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URBAN COMMONS AS PROPERTY EXPERIMENT: MAPPING CHICAGO'S FARMS AND GARDENS

Nate Ela^{*}

ABSTRACT

Over the past decade, scholars of law and geography have been foraging in America's cities, hunting for the commons. Along the way, a new common sense has cropped up, as legal scholars and social scientists have come to see urban farms and community gardens as prototypical examples of the urban commons. Farm fields and garden plots produce not only vegetables, the argument goes, but also opportunities for residents to access and use land as a shared, decommodified resource. As both social practice and emergent institutional reality, such urban commons challenge and are challenged by the logics of public and private property that dominate our cities' legal landscapes.

In this article, rather than assuming that urban farms and gardens are commons, I pose this as a question. Are they in fact cases of commons governance? And if so, how do people bring that about? I investigate this from the ground up, through a socio-legal mapping of how people have gained access to and sought to govern land for a community garden and an urban farm in two neighborhoods on Chicago's South Side. I suggest that we think about the urban commons as the result of experiments with the rules and norms of property that apply to urban land. People who would like to increase the treatment of urban land as a shared community resource

^{*} Ph.D. Candidate, Sociology, University of Wisconsin-Madison; J.D., Harvard, 2007. This research has received generous support from the Lincoln Institute of Land Policy, the Social Science Research Council, and the National Science Foundation (SES Award #1423371). Comments and suggestions from Erik Olin Wright, Joel Rogers, and Meghan Morris have helped my thinking immensely; any errors are, of course, mine alone. I especially wish to thank the gardeners, farmers, and urban agriculture experts in Chicago and beyond who have generously shared their work, their worlds, and their wisdom with me – particularly the gardeners at the Kumunda and 65th Street & Woodlawn Community Gardens, and Harry Rhodes and Rebekah Silverman of Growing Home urban farm.

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4-Nov-15]

URBAN COMMONS AS EXPERIMENT

2

should consider promoting a policy framework that encourages such experimentation.

TABLE OF CONTENTS

Introduction

- I. Hunting the Urban Commons
 - A. The commons in the garden
 - B. Socio-legal mapping
 - C. Property experimentalism
- II. Property Experiments in Chicago's Urban Agriculture
 - A. Kumunda Community Garden
 - 1. Dispossession as threat and as opportunity
 - 2. The threat in the tall grass
 - 3. Producing land
 - 4. Use it or lose it
 - 5. The broader context of sharing
 - 6. Gleaning in the garden
 - B. Growing Home Urban Farm
 - 1. The saga of surplus land
 - 2. Coming to Englewood
 - 3. Ownership and trust
- III. The Commons as Property Experiment
 - A. An Experimentalist Policy for the Urban Commons

Conclusion

INTRODUCTION

Over the past decade, scholars of law and geography have been foraging in America's cities, hunting for the commons. In the process, a new common sense has cropped up, as legal scholars and social scientists have come to view urban farms and community gardens as prototypical examples of the urban commons.¹ Farm fields and garden plots produce not only

¹ See, e.g., NATHAN MCCLINTOCK AND JENNY COOPER. CULTIVATING THE COMMONS: AN ASSESSMENT OF THE POTENTIAL FOR URBAN AGRICULTURE ON OAKLAND'S PUBLIC LAND 13 (2010), available at https://www.academia.edu/1226070/Cultivating_the_commons_An_assessment_of_the_potential_for_urban_agriculture_on_Oaklands_public_land (last visited Oct. 27, 2015); Sheila R. Foster, *Collective Action and the Urban Commons*, 87(1) NOTRE DAME L. REV. 62 (2011). DAVID HARVEY, REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION, 74 (2012).

vegetables, the argument goes, but also opportunities for residents to “reclaim the commons” by accessing and using land as a shared, decommodified resource.² As both social practice and emergent institutional reality, such urban commons challenge and are challenged by the logics of public and private property that dominate our cities’ legal landscapes.³

If some sort of commons is indeed sprouting up in urban farms and gardens, how is this happening? The process is frequently bracketed, often understood simply as “self-organization.”⁴ Instead of relying on local government to bring about the commons by ordinance, urban farmers and gardeners are said to be “self-organizing” the rules of the urban commons.⁵

In practice, what does self-organization look like? Should we understand the spaces and rules devised by urban gardeners and farmers as the products entirely of self-organization, or does that leave out important ways in which their socio-legal settings are the product of rules that urban gardeners and farmers take, rather than those they make? A better understanding of these questions could assist how people think about and seek to implement strategies that promote shared access to urban land and other resources. In this article, I take urban agriculture as a key case of how people may be bringing about an urban commons, and investigate the socio-legal processes by which urban gardeners, farmers, and their policy allies, may be bringing an urban commons into being.

I draw upon over four years of ethnographic research with farmers, gardeners, and urban agriculture policymakers in Chicago. From 2011 through 2015, I observed how farmers and gardeners and their allies sought to increase access to affordable land, and how they worked to govern and

² Nathan McClintock. *Radical, reformist, and garden-variety neoliberal: coming to terms with urban agriculture's contradictions*. 19(2) LOCAL ENVIRONMENT 147, 154 (2014).

³ See, e.g., Nicholas Blomley, *Un-Real Estate, Proprietary Space and Public Gardening*, 36(4) ANTIPODE 614, 635-36 (2004).

⁴ Urban ecologists Johan Colding and Stephan Barthel have noted this tendency among writers on community gardens. Johan Colding and Stephan Barthel, *The potential of ‘Urban Green Commons’ in the resilience building of cities*. 86 ECOLOGICAL ECONOMICS 156, 161 (2013). See, e.g., Marianne E. Krasny and Keith G. Tidball, *Community Gardens as Contexts for Science, Stewardship, and Civic Action Learning*, 2(1) CITIES AND THE ENVIRONMENT, article 8, <http://escholarship.bc.edu/cate/vol2/iss1/8>.

⁵ See, e.g., Foster, *supra* note 1, 94 (“The transformation of these small spaces into productive land uses—community gardens—is a largely endogenous effort. Local residents manage to come together, construct and maintain these fully functioning gardens in the absence of government coercion or intervention, or the divestment of property rights in the lots/gardens.”)

use such land when it was made available. From time to time, I partnered with the Chicago Food Policy Action Council in projects to identify new parcels of land that could be used for urban agriculture, and explore new means of arranging land tenure for such parcels.⁶ I also had opportunities to learn about the process of land acquisition through research into the internal archives of an urban farming organization,⁷ and dozens of interviews with farmers, gardeners, city officials, and urban planners.

My research suggests that in seeking a ground-up explanation of how urban growers participate in bringing about what might be thought of as an urban commons, it might be useful to set aside, at least temporarily, concepts of “the commons” and “self-organization.” Growers in Chicago rarely speak in such terms. To be sure, they and their allies in and out of city government are keen to devise ways for people to access and use land as a shared, productive resource. But the rules, forms, and norms they are tinkering with – everything from zoning laws and land trusts⁸ to landscaping regulations and lines from Leviticus⁹ – aren’t what we usually associate with the commons.

In this article, I explore how we might understand the urban commons more realistically, as the fruit of a wide range of legal experiments that urban growers and their allies have pursued in efforts to expand urban farming and gardening. In Part I, I briefly review how scholars of urban space have sought to understand urban farms and gardens as sites of the urban commons, and propose a method of socio-legal mapping to understand how the property experiments underway in such places might – or might not – be understood in terms of the commons and self-organization.

In Part II, I undertake a detailed socio-legal mapping of how the terms of land use and access for farming and gardening have been shaped by a wide range of laws, regulations, rules, and norms related to property, and thanks to actors’ creative mobilization of legal and non-legal forms of expertise and authority. Two sites serve as case studies for this mapping exercise. The Kumunda community garden in Chicago’s Woodlawn neighborhood illustrates how land access and use for urban gardeners may

⁶ See, e.g., Erika Allen and Nate Ela, *Cultivating Productive Landscapes: A Vision for Community Based Urban Food Systems in the Millennium Reserve*, Aug. 2015 (on filed with author). The work of the Chicago Food Policy Action Council is summarized at <http://www.chicagofoodpolicy.com> (last accessed Oct. 31, 2015).

⁷ See Part II.B.1, *infra*.

⁸ See Part II.B., *infra*.

⁹ See Part II.A., *infra*.

turn not only on self-organized garden rules that prioritize use and sharing, but also rules concerning the tax status of nonprofits; municipal prohibitions on uncut grass; land deals negotiated with powerful neighborhood institutions; gleaning programs inspired by the Torah; and state and local composting regulations.

At the Growing Home urban farm in Englewood, people transitioning out of homelessness and incarceration can gain job skills. The farm sits on two pieces of land, one acquired through a transfer from the city, and another held in trust by NeighborSpace, Chicago's urban agriculture land trust. Understanding how Growing Home provides shared access to and benefits from its land requires tracing how it emerged from experimentation with a federal statute governing disposition of surplus federal property; an effort to reinterpret NeighborSpace's mission to include commercial sites; and has inspired thinking around how land might be held in trust for for-profit farms.

I conclude by arguing that socio-legal scholars of the urban commons would do well to attend to the types of property experiments that urban farmers and gardeners engage in as they claim access to vacant land and govern it as a shared community resource. A socio-legal mapping of such experiments reveals how growers and their allies combine aspects of self-organization, with governance that responds to rules created by state and local government, and to core elements of private property. The claim is not that the Chicago cases examine here typify how people everywhere cultivate spaces where residents can use urban land as a common resource. Rather, they point us in the direction of a more realistic approach to understanding how people bring about and attempt to institutionalize the urban commons, which could inform public policies aimed at encouraging collective management of land and other community resources.

I. HUNTING THE URBAN COMMONS

Until relatively recently, the vast majority of research on common property resources and commons governance overlooked the urban commons.¹⁰ But over the past decade, urban scholars across a wide range of disciplines have grown interested in the commons as a category of analysis,

¹⁰ Legal Geographer Nicholas Blomley calculated that as of late 2005 “the Digital Library of the Commons, held by the influential International Association for the Study of Common Property, reveals that only 21 of the available papers on common property (1.2%) concerned the ‘urban commons’.” Blomley, *Enclosure, Common Right, and the Property of the Poor*, 17(3) SOCIAL & LEGAL STUDIES 311, 318 (2008).

an institution, and a social practice. They have gone on the hunt for the urban commons, and have found it in a wide range of settings, from neighborhood orderliness¹¹ to abandoned department stores,¹² sidewalks¹³ to dog parks,¹⁴ public spaces¹⁵ to limited equity housing cooperatives.¹⁶ Excitement for the urban commons among planners has produced competitions to bring the concept to new spaces.¹⁷ Some scholars have suggested that the city itself is a commons, and ought to be governed as such.¹⁸

A. *The Commons in the Garden*

One of the most frequently cited examples of the urban commons, however, is the community garden.¹⁹ Legal scholars and social scientists

¹¹ Daniel Tumminelli O'Brien, *Managing the Urban Commons: The Relative Influence of Individual and Social Incentives on the Treatment of Public Space*, 23 HUMAN NATURE 467 (2012).

¹² Blomley (2008), *supra* note ____.

¹³ Nicholas Blomley, *How to Turn a Beggar into a Bus Stop: Law, Traffic and the 'Function of the Place'*, 44(9) Urban Studies 1697 (2007).

¹⁴ Daniel Matisoff and Douglas Noonan, *Managing contested greenspace: neighborhood commons and the rise of dog parks* 6(1) INT'L J. OF THE COMMONS, <https://www.thecommonsjournal.org/index.php/ijc/article/view/URN%3ANBN%3ANL%3AUI%3A10-1-112880/256>

¹⁵ Ash Amin, *Collective culture and urban public space*, 12(1) CITY 5 (2008)

¹⁶ Amanda Huron, *The Work of the Urban Commons: Limited-Equity Cooperatives in Washington, DC* (2012) (unpublished Ph.D. dissertation, City University of New York) (on file with author).

¹⁷ See *Designing the Urban Commons*, <http://designingtheurbancommons.org/> (last visited Oct. 31, 2015) ("Re-imagining spaces in London as places for collaboration, sharing, and collective ownership. A competition inspired by the rights to the commons.")

¹⁸ MICHAEL HARDT AND ANTONIO NEGRI, *COMMONWEALTH*, 153 (2009). Sheila R. Foster and Christian Iaione, *The City as a Commons*, **WORK IN PROGRESS, CITATION TBD**.

¹⁹ See, e.g., LINDSAY CAMPBELL AND ANNE WEISEN, *RESTORATIVE COMMONS: CREATING HEALTH AND WELL-BEING THROUGH URBAN LANDSCAPES*. USDA National Forest Service General Technical Report NRS-P-39 (2009); MCCLINTOCK AND COOPER, *supra* note 1; Foster (2011), *supra* note ____; Efrat Eizenberg, *Actually Existing Commons: Three Moments of Space of Community Gardens in New York City*. 44 ANTIPODE: 764. (2011); HARVEY, *supra* note __; Lawson, Laura and Abilyn Miller. *Community Gardens and Urban Agriculture as Antithesis to Abandonment: Exploring a Citizenship-Land Model*. In *THE CITY AFTER ABANDONMENT*, 17-40 Margaret Dewar and June Manning Thomas, eds. (2013); Colding and Barthel (2013), *supra* note 4; Johan Colding, Stephan Barthel, Pim Bendt, Robbert Snep, Wim van der Knaap, and Henrik Ernstson. *Urban green commons: Insights on urban common property systems*. 23 GLOBAL ENVIRONMENTAL

have a wide range of ideas about what community gardens, as an instance of the urban commons, make possible. Some, like geographer Nathan McClintock, take gardens and urban agriculture as a way to produce food in a manner that is cooperative or collective.²⁰ For David Harvey, what is more interesting is how gardens are an example of what he calls a “social practice of commoning,” which decommodifies both land and its products.²¹ Others focus on what the garden commons produces other than just food, such as new neighborhood social norms,²² public health,²³ or urban resilience.²⁴ Other authors focus less on what the garden commons makes possible than how it is routinely threatened by development.²⁵ This has led some to suggest policies that could protect the urban garden commons. Legal scholar Sheila Foster, for example, proposes that courts recognize a limited property right in urban gardens so as to support injunctions that would bar the city from taking public land if the public value accruing from the gardens would be irreparably harmed and such harm is not outweighed by competing land use.²⁶

Relatively less has been said about how urban commons emerge – or, how people bring them about. To the extent scholars have paid attention to emergence of a commons in a garden, the focus is often on whether or not community gardens are endogenously organized. Foster, for example, argues that they are organized largely without governmental support.²⁷ Indeed, it is not uncommon for studies of community gardens to highlight how government actors are antagonists.²⁸

CHANGE 1039 (2013), McClintock (2013), *supra* note ____.

²⁰ MCCLINTOCK AND COOPER, *supra* note 1.

²¹ HARVEY, *supra* note ____ at 73. Harvey, like other commons activists, picks up on the suggestion made by historian Peter Linebaugh that we think of the commons as a *process* – commoning – rather than simply a static institution. PETER LINEBAUGH, THE MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL, 279 (2005) (“To speak of the commons as if it were a natural resource is misleading at best and dangerous at worst—the commons is an activity.”).

²² Foster (2011), *supra* note ___, 95 (gardeners “become norm-entrepreneurs. Their actions transform not just the physical space but also the norms and behavior that govern that space.”)

²³ CAMPBELL AND WEISEN, *supra* note ____.

²⁴ Colding and Barthel, *supra* note ____.

²⁵ Eizenberg, *supra* note ____.

²⁶ Foster (2006), *supra* note ___, 575.

²⁷ Foster (2011), *supra* note ___, 94.

²⁸ Government actors are often understood as enemies of the garden commons, clapping developers on the back as they fire up their bulldozers and prepare to level a garden on a vacant lot. This of course is part of the dynamic of how urban land use is

There are good reasons that scholars have been drawn by the promise of community gardens as a case of endogenous, self-organized management of land. The urban commons in general, and community gardens in particular, offer a third way of managing urban land – an alternative to market allocation and public ownership. This not only offers an exciting opportunity to highlight actually-existing alternative forms of resource management,²⁹ but it offers fertile urban soil in which to plant the theoretical ideas developed by Elinor Ostrom.³⁰

Yet while gardeners may indeed self-organize in the sense that the rules which guide how they garden are not written by the government, it would be wrong to think that community gardens or urban farms are wholly disconnected from rules enforced by the state, or from logics of private property. Support from government may not come in the form of rules, or even grants of land or money (though it often does). But everything from local ordinances to federal statutes create affordances that enable the organization of community gardens.

This article seeks to make these connections apparent – to trace what a focus on self-organization and endogeneity might place outside the frame of reference, and to better understand how the variety of rules and norms at play in an urban landscape provide urban growers with opportunities for claiming and governing land as a shared, community resource. How might people bring about an urban commons not only through self-organization, but also by contesting, leveraging, and adapting rules made possible thanks to local laws and the norms of private property? To answer this question requires a richer sense of the rules, norms, and practices at play in the fields of the city.

B. Socio-legal mapping

In this article I sketch a map of the rules and relationships that are actually at stake in bringing about shared use of urban land on the South Side of Chicago, through case studies of a community garden and an urban farm. What is proposed here is not a geographical mapping of urban farms

transformed, and the story of Mayor Rudolph Giuliani's opposition to vacant lot gardens in New York City has come to be legendary in the literature. See, e.g., Lynn A. Staeheli, Don Mitchell, and Kristina Gibson, *Conflicting rights to the city in New York's community gardens*, 58 GEOJOURNAL 197 (2002).

²⁹ Eizenberg, *supra* note ____.

³⁰ ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990); UNDERSTANDING INSTITUTIONAL DIVERSITY (2005).

and gardens, to understand where they are.³¹ Instead it is a *socio-legal* mapping, one focused on tracing the relationships of power and governance at stake in the legal landscape of the city.

Inspiration for this method of socio-legal mapping comes from several directions. Power mapping is a tool well-known by organizers for social change; the notion is that tracing the relations of power is a prerequisite to identifying pressure points by which organizers can alter those relations.³² Participatory mapping, meanwhile, is a technique developed and frequently deployed by development professionals, which solicits participants' opinions on features relevant to their environments.³³ Here, the goal is to understand power, and to do so through participation and interaction with people who experience it in their day-to-day routines – in this case, of gaining access to and managing urban land. The results may contribute to identifying pressure points for social change, but may also be aimed at clarifying and changing conceptions of what social practices and relations are in play in a particular social setting.

As such, socio-legal mapping is a ground-up method, which takes the daily practices and strategies of actors as the basis for understanding the institutions of power in play in a field of social action, rather than assuming certain institutions will necessarily appear because that is what theory predicts. In this sense, it is a method influenced strongly by the vision of institutional ethnography developed by sociologist Dorothy Smith.³⁴ In developing a method for understanding the structured social relations that shape how people work in a particular setting, Smith described how the “mapping of social relations” begin at one research site, and expand from there, “so that the larger organization that enters into and shapes it becomes visible.”³⁵

³¹ That is a worthy, and remarkably challenging, project. See, e.g., John R. Taylor and Sarah Taylor Lovell, *Mapping public and private spaces of urban agriculture in Chicago through the analysis of high-resolution aerial images in Google Earth*, 108 LANDSCAPE AND URBAN PLANNING (2011).

³² See, e.g., Eva Schiffer, *The Power Mapping Tool: A Method for the Empirical Research of Power Relations*. International Food Policy Research Institute Discussion Paper 00703, May 2007. <http://ebrary.ifpri.org/cdm/ref/collection/p15738coll2/id/38994> (last visited Oct. 31, 2015).

³³ See, e.g., Jon Corbett, *Good Practices in Participatory Mapping*, International Fund for Agricultural Development (2009) http://www.ifad.org/pub/map/pm_web.pdf (last visited Oct. 31, 2015).

³⁴ DOROTHY E. SMITH. INSTITUTIONAL ETHNOGRAPHY: A SOCIOLOGY FOR PEOPLE. LANHAM, MARYLAND: ALTAMIRA PRESS (2005).

³⁵ Smith, *ibid.* at 35. See also MARIE CAMPBELL AND FRANCES GREGORY. MAPPING

The inspiration to pay special attention to legal rules and power relations in such a mapping exercise draws on law professor David Kennedy's recent thinking and writing on cartographic methods for understanding struggle and expertise in global governance.³⁶ Kennedy, like Smith, focuses his analysis on how people at particular sites pursue projects. As Kennedy observes, this is simply the social scientist adopting a method similar to that used by people figuring out how to make their way in a particular social setting, since the first step toward strategic action is often to trace the nodes and relations of power that shape one's environment -- be it economic, political, legal, or physical.³⁷ If savvy community organizers and development professionals map their worlds, then perhaps it makes sense for social scientists to do something similar.

Kennedy seeks to understand the projects by which people struggle and pursue their interests, and thereby shape the institutions and rules that we think of as global governance. This leads him to focus on law, since people pursuing projects often treat law both as "a kind of guidebook to the global terrain of struggle," and as a source of "opportunities to harness coercion to capture what they value as gain."³⁸

Although the scale in question here the urban, rather than the global, the method is similar. I focus on how people mobilize law in pursuit of their farming and gardening projects, since that often both shapes how they see the terrain on which value can be created, and as a way of getting other people to provide access and use of land and other resources.

Yet I also look beyond law and legal expertise to understand the other forms of knowledge and expertise people use to legitimate their projects and get others to support them. People may seek access to land as a source of value through by marshaling arguments that the law affords them the right use it in a certain way, but also by asserting convincingly that the plot of land could be used to grow some quantity of food, or provide training or employment to some number of jobless people. Such assertions may complement legal arguments, by developing moral claims rooted in the particular expertise of the master gardener or the social entrepreneur.

Socio-legal mapping, then, helps us to focus on the relations – between people, organizations, forms of expertise, even species – that make possible

THE SOCIAL: A PRIMER IN DOING INSTITUTIONAL ETHNOGRAPHY. AURORA, ONTARIO: GARAMOND PRESS (2002).

³⁶ DAVID KENNEDY. A WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY. PRINCETON: PRINCETON UNIVERSITY PRESS (2016).

³⁷ *Id.* at 74.

³⁸ *Id.* at 61, 70.

(or impossible) creative, collaborative, and collective uses of land. The goal is not, however, to draw a definitive and final map of a socio-legal landscape or particular territory. Such an effort would likely be futile, or at least not long-lasting, since the rules and forms of knowledge at stake in even a single city are constantly in flux.

Instead, the aim in bringing mapping to bear is to open up and destabilize preset notions of the way people relate to one another in the context of a given socio-legal situation, such as a commons. Is an urban commons in a community garden about self-organization – or, if we traced out the myriad relations of power and authority at stake in bringing about or blocking an urban garden or farm might we find that there is much more in play?

C. Property Experimentalism

In mapping the rules, norms, and forms of authority that influence how gardens and farms come about, I pay special attention to how people are experimenting with aspects of the socio-legal landscape to see what is possible. At the broadest level, urban agriculture itself is an experiment to see how much sense it makes to have farms and gardens in the city – and if so, of what type, where, producing what, benefiting whom. As the assistant director of Growing Home put it to me, “we’re running an experiment that is testing the hypothesis that building urban farms will increase human capital and the financial health of Englewood.”³⁹

Before testing what the effects of urban gardening and farming might be, growers first have to get land. This itself involves experimenting with what is possible – testing projects to see what happens when one makes a claim based on a certain law, or form of moral reasoning. In effect, gardeners and farmers – and, as we will see, advocates for the homeless, synagogue congregants, directors of land trusts, and others – are setting up what the historian of science Hans-Jorg Rheinberger conceives of as experimental systems. Such systems, he writes, “can be regarded as the smallest functional units of research; they are set up in order to give answers to questions that we are not yet able to formulate clearly.”⁴⁰ Quoting Francois Jacob, who worked in Louis Pasteur’s lab, Rheinberger

³⁹ Interview with Rebekah Silverman, assistant director, Growing Home, Chicago, Ill. (Jul. 15, 2015).

⁴⁰ Hans-Jorg Rheinberger, *Experimental Systems: Difference, Graphematicity, Conjecture*, 92 in *INTELLECTUAL BIRDHOUSE: ARTISTIC PRACTICE AS RESEARCH*, Florian Dombois, Ute Meta Bauer, Claudia Mareis, Michael Schwab, eds. (2012).

describes an experimental system, in a typical case, as “a machine for making the future.”⁴¹

The notion here is that people who would like to intervene in a city’s landscape or its political economy are constructing experimental systems. By doing so, they can figure out what happens when they make a particular claim, deploy a particular piece of knowledge, or argue in a new way. They may not yet be able to clearly state the questions to which they are seeking answers about how the city works, and how it might work differently. But in making claims to land, or seeking to change the rules and norms that shape how it is used, allocated, and owned, they are developing machines for making the future of that land – and by extension, a neighborhood and potentially the city itself.

This vision of people involved in property experiments resonates with the work of legal scholars Michael Dorf and Charles Sabel on democratic experimentalism.⁴² Both are rooted in a spirit of pragmatism guiding actors who are continually involved in problem-solving.⁴³ Here, however, we have a narrower focus than do scholars of democratic experimentalism. Experimentation occurs not at the level of a governance system as a whole, but rather in the projects of particular people. Although Dorf and Sabel would have agencies and firms collaborate and share information with one another,⁴⁴ this is not always the case with particular actors such as urban growers engaged in property experiments. A grower who figures out a new way to gain access to land may be motivated to share the outcome of the experiment with other growers, but may also see that knowledge as proprietary, a means of getting out ahead of other growers.

Finally, it is worth noting the potential connections between property, crisis, and experimentation. Law professors Netro Davidson and Rashmi Dyal-Chand have explained how social and economic crises can lay bare fundamental questions about the nature of ownership.⁴⁵ This aligns with the sociological intuition that common property institutions of commons governance might have a countercyclical character, with people more likely to develop them during economic recessions or in the wake of a natural

⁴¹ *Id.* (quoting FRANÇOIS JACOB, *THE STATUE WITHIN: AN AUTOBIOGRAPHY*, 9 (1988))

⁴² Michael C. Dorf and Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98(2) COLUMBIA L. REV. 267 (1998).

⁴³ CHRISTOPHER ANSELL, *PRAGMATIST GOVERNANCE: RE-IMAGINING INSTITUTIONS AND DEMOCRACY*, 6 (2011).

⁴⁴ Dorf and Sabel, *supra* note ____.

⁴⁵ Nestor M. Davidson and Rashmi Dyal-Chand, *Property in Crisis*, 78 FORDHAM L. REV. 1607 (2010).

disaster.⁴⁶ Actors seeking to experiment with the potential for alternative arrangements for the social and legal landscape of a city are acutely aware of the new possibilities that might be raised by times of crisis.

II. PROPERTY EXPERIMENTS IN CHICAGO’S GARDENS AND FARMS

During the four years I spent talking and working with urban farmers and gardeners in Chicago, it was quite rare to hear them speak in terms of the commons. To be sure, they and their allies in and out of city government are keen to devise ways for people to access and use land as a shared, productive resource. But as they pursue projects to make land available for gardens and farms, and to distribute who can enjoy the use, and appreciate the value of that land, the commons is not an everyday category of analysis, or of advocacy. Instead, gardeners, farmers, and their allies in and out of city government are tinkering with a wide range of rules, forms, and norms: zoning, land trusts, landscaping regulations, even lines from the Old Testament. These are things that a hunt for the commons as a category might overlook. If an urban commons is emerging as people create farms and gardens, then to understand how that is happening we would be well served to look to the tools that people actually use, rather than assuming it is “the commons” or “self-organization” that is at work.

In this section, I explore how we might understand the urban commons more realistically, as the fruit of a wide range of legal experiments that urban growers and their allies have pursued in efforts to expand urban farming and gardening.

Two sites provide jumping-off points for socio-legal mapping of how the terms of land use and access for farming and gardening have been shaped by a wide range of laws, regulations, rules, and norms related to property, and thanks to actors’ creative mobilization of legal and non-legal forms of expertise and authority. The claim is not that these sites in Chicago represent how people everywhere cultivate spaces where people can use urban land as a common resource. Instead, reading the legal and physical landscapes they inhabit offers a way to begin to understand the complexities of the urban commons, and how use of resources is organized and managed in such settings.

⁴⁶ Thomas Rudel, *The Commons and Development: Unanswered Sociological Questions*. 5(2) INT’L J. OF THE COMMONS, <http://www.thecommonsjournal.org/index.php/ijc/article/view/248>

A. Kumunda Community Garden

On the east side of Kimbark Street, half a block south of 64th Street, there a community garden known to the gardeners as the Kumunda garden. The garden, one of many in the Woodlawn neighborhood on Chicago's South Side, is the size of two city lots, about one-third of an acre.⁴⁷ Another couple of vacant lots sit to the south, offering ample sunlight for the garden plots. There are about 40 plots, laid out in rows, ten feet by ten feet each. Some of the gardeners have raised their plots by ringing them with boards and adding compost, but many are at the same level as the garden paths.

The garden itself is ringed by a fence – wooden stake snow-fencing to the south and along the back alley to the east, and wire fencing along the sidewalk to the west. A cyclone fence to the north marks off the property line shared by a house. During the summer of 2015, a strip of small kale plants lined the strip of land between the fence and the sidewalk on Kimbark Street, an offering to passers-by. At the southeast corner, a pile of woodchips – material for keeping down grass along the garden paths – spills over onto both sides of the fence, making it possible to step over the fence by climbing the mound.

I was a member of the Kumunda garden for the 2014 and the first half of the 2015 growing season. Tending a ten-by-ten-foot plot offered a day-to-day sense of how such a garden operates as common space for people who both live in the neighborhood, and who come from other parts of the city. I observed how growers work together to manage the space, and to strike a balance between sharing their bounty and keeping it from being taken by outsiders. Much of this they figure out on their own, whether in person at the garden or via the group's email list.

To understand how Kumunda garden came about, and how it continues to exist, we have to look beyond just the rules of the garden and understand how it became possible to organize the use of this land in the first place. And that requires understanding how the land became available: both how the history of Woodlawn resulted in a large number of empty lots, and how gardeners negotiated the rules of the city to *make* some of those lots available for food production.

Woodlawn itself is a patchy landscape, with three-floor brick apartment buildings interspersed with vacant lots. In the fall of 2015, the City of

⁴⁷ The 2015 map by Garden Resources of Woodlawn (GROW) identifies 16 community and school gardens in the neighborhood. See GROW Community Gardens Map (2015), *available at* <http://growwoodlawn.org/wp-content/uploads/2015/03/GROW-community-gardens-map-2015.pdf> (last visited Oct. 31, 2015).

Chicago owned 387 vacant lots in Woodlawn. This vacant land has a history, and like the land used by the Kumunda gardeners, many of the other lots that now sit vacant once had multi-family apartments on them.

Ninety years ago, Woodlawn was a neighborhood predominantly populated by white people. In 1930, at the beginning of the Great Depression, it was home to 67,000 Chicagoans, 86% of whom were white.⁴⁸ But during the Depression, the white housing market slumped and black families from neighborhoods to the west sought to buy into the neighborhood. At first, they were blocked by racially-restrictive covenants, which covered Woodlawn and most of the other neighborhoods that bordered the so-called “Black Belt” neighborhoods where African-American families arriving from the South had been forced to buy or rent during the first great migration.⁴⁹

Both black families seeking to buy into the neighborhood and white families seeking to sell fought the covenants in court. In 1940, the U.S. Supreme Court held in *Hansberry v. Lee* that minority members of a class action were not barred by res judicata from selling to a black family.⁵⁰ This ruling effectively undid the covenant in Woodlawn.

Following World War II, the black population of Woodlawn rose quickly, and white families fled for the suburbs. By 1960, the population was 88,000 – nearly ninety percent of which was black. But during the late 1960s, the neighborhood was hit by disinvestment, as white-owned business owners moved out, fearing a repeat of the riots which hit the black neighborhoods of Chicago’s West Side in the wake of the killing of Martin Luther King, Jr. From 1968 through 1971, 362 abandoned buildings in Woodlawn were destroyed by arson.⁵¹

In the 1960s, the University of Chicago, which dominates the neighborhood of Hyde Park just to the north of Woodlawn, worked with the city council to declare much of the northern section of Woodlawn blighted. However, community organizers with The Woodlawn Organization, a community association formed with the assistance of Saul Alinsky’s Industrial Areas Foundation, resisted these plans.

Since the 1960s, the population of Woodlawn has declined significantly. By 2010, under 26,000 people lived in the neighborhood.⁵² This rapid and

⁴⁸ Amanda Seligman, *Woodlawn*, Electronic Encyclopedia of Chicago (2005), <http://www.encyclopedia.chicagohistory.org/pages/1378.html> (last visited Oct. 31, 2015).

⁴⁹ Allen R. Kamp, *The History Behind Hansberry v. Lee*, 20 U.C. DAVIS L. REV. 481 (1987).

⁵⁰ *Hansberry v. Lee*, 311 U.S. 42 (1940).

⁵¹ Seligman, *supra* note ____.

⁵² City of Chicago, Community Area 2000 and 2010 Census Population Comparisons,

enduring decline has affected the landscape. In addition to the swathes of vacant lots, the neighborhood has a number of churches that have been left with diminished congregations as those African-American families with the means to move to the suburbs left the neighborhood.⁵³

At the same time, by the early 1990s some people in Chicago were coming to see vacant land as a potential resource. In 1996, the leading land trust for the Chicago region, Openlands, found that the city ranked 18th out of 20 large U.S. cities in terms of open space per capita.⁵⁴ The *CitySpace* report noted that at the same time, there was an abundance of vacant lots, many of which were owned by the city or nonprofit organizations.⁵⁵ One of the recommendations flowing from the report was to create a land trust for community gardens, which were understood to be under threat from development.⁵⁶ In 1996, an intergovernmental agreement between the City of Chicago, the Cook County Forest Preserve, and the Chicago Park District created NeighborSpace, a new land trust with the mission to hold land for such gardens in the City of Chicago.⁵⁷ The forms of land security and land tenure afforded by NeighborSpace have come to be crucial to protecting land not only for gardens but also for farms, as I describe in Part II.B.3, *infra*.

1. Dispossession as threat and as opportunity

The Kumunda Garden sits on land owned by the First Presbyterian Church of Chicago, not by NeighborSpace.⁵⁸ But part of the abundance of the resources of the garden is actually due to the opportunity provided by dispossession. It provides an example of how development can not only

available

at

https://www.cityofchicago.org/city/en/depts/dcd/supp_info/community_area_2000and2010_censuspopulationcomparisons.html (last visited Oct. 31, 2015).

⁵³ Lynn LeCluyse, *Black Population Explodes in South Suburbs*, HUB BUB Blog, (Jan. 24, 2012), <http://blogs.luc.edu/hubbub/featured/black-population-explodes-in-south-suburbs/>.

⁵⁴ CITY OF CHICAGO, CHICAGO PARK DISTRICT, AND FOREST PRESERVE DISTRICT OF COOK COUNTY, *CITYSPACE: AN OPEN SPACE PLAN FOR CHICAGO*, ii (Jan. 1998).

⁵⁵ *Id.*, iii.

⁵⁶ *Id.*, iv.

⁵⁷ Chicago City Council, Committee on Finance, Authorization for Execution of Intergovernmental Agreement with Chicago Park District and Forest Preserve District of Cook County for Establishment of “NeighborSpace,” (Mar. 26, 1996) *available at* <http://www.eatbettermovemore.org/sa/policies/pdf/text/ChicagoNeighborSpace.pdf> (last visited Oct. 31, 2015).

⁵⁸ Interview with Benjamin Murphy, coordinator of 65th & Woodlawn Community Garden, in Chicago, Ill. (Jun. 13, 2014).

threaten gardens with dispossession, but also create new opportunities for experimenting with the potential to mobilize a community of growers around contested property issues, and even opportunities for expansion. It raises the question of what moral duty an owner of land might have to gardeners who were using the land, even when the legal right of the owner to remove the gardens from the land is uncontested.

In some sense, the story of the Kumunda Garden began in the mid 1990s, several blocks to the north. That was when gardeners began digging up plots at 61st Street and Dorchester, which became known as the 61st Street community garden.⁵⁹ This was on land owned by the University of Chicago, which either owns or has informally laid claim to much of the vacant land in the northern part of Woodlawn, in the expectation that it may be used to expand its campus in the future.

In 2009, the University had such an opportunity for expansion. It planned to build a new building for the Chicago Theological Seminary at the corner of Dorchester and 60th Street. For the construction of the project, officials from the University decided to use the land on which the 61st Street Community Garden sat as a staging area. The university's community relations department informed the gardeners that they would have to leave at the end of the 2009 season.

As in many other cases, the gardeners resisted displacement, and organized. Here, however, the garden benefited from the social and cultural capital of its gardeners. These were not the typical residents of Woodlawn who were growing in its plots, but rather many people who had been students at the University of Chicago, and had not left the neighborhood. They understood how to negotiate with, and mobilize against, the University.⁶⁰ Among other things, they used digital video storytelling and conversations as a way to rhetorically claim the land, even though they only had a limited right to use it.⁶¹ Among the people who spoke out in favor of the garden was Ben Helphand, the executive director of NeighborSpace.⁶²

Ultimately, the University agreed to provide compensation to the

⁵⁹ Experimental Station, *The Urban Farm Project*, <http://www.experimentalstation.org/food-culture/urban-farm-project> (last visited Oct. 31, 2015).

⁶⁰ The gardeners documented their struggle on their website in meticulous detail. See 61st Street Community Garden Woodlawn website, http://web.archive.org/web/20150925014215/http://www.hydepark.org/gardens_of_HP-K/61st%20Community%20Garden.htm (archived Sep. 25, 2015)

⁶¹ Invisible Institute, *Garden Conversations*, <http://invisible.institute/garden-conversations/> (last visited Oct. 31, 2015).

⁶² *Id.*

displaced gardeners. University officials arranged with the local alderman to have a vacant lot at 62nd Street and Dorchester made available for gardening (this has since been converted into a NeighborSpace garden). It agreed to donate resources both toward this new garden and other community gardens in Woodlawn.

A community garden at 65th Street and Woodlawn Avenue, which had been founded two years earlier, was one of the gardens that benefited from the University's largess.⁶³ Much of the support from the University was used to buy compost for creating new garden plots.⁶⁴ In this sense, the dispossession from the land at 61st Street and Dorchester literally made new land – in the form of soil – available elsewhere in the neighborhood.

The 65th & Woodlawn community garden was incredibly popular. Thanks to the resources provided by the University its founder arranged to bring in truckloads of compost, and have its 10' x 10' plots hooked up to a drip irrigation system. This drew gardeners not only from the middle class Hyde Park neighborhood to Woodlawn's north, but even from neighborhoods on the north side of Chicago – a half hour drive, even without traffic.⁶⁵

By 2012, the 65th and Woodlawn Garden had a waiting list. In 2013, its founder arranged with the First Presbyterian Church to use a vacant lot on the block to the east, which would become the Kumunda garden. Again, the resources made available from the land deal with the University of Chicago deal helped get it going.⁶⁶

2. The threat in the tall grass

The land on which the 65th & Woodlawn and Kumunda gardens sit is owned by the First Presbyterian Church. It might seem natural that a church would support community gardening, and First Presbyterian has supported gardening through various projects since at least 2000.⁶⁷ But to understand

⁶³ Interview with Benjamin Murphy, *supra* Note ____.

⁶⁴ *Id.*

⁶⁵ One summer day in 2014, I met a gardener who told me she lived in Rogers Park, on the north side, but could not get a plot there because there was too much demand for the garden plots available. North Side gardeners who do get off a waiting list often have less space available than in Woodlawn. For example, during the 2015 season Peterson Garden Project, one of the leading gardening organizations on the North Side, offered members a four-by-eight foot gardening plot, without irrigation, for \$85. Peterson Garden Project, *Garden With Us*, <http://petersongarden.org/garden-with-us/> (last visited Oct. 31, 2015).

⁶⁶ Interview with Benjamin Murphy, *supra* note ____.

⁶⁷ In addition to the two community gardens, it has for many years let an older man from the neighborhood garden half of a large vacant lot across the street from the church, at

why church leaders might have been eager to expand to Kumunda garden, it helps to appreciate a recent change to Chicago's weed ordinance. Municipal ordinances on weeds spur availability of land for gardens.

In 2008, Chicago created a weed abatement regulation.⁶⁸ This created steep fines for any "weeds" over 10 inches in length. The regulation has been actively enforced, and newspapers have reported that from 2009 to 2014 the city collected over \$19 million in fines for uncut weeds.⁶⁹

For absentee owners, or landowners without the means to keep up landscaping to legal requirements, the city weed ordinance poses a risk. First Presbyterian, with its small congregation but large inventory of vacant lots, faces particularly large problem. If church leaders see the vacant land as a type of investment – as the founder of the 65th Street community garden assumes⁷⁰ – then selling properties at the bottom of the market, in the wake not only of decades of disinvestment but also the financial crisis, does not make sense.

In this context, community gardens provide a solution for the church and similarly-situated landowners. Allowing people to grow a garden on a vacant lot transfers the responsibility to keep up the lot to the gardeners, and reduced the risk of fines for uncut grass. As the founder of the garden pointed out to me, it also fits with the federal tax regulations concerning how nonprofits may rent out their surplus land or buildings; since the gardens are also non-profits, sharing the land with them does not jeopardize the Church's tax-exempt status.⁷¹

Yet despite the way in which the weed ordinance has incentivized sharing, gardeners elsewhere in the city are of mixed minds about the ordinance. Some have been hit repeatedly with fines, prompting Advocates

64th Street and Kimbark Avenue; the other half of the lot has been used by nonprofit organizations that grow food for the church's food pantry. Interview with Meg Mass, coordinator of the Abundance Project, in Chicago, Ill. (Sep. 10, 2014). In addition, the Church has a dilapidated greenhouse on its south side, which was built by the Center for Neighborhood Technology in the 1970s, in one of the earliest post-WWII urban farming projects in Chicago. Center for Neighborhood Technology, *Pioneering Urban Gardening*, <http://www.cnt.org/projects/pioneering-urban-gardening> (last visited Oct. 31, 2015).

⁶⁸ Amendment to Section 7-28-120 of city code.

⁶⁹ Benjamin Woodard, *Weeds or Wildflowers? City Collects Millions in Fines for 'Uncut Weeds'*, DNAINFO (Aug. 6, 2014), <http://www.dnainfo.com/chicago/20140806/rogers-park/weeds-or-wildflowers-city-collects-millions-fines-for-uncut-weeds> (last visited Oct. 31, 2015).

⁷⁰ Interview with Benjamin Murphy, *supra* note ____.

⁷¹ Interview with Benjamin Murphy, *supra* note ____; Interview with Meg Mass, *supra* note ____.

for Urban Agriculture, one of Chicago's food and gardening policy organizations, to draft a revised ordinance that would increase city inspectors' sensitivity to native plantings which might be higher than ten inches.⁷² But there are also gardeners elsewhere who appear to benefit from the leverage that the weed ordinance provides against landowners who might otherwise simply let their land sit idle. One organizer who started a community garden in the McKinley Park neighborhood told me that staff for the local alderman contacted the person who owned an attractive piece of land, and offered to waive \$1500 in landscaping fines if the owner made the property available for use as a community garden.⁷³

3. Use it or lose It

With the land available from the church, the Kumunda gardeners needed to develop some rules. So long as they kept the land tended, the church largely – but not entirely – leaves it up to them how to organize that. As I found out on my first day at the garden in 2014, these rules prioritize both use and sharing.

In the spring of 2014, I was lucky to hear from a friend in Hyde Park about the 65th Street and Kumunda gardens. At that point, my research on farms and gardens in Chicago had largely consisted of attending meetings, interviewing growers and urban agriculture advocates, and visiting other people's growing sites. Having a plot for myself struck me as a way to get some more information about the field, while also having a pastime.

I connected with Benjamin "Benja" Murphy, the founder and coordinator of the garden, by email, and showed up as instructed at the Kumunda garden on a cool late April evening. There were two plots left, and one other potential gardener. Benja said that I had been the first to email, so I had first dibs. As we walked around, he briefly told us about the two plots. One, toward the back of the garden, was the site of the compost pile the season before. It was overgrown, but I figured after tearing up the weeds and grass it would reveal rich soil. The other plot, closer to the street, had some concrete in it, perhaps from the foundation of a house that had been on the site. Benja wasn't sure about this, but assured me and the other gardener that the site had been tested for lead and other contaminants and

⁷² Rachel Schipull, *No Weeds in Our Yards: How Chicago's Landscaping Ordinance Can Result in Big Fines and What AUA is Doing to Help*, Advocates for Urban Agriculture (Feb. 19, 2015), <http://auachicago.org/2015/02/19/no-weeds-in-our-yards/> (last visited Oct. 31, 2015).

⁷³ Interview with Corenna Rooseboom, founder of McKinley Park Community Garden, in Chicago, Ill. (Jun. 2, 2014).

had been cleared. Although I felt a bit guilty about taking the better spot, I exercised my apparent right to take first pick.

I gave Benja the use fee, \$40, in cash, and signed the usage agreement. Benja showed us around the garden's shared spaces. The drip irrigation system wasn't functioning just yet; it needed some repairs. A tool shed was nearly finished, built by Benja out of scrap wood and with hardware that he had purchased with the garden's common fund. He said he would stock it with tools – including a special wrench to open the fire hydrant which provided the water for the garden – and put a combination lock on it, which would have the same code as the lock on the gate at the front of the garden. Behind the shed were a few wheelbarrows, also locked up with a combination lock for which gardeners knew the code. He also pointed out a strip of land just outside the fence, along the sidewalk, which was for planting crops that people from the community, who weren't members of the garden, could pick and use.⁷⁴

At this first meeting, Benja told me and the other new gardener that it was our responsibility to get the plot planted by June 1, or we would lose our fee for the year and use of the land. This use-it-or-lose-it rule appears in the garden usage agreement.⁷⁵ At the time, as an eager first-year gardener, it didn't seem like that big a deal. The following weekend, I was back at the garden with a gardener friend visiting from out of town. We built a frame for a raised garden bed with planks of lumber I'd purchased from Home Depot. The week after, I filled the frame with about a dozen wheelbarrow loads of rich black compost, from the large pile that had been dumped at the back of the garden. And the week after that, I was planting. By June 1, I had more kale and chard than I could manage, and gave extra away to any gardeners who I could see when I was harvesting.

Later in the season, I helped one of the coordinators of the garden take over on a plot that either had never been planted, or had been abandoned. It happened to be adjacent to mine, and for months I had been watching its weeds grow higher and higher, wondering if the gardener would ever come

⁷⁴ See also *Finding Common Ground*, CHICAGO WEEKLY, May 26, 2010, at 3. <http://www.chicagoweekly.org/2010/05/26/finding-common-ground-south-siders-share-plots-and-plans-at-the-65th-and-woodlawn-community-garden/> (last visited Oct. 27, 2015)

⁷⁵ See Kumunda Garden Usage Agreement (on file with author). The 65th and Woodlawn community garden has a very similar agreement, with an added option to volunteer to maintain a 100-square-foot section of the "free for all" garden outside that garden's fence. See Usage Agreement for the 65th & Woodlawn Community Garden, www.65thandwoodlawn.com/images/2012_usage_agreement.pdf (last visited Oct. 27, 2015).

back and reclaim the space. Instead, one afternoon the coordinator enlisted me to help her pull out the weeds, after asking me whether I'd ever seen anyone there. I hadn't. Before we yanked the weeds, we pushed them aside, looking for hints of crops that might be hidden underneath. We saw a squash vine or two, but nothing that suggested activity this season – the vine could have been from the year before. So we pulled out the weeds and planted seedlings for late-season crops that would go to the church food pantry.

The following spring, the use-it-or-lose-it rule about which I'd been so nonchalant the year before nearly came back to bite me. My wife was now back in town – the previous year she had been away doing research overseas – and we wanted to prepare the garden together. Early in the spring, we planted some seeds in trays at our apartment, and put them next to the only window that received direct light. The seedlings came up, frustratingly slowly. We waited to plant until we could find a weekend when we would both be free to do so, the seedlings were hardy enough, and the weather cooperated.

Weekends came and went, without planting. Between two busy schedules, a wet spring, and a lot of travel to attend to my aging father, it soon it was mid May and we had not planted a seed. With the rule hanging over us, we eventually rushed out day on the way out of town to put some seedlings that we had bought into the ground. Having made our use of our plot obvious, we planted a few of the remaining seedlings outside the fence, in the common area. This felt less like claiming land for the commons than staking our individual claim so as to prevent our plot from reverting to the commons.

Indeed, there are many aspects of the Kumunda garden which make it seem sometimes more like a collection of individuals using their own plots – somewhat like an apartment building – than a community managing a commons. All of the plots are rented to individuals, and the fence ringing the garden is meant to keep out non-members. Although I have often heard people in the community garden movement decry fences and locked gates, at Kumunda Garden gardeners receive emails reminding them to lock the gate behind them, and to be aware of people who jump the fence in order to pick some free vegetables.⁷⁶

Of course, like an apartment building or condominium complex, there are shared spaces and tasks in the Kumunda garden, like in other gardens

⁷⁶ See Email from 65th & Woodlawn Community Garden organizers to Kumunda Gardeners, (Jul. 24, 2015) (on file with author).

that are set up allotment-style. The usage agreement provides that gardeners are responsible for maintaining weed-free paths, for putting compost in the right places, and for chipping in with work to keep commons spaces well-tended. Yet unlike the use-it-or-lose-it rule, it is harder to enforce cooperation by other gardeners. Instead, gardeners are reminded of the rules at meetings and in emails, and encouraged to come to community work days. I have not heard of people having lost their plots because they free ride on the communal work of other gardeners.

4. The Broader Context of Sharing

Much of the sharing that takes place at the Kumunda garden occurs in the context of resources that are made available or regulated by the city. Highly active gardeners and their advocates often seek to influence these rules to create a context that facilitates community gardening, but most gardeners in the city are more rule-takers than rule-makers. Water and compost provide two key examples of how the common governance of a community garden like Kumunda is possible because of rules developed at a municipal scale.

Chicago is a temperate climate, relatively favorable for three-season food gardening.⁷⁷ But even in such a favorable climate, weeks pass from time to time without regular rain. Community gardens like Kumunda would not exist without a source of water for irrigation.

At Kumunda, like many other gardens in Chicago, water is provided from a city fire hydrant, which is fitted with a special adapter that connects to a garden hose. This runs about a hundred feet down the block, and can be used to replenish a bathtub-sized tank that gardeners use to fill watering cans, or can be connected directly to the garden's drip irrigation system.

For gardens like Kumunda, then, the possibility of using and sharing such a space of production depends on the City of Chicago's program to provide water from hydrants. This gives power to each Alderman's ward office to approve use of water at particular garden, and authorize the Streets and Sanitation Department to provide gardeners with the needed adaptor and wrench to turn off and on a hydrant. As a result, the creation of a new garden, or the maintenance of an ongoing one, requires the approval of the local Alderman. Self-organization of a garden doesn't simply happen, but occurs when and where an Alderman lets it happen.

⁷⁷ The U.S. Department of Agriculture's plant hardiness zone map classifies Chicago as Zone 6a. <http://planthardiness.ars.usda.gov/PHZMWeb/> This allows for growing from roughly mid-March through mid-November. http://garden.lovetoknow.com/wiki/Gardening_Zone_6

Providing permanent access to water is one of the major expenses that NeighborSpace covers for community gardens for which it holds title in trust. A connection to the municipal water system costs tens of thousands of dollars, which NeighborSpace covers from its budget. To have such resources made available on a permanent basis again requires the approval of an alderman, since it is only at the alderman's discretion that the city council will transfer land from its inventory to NeighborSpace.⁷⁸

As with water, gardens such as Kumunda couldn't exist without soil or compost. In Chicago, as in many other post-industrial U.S. cities, community gardeners often assume that all soil is contaminated by lead or other heavy metals.⁷⁹ Although people sometimes grow directly in the ground, the official city policy is that community gardens should have raised beds with clean soil or compost brought in from other locations.

Buying soil, of course, can be incredibly expensive. This cost increases the attractiveness of producing one's own soil by composting household organic waste. Yet until mid 2015, gardeners were prohibited from bringing compostable materials from their homes onto their community gardens.⁸⁰ At least officially, this limited gardeners' ability to make their own soil. At the Kumunda garden, growers received an email in early 2015 reminding them that this was not an option, and that the compost piles were to be used only for things produced on the garden.⁸¹

In late 2015, the city passed a new ordinance which permitted community gardeners to use household materials for composting.⁸² This came after pressure from Advocates for Urban Agriculture (AUA) and the Chicago Food Policy Action Council (CFPAC), the two main urban

⁷⁸ Known as "aldermanic privilege", this is a key part of the customary but unwritten power of aldermen in Chicago. The Electronic Encyclopedia of Chicago, Aldermanic Privilege (2005) <http://www.encyclopedia.chicagohistory.org/pages/2197.html>

⁷⁹ Chicago Community Gardeners Association, Starter Kit: Environmental Best Practices for Chicago Community Gardens, <http://chicagocommunitygardens.org/resources/environment-and-safety/starter-kit-environmental-best-practices-for-chicago-community-gardens/> (last visited Oct. 27, 2015).

⁸⁰ Cite

⁸¹ Email from 65th & Woodlawn Community Garden organizers to Kumunda gardeners (May 21, 2015) (on file with author).

⁸² Chicago, Ill., Substitute Ordinance to Chapters 7-28, 11-4-040 of the Municipal Code of Chicago, and Chapter 17-9 of the Chicago Zoning Ordinance (Jul. 29, 2015). Available at <http://auachicago.files.wordpress.com/2015/08/chicago-compost-substitute-ordinance.pdf> See also City of Chicago, City Council Approves Ordinance to Expand Citywide Composting Program (Jul. 29, 2015) http://www.cityofchicago.org/city/en/depts/cdph/provdrs/environmental_permitsregulation/news/2015/july/city-council-approves-ordinance-to-expand-citywide-composting-pr.html

agriculture advocacy organizations to change the rule.⁸³ This campaign received a push from the fact that many of the leaders of CFPAC and AUA work with commercial farms in Chicago, which have a financial interest in making sure that they are permitted to bring off-site materials for composting. The rule changes permit community gardeners and urban farmers to compost food scraps and organic waste collected from off-site sources, and establish a permitting system for nonprofit organizations to start community composting centers.⁸⁴

5. Gleaning in the garden

Although in certain ways the members of community gardens always have to learn to share the space, even if they have individual plots, many have additional programs to share some of the bounty of what is produced at the garden. At gardens run by the Peterson Garden Project on Chicago's North Side, this takes the form of raised beds that designated as part of a "GrowToGive" program; five percent of garden harvests go to food pantries or nutrition programs.⁸⁵ Both the 65th & Woodlawn and Kumunda gardens have a strip of land outside the fence that is free for passers-by to pick. But they have also developed a different way to share the bounty of the gardens: gleaning programs that harvest and distribute a share of the produce from members' individual plots.

The gleaning program at 65th & Woodlawn came about first, as a result of conversations between the garden's founder and a member of the KAM Isaiah Israel (KAMII) Temple in Kenwood. Robert Nevel, the founder of KAMII's gardening programs, had begun by tearing up some of the lawn around the synagogue to plant gardens where food could be grown and donated to nearby shelters. Having run out of space to expand around the synagogue building, he began thinking about ways that the congregation could help provide more fresh produce to local food pantries. He proposed to Benja that they set up a gleaning program, which would gather produce fruits and vegetables from community gardens in the neighborhood.⁸⁶

⁸³ Advocates for Urban Agriculture, *A New Day for Composting in Chicago* (Aug. 14, 2015) <http://auachicago.org/2015/08/14/a-new-day-for-composting-in-chicago/>

⁸⁴ *Id.*

⁸⁵ Peterson Garden Project, *Programs* http://salsa.petersonsgarden.org/p/salsa/web/common/public/content?content_item_KEY=9957 (last visited Oct. 27, 2015).

⁸⁶ Interview with Benjamin Murphy, *supra* note X; Robert Nevel, President, KAM Isaiah Israel Synagogue, Address at the American Community Gardening Association Pre-Conference Event (Aug. 7, 2014).

The KAMII White Rock Gleaning Program⁸⁷ took its name came from the practice of leaving a white rock in a garden plot to signal that the gardener was okay with having gleaners from the congregation take some of the produce during their weekly gleaning visits. By the time I gleaned with the KAMII group in the fall of 2014, the white rocks had become florescent orange survey flags, and what had been an opt-in system had become an opt-out one. Fellow gleaners explained that this was because the stakes were easier to see, and because many gardeners didn't seem to understand that they needed to put a rock or a flag in the plot in order to share.

Nevel and others from KAMII cite verses from the Torah as a moral basis for gleaning.⁸⁸ At their 2014 Food Justice weekend, annually held on Martin Luther King Jr. day, a youth educator from the congregation held a workshop on Jewish law concerning gleaning and the sharing of agricultural surpluses. Of particular interest was Leviticus 19:11, concerning the *pe'ah*, or the corners of the fields:

When you reap the harvest of your land, you shall not reap all the way to the corner of your field, or gather the gleanings of your harvest. You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard; you shall leave them for the poor and the stranger; I the Lord am your God.⁸⁹

Nevel sees verses such as these as providing moral justification for taking what other people grow. In a talk before the 2014 American Community Gardening Association conference in Chicago, he said:

At 65th and Woodlawn community garden, over the weekly peanut butter and beer lunch we began a sort of Talmudic debate. If a plot has most certainly been abandoned, if the carrots are showing lots of leg, is it *chayil*⁹⁰ to harvest those carrots before they're lost, and deliver them to women and children living in a nearby shelter? By renting a plot, is a renter entitle to do whatever a renter wants with the yield, even if that means wasting it? Is renting a plot a privilege?

⁸⁷ KAM Isaiah Israel Congregation, Our Garden <https://kamii.org/content/our-garden> (last visited Oct. 27, 2015).

⁸⁸ Robert Nevel, Address at the American Community Gardening Association Pre-Conference Event, *supra* note X.

⁸⁹ Cite Old Testament. KAMII members are not alone in interpreting these verses as having contemporary relevance concerning the duty to the poor. See, e.g., <http://www.myjewishlearning.com/article/peah-the-corners-of-our-fields/>

⁹⁰ Chayil is a Hebrew word that takes on various meanings in Jewish texts, such as valor, bravery, and strength. The poem *Eshet Chayil*, *Proverbs* 31:10-31, describes the woman of valor, who among other things plants a vineyard and gives generously to the poor.

Do renters have responsibilities beyond those we typically dream of – to the community, to the land, to those in need?⁹¹

This interpretation of Torah law puts into practice what property law scholar Joseph Singer has written about in his book *Edges of the Field*.⁹² Singer draws on the Old Testament to develop a broader argument concerning the social obligations inherent in property law; on the South Side of Chicago, gardeners are doing something similar to inculcate a culture and practice of sharing the produce of community gardens.

In effect, gardeners are working as a sort of “organic intellectual,” as the sociologist Monica White, in a riff on Gramsci, has put it in recent work.⁹³ This might not seem all that remarkable, yet gardeners are sometimes mistaken for people who simply do good work, which others are left to theorize. This even happened at the event where KAMII members interpreted lines from Leviticus. The night before, legal scholar and moral philosopher Martha Nussbaum (who is also a neighborhood resident) gave a talk commending the good work of the gardeners; she described her role as developing theories that push the boundaries of ethical and moral practices and enable new ideas about policy.⁹⁴ This was something the gardeners themselves were doing.

What’s more, Nevel and other KAMII members have worked to spread their ideas about gleaning, and to help other gardens develop similar policies.⁹⁵ Other gardens have joined the KAMII gleaning program,⁹⁶ and Jewish religious educators who attended a convention for cantors at KAMII in 2015 came away having learned about the gleaning program and other ways in which congregants in Chicago were applying Torah teachings to

⁹¹ Robert Nevel, Address at the American Community Gardening Association Pre-Conference Event, *supra* note X.

⁹² JOSEPH WILLIAM SINGER, *THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP* (2001).

⁹³ Monica M. White, “‘A Pig and a Garden:’ Fannie Lou Hamer and Freedom Farms Cooperative,” at the Rural Sociological Society 78th Annual Meeting (Aug. 7, 2015). See also Antonio Gramsci, *The Intellectuals*, in *SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI* (Quentin Hoarse and Geoffrey Nowell Smith, eds., 1971).

⁹⁴ Martha Nussbaum, “The New Frontiers of Justice: Beyond the Social Contract,” Keynote Address at KAM Isaiah Israel Fifth Annual Dr. Martin Luther King Junior Food Justice and Sustainability Weekend (Jan. 17, 2014).

⁹⁵ Nevel often shares the experience of the KAMII gleaning program at events for community gardeners. See, e.g., Robert Nevel, Address at Panel Discussion on “Sharing the Harvest,” Advocates for Urban Agriculture Spring Gathering, Chicago, Ill. (May 15, 2013). <http://auachicago.org/2013/05/01/save-the-date-aaa-spring-gathering-on-may-15/>

⁹⁶ Such as the community garden at 62nd Street and Dorchester Avenue in Woodlawn. See <http://62garden.com/> (last visited Oct. 29, 2015).

guide their gardening programs.⁹⁷

The KAMII gleaning program at the 65th & Woodlawn garden also inspired a similar program at the Kumunda garden. But at Kumunda, the gleaning is not coordinated by KAMII, and the produce goes to a different food pantry. As a coordinator of the Kumunda garden explained to me, this was because when garden organizers from 65th & Woodlawn asked First Presbyterian for more land for a new garden, it came on the condition that any food gleaned from the new garden go to the church's own food pantry, rather than to other destinations.⁹⁸

During the 2014 season, these two gleaning programs ran in parallel, one block from each other. I gleaned with each organization, and found that the KAMII program was run like a machine. A team of a half-dozen gleaners swiftly moved from plot to plot and garden to garden, stopping back at the synagogue to weigh the gleanings for record-keeping and promotional purposes before distributing the vegetables to food pantries and senior centers in Kenwood and Woodlawn. At Kumunda, the gleaning program was more bare-bones. The garden coordinator carried over some plastic tubs from the church, and picked vegetables with the help of a summer intern, and sometimes a volunteer like myself.

In both cases, however, the act of gleaning involves constant judgment calls. Is this tomato ripe enough to pick? How many tomatoes is 10% of the harvest from this plot? Is this overgrown plot abandoned, or just ill-tended? If this plot is overgrown but has a survey flag in it, should we respect the opt-out signal? Old Testament verses may help justify gleaning as an ethical practice, but they do not resolve the many questions of how to glean in practice. For that, new gleaners such as myself would appeal to people who had more experience, sometimes stopping together to consider together the state of a garden plot before taking part of its bounty, or passing it over and moving on to the next.

If an urban commons is emerging in Chicago's community gardens, it is seldom through conscious effort to govern land as a common-pool resource. Instead, it appears to come about as people tinker with the plots of land that are available, and the resources they have to regulate how that land is used.

⁹⁷ Hazzan Arlyne Unger, "Notes from Hazzan Arlyne Unger," *The Ruach! Newsletter of Beth Tikvah B'nai Jeshurun*, vol 11. No. 5 (June 2015).

⁹⁸ Interview with Meg Mass, Chicago, Ill. (DATE)

Some of these resources, such as garden usage agreements or gleanings programs, are more easily understood as instances of self-organization. But other times gardeners draw on rules and norms available at different scales: municipal ordinances, aldermanic policies on where gardens should be located, even rules that have been written in religious texts. They experiment with these rules, seeing what works for gardeners, and what doesn't, sometimes trying to change higher-order rules such as composting ordinances, which would allow more sharing of resources in gardens. They also experiment with ways to strike a balance between exclusive use and obligation to others, giving gardeners the expectation that they will have most but maybe not all of the fruits of their labors.

B. Growing Home Urban Farm

If community gardens are places where people can experiment with ways of treating urban land as a common resource, what about urban farms? Might they also be places where people are bringing about and governing urban commons? Some social scientists have suggested that urban farms are a way to reclaim the commons. Geographer Nathan McClintock notes that “urban agriculture has served as a rallying point for radical structural critiques and the reclamation of the commons,”⁹⁹ and has proposed how vacant (or “fallow”) public land in Oakland might be treated as a commons, with larger sites run by urban agriculture organizations as “mini-farms,” or leased directly to commercial urban farmers.¹⁰⁰ Urban agriculture, McClintock argues, has become “about more than simply gardening,” with many growers “demanding rights-based changes to the food system and an increased focus on ‘entitlements, structural reforms to markets and property regimes, and class-based redistributive demands for land.’”¹⁰¹

Walking up to Growing Home Urban Farm, in Chicago's south-side Englewood neighborhood, you might not immediately recognize it as a structural reform to the city's property regime. The first structures you would notice would instead probably be hoop houses – long tube-like structures of curved metal poles and clear plastic sheeting, housing trellised tomato vines and rows of kale. On a summer day, you might see a group of

⁹⁹ Nathan McClintock. *Radical, reformist, and garden-variety neoliberal: coming to terms with urban agriculture's contradictions*. 19(2) LOCAL ENVIRONMENT 147, 154 (2014).

¹⁰⁰ MCCLINTOCK AND COOPER, *supra* note 1.

¹⁰¹ McClintock, *supra* note X at 8 (quoting Eric Holt-Giménez and Annie Shattuck, *Food crises, food regimes and food movements: rumblings of reform or tides of transformation?* 38 (1) J. PEASANT STUDIES 109, 114 (2011)).

workers – job trainees, actually – weeding the rows, prepping new beds for planting, or cleaning the harvest.

The way in which Growing Home’s founders experimented with property relations in developing this farm is not immediately apparent. But it is thanks to their tinkering that the farm is here, on two half-acre parcels on either side of an abandoned railroad embankment. To understand whether, or how, it makes sense to think of Growing Home as an urban commons requires mapping how people brought it about, and how it has fostered new ways of governing the use of urban land.

1. The Saga of Surplus Land

Growing Home’s roots extend back to a plan to claim a prime piece of lakefront property in downtown Chicago. At the end of 1988, the Chicago Coalition for the Homeless (CCH) received a memo from the National Coalition for the Homeless, in Washington D.C.¹⁰² The memo explained that a recent court order had directed the federal government to make available unused property for use by the homeless.¹⁰³ A month later, a list of properties arrived, and included one referred to as “Chicago Moorings.”¹⁰⁴

Lester Brown, a program associate with CCH, was taken by the potential leverage offered by the McKinney Act.¹⁰⁵ The Chicago Moorings property, a former Coast Guard facility, was a nearly ½-acre piece of prime lakefront property. It was located where the Chicago River meets Lake Michigan, at the base of Navy Pier, which was slated to be redeveloped as a massive tourist attraction. The McKinney Act’s prioritization of land for use by organizations that serve the homeless seemed to have the potential to trump local regulations which might otherwise bar use of such a site.¹⁰⁶

¹⁰² Memorandum from Maria Foscarinis and Tim Leshan, National Coalition for the Homeless, to Board of Directors and State Coalitions (Dec. 15, 1988) (on file with author). This and other archival documents cited in this section are in Growing Home’s organizational archives, which were generously made available to the author.

¹⁰³ *Id.*

¹⁰⁴ Department of Health and Human Services Division of Health Facilities Planning, “United States Government Property Notice of Determination of Homeless Suitability” (Jan. 9, 1989) (on file with author).

¹⁰⁵ Form letter from Les Brown, program associate, Chicago Coalition from the Homeless to potential supporters (Apr. 1, 1992) (on file with author).

¹⁰⁶ A copy of a letter that the Chicago Coalition from the Homeless received argued that “the McKinney Act preempts state and local zoning requirements that conflict with that Act.” Letter from Maria Foscarinis, National Law Center on Homelessness and Poverty, to Olivette Simmons Simpson, development officer, New Jersey Housing and Mortgage Finance Agency (Oct. 4, 1990) (on file with author).

Brown developed a plan for how CCH might use the property, in advance of applying to the Department of Health and Human Services in April of 1992. He came up with the idea of building several greenhouses on the site, in which homeless clients could learn job skills as they grew fresh herbs for nearby gourmet restaurants.¹⁰⁷ As he noted in a letter asking for support from the Center for Neighborhood Technology, which had developed the greenhouse attached to the First Presbyterian Church in Woodlawn, “Obviously we will face great opposition from the City, the Park District, and the people behind the Lakefront Protection Ordinance. I think, however, that the idea of a greenhouse and jobs for homeless people would be more difficult to oppose than a shelter.”¹⁰⁸ Brown also realized that the claim to the property was likely to turn into a bargaining chip with the city, rather than actually turning into a project at the lakefront site. “Given the location and value of the property,” he wrote in a letter asking for support from other organizations, “we expect to encounter considerable opposition from a number of sources. However, we feel strongly that we, at least, will be in a position to leverage other funds and resources should we be unable to develop the proposed program.”¹⁰⁹

Exactly what might be achieved by using this lever was an open question. Brown and CCH set the experiment in motion, eager to see what they might get in return for their claim to the property. As expected, the city resisted the land being given to CCH, and filed its own application for the property.¹¹⁰ Over the next 18 months, the General Services Agency mediated negotiations between city officials and the CCH. Throughout, CCH maintained that the McKinney Act gave them a valid claim to the land, while city officials affirmed that a claim could not be made to land that would violate local zoning and lakefront land use restrictions. The city proposed that if CCH dropped its claim to the Moorings site, it would transfer a different piece of city-owned land for the greenhouse project, as well as helping CCH apply for grants to support the program. CCH rejected the city’s initial list of alternative sites, and submitted criteria that any alternative location would have to meet; CCH also tested a number of different proposals, including creating a line in the city budget dedicated to

¹⁰⁷ Letter from Les Brown, Chicago Coalition for the Homeless, to Lou Kreinberg, Center for Neighborhood Technology (Mar. 23, 1992) (on file with author).

¹⁰⁸ Id.

¹⁰⁹ Form letter from Les Brown letter, *supra* note ____.

¹¹⁰ Growing Home, *Timeline: Nave Pier Moorings Site, negotiations for Land Swap, Agreement to Allow Growing Home Sell Property*. (undated, circa Oct. 2004) (on file with author).

supporting the greenhouse program, to an annual fee on leases at the new Navy Pier Development that would fund low-income housing, to assistance from the city in getting local restaurants to source their produce from the greenhouse project.

By the fall of 1993, the City and CCH had reached the outline of a deal: in exchange for CCH dropping its claim to the Chicago Moorings site, the city would sell it a piece of vacant city-owned land on the near southwest side for \$10, give it priority in applying for grants, provide a no-cost lease for a produce stand at Navy Pier, and some other assistance. The deal nearly stumbled over a final hurdle when the alderman for the ward in which the alternative property was located objected to the transfer; CCH responded by telling city officials they would need to have Mayor Daley prevail upon the alderman, or CCH would move to have the federal government decide on its application for the Moorings site. Ultimately, the transfer of the land went through.

From 1996 to 2001, CCH worked on developing a greenhouse project at the site on Fourteenth Street. But in the process, it discovered that the land was contaminated; the city's due diligence prior to CCH taking ownership had been insufficiently rigorous.¹¹¹ At the beginning of 2001, the city said that it did not have the money to cover the costs of remediating the contamination, which were estimated at \$150,000.¹¹² This left CCH holding a liability: a contaminated parcel of land that by the terms of its transfer from the city could only be used for homeless services.¹¹³ CCH negotiated with the city for the right to sell the property, instead, and take the money from the sale.¹¹⁴ The city agreed, and after a couple years of looking, Growing Home was able to find a buyer who paid over \$900,000 for the site at the end of 2004.¹¹⁵ Over a decade into the experiment to see what could be gained from the sliver on the river, this gave Growing Home, the nonprofit organization that CCH had spun off to run the greenhouse project, a tidy sum of money. But it still had no land on which to build a farm in Chicago.

2. Coming to Englewood

City officials were still willing to transfer land to Growing Home for the project, and their attention soon turned to Englewood, where a quality of

¹¹¹ Interview with Laura Tilly, board member, Growing Home, Chicago Ill. (DATE).

¹¹² Growing Home, Timeline, *supra* note ____.

¹¹³ Cite development agreement.

¹¹⁴ Growing Home, Timeline, *supra* note ____.

¹¹⁵ *Id.*

life planning process was underway.¹¹⁶ The plan proposed to “[d]evelop an urban agriculture district to provide business, job training and employment opportunities while improving the availability of fresh produce.”¹¹⁷

This was a new vision for Englewood, which as one community organizer put it to me, has replaced Woodlawn in being perceived by city officials and urban planners as the most troubled neighborhood in the city, most in need of interventions.¹¹⁸ Englewood, which the media has focused on recently for its high crime rates and troubled schools,¹¹⁹ is home to households that are predominantly African-American and low-income.¹²⁰ According to data from the City of Chicago, between 2008 and 2012 some 46% of households in the Englewood community area had incomes below the federal poverty line, and 28% of residents over age 16 were unemployed.¹²¹ In 2010, 58% of children in Englewood lived in poverty.¹²²

Englewood has also been the site of incredible disinvestment and depopulation over the past several decades. Once a vibrant commercial center, second only to the downtown Loop,¹²³ it is now a landscape marked

¹¹⁶ TEAMWORK ENGLEWOOD AND LISC/CHICAGO’S NEW COMMUNITIES PROGRAM, ENGLEWOOD: MAKING A DIFFERENCE. (Dec. 2005.) Available at http://www.newcommunities.org/cmadoes/englewoodsummaryplan_12-05.pdf (last visited Oct. 29, 2015).

¹¹⁷ Id. at 6.

¹¹⁸ L. Anton Seals, comments during Social Justice Bicycle Ride of Woodlawn and Englewood (Aug. 2, 2014).

¹¹⁹ See, e.g., This American Life, *Episode 487: Harper High School Part One*, Available at <http://www.thisamericanlife.org/radio-archives/episode/487/harper-high-school-part-one> (last visited Oct. 29, 2015).

¹²⁰ In the 2010 census, residents of census tracts in Englewood and West Englewood were 97-98% African-American. See Matthew Bloch, Amanda Cox, and Tim Giratikanon, *Mapping Segregation* THE NEW YORK TIMES, Jul. 8, 2015. Available at <http://www.nytimes.com/interactive/2015/07/08/us/census-race-map.html> (last visited Oct. 29, 2015).

¹²¹ Other residents have likely stopped looking for work and thus are not officially counted as unemployed. In the West Englewood community area, which is often considered part of “Greater Englewood,” things are little better: 34% of households fell below the poverty line, and 35% of residents over 16 years old were unemployed. See City of Chicago Data Portal, *Census Data – Selected Socioeconomic Indicators in Chicago, 2008-2012*. Available at <https://data.cityofchicago.org/Health-Human-Services/Census-Data-Selected-socioeconomic-indicators-in-C/kn9c-c2s2> (last visited Oct. 29, 2015).

¹²² Illinois Action for Children, “Population and Poverty Data by Chicago Community Area” (Sept. 2011) Available at http://www.actforchildren.org/site/DocServer/2010_Census_Data_Fact_Sheet_by_Chicago_Community_Area.pdf (last visited Oct. 29, 2015).

¹²³ Clinton E. Stockwell, *Englewood*, in THE ELECTRONIC ENCYCLOPEDIA OF CHICAGO (2005), Available at <http://www.encyclopedia.chicagohistory.org/pages/426.html> (last

by vacant lots. In the fall of 2015, the City owned over 1600 vacant properties in Englewood, totaling 153 acres or 7.7% of the total land area.¹²⁴ Several thousand more vacant lots are privately owned.¹²⁵

As in Woodlawn, this landscape is the product of successive waves of depopulation and disinvestment. In 1930, Englewood was an almost entirely white neighborhood, home to 89,000 people.¹²⁶ Thirty years later, the population had risen to over 97,000, but tens of thousands of white residents had already left the neighborhood; the population was now 69% African-American.¹²⁷ Since 1960, Englewood has lost over two-thirds of its population, and by 2010 was home to just over 30,000 people, 97% of whom are African-American.¹²⁸

This decades-long exodus has prompted city planners to reimagine what Englewood might look like, working on the assumption that the population will only increase at a low rate over the next 25 years.¹²⁹ Reimagining possible uses for land after disinvestment has created opportunities for expansion and profit. A large swath of the east side of the neighborhood has been leveled, to make way for an expansion of the Norfolk Southern intermodal rail yard, which increases Chicago's capacity to import goods that were manufactured overseas.¹³⁰

Meanwhile, a spur railroad line which once served light industrial firms along 59th Street sits abandoned, with many of the former manufacturing

visited Oct. 29, 2015).

¹²⁴ Author's analysis, based on data downloaded on Oct. 3, 2015, from the City of Chicago Data Portal's "City-Owned Land Inventory" database, accessible at <https://data.cityofchicago.org/Community-Economic-Development/City-Owned-Land-Inventory/aksk-kvfp> (last visited Oct. 3, 2015).

¹²⁵ CITY OF CHICAGO DEPARTMENT OF PLANNING AND DEVELOPMENT, GREEN HEALTHY NEIGHBORHOODS, 7 (2014). Available at http://www.cityofchicago.org/city/en/depts/dcd/supp_info/green-healthy-neighborhoods.html (last visited Oct. 29, 2015).

¹²⁶ Stockwell, *supra* note ____.

¹²⁷ Id.

¹²⁸ City of Chicago, Census 2010 and 2000 by Community Area. Available at www.cityofchicago.org/dam/city/depts/zlup/Zoning_Main_Page/Publications/Census_2010_Community_Area_Profiles/Census_2010_and_2000_CA_Populations.pdf (last visited Oct. 29, 2015); Illinois Action for Children, *supra* note ____.

¹²⁹ GREEN HEALTHY NEIGHBORHOODS, *supra* note ____, at 10-11.

¹³⁰ Chicago Metropolitan Agency for Planning, *Intermodalism: Metropolitan Chicago's Built-in Economic Advantage* (May 1, 2015). Available at http://www.cmap.illinois.gov/about/updates/-/asset_publisher/UIMfSLnFfMB6/content/intermodalism-metropolitan-chicago-s-built-in-economic-advantage (last visited Oct. 29, 2015)

sites vacant lots. City planners have imagined building a fitness trail on the abandoned embankment,¹³¹ along the lines of Manhattan’s High Line, or the recently-opened 606 trail that links hipster neighborhoods on Chicago’s north side.¹³²

In the wake of the quality of life planning process, the City sold a piece of land to Growing Home on the north side of this railroad embankment. This became the Wood Street urban farm. Following Les Brown’s vision and the hopes of the community plan, the farm’s primary goal is to provide job training for people transitioning out of homelessness and incarceration.¹³³ Growing food offers a context for training people who have barriers to employment in the basic skills of being a worker: how to arrive on time, and attend to detailed (and potentially repetitive and boring) tasks. Growing Home also works with partners to help its trainees seal or expunge their criminal records.¹³⁴ In so doing, it is addressing in some small way the barriers to labor market entry and mobility that mass incarceration has created for residents of neighborhoods like Englewood.¹³⁵ If land for the farm is the byproduct of historic disinvestment in communities like Englewood, then its labor force might be thought of as the byproduct of mass incarceration, with trainees’ modest stipends underwritten by grants from city and state agencies and charitable foundations that aim to facilitate reentry into society by formerly incarcerated people.¹³⁶

3. From Ownership to Trust

After receiving the parcel on Wood Street from the city, Growing Home sought to put up a building on the site for its offices, processing facility, and

¹³¹ See GREEN HEALTHY NEIGHBORHOODS, *supra* note ___, at 39-45.

¹³² See The 606, <http://www.the606.org/> (last visited Oct. 29, 2015).

¹³³ Growing Home, *About Us*, <http://growinghomeinc.org/about-us/> (last visited Oct. 29, 2015).

¹³⁴ *Id.*

¹³⁵ See, e.g., Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67(4) AM. SOCIOLOGICAL REV. 526

¹³⁶ Trainees earn up to \$3,500 over the course of a 14-week training program. Growing Home, 2014 Annual Report - Employment, *available at* <http://growinghomeinc.org/report2014/employment.html> (last visited Oct. 29, 2015). Growing Home has recently received major grants from the City of Chicago Department of Family and Support Services and the Illinois Department of Corrections, in addition to a wide range of foundations. Growing Home, 2014 Annual Report - Grants, *available at* <http://growinghomeinc.org/report2014/grants.html> (last visited Oct. 29, 2015); Growing Home Annual Report 2012-2013, *available at* <http://growinghomeinc.org/docs/GrowingHome12-13AnnualReport.pdf> (last visited Oct. 29, 2015).

classroom. To do so, the organization's leaders planned to use their newly-owned land as collateral for a loan. But when lenders did their due diligence into the property, they found evidence of contamination. Once again, it turned out that Growing Home had failed to find that the site the city had sold them was polluted. This complicated the process of receiving a loan.¹³⁷ But this time, rather than selling the property, Growing Home managed to get support from the city to cover the costs of remediation.¹³⁸ The loan, and the construction, went forward.

Growing Home's twelve-year saga to find land on which to build a farm illustrates how ownership of land can be as much a curse as a blessing. Receiving city-owned properties can come cheap, but also involve taking on hidden liabilities. Twice the city transferred land to Growing Home that turned out to be contaminated. This forced the farm's leaders to either figure out a way to move on to another site, or find the money needed to clean up the contamination. Yet for raising money through a mortgage, or having the ability to custom-build a permanent structure, ownership of a site is essential.

When Growing Home sought to expand to a parcel across the embankment, on Honore Street, it decided to try something different. Rather than taking ownership of the land from the city, it figured out a way to have the parcel transferred from the city to NeighborSpace, and then rent the land from the land trust. Up until that point, NeighborSpace had only held land for community gardens – holding land for a commercial, albeit nonprofit, farm was a new proposition. It prompted discussions among the NeighborSpace board, to decide whether such a land use fell within its mission of community-managed open space.¹³⁹

Ultimately, the board agreed that the deal could go forward without amending the land trust's bylaws. In the process, it developed rough criteria for holding land for urban farms: a farm would to be run by a not-for-profit organization; it could not be an indoor farm, or involve any permanent structures on the site (though hoop houses are permissible); and the site could not be too big.¹⁴⁰ According to NeighborSpace's executive director, this last criterion remains somewhat vague, and depends on the context of a site.¹⁴¹

¹³⁷ Interview with Laura Tilly, *supra* note ____.

¹³⁸ *Id.*

¹³⁹ Interview with Ben Helphand, executive director, NeighborSpace, Chicago, Ill.

(DATE).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

City officials, of course, also had to be willing to transfer land to a trust, rather than directly to a farming organization. But from their perspective, NeighborSpace's ownership of the land helps solve some of the problems concerning site preparation, since the land trust can help coordinate and fundraise for environmental testing and any needed remediation.¹⁴² Since this can be a significant investment – in the range of several hundred thousand dollars – knowing that the land will remain in trust and be used for open space even if a nonprofit is no longer able to use it helps to secure the public investment in preparing the land.¹⁴³

The experiment that began at Honore Street has helped to spark new thinking about how vacant land can be governed and put to use, by serving as a model for transferring city-owned lots to NeighborSpace, for use by nonprofit farms. And other projects have been starting to follow suit. In East Garfield Park, a low-income, predominantly African American neighborhood on Chicago's West Side, NeighborSpace now holds 2.6 acres of land for Chicago FarmWorks urban farm, which grows vegetables for sale at wholesale prices to the Greater Chicago Food Depository.¹⁴⁴ Officials from city agencies and local foundations, eager to expand commercial urban agriculture in Chicago, have come to see the land trust as an useful tool for furthering that goal.

Holding farmland in trust serves as a potential complement for for-profit, entrepreneurial urban farming models. Foundation officials in particular seem interested in the potential for the urban farming sector to move beyond nonprofit business models dependent on grants. One whom I spoke with in 2014 was particularly excited by a Baltimore-based company that prepares sites and builds farms that other organizations can use, and by a small Chicago company that was developing a similar fee-for-service based model.¹⁴⁵ Recently local foundations have created a joint program called "Food:Land:Opportunity," which is funding a NeighborSpace-led effort to develop a land tenure model that could support for-profit commercial growers in Englewood.¹⁴⁶

¹⁴² Interview with Bradly Roback, TITLE, City of Chicago Department of Planning and Development, Chicago, Ill. (DATE).

¹⁴³ Id.

¹⁴⁴ Heartland Alliance, *Heartland Human Care Services Breaks Ground on West Side Urban Farm*, (Nov. 14, 2012). Available at <http://www.heartlandalliance.org/news-and-publications/inthenews/press-releases/urban-farm.html> (last visited Oct. 29, 2015).

¹⁴⁵ Interview with Karen Lehman, Director, Fresh Taste funder initiative, Chicago, Ill., (May 9, 2014).

¹⁴⁶ Food:Land:Opportunity, *Current Projects*, available at http://www.cct.org/about/partnerships_initiatives/searle-foodlandopportunity/ (last visited

This potential new role for NeighborSpace responds to a problem likely to arise thanks to the growth of programs focused on training new commercial urban farmers. In 2013, Mayor Rahm Emanuel announced the Farmers for Chicago program, which committed the city to helping to find land for farmer trainees from organizations such as Growing Home.¹⁴⁷ The Chicago Botanic Garden and Growing Power have since developed “incubator farms” where beginning urban farmers can refine their growing skills, test out their business models, and sharing equipment and distribution facilities.¹⁴⁸ Yet when the incubation period ends for these new farmers, the questions remains where they might go to establish their farming businesses. Will they be able to afford land at market rates in the city, or will they have to move to the country to find land?¹⁴⁹

The planning process funded by Food:Land:Opportunity is aimed at figuring out a way for for-profit urban farmers to afford land in Englewood. As of late 2015, there were many things yet to be worked out. If land could be made affordable by holding it in trust and leasing to farmers, is that something NeighborSpace could do, without revising its mission? One option that participants in the process have discussed is the possibility of creating a nonprofit growers’ cooperative that would lease land from

Oct. 29, 2015). Interest has also been growing around the country in how the community land trust model, developed for affordable housing, could be adapted to provide appropriate land tenure models for urban agriculture projects. See Greg Rosenberg and Jeffrey Yuen. *Beyond Housing: Urban Agriculture and Commercial Development by Community Land Trusts*, Lincoln Institute of Land Policy Working Paper WP13GR1 (2012).

¹⁴⁷ Press Release, City of Chicago, Mayor Emanuel Launches New ‘Farmers for Chicago’ network for Chicago Urban Farmers (Mar. 15, 2013). *Available at* http://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2013/march_2013/mayor_emanuel_launchesnewfarmersforchicagonetworkforchicagourban.html (last visited Oct. 29, 2015).

¹⁴⁸ Chicago Botanic Garden, Chicago Botanic Garden’s Beginning Farmers and Ranchers Development Program establishes four incubator farms in year two of three-year program, http://www.chicagobotanic.org/pr/release/chicago_botanic_garden_establishes_four_incubator_farms (last visited Oct. 29, 2015); Growing Power, Farmers for Chicago, <http://www.growingpower.org/education/chicago-farms-and-projects/farmers-for-chicago/> (last visited Oct. 29, 2015).

¹⁴⁹ Farm incubator programs elsewhere have confronted difficulties in graduating trainees onto their own land outside of the program. One of the earliest programs, Intervale Farms in Burlington, Vermont, faced the problem of letting too many early trainees remain on the land as “mentors,” which meant there was eventually little land left on which to bring new trainees. See Notes on talk by Andrea Tursini from Intervale, 2-3 (Oct. 29, 2010), Northeast Beginning Farmers Program, <http://www.nebeginningfarmers.org/files/2012/05/Andrea-Tursini-Farm-Incubators-sc7cbp.pdf> (last visited Oct. 29, 2015).

NeighborSpace or another land trust.¹⁵⁰ The members of the cooperative, in turn, could then incorporate using the business form of their choice, whether as non-profits or as some type of for-profit entity.¹⁵¹

For some community organizers from Englewood who have been involved in this process, these visions hold both promise and the potential for threat. The promise is clear: a suitable land tenure model could provide the basis for investments that would turn some of the neighborhood's vacant lots into productive green spaces. But the threat is that such a model would grant control over land use to an organization such as NeighborSpace, which is run by a staff and a board which is composed neither of people from Englewood, nor, for the most part, of African Americans. As one organizer explained to me, it was difficult to imagine supporting a model in which a white-run organization would own land being farmed by black people, or in which people who weren't from the neighborhood – or at least look like the people from the neighborhood – would benefit from access to low-cost farm land.¹⁵² Yet she acknowledged that it would be difficult for a trust for urban farmland to require that growers have a particular racial background,¹⁵³ it would almost certainly receive public lands and public funds.

One option would be to prioritize growers from Englewood and nearby neighborhoods. The city used a somewhat similar strategy in recent programs that sold city-owned vacant lots to residents for \$1 each.¹⁵⁴ Known as the Large Lots programs, these were piloted in Englewood and West Woodlawn in 2014, and have since expanded to other neighborhoods where the city owns large numbers of vacant lots.¹⁵⁵ To prevent outsiders from coming into the neighborhoods and buying up land, the Large Lots programs have required prospective purchasers to own a property either across the street or on the same block as the vacant lot they wish to buy.¹⁵⁶

¹⁵⁰ Interview with Ben Helphand, executive director, NeighborSpace, Chicago, Ill. (Aug. 27, 2015).

¹⁵¹ This model, however, would raise questions about how leasing arrangements between a land trust, a nonprofit cooperative, and for-profit businesses might affect the tax-exempt statuses of the land trust and the cooperative.

¹⁵² Interview with Sonya Harper, Executive Director, Grow Greater Englewood, Chicago, Ill. (Aug. 30, 2015).

¹⁵³ Id.

¹⁵⁴ Large Lots Program, <https://largelots.org/> (last visited Oct. 29, 2015).

¹⁵⁵ Id.

¹⁵⁶ This is effectively an expansion of a city program in which homeowners could buy city-owned vacant lots immediately adjacent to their home. City of Chicago, Adjacent Neighbors Land Acquisition Program,

The difficulty with applying a residency requirement to people who would seek to farm land held in trust in Englewood is that the neighborhood might not have any residents with the skills needed to run a successful urban farm. An African-American community organizer who had tried to start a project with a white farmer in a nearby South-Side neighborhood explained to me that there are only a certain number of people in the city who have the right mix of growing and business skills.¹⁵⁷ If through a process of opportunity hoarding white people have tended to monopolize those skills¹⁵⁸ – or if they simply have greater ability to take on unpaid internships on urban farms – then using “merit” alone as a basis for deciding who should have access to farmland held in trust could tend to create white spaces in otherwise black places such as Englewood.¹⁵⁹

Yet even with these complications, it is worth noting how Growing Home in particular, and urban farming more generally, has helped Chicagoans imagine and act on new ways of claiming, using, and governing urban space. In some sense, this is as much a part of their work as growing food, or providing job skills training. For example, since a recent trip to Cuba during a fellowship year sponsored by a local foundation, Growing Home’s executive director has taken to showing a documentary film of a collective farm that he visited in Havana.¹⁶⁰ The film shows Chicagoans what is possible when a city gives growers usufruct rights to vacant land.¹⁶¹ But to bring about such visions in the complex legal and social landscape of the South Side of Chicago requires figuring out who is willing to make land available for such uses, and on what conditions. And in Chicago, that collective, and sometimes contentious, process is very much a work in progress.

https://www.cityofchicago.org/city/en/depts/dcd/supp_info/adjacent_neighborslandacquisitionprogramanlap.html (last visited Oct. 29, 2015).

¹⁵⁷ Interview with Brandon Johnson, former Executive Director, Washington Park Consortium, Chicago, Ill. (Jul. 13, 2015).

¹⁵⁸ See DOUGLAS MASSEY, *CATEGORICALLY UNEQUAL: THE AMERICAN STRATIFICATION SYSTEM*, 244 (2007).

¹⁵⁹ Brandon Hoover, *White Spaces in Black and Latino Places: Urban Agriculture and Food Sovereignty*, 3(4) J. OF AG., FOOD SYSTEMS, AND COMMUNITY DEV. 109 (2013). See also Minehaha Forman, *Race Dynamic Seen as Obstacle in Detroit Urban Farming*, THE MICHIGAN MESSENGER (Oct. 30, 2009), available at <http://www.cityfarmer.info/2009/11/02/race-dynamic-seen-as-obstacle-in-detroit-urban-farming/> (last visited Oct. 30, 2015).

¹⁶⁰ TIERRALISMO: STORIES FROM A COOPERATIVE FARM (Alejandro Ramirez Anderson, 2013).

¹⁶¹ Interview with Rhodes.

III. THE URBAN COMMONS AS PROPERTY EXPERIMENT

Mapping the socio-legal practices by which people are claiming and governing land for urban farms and gardens can offer a new perspective on how these might be sites of commons governance in the city. In reflecting on how farmers and gardeners in Chicago are experimenting with property rules and relations, it is worth asking again: are they in fact reclaiming a *commons*, as some scholars have suggested? If so, *how* are they doing so? And how do their practices compare to how scholars of the have thought of *commons governance* as a type of self-organized institution?

First, it is clear that even if most gardeners and farmers are not explicitly reclaiming the commons, they are certainly staking claims to land, usually vacant lots. Such pieces of land might be understood as a sort of common pool resource in the sense defined by Ostrom. It is expensive to exclude people from a vacant lot, and particularly so from all the vacant lots in a neighborhood. And one person's use of a lot – for gardening, dealing drugs, or dumping trash – does reduce the area available to other potential users. When gardeners and farmers make claims to vacant lots, then, they are asserting that at least some portion of this common pool resource could be managed by residents of a neighborhood, in order to provide benefits to their community. The claim, however, is not usually that a community gardens or urban farm will be a site to which *all* will share access. More common is that it will a place in which some but not all residents will share rights to draw upon and collectively manage the resource.

The stories of Kumunda garden and Growing Home help illustrate how gardeners and farmers go about making these claims to vacant land as a type of common resource. As I have described, people make such claims in a variety of ways. The assertion is not that these are typical of all community gardeners and farmers generally, even in the city of Chicago. But even if they are not generalizable to all gardens everywhere, they provide a useful way for conceptualizing how urban gardeners and farmers make claims in a pragmatic way, experimenting with rules and norms to see what claims succeed, and which fail.

We might think of urban growers' property experiments as falling into two general categories: claiming access to space, and figuring out how to govern and use space once access is granted. As the stories in this article show, experiments with claiming space can come in many forms. Growers experiment with ways of getting land and other resources from private organizations that threaten to displace them; they tinker with ways to get

ownership or use of city-owned land, whether for gardens or for commercial farms that provide community resources.

In the course of these experiments, city officials often exercise control over where gardeners and farmers can access land. As Growing Home's saga illustrates, even a well-founded legal claim to land does not mean a gardener can count on access to a prime parcel of downtown land. City officials have particular neighborhoods, such as Englewood, where they understand commercial urban agriculture to be an appropriate use of land. And in any neighborhood, the alderman generally has veto power over whether a garden or a farm will have access to a city-owned vacant lot.

The city, however, is not the only player in determining access to land. Local foundations have also gotten involved in this process. Their funding supports the realization of city plans, such as the Green Healthy Neighborhoods plan, but fills in the blank spaces in those plans by helping to create and legitimize new models for land tenure. Growers who want access to land thus are not only making claims to the city, but also pitching their projects to foundation officials. Having gained the backing of foundations, they may be better able to satisfy city officials that transferring land into trust for for-profit urban farms will be likely to succeed, at least in the sense that the land will be used, and not return to the city's inventory.

Once gardeners and farmers have secured access to land, they have to figure out how to govern its use. Here the question is whether they are creating examples of commons governance. This is often conceived in terms of *self-organized* resource management – a form of governance that ensures the (but not the overuse) of resources without resort to government coercion or transfers to private ownership.¹⁶² How well does that explain what is going on in gardens and farms like Kumunda and Growing Home?

In certain ways, the concept of self-organized commons governance fits these settings quite well. Growers are indeed experimenting and inventing rules for managing these spaces on their own. Community gardens such as Kumunda have rules and usage agreements developed by their coordinators and their users, sometimes by reference to model garden rules,¹⁶³ sometimes by appeal to property rules from the old testament.

For their part, urban farming nonprofits develop their own growing plans, and decide how to allocate their yield, balancing farm stand sales with sales to restaurants and donations to food pantries. When they are on

¹⁶² Ostrom, Sheila R. Foster, *supra* note 1, 62.

¹⁶³ See, e.g., American Community Gardening Association, *Sample Garden Rules*, <https://communitygarden.org/resources/sample-garden-rules/> (last visited Oct. 31, 2015).

NeighborSpace land, like Growing Home's Honore Street farm, they must comply with the rules created by the land trust, such as building only hoop houses and other temporary structures. We might see such a rule as the result of NeighborSpace's board tinkering with ways of interpreting their mission, a process of self-organization of rules that govern how land may be used for commercial farms in a way that conserves urban open space.

But there are also ways in which self-organization by gardeners, farmers, and entities like NeighborSpace is at least symbiotic with, if not ultimately constrained by, rules mandated by city government. In community gardens, for example, city officials hold a veto over whether a garden on city or privately-owned land may be transferred to NeighborSpace; whether water is made available via a fire hydrant; and what materials may be used for composting. Gardener advocacy groups can and do renegotiate and seek to expand their control over management of these resources. And their involvement in amending Chicago's composting ordinance suggests that self-organization can sometimes result in the reworking of municipal rules. But ultimately the power to make, monitor, and enforce those rules rests with government officials – and with neighbors of gardens and urban farms, who are perhaps most likely to call in complaints to the city.

Self-organization by urban farms and by NeighborSpace is also symbiotic with, and ultimately subordinate to, the desires of municipal officials. Offering city land to farms and to NeighborSpace creates secure, affordable land for nonprofit growers, while also helping city officials move vacant lots in their inventory into productive use. This may not directly expand the tax base,¹⁶⁴ but it can help remove liabilities from the city's balance sheet.¹⁶⁵ Moreover, local government officials retain a great deal of control over how NeighborSpace governs the allocation and use of its land. Much of the land trust's board is composed of government employees, and the organization relies on allocations from the city, the Chicago Park District, and the Cook County Forest Preserve District for much of its revenue.¹⁶⁶ Thus even as people in Englewood work to imaging a land

¹⁶⁴ Some studies have suggested that community gardens raise surrounding property values, but it is unclear whether urban farms have the same effect. Ioan Voicu and Vicki Been, *The Effect of Community Gardens on Neighboring Property Values*, 36(2) REAL ESTATE ECONOMICS 241 (2008).

¹⁶⁵ The city is no longer liable for the potential environmental contamination the vacant land, and may face less costs in policing unused spaces.

¹⁶⁶ NeighborSpace, Board, <http://neighbor-space.org/about/board/> (last visited Oct. 31, 2015). Interview with Ben Helphand, *supra* note ___ and Mary Jo Schnell, former executive

tenure model that could hold land for for-profit farms, they are doing so in the context of a land trust that ultimately responds to the interests of local government officials. This complicates the conception of urban farms and gardens as pure-spaces of self-organization, or even spaces in which government merely plays a facilitative role.

On the other hand, it is also difficult to divorce self-organization in urban gardens and farms entirely from the rules and norms central to private property. Indeed, we might better think of self-organization in gardens and farms as a process of tinkering with the core assumptions of private property, rather than inventing new rules of community management out of whole cloth. In gardens like Kumunda, for example, garden plots are leased for a season to individual gardeners, giving them the right to exclude others and benefit from the production on what is effectively their property for the season. Garden coordinators experiment with the conditions that apply to such leases. If you don't use your plot by a certain date, you may lose the right to use it and exclude others. Or if you don't opt out of the gleaning program, you may have others enter your land and seize some portion of your produce. If you don't chip in to plant a common garden outside the fence, then people may end up jumping the fence and picking from your garden. Rights central to a common conception of private property – the right to exclude others, and to benefit from property – remain the default expectations, while garden coordinators and gleaning program leaders tinker with ways of shifting those defaults in a direction that creates social obligations to the community on the part of individual gardeners.

A similar tinkering with the bundle of rights to private property characterizes property experimentation in the context of urban farms. Vacant parcels acquired from the city come with redevelopment agreements that require they be used for particular purposes. For example, the redevelopment agreement for Growing Home's Wood Street farm required that the land be put into agricultural use by a nonprofit that provides job skills training. This suited Growing Home's needs, of course, but it also meant that if these conditions were not met, the city could take back ownership of the land. Social obligations effectively run with the land; to get out of them requires negotiating with the city, as when Growing Home found that its land on 14th Street was contaminated, and wanted to resell the parcel and take the proceeds.

Farmland leased from NeighborSpace is similarly restricted. Farmers

can grow what they like on the land, so long as they pay the rent. But they must use the land for farming, only build temporary structures, and, at least for the moment, be a nonprofit – which ensures some sort of community purpose. It seems possible that a future model that holds farmland in trust for for-profit farmers could include some sort of residency requirement. Again, although farmland is not managed by making it private property that is traded on the market, these experiments with how it may be governed are effectively ways of tinkering with the bundle of rights may be divided in ways that promote the use of land as both a resource for commercial farmers and for their surrounding community.

Governance of land for farms and gardens, then, is not some “pure” form of commons governance, in which self-organization of resource management occurs separate from the coercive influence of government and the forms and norms of private property. We might better think of it as an emergent and experimental form of governance that encourages use and sharing of land as a shared, community resource by both creating rules to govern particular spaces, and experimenting with ways to leverage and rework municipal ordinances and expectations of private property rights.

A socio-legal mapping of how people actually allocate and govern land for urban gardens and farms helps identify the wide range of rules and norms in play. It reminds us of Ostrom’s observation that self-organization always exists within a broader governance. Although Ostrom conceptualized this in terms of a nested hierarchy of governance structures, one might also think of an intersecting and overlapping network of rules and norms – governing everything nonprofits to zoning, land trusts to transfers of city and federal land, racial discrimination to norms of sharing – that people who seek to access and collectively govern urban land can pull upon.

This network of rules both create and limit possibilities for people in places like Woodlawn or Englewood who want to rework who can use the vacant land in their neighborhood. But it also creates opportunities that people or organizations from the other side of the city may seek to exploit, whether as a place to garden, or to set up an urban farm. This complicates the idea that a particular urban commons is a site governed and used by neighborhood residents. It may be a resource for the entire city, and contribute to the experience of the city itself as a commons.¹⁶⁷ But as with other resources in the city, it may become a site of contention over who can access and use the common resource, and whether such rules of access and

¹⁶⁷ See Sheila R. Foster and Christian Iaione, *supra* note ____.

use reproduce forms of social exclusion that appear in other domains of urban governance.

a. An Experimentalist Policy for the Urban Commons?

If we understand the emergence of the urban commons as a product of property experimentalism, how might that affect visions for urban policy? First, it would emphasize that there is not one single policy intervention to support peoples' efforts to bring about the commons governance of urban land. People both in and outside of local government pursue multiple and quite diverse points of influence as they seek to bring about sites and systems of collective resource management. Innovation takes many forms, from adapting land trust models to new contexts to imagining how the old testament could support claims to other peoples' tomatoes.

Socio-legal mapping, which already helps guide urban growers and their allies as they develop property experiments, could also be a tool of people who understand themselves as policymakers. It could help identify ways in which a wide range of government agencies and actors – from aldermen to city planners to park district officials – could help foster experiments that promote community control and management of resources. Following the path suggested by scholars of democratic experimentalism, a continual process of mapping could constantly monitor the progress of these experiments, and draw lessons that could be applied in subsequent innovations.

In the narrative in this article, NeighborSpace offers a promising example of such an experimentalist process. Having identified a problem of community-managed open space, local governments came together to create an entity that would allow people support and space to figure out how to manage community gardens. The lessons from this work helped inspire an expansion of the land trust's work into holding land for nonprofit farms, which may soon morph again into holding land for for-profit farms.

The role of the policymaker concerned with supporting the urban commons then would be to ask "what rule best promotes experimentation by people who want to promote community management and sharing of resources?" This could offer new criterion for decision-making, alongside existing criteria such as what will promote growth, quality of life, or an expanding tax base. Just as those existing criteria are at times in alignment and other times in tension, a prioritization of property experimentation may sometimes align with growth or growing the tax base, and sometimes not.

This perspective could turn a common way of thinking about the urban commons on its head. Often, policies promoting the urban commons focus

on protecting sites of community resource management from development, a defensive struggle that pits the commons against urban growth. An experimentalist approach might focus instead on identifying and creating new spaces for commons governance – a proactive struggle which imagines ways in which sites of community resource management might further forms of growth, or in which forms of democratic planning help increase the productive and efficient use of urban land.¹⁶⁸

A pro-experimentalist policy for the urban commons, however, has a built-in contradiction. As the Kumunda and Growing Home stories illustrate, property experiments often push the bounds of what government or nonprofit actors consider imaginable. This is what the founders of Growing Home did when they staked a claim to land on the downtown lakefront, and planned to build a farm for Chicago’s homeless residents. Federal officials were willing to entertain the experiment – the homeless advocates did, after all, state a plausible claim. But city officials did not take a stance that promoted experimentation – at least, not when such an experiment was imagined as the front door of a major tourist attraction.

If property experiments sometimes conflict with the interests and plans of city officials, then a policy framework that fosters experiments to bring about the urban commons might itself become the subject of experimentation and conflict. Even as we imagine urban commons as sites that are community owned and managed, people who want to preserve those sites might try to secure public ownership and management. This happened in Chicago in the past, when garden advocates after the first world war sought to use eminent domain to take public ownership of land on which people had built vacant lot gardens and war gardens.¹⁶⁹ And it is a strategy that some garden advocates have lately pursued in New York City. A policy that promotes experiments by residents and non-profits to bring about urban commons that provide public goods not provided by the state may evolve into claims that the state itself should directly support the provision of those public goods.¹⁷⁰

¹⁶⁸ See Joel Rogers, *Productive Democracy*, THE NATION, Mar. 23, 2015. Available at <https://www.thenation.com/article/productive-democracy/> (last visited Oct. 31, 2015).

¹⁶⁹ WEST CHICAGO PARK COMMISSIONERS. A GREATER WEST PARK SYSTEM: AFTER THE PLANS OF JENS JENSEN. (1920).

¹⁷⁰ In discussing the urban commons, Sheila Foster adopts this view of the role of nonprofits in providing public goods that go beyond those provided by government. See Foster, *supra* note __ at 113-114.

CONCLUSION

In their recent excitement to find the commons in the garden, social scientists and legal scholars have striven see the forest, but have at times missed the trees. A desire to identify urban farms and community gardens as examples of the urban commons has fostered a habit of working downward from the master concept, rather than building up from the practices actually emerging on the ground. This risks missing ways in which what urban farmers and gardeners are doing might be in tension with common conceptions of what the commons is, and how it comes about.

In this article, I have sought to provide a glimpse of what we might see if we paid attention to the property practices – and the property experiments – of urban farmers and gardeners. Mapping these practices suggests that at times these experiments may indeed produce forms of shared resource management similar to the types of self-organization scholars and advocates of the commons would expect (and hope) to see. But at other times, urban gardens and farms may be governed by a mix of rules developed by growers and ordinances and regulations created and enforced by government officials. And growers' tinkering with ways to promote use and sharing may involve adapting, rather than rejecting or transcending, certain key entitlements associated with private property – such as the right to exclusive use and enjoyment of the benefits of a resource. A socio-legal mapping of these property experiments, then, might be more likely to reveal hybridized varieties of shared property governance than the urban commons in some unadulterated form.

Urban policymakers could benefit from a more realistic understanding of how urban growers use gardens and farms as sites of experiment not only with growing, but also with the rules, norms, and practices of property. Rather than viewing the role of local government as simply defending space for people to grow food – or even grow the urban commons – progressive urban planners and city officials would do well to encourage such gardens as sites where citizens can experiment with difficult questions concerning how urban resources can and should be owned and governed collectively. Such an experimentalist framework would require more patience from policymakers and local officials than a framework that simply defends the urban commons. It might encourage claims both against the state, and to private property, which could seem in tension with the commons itself. But compared with a policy that simply encourages self-organization, or sees local government as the facilitator of the urban commons, the churn produced by such experiments might well bear more satisfying fruit.