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

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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, which takes 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.

This Article, rather than assuming that urban farms and gardens are examples of the urban commons, poses this as a question. Are they in fact cases of commons governance? And if so, how do people bring this about? I explore these questions 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. This mapping suggests that we should conceive of urban farms and gardens as sites where people experiment with the rules, norms, and forms of property that govern urban land. Municipal policies can promote property experiments that seek to treat urban land as a shared community resource.

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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, which takes urban farms and community gardens as prototypical examples of the urban commons.[1] Farm fields and garden plots produce not only 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

1. *See, e.g.*, DAVID HARVEY, REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION 74 (2012); Nathan McClintock & Jenny Cooper, *Cultivating the Commons: An Assessment of the Potential for Urban Agriculture on Oakland's Public Land*, UNIV. OF CAL. DEP'T OF GEOGRAPHY 1 (Dec. 2010), https://www.academia.edu/1226070/Cultivating_the_commons_An_assessment_of_the_potential_for_urban_agriculture_on_Oaklands_public_land [https://perma.cc/VEE6-VUWX] (providing an "inventory of open space with potential for agricultural production . . . within the city limits of Oakland, California," and to "locate Oakland's 'commons'"); Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 93–96 (2011).

2. Nathan McClintock, *Radical, Reformist, and Garden-Variety Neoliberal: Coming to Terms with Urban Agriculture's Contradictions*, 19 LOCAL ENV'T 147, 154 (2014).

reality, such urban commons challenge and are challenged by the dichotomy of public and private property that dominate our cities' legal landscapes.[3]

But are urban farms and community gardens actually examples of the commons? And if commons governance is indeed emerging in the fields of urban agriculture, how is that happening? These questions are often bracketed, with farms and gardens assumed, without much investigation, to be instances of commons governance, which comes about through "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 governance in urban farms and gardens look like? Should we understand the rules and norms crafted by urban gardeners and farmers as commons governance, and the result of self-organization? Does that leave out important ways in which their socio-legal settings are not governed as commons, and are the product of rules that urban growers *take*, rather than those they make? A better understanding of these questions could help people think about and advocate for policies that promote shared access to urban land and other resources. This Article takes urban agriculture as a key case of how people may be bringing about an urban commons, and investigates the socio-legal processes by which urban gardeners, farmers, and their policy allies may be bringing an urban commons—or some other forms of governance—into being.

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

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3. *See, e.g.*, Nicholas Blomley, *Un-Real Estate: Proprietary Space and Public Gardening*, 36 ANTIPODE 614, 631–32 (2004).

4. Urban ecologists Johan Colding and Stephan Barthel have noted this tendency among writers on community gardens. Johan Colding & Stephan Barthel, *The Potential of 'Urban Green Commons' in the Resilience Building of Cities*, 86 ECOLOGICAL ECON. 156, 161 (2013) (observing "a notable difference to what degree [urban green commons] can be viewed as self-organized stewardship systems"); *see also* Marianne E. Krasny & Keith G. Tidball, *Community Gardens as Contexts for Science, Stewardship, and Civic Action Learning*, 2 CITIES AND THE ENV'T 1, 6 (2009), http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1037&context=cate [https://perma.cc/V7M5-3UEY] (arguing that community gardens have "a tradition of self-organization").

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.").

parcels of land that could be used for urban agriculture and to 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 with a ground-up explanation of how urban growers participate in bringing about new forms of governance—which some have proposed thinking of as an urban commons—it is best to set aside, at least temporarily, concepts of "the commons" and "self-organization." Growers in Chicago seldom speak in those 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—from zoning laws and land trusts[8] to landscaping regulations and lines from Leviticus[9]—are not what we usually associate with the commons.

In this Article, I explore how we might understand the governance of land for urban agriculture 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 food production. In Part I, I review how scholars of the regulation of urban space have theorized urban farms and gardens as sites of the urban commons. I then 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 such a socio-legal mapping, examining 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. 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 gardens involves not only 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.[10]

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6. *See, e.g.*, Erika Allen & Nate Ela, *Cultivating Productive Landscapes: A Vision for Community Based Urban Food Systems in the Millennium Reserve*, ILL. DEP'T OF NAT. RES., COASTAL MGMT. PROGRAM (Aug. 2015), http://chicagofoodpolicy.com/wp-content/uploads/2016/02/Cultivating-Productive-Landscapes-December-2015.pdf [https://perma.cc/22VJ-PMQS]; *see also Urban Farmland Working Group*, CHI. FOOD POL'Y ACTION COUNCIL, http://chicagofoodpolicy.com/policy-initiatives/ [https://perma.cc/6ZRL-BNGS].

7. *See infra* Part II.B.1.

8. *See infra* Part II.B.

9. *See infra* Part II.A.5.

10. *See infra* Part II.A.

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.[11] 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, and an effort to reinterpret NeighborSpace's mission to include commercial sites. I also describe how Growing Home has helped spur conversations around how land might be held in trust for for-profit farms.

I conclude by arguing that socio-legal scholars looking for sites of the urban commons should focus on the property experiments carried out by urban growers as they claim access to vacant land, and govern it as a shared community resource. A socio-legal mapping of such experiments reveals that growers and their allies may be self-organizing certain rules for governing land for gardens and farms, but do so in relation to rules created by state and local government and by reference to core elements of private property. The claim, then, is neither that the Chicago cases examined here represent an "urban commons," nor that they are typical of how people elsewhere govern land that residents may use as a shared resource. Rather, they point us in the direction of a more grounded, realistic approach to understanding how people bring about and attempt to institutionalize alternative modes of governing urban land. This perspective could help craft public policies that encourage the 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.[12] But over the past decade, urban scholars across a wide range of disciplines have grown interested in the commons as a category of analysis, an institution, and a social practice. As scholars have gone on the hunt for the urban commons, they have found it in a wide range of settings, from

11. *See infra* Part II.B.

12. 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.'" Nicholas Blomley, *Enclosure, Common Right and the Property of the Poor*, 17 SOC. & LEGAL STUD. 311, 318 (2008).

neighborhood orderliness[13] to abandoned department stores,[14] sidewalks[15] to dog parks,[16] public spaces[17] to limited equity housing cooperatives.[18] Excitement for the urban commons among planners has produced competitions to bring the concept to new spaces.[19] Some scholars have suggested that the city itself is a commons, and ought to be governed as such.[20]

A. The Commons in the Garden

One of the most frequently cited examples of the urban commons, however, is the community garden.[21] Legal scholars and social scientists have made a wide range of claims about what community gardens, taken as the prototypical example 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.[22] 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 the land

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13. *See, e.g.*, Daniel Tumminelli O'Brien, *Managing the Urban Commons: The Relative Influence of Individual and Social Incentives on the Treatment of Public Space*, 23 HUM. NATURE 467 (2012) (evaluating specific patterns of the urban commons via comparing physical and social disorder).

14. *See* Blomley, *supra* note 12, at 312.

15. *See* Nicholas Blomley, *How to Turn a Beggar into a Bus Stop: Law, Traffic and the 'Function of the Place'*, 44 URB. STUD. 1697, 1705 (2007).

16. *See* Daniel Matisoff & Douglas Noonan, *Managing Contested Greenspace: Neighborhood Commons and the Rise of Dog Parks*, 6 INT'L J. OF THE COMMONS 28, https://www.thecommonsjournal.org/articles/10.18352/ijc.299/ [https://perma.cc/B42N-KTPS].

17. *See* Ash Amin, *Collective Culture and Urban Public Space*, 12 CITY 5, 6 (2008).

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

19. *See* DESIGNING THE URBAN COMMONS, http://designingtheurbancommons.org/ [https://perma.cc/4H8L-FT2J] ("Re-imagining spaces in London as places for collaboration, sharing, and collective ownership. A competition inspired by the rights to the commons.").

20. *See* Michael Hardt & Antonio Negri, COMMONWEALTH, 153–54 (2009); Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281 (2016).

21. *See, e.g.*, U.S. FOREST SERVICE, NORTHERN RESEARCH STATION, RESTORATIVE COMMONS: CREATING HEALTH AND WELL-BEING THROUGH URBAN LANDSCAPES 185 (Lindsay Campbell & Anne Wiesen, eds., 2009) [hereinafter RESTORATIVE COMMONS]; Efrat Eizenberg, *Actually Existing Commons: Three Moments of Space of Community Gardens in New York City*, 44 ANTIPODE 764 (2011); Foster, *supra* note 1, at 93–97; HARVEY, *supra* note 1, at 74; McClintock & Cooper, *supra* note 1, at 10. *See generally* Laura Lawson & Abbilyn 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 & Barthel, *supra* note 4, at 159, 160; Johan Colding et al., *Urban Green Commons: Insights on Urban Common Property Systems*, 23 GLOBAL ENVTL. CHANGE 1039, 1041 (2013); McClintock, *supra* note 2.

22. *See* McClintock & Cooper, *supra* note 1, at 1.

and its products.[23] Others focus on what the garden commons produce other than just food, such as new neighborhood social norms,[24] public health,[25] or urban resilience.[26] Other authors focus less on what the garden commons makes possible than on how it is routinely threatened by development.[27] This has led some to suggest policies that could protect the urban commons by protecting urban gardens. 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 uses.[28]

Relatively less has been said about how urban commons emerge or how people strategize and act to bring them about. To the extent scholars have paid attention to the emergence of the commons in a garden setting, they have focused on whether community gardens are endogenously organized. Foster, for example, argues that gardens are organized largely without governmental support.[29] Indeed, it is not uncommon for studies of community gardens to highlight how government actors are antagonists.[30]

There are good reasons why 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, seem to 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,[31]

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23. HARVEY, *supra* note 1, 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 as a static institution. *See* PETER LINEBAUGH, THE MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL 279 (2008) ("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 . . . .").

24. Foster, *supra* note 1, at 95 ("[Gardeners] . . . become norm-entrepreneurs. Their actions transform not just the physical space but also the norms and behavior that govern that space.").

25. *See generally* RESTORATIVE COMMONS, *supra* note 21.

26. *See generally* Colding & Barthel, *supra* note 4.

27. *See* Eizenberg, *supra* note 21, at 777.

28. *See* Sheila Foster, *The City as an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527, 575 (2006).

29. *See* Foster, *supra* note 1, at 94.

30. Government actors are often understood as enemies of the garden commons, clapping developers on the back as they fire up their bulldozers to level a garden on a vacant lot. This, of course, is part of the dynamic of how urban land use is 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 & Kristina Gibson, *Conflicting Rights to the City in New York's Community Gardens*, 58 GEOJOURNAL 197, 200–01 (2002).

31. Eizenberg, *supra* note 21, at 766.

but it also offers fertile urban soil in which the theoretical ideas developed by Elinor Ostrom might take root.[32]

Yet while gardeners may indeed self-organize in the sense that the rules that guide how they garden are not given directly by state agencies, it would be incorrect to think that community gardens or urban farms are wholly disconnected from rules enforced by the state—or, for that matter, from core elements of private property. Support from the 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 creates affordances that enable community gardens to be organized.

This Article seeks to make these connections apparent. It maps the wide variety of rules and norms that provide urban growers opportunities to claim and govern land as a shared, community resource. In so doing, it examines what a focus on endogeneity and self-organization—central concepts in studies of commons governance—might overlook. 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? The answer to this question requires a richer sense of the rules, norms, and practices at play in the fields of the city.

B. Socio-Legal Mapping

The aim of this Article is to sketch a map of the rules and relationships at stake as people bring about shared uses for land on the South Side of Chicago. I develop this map through case studies of a community garden and an urban farm. Rather than a geographical mapping of urban farms and gardens, to understand where they are,[33] the exercise is one of *socio-legal* mapping, focused on tracing the relationships of power and governance at stake in the legal landscape of the city.

Several different methods inform this strategy of socio-legal mapping. One, power mapping, is an analytical tool familiar to organizers for social change. This form of mapping traces relations of power in order to identify pressure points by which organizers might influence those relations.[34]

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32. *See generally* ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990) (elaborating a theory of why and how voluntary organizations can solve collective action dilemmas in governing common pool resources, and providing examples of communal governance of meadows, forests, water rights, and fisheries).

33. This is a worthy, and remarkably challenging, project taken on by other scholars. *See, e.g.*, John R. Taylor & 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 & URB. PLAN. 57 (2012).

34. *See, e.g.*, Eva Schiffer, *The Power Mapping Tool: A Method for the Empirical Research of Power Relations*, INT'L FOOD POL'Y RES. INST. 19 (2007),

Participatory mapping, meanwhile, is a technique conceived of and frequently deployed by development professionals, which solicits participants' opinions on features relevant to their environments.[35] 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—such as the commons—will necessarily appear because that is what a theory predicts. In this sense, it is influenced strongly by institutional ethnography, an approach developed by the sociologist Dorothy Smith.[36] To understand the structured social relations that shape how people work in a particular setting, Smith proposed that 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."[37]

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.[38] 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: 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.[39] If savvy community organizers and development professionals map their

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http://ebrary.ifpri.org/cdm/ref/collection/p15738coll2/id/38994 [https://perma.cc/L7XX-BBEU].

35. *See* Jon Corbett, *Good Practices in Participatory Mapping*, INT'L FUND FOR AGRIC. DEV. 7 (2009), http://www.ifad.org/pub/map/pm_web.pdf [https://perma.cc/XG5J-G552].

36. *See generally* DOROTHY E. SMITH, INSTITUTIONAL ETHNOGRAPHY: A SOCIOLOGY FOR PEOPLE 51 (2005) (explaining the two aims of institutional ethnography include "produc[ing] for people what might be called 'maps' of the ruling relations," and "build[ing] knowledge and methods of discovering institutions and, more generally, the ruling relations of contemporary Western society").

37. *Id*. at 35. *See generally* MARIE CAMPBELL & FRANCES GREGOR, MAPPING SOCIAL RELATIONS: A PRIMER IN DOING INSTITUTIONAL ETHNOGRAPHY (2004).

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

39. *See id*. at 74.

worlds, then perhaps it makes sense for social scientists to adopt a similar method.

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.[40] 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."[41]

Here we are interested in a different scale—that of gardens, neighborhoods, and cities, rather than the global—but 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 is a way of getting other people to provide access and use of land and other resources.[42]

Yet I also look beyond law and legal expertise to understand the other forms of knowledge and expertise people use to legitimize their projects and get others to support them.[43] People may seek access to land as a source of value by marshaling arguments that the law affords them the right to 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 as a site on which some number of unemployed people could be employed, or trained in job skills. 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 enable (or constrain) creative, collaborative, and collective uses of land.[44]

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?

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40. *See id*.
41. *Id*. at 61, 70.
42. *See infra* Part III.
43. *Id*.
44. *Id*.

C. Property Experimentalism

In mapping the rules, norms, and forms of authority that influence how people access and govern land for urban farms and gardens, I pay special attention to how people are experimenting with features of their socio-legal landscape. 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, and 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."[45]

To test the effects of urban agriculture, growers first have to get land. This in itself involves experiments, such as tests to see what happens when one makes a claim based on a certain law, or a certain 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[46]—are setting up what the historian of science Hans-Jorg Rheinberger conceives of as experimental systems.[47] Such systems, Rheinberger 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."[48] Quoting Francois Jacob, who worked in Louis Pasteur's lab, Rheinberger describes an experimental system, in a typical case, as "a machine for making the future."[49]

The notion here is that people who would like to intervene in a city's landscape or its political economy—who would like to remake its future—are developing 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 seeking to shape the future of that land—and by extension, a neighborhood and potentially even the city itself.

This process of experimentation with property resonates with the work of legal scholars Michael Dorf and Charles Sabel on democratic

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45. Interview with Rebekah Silverman, Assistant Dir., Growing Home, in Chi., Ill. (July 15, 2015) (on file with author).

46. *See infra* Parts II.B & III.A.

47. Hans-Jörg Rheinberger, *Experimental Systems: Difference, Graphematicity, Conjecture*, *in* INTELLECTUAL BIRDHOUSE: ARTISTIC PRACTICE AS RESEARCH 92 (Florian Dombois et al. eds. 2012).

48. *Id*.

49. *Id*. at 92 (quoting FRANÇOIS JACOB, THE STATUE WITHIN: AN AUTOBIOGRAPHY 9 (1988)).

experimentalism.[50] Both scholars understand actors to be continually involved in a pragmatic process of problem-solving.[51] Here, however, our focus is not on experiments at the level of a governance system as a whole, but rather in the projects of particular people and organizations. Although Dorf and Sabel would hope to see agencies and firms collaborating and sharing information with one another,[52] this is not always the case with 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, or may see that knowledge as proprietary, a means of getting out ahead of other growers.

Finally, it is worth noting how moments of crisis might foster property experiments. Property scholars Nestor Davidson and Rashmi Dyal-Chand have observed that social and economic crises can lay bare fundamental questions about the nature of ownership.[53] This fits with the sociological intuition that 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 disaster.[54] Whether property experiments underway in urban gardens or farms result in an urban commons or some other form of governing shared spaces, we will see that the open fields and vacant lots that serve as actors' laboratories are often the legacy of social and economic crises.

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, 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, norms, and forms of property: zoning, land trusts, landscaping regulations, even passages from the Old

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50. *See* Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 288 (1998).

51. *See* CHRISTOPHER K. ANSELL, PRAGMATIST DEMOCRACY: EVOLUTIONARY LEARNING AS PUBLIC PHILOSOPHY 6 (2011) (referring to Dorf and Sabel).

52. *See* Dorf & Sabel, *supra* note 50, at 285.

53. *See* Nestor M. Davidson & Rashmi Dyal-Chand, *Property in Crisis*, 78 FORDHAM L. REV. 1607, 1608 (2010).

54. *See* Thomas K. Rudel, *The Commons and Development: Unanswered Sociological Questions*, 5 INT'L J. OF THE COMMONS 303, 314 (2011), http://www.thecommonsjournal.org/index.php/ijc/article/view/248 [https://perma.cc/TW43-A84H].

Testament.[55] These are things that a hunt for the urban commons might overlook. If some new form of governance is emerging as people create farms and gardens, then to understand how that is happening we should look to the concepts and tools that people actually use, rather than assuming that the commons is emerging through a process of self-organization.

In this Part, 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 serve as starting points for a socio-legal mapping. Focusing on these sites, I trace how a wide range of laws, regulations, rules, and norms related to property have shaped the terms by which urban gardeners and farmers access and use land. 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 unpack the complex ways in which people govern resources in places that have often been understood simply as the urban commons.

A. Kumunda Community Garden

On the east side of Kimbark Street, half a block south of 64th Street, there is a community garden known to its members as the Kumunda Garden. One of many gardens in the Woodlawn neighborhood on Chicago's South Side, Kumunda is the size of two city lots, about one-third of an acre.[56] Other vacant lots sit to the south, offering ample sunlight for the garden plots.[57] There are about forty 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.[58]

The garden itself is ringed by a snow fence of wooden stakes to the south and along the back alley to the east and a metal chain-link fence along the

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55. *See infra* Parts II.A., II.B.

56. The 2015 map by Garden Resources of Woodlawn (GROW) identifies sixteen community and school gardens in the neighborhood. *See Woodlawn Community and School Gardens*, GROW (2015), http://growwoodlawn.org/wp-content/uploads/2015/03/GROW-community-gardens-map-2015.pdf [https://perma.cc/RSR8-EDMZ].

57. Google's street view feature provides a view of the garden and the adjoining lots. *See Google Street View* (Sept. 2015), https://www.google.com/maps/place/6431+S+Kimbark+Ave,+Chicago,+IL+60637/@41.7775338,-87.5945745,3a,75y,90h,90t/data=!3m4!1e1!3m2!1sNf—y7vTIkUjmPOIL6O-uA!2e0!4m2!3m1!1s0x880e291e7e4ee8d5:0x7601ac2fd5150304 [https://perma.cc/LFQ9-BHGX] [hereinafter *Google Street View*].

58. Photos of the garden are available on a blog created by two of the gardeners. *See Vertical Gardening*, NUESTROPEQUENOJARDIN (May 13, 2014), https://nuestropequenojardin.wordpress.com/2014/05/ [https://perma.cc/2EA4-RB64].

sidewalk to the west.[59] To the north, the property line is shared with a neighboring house and is marked off by more chain-link fencing.[60] During the summer of 2015, a row of small kale plants lined the strip of land between the fence and the sidewalk on Kimbark Street, an offering to passers-by.[61] At the southeast corner, a pile of woodchips—material for keeping down grass along the garden paths—spilled over onto both sides of the fence, making it possible to step over the fence by climbing the mound.[62]

I was a member of the Kumunda Garden for the 2014 and the first half of the 2015 growing seasons. Tending a ten-by-ten-foot plot offered a day-to-day sense of how such a garden operates as space shared by people who both live in the neighborhood and 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 the Kumunda Garden came about, and how it continues to exist, we have to look beyond just the rules of the garden and examine how it became possible to use this land in the first place. That requires tracing how the land became available: both how the history of Woodlawn resulted in a large number of empty lots, and how gardeners negotiated to make some of those lots available for food production.

Woodlawn today is a patchy landscape. Three-floor brick apartment buildings are interspersed with vacant land. In the fall of 2015, the City of Chicago owned 387 vacant lots in Woodlawn.[63] This 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 66,000 Chicagoans, 86% of whom were white.[64] But during the Great Depression, the white housing market slumped; black families from neighborhoods to the west sought to buy into the neighborhood. At first, they were blocked by racially-restrictive covenants,

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59. *See id*.

60. *See Google Street View*, *supra* note 57.

61. *See Google Street View*, *supra* note 57.

62. *See Touch and Go*, NUESTROPEQUENOJARDIN (May 28, 2014), https://nuestropequenojardin.wordpress.com/2014/05/28/176/ [https://perma.cc/F6HE-MQ65].

63. *See City-Owned Land Inventory*, CITY OF CHI. (2011), https://data.cityofchicago.org/Community-Economic-Development/City-Owned-Land-Inventory/aksk-kvfp [https://perma.cc/P3AY-RMKA].

64. *See* Amanda Seligman, *Woodlawn*, ELEC. ENCYCLOPEDIA OF CHI. (2005), http://www.encyclopedia.chicagohistory.org/pages/1378.html [https://perma.cc/C2ZH-Q96P].

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.[65]

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.[66] Although the ruling focused on the details of class action procedure, its effect was to begin to undo the system of racially restrictive covenants established in Woodlawn and other neighborhoods in Chicago.[67]

Following World War II, the black population of Woodlawn rose quickly, while white families fled to the suburbs.[68] By 1960, the population was 81,000—nearly ninety percent of which was black.[69] But during the late 1960s, the neighborhood was beset by disinvestment, as white-owned business owners moved out, fearing a repeat of the riots that occurred in the black neighborhoods of Chicago's West Side in the wake of the 1968 killing of Martin Luther King, Jr.[70] From 1968 through 1971, some 362 abandoned buildings in Woodlawn were reportedly destroyed by arson;[71] this came in the wake of a 1968 change to fire insurance regulation that encouraged property owners in neighborhoods with low property values to take out large policies on their otherwise worthless buildings.[72]

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.[73]

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65. *See* Allen R. Kamp, *The History Behind* Hansberry v. Lee, 20 U.C. DAVIS L. REV. 481, 483 (1987).

66. *See* Hansberry v. Lee, 311 U.S. 42, 46 (1940).

67. *See generally* Kamp, *supra* note 65, at 498. For a powerful account of Chicago's history of racism in housing, see Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ [https://perma.cc/5X3H-Q88B].

68. *See* Seligman, *supra* note 64.

69. *Id*.

70. *Id*.

71. *Id*.

72. *See* BERYL SATTER, FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA 335 (2009) (quoting an observer as saying buildings "aren't worth anything unless you burn them," and describing the practice of arson on Chicago's South and West Sides).

73. *See id*. at 128–131.

Since the 1960s, the population of Woodlawn has declined significantly. By 2010, fewer than 26,000 people lived in the neighborhood.[74] This rapid and enduring demographic decline has reshaped the physical and social 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.[75]

By the early 1990s some conservationists in Chicago were starting to see vacant lots as a potential resource. In 1998, the leading land trust for the Chicago region, Openlands, found that the city ranked eighteenth out of twenty large U.S. cities in terms of open space per capita.[76] The same report noted that at the same time, there was an abundance of vacant lots, many of which were owned by the city.[77] One of the recommendations flowing from the report was to create a land trust for community gardens, and to make sure neighborhood spaces were safe from development.[78] 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.[79] 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.[80]

1. Dispossession as Threat and as Opportunity

The Kumunda Garden sits on land owned by the First Presbyterian Church of Chicago, not by NeighborSpace.[81] Compared to many other community gardens, Kumunda has abundant resources, the result of its organizers

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74. *See City of Chicago Census 2010 and 2000*, CITY OF CHI., http://www.cityofchicago.org/content/dam/city/depts/zlup/Zoning_Main_Page/Publications/Census_2010_Community_Area_Profiles/Census_2010_and_2000_CA_Populations.pdf [https://perma.cc/E4KE-B263].

75. *See* 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/ [https://perma.cc/V7X6-GS8L].

76. CITY OF CHI., CHI. PARK DIST. & FOREST PRES. DIST. OF COOK CTY., CITYSPACE: AN OPEN SPACE PLAN FOR CHICAGO ii (Jan. 1998).

77. *Id*. at iii.

78. *Id*. at iii–iv.

79. *See* CHI. CITY COUNCIL, COMM. ON FIN., AUTHORIZATION FOR EXECUTION OF INTERGOVERNMENTAL AGREEMENT WITH CHICAGO PARK DISTRICT AND FOREST PRESERVE DISTRICT OF COOK COUNTY FOR ESTABLISHMENT OF "NEIGHBORSPACE," (Mar. 26, 1996). http://www.*eatbettermovemore.org/sa/policies/pdftext/ChicagoNeighborSpace.pdf [https://perma.cc/BF27-S75Y]*.

80. *See infra* Part II.B.3.

81. Interview with Benjamin Murphy, Coordinator, 65th & Woodlawn Cmty. Garden, in Chi., Ill. (June 13, 2014) (on file with author).

having seized an opportunity made possible by dispossession. Although development is often understood as a threat to gardens, instances of dispossession can also create opportunities to both mobilize a community of growers, and potentially even expand garden operations elsewhere.

Although growing only began at the Kumunda Garden in 2013, its story begins as early as the mid-1990s, several blocks to the north. That was when gardeners began digging up plots at the corner of 61st Street and Dorchester Avenue at what became known as the 61st Street community garden.[82] This land was 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.[83]

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.[84] Officials from the University decided to use the land on which the 61st Street Community Garden sat as a staging area for construction, and the University's community relations department informed the gardeners that they would have to leave at the end of the 2009 season.[85]

As in many other cases, gardeners organized themselves to resist displacement. Since the legal right of the University to displace the gardeners was uncontested, the moral duty it owed to the gardeners who had been using the land became the issue. In mobilizing around this issue, the garden benefited from the social and cultural capital of its gardeners. Many of the gardeners were not long-time residents of Woodlawn, but rather University of Chicago students who had moved into the neighborhood. They understood how to negotiate with, and mobilize against, the University.[86] 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

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82. *See The Urban Farm Project*, EXPERIMENTAL STATION (2012), http://staging.xstation.webfactional.com/food-culture/urban-farm-project [https://perma.cc/CFY2-6EPX].

83. *See* LaDale Winling, *Obama Presidential Library Part 2*, URB. OASIS BLOG (Aug. 25, 2012), http://www.urbanoasis.org/2012/08/25/obama-presidential-library-pt-2/ [https://perma.cc/22KJ-3GY8] (describing how the University bought property south of its core campus as a means of both expanding the campus and redeveloping the neighborhood).

84. *See generally New Chicago Theological Seminary*, UNIVERSITY OF CHICAGO: FACILITIES SERVICES (2016), http://facilities.uchicago.edu/construction/theological-seminary/ [https://perma.cc/HL5L-KLK2].

85. *See 61st Street Community Garden Woodlawn*, HYDE PARK-KENWOOD COMMUNITY CONFERENCE, http://www.hydepark.org/gardens_of_HP-K/61st%20Community%20Garden.htm [https://perma.cc/2Q7J-WYZZ].

86. The gardeners documented their struggle in meticulous detail on their website. *See id*.

right to use it.[87] Among the people who spoke out in favor of the garden was Ben Helphand, the Executive Director of NeighborSpace.[88]

Ultimately, the University agreed to provide compensation to the displaced gardeners.[89] University officials arranged with the local alderman to have a vacant lot at 62nd Street and Dorchester made available for gardening, and in the years since, this site has been converted into a NeighborSpace garden. The University also agreed to donate resources both toward this new garden and other community gardens in Woodlawn.[90]

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.[91] Much of the support from the University was used to buy compost for creating new garden plots.[92] 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 not only bring in compost, but also have its 10' x 10' plots hooked up to a drip irrigation system.[93] 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.[94]

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 helped get it going.[95]

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87. *See Garden Conversations*, INVISIBLE INST., http://invisible.institute/garden-conversations/ [https://perma.cc/TY3H-UPUH].

88. *Id*.

89. *Id*.

90. *Id*.

91. *Id*.

92. *Id*.

93. *Id*.

94. 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 the 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. *See Garden With Us,* PETERSON GARDEN PROJECT, http://petersongarden.org/garden-with-us/ [https://perma.cc/P2MZ-WALP].

95. Interview with Benjamin Murphy, *supra* note 81.

2. The Threat in the Tall Grass

It might seem natural that a church would support community gardening, and First Presbyterian has made land available for various growing projects since at least 2000.[96] But the reason why church leaders were eager to make land available for the Kumunda Garden might be rooted in a recent change to Chicago's landscaping ordinance.

In 2008, Chicago created a weed abatement regulation, which levies steep fines for any "weeds" over ten inches in length.[97] The regulation has been actively enforced; from 2009 to 2014, the city reportedly collected over $19 million in fines for uncut weeds.[98]

For absentee owners, or landowners without the means to keep up landscaping to legal requirements, the weed ordinance creates a risk. First Presbyterian, a small congregation with a large inventory of vacant lots, faces a particularly large risk. If church leaders see the vacant land as a type of investment—as the founder of the 65th Street community garden assumes[99]— then selling properties at the bottom of the market, in the wake of not only decades of disinvestment but also the financial crisis, does not make sense.

Community gardens offer a solution to this problem. Allowing people to grow a garden on a vacant lot effectively transfers the responsibility to keep up the lot to gardeners, reducing 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.[100]

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 for Urban

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96. 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 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 Chi., Ill. (Sept. 10, 2014) (on file with author). In addition, the Church has a dilapidated greenhouse on its south side, which was built by in the 1970s by the Center for Neighborhood Technology. *See Pioneering Urban Gardening*, CENT. FOR NEIGHBORHOOD TECH. (2015), http://www.cnt.org/projects/pioneering-urban-gardening [https://perma.cc/BY2R-3QE8].

97. MUN. CODE OF CHI. § 7-28-120 (2008).

98. *See* 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 [https://perma.cc/RJ5P-J8ZC].

99. Interview with Benjamin Murphy, *supra* note 81.

100. *Id.*; Interview with Meg Mass, *supra* note 97.

Agriculture, one of Chicago's food and gardening policy organizations, to draft a revised ordinance that would increase city inspectors' sensitivity to native plants, which might grow higher than ten inches.[101] Yet gardeners elsewhere benefit from the leverage that the strict weed ordinance has provided vis-à-vis 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.[102]

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 use and sharing.

In the spring of 2014, I heard from a friend in Hyde Park about the 65th Street and Kumunda Gardens. I emailed Benja Murphy, the founder and coordinator of the garden and showed up as instructed at the Kumunda Garden on a cool evening in late April. Only two plots remained, and there was one other potential gardener. Benja said that I had been the first to email, which gave me first pick. As we walked around, Benja 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 that tearing up the weeds and grass 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 was not sure about this, but assured me and the other gardener had the site tested for lead and other contaminants and that it had been cleared. I felt a bit guilty about taking the better spot, but 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 was not 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

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101. *See* Rachel Schipull, *No Weeds in Our Yards: How Chicago's Landscaping Ordinance Can Result in Big Fines and What AUA is Doing to Help*, ADVOC. FOR URB. AGRIC. (Feb. 19, 2015), http://auachicago.org/2015/02/19/no-weeds-in-our-yards/ [https://perma.cc/Z4B5-C65G].

102. Interview with Corenna Rooseboom, Founder, McKinley Park Cmty. Garden, in Chi., Ill. (June 2, 2014) (on file with author).

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 were not members of the garden, could pick and use.[103]

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 both our fee for the year and the use of the plot. This use-it-or-lose-it rule appears in the garden usage agreement.[104] At the time, as an eager first-year gardener, it didn't seem like that big of a deal. The following weekend, I was back at the garden with a friend visiting from out of town. We built a frame for a raised garden bed with some planks I had bought at Home Depot. The next week, I filled the frame with about a dozen wheelbarrow loads of rich black compost from the pile that had been dumped at the back of the garden. The week after that, seeds and seedlings were in the ground. By June 1, I had more kale and chard than I could manage to give away.

Later in the season, I helped one of the garden coordinators repossess a plot that either had never been planted or had been abandoned. It was next to mine, and for months I had been watching its weeds grow ever higher, wondering if the gardener would come back to 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 began yanking weeds from the ground, we pushed them aside, searching for hints of food 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 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 had been so nonchalant the year before nearly came back to bite me. My wife was back in town—the previous year she had been away doing her own fieldwork—and we wanted to prepare the garden together. Early in the spring, we

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103. *See also Finding Common Ground*, CHI. WKLY. 3 (May 26, 2010), http://www.chicagoweekly.org/2010/05/26/finding-common-ground-south-siders-share-plots-and-plans-at-the-65th-and-woodlawn-community-garden/.

104. *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*, 65TH AND WOODLAWN, www.65thandwoodlawn.com/images/2012_usage_agreement.pdf [https://perma.cc/2YKP-GY5P].

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 slow. We waited to plant until we could find a weekend when we both would be free to do so and the weather cooperated.

Weekends came and went. Between two busy schedules, a wet spring, and a lot of travel to attend to my aging father, it soon was mid-May and we hadn't planted a seed. With the rule hanging over us, we eventually rushed out to put some seedlings that we had bought into the ground. Having made our use of our plot apparent, we planted a few remaining seedlings outside the fence, in the common area. This didn't feel like claiming land for the commons; if anything, we were ensuring our claim to our individual plot, to prevent it from reverting to the commons.

In this and other respects, Kumunda Garden operates less like a community governing a commons, than a collection of individuals tending their own plots and doing the necessary to keep up the common areas. One might think of it more like a condominium complex than a fishery. All of the plots are rented to individuals, and the fence ringing the garden is meant to keep out non-members (even if the mounds of wood chips makes it easy to jump). Although I have often heard people in the community garden movement decry fences and locked gates, the members of the Kumunda Garden receive emails reminding them to lock the gate behind them, and to be aware of people who jump the fence to pick free vegetables.[105]

As in a condominium complex, there are shared spaces and tasks in the Kumunda Garden (as there are in other gardens 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 common 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 are 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 at the Kumunda Garden takes place in the context of resources 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

105. *See* E-mail from 65th & Woodlawn Community Garden Organizers to Kumunda Gardeners, (Jul. 24, 2015) (on file with author).

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.[106] But even in such a favorable climate, weeks can pass 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.[107] 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 may be connected directly to the garden's drip irrigation system.[108]

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.[109] Gardeners must apply to the city's Department of Water Management for temporary use of a hydrant.[110] As a result, the creation of a new community garden, or the continuing use of an ongoing one, effectively requires the approval of either the City of Chicago's Department of Water Management or the donation of water from a neighbor. Self-organization of a garden does not simply happen, but occurs when and where a city official or a friendly neighbor gives it the green light.

Providing permanent access to water is one of the major expenses that NeighborSpace covers for community gardens for which it holds title to the lands in trust.[111] A connection to the municipal water system costs thousands of dollars, which NeighborSpace covers from its budget.[112] To have such resources made available on a permanent basis again requires the approval

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106. The U.S. Department of Agriculture's plant hardiness zone map classifies Chicago as Zone 6a. *See USDA Plant Hardiness Zone Map*, U.S. DEP'T OF AGRIC.: AGRIC. RESEARCH SERV., http://planthardiness.ars.usda.gov/PHZMWeb/ [https://perma.cc/VDB8-7FTQ]. This allows for growing from roughly mid-March through mid-November. *See* Dave Donovan, *Gardening Zone 6*, LOVE TO KNOW, http://garden.lovetoknow.com/wiki/Gardening_Zone_6 [https://perma.cc/J4ST-Y5FN].

107. This setup can be seen using Google Maps' Street View feature, in front of 6427 S. Kimbark Avenue. *See Google Street View* (Sept. 2015), https://www.google.com/maps/place/6427+S+Kimbark+Ave,+Chicago,+IL+60637/@41.7778163,-87.5945811,3a,75y,79.27h,82.55t/data=!3m4!1e1!3m2!1sSn5Axci0S-p4HcS2kpcNyQ!2e0!4m2!3m1!1s0x880e291e80850b45:0xb36f6eb458bc3b82 [https://perma.cc/6R5K-RA78].

108. *See id*.

109. *See Chicago Water Hydrant Policy*, CHI. COMMUNITY GARDENERS ASS'N (April 1, 2015), http://chicagocommunitygardens.org/resources/chicago-water-hydrant-policy/.

110. *See id*.

111. *See Chicago, USA: Community-Managed Open Space*, INT'L COUNCIL FOR LOCAL ENVTL. INITIATIVES, ICLEI Case Study No. 61, 2 (Aug. 2001), https://casesimportal.newark.rutgers.edu/storage/documents/community_service/public/case/NeighborSpace.pdf [https://perma.cc/7PSY-YRKP].

112. *See id*.

of an alderman, since it is only at the alderman's discretion that the city council will transfer land from its inventory to NeighborSpace.[113]

As with water, gardens such as Kumunda could not 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.[114] Although people sometimes grow directly in the ground, experts advise reducing the risk of contamination by planting in raised beds with clean soil, or bringing in clean soil and compost from other locations.[115]

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 the City Council passed a composting ordinance in mid 2015, gardeners were prohibited from bringing food scraps and other compostable materials from their homes onto community gardens.[116] 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 in the garden.[117]

The 2015 ordinance permitting community gardeners to use household materials for composting came in response to pressure by Advocates for Urban Agriculture (AUA) and the Chicago Food Policy Action Council (CFPAC), the two main urban agriculture advocacy organizations.[118] The

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113. Known as "aldermanic privilege," this is a key part of the customary but unwritten power of aldermen in Chicago. *See* Christopher Thale, *Aldermanic Privilege*, ELEC. ENCYCLOPEDIA OF CHI. (2005), http://www.encyclopedia.chicagohistory.org/pages/2197.html [https://perma.cc/SP5A-B2PE].

114. *See Starter Kit: Environmental Best Practices for Chicago Community Gardens*, CHI. COMMUNITY GARDENERS ASS'N (2016), http://chicagocommunitygardens.org/resources/environment-and-safety/starter-kit-environmental-best-practices-for-chicago-community-gardens/ [https://perma.cc/ZZ4S-HXSB].

115. *See generally* Laura Witzling, Michelle Wander & Ellen Phillips, *Testing and Educating on Urban Soil Lead: A Case of Chicago Community Gardens*, 1 J. AGRIC., FOOD SYS., & COMMUNITY DEV. 3 (2011).

116. *City Council Approves Ordinance to Expand Citywide Composting Program*, CITY OF CHI. (July 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 [https://perma.cc/9KNE-P]; *see also* MUN. CODE OF CHI., Chapter 7-28, Sec. 11-4-040, Chapter 17-9, http://auachicago.files.wordpress.com/2015/08/chicago-compost-substitute-ordinance.pdf [https://perma.cc/2UEC-STUG].

117. E-mail from 65th & Woodlawn Cmty. Garden Organizers to Kumunda Gardeners (May 21, 2015) (on file with author).

118. *A New Day for Composting in Chicago*, ADVOC. FOR URB. AGRIC. (Aug. 14, 2015), http://auachicago.org/2015/08/14/a-new-day-for-composting-in-chicago/ [https://perma.cc/NW88-S5UV]. This campaign received a push from the fact that many of

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.[119]

5. Gleaning in the Garden

Even if they tend crops in individual plots, members of community gardens generally share community spaces and many are involved in programs that share some of the garden's produce. At gardens run by the Peterson Garden Project on Chicago's North Side, this takes the form of raised beds that are designated as part of a "Grow2Give" program in which five percent of garden harvests go to food pantries or nutrition programs.[120] The 65th & Woodlawn and Kumunda gardens maintain a strip of land between the sidewalk and the fence, with vegetables that are free for passers-by to pick. At these gardens, members have also developed a different way to share the bounty: gleaning programs that harvest and distribute a portion of the produce from members' individual plots.

The gleaning program at 65th & Woodlawn first came about as a result of conversations between the garden's founder and a member of the KAM Isaiah Israel (KAMII) Temple in Kenwood.[121] Robert Nevel, the founder of KAMII's gardening programs, had ripped up some of the lawn around the synagogue, and replaced it with gardens where food was grown for donation to nearby shelters. Having run out of space to expand around the synagogue, he began thinking about ways that the congregation could help provide more fresh produce to local food pantries. He proposed to the founder of the 65th and Woodlwan garden that they set up a gleaning program, which would gather produce fruits and vegetables from community gardens in the neighborhood.[122]

The KAMII White Rock Gleaning Program took its name 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; a gardener could alternatively

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CFPAC and AUA's leaders 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.

119. *See id*.

120. *Programs*, PETERSON GARDEN PROJECT, http://salsa.petersongarden.org/p/salsa/web/common/public/content?content_item_KEY=9957 [https://perma.cc/QEZ5-WP74].

121. Interview with Benjamin Murphy, *supra* note 81.

122. *Id*.; Robert Nevel, President, KAM Isaiah Israel Synagogue, Address at the American Community Gardening Association Pre-Conference Event (Aug. 7, 2014).

place a survey flag in their plot to signal a decision to not participate.[123] By the time I gleaned with the KAMII group in the fall of 2014, florescent orange survey flags had taken the place of white rocks, and what had begun as 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 did not 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.[124] 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, which instructs farmers not to harvest the corners of their fields.[125] Nevel interprets verses such as these as moral justification for taking some of what other people grow. In a talk before the 2014 American Community Gardening Association conference in Chicago, he asked whether it was *chayil* to harvest carrots from an abandoned plot, and give them to a nearby shelter.[126] Property scholar Joseph Singer has written about his interpretation of Torah law which draws on the Old Testament to develop a broader argument concerning the social obligations inherent in property law;[127] on the South Side of Chicago, gardeners are doing something similar to inculcate a culture and practice of sharing the produce of community gardens.

Nevel and other KAMII members have worked to spread their ideas about gleaning and to help other gardens develop similar policies.[128] Other gardens have joined the KAMII gleaning program,[129] and Jewish religious educators who attended a convention for cantors at KAMII in 2015 learned about the

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123. *See Our Garden*, KAM ISAIAH ISRAEL CONGREGATION, https://kamii.org/content/our-garden (last visited Aug. 4, 2016)

124. Robert Nevel, *supra* note 123.

125. KAMII members are not alone in interpreting these verses as having contemporary relevance concerning the duty to the poor. *See, e.g.*, Jeffrey Spitzer, *Pe'ah: The Corners of Our Fields*, MYJEWISHLEARNING (July 24, 2003), http://www.myjewishlearning.com/article/peah-the-corners-of-our-fields/ [https://perma.cc/T47V-YQJV].

126. Robert Nevel, *supra* note 123. 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.

127. *See* JOSEPH WILLIAM SINGER, THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP 42–56 (2000).

128. Nevel often shares the experience of the KAMII gleaning program at events for community gardeners. *See, e.g.*, Robert Nevel, Address at AUA Spring Gathering: Sharing the Harvest (May 15, 2013), http://auachicago.org/2013/05/01/save-the-date-aua-spring-gathering-on-may-15/ [https://perma.cc/7U4Y-63WX].

129. One example is the community garden at 62nd Street and Dorchester Avenue in Woodlawn. *See* 62GARDEN, http://62garden.com/ (last visited Aug. 4, 2016).

gleaning program and other ways in which congregants in Chicago were applying Torah teachings to guide their gardening programs.[130]

The KAMII gleaning program at the 65th & Woodlawn garden also inspired a similar program at the Kumunda Garden. At Kumunda, however, 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.[131]

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 the application of expertise, and constant judgment calls. Is this tomato ripe enough to pick? How many tomatoes is ten percent of the harvest from this plot? Is this overgrown plot abandoned, or simply 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 the state of a garden plot before taking part of its bounty, or passing it over and moving on to the next.

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New ways of governing land are emerging in Chicago's community gardens, but seldom through conscious efforts to govern them as a commons. Instead, people tinker with ways of making land available, and regulating its use. Some of the forms of regulation developed by growers, such as garden usage agreements and gleaning programs, are more easily conceived of in terms of self-organization. But gardeners also draw on rules and norms available at different scales such as municipal ordinances, aldermanic policies, even rules from religious texts. They experiment with these rules,

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130. Hazzan Arlyne Unger, *Notes from Hazzan Arlyne Unger*, 11 RUACH! NEWSLETTER OF BETH TIKVAH B'NAI JESHURUN 4 (June 2015).

131. Interview with Meg Mass, *supra* note 97.

seeing what works for gardeners, and what does not, sometimes trying to change higher-order rules such as composting ordinances, which would enable greater sharing of resources. 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

Urban farms, like community gardens, offer sites for experimentation with governing urban land as a shared, productive resource. Some social scientists have also suggested that they are a way to reclaim the commons. Geographer Nathan McClintock argues that "urban agriculture has served as a rallying point for radical structural critiques and the reclamation of the commons,"[132] and has proposed that 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.[133] 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.'"[134]

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. Instead, you might first see other structures: hoop houses, long tube-like temporary greenhouses built from curved metal poles and clear plastic sheeting, sheltering trellised tomato vines and rows of kale. On a summer day, you might also see a group of workers—many of them job trainees—weeding the rows, prepping new beds for planting, or cleaning harvested vegetables.

It may not be immediately apparent how Growing Home's founders experimented with property relations to develop this farm. 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.[135] To understand whether it makes

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132. McClintock, *supra* note 2, at 154.

133. McClintock & Cooper, *supra* note 1, at 13.

134. McClintock, *supra* note 2, at 154 (quoting Eric Holt-Giménez & Annie Shattuck, *Food Crises, Food Regimes and Food Movements: Rumblings of Reform or Tides of Transformation?,* 38 J. PEASANT STUD. 109, 114 (2011)).

135. Google Maps offers a view of Growing Home's farms on either side of South Honore Street. *See Google Maps Street View* (2016), https://www.google.com/maps/place/5834+S+Honore+St,+Chicago,+IL+60636/@41.7875004,-

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, explaining that a recent court order had directed the federal government to make unused property available for use by the homeless.[136] A month later, an inventory of available properties arrived, including one listed as "Chicago Moorings."[137]

Lester Brown, a program associate with CCH, was interested in the leverage the McKinney Act offered.[138] 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.[139] 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.[140]

Brown developed a plan for how CCH might use the property. He proposed building several greenhouses on the site, in which homeless clients could learn job skills as they grew fresh herbs for nearby gourmet restaurants.[141] As he noted in a letter asking for support from the Center for Neighborhood Technology, which had developed a greenhouse attached to

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87.6700342,18z/data=!3m1!1e3!4m2!3m1!1s0x880e2e4584c817db:0x333e43182812d734 [https://perma.cc/E4KU-2LPE].

136. Memorandum from Maria Foscarinis & Tim Leshan, Nat'l Coal. for the Homeless to Bd. of Dirs. and State Coals. (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.

137. U.S. GOV'T PROP. NOTICE OF DETERMINATION OF HOMELESS SUITABILITY, DEP'T OF HEALTH AND HUMAN SERVS. DIV. OF HEALTH FACILITIES PLANNING, (Jan. 9, 1989) (on file with author).

138. Form letter from Les Brown, Program Assoc., Chi. Coal. for the Homeless, to potential supporters (Apr. 1, 1992) (on file with author).

139. *See Navy Pier Re-development Planning*, ROULA ARCHITECTS (1990), http://www.roularchitects.com/navy-pier.html [https://perma.cc/KL77-WSHD].

140. 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, Nat'l Law Ctr. on Homelessness and Poverty, to Olivette Simmons Simpson, Dev. Officer, N.J. Hous. & Mortg. Fin. Agency (Oct. 4, 1990) (on file with author).

141. Letter from Les Brown, Chi. Coal. for the Homeless, to Lou Kreinberg, Ctr. for Neighborhood Tech. (Mar. 23, 1992) (on file with author).

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."[142] 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."[143]

Exactly what might be achieved by using this leverage 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.[144] Over the next eighteen months, the General Services Agency mediated negotiations between city officials and the CCH.[145] 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.[146] 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.[147] CCH rejected the city's initial list of alternative sites and submitted criteria that any alternative location would have to meet.[148] CCH also tested a number of different proposals, including creating a line in the city budget dedicated to supporting the greenhouse program, an annual fee on leases at the new Navy Pier Development that would fund low-income housing, and assistance from the

142. *Id*.

143. *Id*. at 30.

144. Growing Home, Timeline: Nave Pier Moorings Site, Negotiations for Land Swap, and Agreement to Allow Growing Home to Sell Property (Oct. 2004) (on file with author).

145. *Id*.

146. *See* Letter from Richard Wendy, Deputy Comm'r of the Dep't of Planning and Dev., to John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless (Sept. 3, 1992) (on file with author).

147. *See id*.

148. Letter from John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless, to Richard Wendy, Deputy Comm'r of the Dep't of Planning and Dev. (Oct. 14, 1992) (on file with author).

city in getting local restaurants to source their produce from the greenhouse project.[149]

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 provide other assistance.[150] 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.[151] Ultimately, the transfer of the land went through.[152]

From 1996 to 2001, CCH worked on developing a greenhouse project at the site on Fourteenth Street. But in the process, CCH discovered that the land was contaminated; the city's due diligence prior to CCH taking ownership had not been sufficiently rigorous.[153] 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.[154] 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.[155] CCH negotiated with the city for the right to sell the property, instead, and take the money from the sale.[156] 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.[157] 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.

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149. Letter from John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless, to Earl Jones, Comm'r, Fed. Prop. Res. Serv. (Dec. 2, 1992) (on file with author); Letter from John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless, to Valerie B. Jarrett, Comm'r of the Dep't of Planning and Dev. (Apr. 29, 1993) (on file with author).

150. Letter from John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless, to Valerie B. Jarrett, Comm'r of the Dep't of Planning and Dev. (June 24, 1993) (on file with author).

151. Letter from John Donahue, Exec. Dir. of the Chi. Coal. for the Homeless, to Valerie B. Jarrett, Comm'r of the Dep't of Planning and Dev. (Dec. 6, 1993) (on file with author).

152. *See* Agreement for the Sale and Redevelopment of Land (no. 96343341) (May 6, 1996) (on file with author).

153. *See* Interview with Laura Tilly, Bd. Member, Growing Home, in Chi., Ill. (July 15, 2015) (on file with author).

154. Growing Home, Timeline, *supra* note 145.

155. *See* Agreement for the Sale and Redevelopment of Land, *supra* note 153.

156. Growing Home, Timeline, *supra* note 145.

157. *Id*.

2. Coming to Englewood

While city officials were still willing to transfer land to Growing Home for the project, their attention soon turned to Englewood, where a quality-of-life planning process was underway.[158] 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."[159]

This was a new vision for Englewood, which as one community organizer put it to me, replaced Woodlawn in being perceived by city officials and urban planners as the most troubled neighborhood in the city and most in need of interventions.[160] Englewood, which the media has focused on recently for its high crime rates and troubled schools,[161] is home to households that are predominantly African-American and low-income.[162] 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 sixteen were unemployed.[163] From 2010–2014, 58% of children in Englewood lived in poverty.[164]

Englewood has also been the site of incredible disinvestment and depopulation over the past several decades. Once a vibrant commercial

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158. *See generally* ENGLEWOOD: MAKING A DIFFERENCE, TEAMWORK ENGLEWOOD & LISC/CHICAGO'S NEW COMMUNITIES PROGRAM (Dec. 2005), http://www.newcommunities.org/cmadocs/englewoodsummaryplan_12-05.pdf [https://perma.cc/3K7F-6JS5].

159. *Id*.

160. *See* L. Anton Seals, Comments during Social Justice Bicycle Ride of Woodlawn and Englewood (Aug. 2, 2014).

161. *See, e.g.*, *This American Life: Harper High School Part One*, CHICAGO PUBLIC RADIO (Feb. 15, 2013), http://www.thisamericanlife.org/radio-archives/episode/487/harper-high-school-part-one [https://perma.cc/9GYV-3T9W].

162. In the 2010 census, residents of census tracts in Englewood and West Englewood were 97–98% African-American. *See* Matthew Bloch, Amanda Cox & Tim Giratikanon, *Mapping Segregation*, N.Y. TIMES (Jul. 8, 2015), http://www.nytimes.com/interactive/2015/07/08/us/census-race-map.html [https://perma.cc/6L3U-T5AU].

163. *See* CENSUS DATA – SELECTED SOCIOECONOMIC INDICATORS IN CHICAGO, 2008–2012, CITY OF CHI. DATA PORTAL (2011), https://data.cityofchicago.org/Health-Human-Services/Census-Data-Selected-socioeconomic-indicators-in-C/kn9c-c2s2 [https://perma.cc/67UT-MLA7]. 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 sixteen years old were unemployed. *Id*.

164. *Population and Poverty Data by Chicago Community Area*, ILL. ACTION FOR CHILDREN (Dec. 2014), http://www.actforchildren.org/wp-content/uploads/2016/02/2014_Census_Data_by_Chicago_Community_Area.pdf [https://perma.cc/5XZJ-AAT8].

center, second only to the downtown Loop,[165] it is now a landscape marked 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.[166] Several thousand more vacant lots are privately owned.[167]

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.[168] Thirty years later, the population had risen to over 97,000, but tens of thousands of white residents had already left; the population was now 69% African-American.[169] Since 1960, Englewood has lost over two-thirds of its population, and by 2010 it was home to just over 30,000 people, of whom 97% were African-American.[170]

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 twenty-five years.[171] 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.[172]

Meanwhile, a spur railroad line, which once served light industrial firms along 59th Street, sits abandoned.[173] City planners have imagined building a

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165. *See* Clinton E. Stockwell, *Englewood*, ELEC. ENCYCLOPEDIA OF CHI. (2005), http://www.encyclopedia.chicagohistory.org/pages/426.html [https://perma.cc/V647-MYJZ].

166. Author's analysis based on data downloaded on Oct. 3, 2015 from the City of Chicago. *See City-Owned Land Inventory*, CITY OF CHI. (2011), https://data.cityofchicago.org/Community-Economic-Development/City-Owned-Land-Inventory/aksk-kvfp [https://perma.cc/P3AY-RMKA].

167. GREEN HEALTHY NEIGHBORHOODS, CITY OF CHI. DEP'T OF PLAN. & DEV. (Mar. 20, 2014), http://www.cityofchicago.org/city/en/depts/dcd/supp_info/green-healthy-neighborhoods.html [https://perma.cc/FSM5-RMVN].

168. *See* Stockwell, *supra* note 166.

169. *Id*.

170. *City of Chicago Census 2010 and 2000*, *supra* note 74; ILL. ACTION FOR CHILDREN, *supra* note 165.

171. *See* GREEN HEALTHY NEIGHBORHOODS, *supra* note 168, at 49–51.

172. *See generally Intermodalism – Metropolitan Chicago's Built-In Economic Advantage*, CHI. METRO. AGENCY FOR PLAN. (May 1, 2015), http://www.cmap.illinois.gov/about/updates/-/asset_publisher/UIMfSLnFfMB6/content/intermodalism-metropolitan-chicago-s-built-in-economic-advantage [https://perma.cc/RL2M-WFZB].

173. *See* Hitchcock Design Group, *New ERA Trail Community Vision Plan: A Path for Transformation*, OPENLANDS (Aug. 2009), http://www.openlands.org/filebin/images/plans_reports/Community_Greening_Projects_New_ERA_Trail_Community_Vision_P.pdf [https://perma.cc/K7YR-YPAQ].

fitness trail on the abandoned embankment,[174] akin to the recently opened 606 trail that links neighborhoods on Chicago's north side.[175]

In the wake of the quality of life planning process, the City transferred a piece of land on the north side of this railroad embankment to Growing Home.[176] This became the Wood Street urban farm.[177] 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.[178] 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) tasks. Growing Home also works with partners to help its trainees seal or expunge their criminal records.[179] In so doing, it is addressing the barriers to labor market entry and mobility that mass incarceration has created for residents of neighborhoods like Englewood.[180] 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.[181]

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

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174. *See* GREEN HEALTHY NEIGHBORHOODS, *supra* note 168, at 42.

175. *See* THE 606, http://www.the606.org/ [https://perma.cc/TA7C-AYQQ].

176. *See* Chi. City Council, Comm. on Housing and Real Estate, *Approval for Negotiated Sale of City-Owned Property at 5814 South Wood Street and Authorization for Execution of Redevelopment Agreement with Growing Home, Inc*, J. OF THE CHI. CITY COUNCIL 6658–88 (Sept. 5, 2007) (on file with author).

177. *See Our Farms*, GROWING HOME, http://growinghomeinc.org/our-farms/ [https://perma.cc/6B7S-JPQM].

178. *See About Us*, GROWING HOME, http://growinghomeinc.org/about-us/ [https://perma.cc/KUW6-WKRX].

179. *See id*.

180. *See, e.g.*, Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 541 (2002).

181. Trainees earn up to $3500 over the course of a fourteen-week training program. *See 2014 Annual Report - Employment*, GROWING HOME http://growinghomeinc.org/report2014/employment.html [https://perma.cc/E2Z6-UXYH]. 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. *See 2014 Annual Report - Grants*, GROWING HOME, http://growinghomeinc.org/report2014/grants.html [https://perma.cc/9XE7-EPGN]; *Annual Report 2012–2013*, GROWING HOME, http://growinghomeinc.org/docs/GrowingHome12-13AnnualReport.pdf [https://perma.cc/FWB4-BZ3F].

classroom.[182] To do so, the organization's leaders planned to use their newly-owned land as collateral for a loan.[183] But when lenders did their due diligence into the property, they found evidence of contamination.[184] 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.[185] But this time, rather than selling the property, Growing Home managed to get support from the city to cover the costs of remediation.[186] The loan, and the construction, went forward.[187]

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 it is a blessing. Receiving city-owned properties can come cheap, but also involve taking on hidden liabilities. The city has twice transferred land to Growing Home that turned out to be contaminated.[188] This forced the farm's leaders to either figure out a way to move on to another site or to 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's staff sought to expand to a parcel across the embankment, on Honore Street, they decided to try something different. Rather than taking ownership of the land from the city, they figured out a way to have the parcel transferred from the city to NeighborSpace, and then to lease 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.[189]

Ultimately, the board agreed that the deal could go forward without amending the land trust's bylaws. In the process, the board developed rough criteria for holding land for urban farms: a farm would 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.[190] According to NeighborSpace's Executive Director, this

182. Interview with Laura Tilly, *supra* note 154.
183. *Id*.
184. *Id*.
185. *Id*.
186. *Id*.
187. *Id*.
188. *See supra* notes 154, 185 and accompanying text.
189. Interview with Ben Helphand, Exec. Dir., NeighborSpace, Chi., Ill. (Aug. 22, 2012) (on file with author).
190. *Id*.

last criterion remains somewhat vague and depends on the context of a site.[191]

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.[192] Since remediation 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.[193]

The experiment that began at Honore Street has sparked new thinking about how vacant land can be governed and put to use. Other projects have started 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.[194]

The land trust has come to be seen as a useful tool for expanding the commercial urban agriculture sector, by holding low-cost land for both nonprofit and for-profit farms. Foundation officials would like to see urban farmers move beyond nonprofit business models dependent on grants. In 2014, I spoke with one who 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.[195] Recently, local foundations have created a joint program called "Food:Land:Opportunity," which is funding an effort led by NeighborSpace to develop a land tenure model that could support for-profit commercial growers in Englewood.[196]

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191. *Id*.

192. Interview with Bradley Roback, Econ. Dev. Coordinator, City of Chi. Dep't of Planning and Dev., Chi., Ill. (July 25, 2014) (on file with author).

193. *Id*.

194. *See* Emily Blum & Chris Lackner, *Heartland Human Care Services Breaks Ground on West Side Urban Farm*, HEARTLAND ALL. (Nov. 14, 2012), http://www.heartlandalliance.org/news-and-publications/inthenews/press-releases/urban-farm.html.

195. Interview with Karen Lehman, Dir., Fresh Taste Funder Initiative, in Chi., Ill., (May 9, 2014) (on file with author).

196. *Food:Land:Opportunity*, CHI. CMTY. TRUST (2016), http://www.cct.org/about/partnerships_initiatives/searle-foodlandopportunity/ [https://perma.cc/49C3-YK6K]. 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 generally* Greg Rosenberg & Jeffrey Yuen, *Beyond Housing: Urban Agriculture and Commercial*

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.[197] 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 share equipment and distribution facilities.[198] Yet when the incubation period ends for these new farmers, the question 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?[199]

The planning process funded by Food:Land:Opportunity sought to develop a model for giving for-profit urban farmers access to affordable 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 for-profit 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 NeighborSpace or another land trust.[200] The members

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Development by Community Land Trusts (Lincoln Inst. of Land Policy, Working Paper No. WP13GR1, 2012).

197. Press Release, City of Chi., Mayor Emanuel Launches New 'Farmers for Chicago' Network for Chicago Urban Farmers (Mar. 15, 2013), http://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2013/march_2013/mayor_emanuel_launchesnewfarmersforchicagonetworkforchicagourban.html [https://perma.cc/FW75-QBBG].

198. *See* Gloria Ciaccio, *Chicago Botanic Garden's Beginning Farmers and Ranchers Development Program Establishes Four Incubator Farms in Year Two of Three-Year Program*, CHI. BOTANIC GARDENS (Aug. 19, 2014), http://www.chicagobotanic.org/pr/release/chicago_botanic_garden_establishes_four_incubator_farms [https://perma.cc/972N-JG5W]; *Farmers for Chicago*, GROWING POWER, http://www.growingpower.org/education/chicago-farms-and-projects/farmers-for-chicago/ [https://perma.cc/W3R6-5WJR].

199. 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, NORTHEAST BEGINNING FARMERS PROGRAM, at 2–3 (Oct. 29, 2010) http://www.nebeginningfarmers.org/files/2012/05/Andrea-Tursini-Farm-Incubators-sc7cbp.pdf [https://perma.cc/9W8Q-F87H].

200. Interview with Ben Helphand, Exec. Dir., NeighborSpace, in Chi., Ill. (Aug. 27, 2015) (on file with author).

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.[201]

For some community organizers from Englewood who have been involved in this process, these visions are both promising and troubling. The promise is clear: a new land tenure model could provide the basis for investments that would turn some of the neighborhood's vacant lots into productive green spaces. But as one organizer explained to me, it was difficult to imagine supporting a model in which a white-run organization—such as Growing Home or NeighborSpace—would own land being farmed by black people; or, for that matter, a model that allowed people who were not from the neighborhood (or didn't at least look like the people from the neighborhood) to benefit from access to low-cost farmland.[202] Yet she acknowledged that it would also be difficult for a land trust for urban farmland to require that growers have a particular racial background.[203]

One option would be to prioritize growers from Englewood and nearby neighborhoods. The city used a somewhat similar strategy in recent programs that have sold city-owned vacant lots to residents for $1 each.[204] 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.[205] 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.[206]

Applying a residency requirement for prospective urban farmers in Englewood, however, would be more complicated. The neighborhood might not have enough residents with the specific skill set 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

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201. 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.

202. Interview with Sonya Harper, Exec. Dir., Grow Greater Englewood, in Chi., Ill. (Aug. 30, 2015) (on file with author).

203. *Id*.

204. *See* LARGE LOTS PROGRAM, https://largelots.org/ [https://perma.cc/HJ8B-7EXX].

205. *Id*.

206. This is effectively an expansion of a city program in which homeowners could buy city-owned vacant lots immediately adjacent to their home. *FACT SHEET for: Adjacent Neighbors Land Acquisition Program*, CITY OF CHI., http://www.cityofchicago.org/content/dam/city/depts/dcd/banners/ANLAPfactsheet.pdf [https://perma.cc/94EZ-34AT].

in the city who have the right mix of growing and business skills.[207] If through opportunity-hoarding,[208] white people have tended to monopolize those skills, then using merit alone as a basis for deciding who should have access to farmland held in trust could create white spaces in otherwise black places such as Englewood.[209]

Yet even with these complications, it is worth noting that Growing Home in particular, and urban farming more generally, has helped Chicagoans to 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, during fundraisers and other events, Growing Home's Executive Director has taken to screening a documentary film that features a collective farm he visited during a recent trip to Havana.[210] The film shows Chicagoans what is possible when a city gives growers usufruct rights to vacant land.[211] 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, by whom, and on what conditions. That experimental process remains very much a work in progress.

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—or might not—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 have thought of *commons governance* as a type of self-organized institution?

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207. Interview with Brandon Johnson, former Exec. Dir., Washington Park Consortium, in Chi., Ill. (Jul. 13, 2015) (on file with author).

208. *See* DOUGLAS S. MASSEY, CATEGORICALLY UNEQUAL: THE AMERICAN STRATIFICATION SYSTEM 244 (2007) (defining opportunity hoarding as "the monopolization by in-group members of access to a resource so as to keep it for themselves or charge rents to out-group members in return for access").

209. *See* Brandon Hoover, *White Spaces in Black and Latino Places: Urban Agriculture and Food Sovereignty*, 3 J. AGRIC., FOOD SYS. & COMMUNITY DEV. 109, 113 (2013); *see also* Minehaha Forman, *Race Dynamic Seen as Obstacle in Detroit Urban Farming*, MICH. MESSENGER (Oct. 30, 2009), http://www.cityfarmer.info/2009/11/02/race-dynamic-seen-as-obstacle-in-detroit-urban-farming/ [https://perma.cc/4SMM-QPY7].

210. *See* TIERRALISMO: STORIES FROM A COOPERATIVE FARM (Americas Media Initiative, 2013).

211. Interview with Harry Rhodes, Exec. Dir., Growing Home (June 4, 2014) (on file with author).

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. It is *possible* to make the case that such pieces of land might, collectively, be understood as a sort of common pool resource.[212] It is expensive to exclude people from a vacant lot, and particularly to do so from all the vacant lots in a neighborhood or a city. And one person's use of a lot—for gardening, dealing drugs, or dumping trash—reduces the area available to other potential users.

At the scale of a neighborhood or a city, then, we might conceive of vacant lots as a common pool resource. When gardeners and farmers make claims to vacant lots, then, they would be asserting that residents of a neighborhood could manage at least some segment of this common pool resource, in order to provide benefits to their community.

The problem with this way of thinking about the governance of urban gardens and farms is that once benefits are established on a particular vacant lot, they seldom remain potentially open to all users. Taken at the scale of a particular garden or farm, land appears less like a common pool resource and management less like commons governance. At Kumunda Garden and Growing Home, land is fenced off and access is granted only to garden members or to people who have enrolled in a job-training program. Only some residents hold rights to draw upon units of the resource.

Nevertheless, the stories of Kumunda Garden and Growing Home help illustrate how gardeners and farmers go about making claims to vacant land as a resource that should be both used and shared. As I have described, people make such claims in a variety of ways.[213] The assertion is not that these are typical of all community gardeners and farmers generally, even in 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: (1) claiming access to space, and (2) 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

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212. Ostrom defines common pool resources as sharing "two characteristics: (1) it is costly to develop institutions to exclude potential beneficiaries from them, and (2) the resource units harvested by one individual are not available to others." Elinor Ostrom, *Neither Market Nor State: Governance of Common-Pool Resources in the Twenty-First Century*, 2 INT'L FOOD RES. POL'Y INST. LECTURE SERIES 1, 2 (1994).

213. *See supra* Parts II.A. and II.B.

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 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.[214]

The city, however, is not the only player in determining access to land. Local foundations have also gotten involved in this process.[215] 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.[216] Growers who want access to land thus are not only making claims to the city, but also pitching their projects to foundation officials.[217] 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 lead to use of the land and prevent it from returning to the city's inventory.

Once gardeners and farmers have secured access to land, they have to figure out how to govern its use. In thinking about whether farms and gardens constitute the "urban commons," the question is not whether land itself is a common pool resource, but rather whether what is happening is an example of commons governance. Such governance is often conceived in terms of self-organized or self-governed resource management—in which people develop rules for managing use (and preventing overuse) of resources without resorting to government coercion or transfers to private ownership.[218] How well does that explain what is going on at places like the Kumunda Garden and Growing Home?

At first glance, the concept of self-organized commons governance seems to fit these settings quite well. Growers are indeed coming up with rules for managing these spaces, and they often do so on their own. Community gardens such as Kumunda have rules and usage agreements their coordinators and their users develop, sometimes by reference to model

214. *See supra* note 114 and accompanying text.

215. *See supra* text Part II.B.3.

216. *See id*.

217. *See id*.

218. *See, e.g*., Elinor Ostrom & Roy Gardner, *Coping with Asymmetries in the Commons: Self-Governing Irrigation Systems Can Work*, 7 J. ECON. PERSPECTIVES 93 (1993); *see also* Sheila R. Foster, *supra* note 1, at 62.

garden rules,[219] sometimes by looking to property rules from the Old Testament.

Nonprofit urban farms such as Growing Home, for their part, develop their own plans for growing and allocating their yield between farm stand sales, deliveries to restaurants, and donations to food pantries. When they are on NeighborSpace land, like Growing Home's Honore Street farm, they must comply with the rules created by the land trust, such as only erecting hoop houses or other temporary structures.[220] This rule developed as the result of NeighborSpace's board tinkering with ways of interpreting their mission. Both it, and the rules an urban farm creates to guide its production and sales, might be understood as self-organization; urban farms and land trusts such as NeighborSpace do in some sense self-govern the resources they manage.

But there are also ways in which it makes less sense to think of urban gardens and farms as instances of self-organized commons governance. Gardeners, farmers, and entities like NeighborSpace govern space through rules and practices that are symbiotic with, and often constrained by, government-mandated rules. In community gardens, for example, city officials hold a veto over whether a garden on city or privately-owned land may be transferred to NeighborSapce, 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 lead to a change to 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, rules enforced by municipal officials. Transferring 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,[221] but it can help remove liabilities from the city's balance sheet.[222] Moreover, local government officials retain a great deal of

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219. *See, e.g.*, *Sample Garden Rules*, AM. COMMUNITY GARDENING ASS'N, https://communitygarden.org/resources/sample-garden-rules/ [https://perma.cc/9SU3-MDWY].

220. *See* Interview with Ben Helphand, *supra* note 201.

221. One study suggests that community gardens raise surrounding property values, but it is unclear whether urban farms have the same effect. *See* Ioan Voicu & Vicki Been, *The Effect of Community Gardens on Neighboring Property Values*, 36 REAL ESTATE ECON. 241, 243, 268 (2008).

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

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.[223] Thus even as people in Englewood work to imagine a land tenure model that could hold land for for-profit farms, they are doing so in the context of a land trust created by, and responsive to, local governments. 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.

It is equally difficult to see apparent self-organization in urban gardens and farms as entirely distinct from the rules and norms central to private property. We might better conceive of self-organization in gardens and farms as a process of tinkering with the central features 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 do not use your plot by a certain date, you may lose the right to use it and exclude others. Or if you do not opt out of the gleaning program, you may have others enter your land and seize some portion of your produce. If you do not chip in to plant a common garden outside the fence, then people may end up jumping the fence and picking from your garden. Rights often understood as part of the basic structure of private property—the right to exclude others, and to benefit from use[224]—remain the default expectations. Garden coordinators and gleaning program leaders continue to 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 that constitute 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

223. *See Board*, NEIGHBORSPACE, http://neighbor-space.org/about/board/ [https://perma.cc/S9QL-HG2G]; Interview with Ben Helphand, *supra* note 201; Interview with Mary Jo Schnell, Former Exec. Dir., NeighborSpace, in Chi., Ill. (Aug. 10, 2012) (on file with author).

224. Henry Smith, in arguing against the bundle-of-sticks conception of property, states the conception that the right to exclude and the right to the residual claim are "basic features" of property. Henry E. Smith, *Property as the Law of Things*, 125 HARV. L. REV. 1691, 1709–10 (2012).

job skills training.[225] This suited Growing Home's needs, of course, but at least in theory it also meant that if these conditions were not met, the city could take back ownership of the land.[226] Social obligations effectively run with the land; to get out of them requires negotiating with the city, as when Growing Home found that the first piece of land it had received from the city was contaminated, and wanted to resell the parcel and take the proceeds.

Farmland leased from NeighborSpace is similarly restricted. Farmers must use the land for growing food, only build temporary structures, and, at least for the moment, be a nonprofit organization that serves some community purpose.[227] 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 such farmland is private property, these experiments with how it may be governed are effectively ways of tinkering with the bundle of rights so as to promote the use of land as both a resource for commercial farmers and for their surrounding community.

Even though urban farms and community gardens have come to be thought of as prototypical examples of the urban commons,[228] a closer socio-legal mapping of how people have experimented with property relations suggests something different than a "pure" form of commons governance. These are not sites where self-organization of resource management takes place apart from the coercive influence of government and the forms and norms of private property. If we are to think of urban gardens and farms as "the urban commons," it might be better to see them as an experimental form of governance that encourages the treatment and use of land as a shared, community resource. This involves both experimenting with rules by which to govern particular shared pieces of land, and tinkering with the possibilities made available by existing laws and features of private property. 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. People who seek to access and collectively govern urban land can pull upon everything from the rules that regulate nonprofits to zoning codes, land trusts to transfers of city and federal land, weed ordinances to norms of sharing.

This web of rules both creates and limits possibilities for people in places like Woodlawn or Englewood hoping to rework who can use the vacant land in their neighborhoods. 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 garden or farm is a "commons" governed and used by

225. *See* Redevelopment Agreement, *supra* note 153.
226. *See* Interview with Harry Rhodes, *supra* note 212.
227. *See* Interviews with Ben Helphand, *supra* notes 190, 201.
228. *See supra* Part I.A.

neighborhood residents. The property experiments that take place on such a site may in fact make it a resource for the entire city, and contribute to the experience of the city itself as a commons.[229] But as with other resources in the city, it may become a site of contention over who can access, use, and benefit from the resource, and whether the rules that regulate access and use reproduce the forms of social exclusion common to other areas of urban governance.

A. An Experimentalist Policy for the Urban Commons?

If we understand the emergence of new forms of sharing and governing resources in urban farms and gardens not as the "urban commons" but rather as the varied products 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 commons governance of urban land. People both inside and outside 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 for 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 monitor the progress of these experiments, and draw lessons to be applied in subsequent innovations.

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 provide people with support and space to figure out how to manage community gardens.[230] 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.[231]

For policymakers, the question would be: "What rule best promotes experimentation by people who want to promote community management and sharing of resources?" This could offer a 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

229. *See* Foster & Iaione, *supra* note 20, at 50.
230. *See supra* Part I.C.
231. *See supra* Part III.A.

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 turns a common way of thinking about "the urban commons" on its head. Often, policies promoting urban farms and gardens focus on protecting these sites of community resource management from development, a defensive struggle that pits sites understood as instances of the urban commons against urban growth. An experimentalist approach might focus instead on identifying and creating new spaces for shared community governance—a proactive struggle which imagines ways in which sites of community resource management might encourage economic development, or in which forms of democratic planning help increase the productive and efficient use of urban land.[232]

An experimentalist policy for promoting 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 shared community use of resources through property experimentation might itself become the object of experiments. People often conceive of the urban commons as sites that are community-owned and managed, but people who want to preserve such 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.[233] 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 forms of shared governance that provide public goods not provided by the state

232. *See* Joel Rogers, *Productive Democracy*, THE NATION (Mar. 23, 2015) https://www.thenation.com/article/productive-democracy/ [https://perma.cc/VH7B-7Z5P].

233. *See* BOARD OF WEST CHI. PARK COMMISSIONERS, A GREATER WEST PARK SYSTEM: AFTER THE PLANS OF JENS JENSEN 15 (1920).

could evolve into claims that the state itself should directly support the provision of those public goods.[234]

CONCLUSION

In their recent excitement to find the commons in the garden, social scientists and legal scholars have strived 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 actually be in tension with conceptions of what the commons is, and how it comes about.

This Article has offered 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 that scholars and advocates of the commons would expect (and hope) to see. 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. Growers' tinkering with ways to promote use and sharing may involve adapting, rather than rejecting or transcending, certain basic features of 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, reveals hybridized varieties of shared property governance, rather than pure, unadulterated examples of the urban commons.

Urban policymakers could benefit from a more realistic understanding of how urban growers use gardens and farms as sites of experimentation, not only with growing practices, 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 as facilitating an idealized notion of the urban commons—progressive urban planners and city officials would do well to see such gardens as sites where citizens can experiment with how urban resources can and should be owned and governed. Such an experimentalist framework would require more patience from policymakers and local officials than a framework that simply defends or promotes the urban commons. It might encourage claims both against the state, and to private property, which could seem in tension with the commons itself. Compared with a policy that simply encourages self-organization, or sees

234. 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 1, at 113–114.

local government as a booster or protector of the urban commons, a policy that promotes property experimentation might bear more satisfying fruit.