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Balkinization

Balkinization
an unanticipated consequence of
Jack M. Balkin

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Friday, November 18, 2016

Master Gardeners

Kathleen Morris

For the Symposium on [Richard Schragger, City Power: Urban Governance in a Global Age \(2016\)](#).

Richard Schragger's timely, wondrous book presses, among other things, a persuasive case that urban scholars should adopt "a certain methodological orientation -- one that emphasizes the ecological nature of human settlement, the co-existence of contingency and path dependence, and the cyclical nature of urban development -- in other words, the complexity of urban systems." Quoting Jane Jacobs, he posits that the city is a *process* not a *product*, "more like 'a developing embryo' than it is like a widget that is produced and sold in the marketplace." The city, he continues, "is self-generating. Like all networked goods, the resident-consumer of the city is both a consumer of city life and a producer of it. She and her fellow citizens *are* the city."

At the risk of metaphorical excess, as I reflected on Schragger's book the image that kept coming to mind was that of a garden. Plants, like people, are "resident-consumers," both consumers and producers of life. In this metaphor, a city official would assume the orientation of a gardener, positioning him or herself as a partner, tender, and servant to the city's space and citizenry, rather than as a designer trying to create the perfect, gleaming city.

A casual observer can easily attest to the infinite range of visions for garden space. Japanese gardens are designed to be seen from a diagonal, and their designers and cultivators compose scenes of contrasting right angles. By contrast, English gardens emphasize symmetrical gravel walkways, short hedges, lawns and kitchen herbs. African gardens feature extensive use of rocks or stones and exceptionally hardy plants. Chinese gardens strive to blend unique, extremely ornate buildings with the surrounding natural elements. And so on.

In our democracy, each sub-majority routinely chooses its own style of garden by expressing through the ballot box its (present) collective vision of the city. Some city majorities might choose -- Schragger would say in vain -- to have their city government focus on economic development. Others might choose a more regulatory and redistributive vision. Schragger makes a powerful case that cities should be pursuing the kinds of socially interventionist policies championed by celebrated urban leaders like Al Smith and Fiorello La Guardia. His arguments in this regard deserve and will doubtless receive the focused attention of urban scholars for some time to come.

But in this particular post, I would like to assume that Schragger is correct about what cities fundamentally *are* and should and should not *do*, and turn attention to how America's educators might raise up the army of "gardeners" needed to tend America's nearly 20,000 cities.

As anyone who has ever tried to grow a tomato knows, not all gardeners are created equal. Brown thumb types are surpassed by weekend warriors, who are surpassed by professional farmers and landscapers, who are surpassed by truly great farmers and landscapers, who are surpassed by the most superior gardeners of all, known as "Master Gardeners."

Master Gardeners bring to bear deep individual plant knowledge, full comprehension of the garden ecology, and personal qualities that include optimism, flexibility, dedication, and humility. (Humility is foundational because, to achieve true mastery, a gardener must position him or herself as a partner, tender, and servant -- rather than builder, inventor, or creator -- of the garden.)

Needless to say, not everyone who strives to mastery achieves it, but all aspirants raise their game in the effort. Which brings me to the subject of higher education. Here is my question: As a national institutional matter, are America's colleges, universities and law schools encouraging students in sufficient numbers to attain the special mastery needed to tend our cities? If not, why not?

In legal education, we tend to focus first and foremost on producing graduates who can effectively serve and thrive in the private for-profit, non-profit, and federal government economies. There are pressing reasons to maintain these priorities. And yet, assuming legal educators come to believe -- as Schragger has (and I have) -- that cities belong "at the center of *economic and constitutional* thinking," it stands to reason that law schools should find a way to place cities among the subjects at the center of *legal educational* thinking.

What would this mean as a practical matter? That is an inherently subjective question. From my own perspective, as a law professor and former city lawyer, every law school that has not already done so should shift the (often marginalized) subject of "state and local government law" closer to the center of its educational and service missions. This would mean actively encouraging scholarship related to urban law; incorporating a practical city service project; and developing a comprehensive core public law curriculum that includes:

- state constitutional law (substance and structure);
- state and local government law and lawyering;
- public land use;
- public and private finance;
- state and local tax law and policy;
- labor and local economic development; and
- information, privacy, and technology.

Schragger's book is a welcome breath of fresh air in a tough week. Embracing his view of city-as-ecology, now is the time to consider how law schools can help raise up the Master Gardeners city inhabitants need and so richly deserve.

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Guest Blogger at 9:00 AM

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