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Towards a Human Right to Food: Implications for Urban Growing in Baltimore City, Maryland

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TOWARDS A HUMAN RIGHT TO FOOD: IMPLICATIONS FOR URBAN GROWING IN BALTIMORE CITY, MARYLAND

*Becky Lundberg Witt**

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INTRODUCTION

For attorneys who represent community groups working on urban agriculture in Baltimore City, an issue that nearly always arises in cases involving urban gardens is access to, and use of, land. Baltimore City owns thousands of vacant lots within the city limits, as do private owners who may have long ago abandoned their properties, died, or dissolved as corporate entities.¹ These owners, both private and public, hold the ultimate authority

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1. *Frequently Asked Questions*, BALT. HOUSING, http://www.baltimorehousing.org/vtov_faq [https://perma.cc/RCH2-5EAF] (“[T]here are approximately 16,000 vacant buildings and 14,000 vacant lots in the city of [B]altimore. [T]he

to exclude their neighbors from using the vacant and abandoned land, since U.S. law characterizes the essence of property ownership primarily, and most importantly, as a “right to exclude” other people, under almost all circumstances.² Acres of land in Baltimore City lie fallow, and because of the right to exclude, neighbors are powerless to enter those properties to transform them into community assets.³ Some see a moral wrong in this situation: that the right to exclude held by long-defunct LLCs could trump the rights of neighbors to use land for community benefit.

But property law, like any area of law, is not immutable. It is “not about the connections between people and things, but about the connections between and among people.”⁴ How might other potential rights, recognized or not by the federal or state governments, interact with our understanding of property? Does our conception of property ownership lead to a situation in which we neglect the human rights of some of our poorest citizens in order to accommodate and encourage the property rights of people and organizations that have long abandoned their responsibilities?

This Article argues that human rights, including an inherent right to adequate food, intersect with legal issues relating to urban greening.⁵ It will examine how a universal right to food may give legal support to a “right” to urban farming and gardening. What are the boundaries of a right to food, and how might they interact with the other rights with which the American legal system is more familiar? For example, how might human rights interact with property rights, including both property ownership rights to exclusive possession and rights to be free from nuisance conditions on adjacent properties? When one set of rights interferes with another, which should society privilege?

This Article will sketch out the possibilities of considering a human right to food: first laying out the background and history of the right, then explaining each of the three prongs within the right. Then, the Article will apply the right to food to each prong, using examples of conflicts between human rights and other rights from Baltimore City, Maryland and Los Angeles, California. Finally, the Article will discuss a concept called “a right to the city” and imagine how it might interact with rights to land and food.

two counts combined total 30,000 vacant properties. [M]ore than 75% of all vacant property in [B]altimore [C]ity is privately owned.”).

2. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 730 (1998) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

3. *See id.*

4. Jane B. Baron, *Rescuing the Bundle-of-Rights Metaphor in Property Law*, 82 U. CIN. L. REV. 57, 59 (2014).

5. I use the term “urban greening” to account for the many ways in which people grow food to feed themselves and their communities; these may not necessarily be intensive enough to be considered “agriculture.”

I. HUMAN RIGHTS, PROPERTY, AND FOOD ACCESS

A. Human Rights Theory

Human rights theory lays out two categories of rights: positive and negative.⁶ Negative human rights are those that the state must respect through its lack of intervention in its citizens' activities.⁷ Most courts have interpreted the rights enumerated in the United States Bill of Rights to be negative rights, including the right to free speech and to the free exercise of religion.⁸ Because of the rights enumerated in the First Amendment, the state may not, generally, interfere with an individual's right to express her opinion about any topic aloud or to practice her religion.⁹

The second, more controversial, category of human rights, includes rights that require that an outside party, usually a governmental body, provide resources to its citizens.¹⁰ Courts in the United States traditionally have not recognized the latter category of human rights, referred to as positive rights.¹¹ Judge Richard Posner wrote:

[T]he Constitution is a charter of negative rather than positive liberties The men who wrote the Bill of Rights were not concerned that government might do too little for the people but that it might do too much to them. The Fourteenth Amendment, adopted in 1868 at the height of laissez-faire thinking, sought to protect Americans from oppression by state government, not to secure them basic governmental services [N]o one thought federal constitutional guarantees or federal tort remedies necessary to prod the states to provide the services that everyone wanted provided. The concern was that some states might provide those services to all but blacks, and the equal protection clause prevents that kind of discrimination. The modern expansion of government has led to proposals for reinterpreting the Fourteenth Amendment to guarantee the provision of basic services such as education, poor relief, and, presumably, police protection, even if they are not being withheld discriminatorily To adopt these proposals, however, would be more than an extension of traditional conceptions of the due process clause. It would turn the clause on its head. It would change it from a protection against coercion by state

6. Susan Bandes, *The Negative Constitution: A Critique*, 88 MICH. L. REV. 2271, 2274 (1990).

7. *Id.*

8. *Id.* at 2272–73.

9. *See id.* at 2282; *see also* E. Gregory Wallace, *Justifying Religious Freedom: The Western Tradition*, 114 PENN ST. L. REV. 485, 486 (2009).

10. *See* Bandes, *supra* note 6, at 2274.

11. *See* Jackson v. City of Joliet, 715 F.2d 1200, 1203 (7th Cir. 1983).

government to a command that the state use its taxing power to coerce some of its citizens to provide services to others.¹²

Judge Posner condemns the idea that the U.S. Constitution might guarantee any minimum basic services.¹³ Reflecting that condemnation, human rights discourse in the United States has been leery of positive rights, such as an individual's right to food, water, or shelter.¹⁴ For this reason, the U.S. government has not been a reliable ally in advancing the goals of the global human rights community.

How do human rights connect with food? Food is an essential physiological human need. According to the U.S. Department of Agriculture (USDA), though over 85% of Americans were "food secure" in 2013, meaning that "they had access at all times to enough food for an active, healthy life," the remaining 15% were food insecure during at least part of the year, and 5.6% of the American population had very low food security.¹⁵ Very low food security is a situation in which "the food intake of one or more household members [is] reduced and their eating patterns [are] disrupted at times during the year because the household lack[s] money and other resources for food."¹⁶ In a country as affluent as the United States, how can it be that all citizens do not have sufficient food to thrive?

In the developed world, hunger and malnutrition are problems of socioeconomic cause, not problems of sufficient quantities of food.¹⁷ In 2014, 16.5% of families in the Baltimore metropolitan area experienced food hardship.¹⁸ Low-income neighborhoods often have insufficient or no access to stores that sell fresh, healthy foods; instead, stores sell highly processed foods¹⁹ that can be heated up easily by people with little time to cook. Paradoxically to some, low-income communities have high levels of obesity

12. *Id.* at 1203–04.

13. *Id.*

14. Bandes, *supra* note 6, at 2273.

15. ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH REPORT NO. 173, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2013, at 4, 6 (2014), <http://www.ers.usda.gov/media/1565415/err173.pdf> [<https://perma.cc/7FPN-EV3R>].

16. *Id.* at i.

17. See FOOD RESEARCH AND ACTION CTR., HOW HUNGRY IS AMERICA?: FRAC'S NATIONAL, STATE AND LOCAL INDEX OF FOOD HARDSHIP 3 (Apr. 2015), http://frac.org/pdf/food_hardship_2014.pdf [<https://perma.cc/TT8P-5Y3J>] (stating that the data on hunger and malnutrition in the United States "represent an economic and political failure").

18. See *id.* at 9.

19. See *Food Deserts*, U.S. DEP'T OF AGRIC., <https://apps.ams.usda.gov/fooddeserts/fooddeserts.aspx> [<https://perma.cc/P7T2-G9HC>].

and elevated levels of malnutrition; this may be, at least in part, due to the lack of quality, healthy foods in those areas.²⁰

The urban agriculture movement that has sprung up in recent years has attempted to address issues of inequality and food insecurity.²¹ However, there are few legal structures in place to encourage and protect urban growing; municipalities value these activities as interim projects but not as part of the long-term solution.²²

In Baltimore, there have been gross inequities in the ways in which city, state, and federal governments choose to invest in urban cores.²³ Developers routinely receive significant tax breaks and special deals on land,²⁴ while communities receive easily revocable license agreements and lip service.²⁵

B. The History of the Right to Food

The Universal Declaration of Human Rights, adopted on December 10, 1948, by the United Nations General Assembly, is the basis of international human rights law;²⁶ it explicitly articulates a human right to food.²⁷ Within the economic, cultural, and social rights section of the Declaration, Article 25(1) begins: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food” and a host of other requirements for a healthy life, including clothing, housing, and medical care.²⁸

20. SARAH TREUHAFT & ALLISON KARPYN, POLICYLINK & THE FOOD TRUST, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS 5 (2010), http://thefoodtrust.org/uploads/media_items/grocerygap.original.pdf [<https://perma.cc/A7TX-PMET>].

21. See Lauren Heumann, *Urban Agriculture for Food Security: Good but Not Enough*, BERKELEY PLANNING J.: URB. FRINGE (Mar. 19, 2013), <http://ced.berkeley.edu/bpj/2013/03/urban-agriculture-for-food-security-good-but-not-enough/> [<https://perma.cc/4N4G-LLUZ>].

22. See *infra* text accompanying notes 88–96.

23. See *infra* text accompanying notes 80–85.

24. See, e.g., Luke Broadwater, *City Board Approves \$107 Million Harbor Point TIF*, BALT. SUN (May 20, 2013), http://articles.baltimoresun.com/2013-05-20/news/bs-md-ci-exelon-tif-20130520_1_harbor-point-development-city-board-developer-michael-s [<https://perma.cc/Q9JQ-EUKS>] (“The city-owned Baltimore Hilton hotel was financed with \$301 million in tax-exempt revenue bonds in 2006. The Clipper Mill development received \$14.5 million in such bonds for public roads, sidewalks and utilities in 2004. Mondawmin Mall has received \$17 million in TIF bonds.”).

25. See discussion *infra* Part II.C (discussing “Adopt-A-Lot” license agreements).

26. See *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> [<https://perma.cc/7TED-YLXA>].

27. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

28. *Id.*

Two decades following the Universal Declaration of Human Rights, the General Assembly of the United Nations, in 1966, adopted the International Covenant on Economic, Social and Cultural Rights (ICESR).²⁹ In Article 11(2) of the Covenant, signatories promised that:

[In] recognizing the fundamental right of everyone to be free from hunger, [the signatories] shall take, individually and through international cooperation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.³⁰

In 1977, under the Carter Administration, the United States signed but did not ratify this covenant.³¹ The other states that are members of the United Nations but have not ratified the ICESR are: Belize, Comoros, Cuba, Sao Tome and Principe, and South Africa.³²

In 1996, the Food and Agriculture Organization of the United Nations (FAO) assembled world leaders to discuss worldwide malnutrition and to discuss the possibility of solving the world's agricultural needs to address increasing human population.³³ Participants created the Rome Declaration on World Food Security, setting out definitions and goals for food security at all levels: "individual, household, national, regional, and global."³⁴ The document stated that:

The implementation of the recommendations contained in this Plan of Action is the sovereign right and responsibility of each State through national laws and the formulation of strategies, policies, programmes, and development priorities, in conformity with all human rights and fundamental freedoms, including the right to development, and the significance of and the full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their

29. See International Covenant on Civil and Political Rights pmbl., Dec. 16, 1966, 999 U.N.T.S. 171.

30. *Id.* art. 11.

31. Ann M. Picard, *The United States' Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the Poor Be Always With Us?*, 13 SCHOLAR 231, 232 (2010).

32. *Id.* at 232 n.6.

33. World Food Summit, *Rome Declaration on World Food Security*, FAO OF THE U.N. pmbl. (Nov. 13, 1996), <http://www.fao.org/docrep/003/w3613e/w3613e00.htm#Note1> [<https://perma.cc/LH7D-UQK2>].

34. *Id.* pmbl., ¶ 1.

communities should contribute to the full enjoyment by all of their human rights in order to achieve the objective of food security for all.³⁵

The World Food Summit Plan of Action defined food security as a time “when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”³⁶ As these plans and policies show, human rights law has formed the foundation for international dialogue to move nations toward broader food security for all.

The United States, however, is one of only seven United Nations member states that has not ratified the ICESR.³⁷ Therefore, members of the public who assert that their right to food has been violated within the United States do not have a cause of action to assert that right.³⁸ If the United States were to ratify the ICESR, it would become the supreme law of the land, under the Constitution’s Supremacy Clause.³⁹ An individual’s right to food could then, arguably, protect him at every level of U.S. government: federal, state, and local.⁴⁰ While communities work toward encouraging their governments to recognize human rights like the right to food, they can still use a theoretical human rights framework to help federal, state, and local governments rethink their policies about how to encourage food security.

C. What is the Right to Food?

With the history of the right to food in mind, this Article will proceed to a definition and outline of the right to food and its three main components. Human rights theory states that any human right is enforced by the state’s implementation of three increasing levels of duty, referred to as the tripartite typology: a duty to respect, protect, and fulfill the human rights of its citizens.⁴¹

35. *Id.* ¶ 12.

36. *Id.* ¶ 1.

37. *See* Picard, *supra* note 31, at 242 n.54.

38. *See id.*, at 244–45. In 2008, an international treaty called the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights was created that sets up a way for individuals to bring complaints of violations of the ICESCR against parties to the agreement to the Committee on Economic, Social, and Cultural Rights for adjudication. *See* G.A. Res. 63/117, art. 2 (Dec. 10, 2008).

39. *See* U.S. CONST. art. VI. “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” *Id.*

40. *See generally* David Sloss, *Ex Parte Young and Federal Remedies for Human Rights Treaty Violations*, 75 WASH. L. REV. 1103 (2000).

41. *See* Asbjørn Eide, *Economic and Social Rights*, HUMAN RIGHTS, <http://www.corteidh.or.cr/tablas/r28245.pdf> [<https://perma.cc/VA36-JVXU>]; *see also* Office

1. Duty to Respect

First, to respect a citizen's right to food, a state must not "take any measures that result in preventing" individuals or groups from utilizing their own efforts to satisfy this right.⁴² The responsibility to respect a person's right to food is, essentially, a negative right, analogous to the negative rights in the Bill of Rights. In the same way that the federal and state governments cannot interfere with a person's right to worship as he chooses, the right to food prevents governmental bodies from interfering with a person's right to use their own efforts to find or create food for themselves and their families.⁴³

2. Duty to Protect

Second, "[t]he obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food."⁴⁴ This obligation is distinct from the duty to respect in that the state has the affirmative obligation to step in and protect a citizen from a private actor interfering with that citizen's right to feed themselves and their family.⁴⁵ On the spectrum of negative to positive rights, however, the requirement to protect the right to food is still closer to a negative right than to a positive right, because it does not require the direct provision of food. However, a duty to protect could require that the state expend some resources to force private parties to respect the rights of others.⁴⁶

Nations, such as the United Kingdom, Norway, and Sweden, that recognize "every man's right" or "right to roam,"⁴⁷ carry out a duty to protect their citizens' rights to walk, hike, camp, and even forage on privately owned land.⁴⁸ In the United Kingdom, under the Countryside and Rights of Way Act, the public has the right to roam freely over "mountains, moor, heath, or

of the Comm'r for Human Rights, *CESCR General Comment No.12: The Right to Adequate Food (Art. 11)*, ¶15, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter *The Right to Adequate Food*], <http://www.refworld.org/docid/4538838c11.html> [<https://perma.cc/BVC7-KPR9>].

42. See *The Right to Adequate Food*, *supra* note 41, ¶ 15.

43. See *id.*

44. *Id.*

45. See *id.* ¶ 27.

46. See *id.* ¶ 19.

47. Heidi Gorovitz Robertson, *Public Access to Private Land for Walking: Environmental and Individual Responsibility as Rationale for Limiting the Right to Exclude*, 23 GEO. INT'L ENVTL. L. REV. 211, 215 (2011).

48. Jerry Anderson, *Britain's Right to Roam: Redefining the Landowner's Bundle of Sticks*, 19 GEO. INT'L ENVTL. L. REV. 375, 404, 435 (2007).

downland.”⁴⁹ In Sweden, the right to roam is enshrined in the country’s constitution,⁵⁰ as an acknowledgement of its common cultural acceptance and long history, going back hundreds of years.⁵¹ The Swedish Environmental Protection Agency’s website explains the right to its citizens; the agency suggests that members of the public may “pitch two or three tents for a night or two” on private land,⁵² which implies a lack of clear boundaries of the right and its ancient origin. Though it is not well-defined, however, the Swedish government’s protection of this right against the landowner’s right to exclude strangers from his or her land is an example of the state’s duty to protect its citizens’ rights; in this case, the state believes that the right to roam is so important that it is privileged above the landowner’s right to exclude.⁵³ Perhaps a similar value judgment could be made that a human being’s right to food to sustain her life and her family’s lives should receive preference over a landowner’s right to exclude.

3. *Duty to Fulfill (Facilitate and Provide)*

The most controversial application of any human right is the responsibility of the state to fulfill its citizens’ rights, which includes both the responsibility to facilitate and to provide resources directly, if necessary.⁵⁴ The obligation to facilitate citizens’ right to food means that the government must affirmatively use its resources to strengthen its citizens’ ability to ensure their livelihood.⁵⁵ The obligation to provide resources, like food, applies when citizens do not have the ability to provide those resources for themselves and applies specifically to people in particularly vulnerable situations or populations.⁵⁶ One common application of the duty is to provide resources to victims of natural disasters, who are uniquely vulnerable and can provide little for themselves.⁵⁷

49. Countryside and Rights of Way Act 2000, c. 37, §§ 1(2), 2 (Eng.), http://www.legislation.gov.uk/ukpga/2000/37/pdfs/ukpga_20000037_en.pdf [<https://perma.cc/P72K-JLA6>].

50. Robertson, *supra* note 47, at 216.

51. *Id.* at 222.

52. *Camping – Tents*, SWEDISH ENVTL. PROT. AGENCY, <http://www.swedishepa.se/Enjoying-nature/The-Right-of-Public-Access/This-is-allowed/Camping—tents/> [<https://perma.cc/9EXZ-VSQ5>].

53. Robertson, *supra* note 47, at 216.

54. U.N. CESCR, 20th Sess., General Comment No. 12, U.N. Doc. E/C.12/1999./5 (May 12, 1999), <http://www.refworld.org/docid/4538838c11.html> [<https://perma.cc/BW34-SBWU>].

55. *Id.*

56. *Id.*

57. *Id.*

II. THE RIGHT TO FOOD, AS APPLIED TO URBAN GROWING IN LOS ANGELES AND BALTIMORE CITY

This Article builds on the ideological framework of a right to food by examining three particular examples of how a right to food might be actualized in each of its three applications listed above: two are examples from Baltimore City, Maryland, and one is an example from Los Angeles, California.

A. Duty to Respect—Zoning

As of the writing of this article in 2015, the Baltimore City Council has been working for seven years on a comprehensive rewrite of the city's zoning code, which was last rewritten in 1971.⁵⁸ Within that proposed rewritten zoning code is Baltimore City's first-ever mention of urban agriculture; the term includes permission for market farms and gardens as well as small livestock.⁵⁹ Urban agriculture and community managed open space were not mentioned in previous versions of the zoning code, and uses that are not specifically listed in the code are forbidden.⁶⁰ The proposed zoning code could make legal the urban agriculture activity that is already happening in Baltimore but which has no validity under the current zoning code.⁶¹

The council is currently debating, however, whether to approve an amendment that would require community gardens and farms to obtain a conditional use permit in order to engage in certain activities, including keeping animals like chickens, having a weekly farm stand, and accepting compostable materials for composting on a site.⁶² One City Councilwoman in particular is adamant that these three uses should require a conditional use

58. *Background*, REWRITE BALT., <http://www.rewritebaltimore.org/> [<https://perma.cc/HN3V-SZMR>].

59. See Dep't of Planning, Council B. 12-0152, § 1-314(J) (Balt., Md., 2012), http://www.rewritebaltimore.org/pdf/12-0152_1st_Reader_Text.pdf [<https://perma.cc/V4SC-7XHX>].

60. See Zoning Code § 3-106, Balt. City Dep't of Legis. Ref. (2015), <http://archive.baltimorecity.gov/portals/0/charter%20and%20Codes/code/Art%20000%20-%20Zoning.pdf> [<https://perma.cc/GPT2-VKW9>].

61. See Dep't of Planning, Council B. 12-0152, § 1-314(J). The urban agriculture activity which is not permitted under the current zoning code has been allowed to continue because of the overwhelming issues in Baltimore City relating to more serious public health concerns. Urban agriculture has not been an enforcement priority for Baltimore City code enforcement, but because these uses are not permitted, urban farmers and growers *could* be cited under the code as it currently exists. *See id.*

62. Megan Wakefield, *Proposed Zoning Code Amendment Tries to Weigh Community Input with More Extensive Community Gardens*, CMTY. L. CTR. (Mar. 20, 2014), <http://communitylaw.org/urbanagriculturelawproject/CMOSproposal> [<https://perma.cc/H3L6-SX8M>].

permit.⁶³ Each conditional use application requires that the applicant pay a \$250 fee per city lot, attend a daytime hearing, and defend the plans against any neighborhood opposition that may be presented at the hearing.⁶⁴ The requirement that an applicant must pay a fee per lot is particularly important in Baltimore because most of Baltimore's lots are very small. The city was built as a series of rowhouses, blocks at a time.⁶⁵ Some lots are only ten or fifteen feet wide, so when rowhouses are demolished after becoming vacant, one half of a small block can contain up to ten or fifteen lots. A \$250 fee multiplied by ten or fifteen, which may cover a small community farm, becomes a prohibitively expensive undertaking.

Though the second two uses contemplated in the proposed amendment (farm stands and composting materials from off-site) may not be directly relevant to the right to food, the first (keeping animals like chickens) may be. Some cultures' food traditions require animal products, such as keeping chickens for their eggs or goats for their milk. If citizens are trying to provide for their food needs, under a right to food, should the city be allowed to force them to go through the conditional use zoning process? Would a \$250 conditional use permit fee violate a citizen's right to food, assuming that this right were justiciable in the United States? And what would the city do if community members showed up to protest keeping animals? Can the rights of the community trump the human rights of another? It is important to note that this conditional use permit is required before any "farm" animals can be kept on a community managed open space, so any nuisance to the community is only hypothetical at the time of the application.

B. Duty to Protect—South Central Farm

Many of the right to food issues raised in the United States are closely intertwined with access to land. The United States, deriving its property law from England, has some of the strongest property laws in the world, which allow property owners to exclude with impunity.⁶⁶

One situation in which property rights benefitted over the right to food of a vulnerable population was South Central Farm in Los Angeles, California, also known as the South Central Community Garden.⁶⁷ The City of Los

63. *See id.*

64. Becky L. Witt, *Rewrite Baltimore's Influence on Urban Agriculture*, CMTY. L. CTR. (Mar. 11, 2013), <http://communitylaw.org/urbanagriculturelawprojectrewrite-baltimores-influence-on-urban-agriculture/> [https://perma.cc/5GN7-73T9].

65. *See generally* CHARLES BELFOURE & MARY ELLEN HOWARD, *BALT. ROWHOUSE* (1999) (discussing the history, development, and characteristics of Baltimore's rowhouses).

66. *See generally* Merrill, *supra* note 2, at 754–55.

67. *See generally* Laura Lawson, *Cultural Geographies in Practice. The South Central Farm: Dilemmas in Practicing the Public*, in *TAKING FOOD PUBLIC: REDEFINING FOODWAYS IN A CHANGING WORLD* 88, 88 (Psyche Williams-Forsen & Carole Counihan eds., 2012)

Angeles took ownership of a fourteen-acre parcel through eminent domain in 1986, intending to install an incinerator on the land.⁶⁸ The community successfully fought the incinerator project, which the City decided not to build.⁶⁹ As part of the eminent domain action that took the parcel from its previous owners, the City had agreed to a provision that the previous owner could repurchase the land if the City ever decided to sell the lot for a non-public use.⁷⁰ The City sold the lot to the Port of Los Angeles for \$13.3 million.⁷¹ At that point, the former owner of the land sued Los Angeles to enforce his rights to retake the lot; the City settled with the owner and allowed him to repurchase it for \$5 million.⁷²

Since 1994, a group of gardeners, mostly Latino and low-income, many of them immigrants, had been gardening the fourteen-acre parcel, using traditional gardening and farming techniques from their home countries to grow healthy, traditional foods for their families.⁷³ The new owner, Ralph Horowitz, immediately terminated the gardeners' license to be on the land in 2004.⁷⁴ The farmers and gardeners fought the license termination in court for several years, but Horowitz evicted the gardeners and bulldozed the garden on June 13, 2006.⁷⁵ The lot has been vacant and barren ever since.⁷⁶

How could this ending have been different if the City of Los Angeles had recognized its duty to protect the right to food for its citizens? Under the Voluntary Guidelines to support the right to food adopted by the FAO, “[s]tates should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society.”⁷⁷ According to the activists involved with the South Central Farm project, the City Council approved the settlement with

(describing the conflicts and legal issues facing urban gardeners of a community urban garden when their land is claimed by developers).

68. *Id.* at 89.

69. *Id.* at 89–90.

70. *Id.*

71. Jessica Hoffman, *History of the South Central Farm*, NEW STANDARD (Apr. 5, 2006), <http://newstandardnews.net/content/index.cfm/items/3028> [https://perma.cc/B28M-TNDA].

72. *Id.*

73. *Id.*; see also Lawson, *supra* note 67, at 88.

74. *Id.*

75. Hector Becerra, Megan Garvey & Steve Hyman, *L.A. Garden Shut Down; 40 Arrested*, L.A. TIMES (June 14, 2006), <http://articles.latimes.com/2006/jun/14/local/me-farm14> [https://perma.cc/66UC-ZH63].

76. Mary Harris, *Gutted South Central Farm Remains Vacant*, NBC L.A. (June 4, 2011, 3:35 PM), <http://www.nbclausangeles.com/news/local/South-LA-Urban-Farm-Lot-123050788.html> [https://perma.cc/KW77-NJNL].

77. *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, FAO of the U.N. ¶ 8.10 (2005), <http://www.fao.org/3/a-y7937e.pdf> [https://perma.cc/5FVS-GTXD] [hereinafter *FAO Voluntary Guidelines*].

Horowitz in a closed-door session and never provided any details of the negotiation or agreement to the farmers, even after repeated requests for more information.⁷⁸ It is difficult, of course, to know for certain what took place in the private negotiation between Horowitz and the City of Los Angeles. The right to food does not necessarily require that the City of Los Angeles go to any lengths to obtain the legal right to the parcel on the neighbors' behalf.⁷⁹ Indeed, the City has many other competing responsibilities to all of the citizens who live within its boundaries. It is possible that, even if the City had taken affirmative steps to try to protect its citizens' right to food, the outcome would have been the same. However, from the farmers' perspective, the City did not even attempt to protect their human rights to provide food for themselves; therefore, we cannot know what could have been accomplished if the City had taken this responsibility seriously.

C. Duty to Provide—Land

Power in Dirt is Baltimore City's program for neighborhood residents to adopt vacant City-owned lots and use them for community purposes.⁸⁰ Citizens have adopted lots and used them for community parks, gardens, farms, horseshoe pits, and other recreational and ecological benefits.⁸¹

The City requires the adopter of the lot, whether a community group or an individual, to sign a standard license agreement to be permitted to use City-owned land.⁸² The license agreement cannot be negotiated and is weighted heavily towards the legal benefit of the City and away from community members.

First, the license agreement is easily revocable, almost at will.⁸³ The agreement requires the City to give thirty days' notice when it intends to

78. See Hoffman, *supra* note 71.

79. See *FAO Voluntary Guidelines*, *supra* note 77.

80. See POWER IN DIRT, <http://www.powerindirt.com/> [<https://perma.cc/R5EV-W2ZA>]; Jamie Smith Hopkins, 'Power in Dirt,' *Baltimore Vacant-Lot Adoption Program, Gets Time at Mayors' Conference*, BALT. SUN (June 19, 2012), http://articles.baltimoresun.com/2012-06-19/business/bal-wonk-power-in-dirt-baltimore-vacantlot-adoption-program-gets-time-at-mayors-conference-20120618_1_mayor-stephanie-rawlings-blake-adoption-vacant-lot [<https://perma.cc/47JB-L76L>].

81. *What Others Are Doing*, POWER IN DIRT, <http://www.powerindirt.com/index.php/others/> [<https://perma.cc/KF8W-P2ZZ>]; *Dr. Rayner Browne Elementary School*, POWER IN DIRT: BLOG (Nov. 16, 2011, 11:01 AM), <http://powerindirt.blogspot.com/2011/11/dr-rayner-browne-elementary-school.html> [<https://perma.cc/7PSB-BT6C>].

82. Cmty. L. Ctr., "Adopt A Lot" License Agreements: Breaking Through the Legalese, <http://communitylaw.org/wp-content/uploads/2013/07/Adopt-A-Lot-License-Agreements-version-10.5.12.pdf> [<https://perma.cc/R79D-5B9L>].

83. *Id.* at 2.

revoke a license and take back a parcel of land.⁸⁴ The Baltimore Department of Housing, which administers the program, may decide to allow a community group to see through a growing season, but it is not required to do so.⁸⁵

Second, the agreement requires that the community indemnify the City for any injury or liability that is related to anything on the lot or any of the adjoining sidewalks.⁸⁶ Since most of the vacant lots are former sites of rowhouses, there may be any number of dangerous conditions on a lot, including sharp materials, holes in the ground, and broken and uneven sidewalks, which are prevalent throughout the city. To require community members to be responsible for reimbursing the City for harm having nothing to do with the negligence of a community member or group may discourage potential lot adopters from legally taking responsibility for a site.

In 2013, controversy arose when Baltimore City put up for sale a city-owned vacant lot that had been gardened by gardeners at the Baltimore Free Farm, a cooperatively run organization in the Hampden neighborhood.⁸⁷ The Free Farm gardeners did not have a license agreement in place; they had asked for a license to garden on the property, which the City denied because it intended to sell the lot to a developer to build housing.⁸⁸ Without permission, the gardeners went ahead and used the lot for their gardening project.⁸⁹ After months of stewardship of the land, they received notice from the City that the lot would be put up for bid.⁹⁰ The Free Farm members immediately mounted a media campaign to encourage the City to sell the lot to the Free Farm instead of a developer for another rowhouse.⁹¹ Hampden, like many Baltimore neighborhoods, is a dense rowhouse community with relatively little park space on the side of the neighborhood where the Free Farm is located.⁹² The Free Farm argued that the neighborhood would be better off with more green space than with another rowhouse.⁹³ During this precise moment, the media confronted Baltimore City Mayor Stephanie

84. *Id.* at 4.

85. *Id.*

86. *Id.* at 2.

87. Editorial, *Vacant or Valuable?*, BALT. SUN (June 30, 2013), http://articles.baltimoresun.com/2013-06-30/news/bs-ed-baltimore-free-farm-20130630_1_vacants-baltimore-free-farm-group [<https://perma.cc/WNP9-JHSD>].

88. *Id.*; see also Fern Shen, *City Poised to Sell Land Used by Baltimore Free Farm to Developer*, BALT. BREW (June 20, 2013), <https://www.baltimorebrew.com/2013/06/20/city-poised-to-sell-land-used-by-baltimore-free-farm-to-developer/> [<https://perma.cc/HJ3X-CCG8>].

89. See *Vacant or Valuable?*, *supra* note 87.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

Rawlings-Blake at the groundbreaking of another community garden in a very different part of town, Sandtown-Winchester, a neighborhood on the west side of Baltimore made famous during the April 2015 unrest.⁹⁴ Reporters asked the Mayor whether it was wise to celebrate the groundbreaking of a garden on the west side while her housing agency was seeking to take away a similar garden on the north side of Baltimore.⁹⁵ She responded that her office would always be interested in promoting the highest and best use of any particular property.⁹⁶ The highest and best use for any property is typically the most developed version of what could be built on a particular piece of land.⁹⁷ This market-centric point of view focuses on creating revenue for the City through property taxes and bringing in developers to build housing with high property values, to the exclusion of other community values of property.⁹⁸

How might Baltimore City write its Adopt-A-Lot agreement if the City took seriously a duty to fulfill a right to food for its citizens? The agreement would probably not be a license agreement at all, because license agreements are revocable by their very nature and give all of the power in the relationship to the license giver and land holder, not to the license holder. Instead, the City could offer leases to those who want to grow food for themselves and their communities, under which leaseholders have actual property rights in the property that they are working so hard to maintain and use to provide for themselves. The current structure of the land access system is much more to the benefit of the City, rather than being for the benefit of the community. The City retains all of the power in the relationship and benefits from hours of free labor, as well as large amounts of privately donated funds and materials to keep up properties that the City may reclaim at any time. The Power in Dirt program could be seen as almost exploitative, benefiting the City from the hard unpaid work of its citizens, most of whom are already disadvantaged and living in difficult circumstances. As a 2013 Baltimore Sun editorial opined, “the Adopt-A-Lot program is all sweat and no equity.”⁹⁹ Looking at access to land from the perspective of a human right to food and self-determination, the program could significantly increase its benefits to neighbors and the city in general.

94. See Shen, *supra* note 88.

95. *Id.*

96. *Id.*

97. See *Highest and Best Use*, DICTIONARY OF REAL EST. APPRAISAL (5th ed. 2010) (defining “highest and best use” as: “The reasonably probable and legal use of a vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.”).

98. See *id.*

99. See *Vacant or Valuable?*, *supra* note 87.

III. RIGHT TO THE CITY

Recently, activists who protest neoliberal economic structures have mobilized around a concept called “a right to the city,” which this Article will look at briefly before it concludes.¹⁰⁰ The right to the city is not based in human rights law but has developed in recent decades to fight against the influence and control that large corporations have over the decisions that impact cities around the globe.¹⁰¹ The right to the city, then, focuses on the enfranchisement and the empowerment of city residents against these powerful forces, using democratic tools to encourage community involvement at all levels of decision making.¹⁰²

This so-called right, mainly hypothetical at this point, dovetails nicely with the right to food as detailed above. The world’s food system has become increasingly commodified and centralized, taking power away from small farmers and giving it to larger commercial operations.¹⁰³ Though this has allowed our food system to grow and produce increasingly astonishing quantities of food, the distribution of that centralized food system is unequal.¹⁰⁴

Convincing local governments to respect their residents’ rights to provide food for themselves by prioritizing policies that encourage such local provision is a low cost way to help form sustainable communities of people who are better connected with each other. Creating the policies outlined above will certainly not solve the problem of hunger and malnutrition in Baltimore City, but it will allow the City’s government to see the ways in which they may actually be getting in the way of their citizens’ feeding themselves.

Many criticize the use of human rights as a basis for legal action,¹⁰⁵ which is probably why this country has not ratified the important human rights treaties that the United Nations created. Critics say that human rights are too vague to enforce and that positive rights are unrealistic, taking too many resources.¹⁰⁶ But all rights are vague in the first instance and are developed

100. See Mark Purcell, *Excavating Lefebvre: The Right to the City and Its Urban Politics of the Inhabitant*, 58 GEOJOURNAL 99, 99, 101 (2002).

101. See *id.*

102. See *id.* at 102.

103. See Jose Luis Vivero Pol, *Why Food Should Be a Commons Not a Commodity*, OUR WORLD (Oct. 16, 2013), <http://ourworld.unu.edu/en/why-food-should-be-a-commons-not-a-commodity> [<https://perma.cc/8EQH-R74Q>].

104. See *id.*

105. See, e.g., Eric Posner, *The Case Against Human Rights*, GUARDIAN (Dec. 4, 2014), <http://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights> [<https://perma.cc/6JNG-R8ER>].

106. See, e.g., David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 99, 108, 116 (2002).

over decades and centuries through the jurisprudence of the courts. This is how the Fourth Amendment to the U.S. Constitution was interpreted to mean that citizens have a Constitutional “right to privacy,” a term that does not appear in the Constitution.¹⁰⁷ It was created out of rhetorical shadows by U.S. Supreme Court Justices in *Griswold v. Connecticut* and developed by later courts to have its current meaning and implication.¹⁰⁸ A new human rights jurisprudence could be built by international and national courts to support emerging values and norms, in much the same way. Positive rights and negative rights *both* require a structure in place to enforce them, which costs money to the state. Free speech rights in the United States under the First Amendment require that police work overtime during white supremacists’ rallies to protect the rights and the safety of all. No rights are free, either negative or positive.

CONCLUSION

The human right to food is not a legally justiciable right in the United States. However, the idea that human beings, especially those belonging to vulnerable populations, should be encouraged and allowed to create food for themselves and their families is one with moral weight, and it should be asserted when governments at all levels prioritize financial gain over human health and dignity. From the perspective of a right to food, government at all levels could and should be doing a great deal better in encouraging community members to take on the task of providing food for themselves. Governments should lower barriers, such as conditional use permits, to citizens’ procurement of their own food. They should encourage residents to take on community greening by protecting residents’ access to land that is sitting fallow. And they should be working with communities to protect their rights to food against the actions and even rights of other private actors. Asserting a human right to food, even if not yet justiciable, would be a valuable tool in the hands of organized communities fighting for food sovereignty.

107. *See generally* U.S. CONST. amend. IV.

108. *Griswold v. Connecticut*, 381 U.S. 479 (1965); *see, e.g., Obergefell v. Hodges*, 135 S.Ct. 2584, 2589 (2015) (“The fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs.”).