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## Scaling Biopolitics: Enacting Food Sovereignty in Maine (USA)

Hilda E. Kurtz in collaboration with Heather  
Retberg and Bonnie Preston

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## Abstract

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In 2011, a group of food and farmer activists in Maine set off a maelstrom of political activity in and around the food sovereignty movement when they drafted and placed on town meeting warrants a Local Food and Community Self-Governance Ordinance. Intended to maintain the viability of small farms in a struggling rural economy, these ordinances exempt direct transactions of farm food from licensure and inspection. Their goal is to maintain control of food at the local level by asserting the right to remain autonomous from the corporate industrial food system. Conceptually, they draw on a populist ethos and the town meeting tradition to invite broad democratic participation in pressing claims for food sovereignty. This paper traces the ordinance strategy and its effects through activist networks and into the halls of the state capitol, where the governing and the governed have wrestled over the last two years with fundamental and difficult issues facing food systems. Recognizing the play of multiple food sovereignties in different settings, we suggest that this work offers insight into possible trajectories of food sovereignty as a movement for radical change in the food system by reasserting the right to define a local food system and drawing a protective boundary around traditional foodways. The concept of food sovereignty - democratic control of the food system, and the right of all people to define their own agrifood systems (US Social Forum 2010) – implies a re-scaling of food production and trade regimes, away from industrial scale production for international trade to food systems organized at local and regional scales. Beyond such a re-scaling, however, food sovereignty discourse is ambiguous if not ambivalent about the geographic scales at which food sovereignty can and should be achieved. Maine ordinance advocates engage with the scale problem directly by arguing for the need for scale appropriate regulations for small scale production for direct sale; in addition, they draw on Maine's tradition of Home Rule to frame perhaps the first legible spatial expression of food sovereignty in the United States. This paper examines the ordinance strategy and its ripple effects as a politics of scale, in which different expressions of geographic scale shape both the form and the content of political debate. The stakes in this struggle are high, concerning intersections of life and livelihood, autonomy and its absence, and bases for knowing and for evaluating risk. We view these stakes as biopolitics, or struggle over the exercise of biopower. In the exertion of biopower, states (and other actors) manage population health through the use of vital statistics and other technologies. Foucault demonstrates that as new forms of knowledge and regimes of truth made population health knowable, biological experiences shaping individual and collective life, like dietary practices, became linked to the exercise of state power. The paper traces how the food sovereigntists of Maine use politics of scale to face off against biopower as exercised through corporate influence over food and farm regulations.

## Introduction

In 2011, a group of food and farmer activists in Maine set off a maelstrom of political activity in and around the food sovereignty movement when they drafted and placed on 5 town meeting warrants<sup>i</sup> a Local Food and Community Self-Governance Ordinance. Intended to maintain the viability of small farms in a struggling rural economy, these ordinances exempt direct transactions of farm food from licensure and inspection. Their goal is to maintain control of food at the local level by asserting the right to remain autonomous from the corporate industrial food system. Conceptually, they draw on a populist ethos and the town meeting tradition to invite direct democratic participation in pressing claims for food sovereignty. This paper traces the ordinance strategy and its effects through activist networks and into the halls of the state capital, where the governing and the governed have wrestled over the last two years with fundamental and difficult issues facing food systems. Recognizing the play of multiple food sovereignties in different settings (Desmarais and Wittman 2013), we suggest that this work offers insight into possible trajectories of food sovereignty as a movement for radical change in the food system. Ordinance activists' efforts to reassert the right to define a local food system and draw a protective boundary around traditional foodways and direct exchanges of food may inform food sovereignty struggles elsewhere.

The concept of food sovereignty - democratic control of the food system, and the right of all people to define their own food systems (US Social Forum 2010) – implies a re-scaling of food production and trade regimes, away from industrial scale production for international trade to food systems organized at local and regional scales. Beyond such a re-scaling, however, food sovereignty discourse is ambiguous about the geographic scales at which food sovereignty can and should be achieved (Patel 2010; DesMarais and Wittman 2013). Maine ordinance advocates engage with the scale problem directly by drawing on Maine's tradition of Home Rule to frame perhaps the first legible spatial expression of food sovereignty in the United States with a rights-based local ordinance. In addition, ordinance advocates argue for the need for scale-appropriate regulations for small scale production for direct sale.

This paper examines the ordinance strategy and its ripple effects as a politics of scale, in which different expressions of geographic scale shape both the form and the content of political debate. The *form* that engagement takes is the passage of local ordinances in multiple towns, the lawsuit heard in Hancock County Superior Court that was widely seen as a test of the ordinances, and legislative efforts to inscribe some parts of the local ordinance into state law. The *content* of the engagement concerned local autonomy as articulated in rights-based ordinances, as well as an argument waged by ordinance allies for scale-appropriate regulations.

The *stakes* in this struggle are high, concerning intersections of life and livelihood, autonomy and its absence, and bases for knowing and for evaluating risk. We view these stakes as

biopolitical, a struggle over the exercise of biopower. In the exertion of biopower, states (and other actors) manage population health through the use of vital statistics and other technologies. Foucault demonstrates that as new forms of knowledge and regimes of truth made population health knowable, biological experiences shaping individual and collective life, like dietary practices, became linked to the exercise of state power. The paper traces how the Maine food sovereignty activists use a politics of scale to face off against biopower as exercised through corporate influence over food and farm regulations.

To develop this argument, the paper first considers what is at stake in the ordinance struggle, outlining food sovereignty as a problem of biopolitics. We then lay the groundwork for thinking about food sovereignty as a problem of scale, with attention to the ways in which rights-based ordinances can shape understandings of food sovereignty. With this framework in place, we trace the work of the ordinance activists as they engaged in a politics of scale to give formal and substantive expression to food sovereignty and biopolitics.

### Conceptual Framework

#### *Food sovereignty as a problem of biopolitics*

Itelvina Masioli of the Brazilian Landless Rural Workers Movement, in an interview with Hannah Wittman (Masioli and Nicholson 2011), was asked what food sovereignty means to her organization. Her reply is captured in a chapter of Wittman et al.'s (2010) edited volume, *Food Sovereignty, Reconnecting Food, Nature and Community*:

Food sovereignty for the...group of movements of La Via Campesina, is the right of peoples to decide and produce their own food. It is a political right to organize ourselves, to decide what to plant, to have control of seeds. Food sovereignty is a very broad concept that includes the right of access to seeds, the right to produce, to trace, to consume one's own food. Finally, it is a concept that is linked to the autonomy and sovereignty of peoples.

In direct and powerful language, Masioli describes a radical transformation of farming and food systems that rests centrally on assertions of rights. As Desmarais and Wittman caution in their paper for this conference, "concepts that have transformatory potential do not appear in a vacuum as disembodied intellectual exercises" (2013:5). They emerge instead in response to grievances and even crises that can be made legible to numerous publics. To better understand the contours of food sovereignty, we need to look carefully not only at social actors involved, but also at the conditions that spurred such transformative language (and more) in the first place. How is it that farmers don't have control of the very seeds from which they grow food? Aren't seeds the stuff of life itself? Why does a right to consume one's own food even have to be articulated as a claim such as this?

While other scholars trace the emergence of the concept of food sovereignty with reference to international agreements and trade relations that have dispossessed farmers, and the movement infrastructure of Via Campesina and other organizations, this paper takes a wider view to reflect on how struggles for food sovereignty read as biopolitics, or resistance to the exercise of biopower. Nikolas Rose has provocatively characterized biopolitics as the ‘politics of life itself’, and biopolitics as a central political issue for the 21<sup>st</sup> century (2006).

Michel Foucault used the term biopower in a narrative of the changing nature of states’ power over territory and people (Foucault 2008). In Foucault’s formulation, states have long exercised sovereign power primarily over territories, and only later developed a different mode of power – biopower - over human populations as such. Biopower emerged with the ability to use vital statistics to document and manage human population health. The state invests in population health in order to manage human productivity (Speake 2010; Brooks 2005). Population statistics brought population health into focus as a political object, and spurred the creation of “institutions to coordinate medical care, centralize information, *normalize knowledge*... teach hygiene and...medicalize the population” (Foucault 2003, p. 241, emphasis added). These efforts depended on new understandings of hygiene in the health sciences, and also on the administrative capacity of the state to make public health programs (like water sanitation and mandatory milk pasteurization) happen (Speake 2010). It also depended heavily on the ability to normalize knowledge of state-sanctioned health and dietary practices, a term Foucault refers to as subjectification.

Biopower plays out in multiple arenas and projects (Hannah 2011), ranging from genomics (Rose 2001, 2006) to post 9/11 biosecurity measures (Braun 2007). Significantly, a growing body of work on biopower traces its implications within food systems, in arenas such as mandatory dairy pasteurization (Speake 2010; Paxson 2008; Kurtz et al. 2013), agricultural biotechnology (Brooks, 2005; Herring, 2007; Schlosser, 2008), livestock breeding (Morris and Holloway 2009; Holloway et al 2009) and the Green Revolution (Nally 2011). Nally (2011) argues that biopower has been exerted perhaps most aggressively in the development of large-scale food systems, from plantation agriculture through the Green Revolution and into applications of biotechnology.

The sweep of Nally’s (2011) work brings to mind James Scott’s widely embraced thesis in *Seeing Like a State* that states rely centrally on simplifications - schematic and selective forms of knowledge - to control territory and populations. Scott’s thesis parallels Foucault’s analysis of the emergence of biopower; Foucault and Scott alike trace the emergence of these powers to early modern European states. Scott (1998:3) observes that

much of early modern European statecraft seemed...devoted to rationalizing and standardizing what was a social hieroglyph into a legible and administratively

more convenient format. The social simplifications thus introduced not only permitted a more finely tuned system of taxation and conscription but also greatly enhanced state capacity. They made possible quite discriminating interventions of every kind, such as public health measures, political surveillance and relief for the poor.

A key dimension of such social simplifications is that “when allied with state power, [they] enable much of the reality they depicted to be remade” (ibid.). Foucault characterizes this dynamic interplay as power-knowledge. The capillary and discursive qualities of power-knowledge makes it hard to pinpoint where and how power-knowledge works. Discussing biopower as a form of power-knowledge, Morris and Holloway (2009) suggest that scholars examine how biopower plays out at different scales in the food system – the body, the farm and rural spaces, and national and international “networks of...knowledge-practices” (p. 313). It is equally important to examine the ways in which biopolitics – eg. *resistance* to biopower - plays out in multiple arenas and at different scales. While Foucault himself said relatively little about how biopolitics work (Smart 1998; Rose and Rabinow 2006), he noted famously that where there is power, there is resistance (Foucault 2008). It follows that to understand power, we must study resistance to it (Smart 1998; Rabinow and Rose 2006).

Neither Scott’s (1998) argument about state simplifications, nor Nally’s (2011) argument about biopower in food systems engages with the concept of food sovereignty directly, but their arguments frame many of the concerns of the food sovereignty movement. Food sovereignty as an animating idea calls into question the nature and extent of corporate control of food systems, and the modalities of power that shape industrial food production at the expense of millions of small-holder and peasant farmers. As historian Jim Handy explained at an international workshop on food sovereignty (2007; quoted in Wittman et al 2010, p. 4),

Food Sovereignty challenges not just a particular development model, doesn’t just challenge a particularly abhorrent form of neo-liberalism, doesn’t just suggest a new set of rights. Rather, it envisions fundamental changes in the basis of modern society. Modern society was based on a set of exclusions and enclosures that were fundamental to the emergence and strengthening of capitalism. Those exclusions were felt primarily in the countryside and primarily in agriculture. Capitalism was dedicated to divorcing producers from any right over the goods they produced and encasing those goods in ever larger, ever more disconnected, ever more monopolized, and ever more destructive markets. Food Sovereignty challenges all of that because it demands that we rethink what was at the very centre of this transition, it demands that we treat food not simply as a good, access to which and the production of which is

determined by the market, it demands that we recognize the social connections inherent in producing food, consuming food, and sharing food. In the process it will change everything.

The broad and bracing claims of food sovereignty activists, grounded in a complex critique such as Handy's above, highlight the importance of looking carefully at biopolitics as resistance to biopower. Significantly, Foucault argues that the exercise of power is not conceived in terms of relations between individuals and collective agents, but rather as

A total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult in the extreme, it constrains or forbids absolutely; it is nevertheless always a way of acting upon acting subjects" (quoted in Smart 1998:133).

Smart (1998:134) explains that

Foucault argued that every relation of power implies a potential 'strategy of struggle', that is to say the relatively stable mechanisms through which conduct may be guided and outcomes ordered in the course of the exercise of power (read, agricultural regulations in Maine) has as one of its limits a relationship of confrontation by which it may be displaced or undermined.

This formulation describes quite well the dynamics in and around the state regulations that prompted the local ordinance strategy starting in 2009. Maine's agricultural regulations, the power they manifest, and their implications for the structure of social practices and relations that shape small scale food production in rural Maine, are not simply the result of a collective agent (e.g. the Dept of Ag) exerting power over individuals. They are just one vector in a complex dynamic that is unfolding, shifting, and pulling in different directions over time. The Local Food and Community Self-Governance Ordinances confront the mechanisms that guide small farmer's conduct, and offer a relationship of confrontation to the Department of Agriculture's exercise of power.

Biopolitics entails debate and disagreement over the exercise of biopower, a relationship of confrontation over how life, health and disease are understood by the state, on one hand, and by individuals and smaller groups on the other. Rose (2006: 142) notes that state's exercise of biopower

tend[s] to represent science itself as unproblematic [and] problematize the ways in which citizens misunderstand it. But...vectors 'from below' [e.g. ordinance activists and others like them] pluralize biological and biomedical truth,



introduce doubt and controversy, and relocate science in the fields of experience, politics, and capitalism (Rose 2006, p. 142).

Significantly, vectors from below are inherently social (Rose and Novas 2004), in the sense that individuals introducing doubt into government sanctioned science are positioned within social groups, norms and bodies of knowledge. We need then to look not only at social actors, but the discourses, institutions and efficacies within which they form ideas, agendas and strategies.

From a more geographical perspective, it is worth noting that when biopolitics intersects with or is expressed as struggle for food sovereignty, it may hone the concept conceptually, but does little to clarify the spatiality of the struggle. Instead, discourses and debates over food sovereignty bring their own complications concerning geographic scale.

### *Food sovereignty as a problem of scale*

Food sovereignty stakes claims to and poses problems of scale in two related ways. First, food sovereignty activism problematizes economic scales of production in a corporatized and industrialized food system, highlighting the problem of scale as it confronts small- and medium-scale farmers. To challenge the organization and bases for food production, and remake food systems as more democratic and transparent for consumers and small- to medium-scale producers as Jim Handy describes, requires a re-scaling of food production and trade regimes to more local and decentralized systems, in ways which are not yet fully understood.

Second, and relatedly, food sovereignty activism calls into question the political and jurisdictional scales at which food sovereignty can be achieved. Food sovereignty may put “questions of what food is produced, where, how, by whom, and at what scale at the centre of public debate” (Desmarais and Wittman 2013:3), but the sheer diversity of conditions from which claims for food sovereignty arise creates confusion about the political scales at which food sovereignty can and should be pursued. Raj Patel (2010:191) notes that

one of the most radical moments in the definition of food sovereignty is the layering of different jurisdictions over which *rights can be exercised* (Patel 2010). When the call is for, variously, peoples, regions and states to craft their own agrarian policy, there is a concomitant call for spaces of food sovereignty. Food sovereignty has its own geographies determined by specific histories and contours of resistance. To demand food sovereignty is to demand specific arrangements to govern territory and space (emphasis added).

A robust geographic literature on the politics of scale suggests that efforts to create spaces of food sovereignty, and to claims rights in layered jurisdictions, constitute innovative politics of scale. In this perspective, political and other geographic scales are not neutral containers for social action, but are themselves created in the course of political struggle. Herod (1991:84)

articulated a lasting insight in this regard, noting that “[w]hereas political, cultural, gendered and economic struggles distinctively craft the production of scale, scale in turn defines and redefines those struggles.” That is to say, scales of social and economic organization are shaped by and in turn shape social relations, including relations of social struggle.

Scale theorists recognize scale as a process of ‘framing’ reality (Delaney and Leitner 1997:96), embracing the concept of politics of scale to examine how social actors bring “conceptions and ideologies of space and power...to practical efforts to change the world” (ibid). While much of the early work on politics of scale focused on how activists for a given cause ‘scaled up’ their grievance to seek broader redress, Herod (2000) noted that sometimes activists find it more strategic to ‘scale down’. The concept of scale frames (Kurtz 2002, 2003) recognizes the range of options available to activists, to scale up or down as the situation demands. As a central practice in politics of scale, scale frames are “a type of collective action frame that does the work of ‘naming, blaming, and claiming (Snow and Benford 1992)’ all with central reference to, and differentiation by, particular geographic scales” (Kurtz 2002:254).

The Maine ordinance advocates’ arguments can be understood as scale frames that created a scale-referenced response to a scale-inflected problem. The scale-inflected problem is easily recognizable through the lens of food sovereignty; industrial agriculture and the agricultural regulations through which it is shaped systematically undermine the viability of small-scale farmers. In a system rigged so heavily against them, many small farmers see the need to opt out of that system and pursue their own more localized norms of food production.

In their scale-referenced response to these conditions, the Maine ordinance activists introduced an unusually legible spatial expression of food sovereignty when they drew on Home Rule and a New England tradition of annual town meetings to get local ordinances passed to protect their foodways. Rather than just using municipal governance as a convenient scale of action, however, the activists crafted a *rights-based ordinance* to argue substantively for local self-governance concerning the production and consumption of food. Their substantive argument references scale in three related ways. They are arguing for a) the right to community self-government in matters relating to food, b) the local spatial scale as a basis on which to organize a food system, and by extension c) the need for scale-appropriate regulations for small-scale production for direct sale. As in other work with scale frames, the meaning of ‘scale’ is polyvalent in this construction; referring to jurisdictional scales as well as to the scales of economic activity within a complex production system.

The response strategy is enabled and constrained by a scaled hierarchy of government powers. Three key relationships among jurisdictional scales shape the milieu. First, states allocate different degrees of autonomy to local governments under Dillon’s Rule on one hand, and Home Rule on the other. Under Dillon’s Rule, local governments hold no law making authority

of their own unless expressly authorized in state legislation. Home Rule, stronger in some states than in others<sup>ii</sup>, delegates to local governments “legislative power regarding local matters” except in “areas of law and policy-making reserved for the state” (Parlow 2008:383). This uneven mosaic of state and local powers differentially shapes capacity for grassroots efforts to effect social change from the bottom up (Diller 2007). Strong Home Rule in Maine fostered a political opportunity structure in which to shape a political strategy both substantively and formally grounded in understandings of local autonomy and self-governance.

Second, however, all municipal governance, whether in Home Rule or Dillon’s Rule states, is subject to the doctrine of preemption. Under this doctrine, federal and state laws constrain the legislative powers of local governments by pre-empting them. Legal scholars argue that state laws tend to more forcefully pre-empt local laws, but state laws are in turn pre-empted by federal law (Bussell 2010; Diller 2007). Depending on the area of law that a municipal ordinance addresses, it may be subject to express or implied pre-emption. As Diller (2007:1115-1116) explains, express preemption occurs when state law “explicitly declares that local laws are preempted within a certain field...But when the state legislature has given no clear guidance regarding preemption, state courts ask whether local authority has nonetheless been impliedly preempted.” Because implied pre-emption can be so tricky to ascertain, Diller argues that it “has become the primary battleground for determining the parameters of local authority in modern home-rule regimes.” (Diller 2007:1127). The point is that a local ordinance can be contested in legal arenas when its content edges into the gray area of implied preemption.

In the third scalar relationship of central interest to this story, the Maine ordinance activists crafted a *right-based ordinance* that itself explicitly challenges the doctrine of preemption. The ordinance draws from a form of populism promulgated by the Community Environmental Legal Defense Fund (CELDF) to assert the right to community self-governance. The local food ordinances diverge from other CELDF-influenced ordinances in several ways. Of key interest here is that the ordinance doesn’t target a single organization, but rather corporate power within the agricultural system, and that it goes beyond other ordinances to substantively challenge preemption (Interview P 7/12).

The ordinance references both Maine’s Constitutional home rule provision, and additional statutory authority by which Maine “grants municipalities all powers necessary to protect the health, safety, and welfare of [its residents].” (Local Food and Community Self-Governance Ordinance 2011). As Almy (2013:797) notes in a perceptive legal analysis of the ordinance, its authors make a broader substantive claim about the kind of local food system they seek to protect. Ranging across a broader legislative framework,

[The ordinance] also cites Maine’s statutory policy ‘to encourage food self-sufficiency for the State.’ Thus, finding a cohesive purpose between the municipal ordinance and the State’s defined goals in regulating Maine’s food and agriculture, proponents maintain that this regulatory scheme inherently leaves room for the town’s Local Food Ordinance.

In the following sections, we trace a narrative and analysis of the origins and implications of the Local Food and Community Self-Governance Ordinance(s) as a key moment in biopolitical struggle, shaped in part by the discourse and agenda of the food sovereignty movement, and given form and political expression in a sophisticated politics of scale.

## Scaling Biopolitics

### *Catalyst – 1000 Bird Exemption*

In June 2009, the Maine legislature passed a bill exempting poultry producers slaughtering fewer than 1,000 birds from some of the requirements for large scale poultry operations. This exemption would put Maine in line with other states which follow federal parameters of offering 20,000 bird and 1,000 bird exemptions. Rules concerning livestock slaughter focus primarily on hygiene at slaughter. The rule-making process, however, resulted in rules that did little to differentiate between facility requirements under a 20,000 bird- and a 1,000 bird exemptions, requiring the smaller scale farmers to incur the same facility costs of \$20,000-\$40,000 as did the far larger operations.

In Penobscot, Heather and Phil Retburg of Quill’s End Farm were running a small, diversified livestock farm, where in addition to raising sheep and cattle for meat and milk, they processed several hundred meat chickens each year at a neighbor’s slaughtering facility. The implications of the new rules for Quill’s End and countless other farms like it, was that they would either have to build their own slaughter facility on-site, or take their chickens to be slaughtered at one of just four facilities in the entire state of Maine. The closest facility is in Monmouth, a distance of nearly 70 miles from Penobscot. Neither option was financially viable for the Retbergs.

Distressed at the implications of the new rule for their farm and countless others like it, the Retbergs turned to their friend Bob St Peter, Executive Director of Food for Maine’s Future (FMF), for help generating a response to the new rules on the part of other small farmers. Food for Maine’s Future is a small but vocal organization that speaks out on behalf of small-scale farmers in Maine and elsewhere. Formed in a merger of two organizations doing work on skill-building for local food production and resisting genetic engineering of food, FMF uses an extensive contact list, educational events, speaking tours and an annual conference to raise awareness and spur public input for key legislative efforts. As FMF explains on its web site (Food for Maine’s Future 2012),

Food for Maine's Future is part of a growing international movement for food sovereignty. Our work is informed and strengthened through relationships with our allies in La Via Campesina. FMF is working to build solidarity and alliances between rural people in Maine and around the world. ... Our involvement in [the National Family Farm Coalition] has connected us with farmers throughout the U.S. working on food justice and sovereignty issues, genetic engineering, and federal agricultural policy. We in turn report on challenges and successes of family farmers here in Maine.

Concern about the fate of the 1,000 bird exemption, then, was well within Food for Maine's Future's ambit. FMF lent a hand by reaching out through email lists and social networking sites to encourage people to write to the Department of Agriculture's Quality Assurance QAR and to attend the public comment session scheduled just before Christmas on Dec 21, 2009.

While letters on each side of the issue tended to acknowledge the importance of small scale poultry to the state's farm economy, they focused on different issues. Those expressing support for the new rules prioritized hygiene concerns as conventionally codified in federal and state regulations. Many expressed concern for unfair costs advantages to farmers using the exemption, and argued that the answer to the problem of a costly slaughtering regime was more slaughter facilities, not less regulation. On the other side of the debate, letter writers concerned about the new rules protested the lack of differentiation between small and mid-sized poultry farmers. Some argued that the QAR should take into account different logistical needs and safety concerns involved in small scale agricultural production and develop scale-specific regulations for each. Many of these writers expressed urgency about the situation, as with one writer who wrote that the new rules might "very possibly mean an end to small poultry farms in Maine".

As Thom Young of Orizaba Farm, near Bangor, wrote to the QAR during the poultry exemption debate and posted on his website,

We urge the MDA to ensure that the language within farm regulations is scale-specific and acknowledges that small farmers who direct-market to consumers are faced with different logistical considerations and operating constraints than large agribusinesses and food processors (Orizaba Farm 2009).

After a period of public input and a slight relaxing of the facilities requirement, the chair of the legislative committee overseeing this process announced that the committee could not and would not approve rules less restrictive than federal rules, or the state would lose USDA funding for meat inspection. This outcome struck a nerve among farmers who had mobilized for months in pursuit of rules better aligned with the intent of the legislation.

*Response – Local Community and Self-Governance Ordinance*

Disappointed farmers and farm patrons viewed the distorted ruling on the poultry exemption as symptomatic of a regulatory regime in which their own views of life, health, and livelihood were fundamentally at odds with those held by state agencies like the Department of Agriculture (DoA). Those who had worked hard on the poultry exemption had confidence in their individual and community bases for evaluating risk in farm practices and food preparation, and found the stance of the DoA to be onerous and intrusive. They further recognized that the poultry exemption debate was just the tip of an iceberg, and recognized the need to take a stand for the traditional foodways that have been shaping social relations in rural Maine for hundreds of years.

After reading up on American founding documents, attending a Democracy School sponsored by the Community Environmental Legal Defense Fund (CELDF), and consulting with members of their communities, a small group of farmers and farm patrons worked together to draft a Local Food and Community Self-Governance Ordinance, and to get it placed on the town meeting agenda of five towns in Maine.

By that time, there was precedent for towns to pass ordinances keeping out unwanted land uses and other practices, including wind turbines, cell towers, corporate water extraction for bottling, and genetically modified seeds. Significantly, those relatively recent ordinances all imposed more restrictions on local activities than was exercised at the state or federal level, and focused primarily on restraining corporations from exploiting local resources to the detriment of the town (Interview S 7/12). The idea emerging for the new food-related ordinances did not target corporate actions directly, but focused instead on agricultural regulations understood to benefit corporate agriculture to the detriment of small farmers. The ordinance would basically codify the practices small scale farmers had been using for a long time, eliminate the need for these practices to be licensed and inspected by state agricultural inspectors, and thereby seek to protect and support the emergent community economy centered on farm- and foodstuffs (Interview S 7/12).

Throughout 2010, Food for Maine’s Future, and the group now calling itself Local Food Rules kept the issue of scale-appropriate regulations in public view and discussion amongst farmers and food activists, through such logistics as email lists, social media, and Food for Maine’s Future’s annual conference. Heather Retberg gave the keynote speech at the 2010 conference (Retberg 2010), in which she contrasted the language that small farmers and state regulators use to describe small scale farming. The speech began:

Sustainable agriculture. A viable food production system. Family scale farm.  
Local food economy.

Milk distributors. Chicken processors. Food Safety Inspection System. Supreme Court rulings. Private sales.

... The first set are words we use to describe ourselves and others on our peninsula, who are beginning to understand the necessity and the urgency of coming together to survive. The second set of words represent the steep learning curve [we] are now climbing as we try to decide how much regulation and licensure to accept, or indeed if we have a choice. Our state and federal laws, we have come to learn with a heavy clarity, right up to the highest court in the land, have been written against us. We've been happily working outside the system for our first 12 years of farming. This past fall, the system knocked on our door. We are not farmers, family or otherwise in their world—instead we are 'distributors' and 'processors'—the same language and definitions used to describe industrial food manufacturers. The language here is of primary importance. The definitions are written by the USDA.

The speech focuses on a central tension between how the emerging ordinance activists – small farmers and farm patrons in the ordinance language - view their way of life, and broader economic and regulatory conditions which shape and constrain it. Retberg works from a key insight recognized by constructivist scholars, which is that the language of regulations such as these not only describes social and material realities, but brings them into being. In the view of the Food and Drug Administration, milk isn't milk until it has been pasteurized<sup>iii</sup> (Almy 2013:793). The Maine Milk Rule (2007) defines a milk distributor as someone who sells milk in final form to an end consumer. A milk producer is defined as someone who sells milk, but not in its final form; that is, the producer must sell to a distributor, and not to an end consumer. So when the mixed livestock farmer with a couple of milking cows wants to sell her or his milk fresh or raw directly to a consumer, s/he gets caught between definitions, and her/his actions are constrained accordingly. The structuring and problematic assumption here is that there must be an intermediary a milk distributor between the producer and the final consumer.

Just as the cadastral map both describes and creates a system of land tenure by giving its categories the force of law (Scott 1998:3), so do agricultural regulations such as these regarding milk *presuppose* and help bring into being a food system configured around economies of scale, and other practices that centralize and aggregate the industrial food system. As Retberg argues, much hinges on definitions. In the process of drafting and defending the Local Food and Community Self-Governance Ordinance(s), the Local Food Rules activists and allies amplified the message that the regulations as written do not recognize the particulars of their farm systems. They emphasize that small scale rural food systems do not aggregate or

centralize, and are predicated on very different kinds of economics than are the mega-scale intensely profit-driven industrial agricultural systems.

As the ordinance took shape, the ordinance committee engaged in ‘community consultation’ with groups like the Grange, the County Democrats and County Republicans, and the Chamber of Commerce. Interestingly enough, the ordinance was met with support from each of these quarters, suggesting that the concept for the ordinance resonated among people across the political spectrum<sup>iv</sup>.

By March 2011, the ordinances had been placed on the warrants, or agendas, for the annual town meeting in five towns, including the 4 towns in which the authors resided – in total, these were Sedgwick, Penobscot, Blue Hill, Trenton, and Brooksville. The ordinance passed in all but Brooksville. Sedgwick held its town meeting first and hence became the poster child for what quickly became known as a “food sovereignty ordinance” in the alternative food system blogosphere.

The catalytic controversy around the nature of the new poultry rules, then, constrained farmers’ actions as small-scale poultry producers, but spurred action around a larger set of issues. As Foucault observes, there are many possible actions in response to biopower, where there is power (of any kind), there is resistance (Foucault 2008; Smart 2002). Cadman (2010) notes that rights inevitably become a tool of a liberal political apparatus. When studying resistance to power, then, it is important to trace how particular bundles of rights are identified and claimed, including “the right to question” governmental regimes of truth (Cadman 2010:541, citing Foucault 1997:32). The ordinance activists engaged in biopolitics by asserting the right to question governmental regimes of truth that require expensive facilities in which to slaughter poultry, and more broadly by asserting rights to purchase and consume foods of their choice.

The Ordinance is a fascinating document. The PREAMBLE and Purpose are worth excerpting at length (emphasis added):

We the People of [Blue Hill]... have the *right to produce, process, sell, purchase and consume local foods* thus promoting self-reliance, the preservation of family farms, and local food traditions.

We recognize that family farms, sustainable agricultural practices, and food processing by individuals, families and non-corporate entities offers *stability to our rural way of life* by enhancing the economic, environmental and social wealth of our community.



As such, our right to a local food system requires us to *assert our inherent right to self-government. We recognize the authority to protect that right as belonging to the Town of [Blue Hill]*.

We have faith in our *citizens' ability to educate themselves and make informed decisions. We hold that federal and state regulations impede local food production and constitute a usurpation of our citizens' right to foods of their choice...*(emphasis added).

Here is where biopolitics are given spatial expression through a scalar (bio)politics. The ordinance activists assert quite clearly the right to question governmental regimes of truth, expressing faith in town citizens' ability to make informed decisions about their food choices, independent of biopower exercised as state and federal regulations that constrain those choices. The ineffective poultry exemption and the broader regulatory regime supporting it constitute an exercise of biopower, in which state and federal agencies ground slaughter regulations in understandings of hygiene that they represent as unproblematic. The biopolitical resistance to these regulations "introduce doubt and controversy" about whether such stringent standards are necessary in small-scale operations, and as Rose might predict, "relocate science in the fields of experience, politics, and capitalism" (2006:142).

Significantly, the rights asserted here are located not only at interface of personal choice and government oversight, but at nexus of these and the organization of food systems. The assertion of "the right to produce, process, sell, purchase and consume local foods", invokes an understanding of these practices as part of a social and economic *system* of family farms and local food traditions – cultural economies grounded in mutually understood traditions.

The statement that such localized food systems offer stability to rural ways of life invokes a recognition that the small farming at the margins of economic development is heavily threatened by structural forces shaping larger scale agriculture. Because Maine's position at/in the periphery of the national economy, with a lingering dependence on primary sector activities and tourism, small farmers can link their argument to urgent concerns about the viability of Maine's rural economy, the larger positioning of Maine's economic future within a struggling national economy, and the specter of a pressing need for self-sufficiency and local food security.

The Local Food and Community Self-Governance Ordinances act somewhat differently than the earlier water or windpower ordinances. Whereas the earlier ordinances forbade certain *corporate* activities within town boundaries, the Local Food ordinance seeks to delimit *governmental* action and oversight within town boundaries. Under strong Home Rule, local ordinances have the power of law, yet in a strictly technical sense, lawyers and lawmakers

might argue that such a move amounts to secession, or at minimum a significant test of the doctrine of preemption. While ordinance supporters understood them to be a test of preemption that would prove to be legal and in line with the state constitution, the state Agriculture Commissioner (and many others in state government) saw the matter differently. The most obvious recourse for the state was to test the ordinance in court, and the most direct way to see that done was to find someone to sue. As discussed in the next section, the state's lawsuit against a Blue Hill farmer served to deepen and amplify the political significance of the ordinance and the issues that brought it into being.

### Scaling Food Sovereignty

While the alternative food blogosphere viewed the local ordinances through the lens of food sovereignty from the start, it is not entirely clear when and to what degree the concept of food sovereignty began to inform the ordinance activists' own thinking about their agenda. Different members of the group embrace the food sovereignty frame to differing degrees, and this seems to fluctuate over time as well. But two related events recognizably amplified the discourse of food sovereignty through which the ordinance strategy was understood locally and more broadly across alternative food networks. One formed part of the backdrop for the ordinance strategy: In February 2010, a small group of raw milk producers and consumers in several other states represented by the Farm to Consumer Legal Defense Fund sued the US Food and Drug Administration in for restricting their access to raw milk through its ban on interstate commerce in raw milk. The second, hitting closer to home and playing out in part as a test of the local food ordinance and the issue of preemption, was a lawsuit brought by the Maine DoA in November 2011 against a Blue Hill farmer for selling raw milk without a license.

#### *"There is no right to consume foods of one's choice"*

Raw milk controversy had been simmering for in several states where FDA agents had appeared to target raw milk producers and buying clubs for raids. The Weston A. Price Foundation and its legal arm, the Farm to Consumer Legal Defense Fund has raised the profile of raw milk controversy across a wide political spectrum of organizations and individuals invested in traditional foodways (Weston Price Foundation 2011, Fallon 2001, see also Gumpert 2009).

In February 2010, the Farm to Consumer Legal Defense Fund filed a widely-publicized lawsuit against the FDA (Cox 2010: FTCLDF v. Sebelius, United States District Court for the Northern District of Iowa Western Division. Case No. 5:10-cv-4018), contesting the federal ban on interstate commerce in raw milk. The FDA spent the next two years filing a series of documents trying to get the judge to dismiss the case. In one of these, filed in April 2010 in response to the plaintiff's argument that the interstate ban violated their rights to consumer food of their own choosing, FDA lawyers countered that "there is no absolute right to consume or feed children any particular food" (Rose 2010:25). This phrase was repeated widely as a rallying cry for food

rights, as alternative food activists across the blogosphere seized on this assertion as evidence of the FDA's intent to seize ever more control of the food system with the passage of the Food Safety and Modernization Act of 2010<sup>v</sup>. While much of the ire came from participants in the food rights movement, the tenor of the response helped blur the distinctions between food rights and food sovereignty as animating discourses.

Within a year, 5 towns in Maine has passed a Local Food and Community Self-Governance Ordinance that counters the FDA's view, claiming a right to foods of one choice that can be protected through local autonomy. The rights-based ordinance grounds such a right in particular places, nesting it in a set of scalar relationship while challenging the doctrine of preemption.

In a conceptual vein, the biopolitical stakes of controversies involving state and federal regulators came more clearly into focus as the briefs were filed back and forth in this lawsuit; as I note in an earlier paper with Amy Trauger and Catarina Passidomo (Kurtz et al 2013:136) in an analysis of the raw milk raid and this ensuing lawsuit, in the debate over the nature and extent of rights to given foods, "biopolitics [were] mobilized around discourses of health and disease to challenge and reconfigure notions of citizenship and power".

### *We are all Farmer Brown*

The local food ordinances passed in six towns in the spring of 2011 were intended to insulate town residents engaged in direct sale of farm goods from the inspection and licensure requirements designed for aggregated and longer distance agricultural trade. Among those town residents emboldened by the ordinance was Dan Brown of Blue Hill, a small-scale diversified farmer with one milking cow. Before the rule change in 2009, Mr. Brown was selling his products, including raw milk and milk products, at two farmers markets. At some point that year, he was told by an agricultural inspector that he could not do so unless he was licensed, but that he could sell directly from his farm without a license. Mr. Brown then built a farm stand on his property at considerable expense, where the same inspector visited him and informed him that under the new interpretation of raw milk rules, he was could not sell raw milk at all without a license. Mr. Brown disagreed with the inspector's interpretation of the rules and with the passage of the Local Food Ordinance in Blue Hill, understood his actions to be protected. The Department of Agriculture filed a lawsuit against him in November (Condra 2011, Miller 2011) in what many interpreted as a test case of the Local Food Ordinance.

Food for Maine's Future and other organizations publicized the lawsuit against Mr. Brown across alternative food networks and the blogosphere, and launched a campaign called We Are All Farmer Brown, in which people were asked to write to the Agricultural Commissioner and the Governor urging the Department of Agriculture to drop its lawsuit against Dan Brown. Against a backdrop that included the FDA's rejection of a right to consume the foods of one's

choice, it was not hard to portray the Department of Agriculture's actions as symptomatic of the state's vested interest in intervening in and regulating basic practices of life (food choices) and farm-based livelihood (selling raw milk and traditionally slaughtered poultry, etc.). Given how integral localized and community-based farm and food practices can be to personal and collective identity, such an apparent overreach by the FDA and by association the Maine Dept of Ag, seemed particularly sinister.

While Farmer Brown's case made its way through the discovery phase, depositions, and various motions from both sides, Food for Maine's Future and Local Food RULES reached out across activist networks to speak out for the validity of the ordinances and their relevance to Farmer Brown's defense. The cause of Farmer Brown proved to be a useful mechanism for building up public awareness and dialogue about the ordinances, and encouraging other towns to pass the ordinance.

While the food sovereignty frame had been applied to the ordinance work intermittently for some time, the visibility of the two lawsuits involving rights to sell and purchase raw milk amplified the use of this frame. The discourse of food sovereignty deepened the resonance of the stakes in the ordinance work as fundamentally biopolitical - a struggle against the state's diffuse power over life itself through control of the food system (cf Nally 2011, Brooks2005). Concurrently, Food for Maine's Future was deepening its own engagement with food sovereignty through executive membership in the National Family Farm Coalition, itself a member of Via Campesina. FMF had hosted several Via Campesina speakers and events since 2006, and used a biannual newspaper, a sizeable email list and several events each year to link the interests and forge connections between small-scale farmers in Maine and allies from around the world. As already noted, Food for Maine's Future played a key role in spreading word about local ordinances and then in defense of Farmer Brown.

The social link between an organization invested in the concept of food sovereignty, and a group of farmer activists waging a battle for local control of their foodways played a significant role in the emerging understanding of the ordinance strategy as a battle for food sovereignty. The galvanizing lawsuits touched a collective nerve regarding limited access to raw milk and helped define the biopolitical stakes of the ordinance effort.

In April 2013, the Hancock County Superior Court granted summary judgment in favor of the state and issues an injunction against Farmer Brown that prevents him from selling raw milk without a license. While the case was widely seen as a test of the local ordinance, the Court did not engage directly with its constitutionality, preferring to interpret raw milk as a type of food that was likely not included in the scope of the ordinance. That is, the Court left the ordinance alone, on the view that ordinances could address trade in foods other than raw milk. An

insightful analysis of the case, and of alternative decisions the Court might have made, was recently published in the *Maine Law Review* (Almy 2013); it is worth excerpting at length.

After acknowledging the reasoning the court used, Almy proffers an alternative judgment that could also be supported by the facts. Honing in on the issue of preemption that shapes the politics of scale in play in the ordinance debate, he argues that preemption analysis shouldn't stop at the question of whether the food sovereignty ordinances "circumvent regulations designed to conform all intrastate food production and supply to state sanitation and safety standards" (p. 800). Rather, the analysis should take into account the state intent of agricultural regulations under Title 7 of the Maine Revised Statutes (7 M.R.S.A. ss 1-A (2002 & Supp. 2012)), which indicates that

Agriculture...[contributes] substantially to the state's overall economy, [is] essential to the maintenance and strengthening of rural life and values and necessary to the preservation of the health, safety and welfare of all of the people of this State.

The survival of the family farm is of special concern to the people of the State, and the ability of the family farm to prosper, while producing an abundance of high quality food and fiber, deserves a place of high priority in the determination of public policy (quoted in Almy (2013:800-801)).

Almy argues that the Hancock County Superior Court could have reasonably ruled in defense of the ordinances, finding that they do not frustrate the purpose of state agricultural regulations, because those regulations are intended not only to enforce sanitation standards designed for industrial scale agriculture, but also to preserve the family farm, strengthen rural ways of life and ensure the provision of high quality food. In this view, the ordinance "represents a locality's attempt to reassert the established policy goals of agricultural regulation by exempting the family farm and direct farm-to-consumer sales from the industrial food model" (p. 801).

The Court, of course, did none of these things, leaving the preemption question to the side for the time being. But what is interesting in Almy's analysis is the conceptual/legal space he makes for a ruling that could upend understandings of preemption by finding a local rights-based ordinance to be reinforcing rather than circumventing state law. While the *Brown* case was decided without engaging these questions, a future challenge to the ordinance could engage these questions more directly.

More broadly, the cause of *Farmer Brown* proved to be a useful mechanism for building up public awareness and dialogue about the ordinances, and encouraging other towns to pass the ordinance. As of now, ten towns have passed the ordinances, eight towns in Vermont have

passed food sovereignty resolutions modeled on the ordinances (Vermont is a Dillon's Rule state), and counties and/or municipalities in California, Arizona, Massachusetts and Utah have passed similar measures (Kennedy 2013). The diffusion of idea that food sovereignty can be expressed as local control over food systems is changing the terms of debate over food sovereignty and local food systems.

### Taking it up a notch

During the winter of 2012-3, members of Local Food Rules learned from their state legislator(s) that several bills would be introduced into the legislature in the coming months that addressed various concerns on the part of small farmers. These included bills concerning small scale poultry processing, sales of raw milk, direct sales of farm stuffs, labeling of food made with genetically modified ingredients, and an umbrella 'concept' bill LD 475 An Act to Promote Food Sovereignty in Maine Communities. It seemed clear that keeping the ordinances and Farmer Brown's case in the public eye was bringing attention to these concerns in the legislature. The Local Food Rules group mobilized supporters and offered testimony on an array of bills, but worked most intensively with the sponsor of the food sovereignty bill, Representative Craig Hickman (D-Winthrop) to garner support for the community governance concept expressed in the local ordinances. Secondly, they worked in support of a bill to (re)allow face-to-face sales of raw milk without a license. Their work included networking among farmers and other allies in Maine and elsewhere to explain the significance of the bill and generate letters to legislators and members of the decisive committee, organizing carpools to Augusta on key dates, and reporting on stages in the decision-making process to their networks and communities.

At the end of a frenzied legislative session, several more legislators had emerged as champions of localized food sovereignty in Maine, even while other legislators predictably dug in their heels in opposition. By the time the session ended, the food sovereignty bill had been killed, and the raw milk bill was passed in the legislature and then surprisingly vetoed by a governor who expressed support for efforts to promote and protect small-scale farming since being elected. With these ambiguous results, the ordinance activists return to the drawing board, thinking back through the most effective strategy and politics of scale to use going forward.

### Conclusions: Food sovereignty, biopolitics, and scale

This analysis suggests that the discourse of food sovereignty deepened the resonance of the stakes in the ordinance work as biopolitical - a struggle against the state's diffuse power over life itself through control of the food system (cf Nally 2011, Brooks 2010). Food sovereignty registers opposition to the industrial/corporate management of vast and vastly simplified agricultural monocultures that systematically marginalize small and diversified farms. Scott (1998:262) characterizes the very conditions problematized by food sovereigntists when he

notes that “[t]he simple ‘production and profit’ model of agricultural extension and agricultural research has failed in important ways to represent the complex, supple, negotiated objectives of real farmers and their communities”. The food sovereignty movement targets both states and corporations, and the problematic relationship between them in which “folds into biopolitical strategies for managing life” (Nally 2010:44).

Faced with grave concerns about a regulatory system that presupposes and privileges industrial scale agriculture, the Blue Hill area ordinance activists crafted a political response grounded in the town meeting tradition and the power of local ordinances under Maine’s strong Home Rule. Their work was premised on the recognition that “the failure of the industrial food model to differentiate between the family farm and the factory farm necessitates the former’s opting out of that model” (Almy 2013:802). In doing so, they set in motion a formal politics of scale that drew on participatory democracy and a particular hierarchy of governmental powers to give spatial expression to a vast and abstracted set of social, political and economic relationships that we are wrestling with here in our engagement with food sovereignty.

## Notes

<sup>i</sup> These towns were Sedgwick, Brooksville, Penobscot, Blue Hill and Trenton.

<sup>ii</sup> Home Rule is stronger or weaker according to several factors, one of which is whether or not a vestige of Dillon's Rule remains in play in the allocation of powers to municipalities. Preston.

<sup>iii</sup> Almy (2013:793, note 34) indicates that 21 C.F.R. ss131.110(a) (2012) defines 'milk' as "lacteal secretion...obtained by the complete milking of one or more healthy cows" that "shall have been pasteurized or ultra-pasteurized".

<sup>iv</sup> In some circles, the terms food rights and food sovereignty are used interchangeably, which contributes to the resonance of food sovereignty across an unusually large political spectrum. The food rights movement in the United States is largely a libertarian movement, and while it overlaps in some ways with broader understandings of food sovereignty, I would argue that these are distinct movements drawing on quite different political philosophies.

<sup>v</sup> The Food Safety Modernization Act of 2010 was signed into law by President Obama on January 4, 2011.

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# FOOD SOVEREIGNTY: A CRITICAL DIALOGUE INTERNATIONAL CONFERENCE PAPER SERIES

## Food Sovereignty: A Critical Dialogue

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A fundamentally contested concept, food sovereignty has — as a political project and campaign, an alternative, a social movement, and an analytical framework — barged into global agrarian discourse over the last two decades. Since then, it has inspired and mobilized diverse publics: workers, scholars and public intellectuals, farmers and peasant movements, NGOs and human rights activists in the North and global South. The term has become a challenging subject for social science research, and has been interpreted and reinterpreted in a variety of ways by various groups and individuals. Indeed, it is a concept that is broadly defined as the right of peoples to democratically control or determine the shape of their food system, and to produce sufficient and healthy food in culturally appropriate and ecologically sustainable ways in and near their territory. As such it spans issues such as food politics, agroecology, land reform, biofuels, genetically modified organisms (GMOs), urban gardening, the patenting of life forms, labor migration, the feeding of volatile cities, ecological sustainability, and subsistence rights.

Sponsored by the [Program in Agrarian Studies at Yale University](#) and the [Journal of Peasant Studies](#), and co-organized by [Food First](#), [Initiatives in Critical Agrarian Studies \(ICAS\)](#) and the [International Institute of Social Studies \(ISS\)](#) in The Hague, as well as the Amsterdam-based [Transnational Institute \(TNI\)](#), the conference “Food Sovereignty: A Critical Dialogue” will be held at Yale University on September 14–15, 2013. The event will bring together leading scholars and political activists who are advocates of and sympathetic to the idea of food sovereignty, as well as those who are skeptical to the concept of food sovereignty to foster a critical and productive dialogue on the issue. The purpose of the meeting is to examine what food sovereignty might mean, how it might be variously construed, and what policies (e.g. of land use, commodity policy, and food subsidies) it implies. Moreover, such a dialogue aims at exploring whether the subject of food sovereignty has an “intellectual future” in critical agrarian studies and, if so, on what terms.

## ABOUT THE AUTHORS

[Hilda Kurtz](#) is an Associate Professor in the Department of Geography at the University of Georgia in Athens, Georgia (US). Her current research focuses on the biopolitical stakes in controversy over access to controversial foodstuffs such as raw milk and un-licensed and –inspected locally produced food. She has published primarily in geography journals such as *Geoforum*, *Antipode*, *Urban Geography*, *Space and Polity*, *Gender, Place and Culture* and the *Geographical Review*. She is currently working on a book about the local food and community self-governance ordinance strategy profiled in this paper.

[Heather Retburg](#) and [Bonnie Preston](#) are founding members of Local Food Rules, the organization formed to foster broadening support for the local food and community self-governance ordinances.