



SUPERSTRUCTURE OF AUSTRALIAN CAPITALIST SOCIETY AND GENOCIDE: A CRITICAL ANALYSIS

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Abstract - The overall research objective of this paper is to critically examine the superstructure of capitalist society. The research question asks about genocide in Australia. Argument will seek to sustain the view that genocide in Australia is a legal contradiction in the superstructure. The chapter's research methodology critically examines Marxian analytic commentary on the capitalist superstructure. The research is doctrinal, deploying the best available evidence, and developing new knowledge by the generation of syntheses, and in conclusion, by the development of extended syntheses. Recognized rules which appeared in different superstructures might be detected, not only in the realm of law, but also in other superstructural phenomena, for instance the moral rules. Contemporary imperialist international law has transformed into the superstructural phenomena of international arbitrariness and lawlessness. The condition of independence does not in fact exist during the period of imperialism. Sovereignty has thus become a superstructural phenomenon of a merely banal slogan of self-determination, typified by imperialist genocide. Pure thinking that exposed active concealment of the superstructure's contradictions would appear and be interpreted as active opposition to the ruling elites. These contradictions constituted false consciousness of sentiments, illusions, modes of thought, and views of life, with the minds of the dominant social class transforming them into eternal laws of nature and of reason. The superstructure excluded free ritual in conjunction with ancient custom, therefore also excluding science from the elites' superstructure, thereby negating indigenous social systems. Contradictions within the culture were intentionally developed by ideologists in the ruling class, because any false consciousness would work to the commercial advantage of the ruling class, and be apparent as ideological and banal clichés. Benhabib reasoned that the so-called 'banality of evil', for example, can also be seen as the 'routinization of evil', or its everydayness.

Keywords: Genocide; contradictions; superstructure; banality.

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INTRODUCTION

Should capitalism endure, moving through the coming centuries, as Boldizzoni suggests it may well do,¹ its success will be due to its ability to shrug off the deaths of millions of people, including ongoing gratuitous genocides. In fact, the more brutal it is, the longer capitalism might last. It has already survived wars killing millions and that have destroyed entire cities. It may well survive the floods, fires and droughts yet to come, and even find new opportunities for capital accumulation while rebuilding. At some point, ecological destruction will be too severe for capitalism to function. But by

¹ Francesco Boldizzoni, *Foretelling the End of Capitalism: Intellectual Misadventures Since Karl Marx*, Harvard University Press, Cambridge, 2020.



that time, there may little hope that anything else could continue to function either.² In the light of this general statement of significance, the overall research objective of this chapter is to critically examine the superstructure of capitalist society.

Henkin had examined one example of the genocide problem in Australia, saying: ‘...the fact that an Australian court has said that there is no crime of genocide in Australian law ... I’d like to know what there is in the concept of genocide, which is not currently a violation of Australian law ... to have additional enlightenment of the measures being taken to fill the holes, the lacunae in Australian law, which somehow hamper complete compliance with the Covenant’,³ suggesting that genocide in Australia has become a routine artifact. In general, artifacts are historic remnants of behaviour in some kind of a cultural organization, such as a state. The conception of artifacts may also manifest verbally, such as in metaphors, old anecdotes, banal stories and jargon. There might also be behavioral manifestations, such as rituals or customs of denial. Examples of artifacts understood in this way can also be evidenced by design, art, uniforms, clothes, physical objects, such as plants, and buildings architecture.⁴ Artifacts can incorporate relevant knowledge of innovation,⁵ such as for example an innovative method of concealment of true meaning. Thus, in the light of these issues, the research question asks about genocide in Australia. Argument will seek to sustain the view that genocide in Australia is a legal contradiction in the superstructure.

The research seeks to critically examine the capitalist superstructure as it might relate to continuing genocides, through the lens of a suitable meta-discourse. Therefore, the chapter’s research methodology critically examines Marxian analytic commentary on the capitalist superstructure. The research is doctrinal, deploying the best available evidence, and developing new knowledge by the generation of syntheses, and in the conclusion, by the development of extended syntheses. The chapter’s structure is in three main sections: The Soviet Interpretation of International Law; The Base and Superstructure Debate; and, Genocide.

The research is likely to both demonstrate and infer that recognized rules which appeared in different superstructures might be detected, not only in the realm of law, but also in other superstructural phenomena, for instance the moral rules. Contemporary imperialist international law has transformed into the superstructural phenomena of international arbitrariness and lawlessness. The condition of independence does not in fact exist during the period of imperialism. Sovereignty has thus become a superstructural phenomenon of a merely banal slogan of self-determination, typified by imperialist genocide. Pure thinking that exposed active concealment of the superstructure’s contradictions would appear and be interpreted as active opposition to the ruling elites. These contradictions constituted false consciousness of sentiments, illusions, modes of thought, and views of life, with the minds of the dominant social class transforming them into eternal laws of nature and of reason. The superstructure excluded free ritual in conjunction with ancient custom, therefore also excluding science from the elites’ superstructure, thereby negating indigenous social systems. Contradictions within the culture were intentionally developed by ideologists in the ruling class, because any false consciousness would work to the commercial advantage of the ruling class, and be apparent as ideological and banal clichés. Benhabib reasoned that the so-called ‘banality of evil’, for example, can also be seen as the ‘routinization of evil’, or its everydayness.⁶

1. 2 Alyssa Battistoni, ‘When Will Capitalism End?’ *Boston Review*, 25th May 2020.

3 L Henkin, transcript of examination of 3rd and 4th reports of Australia to Human Rights Committee, 20 July 2000.

4 Mary Jo Hatch, *Organization Theory*, Oxford University Press, Oxford, 1997.

5 Beth A Bechky, ‘Analyzing Artefacts: Material Methods for Understanding Identity, Status, and Knowledge in Organizational Life’, in Barry Daved & Hans Hansen (eds.), *The Sage Handbook of New Approaches in Management and Organization*, Sage, London, 2008, pp. 98-111.

6 Seyla Benhabib, ‘Hannah Arendt and the Redemptive Power of Narrative’, *Social Research*, vol. 57, no. 1, 1990, pp. 167-196, p. 185.



1. The Soviet Interpretation of International Law

Five specific issues of *Sovetskoe Gosudarstvo i Pravo*, which are to be critically reviewed here,⁷ contain a coherent ordering of articles concerned with a general discussion of the basic precepts of international law. This particular discussion was related to preparing a new textbook, destined for Soviet law schools, with their completion announced by the A. Ya. Vyshinsky Institute of Law, as a formal branch of the Soviet Academy of Sciences. The Academy's Professor Korovin triggered the discussion in his publication, 'Some Fundamental Questions of Contemporary International Law',⁸ suggesting that Korovin's views were mainstream.

Korovin began with the academic problem of what economic basis to attribute to international law that would apply in a binding way on both capitalist and socialist states. Non-Marxists rarely needed to be concerned with such problems, so that they should be reminded of the Marxist precept that the economic basis, namely, the system, of every society, predetermined the character of its own superstructure, this term meaning its fields of philosophy, ethics, religion, arts, literature, science, music and similar. Such a superstructure included the state's laws, with the contents of national law determined by the economic basis of any given society. Nevertheless, international law served both kinds of societies simultaneously, whether they were founded on either of the two different economic bases of capitalist or socialist. Professor Korovin applied himself to the problem of this apparently undisciplined international law and stated some five proposed solutions articulated by him and his colleagues:

- (1) It is a coincidence that two different bases have produced the same rules of international law (This was his own former view formulated in 1951, but he rejects it in the present article because: 'there can be no complete coincidence or identity in the superstructural forms which qualitatively correspond to different bases');⁹
- (2) Contemporary international law is entirely a product of the capitalist basis (Then would it bind the states founded on the socialist basis?);
- (3) It is a socialist law (Why then was it known to the capitalist societies before the October Revolution?);
- (4) It is composed of inter-class, hybrid rules produced by both economic bases (This interpretation is obviously heretical and un-Marxist);
- (5) It does not form a part of any superstructure and is independent of any basis (This particular view follows Stalin's Gordian solution¹⁰ for a similarly difficult problem of the place of language in the Marxist theory, but a Soviet lawyer cannot pretend to solve scholastic questions in the Stalinist peremptory manner).¹¹

Korovin rejected all five of these proposed solutions because, as he had argued with some logic: 'All such discussions lead by logical necessity either to a juristic nihilism and the denial to international law of any legal significance and force or to a revision of the Marxist-Leninist teaching concerning state and law'.¹² Such a revision to Marxist-Leninist doctrine would be an academically unbearable outcome, which only Stalin himself might have afforded. However, neither Marx, Lenin, nor the Soviet Government ever denied the obligatory power of public international law, inferring it might be useful to them from time to time.

Thus, Korovin tried to find his way out, with a novated interpretation of his own prior views, duly repudiated on one page of his article and then re-introduced on the next page. He said: '[the rules of international law] are parts of both superstructures, the capitalist and the socialist',¹³ implying that

7V. M. Chkhikvadze, *The Soviet state and law*, [Sovetskoe gosudarstvo i pravo], V. M. Chkhikvadze (ed.), Yuri Sdobnikov (trans.), Progress Publishers, Moscow, 1969., nos. 6, 7 and 8 of 1954, and nos. 1 and 2 of 1955.

8 Evgeny A. Korovin, 'Some Fundamental Questions of Contemporary International Law', in *Sovetskoe Gosudarstvo i Pravo*, no. 6, 1954, pp. 34-44.

9 *ibid*, p. 34.

10 Stalin had started a war against the Russian peasantry by forcing them into joining collective farms. Lynne Viola, 'The aesthetic of Stalinist planning and the world of the special villages', in *Peopling the Russian Periphery*, Routledge, New York, 2007.

11 W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 518.

12 Evgeny A. Korovin, 'Some Fundamental Questions of Contemporary International Law', in *Sovetskoe Gosudarstvo i Pravo*, no. 6, 1954, pp. 34-44, p. 35.

13 *ibid*, p. 35.



the superstructure was much bigger than international law. He pointed, with good reason, to a certain similarity between those two legal superstructures, referring to the criminal law in as much as it forbade the same ancient crimes in both types of society. He added to this a new interpretation, inferring that those similarities were really only superficial, while the two legal superstructures remained quite different at their cores. He explained that the basic difference was in the dissimilar purposes served by only ostensibly similar legal rules. The ancient rules: 'do not kill', or 'do not steal', had existed in all of the feudal, bourgeois and socialist codes, but in each case for different reasons. These laws defended different class interests and served different class purposes. This same reasoning therefore applied to the generally catalogued rules of international law.¹⁴

By discussing these motives and purposes, he had conflated policy and law, by-passing the main question of whether an economic basis necessarily created its own correlated law. Also, Korovin's own theory of motives and purposes, subsisting as legal policies, raised the further question of whether there really was any difference between capitalist and socialist motives and purposes, in as much as the prohibition against common murder or the positive protection of private property, excepting for the means of production, might be concerned. In reality, the private property of Soviet citizens was far more strictly protected under Soviet criminal codes than property had been under many capitalist regimes. Thus, the same argument must apply to international law. Korovin conceded that legal institutions were very similar for both types of societies. The same might thus be said about their purposes, certainly in such cases as diplomatic immunities, or maritime law.

Korovin actually adduced one strong example for his motives and purposes theory, namely, the process for recognition of new states. His view was that socialist states immediately granted recognition to a new state, out of respect for their national self-determination, while capitalist states typically delayed recognition out of concern for their former financial and commercial rights and privileges. He stated: 'The motives and purposes of recognition are completely different, but the legal institution of international recognition remains the same'.¹⁵ He agreed that both international law, other branches of law, and some other facets of the various superstructures could be identical, despite the different economic bases:

We may incidentally observe that the same elementary or generally recognized rules which appear in different superstructures may be detected not only in the realm of law but also in other superstructural phenomena, for instance the moral rules.¹⁶

If he had added arts, music and literary forms, just as in the Western capitalist 19th century standards, he could have minimized the Marxist relationship between society's economic regime and its superstructure. He made another un-Marxist claim that international law, in the beginning a part of capitalist superstructure, had lost contact with its original economic basis and had been grafted onto the socialist basis:

One must admit that generally recognized international law, which basically developed during the pre-imperialist period, is ceasing to a large extent to fulfill its active superstructural role in respect to the contemporary capitalist basis because of the modifications in the nature of the latter basis (the transition from 'free' capitalism to imperialism). In consequence contemporary imperialist international law doctrine and practice are increasingly being transformed into a theory and a practice of international arbitrariness and lawlessness These rules [of international law] constantly are losing their useful function for one of the two bases (in this case: the contemporary capitalist basis) and continue to perform this function for the other basis (the socialist).¹⁷

This statement probably ought to have led to a conclusion that international law was only practiced by socialist states, but Korovin moderated his view, as follows:

¹⁴ *ibid*, p. 35.

¹⁵ *ibid*, p. 35; W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 519.

¹⁶ Evgeny A. Korovin, 'Some Fundamental Questions of Contemporary International Law', in *Sovetskoe Gosudarstvo i Pravo*, no. 6, 1954, pp. 34-44, p. 35.

¹⁷ *ibid*, p. 36.



However, it would be incorrect to assume that the generally recognized rules of international law have now lost all practical meaning for the bourgeois states and have become for them some sort of a historical relic. Actually, even without mentioning the fact that the leading imperialist states (for instance, the United States) are sometimes compelled to make appeal to these rules in the defense of their own interests, it would be deeply erroneous to assume that Germany (Western), England, France, Italy and Japan will endlessly and humbly continue to tolerate American mastery and oppression and will not try to escape from American servitude and take the road of their own independent development. This means that many states, even the bourgeois, will seek and find the bulwark for their struggle against the American yoke in the generally recognized principles of international law and will fight for the realization of these principles in practice.¹⁸

The second problem Korovin addressed was the creation of a new subdivision of international law, the socialist branch, which was assumed to co-exist with the general public international law and was practised among and between the socialist states. Korovin thought that development of such a socialist international law was completed by the end of World War II, when new socialist states materialized alongside the Union of Soviet Socialist Republics. He did not resile from the fact that 'the old rules [of general international law] frequently are applied in the mutual relations among the states of the socialist camp',¹⁹ but had failed to adduce persuasive examples of any new and precise socialist legal regimen. When mentioning socialist practices such as treaties of mutual help, cooperation in commerce, or exchanges in scientific data, he referred to practices known also in the capitalist states.

Having agreed to the existence of one generally recognized international law binding equally on all states, irrespective of economic systems, Korovin was then confronted with a further scholastic condition, namely, the Marxist precept that every law expressed the will of whatever class was ruling in the given society. When asked which class, the proletariat or the capitalist class, expressed its will in this hybrid international law, he answered that both of them did so. He proceeded to define international law in the following terms:

A complex of rules which regulate the relations among states, which states uphold, which develop through the process of international cooperation or struggle among states, and which serve the material and spiritual [sic!] needs of the states in the interest of the respective classes ruling in these states.²⁰

The final problem Korovin examined concerned the principle of sovereignty. In respect of the classical Soviet definition of sovereignty as a regime of complete independence in the domestic and external affairs of the state, he stated: '... this "condition of independence" does not in fact exist during the period of imperialism insofar as the majority of states and nationalities are concerned.'²¹ He said further: 'Sovereignty is the right to independence, autonomy and supreme power.'²² This right belonged to all nationalities, even those in a condition of dependency and not having their own state. Sovereignty thus became a mere banal slogan of self-determination and lost its legal meaning as an attribute of statehood.²³

2. The Base and Superstructure Debate

The concept of the base-superstructure slowly evolved in some of the writings of Marx and Engels, but was never exhaustively discussed by either, in any of their articles or books. At first, it was not meant to be either a basis for literary analysis or for a criticism, nor even a guide for cultural workers. Instead, it formed a template for historical material analysis, grounded in the view that the

¹⁸ ibid, p. 37; W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 520.

¹⁹ Evgeny A. Korovin, 'Some Fundamental Questions of Contemporary International Law', in *Sovetskoe Gosudarstvo i Pravo*, no. 6, 1954, pp. 34-44, p. 41.

²⁰ ibid 4, p. 42.

²¹ ibid, p. 43.

²² ibid.

²³ W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 521.



mode of production was how a society organized itself economically.²⁴ Historical materialism was the term that named Marx's theory of history. Marx viewed historical change as having been embedded in the advent of class societies and in how people laboured together to make their livings. For Marx and Engels, the original cause and propelling power of historical events were found in society's economic development and all the political and social turmoil resulting from alterations to the mode of production.²⁵

In his first noteworthy text on economics,²⁶ Marx did not distinguish the base from the superstructure. Those components that would later comprise his superstructure were, 'religion, family, state, law, morality, science, art, etc.', and he called them 'particular modes of production'.²⁷

From this, to set the tone, according to Engels' originary formulation of the term, 'ideology' could be described in detail as follows:

Ideology is a process accomplished by the so-called thinker consciously . . . but with a false consciousness. The real motive forces impelling him remain unknown to him; otherwise, it simply would not be an ideological process. Hence he imagines false or seeming motive forces. Because it is a process of thought, he derives its form as well as its content from pure thought, either his own or that of his predecessors. He works with mere thought material, which he accepts without examination as the product of thought, and does not investigate further for a more remote source independent of thought; indeed, that is a matter of course for him, because, as all action is mediated by thought, it appears to him to be ultimately based upon thought.²⁸

Thus, in their *The German Ideology*,²⁹ Marx and Engels articulated the view that people acting routinely in the course of their daily work or activity, produced conceptions and ideas that were 'conditioned by a definite development' of the productive relations and forces. These ideas and conceptions, that Marx and Engels called 'phantoms formed in the brains of men', either reflected or echoed 'their material life process, which is empirically verifiable and bound to material premises'. As involved beings, working people inescapably evolved their 'material production and their material intercourse', and thereby alter all of their material world and 'their thinking and the products of their thinking. It is not consciousness that determines life, but life that determines consciousness'.³⁰

Only, as labour became more differentiated, specifically into mental and manual modes, mental workers increased their ability to liberate their consciousness from the mundane world 'and to proceed to the formation of "pure" theory, theology, philosophy, morality, etc'. Pure thinking, however, could not effectively challenge the existing social relations unless 'existing social relations have come into contradiction with existing productive forces',³¹ implying that active concealment of such contradictions would appear as opposition to pure thinking. Thus, real critical thought was constrained to reflecting only real material circumstances. Marx and Engels led off their materialist theory of history, first, by 'expounding the real process [or forces] of production', and then afterwards, explaining the relations of production connected with, and created by, forces of production. Only then, did they attempt to explain how 'all the different theoretical products and forms of consciousness, religion, philosophy, morality, etc.', could come forth from the material base.³²

In Marx's 1852 work *The Eighteenth Brumaire of Louis Bonaparte*,³³ he introduced the term 'superstructure', noting only in passing that on top of the various forms of property and on top of the

²⁴ Larry Ceplair, 'The Base and Superstructure Debate in the Hollywood Communist Party', *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 320.

²⁵ H.B. Acton, 'Marx on Historical Materialism', in *Encyclopedia of Philosophy*, vol. 4, Macmillan, New York, 1967.

²⁶ Karl Marx, 1964, (1844), *Economic and Philosophic Manuscripts*, International Publishers, New York, 1964.

²⁷ibid, p. 136.

²⁸ Friedrich Engels, *Letter to Herr Mehring*, 14th July 1893.

²⁹ Karl Marx and Frederick Engels, 1845-6, *The German Ideology*, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, pp. 21-539.

³⁰ Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, pp. 36-37.

³¹ibid, pp. 44-45.

³²ibid, 1976, p. 53.

³³ Karl Marx, (1852), 'The Eighteenth Brumaire of Louis Bonaparte', in Robert C. Tucker (ed.), *The Marx-Engels Reader*, Norton, New York, 1972, pp. 436-525.



various social states of existence there arose ‘an entire superstructure of distinct and characteristically formed sentiments, illusions, modes of thought, and views of life’.³⁴ This was not the product of any one person or group, but rather, solely of the dominant social class.³⁵ Five years later, written in his introduction to his *First Version of Capital*,³⁶ Marx appended ‘art’ to his superstructure postulate, while cautioning that there was no discernible relationship between the developmental level of material production in society and the quality of art produced by it. He was able to state clearly that the material base did not fully determine the artistic component of the superstructure, without carefully delineating what other factors might contribute to this determining.³⁷

Marx wrote his longest and most lucid exegesis of the base-superstructure conception in his Preface to *A Contribution to the Critique of Political Economy*, where he wrote:

In the social production of their existence, men inevitably enter into definite relations that are independent of their will, namely relations of production appropriate to a given stage in the development of their material productive forces. The totality of these relations of production constitutes the economic structure of society, the real foundation [the base], on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life. It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness.³⁸

Notably, this formula did not appear expressly to include ritual and ancient custom in the superstructure. Marx said that this superstructure only changed when the economic foundation, the base, changed, but only the base ‘can be determined with the precision of natural science’. Science could analyze any inherent contradictions between the forces and relations of production, but not any ideological modalities people employed to settle such contradictions,³⁹ implying the exclusion of science from the superstructure.

Engels emphasized, in his 1859 review of *A Contribution to the Critique of Political Economy*, that ‘all social and political relations, all religious and legal systems, all theoretical conceptions which arise in the course of history can only be understood if the material conditions of life obtaining during the relevant epoch have been understood and the forms are traced back to these material conditions’. Therefore, any ‘change in the economic foundation leads sooner or later to the transformation of the whole immense superstructure’,⁴⁰ explaining why the ruling elites are so concerned to maintain the same economic foundation, regardless of its contradictions.

In Marx’s conception, the base comprises first a series of processes, such as assembly-line production, and second, relations such as feudal, mercantilist or capitalist. The superstructure consists of both ideas and arrays of institutions, such as for example the institution of marriage, which are based on ideas. Neither the base nor the superstructure is static. Although the superstructure corresponds to the base, it is not strictly determined by it. Neither Marx nor Engels fully articulated the superstructure components, nor the character of those processes conditioning it. Nevertheless, they asserted that the laws, values and rights of a society arise from its mode of production, and then afterwards, the minds of the dominant social class transform them ‘into eternal laws of nature and of

³⁴ Larry Ceplair, ‘The Base and Superstructure Debate in the Hollywood Communist Party’, *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 321.

³⁵ Karl Marx, (1852), ‘The Eighteenth Brumaire of Louis Bonaparte’, in Robert C. Tucker (ed.), *The Marx-Engels Reader*, Norton, New York, 1972, pp. 436-525, p. 459.

³⁶ Karl Marx, (1857), ‘Economic Manuscripts of 1857-1858: First Version of Capital’, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976.

³⁷ibid, pp. 46-48.

³⁸ Karl Marx, ‘A Contribution to the Critique of Political Economy’, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 16, pp. 469-470.

³⁹ Karl Marx, (1859), “Preface” to *A Contribution to the Critique of Political Economy*, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 16, p. 263.

⁴⁰ Frederick Engels, (1859), Review of Karl Marx, ‘A Contribution to the Critique of Political Economy’, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 16, pp. 469-470; Larry Ceplair, ‘The Base and Superstructure Debate in the Hollywood Communist Party’, *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 322.

reason'.⁴¹ This is a practical example of the conception that if something is a good idea, then it should be made compulsory and become part of the ruling elites' superstructure.

Marx viewed artists and intellectuals as producers, asserting that 'a philosopher produces ideas, a poet poems, a clergyman sermons, a professor compendia and so on'. But still, if products of intellectual or artistic labor are not exchanged for capital, producing surplus value, Marx thought that labor was not 'productive'. Marx stated: 'A writer is a productive laborer not in so far as he produces ideas, but in so far as he enriches the publisher who publishes his works, or if he is a wage laborer for a capitalist'.⁴² In an *Appendix on Productive Labor*,⁴³ Marx referred to John Milton as a critical example, such that 'Milton, who wrote *Paradise Lost*',⁴⁴ was an unproductive worker. On the other hand, the writer who turns out factory-made stuff for his publisher is a productive worker. Milton produced *Paradise Lost* for the same reason that a silk worm produces silk. It was an activity of his nature'. Even if he sold his poem, he did this as an unproductive worker, because his product had not been subordinated to capital in advance, under either contract or compulsion. In the result, this creative activity was not driven by any wish to grow capital.⁴⁵ Similarly, academics conceiving ideas, ministers writing sermons, singers composing songs were all either productive or nonproductive, dependent on the circumstances under which they produced the works.

Marx developed his superstructure concept while attempting to demonstrate how society produced creative artifacts, such as the laws, conceptions and ideas constituting the dominant ideology, by which productive and social relations within the base were legitimized. It seemed clear from the general tone of his observations on creativity that not all cultural artifacts served to legitimize the base.⁴⁶ Cultural workers might, through their products, add strength to the dominant ideology, without necessarily being constrained to do this, suggesting that 'unproductive' cultural work, such as 'free spiritual production', might constitute a real attack on the dominant ideology. Marx thus recognized creative components of human nature, and therefore, of the likelihood of 'free spiritual production' occurring within some social formations.

As Marx constantly reasoned, the basic growth points of contradictions within the culture was because distorted consciousness generated by conflicted social structures was intentionally developed by ideologists in the ruling class. Formations of distorted consciousness constructed the ideological estate that was at once official and at once dominating of a society, as its class ideology,⁴⁷ so that Marx spoke about the 'ideological cadres of the ruling class', to distinguish them from the 'free spiritual producers'.⁴⁸ At this point, O'Keefe postulated that an idea was not ideological solely because it was produced by thinkers from within the ruling class, but rather, this might or might not be the case. It would be ideological because the concealment of contradictions exposed by free spiritual thinking objectively worked in favor of the dominant class,⁴⁹ inferring that any false consciousness working in favor of the ruling class could be identified as ideological.

In several letters written toward the end of his life, Engels admonished the next generation of Marxists against tending to reify the concepts of base and superstructure. He strongly cautioned them against transforming historical materialism into arrays of banal clichés. This resistance against banality endowed the superstructure conception with a significant transformative power, and thus altered it,

41 Karl Marx and Frederick Engels, (1848), 'Manifesto of the Communist Party', in Robert C. Tucker (ed.), *The Marx-Engels Reader*, Norton, New York, 1972, p. 359.

42 Karl Marx, (1862-1863), 'Economic Manuscripts of 1861-1863: Theories of Surplus Value', vol. 30, pp. 318-455, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976 pp. 30, 308-09; 31, 14, 16.

43 Karl Marx, (1857), 'Economic Manuscripts of 1857-1858: First Version of Capital', in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, appendix.

44 John Milton, *Paradise lost*, Penguin, London, 2003.

45 Karl Marx, (1862-63), *Theories of Surplus Value*, G. A. Bonner and Emile Burns (trans.), International Publishers, New York, 1952, pp. 185-186.

46 Larry Ceplair, 'The Base and Superstructure Debate in the Hollywood Communist Party', *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 323.

47 Merab Mamardashvili, 'Analysis of Consciousness in the Works of Marx', *Studies in Soviet Thought*, vol. 32, no. 2, 1986, pp. 101-120, p. 116.

48 Karl Marx, *Theories of Surplus Value*, 1954, p. 261.

49 Terence M. O'Keefe, 'Ideology and the Protestant Principle', *Journal of the American Academy of Religion*, vol. 51, no. 2, 1983, pp. 283-305, p. 287.



strongly inferring that banal forms of consciousness represented transmission of ruling class ideological commands. In his final letter on this subject, he failed to resolve the problems he had identified. In 1890, he wrote as follows:

According to the materialist view of history, the determining factor in history is, *in the final analysis*, the production and reproduction of actual life. More than that was never maintained either by Marx or myself. Now if someone distorts this by declaring the economic moment to be the only determining factor, he changes that proposition into a meaningless abstract, ridiculous piece of jargon. The economic situation is the basis, but the various factors of the superstructure . . . also have a bearing on the course of the historical struggles of which, in many cases, they largely determine the form. It is in the interaction of all these factors and amidst an unending multitude of fortuities . . . that the economic trend ultimately asserts itself as something inevitable.⁵⁰

In his list of facets of the superstructure, Engels included neither art nor literature. His list of 'factors' consisted only of what he called 'systems of thought', meaning 'political forms of the class struggle and its consequences, namely constitutions set up by the ruling class after a victorious battle, etc., forms of law, and the reflections of all these real struggles in the minds of the participants, i.e., political, philosophical and legal theories, religious views and the expansion of the same into dogmatic systems'.⁵¹

Soon after, Engels enlarged further this transformative power of the superstructure.⁵² Speaking of scientists, he observed that they began to 'constitute an independent group within the social development. But for all that, they are themselves in their turn subject to the dominant influence of economic development'. Further down, he added: 'political economy creates nothing *a novo*, but determines the way in which the existing fund of ideas changes and develops, and this too is done for the most part indirectly'.⁵³ He agreed that he and Marx had failed to explain how these ideas arose,⁵⁴ never succeeding in constructing an aesthetic theory, although the Russians later attempted to do so.⁵⁵

3. Genocide

Another article, in the same issue of *Sovetskoe Gosudarstvo i Pravo*, entitled 'Convention on the Prevention and Punishment of the Crime of Genocide', by S. Volodin,⁵⁶ celebrated the ratification on 18th March 1954, of the Convention on the Prevention and Punishment of the Crime of Genocide by the Presidium of the Supreme Soviet. This ratification was no doubt made easier by an elision in defining genocide in the convention. The convention did not mention mass deportations and internments in forced labor camps, to obliterate the identity of national groups.⁵⁷ However, those were the preferred methods used by Soviet authorities, who dispersed throughout their huge territory many small national groups, such as the Crimean Tartars and several Caucasian ethnic groups. A large proportion of the Baltic intelligentsia also were deported in order to deprive their nations of their cultural leadership. The ratification of this convention never meant that the Soviet Union would accept an international criminal jurisdiction for trying genocide criminals.⁵⁸ The Soviet author wrote:

50 Frederick Engels, (1890), 'Letter to Joseph Bloch', September 21-22, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 49, pp. 33-37.

51 Frederick Engels, (1890), 'Letter to Joseph Bloch', September 21-22, in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 49, 1976, pp. 33-37, pp. 34-35.

52 Larry Ceplair, 'The Base and Superstructure Debate in the Hollywood Communist Party', *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 324.

53 Frederick Engels, (1890), 'Letter to Conrad Schmidt, October 27', in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 49, 1976, pp. 57-65, pp. 62-63.

54 Frederick Engels, (1893), 'Letter to Franz Mehring, July 14', in Karl Marx and Frederick Engels, *Collected Works*, International Publishers, New York, 1976, vol. 50, 1976, pp. 163-167, p. 164.

55 Larry Ceplair, 'The Base and Superstructure Debate in the Hollywood Communist Party', *Science & Society*, vol. 72, no. 3, 2008, pp. 319-348, p. 325.

56 S. Volodin, 'Convention on the Prevention and Punishment of the Crime of Genocide', in V. M. Chkhikvadze, *The Soviet state and law*, [Sovetskoe gosudarstvo i pravo], V. M. Chkhikvadze (ed.), Yuri Sdobnikov (trans.), Progress Publishers, Moscow, 1969., nos. 6, 7 and 8 of 1954, and nos. 1 and 2 of 1955, pp. 125-128.

57 W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 529.

58 *ibid*.



... the prevention and punishment of genocide should remain within the realm of national legislation and should not be left to some sort of a vague 'international criminal law' and 'international criminal justice' about which American diplomats have recently prattled much in the United Nations.⁵⁹

The courts of a state, whose own government was most probably the organizer of the genocide, would never dare to take any judicial action unless the responsible government were overthrown either by revolution or by foreign war, offering little consolation to the victims of a new genocide,⁶⁰ suggesting that genocide was an artifact of concealment of superstructure contradictions. The U.S.S.R. accepted the Genocide Convention with the reservation declining any jurisdiction of the International Court of Justice in such disputes. Volodin noted that the United States had declined ratify the Genocide Convention.⁶¹

4. CONCLUSION

The research question asked about genocide in Australia. Argument has sought to sustain the view that genocide in Australia is a legal contradiction in the superstructure

The system of every society predetermined the character of its own superstructure, this term meaning its fields of philosophy, ethics, religion, arts, literature, science, music and similar. The same elementary or generally recognized rules which appeared in different superstructures might be detected, not only in the realm of law, but also in other superstructural phenomena, for instance the moral rules.

Generally recognized international law, which basically developed during the pre-imperialist period, is ceasing to a large extent to fulfill its active superstructural role, in respect of the contemporary capitalist basis, because of the transition from 'free' capitalism to imperialism. In consequence contemporary imperialist international law doctrine and practice are increasingly being transformed into a theory and a practice of international arbitrariness and lawlessness.

The Marxist precept that every law expressed the will of whatever class was ruling in the given society defined international law as a complex of rules which regulated the relations among states, which states upheld, which developed through the process of international cooperation or struggle among states, and which served the material and spiritual needs of the states in the interest of the respective classes ruling in these states.

The classical Soviet definition of sovereignty was as a regime of complete independence in the domestic and external affairs of the state. This condition of independence does not in fact exist during the period of imperialism insofar as the majority of states and nationalities are concerned. Sovereignty is the right to independence, autonomy and supreme power. This right belonged to all nationalities, even those in a condition of dependency and not having their own state. Sovereignty thus became a mere banal slogan of self-determination and lost its legal meaning as an attribute of statehood.

The concept of the base-superstructure formed a template for historical material analysis, grounded in the view that the mode of production was how a society organized itself economically. For Marx and Engels, the original cause and propelling power of historical events were found in society's economic development and all the political and social turmoil resulting from alterations to the mode of production. Marx did not distinguish the base from the superstructure. Those components that would later comprise his superstructure were, religion, family, state, law, morality, science, art, and he called them 'particular modes of production'. Marx and Engels articulated the view that people acting in the course of their daily work or activity, produced conceptions and ideas that were

59 S. Volodin, 'Convention on the Prevention and Punishment of the Crime of Genocide', in V. M. Chkhikvadze, *The Soviet state and law*, [Sovetskoe gosudarstvo i pravo], V. M. Chkhikvadze (ed.), Yuri Sdobnikov (trans.), Progress Publishers, Moscow, 1969., nos. 6, 7 and 8 of 1954, and nos. 1 and 2 of 1955, p. 126.

60 W. W. Kulski, 'The Soviet Interpretation of International Law', *The American Journal of International Law*, vol. 49, no. 4, 1955, pp. 518-534, p. 529.

61 S. Volodin, 'Convention on the Prevention and Punishment of the Crime of Genocide', in V. M. Chkhikvadze, *The Soviet state and law*, [Sovetskoe gosudarstvo i pravo], V. M. Chkhikvadze (ed.), Yuri Sdobnikov (trans.), Progress Publishers, Moscow, 1969., nos. 6, 7 and 8 of 1954, and nos. 1 and 2 of 1955, pp. 127-128.



conditioned by a definite development of the productive relations and forces. These ideas and conceptions, that Marx and Engels called 'phantoms formed in the brains of men', either reflected or echoed their material life process, which was empirically verifiable and bound to material premises. Pure thinking, however, could not effectively challenge the existing social relations unless existing social relations had come into contradiction with existing productive forces, implying that pure thinking that exposed active concealment of such contradictions would appear and be interpreted as active opposition to the ruling elites.

In Marx's 1852 work *The Eighteenth Brumaire of Louis Bonaparte*, he introduced the term 'superstructure', noting only in passing that on top of the various forms of property and on top of the various social states of existence there arose an entire superstructure of distinct and characteristically formed sentiments, illusions, modes of thought, and views of life. This was not the product of any one person or group, but rather, solely of the dominant social class. Marx appended 'art' to his superstructure postulate, the material base did not fully determine the artistic component of the superstructure

In the social production of their existence, men inevitably entered into definite relations that are independent of their will, namely relations of production appropriate to a given stage in the development of their material productive forces. The totality of these relations of production constituted the economic structure of society, the real foundation [the base], on which arose a legal and political superstructure and to which corresponded definite forms of social consciousness. Notably, this formula did not appear expressly to include ritual in conjunction with ancient custom in the superstructure. Science could analyze any inherent contradictions between the forces and relations of production, but not any ideological modalities people employed to settle such contradictions, implying the exclusion of science from the superstructure.

Any change in the economic foundation led sooner or later to the transformation of the whole immense superstructure, explaining why the ruling elites are so concerned to maintain the same economic foundation, regardless of its contradictions. Values and rights of a society arose from its mode of production, and then afterwards, the minds of the dominant social class transform them into eternal laws of nature and of reason. This is a practical example of the conception that if something is a good idea, then it should be made compulsory and become part of the ruling elites' superstructure.

Cultural workers might, through their products, add strength to the dominant ideology, without necessarily being constrained to do this, suggesting that 'unproductive' cultural work, such as 'free spiritual production', might constitute a real attack on the dominant ideology. Marx thus recognized creative components of human nature, and therefore, of the likelihood of 'free spiritual production' occurring within some social formations. The basic growth points of contradictions within the culture was because distorted consciousness generated by concocted social structures was intentionally developed by ideologists in the ruling class. Formations of distorted consciousness constructed the ideological estate that was at once official and at once dominating of a society, as its class ideology, so that Marx spoke about the ideological cadres of the ruling class, to distinguish them from the free spiritual producers.

An idea would be ideological because the concealment of contradictions exposed by free spiritual thinking objectively worked in favor of the dominant class, inferring that any false consciousness working in favor of the ruling class could be identified as ideological. Engels admonished against transforming historical materialism into arrays of banal clichés. This resistance against banality endowed the superstructure conception with a significant transformative power, and thus altered it, strongly inferring that banal forms of consciousness represented transmission of ruling class ideological commands.

The courts of a state, whose own government was most probably the organizer of the genocide, would never dare to take any judicial action unless the responsible government were overthrown either by revolution or by foreign war, offering little consolation to the victims of a new genocide, suggesting that genocide was an artifact of concealment of superstructure contradictions.



In extended synthesis, elementary or generally recognized rules which appeared in different superstructures might be detected, not only in the realm of law, but also in other superstructural phenomena, for instance the moral rules. Contemporary imperialist international law doctrine and practice have increasingly been transformed into the superstructural phenomena of international arbitrariness and lawlessness. Since international law, as a complex of rules, developed through the process of international cooperation or struggle among states, the condition of independence does not in fact exist during the period of imperialism insofar as the majority of states and nationalities are concerned. Sovereignty has thus become a superstructural phenomenon of a merely banal slogan of self-determination, typified by imperialist genocide. Marx called the elements of the superstructure 'particular modes of production', and pure thinking that exposed active concealment of the superstructure's contradictions would appear and be interpreted as active opposition to the ruling elites. These contradictions constituted false consciousness of sentiments, illusions, modes of thought, and views of life, with the minds of the dominant social class transforming them into eternal laws of nature and of reason. Thus, the superstructure did not appear expressly to include free ritual in conjunction with ancient custom, therefore also excluding science from the elites' superstructure. Contradictions within the culture were intentionally developed by ideologists in the ruling class, because any false consciousness would work in favor of the ruling class as ideological and banal clichés.

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