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## Nurturing the Seeds of Food Justice: Unearthing the Impact of Institutionalized Racism on Access to Healthy Food in Urban African-American Communities.

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## COMMENTS

### NURTURING THE SEEDS OF FOOD JUSTICE: UNEARTHING THE IMPACT OF INSTITUTIONALIZED RACISM ON ACCESS TO HEALTHY FOOD IN URBAN AFRICAN-AMERICAN COMMUNITIES

KATE MEALS\*

I. Introduction.....	98
II. Background.....	103
A. Who are the Hungry?.....	104
B. Enter Food Justice: A Community Movement for Change.....	111
III. No Right to Food in the United States?.....	114
IV. Urban Communities.....	116
A. White Flight: A Brief History of Segregation and Ghettoization.....	116
B. Grocery Stores Leave Urban Areas.....	120
1. Transportation Barriers.....	121
2. Complexity of the Grocery Gap.....	122
C. Fast Food.....	123
1. Government Support for Fast Food.....	123
a. The USDA and Fast Food.....	124
V. Urban Gardens: A Community Solution to the Urban Food Crisis?.....	125
A. History of Urban Gardening in the United States....	125

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\* The author wishes to recognize the immutable impact that White privilege has on her viewpoints and analysis of any issue, and the reality that the imbalanced power dynamics between people of color activists and White anti-racists often reinforces the operation of White supremacy even within the movement to eradicate racism. She would also like to acknowledge the generations of racial justice activists whose brave work paves the way for this discussion about food justice. Analysis of systemic racism, such as appears in this comment, was forged by people of color who have been engaged in the struggle for liberation for centuries.

B. Contemporary Urban Agriculture .....	127
1. Critiques of Urban Agriculture.....	128
VI. Institutional Barriers to Urban Land Use .....	129
A. Municipal Intervention .....	129
B. Land Grabs .....	130
VII. Potential Solutions .....	132
VIII. Conclusion .....	136

### I. INTRODUCTION

“For now I ask no more  
than the justice of eating.”<sup>1</sup>

–Pablo Neruda

On November 7, 2011, the New York City Department of Housing Preservation and Development (HRD) raided and destroyed the Morning Glory Community Garden, which served as a community-based solution to the lack of healthy, accessible food in the South Bronx since 2009.<sup>2</sup> Prior to the raid, the garden collective had been working to raise four hundred dollars towards creating their own community supported agriculture program, which would provide affordable and healthy food to participants in the South Bronx.<sup>3</sup>

Elliot Liu, a member of the Morning Glory garden group, stated that the first indication of the city’s plans to destroy the garden came when gardeners arrived to find a padlocked gate surrounding the lot, complete

1. PABLO NERUDA, *THE GREAT TABLECLOTH*, reprinted in *Weathering: Poems and Translations* 99, 101 (Alastair Reid trans., 1988).

2. Sowjanya Kudva, *HPD Raid a South Bronx Community Garden*, THE BIG CECI: MEDITATIONS ON TRANSFORMATIVE GASTRONOMY (Nov. 9, 2011), <http://thebigceci.wordpress.com/2011/11/09/hpd-raid-a-south-bronx-community-garden/>. The lot was abandoned until community members began cleaning it, building garden beds, and bringing in tables and chairs. *Id.* The garden quickly became a community gathering spot to grow healthy food, barbeque, and watch youth performances. *Id.* See also Elizabeth Chen, *Residents, City Clash Over Use of Lot*, MOTT HAVEN HERALD (Nov. 12, 2011, 8:04 AM), <http://motthavenherald.com/2011/11/12/residents-city-clash-over-use-of-lot/> (discussing the process by which the city retook the lot). Many of the community participants were students from the neighborhood’s Samuel A. Gompers High School. *Id.*

3. Kudva, *supra* note 2. See also Elizabeth Chen, *Cops Break Up Occupy the Bronx Rally*, MOTT HAVEN HERALD, (Dec. 4, 2011, 7:40 PM), <http://motthavenherald.com/2011/12/04/cops-break-up-occupy-the-bronx-rally/> (stating that on December 3, 2011, amidst an unusually high police presence, five people were arrested during the Occupy the Bronx general assembly during which members discussed plans to hold a rally and festival in the Morning Glory Community Garden).

with a “no trespassing” sign.<sup>4</sup> Liu and others who tend to and use the community space were surprised since the city had many opportunities to inform the group of its plans in a less confrontational manner.<sup>5</sup> When the Morning Glory gardeners attempted to appeal to Community Board 1 for support in a meeting with the city housing department, District Manager Cedric Loftin informed them that the city had plans to use the garden land to build apartments, that the residents who had gathered and planted vegetables on the land did so improperly, and that the gardeners entered into “somewhere where they [had] no right to be.”<sup>6</sup>

In 2002, New York’s mayor and attorney general reached an agreement to preserve approximately five hundred community gardens and construct apartments on others.<sup>7</sup> Two hundred gardens were left without full protection,<sup>8</sup> and community garden activists reported that in several cases, “protected” gardens were destroyed in violation of the agreement.<sup>9</sup> In 2004, the city of New York evicted and sold three community gardens in the South Bronx.<sup>10</sup> At the time, garden advocates “sued, rallied, and planned possible defense[s] via occupations and lock downs.”<sup>11</sup> Ulti-

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4. Elizabeth Chen, *Residents, City Clash Over Use of Lot*, MOTT HAVEN HERALD (Nov. 12, 2011, 8:04 AM), <http://motthavenherald.com/2011/11/12/residents-city-clash-over-use-of-lot/>.

5. See *id.* (demonstrating garden member Elliot Liu’s expressed surprise at the city’s abrasive manner of contact with group: “We had a bulletin board with contact information. And we’re in there many days of the week working so we’re very approachable.”).

6. *Id.*

7. Jennifer Steinhauer, *Ending a Long Battle, New York Lets Housing and Gardens Grow*, N.Y. TIMES, Sept. 19, 2002, <http://www.nytimes.com/2002/09/19/nyregion/ending-a-long-battle-new-york-lets-housing-and-gardens-grow.html>.

8. City Farmer, Can. Office of Urban Agric., *New York Gardens Threatened With Destruction*, URB. AGRIC. NOTES (Oct. 28, 2002), <http://www.cityfarmer.org/nydestroy.html>.

9. See, e.g., *How Safe is Your Garden, Really?*, BROOKLYN BEARS CMTY. GARDENS (June 8, 2007), <http://brooklynbears.wordpress.com/2007/06/08/how-safe-is-your-garden-really/> (advertising a community meeting to discuss the security of ‘permanent’ community gardens, and stating, “[a]cross the city, even ‘permanent’ community gardens are being threatened—and planned to be destroyed.”).

10. Dominant Fiction, *Casa del Sol Torched; Resistance Grows*, N.Y. RAT, Dec. 2004, at 1, 1, available at [http://www.dominantfiction.com/PDF/rat2\\_11\\_29.pdf](http://www.dominantfiction.com/PDF/rat2_11_29.pdf). As of 2004 at least fourteen gardens were under the threat of eviction by the city. *Id.* See also Geoffrey Croft, *Community Gardens Threatened under Proposed NYC Rules- Push to Preserve All Gardens*, A WALK IN THE PARK (July 28, 2010), <http://awalkintheparknyc.blogspot.com/2010/07/community-gardens-threatened-under.html> (stating that since 1998 over 250 gardens have been destroyed). Garden advocates report that since the 2002 agreement 130 gardens have been destroyed. *Id.*

11. Dominant Fiction, *supra* note 10.

mately, the community was forced into a compromise that resulted in a loss of 28,000 square feet of green space.<sup>12</sup>

When the garden preservation agreement expired in 2012 New York's mayor replaced it with a new set of rules.<sup>13</sup> Community and public health activists responded with mixed reactions, including some who wanted to ensure the gardens would not be turned over to developers.<sup>14</sup> Community members explained the importance of the gardens to low-income communities and communities of color.<sup>15</sup> One member of the community captured the sentiment with the following:

[c]ommunity gardening is a way to fight the systemic injustice of poverty and other forms of structural oppression[.] Most of the gardens are in poor areas of the city, with much higher rates of asthma and lower rates of open space equity. From an indigenous/community perspective, gardens offer a way for our community to heal itself . . . .<sup>16</sup>

In an area such as the South Bronx, which is the reported home of the most severe hunger problems in the United States,<sup>17</sup> community gardens

12. *Id.*

13. Javier C. Hernandez, *Community-Garden Rules Receive a Mixed Reaction*, N.Y. TIMES, Sept. 13, 2010, [http://www.nytimes.com/2010/09/14/nyregion/14gardens.html?\\_r=2](http://www.nytimes.com/2010/09/14/nyregion/14gardens.html?_r=2).

14. *Id.* See also *No Permanent Protections for Community Gardens Under New NYC Rules*, A WALK IN THE PARK (Sept. 16, 2010), <http://awalkintheparknyc.blogspot.com/2010/09/no-permanent-protections-for-community.html> (stating concern that community gardens "will not receive permanent protection, and future administrations will be not required to abide by the new rules."). Community garden advocates stated that, ". . . with the Preservation Agreement expiring on September 17, 2010, the city appears to have abandoned its efforts to preserve green spaces. With the new rules, all the gardens may now be legally transferred for development, rather than preserved." *Id.*

15. Mat McDermott, *New York's Community Gardens Lose Protected Status, Threatened With Development Under New Rules*, TREEHUGGER (July, 27, 2010), <http://www.treehugger.com/corporate-responsibility/new-yorks-community-gardens-lose-protected-status-threatened-with-development-under-new-rules.html>.

16. *Id.*

17. See Sam Dolnick, *The Obesity-Hunger Paradox*, N.Y. TIMES, Mar. 12, 2010, <http://www.nytimes.com/2010/03/14/nyregion/14hunger.html> (stating that a Gallup poll found that in New York's 16th Congressional district, including the South Bronx, nearly 37 percent of the residents reported lacking "money to buy food at some point in the past 12 months," inferring that many answered "yes" to the question: "Have there been times in the past twelve months when you did not have enough money to buy food that you or your family needed?"). See also MARK WINNE, *CLOSING THE FOOD GAP: RESETTling THE TABLE IN THE LAND OF PLENTY* xvi (2008) ("As our knowledge of the connection between diet and health has increased, the food gap has taken on yet another dimension, one that, ironically includes the overconsumption of food . . . [which means] a combination of eating too much of the wrong thing and too little of the right thing.").

can be integral to survival.<sup>18</sup> There, obesity rates are also some of the nation's highest.<sup>19</sup> While the simultaneous existence of extreme hunger and obesity may suggest a paradox, hunger and nutrition experts explain that “[these] plagues [are] often seen in the same households, even the same person: the hungriest people in America today, statistically speaking, may well be not sickly skinny, but excessively fat.”<sup>20</sup>

Significantly, the Bronx is also one of the most diverse areas in the country.<sup>21</sup> According to the 2011 Census, the population is 43.3 percent African-American and 53.8 percent Latino.<sup>22</sup> The South Bronx faces many challenges due to structural racism, creating a situation in which “the food insecurity study is hardly the first statistical measure in which the Bronx lands on the top—or, in reality, the bottom.”<sup>23</sup> The crisis in the South Bronx is representative of the hunger and food access limitations that impact communities of color throughout the country.<sup>24</sup> Institutionalized racism operates on multiple structural levels simultaneously; thus, an urban community of color that lacks healthy food will likely also face housing inequalities, health disparities, substandard education, and overrepresentation in the criminal justice system, as well as a lack of

18. See Karl Linn, *Reclaiming the Sacred Commons*, 1 *NEW VILLAGE J.* 43 (1999) (describing the necessity and rise of community gardening as “a survival strategy” for communities that experience poverty). See also Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, J. LEGIS. & PUB. POL’Y 351, 359–60 (2000) (stating that community gardens “provide partial relief to the problem of substandard grocery stores, which often operate in low-income urban neighborhoods where a lack of transportation limits consumer options.”).

19. See Dolnick, *supra* note 17 (stating that the Bronx has one of highest obesity rates in the nation and that its residents are at an 85 percent higher risk of obesity than residents of nearby Manhattan). The Bronx also has high rates of diabetes, low access to grocery stores, and high unemployment. *Id.* As Triada Stampas of the Food Bank for New York City stated, these [food access and health] problems are “all very much interconnected.” *Id.* In general, poor health and environmental justice concerns often co-occur with poverty and limited access to healthy food; the South Bronx has asthma rates that are fourteen times higher than the national average. *Dominant Fiction*, *supra* note 10.

20. Dolnick, *supra* note 17. See also Kim Carollo, *Millions of Americans Can’t Always Afford Food*, ABC NEWS, Mar. 24, 2011, <http://abcnews.go.com/Health/food-insecurity-affects-50-million-americans/story?id=13206053#.TwCQ2CMzWGg> (stating that food insecurity often results in “buying cheap, processed foods richer in calories than nutrients,” which causes obesity).

21. *Bronx County, NY Public Records*, BRBPUB.COM, <http://www.brbbpub.com/new-york/bronx/> (last visited Sept. 5, 2012).

22. U.S. Census Bureau, Dep’t of Commerce, *Bronx County, New York*, <http://quickfacts.census.gov/qfd/states/36/36005.html> (last updated Aug. 16, 2012).

23. Dolnick, *supra* note 17.

24. *Id.*

structural power to alter these injustices.<sup>25</sup> An anti-racist analysis of hunger<sup>26</sup> is necessary to contextualize the power dynamics and structures responsible for food inequality.<sup>27</sup>

Focusing on food justice and institutionalized racism within the United States, this Comment deconstructs systemic causes of food insecurity, “food deserts,” and “food swamps,” and examines policy and community-based solutions to these inadequacies. Section II provides background on hunger in the United States. Section III seeks to explain the U.S. government’s position on the right to food. Section IV examines the roots of food inequality in the urban United States. Section IV explores urban agriculture as a solution to lack of access to healthy food. Section V covers the institutional barriers to addressing the urban food crisis. Finally, Section VI discusses solutions proposed by proponents of food justice, such as utilizing urban agriculture, zoning, and incentives to correct some

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25. Racist impacts in food are institutionalized because they are created by structural practices of the government and the fast food and supermarket industries rather than being a product of individual acts of discrimination. Andrea Freeman, *Fast-Food: Oppression Through Poor Nutrition*, 95 CALIF. L. REV. 2221, 2222 (2007). Any discussion of institutionalized racism should be contextualized within a historical critique and power analysis. SOLID GROUND, DEFINITION AND ANALYSIS OF INSTITUTIONAL RACISM: ANTI-RACISM DEFINITIONS AND ACCOUNTABILITY STANDARDS 2 (n.d.), available at [http://www.solid-ground.org/Programs/Legal/AntiRacism/Documents/ARI\\_Definitions-Accountability\\_Standards\\_ONLINE\\_7-09.pdf](http://www.solid-ground.org/Programs/Legal/AntiRacism/Documents/ARI_Definitions-Accountability_Standards_ONLINE_7-09.pdf); The People’s Inst. for Survival & Beyond, *Our Principles*, UNDOING RACISM, <http://www.pisab.org/our-principles> (last visited Sept. 5, 2012). See also Stephen L. Bennett, Jr., *The Vietnamese Shrimpers of Texas: Salvaging a Sinking Industry*, 6 SCHOLAR 287, 303 (noting that Amerasians also suffer from racism in that they “do not share the same rights to food, housing, education, and employment” as do racially pure Vietnamese).

26. MULTICULTURAL ADVISORY FOR BRITISH COLUMBIA, STRATEGIC FRAMEWORK FOR ACTION: A STRATEGY TO STIMULATE JOINT ACTION ON MULTICULTURALISM AND THE ELIMINATION OF RACISM IN BRITISH COLUMBIA 11–15 (2005). Many anti-hunger groups are beginning to structure their guiding values around an anti-racist approach, which acknowledges institutionalized racism as a catalyst for disproportionality in hunger and health outcomes. *Id.* at 11–15. An anti-racist approach is the practice of “identifying, challenging, preventing, eliminating and changing the values, structures, policies, programs, practices, and behaviors that perpetuate racism.” *Id.* at 17. See also The People’s Inst. for Survival & Beyond, *Our Principles*, UNDOING RACISM, <http://www.pisab.org/our-principles> (last visited Sept. 5, 2012) (explaining anti-racist principles).

27. See, e.g., Malik Yakini, *Undoing Racism in the Detroit Food System*, THE MICH. CITIZEN, <http://michigancitizen.com/undoing-racism-in-the-detroit-food-system-p9163-77.htm> (last visited Sept. 5, 2012) (describing the commitment of food activist members of the Undoing Racism in the Detroit Food System group to examine the impact and systemic nature of racism and White privilege on the food system, and the group’s use of a power analysis during a workshop facilitated by the People’s Institute for Survival and Beyond). Malik Yakini directs the Detroit Black Community Food Security Network and chairs the Detroit Food Policy Council. *Id.*

of the various food injustice caused, local government, corporate and industrial systems.

## II. BACKGROUND

A major reason our food system is so damaged—so dominated by corporate interests, rife with unhealthy products, and unbalanced by unequal access—is that we too often fail to consider food a social good or to understand that growing, selling, and eating food is by its nature a meaningful social act. What we eat is far more than a pile of commodities. Not only is food’s essential job to nourish our bodies, but it can also serve as a creator of quality livelihoods, a locus of community engagement and cohesion, and an engine of citizen empowerment and education.<sup>28</sup>

In recent decades, globalization and exponential population growth have pushed the boundaries of “economic, social, and ecological sustainability,” threatening global food security.<sup>29</sup> In our modern age, rife with technological advances designed to make food production and distribution less labor intensive,<sup>30</sup> widespread hunger and malnutrition diminish the “health and well-being of millions of people around the world.”<sup>31</sup> Despite the fact that it is fundamental to human survival, adequate access to food is often regarded as if it were a privilege, rather than a “basic human right.”<sup>32</sup> As the food crisis rages on, urban areas in advanced in-

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28. Katherine Gustafson, *From Gangs to Gardens: How Community Agriculture Transformed Quesada Avenue*, TRUTHOUT (June 2, 2012, 11:17), <http://truth-out.org/news/item/9552-from-gangs-to-gardens-how-community-agriculture-transformed-quesada-avenue>.

29. Mustafa Koc et al., *Introduction: Food Security is a Global Concern*, in FOR HUNGER-PROOF CITIES: SUSTAINABLE URBAN FOOD SYSTEMS 1, 5–6 (Mustafa Koc, et al. eds., 1999) (stating that, each day, an estimated 35,000 people around the world die from hunger, and a larger number—which mainly includes women, children, and the elderly—suffer from malnutrition). See Jean Ziegler, *Foreword* to GEORGE KENT, FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD xv (2005). On a global scale, 840 million people suffer from hunger daily. *Id.* A child dies from hunger or malnutrition every seven seconds even though the global food supply could feed the world’s population twice over. *Id.*

30. Ironically, the transition from small, local farming to mechanized agribusiness has destroyed capacity to feed the country sustainably. See, e.g., FAST FOOD/SLOW FOOD: THE CULTURAL ECONOMY OF THE GLOBAL FOOD SYSTEM 15 (Richard Wilk ed., 2006) (“Many excellent studies show just how destructive industrial food systems can be, especially when they are abetted by political and economic policies that aim to steamroller the systems that support more than a billion rural farmers under the wheels of ‘free trade,’ ‘efficient markets,’ and ‘improved technology.’”).

31. Koc, *supra* note 29, at 5.

32. *Id.* at 6. See generally GEORGE KENT, FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD (2005) (discussing food as a human right).



dustrialized countries such as the United States are becoming concentrated zones of hunger and malnutrition, despite the fact that the U.S. food supply is plentiful enough to feed every person in the country almost twice over, even accounting for exports.<sup>33</sup> In the United States today approximately thirty million people are unable to buy sufficient “food to maintain good health.”<sup>34</sup>

#### A. *Who are the Hungry?*

Although our country’s food system crisis impacts the entire nation, people of color bear a disproportionate brunt of its harm. While this Comment pays particular attention to the present and historical structures impacting African-American communities, inequality in the production, acquisition, and quality of food affects communities of color throughout the entire United States.<sup>35</sup> Research indicates that obesity, food security, and “food deserts” most negatively and disproportionately impact people of color and low-income individuals.<sup>36</sup>

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33. MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* 1 (2002).

34. Koc, *supra* note 29, at 6. See, e.g., GEORGE KENT, *FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD* 156–62 (2005) (describing the history of malnutrition in the United States and the programs designed to alleviate the problem); Rania Khalek, *Eight Stories Buried By the Corporate Media That You Need to Know About: Not All News Stories Are Created Equally*, ALTERNET, Dec. 15, 2011, [http://www.alternet.org/news/153455/8\\_stories\\_buried\\_by\\_the\\_corporate\\_media\\_that\\_you\\_need\\_to\\_know\\_about](http://www.alternet.org/news/153455/8_stories_buried_by_the_corporate_media_that_you_need_to_know_about) (listing a “Record Number of US Kids Face Hunger and Homelessness” as an issue to which the mainstream media does not devote adequate coverage, and highlighting that according to the USDA, 17.2 million (14.5 percent) U.S. households are ‘food insecure’ and that one in five U.S. children “face [the] threat of hunger.”). Some assert that, despite the pervasiveness of this crisis, mainstream news sources do not give the issue of hunger in the United States sufficient coverage, which effectively downplays the severity of the problem. Kay Lazar, *A Rising Hunger Among Children*, THE BOS. GLOBE, July 28, 2011, [http://www.boston.com/lifestyle/health/articles/2011/07/28/ranks\\_of\\_hungry\\_children\\_swell\\_worrying\\_doctors/](http://www.boston.com/lifestyle/health/articles/2011/07/28/ranks_of_hungry_children_swell_worrying_doctors/). Lazar cites a report from *The Boston Globe* that “shocking levels” of child malnourishment and hunger in poor Boston neighborhoods are similar to levels in the developing world. *Id.* See also Meghan E. Irons, *Poverty’s Grip Tightens in Boston, Study Says*, THE BOS. GLOBE, Nov. 9, 2011, <http://www.bostonglobe.com/metro/2011/11/09/poverty-grip-tightens-boston-study-says/pUXW8N2DkeJg1TE73IG8mM/story.html> (stating that in Boston 35 percent of African-American youth live in poverty).

35. See ORAN B. HESTERMAN, *FAIR FOOD: GROWING A HEALTHY SUSTAINABLE FOOD SYSTEM FOR ALL* 88 (2011) (“[T]hose who are being most negatively affected [by the problems with the food system in the United States] are on the lower rungs of the economic ladder and often live in communities of color.”).

36. YVONNE YEN LIU, *APPLIED RES. CENTER, GOOD FOOD, GOOD JOBS FOR ALL: CHALLENGES AND OPPORTUNITIES TO ADVANCE RACIAL AND ECONOMIC EQUITY IN THE FOOD SYSTEM* (2012), available at <http://arc.org/foodjustice>.

Nationwide, 38.1 million people, or 12.4 percent of the population, identify as African-American (or Black).<sup>37</sup> When compared with the U.S. population as whole, African-Americans experience “hunger, poverty, unemployment, and income disparity” at disproportionate levels.<sup>38</sup> In 2010, rates of food insecurity in African-American households were higher than the national average, at 25.1 percent.<sup>39</sup> In 2008, 27.2 percent of African-American families had difficulty getting enough to eat, compared with 11.6 percent in Caucasian households overall.<sup>40</sup>

Disparities in food consumption equate to disparities in health.<sup>41</sup> A recent study found that proximity to grocery stores was associated with lower rates of obesity.<sup>42</sup> Healthier food is generally less available and more expensive in urban African-American neighborhoods.<sup>43</sup> One study found that African-Americans are almost four times more likely to live in food deserts than Whites.<sup>44</sup> In general, the role of racism as an “organizing process in the food system” is evidenced by people of colors’ disproportionate lack of access to healthy food, unbalanced likelihood to lose their farms, and overrepresentation in the agricultural labor and food processing industries.<sup>45</sup>

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37. BREAD FOR THE WORLD INST., FACT SHEET: POVERTY AND HUNGER AMONG AFRICAN-AMERICANS 1 (2011), available at <http://www.bread.org/what-we-do/resources/fact-sheets/african-american-poverty.pdf>.

38. *Id.*

39. ALISHA COLEMAN-JENSEN ET AL., ECON. RESEARCH SERV., USDA, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2010 10 (2011), available at <http://www.lafoodbank.org/source/Editorfile/ERR125.pdf>.

40. ECON. RESEARCH SERV., USDA, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES, 2008/ERR-83 17 (2009), available at <http://www.ers.usda.gov/Publications/ERR83/ERR83.pdf>.

41. Steven Cummins & Sally Macintyre, *Food Environments and Obesity—Neighbourhood or Nation?*, 35 INT’L J. EPIDEMIOLOGY 100, 100 (2006).

42. *Id.*; SARAH TREUHAF & ALLISON KARPYN, POL’Y LINK & THE FOOD TRUST, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOODS AND WHY IT MATTERS 8 (2010), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/FINALGroceryGap.pdf> (“[P]eople with access to only supermarkets or to supermarkets and grocery stores have the lowest rates of obesity and overweight and those without access to supermarkets have the highest rates.”).

43. Cummins, *supra* note 41.

44. SARAH TREUHAF & ALLISON KARPYN, POL’Y LINK & THE FOOD TRUST, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOODS AND WHY IT MATTERS 13 (2010), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/FINALGroceryGap.pdf>. Furthermore, only 8 percent of African-Americans have a grocery store in their census tract, compared with 31 percent of Whites. *Id.* at 7. In Washington, D.C.’s lowest-income, African-American neighborhoods one grocery store serves 70,000 people, compared with high-income, mostly White areas in which the ratio is one grocery store for every 11,900 people. *Id.* at 14.

45. Rachel Slocum, *Anti-Racist Practice and the Work of Community Food Organizations*, ANTIPODE 327, 327 (2006). See also Kameshwari Pothukuchi & Jerome L. Kaufman,

Over the past decade, the United States has seen a dramatic increase in awareness of the state of our food supply, urban agriculture, and nutrition.<sup>46</sup> Often missing from these discussions, however, is an understanding of food oppression's structural causes.<sup>47</sup> Instead, the focus typically lies on personal responsibility and the need to bring in outside information to educate communities deemed to be suffering from hunger and health problems.<sup>48</sup> Because many people who work to address food access are outsiders to urban communities of color, "many community organizations remain unaware or closed to the ways racism works in the food system."<sup>49</sup> Such food organizations often overlook the histories of institutionalized racism when proposing "solutions" or goals such as self-sufficiency.<sup>50</sup> Funding needs often demand allegiance to organizations outside of the community and thus do not challenge the power structures that create racial disparities.<sup>51</sup>

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*Placing the Food System on the Urban Agenda: The Role of Municipal Institutions in Food Systems Planning*, 16 AGRIC. & HUM. VALUES 213, 214–21 (1999) (stating that there is now a widespread acknowledgment of the disparate prevalence of obesity and poor nutrition of African-American communities, and suggesting that community gardens, education, and strong urban-rural links will address these issues).

46. HESTERMAN, *supra* note 35, at xi. It is instructive to examine the content of our nation's discussion of food. *Id.* "While there is the beginning of a national conversation about our food system that sings the praises of backyard vegetable gardens and pricey organic produce, the people of Detroit don't even have a supermarket." *Id.*

47. *See id.* at 88–89 (stating that communities of color and low-income communities are "being most negatively affected [by our food system]," because they "have historically been excluded from the ["fair food"] conversation"; and emphasizing the critical need to include these voices in addressing structural racism within our food system).

48. Slocum, *supra* note 45, at 330.

49. *Id.* *See* HESTERMAN, *supra* note 35 ("Like that of many progressive movements, the leadership of this fair food movement was for many years primarily [W]hite and middle class.").

50. Slocum, *supra* note 45, at 330.

51. Kathe Newman & Robert W. Lake, *Democracy, Bureaucracy and Difference in U.S. Community Development Politics Since 1968*, 30 PROGRESS HUM. GEOGRAPHY 44, 51 (2006).

Throughout the United States, many low-income communities<sup>52</sup> and

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52. SARAH FASS, NAT'L CTR. FOR CHILDREN IN POVERTY, *MEASURING POVERTY IN THE UNITED STATES* (2009), available at [http://www.nccp.org/publications/pub\\_876.html](http://www.nccp.org/publications/pub_876.html). In the United States, the federal "poverty line" is generally used to determine which families and communities are "low-income," but use of this measure is grossly misleading, and does not include the thousands of families that subsist above the technical poverty line but still struggle to put food on their tables. *Id.* The poverty line is determined on an outdated assumption that the average family spends one-third of its income on food, which ignores the high cost of housing, transportation, child care, medical care and other expenses. *Id.* See Daniel R. Meyer & Geoffrey L. Wallace, *Poverty Levels and Trends in Comparative Perspective*, 26 *FOCUS* 1, 11–12 (2009) (explaining that since it was first established in 1964, the federal poverty line was widely acknowledged to be a highly inaccurate measure); *Testimony on Measuring Poverty in America: Hearing Before the Subcomm. on Income Security and Family Support of the H. Comm. on Ways and Means*, 110th Cong. 110–56 (2007) (statement of Nancy K. Cauthen, Deputy Dir., Nat'l Ctr. For Children in Poverty), available at [www.nccp.org/publications/pub\\_752.html](http://www.nccp.org/publications/pub_752.html). Critically, many families that are technically living above the poverty line do not have food security and struggle to put food on the table. See Kim Carollo, *Millions of Americans Can't Always Afford Food*, ABC NEWS, March 24, 2011, <http://abcnews.go.com/Health/food-insecurity-affects-50-million-americans/story?id=13206053#.TwCQ2CMzWGs> (stating that "about 29 percent of food insecure individuals are above 185 percent of the poverty line and are typically ineligible for most food assistance programs."). "In the United States, wealth is highly concentrated in a [sic] relatively few hands." G. WILLIAM DOMHOFF, *WHO RULES AMERICA?, POWER IN AMERICA: WEALTH, INCOME, AND POWER* (2012), <http://whorulesamerica.net/power/wealth.html>. In 2007, the upper class, consisting of 20% of households, owned 85% of the wealth in the United States. *Id.*; PAUL KIVEL, *UPROOTING RACISM: HOW WHITE PEOPLE CAN WORK FOR RACIAL JUSTICE* 35 (2002) (explaining wealth distribution in the United States by use of a pyramid, which illustrates the "tremendously unequal" distribution of wealth in which "[p]eople of color are preponderantly on the bottom," and where 80 percent of the population divides just 9 percent of the country's net financial wealth). See also Sabrina Tavernise, *Soaring Poverty Casts Spotlight on Lost Decade*, N.Y. TIMES, Sept. 13, 2011, <http://www.nytimes.com/2011/09/14/us/14census.html?pagewanted=all>. The poverty line often fails to include the large numbers of 25–34 year olds who move in with family and friends to save money. *Id.* The 2010 Census found about half of this group is living below the poverty line, which was \$11,344 for a single person under age 65. *Id.* Even though the federal poverty line measure falls quite short of including the number of people unable to make ends meet, it still paints a grim picture of socioeconomic trends in the United States. *Id.* According to the Census Bureau, 2.6 million more individuals fell below the poverty line in 2010. *Id.* This means that 46.2 million Americans are living in poverty, which is the highest number ever recorded by the Bureau. *Id.* Additionally, middle-class incomes have fallen to 1996 levels, and median household incomes have stagnated for the longest period of time since the Great Depression. *Id.* Communities of color have been hit the hardest by the on-going recession, with census data showing that the poverty rate among African-Americans rose from 25 percent in 2009 to 27 percent in 2010, and that among Latinos it rose from 25 percent in 2009 to 26 percent in 2010. *Id.* Poverty among Asian-Americans remained steady at 12.1 percent. *Id.* For Whites, the rate went from 9.4 percent in 2009 to 9.9 percent in 2010. *Id.* In 2010, 22 percent of children in the United States were living below the poverty line. *Id.* As incomes continue to fall and unemployment continues to rise, the food crisis in the United States rages on unabated.

communities of color face a daily food crisis.<sup>53</sup> According to the U.S. Department of Agriculture (USDA), 17.2 million households were “food insecure” in 2010, and struggled to acquire adequate food due to lack of financial resources.<sup>54</sup> In addition to facing food insecurity, urban areas often exist in what are commonly called “food deserts”<sup>55</sup> or grocery gaps, locales in which there are no grocery stores or other opportunities to purchase fresh, healthy food, which typically co-exist with “food swamps,” areas which have a high prevalence of unhealthy food options, such as fast food and convenience stores.<sup>56</sup> In a 2009 report to Congress, the USDA also found that “higher levels of racial segregation and greater

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53. *Food Providers, Farmers Fight To Sustain Minority Communities*, National Public Radio (Apr. 22, 2010). Chicago Public Radio reporter Natalie Moore calls poor neighborhoods “food deserts,” describing them as devoid of healthy restaurants and lacking healthy options at grocery stores. *Id.* Class, gender, and other identities also shape the relationship between power and food in various communities. See YVONNE YEN LIU & DOMINIQUE APOLOON, APPLIED RESEARCH CTR., *THE COLOR OF FOOD 10* (2011) (illustrating the ratio of median annual wages of those working in the food system, with Caucasian men at the top and African-American and Latina women at the bottom). See also, Lyndsey Eadler, *Purging the Drug Conviction Ban on Food Stamps in California*, 14 SCHOLAR 117, 138 (2011) (“The right to food flows naturally from the right to life because without food, a life cannot be sustained.”).

54. COLEMAN-JENSEN ET AL., *supra* note 39. See MARK WINNE, *CLOSING THE FOOD GAP: RESETTING THE TABLE IN THE LAND OF PLENTY* xvi (2008) (“The more common form of food insufficiency is known as food insecurity, a condition experienced by a much larger number of people who regularly run out of food or simply don’t know where their next meal will come from.”).

55. The USDA raised awareness of this issue by creating an online “food desert” locator, available at <http://www.ers.usda.gov/data/fooddesert/fooddesert.html>. “Food desert” has become a popular way to describe areas that lack grocery stores and are saturated by convenience stores, liquor stores, and fast food. *Id.* Academia and governmental agencies commonly use this term when discussing policy. *Id.* However, the term “food desert” can be misleading and is often insulting and disempowering to those who reside in these communities. *Id.* As Eric Holt-Gimenez, Executive Director of Food First, an institute for Food and Policy Development noted, “[t]hese neighborhoods are not empty deserts, wastelands devoid of people or hope—or wealth for that matter . . . .” Eric Holt-Gimenez, *Grabbing the Food Deserts*, Note, FOOD FIRST: INST. FOR FOOD & DEV. POL’Y (Apr. 20, 2011), <http://www.foodfirst.org/en/Grabbing+food+deserts>. He further stated, “[t]hey are areas of social, political and economic discrimination. In other words areas that have been subjected to a form of ‘food apartheid.’” *Id.* Others have critiqued the limitations of the term “food desert.” See HESTERMAN, *supra* note 35, at xi (defining the term and stating, “[A]ctually the system is failing us all. Even those of us who live in ‘food oases’ and have enough money to buy virtually any food product from any place in the world are living with the fallout of a broken system.”).

56. Jane Black, *Food Deserts vs. Swamps: The USDA Weighs In*, WASH. POST, June 25, 2009, <http://voices.washingtonpost.com/all-we-can-eat/food-politics/food-deserts-vs-swamps-the-usd.html>.

income inequality” define urban areas.<sup>57</sup> The USDA also found that close to six percent of all U.S. households lacked access to obtain the food they “wanted or needed,” and over half of these households also lacked sufficient financial resources for food.<sup>58</sup>

Research conducted in California illustrates these findings. In Los Angeles, a research study by Occidental College found upper-income areas had approximately three times as many supermarkets per capita as did low-income zip codes, and majority Caucasian zip codes had 3.17 times as many supermarkets than majority African-American zip codes.<sup>59</sup> West Oakland, an area whose population numbers 30,000 and is 77 percent African-American, is home to fifty-three liquor stores, thirteen fast food retailers, and zero grocery stores.<sup>60</sup> Even when there are grocery stores in urban communities of color, the produce is often of a lower quality and higher price than that of suburban supermarkets.<sup>61</sup>

Racial justice scholar Andrea Freeman asserts that the damage done by lack of access to healthy food has a “pronounced and extreme effect on low-income people of color” which “represents a form of structural oppression that activists must incorporate into a struggle for racial and economic justice.”<sup>62</sup> Structural food oppression undermines the well-being and very survival of low-income, urban communities of color.<sup>63</sup> Since the food we consume so directly impacts our health, the negative impacts of lack of adequate nutrition and the stress of hunger permeate all other aspects of life.<sup>64</sup> As expressed by one scholar, “[h]ealth is fundamental to every aspect of life,” and “without health, a student cannot do well in school; a worker cannot hold a job, much less excel at one; a family member cannot be an effective parent or spouse.”<sup>65</sup> Health crises and the stag-

57. ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES i (2009), available at [http://www.ers.usda.gov/media/242675/ap036\\_1\\_.pdf](http://www.ers.usda.gov/media/242675/ap036_1_.pdf). This USDA report also links increases in “obesity and diet related diseases” to lack of “access to affordable and nutritious food” because these households may have easier access to fast food restaurants and convenience stores and little or no access to supermarkets. *Id.*

58. *Id.*

59. Mark Vallianatos, *Food Justice and Food Retail in Los Angeles*, 36 *ECOLOGY L. CURRENTS* 186, 187 (2009).

60. Yi Wang et al., *Grabbing the Food Deserts, Large-Scale Land Acquisitions and the Expansion of Retail Monopolies*, 17 *Food First Backgrounder* 1, 2 (2011).

61. See, e.g., MARK WINNE, *CLOSING THE FOOD GAP: RESETTING THE TABLE IN THE LAND OF PLENTY* xiii (2008) (describing “supermarket abandonment” of cities and the “poor pay more” phenomenon).

62. Andrea Freeman, *Fast-Food: Oppression Through Poor Nutrition*, 95 *CALIF. L. REV.* 2221, 2222 (2007).

63. *Id.*

64. *Id.*

65. *Id.*

gering costs they impose are critical underlying causes of poverty, homelessness and bankruptcy.<sup>66</sup> People of color who live in racially segregated neighborhoods are exposed to greater health risks.<sup>67</sup> African-Americans confined to segregated areas have historically experienced rising mortality rates due to overcrowding leading to disease and drug use.<sup>68</sup> These forms of structural racism are shaped heavily by government policies.<sup>69</sup>

Such policies include providing public assistance that is insufficient to cover the cost of fresh food, drawing resources and services out of the cities, zoning and incentive policies that favor corporations over community-based businesses and urban farming, and government subsidies that facilitate saturation of urban communities and schools with fast food.<sup>70</sup> This government-sponsored racial inequality tends to be obscured by the “distinction between public and private spheres of action and is perpetuated by the myth of personal choice, even where a lack of options and resources severely limits the ability to exercise choice.”<sup>71</sup>

In addition, marketing analysis used to determine where businesses choose to locate their stores systematically undervalues inner-city neighborhoods.<sup>72</sup> Marketing firms generally rely on national data counts such as the U.S. Census, which often fail to accurately count city residents, especially people of color.<sup>73</sup> One study of a mostly African-American and Latino area of Washington, D.C. undercounted the area residents by 55 percent.<sup>74</sup> Market studies also generally use average household income rather than total area income to determine an area’s purchasing power, and thus underestimate available dollars within dense urban areas.<sup>75</sup>

In the United States, policy discussions about food insecurity often ignore the histories of institutionalized racism that have caused widespread

66. *Id.*

67. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 34 (1993).

68. *Id.* at 17.

69. *Id.* at 1.

70. Freeman, *supra* note 62.

71. *Id.*

72. JOHN PAWASARAT & LOIS M. QUINN, BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, *EXPOSING URBAN LEGENDS: THE REAL PURCHASING POWER OF CENTRAL CITY NEIGHBORHOODS 1* (2001), available at <http://www.brookings.edu/es/urban/pawasarat.pdf>.

73. *Id.*

74. D’Vera Cohn, *Retail Potential Found in Two Areas; Columbia Heights, Anacostia Studied*, WASH. POST, July 18, 2002, available at <http://www.highbeam.com/doc/1P2-366048.html>.

75. *Id.*

hunger and poverty, and instead tend to place the blame on the struggling communities.<sup>76</sup> These discussions also often overlook a particular “relativistic quality that has wormed its way into our food system over the past ten years.”<sup>77</sup> As lower-income areas begin to make small improvements in access to healthy food, such as the addition of a grocery store or the slightly improved reach of the food stamp program, higher-income communities, by comparison, “leap ahead” with increases in their purchase of local and organic foods.<sup>78</sup> The result is that, “as trends in consumption associated with lifestyle and health expand one class’s universe of choice and perceived health benefits, a lower, less privileged class barely catches up to where the other class was in the last decade.”<sup>79</sup> Without an effective intervention, this gap is likely to continue its expansion.

### B. *Enter Food Justice: A Community Movement for Change*

The food justice movement, which includes a wide variety of communities, organizations, and scholars, has emerged as a response to inequality in the food system.<sup>80</sup> Described as the movement to address food oppression, the food justice analysis<sup>81</sup> embraces the concept that every person

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76. See, e.g., Kim Carollo, *Millions of Americans Can’t Always Afford Food*, ABC NEWS, March 24, 2011, <http://abcnews.go.com/Health/food-insecurity-affects-50-million-americans/story?id=13206053#.TwCQ2CMzWGs> (stating that the policy solution to food insecurity is more education for poor communities). There is “a need to educate people about ways to incorporate healthier foods into their regular diets,” and that “‘some of the most nutritious foods are extremely inexpensive, such as beans and lentils, for instance,’” and “[i]f lower-income people ate some of these foods, they could be well-nourished and maintain a healthy weight. Eating healthy on a very tight budget often requires changing habits, which can be difficult.” *Id.*

77. WINNE, *supra* note 61, at xvii; see also FOOD EXPERT MARK WINNE SPEAKS AT UVA, THE HOOK, <http://www.readthehook.com/74342/food-expert-mark-winne-speaks-uva> (last visited Aug. 8, 2012).

78. WINNE, *supra* note 61, at xvii.

79. *Id.*

80. ROBERT GOTTLIEB & ANUPAMA JOSHI, *FOOD JUSTICE* 5 (2010). In December 2011 food activists participated in the Occupy Wall Street Farmers March. Peter Rothberg, *Occupy Our Food*, THE NATION, (Dec. 28, 2011, 10:44 AM), <http://www.thenation.com/blog/165360/occupy-our-food#>. This march is an example of a growing trend of urban and rural farmers uniting to solve the problems created by the industrial food system. *Id.* In this meeting, the group discussed solutions involving organic, sustainable, and community-based agricultural production. *Id.*

81. Freeman, *supra* note 62, at 2223. See also GOTTLIEB, *supra* note 80, at 4–5. Often drawing from a “distributional equity framework,” food justice is situated within the context of environmental justice, which the EPA has unofficially defined as:

[T]he fair treatment . . . of all people regardless of race, color, culture, national origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies. Fair treat-



has a right to healthy and safe food, and that any risks or benefits related to food should be distributed fairly.<sup>82</sup>

Central to food justice is adequate access to food,<sup>83</sup> an issue advocated by the “community food security movement,” and an understanding of food systems and environments.<sup>84</sup> Achieving food justice requires “grow[ing], sell[ing] and eat[ing] healthy food.”<sup>85</sup> Healthy food is gener-

ment, in regards to EJ, means, no person or group should bear a greater share of negative environmental impacts that result from environmental programs.

U.S. Evtl. Prot. Agency, *Environmental Justice Key Terms*, REGION 7, <http://www.epa.gov/region7/ej/definitions.htm> (last updated May 8, 2012). The environmental justice movement focuses on addressing institutionalized racism, and generally defines the environment as “where we live, work and play,” and food justice scholars extend this phrase to also include “where, what, and how we eat,” which can also be understood as a quest to “transform where, what, and how food is grown, produced, transported, accessed, and eaten.” GOTTLIEB, *supra* note 80, at 4–5. Food justice advocates work within the broader environmental justice movement as a tactic to create change at the policy and systemic levels. *Id.* Food justice is a complex combination of multiple components. *See* Gerda R. Wekerle, *Food Justice Movements: Policy, Planning and Networks*, 23 J. PLAN. EDUC. & RES., 378, 379 (2004) (discussing various components of the food justice movement). The food justice movement combines “the sustainable agriculture movement’s ecological insights and philosophy of localism, the community food security movement’s anti-hunger focus, and the environmental justice movement’s fight against environmental hazards that disproportionately harm people of color,” and “has been a major force behind the resurgence of [urban agriculture] in North American cities.” Nathan McClintock, *From Industrial Garden to Food Desert: Unearthing the Root Structure of Urban Agriculture in Oakland, California* 4 (Inst. for the Study of Soc. Change, Working Paper Series 2007–2008.32, 2008), available at <http://escholarship.org/uc/item/1wh3v1sj>; Robert Gottlieb, *Community Food Security: What is it About? What Brings Us Together?*, COMMUNITY FOOD SECURITY NEWS, Fall 2002–Winter 2003, at 6.

82. Vallianatos, *supra* note 59, at 186.

83. *See* Nathan McClintock, *From Industrial Garden to Food Desert: Unearthing the Root Structure of Urban Agriculture in Oakland, California* 4 (Inst. for the Study of Soc. Change, Working Paper Series 2007–2008.32, 2008), available at <http://escholarship.org/uc/item/1wh3v1sj>. Some food scholars assert that, even in areas with thriving local food systems, communities in “food deserts” have “thus far been unable to reap its benefits and remain tied to the industrial agri-food complex through corporate provisioning of fast-food restaurants, schools, and hospitals, or they are limited to purchasing high-priced, low-quality processed food at corner liquor stores.” *Id.* Others have stated, “the ‘food systems’ paradigm has underscored the interconnectivity between health, diet, and built environment, making it increasingly apparent that urban sustainability does not inherently arise from sustainable agriculture, farmers’ markets, and North Berkeley’s Gourmet Ghetto.” *Id.*

84. *Id.*

85. *Food Justice*, JUST FOOD.ORG, <http://www.justfood.org/food-justice> (last visited Sept. 5, 2012). The Agricultural Justice Project collaborated with farm workers, farmers, and consumer groups to develop a food justice certification process, which addresses social justice in agriculture, including issues such as:

[w]orkers’ rights to freedom of association and collective bargaining[,] [f]air wages and benefits for workers[,] [f]air and equitable contracts for farmers and buyers[,] [f]air

ally defined as food that is “fresh, nutritious, affordable, culturally-appropriate and grown locally with care for the well-being of the land, workers and animals.”<sup>86</sup>

Employing a working definition of food justice helps focus us on our society’s inherent “hierarchies of power”<sup>87</sup> which, 1) create the structural inequalities inherent in environmental and food injustice; and 2) provide the circumstances within which advocates must direct potential policy or legal solutions.<sup>88</sup> Significantly, even when lack of access to healthy food is identified as a major social problem in a particular area, policy is generally not implemented to address it, and when discussions do occur, the proposed solution is often within the private sector.<sup>89</sup>

The scope of food justice includes an analysis of how food is produced, how far it travels, and how it is distributed.<sup>90</sup> This analysis addresses the impact of the food system on farm workers, farmers, people of color, and people living in poverty.<sup>91</sup> By exposing the reality of communities of color and low-income communities (and the ecosystems, environments, and public health of these groups), the food justice movement illuminates

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pricing for farmers[,] [c]lear conflict resolution policies for farmers or food business owners/managers and workers[,] [t]he rights of indigenous peoples[,] [w]orkplace health and safety[,] [f]armworker housing[, and] [c]hildren on farms.

*The Agricultural Justice Project’s Social Justice Standards*, FOOD JUST. CERTIFIED, <http://www.agriculturaljusticeproject.org/standards.html> (last visited Sept. 5, 2012). See also Danielle Gould, *Consumer Demands for Food Justice Labels: The Next Big Thing*, FORBES (May 8, 2012, 11:59 AM), <http://www.forbes.com/sites/daniellegould/2012/05/08/consumer-demand-for-food-justice-labels-the-next-big-thing/> (describing the Food Justice Certification label and citing the “plight . . . of people of color in the food system at large” as an example of injustice in the food system).

86. *Food Justice*, *supra* note 85.

87. ENVIRONMENTAL INJUSTICES, POLITICAL STRUGGLES: RACE, CLASS, AND THE ENVIRONMENT 2 (David E. Camacho ed., 1998).

88. *Id.* at 4. Political action within the United States is:

informed by the political process model, which is based on a particular conception of power in the United States consistent with the perspective advanced by an elite model of the political system. Like the elite model, the political process model rests on the assumption that wealth and power are concentrated in the hands of a few groups, thus depriving most people of any real influence over the major decisions that affect their lives. Accordingly, social movements—like the environmental justice movement—are seen as rational attempts by excluded groups to mobilize sufficient political leverage to advance collective interests through noninstitutionalized means.

*Id.* at 3-4.

89. The Food Justice Certified label is an example of a private-sector solution to injustice in our food systems. See *News and Updates*, FOOD JUST. CERTIFIED, <http://www.agriculturaljusticeproject.org/home.html> (last visited Sept. 5, 2012).

90. McClintock, *supra* note 83.

91. *Id.*

the ways in which power and privilege impact our relationship to food.<sup>92</sup> By interweaving discourses of food security, health, social justice, and an equitable environment, food justice organizations “explicitly rais[e] awareness about the complex interconnectivity of the uneven distribution of resources. . .the health of. . .citizens, and their ability to produce and access food.”<sup>93</sup>

### III. NO RIGHT TO FOOD IN THE UNITED STATES?

“The idea of freedom is inspiring. But what does it mean?  
If you are free in a political sense but have no food, what’s that?  
The freedom to starve?”<sup>94</sup>

—Angela Davis

“I am the people, humble, hungry, mean—  
Hungry yet today despite the dream.”<sup>95</sup>

—Langston Hughes

The United States urban food crisis and food justice movement exists within the context of our government’s position on the right to access of adequate food. According to the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948, all people have the right to a standard of living sufficient for “health and well-being” including, “food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his [or her] control.”<sup>96</sup> Although the

92. *Id.*; Yakini, *supra* note 27.

93. McClintock, *supra* note 83, at 10.

94. Angela Y. Davis Quotes, GOODREADS, [http://www.goodreads.com/author/quotes/38737.Angela\\_Y\\_Davis](http://www.goodreads.com/author/quotes/38737.Angela_Y_Davis) (last visited Sept. 5, 2012).

95. LANGSTON HUGHES, LET AMERICA BE AMERICA AGAIN, *reprinted in* THE COLLECTED POEMS OF LANGSTON HUGHES 190 (Arnold Rampersad ed., 1994).

96. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 25, para. 1 (Dec. 10, 1948), *available at* <http://www.un.org/en/documents/udhr/>; GEORGE KENT, FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD 161 (2005). The UDHR implicitly acknowledges that an adequate standard of living requires a broader scope than merely the guarantee of adequate food. *Id.* These requirements include health, education, clothing, housing and others. *Id.* at 46. Although anti-hunger organizations often employ the slogan “Food First,” indicating a belief that “the food issue” should be given an elevated priority, others argue that “all aspects of livelihood are interrelated” and must be “kept in balance.” *Id.*; Absbjorn Eide, *The Right to an Adequate Standard of Living Including the Right to Food*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A TEXTBOOK 89, 89 (Asbjorn Eide et al. eds., 1995); *see also* JACK A. NELSON, HUNGER FOR JUSTICE: THE POLITICS OF FOOD AND FAITH 54 (1980).

United States is a signatory to the UDHR, its policy and practices do not reflect a guaranteed right to food.<sup>97</sup>

Although government programs exist to promote adequate access to food, they are situated within a “deep ideological resistance to economic rights” within the United States.<sup>98</sup> Furthermore, “[t]he U.S. government has consistently expressed its opposition to the idea of the right to food.”<sup>99</sup> In 1996, for example, the United States interpreted the concluding document of the World Food Summit by characterizing its understanding of the right to safe and nutritious food to mean only that “governments should not interfere with the effective opportunity or ability of their citizens to obtain safe and nutritious food.”<sup>100</sup> This interpretation indicates recognition of the obligation to respect, or “not interfere with people’s efforts to provide for themselves,” but not to protect, facilitate, or provide food.<sup>101</sup> However, as we will see, the United States does not comply even with its own interpretation of the World Food Summit’s language. Although the “food status” of many Americans is good, there is generally no *right* to adequate food.<sup>102</sup> Indeed, U.S. federal law does not recognize a right to adequate food.<sup>103</sup> The Supreme Court has never acknowledged an “explicit right to eat certain foods” or a right to food period.<sup>104</sup>

The Food and Drug Administration (FDA) is tasked with protecting and promoting the health of the American people.<sup>105</sup> Recently, the

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Poverty is a denial of human rights. Unemployment, inadequate housing, health care, and education, hunger and malnutrition are all the evidence of violations of human rights. This is particularly true in the case of countries with free-enterprise economies where poverty exists side by side with the affluence of elites. It is, in fact, a by-product of the economic structures that produce such affluence. The denial of basic economic rights necessarily leads to the violation of traditional political rights.

*Id.*

97. See GEORGE KENT, *FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD* 156 (2005) (describing the condition of many Americans during the 1970s and 1980, and stating that hunger is “the single greatest facing American cities.”).

98. *Id.* at 157–58.

99. *Id.* at 158.

100. *Id.*

101. *Id.* at 158–59.

102. *Id.* at 162.

103. *Id.*

104. Baylen J. Linnekin, *The “California Effect” & the Future of American Food: How California’s Growing Crackdown on Food & Agriculture Harms the State & the Nation*, 13 *CHAP. L. REV.* 357, 387 (2010).

105. *The Center for Health and Wellness*, FDA.ORG, <http://fda.org/index.php?category=food-and-drug-administration> (last visited Sept. 5, 2012).

agency asserted that there is no right to health or freedom of food.<sup>106</sup> In response to a lawsuit by the Farm-to-Consumer Legal Defense Fund (FTCLDF), the FDA stated that there is “no fundamental right to choose your food or freedom to contract for it.”<sup>107</sup> The FDA has also stated that there is no right to freedom of food or right to bodily and physical health.<sup>108</sup> Although the plaintiffs in this lawsuit were cow farmers in the sustainable food movement, the FDA’s findings have disturbing implications as a statement on the general ability of communities to assert their right to choose healthy food or to obtain food in general.

#### IV. URBAN COMMUNITIES

White people are so scared of [B]lack people  
 they bulldoze out to the country  
 and put up houses on little loop-dee-loop streets  
 and while [America] gets its heart cut right out of its chest  
 the [B]erlin [W]all still runs down main street  
 separating east side from west  
 and nothing is stirring, not even a mouse  
 in the boarded-up stores and the broken-down houses. . .  
 And I’m wondering what it will take  
 for my city to rise  
 first we admit our mistakes  
 then we open our eyes  
 the ghosts of old buildings are haunting parking lots  
 in the city of good neighbors that history forgot.

–Ani Difranco, “Subdivision”<sup>109</sup>

##### A. *White Flight: A Brief History of Segregation and Ghettoization*

While our national narrative portrays racial segregation as a closed chapter of an unenlightened past, in reality “segregation continues to characterize the present lives of many minorities in America.”<sup>110</sup> Segre-

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106. Heidi Stevenson, *The FDA Says You Have No Right to Health or Freedom of Food*, READER SUPPORTED NEWS (June 1, 2010, 7:23 AM), <http://readersupportednews.org/pm-section/31-31/2096-the-fda-says-you-have-no-right-to-health-or-freedom-of-food>.

107. *Id.*

108. *Id.*

109. ANI DIFRANCO, SUBDIVISION (RIGHTEOUS BABE RECORDS 2001), available at [http://www.righteousbabe.com/ani/rev\\_rec/\\_subdivision.asp](http://www.righteousbabe.com/ani/rev_rec/_subdivision.asp) (last visited Sept. 5, 2012).

110. Marc Seitles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 89 (1998). See also MASSEY, *supra* note 67, at 1 (linking racial segre-

gation is a key component of contemporary, on-going urban poverty.<sup>111</sup> Housing segregation and economic inequality continue to keep the country from moving towards “true racial equality.”<sup>112</sup> The areas of the country most overtly defined by the segregation, the legacy of slavery, sharecropping, Jim Crow laws, and restrictive housing covenants experience the greatest food struggles today.<sup>113</sup> According to a study conducted by the Food Action Research Center, the Southeast has the country’s highest rate of food hardship overall with 21.1 percent.<sup>114</sup> In stark contrast, the same study found rates of food hardship in the Northeast and Mid-Atlantic to be one-third lower.<sup>115</sup>

Racial segregation did not always characterize U.S. cities in the way it does today.<sup>116</sup> As African-Americans began moving north following World War I and II, federal and local governments began intentionally creating racial segregation through various public projects such as urban renewal, public improvement, and public housing programs, causing the “picture of the urban ghetto . . . to develop.”<sup>117</sup> Local governments

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gation and the multiple inequalities associated with urban decay and advocating policies that address institutionalized racism).

111. Seitles, *supra* note 110, at 89–90. *See also* Douglas S. Massey and Mary J. Fisher, *How Segregation Concentrates Poverty*, 23 *ETHNIC & RACIAL STUD.* 670, 671 (2000) (exploring the connection between poverty, race, and segregation, and stating that, “[l]arge urban Black communities are still very highly segregated, and often the degree of racial isolation is extreme.”). Segregation of urban African-American communities is often so extreme that it is termed “hypersegregation.” *Id.* (emphasis in original). Experts argue that segregation and income disparities combine to create extreme levels of “geographically concentrated poverty” in urban African-American neighborhoods. *Id.* Increasing income inequality is then “absorbed by a small number of densely settled, racially homogeneous areas that are clustered together tightly in the older urban core.” *Id.* Hypersegregation contributes to the concentration and deepening of poverty in urban areas. *Id.*

112. Seitles, *supra* note 110, at 90. *See generally* David R. Williams & Chiquita Collins, *Racial Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 *PUB. HEALTH REP.* 404, 404 (2001) (describing how segregation causes racial inequality in health outcomes).

113. Douglas S. Massey and Mary J. Fisher, *How Segregation Concentrates Poverty*, 23 *ETHNIC & RACIAL STUD.* 670, 671 (2000).

114. FOOD ACTION RESEARCH CTR., *FOOD HARDSHIP IN AMERICA – 2010 1* (2011), available at [http://frac.org/wp-content/uploads/2011/03/food\\_hardship\\_report\\_mar2011.pdf](http://frac.org/wp-content/uploads/2011/03/food_hardship_report_mar2011.pdf).

115. *Id.* “The variations in food hardship by region in 2010 were substantial. In the starkest difference, the rate in the Southeast (21.1 percent) and Southwest (20.8 percent) is one third higher than in the Northeast and Mid-Atlantic regions.” *Id.*

116. *See* Seitles, *supra* note 110, at 91 (explaining that prior to 1900, it was common for African-Americans to live alongside Whites in southern cities and that “in northern cities, African-Americans were more likely to share a neighborhood with [W]hites than to live in racially segregated communities.”).

117. *Id.*

adopted racial segregation as a *de facto* policy.<sup>118</sup> Whites began pouring out of the urban areas and into suburbia in a widespread pattern termed “White flight.”<sup>119</sup> Industry began leaving the urban areas in favor of cheap land and tax incentives.<sup>120</sup> Zoning ordinances, designed to facilitate segregation, separated blocks by race, and restrictive covenants allowed for legally backed racial discrimination and segregation.<sup>121</sup> Urban decay and ghettoization<sup>122</sup> are the clear “result of deliberate housing policies of the federal, state and local governments.”<sup>123</sup>

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118. *Id.* at 92. “Racial segregation soon became the de facto policy of local governments and standard operating procedure for individual landowners.” *Id.*

119. See WINNE, *supra* note 61, at xv (“[A]ided in part by America’s car culture and the emergence of the interstate highway system,” White flight “left behind a giant sucking sound in urban cores across the country,” and, “[l]ike the surf crashing against a beach then draining seaward again, middle class families rode a tide of fear, disorientation, and resentment as they escaped to the suburbs.”).

120. Seitles, *supra* note 110, at 91-92.

Manufacturing jobs were lured away from the inner city with cheap land and low taxes. Industry moving from the city to the suburbs resulted in the creation of all-[W]hite suburban towns. Segregationist zoning ordinances, which divided city streets by race, coupled with racially restrictive covenants between private individuals became the common method of legally enforcing racial segregation.

*Id.*

121. *Id.*; see also David R. Williams & Chiquita Collins, *Racial Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH REP. 404, 404 (2001).

Segregation refers to the physical separation of the races in residential contexts. It was imposed by legislation, supported by major economic institutions, enshrined in the housing policies of the federal government, enforced by the judicial system, and legitimized by the ideology of [W]hite supremacy that was advocated by churches and other cultural institutions. These institutional policies combined with the efforts of vigilant neighborhood organizations, discrimination on the part of real estate agents and home sellers, and restrictive covenants to limit the housing options of [B]lack Americans to the least desirable residential areas.

*Id.* at 405.

122. LARRY BENNETT, *Ghettoization*, ENCYCLOPEDIA OF CHICAGO, <http://encyclopedia.chicagohistory.org/pages/514.html> (last visited Sept. 5, 2012).

“Ghetto” is a term with a long history, originally referring to Jewish enclaves within European cities, which were physically separated from surrounding areas, but whose economic institutions often played an important role in the life of the greater city. In American cities . . . the changing dynamics of the process known as ghettoization have paralleled shifts in racial-ethnic composition and underscored the effects of major public policy breakdowns.

*Id.*

123. Seitles, *supra* note 110, at 92. See James A. Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Segregation in the United States*, 22 HOW. L.J. 547, 551 (1979) (explaining that “[t]he inescapable determination is that racial isolation is a result of government policies and actions.”).

Historically, the federal government has emerged various policies to create and maintain racial segregation.<sup>124</sup> Since its creation, the Federal Housing Administration (FHA) perpetuated discrimination as the “protector of all [W]hite neighborhoods.”<sup>125</sup> The FHA employed “redlining,” a discriminatory practice that diverted mortgage funds away from urban, African-American neighborhoods, and toward borrowers in White, middle-class neighborhoods.<sup>126</sup> From 1930 to 1950, three-fifths of all homes purchased in the United States were backed by the FHA, yet “less than two percent of the FHA loans were made to non-White home buyers.”<sup>127</sup> Federal interstate highway and urban renewal programs further segregated neighborhoods and consumed urban land using eminent domain.<sup>128</sup> The cumulative effect of these policies has made the federal government the “most influential in creating and maintaining residential segregation.”<sup>129</sup> In 1968, the Civil Rights Act made discrimination in housing rentals and sales illegal, but “subtle and explicit” housing discrimination continues.<sup>130</sup>

The Department of Housing and Urban Development (HUD) continues to promulgate and maintain intentionally racist policies, which in turn, ensure the continued segregation of urban communities.<sup>131</sup> Courts have found HUD liable for overtly racist policies in Section Eight<sup>132</sup> administration, selection of public housing sites, and tenant housing proce-

124. See HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES: 1492-PRESENT* (Perennial 2003) (1999) (outlining the history of different groups of people in the United States). For a thorough discussion of the federal government’s role in creating institutionalized racism, see IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005) (analyzing racial inequality in Twentieth-Century America and explaining its contributions to U.S. history).

125. Seitles, *supra* note 110, at 93.

126. See MASSEY, *supra* note 67, at 51 (stating that the FHA adopted the “redlining” practices developed by the Federal Home Owners Loan Corporation). See generally Amy E. Hiller, *Spatial Analysis of Historical Redlining: A Methodological Exploration*, *JOURNAL OF HOUSING RESEARCH* (2003) (providing an historical examination of redlining), available at [http://repository.upenn.edu/cgi/viewcontent.cgi?article=1008&context=cplan\\_papers&sei-redirect=1&referer=http](http://repository.upenn.edu/cgi/viewcontent.cgi?article=1008&context=cplan_papers&sei-redirect=1&referer=http).

127. Seitles, *supra* note 110, at 92.

128. Florence W. Roisman, *The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration*, 81 *IOWA L. REV.* 479, 492 (1995).

129. U.S. COMM’N ON CIVIL RIGHTS, *TWENTY YEARS AFTER BROWN: EQUALITY OF ECONOMIC OPPORTUNITY* 39 (1975).

130. David R. Williams & Chiquita Collins, *Racial Segregation: A Fundamental Cause of Racial Disparities in Health*, *PUBLIC HEALTH REPORTS* 404, 405 (2001).

131. Memorandum on Fair Housing for the Heads of Executive Departments and Agencies, 30 *WKLY. COMP. PRES. DOC.* 114 (Jan. 17, 1994).

132. See generally, *Housing Choice Vouchers Fact Sheet*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (delineating



dures.<sup>133</sup> Laws designed to prevent such discrimination have failed to prevent housing inequality, and do not address its underlying structural causes.<sup>134</sup>

### B. *Grocery Stores Leave Urban Areas*

Food retail in the United States had been “gradually changing since the first arrival of chain grocery stores” before World War I and chain supermarkets after World War II.<sup>135</sup> As the middle class flocked to suburbia, a depressed urban economy made it difficult to keep supermarkets or other businesses in the area.<sup>136</sup> Malls, promising one-stop shopping and huge parking lots began opening closer to the suburbs.<sup>137</sup> By 1960, over 65 percent of food was purchased at supermarkets,<sup>138</sup> and by 1975 corporations owned the same percentage of the entire food retail market.<sup>139</sup> This new food structure pulled money away from urban areas and directed it to the corporate headquarters.<sup>140</sup> At the same time, access to food be-

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the provisions of the Section Eight Housing program, a rent subsidy program which awards vouchers on the basis of financial need).

133. *See, e.g.*, *Clients' Council v. Pierce*, 778 F.2d 518 (8th Cir. 1985) (finding HUD liable for acts of intentional racial segregation in public housing); *Gautreaux v. Romney*, 448 F.2d 731, 737–40 (7th Cir. 1971) (holding that HUD's role in housing segregation in violated the Due Process Clause); *Young v. Pierce*, 628 F. Supp. 1037, 1045–57 (E.D. Tex. 1985) (finding HUD liable for widespread intentional discrimination in public housing).

134. *See* Letter from Dean Spade, Assistant Professor at Seattle University School of Law, to those considering law school (Oct. 2010), for a discussion of the limitations of the legal system in addressing structural oppression.

U.S. law is fundamentally structured to establish and uphold settler colonialism, [W]hite supremacy, capitalism—the legal system will not undo these things. When we look at any radical movement in the US that wants to undo these things . . . we can see that those movements most transformative demands were/are never met by law, and instead that law changes are usually created in ways to maximize the preservation of the status quo while adding a window-dressing of fairness. Even when movements win law change that looks like it is supposed to guarantee the redistribution of some essential thing, that law is always quickly eliminated, or never enforced, or twisted through administrative or judicial interpretation to do the reverse . . . [T]ransformation really happens because of mobilization of large numbers of people directly affected by harmful and violent systems. It doesn't come from the top—from elites granting change through legislation or courts.

*Id.*

135. McClintock, *supra* note 83, at 26.

136. *Id.* *See also* Charles P. Lord, *Community Initiatives: Environmental Justice Law and the Challenges Facing Urban Communities*, 14 VA. ENVTL. L.J. 721, 723–24 (1995) (discussing disinvestment in Boston's urban neighborhoods).

137. McClintock, *supra* note 83, at 26.

138. *Id.*

139. *Id.*

140. *Id.*

came directly tied to locations of supermarkets.<sup>141</sup> By the 1980s and 1990s, superstores, such as Costco (which can only be reached by automobile) had taken charge of food retail, leaving the inner cities few options for food shopping.<sup>142</sup> Once shopping options became limited, liquor stores began to serve as a main source of food in urban areas.<sup>143</sup> The food for sale in these corner stores is typically processed (fresh fruits and vegetables are not available), and is generally more expensive than what could be found in a supermarket.<sup>144</sup> As businesses left the cities, low-income urban real estate became devalued.<sup>145</sup> This divestment created a landscape such as Detroit's, where flight from urban areas left over 30,000 acres vacant.<sup>146</sup>

### 1. Transportation Barriers

“Food deserts” or grocery gaps can also be understood as a transportation gap.<sup>147</sup> When the post-World War II supermarket expansion corresponded with the increase in use of the automobile, the need for customer parking drove most supermarket construction to the suburbs, where large, inexpensive tracts of land were readily available.<sup>148</sup> Perplexingly, most urban light rail systems were not planned to reach grocery stores despite the relatively small number of cars in urban areas compared to the suburbs.<sup>149</sup> Attempts to solve this oversight, or to address the connection between lack of transportation and access to food has been largely “absent from any transportation policy or food retail management planning.”<sup>150</sup> The federal Transportation Bill for example, neglects to include “food distribution or food access considerations in the various projects and subsidies” created by the legislation.<sup>151</sup> In addition, studies documenting inequality in access to transportation have found

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141. *Id.*

142. *Id.* See Karen Auge, *Abandoned Stores Leave Grocery Graveyards*, THE DENVER POST (May 9, 2010), [http://www.denverpost.com/news/ci\\_15047968](http://www.denverpost.com/news/ci_15047968) (describing the abandonment of grocery stores in urban areas).

143. McClintock, *supra* note 83, at 26.

144. *Id.*

145. *Id.*

146. Yi Wang et al., *supra* note 60, at 1. See also HESTERMAN, *supra* note 35, at x (describing Detroit's troubled economic state and the city's lack of a major supermarket).

147. GOTTLIEB, *supra* note 80, at 46.

148. The expansion of the highway system during the 1950s and 1960s aided the “food retail shift from the urban core to the suburbs.” GOTTLIEB, *supra* note 80, at 46. See HESTERMAN, *supra* note 35, at 13 (describing the shift to supermarkets and centralization of the food system, stating that “[t]he four largest grocery firms—Wal-Mart, Kroger, Safeway, and Supervalu—account for 47 percent of all [food] sales”).

149. GOTTLIEB, *supra* note 80, at 46.

150. *Id.*

151. *Id.* at 47.

that 19 percent of African-Americans and 13.7 percent of Latinos lack access to cars, compared with only 4.6 percent of Whites.<sup>152</sup>

## 2. Complexity of the Grocery Gap

At first glance, it may seem that the lack of access to fresh, healthy food in low-income communities would be easily resolved by the addition of supermarkets into these areas. However, the grocery stores that have either remained in or returned to low-income areas tend to contribute to the problem by “offering and often prominently displaying highly processed foods, candy, snacks and sodas.”<sup>153</sup> Additionally, as food retail becomes increasingly globalized, grocery stores are able to determine “long-distance supply chains and product selections . . .”<sup>154</sup> This scenario has stripped supermarkets of local and culturally responsive food.<sup>155</sup>

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152. *Getting to Work: Transportation Policy and Access to Job Opportunities*, THE LEADERSHIP CONFERENCE EDUC. FUND (July 2011), available at <http://civilrightsdocs.info/pdf/docs/transportation/getting-to-work-july20.pdf>. See *Rural Transportation at a Glance*, USDA ECON. RESEARCH SERV. (Sept. 3, 2011, 6:07 AM), available at [http://webarchives.cdlib.org/sw15d8pg7m/http://ers.usda.gov/publications/aib795/aib795\\_lowres.pdf](http://webarchives.cdlib.org/sw15d8pg7m/http://ers.usda.gov/publications/aib795/aib795_lowres.pdf) (highlighting that “highly carless communities” in rural areas are predominately populated by poor people of color).

153. GOTTLIEB, *supra* note 80, at 48. Simply introducing grocery stores to urban areas will not solve the food access problem. HESTERMAN, *supra* note 35, at 31. As expressed by Mr. Hesterman:

[b]ecause many researchers focus on the lack of full-service grocery stores as a ‘problem,’ it naturally follows that the solution is to attract new grocery stores . . . if we are to put all of our efforts into attracting grocery stores and forget that there are many other ways to create greater access to healthy, fresh, and sustainably grown food, we will not have ‘solved’ the problem of a broken system. We merely will have created more opportunities for residents to purchase (usually at higher prices than in the suburbs) primarily highly processed foods in a way that also very rapidly siphons money away from the community.

*Id.*

154. GOTTLIEB, *supra* note 80, at 48.

155. *Id.* This problem was evident in the “Tesco invasion” of 2005, when Tesco, an England-based corporation, decided to enter the U.S. market. Aiming to take advantage of the increasing desire for fresh and local food in the United States, Tesco dubbed its new stores “Fresh & Easy Neighborhood Market,” used a smaller store format to induce a neighborhood feel, and stated an express intention to locate its stores in food deserts. GOTTLIEB, *supra* note 80, at 50. Tesco’s U.S. head of operations even stated in an interview with Britain’s *Observer*, “One of the reasons we appeal to American politicians is because we have said we will go back into neighborhoods that have become food deserts.” Zoe Wood, *Tesco Puts the Cart Before the Trolley in Bid to Crack America*, *OBSERVER* (June 10, 2007), <http://www.guardian.co.uk/business/2007/jun/10/supermarkets.retail1>. Tesco entered the U.S. market operating a “nonunion, part-time workforce,” which added to “efforts to reduce the union presence in food retail and rely more on a low-wage, part-time workforce.” GOTTLIEB, *supra* note 80, at 50. Despite publically announcing the intention to enter food deserts, Tesco’s efforts to do so have been minimal. *Id.* Unfortu-

### C. *Fast Food*

In urban areas, fast food has become the most affordable and accessible source of food.<sup>156</sup> According to a study of the fast food industry, African-American communities have 2.4 fast food establishments per square mile, whereas White neighborhoods have only 1.5 per square mile.<sup>157</sup> Additionally, fast food marketing targets youth of color at significantly higher rates than White youth; African-American youth are exposed to 50 percent more fast food advertising than their White peers.<sup>158</sup> As one food scholar described the problem:

A junk food jungle sprouted up from the barren stretches of the fresh food desert throughout poor neighborhoods in post-industrial America, capitalizing on the niche left by the retreat of groceries and supermarkets and a demand for food that was easily accessible, convenient, and cheap, sending the incidence of diabetes and obesity skyrocketing.<sup>159</sup>

#### 1. Government Support for Fast Food

The fast food industry exploits the same market forces that drive healthy food out of urban communities.<sup>160</sup> It also utilizes its massive resources to lobby the government for “subsidies, exemptions, and other perks.”<sup>161</sup> In turn, the government cooperates with the fast food industry by creating artificially low prices, allowing the industry to infiltrate public schools, and distributing misleading health information.<sup>162</sup> Fast food’s corporate share is not merely a product of free-market capitalism; the

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nately, Tesco’s entry into the United States has made it more challenging to “mount a concerted effort to accomplish a range of food justice goals[,]” as it uses a small store format to further the globalization of food retail. *Id.* at 51.

156. See *Do Fast-Food Chains Cluster Around Schools?*, NBCNEWS.COM (Aug. 24, 2005, 12:50 PM), <http://www.msnbc.msn.com/id/9053465/ns/health-fitness/t/do-fast-food-chains-cluster-around-schools/> (describing how “fast-food restaurants are clustered within easy walking distance of elementary and high schools . . . [this] pattern [ ] exists in urban areas nationwide . . .”).

157. Jason P. Block et al., *Fast Food, Race/Ethnicity, and Income: A Geographical Analysis*, AM. J. PREVENTATIVE MED. 211 (2004). The article points out that “[f]ast-food restaurants are more commonly located in [B]lack and low-income areas.” *Id.* at 217. See also LaVonna Blair Lewis et al., *African Americans’ Access to Healthy Food Options in South Los Angeles Restaurants*, AM. J. PUBLIC HEALTH 668–69 (2005) (describing access to food options based on zip code and ethnicity).

158. Rudd Ctr., *Fast Food Marketing*, FAST FOOD F.A.C.T.S., [http://fastfoodmarketing.org/fast\\_food\\_facts\\_in\\_brief.aspx](http://fastfoodmarketing.org/fast_food_facts_in_brief.aspx). McDonald’s and KFC are particularly prone to targeting African-American youth. *Id.*

159. McClintock, *supra* note 83, at 28.

160. Freeman, *supra* note 62, at 2223.

161. *Id.*

162. *Id.*

U.S. government heavily subsidizes the industry.<sup>163</sup> The prices are kept artificially low (by three times the actual cost) by using government subsidies for animal feed, sugar, oils, and large farms that produce fast food's crops.<sup>164</sup>

a. The USDA and Fast Food

For over a century the U.S. government has been telling people what they should and should not eat.<sup>165</sup> The history of this advice reflects the most current information on topics including "agriculture, food product development, and international trade, as well as in science and medicine."<sup>166</sup> Many people assume that the USDA promulgates the food pyramid<sup>167</sup> with the best interests of the American people in mind, but history tells us otherwise.<sup>168</sup> Even when it became apparent that Americans would benefit from eating less of certain types of food, the official recommendations on food intake did not change because "advice to eat less [of certain foods or food categories] . . . runs counter to the interests of food producers."<sup>169</sup> Contemporary information on healthy eating runs counter to the food industry's interests, and this causes a great deal of confusion about how and what to eat.<sup>170</sup> In fact, "dietary advice issued

163. *Id.*

164. See Mike Russo, *Apples to Twinkies: Comparing Federal Subsidies of Fresh Produce and Junk Food*, U.S. PUBLIC INTEREST GROUP (2011), available at <http://www.uspirg.org/sites/pirg/files/reports/Apples-to-Twinkies-web-vUS.pdf> (describing that most of the produce subsidized by the USDA end up in junk food); Freeman, *supra* note 62, at 2224 (stating that additional government-determined factors "that artificially lower the cost of fast food include: the use of hormones and antibiotics to promote rapid animal growth; market deficiency loans; cheap immigrant labor; and special tax breaks," and that, "[m]any Americans would be unable to afford fast food if its price reflected its true costs, including externalities such as the impact on health and the environment.").

165. NESTLE, *supra* note 33, at 31; Monica Eng, *Looking at the Food Pyramid*, CHI. TRIB., July 21, 2010, <http://www.chicagotribune.com/health/ct-met-food-pyramid-20100720,0,5475230,full.story>.

166. NESTLE, *supra* note 33, at 31.

167. Monica Eng, *Looking at the Food Pyramid*, CHI. TRIB., July 21, 2010, [http://articles.chicagotribune.com/2010-07-21/health/ct-met-food-pyramid-20100720\\_1\\_council-for-responsible-nutrition-new-food-guidelines-dietary-guidelines-advisory-committee](http://articles.chicagotribune.com/2010-07-21/health/ct-met-food-pyramid-20100720_1_council-for-responsible-nutrition-new-food-guidelines-dietary-guidelines-advisory-committee). Since 1992, the USDA has issued the food pyramid, which provides portion recommendations from "food groups." *Id.* Congressional mandate requires a review of these recommendations every five years. *Id.*

168. NESTLE, *supra* note 33, at 31.

169. *Id.* See also Kathryn Mulvey, *Industry's Influence over Food Pyramid Hard to Stomach*, TRUTHOUT, May 4, 2005, <http://archive.truthout.org/article/kathryn-mulvey-industrys-influence-over-food-pyramid-hard-stomach> (illuminating how the food industry has been able to aggressively promote junk food because of the government's relaxed management of new nutritional guidelines).

170. NESTLE, *supra* note 33, at 31.

by the government has never been based purely on considerations of public health.”<sup>171</sup> Clearly, the public’s interest in accurate dietary and nutritional advice takes a backseat to the food and agricultural industries’ influence on national food policy.

These USDA practices impose disproportionate levels of harm on African-American communities, which are also a common target of fast-food’s marketing.<sup>172</sup> The USDA’s nutrition guidelines have been accused of being racially biased,<sup>173</sup> as the guidelines place emphasis on meat and dairy products, foods that are leading contributors to diseases commonly found in the African-American community.<sup>174</sup> These foods are also heavily used by the fast food industry.<sup>175</sup>

## V. URBAN GARDENS: A COMMUNITY SOLUTION TO THE URBAN FOOD CRISIS?

### A. History of Urban Gardening in the United States

Despite a history of urban agriculture<sup>176</sup> as a viable method of feeding communities,<sup>177</sup> the United States has generally regarded urban garden-

171. *Id.* at 31–32.

172. Rudd Ctr., *supra* note 158 (last visited Aug. 26, 2012). African-American youth are exposed to significantly more advertising than Caucasian youth. *Id.* Due to the increase in advertising, which targets African-American youth, they are likely to order more items that are “super-sized” and unhealthy than their Caucasian counterparts. *Id.*

173. Milton Mills & Merlene Alicia Vassall, *Biased Food Guidelines Ignore African-Americans*, HEALTHY SCHOOL LUNCHES, <http://www.healthyschoollunches.org/legislative/guidelines.cfm> (last visited Aug. 26, 2012).

174. *See id.* (describing bias in school lunch guidelines that ignores the needs of African-American children, and stating, “African-Americans have much more lactose intolerance, hypertension, diabetes, cancer, and obesity.”). “[D]iseases that appear to be inherently common in the Black population [include]: prostate cancer, diabetes, obesity, and hypertension.” Barbara Murray, *Medicine’s New Roadmap*, HOWARD UNIVERSITY, NAT’L HUMAN GENOME CENTER (Aug. 6, 2012), [http://www.genomecenter.howard.edu/genome\\_article.htm](http://www.genomecenter.howard.edu/genome_article.htm).

175. *See Freeman, supra* note 62, at 2244 (stating that several groups, led by the Physicians’ Committee for Responsible Medicine, called the USDA guidelines “a fundamental form of institutionalized racism.”). The guidelines emphasize intake of meat and dairy products, which are known to be leading contributors to multiple diseases that heavily affect African-Americans. *Id.* at 2244. Consequently, the guidelines do not mention foods such as kale and broccoli, which are calcium-rich. *Id.* at 2244.

176. *See generally* McClintock, *supra* note 83 (“Urban agriculture is a widely lauded strategy in the battle to bring healthy food to urban food deserts and has been receiving growing attention in both academic literature and the popular press over the last few years.”). As McClintock points out, *The New York Times* reported on urban agriculture on almost a weekly basis in 2008. *Id.* Also, “[s]kyrocketing food prices worldwide and the economic crisis have pushed [urban agriculture] even further into the spotlight.” *Id.*

177. *See* Imara Jones, *A Food Crisis is Coming, but Urban America Already has it Solved*, COLORLINES (Feb. 16, 2011) [http://colorlines.com/archives/2011/02/urban\\_america\\_](http://colorlines.com/archives/2011/02/urban_america_)

ing as a recreational activity, a way to build community, or a way to green the cities.<sup>178</sup> Working class American urbanites, however, have long used urban gardening as “a source of food security in lean times.”<sup>179</sup> Garden programs serving schools, prisons, and “at-risk” youth have existed for many years, and public health experts acknowledge the role of gardening to promote nutrition, socialization, and healthy development.<sup>180</sup> In the 1890s and 1930s, urban gardening was used to address unemployment, and during World Wars I and II, “victory” gardens were used to protect against food shortages.<sup>181</sup>

In the late 1960s urban agriculture began spreading in the wake of urban riots over segregation and police brutality.<sup>182</sup> After the riots, thousands of empty lots lay unoccupied where buildings had previously

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is\_nurturing\_the\_future\_of\_food.html (explaining urban farming’s role in establishing a more sustainable form of agricultural production perceived as a feasible form of feeding households throughout the United States).

[S]o called food deserts may soon spread far beyond the neglected [B]lack and [B]rown urban neighborhoods where they now predominate. This makes what’s happening in urban farms so important. The people working in these community-wide efforts to grow and distribute their own food, within their own neighborhoods, aren’t just saving themselves; they’re building a model for sustainable agricultural production that will be essential to the entire nation.

*Id.* In a structural analysis of urban agriculture, it is important to acknowledge such critiques of judgment-laden suggestions from outside of impacted communities: “It is encouraged that African-American . . . communities embrace a land-based self-sustainable model as if it were never a pre-existing reality. Once again, the missionary MComplex is unfolding again—the ideal that there is no innate wisdom within a culture, that it must all come from outside the group—through education no less.” Slocum, *supra* note 45, at 334.

178. See Jane E. Schukoske, *Community Development through Gardening: State and Local Policies Transforming Urban Open Space*, 3 J. LEGIS. & PUB. POL’Y. 351, 356 (2000) (describing community gardens as a way to beautify urban areas, create a sense of community, and decrease crime).

179. McClintock, *supra* note 83. See generally Becky M. Nicolaides, *The Quest for Independence: Workers in the Suburbs*, in METROPOLIS IN THE MAKING: LOS ANGELES IN THE 1920s 77, 77–81 (2001) (illuminating how the suburbanization and industrialization of early 20th century Los Angeles impacted each other symbiotically).

180. Emily J. Ozer, *The Effects of School Gardens on Students and Schools: Conceptualization and Considerations for Maximizing Healthy Development*, 34 HEALTH AND EDUCATION BEHAVIOR Dec. 2007, at 846, 859, available at <http://heb.sagepub.com/cgi/content/abstract/34/6/846>. But see Caitlin Flanagan, *Cultivating Failure: How School Gardens Are Cheating Our Most Vulnerable Students*, THE ATLANTIC (Jan.-Feb. 2010), [http://www.theatlantic.com/magazine/archive/2010/01/cultivating-failure/307819/?single\\_page=true](http://www.theatlantic.com/magazine/archive/2010/01/cultivating-failure/307819/?single_page=true) (critiquing gardening based curriculums as “bestowing field work and low expectations on a giant population of students” of color).

181. *Victory Gardens at a Glance*, THE NAT’L WORLD WAR II MUSEUM, <http://www.nationalww2museum.org/learn/education/for-students/ww2-history/at-a-glance/victory-gardens.html> (last visited Aug. 26, 2012). *Victory Gardens 2008+*, ALL OUT FOOD PRODUCTION!, <http://www.sfvictorygardens.org/history.html>.

182. Jones, *supra* note 177.

stood.<sup>183</sup> Many of the destroyed buildings had been food stores, and when there was no financial support to bring the stores back, communities began planting gardens in these abandoned lots.<sup>184</sup> Most African-Americans in the cities had migrated from the South,<sup>185</sup> so they used their knowledge of agriculture to grow urban vegetables.<sup>186</sup> Now, fifty years later, thirty cities have urban-farming projects,<sup>187</sup> and there are 10,000 community gardens<sup>188</sup> in the United States.<sup>189</sup> New York City alone has an impressive 600 city gardens, involving over 20,000 residents.<sup>190</sup>

### B. *Contemporary Urban Agriculture*

Today, community gardens represent a vital source of food for low-income African-American communities and other communities of color. The typical urban garden produces approximately 540 pounds of food a year.<sup>191</sup> These gardens, such as the Morning Glory in the South Bronx, also create an avenue for people to work together, generate income, educate youth about healthy eating, and build community, and are one of the most promising sources of urban revival.<sup>192</sup> Some food justice advocates call this garden-driven revival “civic agriculture,” noting that “[w]hile the American food and agriculture system follows a decades-old path of industrialization and globalization, a counter trend toward localizing some agriculture and food production has appeared,” which is “tightly linked to a community’s social and economic development.”<sup>193</sup> While civic agriculture, does not currently represent an economic challenge to the conventional agriculture and food industry. . .it does include some innovative ways to produce, process, and distribute food. And it represents a sus-

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183. *Id.* In Washington, D.C. alone, 1,200 buildings were destroyed. *Id.*

184. *Id.*

185. *African-American Mosaic*, LIBRARY OF CONG. (July 23, 2010), <http://www.loc.gov/exhibits/african/afam008.html>.

186. Jones, *supra* note 177.

187. *Id.*

188. *Id.* “A community garden arises when residents grow food, flowers, or greenery on publicly or privately held lots that they do not own.” Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 J. OF LEGIS. & PUB. POL’Y 351, 354–55 (2000).

189. Jones, *supra* note 177.

190. *Id.*

191. City of Madison, *Growing a Stronger, Community with Community Gardens: An Action Plan for Madison*, CITY OF MADISON ADVISORY COMMITTEE ON COMMUNITY GARDENS (1999), available at [http://www.affordablehome.org/urban-ag/muaow\\_assets/Community%20Gardens%20Task%20Force%20Report%20City%20of%20Madison-2.pdf](http://www.affordablehome.org/urban-ag/muaow_assets/Community%20Gardens%20Task%20Force%20Report%20City%20of%20Madison-2.pdf).

192. Kudva, *supra* note 2.

193. THOMAS A. LYSON, *CIVIC AGRICULTURE: RECONNECTING FARM, FOOD, AND COMMUNITY 1* (2004).



tainable alternative to the socially, economically, and environmentally destructive practices that have come to be associated with conventional agriculture . . . . [It] brings together production and consumption activities within communities and offers consumers real alternatives to the commodities produced, processed, and marketed by large agribusiness firms.<sup>194</sup>

However, so long as vacant land used for community gardens is under a city's control, and zoning regulations are used to keep empty lots from being farmed, "urban agriculture efforts. . . will continue to be ephemeral."<sup>195</sup> For now, community gardens only stand a chance of achieving longevity through long-term leases or community land ownership.<sup>196</sup> Policy proposals include creating zoning regulations that encourage urban gardening, and offering incentives and assistance to improve corner stores to stock local, sustainably grown produce.<sup>197</sup>

### 1. Critiques of Urban Agriculture

While food justice has a great deal of support as a concept, the movement has been the target of some practical and theoretical challenges. Some critics<sup>198</sup> have asserted that food justice projects, such as urban gardens are "neoliberal in nature, emphasizing entrepreneurialism and self-betterment while filling gaps left by the rolling back of the state."<sup>199</sup> They argue that individuals are taking up the slack left by "neoliberal roll-back of state services" and transferring the responsibilities of the state to individuals, "creating self-disciplining 'neoliberal citizen subjects.'"<sup>200</sup> Some also claim that "well-intentioned but overzealous" advocates of urban gardening might see it as a cure-all solution to all urban struggles.<sup>201</sup> Perhaps most threatening to urban communities is the potential for urban agriculture to "manifest as a colonial relationship where [W]hite organizations end up telling communities of color what to do" as

194. *Id.* at 1–2.

195. DARRIN NORDAHL, PUBLIC PRODUCE: THE NEW URBAN AGRICULTURE 63 (2009). For a general discussion of legal issues impacting community gardens, including "organizational maintenance, control of garden lands, and access to resources" see Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 J. LEGIS. & PUB. POL'Y 351, 362–82 (2000).

196. NORDAHL, *supra* note 195.

197. *Id.* at 48–49.

198. McClintock, *supra* note 83. "Criticism of UA [urban agriculture] has ranged from the practical to the theoretical." *Id.*

199. *Id.* at 5.

200. *Id.* See generally Julie Guthman, *Neoliberalism and the Making of Food Politics in California*, 39 GEOFORUM 1171, 1171–83 (2007) (discussing the relationship between food politics and neoliberalism).

201. McClintock, *supra* note 83.

they impose their “external values or visions onto participating communities.”<sup>202</sup> Others have worried that urban pollution is likely to make vegetables grown in our city’s gardens unfit for consumption, or that the urban gardens simply are not capable of producing sufficient amounts or varieties of food.<sup>203</sup> Although many well-intended suggestions offered from outside of urban communities of color involve a goal of self-sufficiency, these solutions require access to the means, via business ownership or employment, to overcome the systemic blockades to full economic participation in society.<sup>204</sup> Despite these important critiques of urban agriculture, “applying this type of fine-grained post-structural analysis wholesale to UA [urban agriculture] programs may overlook their potentially revolutionary power.”<sup>205</sup>

## VI. INSTITUTIONAL BARRIERS TO URBAN LAND USE

### A. *Municipal Intervention*

The permanence of urban gardens is consistently in question. Often, rather than repeal or rewrite restrictive zoning ordinances to allow for urban agriculture, cities prefer to grant informal permission to community groups to create gardens on vacant lots.<sup>206</sup> This structure is problematic because community groups have no legal recourse when the city decides to use the land for another purpose.<sup>207</sup> In *New York City Environmental Justice Alliance v. Giuliani*,<sup>208</sup> plaintiffs argued that “community gardens are highly beneficial to minority communities and that the elimination of gardens would therefore have an adverse impact on some aspects of the lives of the neighborhood residents.”<sup>209</sup> Rejecting testimony that there were other available parcels suitable for development that would be less harmful to communities of color, the court held that

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202. *Id.* at 4–5. See generally Rachel Slocum, *Whiteness, Space, and Alternative Food Practices*, 38 *GEOFORUM* 520, 520–33 (2007). See also Yakini, *supra* note 27 (speaking on behalf of Black food activists, stating, “[w]e have rejected the missionary attitude of [W]hites who come into our communities, via grant funded non-profits, to lead us to the urban agriculture promised land.”).

203. McClintock, *supra* note 83, at 26.

204. *Id.* at 44–45.

205. *Id.* at 5.

206. NORDAHL, *supra* note 195, at 59.

207. *Id.*

208. 214 F.3d 65 (2d. Cir. 2000).

209. *N.Y.C. Env'tl. Justice Alliance v. Giuliani*, 214 F.3d 65, 68–69 (2d. Cir. 2000). In this case, the judge denied a preliminary injunction in a suit brought under city, state, and federal laws including Title VI of Civil Rights Act of 1964. *Id.* at 67. The plaintiffs asserted that the selective auctioning of community gardens in New York City resulted in a discriminatory impact on African-American and Latino residents. *Id.* at 70. The court rejected the Title VI claim on the grounds that Title VI only applies to intentional discrimination. *Id.*

the harm from eliminating the community garden was justified by the city's plan to "build new housing and foster urban renewal."<sup>210</sup> Here, as in the case of the Morning Glory Community Garden, the city prioritized other types of land use over urban agriculture.<sup>211</sup> Community gardeners seeking to secure land sometimes achieve this goal thorough the use of intermediaries, such as land trusts to clear title, or through typically impracticable measures such as adverse possession or implied dedication.<sup>212</sup>

### B. *Land Grabs*

Land grabs are "large-scale acquisition of agricultural, range, and forest lands by outside interests."<sup>213</sup> These acquisitions are occurring throughout the world, mainly in Africa and other parts of the "Global South."<sup>214</sup> Many tend to think of land grabs as happening mostly in developing countries, but it is happening in the United States with increasing frequency.<sup>215</sup> Corporations in the United States are currently engaged in urban land grabs under the guise of eradicating the "food

210. *Id.* at 65.

211. *Id.* Some cities actively prevent homeowners in grocery gaps to grow vegetables in their own yards. Erika Allen, a food activist in Chicago was ticketed for using her whole yard to grow vegetables, and Julie Bass, a resident of Detroit faces jail time for growing vegetables in her front yard. See Kim I. Hartman, *Woman Faces Jail Time for Planting Vegetable Garden in Front Yard*, DIGITAL J., July 9, 2011, <http://digitaljournal.com/article/308925> (explaining that a woman was charged with a misdemeanor after planting a vegetable garden in her front yard in violation of a city code requiring homeowners to plant grass, shrubbery, ground cover, or other "suitable" material in their front yards). For a model of how local governments can support urban agriculture, see Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 J. LEGIS. & PUB. POL'Y 351, 391 (2000).

212. Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 J. LEGIS. & PUB. POL'Y 351, 365–66 (2000).

213. See Yi Wang et al., *supra* note 60, at 1 (reporting on the global land grab and highlighting a rising trend of land grabs within U.S. "food deserts").

214. *Id.* Most of these land grabs are orchestrated by China, the United States, and Great Britain. *Id.* See also Lester R. Brown, *When the Nile Runs Dry*, N.Y. TIMES, June 1, 2011, [http://www.nytimes.com/2011/06/02/opinion/02Brown.html?\\_r=1&ref=contributors](http://www.nytimes.com/2011/06/02/opinion/02Brown.html?_r=1&ref=contributors) (showing there are numerous examples of the global land-grab by wealthy countries, especially those who rely on imported grain for a large part of their diet, such as South Korea, Saudi Arabia, China, and India). For example, fears generated by increases in global food prices and reductions in exports motivated South Korea, a country that imports 70% of its grain, to acquire 1.7 million acres in Sudan. *Id.* These types of land grabs "shrink the food supply in famine-prone African nations and anger local farmers, who see their government selling their ancestral land to foreigners." *Id.*

215. Kerry Trueman, *Sew Seeds, Not Greed: Farmers Gather on Wall Street*, GRIST, Dec. 7, 2011, <http://www.grist.org/food/2011-12-06-farmers-come-to-wall-street>.

deserts.”<sup>216</sup> The global recession is forcing food retailers, seeking profits in untapped markets, to focus on low-income urban communities.<sup>217</sup>

The poor and hungry do not benefit from these large-scale land acquisitions.<sup>218</sup> According to one researcher, “[l]and grabs, which aim at 20 percent profits for investors, are all about financial speculation.”<sup>219</sup> Accordingly, “this is why land grabbing is completely incompatible with food security; food production—or any other legitimate economic activity—can only bring profits of 3-5 percent.”<sup>220</sup> Land grabbing simply enhances the commodification of agriculture whose sole purpose is the over-remuneration of speculation capital.<sup>221</sup> These land grabs take money out of the community and put it into the hands of corporations. Recent government incentives to offer healthy food are providing large entitlements to corporate grocers, such as Wal-Mart to open stores in the inner city.<sup>222</sup>

Global corporations, such as Wal-Mart and Kroger, see an opportunity to “capture public entitlements” by stating an intention to address the “food desert” problem.<sup>223</sup> These urban land grabs, however, “contradict the food justice movement’s vision for a just, sustainable, and democratic food system,” and they do not take history into account.<sup>224</sup> History reminds us that many of the same corporations have previously opened stores in our nation’s low-income, inner cities and then abandoned them, taking community resources out of the community with them.<sup>225</sup> One such situation occurred in West Oakland, when the grocer Foods Co. entered the community, acquired land, opened a store, and closed its doors soon after, taking with it funding and local investment.<sup>226</sup> Even though funding initiatives, such as the U.S. Department of Health and Human Services’ Healthy Food Financing,<sup>227</sup> are intended to support local food

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216. Yi Wang et al., *supra* note 60.

217. *Id.* at 1.

218. *Id.* at 2.

219. *Id.*

220. *Id.*

221. *Id.*

222. *See id.* (stating that, in Chicago, Wal-Mart, which is the world’s biggest “food retail monopoly,” fought its way past local unions and local business and has plans to open 20 stores, and in Oakland, CA, Kroger, a large retail chain, plans to open three new stores).

223. *Id.*

224. *Id.* at 3.

225. *Id.*

226. *Id.*

227. *Obama Administration Details Healthy Food Financing Initiative*, U.S. DEP’T OF HEALTH & HUM. SERV. (Feb. 19, 2010), <http://www.hhs.gov/news/press/2010pres/02/20100219a.html>.

projects in practice, large corporations are beating out food justice advocates because they have the necessary capital to set up their stores quickly.<sup>228</sup> Since there is no system in place to favor community-owned food projects, corporations are displacing local economies with the new urban land grab trend.<sup>229</sup> While the corporate stores might meet some food access needs, this undemocratic development process will likely reduce green space, decrease community investment in urban areas, and further decrease food autonomy.

## VII. POTENTIAL SOLUTIONS

As previously discussed, food justice can be understood as a quest to transform the ways in which food is grown, accessed, transported, and eaten.<sup>230</sup> These components of food justice are often compartmentalized, which makes it difficult to piece together the full scope of the problem. A “political-economic critique” of the food system is helpful in addressing the sense of fragmentation, as it maps the extreme changes in our food system that have occurred over the past sixty years, including:

- The marginalization of small-scale primary producers and processors;
- Loss of rural ways of life;
- Horizontal and vertical integration, consolidation, and monopolization in the food industry and agriculture;
- Manipulation of food and its packaging to increase profit; and
- Alienation of food consumers from food producers and from the food that they eat, including the “de-skilling,” or the loss of people’s abilities to grow and prepare food.<sup>231</sup>

Food justice advocates are actively at work in each of these areas.<sup>232</sup> One approach to transforming our food system consists of efforts to work through governmental components, such as the Food and Drug Administration and the court system.<sup>233</sup> As discussed previously, this approach

228. Yi Wang et al., *supra* note 60, at 3.

229. *Id.*

230. GOTTLIEB, *supra* note 80, at 6.

231. Elaine M. Power, *Combining Social Justice and Sustainability for Food Security*, in *FOR HUNGER-PROOF CITIES: SUSTAINABLE URBAN FOOD SYSTEMS* 31–32 (Mustafa Koc et al. eds., 1999).

232. Although the lack of adequate access to healthy food is documented, there is less available research on potential solutions to the problem. TREUHAFT, *supra* note 44, at 21. Community activists are engaged in various efforts, including increasing access to and quality of grocery stores, developing additional means of accessing food, such as “farmers’ markets, public markets, cooperatives, farm stands, community supported agriculture, and mobile vendors,” increasing urban agriculture, and improving transportation to food retail to address the situation. *Id.* at 9.

233. *Id.*

has often been less than successful for advocates of food justice and food autonomy.<sup>234</sup> However, cities should be encouraged to be proactive about addressing food access, by implementing increased transportation to food retail and launching intra-department collaborations.<sup>235</sup> For example, the New York City's mayor's office and departments of economic development, health, housing and planning collaborated to create several programs aimed at increasing food access.<sup>236</sup> When instituting any program or initiative, however, it is critical to involve community members of affected areas at every step of the process and clearly understand who is likely to benefit or be harmed from any policy changes.<sup>237</sup>

Corporate intervention has the potential to also play a role in increasing access to food. Food justice advocates are generally opposed to this approach because ultimately it strips resources from urban areas.<sup>238</sup> Instead, advocates tend to favor public incentives that would provide healthy, affordable food and keep the food dollars local through community-based urban farming, farmers' markets, co-ops, community supported agriculture, and community processing businesses and retail.<sup>239</sup> Community-based, democratic food options would build "economic resilience" in urban areas while "addressing the deeper, structural causes of hunger."<sup>240</sup>

Some proponents of urban agriculture enlist assistance of land trusts to acquire garden land and hold it in perpetuity, thus ensuring its protection from development.<sup>241</sup> Community land trusts offer an appealing haven

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234. Note, however, that the issue of urban food access has recently received increasing attention at the federal level. The Senate Agriculture Committee passed the 2012 Agriculture Reform, Food and Jobs Act (ARFJA), which includes several provisions which support the urban agriculture movement, such as plans to improve access to food stamps and easing the ability of customers to use food stamps at farmer's markets.

235. TREUHART, *supra* note 44, at 21–22.

236. *Id.* These programs include:

Green Carts, to help produce vendors locate in underserved neighborhoods with high rates of obesity and diabetes; Healthy Bodegas, to improve healthy offerings in corner stores; Health Bucks, to promote produce purchasing at farmers' markets; and FRESH, to provide zoning and financial incentives to promote grocery store development, upgrading, and expansion in underserved areas.

*Id.*

237. *See id.* (highlighting the importance of collaboration between community members, groups, researchers and government agencies in identifying policy solutions to the food access problem).

238. Yi Wang et al., *supra* note 60, at 3.

239. *Id.*; see Ray Telles, *Forgotten Voices: Gentrification and Its Victims*, 3 SCHOLAR 115, 123 (2000) (discussing an El Paso, Texas housing initiative to reclaim abandoned buildings and institute communal gardens).

240. Yi Wang et al., *supra* note 60, at 3.

241. NORDAHL, *supra* note 195, at 62.

for community gardens and hope for the future.<sup>242</sup> Community land trusts are non-profit organizations that safeguard land and ensure it is used in a way that benefits the greater community.<sup>243</sup> There are currently over two hundred community land trusts operating throughout the United States, and many hold land that is used for community gardens.<sup>244</sup> Some gardens slated for demolition or sale are preserved through land trusts, such as the Bronx Land Trust, which is home to eighteen community gardens saved from sale in 1999.<sup>245</sup>

Additionally, zoning laws dictate the ways in which land may be used.<sup>246</sup> As discussed previously, zoning is tied to a legacy of intentional segregation and devaluation of the country's urban areas.<sup>247</sup> Presently, many cities are grappling with creative ways to use modern-day zoning to correct urban decay and discrimination.<sup>248</sup> Cities enjoy a great deal of discretion in structuring their zoning policies.<sup>249</sup> Zoning plans related to food access are necessarily unique to each city's particular assets and needs.<sup>250</sup> Most U.S. cities employ "use-based" zoning laws, which divide land into separate districts, such as commercial, residential, multi- or mixed use, and industrial.<sup>251</sup> Use or development of land is based on its

242. See, e.g., The Trust for Pub. Land, *Thirty-Two Community Gardens Turned over to Local Land Trust*, (Jan. 4, 2012), <http://www.tpl.org/news/press-releases/2012-press-releases/thirty-two-community-gardens-go-to-landtrust.html> (stating that "TPL has worked with local gardeners to establish three new nonprofit organizations to ultimately own and manage the gardens, The Bronx and Manhattan Land Trusts and the Brooklyn-Queens Land Trust. Collectively, the three land trusts will protect more community gardens than any private, non-profit in the nation.").

243. Urban Strategies Council, *An Introduction to Community Land Trusts*, COMMUNITY LAND TRUSTS (Nov. 9, 2007), available at [http://www.urbanstrategies.org/foreclosure/Community\\_Land\\_Trust/CommunityLandTrusts\\_brief.pdf](http://www.urbanstrategies.org/foreclosure/Community_Land_Trust/CommunityLandTrusts_brief.pdf). A community land trust, "[a]cquires and retains land in trust for the community and never sells it." This land is often made available for use as community gardens. *Id.*

244. *Id.*

245. *History and Mission*, THE NEW YORK CITY GARDEN LAND TRUSTS: THE BRONX LAND TRUST, <http://bronxlandtrust.org>.

246. HEATHER WOOTEN & AMY ACKERMAN, CHANGE LAB SOLUTIONS, *SEEDING THE CITY: LAND USE POLICIES TO PROMOTE URBAN AGRICULTURE 5* (2011), available at <http://changelabsolutions.org/publications/seeding-city>.

247. For a discussion of zoning laws that negatively impact African-American communities, see Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 760-61 (1993).

248. *Id.*

249. See WOOTEN, *supra* note 246, at 6 ("Courts generally defer to the government's judgment in determining whether or not a zoning regulation is legal.").

250. See *id.* "[T]here is no one-size-fits-all urban agriculture land use policy. Urban areas vary in availability of land for agriculture, population density, soil suitability, and resident interest." *Id.*

251. *Id.*

specific designation, and if an area is not specifically zoned for urban agriculture, such as a community garden, it is unprotected from being forced to shut down.<sup>252</sup> Starting with the goal of maintaining existing urban agriculture and establishing new sites, cities have the power to structure zoning policies to promote urban agriculture on appropriate public and private land.<sup>253</sup> These regulations should include community gardens, urban farms, and farmer's markets. In addition, some food justice proponents are calling for cities to zone out fast food.<sup>254</sup> South Los Angeles has taken the lead in this radical policy, by declaring a moratorium on new fast food locations in 2008.<sup>255</sup>

Advocates of food justice can also urge local governments to provide incentives to retailers to sell locally grown food. The New York Food Retail Expansion to Support Health (FRESH) Program, which was created to promote grocery stores in underserved areas by using financial and zoning incentives, provides a useful example.<sup>256</sup> This model could be improved by efforts to reduce prices for healthy food and take cultural food preferences into account.

In order to support healthy urban development, corporate land grabs in food deserts must be prevented.<sup>257</sup> Federal loans offered to local businesses to sell healthy food help would achieve this goal and keep resources in the community. The HOPE collaborative in Oakland, California is an example of an effort to increase local ownership of food

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252. *See id.*

Depending on the form of occupancy and the zoning laws, urban agriculture may have varying levels of protection. Least secure would be, for example, a community garden planted in a zoning district that does not allow for urban agricultural uses and whose gardeners have no right to occupy the land. That garden would be very vulnerable to displacement. A garden created in a zoning district that permits urban agriculture and whose gardeners have entered into a lease with the owner to use the land as a garden would be protected for the duration of the lease. Most protected would be a garden in a zoning district that permits urban agriculture and whose gardeners own the underlying property or whose owners are required to allow continued use of the property for agriculture.

*Id.*

253. *Id.*

254. Jennifer Medina, *In South Los Angeles, New Fast Food Spots Get a 'No, Thanks,'* N.Y. TIMES, Jan. 15, 2011, <http://www.nytimes.com/2011/01/16/us/16fastfood.html>.

255. *Id.* It is important to acknowledge that a moratorium on fast food is only a start to solving this problem. *Id.* A comprehensive solution must take into account accessibility and affordability. *Id.*

256. *Food Retail Expansion to Support Health*, NYC.GOV, <http://www.nyc.gov/html/misc/html/2009/fresh.shtml> (last visited Sept. 5, 2012).

257. Yi Wang et al., *supra* note 60, at 1.



retail.<sup>258</sup> Reverend Jeffrey, a racial justice and food activist in Seattle, Washington, makes a key point about urban farmer's markets. He states:

Inner-city people are not going to the farmers markets. It's not because they're not interested. Some of it is because of prices, but mostly it's because they are not community-owned. The issue of community ownership, the idea that this is ours and that the money spent will circulate to help us, is a real issue. So what we do. . . is have food stands that are run by neighborhood people. They're in front of churches, and people know that they're run by members of the community. In this way, we're bringing food directly to the people in a way that gives them ownership, so they purchase the food. I think that's the missing link. Inner-city people are tired of others creating things for them and expecting them to participate with no direct benefit.<sup>259</sup>

### VIII. CONCLUSION

Our food systems form a complex web of corporate actions, government regulations, and human needs. Addressing the barriers discussed in this Comment, requires "a fundamental commitment to social justice," without which "the estimated 1–2 percent of Americans who eat organic food will be indistinguishable from the 1–2 percent who control almost all of this country's wealth and power."<sup>260</sup> Our nation's history of discriminatory zoning and other racist government policies has created segregation, inequality in food access, and urban decay. Intentional zoning practices, local community investment, as well as federal, state, and local governments are all key pieces of the food access puzzle. In order to be effective, comprehensive change must include a combination of community-based solutions and elimination of racism from the structural levels of our food system. Addressing institutionalized racism in our food sys-

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258. *HOPE Collaborative*, <http://hopecollaborative.net/>. For further discussion of locally owned food retail, see HESTERMAN, *supra* note 35, at 118–120.

259. Christa Hillstrom, *Lentils and Justice for All: It All Begins With Food: How to Restore the Health and Wealth of Inner-City Communities*, YES! (Feb. 14, 2011), <http://www.yesmagazine.org/peace-justice/lentils-and-justice-for-all-1>.

260. Eric Schlosser, *Social Justice Food Is Not Just About Food*, THE NATION, Sept. 24, 2011, <http://www.truth-out.org/its-not-just-about-food/1316874550>.

Creating food justice in our city cannot be separated from the larger struggle for social justice. Race, class and power are critical factors in food insecurity. As we strive to create food justice and food security, we must create conditions in which Detroit's communities, particularly those that are African-American, Latino and Asian, exercise self-determination. We must create a just social environment in which those communities are able to fully express their vision and aspirations. There can be no food justice without racial justice.

Yakini, *supra* note 27.

tem is imperative, and will require changes to the structures that hold food inequalities in place.

Importantly, there is a distinction between fulfilling one's *need* for food and fulfilling one's *human right* to food.<sup>261</sup> When people do not have the opportunity to "influence what and how they are fed. . .their right to adequate food is not being met, even if they get all the nutrients their bodies need."<sup>262</sup> The right to food reflects President Franklin Roosevelt's declaration that 'freedom from want' is one of four fundamental freedoms in our nation's original understanding of universal human rights.<sup>263</sup> When it comes to universal human rights, all people, "*must* have some institutionalized remedies available to them" that they can access when they feel that they are being treated unjustly.<sup>264</sup>

Food justice has the capacity to reorient the food movement towards addressing inequities while seeking to transform the food system as a whole. Additionally, "[f]ood justice is integrated into other social justice movements, such as those concerned with community economic development, the environment, housing, or transportation."<sup>265</sup> If this integration does not take place within the context of a clear understanding of historical and present-day institutionalized racism, we will be unable to build an inclusive, successful coalition that makes the changes needed to achieve equality on all levels. Hopefully, however, as we come to understand the following sentiment, stated by Justo Gonzalez, we will continue implementing community-supported solutions and institutional changes:

The first thing we must do is realize that, more often than not, hunger is a political problem. 'Politics,' in the strictest sense, is the manner in which humans divide and distribute power and resources. People are not hungry in this country and elsewhere because they

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261. KENT, FREEDOM FROM WANT, *supra* note 97, at 45.

262. GEORGE KENT, FOOD IS A HUMAN RIGHT: ECONOMIC, SOCIAL AND CULTURAL RIGHTS 2 (2004), available at [http://www.choike.org/documentos/Food\\_Human\\_Right.pdf](http://www.choike.org/documentos/Food_Human_Right.pdf). "Human rights are mainly about upholding human dignity, not about meeting physiological needs. Dignity does not come from being fed. It comes from providing for oneself. In any well-structured society, the objective is to move toward conditions under which all people can provide for themselves." *Id.*

263. *Freedom from Want, Freedom from Poverty*, EVERY HUM. HAS RIGHTS (Apr. 26, 2010, 9:29 AM), <http://everyhumanhasrights.org/component/content/article/1-udhr/17-freedom-from-want-freedom-from-poverty>. The international community is in agreement that, rather than being focused on merely meeting physiological needs, human rights look to "upholding human dignity." *Id.* See also KENT, FOOD IS A HUMAN RIGHT, *supra* note 262.

264. KENT, FOOD IS A HUMAN RIGHT, *supra* note 262.

265. GOTTLIEB, *supra* note 80, at 7.

don't know how to raise food or are lazy . . . . They are hungry because they have no access to power, and therefore no access to food.<sup>266</sup>

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266. KENT, FREEDOM FROM WANT, *supra* note 97, at 121.