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An International Legal Theory of Reification: The Ideological Process and its Application in International Investment Law

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Abstract
The application of ideology as a concept has long been a feature of the Marxist analysis of law. Marxist scholars have used ideology to investigate the various ways law features as a part of capitalism's epiphenomenal superstructure which reproduces its economic base. In the years following globalisation's rabid expansion of capitalist social relations across time and space, this formulation of both ideology and law has grown increasingly obsolete in capturing the various ways in which concept, practice, time and power relations overlap to reproduce our material world. This paper contributes to the reformulation of ideology and (international) law by offering an international legal theory of reification. In Marx's words, reification describes how social relations between people take on 'the fantastic form of a relation between things.' By formulating an international legal theory of reification, this paper theorises ideology not as a definable concept or thing, but as a process. The ideological process occurs as a dialectical relationship between the material practices of actors and their conceptualisation of these practices under the hegemonic power relations of a given time and space. Specific to the practice of international law, the ideological process reifies the exploitative social relations found in globalised capitalism. The paper provides an example of the ideological process by examining the reification of 'development' as it is found in the practice and conceptualisation of international investment law.

Keywords Reification · Ideology · International Law · International Investment Law · Marx · Development

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Introduction

At a time when the global capitalist system is creating a polycrisis involving the gross degradation of the environment, intensifying wealth inequality and the rise of authoritarianism (Albert 2024), it is worth reflecting more on how international law helps reproduce such a destructive political economy. Critical legal scholarship (Anghie 2005; Miéville 2006; Pahuja 2011; Tzouvala 2020) has for many years demonstrated the role international law plays in facilitating the harms of the global capitalist system through its imperialist, colonialist and neoliberal histories. Crucially, Parfitt (2019, p. 27) charges that exposing international law's reproduction of the past 'wounds' of history '*demands* that we take action to transfigure it.' Such a task requires reflecting on how international law continues to maintain the exploitative social relations and processes of globalised capitalism that contribute to the polycrisis. However, this task remains difficult as long as the possibility of doing and thinking about things differently remains opaque (Marks 2009). It is at this juncture that a Marxist ideology critique of international law becomes so important because its aim is to illuminate areas for progressive change within a globalised capitalist political economy.

This article contributes to the reformulation of legal ideology critique by expanding upon the notion of ideology as a *social process*. It posits an international legal theory of the oft overlooked philosophical concept of reification as it occurs in what this article refers to as the ideological process (Gabel 1982; Hedrick 2014; Litowitz 2000; Stone 1986). Marx (1976; Burris 1988, p. 26) provided the theoretical basis for an analysis of reification by elucidating how, under capitalism, 'definite social relation[s] between men…[assume], in their eyes, the fantastic form of a relation between things.' Concerning legal analysis, reification refers to how the ideological process obscures the transitive social origins of globalised capitalism and entrenches them as fixed natural phenomenon to the subjects involved; 'subjects' broadly encompassing individual actors, collective/social groups (ie states) or institutions (ie international organisations). An ideology critique of how international law reifies the social relations of globalised capitalism demonstrates how its ideas and practices are contestable at their most fundamental level and capable of changing.

Part I of this article formulates the ideological process as the dialectic interplay between three main components. It breaks the ideological process down into: first, people's material practices and the conceptualisation of these practices; second, the historical power relations by which material practice and its corresponding conceptualisation occur; and third, the reification of the capitalist social relations within the practice and conceptualisation of international law (Fyock 2022a).[1]

Part II of this article illustrates the ideological process through a brief case-study examination of the concept of 'development' as it is found in the operation of international investment law (IIL). Development, especially economic development, has long been a topic of contention within both IIL's caselaw and scholarship (Schill, 2015). It has served as one of the regime's core justifications: developing states are

[1] This is a reworked formulation of the ideological process that was originally provided in Chap. 3 of my PhD thesis titled 'International Investment Law as Development: The Ideological Constraint of the Grand Bargain'.

believed to benefit economically from their participation in the regime despite a lack of empirical evidence backing this claim (Salacuse and Sullivan 2009; Swenson 2009). This article's examination of reification and the ideological process offers an alternative reading of developing states' involvement in IIL by illustrating how the practice and conceptualisation of IIL, under the imbalanced social relations of globalised capitalism, reifies capitalist economic development. Such reification obscures the exploitative social relations at the heart of the legal relationship between foreign direct investment and developing states and locks developing states into the broader global capitalist system.

Part I. The Ideological Process of International Law: A Dialectical Legal Theory of Reification

The application of ideology critique as an analytical tool for examining the law's role in the reproduction of capitalism has long been a feature of the Marxist analysis of law (Hirst 1979; Hunt 1985; Sumner 1979). Traditionally, Marxist scholars often used ideology critique to investigate the various ways law features as a part of capitalism's epiphenomenal superstructure which reproduces its economic base. However, ideology has become a fraught term with an overabundance of meanings, leading some to even question its analytical capacity (Eagleton 1994, pp. 1–20; Fagerholm 2016, p. 138).[2] In the years following globalisation's rabid intensification, the traditional formulation for both ideology and its relation to law has grown largely obsolete in capturing the various ways in which concept, practice, power relations and time overlap to reproduce our material world (Holdren and Hunter 2020; Sayer 1987).[3] Such shortcomings have prompted a recent wave of legal scholarship (Knox and Tzouvala 2021; Marks 2003; Parfitt 2019; Tzouvala, 2020) to reformulate what ideology means to international law. Legal scholars have increasingly viewed ideology not as a 'false consciousness' reflecting a determinative economic base but as 'a social process that is realized in and through social relations' (Hunt 1985, pp. 16–17). By elucidating an international legal theory of reification, this article contributes to the reformulation of how the ideological *process* locks legal subjects into the social relations of globalised capitalism.

An analysis of international legal reification should not be interpreted as giving philosophical or methodological primacy to idealism, something which Lukács, arguably reification's most seminal theorist, is often accused (Burris 1988, p. 34). Marxism is first and foremost a materialist philosophy and there are concrete, material forces that inhibit progressive change and entrench capitalist social relations. However, 'the concrete is a concentration of many determinations' (Hirst 1979, p. 113; Marx 1973, p. 101). The relationship between practice and concept is not one of cause and effect, but rather a dialectical relationship where the two act on one

[2] Eagleton's typology of ideology identifies over a dozen various definitions that have been applied to the term over time.

[3] Sayer makes the argument that Marx never intended the base – superstructure metaphor to be the basis for theory, but instead a 'guiding thread' or 'orientation to empirical and historical research,' p. 13.

another (Kivotidis 2021).[4] The term 'dialectical,' here, refers to the systematic analysis of a 'concrete unity' (Lukács 1968, p. 6) in which all physical, social and mental aspects of reality 'are in a process of movement and becoming, of development and change' (Norman and Sayers 1980, p. 4). While such a concept of 'totality' comes with an immense level of theoretical baggage, it is very useful in thinking through how causal determinants interact and affect one another within a larger whole (Jay 1984). A dialectical analysis emphasises three things: first, reality is comprised of relations between things; second, reality is processual and in constant motion; and third, social reality is, according to the prior two, capable of change. The takeaway of a dialectical analysis is that, while there may be a primary determinant in certain facets of reality (Althusser 1996),[5] whatever that determinant is (perhaps an economic phenomenon), in terms of its effect on human processes, it always corresponds and interacts with other determinants (social and/or mental). In this way, it is not as simple as stating that our ideas determine our material circumstances, nor is it viable to posit that they merely reflect these circumstances. Rather, a dialectical approach recognises the relationship between both.

The concept of reification effectively bridges the dialectical relationship between the material, contingent social relations of a given point in history and the more ideational, conceptual features in which they correspond. Lukács (1968, p. 135) describes reification as the condition in which 'man…confronts a reality "made" by himself…which appears to him to be a natural phenomenon alien to himself; he is wholly at the mercy of its "laws".' An analysis of reification, then, takes as its starting point that the *social* aspects of our reality - intangible abstractions like shared notions of 'justice,' an institution such as the 'nation state' or the 'value' of a commodity - are not metaphysical objects but are rather socially determined relations between people. Marx insisted that the categories or concepts used in describing social phenomena are 'transitory;' concepts are historically determined (Sayer 1987, p. 126). An analysis of reification reveals how, people, socially, through their activity, thought and communication, turn their shared concepts into objective things that then act back upon them. It is therefore important to recognise that 'reification is not merely an illusion foisted upon consciousness from the outside,' but the mystified appearance of concrete social relations and social processes that have objective impact on people's lives (Burris, 1978, p. 26).

An analysis of reification in international law illuminates the deeper social-structural level of the ideological process as it occurs within international law's practice and ideation (Litowitz 2000, p. 417). Such an analysis is distinct from more 'instrumental' or intentional notions of ideology that view ideology as a way by which powerful actors realise their ends through surreptitious means of domination (Burris 1988, p. 32). This is not to say that international law is not full of instances in which gross power imbalances have established and maintained its order. Indeed, the general principles of law recognised by 'civilized nations' represented a very narrow 19th century western European idea of *who* counted as 'civilized' (Koskenniemi,

[4] Kivotidis describes dialectics as an analysis including the interconnectedness of social processes, movement and history, p. 544.

[5] Perhaps something resembling Althusser's 'determination in the last instance'.

2002, pp. 11–97). Power and domination, of course, are an important element of the ideological process and are of particular relevance to the practice of law (Miéville 2006). For instance, understanding ideology's relationship to power provides a better understanding of how certain groups' dominate other groups through the discursive power of the law and how certain norms or principles take prominence over other normative orders (this will be discussed in more detail below) (Marks 2003; Tzouvala 2020).[6] However, an analysis of reification differs by drawing special attention to the structural underpinnings of the ideological process in the law. Specifically, an analysis of reification problematises 'the foundational notions upon which laws are constructed,' the law's underlying conceptual apparatuses comprising its norms, principles and customs (Litowitz 2000, p. 417). An analysis of reification in the law, therefore, rather than focusing primarily on the use of power, illuminates how it is often the banal collective acceptance of the law's reified social, historical, political and economic conceptual underpinnings that helps reproduce the exploitative social relations of globalised capitalism. The law obscures, naturalises and entrenches the capitalist notions of substantively transitory international legal concepts like sovereignty, justice, consent, reasonableness or development (among many others).

To offer a theory about how reification occurs within the practice of international law, the following breaks down the ideological process into three dialectical moments: first, the disconnect between practice and concept; second, the influence of power and social structure; and third, reification. Importantly, these three moments do not come together in some mechanical fashion or sequence that produces 'ideology.' Rather, they are three interconnected parts of a moving social process in which subjects naturalise their transitory, socially constructed world and this reified world comes back around to constrain their agency, inhibiting progressive change. Ultimately, reification represents a 'subordination of human beings to things and the relations among things' (Burris 1988, p. 28). International law, with its norms, principles and underlying concepts, is a malleable human artifact that should be at the behest of humanity's needs. Instead, international law tends to put its norms, principles and underlying concepts – its things – in the driver's seat at the detriment of people and the environment.

The Disconnect between Practice and Concept

While there is no real starting point to the type of dialectical approach adopted here, Henry (1983, p. 162) suggests that an analysis of ideology should begin with the consciousness a subject has about its lived experience. Doing so brings to the fore the relationship between 'practice' and 'concept.' According to Marx (Marx and Engels 2011, p. 15), subjects' interaction with their material context determines how they represent this material context to themselves and one another, famously stating, 'Life is not determined by consciousness, but consciousness by life.' Ideas are 'embodied' in material practice (Poulantzas 1978, p. 68). This is what it means to be a materialist philosophy: it is people's lived material conditions which shape their mental atti-

[6] Legal scholars like Marks and Tzouvala have adeptly demonstrated the law's role in establishing and maintaining domination through its discursive practice in the law's norms, principles and customs.

tudes towards the world. Nonetheless, if people's actions were simply the result of a given set of material circumstances, they would be left with no agency to act upon their intersubjective, material conditions. People shape their world through their conceptual and social interaction within their material circumstances (Henry 1983, pp. 168–169). Practice and concept, while distinct, are dialectical features of the same 'concrete unity.'

However, the above does not imply that practice and concept are identical reflections of one another. Rather, an analysis of reification falls within the rationalist western philosophical tradition concerned with the divide between a subject's knowledge, or mental representation of a given object, and what the given object is in its material being (outside of the mental processes of the subject's mind) (Piccone, 1977, p. 15). The logical consequence of distinguishing between material practice and concept is that the two are not identical; a subject's material object or circumstance does not always align with a subject's representational or conceptual suppositions of it. Marx provides his notion of 'practice' in *The German Ideology* (2011, p. 7) as '…the physical organization of…individuals and their consequent relation to the rest of nature.' Practice consists of a 'series of practices, know-how, customs and rituals' that occur as material intersubjective experiences between people and their environment (Poulantzas 1978, p. 68). Concepts exist as the intersubjective mental representations of these material practices (Berger and Luckmann 1966). There is no necessary or inherent connection between the two; they are not identical (Piccone, 1977). 'If there were [a necessary connection between them], then not only would absolute knowledge be possible,' as Piccone (ibid., p. 15) points out, 'but it would have long since been attained by mankind.'

Accordingly, there can occur a disconnect between peoples' material practices and the intersubjective conceptualisation of these practices (Adorno 1973, p. 146).[7] How one conceives of a particular concept, whether that be something like development, property, or justice, and how this concept reflects the particular concrete material practices as experienced in one's lived reality, can vary radically between individual circumstances and contexts. Relevant here is the distinction Marx makes in the terms 'abstract' and 'concrete.' Kivoditis (2021, p. 545) points out that these terms represent 'epistemological categories' in which 'abstract' corresponds to the 'one-sidedness' of a thing while 'concrete' represents the 'unity of diverse elements' that always occurs in a world that is in a constant state of change. Concepts have a tendency towards abstraction – they are often fixed, static and/or isolated. This fixedness can often be at odds with material practice, which is concrete, dynamic, processual and interactive (Norman and Sayers 1980, pp. 2–3).

Law attempts to navigate the complicated relationship between the dynamism of concrete material social practice and the abstraction that often occurs with this practice's conceptualisation. Law, as a form of objectified social relations, is a way in which people mediate their shared experience with one another: as Klare (1979, p. 132) formulates, it is 'a form of expressive social practice in which the community participates in shaping the moral, allocative and adjudicatory texture of social life.'

[7] Adorno refers to this disconnect as the 'identity' and 'nonidentity' between a concept and particular thing.

The ideological process, as it is found in international law, is, in part, the result of the disconnect between this expressive social practice and the often-times abstract conceptualisation that corresponds therein.

For example, a concept such as ‘property’ can encompass a vast array of ways in which people, municipalities or states organise their personal and/or group possession over objects, both physical and/or mental. The concept ‘property’ becomes abstract in the Marxian sense when subjects’ use of the concept becomes fixed to a narrow usage or understanding like it has under capitalist social relations. Indeed, property can and has represented many different forms of possession and ownership throughout its history, from periods of slavery to feudalism to capitalism, and so on (Brenner 2007). Renner (1949, p. 281) illustrates how capitalism has effectively tied the notion of property to ‘one function only, that of drawing surplus value from the object.’ In removing the concrete social relations behind what creates value, that a working class sells its labour to an ownership class that possesses the means of production, capitalism has rendered the concept of property abstract and one-sided.

Abstracting a concept like property into one narrow iteration of itself inhibits the potential for its corresponding material practice to change. Such constraint contributes to the ideological process because it inhibits the dynamic potential of people’s material practice around a social feature like people’s possession and ownership over objects. It is important to maintain that, since there is no necessary connection between concepts and their corresponding material practice, these connections are fundamentally malleable and can change over time.

Power

The dialectical relationship between practice and concept formulated above is not intrinsically problematic if it were not for the second feature of the ideological process: power. The social interplay between practice and concept does not occur within a vacuum. Rather, both material practice and its corresponding conceptualisation occur within an historical context in which power and domination are a constant feature. Power, in its reproductive sense (as opposed to its repressive or violent sense (Miéville 2006), helps configure the form, or iteration, that practice and concept take. It is the form of practice and concept under the influence of power relations that is reified in the ideological process of international law.

The framework developed here formulates power in two senses. First, power is often exerted instrumentally by dominant groups to achieve a certain end. It is this form of power that establishes the dominant use and understanding of the practices and concepts that become hegemonic (Bachand 2021). Like the relationship between practice and concept, however, power must also be viewed dialectically. Power is not only comprised of one subject’s domination over another. There is a second side to power that is structural and embedded in the internal logic unique to capitalism. The second form of power is one in which subjects are dominated by objective social structures embodied in institutions, rituals and customs. The social structures created by capitalist practice and concept act back upon subjects, constrain their agency and compel their participation in the reproduction of capitalism (Mau 2023). This is a broader form of power which is outside of the direct control of any particular social group or institution. These two forms of power act together in the contemporary international legal system to entrench and naturalise a particular iteration of concept and practice.

The first form of power has been widely discussed in the context of international law (Marks 2003; Pahuja 2011; Schneiderman 2014; Tzouvala 2020). It follows a largely instrumental, Gramscian formulation of hegemony in which ‘a social class [or group] export[s] a mode of production (favourable to its own interests) [capitalism] to the entire world, thereby succeeding in convincing other actors that it is also beneficial for them’ (Bachand 2021, p. 360). Marx (Marx and Engels 2011, p. 39) wrote that,

> The ideas of the ruling class are in every epoch the ruling ideas: i.e. the class which is the ruling material force of society is at the same time its ruling intellectual force. The class which has the means of material production at its disposal has control at the same time over the means of mental production, so that…the ideas of those who lack the means of mental production are subject to it.

In this formulation, ‘the interests of the leading class’ are brought ‘into harmony with those of subordinate classes’ by universalising the leading class’s interests through consent – this is hegemony (Cox 1983, p. 168). The leading class, or group, makes their interests ‘common sense’ by embedding their customs, discourses and ways of thinking into the routine activity of the masses (Cox, ibid; Gramsci 1971, pp. 323–333). Common sense, in Gramsci’s use of the term, does not refer to the self-evident or obvious nature of some feature of reality. Rather, the common sense perspective occurs when more powerful subjects’ unreflective understanding of a particular concept or practice becomes hegemonic.

The Third World Approach to International Law movement provides an example of this form of power in its broader analysis of how international law facilitates the hegemony of the global North by exporting their norms, principles and customs to the global South. Authors like Anghie (2005) and Pahuja (2011) illustrate how international law conveys discursive power to the global North by universalising this block’s interpretation of the law. By ‘universal,’ these authors mean that international law’s project has been to make the global North’s meaning and use of different legal norms, principles or customs ubiquitous and equally applicable to all states. International law makes Northern norms, principles or customs common sense. Global South states assimilate to international law’s project by consenting to the global North’s norms, found as they are in international law’s instruments or discourses, despite the concrete differences global South states experience in their social, political or cultural histories. For instance, Pahuja (ibid., p. 46) demonstrates how global South states achieved recognition within international law only through their tacit acceptance of international customary norms like the Minimum Standard of Treatment. Such customary norms were established by Northern practice while much of the global South was colonised and therefore unable to participate in the formation of custom. Pahuja argues that the tacit acceptance of Northern international norms continues to disadvantage global South states because principles like the Minimum Standard of

Treatment are used to target Southern treatment of Northern capital through regimes like IIL, for example.

Power, however, is not only instrumentally wielded by a leading class or group. It is also a structural effect of capitalism, located '*in* the economic processes themselves' (Mau 2023, p. 4) – what Marx refers to as 'mute compulsion' (Marx 1976, Chap. 28). Mau expands upon Marx's theory of mute compulsion to illustrate how capitalism's internal logic, the logic surrounding capitalism's imperative towards expansion, creates a system in which subjects must compete economically with one another or face ruin. This structural competition, inherent to the capitalist system, compels subjects to participate in and reproduce the system. Most notable about this structural feature of capitalism is its impersonal character (Mau 2023, p. 136). '[Capitalism] "insert[s itself] in the gap between life and its conditions", which essentially means that [subjects] cannot reproduce [their] social existence without mediation by the market and money as a universal equivalent' (Kotova 2024, p. 86; quoting Mau 2023, p. 114). Once the capitalist imperative to compete and expand is established, it locks subjects into the logic of its system. The structural power of capitalism affects subjects from both sides of the class divide. The capitalist classes are locked into competing amongst themselves to expand their accumulation of capital just as the labouring classes must compete amongst themselves to secure a place within the system.

International law plays a fundamental role in structuring the mute compulsion of capitalism on a global level (Kotova, 2023, p. 109; Pashukanis 2009).[8] The commodity form theory of law, derived from Marx's (1976, pp. 138–152) theory of 'commodity fetishism,' posits that the law, similar to capitalist exchange, is based upon an artificial system of equivalence (Pashukanis 2009). In Marx's theory, there is a commodity's use value, the unique characteristics that give the commodity its individual worth, and its exchange value, the universal, socially determined value designated to each commodity based upon the abstract 'labour time' necessary for its production. Because no two commodities are qualitatively the same thing, capitalism bases a commodity's value on its abstract exchange value. It makes 'unlike things alike' (Rose 2014, p. 59). Similarly, the law removes the concrete, unique differences between subjects and replaces them with an abstract legal personality (Pashukanis 2009, p. 85).[9] This abstract legal personality, devoid of any material difference, provides the basis for a system of law in which two artificially equivalent legal subjects can meet one another on a plane of formal equality. In other words, the law provides the structural basis for the labourer and the capitalist to meet one another as formally equal rights bearers in the market, just as it provides the basis for states (or, as will be seen below, investors and states) to meet one another as sovereign equals on the international plane.

This is not to say that the international legal system is solely the consequence of economic processes. In fact, to view the commodity form theory of law as economic determinism would be to miss the point about what the law does in a liberal capitalist

[8] The commodity form theory of law was originally theorised by Evgeniy Pashukanis and extrapolated to international law in Miéville (2006).

[9] Pashukanis writes, 'In as much as the wealth of capitalist society appears as "an immense collection of commodities", so this society itself appears as an endless chain of legal relations.'

society. Rather, the commodity form illustrates how legal subjectivity within liberal capitalist society eschews subjects' concrete distinguishing features in favour of an abstract equality between subjects, thus obscuring any potential concrete inequalities that may exist in material practice. It provides the legal basis for the mute compulsion of capitalist social relations – relations that are inherently unequal. The commodity form of law provides the basis for how a capitalist, who owns the means of production, can enter a consensual relationship with a worker, who conversely only has their own labour at their disposal. This is visible in international law, whereby, in providing the basis for states to meet one another as sovereign equals on the international plane, international law provides the basis in which global South states accept an international legal system of norms, principles and customs not of their making. Global South states are compelled to accept international law as it is if they wish to participate in the system.

Reification

The final component of the ideological process of international law is reification. Reification describes how subjects treat the corresponding concepts of their concrete social practices, shaped by historical circumstances and power relations, as natural, abstract things (Gunderson 2020, p. 22).[10] Over time, these abstractions gain a kind of 'phantom objectivity' that acts back upon and constrains the very subjects that create them (Lukács 1968, p. 83). Law is very susceptible to such a social process. As an expressive social practice in which subjects engage with one another through discourse and codification, legal practice tends to crystalise and make abstract the shared concepts which correspond to its material practice. These concepts then come back to influence the very practice to which they correspond.

One may argue, when considered from the perspective of making transient social concepts 'things,' that reification is an inevitable consequence of the human experience. This would be a misreading of reification's analytical breadth. Reification does not extend to the broader social practice of assigning intersubjective meaning to shared material practices and their objects. Berger and Pullberg (1965, pp. 199–200) refer to this behaviour as 'objectivation' or 'objectification,' depending on degree, and the two terms differ from what the authors refer to as 'alienation' and 'reification.' The prior two terms are necessary for subjects to socially comprehend the world around them. In contrast, alienation, in line with Marx's theory, occurs when subjects' intersubjective assignment of meaning to the exterior world is 'broken' off and becomes separated from its immediate experience and understanding (ibid., p. 200). Reification, Berger and Pullberg (ibid.) argue, goes a step further and occurs when these abstract meanings take on an objective 'thinghood' of their own and, more importantly, 'become the standard of objective reality.'

What sets reification apart is its ideological dynamic: that reified concepts become the standard of objective reality. Legal practice tends to abstract and naturalise the social relations of the material context in which it occurs. In a world dominated by

[10] Gunderson describes reification's unifying element as 'the way in which society…appears as if it were fixed and inalterable.'

capitalism, the practice of international law narrows the plurality of such concepts like civilisation, sovereignty, development and many others to 'one-dimensional' capitalist iterations of themselves (Marcuse 1964). In doing so, international law entrenches and obscures capitalist social relations 'as both [its] backdrop and [its] ultimate goal' (Lostal 2025, p. 816). Reification, and the ideological process more generally, cannot be understood as a mechanical sequence. It is a dialectical process concerning the relationship between practice and concept, power in both its instrumental and structural forms, and the passage of time. It is in the concept of reification that these different elements come together in a moving, interconnected process in which abstract 'things' come to represent the standard of objective reality.

In analysing reification as it occurs in international law, it is perhaps easiest to begin with how the instrumental use of power narrows the concrete plurality found in both practice and its corresponding conceptualisation. Instrumentalism involves the 'streamlining' or 'rationalising' of certain narrow ways of doing things to achieve a particular end (Horkheimer 2013, p. 13). Under the capitalist system, powerful actors 'instrumentalise' capitalist social relations to more effectively establish a rationalised, smoother system of commodification, exchange and global exploitation (Jameson 1979, pp. 130–131). The disconnect between practice and concept occurs when these practices and concepts, formally concrete in their plurality, become abstract as hegemonic actors instrumentally narrow them to meet certain ends. The instrumental use of law is particularly evident in the different areas of international economic law.

Recall, for example, the universalisation of international law's norms, principles and customs mentioned in the previous section. Tzouvala (2020, pp. 56–63) illustrates how the global North was able to use international law and its narratives around 'civilised nations' to get newly independent global South states to accept the international legal infrastructure (ie property relations) around free trade and foreign investment. This capitalist international economic legal infrastructure is, of course, only one way that global communities could organise their political economic relations. History shows that a vast plurality of political economic arrangements has existed between communities (Graeber and Wengrow 2021). However, in instrumentalising and universalising the global economic legal system around free markets, private property and the division of labour, powerful states entrench the capitalist social relations that siphon the surplus value from the global South to the North (Wallerstein 2014).

Reification exhibits its temporal element when the hegemonic, instrumentalised iterations of social practices and concepts become routine over time. If alienation is the separation of meaning and practice from immediate human experience, reification occurs when subjects 'forget' the plurality and complexity that composes any set of concrete social practices or concepts before such separation (Adorno and Horkheimer 1997, p. 230). Gunderson (2021) describes the loss of social practices and concepts' plurality as a kind of 'social amnesia.' This critique makes sense from a dialectical point of view because the human experience is one of constant change and motion. Material practice is comprised of concrete activity between unique individuals or groups pursuing their own instrumental ends. The plurality and complexity comprising human activity (material practice and its corresponding conceptualisation) becomes calcified over time as the powerful entrench their way of doing things and understanding the world. This process prompted Marx (1926, p. 23) to declare:

> Men make their own history, but not just as they please. They do not choose the circumstances for themselves, but have to work upon circumstances as they find them, have to fashion the material handed down by the past. The legacy of the dead generations weighs like an alp upon the brains of the living.

The tragedies and struggles of the past eventually get forgotten and the hegemonic practices and ideation of the present get taken for granted as common sense. Such a dynamic is visible, for instance, in how the New International Economic Order's struggle to redefine state sovereignty over natural resources has steadily faded from memory and the more recent neoliberal notions around sovereignty, self-determination or consent have become routine (Salomon, 2013).

Subjects' 'amnesia' about the social origins of their abstractions '[gives these abstractions] the impression of being natural conditions [despite] not [being] immediately recognizable as the result of man's social activity' (Kosik, 1976, p. 2). This dynamic of reification is its corresponding structural element that occurs in the present. Reification naturalises and entrenches the hegemonic, narrow ways of doing things and their corresponding understanding. As a result, reification obscures the concrete plurality of concepts and entrenches an abstract fixedness in its stead. It amplifies the disconnect between practice and concept by making 'unlike [concrete] things appear to be identical or equal' (Rose 2014, p. 60). It is in this way that theorists like Lukács and Adorno compare the fetishism of the commodity to the subject's experience of capitalism. In the same way a commodity's exchange value becomes equivalent to its use value, reified practices and concepts become the standard of objective reality in relation to their given origin. Subjects experience the socially constructed system of exchange as an objective, natural thing they must navigate (Lukács 1968, p. 87). Reification naturalises the social relations of globalised capitalism - free markets, private property relations, the division of labour, etc. - and entrenches the mute compulsion that is their consequence. Subjects foist these reified practices and concepts back upon themselves as the objective standard of reality.

Reification, then, is about how objectified, abstracted social relations come back around to control subjects as a system of 'natural' laws – fixed, inalterable ways of doing and thinking about social phenomena. It describes how subjects give objective material force to their abstractions and these abstractions come back to control them (Schutz 1973, p. xxxvi). Berger and Pullberg (1965, p. 199) point out that reification is not only a phenomenon endemic to capitalist social relations but occurs in a similar way to other social practices and concepts. Pashukanis's commodity form theory of law, for instance, illustrates how the law reifies the liberal legal subject, but legal practice also naturalises abstractions such as property, value, justice, development, and so on (Kennedy 1985, pp. 978–979). International law is replete with reified concepts that have gained material force by becoming the standard of objective reality. These objectified legal abstractions come back to constrain the very concrete subjects that create them. The below provides one example of this through an analysis of the reification of 'development' in the practice of IIL.

In sum, reification is an essential component of the ideological process because it occludes the plurality inherent in any concept representative of a constantly changing world. In this plurality's stead, reification entrenches a singular way of acting in and understanding this same world. However, it must be posited that reification is not necessarily a permanent or even static social phenomenon. Rather, reification's social origins must be emphasised. Ultimately, reified forms only represent one transient iteration of history; reified concepts and practices are still fundamentally social phenomena, and, therefore, they are still capable of change (Bhaskar 1979). Any articulation of a given practice or concept is neither static or totally indefinite but rather a partially fixed 'nodal point' with a contingent character subject to its contextual social relations (Laclau and Mouffe 1985, pp. 99–100). In other words, though reification entrenches or naturalises practices and their corresponding concepts, these practices and concepts do fundamentally maintain their malleability, even if it is under layers of social fixedness. International law can change, but this change requires both a change in material practice and how this material practice is conceived. This is the final, perhaps most important point that an analysis of reification reveals: to challenge the ideological process, subjects must engage at both a material and conceptual level.

Part II. The Ideological Process in International Investment Law: An Analysis of the Reification of 'Development'

As the forum which states, international organisations and other vested interests come together to shape the moral, allocative and adjudicatory texture of international life, international law plays a significant role in the ideological process. It is the site at which meaning gets imputed through international legal practice (Kelsen 1992, pp. 8–14), international norms develop under the control of powerful institutions (St John 2018) and time slowly obscures the international legal activity that previously transpired (d'Aspremont 2022). This article has offered a schematic as to how international law contributes to the reification of certain (particularly) capitalist ways of doing and understanding things. Of course, it is impossible to demonstrate the ideological process across the entirety of international law, with its many various regimes, institutions, actors and processes. Instead, the following section provides one example of how international investment law's treatment of a particular concept – that of 'development' – exhibits the key elements of the ideological process outlined above.

The below walks the reader through the three components of the ideological process – practice and concept, power and reification – as it occurs within IIL and its engagement with the concept of development. It is not that this one example represents exactly how the ideological process and reification occur in every instance. This is not the purpose of an ideology critique. Rather, the point is to demonstrate how the dialectical dynamic of the ideological process can occur within the practice and ideation of a concrete area of international legal practice.

International legal concepts such as development often take on a 'phantom objectivity' within international legal practice that significantly impacts the material lives of those involved. The fact that these concepts gain objectivity is not what makes them ideological, however. Rather, it is that this objectivity is a one-dimensional objectivity that naturalises a very narrow way of acting in and understanding the world. Specifically, this section demonstrates how a reified international legal concept such as development can lock developing states into the broader one-dimensional system of globalised capitalism. An analysis of IIL's reification of development illustrates how the ideological process obscures the exploitative social relations at the heart of the legal relationship between foreign direct investment and developing states. The reification of development helps entrench a capitalist international legal order that constrains the ability of its subjects to creatively find new ways of producing and reproducing their social lives.

IIL is an international legal regime centred primarily around the vast number of, largely bilateral, international investment agreements (IIA) between states and these agreements' corresponding enforcement mechanism, investor-state arbitration. IIAs provide legal protection to the commercial activities of their respective countries' investors through the substantive and procedural investment protections found within their texts. Scholars and activists have found much contention over IIL's roughly four decades of operation due to various systemic issues such as its alleged democratic deficit (Cotula 2017), a perceived power imbalance between actors from the global North and global South (Sornarajah et al. 2018) and multiple doctrinal issues such as inconsistent decisions in the arbitral caselaw (Arato et al. 2020). Such issues have brought the question of global South states' involvement to the fore, prompting multiple analyses from various theoretical, empirical and economic methodologies (Bonnitcha et al. 2017; Guzman 1997; Poulsen 2015; Williams 2022). The question is seemingly simple: why would a sovereign state participate in a legal regime that, at its best, has not been shown to deliver the material benefits promoted by its advocates (Webb Yackee 2008), and, at its worst, avails respondent states to damages in the billions of US dollars (Marzal 2021)? Economic development has traditionally been proffered as a justification. Critic of the regime, Sornarajah (2016, p. 210) points out that 'the loss of control over foreign investment that results from conformity with the standards in the investment treaty' only makes sense, particularly from the perspective of a developing state, with the '*quid pro quo*' of economic development.'

There is a plethora of literature concerning the merits of this rationale or whether IIL promotes development (Fauchald 2021; Hansen and Rand 2006). However, little attention has been paid to how IIL's relationship with development acts as an ideological justification for the regime, but also that the practice and ideation that occurs within IIL calcifies a particular *capitalist* iteration of (economic) 'development' to those involved (states, international legal practitioners, scholars, etc.). By illustrating the reification of capitalist economic development in IIL, this section demonstrates how international law's practice can naturalise and constrain the ideation around a particular concept to an exceptionally narrow, capitalist version of itself. This section applies the three features of the ideological process outlined above to show how this one-dimensional iteration of development constrains the agency of those involved in the regime, especially those found in the global South.

International Investment Law's Disconnect between the Concrete Plurality of Development and its Abstract Capitalist Conceptualisation

The ideological process involves the disconnect between concrete (plural) material practice and the abstract conceptualisation that often comes to represent such practice. 'Development' exhibits well the potential plurality of a concept that encompasses the vast array of practices, beliefs and ideas around the technological, economic, political or social progress of a given community or society. While mainstream development discourse has historically, rather vaguely, articulated the concept as 'the movement upward of the entire social system' (Myrdal 1974, p. 729), in practice, this concept's plurality has increasingly been curtailed, perhaps even completely coopted (Phillips 1977), by its association with globalised capitalism and international legal regimes like IIL. The objective in pointing out this disconnect is not to define or even redefine a concept like development. Rather, the objective is to point out that any legal concept like development will inherently comprise a plurality of concrete features, aspects or practices, and that this plurality is made abstract by the ideological process.

Development as a concept could represent various different accounts of 'upward' social movement or progress. For instance, Nussbaum (2011) and Sen (1999) have both offered accounts of how development could represent the advancement of people's personal capabilities. More recently, authors have even explored moving beyond the connection between the economy and notions of development altogether by shifting the focus on how communities could live well by being in greater harmony with the environment (Kothari et al., 2019). Be that as it may, over the years the concept of development has increasingly come to equate to a very specific set of ideas around progress and *economic* development despite these alternative accounts (Cheang and Palmer 2023). Rist demonstrates how development has visibly narrowed in scope to represent a very limited set of political economic assumptions around globalised capitalism by providing a critical genealogy of development, through its origins in the colonial/imperial encounter, to its Americanisation in the years following the second World War, to its more recent correlation with discourses around sustainability (Rist 2014). Particularly in the last 50 years, mainstream commentators have left behind development's alternative voices such as the Dag Hammarskjold Foundation Report (1975) or the Ujamaa program of post-independence Tanzania (Huizer 1971). These initiatives' emphasis on both a development from within communities, focussing on the provision of socio-economic well-being, and a critical view of the exploitative nature of capitalist systems existing between the global North and global South has given way to one-dimensional developmental initiatives represented by the likes of the Sustainable Development Goals (Hickel 2018).

It is hardly contestable to claim that 'development,' as a concept active in IIL's discourse and practice, is almost only associated with capitalist, growth-oriented notions of the concept. The coupling of economic development and the operation of the regime is directly visible in various preambular statements such as that found in the International Centre for Settlement of Investment Disputes (ICSID, IIL's main dispute resolution body) (1965, Preamble), recent regional trade and investment agreements such as the African Continental Free Trade Area's (AfCFTA) investment protocol (2023, Art. 28), arbitral deliberations around the definition of investment (*Phoenix Action* *v. Czech Republic*, 2009, para. 85) and said deliberations' corresponding scholarly discourse (Garcia-Bolivar 2011). Even IIL's more recent, enthusiastic embrace of the principle of sustainable development still comes with 'background assumptions' around the necessity of capitalist notions of growth and foreign investment (Fyock 2022, p. 41). For example, IIL's relationship with the Sustainable Development Goals presumes the necessity of foreign investment for their actualisation; the Goals even go so far as to make economic growth one of their primary targets (Fyock, 2025A, pp. 172–175). This means that, even though the regime and its associated scholarship may actively try to soften IIL's more harmful social and environmental tendencies, its espousal of sustainable development is still built upon the capitalist relations of private property, division of labour, free trade and so on.

The point of the above is to show that there is no necessary, inherent meaning to the concept of 'development.' Rather, the concept can represent a plurality of concrete meanings regarding peoples' capabilities, equity, culture, and so on. It could refer, for instance, to 'the removal of various types of unfreedoms that leave people with little…opportunity of exercising their reasoned agency' (Sen 1999, p. xii). Or, development could involve 'promoting greater economic cooperation' and 'stimulat[ing] the flow of private capital' through states' signing of IIAs (U.S. Model BIT, 2012, Preamble). The ideological process helps explain how the latter has become hegemonic rather than the former by illustrating how development's concrete plurality is greatly curtailed and made abstract within the practice and ideation of international legal regimes like IIL. Instead of states envisaging and pursuing their own concrete iterations of 'development,' deciding for themselves what the concept entails and looks like, the operation of IIL reflects that the very narrow, abstract iteration comprising capitalist, economic growth-oriented development is hegemonic. Crucially, this abstract notion of development in IIL's practice and ideation is not just a random occurrence. The next section illustrates power's role in determining which form a concept like development takes in its practice and ideation in a regime like IIL.

International Investment Law, Development and the Power of Capitalist Interests

The ideological process sheds light on how international legal practice narrows a concept like development to its capitalist iteration by examining power's role in the process. International law plays a significant role in this narrowing of the concept of development to economic development and connecting it to the advancement of capitalist social relations. Like Rittich (2016, p. 821) points out, international law is instrumentally 'relied upon to catalyse social and economic change' and that, 'within mainstream development policy and practice, legal and judicial reform is often imagined simply *as* development.' 'Legal and judicial reform' has most often corresponded to the narrow strictures of capitalist free markets, the privatisation of public goods and a global division of labour. This instrumental dynamic is particularly visible in IIL. However, as will be shown below, there is also a structural element to international law and IIL's power in entrenching an abstract version of capitalist, growth-oriented development.

IIL's history is one in which its proponents used development as an instrumental discursive device to persuade developing states to assimilate into a liberalised global capitalist system. Mirroring Rist's timeline above, Olaoye and Sornarajah (2022, pp. 112–121) illustrate how development has attended IIL's evolution from the period of colonisation to decolonisation, to IIL's ascendency and the more recent era of reform with its emphasis on sustainable development. It was during the tumultuous years of decolonisation that a group of 'norm entrepreneurs' from international capitalist institutions like the World Bank sold internationally enforceable procedural and substantive protections as a solution to the 'problems related to international development' (Perrone 2021, p. 4). Such a project, however, did not have immediate appeal for a significant portion of newly independent states that were exploring alternative approaches to economic development such as the nationalisation of domestic industries, permanent sovereignty over natural resources and import substitution.

It was only at the height of the liberal moment of the 1990s and early 2000s that IIL and its norm entrepreneurs, largely representing capital-exporting states, were able to sell the connection between the international protection of foreign investment and development/economic development as common sense. The general sentiment of the time is apparent in one 2002 UN Trade and Development Document (Abeasi, p. 41) which stated:

> How can developing countries have more trade except by expanding their production base? And how can we expand the production base except through increased investments, especially foreign direct investment… Thus the need for developing countries to attract FDI is straightforward and not in question.

It was during these years that scholars enthusiastically promoted IIL as a best practice for acquiring the capital needed to set development initiatives in motion (Salacuse 1999; Vandevelde 1998). Authors like Sattorova (2018) and Tan (2015) point to how proponents of IIL often framed the regime as a form of good governance. This narrative helped legitimise the regime in the perception of developing states by connecting the effects of good governance with economic development, reflected in the common narrative of the 'grand bargain' (Salacuse and Sullivan 2009, p. 120). The grand bargain posits that, by entering IIAs, developing states cede a portion of their sovereignty over their laws concerning foreign investment. Doing so signals to foreign investors that they are a secure economic environments for business, subsequently allowing host states to reap the economic rewards of foreign capital (Bonnitcha et al. 2017, p. 158).

A similar narrative around good governance and development continue to be seen in the initiatives to integrate IIL and sustainable development (UNCTAD, 2019). As a principle which promotes the compatibility between capitalist growth and environmental and social well-being, sustainable development has been enthusiastically embraced by states, practitioners and scholars alike, visible in the oft-discussed Morocco - Nigeria bilateral investment agreement (2016, Art. 24), for example. Nonetheless, sustainable development does not represent a significant departure from previous narratives around best practices. Rather, like previously mentioned above, sustainable development maintains the notion that, with its own set of prescriptions around environmental and social policy, developing states will benefit economically from foreign investment.

The instrumentalism reflected in the efforts of IIL's proponents to push the narrative of the grand bargain coincides with the broader structural power of capitalism's mute compulsion. Similar to Wright's (1979, p. 70) statement about private property: 'as long as…production remain[s] embedded in the legal superstructure of private property, formal legal ownership is in general a *necessary* condition for economic ownership;' as long states remain embedded in a global political economy based upon the expansion of capital through foreign investment, formal legal norms mediating the relationship between sovereign state and foreign investor will remain necessary. Developing states participated (and continue to do so) in IIL in an instrumental attempt to compete for foreign capital. In this way, the rational analyses about the relationship between foreign investment, developing states and IIL by authors like Guzman (1998) or Bonnitcha et al. (2017) are not completely off the mark. Indeed, the circumstances that developing states have found themselves over the years has often been one in which their options are to either participate in the globalised capitalist economy or risk being a pariah state. These authors just miss the broader political economic context in which this dynamic occurs (Fyock, 2025B, pp. 11–16). In a global political economy in which capitalist social relations are supremely hegemonic, developing states have little choice but to compete against one another for foreign capital.

This section illustrated how power, as it is actualised in both its instrumental and structural forms within IIL, entrenches a narrow, capitalist iteration of development in the regime's practice and ideation. The following section shows how scholars and practitioners both accept this reified version of development and participate in its continued reification.

International Investment Law and the Reification of Development

Scholars rightly point out that the narrative around IIL and development, especially in its guise as the grand bargain, has subsided (Lang and Perrone 2017). Indeed, development is no longer an explicit preoccupation of the regime and not something that its proponents use much anymore in justifying its operation. For example, the arbitral debates around investment's definition are no longer something which preoccupy doctrinal and scholarly attention. However, it is here crucial to recall the ideological process and reification's temporal element. Reification is an active and ongoing (a dialectical) process. The reification of development that has taken place in the regime's doctrinal history visibly constrains states' actions in the present and locks them into a globalised political economy that prioritises the protection of foreign capital over the well-being of local communities. Rather than subsiding, an analysis of the reification of development in IIL suggests that the regime and its subjects, through their practice and ideation, have naturalised development as an intrinsic outcome of foreign investment and its corresponding international legal norms. The following section demonstrates how IIL reifies the capitalist political economy in which (capitalist) *economic* development equals development through two examples: tribunals' practice of determining the definition of investment in investor-state arbitration and the creation of regional investment agreements.

IIL's reification of development is perhaps most doctrinally apparent in the concept's relevance regarding the definition of 'investment.' Arbitral tribunals determine their jurisdiction in investor-state arbitration, in part, by considering a dispute's *rationae materiae*, whether the dispute actually concerns an investment. Determining a dispute's *rationae materiae* has required tribunals to grapple with how to define investment. The practice and concept of development became a significant consideration in this debate once it featured in the 2001 ICSID decision on jurisdiction in *Salini v. Morocco* (2001). Namely, the tribunal included 'the contribution of the contract to the *economic* development of the Moroccan State' as one of four key characteristics in the definition of investment (ibid., para. 57). While having lost much of its 'legal force' over the last two decades, *Salini v. Morocco* initiated a significant debate within the discourse and practice of IIL that entrenched 'economic development' as an important consideration in both the operation and justification of the regime (Chan and Lai 2023).

Tribunals recognised that development is a slippery concept. In their attempt to rationalise and streamline their jurisdiction in various cases, they have both naturalised and entrenched development's *economic* iteration by involving it in the definition of investment. For example, the tribunal's comments concerning development in *Phoenix Action v. Czech Republic* (2009, para. 85) illustrate how the concept's concrete possibilities are narrowed and rationalised for the sake of legal clarity:

> It is the Tribunal's view that the contribution of an international investment to the *development* of the host State is impossible to ascertain – the more so as there are highly diverging views on what constitutes "development". A less ambitious approach should therefore be adopted, centered on the contribution of an international investment to the *economy* of the host State.

Tribunals' instrumental reification of development is perhaps most apparent, however, in the tribunal's decision to rationalise the definition of investment in *Pey Casado v. Chile*. In this case (2008, para. 232), the tribunal posited that the development of a host state need not even be a component for the definition of an investment because, by the mere fact of 'protecting investments, the Convention [ICSID] facilitates the development of the host State.' The tribunal (ibid.) determined that the explicit reference to development in the definition of investment is unnecessary because development is rather a 'consequence and not a condition of the investment.' Such a decision naturalises development as a consequence of protecting the capitalist social relations inherent in foreign investment.

The cases above are instances in which tribunals attempted to remove any consideration of a host state's development from determining their jurisdiction. Such instances illustrate how tribunals' *instrumental* efforts to rationalise and remove any debate around development further entrenched a one-dimensional version of development that assumes its economic, capitalist connotations. The *structural* constraint of capitalism's mute compulsion becomes apparent when arbitrators or academics posit the opposite, that (economic) development *should* be a jurisdictional requirement of investor-state arbitration.

For instance, in his dissent *MHS v. Malaysia* (2009, para. 22), Shahabuddeen asserted that if ICSID tribunals were to not consider the contribution of 'investments' to the economic development of a host state, ICSID's original purpose (as a body of the World Bank) would '[lose] its way' by removing the component of economic development from the definition of investment. By continuing to identify the deliberations of IIL with economic development, these actors continue to equate development to the social relations of globalised capitalism. When scholar Sornarajah (2012, p. 313) echoes opinions like Shahabuddeen's, that dispute forums like ICSID would lack competence to arbitrate if investor-state arbitration was not somehow 'connected to economic development,' he identifies economic development from foreign direct investment as a necessary component of a developing state's political economy. Such comments naturalise a system that concentrates the accumulation of capital in the hands of a select few powerful individuals and corporations and entrench a political economy centered on constant economic growth. When Monebhurrun (2017, p. 476) argues that tribunals should either discard development as a component of the definition of investment or provide development specialists that would 'objectively' determine the evidence towards development in a dispute, he is positing that development is a quantifiable concept that can presumably be pinned to a number of economic markers. Such arguments accept the broader capitalist political economy that is responsible for the inequality between the global North and South in the first place.

The analysis of reification drives home Marx's quote above about subjects working with the circumstances of what has been handed down to them from the past. The below two examples concerning states' legal argumentation about the definition of investment and their continued inclusion of development in their investment agreements demonstrates how the past practice and ideation of development 'weighs like an alp upon the brains of the living.' The analysis of reification exposes how subjects no longer must *actively* engage with a particular practice and concept for it to be ideological. Rather, reification reveals how the previous practices, the legal argumentation in caselaw or the previous academic discourse, for just two examples, can lock future generations into a fixed, one-dimensional way of conceiving concepts like development.

Subjects' susceptibility to the reification of development is evident in instances like the dispute between cigarette manufacturer Philip Morris and Uruguay (Philip Morris v. Uruguay, 2013). This was a dispute that concerned the domestic regulation of cigarette packaging. Philip Morris brought claims against Uruguay, claiming that the increased regulatory measures on their packaging violated the claimant's rights as they are provided for in the Swiss-Uruguay BIT (ibid., para. 2; Swiss-Uruguay, 1991). In their defence, Uruguay adopted the Salini approach to *rationae materiae* and posited that the tribunal lacked jurisdiction because Philip Morris's 'not only… [failed] to make any contribution to the Country's development, but they actively prevent and interfere with such development' (ibid., para. 177). By accepting IIL and foreign investment's role in their development as they argued that economic development is an objective criterion of investment, Uruguay accepted the reified understanding of development. Interestingly, Uruguay did not posit development as a holistic approach towards the well-being and public health of Uruguay's people, something that would have exhibited a more concrete, holistic approach to development. Rather, Uruguay's comments suggest that the state turned development into an economic calculation. While the case was eventually decided in the favour of Uruguay, the state's arguments concerning jurisdiction reveal that it had accepted foreign capital's role in developing its economy and decided to pursue its jurisdictional argument accordingly.

The reification of development in IIL is perhaps most visible in its continued prominence in investment agreements between states. It is apparent in certain recent IIAs' (Uzbekistan-India BIT, 2024, Art. 1.4) direct reference to 'the significance for the development of the Party in whose State's territory the investment is made' in the definition of investment. Such reference indicates a continued belief in the grand bargain by states. AfCFTA's protocol on investment (2023, Art. 38) explicitly connects the importance of foreign investment to 'domestic development,' specifically 'the development of local entrepreneurs…enhancing productive and trade capacity…wealth creation' and more. Other recent IIAs, like that between Bahrain and Hungry (2024, Art. 1), do not even mention development, but instead list other core components of an investment like its 'duration, commitment of capital or other resources, assumption of risk or the expectation of gain or profit.' A treaty definition like Bahrain and Hungary's exemplifies perhaps the ultimate reification of development by reflecting the decision in cases like *Pey Casado v. Chile* in which development is presumed as a 'consequence and not a condition of the investment.'

Of course, agreements like AfCFTA's protocol on investment, for instance, come with language about the more equitable and sustainable use of foreign investment and its corresponding international legal practice. AfCFTA article 28(C) (2023) directly states that parties may introduce investment measures that '[address] economic and development disparities suffered by identifiable ethnic or cultural groups, including historically marginalised groups or geographical regions and localities.' Scholarly literature concerning the protocol emphasises how foreign investment must be used in a way that is socially and environmentally sustainable (Ajibo and Kaime 2025; Odionu 2025). It accounts for the 'imperial history and origins' of IIL, stressing the need for a radical 'Africanization' of IIL (Mbori 2023, p. 647).

However, this is precisely the point of reification and the ideological process. It exposes how even the more progressive international legal agreements and sentiments almost always accept the hegemonic premise of capitalist social relations' role in development. The drafters of such international agreements and the authors of such scholarship accept a reified form of development which rests upon the globalised capitalist political economy comprised of private property, liberalised markets, a division of labour and the importance of growth. Such efforts indicate that there is something of a social amnesia about the contestation over globalised capitalism like that which was visible in the writings of Nkrumah and Amin or in the legal battles over what constitutes international law in the 1960s (Abi-Saab 1962; Amin 1976; Castaneda, 1961; Nkrumah 1974). Initiatives like the Sustainable Development Goals and their enthusiastic embrace by proponents of IIL reveal that subjects, whether they be developing states, politicians, international legal organisations, etc., appear to have forgotten that concrete alternatives to capitalist development such as Tanzania's Ujamaa program or the more recent post-growth exist (Kothari et al., 2019). Rather, these subjects accept the exploitative social relations of globalised capitalism by accepting the reified form that the capitalist iteration of development obscures, even in its sustainable iteration. Even Mbori's (2023, pp. 651–658) 'radical' diagnosis for IIL, while calling for the dismantling of investor-state arbitration, implicitly accepts that there is a role to be played by foreign investment and some radically reformed corresponding IIL in order for 'economic justice' to be achieved on the African continent. Implicit in such an argument is a reified understanding of *economic* development as development.

In sum, IIL's uniquely contested economic and political nature provides a useful example of how international law reifies capitalist social relations by illustrating how presumably plural, non-legal concepts such as development can come to naturalise and entrench these capitalist social relations through their practice and ideation in the law. Development has corresponded to the history of the expansion of capitalism around the globe in which international law played a significant role in facilitating. Through both instrumental means and a structural compulsion inherent in capitalist social relations, post-colonial states found themselves in a situation in which they had little choice but to accept IIL's grand bargain. However, in doing so, these states have joined the regime in entrenching a very specific capitalist form of development as its natural, abstract embodiment. Perhaps, in a global political economy dominated by capitalism, the concept of development *is* largely intertwined with economic development and the movement of capital. However, accepting this iteration of development is to accept, and therefore be constrained by, the very same social relations that create the need for economic development in the first place. Like Phillips (1977, p. 7) states, 'There is no satisfactory definition of "development" that does not already imply "capitalism".'

Conclusion

This article examined how the ideological process, as it is found in the operation of international law, can impede the agency of international legal subjects to enact change. The above demonstrates how international law reifies a one-dimensional, capitalist version of concepts like development, entrenching and naturalising the global capitalist social relations that maintain the accumulation of capital and the exploitation of people and the environment at a global scale. Legal practitioners, state bureaucrats, local communities or international legal scholars often accept the concrete, dynamic social relations of globalised capitalism as permanent, abstract, natural things.

However, it does not have to be this way. It is imperative to remember that what is social is also malleable. For as entrenched as material practice and its corresponding conceptualisation can be, they are fundamentally aspects of the human experience which we have agency over. Accompanying the *need* for change is the real *possibility* for change. Adorno (2006, p. 68) points out, 'in every situation there is a concrete possibility of doing things differently.' However, for progressive change to occur around the international legal practices like the law of foreign direct investment, the inherent plurality of social practice and conceptualisation must be recognised and acted upon by those subjects involved. Schneiderman (2008, p. 8) writes that 'any transnational [legal] regime should encourage innovation, experimentation, and the capacity to imagine alternative futures for managing the relationship between [politics, the economy, the environment and social well-being].' By reifying capitalist social relations through its practices and ideation of concepts like development, the subjects involved in IIL do exactly the opposite. Rather, IIL entrenches a stubbornly capitalist version of the global political economy and makes the material and conceptual experimentation necessary for progressive change harder to actualise. The essential change needed in international law is only possible if it is pursued at both a material and conceptual level. If change is to occur regarding developing states' relationship to foreign investment, both these actors' material practice and conceptual ideation around development must change.

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