Chapter 1

Setting the Table for Urban Agriculture

Michael Roberts and Margot Pollans

The resurgence of urban agriculture reflects a variety of trends in American culture, including the continuing salience of the Jeffersonian vision and dissatisfaction with many aspects of the modern food system. This dissatisfaction covers a litany of challenges, including, among others, environmental harms, food access problems, hunger, and lack of transparency. To these ends, advocates have fought to reverse a century of laws and policies aimed at removing agriculture from city life.

This introduction first reflects on how popular support for the development of a legal framework that promotes urban agriculture is rooted deeply in American agrarian traditions. We then note the tension between the rhetoric in support of urban agriculture and the modes of urban law and planning that dominated the 20th century. We consider how various approaches to urban planning have facilitated or thwarted urban agriculture and survey recent legal developments designed to accommodate and encourage urban agriculture projects as alternatives to conventional industrial agriculture.

Notwithstanding the growing enthusiasm for urban agriculture, serious equity and ecological concerns lie within modern urban agriculture. Careful strategic planning is needed to align the implementation of the legal tools presented in this book. This chapter concludes by recommending the use of key legal tools in developing urban agriculture that, if implemented, will improve food systems in general.

Urban Agriculture and American Popular Culture

The Urban Agriculture Trend

Urban agriculture encompasses a variety of economic and social activities related to food production, distribution, processing, eating, and disposal. It includes, among other

1. Special thanks to our research assistant Rachel Landauer, J.D. and M.P.H. Candidate, University of California Los Angeles, for researching and editing and for gathering the data for and creating the charts included in this chapter. Thanks also to Kim Kessler, Policy and Special Programs Director, Resnick Program for Food Law and Policy, for her helpful comments.
things, community gardens and urban farms, and their associated distribution mechanisms, which can include farm stands, farmers’ markets, and community-supported agriculture (CSA) ventures, through which customers contract in advance to purchase a box of produce the contents of which are determined by the farmer based on that week’s harvest. Most urban agriculture projects are part of a broadly defined alternative food movement, which includes, in particular, the local food movement. Thus, urban agriculture projects emphasize paying attention to our food—knowing where it comes from, how it was produced, and what it contains.

Despite its recent surge in popularity, urban agriculture is not new. Through the 19th century, vegetable gardens and farm animals were common features of city life in the United States. But in the 20th century, many of the gardens and nearly all of the farm animals disappeared from the urban landscape. A slow resurgence began in the 1970s, in the wake of urban abandonment, which left both the space for agriculture and the need for creative approaches to redevelopment. In the last five to ten years, the trickle turned into a flood. For instance, between 1993 and 2013, the number of community gardens in Seattle, Washington, increased from 30 to 81. Portland, Oregon, which had 30 gardens in 2007, has 50 today.

Urban agriculture is an increasingly central feature of urban landscapes, conversations about food, and, of course, laws. Tables 1 and 2 demonstrate its newfound prevalence as both an element of public dialogue and a focus of academic legal analysis. As Table 1 demonstrates, use of the term “urban agriculture” since 2010 has already exceeded totals for any previous decade. Urban agriculture has also permeated popular culture. For example, the first episode of the sketch comedy show Portlandia mocks the trend, particularly the desire to know where our food comes from, by taking it to an extreme—when out to dinner, the two main characters refuse to order without first paying a visit to the local source of the restaurant’s chickens to ensure the chickens were well-treated. More than just the subject of mockery, the interest in local sourcing is evident everywhere from the White House Garden to a recent episode of The Simpsons featuring a rooftop garden on the top of the Kwik-E-Mart.

Urban agriculture programs also emphasize what participation in the food system can offer urban residents: food security, empowerment, healthy and tasty eating, and access to open space. Urbanites can participate via community gardens, backyard gardens, and home food processing. CSAs, farm stands, and farmers’ markets offer

---

2. Before the Revolutionary War, many cities were planned with common areas for animal grazing or lots large enough to accommodate gardens. Joshua Yellin, The Intersection Between Urban Agriculture and Form-Based Zoning: A Return to Traditional Planning Techniques, 19 Hastings W.-Nw. J. Env’tl. L. & Pol’y 83, 84–85 (2013). Though less of a necessity due to increased rural production, urban agriculture continued through the late 19th century as more of a form of charity, recreation, or poverty alleviation. Kimberly Hodgson et al., Urban Agriculture: Growing Healthy, Sustainable Places 10 (Timothy Mennel ed., 2011).


urban residents an opportunity to support and engage with urban agricultural activities by visiting farms and making purchases directly from farmers. Reflecting this new desire for participation, the upscale home goods chain Williams-Sonoma recently added a new section to its online store called “Agrarian,” which features...
everything from do-it-yourself canning kits to raised bed planters to chicken coops. Williams-Sonoma’s entry into this market suggests that a growing number of Americans are willing to invest both time and money into a different type of food system, one that is not characterized by convenience.

The Jeffersonian Tradition

As advertised on the Williams-Sonoma website, the “Agrarian” market, “supports a lifestyle of healthy-living—connecting the virtues of the homegrown and homemade to your everyday table.” Why is agriculture virtuous? Aristotle, Horace, Virgil, and Adam Smith have all pointed to the moral superiority of agriculture as a way of life; in the American conscience, however, “the most emblematic figure, if not the patron saint, of an agrarian mentality” is Thomas Jefferson. Although Jefferson himself never elucidated the elements of agrarianism, he often connected virtue and agriculture with lofty language, such as the following: “Those who labor in the earth are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue.”

The interpretative tradition that has grown around the writings of Jefferson punctuates the connection. For a century after Jefferson, the agrarian ideal was imbued with a special significance in American political rhetoric, prose, and visual arts. In 1851, Representative George Julian of Indiana stated in a speech to Congress that “[t]he life of the farmer is peculiarly favorable to virtue. . . . His manners are simple . . . his nature unsophisticated . . . [H]e lives in rustic plenty, remote from the contagion of popular vices. . . .” The ideals of the Jeffersonian vision were also celebrated in the harmonious pastoral landscape, as evidenced in the literary works of poet William Cullen Bryant and novelist James Fenimore Cooper. Paintings produced by the Hudson River School, founded by Thomas Cole, paid homage to rural contentment, plentitude, and agrarian virtues. In the late 19th and early 20th century, Jeffersonian agrarianism continued to influence political thought. Woodrow Wilson, an admirer of Jefferson, was attracted to the agrarian utopia of small farms and educated farmers and embraced a platform in 1912 attacking the “wall of privilege”—the tariff, banks,

13. Burns, supra note 11.
14. See id.
and trusts. Populist politician, newspaper editor, and writer Thomas E. Watson, who authored a biography of Jefferson, influenced agrarian thought for some time by his parsing of farmers’ virtue from political theory. A review of recent agrarian literature shows that reliance on the symbol of the farmer to define citizen virtue is alive and well in contemporary discourse. For example, agrarian philosopher Paul Thompson argues that current discussions of sustainability need to reconnect with an agrarian philosophical and historical tradition that subverts industrialized agriculture’s dominance. The most prominent contemporary voice for the Jeffersonian tradition is American novelist and cultural critic Wendell Berry, who appropriates Jeffersonian ideas by arguing that the agrarian farmers’ intimate and caring connection with the land distinguishes them from industrial agriculture: “farming gives gifts because it is given a chance to do so; it is not overcropped or overused.” Although its legitimacy may be questioned, the Jeffersonian notion that agrarianism produces virtuous individuals and communities is firmly entrenched in American moral populism, as exemplified in a 2013 Ted Talk (“ReGrowing Agrarian Roots”) by rancher, author, and popular speaker Paul Schwennesen, that espoused the simple virtues of farms and living on the land.

In spite of the abstractness of the Jeffersonian creed of agrarianism, three basic tenets have emerged. The first tenet connects agrarianism to nature: through contact with nature, the agrarian acquires virtues of honor, self-reliance, and moral integrity. Second, agrarianism engenders a sense of belonging to a community. Jefferson believed that agricultural pursuits keep citizens in touch with communities and that democracy requires such a connection. Third, agrarianism checks against the evils of urbanism, capitalism, and the imbalances of modern society.

19. Thompson, supra note 9.
20. Wendell Berry, Bringing it to the Table: On Farming and Food 128 (2010).
21. See Jim Chen, Of Agriculture’s First Disobedience and Its Fruit, 48 Vand. L. Rev. 1261, 1326 (1995) (asserting that agrarian virtue is nothing more than a myth and that agriculturists are nothing more than survivors and exploiters of land (environmental destruction) and humans (slavery)).
24. Id.
25. Id.
populace could be employed as independent farmers, the country would stave off the power-seeking schemes of massive economic concern.28

Virtue in Urban Agriculture

Agrarian thought among urban populations, like that among rural populations, embraces the potential virtue of a particular type of food production—the nonindustrial. Realization of this nonindustrial virtue hinges on urbanite participation. The best-selling author Michael Pollan captures this connection in his book Food Rules. For example, Rule 62 advocates for readers to “[p]lant a vegetable garden if you have the space, a window box if you don’t.” This practical suggestion calls for direct participation “in the intricate and endlessly interesting processes of providing for your sustenance. . . .”29 Although active participation in food production is not always possible for urban residents, the cultural emphasis on “food” makes the Jeffersonian ideals relevant to urbanites. Urban farming, CSAs, and farmers’ markets help urban dwellers connect with nature and producers and “brush up against someone who is actually living out a life premised on self-reliance and stewardship.”30

Although agriculture policy in the United States still favors large, nonurban industrialized farming, policy advocates increasingly point to the virtues of urban agriculture and promote its development. Government initiatives have encouraged urban residents to transform the urban environment by embracing agricultural practices.31 University researchers of all stripes—human geography, environmental sciences, and urban studies—have postulated that agrarian practices of small-scale agriculture can improve and beautify cities.32 Urban agriculture may only meet a small percentage of total urban food needs, but the uses of agrarian narratives and images have a powerful influence on the way that individuals and communities imagine their relationship to nature, as well as to food and the people who produce it.33

The momentum toward connecting urban agrarianism to virtue has spawned a recurring narrative that encompasses the Jeffersonian tenets, allowing urban agriculture proponents to cite numerous potential benefits that appeal to modern urban sensibilities. These benefits include individual moral development, community development, personal health (through access to fresh fruits and vegetables), economic development, access to greenspace, environmental sustainability, and food justice (via both food access and food sovereignty). These potential benefits will be discussed at greater length in Chapter 3, which considers local food policy and justifications for urban agriculture programs. They will also be considered in the case studies included at Chapters 13 through 17, which attempt to measure some of those benefits through direct observation and empirical study.34 As this section demonstrates, urban agriculture is more than a trend driven by economic exigency and urban abandonment; its

30. Thompson, supra note 9, at 121.
31. Id.
32. Id.
33. Id.
34. See Chapters 13–17.
rhetoric is deeply rooted in the American agrarian tradition, which values connection to nature, hard work, and self-sufficiency.

**Planning and Legislating for Urban Agriculture**

Twentieth century urban land use law and planning, which calls for separation of uses and isolation of cities from their agricultural hinterlands, hastened the decline of urban agriculture in the early 20th century and thwarted its development at the turn of the 21st. The widespread adoption and development of urban agriculture in recent years has required both reconceptualization of cities themselves and revamping of legal frameworks. This section describes both of these transformations, beginning with a brief history of urban planning theory in the United States. Examples of historical and current models of urban agriculture are discussed in Chapter 2. Here, at the outset, we focus on planning theory because it is essential to urban land use decisions. Two recent strands of urban planning theory—“New Urbanism” and “agricultural urbanism”—are gaining popularity and have facilitated and encouraged the expansion of urban agriculture.

**History of American Urban Planning Theory**

Early colonial urban planning expressly provided for agricultural spaces. Cities such as Boston, Philadelphia, and Savannah were all designed to leave room for food production. This approach reflected both conventional practice and technological necessity—without refrigeration or railroads, fresh food had to come from nearby. Over time, agricultural space gave way to denser and more industrial uses, and by the early 20th century, the dominant mode in city planning had become separation of uses, characterized by Euclidian zoning, which designates closely related and compatible uses for each zoning district.

Many communities have established large minimum lot sizes, often as large as two acres, and prioritized single-family homes over multifamily buildings and nonresidential uses by specifying permissible uses. These and other zoning restrictions have limited housing density and facilitated sprawl. Accordingly, zoning has been at least partly blamed for increased carbon footprints.

Although it is still the dominant mode of planning, Euclidian zoning is increasingly falling out of favor. Following the path of Jane Jacobs, an urban theorist who, in the mid-20th century, advocated for mixed-use, dynamic development, planners such as Andres Duany and Emily Talen have called for a return to form- (rather than use-) based planning. Called “New Urbanism,” this new planning mode emphasizes

35. Yellin, supra note 2.
38. Yellin, supra note 2, at 95–96 (explaining that sprawl increases automobile dependency).
the importance of context-based planning in which “[n]ature . . . provide[s] the order and underlying structure of the metropolis.” Just as a natural environment is diversified, so too should be an urban landscape. Residential, commercial, and even agricultural and industrial uses can coexist, so long as they are appropriately scaled for their surroundings. Mixed-use developments, featuring combinations of residential and commercial uses and green space, are increasingly common, and many cities have experimented with “upzoning”—allowing a greater variety of uses and larger building sizes—to facilitate density, particularly around transit hubs. Some examples of cities that have embraced this mode of planning include Miami, Florida, which revamped its entire zoning code to follow the tenets of New Urbanism, and Fremont, Michigan, which adopted a hybrid code combining elements of form-based zoning and conventional zoning with the goal of “foster[ing] a vibrant city through a lively mix of uses.”

Planner Peter Calthorpe articulates the aspirations of New Urbanism when he argues that a new type of growth should be a search for a paradigm that combines the utopian ideal of an integrated and heterogeneous community with the realities of our time—the imperatives of ecology, affordability, equity, technology, and the relentless force of inertia. The work asserts that our . . . neighborhoods must be diverse in use and population. And . . . that the form and identity of the metropolis must integrate historic context, unique ecologies, and comprehensive regional structure.

Following this reasoning, agriculture may once again secure an appropriate and productive place in urban areas as a relief from density, a productive use of available spaces such as vacant lands and roofs, and a mechanism to attach cities to their ecological contexts.

Drawing on the philosophy of New Urbanism, a new group of “Agricultural Urbanists” have asked how planners can expressly incorporate food into planning methodologies to facilitate environmental sustainability, social and economic development, and public health. Arguing that, for far too long, planners have assumed that food comes packaged from the supermarket, Agricultural Urbanists have called on city planners to implement a framework “that sees municipal food networks as analogous to other vital infrastructure such as roads or sewers.” In their guide to agricultural urbanism, planners Janine de la Salle and Mark Holland developed a series of guiding principles including approaching planning from “an integrated
food-and-agriculture-system perspective”; increasing physical access to food; integrating food systems into a broad range of urban policy, programs, institutional mandates, and development plans; and constructing sustainable infrastructure for food and agriculture.45

Revamping the Legal Framework

The bottom line for Agricultural Urbanists is that food is a conscious feature of all elements of city planning. Both the New Urbanism and Agricultural Urbanism modes seek to develop integrative landscapes, where residents can live, work, and grow food—a place where agrarian ideals are fostered. Implementing this vision requires both legal change, to legalize agricultural uses, and funding, to develop agriculture projects.

A central concern of this chapter, as well as much of the rest of this book, is the influence urban agrarianism is having and will have on law.46 The emerging application of law to urban agriculture focuses not on preservation, as rural agricultural law has done, but rather on legalization and promotion.47 What are the legal tools being implemented to serve these two goals? Several of the chapters in the book, including Chapter 4 (preemption of local laws by the state and federal government), Chapter 5 (zoning to regulate local food production), Chapter 6 (farm animals in urban areas), Chapter 7 (urban agriculture and the law of nuisance), and Chapter 9 (local food and tax exemptions), illustrate the promotion of urban agriculture via legal tools. Below is a brief summary of local, state, and federal facilitative laws.

Changes to State and Local Laws

With primary control over local land use, state and local governments play a formative role in governing urban agriculture. Changes to state and local laws fall into three main categories: (1) changes to municipal codes; (2) property tax incentives; and (3) government acquisition of land for urban agriculture purposes.

Many cities are updating their municipal codes to allow for urban agriculture. These updates often provide clear definitions for relevant terms and stipulate where certain types of urban agriculture can be practiced, permissible lot sizes, whether commercial gardens are permitted, the number of livestock that can be kept, and the types of structures that can be built. In addition, some codes set standards for irrigation runoff, pesticides, and sanitation. Although these updates primarily address zoning, others aspects of local law, such as health codes, have also been implicated.

45. De la Salle & Holland, supra note 44, at 31–32.
46. Urban agrarianism refers to the broader trend of integrating agriculture into cities. Agricultural Urbanism, by contrast, is the specific urban planning movement that has developed strategies and mechanisms for implementing urban agrarianism.
47. “Agricultural law” historically has served primarily as a tool to protect rural agriculture. An enormous body of legal exceptions, protections, and programs serve that end. They include bankruptcy protection; international-trade laws and programs; exceptions to environmental and antitrust regulations; subsidy, loans, and education programs; and farmland preservation laws and programs. John H. Davidson et al., Agricultural Law: Cases and Materials (Am. Casebooks, 1985). Many of these tools reflect the Jeffersonian centrality of agriculture, privileging farms above other economic endeavors. See also Susan A. Schneider, A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 946 (2010).
Cities that are regularly acknowledged for their comprehensive, urban-agriculture-friendly zoning codes include Boston, Seattle, and Cleveland. As demonstrated in these cities, updates to municipal codes remove impediments, create space for and regulate activities and land uses related to urban agriculture, including the sale of agricultural products and the raising of livestock. For instance, since 2011, Berkeley, San Francisco, and Detroit have all enacted laws legalizing the sale of homegrown and urban-garden-grown edibles. Among many other cities, San Diego and Baltimore recently amended their zoning codes and health codes to legalize beekeeping, backyard chickens, and goats. Baltimore also legalized rabbit-raising.

Some states have enacted laws allowing local governing bodies to lower property taxes on certain properties used for urban agriculture. For instance, Maryland’s urban agriculture property tax credit, enacted in 2010, allows the mayor and city council of Baltimore, as well as any county or governing body of a municipal corporation, to grant a property tax credit to urban agriculture properties of a certain size. Similarly, California recently enacted the Urban Agriculture Incentive Zones Act, which allows city governments to designate “urban agriculture incentive zones” in which landowners can receive a property tax reduction for contracting to commit land to agricultural use for a minimum of five years. The California act requires the county assessor to value property at its agricultural, as opposed to market-rate value. To qualify as an “urban agriculture incentive zone,” the area encompassing the zone must be a United States Census designated urban area of 250,000 people or more. Tax incentives are discussed further in Chapter 9.

Some new state laws that support urban agriculture allow local governments to appropriate private, vacant lots or enter into lease agreements with private property owners, to open land for community gardens. The following two examples illustrate this trend.

51. Detroit, Mich., City Code § 61-12-327 (2012) (allow products grown or produced at urban gardens and farms to be sold on site, at farmers’ markets, or directly to public and private entities).
First, in April 2009, the Ohio General Assembly amended the Land Reutilization Program to create land bank corporations. This permits municipalities, counties, and townships to acquire nonproductive land via tax foreclosure and implement procedures for reutilization of nonproductive lands. Soon after this amendment, Cleveland formed the Cleveland Landbank Program, which makes land available to private citizens for new home construction, residential side-yard expansion, and commercial development, among other potential uses. Land can be purchased for agriculture or other greening uses for $200 per parcel or licensed for use as a community garden for $1 per year.

Second, in Seattle, the Municipal Code authorizes the Director of Neighborhoods to “enter into, renew, modify and administer leases and agreements to lease any property within [the] city . . . for use as . . . community gardens.” With this authority, the city has set up the P-Patch Community Gardening Program, which currently manages 81 gardens.

Federal Support for Urban Agriculture

In addition to implementation of the state and local legal tools outlined in this book, the legal framework for promoting urban agriculture is also shaped by federal programs that directly or indirectly support urban agriculture. Generally, the federal programs supporting urban agriculture fall into one of three categories: grants for private, local, and state research and projects; consumer food purchasing subsidies that can be used at farmers’ markets; and funding for and provision of education and information sharing. For example, a recent research grant from the United States Department of Agriculture’s (USDA) National Institute of Food and Agriculture to the Pennsylvania State College of Agricultural Sciences and New York University provided $453,000 for a report entitled “The State of Urban Farming in the United States: Enhancing the Viability of Small and Medium-Sized Commercial Urban Farms.” Researchers plan to examine the current and future state of urban agriculture. Other project funding...
programs include the Community Food Project Competitive Grants Program,\textsuperscript{64} the Farmers Market Promotion Program,\textsuperscript{65} and the Farm to School Grants Program.\textsuperscript{66}

\begin{itemize}
\item \textsuperscript{64} Started in 1996, this program funds projects designed to “meet the food needs of low-income people”; “increase the self-reliance of communities in providing for their own food needs”; and “promote comprehensive responses to local food, farm, and nutrition issues.” Community Food Projects Competitive Grants, U.S.D.A. Nat’l Inst. of Food and Agric. (Mar. 18, 2009), http://www.csrees.usda.gov/nea/food/in_focus/hunger_if_competitive.html. Grants are also available for projects that meet specific state, local, or neighborhood food and agriculture needs for infrastructure improvement and development; planning for long-term solutions; or the development of marketing activities that mutually benefit agricultural producers and low-income consumers.

2013 grants included support for the following projects:

Revision International (CO) received funding to increase access to and the affordability of locally-grown, fresh, healthy produce in the food desert of Westwood, and to do so through a community-owned and operated cooperative. Among other outcomes, the project seeks to expand the number of backyard gardens and growing space at the project’s two urban farms. Westwood Food Cooperative: Urban Farms, Food Hub, and Marketplace, U.S.D.A. Nat’l Inst. of Food and Agric., http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=58197&format=WEBLINK (last visited Jan. 10, 2014).

Youngstown Neighborhood Development Corporation (OH) received funding to expand programming for and assistance to urban growers. The plan is to recruit and provide training, support the creation of new food-based businesses through supportive services such as small business development consulting, access to both vacant land and value-added processing facilities, create jobs through the development of a strong, diverse local food system, and increase the knowledge and capacity of community residents to both grow and prepare fresh, healthy, local foods. Growing New Food Entrepreneurs in Youngstown, U.S.D.A. Nat’l Inst. of Food and Agric., http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=58121&format=WEBLINK (last visited Jan. 10, 2014).

\item \textsuperscript{65} This program provides awards of up to $100,000 for agriculture cooperatives, economic development corporations, local governments, non-profit organizations, producer associations and networks, public benefit corporations, regional farmers’ market authorities, and tribal governments. The grants support direct marketing of local food systems (e.g., farmers’ markets, roadside stands, CSAs, agri-tourism, and electronic benefit transfer (EBT) machines, which enable the use of food stamps at farmers’ markets). In 2012, these grants resulted in 131 projects in thirty-nine states. Farmers Market Promotion Program—FY 2012 Awards (2012), available at http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5100605. Under the Farmers Market Promotion Program, the USDA provided funding to the following projects, among others, in 2012:

Truly Living Well Center for Urban Agriculture (GA) received an award to expand delivery systems from local urban farmers to markets, support the use of EBT, and promote the markets to consumers in Atlanta food deserts.

New Orleans Food & Farm Network (LA) received an award to train new urban farmers in business and farm management, marketing, and legal principles related to urban farming.

United Community Centers (NY) received an award to provide educational tours of urban farms so as to increase awareness of and attendance at local farmers’ markets.

\item \textsuperscript{66} This funding program is designed to help schools source more local foods and provide educational activities around food, farming, and nutrition. These grants range from $20,000 to $100,000 and have a matching fund requirement. Applicants include schools, state and local agencies, tribal organizations, agricultural producers, and non-profit organizations. First year awards, announced November 14, 2012, spanned 68 projects in 37 states and the District of Columbia. U.S.D.A., U.S.D.A. Farm to School FY 2013 Grant Awards (2012), available at http://www.fns.usda.gov/sites/default/files/F2S_Grants-FY2013.pdf. First year awards by the Farm to School Grants Program included funding for the following projects:

Community Food Bank (AZ) received a grant to partner with schools to bring local and healthy foods into cafeterias. The program has three areas of focus: food production, garden-based education, and working with local producers and developing a farm to school partnership on Tohono O’odham Nation.
The second area of focus for government funding programs is facilitation of local agriculture through existing consumer food subsidies. Although these programs apply broadly, certain aspects support the development of urban and peri-urban agriculture by providing low-income consumers with financial support to purchase those products. The Senior Farmers’ Market Nutrition Program is designed to provide low-income seniors—many of whom reside in urban communities—with farm-direct food.67 Many states use a coupon model, allowing seniors to purchase directly; others purchase bulk quantities of produce from local farmers and provide boxes of food to participants on a regular basis; and a few states purchase a share of CSA programs on behalf of each senior participant. The Supplemental Nutrition Assistance Program (SNAP), available to low-income individuals and families, provides financial benefits through electronic benefit transfer (EBT)—essentially debit cards.68 Traditionally, these benefits were redeemable only at participating retail stores, but according to a USDA database as of 2013, nearly one-third of the farmers’ markets in the country had EBT machines.69 Some states and localities incentivize use of SNAP benefits at farmers’ markets by offering matching benefits—in other words, for each SNAP dollar spent at farmers’ markets, a SNAP participant gets a second dollar.70

Some states now also allow vouchers issued under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to be used at farmers’ markets for purchase of fruits and vegetables.71 WIC provides food-purchasing support for pregnant women, new mothers, infants and children up to five years of age.72 Under the WIC Farmers’ Market Nutrition Program, established in 1992, most states provide coupons specifically for use at farmers’ markets.73

Finally, through the USDA, the federal government also supports urban agriculture through education and the provision of information. For instance, the USDA has created the Alternative Farming Systems Information Center, which identifies

---

Healthy Foods for Healthy Kids, Inc. (DE) received a grant for its work starting vegetable gardening programs at schools.

Growing Power (WI) received a grant for a project to provide children with curriculum-based education on urban sustainable food systems and facilitate the procurement of more locally produced food for the Milwaukee public school system. 82.6 percent of the student population is low-income.


resources on sustainable food systems and practices.\textsuperscript{74} Similarly, the USDA Cooperative Extension System houses a nationwide educational network, providing information on an array of agricultural topics including urban agriculture.\textsuperscript{75} The USDA Beginning Farmer and Rancher Development Program of 2008 earmarks funding for beginning farmers (individuals with ten years or less experience in operating farms) and provides education and training for emerging urban producers.\textsuperscript{76}

These legal tools and government research and project funding programs, and many others that we did not have space to mention here, demonstrate vividly the commitment law- and policymakers have to the development of regional food systems in general, and urban agriculture in particular.\textsuperscript{77} This commitment also reflects our cultural belief in urban agriculture’s social benefits.

\textbf{Challenges}

Notwithstanding its popularity and virtues, urban agriculture faces some challenges. Recognition of these problems does not diminish the value of urban agriculture, and, indeed, we do not wish to suggest that all urban agriculture projects suffer from the


\textsuperscript{76.} \textit{Farm Loan Programs, U.S.D.A. Farm Serv. Agency} (Oct. 21, 2013, 8:02:44 AM), http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=bfl. In the first year, three-year grants supported training for 5,000 beginning farmers and ranchers. In 2011, grants supported training for more than 38,000 beginning farmers. \textit{STEPHANIE RITCHIE \\& ALEXANDRA WILSON, OUTCOMES REPORT 2011: BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM} (Scott Elliot ed., 2012). In 2010, the USDA awarded a Beginning Farmer start-up grant to the New York City School of Urban Agriculture, which serves as an agricultural training resource for New York City and the Northeast, with a particular emphasis on students from low-income communities. Through course offerings in urban agriculture production, preparation, distribution, and marketing, the School seeks to increase the capacity of established and emerging urban agriculture leadership. The project expects to train at least 3,000 students over three years. Memorandum from Kathleen A. Merrigan, Deputy Secretary of Agriculture, Urban Agriculture and Gardening—Supporting Farm Viability, Building Access to Nutritious, Affordable Food and Encouraging Rural-Urban Linkages (Oct. 14, 2011), \textit{available at} http://www.usda.gov/documents/usda-urban-ag-memo-final.pdf.

\textsuperscript{77.} A few additional noteworthy programs bear mentioning. One of the more popular USDA programs supportive of urban agriculture has been the Know Your Farmer, Know Your Food program started in 2009. \textit{Know Your Farmer, Know Your Food, U.S.D.A.} (Jan. 11, 2014), http://www.usda.gov/wps/portal/usda/usdahome?navid=KNOWYOURFARMER. This program is an effort by the USDA to strengthen local and regional food systems by supporting small and mid-size farms. The Specialty Crop Block Grant Program provides states with funding for projects to increase the production of specialty crops, and supports urban agriculture projects. \textit{Commodity Areas, U.S.D.A. Agric. Marketing Serv.} (Nov. 1, 2013), http://www.ams.usda.gov/SCBGCP. For instance, California received funding to partner with the California Association of Nurseries and Garden Centers to market California-grown nursery products and transition consumers from “urban dwellers into urban farmers.” USDA, Agricultural Marketing Service, “Fruit and Vegetable Programs: Specialty Crop Block Grant Program, Fiscal Year 2013, Description of Funded Projects,” \textit{available at} http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5105139. Finally, the USDA’s People’s Garden, located at USDA headquarters, plays an important symbolic role in urban agriculture. \textit{People’s Garden, U.S.D.A.} (Jan. 11, 2014), http://www.usda.gov/wps/portal/usda/usdahome?navid=PEOPLES_GARDEN. There, USDA employee volunteers cultivate herbs and vegetables for the DC Central Kitchen, a community soup kitchen.
problems we identify. But it is essential to point out that urban agriculture does not inherently provide the touted social benefits enumerated by its supporters. Instead, those benefits follow from particular legal and design choices. A careful examination of the potential pitfalls is essential to inform policies, land use planning, and legal change. Two such pitfalls are particularly significant: equity and ecological concerns.

**Equity Concerns**

Who benefits from urban agriculture? Is it an equitable endeavor? If not, are the inequities inherent to the enterprise or can they be addressed? These questions preface two potential problems with urban agriculture programs: that urban agriculture is racially and economically unjust.

**Racial Justice**

Does urban agriculture offer an integrated and inclusive space? This question is difficult to answer in absolute terms. Many urban agriculture projects provide food equity benefits to minority communities. For instance, for some immigrant communities, community gardens offer access to traditional produce that may be difficult to find in local grocery stores.78 Further, there are numerous urban agriculture projects whose primary participants and organizers come from minority communities. For instance, La Finca del Sur, a women-led farm in the South Bronx, in New York City, is led by a board of advisors made up primarily of individuals self-identifying as either black or Latina.79 It was named one of EcoWatch’s top ten New York City farm projects in 2013.80 The Detroit Black Community Food Security Network, formed in 2006 to address food insecurity in Detroit’s black community and is driven by the belief that “the most effective movements grow organically from the people they are designed to serve.”81 The organization runs a two-acre model farm and developed a food access policy that the city recently adopted. Another example is Growing Power, a Milwaukee community farm founded by Will Allen. The organization’s mission is to “transform[] communities by supporting people from diverse backgrounds and the environments in which they live through development of Community Food Systems.”82

Notwithstanding these individual projects, some critics have alleged that the alternative food movement is concentrated in white neighborhoods, the organizers are predominately white, and the whole endeavor draws from a white agrarian past that

---

78. See, e.g., Susan Thompson et al., *The Role of Community Gardens in Sustaining Healthy Communities*, at 163 (unpublished paper presented at the State of Australian Cities conference, Nov. 28–30, 2007 in Adelaide, South Australia), available at http://soac.fbe.unsw.edu.au/2007/papers/include.asp (“A substantial number of community gardens have been developed in response to the needs of new immigrant families in disadvantaged areas. Often prompted by a desire to grow traditional foods in culturally familiar and appropriate ways, such initiatives have resulted in enhanced social capital for the community.”).


ignores other types of historical (and even more recent) experience with farming such as slavery and migrant labor.83 For instance, Julie Guthman, a geographer at UC Santa Cruz, has described farmers’ markets as “white spaces,”84 and Rachel Slocum, a geographer from the University of Wisconsin at La Crosse, has identified how “whiteness is an organizing feature of alternative food practices.”85 These critics cite studies that suggest that minorities are underrepresented among farmers’ market and CSA customers.86 These critics opine that these spaces are exclusive not just because of price, but for two additional reasons, as discussed next.

First, many urban agriculture retail programs emphasize local production at the expense of local culinary traditions and preferences. By defining “local” based on production only, these programs exclude potential customers for whom what is locally grown is not actually what they want to eat.87 As a result, local residents may feel excluded from alternative food enterprises or may simply choose to shop elsewhere.

Second is what Julie Guthman terms the “if they only knew” concern, a widely shared sentiment that if lower income and minority communities only knew more about where their food came from, they would be willing to change their eating habits, to spend more, or to make the extra effort to purchase local and organic produce. The paternalism of many urban agriculture projects harkens back to the turn of the last century and the prominence of Settlement Houses, at which upper-middle-class white women attempted to improve the quality of life of immigrants by teaching them “American” practices.88 These projects were premised on the belief that there was a single correct manner of living, which led in turn to good health, assimilation, and acceptance in American culture.

The same view pervades some urban food projects. Through a series of interviews with customers and employees of a food cooperative and CSA in a predominantly black neighborhood in New Orleans, Yuki Kato found this education narrative was commonly used to explain why more neighborhood residents did not shop at the cooperative.89 This narrative is problematic not just because it infantilizes certain populations but also because it presumes there is a single, correct approach to good eating.

83. See, e.g., Pigford v. Glickman, 185 F.R.D. 82, 103–04 (D.C. Dist. 1999) (concluding there was “a persuasive indictment of the civil rights records of the USDA and the pervasive discrimination against African American farmers.”).
86. Guthman, supra note 84, at 392.
87. Yuki Kato, Not Just the Price of Food: Challenges of an Urban Agriculture Organization in Engaging Local Residents, 83 Soc. Inquiry 369, 381 (describing interviews with many residents complaining that the market did not have items they were accustomed to cooking with); at 387 (observing the “challenge of defining ‘local food’ . . . when what the locals eat may not necessarily be grown locally”); see also Guthman, supra note 84, at 394 (describing the available selection of items as exclusionary).
89. Kato, supra note 87, at 379–80 (observing that many residents found the cost of the market to be prohibitive).
Economic Justice

Urban agriculture also can be economically unjust. In some areas, farmers’ markets are competitively priced with local supermarkets; often, however, participation in urban agriculture may be prohibitively expensive as some farmers’ markets are quite expensive relative to other retail food options.90 Even reasonably priced CSAs may be cost-prohibitive if they require an upfront payment for the entire growing season. As a result, two classes of consumers emerge: the wealthy who can afford carefully sourced and healthy food, and the poor who are resigned to highly processed, shelf-stable, less nutritious options.91 Critics of this dichotomy discount the notion that better education will motivate the urban poor to prioritize their spending on local food or that the urban poor might solve this problem for themselves by participating in food production either at community gardens or in their own yards. That reliance on self-help, critics argue, reflects a neoliberal mentality that has permeated the health and environmental movements whereby those suffering from food insecurity are expected to take matters into their own hands, effectively releasing all levels of government from responsibility and accountability.92

Well-structured community gardens and agriculture programs can provide an antidote to this cost problem, improving access to fresh fruits and vegetables at low cost. Indeed, participation in a community garden might save a family on food expenses.93 But this participation requires free time, a luxury that many urban poor can ill afford. Participation in urban agriculture may tax free time in a number of ways.94 Community gardens and work share programs (which offer discounted or free CSA shares in exchange for work hours) can require substantial time commitments. Also, purchasing locally may require making multiple shopping trips (to the farmers’ market for vegetables and to the grocery store for other products such as flour and sugar that are typically not available at farmers’ markets). Similarly, local purchasing may require having a flexible schedule to accommodate the limited hours of farmers’ markets and some CSA drop offs.

Another potential equity critique lies in the land use decision-making process. Devoting land to urban farming requires a trade-off with other potential uses such as

90. See id. at 378–79 (finding that many residents found the costs of the market to be prohibitive).
91. James E. McWilliams, Just Food 34 (2010) (identifying that it is “generally an elite few who have the . . . money” to purchase items from local, sustainable entities); Julie Guthman, Weighing In: Obesity, Food Justice, and the Limits of Capitalism 139 (2011) (expressing concern that the alternative food movement “is in effect producing a bifurcated food system with great, healthy, less toxic food for the few and cheap, standardized, and nutritionally vacuous food for the masses”).
92. See, e.g., Julie Guthman, Neoliberalism and the Making of Food Politics in California, 39 Geoforum 1171, 1176–77 (2008) (identifying concerns such as the way in which an entrepreneurial emphasis “depoliticizes hunger”).
93. See, e.g., Richard Mattson et al., The Benefits of Community Gardening: Survey Suggests Gardens Contribute Economic and Quality of Life Benefits. Community Greening Rev. 13, 13–15 (1994) (discussing a 1992 study finding that community gardens supplemented budgets for unemployed persons, students, low-income families and retirees); David Malakoff, Community Gardening: A Key to Food Security? Community Greening Rev. 23, 23 (1995) (discussing one study finding that a 64-square-foot plot could save a family up to $600 in food purchases per year).
affordable housing or playgrounds. In cities such as Detroit, this is a low-cost trade-off because vacant land is so plentiful; however, in San Francisco, the calculation may come out differently. This is not to say that devoting land to agriculture is the wrong choice, but it merely raises concerns about the process for decision making and the identity of the decision makers. The nature of an urban agriculture project should be context-specific. For instance, in a high-density area with a lot of housing market pressure, a rooftop garden on a new apartment high-rise may be preferable to a community garden on a vacant lot. This approach is also more consistent with the principles of New Urbanism, which encourages both complexity and integrity of place and relies on the conclusion of urban economists that “dense, diverse cities breed innovation.”

Ecological Concerns
In addition to equity concerns for urban agriculture, implementation challenges, many of which are addressed in this book, can frustrate the aspirations of a sustainable urban agriculture.

Scaling-Up Concerns
One such concern is that scaling up urban agriculture (increasing the size of urban agricultural projects or multiplying the number of such projects) is not viable because feeding everyone (or even some substantial percentage of the urban population) is simply not feasible. Roadblocks to scaling-up include availability of land and labor. Plus, urban agriculture projects are, by definition, small scale; to feed entire urban populations, the number of required projects would be vast and could undermine the density that makes urban areas efficient. Scaling-up also could threaten other types of open space. This threat is particularly dire on urban fringes where urban agriculture projects may swallow up or distress more biodiverse open space that provides essential ecosystem services such as flood control, water purification, and biodiversity protection through habitat preservation.

Another unintended threat resulting from the scaling-up of urban agriculture is that the reduced need for conventional agriculture could harm rural communities that depend on the economic vitality of conventional agriculture. Millions of people are employed in the conventional agriculture industry, and, although small-scale urban agriculture is arguably more labor intensive and thus perhaps would not result in a net loss of jobs, some worry that it could nevertheless shift the location and skill set of those jobs, creating enormous transition costs and economic harm. This concern, however, is likely overstated. Urban agriculture is neither intended to nor able to replace conventional food systems or reduce their vitality. Instead, urban agriculture is one element of a sustainable food system, intended to complement, not compete with, rural agriculture. Within alternative food advocacy communities, the vast majority of

95. Duany & Talen, supra note 39, at 252, 254.
96. See, e.g., Marielle Anzelone, Greedy Gardeners, N.Y. TIMES (June 14, 2013), http://www.nytimes.com/2013/06/15/opinion/greedy-gardeners.html (criticizing urban agriculture’s displacement of native species and, thus, important natural ecological processes).
97. See, e.g., McWilliams, supra note 91, at 36 (commenting on localization’s effect on employment opportunities, such as the removal of middlemen from the food system supply chain, which disproportionately impact the “traditionally marginalized”).
organizations focus on these small-scale projects rather than on fostering change in the conventional agriculture industry.

**Questionable Environmental Benefits**

To be sure, important environmental benefits accrue from urban agriculture. For example, conversion of urban space, such as roofs and vacant lots, to farmland can have numerous positive environmental effects, such as providing habitat for birds and other species, thereby protecting biodiversity and reducing urban heat island effects and storm water runoff. The benefits of urban agriculture may not, however, be as widespread as assumed or claimed by supporters. For example, many proponents of urban agriculture argue that local food production, and urban agriculture in particular, is better than other types of production because it reduces the greenhouse gas emissions associated with transporting produce to market. Transportation to market is, however, actually just one small element of the carbon footprint of food and actually results in comparatively fewer greenhouse emissions than are caused by home cooking.98

There are also environmental concerns that are city-specific. For instance, in many cities, the vacant land that is available for production is also heavily contaminated. Chapter 8 will address this issue in greater detail. In other places, particular farming techniques or the presence of farm animals may give rise to nuisances. Chapters 6 and 7 consider issues surrounding farm animals, general nuisance concerns relating to urban agriculture, and the use of right-to-farm laws to protect agricultural enterprises.

The underlying point of this “hard look” at the ecological consequences of urban agriculture is that the enterprise is not inherently more ecologically sustainable than regional or global production. Much depends on implementation. Planners Branden Born and Mark Purcell term this confusion of local as the ends rather than the means as the “local trap.”99 Local production can, in fact, produce environmental benefits, but it does not inherently do so.

Neither the equity nor ecological concerns raised in this section are fatal to the urban agriculture endeavor. The lesson to be conveyed is there is a need for thoughtful implementation of urban agriculture through the use of the legal and policy tools outlined in this book. Planning matters. Otherwise, urban agriculture can be just as inequitable and ecologically burdensome as our global food system. Proper planning, however, can facilitate important contributions by urban agriculture to ecological sustainability, public health, and food justice. Which direction it goes depends on the implementation of legal tools and policies discussed in this book.


Conclusion

This chapter has identified the various tools for urban agriculture’s legalization and promotion, and it has flagged the potential challenges of this endeavor, cautioning that these legal and policy tools discussed in this book must be designed to address such concerns as well as to avoid the “local trap” with regard to both ecology and equity. Urban agriculture laws, policies, and programs should consciously articulate specific aspirations and guard against potential pitfalls. A careful planning approach may also cultivate thoughtful and novel approaches to modern food system problems that can be applied to other areas of food production and distribution. Urban agriculture may not be a cure-all for the ills of modern farming, but it deserves a place at the food-policy table, not as an end in itself but as a means to foster a food system that is healthy, just, and sustainable—both for people and for the environment.