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The Twilight of Capitalism. By Michael Harrington

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BOOK REVIEW


Reviewed by Elliott M. Abramson**

In addition to arguing the thesis expressed in its title, this volume is intent on a reinterpretation or, more precisely, an accurate interpretation of the ethos of Karl Marx's work. It seeks to devastate popular conceptions of "the familiar Karl Marx" who never existed and to raise the phoenix of "the new Karl Marx." The author's purpose is to utilize the Marx so resuscitated as collaborator in the proof of his thesis.

To this end The Twilight of Capitalism is divided into two parts. In the first, Harrington resurrects the "authentic" Marx; in the second he suggests how the application of the true doctrine demonstrates that contemporary American capitalism is in its death throes. While this latter argument is decidedly lacking in cogency, the informed rereading of Marx is both vibrant and provocative.

Harrington's strategy of a fresh look at Marx derives its impulse from the fact that Marxism, as a Weltanschauung heavily relying on an interpretation of history, has been dealt eviscerating blows by analysts who have measured the prognostications and prescriptions of "the familiar Karl Marx" against history's actual course. The analysts' tactic has been to show how current reality has deviated substantially from what Marx and Engels indicated it would be, thereby eroding the presumptions of Marxism to chart and predict the development of society. Harrington's object is to show that such critics have misread Marx and thus unwittingly undermined their syllogistic attacks by having poised them upon erroneous premises. Harrington's motive, however, is also

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** Associate Professor of Law, Williamette University College of Law. A.B. Columbia College, 1960; J.D. Harvard Law School, 1963.
1. P. 61. "[T]he ideas which bear his name are at best cheap vulgarizations and at worst outright misstatements of what he said." P. 13.
2. P. 13. The term is used by Mr. Harrington to characterize what he considers the original Marx authentically understood.
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ulterior. By making Marx what he wishes him to be, Harrington designs to justify his own moderate practice of democratic social-
ism.3

In an early chapter which candidly acknowledges that some of the toughest criticism of "the familiar Marx" has been fashioned from tools provided by the theorist himself, the author confronts the magnitude of his problem of reinterpretation by trying to show how "Marxism misunderstands itself."4 One of the key transmutations upon which Harrington is intent is the rescue of Marx from the role of economic determinist—one who sees and interprets all social and cultural institutions as superstructure reflections of the (base-ic) producing and distributing functions of the society which breeds them.5 But Harrington notes that in the Forward to the Critique of Political Economy, written in 1859 (several years prior to publication of the initial volume of Das Kapital), Marx wrote: "'The mode of production of material life determines the social, political and spiritual life process in general.'" As Harrington admits, "Nothing, it would seem, could be simpler: on the one side there is 'material' life and its 'mode of production'... on the other side social, political and spiritual life... And the former determines the latter." It does indeed seem unequivocal. And, as Harrington indicates, this text is "a favorite of the catechists of Marxism" and "even a sophisticated scholar like C. Wright Mills puts it first in his anthology of Marxist writings."6 The reader is informed, however, that things are not in reality as simple as they appear. For just prior to the above-quoted passage from the Forward, Marx wrote that "'legal relations... are not to be conceptualized... on their own terms... but rather are rooted in the material relations of life, whose totality Hegel summed up under the term 'civil society'... The anatomy of civil society is to be sought in its political economy.'" Although, if anything, these sentiments seem to confirm the above-quoted passage, which follows hard upon them in the Forward, Harrington suggests that this notion is dispelled if we recognize that

3. For a fluent statement of the philosophy of social democracy, see, e.g., the preface to E. Bernstein, Evolutionary Socialism xxiii-xxxii (1961).
4. This is "the very essence of vulgar Marxism." P. 37.
5. P. 35.
6. P. 38.
7. Id.
8. P. 37.
9. P. 38 (quoting K. Marx, Forward to the Critique of Political Economy (1859)).
Hegel wrote about civil society in a book that Marx had read with extreme care. It defined the sphere of private rights and economic self-interest, a “system of all-sided dependency.”

Civil society, then, defined the whole world of *laissez faire*, its human interrelationships and its needs, as well as its material goods and machines. Now, all this is anything but clear in Marx's very brief allusion to it, and one can understand why people have taken Marx's formulation “mode of production of material life” as describing the crudely economic. But if one reads this passage carefully all of this becomes apparent. More to the point, there are literally hundreds of other occasions on which Marx is much more explicit about the social classes and the human interrelationships which are part of the “economic” factor. Only, most readers did not read this text carefully or look up Marx's other, and clearer, statements of the same theme.

Marx can hardly be faulted for his reader's intellectual slothfulness. But there are other passages in the *Forward* which are simply, and unambiguously, inaccurate, even given the most careful of interpretations.

... [It cannot be denied that Marx, for whatever reason, helped to obfuscate his own ideas in the *Forward*.]^{10}

Harrington offers a reason: “One explanation, then, is that the *Forward* is the kind of oversimplification even a genius might write when confronted with the problem of summarizing extremely complicated material.”^{11} Additionally, reference to Marx's contemporaneous *Grundrisse*, a much less mechanistic work according to Harrington, “reinforces the case for considering the *Forward* a mere aberration” which should be “subsumed under the famous rule, ‘Even Homer nods.’”^{12}

The problem of why such nodding should overtake so powerful an intellect is an interesting one. It raises the question of intellectual consistency in dealing with the works of a given thinker as a single *oeuvre* and, as such, it is a matter worthy of further discussion. At this point, however, it seems useful to probe more deeply into the issue of how diserving it is to Marx to regard him as a “crude” economic determinist.
Certainly the question of the degree to which a society’s economic institutions determine its other cultural matrices is one of fundamental significance for those professionally involved with law. The practice of law and legal education are indissolubly intertwined with business and economic mechanisms. Is law just a playing out of the crass material realities (the base), or can it, at least in some way, transcend and, indeed, affect them? Can it be that which determines rather than simply the reflexively determined (the superstructure)?

Harrington’s portrayal of the Marxist view of the influence of economic realities on life in general is a facile accommodation. Economics is “determinate” but not “dominant”; it is very important but not all important. Harrington admits that he has been ruthless in his criticism of vulgar Marxism, with its simplistic derivation of political and cultural superstructure from the economic “base” . . . . But that hardly means that the economic is just another factor, on a par with the social and the cultural. If all of these aspects of the organic whole are seen as interpenetrating one another, the economic still remains primary, both as the sine qua non of life itself and as the source of the pervasive light that bathes the entire society. It is, of course, impossible to define this concept with any precision in generalities.13

The concession that some autonomy may reside in extra-economic institutions such as law, in contradistinction to the law being merely a marionette of base economics, gives sustenance to those who believe working the different levers “within the [legal] system” in creative and energetic ways can produce meaningful change.14

That law is not, however, only a totally reflexive knee-jerk of underlying economic nerves; that it possesses an integrity which itself generates and fashions consequences may not at all imply that mining the legal vein can yield a golden age of improvement. For example, Rudolf Schlesinger, though acknowledging that it is erroneous to interpret Marxism as claiming that law is a superstructure which automatically reflects economic conditions, still asserts that Marxists contend:

14. Such an approach fits neatly with Mr. Harrington’s own social democratic fondness for gradual and piecemeal improvements, which he seeks to justify in the second part of the book.
Law as well as State . . . is a historical phenomenon. It is a superstructure upon the economic basis of society, i.e. upon those relations which men enter in carrying on the social process of production . . . . Property relations, for example, are mere legal expressions for existing relations of production, and social classes may be described as owning (or not owning) certain kinds of property.\(^5\)

Thus, it may be misleading to focus on whatever autonomy law does possess as a significant source of social amelioration. In a sense, the more things change the more they may fundamentally remain the same. Schlesinger points out that even when law and the maneuvers of legalism seem employed to the disadvantage of entrenched economic interests, it may be that the latter are being rescued despite themselves. For example, legislation interfering with the rights of mine owners to employ children might simply prevent unsound methods of competition among capitalists and preserve the health of the younger generation of workers so that they will be even more ripe for profitable exploitation in the future. A reformist curlicue may be added here and a progressive wrinkle there but the underlying pattern remains the same. Schlesinger notes that “once a certain fundamental approach is taken for granted there is some variety of choice in legislation as well as in judicial interpretations of the law. Amongst the various factors influencing this choice Marxism recognizes also the inherent working of the legal ideology . . . .”\(^6\) So the law as an intellectual construct may possess autonomy, but it is an autonomy of severely limited potency. Law may not reflect economics one to one but the deviation from such congruence is minimal and perhaps trivial.

Schlesinger feels Marxism asserts that the state, which is the embodiment of law, arises from the struggle of classes and comes to be dominated by those classes controlling social production. Law, therefore, develops as an instrument to serve the economic interests of such classes and is intent on protecting the society as it already exists. Consequently, although interests other than those of the dominant class can influence legislation, there remains the law’s essential association with the material interests of that dominant class.\(^7\)

\(^{15}\) R. SCHLESINGER, SOVIET LEGAL THEORY: ITS SOCIAL BACKGROUND AND DEVELOPMENT 18 (1945).
\(^{16}\) Id. at 21.
\(^{17}\) Id. at 19.
One might question the usefulness of comparing "fundamental" changes with those which are but marginal. It seems arguable that what is important and "real" is how people live, and that a "marginal" change can bring significant benefit in the things that matter to an individual day to day. The overall pattern might remain the same, the dominant interests might be unshaken in their ascendancy, but the lives of many might be measurably improved. In such a vein it can be asked whether it is the pervasive patterns which obscure the real and practical advances. The fallacy of such pragmatism, however, may come from its blind allegiance to "betterment" as it remains oblivious to the utopia of true freedom. Law itself, and any and all of its by-products, may be the mask of a system which forever suppresses optimal human development. For, even in early stages of a Communist society, law is essentially used to effectuate the purest stage of an inequitable syndrome — bourgeois entitlements. In such a context it ensures equal recompense for equal work and that unequal work is rewarded unequally. Lon Fuller summarized one of the conceptions of Eugene Pashukanis, a Soviet legal theoretician of the 1930's: Law is a product of exchange "and as long as you have law it will be bourgeois law. There is no use pretending that socialist law is something of a higher nature, or different from capitalist law."

For Marx anything achievable by law is, to some extent, a snare which diverts from that which is most worth achieving. In the Critique of the Gotha Programme he argued that, by definition, law applied equal standards to individuals equal only in certain respects. They could not be equal in more than certain respects or they would then not be different. Thus, law homogenizes illegitimately.

Communism sought to transcend such gross categorization. Its aspiration was to drop "the narrow legal point of view" and craft a society in which each individual would be expected to participate in social work as he could, while, regardless of his contribution, he would consume as his needs dictated.

The use of the law as a mechanism for advancing social justice may be seen as an expression of the kind of human degrada-

20. Id.
21. Id.
tion which the Marxian vision, in its fullest expression, aims at eliminating. This is not simply because utilizing institutions endemic to the system whose eventual destruction is sought makes the latter superficially more appealing. Rather, it is complicit with the very dominative processes marked for extinction by the revolutionary ideal. As Engels wrote:

As the State is only a transitional institution which is used [. . .] in order to hold down one's own adversaries by force, it is pure nonsense to talk of a "free people's state", as long as the proletariat still uses the State it does not use it in the interests of freedom but in order to hold down its adversaries, and as soon as it becomes possible to speak of freedom the State as such ceases to exist.  

Marx sought the fullest possible individual freedom and regarded the existing structure of capitalist forces of production as the chief obstacle to its realization. Becoming "freer" within the established labyrinth did not constitute a movement toward freedom. It might, indeed, guarantee eternal bondage. As one observer has noted, Marx's concern with wages was in the vein of ending the wage system itself rather than in equalizing or redistributing income. In fact, Marx condemned wage increases as only strengthening the wage slavery system and as failing to dignify labor or enhance human significance. Income redistribution, as a method for rectifying social inequities, he labeled "vulgar socialism." Marx did not want to ameliorate the internal justice of capitalism but rather sought to focus on the social relationships that it had created.

"From each according to his ability, to each according to his needs" was not a formula for justice or equity; it expressed an ethic of brotherhood. . . . Marx's materialistic argument . . . is not primarily an argument about the distribution of goods, but rather about the nature of work and the quality of the social relationships under capitalism . . . . He saw those factors, like everything else, as the products of a system. If alienating work is to be ended, the whole system must be changed.

22. Id. at 22 (quoting Engel's letter to Bebel accompanying K. Marx, Critique of the Gotha Programme (1875) (footnotes omitted)).
24. Id.
25. Id.
The capitalist system divides humanity into separate and alien fragments. "Improving" the status of each such fragment, in its own cloistered sphere, is not addressing the crucial and key problem of the fragmentation itself.

For Marx, full human development requires man to **exercise control over his actions, but achievement of that condition requires that control be shared by everyone.** . . . It is this common control that permits the end of alienation in work, because the division of labor between the owners and the operatives of the means of production would be ended. Products would then be the expression of each individual; the relationships among people would be based on the full brotherhood among people rather than exchange. The leverage point to begin progress toward this new state of affairs is the end of private ownership of the means of production; the means of production need to be owned and controlled by all . . . In short . . . macro-level changes are necessary for sustained changes in micro-level systems. 26

Marx himself insisted that the individual could be most free, most completely accommodated, only after systemic revolution.

"[A]fter the enslaving subordination of the individual to the division of labor . . . has vanished . . . only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: 'From each according to his ability, to each according to his needs!'" 27

This is a convenient point to return to the significance of internal coherence in a vast body of intellectual work such as Marx’s. Recalling Harrington’s allusion that “even Homer nods,” it might be said that Homer will be so regarded only if our perspective insists on treating him as a monolith who himself elevates consistency as primary. Imposition of such a perspective is commonly affected by those who analyze the work of major intellectuals.

Much of this analysis seeks to demonstrate the underlying reconcilability of the various apparently contradictory expressions of a given thinker. It is often felt that unless overarching harmony can be successfully orchestrated from such apparently discordant strains, the validity of the thinker’s general contribu-

26. Id. at 572 (emphasis added).
27. Id. at 567-68 (quoting K. Marx, Critique of the Gotha Programme (1875)).
tion is imperiled. This seems questionable. Each of two separate ideas of a single thinker may be highly fertile, imaginative and stimulating, notwithstanding that the “verification” of one would “disprove” the other. No other thinker may have been capable of either contribution. Thus, the importance of the theorist responsible for both ideas is no less great because he has “contradicted” himself. It is in such a context that Emerson’s aphorism that “consistency is the hobgoblin of little minds” is most apposite. A constricted thinker may be adept at ensuring that each of his assertions meshes tightly with the others. This might yield a structure which is entirely self-coherent, but nonetheless trivial. A giant is likely to be sufficiently seminal to procreate nonidentical siblings. They need not even struggle for mastery. Each may herald a share of the truth. As Emerson’s colleague, Whitman, wrote: “Do I contradict myself?/Very well then, I contradict myself./I am large, I contain multitudes.”

It may be most fruitful to evaluate Marx’s brilliance from such a perspective, rather than being overly concerned with whether he had consistently covered his own flanks. Such a receptive attitude seems especially appropriate in the case of a thinker so richly complex and sophisticated. Harrington does not ignore the usefulness of such a perspective, for despite his efforts to create doctrinal unity, he acknowledges that Marx certainly revised some feelings and opinions. As his ideas deepened they could be said to have changed. Harrington insists, however, that “his vision, his fundamental values, persisted throughout his life.”

Marx acutely observed the human spirit caught and deformed by a brutal economic process. His vision was the severance of these self-imposed shackles so that souls might soar, become truly human, be no longer alien to themselves; to promote, as Engels expressed the vision, “the ascent of man from the kingdom of necessity to the kingdom of freedom.” Since, as Harrington points out, Marx lived politics, as well as philosophized about them, practical exigencies may have, at times,

28. P. 151.
29. For a further discussion of this point, see Thesis on Feuerbach, reprinted in BASIC WRITINGS ON POLITICS & PHILOSOPHY, KARL MARX & FRIEDRICK ENGELS 245 (L.S. Feuer ed. 1959).
30. 2 MAN IN CONTEMPORARY SOCIETY 265, 289 (Columbia College ed. 1956).
influenced and perhaps distorted theory. The urgencies of the
day may have bred inconsistency and self-contradiction, but
the fervor of the mission never flagged and the many insights
which fueled its endeavor are still resources upon which we may
draw for inspiration and liberation.

If a reader is inclined to assume that consistency of program
from major intellectual contributors is significant, Harrington’s
account of how the “old Marx” could have surfaced from the
torrent of the genuine Marx is relevant rationalization. Engels
was perhaps most culpable: “Marx was unjust to his ideas in a
few passages; Engels did much more consistent harm to his men-
tor’s theory . . . .”31 Harrington considers Engels’ warping of the
pure Marxist fabric to be a function of both Engels’ role as the
polemical popularizer of the canon and Marx’s toleration of a
double standard. It fell to Engels as “the tribute that talent pays
to genius”32 to translate the intricacies of Marx’s luxuriously rea-
soned formulations into a pattern that would appeal to the un-
educated masses, as well as to dispatch, with rhetorical decisiv-
ness, gainsaying nitpickers such as Duhring. The unfortunate re-
sults were imprecise formulations and overgeneralizations that
Marx would have excised from his own work. The author suggests
that under the mid-nineteenth-century influence of Darwinian
system building there was an emphasis on formulating compre-
hensive laws of development.33 After Marx’s death, Engels fell
prey to this tendency to construct all-inclusive, perfectly propor-
tioned grand designs by announcing, at Marx’s graveside, that
“as Darwin discovered the law of development of organic nature,
so Marx discovered the developmental laws of human history.”34

This appears to be an inadequate explanation of how Marx,
a thinker so vigorously original and strongly independent, ended
up standing for positions Harrington conceives as grossly removed
from those Marx actually intended to foster. Credibility is not
inspired by Harrington’s notion that this fierce, insightful icono-
clast stood meekly aside as intellectuals and transitory political
trends appropriated and convoluted his work for their own ulter-
ior purposes.

Harrington provides villains for whom it was, and presently

31. P. 42.
32. 2 MAN IN CONTEMPORARY SOCIETY 265 (Columbia College ed. 1956).
34. Id.
is, advantageous to vulgarize Marx and convert whatever tendencies Marxism had to misunderstand itself into persistent distortions. 

"[T]he masses were not and are not capable of the intellectual subtlety required to fathom authentic Marxism on the theoretical level. They veered instead toward a vulgar Marxism that corresponded to their needs in capitalist society."35 This dilution of Marxism permitted it greater political appeal to its natural constituency.

Harrington finds "vulgar" Marxism an ideal vehicle for self-serving "dynamic bureaucracies that are going to save the workers from themselves."36 It rationalizes elevation of a technocratic elite which spiritlessly applies the mechanistic distortions of Marxist ideology and then asserts that the correct transformations have been made. This conception of Marxism has been used to mystify the harsh rigors of a Stalinist regime under such glib observations as "[w]here the means of production are socialized there is socialism, and the people rule."37 The functionaries required to administer the processes of socialization thereby justify themselves in their own domative and exploitative roles, the positions which they obtained in order to terminate domination and exploitation. Harrington points out how such crude distortions play into the hands of non-and anti-Marxists who crave the most simplistic Marx to devastate intellectually.

But Harrington acknowledges that even sophisticated thinkers, and those as basically simpatico to Marxism as Edmund Wilson and Karl Popper, egregiously "falsified" him.38 The explanation is that "[i]n the case of Marx . . . Joyce’s outrageous demand [that the reader devote his lifetime] applies. The Marxian canon is so huge and complex . . . that it is impossible for even a genius to simply drop in on Marxism and produce something of real value."39 Harrington’s explanation is tantamount to a charge that those who interpret Marx differently than Harrington are either not as perspicacious or have not read Marx for as many hours.

Harrington’s strategy in defending Marx against those who “corrupted” him, whether from pragmatism, guile or ignorance,

35. P. 47.
37. P. 52.
39. P. 55.
is to derive support from his own political practice of "Marxism." The book's flyleaf tells us that "working to build a socialist presence in the mainstream of American politics, Harrington was elected a delegate to the Democratic Party convention in 1974." The author's dedication is "[t]o the future of an almost forgotten genius: the foe of every dogma, champion of human freedom and democratic socialist — Karl Marx." There is good reason to believe that many who have devoted as much, or perhaps more, study to Marx, would find joining today's Democratic Party and referring to Marx as a "social democrat" a curious application of Marxian doctrine. In fact, it is easily imaginable that some of these would rail against such acts as "vulgarization" if not, indeed, perversion.

This desire to make Marx relevant to contemporary American mainstream politics is exemplified by the two major segments into which this book is divided. The first, as indicated, is concerned with a theoretical exposition of the "real" Marx and a critique of the mythically "vulgar" Marx. The second, in addition to painting a canvas of capitalism in decline, immerses itself in the responses of the contemporary welfare state to problems of inequality, i.e., maldistribution. The author contends that the welfare state's failure to accomplish its objectives is not because the planning approach has been overly intrusive into private affairs, but because these efforts have been too timid and fragmentary; insufficiently Marxist, as it were. After all, Harrington believes that "the contemporary American welfare state, for all of its governmental intervention into the economy, is still capitalist." Programs designed to deal with inequities take shape only in the context of ensuring the sanctity and well-being of the fundamental capitalist structure.

Harrington asserts that government intervention in an economy primarily controlled by private corporations must, perforce, primarily benefit such corporations. The traditional capitalist priorities are accorded their pound of flesh in fresh, sophisticated ways. To demonstrate his position, Harrington refers to a federal housing policy which has resulted in government assistance to the profit-making builders of ten million housing units for well-to-do

41. P. 220.
42. This is consonant with the Schlesinger position cited earlier. See note 15 supra and accompanying text.
occupants over three decades, while in the same period, only 600,000 low cost units were subsidized. Similarly, he points out that

[i]n this post-Keynesian era, the tax system is not conceived of as a mechanism for collecting and disbursing public revenues. Its prime function is to facilitate countercyclical policy, to expand demand when there is excess capacity and unemployment, to restrain it when the opposite is the case . . . . Since corporations are the primary economic units in the society, such countercyclical tax policy must, as Keynes so well understood, be kind to executives.

. . . .

When John Kennedy wanted to get the economy moving again in the early sixties, he could have done so . . . by direct outlays for social investments. That, however, would have pitted him against the political power of business [and so] he came out for a tax cut that would benefit the corporations more than anyone else . . . .

This did not mean . . . that Kennedy had "sold out." It is much more profound than that . . . . The President of the United States was bowing to the power relationships of an economy dominated by private corporations. In such a setting, he could . . . have acted otherwise; but all of the institutional, structural pressures in American society urged him to act as he did.

. . . .

[E]ven under a liberal administration like Kennedy's . . . men are forced, willy-nilly, to follow corporate priorities when they elaborate the government's program . . . because the macroeconomics of the welfare state, for all the momentous changes that have taken place, are still filled with a capitalist content. The welfare state, then, is not a new form of society . . . [I]t is, rather, a new way of protecting the old order.43

Harrington examines what he terms the "notch" effect,44 where government policy turns a marginal increment for an individual into a substantial loss. Thus, where the right to Medicaid is predicated, in an all or nothing manner, on being below a certain income level, a person who raises his income from one dollar below the qualifying line to one dollar above it loses in benefits much more than the two additional dollars of income he

43. Pp. 231-35.
44. P. 281.
gains. But, he argues, this notch effect does not vitiate the case for government intervention in areas of social dysfunction because the "notch" is the product of deeper, unsatisfactory social configurations. "The 'notch' was the creation of timid governmental action, not of sweeping programs." Therefore, whatever failures the welfare state has recently experienced are not due to its excessive liberalism, but rather, to its fundamental conservatism.

Despite such frustrations, Harrington believes in the efficacy of welfare state politics. Acknowledging that this system tends to co-opt its reforms, he nevertheless sees those reforms as the only hope for changing the system. The thrust here is defense of incremental social reform against radical critics who view it as a means by which the dominant interests give a little in order to keep what they already have—a means of staunchly maintaining the status quo by altering the surface in the most cosmetic fashion. In the parlance of the earlier discussion, a step forward, perhaps, but most assuredly, one away from freedom. Harrington apparently prefers revision and reform over revolution. If gain through social democratic techniques are basically counterproductive and subversive, if they but strengthen the ultimate enemy, the capitalist system itself, then Harrington should be on the barricades. But, as we have seen, he prefers the councils of the Democratic Party. He admits to a considerable extent that "the increments of reform . . . function to make basic change unnecessary. But it is also . . . the instrument of the oppressed as well as of the oppressors, a means of partial liberation as well as of partial pacification." 46

This argument claims independent integrity for particular political victories which yield socially progressive outcomes. Harrington attempts to depict Marx as sensitive to, and approving of, the worth of such steps by referring to his analysis, in *Das Kapital*, of the Ten Hour Law which curtailed Victorian England's working day. 47 Marx recognized that that law made capitalism more effective, yet he lauded it as strengthening the workers, improving their living standard, and teaching them the power of the solidarity which had enabled them to secure it. Thus, he hailed the law as a "modest Magna Charta." 48 But one must

45. Id.
46. P. 306.
47. Pp. 293-94.
wonder whether Marx was not more interested in the solidarity from which revolution might be launched than in the practical changes for which the law provided.

Harrington lays the basis for enlisting Marx in the cause of gradualist social democracy in the first section of *The Twilight of Capitalism*. He notes Marx's "mature description of the working class . . . building potential parties, winning increments of dignity even within the capitalist order." To establish this claim, he promises to "spell out the theoretical implications of Marx's own practice of Marxism, defining premises which he must have acted upon, but which he sometimes did not explicitly formulate and sometimes, particularly in his own youth, even contradicted." This appears to be directing the reader to understand what Marx said by watching what he did. It suggests that the correct interpretation of the text can be had only by refracting a manifest counterinterpretation of such text through the prism of the text writer's own activities. The reliability of such a methodology is questionable, at best, because theoreticians, no less than others, practice differently than they preach. Harrington, however, sketches Marx as a progressive social reformer rather than a prophet of cataclysmic revolution by pointing out that in 1847-48 "Marx was a champion of united fronts with bourgeois liberals in the battle for democracy" and that from 1864 to 1872 he was politically allied with reformist British trade unionists.

This interpretation implies a motive to rescue Marxism from the obligation of accuracy in its revolutionary predictions if it is to retain credibility and vitality as a powerful critique of society. As Harrington notes, it aims at refuting a brilliant formulation of Harold Rosenberg:

"At the heart of Marxism . . . is its contention that its criticism and the revolutionary action of the working class have the identical objective, revolution by the second being the material equivalent of the first and supplying its positive content . . . . [Marxism] is a philosophy suspended upon an event, a monologue in the drama of history which only the action of its mass hero can save from being a soliloquy."

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50. P. 31 (footnote omitted).
51. Id.
52. Id.
53. P. 29 (quoting H. ROSENBERG, MARXISM, CRITICISM AND/OR ACTION IN VOICES OF DISSENT 50, 55 (1958)).
Harrington admits that since Marx’s proletarian revolution has not occurred, Rosenberg’s interpretation threatens the core assumption of *The Twilight of Capitalism*: "[T]hat in spite of the failure of that event, a meaningful Marxism still exists."\(^{54}\)

If, in fact, a prognosis of history evolving dramatically toward socialist triumph is not one of Marxism’s cardinal tenets, then the failure of history to yet follow such a course does not promote suspicion of the accuracy of Marx’s prediction of the ultimate denouement of capitalist society—disintegration into socialist salvation and profound freedom. Additionally, Harrington’s own labors to extract incremental human gains from existing capitalist structures becomes justified.\(^{55}\) If Marx was the “social democrat” that Harrington’s dedication postulates, then, of course, Harrington can remain a social democrat and be a Marxist as well.

It should be clear that one may be most sympathetic to Harrington’s affection for the philosophy of social democracy without believing that Harrington has been successful in demonstrating Marx to have been a social democrat. One may agree with his feelings on how to proceed politically without accepting his claim that Marx would have approved the same tactics. Indeed, there would seem a strong case for the proposition that if Harrington is right, Marx was wrong. More precisely, Harrington may be right, but wrong about Marx.\(^{56}\)

Surely a portion of Marx’s legacy of genius is the many trenchant concepts, such as alienation and division of labor, which he developed and left as potent scalps for those who were to carry on his life project of incisive, but constructive, social criticism.\(^{57}\) The particular strength of *The Twilight of Capitalism*, therefore, is its skillful, lucid and powerful treatment of these Marxian exposés of a society based on exchange for profit.

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54. P. 29.
55. Critics of Harrington might be less sympathetic, characterizing his efforts as being aimed at accomplishing only “cosmetic” gains.
56. Consider, for example, the following statement regarding the polarity of Karl Marx and Eduard Bernstein: “[Bernstein’s] evolutionary or ‘gradualist’ version of socialism deviated from the orthodox Marxist dependence on the ability of a revolutionized state to take over . . . Bernstein put his trust rather in the gradual movement towards a cooperative scheme.” 2 INTRODUCTION TO CONTEMPORARY CIVILIZATION IN THE WEST 971 (3d ed. 1961).
57. The constructive component of the criticism cannot be emphasized sufficiently, given the all too common version of Marx as the vengeful dissident. Marx was a humanist prophet because he had an exalted vision of the potential of human civilization.
Exposure to such a humanistic critique of free enterprise is something that happens too infrequently in American legal education. An aspect of being a true professional is to comprehend the ramifications of the professional service rendered—to appreciate its role in interacting with, and often nurturing, other of society’s institutions. To attain this perspective, a comprehensive knowledge of the other institutions is essential.

Harrington assists his readers in acquiring appreciation of Marx’s seminal observations on the free enterprise paradigm, so casually taken for granted by the typical American law student. For example, he portrays, in at least quasi-legal terminology, capitalism as a society of freedom, contract and equivalent exchange. It is pointed out that in precapitalist modes of production economic exploitation rested on noneconomic coercion. The slave, for example, sacrificed his labor to the master because he was so compelled by a backdrop of physical power; the serf donated his specified portion to his lord because of traditional and religious considerations. Capitalism, however, parades in terms of equals exchanging equivalents. The worker is paid for the time which he works at a wage rate to which he has freely agreed. The suggestion is, however, that a contract “freely” entered into between two parties vastly unequal in economic power is not, in fact, a free experience nor does it maximize human freedom.

He who controls the means of production must get more from the worker than the latter is paid for manning such facilities because an excess for profit and new investment must be generated. This necessitates extraction of “surplus value”—the worker produces more than he is paid. According to Harrington, “[t]he problem, then, is to rationalize a nonequivalent exchange, in which one party to a contract gets more than the other, as an equivalent exchange.”58 “Contract” and “wages” are terms which conceal reality rather than report, much less expose it. This exploitation, so concealed, is essential to capitalism as a social labor process, owned by private entrepreneurs who must appropriate the surplus to lubricate the system with further investment and employment opportunities. “Therefore, the only way . . . [to] end . . . exploitation would be to transform the economic structure that made exploitation essential to the future of the system.”59

58. P. 124.
59. Id. It should be noted that others, besides Marx, have exploded the false consciousness which views contracts as free transactions and as prototypical expressions of a
Harrington provides additional Marxian insights. The system of "contracting" for wages demonstrates that the worker himself is perceived as a commodity. Men "freely" sell themselves. Life traded is depersonalization with a vengeance, a vengeance unto death. Capitalism is a contradictory system of production. It is intensely socialized in the comprehensiveness of its scope; its fantastic technology joins the remotest corners of the earth in integrated processes. But its ultimate quest is profit and not human amelioration or fulfillment. "Men do not master the productive process that they themselves have created; they do not impose their priorities upon it." In a free market not geared to collective human objectives, things in the large may go catastrophically amiss, causing great human suffering. Additionally, since individuals are "free" to choose that which sells, and therefore to determine that which is produced and distributed, irrationality may result.

A carcinogenic cigarette that satisfies an artfully induced demand is "valuable"; a house desperately needed by poor people, but costing more than they can pay, is so valueless that it will not even be built. . . . In short, when one says that an item is "worth" such a price, and that it has such and such a "value," an entire framework of antihuman priorities is implied.

Capitalism's antihumanism, according to Harrington's reading of Marx, is not endemic to its economic institutions but results from its being a social process not authentically socialized—not socialized in terms of human needs and objectives. It is not planned to satisfy them. In any system where independent producers deal reciprocally through a free market, commodities

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60. See also K. POLANYI, THE GREAT TRANSFORMATION 68-76 (1944). The following gives the flavor of Polanyi's strong attack:

[E]very element of industry is regarded as having been produced for sale, as then and only will it be subject to the supply-and-demand mechanism interacting with price . . . .

The crucial point is this: labor, land, and money are essential elements of industry; they also must be organized in markets. . . . But labor, land, and money are obviously not commodities . . . . Labor is only another name for a human activity which goes with life itself.

Id. at 72.

61. P. 78.

62. Id.
are exchanged in proportion to the labor time invested in them.\textsuperscript{63} In lieu of planning, this pricing procedure serves as society's mechanism for allocating its labor time to the needs of its various citizens. It is an alienating process.

But those prices . . . also state an essentially social relationship — that people are working for one another's needs, in a non-, or even anti-social way — that each is "worth" so much per hour . . . . They would toil for one another not in a human relationship, but by means of an impersonal market that would reduce their social interconnections into prices. And since the allocation of labor in such a society is unplanned, it would also be menaced by economic crisis. For one would never know if one had expended the proper amount of labor time on a commodity until it is first offered for sale.\textsuperscript{64}

The system of private producers haphazardly contributing to an overall process which must serve, somehow, large and integrated social goals is a situation ripe for malfunction. Overproduction, induced by rising prices at a time when collective demand decreases, may result in there being more goods than wants motivating their purchase. As a consequence, productive activity will slacken yielding attendant crisis effects such as unemployment. Harrington notes that this type of structural situation generates capitalism's cyclical boom-bust pattern\textsuperscript{65} which, in its various misfirings, results in human disappointment and misery.

Harrington's Marxist-derived solution is not to redress the evils bred by exploitation of surplus value, through the redistribution of chips which randomly fall where an undisciplined economic process scatters them. Rather, it is to replace the villainous process itself. As long as capitalism persists, the evils of its dysfunctions will be repeated.

The point, then, is not simply to make the distribution of wealth fairer, but to change the mode of production of wealth so that it is no longer accomplished by means of periodic crises and the brutalization of the producers. In this case, as throughout his analysis, Marx sees production, not distribution as crucial.\textsuperscript{66}

Another area in which those involved with law and legal analysis should consider the application of Marxist perspectives

\textsuperscript{63} This, in brief, is the labor theory of value.
\textsuperscript{64} Pp. 112-13.
\textsuperscript{65} P. 133.
\textsuperscript{66} P. 137.
is related to consciousness. As Harrington cogently explains, Marxism “asserts that the common sense of any given society is a rationalization for that society, that vocabularies normally conceal as well as communicate.”\textsuperscript{67} Therefore, almost all persons think and conceptualize in terms and categories useful to, and comfortable for, the society’s dominant class. Consequently, those actually alienated may believe themselves very much at ease.\textsuperscript{68} However, they may feel quite differently than they think they know. This is a charge worth bearing in mind when paean to the enshrinement of that quintessential object of the first year of law school — getting the students to “think like a lawyer.”

Regardless of the validity of these various ideas, their value in thinking about the societal institutions and concepts with which lawyers deal should be patent. They need not be purchased wholesale as fundamental truths. Their role as a source of enlightenment is clear, although their contribution may be made in a manner different than Marx intended or of which he would have approved.

The inherent potency of this form of thought has often been questioned in the intellectual drawing rooms. As pointed out by Jonathan Rée,\textsuperscript{69} the positivist tradition, in the interests of “mental hygiene” and clinically clean modes of presenting and developing ideas, has tended to deride huge and sprawling speculative efforts as exemplified by Marxism and its intellectual outgrowths. Rée notes that the positivists have taken the side, in Sartre’s terms,\textsuperscript{70} of analytical as against dialectical reason and have derided the latter as sloppy and dissolute thinking, trafficking in ideas and assertions not susceptible of “scientific” investigation or verification. And, as Rée points out, most of the work so criticized has been Marxist, at least to the extent of centrally referring to Marx. But Rée rightly cites the haven constructed by Sartre for the storm-tossed argosy of dialectical reason: “‘[It] sustains, controls, and justifies all other forms of thought, because it explains them, puts them in their proper place and integrates them as non-dialectical moments which, in it, regain a dialectical value.’”\textsuperscript{71}

\textsuperscript{67} P. 192.
\textsuperscript{68} P. 194.
\textsuperscript{69} Rée, A Radical Future For Philosophy, The Listener 748-49 (June 10, 1976).
\textsuperscript{70} Id. at 749.
\textsuperscript{71} Id.
This is, of course, the strength of Marxist thought and of the thought that it has inspired. It is a method of thinking rapidly recuperating from the lacerations it has been dealt by positivism ascendant, as the latter has been for much of the last thirty years. As Rée notes, increasingly students are proceeding inter-disciplinarily in ways which require mastery and, subsequently, fluent integration of a large corpus of knowledge from several scholarly areas. It is only the spirit of the dialectical tradition which is available to intelligently inform such projects. The last, and perhaps sufficient, word on *The Twilight of Capitalism* is that it possesses the power to contribute to the cultivation and refinement of this type of thinking and to the dialectical tradition itself. That is, if the very final word should not be in salute to perhaps the most powerful proponent ever to carry the banner of that tradition; to Karl Marx—supreme dialectician.

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72. *Id.*