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While Waiting for Capital to Rain

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But, after more than half a century of work on the subject by scholars of half a dozen different nationalities and of every variety of political opinion, to deny that the phenomenon exists; or to suggest that, if it does exist, it is unique among human institutions, in having, like Melchizedek, existed from eternity; or to imply that, if it has a history, propriety forbids that history be disinterred, is to run wilfully in blinkers.

—R.H. Tawney, 1937[1]

INTRODUCTION

While Waiting for Rain is a remarkable book solely for refusing to adopt standard conventions of academic writing.[2] "But what's the takeaway?" is a question for which every impatient professor, reader, or editor wants an answer. *While Waiting for Rain* is a book about economic development at the local level, and it uses the city of Buffalo as a case study. But *While Waiting for Rain* offers no easy answers. There are no quick fixes for local economies that are in the grip of capital disinvestment. The surest advice *While Waiting for Rain* gives us is about what *not* to do when faced with economic decline.[3]

If it wasn't such intriguing history, such interesting interweaving of grounded legal theory and detailed evidence,

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† Professor, University at Buffalo School of Law. Many thanks to Nate Holdren, Rob Hunter, Pierre Schlag, John Schlegel, and Bert Westbrook for comments and criticism; and to Madeline Becker, Mathew Biondolillo, and others at the Buffalo Law Review for their able editing. Remaining errors and misjudgments are mine.

1. R.H. TAWNEY, RELIGION AND THE RISE OF CAPITALISM vii–viii (Verso 2015) (1926).

2. JOHN HENRY SCHLEGEL, WHILE WAITING FOR RAIN: COMMUNITY, ECONOMY, AND LAW IN A TIME OF CHANGE (2022).

3. That advice is to "stop doing harmful things." *Id.* at 198–99.

While Waiting for Rain's rejection of convention alone would earn my unyielding praise. The what's-the-answer attitude toward academic writing is only the deepest sign of higher education's capitulation to our exchange society—what is more fashionably called "neoliberalism" today. Writing toward the end of World War II's conflagration, Max Horkheimer and Theodor W. Adorno diagnosed the malign intellectual influence of the "culture industry," by which they meant industrialized culture or what we might today call commodified culture.[4] We are even more of a consumer society today, as Schlegel observes: "[T]he years since World War II have instantiated the triumph of consumerism in both its positive and negative senses. *Dinglichkeit* pervades the land in ways that simply weren't true sixty years ago."[5] Like all of our consumer products, we want it hot, and we want it now. The last thing we should do is make the reader puzzle or raise thorny questions with open answers. I suppose poor scholarship has this effect, too. But the fact that we've lost the ability to tell the difference is its own condemnation.

Among the questions that *While Waiting for Rain* raises, intentionally or unintentionally, is what I will call the question of capitalism. Specifically, is capitalism "a thing," as the kids say?[6] We hear a lot about capitalism these days, but it's not clear if the word is used as anything other than an epithet for "stuff I don't like." Recognizing this vapidity, legal scholars commonly say that there is no such thing as capitalism. Samuel Moyn is maybe the most recent scholar to assert this conclusion.[7] But he wasn't the first, and probably won't be the last; the rejection of capitalism as an independently existing "thing" also goes back to the critical legal studies movement. Duncan Kennedy made the most

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4. MAX HORKHEIMER & THEODOR W. ADORNO, DIALECTIC OF ENLIGHTENMENT: PHILOSOPHICAL FRAGMENTS (Gunzelin Schmid Noerr ed., Edmund Jephcott trans., Stanford University Press 2002) (1944).

5. SCHLEGEL, *supra* note 2, at 91.

6. Parts of this Essay originally appeared as a post at the Law and Political Economy Blog. Matthew Dimick, *Is Capitalism "a Thing"?*, THE LPE BLOG (Oct. 23, 2023), https://lpeproject.org/blog/is-capitalism-a-thing/.

7. "[T]here is no such thing as capitalism." Samuel Moyn, *Thomas Piketty and the Future of Legal Scholarship*, 128 HARV. L. REV. F. 49, 55 (2014).

articulate claim for the non-existence of capitalism.[8] Schlegel, although like Kennedy a famous member of the critical legal studies movement,[9] nevertheless comes to a different view about the existence of capitalism, asserting its existence but finding more interest in its different "flavors."[10] Nevertheless, *While Waiting for Rain* itself never really explores the question nor especially the repercussions of capitalism for local economic development.

In this Essay, I want to explore two questions about capitalism and then discuss briefly what implications they have for the problem of local economic development raised by *While Waiting for Rain*. The first question, addressed in Part II, is, what is capitalism, if anything? To understand the role of capitalism for local economic development—for economic questions in general—we have to be convinced that there is something called "capitalism" worth exploring. This Part replies to these doubts by articulating Karl Marx's concept of capitalism, which is the use of money to acquire commodities in order to earn more money in the future. This form of market participation is different than the conventional form, where money is the intermediating term between the sale and purchase of commodities and where consumption is the final goal. In capital, the end goal is money—full stop. Part II then contrasts this concept to alternative concepts of capitalism: capitalism as trade or commerce, including what Schlegel calls a particular kind of trade, "financings"; capitalism as economic inequality; and capitalism as private property in the means of production, which is the concept that has been the most frequent target of critical legal scholars, such as Duncan Kennedy.

The second question, addressed in Part III, is, having identified something called capitalism, what implications flow from it? This Part takes the opportunity to correct the misperception that Marx was committed to discovering "general" and "natural" laws of capitalism. I take the reader through the slight detour of the philosophy of causal

8. DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION: FIN DE SIÈCLE 287 (1997).

9. SCHLEGEL, *supra* note 2, at 195.

10. John Henry Schlegel, *On The Many Flavors of Capitalism* or *Reflections on Schumpeter's Ghost*, 56 BUFF. L. REV. 965, 970 (2008).

explanation in order to show that Marx and Schlegel arrive at similar conclusions: neither wants to demonstrate "a universal theory of anything." Above all for Marx, capitalism is not a natural, but a historically specific form of organizing economic activity. Nevertheless, Marx is willing to see necessity in contingency and identifies certain tendencies that flow from the capital relation, such as increasing economic inequality. While Marx and critical legal scholars agree that the economy is "socially constructed," somewhere along the way critical legal scholars, unlike Marx, end up unintentionally reifying capital as just another "factor of production."

Like *While Waiting for Rain*, I offer no silver-bullet solutions, no easy takeaways, but I also identify an elephant in the room of Professor Schlegel's book. This is the elephant of capitalism, which is in many ways an obstacle to the kind of community-driven economic development that *While Waiting for Rain* shows to be increasingly out of reach in today's economic environment.

I. IS CAPITALISM "A THING?"

What is capitalism, if anything? This Part articulates Marx's understanding of capital and contrasts it with three others: capitalism as commerce, inequality, and property.

A. *Capital as Process: The Accumulation of Money*

I will say that capitalism—I prefer "capital" for reasons that will become clearer in the course of discussion—is indeed "a thing." It is permissible to say "a thing" in the sense that capital does exist. But, strictly speaking, capital is not a thing in the sense that it is a tangible, material object.[11] This contrasts with common usage, according to which capital is indeed most readily thought of as a physical object, as a good used to produce other goods, such as a steel mill, an espresso-making Mastrena machine (used by Starbucks), or an

11. Marx famously wrote, "[C]apital is not a thing, it is a definite social relation of production pertaining to a particular historical social formation . . . ." 3 KARL MARX, CAPITAL 953 (David Fernbach trans., Penguin 1981) (1894).

automobile-assembling robot.[12] Instead, I will say that capital is something a bit more abstract than "a thing." Capital is a process which, because it incorporates *change* into its concept, cannot be reduced to a physical, tangible object. It is nevertheless an existing process, one that does indeed take place "out there" in the "real world."

Following Karl Marx, capital is a process that begins with money that is used to acquire commodities (through exchange in the market)—such as raw materials, labor power, or the (physical) capital goods referred to previously—which are then used to produce new commodities that are sold for money.[13] We can characterize this process as "buying in order to sell." This is a distinct and historically novel orientation toward the market. A different orientation toward the market, one that is far more common in human history, is "selling in order to buy." In this latter sequence, we (producers or workers) bring commodities to the market (goods, services, or labor) in order to sell them for money, and then the money is used to acquire the things we need or want for consumption.[14]

These two sequences have very distinct ends. In "selling in order to buy," the end or goal serves some recognizably human and, dare I say, "rational" purpose: the satisfaction of human needs and wants of whatever kind. The more novel sequence of capital, "buying in order to sell," has a different goal: money—full stop. As Michael Heinrich explains:

> The only aim of the movement of capital is the increase of the sum of value that is initially advanced. But this purely quantitative increase knows neither measure (why should a 10 percent increase be deemed insufficient while considering a 20 percent increase as

12. PAUL SAMUELSON & WILLIAM NORDHAUS, ECONOMICS 270 (17th ed. 2001).

13. 1 KARL MARX, CAPITAL 247–57 (Ben Fowkes trans., Penguin 1976) (1867).

14. The commonplace distinction between "need" and "want" is not particularly crucial in this context because it is not necessary to distinguish them in order to say that a need or want can be satisfied. In any case, needs and wants are historically evolving: yesterday's wants are today's needs.

> sufficient?) nor limit (why should the process end after a singular movement, or even ten such movements?).[15]

"Selling in order to buy," by contrast, finds its measure in the need (or want) and its limit in the satisfaction of that need or want.[16] The upshot is that the process of capital is an end in itself (accumulating capital furthers future accumulation of capital) and is unlimited and ceaseless. It is rational only in the sense that the most advanced knowledge of science and management is used in the service of accumulating capital; it is irrational in that the goal itself does not directly or necessarily serve any recognizable human purpose.

Capital is a historically specific way of organizing economic activity. Capitalism does not arise as a consequence of ineluctable laws of nature, human or otherwise, but is a fortuitous convergence of a peculiar constellation of social relations and institutions.[17] Throughout human history, most economic activity has not been organized by capital. Ruling classes of the past, Roman patricians or medieval barons, had objectives very different from accumulating capital. They favored self-sufficiency over specialization, conspicuous consumption over delayed gratification. Roman slaves were provided for without market mediation in the household of the *pater familias*. Medieval serfs had direct access to their means of consumption, again unmediated by the market. All of these actors participated in the market, sometimes extensively, but as a means for further consumption, power, or status, not for the end-goal of money; and participation in the market was not the universal obligation it is today. Like the market, capital has always been around, but only in the interstices: medieval merchants who bought cheap and sold dear or usurers who lent money on a promise of a greater return. The universalization of exchange, the separation of peasants

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15. MICHAEL HEINRICH, AN INTRODUCTION TO THE THREE VOLUMES OF KARL MARX'S CAPITAL 87 (Alexander Locascio trans., Monthly Review Press 2012) (2004).

16. *Id.*

17. For this paragraph, *see generally* ELLEN MEIKSINS WOOD, THE ORIGIN OF CAPITALISM: A LONGER VIEW (Verso, 2002) (1999).

from direct access to their means of subsistence, and the obligation that virtually all of production satisfy the profit criterion are novel and distinct features of modern society.

This notion of capital as the limitless accumulation of money leads Marx to a series of conclusions about the kinds of consequences capital has for our social world. I will talk a little more about those implications in the following Part. Before that, we can firm up this proposed concept of capital by contrasting it with what it is not. In the following Subsections we will see why Marx's concept of capital diverges from typical ways of understanding capitalism, specifically, as commerce (or trade, or exchange, or the market), as an extreme form of economic inequality, or as private property in the means of production.

B. *Capitalism as Commerce*

An unreflective definition identifies capitalism with the market—or trade or commerce or exchange. This is certainly a popular conception. It tracks the lingering Cold War conception of capitalism.[18] Capitalism is "free enterprise," the opportunity to engage in the market, as opposed to something like Soviet-style state-ownership of the economy with public planning. The Soviet model was called a "command economy," with all economic activity directed from the center (i.e., the state), in direct antithesis to the market, which is (depicted as) decentralized and uncoordinated.[19] One of the apparent appeals of socialism, at least in the early twentieth century, was replacing the chaotic and crisis-ridden market with coordinated public planning.

The "capitalism is the market" idea is closely aligned with thinking in academic economics. Capital-as-process essentially disappears as a concept in modern economics. As mentioned, economists usually use capital only to refer to a good or commodities that are used to produce other

18. Schlegel, *supra* note 10, at 965.

19. Mark Harrison, *Coercion, Compliance, and the Collapse of the Soviet Command Economy*, 55 ECON. HIST. REV. 397 (2002) (explaining the collapse of the centralized Soviet economic system and referring to it as a "command economy" and "command system.").

commodities—the "physical" goods mentioned before: factories, machines, and tools.[20] Furthermore, although economists admit that firms maximize profits, rather than consumption or well-being, it turns out that this admission has no significance whatsoever because, according to economic theory, firms make zero profits. According to economists, in a perfectively competitive economy all of the firms' revenues are paid to factors of production: wages to labor and interest (or dividends) to capital. The productivity of a (physical) capital good is treated identically as the interest on savings.[21]

Capital-as-process (rather than capital as physical goods) then gets treated in mainstream economics as "savings," or, as Schlegel calls them elsewhere, "financings."[22] According to Schlegel, "financing is the form of economic activity that facilitates the inter-temporal transfer of value."[23] For example, if someone uses money to buy goods with "the expectation, really a hope, of reselling them at some future time for more than I paid," they are engaged in the inter-temporal transfer of value.[24] Or, as economists call it: deferred consumption. The same thing happens when you deposit money in the bank or buy shares in a firm. In each case, you are transferring present value to some point in the future.

For Schlegel, it is precisely this—financings—which sets capitalism apart from markets.[25] In other words, like Marx,

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20. SAMUELSON & NORDHAUS, *supra* note 12.

21. The so-called "Cambridge capital controversy" was a debate about the problems of conflating, among other things, capital goods, their quantity and productivity, with currency-denominated valuations. For a fascinating, multi-faceted, and somewhat autobiographical account of this controversy, see Amartya Sen, *Sraffa, Wittgenstein, and Gramsci*, 41 J. ECON. LITERATURE 1240 (2003).

22. Schlegel, *supra* note 10, at 970.

23. *Id.* With due acknowledgements to our colleague, Bert Westbrook, to whom Schlegel credits this understanding.

24. *Id.*

25. *Id.* at 971 (writing that "the existence of a market does not in and of itself imply the existence of a capitalist economy, for capitalism requires the widespread use of financings, the attempt to move value from one point in time to another with the hope of earning more in the future than one has in the present, but always with the risk that one may earn less.").

Schlegel correctly distinguishes "buying in order to sell" (i.e., capital, or "financings") from "selling in order to buy" as essential to capitalism. There is, however, at least one key difference between Marx and Schlegel. For Marx, capital becomes capitalism when "buying in order to sell" becomes generalized in the process of production itself. The difference is between, on the one hand, the medieval merchant who buys woolen and linen cloth from the independent artisan with the hope of selling them later for profit; and, on the other hand, the capitalist who buys wool, machinery, and hires workers to *make* the woolen and linen cloth with the same hope.[26] Both of these transactions are capital, but only when "financings" seize on the production process itself on a widespread basis does capital become capital*ism*.[27] You could say that capital*ism* is defined by the generalized "financialization of production."[28]

Why do capitalists and firms accumulate capital? Primarily because they have to.[29] Firms that don't maximize profits go out of business. Notice that "the market," or "competition," places constraints on firms, managers, and capitalists, regardless of their subjective states of mind. "Self-interest" or "greed" is only obliquely related to profit maximization. That is, the capitalist may really want to

26. The fact that the example uses "material" goods is inconsequential. It is just as permissible to speak about the production of services as much as goods.

27. Another question that Marx emphasizes, but Schlegel does not, is where the increment in value from "buying in order to sell" comes from. Unlike the piggy bank that Schlegel mentions, which produces no more money than what you put into it, other financings seem, almost magically, to yield more money than was initially spent. How is it possible for money, by itself, to produce more money? For mainstream economists, the gain is explained by the "productivity of capital." However, Marx's answer, which is rejected by almost all academic economists, is that the increment in value comes from unpaid labor. To my mind, both the substantive and formal-logical objections to Marx's claims have been answered. The claim remains controversial mainly for the deeply uncomfortable implications it has. For the substantive answers, *see* MOISHE POSTONE, TIME, LABOR, AND SOCIAL DOMINATION 123–86 (1993). For the formal-logical answers, *see* Simon Mohun & Roberto Venezini, *Value, Price, and Exploitation: The Logic of the Transformation Problem*, 31 J. ECON. SURVEYS 1387 (2017).

28. I am using "financialization" very differently from its usual usage to refer to a particular "stage" or type of capitalism. In my usage capitalism is always financialized.

29. HEINRICH, *supra* note 15, at 88–89.

provide a safe place for their employees to work, to abstain from job-destroying automation of work processes, and not to contribute to climate change. But if the choice is between doing those things or going out of business, the good intentions of the business owner may not particularly matter.

The market is, therefore, an essential institution for capital accumulation, but it is not the same thing as capitalism. As already indicated, for most of human history the use of money has been a means to an end—the intelligible end of satisfying wants and needs. But under capitalism, money itself becomes the end and, to the extent that the economy does satisfy needs, this is a lucky accident.[30] Capitalism also requires the extension of the market and, more importantly, the obligation that everyone use money and participate in the market in order to consume and survive. Historically, this has meant the separation of peasants, free or unfree, or other producers from direct access to land and other means of reproduction, which provided for life's necessities without the intermediary of money and the market.[31] All of these conditions are necessary for capital to become capitalism, for production to become "financialized." From a certain perspective, capitalism is the market "gone wild." But, again, it is important not to identify the market with capitalism unless you want to cause a great deal of confusion.

C. *Capitalism as Inequality*

Economic inequality is another possible way of identifying capitalism. Senator Bernie Sanders identifies himself as a democratic socialist and rails against economic inequality and the "billionaire class."[32] In addition, both the United States and Sweden are market economies with private ownership of productive assets, but the latter is sometimes called "socialist." Why? Because inequality is

30. *Id.* at 87.

31. *See generally* WOOD, *supra* note 17.

32. Paul Kane & Philip Rucker, *An unlikely contender, Sanders takes on 'billionaire class' in 2016 bid*, WASH. POST, May 1, 2015, at A1.

significantly lower in Sweden as a result of big differences in political and policy choices: collective bargaining over wages and extensive income distribution through taxation. Inequality is also front-and-center in current discussions of "racial capitalism." Indeed, racial capitalism appears to refer, primarily, to the correlation between economic inequality and racial injustice and oppression.[33] In these discussions, the "capitalism" part of "racial capitalism" refers to the economic and political struggle to shift the distribution of income and wealth toward profits.[34]

But inequality, like the market, makes capitalism superfluous, both conceptually and practically. If inequality is the problem, and the only identifying feature of capitalism is inequality, we can eliminate capitalism from our conceptual—and practical—toolkit. We should focus on inequality instead. Moyn puts the problem this way: "[T]he question is not: given that capitalism produces inequality as a matter of systemic necessity, by what legal pathways does it do so? Rather, one should ask: what legal arrangements promote or lessen inequality?"[35] Putting inequality in terms of a legal problem allows Moyn, who admonishes us to do the same, to excise capitalism as either a concept or object from the analysis.

This response simply assumes that there is no causal relationship between capital and inequality, mostly because capital is underdefined, if defined at all. If you already assume that there is no such thing as capitalism, you are not

33. Professors Gonzalez and Mutua define racial capitalism as comprised of "two key structural features": "*profit-making* and *race-making*." By profit-making, they "mean capturing, as well as securing and expanding, surplus value, economic profits or wealth, and political power through processes of exploitation, expropriation, and expulsion." By race-making, they "mean the processes by which 'races' and racial hierarchies are created and perpetuated, including through practices of differential dispossession, discrimination, [and] segregation." These processes "are mutually constitutive: Profit-making creates or reinforces race-making, and race-making structures and facilitates profit-making." Carmen G. Gonzalez & Athena D. Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J. L. & POL. ECON. 127, 128 (2022).

34. *Id.*

35. Moyn, *supra* note 7, at 51–52.

going to be concerned about capital's effect on inequality.[36] As we will see in Part III, Marx posits an intuitive relationship between capital and inequality, one that remains topical today. If Marx is right about this relationship—or even if he is not right, but there are other important causal connections between capital accumulation and income inequality—then Moyn's injunction to focus on inequality rather than capitalism is like the doctor who winds up killing the patient by treating symptoms rather than addressing the disease itself.

Therefore, we cannot reduce capitalism to inequality. Capitalism may be particularly good at generating inequalities, economic inequality among them. But distinguishing capitalism from other forms of inequality helps us understand what exactly it is about capitalism that generates inequality, which is essential if we actually want to address it practically.

D. *Capitalism as Private Property in the Means of Production*

Traditionally, many self-declared Marxists have defined capitalism as the "private ownership of the means of production,"[37] where the "means of production," again, refers to capital as goods used to produce other goods. This definition contrasts with an idea of socialism as public ownership of the means of production, where the state was often assumed as a stand-in for the public. The private-property conception of capitalism draws heavily on nineteenth-century liberalism's political-economic view of itself as a polity divided between private and public spheres.[38] The private sphere is understood as pre- or nonpolitical, a realm of freedom or autonomy; the public, represented by the state, assumes responsibility for those

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36. Rob Hunter makes a similar point. Rob Hunter, *Complexity Without Contradictions: The Social Theory of Left-Liberal Legal Thought*, LEGAL FORM (Oct. 13, 2023), https://legalform.blog/2023/10/12/hunter-moyn-lpe-cls/.

37. POSTONE, *supra* note 27, at 5–6.

38. Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 PA. L. REV. 1423 (1982).

few areas of common concern such as national defense and, critically, as the neutral guardian of every person's private autonomy.

But as the legal realists and, later, the critical legal studies movement pointed out, it was impossible for private property to be pre-political. Private property depends entirely on the law for one to "own" it: to possess it through tort and criminal law (e.g., against trespassers) or to exchange it through contract and property law. *While Waiting for Rain* hews to this critical-legal-studies insight. Schlegel addresses the popular "notion that economic life would be better if law went away,"[39] for example, the notion that reducing taxes and eliminating regulations is a recipe for guaranteed economic development. He confirms the roots of this view in the classical liberalism of "British political economy from Adam Smith to John Stuart Mill."[40] Schlegel points out that none of the proponents of deregulation "ever suggested that the great silent work of contract, tort, and property law be dispensed with."[41] He also observes that "there is no such thing as a 'natural' market, a market whose definition/structure is independent of law. A deregulated market is as constituted by law . . . as a regulated one."[42]

But if the legal-realist critique applied to liberal conceptions of private property, it also applied to the traditional Marxist definition of capitalism as private property in the means of production.[43] Duncan Kennedy's work provides a good example of this criticism. Kennedy observes that "property is just a bundle of rights" with no

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39. SCHLEGEL, *supra* note 2, at 73.

40. *Id.*

41. *Id.*

42. *Id.*

43. For two recent articles that respond to the CLS criticism of Marxism, and seek to correct some of the deficiencies in traditional conceptions of Marxism to which the CLS criticism was addressed, *see* Nate Holdren & Eric Tucker, *Marxist Theories of Law Past and Present: A Meditation Occasioned by the 25th Anniversary of* Law, Labor, and Ideology, 45 LAW & SOC. INQUIRY 1142 (2020); Rob Hunter, *Critical Legal Studies and Marx's Critique: A Reappraisal*, 31 YALE J. L. & HUMAN. 389 (2021).

identifiable "core."[44] That is, property is just a series of rights—to possess, to alienate, to enjoy the use of, etc., some tangible or intangible asset or object—without any more fundamental fact or attribute holding this collection of rights together. In principle, therefore, the state can divide and reallocate these rights in whatever way one thinks is normatively desirable. A minimum wage law, for example, isn't an interference with freedom of contract (understood as a private realm of liberty) because the state has already chosen a certain allocation of rights when protecting this freedom of contract. If the state saw fit to change that allocation by enacting a minimum wage law in order to achieve some justifiable public goal, so be it. Kennedy then points out that "[s]ocialism, in the form of collectivist, altruist, egalitarian values, is already present in the capitalist legal system,"[45] as, for instance, in the minimum-wage legislation just mentioned or in the welfare state or any number of current-day redistributive and regulatory policies. This leads Kennedy to conclude that "[m]odern mixed capitalist legal regimes have no overall system logic: each is an internally inconsistent hodgepodge of 'social' and 'individual' elements with conflicting valences."[46] Existing, mixed economies are just a "mushy continuum between collectivism and anarchism, hierarchy and equality" having nothing about them that is *essentially* capitalist.[47] Kennedy's conclusion precisely underlies Moyn's inference that "[t]here is no such thing as capitalism."[48]

Kennedy's argument isn't successful because neither capital nor capitalism should be understood as private property. In fact, Marx has no disagreement with the "bundle of rights" view of property. One could say that Marx was the first to articulate such a view when he famously wrote that "capital is not a thing, it is a definite social relation of production pertaining to a particular historical social

44. KENNEDY, *supra* note 8, at 287.

45. *Id.*

46. *Id.*

47. *Id.*

48. Moyn, *supra* note 7, at 55.

formation."[49] Without such a view, Marx wouldn't be able to think that a different way of organizing economic activity is possible (something other than capitalism, such as socialism, small-c communism, or whatever you call it). Capital is not private property in the means of production, but rather the use of money to acquire commodities in order to accumulate more money. This process does not require an idealized conception of private property. Nor does it appeal to individual over collective, selfish over altruist, or hierarchical over egalitarian principles or values. The process of capital accumulation is still entirely compatible with, for example, the presence or absence of a statutory minimum wage or any other regulated form of capitalism.[50]

Capital does *require* various legal mechanisms to define, protect, and enforce this process. But the fact that capital can accumulate under an extremely wide variety of legal institutions actually shows that law and capital operate at different levels of abstraction. That is to say, capital is "multiply realizable" by a variety of legal arrangements and cannot be reduced to merely law.[51] Marxist scholar Moishe

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49. MARX, *supra* note 11, at 953.

50. This is why it is important to distinguish capital, the process, from capital*ism*, a society dominated by capital. The objection that capital*ism* does not exist because combinations of capital accumulation and non-capital production might coexist in some combination misses, precisely, the logic of capital.

The fact that some production under capitalism (for example, in the household or by the postal service) is not subject to the profit-maximization criterion is also not a problem for the concept of capital. These not-for-profit forms of production are all dependent on money, and thus on capital accumulation, through waged-labor in the case of household production, taxation in the case of the postal service, and charitable donations in the case of non-profits.

I suppose it would be possible to conceive of a more genuinely "mixed" economy with capitalist and noncapitalist forms of production, one where significant amounts of production and life were decommodified and not dependent on money. Whether such an economy would be stably reproducible over an extended period of time seems doubtful to me: because capital accumulation has no measure or limit, it wants to grow, like a cancer.

51. Schlegel grasps this point particularly well. He writes, "the existence of a rule system does not in and of itself create a market. Rules may establish a game that is so boring that no one will play." Schlegel, *supra* note 10, at 973. In addition to rules, the market—or capitalism, I would add—requires people willing to play the game, and not everyone will be willing to play under any conceivable set of

Postone insists that "private property" is inadequate as a concept of capital, going so far as to argue that state ownership of the productive assets (as in the Soviet model) still produces the domination that is characteristic of capital itself.[52] For those reasons, but also on the basis of Marx's *Capital* alone, I think it is wrong for Kennedy to claim that critics of capitalism "didn't have much in the way of an actual theory of the logic of capital."[53] Marx quite clearly specifies the logic of capital, in the terms we have already provided, and this logic, while certainly legal, is not reducible to law.

II. WHAT KIND OF THING IS CAPITALISM?

Now that we have some idea of what capitalism is, what are the implications of that "thing"? What consequences does the process of capital have for law, for development, for the social world?

A. *General Laws and Causal Explanation*

Marx does not just want to say what capitalism is, he also wants to trace out the consequences of this historically novel social process he identifies. And, of course, he does just that by examining the implications of capital for income inequality, economic crises, technological change, and even, presciently but more limitedly, ecology. Borrowing the scientific language of the time, he even invokes the language of "general laws." For example, chapter 25 of *Capital* is titled "The General Law of Capitalist Accumulation."[54] He uses the chapter to investigate the impact of capital accumulation on the distribution of income—certainly, a relevant topic today.

The invocation of "general laws," however, earns Marx opprobrium from scholars like Samuel Moyn. Moyn lumps Marx in with other nineteenth-century thinkers, for whom "science" was still new, even revolutionary, but also had very

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rules. That may be because the rules of the game are boring, rigged, or are not compatible with basic needs or incentives, however coarsely defined.

52. POSTONE, *supra* note 27, at 14 n. 8 and 334–35.

53. KENNEDY, *supra* note 8, at 287.

54. *See* MARX, *supra* note 13, at 762.

much a naturalistic cast. Moyn writes, "the nineteenth-century figures like David Ricardo and Karl Marx who initially described"[55] the so-called general laws of capitalism "wanted them to be more like scientific necessities,"[56] "like those of gravity or thermodynamics."[57] To Moyn, as well as many nineteenth-century thinkers, general laws are universal, predictable, naturalistic, and necessary (or deterministic). In this specific intervention, Moyn is criticizing the idea, found in Thomas Piketty but also earlier in Marx, of a "natural law of capitalism" that inequality increases over time with "inexorable necessit[y]."[58]

Instead of necessity, Moyn advocates contingency. There is no inexorable law by which capitalism necessarily generates income inequality. Moyn leans heavily on the legal realist view, mentioned earlier, that there is no "pre-legal" economy: economies are just allocations of different legal rules, each of which generates a different distribution of income.[59] According to Moyn, approaches like Marx's risk blinding us "to how inequality has been achieved, worsened, and moderated through specific legal innovation rather than the necessary logic of 'capitalism.'"[60] There is "no such thing as capitalism, [rather] . . . there are only legal and more broadly political arrangements in which inequality improves or—in our case—worsens."[61] It is better, Moyn insists, to reject talk of "capitalism" and its "general laws," and instead focus directly on ameliorating inequality through "the humdrum, messy, and contingent laws that mere mortals have made to structure transactions or organize politics."[62] "[C]apitalism's alleged law of necessarily increasing inequality," he says, "was one made to be broken."[63]

55. Moyn, *supra* note 7, at 50.

56. *Id.*

57. *Id.* at 51.

58. *Id.* at 54, 52.

59. *See id.*

60. *Id.* at 50.

61. *Id.* at 54–55.

62. *Id.* at 50.

63. *Id.* at 53.

Before we can assess whether Marx was committed to "general law" explanations as understood by Moyn, we first need to know what "general laws" are. The "general law" model of explanation—also called the "covering-law" model[64]—is characterized by two things. The first is, somewhat obviously, their generality, or universality. The generality of causal laws is said to inhere in effects that *always* follow specified causes.[65] But there is also a sense that a general law is "general" when it applies in the broadest possible conditions, preferably at any time and at any place. Generality seems to have an intrinsic appeal to scientists. Laws that are less contingent or conditional seem more fundamental; they express, somehow, a "deeper truth." They are universal in their unconditionality, and that universality is their appeal, both in itself and as a model to the other sciences, for it demands our obedience as an unalterable fact of nature, independent of human will or convention.

This characteristic is related to the second defining feature of the covering-law model, which is that it understands explanation as prediction.[66] Indeed, if a general law did not apply in a broad range of conditions, it would have no predictive power and thus (by its own terms) would not be able to explain anything. In this model, a good explanation will be one where our empirical observations confirm the *expectations* identified by the theoretical statement of the "general law." The emphasis on prediction has deep roots in the English empirical tradition. The philosopher David Hume understood causality as nothing more than an empirical regularity or the "constant

64. Maurice Mandelbaum, *Historical Explanation: The Problem of "Covering Laws,"* 1 HIST. & THEORY 229, 229 (1961).

65. Carl G. Hempel, *The Function of General Laws in History*, 39 J. PHIL. 35, 35 (1942) (explaining that "a universal hypothesis may be assumed to assert a regularity of the following type: In every case where an event of a specified kind C occurs at a certain place and time, an event of a specified kind E will occur at a place and time which is related in a specified manner to the place and time of the occurrence of the first event.").

66. *Id.*

conjunction" of events.[67] As prediction, this is a forward-looking view of explanation.

The classic example of a general law, indeed even a model for the covering-law model itself, is Isaac Newton's laws of motion. The first law of motion says "[a] body remains at rest, or in motion at a constant speed in a straight line, unless acted upon by a force."[68] This statement is extraordinarily general: it makes no distinctions among the bodies, or objects, to which it applies. It applies to any object, at any place, at any time. It makes a prediction about bodies at rest or at motion, and the generality and predictability of the law has been repeatedly confirmed by experiment.

Contrary to the covering-law model, I would assert that neither generality nor prediction are essential for explanation. *While Waiting for Rain* is a great example of this. Early on, Schlegel opposes the search for a "general," or universal, model of economic development: "[T]his book does not attempt to offer a universal theory of anything."[69] He dives deeper into this theme when he contemplates the role of "grace" in Jane Jacobs's studies of urban economic development. Without a recipe or guaranteed checklist for urban (re)development, there is always something of a "secret sauce" in any success story. Because of this "X" factor, Schlegel writes, "The winners in economic history need to understand that their triumph is unknowable, except in retrospect, and both unbidden and undeserved, especially undeserved."[70] The phrase "except in retrospect" is crucial, for retrospection makes the *explanation* of a community development success story possible. Schlegel continues, "Which is not to say that there cannot be stories of economic development that are not simply strange, perhaps

67. DAVID HUME, AN ENQUIRY CONCERNING HUMAN UNDERSTANDING 17 (Eric Steinberg ed., Hackett 1993) (1748) (explaining that knowledge of cause and effect is not obtained by reason a priori, "but arises entirely from experience, when we find that any particular objects are constantly conjoined with each other.").

68. NEWTON, ISAAC, NEWTON'S PRINCIPIA: THE MATHEMATICAL PRINCIPLES OF NATURAL PHILOSOPHY. (I. Bernard Cohen & Anne Whitman trans., Univ. of Cal. Press 1999) (1726).

69. SCHLEGEL, *supra* note 2, at 189.

70. *Id.* at 217.

mysterious, even miraculous, where in the narrowest sense, causation is clear—the existence of A made possible B—but where at any greater scale, causation is hard to identify."[71] He identifies the growth of the bicycle industry in postwar Japan or the invention of the post-it note as examples. In each case, the "concatenation of circumstances is simply too implausible to predict."[72] But it is quite possible, after the fact, to explain their occurrence. Schlegel considers several alternatives to "grace" to explain the prospectively unknowable in local economic development: "serendipity," "randomness," "luck" or "Fortuna," "happenstance," and "magic."[73] None seems adequate, but he settles on "rain"; hence, the title of the book, *While Waiting for Rain*.

We can call this alternative model of explanation "historical" or even "narrative" explanation. For a historian who wants to explain unique, historical events, the covering-law model does not work. Explaining one-time events is nonsensical from the perspective that explanations can only be general and confirmed with repeated observations. Yet, an older tradition of philosophy, before the rise of empiricism, says that everything that happens is caused.[74] From that perspective, unique, historical events—events which cannot occur regularly—must have explanations. They happened, so they must have been caused. And, indeed, historians often try to explain the unfolding of events by tracing the sequences of causes through narration, including Schlegel in *While Waiting for Rain*. Historians sift through evidence, consider counterfactual scenarios, and try to make conclusions about the cause, or causes, of specific historical events. As causal narration, this is a backward-looking view of explanation, not to predict what will happen (which is a

71. *Id.*

72. *Id.*

73. *Id.* at 216–18.

74. The idea that "everything that happens is caused" was most famously articulated by Gottfried Wilhelm Leibniz as the "principle of sufficient reason," but the idea existed before that time. Yitzhak Y. Melamed & Martin Lin, *Principle of Sufficient Reason*, STAN. ENCYCLOPEDIA OF PHIL. (October 30, 2023, 1:36 PM), https://plato.stanford.edu/archives/sum2023/entries/sufficient-reason/.

non sequitur given the uniqueness of the event) but to understand why it did.[75]

We have now contrasted two types of explanation: first, the covering-law model, which highlights generality and prediction in a prospective view of causality; and second, historical explanation, which highlights a specific chain of events to explain unique events in a retrospective view of causality. However, we should really see these two types as the ends of a continuum. In other words, it is also possible to make predictions about the regularity of certain effects, but based on limited, contingent, and even relatively unique historical circumstances. Indeed, even the most ideal general laws, such as Newton's laws of motion, only hold under certain specified conditions: they do not apply to objects at very high speed, of very large mass, or of very small size. General laws only apply under certain conditions; therefore, the more conditions you have, the more limited your explanation. But that is not necessarily a bad thing because, as we have said, even unique historical events (e.g., development success stories; the French Revolution) are sometimes worthy of explanation. Understanding this allows us to make sense of the way that Marx talks about capital, technological change, and economic development, which we turn to in the next Section.

B. *A Marx of General Laws?*

Marx is not committed to general laws in the naturalistic sense. Quite the opposite. For example, he reproaches the

75. Sometimes, philosophers argue that scientists study unique events repeatedly (i.e., experiments) to derive general laws, while historians use general laws to explain unique events. Carey B. Joynt & Nicholas Rescher, *The Problem of Uniqueness in History*, 1 HIST. & THEORY 150 (1961). In either case, they insist, the covering-law model of explanation remains the only appropriate model of explanation. It is possible to question this conclusion. While many historians, and especially historically minded sociologists, may indeed appeal to "general laws" of social explanation, it is not necessary to do so. Frequently, historians make no appeal to any general laws. True, this may because they are simply assuming or implicitly adopting some more general law of social. But in other cases, social scientists build "purpose built" models to explain very specific events or sets of events. *See generally* the edited volume, ANALYTIC NARRATIVES (Robert H. Bates et al. eds., 1998). To call these models "general" seems laughable.

economists of his day for treating the long-term movement of wages as a "natural law of population."[76] Late nineteenth-century economists claimed that the working class was "reproducing" too quickly, causing the supply of labor to outstrip its demand, and consequently pushing down wages and increasing poverty. As birth rates were simply a biological process, natural laws of population caused the poverty of the working class. According to these same economists, the demand for labor, driven by the growth of capital, was determined by completely separate "laws." In this view, poverty and inequality were just products of laws of nature.

Marx objected to the unconditioned generality of so-called "natural" laws, to the claim that they applied at all places and all times—in this case, that wages were determined by population growth. Marx had a different argument for the movement of wages and inequality. He argued that profit maximization—increasing the money returned over money advanced—induced capitalists (again, under pain of losing out to competitors) to introduce labor-saving machinery.[77] Today, we call this "automation," a topic of much discussion in the media and academy.[78] Labor-saving machinery reduces labor costs, increases productivity, both of which increase profits. By displacing workers, however, the aggregate effect of many firms automating production reduces the demand for labor. And this, in turn, drives down wages and increases poverty and inequality. We can also remark, too briefly, unfortunately, that the main drivers of inequality, whether those identified by Marx or others, are also responsible for the community disinvestment that many "rustbelt" cities, including Buffalo, have experienced. Suffice it to say, capitalism takes place in *space* as well as time. Inequality does not just happen to someone at some time, it also happens somewhere.

Increasing inequality is therefore a "law" of capital, according to Marx, but not a law of nature. It is a law

76. MARX, *supra* note 13, at 771.

77. *Id.* at 429–38.

78. Steve Lohr, *Economists Point to Tech on Pay Gap*, N.Y. TIMES, Jan. 11, 2022, at B1.

conditioned by the particular social and historical conditions where capitalism prevails: "social" in the sense that capitalism obtains only under particular social relations and institutions; and "historical" in the sense that these social relations have only existed for a limited period of human history. The law of increasing inequality does not apply at all times or in all places; it is not a law of nature. Marx writes, "The law of capitalist accumulation, mystified by the economists into a supposed law of nature, in fact" expresses an inverse *social* relationship between profits and wages.[79] He is clear that capitalism's tendency toward inequality is, like any theoretical statement, necessarily abstract, and "is modified in its working by many circumstances."[80]

In this respect, Marx's and Schlegel's projects are very similar. Like *While Waiting for Rain*, Marx's *critique* of political economy (the subtitle to *Capital*) "does not attempt to offer a universal theory of anything."[81] Marx doesn't want to show how capitalism works and how to fix it—he wants to show how it doesn't work. He doesn't understand economy or society as an accidental collection of individuals standing helpless before impersonal natural laws. He is more interested in showing why the impersonal—objective and lawlike—appearance of such laws is constantly confused with nature rather than seen as what they truly are, which is social and contingent. This point of view expresses a profound skepticism of a mechanical and "scientistic" view of society to be managed by knowledge-workers and technocrats. I believe the same skepticism underlies Schlegel's hesitation to offer recipes for development success.

Marx and Schlegel are also united in their goal to "denaturalize," respectively, the market and capital. Recall: according to Schlegel, "there is no such thing as a 'natural' market,"[82] while, according to Marx, "capital is not a thing, it is a definite social relation of production pertaining to a

79. MARX, *supra* note 13, at 771.

80. *Id.* at 798.

81. SCHLEGEL, *supra* note 2, at 189.

82. *Id. at* 73.

particular historical social formation."[83] However, something odd happens in Schlegel's case. The oddity is that while the market is denaturalized, understood as intrinsically social and contingent, capital is, if I may be permitted, naturalized. Somewhere along the way, in Schlegel's—and critical legal studies'—efforts to deconstruct the economy's legal constitution, capital crosses the boundary from the social to the natural. That will sound provocative so let me explain. Schlegel defines capital in neutral and indifferent terms, merely as the "inter-temporal transfer of value."[84] But expressed in this way, it loses the specific social and historical character of *capitalism*. In such value-void language, capital simply becomes one of the other "technical" factors of production, alongside labor, skills, or natural resources. As neutral and technical, it lacks any meaning, sociality, or value-ladenness. Capital is treated like inert, disenchanted nature.

In contrast, Marx's point is to underscore the intrinsic sociality, even normativity, of capital. We don't talk about technical factors of production—labor, a hammer, or a machine—as "wrong" or "false." Yet this is precisely how Marx speaks of capital and capitalism: it is "strange . . . , abounding in metaphysical subtleties and theological niceties,"[85] "betwitched," "distorted," "upside-down," and "haunted."[86] What makes capital "wrong?" Well, in the first respect, as we mentioned earlier, it is intrinsically absurd to subordinate human needs and wants to the limitless and ceaseless accumulation of money. Capital instrumentalizes these human needs and wants, which makes capitalism a form of domination. We are not free under capitalism.

If that is not enough for those of a legal realist—and therefore consequentialist—mindset, we can nod at the train of misfortunes that follow in capital's sweep. As just one example, take the inequality that we have already mentioned. Now, it is often objected that Marx was wrong as

83. MARX, *supra* note 11, at 953.

84. Schlegel, *supra* note 10, at 970.

85. MARX, *supra* note 13 at 163.

86. MARX, *supra* note 11, at 969.

an empirical and historical matter about capitalism's tendency toward increasing inequality.[87] The three decades following WWII, for example, are hailed as a period of shared prosperity under capitalism. Moreover, if an economy is fundamentally ordered by legal rules, we don't need to worry about capital; we should, instead, use legal rules to moderate inequality under capitalism. As Moyn puts it, "capitalism's alleged law of necessarily increasing inequality, was one made to be broken."[88]

I do not doubt that legal reforms can reduce poverty and inequality under capitalism. Let's put away the distracting objection that Marx was a determinist for whom increasing inequality was an "inexorable" natural law of capitalism. Marx never suggested that material improvements were impossible under capitalism; he was, in fact, an advocate for legal reform. But he also thought that ameliorating

87. Scholars disagree about whether Marx believed that, according to his "general law of capitalist accumulation," wages would remain stagnant under capitalism or only that labor's share of national income would decline. Daron Acemoglu & James A. Robinson, *The Rise and Decline of General Laws of Capitalism*, 29 J. ECON. PERSP. 3, 6 (2015). In fact, it is not clear that Marx held either view. As a critic of capitalism, Marx was more interested in disproving the existence of so-called natural, general laws, not in establishing new ones. Furthermore, Marx's view is complicated by the fact that he specifically allows for the possibility that capital accumulation may allow wages to rise. For example, he mentions the possibility that the *extensive* growth of capital could offset the fall in labor demand induced by automation, which would have the effect of lowering profits, raising wages, and reducing income inequality. However, on one point he is particularly clear, which is that, as soon as wages rise, the fall in profits this causes cools the engines of capital accumulation: "The rise of wages is therefore confined within limits that not only leave intact the foundations of the capitalist system, but also secure its reproduction on an increasing scale." As a result, capital accumulation "excludes . . . every rise in the price of labour, which would seriously imperil the continual reproduction, on an ever larger scale, of the capital-relation." MARX, *supra* note 13, at 771–72. Thus, rather than a law of general, empirical regularity, it might be more helpful to understand Marx's law as a causal limit on the growth of wages. In that light, also recall that the limit imposed by capital accumulation is not a technological one; it is an arbitrary, social one. The going-rate of profit at one point in time could prevent wage increases that the going rate of profit may permit at another point in time. (Remember Heinrich's point, *supra* note 14, at 87: "why should a 10 percent increase be deemed insufficient while considering a 20 percent increase as sufficient?") This arbitrariness underscores the irrationality of capitalism.

88. Moyn, *supra* note 7, at 53.

capitalism faced tangible limits, among them their long-term sustainability. The question is not: can we reduce inequality under capitalism, but rather, why does inequality still haunt us? If capitalism has no tendency toward increasing inequality, why haven't we fixed inequality yet? Post-WWII politicians and their (then) new high-priests of social science, the economists, thought they had solved the problems of inequality and crisis. Why have they returned? To put it harshly, perhaps, the New Deal was an attempt at the "legal reform" solution, and while it had its moment, it has not proved up to the task of sustained, and sustainable, shared prosperity.

The crisis of the 1970s and the ensuing neoliberal reaction shows why something more than legal reform under capitalism is necessary. Certainly, the rise of neoliberalism can be described in terms of "changes in legal ideology, legal rules, and legal outcomes," all in the service of powerful economic interests. But if the "transition to the 'neoliberal' moment" is a story *just* about legal change, that would be a very poor explanation.[89] It certainly is a story about shifting legal arrangements, but it is also about the ceaseless drive to accumulate money.

Beginning in the 1960s, the economies of the developed countries entered into a profound crisis, made more so as the previously reliable technocratic tools of Keynesianism faltered. At the center of this deep crisis, many have argued, was a crisis in profitability—a breakdown in the process of capital accumulation.[90] In those crisis circumstances, one can be forgiven for thinking that a return to market ordering, a reduction in taxes, and a loosening of the administrative state were necessary answers to the malaise. Furthermore, one cannot describe neoliberalism's ideological success as a simple matter of "legitimation," unless you accept an astonishing amount of omniscience on the part of "the elite" and an equally unflattering amount of gullibility on the part of "the people." Only with the lazy virtue of hindsight can we see that the neoliberal revolution was a boon only for those born with a silver spoon in their mouth. At the same time, I

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89. *Id.* at 54.

90. ROBERT BRENNER, THE ECONOMICS OF GLOBAL TURBULENCE (2006).

lack a legal technician's confidence to say that dramatic and inequitable legal changes were not also necessary to restore the profitability required to revive the *specifically* capitalist economy of the 1970s in *everyone's* interests. Such are the contradictions of capitalism.

CONCLUSION

What can we learn from the process of capital so that we can revive local economies or help them thrive? What is, to return to the beginning, the "takeaway?" Like *While Waiting for Rain*, I'm afraid I don't have a set of bullet points or a guaranteed recipe for local economic development success. But, also like *While Waiting for Rain*, I do think it is more honest and helpful to stay "stop doing harmful things."[91] For example, as Schlegel acidly observes, throwing money at the problem may stave off the direst consequences of capital divestment in a city or region, but it doesn't solve the problem of local economic development. He explains, "Monetary transfers from governmental entities may improve the circumstances of current residents of a place," but such transfers "can as easily disappear as they appeared."[92] What is needed instead is "import substitution and export creation brought forth through the mysterious process sometimes called 'innovation.'"[93]

But for that strategy you need capital: someone who owns the money and is willing to take the gamble that investing that money will yield a greater return in money. Of course, one may need to satisfy many other conditions as well, such as labor, skill (or "human capital"), innovation, an appropriate legal and municipal infrastructure, entrepreneurship, geographic location, a bohemian culture, or natural resources. However, as this Essay has emphasized, capitalism is different. It is not that capital is somehow "more important" than any of the other factors required to sustain an economy. Rather, unlike these other conditions of a flourishing economy, which are in some

91. SCHLEGEL, *supra* note 2, at 198.

92. *Id.* at 214.

93. *Id.* at 271.

measure perhaps necessary for any economy, capitalism is social and historically specific. Capitalism is not just saving, financing, or the intertemporal transfer of value. Any economy will require some method of setting aside resources now for future production and consumption. Rather, capitalism is when capital seizes on the production of goods and services, making the satisfaction of needs and wants subordinate to the accumulation of money. And this is, again, a historically specific factor of production, one that for that reason is, unlike the others, inessential from a historical point of view.

In view of capitalism's contingent nature, we might then ask, "Why are we subordinating the needs of local economic development to the domination of capital?" Understanding capital as a historical, contingent phenomenon makes the usual—putatively sober, hard-headed, and pragmatic—local innovation efforts to get the rains to come look more like a ritual genuflection to the rain gods. This puts the title *While Waiting for Rain* in a slightly different light—or under a different cloud? I suppose, in addition to "stop doing harmful things," I might want us to ask ourselves why we continue to subject ourselves to the harms of capital?