

NOTE

#LANDBACK TO INDIGENOUS PEOPLES FROM “LAND-GRAB” UNIVERSITIES

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| INTRODUCTION..... | 190 |
| I. OVERVIEW OF THE MORRILL ACT AND ITS HISTORICAL CONTEXT | 191 |
| A. How the Morrill Act is Linked to Indigenous Land Dispossession..... | 192 |
| B. The Historical Context Underpinning the Morrill Act | 199 |
| II. THE MODERN DAY #LANDBACK MOVEMENT AND PREDECESSORS | 201 |
| A. Overview of the #LandBack Movement..... | 201 |
| B. #LandBack Actions at the Federal Level..... | 202 |
| 1. <i>Indian Claims Commission Act</i> <i>of 1946</i> | 202 |
| 2. <i>Nonintercourse Act Land Claims</i> <i>Litigation</i> | 204 |
| 3. <i>Legislation Returning Land to Tribes</i> | 205 |
| 4. <i>Federal Buyback Program through the</i> <i>Cobell v. Salazar Settlement Agreement</i> | 206 |
| C. State and Local #LandBack Efforts..... | 207 |
| III. A SURVEY OF LGU RESPONSES | 208 |
| A. Land Acknowledgment Statements | 208 |
| B. Truth and Reconciliation Projects | 210 |
| C. Partnerships and Financial Assistance | 211 |

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|--|-----|
| IV. WHY #LANDBACK IS NECESSARY TO REMEDY THE MORRILL ACT..... | 212 |
| A. LGUs Were Unjustly Enriched by the Provision of Morrill Act Parcels Ceded from Indigenous Peoples | 213 |
| B. Remedies for Morrill Act Parcels Taken by Ratified Treaty or Agreement Versus by Unratified Treaties and Other Seizures..... | 215 |
| C. The Responsibility of LGUs Versus the U.S. Government to Recompense Indigenous Peoples..... | 218 |
| V. APPLYING #LANDBACK TO LGUs AS PART OF LARGER REMEDIAL ACTION..... | 219 |
| A. #LandBack Actions That LGUs Can Take..... | 219 |
| 1. <i>Co-Management of Lands</i> | 219 |
| 2. <i>Returning Mineral and Subsurface Rights</i> | 221 |
| 3. <i>Return of Tribal Land</i> | 222 |
| B. Recommended Framework for Actions at the LGU Level That Combines #LandBack and Other Remedies | 223 |
| C. Legislative Remedies..... | 225 |
| 1. <i>Amending the Morrill Act</i> | 225 |
| 2. <i>Creating a Cause of Action for Land Cessions Connected to the Morrill Act</i> | 226 |
| CONCLUSION..... | 229 |
| APPENDIX: METHODOLOGY FOR DATA ANALYSIS | 230 |

INTRODUCTION

The Morrill Land Grant Act of 1862 (Morrill Act) was the first federal legislation to fund public higher education in the United States, funding fifty-two land-grant universities (LGUs) that still exist today. While the purpose of the Act was to “democratiz[e] . . . education” focusing on the study of agriculture and mechanical arts,¹ it created LGUs by taking

¹ Margaret A. Nash, *Entangled Pasts: Land-Grant Colleges and American Indian Dispossession*, 59 HIST. EDUC. Q. 437, 441 (2019) (quoting ROGER L. WILLIAMS, *THE ORIGINS OF FEDERAL SUPPORT FOR HIGHER EDUCATION: GEORGE W. ATHERTON AND THE LAND-GRANT COLLEGE MOVEMENT 1* (1991)).

Indigenous land. In 2020, *High Country News* issued an investigative report, “Land-Grab Universities,” documenting how LGUs were established both on occupied Indigenous land and through the sale of Indigenous land taken by treaty, land cession, or seizure, which provided seed money for the universities.² While some LGUs have increased support for Indigenous students through tuition assistance or increased funding for Indigenous studies, none have implemented land return to Indigenous peoples.

This Note analyzes potential remedies to redress the taking of Indigenous lands by the Morrill Act in the context of the #LandBack movement. Part I discusses the Morrill Act provisions and impact as well as the historical context. Part II discusses the modern-day #LandBack movement and past #LandBack actions at the federal and state levels. Part III provides a survey of current responses from LGUs to their Morrill Act legacy. Part IV explains why #LandBack is needed to make amends to Indigenous peoples for the taking of their lands via the Morrill Act. Part V identifies #LandBack remedies that LGUs can take to recompense Indigenous peoples and provides an implementation framework. It also proposes legislative reform, including creating a cause of action for land claims, to compensate Indigenous peoples for the taking of their lands via the Morrill Act.

I

OVERVIEW OF THE MORRILL ACT AND ITS HISTORICAL CONTEXT

The Morrill Land Grant Act of 1862 (Morrill Act)³ was sponsored by Vermont Congressman Justin Morrill to donate public lands to each state to provide colleges for the benefit of agriculture and the mechanic arts.⁴ Most LGUs are

² Robert Lee & Tristan Ahtone, *Land-Grab Universities*, HIGH COUNTRY NEWS (Mar. 30, 2020), <https://www.hcn.org/issues/52-4/Indigenous-affairs-education-land-grab-universities/> [<https://perma.cc/8YJW-3S88>]; Robert Lee et al., *Land-Grab Universities: A High Country News Investigation*, HIGH COUNTRY NEWS, <https://www.landgrabu.org/> [<https://perma.cc/UR99-XG32>].

³ First Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (codified as amended at 7 U.S.C. §§ 301-309).

⁴ *Id.* In addition to the First Morrill Act, the Second Morrill Land Grant Act of 1890 was aimed at addressing lack of higher educational opportunities for Black Americans, who were often excluded from the first LGUs due to discriminatory admissions policies. See Margaret Lawrence, *Celebrating the Second Morrill Act of 1890*, NAT'L INST. FOOD & AGRIC. (Aug. 30, 2022), <https://www.nifa.usda.gov/>

publicly-funded institutions, but some are private.⁵ LGUs did not pay anything for the receipt of public lands granted by the Act.⁶ Instead, the U.S. government granted each state a specific acreage of federally-owned lands based on the size of its Congressional delegation.⁷ The Morrill Act granted each state 30,000 acres of public land per Senator and Congressional representative, issued via “land scrip” certificates.⁸ Each state could use the proceeds of the sale of donated public land to either establish an LGU or benefit an existing university within the state.⁹ Most states east of the Mississippi River did not have public lands left, so they were granted land scrip parcels from Western states, which they could sell to fund their LGU endowments.¹⁰ States and territories west of the Mississippi River were granted public lands within their boundaries.¹¹ The Act directed each State to hold money derived from the sale of its land-grant acres in a “perpetual fund” for the maintenance of its designated LGUs.¹²

A. How The Morrill Act is Linked to Indigenous Land Dispossession

Although the Morrill Act granted U.S. government-owned public lands to each State to fund LGUs, in practice these public lands were acquired from Indigenous peoples. To illustrate the connection between the Morrill Act and Indigenous

about-nifa/blogs/celebrating-second-morrill-act-1890 [https://perma.cc/WLV9-ZS8W]. The Second Morrill Act LGUs were funded through a portion of the sales of public lands previously allocated by the First Morrill Act. Second Morrill Act, No. 51-841, 26 Stat. 417 (codified as amended at 7 U.S.C. §§ 321-326, 328). The Equity in Educational Land-Grant Status Act of 1994 also gave land-grant status to Tribal colleges and provided capacity grant funding. ELENI G. BICKELL, CONG. RSCH. SERV., IF12009, 1994 LAND-GRANT UNIVERSITIES: BACKGROUND AND SELECTED ISSUES 2 (2022). This Note does not discuss 1890 and 1994 LGUs.

⁵ Cornell University and Massachusetts Institute of Technology are the two 1862 land-grant universities that are private institutions. See NAT'L EDUC. ASS'N, LAND GRANT INSTITUTIONS: AN OVERVIEW 4 n.1 (2022).

⁶ Morrill Act § 1, 7 U.S.C. § 301.

⁷ *Id.*

⁸ *Morrill Act (1862)*, NAT'L ARCHIVES (May 10, 2022) <https://www.archives.gov/milestone-documents/morrill-act> [https://perma.cc/MX9R-CHD5]. Grants ranged from 90,000 to 990,000 acres, dependent on delegation size. See also Lee et al., *supra* note 2.

⁹ Nash, *supra* note 1, at 449.

¹⁰ *Id.* at 451.

¹¹ Lee et al., *supra* note 2.

¹² Morrill Act § 4, 7 U.S.C. § 304.

land dispossession, *High Country News* located and documented 99% of the Morrill Act land-grant parcels and how each parcel was acquired by the U.S. government from Indigenous nations.¹³ The Morrill Act parcels were taken from over 160 land cessions between the U.S. government and 245 Indigenous nations.¹⁴ These cessions occurred from 1801 to 1889, both prior to and after the passage of the Morrill Act.¹⁵ The land cessions were acquired via the following means: 1) treaty or agreement, 2) unratified treaties, 3) acts of Congress other than the Morrill Act, 4) executive orders, 5) purchase, 6) unceded reservation lands, and 7) seizures by force without any underlying agreement, treaty, act of Congress, or executive order.¹⁶

The amounts in the tables in this Note are calculated based on data analysis of the Morrill Act parcels database mapped onto the cessions database that *High Country News* has made publicly available as datasets.¹⁷ In its dataset of 162 land cessions, *High Country News* identified six cessions of land of which the dates and precise acreage amount are unknown.¹⁸ I have excluded those six cessions from the analysis in this Note for greater consistency and accuracy in the data displayed, however, this results in an underestimation of the land taken under the Morrill Act and an underestimation of the monetary value of that land in Tables 1-4. Please see the Appendix: Methodology for Data Analysis at the end of this Note for an explanation of my methodology.

Table 1 documents the breakdown of types of cessions that contributed to Morrill Act parcels given to LGUs. **Table 2** documents the Indigenous land cessions occurring prior to the Morrill Act, the land parcels taken from those cessions, and

¹³ Robert Lee, *High Country News, Morrill Act of 1862 Indigenous Land Parcels Database*, GITHUB (Mar. 2020) [hereinafter High Country News Database], <https://github.com/HCN-Digital-Projects/landgrabu-data> [<https://perma.cc/7FNT-AH8S>].

¹⁴ Lee et al., *supra* note 2.

¹⁵ High Country News Database, *supra* note 13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* The affected tribes under the six land cessions excluded from the analysis in this Note include the Atakapa-Ishak, Serrano, Choctaw, Chippewa, Sioux, Mandan, Hidatsa, and Arikara.

the amount the U.S. government paid for the parcels. **Table 3** documents the Indigenous land cessions after the Morrill Act, the land parcels taken from those cessions, and the amount the U.S. government paid for the parcels.

Table 1: Cessions Between the U.S. Government and Indigenous Nations that Contributed to the Morrill Act (1801–1889)

| Type of Acquisition | Count | Percentage |
|---|--------------|-------------------|
| Ceded by Treaty or Agreement | 83 | 53% |
| Seized Without Treaty, Agreement, Act of Congress, or Executive Order | 10 | 6% |
| Seized by Unratified Treaty | 37 | 24% |
| Purchased | 1 | 1% |
| Seized by Executive Order | 16 | 10% |
| Seized by Act of Congress | 7 | 4% |
| Unceded (on present-day reservation) | 2 | 1% |
| Total | 156 | 100% |

Table 1 documents the 156 of the 162 Morrill Act land cessions from Indigenous peoples that were used to benefit LGUs by type of acquisition sourced from the High Country News Database. Six of the cessions were excluded because the total acreage is unknown for those cessions.

Table 2: Pre-Morrill Act Indigenous Land Cessions that Were Used to Benefit LGUs (1801–1861)¹⁹

| Type of Acquisition | Count | Percentage | Total Acreage | Land Grant Acres from Total Acreage | Amount U.S. Paid for Land Grant Acres |
|---|--------------|-------------------|----------------------|--|--|
| Ceded by Treaty or Agreement | 60 | 59% | 580,963,283 | 7,364,021 | \$365,415 |
| Seized Without Treaty, Agreement, Act of Congress, or Executive Order | 4 | 4% | 1,146,688 | 4,028 | \$0 |
| Seized by Unratified Treaty | 35 | 35% | 105,687,140 | 1,883,718 | \$0 |
| Purchased | 1 | 1% | 960,000 | 480 | \$75 |
| Seized by Executive Order | 1 | 1% | 11,843,504 | 34,670 | \$1,196 |
| Total | 101 | 100% | 700,600,615 | 9,286,917 | \$366,686 |

Table 2 documents the 101 Pre-Morrill Act land cessions from Indigenous peoples which were used to benefit LGUs by type of acquisition sourced from the High Country News Database.

¹⁹ The data in this table was sourced from the High Country News Database, *supra* note 13.

Table 3: Post-Morrill Act Indigenous Land Cessions that Were Used to Benefit LGUs (1863–1889)²⁰

| Type of Acquisition | Count | Percentage | Total Acreage | Land Grant Acres from Total Acreage | Amount U.S. Paid for Land Grant Acres |
|---|-----------|-------------|--------------------|-------------------------------------|---------------------------------------|
| Ceded by Treaty or Agreement | 23 | 42% | 427,529,901 | 591,521 | \$30,008 |
| Seized Without Treaty, Agreement, Act of Congress, or Executive Order | 6 | 11% | 96,735,620 | 199,505 | \$0 |
| Seized by Unratified Treaty | 2 | 4% | 186,836 | 5,212 | \$0 |
| Seized by Executive Order | 15 | 27% | 85,190,769 | 206,212 | \$0 |
| Seized by Act of Congress | 7 | 13% | 127,986,832 | 247,995 | \$553 |
| Unceded (on present-day reservation) | 2 | 4% | 3,391,470 | 239 | \$0 |
| Total | 55 | 100% | 741,021,428 | 1,250,684 | \$30,561 |

Table 3 documents the fifty-five Post-Morrill Act land cessions from Indigenous peoples which were used to benefit LGUs by type of acquisition, sourced from the High Country News Database.

²⁰ The data in this table was sourced from the High Country News Database, *supra* note 13.

High Country News reports that 10.7 million acres of land were ceded from Indigenous peoples to benefit LGUs.²¹ The total compensation to Indigenous peoples for the 10.7 million acres granted by the Morrill Act was approximately \$397,247, at an average compensation of \$0.03 per acre, with many tribes going uncompensated.²² **Table 4** documents the estimated endowments raised by LGUs from the Morrill Act parcels, as compared to the price that the U.S. government paid for the parcels. As noted in **Table 4**, LGUs raised endowments of almost \$22 million in 1914 dollars (\$709.9 million in 2025 USD).²³ The estimated value of the lands ceded from Indigenous nations to create land grants via the Morrill Act in 2025 USD is \$67.9 billion.²⁴ Thus, LGUs gained significant wealth from Indigenous land.

²¹ Lee et al., *supra* note 2. Note that the Tables in this Note show that about 10.5 million acres total were taken to benefit land-grant universities; however, this is due to the earlier limitation of some parcels being excluded from the data because they were not mappable to the six cessions of indeterminate acreage. See *infra*, Appendix: Methodology for Data Analysis.

²² The average compensation of \$0.03 per acre taken was calculated by taking the total land-grant acres under the Morrill Act (10,537,601) and dividing it by the amount the United States paid for all land-grant acres (\$397,247), sourced from the High Country News Database *supra* note 13. As noted in the Methodology and *supra* note 21, the calculations in this Note include slightly fewer cessions and acres than High Country News reports, due to six cessions of indeterminate acreage which are excluded from this Note for greater data consistency.

²³ This value is in Table 4 and calculated by multiplying the 1914 endowment amount by \$32.40, the multiplier for the difference of a dollar in January 1914 versus a dollar in August 2025 as calculated by the Bureau of Labor Statistics. See *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/92R8-UAYC>]. August 2025 was chosen to correspond with the U.S. Department of Agriculture's average farmland value per acre as reported in August 2025 in note 24.

²⁴ This value was calculated by taking the total land-grant acres and multiplying by the average value of an acre of farmland as reported by the U.S. Department of Agriculture as of 2025. See *2025 Farm Real Estate Value by State*, NAT'L AGRIC. STAT. SERV. (Aug. 1, 2025), https://www.nass.usda.gov/Charts_and_Maps/graphics/farm_value_map.pdf [<https://perma.cc/REU4-QM6Y>]. Where the land-grant parcel was over multiple states, I averaged each state's average value of an acre of farmland and used it as a multiplier. See *id.*

Table 4: Estimated Endowments Raised from All Morrill Act Parcels Ca. 1914 and Estimated Value of Endowment Raised and Land in 2025 U.S. Dollars (USD)

| Type of Acquisition | Land Grant Acres | Amount U.S. Paid for Land Grant Acres | Amount University Raised in 1914 | University Raised in 1914 Converted to 2025 USD | Estimated Value of Land in 2025 USD Based on the Average Cost of an Acre of Farmland in the Specified States |
|---|-------------------|---------------------------------------|----------------------------------|---|--|
| Ceded by Treaty or Agreement | 7,955,542 | \$395,423 | \$15,742,958 | \$510,071,841 | \$41,604,510,143 |
| Seized Without Treaty, Agreement, Act of Congress, or Executive Order | 203,533 | \$0 | \$634,196 | \$20,547,966 | \$1,027,445,506 |
| Seized by Unratified Treaty | 1,888,931 | \$0 | \$3,609,046 | \$116,933,094 | \$24,115,882,113 |
| Purchased | 480 | \$ 75 | \$ 261 | \$8,457 | \$3,259,200 |
| Seized by Executive Order | 240,881 | \$1,196 | \$1,170,319 | \$37,918,326 | \$868,785,101 |
| Seized by Act of Congress | 247,995 | \$553 | \$753,841 | \$24,424,453 | \$370,007,447 |
| Unceded (on present-day reservation) | 239 | \$0 | \$1,131 | \$36,630 | \$485,980 |
| Total | 10,537,601 | \$397,247 | \$21,911,752 | \$709,940,765 | \$67,990,375,490 |

Table 4 analyzes data from the High Country News Database on Morrill Act land parcels using the Bureau of Labor Statistic CPI Inflation Calculator to convert January 1914 USD to August 2025 USD to estimate the value of the 1914 endowment in 2025 dollars. Additionally, the estimated value of land in 2025 is based on USDA average farmland acre prices, from August 2025 in the states where each land grant acre was located. See the Appendix: Methodology for Data Analysis for a further explanation.

B. The Historical Context Underpinning the Morrill Act

To understand the role of the Morrill Act in Indigenous dispossession, it should be examined in the context of contemporary historical events. At the time that the Morrill Act was passed, the United States was in the middle of the Civil War (1861-1865).²⁵ The Morrill Act was also passed during the Removal and Reservation and Treaty Period of relations between the U.S. government and the Indigenous peoples (1828-1887).²⁶ During this period, the U.S. government sought to obtain Indigenous lands and expand westward through removal treaties, which exchanged Indigenous tribes' lands for permanent reservation lands further west.²⁷

The Marshall Trilogy of cases set the groundwork for the removal of Indian tribes by treaty and the power of the federal government to extinguish Indian title to their land.²⁸ In *Johnson v. M'Intosh*, the Supreme Court held that Europeans had a superior claim to Indian lands as the "discoverer" whereas Indigenous peoples had only the right of "occupancy" to the same land.²⁹ *M'Intosh* also held that given the victory of the United States in the American Revolution over Great Britain, the United States had the exclusive right to unilaterally extinguish Indian title to their lands.³⁰ Subsequently, the United States entered into many treaties with Indigenous tribes to gain concessions of land, many of which were obtained through force, duress, and military might, and unequal bargaining power.³¹

Building off of *M'Intosh*, the Court in *Cherokee Nation v. Georgia* held that the Indian tribes were "domestic dependent nations," dependent on the United States as "a ward [is] to his guardian."³² In *Worcester v. Georgia*, the Court held that the

²⁵ *Civil War*, HISTORY.COM (Oct. 15, 2009), <https://www.history.com/topics/american-civil-war/american-civil-war-history> [<https://perma.cc/7T6P-YKKY>].

²⁶ NAT'L CONG. OF AM. INDIANS, TRIBAL NATIONS AND THE UNITED STATES 14 (2020), <https://cdn.sanity.io/files/raa5sn1v/production/3e782452a1ed9a2e03425ba035b353f54b2c2e46.pdf> [<https://perma.cc/S5AN-BQFH>].

²⁷ *Id.*

²⁸ See e.g., Eric Eisner, *The Law-of-Nations Origins of the Marshall Trilogy*, 133 YALE L.J. 998 (2024). The Marshall Trilogy includes *Johnson v. M'Intosh*, 21 U.S. 543 (1823), *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), and *Worcester v. Georgia*, 31 U.S. 515 (1832).

²⁹ *M'Intosh*, 21 U.S. at 573, 584–85.

³⁰ *Id.*; see also Audrey Glendenning, Martin Nie & Monte Mills, *(Some) Land Back . . . Sort of: The Transfer of Federal Public Lands to Indian Tribes Since 1970*, 63 NAT. RES. J. 200, 205 (2023).

³¹ Glendenning, Nie & Mills, *supra* note 30, at 206.

³² *Cherokee Nation*, 30 U.S. at 2.

State of Georgia could not impose its laws on Indigenous nations because relations with them were the sole purview of the federal government.³³ Despite the Court's holding in *Worcester*, President Andrew Jackson defied it as he was interested in removing the Cherokees from their lands.³⁴ Jackson purportedly stated, "John Marshall has made his decision; now let him enforce it."³⁵ The Indian Removal Act of 1830³⁶ provided legal cover for the forced removal of Indigenous peoples. In 1835, President Jackson coerced individual Cherokees to sign a treaty to relocate the entire Nation west of the Mississippi, circumventing Cherokee leadership in the process.³⁷ The Trail of Tears followed, in which the Choctaw, Chickasaw, Seminole, Creek, and Cherokee peoples were forcibly removed from their lands to a reservation in present-day Oklahoma.³⁸

Through removal treaties, the U.S. government created public lands from cessions of Indigenous land to make land grants to railroads, mining interests, states, and other wealthy citizens to support westward expansion.³⁹ The prior removal of Indigenous tribes via cession agreements significantly increased the federal government's ability to grant public lands via the Morrill Act.⁴⁰ In 1862, the same year that the Morrill Act was passed, Congress passed the Homestead Act, which granted large amounts of land to railroad companies.⁴¹ The Homestead Act, Morrill Act, and railroad grants worked together to support U.S. expansion westward under the philosophy of

³³ *Worcester*, 31 U.S. at 520.

³⁴ *Law & Politics and the Balance of Power Storyline: Worcester v. Georgia*, AM. LEADER, <http://theamericanleader.org/timeline-event/worcester-v-georgia/> [<https://perma.cc/Z2TS-LL73>].

³⁵ U.S. Assoc. Just. Steven Breyer, University of Pennsylvania Law School Commencement Remarks (May 19, 2003) (transcript available through the News Media, Speeches archive of the Supreme Court of the United States, https://www.supremecourt.gov/publicinfo/speeches/viewsspeech/sp_05-19-03 [<https://perma.cc/5GFD-X5QY>]).

³⁶ Indian Removal Act, Pub. L. 21-148, 4 Stat. 411 (1830).

³⁷ *Law & Politics and the Balance of Power Storyline: Worcester v. Georgia*, *supra* note 34.

³⁸ *Trail of Tears*, HISTORY.COM (Nov. 9, 2009), <https://www.history.com/topics/native-american-history/trail-of-tears> [<https://perma.cc/7HP9-4UZ5>]; *What Happened on the Trail of Tears?*, NAT'L PARK SERV., <https://www.nps.gov/trte/learn/historyculture/what-happened-on-the-trail-of-tears.htm> [<https://perma.cc/3Q76-5EBE>] (last updated Apr. 23, 2025).

³⁹ Glendenning, Nie & Mills, *supra* note 30, at 205-06; Nash, *supra* note 1, at 439-40.

⁴⁰ Nash, *supra* note 1, at 452.

⁴¹ *Id.* at 440.

the Doctrine of Discovery, Manifest Destiny, and the forced removal of Indigenous peoples.⁴²

II

THE MODERN DAY #LANDBACK MOVEMENT AND PREDECESSORS

As discussed in Part I, the Morrill Act benefited LGUs through unjust cessions of land from Indigenous peoples. The modern day #LandBack movement and its predecessors offer important insight into how to remedy the taking of Indigenous land under the Morrill Act. This Part provides an overview of the #LandBack movement and #LandBack efforts at the federal and state level.

A. Overview of the #LandBack Movement

The #LandBack movement officially started in 2018, and grew as a movement in the United States after President Trump's July 3, 2020 address at Mount Rushmore, located on the sacred Lakota Sioux Black Hills.⁴³ Indigenous people who were members of the NDN Collective protested Trump's speech and renewed their call for the Black Hills to be returned to Indigenous people.⁴⁴ The NDN Collective is an Indigenous-led organization, whose mission is to "Build the collective power of Indigenous Peoples, communities, and Nations to exercise our inherent right to self-determination, while fostering a world that is built on a foundation of justice and equity for all people and

⁴² *Id.* at 443–44, 450 (noting that the papal decree of the "Doctrine of Discovery," which declared that any land not inhabited by Christians was available to be discovered by Christians, and Manifest Destiny were philosophies underlying the U.S. removal treaties and Acts of Congress in 1862 supporting westward expansion).

⁴³ Albert Bender, *The LandBack Movement is Decolonizing Indigenous Land Across the Americas*, PEOPLE'S WORLD (Jan. 21, 2022), <https://www.peoplesworld.org/article/the-landback-movement-is-decolonizing-Indigenous-land-across-the-americas/> [<https://perma.cc/UTU8-F7JV>] (discussing how the #LandBack movement officially began in 2018 by Aaron Tailfeathers, a member of the Kainai Tribe of the Blackfeet Confederacy of Canada, and how it has quickly spread as a hashtag on social media and spread to other countries); Stephen Groves, *Native Americans Protesting Trump Trip to Mount Rushmore*, AP NEWS (June 26, 2020), <https://apnews.com/article/sd-state-wire-south-dakota-donald-trump-us-news-ap-top-news-50f6bdb9e2fd2349bb39b99c1250b093> [<https://perma.cc/G8CB-R26J>].

⁴⁴ NDN Collective *LANDBACK Campaign Launching on Indigenous Peoples' Day 2020*, NDN COLLECTIVE (Oct. 9, 2020), <https://ndncollective.org/ndn-collective-landback-campaign-launching-on-Indigenous-peoples-day-2020/> [<https://perma.cc/2GFU-5B46>]; see also Glendenning, Nie & Mills, *supra* note 30, at 202.

Mother Earth.”⁴⁵ On Indigenous Peoples’ Day in 2020, the NDN Collective launched their #LandBack Campaign to “restor[e] ecological health to Indigenous lands and . . . actual[ly] recover[] Indigenous land ownership . . . to empower Indigenous people across Turtle Island.”⁴⁶ The #LandBack movement focuses on returning land to Indigenous peoples to redress historical harms, to build Indigenous sovereignty, and to protect Indigenous culture and identity.⁴⁷

B. #LandBack Actions at the Federal Level

While the #LandBack movement is the most recent iteration of the movement to return land to Indigenous peoples, there have been other historical efforts aimed at returning land to Indigenous peoples. Over the past century, changes in federal policy have allowed Indigenous peoples to bring land claims for monetary compensation and return of land. Generally, land claims litigation has had only limited effectiveness in returning land to Indigenous nations. More successful federal actions have used either national legislation or settlements after litigation to give land back to Indigenous nations.

1. *Indian Claims Commission Act of 1946*

In 1946, the Indian Claims Commission Act was passed to decide land claim cases of Indian tribes who believed that the federal government had treated them unjustly through treaty violations, confiscation of land, and other grievances.⁴⁸ While the compensation for these claims was monetary, it was one of the first comprehensive Acts of Congress that provided a cause of action to specifically redress the taking of Indigenous lands.⁴⁹ The Indian Claims Commission (ICC) heard Indigenous land claims from 1946 to 1978 and awarded over \$800 million to

⁴⁵ *Our Mission*, NDN COLLECTIVE, <https://ndncollective.org/our-mission/> [<https://perma.cc/SWA9-Q6CP>].

⁴⁶ NDN Collective, *supra* note 44; *see also* Glendenning, Nie & Mills, *supra* note 30, at 202.

⁴⁷ Harmeet Kaur, *Indigenous People Across the U.S. Want Their Land Back—and the Movement Is Gaining Momentum*, CNN (Nov. 26, 2020), <https://www.cnn.com/2020/11/25/us/indigenous-people-reclaiming-their-lands-trnd/index.html> [<https://perma.cc/V24E-HCAR>].

⁴⁸ Indian Claims Commission Act, 25 U.S.C. § 70 (1946).

⁴⁹ Hannah Friedle, *Treaties as a Tool for Native American Land Reparations*, 21 Nw. J. HUM. RTS. 239, 248 (2023).

Indian tribes.⁵⁰ However, scholars have critiqued the Indian Claims Commission for being ineffective in compensating Indigenous tribes because they could only receive monetary compensation rather than land return.⁵¹ For example, the Western Shoshone refused to accept compensation from the ICC in 1962 for the taking of their land, and the Oneida Indian Nation withdrew their claim from the ICC in 1982 because the ICC was only offering monetary compensation rather than land back.⁵²

Another notable example is the Sioux Nation's land claim for the return of the Black Hills. The Sioux Nation refused to accept a \$17.5 million plus interest award from the Court of Claims' 1979 finding that the United States took the Black Hills in 1877 without just compensation.⁵³ In 1980, the U.S. Supreme Court affirmed the Court of Claims' decision.⁵⁴ However, the Sioux still refused the monetary award because they did not want money, rather, they wanted the return of the Black Hills.⁵⁵ Even as the award amount in trust had grown to over \$1.3 billion by 2011, the Sioux refused to accept payment, reasoning that they never voluntarily ceded the land and accepting the money would amount to a sales transaction.⁵⁶ The Sioux have called for legislation to return 1.3 million acres of the Black Hills, relabel the trust money awarded as back rent, and agree on future terms of rent for the resources of the land for about roughly \$7 million a year.⁵⁷

Some litigation under the ICC has led to specific Acts of Congress returning public lands back to Indigenous tribes. In the 1960s, the Confederated Salish and Kootenai Tribes (CSKT) sued the United States under the ICC for the unlawful taking of their reservation lands, including land appropriated for the

⁵⁰ *Record Group 279: Records of the Indian Claims Commission*, NAT'L ARCHIVES (Mar. 28, 2023), <https://www.archives.gov/research/native-americans/indian-claims-commission> [<https://perma.cc/GK4C-T2TK>].

⁵¹ See William Y. Chin, "We Want Our Land Back": Returning Land to First Peoples in the Land Return Era Using the Native Land Claims Commission to Reverse Centuries of Land Dispossession, 24 *SCHOLAR* 335, 355–56 (2022); Devin Nicole Barbaro, *Taking the Land Back: How to Return Stolen Land to the Indigenous People of New York State Through Eminent Domain*, 32 *J.L. & POL'Y* 37, 59 (2023).

⁵² Chin, *supra* note 51, at 355–56.

⁵³ *Id.* at 355.

⁵⁴ *United States v. Sioux Nation of Indians*, 448 U.S. 371, 424 (1980); Chin, *supra* note 51, at 355.

⁵⁵ Chin, *supra* note 51 at 355–56.

⁵⁶ *Why the Sioux Are Refusing \$1.3 Billion*, PBS NEWS (Aug. 24, 2011), https://www.pbs.org/newshour/arts/north_america-july-dec11-blackhills_08-23 [<https://perma.cc/969W-9PYD>].

⁵⁷ *Id.*

National Bison Range.⁵⁸ In 1971, the U.S. Court of Claims held that the National Bison Range was taken in an unlawful Fifth Amendment taking without just compensation, and awarded over \$6 million plus 5% interest from 1912 to 1934.⁵⁹ While this litigation did not return land to CSKT, they subsequently applied in 2003 to co-manage the National Bison Range land with the U.S. Fish and Wildlife Service (USFWS) pursuant to the 1994 Tribal Self-Governance Act.⁶⁰ After a period of co-management, the USFWS began negotiations to transfer the ownership back to the CSKT.⁶¹ In 2020, Congress passed legislation to restore the National Bison Range to federal trust ownership for the CSKT.⁶²

2. *Nonintercourse Act Land Claims Litigation*

As another example, the Oneida Nation's land claims litigation under the Nonintercourse Act has led to only limited remedies for the Nation. In 1970, the Oneida Nation filed suit against Madison and Oneida Counties for the return of their reservation land.⁶³ In *Oneida Indian Nation v. County of Oneida (Oneida I)*, the Supreme Court held that the Oneida Nation had the right to sue in federal court for land illegally taken by New York State in violation of the Nonintercourse Act.⁶⁴ In *County of Oneida v. Oneida Indian Nation (Oneida II)*, the Court affirmed that the Oneidas could seek damages for the fair rental value of the land from Oneida and Madison Counties for two years of occupancy.⁶⁵ However, the Oneidas' subsequent efforts to recover damages for 200 years of occupation of their lands and to eject private landowners to recover their lands were unsuccessful.⁶⁶

⁵⁸ Glendenning, Nie & Mills, *supra* note 30, at 246.

⁵⁹ *Confederated Salish & Kootenai Tribes v. United States*, 437 F.2d 458, 459, 485 (Ct. Cl. 1971).

⁶⁰ Glendenning, Nie & Mills, *supra* note 30, at 246.

⁶¹ *Id.* at 247.

⁶² *Id.* at 248.

⁶³ *Oneida Indian Nation Historical Timeline*, ONEIDA INDIAN NATION, <https://www.oneidaindiannation.com/wp-content/uploads/2023/10/Historical-Timeline-2023A.pdf> [<https://perma.cc/63KY-3TBU>].

⁶⁴ *Oneida Indian Nation v. County of Oneida (Oneida I)*, 414 U.S. 661, 666–68 (1974).

⁶⁵ *County of Oneida v. Oneida Indian Nation (Oneida II)*, 470 U.S. 226, 230 (1985). On remand, the District Court ordered damages of \$15,994 from Oneida County and \$18,970 from Madison County, plus prejudgment interest. *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 209 (2005).

⁶⁶ *City of Sherrill*, 544 U.S. at 209–11.

In *City of Sherrill v. Oneida Indian Nation*, the Supreme Court held that laches, acquiescence, and impossibility prevented the Oneida Nation from asserting tax immunity over parcels purchased within its original reservation lands.⁶⁷ The Second Circuit applied the holding in *City of Sherrill* to bar the Oneidas' claim to possession of lands unlawfully ceded to New York and nonpossessory monetary compensation for the period in which they did not occupy the land.⁶⁸ After subsequent litigation, on May 16, 2013, the Oneida Indian Nation, State of New York, Madison County, and Oneida County signed a settlement to end all legal disputes between the parties.⁶⁹ The agreement gave the Oneida Nation exclusive gaming rights in a ten-county Central New York region in exchange for a reinvestment of 25% of its net gaming revenue to the state and counties.⁷⁰ It also limits the amount of land the Nation can move into trust with the U.S. government to 25,370 acres.⁷¹

3. *Legislation Returning Land to Tribes*

Specific Acts of Congress have given back land to Indigenous nations or placed lands into trust for the benefit of tribes. For example, the Taos Pueblo gained back 48,000 acres, including the Blue Lake, through Public Law 91-550 in 1970.⁷² After the Treaty of Guadalupe Hidalgo in 1948, the United States excluded the Blue Lake from the Taos Indians despite their historical use of it for water and as a religious site.⁷³ In 1906, President Roosevelt designated the Blue Lake to be part of Carson National Forest.⁷⁴ The Taos Pueblo's advocacy in connecting the return of the Blue Lake with the protection of their religion and the change in federal policy in 1970 towards self-determination made the return of this land politically feasible.⁷⁵

⁶⁷ *Id.* at 221.

⁶⁸ *Oneida Indian Nation v. County of Oneida*, 617 F.3d 114, 140 (2d Cir. 2010).

⁶⁹ Settlement Agreement by the Oneida Nation, the State of New York, the County of Madison & the County of Oneida (May 16, 2013) [hereinafter *Oneida Settlement Agreement*], https://www.tax.ny.gov/pdf/publications/oin_settlement_agreement.pdf [<https://perma.cc/XAF9-3N8K>].

⁷⁰ *Id.* §§ III-IV. See also 2013 *Historic Agreement*, ONEIDA INDIAN NATION, <https://www.oneidaindiannation.com/2013settlementagreement/> [<https://perma.cc/WEL5-EHCX>].

⁷¹ *Oneida Settlement Agreement*, *supra* note 69, § VI.

⁷² Glendenning, Nie & Mills, *supra* note 30, at 235.

⁷³ *Id.* at 232.

⁷⁴ *Id.*

⁷⁵ *Id.* at 233.

An additional example is the Western Oregon Tribal Fairness Act, which passed in 2018.⁷⁶ This act placed land into trust for the Cow Creek Band of the Umpqua Tribe and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, tribes which were previously terminated under the Termination Era.⁷⁷ The Leech Lake Band of Ojibwe (LLBO) was able to regain 11,760 acres of the Chippewa National Forest via Public Law 116-255.⁷⁸ The legislation was passed in recognition of the historical fractionation and involuntary cession of LBBO land due to unlawful actions by the State of Minnesota and the Bureau of Indian Affairs.⁷⁹

4. *Federal Buyback Program through the Cobell v. Salazar Settlement Agreement*

In addition to legislation, the U.S. government implemented a federal buyback program after the *Cobell v. Salazar* lawsuit to support buying back fractional interests to move lands that Indigenous peoples hold in fee simple into federal trust to restore it to full protection under reservation status.⁸⁰ In *Cobell v. Salazar*, Cobell and other class action plaintiffs filed suit against the U.S. government for mismanagement of 300,000 individual Indian money account holders who had trust funds held with the federal government.⁸¹ The *Cobell v. Salazar* Settlement Agreement provided a \$3.4 billion settlement.⁸² From the settlement fund, \$1.5 billion went towards the 300,000 individual Indian account holders and \$1.9 billion was provided as a Trust Land Consolidation Fund to purchase fractional interests from individual sellers to move these lands into trust for the benefit of tribes.⁸³ The Federal Buyback program ran from 2012—2022, restored nearly 3 million acres of

⁷⁶ *Id.* at 239.

⁷⁷ *Id.* at 237.

⁷⁸ *Id.* at 244.

⁷⁹ *Id.* at 240–41.

⁸⁰ Under 25 U.S.C. § 2201(4), Indian lands held in trust by the U.S. government are protected against alienation. Further, holding the lands in trust exempts the lands from state laws and regulations and entitles tribes to certain federal benefits. See *Benefits of Trust Land Acquisition (Fee to Trust)*, BUREAU INDIAN AFFS., <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition> [<https://perma.cc/NN67-VHD4>].

⁸¹ *Individual Indian Money Accounts (Cobell v. Salazar)*, NATIVE AM. RTS. FUND, <https://narf.org/cases/cobell/> [<https://perma.cc/XM9T-ZXHH>] (last visited Dec. 22, 2024).

⁸² *Id.*

⁸³ *Id.*; *Land Buy-Back Program for Tribal Nations*, U.S. DEP'T INTERIOR, <https://www.doi.gov/buybackprogram> [<https://perma.cc/7NBL-KLHQ>].

land to affected tribes, and returned over one million fractional interests to the tribes.⁸⁴

C. State and Local #LandBack Efforts

Recently, states and localities have taken action to return land to Indigenous tribes. California returned 2,820 acres of land to the Shasta Indian Nation, in association with a dam removal project aimed at restoring land and 300 miles of salmon habitat for the benefit of the Shasta Indian Nation.⁸⁵ The return of the land occurred during the five year anniversary of California's formal apology to Indigenous peoples in the state,⁸⁶ and is part of California's ongoing efforts to address the historical wrongs it committed against Indigenous tribes.⁸⁷ The Berkeley City Council recently returned land to the Sogorea Te'Land Trust, so that the owners of the trust can restore the site to a place of gathering, ceremonies, and traditional use.⁸⁸ Through a settlement with the USFWS, the New York State Department of Environmental Conservation, and Honeywell International Inc., New York transferred title of 1,000 acres in the Central New York Tully Valley to the Onondaga Nation.⁸⁹

⁸⁴ *Ten Years of Restoring Land and Building Trust 2012-2022: Land Buy-Back Program for Tribal Nations*, U.S. DEP'T INTERIOR (Dec. 2023), <https://www.doi.gov/sites/default/files/doi-lbb.pdf> [<https://perma.cc/STD9-HCC7>].

⁸⁵ Madilynne Medina, *California to Return Historic Amount of Land to Native Tribe*, SFGATE (June 19, 2024), <https://www.sfgate.com/bayarea/article/california-return-historic-amount-land-native-19522517.php> [<https://perma.cc/7MQ7-3KEG>].

⁸⁶ Cal. Exec. Order No. N-15-19 (June 18, 2019); *Governor Newsom Issues Apology to Native Americans for State's Historical Wrongdoings, Establishes Truth and Healing Council*, OFF. GOVERNOR GAVIN NEWSOM (June 18, 2019), <https://www.gov.ca.gov/2019/06/18/governor-newsom-issues-apology-to-native-americans-for-states-historical-wrongdoings-establishes-truth-and-healing-council/> [<https://perma.cc/7LX6-SG6T>].

⁸⁷ *Governor Newsom Announces Historic Land Return Effort on the 5th Anniversary of California's Apology to Native Americans*, OFF. GOVERNOR GAVIN NEWSOM (June 18, 2024), <https://www.gov.ca.gov/2024/06/18/governor-newsom-announces-historic-land-return-effort-on-the-5th-anniversary-of-californias-apology-to-native-americans/> [<https://perma.cc/SQX6-9XS2>].

⁸⁸ Frances Dinkelspiel, *Ohlone, Allies Celebrate Transfer of West Berkeley Shellmound Site to Indigenous Hands*, SOGOREA TE' LAND TR. (July 14, 2024), <https://sogoreate-landtrust.org/2024/07/15/ohlone-allies-celebrate-transfer-of-west-berkeley-shellmound-site-to-indigenous-hands/> [<https://perma.cc/3C6M-CRRF>]; see also Adina Merenlender, *Exploring the Why, What and Hope in LandBack*, U.C. AGRIC. & NAT. RES. (Mar. 20, 2024), <https://ucanr.edu/News/?routeName=newsstory&postnum=58896> [<https://perma.cc/NH4S-KSSG>].

⁸⁹ *Governor Hochul, U.S. Fish and Wildlife Service, Onondaga Nation and Attorney General James Announce More Than 1,000 Acres in Central New York's Tully Valley Returned to Onondaga Nation*, OFF. GOVERNOR KATHY HOCHUL (Oct. 2, 2024),

California has also put forth legislation and policies to strengthen Indigenous rights with regards to return of state land and co-management with the state of lands originally belonging to California tribes. California law SB-18 requires local governments to consult with tribes prior to implementing land plans that may affect cultural places of the tribes, and also adds tribes to the list of entities who may hold conservation easements.⁹⁰ The Governor of California's Native American Ancestral Lands Policy encourages actions such as: 1) entering into memoranda of understanding (MOU) to co-manage state-owned natural lands with California tribes who have ancestral lands located in those areas; 2) grants to support California tribes with the protection of natural lands located within their ancestral territories; 3) working to return lands in excess of State needs to California tribes; and 4) adopting preferential policies for California tribes to access State-owned natural lands that are located within the tribe's ancestral lands.⁹¹

III

A SURVEY OF LGU RESPONSES

#LandBack has been implemented at the federal and state government level, but so far it has not been implemented on a large scale by LGUs. This Part discusses the responses that LGUs have made following the issuance of the *High Country News* Report, most of which do not involve #LandBack. Some universities have made recommendations to implement #LandBack remedies but have not yet implemented them.

A. Land Acknowledgment Statements

Since 2020, many LGUs have issued land acknowledgment statements to recognize that the universities were built through the forceful taking of Indigenous land.⁹² A land acknowledgment

<https://www.governor.ny.gov/news/governor-hochul-us-fish-and-wildlife-service-onondaga-nation-and-attorney-general-james> [<https://perma.cc/LHD8-5U6K>].

⁹⁰ Governor's Off. of Plan. & Rsch., *State of California Tribal Consultation Guidelines*, CAL. NATIVE AM. HERITAGE COMM'N, 3, 9 (Nov. 14, 2005), <https://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf> [<https://perma.cc/L94L-STB8>].

⁹¹ *Statement of Administration Policy: Native American Ancestral Lands*, OFF. GOVERNOR GAVIN NEWSOM (Sep. 25, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf> [<https://perma.cc/7KVG-WH47>].

⁹² See, e.g., *Land Acknowledgement: What is a Land Acknowledgment?*, CORNELL UNIV. AM. INDIAN & INDIGENOUS STUDIES PROGRAM, <https://cals.cornell.edu/>

statement recognizes Indigenous peoples as the original inhabitants of the lands on which the person or institution is located.⁹³ Land acknowledgments can be a helpful starting point to repairing relationships with Indigenous nations, but should not be considered a remedy for the dispossession of Indigenous lands. Some Indigenous activists and scholars have criticized land acknowledgment statements as “feel-good public gestures” which do not lead to concrete change for Indigenous peoples.⁹⁴ The Native Governance Center recommends that in addition to land acknowledgement, institutions should commit to a plan with action steps to support Indigenous communities in the future.⁹⁵

In the context of LGUs, land acknowledgement statements should not only acknowledge Indigenous nations on which their campuses are located, but also Indigenous nations whose lands were sold to fund the LGUs.⁹⁶ It is important to acknowledge the first group to recognize the harm experienced as a consequence of their removal from territories and the loss of lands and resources to make way for settler expansion within each state, which often predated the Morrill Act.⁹⁷ However, the second group should also be acknowledged because their lands were ceded and sold to fund the endowment of the LGU.⁹⁸ Few official land acknowledgment statements from LGUs acknowledge the debt owed to both groups of Indigenous nations.⁹⁹

american-indian-Indigenous-studies/about/land-acknowledgment [https://perma.cc/8EHD-GQJZ]. Cornell University’s land acknowledgment statement was adopted on May 18, 2021.

⁹³ See, e.g., *id.*

⁹⁴ Elisa J. Sobo, Michael Lambert & Valerie Lambert, *Land Acknowledgments Meant to Honor Indigenous People Too Often do the Opposite—Erasing American Indians and Sanitizing History Instead*, CONVERSATION (Oct. 7, 2021), <https://theconversation.com/land-acknowledgments-meant-to-honor-Indigenous-people-too-often-do-the-opposite-erasing-american-indians-and-sanitizing-history-instead-163787> [https://perma.cc/HVN4-GBHM].

⁹⁵ *Beyond Land Acknowledgment: A Guide*, NATIVE GOVERNANCE CTR. (Sep. 21, 2021), <https://nativegov.org/news/beyond-land-acknowledgment-guide/> [https://perma.cc/T8WT-JD3G]. They suggest reparative actions in addition to land acknowledgment including voluntary land taxes, land return, and showing up to Indigenous-led protests.

⁹⁶ Stephen M. Gavazzi & John N. Low, *Confronting the Wealth Transfer from Tribal Nations That Established Land-Grant Universities*, AM. ASS’N UNIV. PROFESSORS (Spring 2022), <https://www.aaup.org/article/confronting-wealth-transfer-tribal-nations-established-land-grant-universities> [https://perma.cc/59A2-7QGM].

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

B. Truth and Reconciliation Projects

Some LGUs have developed truth and reconciliation projects to further research their history and connection to the Indigenous dispossession of their lands to inform further reparative and restorative work. The University of California (UC), Berkeley issued a UC Land-Grab report with recommendations for restorative actions towards Indigenous peoples including #LandBack.¹⁰⁰ Its #LandBack recommendations include: 1) creating MOUs and co-management agreements to provide California tribes with access across all of UC's natural reserves, research centers, and field stations for stewardship, ceremony, and cultural activities; 2) granting easements to tribal organizations; 3) transferring land back to tribes; and 4) collaborating with tribes who are going through the Native American Graves Protection and Repatriation Act (NAGPRA) process to repatriate their ancestors and cultural objects on lands that are currently owned by the UC system.¹⁰¹

Another notable example is the University of Minnesota's Toward Recognition and University-Tribal Healing (TRUTH) Project, which partnered directly with the eleven recognized Minnesota tribes to produce a report with recommendations for the University of Minnesota with regards to the taking of Indigenous land.¹⁰² The TRUTH Project released a report in March 2023.¹⁰³

¹⁰⁰ *UC Land Grab*, U.C. BERKELEY, <https://cejce.berkeley.edu/centers/native-american-student-development/uc-land-grab> [<https://perma.cc/7P4W-CGWP>]; Joseph A. Myers Ctr. for Rsch. on Native Am. Issues & Native Am. Student Dev., *The University of California Land Grab: A Legacy of Profit from Indigenous Land—A Report of Key Learnings and Recommendations*, U.C. AGRIC. & NAT. RES. (2021) [hereinafter *UC Land Grab Report*], <https://indd.adobe.com/view/7cdb5d0a-47e1-4811-8538-39bb255f0928> [<https://perma.cc/Z9VH-XY8F>].

¹⁰¹ *UC Land Grab Report*, *supra* note 100, at 8. Still today, California's Indigenous peoples are fighting for the return of their ancestral remains from UC schools, with more than 6,000 ancestral remains pending return. Anabel Munoz & Jill Castellano, *35 Years Later, California Tribes Still Fighting to Reclaim Ancestral Remains*, ABC NEWS (Dec. 6, 2024), <https://abc7.com/post/native-american-tribes-are-fighting-repatriate-ancestors-35-years-after-federal-law-was-meant-fix/15591970/> [<https://perma.cc/7B5W-MQ9D>].

¹⁰² TRUTH PROJECT, <https://sites.google.com/view/truthproject/about> [<https://perma.cc/5SNY-X99Q>]; *The TRUTH Report*, TRUTH PROJECT (Mar. 2023), <https://sites.google.com/view/truthproject/research/report> [<https://perma.cc/999N-TVFE>].

¹⁰³ *Oshkigin Nojimo'uwe, Nagi Wai Petu Uη Ihduwas'ake He Oyate Kiη Zaniwicaye Kte: Renewing Systems Landscapes Through Traditional Indigenous Management Practices*, TRUTH PROJECT (Mar. 2023), https://drive.google.com/file/d/1_5Ink1epx-0dhiGEziRUZLXa5wt9PwMI/view [<https://perma.cc/J8HY-FSH8>].

The report's core recommendations include: 1) to review annually the university's holdings of Indigenous land to assess those lands for #LandBack; 2) to pay reparations in perpetuity to Indigenous tribes from the Permanent University Fund (PUF) held as a direct result of the Morrill Act; 3) to divert PUF funding streams to give back to Indigenous communities; 4) to increase representation of Indigenous professors and students on campus; 5) to provide a full tuition and cost of attendance waiver for all Indigenous peoples regardless of state of residence; 6) to enact policies that respect tribal sovereignty, including the return of cultural property to Indigenous tribes; 7) to commit to sites for future research to support truth finding around the university's history; and 8) to meet trust obligations to Indigenous tribes as a federal LGU.¹⁰⁴

C. Partnerships and Financial Assistance

Some LGUs have entered into partnerships with tribes, some of which predate the *High Country News* Report. For example, the University of Idaho signed a MOU in 2008 with eleven local tribes recognizing their sovereignty.¹⁰⁵ The goal of the MOU is to strengthen the relationship between the University and the tribes, to assist the University in efforts to recruit and retain Indigenous students and faculty, and to create an environment at the University which is conducive to the cultural needs of Indigenous students.¹⁰⁶ However, the partnership does not commit money or land back to the tribes, which is relevant as the University of Idaho still continues to profit from its 33,000 acres of Morrill Act holdings.¹⁰⁷ In contrast, South Dakota State University's Wokini Initiative, established in 2017, reinvests the \$600,000 in annual income from its Morrill Act holdings of 160,000 acres of land into scholarships

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Memorandum of Understanding, University of Idaho President's Native American Advisory Council*, UNIV. IDAHO <https://content-hub.uidaho.edu/api/public/content/b8ca3e92373c44d9b3fe6e29bc0e0cae?v=987c634d> [<https://perma.cc/T6DX-AXWQ>].

¹⁰⁶ *Id.* at 1.

¹⁰⁷ See Kalen Goodluck, Tristan Ahtone & Robert Lee, *The Land-Grant Universities Still Profiting off Indigenous Homelands*, HIGH COUNTRY NEWS (Aug. 18, 2020), <https://www.hcn.org/articles/Indigenous-affairs-the-land-grant-universities-still-profiting-off-Indigenous-homelands/> [<https://perma.cc/F8L4-4GLL>].

supporting Tribal members as students and its American Indian Student Center.¹⁰⁸

Another way LGUs have responded to the Morrill Act legacy is to provide tuition assistance for Indigenous students or full scholarships.¹⁰⁹ Some LGUs have implemented tuition waivers for Indigenous students.¹¹⁰ Some LGUs are located in states, such as Massachusetts and Michigan, which have policies to waive in-state tuition at all public universities for Indigenous students who are residents and members of tribes historically located in their states.¹¹¹ In addition, some LGUs and states offer in-state tuition for members of tribes affiliated with the state.¹¹²

IV

WHY #LANDBACK IS NECESSARY TO REMEDY THE MORRILL ACT

After surveying the responses that LGUs have given in response to the *High Country News* Report in Part III and reviewing past #LandBack remedies in Part II, this Part argues that #LandBack is necessary to remedy Indigenous peoples for the unjust sale and use of their lands to fund land-grant universities. While the Morrill Act is only one of the ways in which the U.S. government dispossessed Indigenous peoples of their lands, it remains relevant today because the Morrill Act was a major contributor to the success of U.S. higher education

¹⁰⁸ Jon Parmenter, *Assessing Cornell University's Response to Recent Revelations Concerning the Origins of Revenues Obtained from the Morrill Act of 1862*, CORN. UNIV. & INDIGENOUS DISPOSSESSION PROJECT (Aug. 11, 2022), <https://blogs.cornell.edu/cornelluniversityindigenoussdispossession/2022/08/11/assessing-cornell-universitys-response-to-recent-revelations-concerning-the-origins-of-revenues-obtained-from-the-morrill-act-of-1862/> [https://perma.cc/8R9S-L5X4].

¹⁰⁹ Gavazzi & Low, *supra* note 96.

¹¹⁰ As of 2022, the University of California system waived tuition and fees for Indigenous students who are state residents and members of federal recognized tribes. Rina Torchinsky, *University of California Will Waive Tuition and Fees for Many Native American Students*, NPR (Apr. 28, 2022), <https://www.npr.org/2022/04/28/1095209856/university-of-california-native-american-tuition-fees-waive> [https://perma.cc/D3QP-7ZDM]. University of Montana and University of Maine offer tuition waivers for Indigenous students associated with their states as well. See Sam Jaquez, *Colleges That Offer Tuition Waivers and Scholarships for Native American Students*, COLL. CONFIDENTIAL (Oct. 16, 2023), <https://www.collegeconfidential.com/articles/tuition-waivers-and-scholarships-for-native-american-students/> [https://perma.cc/S5AZ-26QW].

¹¹¹ See Jaquez, *supra* note 110.

¹¹² *Id.*; Colorado State University, South Dakota State University, and the states of Iowa, Utah Oregon and Washington offer in-state tuition to members of tribes with historic ties within their state. See Gavazzi & Low, *supra* note 96.

and continues to benefit LGUs today.¹¹³ Because of the Morrill Act's national scope, having each LGU take action to return land would be a powerful way to create a national movement for #LandBack to Indigenous peoples. Another reason to pursue #LandBack remedies for Indigenous peoples in this context is because litigation to reclaim land for Indigenous tribes has faced many challenges. #LandBack is necessary to remedy historical harm from unjust enrichment accrued to LGUs via the Morrill Act.

A. LGUs Were Unjustly Enriched by the Provision of Morrill Act Parcels Ceded from Indigenous Peoples

LGUs should provide #LandBack and monetary reparations to tribes because they were unjustly enriched by the donation of Indigenous land from the U.S. government to raise endowments for their universities. First, as discussed in Part I, LGUs did not pay anything for the receipt of their Morrill Act parcels. The U.S. government valued the Morrill Act parcels at \$1.25 per acre,¹¹⁴ which is the minimum price it set for LGUs to recover for the sale of its Morrill Act parcels. However, the U.S. government itself paid about \$0.03 per acre on average to extinguish title to Indigenous lands for the Morrill Act parcels, less than 2% of what it stated the value of the public land was.¹¹⁵ In practice, LGUs were able to sell the land at a higher price than \$1.25 per acre, including New York, which sold its Morrill Act parcels at \$5.82 per acre.¹¹⁶ From the receipt of public land ceded from Indigenous peoples, LGUs were able to raise nearly \$22 million in endowments by 1914, which

¹¹³ See Isaac Ehrlich, Adam Cook & Yong Yin, *What Accounts for the US Ascendancy to Economic Superpower by the Early Twentieth Century? The Morrill Act—Human Capital Hypothesis*, 12 J. HUM. CAP., 233, 234–35 (2018) (discussing how the Morrill Land Grant Act contributed to the United States' overtaking of Great Britain as a global superpower by spurring economic development); see also Goodluck, Ahtone & Lee, *supra* note 107 (discussing that there are fifteen LGUs making money from the expropriated Indigenous lands they retained from the Morrill Act). See note 153 for a clarification about a numerical discrepancy in the Goodluck article.

¹¹⁴ Morrill Act § 2, 7 U.S.C. § 302.

¹¹⁵ This estimation is calculated by dividing the \$397,247 the United States paid for the land cessions to extinguish Indigenous title by the 10,537,601 land acres taken noted in Table 4 of this Note. This amounts to about \$0.03 per acre. Data is sourced from High Country News Database, *supra* note 13.

¹¹⁶ Craig L. LaMay, *Justin Smith Morrill and the Politics and Legacy of the Land-Grant College Acts*, COMMUNITY-WEALTH 80, <http://staging.community-wealth.org/sites/clone.community-wealth.org/files/downloads/article-la-may.pdf> [https://perma.cc/P6GB-CHJK].

adjusted for 2025 dollars is valued at \$709.9 million.¹¹⁷ Given this data, LGUs clearly accrued a significant profit for their endowments through the donation of and subsequent sale of Indigenous land.

While LGUs may not be legally responsible for the cessations of Indigenous land, they would not have the endowments they have today but for the donation of Indigenous land via the Morrill Act. Drawing on arguments from the reparations movement for Black Americans to address the historical injustice of slavery,¹¹⁸ there is a strong argument that Indigenous nations are owed some form of reparations to correct the historical injustice in how their lands were ceded, not only via the Morrill Act, but also from U.S. federal and state government actions to take Indigenous land via treaties and genocidal warfare.¹¹⁹ However, as noted by Dunbar-Ortiz, Indigenous nations do not ordinarily use the term “reparations” in reference to their land claims and treaty rights, rather demanding restoration and repatriation of U.S. acquired lands.¹²⁰ As seen by the land claims litigation reviewed in Part II, money is insufficient to compensate Indigenous nations for the loss of their lands. For Indigenous peoples, land has cultural and spiritual significance and is not viewed purely as property to be owned.¹²¹ #LandBack is one of the key ways for Indigenous peoples to increase their sovereignty, preserve their cultural and religious traditions,

¹¹⁷ This data is calculated by multiplying the value of the endowments at \$22 million in 1914, sourced from High Country News Database, *supra* note 13, and multiplying the value by \$32.40, the multiplier for the difference of a dollar in January 1914 versus a dollar in August 2025 as calculated by the Bureau of Labor Statistics, *see CPI Inflation Calculator*, *supra* note 23. This data is also reflected in Table 4 of this Note.

¹¹⁸ *See, e.g.*, Adeel Hassan, *Where Reparations Stand in the U.S.*, N.Y. TIMES (July 1, 2023), <https://www.nytimes.com/2023/07/01/us/black-americans-reparations.html> [<https://perma.cc/63KT-ER5K>].

¹¹⁹ Kalen Goodluck, *The Land Back Movement Unravels Manifest Destiny*, SIERRA MAGAZINE (Sep. 11, 2023), <https://www.sierraclub.org/sierra/2023-3-fall/feature/land-back-movement-unravels-manifest-destiny> [<https://perma.cc/DM29-GEWA>].

¹²⁰ Roxanne Dunbar-Ortiz, *Land Claims: An Indigenous People's History of the United States*, IN THESE TIMES (Sep. 12, 2015), <https://inthesetimes.com/article/land-claims-an-Indigenous-peoples-history-of-the-united-states> [<https://perma.cc/EQT8-BUM5>] (excerpted from ROXANNE DUNBAR-ORTIZ, AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES (2015)).

¹²¹ *See* Friedle, *supra* note 49, at 242–43 (discussing how land is the focal point of Indigenous identity, religious and cultural beliefs and secures cultural integrity, self-determination, and self-sufficiency for Indigenous peoples, citing the example of the Lakota Sioux Black Hills).

and support their tribal economies.¹²² Even Western common law doctrine recognizes the value of land as distinct from other forms of property in the doctrine of specific performance, which recognizes that land often cannot be adequately compensated for with monetary damages.¹²³ As David Treuer notes, “For Native Americans, there can be no better remedy for the theft of land than land.”¹²⁴ Since monetary damages have proven to be an inadequate remedy for land lost, #LandBack is necessary to make Indigenous nations whole.¹²⁵

B. Remedies for Morrill Act Parcels Taken by Ratified Treaty or Agreement Versus by Unratified Treaties and Other Seizures

There is a distinction in U.S. law between land acquired by ratified treaties, which are legally binding due to the presumed consent of the Indigenous nation involved, and land cessions by an unratified treaty or in the absence of treaty or agreement.¹²⁶ Even for land cessions obtained via ratified treaties between

¹²² See Chin, *supra* note 51, at 338.

¹²³ *Specific Performance*, LEGAL INFO. INST. (June 2024), https://www.law.cornell.edu/wex/specific_performance [<https://perma.cc/7ZAC-JJ72>] (describing the contractual remedy of specific performance, wherein a court will order a breaching party to fulfill its obligations per the terms of the contract which is at issue in litigation).

¹²⁴ See generally David Treuer, *Return the National Parks to the Tribes*, THE ATLANTIC (May 2021), <https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395/> [<https://perma.cc/5P86-9768>] (arguing that national parks should be returned to a consortium of Native tribes for their management and governance).

¹²⁵ See Chin, *supra* note 51, at 354–55 (arguing that a national Native Land Claims Commission devoted to facilitating the return of land, rather than payment of money, is the necessary corrective to the 1946 Indian Claims Commission, citing the Western Shoshone and Sioux Nation as examples of tribes rejecting monetary compensation for their claims, as what they sought was recovery of their ancestral lands).

¹²⁶ See *McGirt v. Oklahoma*, 591 U.S. 894, 900–02 (2020). *McGirt* discusses the Congressional ratification of the treaties that established the Creek Reservation. From that premise, the Court articulated that, once Congress has established a reservation, only Congress can diminish or disestablish it. *Id.* at 902–04. Federal Indian law followed international law standards for treaty-making, meaning ratification is required for legal enforceability. See Larisa K. Miller, *The Secret Treaties with California’s Indians*, NAT’L ARCHIVES 38 (2013), <https://www.archives.gov/files/publications/prologue/2013/fall-winter/treaties.pdf> [<https://perma.cc/L9RV-ME5Q>] (discussing how only ratified Indian treaties confirmed by the Senate had the force of law, following the rules for treaty-making with foreign nations); see also Curtis A. Bradley, *Unratified Treaties, Domestic Politics, and the U.S. Constitution*, 48 HARV. INT’L. L.J. 307, 313–14 (2007) (discussing that under international law principles, consent to be bound by a treaty requires ratification, not merely signature, a convention the United States followed).

the U.S. government and Indigenous nations, they were likely obtained via fraud, coercion, or duress.¹²⁷ However, given the difference in how these instruments are treated in U.S. law, the remedy for cession of land via ratified treaty might be limited in comparison to cessions via other means. The land used by the Morrill Act was taken from many different cessions between the U.S. government and Indigenous nations. Using the data from *High Country News*, 53% of the underlying cessions with Indigenous nations were ceded by treaty or agreement and 24% were by unratified treaty.¹²⁸ The remaining cessions include seizures by executive order (10%), by Congressional Act (4%), purchase (1%), unceded lands (1%), and seizures without any underlying agreement, treaty, act of Congress, or executive order (10%).¹²⁹

Acknowledging that U.S. law treats ratified treaties as legally binding instruments, there may be a stronger legal argument that where Morrill Act parcels were taken by means other than ratified treaty or agreement, these transactions were unlawful. For these cessions in particular, it should be presumed that remedial action to Indigenous nations in the form of land return or fair monetary compensation is required. For these parcels, the U.S. government unlawfully obtained title to Indigenous land. For unratified treaties, these agreements did not have legal force and often had promises that were not honored.¹³⁰ For cessions that were seizures of land without any underlying agreement or treaty, those lands were unilaterally taken without the consent of the Indigenous nation.¹³¹ In both scenarios, Indigenous land was unlawfully transferred to LGUs. Following the reasoning in *United States v. Sioux Nation of Indians*, Indigenous nations could argue that seizures of

¹²⁷ See *Understanding Indian Treaties in American History and Law*, CLARKE HIST. LIBR., <https://www.cmich.edu/research/clarke-historical-library/explore-collection/explore-online/native-american-material/native-american-treaty-rights/understanding-indian-treaties-in-american-history-and-law> [https://perma.cc/Z3TX-GFF6] (describing the various barriers to equal negotiating power between Indian tribes and the U.S. government, including different conceptions about ownership of land, language barriers, and the timing of negotiations after military defeat of tribes); see Friedle, *supra* note 49, at 258–59 (discussing as to how negotiators for the federal government frequently avoided fully explaining the treaties they were discussing in order to pressure tribal members to sign, and used fraudulent tactics to gain cessions of land).

¹²⁸ See *infra* Table 1.

¹²⁹ See *id.*

¹³⁰ See Miller, *supra* note 126; Goodluck, Ahtone & Lee, *supra* note 107.

¹³¹ See Chin, *supra* note 51, at 343–44.

land without an underlying ratified treaty or agreement are a Fifth Amendment taking, requiring just compensation.¹³²

Even in evaluating the land cessions obtained via ratified treaty, one could still argue that the vast majority of these cessions were invalid on public policy grounds due to fraud or unconscionability.¹³³ As noted by Chin, half of the land area that the United States purchased to increase its territory was done through inequitable treaties which paid tribes on average less than a dollar per acre, and the United States confiscated an additional third of a billion acres without compensation.¹³⁴ Additionally, the United States claimed two thirds of a billion acres of land through unilateral actions, which extinguished Indian title to the land.¹³⁵ In light of the history behind these treaties, it is not safe to assume that an agreement to cede land via ratified treaty ensures that the U.S. government obtained this land fairly with full informed consent from the Indigenous nation. For the cessions obtained by ratified treaty, if Indigenous nations could show that the underlying cession was in violation of the treaty ratified by Congress, they could also argue that compensation is owed for the violation of the treaty agreement.¹³⁶ Indigenous nations should be afforded the opportunity to present evidence for cessions obtained by ratified treaty that the cession either lacked informed consent or that the cession was made with consent but unjustly compensated for given the fair market value of the land at the time of the cession. National legislation, discussed in Part V, could help address the issue of cessions via ratified treaty that were unjustly compensated for.

Given the history of previous Indigenous land claims litigation, monetary compensation alone for tribes for illegal seizures of land or inequitable treaties to cede land is not enough

¹³² *United States v. Sioux Nation of Indians*, 448 U.S. 371, 423–24 (1980).

¹³³ *See Understanding Indian Treaties in American History and Law*, *supra* note 127 (describing the various barriers to equal negotiating power between Indian tribes and the U.S. government, including different conceptions about ownership of land, language barriers, and the timing of negotiations after military defeat of tribes); Friedle, *supra* note 49, at 258–59 (discussing use of fraud and critical omissions of information by federal representatives negotiating treaties with tribal members).

¹³⁴ *See Chin*, *supra* note 51, at 344.

¹³⁵ *Id.*

¹³⁶ This would be in alignment with the recognition in *Sioux Nation of Indians*, 448 U.S. at 422–24, that the 1877 Act removing the Black Hills from the Sioux Reservation was a violation of the terms of the Fort Laramie Treaty of 1868 with the Sioux Nation, and this violation amounted to a taking without just compensation.

to remedy the harm from the dispossession of their lands. Thus, compensation to Indigenous nations under either scenario should not be limited to monetary damages and must consider #LandBack as a first preference for compensation where possible.

C. The Responsibility of LGUs Versus the U.S. Government to Recompense Indigenous Peoples

The Morrill Act raises questions of who should be primarily responsible for remedying Indigenous nations for the use and sale of Indigenous lands under the Morrill Act. Because the U.S. government obtained title to Indigenous lands independent of the Morrill Act, one could argue that the U.S. government should have the sole responsibility to remedy Indigenous nations for the taking of their lands. However, allocating sole responsibility to the U.S. government to remedy Indigenous nations would not fully capture the unjust enrichment obtained by LGUs, as well as the ongoing profit that some LGUs have obtained, from the use of Morrill Act parcels.¹³⁷ LGUs should be responsible for providing compensation to tribes in relation to the unjust enrichment they derived from the use and sale of Indigenous land, particularly in endowment raised from the principal value received.

However, the U.S. government should also recompense Indigenous tribes via land return and/or monetary compensation for the underlying transactions preceding and following the Morrill Act parcels, especially for the portions of those land acquisitions which did not benefit LGUs. It is possible that LGUs and the U.S. government could share responsibility for returning land seized under the Morrill Act. For example, the LGU could return land parcels it is not directly using for its campus, and the U.S. government could indemnify the LGU for the value of the land that it lost. The U.S. government could alternatively recompense the Indigenous nations directly for the principal of what the Morrill Act parcels were valued at when they were given to the university in fair market value in 1862, adjusted for inflation, while LGUs recompense Indigenous nations for profit accrued from the sale of the land and implement actual land return to Indigenous nations. This solution is explored more in subpart V.C.

¹³⁷ See generally *supra* Part I and *infra* subpart V.A.

V

APPLYING #LANDBACK TO LGUs AS PART OF LARGER REMEDIAL ACTION

In light of the arguments for #LandBack explored in Part IV, LGUs should consider independently implementing actions to give lands or property interests back to Indigenous tribes. This Part identifies land back remedies LGUs can take, recommends a framework for universities to implement and proposes national legislation where responsibility would be shared between the U.S. government and LGUs to recompense Indigenous nations.

A. #LandBack Actions That LGUs Can Take

This section discusses three potential possibilities for individual LGUs to give land back to Indigenous peoples: 1) co-management of lands that LGUs hold, 2) return of mineral rights obtained from the Morrill Act back to Indigenous peoples, and 3) return of excess land holdings back to Indigenous peoples.

1. *Co-Management of Lands*

Many LGUs still hold trust lands from the state, which fund part of their endowments. These trust lands are often used in extractive industries that contribute to climate change, and exploit traditional lands held by Indigenous peoples.¹³⁸ State trust lands exist in twenty-one Western and Midwestern states, including more than 500 million surface and subsurface rights, and fourteen of the Morrill Land Grant Act Institutions hold state trust lands to support their revenue, comprising more than 8.36 million surface and subsurface acres taken from 123 tribal nations.¹³⁹ A way for these LGUs to engage in return of land is by investigating where their trust lands are, identifying which tribal nations have original lands within those trust land borders, and entering into co-management agreements with the affected Indigenous nations to preserve those lands and divest from the use of these lands for extractive industries.

¹³⁸ Tristan Ahtone et al., *Misplaced Trust: Stolen Indigenous Land Is the Foundation of the Land-Grant University System. Climate Change Is Its Legacy.*, GRIST (Feb. 7, 2024), <https://grist.org/project/Indigenous/land-grant-universities-Indigenous-lands-fossil-fuels/> [<https://perma.cc/8P3J-TTB9>].

¹³⁹ These universities include: South Dakota State, Utah State, Montana State, University of Minnesota, Oklahoma State, Colorado State, University of Wyoming, Texas A&M, North Dakota State, New Mexico State, University of Arizona, University of Idaho, University of Wisconsin, and Washington State. *Id.*

Entering into such agreements could encourage sustainability as well as return a property interest back to the affected tribes. Another possibility is co-management of conservation easements with Indigenous nations. For example, Cornell University (Cornell) has conservation easements with the Finger Lakes Land Trust and has worked to create land trusts with the Land Trust Bird Conservation Initiative to protect local birds and wildlife.¹⁴⁰ Where these lands co-exist with the lands originally belonging to Indigenous peoples, the LGUs should seek to enter into MOUs to allow for greater Indigenous input into the management of these lands.

LGUs may be hesitant to enter into co-management agreements with Indigenous tribes because they have relied on the extraction of resources from these trust lands to support their revenue stream.¹⁴¹ LGUs would have to be willing to forgo or reduce the revenue they currently get from the trust lands to move away from using the trust lands as a source of revenue, instead using these lands as a way to remedy for past wrongs and work collaboratively with Indigenous tribes for their benefit. One way to approach this is to develop a plan to phase out the universities' use of trust lands for extractive resources, as a component of the co-management of the lands with Indigenous peoples. For example, the University of Arizona has 705,000 subsurface acres of Arizona state trust lands, of which 645,000 are earmarked for oil and gas production.¹⁴² These lands were taken from at least 10 Indigenous nations.¹⁴³ However, the University of Arizona has pledged to reach net-zero emissions by 2040.¹⁴⁴ As part of its commitment to divest from industries contributing to climate change, the University of Arizona could partner with tribes to manage their state trust lands in a more sustainable way.

¹⁴⁰ *Cornell Plantations and Land Trust Partner to Protect Natural Areas of Tompkins County*, CORN. CHRONICLE (June 28, 2006), <https://news.cornell.edu/stories/2006/06/cu-partners-finger-lakes-land-trust-protect-local-natural-areas> [<https://perma.cc/C5PT-3ZWM>]; *Land Trusts in Action*, CORNELL LAB LAND TR. BIRD CONSERVATION INITIATIVE, <https://www.birds.cornell.edu/landtrust/land-trusts-in-action/> [<https://perma.cc/E64X-ARXW>].

¹⁴¹ See generally Ahtone et al., *supra* note 138.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

2. *Returning Mineral and Subsurface Rights*

Related to the above, but a distinct form of #LandBack remedies that LGUs could take is the return of mineral rights back to Indigenous nations. Cornell currently holds 50% mineral rights to 153,540 acres in Wisconsin, which it received directly from the Morrill Act as part of its land scrip.¹⁴⁵ Due to language it included in contracts for sale of its scrip in Wisconsin, Cornell retained 50% of its mineral rights to 155,340 acres of land sold in Wisconsin from 1889 to 1938, which it still holds today.¹⁴⁶ Part of Cornell's retained mineral rights from its Morrill Act holdings include a 160-acre parcel of land in Barron County, Wisconsin, which is home to a quarry that is a sacred place to the Lac Courtes Oreilles and the Anishinaabeg peoples.¹⁴⁷ The quarry has pipestone used by the Lac Courtes Oreilles to craft pipes for Midewiwin religious ceremonies.¹⁴⁸

In March 2024, Rick St. Germaine, a knowledge-keeper for the Lac Courtes Oreilles in Wisconsin, spoke at Cornell to appeal for the return of the 50% mineral right interest of the 160-acre parcel back to the Lac Courtes Oreilles, so they can have secure rights to access the quarry for religious purposes, for education of their community, and to preserve the natural resources of the quarry.¹⁴⁹ Cornell has not yet responded to the request of the Lac Courtes Oreilles to return the mineral rights on the quarry to the tribe.¹⁵⁰ While the return of the mineral rights to the 160-acre parcel would not cost Cornell much in the grand scheme of its total holdings, it should also consider returning all of its 50% mineral rights interest in the 155,340 acres of Wisconsin land from the Morrill Act to Indigenous nations as a way to meaningfully give land back.

¹⁴⁵ Jon Parmenter, *Cornell University's Mineral Rights in Wisconsin: A Legacy of the 1862 Morrill Act*, CORN. UNIV. & INDIGENOUS DISPOSSESSION PROJECT (Aug. 29, 2024), <https://cuidproject.com/article/cornell-universitys-mineral-rights-in-wisconsin-a-legacy-of-the-1862-morrill-act/> [https://perma.cc/6PVS-H8RC].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*; Skylar Kleinman, *The Morrill Act, a Pipestone Quarry and the Fight for Repatriation: The Story of Cornell's Ties to 155,340 Acres of Wisconsin Land*, CORN. DAILY SUN (Apr. 24, 2024), <https://cornellsun.com/2024/04/24/the-morrill-act-a-pipestone-quarry-and-the-fight-for-repatriation-the-story-of-cornells-ties-to-155340-acres-of-wisconsin-land/> [https://perma.cc/JUG6-9B45].

¹⁴⁸ Kleinman, *supra* note 147.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

3. *Return of Tribal Land*

LGUs should also assess their land holdings to see whether they can return the land taken by the Morrill Act back to Indigenous peoples. One challenge to this remedy is that most of the Morrill Act lands that were granted to the states are no longer held by LGUs because they were sold off to fund the universities. However, twelve states are in possession of unsold Morrill acres and mineral rights, which produce revenue for the states' respective LGUs.¹⁵¹ There are fifteen LGUs that collectively hold half a million acres of land from the Morrill Act.¹⁵² Among these fifteen LGUs, some retain only surface acreage, some only retain mineral rights, and some retain both surface acreage and mineral rights.¹⁵³

LGUs who still retain their Morrill Act holdings could consider returning portions of their land that are not where their actual campus resides and repatriate their surface and subsurface rights to the original Indigenous holders of the land. For example, the University of Idaho still retains over 33,000 acres of unsold Morrill Act land.¹⁵⁴ It profits from investments in this land, which has been used for timberland, rangeland, and farmland.¹⁵⁵ The University of Idaho's Morrill Act holdings generated nearly \$360,000 in revenue in 2019.¹⁵⁶ In return for those lands, the U.S. government paid just \$1,214 total, and the land was ceded from the Nez Perce Tribe, Shoshone-Bannock Tribes, the Schitsu'umsh (Coeur d'Alene), and the Te-Moak Tribe of Western Shoshone.¹⁵⁷ Other LGUs that still hold original Morrill

¹⁵¹ Lee & Ahtone, *supra* note 2.

¹⁵² Goodluck, Ahtone & Lee, *supra* note 107.

¹⁵³ See *id.* The fifteen land-grant universities retaining some of their original Morrill Land Grant Act holdings include: University of Arizona, University of California, Colorado State University, University of Idaho, Kansas State University, University of Minnesota, Montana State University, North Dakota State University, University of Nebraska, New Mexico State University, South Dakota State University, Utah State University, Washington State University, University of Wisconsin, and University of Wyoming. *Id.* Please note that the original article incorrectly stated that University of Missouri retains 15,000 Morrill acres, which would have been the sixteenth university. Upon its removal, there are fifteen LGUs that retain over half a million acres from the Morrill Act that are referenced in this article. *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; see Kenny Barnes, *Exhibit: The Land Grant System: Black Inclusion and Community Building*, HIST. LABVA. TECH, <https://historylab.squarespace.com/the-land-grant-system-exhibit-Indigenous-lands-fund-the-morrill-act> [<https://perma.cc/XAG6-3PDH>].

¹⁵⁶ Goodluck, Ahtone & Lee, *supra* note 107.

¹⁵⁷ *Id.*; Barnes, *supra* note 155.

Act parcels could evaluate what portions of these holdings can be returned to affected Indigenous nations. Although it is not an LGU, Brown University recently transferred 250 acres of its Mount Hope property back to the Pokanoket Indian Tribe, to be put into their preservation trust.¹⁵⁸ Given this example, LGUs should take steps to give land parcels taken from Indigenous peoples back to their original caretakers.

B. Recommended Framework for Actions at the LGU Level That Combines #LandBack and Other Remedies

Since the 2020 *High Country News* Report on Land-Grab Universities, there have been a variety of calls to action by scholars, students, professors, and administrators at LGUs. As discussed in Part III, some LGUs have taken initiative in taking actions to reinvest money from their endowments into Indigenous communities or provide some form of financial aid to Indigenous students, but much work remains left to do. While #LandBack is the best remedy for Indigenous peoples, in some cases #LandBack may not be possible for LGUs to implement if they no longer have ties to their Morrill Act holdings. Given this limitation, the most fruitful approach may require multiple types of restorative action. Consequently, this Note proposes a framework for how LGUs can remedy Indigenous nations affected by their land grants based on existing best practices amongst LGUs as well as additional #LandBack remedies.

First, all LGUs should evaluate their land-grant acknowledgment statements to ensure that they are accurate and specific in naming all of the Indigenous nations affected by their institution. The land acknowledgment statements should both acknowledge the lands of the Indigenous nations on which the university sits and acknowledge the Indigenous nations whose lands were used as “scrip” to fund the university’s creation or create their permanent endowment fund.

Second, LGUs should dedicate, if not already present, funding and professorship positions to support the documentation of the LGU’s history with regards to the dispossession of Indigenous nations, the use of the scrip and Morrill Act holdings to fund the university and the current status of the Morrill Act holdings and examine the treatment of Indigenous students and neighboring Indigenous nations from the

¹⁵⁸ *Brown Transfers Land in Bristol to Preservation Trust Established by Pokanoket Tribe*, BROWN UNIV. (Nov. 15, 2024), <https://www.brown.edu/news/2024-11-15/bristol-land> [<https://perma.cc/YY63-JPYV>].

institution's founding to the present day. The findings of the commissions at each university should be publicly available and identify concrete actions to address the harm to affected Indigenous nations.

Third, each LGU should assess its usage of its current land holdings, including mineral rights and subsurface rights as a direct result of the Morrill Act, and determine how much of the land and mineral rights can either be 1) returned to the original Indigenous tribes who lived on the land or 2) be entered into co-management, trust or conservation easement agreements with the Indigenous tribes who originally held title to the land. In both of these potential actions, the LGU should consult all affected tribes from the Morrill Act linked to its institution, in an open and transparent process. For the second category of co-management, trust, or conservation easement arrangements, Indigenous nations should have equal say into the objectives for the use of the land.

Fourth, each LGU should review its permanent endowment fund from its Morrill Act holdings and dedicate a portion of the permanent endowment funding to pay monetary reparations to Indigenous tribes whose lands were used to fund the LGU. For a guideline of how much in fair market value Indigenous tribes are owed, each LGU could use the data compiled by the *High Country News* Report as a start to track the profit that they accrued from each individual Indigenous tribe affected by the Morrill Act.¹⁵⁹

Fifth, at a minimum, each LGU should offer full ride scholarships or tuition waivers to each student who is a member of a tribe historically recognized within the state where the LGU sits or who is a member of an Indigenous tribe whose lands were sold to fund the endowment of the university.¹⁶⁰ A better approach would be to waive tuition for any Indigenous student, regardless of residency within the state who can prove membership in a federally recognized tribe.¹⁶¹

¹⁵⁹ See High Country News Database, *supra* note 13.

¹⁶⁰ Gavazzi & Low, *supra* note 96.

¹⁶¹ *Id.* In *Morton v. Mancari*, 417 U.S. 535, 553 n.24 (1974), the U.S. Supreme Court held that membership in a federally recognized tribe is a political classification, rather than a racial classification. Thus, scholarships based on membership in a federally recognized tribe are subject to the rational basis test, which is more likely to withstand judicial scrutiny. See also Cruz Reynoso & William C. Kidder, *Tribal Membership and State Law Affirmative Action Bans: Can Membership in a Federally Recognized American Indian Tribe be a Plus Factor in Admissions at Public Universities in California and Washington?*, 27 *CHICANA/O-LATINA/O L. REV.* 29, 32 (2008).

The above national approach, if implemented by all fifty-two LGUs would begin to repay the debt owed to Indigenous nations that has resulted from the Morrill Act. While not perfect, it would be a starting point to meaningfully compensate Indigenous peoples for the loss of their lands via the Morrill Act.

C. Legislative Remedies

In the alternative to voluntary actions by LGUs, another comprehensive approach to remedy Indigenous tribes for the unjust cessions of their lands to fund LGUs is legislation. This section explores two alternative legislative remedies, which could be simultaneously pursued, to redress the theft of Indigenous land via the Morrill Act: 1) an amendment to the Morrill Act to implement #LandBack as a shared responsibility between LGUs and the U.S. government and 2) a legislative cause of action for Indigenous tribes to bring land claims related to the Morrill Act.

1. *Amending the Morrill Act*

One approach is for Congress to pass legislation to amend the Morrill Act, to share the responsibility to recompense Indigenous peoples between LGUs and the U.S. government. The Act could be entitled “Remedial Actions for the Theft of Indigenous Land via the Morrill Act.” The legislation would provide a remedy for lands unlawfully ceded by means other than ratified treaty and also for lands ceded by ratified treaty where there is evidence that the lands were ceded without consent or fair compensation. Additionally, it would incorporate items from the recommended framework in subpart V.B. Instead of keeping the requirement from the original Morrill Act that the endowment fund from the land grants be held in perpetuity, the legislation would mandate that each LGU make amends from the endowment fund to recompense and give land back to Indigenous nations whose lands funded the institution, in relation to the profit they accrued from the sale and use of Indigenous land.

As discussed in subpart IV.C, the U.S. government should be responsible for recompensing Indigenous nations for the fair market value of what the lands it ceded were valued at the time of cession adjusted for inflation, while LGUs should be responsible for recompensing Indigenous nations based on the profit accrued from the use and sale of their land-grant parcels. Since land return is the preferred remedy, it is recommended

that LGUs be responsible for selecting and returning unused land parcels or mineral rights it still retains from the Morrill Act to Indigenous nations. However, when LGUs are able to return land to Indigenous peoples, they could be indemnified by the U.S. government for the fair market value of the parcels returned. If there are no land parcels available to be returned to Indigenous nations, the U.S. government should provide fair market compensation to Indigenous nations for the cession of their lands used to benefit the affected LGU. In that scenario, the LGU should implement other #LandBack remedies if possible, such as co-management of university lands used for agricultural or research centers. The LGU should also pay monetary reparations to affected Indigenous tribes based on the profit accrued from the use and sale of their land-grant parcels.

Indigenous tribes should have the option of receiving either land back from LGUs, monetary compensation for the fair market value and rental value of ceded lands, or a combination of land back and monetary remedies. The legislation should set a floor, rather than a ceiling of what each LGU must do to compensate affected Indigenous nations. If enacted, this Act would provide greater accountability, formally acknowledge historical wrongs in the use of Indigenous lands to fund LGUs and provide a greater foundation for #LandBack claims.

2. *Creating a Cause of Action for Land Cessions Connected to the Morrill Act*

To address the limitations of only seeking #LandBack for land parcels ceded to benefit LGUs, an alternative approach is to create a legislative cause of action to allow Indigenous nations to sue the U.S. government for the land cessions from 1801–1889 underlying the Morrill Act parcels.¹⁶² This would allow Indigenous nations to seek full compensation for the underlying cession via ratified treaty or agreement, unratified treaties, or in some cases seizures without any underlying agreement. The Morrill Act parcels given to LGUs were about 10.7 million acres, only a portion of the 1.4 billion acres that the U.S. government obtained from Indigenous tribes between 1801–1889.¹⁶³ Indigenous tribes affected by the Morrill Act

¹⁶² See *United States v. N.Y. Rayon Co.*, 329 U.S. 654, 658–59 (1947) (stating that interest can be recovered against the United States only when express consent to recovery is given by Congress).

¹⁶³ See *supra* Part I.

likely want compensation not only for ceded lands that were granted to LGUs, but also for land parcels that were retained by the U.S. government or sold to other private parties other than LGUs. Under a legislative cause of action, Indigenous tribes could sue the U.S. government for the unjust cession of their lands, regardless of the underlying mechanism by which the land was ceded. The Act would be styled similarly to the Indian Claims Commission Act of 1946. However, instead of only providing monetary compensation, the remedy would prioritize land return, and then monetary compensation when land return is not possible.¹⁶⁴

To be comprehensive, the legislation should allow Indigenous tribes to bring a claim for lands ceded by ratified treaty or agreement, unratified treaty, seizures by executive order or act of Congress, purchases, and seizures without any underlying agreement. Indigenous tribes should not be limited to suing for cessions obtained by unratified treaties or other seizures because in view of the historical context underlying removal treaties, many of the agreements to cede land by ratified treaty were still done without just compensation or fair dealing.¹⁶⁵ Procedurally, cessions of land from Indigenous communities acquired via means other than a ratified treaty should be given a presumption of being unjust cessions requiring just compensation. For ratified treaties, Indigenous tribes should be able to present evidence to show that the agreement was either done without tribal consent or was an unfair dealing. The rules of evidence should be modified for these types of proceedings to allow for any evidence to be presented to support the Indigenous tribes' claim, with a presumption of good faith.¹⁶⁶ Further, the legislative act should undo the preclusive effect of judgments awarded by the Indian Claims Commission of 1946.¹⁶⁷

¹⁶⁴ See Chin, *supra* note 51, at 353–54.

¹⁶⁵ See *supra* notes 125, 130.

¹⁶⁶ See Chin, *supra* note 51, at 373–75 (discussing how the 1934 Indian Claims Commission bill allowed tribes to present their claims without the rules of evidence, how traditional rules of evidence may bar otherwise viable claims, and arguing that, for a renewed land claims commission, Indigenous tribes should be able to present any evidence with a presumption of good faith).

¹⁶⁷ See, e.g., Michelle Smith & Janet C. Neuman, *Keeping Indian Claims Commission Decisions in Their Place: Assessing the Preclusive Effect of ICC in Litigation over Off-Reservation Treaty Fishing Rights* 2–3 (Lewis & Clark L. Sch., Working Paper No. 2009-22, 2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1300640 [<https://perma.cc/4CQS-AJGS>] (discussing that the judgments of the ICC regarding off-reservation treaty fishing rights should have limited preclusive effect because of the limited scope of remedy as monetary compensation, and that the act should not be interpreted as “statutory preclusion”).

The statute should further explicitly disallow the defense of laches to bar a meritable claim.¹⁶⁸ As noted previously, the ICC was limited in providing full compensation to affected Indigenous tribes by only awarding monetary compensation for land claims, when the vast majority of Indigenous tribes wanted to receive their lands back rather than monetary compensation.

Each land claim from Indigenous tribes should be assessed based on what the fair market value of the land was at the time of cession adjusted for inflation. Compensation should be awarded to Indigenous tribes in an amount equivalent to the difference between what was received as compensation and the fair market value of the land received today, including interest. However, where the U.S. government holds title to lands within the original cession, it should return the land to the affected Indigenous tribe and offer to move the land into trust, if that is what the tribe wants.¹⁶⁹ Some tribes may prefer to hold their land in fee simple.¹⁷⁰ If the tribe prefers to have the land returned in fee simple, the Act should specifically stipulate that the land will be exempted from state taxes and regulation, under the exclusive jurisdiction of the tribe.¹⁷¹

For lands where title has since passed from the U.S. government to private entities, the U.S. government should award fair monetary compensation and facilitate fact finding and negotiations to see whether individual private landowners are willing to voluntarily sell their land to the Indigenous tribe. This would be structured similarly to the *Cobell v. Salazar* Federal Buyback program.¹⁷² The monetary award provided by the U.S. government could be used by the tribe to purchase back the land in fee simple. This Act would not force private landowners to sell or force them off land via ejectment but facilitate the return of U.S. government-owned lands and return of privately held lands by willing sellers where possible. Where lands

¹⁶⁸ See Chin, *supra* note 51, at 376–77 (discussing how under a proposed Native Land Claims Commission Act, the defenses of laches and statute of limitations should not bar a claim, as such defenses would be precluded by a “fair and honorable dealings” provision and an explicit statement that all remedies be available to tribal claimants).

¹⁶⁹ See *id.* at 357 (discussing how some tribes may prefer trust status to avoid state taxation, eminent domain, and adverse possession, while others may prefer to hold fee simple title to returned land).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 359.

¹⁷² See *infra* subpart II.B.4.

originally held by the U.S. government have passed on to state governments or LGUs, the Act should provide an additional impetus for negotiating for the return of land where possible to the tribe. When title to land is returned, it should include both surface and subsurface rights, including any associated mineral and water rights.¹⁷³

CONCLUSION

There are a number of ways that LGUs should take remedial actions to address their history of being funded through the cession of Indigenous land via the Morrill Act. Nearly six years after the 2020 *High Country News* Report, the response of LGUs towards Indigenous nations has been inadequate. In order to recompense Indigenous tribes, LGUs must implement land return, cultural property return, and reinvest monetarily into Indigenous nations to begin to repair the injustice of the Morrill Act. Ideally, national legislation would mandate a land return effort to Indigenous tribes affected by the Morrill Act. Congress should pass a formal amendment to the Morrill Act in recognition of the harmful history of Indigenous dispossession which funded LGUs. This amendment would mandate that all LGUs give land parcels or money back to all affected Indigenous tribes based on the profit the universities received from the Morrill Act scrip, with the U.S. government providing indemnification to LGUs who implement land return to Indigenous peoples. This Act would be a floor, not a ceiling to the amount LGUs would be expected to return. In the absence of national legislation, LGUs should voluntarily take on these actions, following the framework articulated in this Note as a starting point. Alternatively, Congress could pass an Act providing a cause of action for Indigenous tribes to sue the U.S. government for the return of their lands ceded via various mechanisms from 1801–1889. This Act would provide a way for Indigenous tribes to seek remuneration in the form of land return and monetary compensation for the entire underlying cessions of land, not just the lands granted to LGUs via the Morrill Act.

¹⁷³ See Chin, *supra* note 51 at 380 (discussing how Senator Bradley's 1987 bill to return the Black Hills to the Sioux would encompass land, mineral, and water rights).

APPENDIX: METHODOLOGY FOR DATA ANALYSIS

Data Analysis of High Country News Database

I downloaded available data published by *High Country News*,¹⁷⁴ which documents 99% of the parcels of land taken under the Morrill Act of 1862 to benefit land-grant universities. The authors at *High Country News* documented and traced these parcels by looking at land patent records, congressional documents, the National Archives, state repositories, collections at universities, and other sources. Additionally, the *High Country News* database validated where possible these land parcels with the Bureau of Land Management's General Land office database. Where validation with the Bureau of Land Management was not possible, the *High Country News* authors transcribed these records manually from print records and reproductions.

I used *High Country News*' data in the Cessions.csv file¹⁷⁵ and the Parcels.csv file¹⁷⁶, and merged them into one Excel sheet where I conducted additional data analysis. The Cessions.csv file accounts for each of the 162 Indigenous land cessions the U.S. government acquired from 1801–1889, each of which in part were redesignated as land scrip under the Morrill Act for the benefit of land-grant universities. The Parcels.csv file documents each of the 79,461 parcels taken from the cessions from Indigenous nations to benefit land-grant universities. I mapped this data onto the Cessions data to support the calculations in this Note. Using the unique identifier present in both datasets, "Royce_ID," I mapped each land-grant parcel onto the indigenous land cessions they came from.

After this mapping of parcels to cessions, I excluded six cessions of land that had an unknown total acreage from the *High Country News* cessions dataset to better control the accuracy of the data analysis. This means of the total number of Indigenous land cessions analyzed there are 156 instead of the 162 contained in the Cessions.csv file and as reported by *High Country News* in their article. This results in an undervaluation

¹⁷⁴ High Country News Database, *supra* note 13.

¹⁷⁵ *Id.* at CSV Files, Cessions.csv, https://github.com/HCN-Digital-Projects/landgrabu-data/blob/master/Morrill_Act_of_1862_Indigenous_Land_Parcels_Database/CSVs/Cessions.csv [https://perma.cc/HC4S-T3H8].

¹⁷⁶ *Id.* at CSV Files, Parcels.csv, https://github.com/HCN-Digital-Projects/landgrabu-data/blob/master/Morrill_Act_of_1862_Indigenous_Land_Parcels_Database/CSVs/Parcels.csv [https://perma.cc/7MRH-8GU8].

of the total land taken and the endowment universities raised from the Morrill Act land parcels.

I calculated how much land-grant universities raised from each cession from Indigenous nations as of 1914 by aggregating and mapping the endowment raised per parcel in 1914 to each Indigenous land cession, using the Royce ID as a unique identifier. I then estimated the endowment raised in 1914 in 2025 dollars, by multiplying the endowment raised in 1914 per cession by the multiplier for a dollar in 1914 to August 2025, using the CPI calculator from the Bureau of Labor Statistics. That amount is \$32.40, so I multiplied the 1914 endowment raised by \$32.40 to calculate the 2025 adjusted amount.

I estimated the value of land parcels ceded from the cessions of Indigenous land in 2025 dollars using the average price of farmland by state in August 2025, as published by the U.S. Department of Agriculture. I mapped the average farmland value onto each cession based on the states identified for each cession in the Cessions.csv file. There are limitations to using farmland value as an estimator because it may not account for variation in the value of land by county and urban areas in comparison to rural areas, but unfortunately, I was not able to find a better alternative. When the cession from the Indigenous nation included multiple states, I adjusted the formula to average the average price of farmland in each state that contributed to the cession as the multiplier.

For the purpose of analysis in this Note, I cleaned up the categories in what is Column D “US_Acquired_Mode,” in the *High Country News*’ published Cessions.csv file to categorize the means by which the United States acquired the Indigenous land cession. In this Note, I use the following categories: 1) ceded by treaty or agreement, 2) seized without treaty, agreement, act of Congress, or executive order, 3) seized by unratified treaty, 4) purchased, 5) seized by executive order, 6) seized by act of Congress and 7) unceded on present day reservation. I consolidated some similar types of cessions. I also categorized the following types of cessions as seizures: seizures without treaty or agreement, seizures by Congressional act, and seizures by executive order. My categorization differs slightly from *High Country News*, as they categorize some of these transactions, such as seizure by an act of Congress or executive order as treaties in their aggregated analysis.¹⁷⁷

¹⁷⁷ See Lee et al., *supra* note 2.

To organize the values in Tables 1 and 2, I also categorized the cession of land by whether the cession of land occurred prior to the Morrill Act passage in 1862 (“Pre-Morrill”) or after its passage (“Post-Morrill”). There were no actual cessions acquired from Indigenous nations in 1862, so the data in Table 1 covers the cessions the US acquired from Indigenous nations from 1801–1861 and Table 2 covers the cessions the US acquired from Indigenous nations from 1863–1889.

I calculated the total amount that the U.S. government paid for the land parcels acquired from a particular cession from an Indigenous nation or groups of indigenous nations by aggregating the individual value paid per parcel in the Parcels sheet and mapping it on to the cession it came from using the unique identifier `Royce_ID`.

Explanation of Tables in This Note

Table 1 indicates the cessions of land from 1801–1889 that the U.S. government took parcels from to fund 1862 land-grant universities, broken down by type of acquisition.

Table 2 indicates the Pre-Morrill Act cessions of land from Indigenous nations which the U.S. government took parcels from to fund 1862 land-grant universities. The data is broken down by type of transaction and filtered as being taken prior to 1862 (“Pre-Morrill”).

Table 3 indicates the Post-Morrill Act cessions of land from Indigenous nations which the U.S. government took parcels from to fund 1862 land-grant universities. The data is broken down by type of transaction and filtered by date of acquisition of on or after 1862 (“Post-Morrill”).

Table 4 indicates the total endowment land-grant universities raised from Morrill Act land parcels in 1914, and the amount adjusted for inflation in 2025 dollars. It also indicates the estimated value of the land that was used to fund the endowment in August 2025 USD, using the average price of farmland published by the USDA in August 2025.