Consider Buffalo

Pierre Schlag

Follow this and additional works at: https://scholar.law.colorado.edu/faculty-articles

Part of the Law and Economics Commons, and the Legal History Commons

Copyright Statement
Copyright protected. Use of materials from this collection beyond the exceptions provided for in the Fair Use and Educational Use clauses of the U.S. Copyright Law may violate federal law. Permission to publish or reproduce is required.
Consider Buffalo

PIERRE SCHLAG†

Especially in the analysis of social states which are the product of many variables, and especially when one’s interest is in a predicted state some substantial time in the future, even if one restricts one’s vocabulary of inquiry very sharply, the problems are enormous. If \( q \) is the future state, and if you know that \( q \) is a function of \( a, b, c \ldots n \), and \( a, b, c \ldots n \) are variables many of which are dependent and reflexive, even if \( n \) is no greater than, say, seven (hell, three), the "solution" of the problem is, to say the least, “chancy.”

—Arthur Leff1

I was about halfway through Jack Schlegel’s book, While Waiting for Rain, when I turned page 221 to arrive at part IV. “Consider Buffalo,” it said.2 This was a bit unexpected. (The imperative voice). And then I thought: well, all right then, let’s consider Buffalo.

To consider Schlegel’s Buffalo is harder than might seem. Indeed, in his book Buffalo features in many different ways. It serves as a reference to the geopolitical site—the city of stone and concrete, gardens and rail lines, people and robber barons, jurisdiction and subdivision. It also functions as the center of attraction for the complex interplay of law, politics, and economics (none of which will remain wholly distinct in the book). Buffalo also functions as a sometime micro-version of the U.S. (the latter is also addressed by

† University Distinguished Professor and Byron R. White Professor of Law, University of Colorado Law.


2. JOHN H. SCHLEGEL, WHILE WAITING FOR RAIN: COMMUNITY, ECONOMY, AND LAW IN A TIME OF CHANGE 221 (2022). Truth be told, I had already considered Buffalo much before Part IV which brought an additional reason for the jolt—as if I were being scolded for not having considered Buffalo hard enough before.
Schlegel, but it’s not the main attraction. If it’s hard to say useful things about the decline of Buffalo it is, as Schlegel notes, exponentially more difficult in regard to the U.S.\textsuperscript{3} Buffalo also plays (Schlegel denies this) as an example of mid-size American cities that were once thriving centers of commerce and then declined sometime during the 20th century. Buffalo is also the thing submitted to diagnostic inquiry—what happened, why, how, who, what, starting and ending when? And then too, Buffalo serves as the scene (and test case) for Jane Jacobs’s account of cities as the prime engines of economic activity (Schlegel largely adopts Jacobs’s analyses, though not without the occasional piercing criticism).\textsuperscript{4} By the end of this melancholic book, Schlegel leaves some room for prescription (the conclusion). But there he is spare, tentative, and hesitant.

In currency today, there is a fashionable phrase for describing all this intertwining complexity. The phrase is overused, but I am going to invoke it anyway. Here goes: Buffalo is a combination of mutable intersecting networks. Among them: railroad lines, bank transactions, policy planning, urban projects, legal imperatives, political action, production, and exchange consumption. This image of multiple mutable intersecting networks doesn’t explain much, but I am going to invoke it anyway.

One reason is that while the image of “multiple mutating networks” doesn’t explain much, it does a passable job at illustrating the difficulty of Buffalo’s problems. So just to get concrete, please plug your PC to your largest screen, go to

\textsuperscript{3} Though I do think one could do a lot by adding to the huge post WWII comparative advantage, the repeated squandering of this advantage by the astonishingly parochial and myopic self-congratulation known as “American exceptionalism.” My two bits: American Exceptionalism = winner’s curse. See text accompanying infra, note 25.

\textsuperscript{4} See SCHLEGEL, supra note 2 at 221–70 (2022) (discussing JANE JACOBS, CITIES AND THE WEALTH OF NATIONS: PRINCIPLES OF ECONOMIC LIFE (1984)). Given all this one might reasonably expect that Buffalo will serve as the locus for an extended morality tale. One might have reason to expect this, but one would be wrong.
YouTube, and watch the supercut of Refik Anadol’s work.\textsuperscript{5} It is a strikingly beautiful video. And while I recommend watching the whole thing, for those in a hurry, I advise going straight to the one hour and one minute point or the one hour and twenty-two-minute mark, which is most relevant to Schlegel’s book. O.K. Now, if you can momentarily think of the visuals as representing Buffalo’s economy, and law as the usual lawyer’s toolbox (i.e., classifications, penalties, subsidies, hierarchies, etc.), it is difficult to imagine the latter as improving Buffalo’s economy (or indeed any economy).\textsuperscript{6} The aesthetics are off. What are the lawyers supposed to do with these mutating shimmering networks? Can you imagine the litigation team leader saying, “Come on guys, they can’t stop a bunch of jurists armed with line-drawing, nudges, and balancing?” See—it just won’t work.

Now I realize that I am exaggerating. And I know that this being a law review and all I can’t very well substitute images for arguments, but keep this image in mind nonetheless for a moment longer. Imagine that law and the various policy sciences are somehow supposed to guide or coordinate or intensify or redirect or block or in some way control some of these mutating shimmering networks. Just how is that to be accomplished?

One can imagine the artist, Anadol Renofik, tweaking the algorithms or the AI software to do what he wants them to do. He’s outside those networks. He’s Czar of his own universe. But that’s not the case with law or urban planning or economic expertise or the electorate or the courts or the firms. The experts, the managers, and the teams are not somewhere outside the networks. They are their own mutating shimmering networks. They are in the picture. Our

\textsuperscript{5} Los Leones, \textit{Refik Anadol Supercut}, YOUTUBE (Mar. 9, 2023), https://www.youtube.com/watch?v=Ts7fQB3K__M&t=5s&ab_channel=LosLeones.

\textsuperscript{6} I don’t wish to deny that Buffalo’s economy (or indeed any economy) is already imbued \textit{to some degree} by law and its various aesthetics. On the contrary, I would insist on that. But the key terms here are “to some degree.” Pierre Schlag, \textit{Hohfeldian Analysis, Liberalism and Adjudication (Some Tensions)}, in \textit{THE LEGACY OF WESLEY HOHFE LD: EDITED MAJOR WORKS, SELECT PERSONAL PAPERS, AND ORIGINAL COMMENTARIES} (Shyam Balganesh, Ted Sichelman & Henry Smith eds., 2018).
expert knowledges, our law, and our urban planning are in unsteady competition and alliance with popular belief, historical habits, cultural commitments, architecture, and other cities—all of which variously contribute to or detract from the prosperity of the Buffalo economy. For a coordination mechanism such as law to presume itself to be outside the eco-system it seeks to observe, regulate, or organize, is a serious mistake and one with often devastating consequences.

It is, however, routine. Witness the law and economics people who systematically analyze the rational utility maximizing behavior of other people and who thus come up with notions such as capture, rent-seeking, etc., but almost never turn those notions back on themselves or their own productions. Note that the behavioral economists do much the same: cognitive errors and biases in other people—sure. In ourselves? “Hell no, we want professional advancement, a better zip code.” The legal pragmatists do the same as well: they are perfectly content to admonish others to consider context while never considering the pragmatic context of their own work—giving a paper at some conference panel before other academics. The institutionalists . . . One could go on. We could call it the Czar complex.

Another reason I bring in the image of mutating networks is that it provides a damned good excuse as to why I am not going to give you some sort of clean narrative here. I can’t go picaresque. I can’t go tragic. Or comic. I’ve thought of noir. But as the book proceeds, it is evident that while there are plenty of unfortunate encounters, there are no villains. (No heroes either.) Instead, across the centuries, there are politicians, lawyers, business persons, policy people, and urban planners who occasionally do dumb things, and there are some people whose habits or sense of rationality could stand significant reform. Many others are simply unlucky. But the characters are not mean. And neither is Schlegel. To the contrary, it is evident that Schlegel feels a deep affection for Buffalo and a bemused appreciation for the charms of its inhabitants as they deal with the cards dealt them by previous generations.

To his credit, Schlegel does not place himself above his subject (or his subjects). Not only is that good anthropology,
but it is particularly appropriate since the problems of those he discusses are his problems as they are my problems as they are yours. Read this book and find your urban policy planning chops and your own analyses (and mine) cut down as the epistemic ground collapses. Schlegel is highly conscious of this throughout, and it makes for a pleasure reading his book.

But the main reason I bring in the images of mutable intersecting networks and the multiple Buffalos is to gently nudge the reader into the recognition that this big, wonderful, beautifully written book frustrates any singular narrative; defies theorization; follows no obvious model; and does not deserve to be summarized (even as unavoidably it will be). At the same time, Schlegel does have one hell of a title that resonates throughout the book—While Waiting for Rain.

The image Schlegel is trying to convey is not a peaceful retreat to the couch on a gray Sunday afternoon. This is not about tea and crumpets. Or the warmth of a gently crackling fireplace. That is not at all the rain or the waiting he has in mind.

Schlegel is from the Midwest.

Think then of the midwestern farmer facing a long drought and waiting for rain—something which he desperately needs but cannot summon. Rain is Schlegel’s secular term for what Jane Jacobs calls grace—a mysterious blessing or gift that is unknowable, unbidden, and undeserved. It is, as Schlegel and Jane Jacobs show, necessary for achieving and maintaining a city’s prosperity. Or as a backup position, rain is necessary to any analysis of how to achieve and maintain prosperity. In other words, it is either part of how the world works or what we can know of how the world works. If there were a single message in Schlegel’s book (which there isn’t), it would be the humbling counsel: sometimes the best cities and citizens will be able to do is wait for rain (i.e., for providence to strike).

This, of course, doesn’t seem like a terrific option for those of us who are running out of time (which increasingly

7. See Schlegel, supra note 2, at 199.
is all of us). But that doesn’t mean the message is wrong. There is no universal law (not even in America) that says: “Because we really need X, we must already have it, or we can simply posit it into existence.” There are a number of departments on campus that will allow you to get away with this sort of thing (at least two of which excel in this regard), but history, very much to its credit, is not one of them.

The idea that sometimes all one can do is wait for rain might be read to say that one should simply wait for rain. But that is not what Schlegel says. Indeed, he explicitly rejects that option. Moreover, waiting in the sense of doing nothing is itself not an option. That is because, as Schlegel argues, doing nothing is never just doing nothing. When you have an ongoing culture, a working market, and an active law, doing nothing means allowing those forces already in action to continue doing whatever they were doing before. Yes, there is a political-legal-economic status quo, but it is an inexorable aspect of status quos to be always moving.

So, Schlegel rejects any generalized admonition to wait. Indeed. The reason is simple: Schlegel, throughout the book, gives a sad and relentless display of how any approach to economic prosperity (waiting has to be included) is susceptible to failure and has indeed already failed on several occasions in Buffalo (as elsewhere).

Why failure? Sometimes the assumptions are bad. Sometimes the timing is off. Sometimes the array of counterforces is simply too strong. Sometimes the fixed capital investments have been securely fixed but are no longer capital. Sometimes—and this one is a real killer—the proposed or planned change requires that the very same change has already occurred.

As an example of the latter, consider WIIFM or “what’s in it for me”—an attitude that draws Schlegel’s ire. In Buffalo, according to Schlegel, the municipally settled form of WIIFM is a bit more aggressive—WIIFM translates into: “Nothing for me? Then, nothing for you.” This is a real killer of an attitude—guaranteed to scuttle even the most well-

8. Id. at 328.
9. See id. at 269–70.
thought-out plans and reforms. How so? Well, it limits the win-win options (a decidedly rare scenario in urban politics) down to a very small set. This is particularly so, the game theory people will tell you, if the parties are exceedingly greedy or bad at calculation.

How do you break WIIFM? How do you keep people from saying: “Nothing for me—well, nothing for you?” This is where people are tempted to go to law to impose a solution on the squabbling parties (Posner aptly calls it “a forced exchange”\(^1\)). This solution sounds like a great idea (socialism?) except that before a legal solution is adopted, the very same people who invoke WIIFM, will of course show up to ask as amici curiae or in person: “What’s in it for me?” This scenario is not hopeless, but it is certainly frustrating. And it doesn’t go away by ordinary means. If the aim is to change this attitude by changing the culture, we can expect more of the same: “What do you mean change the culture? What’s in it for me.”

It is easy to make fun of the recurrence of this persistent perversity when one is at a distance. But none of this is very funny when the stakes are real and the news of gridlock registers in the form of pain, lost jobs, broken families, homelessness, drugs, tent cities, and death. In just about that order.

All of this is especially vexing when one of the parties or factions misapprehends the proposal or the stakes, and actually succeeds in thwarting what would otherwise have been a “reasonably fair” win-win scenario. Note the problem resurfaces yet again in the question of which mode of accounting or metric to use in measuring what’s fair or reasonable. Still as with justice and injustice, we may not know what is fair or reasonable, but we have a damned good idea much of the time about what is unfair or unreasonable.

So much for WIIFM.

There is a more generalized version of the problem which, despite its abstraction, is every bit as vexing and, depending on the stakes, harsh and painful. Since in municipal life, as elsewhere, things depend upon other

---

things which depend upon other things . . . expert analysis is truly challenged. The problem is that before a given change can be achieved, some other change would need to have occurred and so on down the line or around the circle.

Experts and academics and their employers understandably find this rather vexing. And they all have, again understandably, certain techniques for avoiding the difficulty—none of which are entirely satisfying. Here the standard technique is pretty well-known:

There is a story that has been going around about a physicist, a chemist, and an economist who were stranded on a desert island with no implements and a can of food. The physicist and the chemist each devised an ingenious mechanism for getting the can open; the economist merely said, "Assume we have a can opener"!11

The parable is amusing, but that should take nothing away from its seriousness nor its salience. Nor should one read the parable as limited to economics. The latter is simply one of the most obviously exposed targets. Any discipline or sub-discipline that has successfully formalized itself (usually in pursuit of "rigor") is also a potential target. The reason is simple: formalization inevitably leads the discipline to exclude whatever cannot be domesticated. What’s more any discipline that formalizes itself can be counted upon to formalize away everything that would negate its own assumptions or fundamental protocols. A tell-tale sign is that whenever anyone comes close to that dangerous borderline, the audience will begin to shift awkwardly in their seats and titter nervously.12

But put that aside. The fact of the matter is that the proverbial "can opener problem" is deeply embedded in many disciplines and bodies of expertise. In legal studies, for instance, the call for improvements in the law is incessant—a literal 24/7 thing. In legal studies there are constant calls for more (or better) respect for process, more (or better) expertise, more (or better) democracy, more (or better) civic


12. For any serious intellectual this somatic manifestation is a clear sign to pay attention. Something is happening.
virtue, more, more, more. The biggest problem with all these recommendations is that they almost invariably assume that there is a competent agent—this would be the human equivalent to the can opener—both willing and capable of putting the recommendations into effect. So, who precisely is this competent agent? The people? Congress? The courts? State legislatures? City councils? Other law professors? Never mind that these institutional agents are often captured, manipulated, severely compromised, and/or gridlocked, the fact of the matter is that much of the time they are not even listening.

Schlegel does engage in some prescription. It is exceedingly modest, tentative, and hesitant. The conclusion is entitled: “Is it possible to conclude?” Despite the modesty of his prescriptions, I am nonetheless surprised. And it provides the occasion for thinking about what it is that drives even the academics most resistant to prescriptive advice—Schlegel would be one—to give it anyway. By the way, I have nothing against prescription in principle. It’s just that if you’re going to do this sort of thing in practice, it is important to have someone or something willing and capable of putting it into effect. This would mean someone or something with agency. No can openers.

Back to the main line: even among the most recalcitrant, there is often the perfectly admirable and widespread desire to want to help. And that desire translates most easily, most readily, most obviously (particularly in the discipline of law) to offering prescriptions and advice. So even as some of us recognize (see the paragraphs above) that legal prescriptions in the air (or in law review articles) are generally unlikely to do much good and may do some bad (e.g., make people think they’re doing something useful/activist/political when they are not) people do it anyway. Hope and cheeriness in legal thought is institutionalized. The economic, social, and


cultural investment of the profession in that rhetoric is huge. That is not an unqualifiedly good thing, and it is at certain times a very bad one. I pose the following as a question (a difficult and likely unanswerable one): when have the most successful progressive changes occurred—when people were hopeful and cheery or when, recognizing the blockage in the “system,” they were outraged and resolute? This is a genuine question (not a rhetorical one).

History as a discipline or an activity has a real advantage here: I’m guessing that explicit prescription for how to fix things is relatively rare in the study of history. For one thing the subject matter and timelines present real constraints. No historian, so far as I know, has offered prescriptions as to how the War of the Roses should have come out, nor how it could have been made the best it can be.

History as a discipline has the decided advantage that it is not compelled to honor any a priori fiction that thought rules action, nor that reason has some strong hold on being. In fact, I’m guessing that if anything, the study of history has a strong suit suggesting otherwise.

So then, what does the study of history teach us? Oh dear, and I fell into that one so innocently. Let’s move on quickly and ask much more narrowly: why does Schlegel offer us this book? One answer is his fondness for Buffalo and the manifest sadness he feels for its decline and the victims of this decline. This makes for the most poignant parts of Schlegel’s book and those that underscore what has been most unfair in the decline of Buffalo’s economy:

The “evisceration,” a word carefully chosen, of the lower (unionized) middle class broke a political promise made in the Great Depression and redeemed in blood by service in World War II, Korea, and Vietnam, of a better life for the working class. Similarly, the shrinking of the middle-middle class of white-collar middle management destroyed the lives of at least two generations of Americans.

16. I concede—no I insist—right off that it is possible to be at once hopeful and cheery as well as outraged and resolute. It may well be something to aim for—particularly if one thinks that you cannot have one without the other.

17. SCHLEGEL, supra note 2, at 172.
This, as Schlegel suggests, was a breach of an implicit quid pro quo. And, of course, the breach endures and repeats as the children of the lower middle classes and the poor are sent off to fight ever more meaningless wars, brought back broken, given a few medals, and then shuffled off to fend for themselves in the “free market” where a predictable number will end up in tent cities.

Why else does Schlegel offer this book? Here it helps to take note of a Braudel quote that appears as two bookends: “Man lives from choice in the framework of his own making, trapped in his former achievements for generations on end.” Schlegel adds that this makes clear why accurately understanding one’s economic past is important to shaping an economic future.

This is not the idea that those who do not learn their history are compelled to repeat it. (Those who do learn their history are also often compelled to repeat it as well.) I take Schlegel’s quote as the thought that present action is made in (and to various degrees, with and against) the accretions left by prior generations—accretions not just of stone and concrete, or factories and offices, but of habits, practices, mindsets, cultures, and the like. The study of history plays some part not only in that it uncovers where and who we have been, but it also offers an occasion and a model for reflection that can (with lots of luck) become a part of history. Taking stock. Doing the inventory. Noting the adversities. And trying to give it all a form.

Giving the inventory a form becomes more and more difficult as time goes on. Prior accretions—the cultures of primitive tribalism, feudalism, rationalism, modernism, etc.—do not merely succeed each other. Each survives in the interstices of the later ones—none of which are ever fully successful in extirpating their antecedents. Each culture


19. Pouring paint on a canvas, worked well enough for Jackson Pollock, but university promotion committees and chancellors are unlikely to be pleased if this should become the chief m.o. in history departments. (I’m guessing historians are not at serious risk.).
survives long enough to distort both the inception and the reception of the later ones. If you need an image here, think of the Taliban terrorist in an internet café outside Kabul holding his AK-47 as he talks to his tribal chieftain on an iPhone about goat prices. Or if you need an image closer to home, think of the Yale college student eating sushi while watching Hannity on Fox News as he tries to decide between divinity school and the offer from J.P. Morgan.

This sort of structured incoherence mixing and fusing genres, eras, and ages is how we get postmodern architecture—a form that later generations will almost surely condemn as inexcusably ugly. It certainly is, but that architecture is nonetheless a damned good commentary on our present condition. For those of you who especially revile postmodernism, recognize that postmodernism is the latest accretion we have to build through, upon, and with. For my part I am struck by how much of the postmodernism of the late 20th century (Lyotard, Derrida, Foucault, and company) has turned out to be prescient—stunningly on track in describing present conditions.

But back to form—specifically, giving the inventory a form. For Schlegel and for the reader of the book, that moment arrives most acutely in his discussion of Jane Jacobs's work on cities. It is at that point, a bit more than halfway through, that the reader is apprised (I imagine that this must have dawned with the force of revelation for Schlegel) that, as Jane Jacobs states, the achievement and maintenance of prosperity depends upon something very much like the mystery of grace—a gift or blessing that is unknowable, unbidden, and undeserved.

Wow!

Schlegel explains:

[Jacobs] says that development is a process not a product. “Development cannot be given. It has to be done.” Thus, communities can neither will development (it is unbidden), nor by hard work make it appear (it is undeserved.) And prosperity standing alone is not evidence of development (it is unknowable). Prosperity might only result from the transient transfers of wealth by a governmental entity. Moreover, development stops when exports are no longer saleable and are not replaced through the process of creating new exports as part of the process of creating innovative substitutions for imports, a failure that Jacobs can no
more explain than she can explain the beginning of that process. The structural parallelism between her understanding of economic development and the mystery of grace is clear.20

Schlegel immediately tries to find a theology-free substitute for “grace,” and after discarding a few candidates, settles on rain. The midwestern farmer again.

But why is rain necessary? There are a number of answers, all of which take the form of: “Well, nothing else, no knowledge, no expertise, no urban planning will do.” It’s worth some time to wonder why that is.

Let’s do it concretely by considering Jane Jacobs’s recommendations for a vital city economy. She takes as her objective to provide “instructions” as to how a city might achieve and maintain prosperity. Here is Schlegel’s summary:

For Jacobs, getting prosperity is a matter of innovation/import replacement/export creation plus nature/grace and keeping prosperity, a matter of not doing things that might kill innovation/import replacement/export creation plus nature/grace or create a false sense of prosperity by relying on one or more of the transactions of decline.21

To elaborate:

Import Replacement involves a city replacing the stuff it imports from other places with its own homegrown substitutes.

Export creation kicks up the ambitions a bit and involves creating stuff to export to other places.

Nature is nature: these days there is no nature that does not already bear the imprint of humans (even wilderness) but still we know pretty much know what we mean. And we know that nature affords different advantages and disadvantages to cities and their inhabitants.


21. Id. at 212–13.
Innovation is a bit of a mystery. And today with the persistence of the neoliberal ethos, we would want to qualify the term severely to say, “the right kind of innovation.” Indeed, the innovative Silicon Valley mantra, “Break things and Move Fast” might be really good for those doing the breaking and the moving, but it may not be so great for those in the immediate vicinity. Also, it’s pretty clear that whatever the wisdom of the advice at the micro-level, it won’t work very well at the macro-level: we cannot have a whole country of people moving fast and breaking things.

Transactions of Decline: These are the things to be avoided—the kinds of things that will undo or negate the more positive things described above. They will sap the capacity of a city to engage in import substitution and export creation and innovation. One example of things to avoid is serving as home base for military procurement. Another is direct subsidy to a city economy from the outside. Yet another is for an advanced city economy to trade with a backwards economy. If it seems counter-intuitive to consider these actions “transactions of decline,” consider two things. First, there is a difference between increasing the income or wealth of city residents for a period of time and promoting development. These things are not coterminous. They may even not be congruent. Second, recall that development occurs across time and that what seems wealth-enhancing today may well not be tomorrow. As Schlegel notes, Jacobs views “development [a]s a process not a product.”22 This is a hard lesson to learn—not the least reason being that social workers, therapists, psychiatrists, school counselors, and facilitators have so abused the term “process” that it has turned into pablum. One should expect that soon we will have an over-reaction with entire industries reversing course by preaching the gospel of outcomes—as in: “Keep your eye on the prize.”23

22. Id. at 199.
23. Or any of the following:
   “Success is measured by results, not by the effort or method that led to it.”
   “In the end, it’s not the path you take but the destination you reach that matters.”
Grace: This is the kicker, the catalyst, the necessary supplement—what Schlegel calls rain. This is “a gift or blessing that is unknowable, unbidden, and undeserved.”

Why do we need grace, or rain, or Fortuna, or luck or something of this character for development to succeed? The simple way to put it is that everything depends on something else and sometimes on everything else. To have innovation you need the resources to yield that innovation. You can look to import replacement but for that you need the resource to produce import replacement. You can look to export creation to obtain those resources, but for that you need . . . There are a number of conceptualizations to describe the problem here, but we need not to go through them. Suffice to say (and this is the problem in much policy planning and legal prescriptions), the champions of change seem to assume that they already have the resources available to produce the change.

This is the “can opener problem” all over again.

Jacobs seems to be aware of these problems and her answer is as follows:

Earlier, I defined economic development as a process of continually improvising in a context that makes injecting improvisations into everyday life feasible. We might amplify this by calling development

“The merit of an action lies in its outcome, not in the intricacies of its execution.”

“Achievement is not about the road traveled, but the destination reached.”

“Effectiveness is judged by results, not by the complexity or elegance of the process.”

“It’s not about how you get there, but where you end up.”

“Results speak louder than the processes that produce them.”

“The worth of a plan is judged by its outcome, not by its blueprint.”

“In the grand scheme of things, it’s the end result that counts, not the journey.”

“Outcomes are the true measure of success, not the strategies employed to achieve them.”

OpenAI, Outcomes are More Important than Processes, Chat GPT 4 (Dec. 19, 2023), https://chat.openai.com/ (responding to the prompt, “Please give me some quotes for the idea that in law outcomes are more important than processes”).

24. SCHLEGEL, supra note 2, at 199.
an improvisational drift into unprecedented problems, then drifting into improvised solutions, which carry further unprecedented work carrying unprecedented problems . . . 25

Fair enough: development is something that occurs as a result of a generally felicitous self-reinforcing mechanism, or put graphically, a beneficent spiral. But it has to be a beneficent spiral—not the other kind. All right, but just how is a city supposed to get on the ride?

Jacobs’s answer is that grace, rain, fortune, or something of the sort is required—which in one sense is to say that Jacobs doesn’t know how to get around this challenge (and neither does Schlegel). I certainly don’t, and so far as I know, neither does anyone else. But if we become convinced that economic life is produced by certain things that depend on other things that depend on other things . . . and so on, we arrive at the vexing realization that we can only go so far in figuring what to do. We can try, of course, and that seems for a whole bunch of reasons far superior to the obvious alternative.

Hence, we need rain—that which we do not deserve, cannot know, and cannot summon. Schlegel is big on emphasizing the “deserve” part. And for good reason: of the three, the “deserve” part is the one that is most within the control of cities and their citizens. Indeed, if cities start believing that their good fortune is deserved (municipal exceptionalism?) this is likely to trigger what Schlegel calls the winner’s curse: belief in deserved success paves the way for cities to decline. Why? Because they believe (and this is the logic of desert) that they have already done what is necessary or that they need only continue doing more of the same. If you need an image here, consider railroad executives at the turn of the century saying, “Yeah, we’ve done a terrific job for this country. We’re set. All we need are more rail lines. Can’t go wrong.” 26


26. This is inspired by Theodore Levitt’s “Marketing Myopia.” Theodore Levitt, Marketing Myopia, HARV. BUS. REV. July–Aug. 1960, at 45. Levitt was making a different point. No matter.
In Buffalo, the summoning rain error is big. An example is: “Bring back the 50s economy.” If you think about it though, the people who want to bring back the 50s are not really serious about bringing back the 50s. Why not? Well, when people suggest that we bring “back the good old days” (the recurring logic of reactionary politics) what they almost invariably have in mind, is: bring back what was good about the golden age but shear it of what was bad and add lots of good modern stuff that wouldn’t have been possible back then. The reactionary position is thus not only impossible but incoherent. Not to mention that, like other political positions, it too depends upon the bizarre, though widely accepted presumption that the good and bad parts of social and political life are not merely divisible, but also do not depend upon or produce each other.

All this flipness—it is a kind of distancing mechanism—hides some real pain: the wish to revive the 50s economy is a wish to return to a time when workers had dignity and pride in working with their hands. The identity, community, solidarity, and sense of purpose that manual workers drew from this work has been taken away . . . because the work has been taken away. And nothing has taken its place. The suggestion from some quarters that manual workers should be “retrained” adds insult to injury. It grossly misunderstands that the stakes are not simply “jobs” in the anemic sense of income-producing labor, but an entire way of life. And so, not surprisingly, such liberal tone deafness (not to say indifference or simply ignorance) has been remarkably conducive to delivering the working class straight into the hands of Fox News and the far-right resentment and revanchism machine. That—and the fact that liberals and the left (as in much of the world) failed spectacularly for decades to deliver for its working class constituencies.

I don’t want to be misunderstood (and presumably neither does Schlegel) to say that thought or expertise is useless to action or anything of the sort. There are consequences to thought (or its semblance). It’s just that since the thought/action connections remain so elusive, so context-specific, the consequences are difficult to fathom in advance. They are even difficult to fathom in rear view, and experts are dangerous in this regard because they have
considerable cultural comparative advantages in rationalizing failure and legitimating shortcomings.

Jacobs and Schlegel inveigh against the urban policy planners and the economic experts because their ideas shut down avenues to prosperity. Prosperity cannot be prescribed or planned. “It has to be done.”27 And the problem with academics, experts, and planners is that they appropriate as the rightful jurisdiction for their theories, ideas, plans, prescriptions—that which can only be done through action. Put simply: their theory/action ratio is off. Sadly this seismic error is deeply embedded in the reified form of the policy paper, the strategic plan, the law review article, the . . . .28

Thus, it is that Schlegel exudes a sustained sensibility throughout the book that academics, experts, planners, etc. can do real harm with their ideas. And particularly so if these ideas lead to outsized investment in long-term, constant, fixed capital. As mentioned earlier much of Buffalo’s problems is that its investments have remained fixed, but are no longer capital. Many people left.

These are not just Buffalo’s problems, nor just a city problem. At some point, the reader of Schlegel’s book will get the idea that we—the experts, the academics, the planners—also need some rain for our own projects. As Schlegel intimates, we are all nearly at the end of the line in our understandings and hold on law, politics, the economy, culture.

27. SCHLEGEL, supra note 2, at 199 (quoting JANE JACOBS, CITIES AND THE WEALTH OF NATIONS: PRINCIPLES OF ECONOMIC LIFE 119 (1984) (alteration in original)).