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MORE THAN MORRILL

THE INTERTWINED HISTORY OF INDIAN LAND DISPOSSESSION, ARIZONA STATEHOOD, AND UNIVERSITY ENRICHMENT

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Through the federal government's university land-grant programs, which began with the Morrill Act in 1862 and continue today, Congress has systematically allocated millions of acres of land in the western United States to states to create endowments to support the public higher education of its citizens. In Arizona, land was taken from Indigenous people, communities, tribes, and nations by treaty, act of congress, executive order, and force to accomplish this. As a result, by the time of statehood in 1912, the state of Arizona had accumulated approximately 850,000 acres of land around the state on behalf of higher education including the University of Arizona, then the state's only university and its designated land-grant institution. Today, the Arizona State Land Department still holds and manages 688,706 acres of land in trust for the benefit of public higher education. All three of Arizona's public universities receive distributions from the revenue generated by these trust lands. The goal of this paper is to explore and analyze the University of Arizona's historical and ongoing enrichment from land taken from Indigenous peoples by the federal government and transferred to the territory and, later, the state of Arizona for the benefit of institutions of higher education in the nineteenth and early twentieth centuries. A comprehensive understanding of Arizona's history and the state's current holdings and financial benefits is required to examine the policy implications and

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moral and legal obligations that Arizona and its universities have to Indigenous peoples in Arizona.

INTRODUCTION

Indigenous peoples and communities have inhabited Arizona for thousands of years. Long before Spanish missionaries and soldiers ventured into the Sonoran Desert, the

Hohokam, Ancestral Puebloan, Tohono O'odham, Apache, Navajo, Hopi, Yavapai, and numerous other peoples and tribes called the lands of Arizona home. Through the federal government's university land-grant programs, which began with the Morrill Act in 1862 and continue today, Congress has systematically allocated millions of acres of land in the western United States to states to create endowments to support the college education of its citizens.[4] In Arizona, land was taken[5] from Indigenous people, communities, tribes, and nations by treaty, act of congress, executive order, and force to accomplish this.[6]

As a result, by the time of statehood in 1912, the state of Arizona had accumulated approximately 850,000 acres of land[7] throughout the state on behalf of higher education, including the University of Arizona, the state's land-grant-designated institution and only

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[4] Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (1862) (codified at 7 U.S.C. §§ 301–308).

[5] For the purposes of this article, land is considered "taken" if "(i) there is evidence of a unilateral action by the federal government, (ii) there is no evidence of consideration, (iii) the treaty was not ratified, but the lands were taken anyway, and (iv) if there was open opposition by the tribes involved with the cession." Douglas W. Allen & Bryan Leonard*, Late Homesteading: Native Land Dispossession through Strategic Occupation*, 119 AM. POL. SCI. REV. 56, 63 (2025). In contrast, Allen & Leonard define "ceded" to refer to actions where "there is evidence it [the land transaction] was voluntarily entered into by each side. That is, if there is evidence in the historical record of (i) an actual exchange of lands for some type of consideration, (ii) no indication of duress or ex post unilateral change of terms, and (iii) no evidence of outright Native opposition to the cession." *Id.* While scholars may utilize other definitions or disagree with our interpretation, the authors adopt Allen & Leonard's distinction to highlight the coercive and often non-consensual nature of land transfers in Arizona, consistent with the historical record presented in Charles C. Royce's *Schedule of Indian Land Cessions*. Royce, *infra* note 17. For example, Royce notes that the treaty of June 1, 1868, between the U.S. and the Navajo Nation was made at Fort Sumner, New Mexico Territory, *id.* at 848, which, Royce did not note, is the location of Bosque Redondo, where the Navajo people had been force-marched and detained since 1863. During their period of internment, the Navajo people desperately tried to convince the government to allow them to return to their homelands. *See generally infra* II.C. Thus, this treaty clearly was not made between parties of equal power. Even the Final Report of the Indian Claims Commission, *infra* note 27, explains in striking, matter-of-fact detail, the inequities of the Indian land cessions. U.S. INDIAN CLAIMS COMM'N, 95TH CONG., FINAL REPORT, 1–3 (2d Sess. 1978).

[6] For a comprehensive accounting and GIS mapping of Arizona's nineteenth century Indian land cessions, see generally DANIEL F. CRACCHIOLO LAW LIBR., JAMES E. ROGERS COLL. OF LAW, *University of Arizona Land-Grant Project: Tracking the History of Land-Grant Enrichment at the University of Arizona*, https://storymaps.arcgis.com/stories/913da25f6c3d46658690c3800bfef48e [https://perma.cc/C6B5-57P6] (last visited Oct.19, 2025) [hereinafter Univ. of Ariz. Land-Grant Project]. The project includes historical narratives and interactive GIS maps of land takings and current land holdings using Bureau of Land Management records.

[7] According to the United States Census Bureau, Arizona encompasses a total land area of 72,739,456 acres (113,655 square miles). *Arizona*, https://data.census.gov/profile/Arizona?g=040XX00US04 [https://perma.cc/7KXX-2YZQ] (last visited June 18, 2025). Of this total, more than nine million surface acres are designated as State Trust lands, which are dispersed throughout the state and situated among federal and private holdings. These lands account for approximately 13% of Arizona's total surface area. *See* ARIZ. STATE LAND DEP'T, *Our Agency & Mission*, https://land.az.gov/our-agency-mission [https://perma.cc/PY77-GLCA] (last visited Jun. 18, 2025). Additionally, tribal lands represent a significant portion of the state's land base, covering an estimated 27,736,000 acres (43,338 square miles), or roughly 28% of Arizona's total land area. *See* ARIZ. TRIBAL TRANSP., https://aztribaltransportation.org/home [https://perma.cc/2ZV3-4PTM] (last visited June 18, 2025).

university at that time.[8] Today, the Arizona State Land Department still holds and manages in trust for public higher education 688,706 acres of land.[9] All three of Arizona's public universities—Arizona State University, Northern Arizona University, and the University of Arizona—receive distributions from the revenue generated from the trust land.[10] The University of Arizona also receives federal funding directly from the U.S. Congress to support its agricultural college, which is one element of the nineteenth century land-grant designation.[11]

The goal of this paper is to explore and analyze the University of Arizona's historical and ongoing enrichment from land taken from Indigenous peoples by the federal government and transferred to the territory and, later, the state of Arizona for the benefit of institutions of higher education in the nineteenth and early twentieth centuries. A comprehensive understanding of Arizona's history and the state's current holdings and financial benefits is required to examine the policy implications and moral and legal obligations of Arizona and its universities to Indigenous peoples in Arizona.

This study opens with a historical analysis of federal land seizures from Indigenous peoples, communities, tribes, and nations in Arizona Territory during the nineteenth century federal government's colonial settlement efforts in Arizona Territory under the Doctrine of Discovery.[12] The analysis traces the establishment and development of the

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[8] *See* Henry S. Brunner, *Land-Grant Colleges and Universities, 1862–1962*, U.S. DEP'T. OF HEALTH, EDUC., & WELFARE, OFF. OF EDUC., 1, 43 (1962), https://files.eric.ed.gov/fulltext/ED544003.pdf [https://perma.cc/Q7RY-3WDL] ("The term land-grant college (or university) is applied to any institution of higher education that has been recognized and designated by the legislature of the State in which it is located as being qualified to fulfill the provisions and to receive the benefits of either or both the First Morrill Act of 1862 or the Second Morrill Act of 1890."). The relevant 1862 Morrill Act provisions include offering a higher education in the "agricultural and the mechanic arts" and "military tactics." *See* Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (1862) (codified at 7 U.S.C. §§ 301–308). The Morrill Act will be discussed in greater detail in the next sections.

[9] 2024 ARIZ. STATE LAND DEP'T ANN. REP. 9, https://land.az.gov/sites/default/files/2024-09/FY%202024%20Annual%20Report.pdf [https://perma.cc/HR4H-2M9A]. The reduction in State Trust land acreage, from 850,000 acres to 688,706 acres, is attributed to land sales, land exchanges, and constitutional mandates. The Arizona State Land Department (ASLD) publishes annual reports detailing land management activities and revenues generated during each fiscal year. In addition, ASLD regularly posts notices for upcoming land auctions on its website. S*ee, e.g.*, ARIZ. STATE LAND DEP'T, *Reports & Notices*, https://land.az.gov/reports-notices [https://perma.cc/7CVD-ALLP] (last visited June 18, 2025). ASLD also provides auction results dating from fiscal year 2017 to the present. *See, e.g.*, ARIZ. STATE LAND DEP'T, *Auction History 05302025*, https://land.az.gov/sites/default/files/2025-05/Auction%20History%2005302025.pdf [https://perma.cc/4TE4-LW5S] (last visited June 18, 2025).

[10] *See, e.g.*, ARIZ. BD. OF REGENTS, FY 2024 STATE BUDGET REQUEST 13–19 (Sept. 1, 2022), https://www.azregents.edu/sites/default/files/reports/FY2024-Budget-Request_0.pdf [https://perma.cc/F52J-5CJT].

[11] *See* Smith-Lever Act, Pub. L. No. 95, ch. 79, 38 Stat. 372 (1914). (U.S. Congress makes annual appropriations as part of The Farm Bill to land-grant institutions to support agricultural extension).

[12] Margaret Nash, *Entangled Pasts: Land-Grant Colleges and American Indian Dispossession*, 59 HIST. OF ED. Q. 437, 443–44 (2019), explaining that the system of settler colonialism "depended on the accessibility of vast quantities of land, land that the British settlers felt they had a right to under the . . . Doctrine of Discovery." Nash argues that this doctrine's sentiment is the underlying cause of the American Revolution,

university system within Arizona Territory, the process by which it secured land-grant status, and the distinctive western mechanism through which the Arizona State Land Department holds title to nearly 850,000 acres in trust for Arizona's institutions of higher education.

Building upon this foundation of how Arizona's territorial and university development depended upon the dispossession of Indigenous lands and the destruction of Indigenous lifeways, this paper next examines the contemporary financial benefits accruing to Arizona's public universities, focusing particularly on the University of Arizona as the state's original nineteenth century land-grant institution.

The paper concludes by exploring the policy implications and moral and legal obligations owed to Indigenous peoples in Arizona over a century after the federal government's final military campaigns to colonize Arizona territory.[13]

I. ARIZONA'S NINETEENTH CENTURY LAND CESSIONS

As homesteaders, speculators, miners, railroad industrialists, and others ventured westward in the nineteenth century,[14] U.S. soldiers in Arizona Territory forcibly rounded-

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which allowed colonists "the freedom to continue pushing west and to continue the regime of dispossessing and eradicating Native Americans." University of Arizona Regents Professor Robert A. Williams has studied and published prolifically on the Doctrine of Discovery and its effect on Indigenous peoples and land. *See, e.g.*, THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST (1990); LINKING ARMS TOGETHER: AMERICAN INDIAN TREATY VISIONS OF LAW AND PEACE, 1600–1800 (1997); SAVAGE ANXIETIES: THE INVENTION OF WESTERN CIVILIZATION (2012). See generally LINDSAY G. ROBERTSON, CONQUEST BY LAW: HOW THE DISCOVERY OF AMERICAN DISPOSSESSED INDIGENOUS PEOPLES OF THEIR LANDS (2005) for a close examination of *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823), establishing that American Indians had no right to legal title of the land they occupied and that only the federal government could acquire title to Native lands.

[13] Today Arizona is home to 22 federally recognized Tribes and at least one Tribe that is not yet federally recognized. At least three additional tribes were removed to Utah, New Mexico, and Oklahoma. The University of Arizona acknowledges Tucson, where the University's main campus sits, as "being home to the O'odham and the Yaqui." UNIV. OF ARIZ, https://www.arizona.edu/ [https://perma.cc/H9Z4-SYSK] (last visited Jan. 13, 2025); *see also* UNIV. OF ARIZ., *The University of Arizona Land Acknowledgement*, https://www.arizona.edu/university-arizona-land-acknowledgment [https://perma.cc/U7HZ-S4YH] (last visited Jan. 13, 2025). The University of Arizona's Land Acknowledgment was developed as a collaborative effort among University officials and leaders of the Tohono O'odham Nation and Pascua Yaqui Tribe. It reads as follows: "We respectfully acknowledge the University of Arizona is on the land and territories of Indigenous peoples. Today, Arizona is home to 22 federally recognized tribes, with Tucson being home to the O'odham and the Yaqui. Committed to diversity and inclusion, the University strives to build sustainable relationships with sovereign Native Nations and Indigenous communities through education offerings, partnerships, and community service." In February 2025, the phrase "Committed to diversity and inclusion," was deleted from the University's land acknowledgment.

[14] *See* Nash, *supra* note 12, at 450 (explaining Congress's motivations for establishing white dominance in the west through legislation such as the Homestead Act of 1862 and transfers of land to the railroads). Nash argues that while the Morrill Act earmarked funds for public education, "its real purpose was to encourage white settlement of the west." *Id.* Nash also references press coverage that regarded the Morrill Act as federal land policy more than educational advancement. *Id.*; *cf.* THOMAS E. SHERIDAN, ARIZONA: A HISTORY 92 (2012) ("All that changed in 1874, when the government decided to consolidate many of the

up Indigenous peoples and confined them to inadequate reservations that were mostly created by executive orders and without compensation for their land.[15] This was not a peaceful process.[16] Even though Tribes in Arizona had occupied the land for millennia and claimed possession and occupancy over large swaths of land, the federal government did not recognize tribes' fee simple land title when creating these reservations.[17] Instead, reservation land was placed "in trust" for the supposed benefit of the tribes as "domestic dependent nations."[18] Except in rare circumstances, the U.S. government continues to hold reservation lands in trust for Native nations, tribes, and communities.[19]

The government of the Territory of Arizona tried to remove its original inhabitants from the Territory of Arizona in the late nineteenth century. In a Memorial to the U.S. Congress dated February 10, 1883, the Twelfth Territorial Legislature petitioned Congress to have all reservations in Arizona abolished and the reservation land returned to the "public" domain.[20] The territorial legislature requested that "Apache and other belligerent Indians" be removed "to a prairie or level country, where they can be easily guarded and

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smaller reserves into one giant reservation [San Carlos] where the Indians could be isolated and controlled.").

[15] See generally U.S. INDIAN OFFICE, EXECUTIVE ORDERS RELATING TO INDIAN RESERVES FROM MAY 14, 1855, TO JULY 1, 1902 (1902) for a compilation of Executive Orders pertaining to Native nations in Arizona; *see also* CHARLES J. KAPPLER, INDIAN AFFAIRS LAWS AND TREATIES VOL 2 (1904) and CHARLES J. KAPPLER, INDIAN AFFAIRS LAWS AND TREATIES VOL. IV § 4 (1929), for a full accounting of executive orders that created reservations for Native nations, tribes, and communities in the nineteenth century.

[16] See generally PAUL ANDREW HUTTON, THE APACHE WARS: THE HUNT FOR GERONIMO, THE APACHE KID, AND THE CAPTIVE BOY WHO STARTED THE LONGEST WAR IN AMERICAN HISTORY (2016), for detailed nineteenth century history of the Apache people and their fight with the U.S. government to protect and maintain their homelands; ROXANNE DUNBAR-ORTIZ, AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES (2014), for an accounting of Indigenous peoples' struggles for survival.

[17] *See* Charles C. Royce, *Schedule of Indian Land Cessions, in* EIGHTEENTH ANNUAL REPORT OF THE BUREAU OF ETHNOLOGY TO THE SECRETARY OF THE SMITHSONIAN INSTITUTION, 1896–97 (ed. J.W. Powell, 1899) for a late-nineteenth century description and illustration of land occupied by Indigenous peoples in the United States prior to colonization. The proceedings of the mid-twentieth century Indian Claims Commissions (60 Stat. 1049 (1946)), *infra* note 27, also contain highly detailed descriptions of land possession and use by Indigenous peoples in Arizona and throughout North America.

[18] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 2 (1831). This terminology ("domestic dependent nation") established the framework for the trust relationship between the federal government and tribes, positioning the United States as a guardian or trustee with tribes as wards.

[19] Aside from a few tribes such as the Pueblos of New Mexico and the Tuscarora of New York, title to most tribal land is held in trust for the tribe by the United States. DAVID H. GETCHES ET AL., CASES & MATERIALS ON FEDERAL INDIAN LAW 285 (7th ed., 2017). For an excellent discussion of the trust relationship between Indian tribes and the United States, see generally Daniel I. Rey-Bear & Matthew L. Fletcher, *We Need Protection from Our Protectors: The Nature, Issues, and Future of the Federal Trust Responsibility to Indians*, 6 MICH. J. ENV'T & ADMIN. L. 397 (2017); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 353–55 (NELL JESSUP NEWTON & KEVIN K. WASHBURN eds., 2024); GETCHES, ET AL. at 338–414; and CAROLE E. GOLDBERG ET AL., AMERICAN INDIAN LAW: NATIVE NATIONS AND THE FEDERAL SYSTEM: CASES AND MATERIALS 1025–54 (7th ed., 2015).

[20] TWELFTH LEGIS. ASSEMB. TERRITORY ARIZ., MEMORIAL IN REFERENCE TO INDIAN AFFAIRS TO THE SEN. AND H.R. OF THE UNITED STATES OF AMERICA, DOC. NO. 2, *in* LAWS OF THE TERRITORY OF ARIZ. 292, 295–96 (1883).

forced to take up agricultural pursuits . . . ." The legislature suggested that "[s]uch a mode of disposing of the Indians would be as much a benefaction to them as to ourselves."[21] The request was denied.

In 1885, the very year the Thirteenth Territorial Legislature approved the establishment of the University of Arizona, Arizona's Sixth Territorial Governor Frederick Augustus Tritle, in his Report to the Secretary of the Interior, complained of Apache depredations upon the lives and property of Arizona's residents, and pleaded with the Secretary to remove the San Carlos Apache to Indian Country (present-day Oklahoma):

> To the expediency of the removal of the Indians I earnestly request the consideration of Congress. If it is decided, however, to continue them in this [Arizona] Territory, I most respectfully recommend and urge that the limits of their reservation be narrowed, that they be disarmed and maintained under sufficient military guard to absolutely prevent the possibility of any further depredations by them. I would also recommend that entire jurisdiction over them be transferred to the War Department and that their complete control and treatment be placed in the hands of the military authorities.[22]

Again, the request for removal was denied. Nonetheless, the relegation of Native peoples in Arizona to miniscule reservations allowed the United States to control and take title to millions of acres of "open and empty" land.[23]

However, Arizona was anything but "open and empty" land as is apparent and documented in Charles C. Royce's authoritative, but not entirely accurate, 1895 Schedule of Indian Land Cessions.[24] Below are two maps from Royce's 1895 Schedule of Indian Land Cessions. Royce's Arizona Map 1 depicts the territory of land possessed and claimed

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[21] *Id.*

[22] Frederick Augustus Tritle, *Report of the Governor of Arizona to the Secretary of the Interior*, 15–16 (1885).

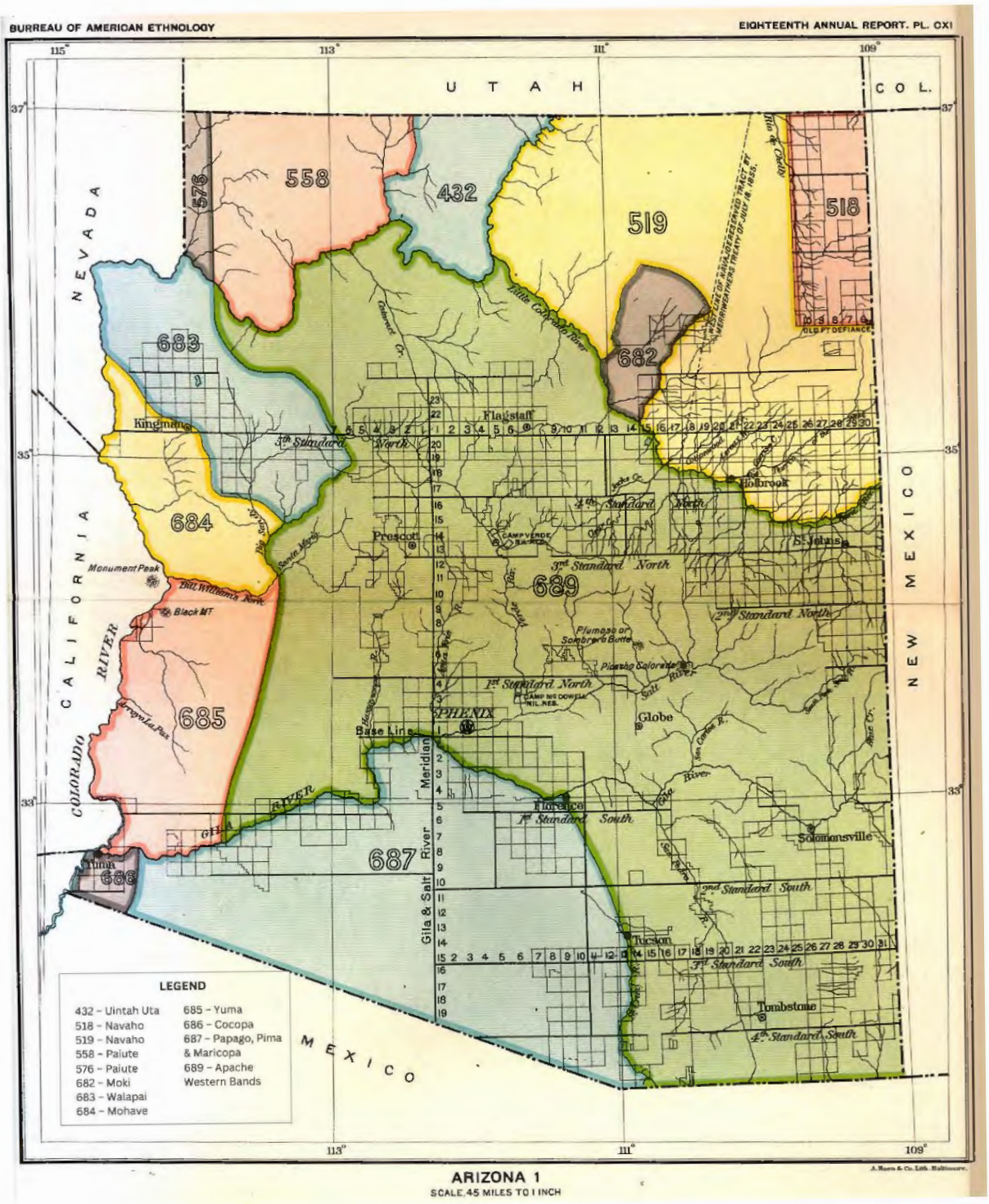
[23] Arizona land patents cite to An Act Making Further Provision for the Sale of the Public Land, Pub. L. No. 16-50, 3 Stat. 566 (1820), for legal title which authorizes initial land sales by the federal government in Arizona Territory. *See, e.g.*, BUREAU OF LAND MGMT., *Land Patent for Artemas Fay (AZAZAA01244)*, May 25, 1883, https://glorecords.blm.gov/details/patent/default.aspx?accession=AZAZAA%20011244&docClass=SER&sid=2bwm34u2.0ku [https://perma.cc/YWN2-YTPZ] (last visited Apr. 18, 2025).

[24] Royce, *supra* note 17, at Arizona Map 1. One example of Royce's inaccuracies in his Indian Land Cessions is the mistaken assignment of an Act of Congress of Oct. 1, 1886, supposedly associated with 11 Stat. 374. Royce at 920–23. In fact, there is no Act of Congress of Oct. 1, 1886, as Congress was not in session on Oct. 1, 1886. Further 11 Stat. 374 was passed in 1858, not 1886, and does not pertain to any of the nine Arizona tribes and their homelands that Royce enumerates in this section. Another example is Royce's erroneous assertion that the Navajo Treaty of June 1, 1868, Royce at 848, was never ratified, Royce at 851, despite his correct citation to the treaty, which states it was ratified by the Senate on July 25, 1868, and signed by President Andrew Johnson on Aug. 12, 1868 (15 Stat. 667, 672 (1868)).

by Native nations in Arizona prior to colonization.[25] As Arizona Map 1 illustrates, Native peoples occupied, utilized, and possessed every mesa, valley, mountain, and river in Arizona prior to colonization. Arizona Map 2 depicts the reservations upon which tribes were forced to live at the end of the nineteenth century.[26] Examining Royce's maps side-by-side helps one understand the dramatic loss of land and resources Indigenous peoples suffered at the hands of the governments of the United States and Territory of Arizona in the second half of the nineteenth century.

[25] Royce, *supra* note 17, at Arizona Map 1. Arizona Map 1 also includes the Navajo reservation created by treaty of 1868 (Area 518). This area does not appear to be part of the Navajo reservation in Arizona Map 2. Also note, the Legends in the lower left corner of Royce's maps are not in the original. They were created by the authors using Royce's schedule and terminology.

[26] *Id.* at Arizona Map 2. Please note, the Legends in the lower left corner of Royce's maps are not in the original. They were created by the authors using Royce's schedule and terminology.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519 – Navaho
558 – Paiute
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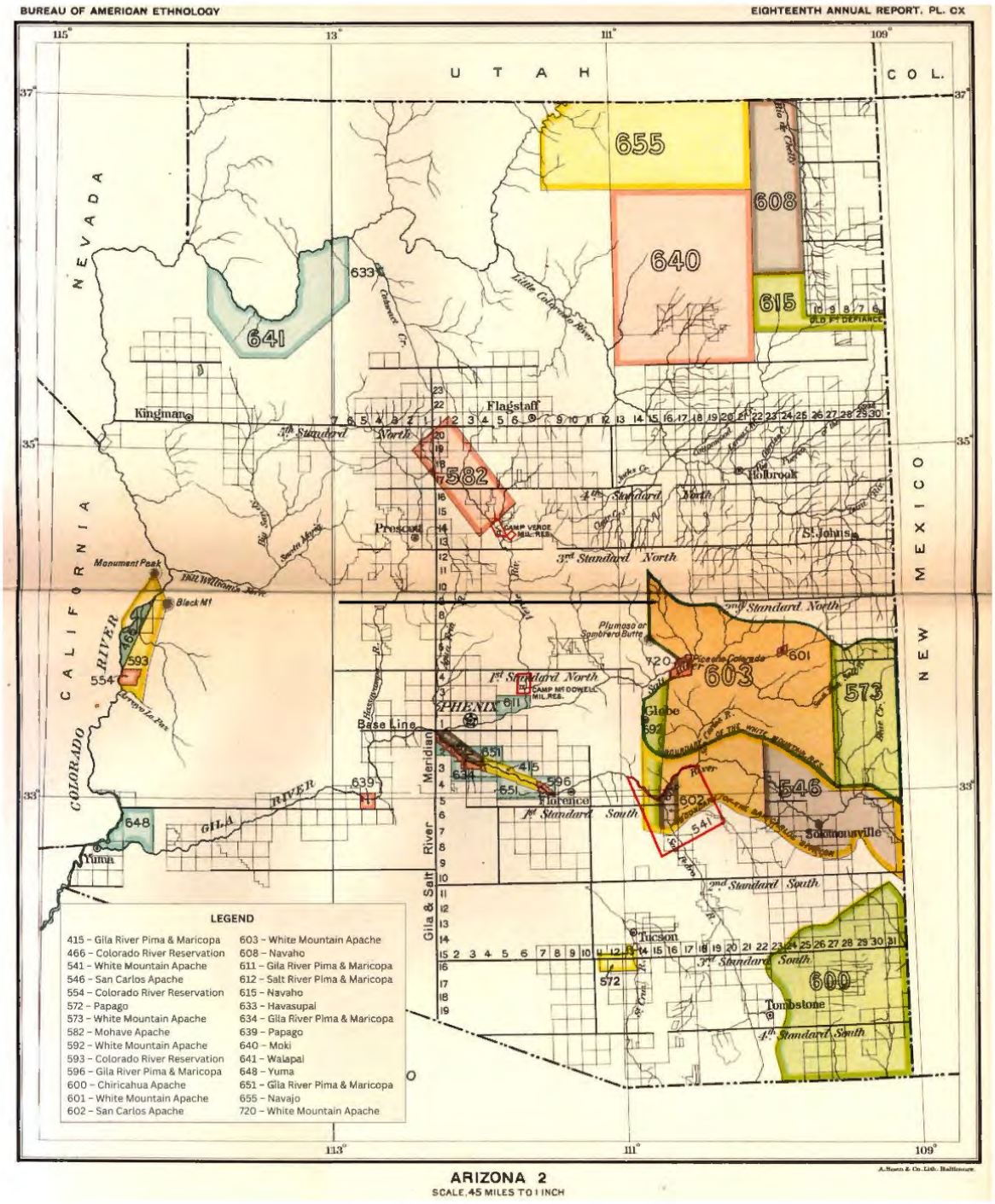

While it is beyond the scope of this paper to provide a complete history of Arizona's nineteenth century Indian land cessions, following are several brief examples of the struggles Native peoples endured in their fight to retain possession and occupancy of their ancestral homelands in Arizona. Included in the summaries are select nineteenth century

treaties and executive orders and twentieth century Indian Claims Commission decisions[27] that authorized the land takings and forced removals. The O'odham peoples are featured as it is their ancestral lands upon which the University of Arizona sits. The Navajo Nation is the largest Native nation in the United States, and their forced exile to Bosque Redondo is emblematic of what many Indigenous peoples faced during westward expansion and settlement. The Yavapai-Apache Nation is a much smaller community that, after years of complying with federal government directives, was force-marched to another Native nation's reservation. Both the Navajo and the Yavapai-Apache peoples made their way back to their ancestral homelands under very different conditions with vastly different results. The Havasupai Tribe has lived in and adjacent to the Grand Canyon for millennia, navigating the challenges and opportunities of this once remote, now heavily visited region. Finally, the Chiricahua Apache are illustrative of Indigenous peoples' long and bitter resistance against colonization.

The purpose is not to provide a complete history of these tribes, which only they can do with any degree of completeness, nor a full historical accounting of federal government actions and territorial transactions.[28] The purpose is to provide a few examples of Indigenous peoples' loss of land, life, and lifeways in Arizona.

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[27] Congress passed the Indian Claims Commission Act in 1946 in response to increasing requests for the U.S. Court of Claims to hear cases involving Indian claims to ancestral lands. Pub. L. No. 79-726, 60 Stat. 1049 (1946). The intent of the Act and the quasi-judicial Indian Claims Commission (ICC) was to resolve, once and for all, land claims made by tribal nations. The Act gave tribes five years to file a claim and gave the ICC ten years to finish its work. The ICC was replete with problems including underfunding and slow-moving dockets. The ICC finally lapsed in 1978 transferring the few remaining open cases to the U.S. Court of Claims to resolve. KEITH RICHOTTE, FEDERAL INDIAN LAW & POLICY: AN INTRODUCTION 175–78 (2020). The ICC also had limited jurisdiction and remedies, the latter of which were restricted to monetary awards for the fair market value of the land at the time it was taken by the U.S. government (the nineteenth century for Arizona) without adjustment for inflation or consideration for lost profit. DAVID E. WILKINS, HOLLOW JUSTICE: A HISTORY OF INDIGENOUS CLAIMS IN THE UNITED STATES 103–04 (2013). The ICC was not permitted to return land to the tribes nor provide additional recovery beyond the calculated nineteenth century price of the land taken. These limitations ultimately meant that the ICC's monetary awards were simply inadequate compensation for loss of land and lifeways suffered by the tribes. The ICC, initially praised for its collaborative intent, quickly became adversarial in nature and has since been criticized for its inadequacies. Illustrative of the ICC's inadequacies is the Inter-American Court of Human Rights opinion finding that the ICC violated the due process rights of individuals such as the Dann sisters (Western Shoshone) who never ceded their family's claim to land they possessed from time immemorial. RICHOTTE at 648–64 (citing *Case of Mary and Carrie Dann v. United States*, Case No. 11.140, Inter Am C. H. R. No. 75/02 (2002)).

[28] Arizona's nineteenth century Indian Land Cessions are comprehensively documented in Appendix A of the online Univ. of Ariz. Land-Grant Project, *supra* note 6. Founded in 2022, the project brings together nineteenth century primary and secondary sources, as well as summaries of the mid-twentieth century Indian Claims Commission which purported to settle all Indian land claims in the United States.

A. Chiricahua Apache Tribe

The Chiricahua Apache are one of the major Western Apache groups, with several autonomous bands (e.g. Bedonkohe, Chihene, Chokonen, Nednhi) making their home in eastern Arizona and western New Mexico, and south into Sonora and Chihuahua, Mexico.[29]

After decades of fighting and resisting colonization, President Grant established the Chiricahua Indian Reservation "for certain Apache Indians in the Territory of Arizona" by Executive Order on December 14, 1872,[30] as a peace settlement involving General O.O. Howard and Cochise.[31] However, after Cochise died in 1874, hostilities renewed, giving rise to the excuse the United States needed to forcibly remove the Chiricahua Apache north to the San Carlos Reservation.[32] Thus, less than four years after its creation, President Grant eliminated the Chiricahua Apache Reservation in its entirety by Executive Order on October 30, 1876.[33]

With the elimination of their reservation, the Chiricahua Apache were forcibly removed to the San Carlos Apache Reservation, but many of them refused to stay. After a long and bloody resistance that eventually ended in surrender in 1886, Chiricahua Apache leader Goyathlay (Geronimo) and 300 other Chiricahuas were sent by train as prisoners-of-war to Fort Marion in St. Augustine, Florida. Those who survived were permanently relocated to Fort Sill in Indian Territory (present-day Oklahoma) in 1894, where many Chiricahua Apache still reside.[34]

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[29] SHERIDAN, *supra* note 14, at 67.
[30] U.S. INDIAN OFF., *supra* note 15, at 4; *see also* Royce, *supra* note 17, Arizona Map 2, Area 600.
[31] SHERIDAN, *supra* note 14, at 98. President Grant's Indian Peace Policy, established in 1869, was intended to reduce conflict with Native Americans which was necessary to further Grant's goals of westward expansion, which required removing Indians to reservations for their protection. *President Ulysses S. Grant, First Annual Message, December 6, 1869*, available at AM, PRESIDENCY PROJECT, https://www.presidency.ucsb.edu/documents/first-annual-message-11 [https://perma.cc/5B6F-YF2Q] (last visited July 23, 2025). Grant's Indian Peace Policy reformed the Indian bureau and removed corrupt agents, replacing them with Christian missionaries who would establish schools on reservations and impose western education, religion, and agricultural practices. CLIFFORD E. TRAFZER, AMERICAN INDIANS/AMERICAN PRESIDENTS: A HISTORY 102–03 (2009). Some of the worst military campaigns in U.S. history occurred under Grant's Indian Peace Policy, *id.* and Dunbar-Ortiz, *supra* note 16, at 146, which also led to the end of official treaty-making in 1871, *see infra,* note 68.
[32] SHERIDAN, *supra* note 14, at 99; *see also* Royce, *supra* note 17, Arizona Map 2, Area 602.
[33] U.S. INDIAN OFF., *supra* note 15, at 5; *see also* Royce, *supra* note 17, Arizona Map 2, Area 600.
[34] FORT SILL APACHE TRIBE, *History*, https://fortsillapache-nsn.gov/history-and-traditional-culture/history/ [https://perma.cc/NM23-8WN5] (last visited Apr. 18, 2025). In addition to Fort Sill, Oklahoma, some Chiricahua Apache have remained on the San Carlos Apache Reservation in eastern Arizona, and others live amongst the Lipan and Mescalero Apache on the 463,000-acre Mescalero Apache Reservation, established in 1873 by Executive Order of President Grant, in south-central New Mexico. MESCALERO APACHE TRIBE, *Our Culture*, https://mescaleroapachetribe.com/our-culture/ [https://perma.cc/7EAR-3W6L] (last visited Feb. 5, 2025). See generally HUTTON, *supra* note 16, for detailed nineteenth century history of the Apache people, their fight with the U.S. government to protect and maintain their homelands, and their eventual surrender and removal from Arizona Territory.

In his autobiography Geronimo pleaded for his and his people's return to their homelands in southeastern Arizona but was denied:

> We are now held on Comanche and Kiowa lands, which are not suited to our needs . . . . There is no climate or soil which, to my mind, is equal to that of Arizona. We could have plenty of good cultivating land, plenty of grass, plenty of timber and plenty of minerals in that land which the Almighty created for the Apaches. It is my land, my home, my father's land, to which I now ask to be allowed to return. I want to spend my last days there, and be buried among those mountains. If this could be I might die in peace, feeling that my people, placed in their native homes, would increase in numbers, rather than diminish as at present, and that our name would not become extinct. I know that if my people were placed in that mountainous region lying around the headwaters of the Gila River, they would live in peace and act according to the will of the President… If this cannot be done during my lifetime—if I must die in bondage—I hope that the remnant of the Apache tribe may, when I am gone, be granted the one privilege which they request—to return to Arizona.[35]

On May 26, 1948, the Fort Sill Apache Tribe of Oklahoma, which includes Chiricahua and Warm Springs Apache, filed a claim with the Indian Claims Commission (ICC) alleging "aboriginal title"[36] to land in New Mexico and Arizona that the U.S Government took without proper compensation.[37] On June 28, 1968, the ICC found that the Fort Sill and Chiricahua Apache held aboriginal title to "a vast area west of the Rio Grande River in the present States of New Mexico and Arizona," and that the U.S. government had indeed taken the land in 1886 without proper payment.[38] On June 9, 1971, the ICC determined that the Fort Sill and Chiricahua Apache were entitled to nearly $16 million for the 14.8 million acres of land to which they had held title, including land in the Cochise and Graham counties in the southeastern Arizona Territory.[39] The ICC also approved a stipulated settlement of an additional $521,800 from a companion suit, minus any offsets, which amounted to $7,700 for the government.[40] These monetary awards were

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[35] GERONIMO & S.M. BARRETT, GERONIMO: HIS OWN STORY 173 (Frederick W. Turner ed., 1970).
[36] "Aboriginal title" is defined as having "full beneficial interest, including full use and enjoyment of the surface and mineral estate, timber resources, and other things growing on the land." GOLDBERG ET AL., *supra* note 19, at 983.
[37] Fort Sill Apache v. United States, Petition, Docket No. 30 (1948); *see also* 19 Ind. Cl. Comm'n 212, 253 (1968) ("The claims herein were timely filed on May 26, 1948.").
[38] Fort Sill Apache v. United States, 19 Ind. Cl. Comm'n 212, 268 (1968).
[39] Fort Sill Apache v. United States, 25 Ind. Cl. Comm'n 352, 353, 380 (1971).
[40] Fort Sill Apache v. United States, 26, Ind. Cl. Comm'n 193, 194 (1971).

calculated using the 1886 values for grazing lands ($.65 per acre), farming ($5 per acre) and mineral worth ($106.25 per acre) in Arizona.[41] The awards were not adjusted for interest or inflation between the determined date of taking (1886) and award (1971).

Today, the short-lived (1872–1876) Chiricahua Apache Reservation in southeastern Arizona is comprised of privately held agricultural land, Arizona state trust land (the revenue from which benefits Arizona's public universities), interstate and railroad corridors, and federal public land.[42] This includes Chiricahua National Monument and Fort Bowie National Historic Site, from where Army officials negotiated with Geronimo for his surrender in September 1886.[43]

B. Havasupai Tribe

The Havasupai people, known in their language as Havasu Baaja (People of the Blue Green Waters), have maintained a continuous presence in the Grand Canyon region for over a millennium. Their traditional homeland centers around the village of Supai, Arizona, situated eight miles below the Grand Canyon's rim, where they have preserved their cultural connection to the land despite significant territorial changes over the past 150 years. The Havasupai reservation totals 188,077 acres (294 square miles).[44]

The Havasupai are one of 13 bands that comprised three major Pai ("people") subgroups in northern Arizona prior to colonization. The Hualapai (Amat Whala Pa'a, Pine-Clad Mountain People) are another such band.[45] The Havasupai and Hualapai joined forces in the Haulapai Wars (1865–1869) against the U.S. government over land (encroachment of cattle ranching and building the Santa Fe Railroad) and resources (particularly copper mining) that were displacing the Pai and their lifeways. After their defeat, Hualapai survivors were forced to relocate to a camp at La Paz, Arizona, and the Havasupai were confined to a small area within Havasu Canyon.[46]

The formal definition of Havasupai territory by the United States government began on June 8, 1880, when President Rutherford B. Hayes issued an Executive Order establishing a reservation along Cataract Creek in northern Arizona Territory.[47] This initial

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[41] Fort Sill Apache v. United States, 25 Ind. Cl. Comm'n 352, 354–355, 361 (1971). This decision provides great detail as to how the ICC calculated its monetary award.
[42] Univ. of Ariz. Land-Grant Project, *supra* note 6, interactive maps, Map 11.
[43] GERONIMO & BARRETT, *supra* note 35, at 142–44.
[44] HAVASUPAI TRIBE, *About*, https://www.theofficialhavasupaitribe.com/About-Supai/about-supai.html [https://perma.cc/5HQ9-TDM8] (last visited Feb. 5, 2025); *see also* INTERTRIBAL COUNCIL OF ARIZ., *Havasupai Tribe*, https://itcaonline.com/member-tribes/havasupai-tribe/ [https://perma.cc/P8KW-Z74P] (last visited Feb. 5, 2025).
[45] SHERIDAN, *supra* note 14, at 81–82.
[46] N. ARIZ. UNIV., CLINE LIBR., SPECIAL COLLECTIONS & ARCHIVES, *Indigenous Voices of the Colorado Plateau*, https://library.nau.edu/speccoll/exhibits/indigenous_voices/havasupai/overview.html [https://perma.cc/5KDV-8A28] (last visited May 26, 2025).
[47] U.S. INDIAN OFF., *supra* note 15, at 14; *see also* Royce, *supra* note 17, at 900–01, Arizona Map 2, Area 633.

designation was quickly refined through a subsequent Executive Order on November 23, 1880, which clarified the intended boundaries while maintaining the reservation's approximate size of 38,500 acres (60 square miles).[48] The Havasupai Reservation was dramatically reduced by President Chester A. Arthur's Executive Order of March 31, 1882, which revoked the 1880 boundaries and established a new, significantly smaller reservation of just 518 acres (.81 square miles).[49] With the development of Grand Canyon National Park (est. 1919), Havasupai who lived within the park boundaries, including families farming the land at Indian Garden, were forced out of the canyon and onto their inadequate reservation.[50]

On December 30, 1968, the ICC determined that the United States extinguished without compensation, aboriginal title to land exclusively used and occupied by the Havasupai lying outside the reservation that was created for them by Executive Order on June 8, 1880. The ICC also held that the United States, on March 3, 1882, extinguished without compensation, aboriginal title to the lands exclusively used and occupied by the Havasupai Indians inside the reservation established by the Executive Order of June 8, 1880.[51] On August 6, 1969, the ICC approved a monetary settlement between the Havasupai and the U.S. government for $1.24 million (about $.55 per acre) for 2,257,728 acres of land (3,528 square miles) in the north and northeastern parts of Arizona that were appropriated by the government without compensation to the Havasupai Tribe.[52]

The Havasupai reservation boundaries remained unchanged until 1975, when President Gerald Ford signed into law the Grand Canyon National Park Enlargement Act,[53] which returned to the Havasupai Tribe an additional 185,000 acres of land on the rim of Grand Canyon on the western edge of the park. "It is land the Havasupais had occupied for about 1,000 years, until it was taken away from them about a century ago."[54]

C. Navajo Nation

The Navajo were highly successful and productive hunters, farmers, and ranchers in the middle of the nineteenth century. Charles Bent, the first American governor of New Mexico (1846–1847) observed that the tribe possessed an estimated 30,000 head of cattle, 500,000 sheep, and 10,000 horses and mules, spread across a vast region, in addition to

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[48] U.S. INDIAN OFF., *supra* note 15, at 14–15.
[49] *Id.* at 15.
[50] Patricia Biggs, *Havasupai*, NATURE, CULTURE, & HIST. AT THE GRAND CANYON, https://grcahistory.org/history/native-cultures/havasupai/ (last visited Feb. 5, 2025).
[51] Havasupai Tribe v. United States, 20 Ind. Cl. Comm'n 210, 222 (1968).
[52] Havasupai Tribe v. United States, 21 Ind. Cl. Comm'n 324, 341 (1969).
[53] Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620, 88 Stat. 2089 (1975) (codified at 16 U.S.C. § 228a-j).
[54] U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFS., *Land Near Grand Canyon Restored to Havasupai Indians* (Jan. 17, 1975), https://www.bia.gov/as-ia/opa/online-press-release/land-near-grand-canyon-restored-havasupai-indians [https://perma.cc/YA9R-7ZGA].

engaging in significant and varied farming activity.[55] In 1854, David Merriwether, Governor and Superintendent of Indian Affairs in New Mexico, reported to the U.S. Secretary of the Interior that the Navajo were a "powerful tribe of Indians" who resided on over 16 million acres (25,000 square miles) in what is today the four corners region of Colorado, Utah, Arizona, and New Mexico. He noted the land as "one of the finest agricultural regions within New Mexico."[56]

The United States government signed eight treaties with Navajo leaders between 1846–1868.[57] The U.S. Senate ratified only two, each of which set reservation boundaries significantly smaller than the territory they possessed, in 1849[58] and 1868.[59] Andrew Curley (Diné) explains the circumstances of the 1868 treaty:

> These were not fairly negotiated provisions between two equal parties. The U.S. government used coercive force and threats to make an interned, half-starved population select leaders who acted as legal agents on behalf of the entire tribe. These leaders simply endorsed actions that the U.S. government had already determined it was going to take, regardless of what the Navajo people did there.[60]

Leading up to the 1868 treaty were many years of broken peace treaties and sporadic fighting until the United States determined that the only way to control and suppress the Navajo was to force them off their traditional homelands and confine them to a distant reservation. Brigadier General James Carleton ordered Christopher "Kit" Carson

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[55] SHERIDAN, *supra* note 14, at 76 (quoting Charles Bent sometime before January 1847, when he was killed in the Taos Indian Revolt). According to Bent, Navajo crops included wheat, corn, beans, squash, melons, and peaches.

[56] David Merriwether, *Report No. 84*, *in* ANNUAL REPORT OF THE COMM'R OF INDIAN AFFS. 166, 172 (1854); *see also* David Merriwether, *Annual Report of Commissioner of Indian Affairs, Report No. 84*, *in* REPORT OF THE SECRETARY OF THE INTERIOR 374, 380 (1854).

[57] N. ARIZ. UNIV., CLINE LIBR., *Navajo Treaty Item Description*, https://archive.library.nau.edu/digital/collection/cpa/id/97562/ [https://perma.cc/XF54-2AND] (last visited Apr. 18, 2025).

[58] Treaty with the Navaho Tribe of Indians, Sept. 9, 1849, 9 Stat. 974; *see also* images of Ratified Indian Treaty 255 at https://catalog.archives.gov/id/174690799 [https://perma.cc/HB66-9GJQ] (last visited Feb. 5, 2025); Royce, *supra* note 17, at 780–81.

[59] Treaty of Peace and Establishment of Navajo Nation Land Boundaries, June 1, 1868, 15 Stat. 667; *see also* Royce, *supra* note 17, at 848–49, Arizona Map 1, Area 518, 519.

[60] Andrew Curley, *The Origin of Legibility: Rethinking Colonialism and Resistance among the Navajo People, 1868–1937*, *in* DINÉ PERSPECTIVES: REVITALIZING AND RECLAIMING NAVAJO THOUGHT 129, 134 (Lloyd L. Lee ed., 2014). In this chapter, Curley provides a profound examination of the utility of treaty-making for the federal government and its effect on Indigenous peoples: "In the context of the U.S. westward expansion, treaties became a principal method for creating tribes. Tribes were created from treaties. Treaties introduced tribes and turned ambiguous ethnic and racial references, such as the early Spanish reference for the Diné people as 'Apache de Navajo,' into bounded categories of people, attaching legal and political weight to these categories and creating hard borders between tribes and races." *Id.* at 132.

to accomplish this brutal task.[61] In July 1863, Carson reached Fort Defiance with over 700 soldiers and Indian scouts and began the systematic destruction of Navajo resources. Carson's forces burned cornfields, slaughtered sheep, confiscated cattle and horses, killing Navajo men and seizing women and children. As winter approached, small groups of starving Navajos surrendered at Fort Defiance.[62] The final Navajo refuge was Canyon de Chelly in northeastern Arizona. After a winter storm, Carson's forces entered from east and west, systematically destroying fields and herds without fighting major battles.[63] Jennifer Nez Denetdale (Diné) explains, "[b]eginning in late 1863, the United States uprooted about 10,500 Navajo men, women and children from their homes and force-marched them 450 miles to Bosque Redondo, an internment camp on the Pecos River in southeastern New Mexico."[64] Carleton reported that 8,354 Navajos were at Bosque Redondo in January 1865 struggling for their very survival on the smallpox-ridden and overcrowded reservation.[65]

After four years of suffering, starvation, disease and death, the exiles convinced U.S. officials to allow them to return to their "beloved country" in 1868.[66] The Navajo Treaty of 1868 allowed the Navajo people to return to a small portion (about 3.4 million acres) of their ancestral lands in northeastern Arizona and northwestern New Mexico and reestablish their legal sovereignty.[67] After treatymaking with Native nations officially ceased in 1871,[68] a series of executive orders in the fourth quarter of the nineteenth century

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[61] SHERIDAN, *supra* note 14, at 77.
[62] *Id.* at 77–78.
[63] *Id.* at 78.
[64] Jennifer Nez Denetdale, *Naal Tsoos Sani (The Old Paper): The Navajo Treaty of 1868, Nation Building and Self-Determination,* 19(2) AM. INDIAN, MAG. OF THE NAT'L MUSEUM OF THE AM. INDIAN, SMITHSONIAN INST. (2018), https://www.americanindianmagazine.org/story/naal-tsoos-sani [https://perma.cc/G6D5-5KLR] (last visited Feb. 6, 2025). Denetdale is Professor and Chair of American Indian Studies at the University of New Mexico.
[65] SHERIDAN, *supra* note 14, at 78.
[66] Denetdale, *supra* note 64.
[67] *Id.* The signers of the treaty included 23 Navajo leaders, including Barboncito, Manuelito, Ganado Mucho, and Narbono, U.S. President Andrew Johnson, and Lt. General and Indian Peace Commissioner William Tecumseh Sherman. N. ARIZ. UNIV., CLINE LIBR., *Navajo Treaty, August 20, 1868 [Signed June 1, 1868]*, https://archive.library.nau.edu/digital/collection/cpa/id/97562 [https://perma.cc/M9FF-AV8Z] (last visited Oct. 9, 2025); *see also* Curley, *supra* note 60, at 134 ("All that the Navajo people at Bosque Redondo could do was agree to this treaty.").
[68] Indian Appropriations Act of Mar. 3, 1871, ch. 120, 16 Stat. 544, 566. From the founding of the United States until 1871, the U.S. government recognized Indian Tribes as sovereign nations and negotiated treaties with them, all of which required congressional approval. Treaty-making ceased on March 3, 1871, when Congress, as part of a massive appropriations bill, stopped recognizing Native nations as independent nations with whom the United States must engage in treaty-making: "Provided, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." Treaty-like agreements, which required the approval of both houses of Congress, continued well into the twentieth century. See, e.g., the Brunot Agreement of 1873, ch. 136, 18 Stat. 36, 37 (1874), H.R Exec. Doc. No. 53, 43d Cong., 1st Sess. (1874), wherein the confederated bands of the Ute Nation ceded land to the federal government in order to retain their perpetual right to hunt, fish, and gather within the ceded area.

expanded (and in at least one instance, reduced) the Navajo Nation territory to 7.7 million acres (about 12,029 square miles).[69] Additional executive orders in the first half of the twentieth century and the Indian Reorganization Act of 1934 saw additional land returned to the Navajo Nation.[70] In 1981, the federal Court of Claims, acting as successor to the ICC, affirmed a stipulated monetary judgment of $14.8 to the Navajo Nation for loss of revenue and lifeways from land taken in the 1868 treaty.[71]

Today, the Navajo Nation encompasses over 17.5 million acres (about 27,000 square miles) across southern Utah, northern Arizona, and New Mexico. There are nearly 400,000 enrolled members of the Navajo Nation with nearly 250,000 living on the Navajo Nation.[72]

D. O'odham Peoples

The University of Arizona acknowledges that it is located on the land of Indigenous peoples, and that Tucson is home to the Tohono O'odham and Pascua Yaqui people.[73] For thousands of years prior to colonization, the Tohono O'odham inhabited an area of land that extended from Sonora, Mexico to north of Phoenix, from the Gulf of California east to the San Pedro River.[74] This area includes the city of Tucson, a word derived from the name of the O'odham settlement, Cuk Ṣon (or Chuk Son), meaning "the base of the black hill," which includes Sentinel Peak, also known as A-Mountain.[75]

The influx of Spanish, Mexican, then U.S. settlers, and the boundaries erected by the Mexican and U.S. governments, severely disrupted the lifeways of the Tohono O'odham people. The O'odham also lost land on both sides of the U.S.-Mexico border causing their communities to become isolated from one another. Eventually, the U.S. government established separate reservations for several O'odham communities. Today,

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[69] U.S. INDIAN OFF., *supra* note 15, at 9–11. Royce, *supra* note 17, at 892–93, 898–98, and 916–17. Arizona Map 2, Areas 608, 615, and 655.
[70] Act of June 18, 1934 (Indian Reorganization Act), Pub. L. No. 73-383, 48 Stat. 984, *amended by* Pub. L. No. 109-221, 120 Stat. 336 (2006); *see also* Act of Jun. 14, 1934, Pub. L. No. 352, 48 Stat. 960 (defining exterior boundaries of the Navajo Indian Reservation in Arizona).
[71] Navajo Tribe v. The United States, CCL-D_229_00029 (Ct. Cl. 1981).
[72] NAVAJO NATION, *History*, https://www.navajo-nsn.gov/History [https://perma.cc/A368-RZ83] (last visited Feb. 6, 2025).
[73] UNIV. OF ARIZ., *supra* note 13.
[74] TOHONO O'ODHAM NATION, *Tohono O'odham History & Culture,* https://www.tonation-nsn.gov/history-culture/ [https://perma.cc/B2YL-U7PV] (last visited Sept. 1, 2025).
[75] Ronald Geronimo (O'odham), *Establishing Connections to Place: Identifying O'odham Place Names in Early Spanish Documents*, 56(2) J. OF THE SOUTHWEST 219, 222 (2014) ("The name Tucson is easily identified as being derived from the O'odham language because the O'odham place name of *Cuk Ṣon* is still being used today by O'odham speakers."); *see also* DEAN SAXTON, LUCILLE SAXTON & SUSIE ENOS, DICTIONARY: TOHONO O'ODHAM/PIMA TO ENGLISH, ENGLISH TO TOHONO O'ODHAM/PIMA 138 (R.L. Cherry ed., 2d ed. 1998) (Tucson is derived from the O'odham word, *Chuk Shon*, meaning Black Foothills); Paola Rodriguez, *Tucson to begin returning ancestral lands to Tohono O'odham Nation*, AZPM (Apr. 19, 2023), https://www.azpm.org/s/96509-tucson-to-begin-returning-ancestral-lands-to-tohono-oodham-nation/ [https://perma.cc/9MHU-WVKP].

there are four federally recognized Tohono O'odham bands in Arizona: the Tohono O'odham Nation, the Gila River Indian Community, the Ak-Chin Indian Community, and the Salt River (Pima Maricopa) Indian Community. An additional O'odham band, the Hia-C'ed O'odham, is not federally recognized but members live throughout Arizona. There are at least nine established O'odham communities in Mexico, just south of the Tohono O'odham Nation.[76]

Each of the four O'odham bands in Arizona faced unique challenges during colonization, and each has a unique history of land cessions and reservations. The earliest of the O'odham reservations was created by an Act of Congress on February 28, 1859, establishing the Gila River Reservation.[77] In this Act, Congress appropriated money and a small tract of land along the Gila River southeast of Phoenix, and authorized gifts to the Pimas and Maricopas "in acknowledgment of the loyalty to this government and the many kindnesses heretofore rendered by them to our citizens."[78] The kindnesses referenced in this legislation were the many documented acts of generosity offering food, water, shelter, and safety to settlers who were passing through their homelands.[79] Army Lieutenant Sylvester Mowry reported to the Commissioner of Indian Affairs in 1857 that, "[t]heir stores of wheat and corn have supplied many a starved emigrant, and restored his broken down animals."[80]

Although the Gila River Reservation was slightly expanded with executive orders in 1876,[81] 1882,[82] and 1883,[83] the community suffered from a loss of water in the Gila River as settlers began diverting the water upstream.[84] By the 1870s, the river was dry, and their extensive agricultural system was destroyed resulting in mass famine and starvation into the twentieth century. Today, after many years of litigation, the community is reestablishing its irrigation system and its agricultural practices.[85] The Gila River Reservation, home to both the Akimel O'otham (Pima) and the Pee-Posh (Maricopa) tribes, is 373,600 acres (584 square miles)[86] with a population of over 14,000.[87]

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[76] TOHONO O'ODHAM NATION, *supra* note 74.
[77] Act of Congress on February 28, 1859, 11 Stat. 401; *see also* Royce, *supra* note 17, Arizona Map 2, Area 415.
[78] 11 Stat. 401.
[79] GILA RIVER INDIAN CMTY., *History,* https://www.gilariver.org/index.php/about/history [https://perma.cc/LWC5-UM72] (last visited Sept. 1, 2025).
[80] *Id.* (*citing* Lt. Sylvester Mowry, *Report of the Commissioner of Indian Affairs, Accompanying The Annual Report of the Secretary of the Interior for the Year 1857*, 300 (1858)).
[81] U.S. INDIAN OFF., *supra* note 15, at 11–12 (1902); *see also* Royce, *supra* note 17, Arizona Map 2, Area 596.
[82] U.S. INDIAN OFF., *supra* note 15, at 13; *see also* Royce, *supra* note 17, Arizona Mapy 2, Area 634.
[83] U.S. INDIAN OFF., *supra* note 15, at 13–14; *see also* Royce, *supra* note 17, Arizona Map 2, Area 651.
[84] GILA RIVER INDIAN CMTY., *supra* note 79.
[85] *Id.*
[86] GILA RIVER INDIAN CMTY., *About*, https://www.gilariver.org/index.php/about [https://perma.cc/QW2B-MYQC] (last visited Sept. 1, 2025).
[87] United States Census Bureau, *Gila River Indian Reservation,* 2020 Decennial Census, https://data.census.gov/profile/Gila_River_Indian_Reservation,_AZ?g=2500000US1310 [https://perma.cc/TNT4-UVAY].

The Salt River Pima-Maricopa Indian Community traces their history to villages along the Gila and Salt Rivers with the center of their aboriginal land in the Phoenix valley.[88] Their original reservation of 680,000 acres (1,062.5 square miles) was established by Executive Order of President Rutherford B. Hayes on January 10, 1879, along the Salt and Gila rivers, adjacent to the Gila River Reserve.[89] However, a few months later, on June 14, 1879, President Hayes inexplicably reduced their reservation to 46,627 acres (72.8 square miles) and relocated it to the northeast along the Salt River, which created a geographical separation from the Gila River Reserve.[90] Today, the Salt River Pima-Maricopa Indian Community, home to the Onk Akimel O'odham (Salt River People), also known as Pima, and the Xalychidom Piipaash (Upriver People), and more commonly known as Maricopa, is 52,600 (82 square miles) acres and has nearly 11,000 enrolled members.[91]

The Ak-Chin Indian Community, located about 35 miles south of downtown Phoenix, was created by President Willian Howard Taft's Executive Order on March 28, 1912.[92] Initially encompassing 47,600 acres (74.4 square miles), President Taft, without explanation or compensation, reduced the reservation to less than 22,000 acres (34 square miles) through two subsequent Executive Orders that same year.[93] The Ak-Chin Indian Community formed its government in 1961 under the Indian Reorganization Act[94] and they gained water rights to the Colorado River in 1984 allowing them to reinstate agricultural practices.[95] Ak-Chin, which is O'odham for "mouth of the wash" took its name from the type of farming that relies on melting winter snow and summer rains flowing through the desert washes. The Ak-Chin Indian Community has over 1,100 enrolled members, mostly Akimel O'odham and Tohono O'odham and some Hia-Ced O'odham.[96]

The Tohono O'odham Nation, the largest of the O'odham reservations today, was originally established by President Ulysses S. Grant's Executive Order on July 1, 1874, in and around the San Xavier del Bac mission south of Tucson.[97] A second small reserve was established by President Chester A. Arthur's Executive Order on December 12, 1882, at

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[88] SALT RIVER PIMA-MARICOPA INDIAN CMTY., *History,* https://srpmic-nsn.gov/about/history/, [https://perma.cc/PGN7-KVPM] (last visited Sept. 1, 2025). Both the Gila River and Salt River communities are made up of Pima and Maricopa people who are ethnologically distinct but have been interconnected for centuries.

[89] U.S. INDIAN OFF., *supra* note 15, at 12; *see also* Royce, *supra* note 17, Arizona Map 2, Area 612.

[90] U.S. INDIAN OFF., *supra* note 15, at 14; s*ee also* Royce, *supra* note 17, Arizona Map 2, Area 611.

[91] SALT RIVER PIMA-MARICOPA INDIAN CMTY., *About*, https://srpmic-nsn.gov/about/ [https://perma.cc/ZHL5-RCXU] (last visited Sept. 1, 2025).

[92] AK-CHIN INDIAN CMTY., *Our History,* https://www.ak-chin.nsn.us/about/ [https://perma.cc/9UP4-J64A] (last visited Sept. 1, 2025), *citing* Exec. Order No. 1538, March 28, 1912.

[93] *Id., citing* Exec. Order No. 1598 on Sept. 2, 1912, and Exec. Order No. 1621 on Oct. 8, 1912.

[94] Act of June 18, 1934 (Indian Reorganization Act), Pub. L. No. 73-383, 48 Stat. 984.

[95] Act of Oct. 19, 1984 (Ak-Chin Settlement Act), Pub. L. No. 98-530, 98 Stat. 2698.

[96] AK-CHIN INDIAN CMTY., *Our Community*, https://www.ak-chin.nsn.us/about/ [https://perma.cc/9UP4-J64A] (last visited Sept. 1, 2025).

[97] U.S. INDIAN OFF., *supra* note 15, at 11 (creating the Papago Reserve; Papago was the name given to the Tohono O'odham by the Spanish in the sixteenth century); *see also* Royce, *supra* note 17, Arizona Map 2, Area 572.

Gila Bend, along the Gila River west of Phoenix.[98] Executive orders of January 14, 1916,[99] and February 1, 1917,[100] created the current Tohono O'odham reservation, and several Acts of Congress in the 1930s added acreage to the reservation.[101] Today, the Tohono O'odham Nation is the second largest reservation in Arizona in land mass at 2.8 million acres (4,460 square miles), with a population of approximately 28,000 members.[102]

Each of the Tohono O'odham tribes filed claims before the Indian Claims Commission. On Aug. 11, 1951, the Tohono O'odham Nation (Papago) filed a claim with the ICC claiming aboriginal title to over 9 million acres in southwest Arizona.[103] On Sept. 10, 1968, the ICC held that the U.S. Government extinguished the Tohono O'odham's aboriginal title to the land in question without compensation, excluding the San Xavier del Bac Reservation, the Sells Reservation, and any Spanish or Mexican land grants the Tribe claimed.[104] The amount of land for which the Tohono O'odham were to be compensated was ultimately reduced to approximately 6.34 million acres, and on July 21, 1976, the ICC approved a compromised settlement for $26 million ($4.10 per acre) for the Tohono O'odham Nation.[105]

Pursuant to their joint claim, the ICC determined on December 17, 1970, that the Pima-Maricopa Indian Community, which includes the Gila River, Salt River, and Ak-Chin Indian communities, held aboriginal title based on use and occupancy to 3.75 million acres in south-central Arizona.[106] This area stretches across and beyond metropolitan Phoenix and covers large swaths of Pinal and Maricopa counties. In 1978, following statutory procedure pending the Court's abolition, the ICC transferred the case to the U.S. Claims Court, and on October 29, 1982, the Claims Court determined the compensation value for Pima-Maricopa Indian Community's aboriginal lands to be $5,529,339 at the time of taking in 1883.[107] The United States Court of Appeals for the Federal Circuit affirmed the Claims Court order.[108] On May 3, 1999, the United States Federal Court of Claims, pursuant to a

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[98] U.S. INDIAN OFF., *supra* note 15, at 8; *see also* Royce, *supra* note 17, Arizona Map 2, Area 639.
[99] Papago Tribe v. United States, 19 Ind. Cl. Comm'n 394, 421 (1968) (Exec. Order No. 2300 on Jan. 14, 1916, set aside 2,225,000 acres for the Tohono O'odham reservation south of Tucson.).
[100] 19 Ind. Cl. Comm'n at 421. (Exec. Order No. 2524 on Feb. 1, 1917, reduced the Tohono O'odham reservation by about 475,000 acres "of the more fertile and desirable reservation lands" to the public domain. The court found that, "[t]he practicable reasons for eliminating the strip were the private interests of white settlers and business groups.")
[101] 19 Ind. Cl. Comm'n at 422 (referencing Acts of Congress of Feb. 21, 1931 (46 Stat. 1202), July 28, 1937 (50 Stat. 536), and June 13, 1939 (53 Stat. 819)).
[102] TOHONO O'ODHAM NATION, *About Tohono O'odham Nation,* https://www.tonation-nsn.gov/about-tohono-oodham-nation/ [https://perma.cc/3NPD-NG76] (last visited Sept. 1, 2025).
[103] Papago Tribe v. United States, Land Petition, Docket No. 345 (1951). Acreage claimed is approximately the area described in Royce, *supra* note 17, Arizona Map 1, Area 687. 19 Indian Cl. Comm'n at 394–395.
[104] 19 Ind. Cl. Comm'n at 422–423.
[105] Papago Tribe v. United States, 38 Ind. Cl. Comm'n 542 (1976).
[106] Gila River Pima-Maricopa Indian Cmty. vs. United States, 24 Ind. Cl. Comm'n 301, 335 (1970); *see also* Gila River Pima-Maricopa Indian Cmty. vs. United States, 27 Ind. Cl. Comm'n 11, 17 (1972) (reiterating the Court's previous finding of aboriginal title to 3.75 million acres and determining the date of the taking to be November 15, 1883).
[107] Gila River Pima-Maricopa Indian Cmty. v. United States, CCT-D-228_000013 (Cl. Ct. 1982).
[108] Gila River Pima-Maricopa Indian Cmty. v. United States, CCT-D_228_00002 (Fed. Cir. 1984).

settlement agreement, ordered a final judgment of $7 million in favor of the three Pima-Maricopa Indian communities.[109]

E. Yavapai-Apache Nation

The aboriginal homeland of the Yavapai-Apache Nation spans more than 10 million acres (over 16,000 square miles) across central Arizona.[110] With an Executive Order on October 3, 1871, U.S. President Ulysses S. Grant approved the selection of land by Vincent Coyler, Commissioner with the Department of the Interior, Board of Indian Commissioners, at Camp Verde,[111] for the protection of the:

> Apache Mohave Indians on the Verde River above the post, and finding the Indians to be in considerable numbers, destitute and in a starving condition, having no boundaries defining their homes, their country overrun by hunters who kill their game, and not unfrequently kill the Indians—gold prospectors and others, none of whom locate in this section of country . . . .[112]

By the fall of 1873, the Yavapai (Yavapé) and Apache (Dilzhę́'é) citizens on the Camp Verde Reservation were producing fresh produce sufficient to feed themselves and the U.S. Army. The next year, they dug an irrigation ditch (which is still in use today to supply the residents of Cottonwood with irrigation water) and expanded their farming production. As their success and independence grew, so did the attraction of their land to white settlers. Eventually, in response to a collective movement by white lobbyists, businessmen and contractors, the Yavapai-Apache people were ordered removed from their homelands to the San Carlos Reservation, some 180 miles to the southeast.[113]

> So, unceremoniously, on February 27, 1875, without consent or consideration, 1,476 of our People, young and old, pregnant and infirm alike, were force marched as prisoners of war in horrendous conditions for 180 miles to an unknown land. A land that had belonged to enemies in previous times [the San Carlos Apache Reservation]. More than 100 of our ancestors died *en route* due to exposure, trauma, childbirth and drowning. Today, our Nation commemorates this event every year as Exodus Day in memory of our ancestors and

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[109] Gila River Pima-Maricopa Indian Cmty. v. United States, CFC-D_236-C_00001 (Fed. Cl. 1999).
[110] *Yavapai-Apache Land Exchange: A Brief History of the Yavapai-Apache Nation and its Lands*, YAVAPAI-APACHE NATION 2 (2024), https://yavapai-apache.org/wp-content/uploads/2024/01/2024_01_12-Brief-History-of-YAN.pdf [https://perma.cc/2EKG-K2NJ][hereinafter Yavapai-Apache Nation].
[111] *See* Royce, *supra* note 17, at Arizona Map 2, Area 582.
[112] U.S. INDIAN OFF., *supra* note 15, at 3.
[113] Yavapai-Apache Nation, *supra* note 110, at 7–8.

> as a reminder of the suffering they endured with the complete loss of our traditional Homelands.[114]

Immediately after removal from their homelands, President Grant extinguished the Camp Verde Indian Reservation with a one-sentence Executive Order on April 23, 1875, returning the land to the public domain.[115] Despite forced removal, the Yavapai-Apache peoples made their way back to the Verde River valley over time. Following Geronimo's 1886 surrender, the U.S. Army began issuing work permits allowing the Yavapai-Apache people to leave the San Carlos Reservation to cut hay and gather traditional foods. By 1890, the Army ceased enforcing the permit system, and many Yavapai-Apache families returned to their ancestral homelands across central and northern Arizona.[116] Today, members of the Yavapai-Apache Nation live in five tribal communities east of Prescott in the Verde Valley: Tunlii, Middle Verde, Rimrock, Camp Verde, and Clarkdale, totaling about 5,000 acres, an increase from 1,810 acres after a 2024 land exchange with the U.S. forest Service that more than doubled the size of the reservation.[117]

The Yavapai-Apache Nation was party to two claims before the ICC, both filed in 1948. One claim was as part of the Western Apache tribes and included the San Carlos Apache Tribe and the White Mountain Apache Tribe.[118] The ICC determined that the Western Apache tribes held aboriginal title to 8.1 million acres in southeastern Arizona until it was taken in 1870, and approved a monetary settlement $4.9 million in 1972 in accordance with this determination.[119] The second claim pertained specifically to the extinguishment of their Verde Valley reservation in 1875 for which the ICC approved a compromised monetary settlement $5.1 million for the takings.[120]

These brief summaries of Chiricahua Apache, Havasupai, Navajo, O'odham, and Yavapai-Apache dispossession and survival are but a few examples of Indigenous peoples' displacement marked by broken promises, fluctuating executive orders, and forced land seizures in Arizona. Indeed, all Indigenous peoples, communities, tribes, and nations in Arizona in the nineteenth and twentieth centuries were subjected to the U.S. government's

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[114] *Id.* at 9.
[115] *Id.* at 4. U.S. INDIAN OFF., *supra* note 15, at 4.
[116] Yavapai-Apache Nation, *supra* note 110, at 11.
[117] *Land Exchange*, YAVAPAI-APACHE NATION (2025), https://yavapai-apache.org/land-exchange/ [https://perma.cc/KE8Y-S4C2]. Beginning in the early 1990s, the Yavapai-Apache Nation strategically "began acquiring privately owned parcels of land within various National Forests in Arizona. The hope has always been to exchange those lands for Forest Service lands adjacent to the Nation's Reservation lands." *Id.* The irony is not lost on the authors that tribal nations are forced to purchase land that was taken from them in order to regain possession of their ancestral homelands.
[118] San Carlos Apache Tribe v. United States, 21 Ind. Cl. Comm'n 189 (1969).
[119] San Carlos Apache Tribe v. United States, 28 Ind. Cl. Comm'n 399 (1972).
[120] Yavapai v. United States, 20 Ind. Cl. Comm'n 361 (1969).

orders of removal and confinement onto reservations within and outside of Arizona.[121] While the decisions of the ICC served to substantiate Indigenous peoples' occupancy and possession of land areas in Arizona, the ICC did not come close to achieving appropriate reparations. To be clear, in accordance with the ICC Act, the ICC did not return any land to Native nations, tribes, or communities. Further, the monetary awards were calculated using fair market land values at the time of the takings in the nineteenth century without an upward adjustment for loss of potential income, interest, or inflation.[122]

II. EVOLUTION OF ARIZONA TERRITORY AND THE UNIVERSITY OF ARIZONA

While the federal government was confining Indigenous peoples to reservations in Arizona, or removing them altogether, it was encouraging white settlement throughout the territory. This section provides an overview of the history of Arizona Territory in the nineteenth century, focusing on federal land-grants for higher education, the founding of the University of Arizona, and the University's evolution as a land-grant institution. This section also explains how Arizona's public universities benefit from the University of Arizona's land-grant designation as well as from the lands granted to the state of Arizona in anticipation of, and at, statehood.

A. The Creation of Arizona Territory

The United States assumed governing authority over the northern two-thirds of present-day Arizona, together with all of present-day New Mexico and California, pursuant to the Treaty of Guadalupe Hidalgo that concluded the Mexican-American War in 1848.[123] In Article XI of the treaty, the United States agreed to the following:

> And, finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the

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[121] See generally Royce, *supra* note 17, for a near-complete accounting of Arizona's nineteenth century Indian land cessions. See also Univ. of Ariz. Land-Grant Project, *supra* note 6, for a complete accounting of Arizona's Indian land cessions with links to Royce and to tribal websites and histories.

[122] U.S. Indian Claims Comm'n, *Final Report*, 9 (1978) (describing the ICC's task of determining fair market value at the time of taking with no provision for inflation or other upward adjustments). The ICC held that the ICC statute does not permit inflationary value in its monetary awards in Assiniboine Indian Tribe v. United States, 1 Ind. Cl. Comm'n 530 (1951): "The general rule is that in the absence of express statutory authorization, interest, or damages for delay in payment, cannot be recovered in claims against the United States, including claims for the taking of lands." *See also* WILKINS, *supra* note 27, at 103–04 (explaining that the ICC included no authorization to adjust awards for potential lost profits, interest, or inflation that had accrued since the time of the land was taken or ceded, and that the devaluation of awards by inflation was extreme); Nooksack Tribe of Indians v. United States, 162 Ct. Cl. 712, 718 (1963) (holding that the measure of recovery is the "value of the land at the time of taking without any increment for delay in payment whether by way of interest or allowance for dollar devaluation").

[123] Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848).

> removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.[124]

The Compromise of 1850 included the creation of New Mexico Territory from the western lands of Texas west to the Colorado River.[125] In 1853–1854, the United States executed the Gadsden Purchase whereby the federal government purchased and assumed governing authority over what is now southern Arizona and western New Mexico from the Mexican government.[126]

U.S. officials adopted the Mexican name for the land transferred by the Gadsden Purchase: "Arizona."[127] In 1863, the Territory of Arizona (nearly 73 million acres) was created from the western lands of New Mexico Territory, and Congress obligated the territorial governments of New Mexico and Arizona to assume all laws of the United States.[128]

B. The University of Arizona as the State's Land-Grant Institution

The processes by which the University of Arizona became a land-grant institution and the Arizona State Land Department acquired hundreds of thousands of acres of land on behalf of Arizona's public universities is complex. Tracing this history and these land acquisitions is not straightforward in large part because the Morrill Act of 1862,[129] which called for the creation of land-grant institutions, was passed the year before Arizona Territory was created (1863), over 20 years before the Thirteenth Territorial Legislature established the University of the Territory of Arizona (1885), and nearly 30 years before the University opened its doors to students (1891). Adding to the complexity are the

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[124] *Id.* at 932. Rebecca Tsosie argues that both the Treaty of Guadalupe Hidalgo and the Indian Treaties are being used as instruments for intercultural justice, with claimants aiming to affirm the United States' moral responsibility to uphold its commitments to respect the land and cultural rights of the distinct ethnic groups—Native American and Mexican American—that were forcibly incorporated through conquest. Rebecca Tsosie, *Sacred Obligations: Intercultural Justice and the Discourse of Treaty Rights,* 47 UCLA L. REV. 1615, 1617 (2000).

[125] Compromise of 1850, ch. 49, 9 Stat. 446.

[126] Gadsden Purchase, 10 Stat. 1031 (1853) (ratified in 1854).

[127] *See, e.g.*, Lieutenant Sylvester Mowry, *Annual Report of Commissioner of Indian Affairs, 1857, Report No. 112* 296 (1857) ("Territory known as Arizona, or the Gadsden Purchase."); ARIZ. STATE LIBR., ARCHIVES, & PUB. RECS. *The Meaning of Arizona*, https://azsos.libguides.com/azalmanac/meaningofaz [https://perma.cc/5HHT-5EKA] (last visited Feb. 10, 2025); *see also* DEAN SAXTON, LUCILLE SAXTON & SUSIE ENOS, *supra* note 75 (Arizona is derived from the O'odham word, *Al Shon*, meaning Little Spring).

[128] Act of Feb. 24, 1863, ch. 56, 12 Stat. 664 (proviég temporary government for the territory of Arizona).

[129] Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (1862) (codified at 7 U.S.C. §§ 301–308).

additional Congressional acts and allocations since 1862 to Arizona and to the nation's land-grant universities.

The Morrill Act of 1862 is not unique as an act granting "public land" to institutions and is only one instance in a broader tradition of federal land grants for educational purposes. This practice can be traced back to the republic's formative years when land grants became instrumental in the federal government's state-formation strategy. Two Continental Congress enactments are foundational to state trust land policies: the General Land Ordinance of 1785 and the Northwest Ordinance of 1787.[130] The former established the township-section survey system still utilized today, reserving Section 16 in each township "for the maintenance of public schools."[131] The latter addressed territorial governance and statehood processes, guaranteeing new states entry "on an equal footing with the original States" and specifically mandating the perpetual advancement of education while maintaining peaceful relationships with Native peoples.[132] Congressional implementation of these principles proved selective.

Souder and Fairfax argue that land grants to prospective states functioned as mechanisms of federal control over the admission process of states into the Union.[133] They categorize United States land accession into four distinct phases based on states' union-entry dates. Phase one, 1785 to 1803, comprises the original 13 colonies, Vermont, Tennessee, and Kentucky, which contained no federal land within their borders upon statehood and did not receive school lands as outlined in the General Land Ordinance of 1785.[134] Phase two, from Ohio's admission in 1803 to Michigan's in 1837, marks the use of the statehood formula as provided in the Land Ordinance by upholding the promise of land grants for schools.[135] Phase three, spanning Florida's statehood in 1845 to Nevada's in 1864, reflects the slavery debates of the Missouri Compromise culminating in the Civil

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[130] JON SOUDER & SALLY FAIRFAX, STATE TRUST LANDS: HISTORY, MANAGEMENT, AND SUSTAINABLE USE 17 (1996); Timothy M. Hogan & Joy E. Herr-Cardillo, *100 Years of Keeping the Trust: The Historic Role of the Judiciary in Protecting Arizona's State Land Trust*, 44 ARIZ. ST. L.J. 589, 589–90 (2012); Jessica Wiles, *Montana's State School Trust Lands*, 38 PUB. LAND & RES. L. REV. 149, 152 (2017).

[131] U.S. CONST. CONG., *An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory* (May 18, 1785), available at https://www.loc.gov/item/90898224/ [https://perma.cc/9E42-HXYE]; *see also* Hogan & Herr-Cardillo, *supra* note 130, at 590.

[132] *An Ordinance for the Government of the Territory of the United States North-West of the River Ohio*, ch. 8, 1 Stat. 50, 52 (1787) (Article 3 states, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians . . .") [hereinafter Northwest Ordinance]; *see also* Wiles, *supra* note 130.

[133] SOUDER & FAIRFAX, *supra* note 130, at 19. For an excellent treatment of the evolving legal and political requirements for statehood, see generally Peter S. Onuf, *Territories and Statehood*, *in* ENCYCLOPEDIA OF AMERICAN POLITICAL HISTORY: STUDIES OF THE PRINCIPAL MOVEMENTS AND IDEAS 1284–1300 (Jack P. Greene ed., 1984). "Requirements for statehood, such as population requirements, evolved over time while maintaining the central principle of American federalism that all states are equal and all new states 'enjoy full equality in the Union'." *Id.* at 1292.

[134] SOUDER & FAIRFAX, *supra* note 130, at 19.

[135] *Id.* at 19–22.

War and the territorial gains from the Mexican American War, which accelerated statehood for some while delaying it for others.[136] Finally, Phase four, from Nebraska's statehood in 1867 to Arizona's admission as the final contiguous state in 1912, marks the frontier's closure through the violent suppression of Native American rights and lifeways with military campaigns that enabled western settlement.[137]

While similarities exist in the paths to statehood among larger western states, not all territories entered the union under enabling acts, and not all territories were allocated trust land upon statehood.[138] Souder and Fairfax identify 22 states with active state land trust programs with varying policies governing trust land management.[139] As states with trust lands formed, they were obligated to maintain permanent school funds and adhere to investing requirements.[140] Congress instituted a particularly restrictive state trust framework for Arizona, the last to enter statehood in this manner, because of the fraud and abuse by other states of their trust lands.[141] The Arizona Constitution provides even stricter requirements than Congress. Arizona's courts have relied on both to guard the corpus of the trust from executive and legislative overreach, and to ensure the beneficiaries of Arizona's trust lands receive their full benefits.[142]

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[136] *Id.* at 20–22; *see also* Onuf, *supra* note 133, at 1300 ("Strategic considerations also led the United States to accelerate state-making where there was sufficient population and political development – as in Kansas in 1861 – and even where a convincing case for statehood could not be made. Nevada, the Union's 'rotten borough,' was a territory for only three years before its admission in 1864, when its largely transient population was probably less than 30,000.").

[137] SOUDER & FAIRFAX, *supra* note 130, at 21–23; *see also* Onuf, *supra* note 133, at 1284 ("By the end of the nineteenth century… the decision to admit a new state no longer reflected a clear understanding of what made a territory into a state that was shared by Congress and the people of the territories. Instead, states were admitted to advance narrowly partisan interests in Congress or in presidential elections.").

[138] Onuf, *supra* note 133, at 1294 ("The American territorial system was supposed to establish standard criteria for territorial development and ultimate statehood. But applicants for statehood approached admission under radically different strategic, diplomatic, and political circumstances. As a result, the attainment of statehood was to a large extent dissociated from any assessment of a community's political development.").

[139] SOUDER & FAIRFAX, *supra* note 130, at 17.

[140] *Id.* at 32–33.

[141] Hogan & Herr-Cardillo, *supra* note 130, at 591; *see also* Kadish v. Ariz. State Land Dep't, 155 Ariz. 484, 747 P.2d 1183 (1987). The Arizona Supreme Court provides a detailed history of why Arizona's allocation of land for educational purpose is held "in trust" with very restrictive provisions. In sum, it is because Congress wanted Arizona to keep the land in perpetuity after watching twenty-three other states squander their land-grants: "The dissipation of the funds by one device or another, sanctioned or permitted by the legislatures of the several states, left a scandal in virtually every state, and these granted lands and the monies derived from a disposition thereof were so poorly administered, so unwisely invested and dissipated, that Congress concluded to make sure, in light of experiences of the past, that such would not occur in the new states of New Mexico and Arizona . . . . The duties imposed upon the state were the duties of a trustee and not simply the duties of a good business manager." *Kadish*, at 487 (citing Murphy v. State, 65 Ariz. 338, 351, 181 P.2d 336, 344 (1947); *see also* Onuf, *supra* note 133, at 1288 ("Almost every new state scheme had been an attempt to expropriate public lands. Settlement had to be controlled and directed in the interests of the United States generally.").

[142] Hogan & Herr-Cardillo, *supra* note 130, at 596–97, 611–12.

1. The Morrill Act of 1862

The cornerstone of American land-grant universities was laid on July 2, 1862, when Congress passed "An Act Donating Public Lands to the Several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts," also known as the Morrill Act.[143]

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to **thirty thousand acres for each senator and representative** in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: *Provided*, That no mineral lands shall be selected or purchased under the provisions of this Act.
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> . . . . SEC. 4. And be it further enacted, That all moneys derived from the sale of the lands . . . shall be invested in stocks . . . and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished . . . and the interest of which shall be inviolably appropriated . . . to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including **military tactics**, to teach such branches of learning as are related to **agriculture and the mechanic arts** . . . in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.[144] (emphasis added)

Thus, this landmark legislation allocated 30,000 acres of federal land to states for each member in their Congressional delegation as of 1860. For eastern states lacking sufficient public lands, the act provided land scrip to claim and sell western lands. For example, Alabama and Pennsylvania were granted land scrip in what is today Arizona,

[143] Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (1862) (codified at 7 U.S.C. §§ 301-308). The Morrill Act is named for Vermont Senator Justin Morrill who championed access to higher education "for the industrial classes." *Id.* at 504.
[144] *Id.* at 503–04; 7 U.S.C. § 301, 304.

which the federal government sold on their behalf in 1875[145] and 1894,[146] respectively, to support their land-grant institutions.

The clear intent as articulated in the act was for each state to sell their land allocation, create an endowment from the proceeds of the sale, invest the endowment in stocks, and use the interest from the investment to support a state university that has a leading focus on agriculture and mechanic arts, in additional a traditional scientific, classical, and military tactics curriculum. A subsequent amendment to the Morrill Act allowed territories to leverage the Morrill Act provisions upon statehood.[147]

The Morrill project was an immediate success from the perspectives of the federal government and the states. On June 21, 1887, on the occasion of a 25th anniversary celebration of the Morrill Act, Senator Justin Morrill proudly praised the progress and potential of the "thoroughly American" land-grant colleges, peppering his remarks with direct references to the country's manifest destiny:

> For "to whomsoever much is given, of him shall much be required", and the New World has been given to us forever as an inalienable possession, where we are not only to bridge great rivers and tunnel mountains, but to "make the wilderness and solitary places glad." All the centuries of the future are in reserve, under Providence, for the men of this great continent to make their own history, and, it is to be devoutly hoped, in some measure, to eclipse and take the lead of other nations, old or young, in worthy achievements in all the arts of peace, and in all the glories of manhood's ripest culture.[148]

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[145] Pursuant to the Morrill Act of 1862, the state of Alabama was granted 800 acres of scrip in Maricopa and Yavapai counties, which was sold by the U.S. government on April 15, 1875, on behalf of the state of Alabama for the benefit of Auburn University (est. 1856, land-grant status 1872). BLM Gen. Land Off. Recs., Accession Numbers: AGS-0434-001 through AGS-0434-005, Scrip Nos. 582, 1002-1005; *see also* Robert Lee & Tristan Ahtone, *Land-Grab Universities: Auburn University*, HIGH COUNTRY NEWS, https://www.landgrabu.org/universities/auburn-university [https://perma.cc/V4SS-7734] (last visited Jan. 14, 2025).

[146] Pursuant to the Morrill Act of 1862, the state of Pennsylvania was granted 160 acres of scrip north of Gila Bend which was sold by the U.S. government on Aug. 6, 1894, on behalf of the state of Pennsylvania for the benefit of Pennsylvania State University (est. 1855, land-grant status 1867). BLM Gen. Land Off. Recs., Accession Number: AGS-0351-182, Scrip No. 112; *see also* Lee & Ahtone, *Land-Grab Universities: Pennsylvania State University*, HIGH COUNTRY NEWS, https://www.landgrabu.org/universities/pennsylvania-state-university [https://perma.cc/3GXJ-YAYM] (last visited Jan. 14, 2025).

[147] Act Extending Time to Accept Land under Morrill Act of 1862, 14 Stat 208 (1866) (codified at 7 U.S.C. § 305). New states needed to expressly accept the Morrill Act withing three years of statehood and designate the land-grant college within five years.

[148] Justin Morrill, Address, *in* ADDRESSES DELIVERED AT THE MASSACHUSETTS AGRICULTURAL COLLEGE, JUNE 21ST, 1887, ON THE 25TH ANNIVERSARY OF THE PASSAGE OF THE MORRILL LAND GRANT ACT 17, 26 (Massachusetts Agricultural College, ed.,1887) (citing Luke 12:48 and Isaiah 35:1, respectively).

2. Arizona Territory's Educational Framework

The potential for Morrill Act implementation in Arizona was made possible when President Abraham Lincoln signed into law an act establishing the Territory of Arizona on February 24, 1863.[149] The following year, the first legislative assembly of the Territory of Arizona adopted the Howell Code, which included educational provisions in Chapter XXIII that reflect the Morrill Act's provisions.[150] Specifically, the Howell Code called for the creation of "The University of Arizona" within the territory "for the purpose of educating youth in the various branches of literature, science, and arts."[151] The University "shall be under the management, direction, government, and control of a board of regents . . . . "[152]

William Howell seems to have borrowed language directly from the Morrill Act when he drafted protections for the future university's endowment: proceeds from all lands granted by the United States for university purposes would constitute "a perpetual fund," with interest, income, and rents to be "inviolably appropriated and annually applied to the specific object of the original gift, grant, or appropriation."[153] The code explicitly prohibits the use of these resources for any other purposes, as does the Morrill Act, establishing a strong legal framework for the future stewardship of university lands and funds.[154]

3. Arizona's Initial Land Selections

Although Arizona Territory was undoubtedly eligible to receive land-grants under the Morrill Act upon statehood, a separate congressional act passed on February 18, 1881, 31 years before statehood, set aside 72 sections (46,080 acres) of public land for Arizona, Dakota, Montana, and Idaho territories for university purposes at the time of statehood.[155] Setting aside public land for university purposes was a common practice as early as 1792 for Ohio Territory, and for territories throughout the nineteenth century. The Committee on the Public Lands observed in 1879 that the public land was being purchased "with marvelous rapidity," necessitating land set-asides for territories to receive upon statehood.[156] The committee opined that, "next to furnishing homesteads for the people, no

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[149] An Act to Provide a Temporary Government for the Territory of Arizona, ch. 56, 12 Stat. 664 (1863).
[150] TERRITORY OF ARIZONA, THE HOWELL CODE: ADOPTED BY THE FIRST LEGIS. ASSEMB. OF THE TERRITORY OF ARIZONA 168 (Office of the Arizona Miner, 1864).
[151] *Id.* § 1.
[152] *Id.* § 2.
[153] *Id.* § 4.
[154] *Id.*
[155] An Act to Grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for University Purposes, ch. 16, 21 Stat. 326 (1881). The population of Arizona on June 1, 1880, was 40,441. REP. OF SUPERINTENDENT OF CENSUS; COMPLETE RETURNS OF POPULATION OF EACH STATE AND TERRITORY, S. Exec. Doc. No. 46-22, at 2 (1881).
[156] H. Rpt. 46-739 to accompany bill H.R. 1327, at 2 (1879).

better use can be made of the public domain than to dedicate it to the uses and purposes of education."[157]

The Act of 1881 in fact demanded that land be immediately identified and set aside for the territories "for the use and support of a university in each of said Territories when they shall be admitted as States into the Union."[158] The Act further provided specific parameters for the sale of the land, including that, "the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund."[159]

Moses H. Sherman, Territorial Superintendent of Public Instruction, selected Arizona's allotted sections after having sought expertise from W.N. Kelly, Register of the United States Land Office at Prescott, whose recommendations were subsequently verified through field examinations by a committee designated by Sherman. On December 27, 1882, Sherman filed Selection List No. 1, comprising 72 one-square-mile (640-acre) sections within townships 20 and 21 North, totaling 46,060 acres, near the San Francisco mountains, in what would later become part of the Coconino and Tusayan National Forests.[160] The University's land grant was partially fulfilled on January 11, 1890, when the Territory of Arizona received title from the federal government to 52 parcels of land totaling 36,890 acres of the originally selected lands in Coconino County.[161] This land remained under the control of the territorial government until shortly after statehood, when the state transferred management to the Arizona State Land Department.[162]

4. Founding The University of Arizona: 40 Acres and a Loan

On March 12, 1885, Arizona's Thirteenth Territorial Legislature passed Act No. 99 to establish the University of Arizona "at or near the City of Tucson, in the County of Pima . . . an institution of learning under the name of the 'University of Arizona'."[163] The

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[157] *Id.*
[158] 21 Stat. 326.
[159] *Id.*
[160] ARIZ. STATE LAND COMM'N, *Report of the State Land Commission of Arizona to the Governor of the State, June 6, 1912-December 1, 1914*, at 115; see also an exchange of letters between Arizona and U.S. officials describing the 72 sections selected in, M. H. Sherman, *Annual Report for 1881–1882,* DEP'T OF EDUC., ARIZ. TERRITORY 3, 30–31.
[161] ARIZ. STATE LAND COMM'N, *supra* note 160; *see also* BUREAU OF LAND MGMT., *Land Patent for State of Arizona (AZAZAA 014863)* (Jan. 11, 1890) https://glorecords.blm.gov/details/patent/default.aspx?accession=AZAZAA%20014863&docClass=SER&sid=33ehexvb.xkk [https://perma.cc/J7GV-4YWV]).
[162] ARIZ. STATE LAND COMM'N, *supra* note 160, at 118.
[163] Act No. 99, § 1, Thirteenth Legis. Assemb., Laws of the Territory of Arizona, also Memorials and Resolutions, 272 (1885). Governor Tritle advised against the establishment of a university as recently as 1883 in a message to the Twelfth Legislature in which he noted that while there had been support for the establishment of a territorial university for some time, there was no money to create one. Ariz. State Land Comm'n, *supra* note 161, at 115.

territorial legislature created a board of regents[164] and enumerated five specific departments for the University: department of science, literature, and the arts; department of theory and practice and elementary education; department of agriculture; normal department; and department of mineralogy and school of mines.[165] To finance the University's construction, the act authorized a $25,000 loan through territorial bonds to be issued by the Treasurer of the Territory.[166] The money was to be used for buildings and equipment and placed in the University Fund created by this Act.[167] This funding was contingent upon the conveyance of at least 40 acres of unencumbered land near Tucson for the campus to the board of regents.[168]

On May 25, 1883, Artemas Fay purchased 160 acres of public land directly from the U.S. government in what is now central Tucson.[169] According to the Bureau of Land Management records, the land patent was authorized by an act of Congress that established guidelines (not title) for the U.S. government to sell public land.[170] The land patent does not reference any treaty, congressional act, executive order, or other legal authority for U.S. government title to this land. According to a local attorney's contemporaneous records, title to the 160-acre parcel passed through several hands before W.S. Read, P.C. Parker, E.B. & America Gifford, acquired it on October 5, 1886.[171] In response to a plea from representatives of the newly-organized University of Arizona, Read, Parker, and the Giffords transferred 40 acres of their 160-acre parcel to the Regents of the University of Arizona for $1 on November 27, 1886, expressing in the deed their "desire . . . to aid and assist the construction of the Territorial University."[172]

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[164] Act No. 99, § 1, Thirteenth Legis. Assemb., Laws of the Territory of Arizona, also Memorials and Resolutions (1885).
[165] *Id.* § 10.
[166] *Id.* §§ 16–17.
[167] *Id.* § 17.
[168] *Id.* § 22.
[169] BUREAU OF LAND MGMT., *Land Patent for Artemas Fay (AZAZAA01244)*, issued May 25, 1883, https://glorecords.blm.gov/details/patent/default.aspx?accession=AZAZAA%20011244&docClass=SER&sid=2bwm34u2.0ku [https://perma.cc/96U6-Y4K4] (last visited Jan. 15, 2025).
[170] The federal statute referenced on the land patent is, 3 Stat. 566 (1820). This is a citation to the "Land Act of 1820," a United States federal law that required full payment at the time of purchase of public lands, instead of allowing credit installments as previously permitted. It also lowered the minimum price per acre and the minimum land tract size to encourage more sales in the newly settled frontier territories.
[171] Sidney J. Doster, Attorney's Notes on the Examining of the Abstract of Title of Part of NE ^{4}NW^4 Sec.7 - Tp.14S - R14 East in EXAMINATION OF ABSTRACT OF TITLES (Arnold Turney Smith, ed.), 21 (1925). According to Selim Franklin, a Tucson attorney and member of the Board of Regents, these benefactors were "three of the leading gamblers of the City." Selim Franklin, Early History of the University of Arizona 7 (Mar. 12, 1922) (on file with Univ. of Ariz., Special Collections, AZ 266).
[172] W.S. Read, P.C. Parker, E.B. & America Gifford, Indenture to the Board of Regents of the University of Arizona (1886) (on file with Univ. of Ariz., Special Collections, Broadside, LB2827 .D33 1886).

With the land secured, territorial bonds were issued on January 21, 1887, providing the promised $25,000 for construction.[173] The Board of Regents contracted with M.J. Sullivan on October 13, 1887, to construct the University's first building, Old Main, for a School of Mines.[174] Ground was broken for Old Main on October 27, 1887, in a ceremony that drew significant public participation. The downtown public school closed early, allowing 600 children and adults to attend the festivities at the newly cleared site. An army unit from Fort Lowell provided artillery salutes with a howitzer for the occasion.[175]

5. University Shift from Mining to Agriculture

Facing construction cost overruns in early summer 1889, the Board of Regents strategically pivoted from their initial focus on a School of Mines to a new effort to establish a College of Agriculture in order to access new federal funding.[176] The Hatch Act of 1887 provided annual grants of $15,000 to establish and operate agricultural experiment stations at Morrill Act land-grant colleges, with the goal of advancing research in soil minerals and plant growth and sharing new information and best practices with local residents.[177] These agricultural experiment stations would later form the foundation for cooperative extension services under the Smith-Lever Act of 1914.[178]

With Arizona territorial Governor Lewis Wolfley's assistance, the University of Arizona Board of Regents submitted a funding proposal under the Hatch Act to the U.S. Department of Agriculture on July 1, 1889, designating their institution a "College of Agriculture" in accordance with the Morrill Act of 1862, and appointing Selim Franklin, an attorney and the only regent with a college degree, as professor of agriculture and superintendent of experiment stations.[179] After Franklin donated ten acres of land near Phoenix to the University of Arizona, the Board of Regents notified the U.S. Department of Agriculture that they had organized an experiment station.[180]

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[173] Estelle Lutrell, History of the University of Arizona, 1885–1926, Supplementary Data, 1936–1947, *in* ESTELLE LUTRELL PAPERS, 370 (on file with Univ. of Ariz., Special Collections, AZ 055, Box 1 Folder 5).
[174] *Id.* at 291; *see also* Margaret Mitchell, *The Founding of the University of Arizona 1885–1894*, 27(1) ARIZONA & THE W. 5, 13 (1985).
[175] Mitchell, *supra* note 174, at 13–14.
[176] *Id.* at 16–17.
[177] Hatch Act, ch. 314, 24 Stat. 440 (1887) ("[T]here shall be established, under direction of the college or colleges or agricultural department of colleges in each State or Territory established, or which may hereafter be established, in accordance with the provisions of an act approved July second, eighteen hundred and sixty-two, entitled, 'An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,' or any of the supplements to said act, a department to be known and designated as an 'agricultural experiment station' . . . .").
[178] Smith-Lever Act, ch. 79, 38 Stat. 372 (1914).
[179] Mitchell, *supra* note 174, at 17; *see also* ARIZ. BD. OF REGENTS, ANN. REP. 8 (1890); UNIV. of ARIZ., *Course of Instruction and General Information* 17 (1891).
[180] Mitchell, *supra* note 174, at 17; *see also* Lutrell, *supra* note 173, at 42–43, (citing *Minutes of the Arizona Board of Regents, July 1, 1889* at 89 (on file with Univ. of Ariz., Special Collections, AZ 421).

University of Arizona Librarian Estelle Lutrell noted this sudden shift in the University's educational mission in her memoirs: "For years the friends of higher education in Arizona had been fostering an embryo school of Mines, but now expediency demanded that the emphasis be shifted to an Agricultural Experiment Station and College of Agriculture."[181]

The Hatch Act funds became available in June 1890, allowing for the completion of two rooms in Old Main for agricultural research and instruction.[182] Shortly thereafter, on August 12, 1890, attorney-turned-interim agriculture professor, Selim Franklin, tendered his resignation making way for the board of regents to appoint Frank A. Gulley, an actual professor of agriculture, to replace Franklin that same day.[183]

The Second Morrill Act, passed by Congress on August 30, 1890, provided additional annual appropriations beginning at $15,000 and increasing by $1,000 each year for ten years until reaching $25,000 annually.[184] These appropriations, funded by the sale of public lands, were specifically designated for "instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematics, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction."[185] Notably, this act prohibited racial discrimination in admissions unless separate but equal facilities were provided, leading to the establishment of 17 (now 19) historically Black land-grant institutions.[186]

By January 2, 1891, significant progress had been made with the University of Arizona's campus development. J.M. Ormsby, Board of Regents secretary, reported that the University's 40-acre campus would incorporate the experimental agricultural station. A well was dug to ninety feet, equipped with a fifteen-horsepower engine and two pumps capable of delivering 14,000 gallons per hour, sufficient for irrigation and building use. Plans for a university library and chemical laboratory were also underway. Ormsby predicted that current and anticipated territorial treasury funds would allow for the completion of Old Main within a few months, and that a School of Mines could open by summer, under the supervision of the director of the experimental station and without further expense to the territory. University officials, however, had one final request of $15,000 from the territorial legislature to erect three faculty residences and one student dormitory. They emphasized that the University did not expect to request further financial

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[181] Lutrell, *supra* note 173, at 42.
[182] J.M. Ormsby, *Annual Report of the Board of Regents of the University of Arizona to the Governor of the Territory of Arizona*, in *Biennial Message of N.O. Murphy, Acting Governor of Arizona, to the Sixteenth Legis. Assemb.*, 17 (1891); *reprinted in Journals of the Sixteenth Legis. Assemb. of the Territory of Arizona*, 20–21 (1891).
[183] Lutrell, *supra* note 173, at 45; *see also* Franklin, *supra* note 171, at 8.
[184] Second Morrill Act, ch. 841, 26 Stat. 417 (1890) (codified as amended at 7 U.S.C. §§ 321–326, 328).
[185] *Id.* at 418.
[186] *See* Council of 1890s Institutions, ASS'N OF PUB. & LAND-GRANT UNIVS., https://www.aplu.org/councils/1890-universities/council-of-1890s-institutions/ [https://perma.cc/5D8T-2ET9] (last visited Jan. 14, 2025).

support, surmising that future congressional appropriations would be sufficient to maintain the University.[187]

The territorial legislature supported the establishment of the University and on March 19, 1891, passed "[a]n Act to Provide for the Further Erection and Maintenance (sic) of the University of Arizona." The University of Arizona opened its doors to students on October 1, 1891,[188] graduating its first class four years later in 1895.[189]

6. Evolving Federal Support for Land-Grant Institutions

The early twentieth century marked a period of significant federal expansion in financial support for land-grant institutions, coinciding with Arizona's transition from territorial status to statehood. These developments, several of which are described in this section, brought substantial new resources to the University of Arizona—and all land-grant institutions—thereby further establishing a solid foundation for the land-grant university's modern endowment. While the annual appropriations from the federal government are arguably distinct from the state-managed revenue derived from land-grant assets, it is important to emphasize that the University of Arizona would not have been eligible for this federal funding had the board of regents not taken affirmative steps in the nineteenth century, at the time of the University's founding, to establish the University of Arizona as Arizona's designated land-grant institution.[190]

The Hatch Act of 1887 instituted the research function of land-grant universities through the establishment of agricultural experiment stations.[191] Today, this Act provides for the distribution of federal payments to states utilizing fiscal year 1955 as a fixed base and rural/farm population ratio.[192] Eligible state institutions must submit a work plan to the U.S. Department of Agriculture (USDA) National Institute of Food and Agriculture (NIFA) for approval before these funds are distributed. Federal funds provided under the Hatch Act to state institutions must be matched with nonfederal funding on a dollar-for-dollar basis.[193]

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[187] J.M. Ormsby*, supra* note 182, at 18–19; *see also Journals of the Sixteenth Legis. Assemb.,* at 21 (1891); J.M. Ormsby*, The Annual Report of the Board of Regents of the University of Arizona 1890*, at 6–7 (1891).
[188] Lutrell, *supra* note 173, at 47; Mitchell, *supra* note 174, at 5.
[189] Lutrell, *supra* note 173, at 55.
[190] Mitchell, *supra* note 174, at 17; ARIZ. BD. OF REGENTS, ANNUAL REPORT 8 (1890); UNIV. OF ARIZ., COURSE OF INSTRUCTION AND GENERAL INFORMATION 17 (1891).
[191] Eleni G. Bickell, *The U.S. Land-Grant University System: Overview and Role in Agricultural Research*, CONG. RSCH. SERV., R45897 (v.8), at 7 (Aug. 9, 2022), https://www.congress.gov/crs_external_products/R/PDF/R45897/R45897.8.pdf [https://perma.cc/L7R6-BQM3]. Relatedly, the McIntire-Stennis Cooperative Forestry Act, Pub. L. No. 87-788, 76 Stat. 806 (1962) authorized forestry research capacity grants. These funds are apportioned to the states in amounts determined by the Secretary of Agriculture in consultation with an advisory council. Northern Arizona University's School of Forestry receives funding from this act.
[192] Bickell, *supra* note 191, at 12.
[193] *Id.*; *see also* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 7213, 116 Stat. 134, 448.

The federal government allocates $2.9 million annually from the Hatch Act to the state of Arizona, which then directs these funds to the University of Arizona's College of Agriculture, Life, and Environmental Sciences through specific line items. These funds support the Arizona Experiment Station program which is comprised of eleven locations spanning the geographical and biological diversity of the state.[194]

The Smith-Lever Act of 1914 established a national cooperative extension service, expanding 1862 land-grant universities' ability and obligation to disseminate agricultural knowledge to rural Americans.[195] Arizona's legislature endorsed University of Arizona participation in cooperative extension, assenting to the federal act and monies the following year.[196] The University of Arizona's 1916 Annual Report, including its Report of Agricultural Extension Services, documented the significant impact of Smith-Lever funding on the University of Arizona College of Agriculture's operations.[197]

The Smith-Lever Act provides capacity grants to 1862 land-grant institutions for their agricultural extension activities. These capacity grants fund both local and multistate initiatives. Like the Hatch Act, capacity grant funds must be matched with nonfederal funding and eligible state institutions must submit a work plan to NIFA for approval before the funds are distributed.[198] The University of Arizona receives $3.1 million annually from the Smith-Lever Act.[199] This amount is appropriated each year based on formulas that were established in Washington, D.C. decades ago taking into consideration factors such as the number and size of farms and ranches in a state. Although Arizona has a larger land area, the state has fewer farms and ranches compared to other regions, resulting in a lower allocation of funds.[200]

Combined, these federal acts provide significant funding to the University of Arizona today. Congress distributes these monetary allocations to land-grant institutions via the USDA's Farm Bill. Only 1862 land-grant institutions were, and continue to be, eligible for Hatch Act and Smith-Lever Act funding; 1890 (historically Black colleges and

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[194] Conversation between University of Arizona College of Agriculture, Life, and Environmental Sciences business office and the authors (Jan. 15, 2025) (notes on file with the authors).
[195] Smith-Lever Act, ch. 79, 38 Stat. 372 (1914).
[196] 1915 Ariz. Sess. Laws, 59–60.
[197] University of Arizona Record, *Annual Report of the Board of Regents of the University of Arizona for the Fiscal Year Ending June 30, 1917,* at 200–01 (1917). The Report of Agricultural Extension Service, beginning at 196, references funds received from the Smith-Lever Act and other federal sources that support the College of Agriculture and the University to this day.
[198] Bickell, *supra* note 191, at 14. Since passage of the Smith-Lever Act in 1914, the United States has developed an expansive cooperative extension system operating through the land-grant university system in partnership with federal, state, and local governments. Partners include NIFA, state cooperative extension services at land-grant colleges and universities, and cooperative extension service offices located in nearly each of the country's approximately 3,000 counties.
[199] Conversation with the University of Arizona College of Agriculture, Life, and Environmental Sciences business office, *supra* note 194.
[200] *Id.*

universities) and 1994 (tribal colleges) land-grant institutions were and are not eligible.[201] In addition to Hatch Act and Smith-Lever Act funding, 1862 land-grant institutions were, and continue to be, beneficiaries of substantial subsequent funding, thus furthering the benefits of the University of Arizona's 1862 land-grant status.[202]

C. Arizona Statehood

As Arizona Territory's land-grant institution, the University of Arizona received a massive financial boost when the U.S. Congress authorized Arizona's path to statehood through the 1910 Arizona-New Mexico Enabling Act.[203] This act granted the future State Land Commission title to over nearly 11 million acres of "surveyed, unreserved, unappropriated and nonmineral public lands" for specific and varied uses.[204] Within the territory's prescribed allocation of nearly 11 million acres of land, 800,000 acres were designated "in lieu of the [Morrill] Act," for higher education, divided among several purposes:

- 200,000 acres for university purposes;
- 150,000 acres for agricultural and mechanical colleges;
- 150,000 acres for the school of mines;
- 100,000 acres for military institutions; and,
- 200,000 acres for normal (education) schools.[205]

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[201] John Michael Lee, Jr. & Samaad Wes Keys, *Land-Grant But Unequal: State One-to-One Match Funding for 1890 Land-Grant Universities*, ASS'N OF PUB. & LAND-GRANT UNIVERS. 1–2 (2013), https://www.aplu.org/wp-content/uploads/executive-summary-land-grant-but-unequal-state-one-to-one-match-funding-for-1890-land-grant-universities.pdf [https://perma.cc/26JH-PCAA]. Many of the federal acts that supplemented 1862 land-grant colleges and agricultural experiment stations had certain matching requirements from their state, and many 1890 institutions did not receive support from their states. Second Morrill Act, ch. 841, 26 Stat. 417 (1890); Equity in Educational Land-Grant Status Act of 1994, Pub. L. No. 103–382, 108 Stat. 4048 (1994).

[202] *See, e.g.*, Adams Act, ch. 951, 34 Stat. 63 (1906) (authorizing additional appropriations for agricultural experiment stations established under the Hatch Act at 1862 institutions); Nelson Amendment, ch. 2839, 34 Stat. 1256, 1281 (1907) (increasing the annual appropriation of the Second Morrill Act by $5,000 until the total amount received shall be $50,000 annually, combined); Purnell Act, ch. 308, 43 Stat. 970 (1925) (providing additional funding for research at 1862 institutions and related research facilities and broadened the scope of research to encompass the social sciences, including the study of agricultural economics and sociology); Capper-Ketcham Act, ch. 792, 45 Stat. 711 (1928) (enhancing collaboration between land-grant colleges and the Agricultural Department as outlined in the Smith-Lever Act, aiming to advance the cooperative extension system); Bankhead Jones Act, ch. 338, 49 Stat. 436 (1935) (authorizing additional appropriations for research, land purchase and rental, and research building construction); Bankhead-Flanagan Act, ch. 81, 59 Stat. 231 (1945) (amending the Bankhead-Jones Act to facilitate the ongoing advancement of cooperative agricultural extension work).

[203] An Act to Enable the People of Arizona to Form a Constitution and State Government and Be Admitted into the Union on Equal Footing with the Original States, Pub. L. No. 61-219, 36 Stat. 557, 568 (1910).

[204] *Id.* at 575.

[205] *Id.* at 573. The Enabling Act granted land to Arizona for higher education in lieu of the Morrill Act. Note that the Morrill Act provided land grants for the specific use of agricultural and mechanic schools and for

To be clear, Arizona never received grants of land directly from the Morrill Act of 1862. Instead, the federal government granted the state of Arizona trust land for university purposes through the 1881 Act and the Enabling Act of 1910 *in lieu of* the Morrill Act. The University of the Territory of Arizona became the state's Morrill Act land-grant designated institution 20 years before statehood when it applied for Hatch Act funding in 1889 and simultaneously created the university's college of agriculture and experiment station.

Following Arizona's admission as the forty-eighth state on February 14, 1912, the first state legislature, on May 16, 1912, formally assented to the Enabling Act's provisions related to the University of Arizona.[206] A few days later, on May 20, 1912, the state legislature created the State Land Commission. The Commission was charged with creating a process whereby the state could comply with the Enabling Act, including examining, recording, and developing policies for managing Arizona's public lands on behalf of its land-grant institution and the other designated beneficiaries.[207]

On December 1, 1914, the Arizona State Land Commission issued its first comprehensive assessment of university lands to Arizona Governor W.P. Hunt.[208] The report details the status of lands granted under the 1881 Act, noting that 36,890 acres had been approved in 1890, with an additional 320-acre tract in the Tucson Mountains selected in 1904 and approved in 1905. This latter parcel, known today as Tumamoc Hill,[209] was

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military tactics programs. The Morrill Act did not provide land-grants for general university purposes, schools of mines, or normal schools; these allocations are unique to Arizona's Enabling Act.

[206] An Act Assenting to the Provisions of the Enabling Act of Congress, Approved June 20, 1910, Providing for Grants of Land for Agricultural and Mechanical Colleges, and for School of Mines, in the State of Arizona, and for Other Purposes; and Reserving Lands for Said Colleges and School, 1912 ARIZ. SESS. LAWS, 193–94; *see also* ARIZ. CONST. art. X, § 1: Acceptance and holding of lands by state in trust ("All lands expressly transferred and confirmed to the state by the provisions of the Enabling Act approved June 20, 1910, including all lands granted to the state and all lands heretofore granted to the Territory of Arizona, and all lands otherwise acquired by the state, shall be by the state accepted and held in trust to be disposed of in whole or in part, only in manner as in the said Enabling Act and in this Constitution provided, and for the several objects specified in the respective granting and confirmatory provisions. The natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.").

[207] An Act to Provide for a Method of Compliance with the Enabling Act of the United States Congress and the Constitution of the State of Arizona, with Reference to the Selection, Disposition and Control of the Public Lands of Every Description Belonging to the State of Arizona, 1912 ARIZ. SESS. LAWS 417–20.

[208] ARIZ. STATE LAND COMM'N, *supra* note 160.

[209] Archeological evidence suggests that Tumamoc Hill was surrounded by Hohokam villages. The hill may represent a distinctive feature of early Hohokam culture, which is an integral part of the ancestral heritage of the O'odham, Hopi, and Zuni peoples. *See* Jeffrey F. Burton & Mary M. Farrell, *Tumamoc Hill Archeological Site*, U.S. NAT'L PARK SERV. https://npshistory.com/publications/nr-forms/az/tumamoc-hill-archaeological-site.pdf [https://perma.cc/DT9W-B8RR] (Apr. 2007). Known in O'odham as Cemamagi Du'ag, or Horned Lizard Mountain, Tumamoc Hill is a volcanic landform of enduring cultural and sacred importance to the Tohono O'odham Nation—including the San Xavier Wa:k District—as well as to other Native nations. *See* UNIV. OF ARIZ., *Discover Tumamoc Hill*, https://desertlaboratory.arizona.edu/tumamoc-hill/overview [https://perma.cc/TC5T-G275] (last visited June 18, 2025). In 2010 the Department of the Interior entered the 860-acre Tumamoc Hill Archeological District into the National Register of Historic

immediately leased to the Carnegie Institute for a desert laboratory. Thus, the total land acquired under the 1881 Act reached 37,210 acres, with 8,870 acres remaining to be selected.[210]

The Commission's 1914 report highlights significant timber resources on university-designated lands near Flagstaff, estimating 300 million feet of mature and over-mature western yellow pine worth over $700,000 on approximately two-thirds of the 1881 Act lands. The Commission advocated establishing a permanent university fund for timber and cordwood sale proceeds, recommending these revenues be invested in "safe, interest-bearing securities." Combined with the Enabling Act land grants, the Commission anticipated these resources would "go far toward wholly maintaining the institution . . . ."[211] Most importantly, the State Land Commission recommended the creation of an Arizona State Land Department (ASLD) to manage state trust lands.[212]

The ASLD was subsequently established by the Second Legislature of the State of Arizona in 1915.[213] The State Land Commissioner's 1915 report reveals a permanent University Timber Account Fund with receipts totaling $110,223 through December 1915.[214] The Report also notes that the U.S. Interior Department approved the state's selection of the remainder of land under the 1881 Act, but limited the selections to "unappropriated, unreserved, unmineralized and untimbered public lands."[215]

The U.S. Department of the Interior, Bureau of Education praised Arizona's approach to managing its educational land grants in a 1918 bulletin. The report notes that Arizona "received 150,000 acres in lieu of the grant under the act of 1862 for agricultural and mechanical colleges" and wisely consolidated this with all other state lands under the control of the State Land Commission. The report further highlights that,

> When the State was admitted to the Union and received the usual quota of lands for different purposes, the legislature wisely decided to center all its higher educational efforts in one institution, and accordingly conferred all its grants for higher education, including the grant for an agricultural college, upon the University of Arizona. By this means this

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Places. *See* UNIV. OF ARIZ., *Tumamoc Hill Timeline*, https://desertlaboratory.arizona.edu/tumamoc-hill/tumamoc-hill-timeline [https://perma.cc/T5U7-QNW8] (last visited June 18, 2025).

[210] ARIZ. STATE LAND COMM'N, *supra* note 160, at 116.

[211] *Id.* at 123–24.

[212] *Id.* at 163–64.

[213] *Acts, Resolutions and Memorials of the Second Special Session of the Second Legislature of the State of Arizona*, 1915 ARIZ. SESS. LAWS 13–57.

[214] ARIZ. STATE LAND COMM'N, *Report of the State Land Commissioner to the State Land Department, July 1, 1915-December 31, 1915*, 21–23 (1915).

[215] *Id.* at 20.

> institution is possessed of a magnificent potential endowment. [216]

In 1926, the University constructed the Men's Gymnasium & Armory (Bear Down Gym), funded partially with $49,000 income received from rentals and sales of the 100,000 acres designated for military science and tactics under the Enabling Act. Combined with a state appropriation of $117,207, the total project budget was approximately $166,207.[217] Thus, this consolidated endowment yielded immediate tangible benefits for campus development.

III. ARIZONA TRUST LAND MANAGEMENT AND REVENUE DISTRIBUTION

Today, both the Arizona State Land Department (ASLD) and the Arizona State Treasurer distribute revenue from the state land trust to the Arizona Board of Regents (ABOR) which then makes allocations to all three of Arizona's public universities. Governing laws include the Arizona State Constitution,[218] Arizona's Land Code[219], Arizona's Education Code,[220] and Arizona Board of Regents policies.[221]

Although land-grant revenue is non-appropriated, it is included in the state's budgeting process: each university submits an annual budget request to ABOR[222] which then submits a budget request on behalf of universities to the governor and the legislature.[223] The governor makes funding recommendations to the legislature for universities and for ASLD.[224] The Joint Legislative Budget Committee (JLBC) provides

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[216] Benjamin F. Andrews, *The Land Grant of 1862 and the Land-Grant Colleges*, U.S. DEP'T OF THE INTERIOR, BUREAU OF EDUC. BULL. No. 13, at 12 (1918).
[217] Lutrell, *supra* note 173, at 309–10 (citing Minutes of the Board of Regents, vol. 5). According to the Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm [https://perma.cc/R3M2-P8ZM] (last visited Oct. 16, 2025), $166,207 in 1926 is approximately $3 million today.
[218] ARIZ. CONST. art. X (State and School Lands).
[219] ARIZ. REV. STAT. tit. 37 (Public Lands).
[220] ARIZ. REV. STAT. tit. 15 (Education).
[221] ARIZ. BD. OF REGENTS, *Policy Manual*, ch. 3 (Business and Finance), https://azregents.edu/about/policy-manual [https://perma.cc/4LRT-M3XJ].
[222] *See id.* at 3-403 (2018) ("For consideration by the Board in June, each university will submit to the System office an Annual Operating budget for approval by the Board.") https://public.powerdms.com/ABOR/documents/1491760 [https://perma.cc/5FN3-YUC8].
[223] ARIZ. REV. STAT. § 15-1626(A)(7). *See e.g.*, ARIZ. BD. OF REGENTS, FY 2024 STATE BUDGET REQUEST, *supra* note 10; *see also* ARIZ. BD. OF REGENTS, *Policy Manual*, 3-401 (2018) ("Each university will prepare a legislative budget request for Board review and approval before submission to the Governor and Legislature."), https://public.powerdms.com/ABOR/documents/1491757 [https://perma.cc/SX68-W9XK].
[224] ARIZ. REV. STAT. § 35-113 to -115. *See also* GOVERNOR'S OFFICE OF STRATEGIC PLANNING & BUDGET, *What We Do* ("OSPB also assists agencies in the preparation of their budgets"), https://www.azospb.gov/responsibilities.aspx [https://perma.cc/82S7-DMNT] (last visited Oct. 18. 2025).

independent analysis and recommendations.[225] Finally, the legislature approves a budget after which the state treasurer and ASLD release funds to ABOR for distribution to the universities[226] in accordance with the operating budget set by ABOR for each university.[227]

The below flowchart summarizes the revenue distribution process after budgets are finalized and approved, with accompanying legal authority.

[225] ARIZ. REV. STAT. § 41-1272(A)(1); *see also* JOINT LEGIS. BUDGET COUNCIL, *Background* https://www.azjlbc.gov/jlbc-background/ [https://perma.cc/56EH-SL4V] (last visited Oct. 18, 2025) ("The primary powers and duties of the JLBC relate to ascertaining facts and making recommendations to the Legislature regarding all facets of the state budget, state revenues and expenditures, future fiscal needs, and the organization and functions of state government.").
[226] ARIZ. CONST., art. X, § 7; *see also* e-mail from Ariz. State Land Dep't to authors (Apr. 28, 2025) (on file with the authors).
[227] ARIZ. REV. STAT. § 15-1626(A)(13).

Institution	Authority	Summary of Authority
Land Granted: Enabling Act of 1910 and Act of 1881	ARIZ. CONST. art. X, § 7	Enabling Act consolidated land-grants to be held in trust; establish a permanent fund for each Enabling Act grant; board of investment to serve as trustee for permanent funds, works with Arizona state treasurer; specific investment provisions.
↓		
Arizona State Land Department	ARIZ. REV. STAT. § 37-522 to -525 (Land Code)	Composition and purpose of consolidated land funds: universities; normal schools; agriculture and mechanical colleges and school of mines; military institutes. ASLD distributes expendable revenue directly to ABOR and deposits non-expendable receipts into the Arizona State Treasury.
↓		
Arizona State Treasurer	ARIZ. REV. STAT. § 15-1662 (Education Code); ARIZ. CONST. art. X, § 7	Maintains separate permanent funds and accounts for land funds created under ARIZ. REV. STAT. § 37-522 to -525: universities; normal schools; agriculture and mechanical colleges; school of mines; military institutes; investments per ARIZ. CONST. art. X, § 7. Treasurer distributes land-grant formulaic distributions directly to ABOR.
↓		
Arizona Board of Regents	ARIZ. REV. STAT. § 15-1663 (Education Code); ABOR Policy 3-606	§15-1663: may expend funds specified in section §15-1662 as it deems expedient; combines the universities funds into the eminent scholars matching fund. ABOR Policy 3-606: allocation policies for each land fund to Arizona's public universities.
↓		
Arizona's public universities: University of Arizona (land-grant designated university), Arizona State University, Northern Arizona University.		

Flowchart 1: The distribution process for revenue generated from the Arizona state trust land for the benefit of Arizona's three public universities, with accompanying legal authority.

The next sections describe in more detail each institution's involvement in the management, allocation, and spending of the state land trust together with the laws that govern these institutions, the land, and the revenue.

A. Arizona State Land Department

ASLD serves as the primary steward of state trust lands, managing these assets and distributing income to designated beneficiaries under Arizona's land code framework.[228] ASLD exercises comprehensive management authority over trust lands, conducting revenue-generating activities—including sales, leases, and other transactions—to the "highest and best bidder" to maximize financial returns while fulfilling fiduciary obligations under Arizona's Enabling Act of 1910 and the Arizona Constitution.[229] ASLD distributes expendable income directly to designated beneficiaries and deposits non-expendable income into the state treasurer's Permanent Land Endowment Trust, which the Arizona State Treasurer administers and invests according to statutory requirements.[230]

ASLD reports that the total amount of land granted under all provisions of the 1910 Enabling Act reached approximately 10.9 million acres for 13 beneficiaries.[231] According to their 2024 Annual Report, ASLD now holds in trust and manages for the state nearly 9.2 million acres, including 688,706 acres distributed among six funds for the state's public universities.[232]

Today, Arizona has three public universities, Arizona State University, Northern Arizona University, and the University of Arizona. Each is a designated beneficiary of proceeds from investments in all of the land funds except School of Mines, which is allocated to the only school of mines in the state: the University of Arizona School of Mining Engineering and Mineral Resources.[233] As noted previously, these permanent funds

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[228] ARIZ. REV. STAT. tit. 37.
[229] ARIZ. CONST. art. X, §§ 1–3.
[230] JOINT LEGIS. BUDGET COUNCIL, *State Land Trust: Land Department & State Treasurer* 3 (2019), https://www.azjlbc.gov/units/pslandtrust.pdf [https://perma.cc/4LU2-CQWP]; *see also*, e-mail from Ariz. State Land Dep't to authors, *supra* note 226.
[231] ARIZ. STATE LAND DEP'T, *History of Arizona State Trust Land*, https://land.az.gov/our-agency-mission/history-trust-land (last visited Jan. 14, 2025); *see also* BUREAU OF LAND MGMT., *General Land Office Record*s, https://glorecords.blm.gov/results/default.aspx?searchCriteria=type=patent%7Cst=AZ%7Ccty=%7Caut=262048%7Csp=true%7Csw=true%7Csadv=false#resultsTabIndex=0&page=10&sortField=11&sortDir=0 [https://perma.cc/WU9Y-DF2N] (last visited January 15, 2025) (land patents to Arizona's public lands acquired via the Enabling Act of 1910).
[232] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9 at 9. Note that over 8 million acres of Arizona's state trust land is designated for Common Schools, K–12 public education. *Id.*; *see also* ARIZ. STATE LAND DEP'T, *State Trust Land Beneficiaries*, https://land.az.gov/our-agency-mission/beneficiaries [https://perma.cc/V84R-LMLY] (last visited Oct. 18, 2025).
[233] Ariz. STATE LAND DEP'T, *State Trust Land Beneficiaries*, *supra note 232*; ARIZ. REV. STAT. § 15-1662 to -1663; ARIZ. BD. OF REGENTS, POLICY MANUAL 3-606(A)(1)-(5) (2018) https://public.powerdms.com/ABOR/documents/1491862 [https://perma.cc/58N3-W78L].

were established at statehood for the state's institutions of higher education. They are listed here with their modern names[234] and current acreage[235] in the fund:

Fund Name	**Beneficiaries**	**Original Acreage (1912)**	**Current Acreage (FY 2024)**
Normal Schools	Colleges of Education	200,000	174,403
Agricultural & Mechanical Colleges	Colleges of Engineering; University of Arizona College of Agriculture	150,000	124,903
Military Institutes	ROTC programs	100,000	80,168
School of Mines	University of Arizona School of Mining Engineering & Mineral Resources	150,000	123,255
University Land Code	Eminent Scholars programs	200,000	137,501
University of Arizona 1881	Eminent Scholars programs	46,060	48,476
TOTAL		846,060	688,706

Table 1: Trust land acreage in 1912 and in 2024.

ASLD generates revenue from state trust land through a variety of mechanisms: land sales, surface leases, and subsurface leases.

Land sales: ASLD conducts public auctions for trust lands deemed suitable for disposition, with constitutional provisions mandating that transactions occur only at public auction to the highest qualified bidder[236] and at no less than appraised value.[237] These protective constraints serve to prevent the undervaluation of public assets while simultaneously ensuring market-based valuation.[238] The disposal of trust land is not the main goal of ASLD since the Enabling Act of 1910 intended the land to be held in trust. The sale of trust land outside of the intended purpose of the Enabling Act would be a breach of trust.[239] Proceeds from land sales are deposited into the appropriate permanent fund managed by the Arizona State Treasurer, with only the investment returns distributed to beneficiaries.[240]

Surface leases: ASLD leases trust land for grazing, agriculture, commercial businesses, and homesites.[241] These arrangements are governed by statute[242], and revenue

[234] ARIZ. STATE LAND DEP'T, *State Trust Land Beneficiaries*, *supra note 232*.
[235] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9 at 9.
[236] ARIZ. CONST. art. X, § 3.
[237] ARIZ. CONST. art. X, § 4.
[238] ARIZ. REV. STAT. § 37-231 to -261
[239] ARIZ. CONST. art. X, § 2.
[240] ARIZ. CONST. art. X, § 7; JOINT LEGIS. BUDGET COUNCIL, *supra* note 230.
[241] ARIZ. CONST. art. X, § 3(1).
[242] ARIZ. REV. STAT. § 37-281 to -295.

is deposited into an expendable fund for distribution to the beneficiaries.[243] Lessees include individuals, corporations, schools, county and municipal governments, and Native nations. The University of Arizona, although a named beneficiary of the land trust, also rents state land for various purposes. The University's current leases include the Desert Laboratory on Tumamoc Hill;[244] the Marana Livestock Facility[245] and Marana Farm,[246] both in Pinal County; and the Santa Rita Experiment Station near Green Valley.[247]

The Cocopah Indian Tribe,[248] Havasupai Tribe,[249] Hopi Tribe,[250] Hualapai Tribe,[251] Navajo Nation,[252] Pasqua Yaqui Tribe,[253] Pueblo of Zuni,[254] Tohono O'odham Nation,[255]

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[243] JOINT LEGIS. BUDGET COUNCIL, *supra* note 230.
[244] ARIZ. STATE LAND DEP'T, Commercial Lease No. 89-98103 (July 2021) (on file with the authors). The Arizona Board of Regents on behalf of University of Arizona's current lease is until March 2031. The annual rent is $72,000 for 200 acres to be used for "Desert plant life and wildlife ecology research."
[245] ARIZ. STATE LAND DEP'T, Commercial Lease No. 89-23963 (July 2011) (on file with the authors). The Arizona Board of Regents on behalf of the University of Arizona had a lease for over 4,638 acres for "Agricultural research and teaching programs of the University of Arizona." The lease provided via public records request expired in September 2018. In years one and two of the lease, the rent was $202,533 annually. In the following years, the annual rent included the prior year's rent with increases based on reappraisal and Consumer Price Index.
[246] ARIZ. STATE LAND DEP'T, Special Use Permit No. 23-99491-05 (July 2023) (on file with the authors). The permit allows "livestock grazing" on 5,019.14 acres until December 2033.
[247] ARIZ. STATE LAND DEP'T, Commercial Lease No. 03-99671 (Jun. 2015) (on file with the authors). The Arizona Board of Regents on behalf of the University of Arizona leased 50,690.94 acres for over $4.4 million annually for years 1–5 and $4.6 million annually for years 6–10 to be used for "Ecological and Rangeland Research." The lease provided through public records request expired in September 2024.
[248] ARIZ. STATE LAND DEP'T, Agricultural Lease No. 01-100522 (May 2014) (on file with the authors). The Cocopah Indian Tribe entered a ten-year lease ending in February 2024 for 140 acres.
[249] ARIZ. STATE LAND DEP'T, Grazing Lease No. 05-000144-00 (Oct. 2022) (on file with the authors). The Havasupai Tribe entered a ten-year lease ending in March 2032 for 8,582.44 acres.
[250] ARIZ. STATE LAND DEP'T, Grazing Lease Nos. 05-012 (Mar. 2022), 05-1600 (Aug. 2019), 05-2114-00 (Jun. 2023), 05-2222-00 (Mar. 2023), 05-00362-00 (Mar. 2020), 05-45 (Aug. 2016), and 05-474 (Mar. 2017) (on file with the authors). The Hopi Tribe has seven leases with ASLD, with ten-year terms totaling 182,280.14 acres.
[251] ARIZ. STATE LAND DEP'T, Grazing Lease No. 05-105161-00 (Apr. 2020) (on file with the authors). The Hualapai Tribe has a grazing lease of 913.31 acres ending in September 2029.
[252] ARIZ. STATE LAND DEP'T, Grazing Lease Nos. 05-132 (June 2006), 05-361 (Oct. 2002), and 05-99669 (Dec. 2000) (on file with the authors). The Navajo Nation had three grazing leases with different terms that total 270,927.73 acres. The leases provided via public records request are expired, and it is unclear if a renewal process was initiated. Lease No. 05-132 also contains a coordinated resource management plan allowing the Navajo Nation to sub-let state land.
[253] ARIZ. STATE LAND DEP'T, Grazing Lease No. 05-1535 (Jun. 2021) (on file with the authors). The Pascua Yaqui Tribe has one grazing lease of 18,982.25 acres ending in November 2030.
[254] ARIZ. STATE LAND DEP'T, Grazing Lease Nos. 05-1063 (Sept. 2019), 05-645 (Oct. 2019), 05-1085-00 (Nov. 2022), 05-113665 (Jan. 2022) and 05-105380 (Sept. 2019), 05-104719 (May 2024), 05-578-00 (Nov. 2022), 05-1814-00 (Jun. 2024), and 05-123719-00 (Nov. 2022) (on file with the authors). The "Pueblo of Zuni" has four grazing leases with ten-year terms that total 10,106.01 acres. The "Zuni Indian Tribe" has five grazing leases with ten-year terms for 16,769.21 acres.
[255] ARIZ. STATE LAND DEP'T, Agricultural Lease No. 01-346 (Aug. 2016) (on file with the authors). Tohono O'odham Farming Authority had an agricultural lease that expired February 2024 for 438.43 acres.

and Yavapai-Prescott Indian Tribe[256] are all lessees, renting land from ASLD near their reservations.[257] The majority are grazing permits to allow livestock on state pastureland. At one point, the Navajo Nation and the Hopi Tribe were the two largest lessees of state trust parcels.[258] In 2024, ASLD collected nearly $3.16 million from surface leases on behalf of Arizona's public universities.[259]

Subsurface leases: ASLD manages exploratory and extractive mineral leases[260] and oil and gas leases,[261] all of which are issued through competitive bidding processes.[262] Revenue from non-renewable resource extraction generally contributes to the Permanent Fund, reflecting the one-time nature of the resource disposition.[263] In 2024, ASLD collected nearly $200,000 from subsurface leases on behalf of Arizona's public universities.[264]

The table below, created from data in ASLD's 2024 Annual Report, illustrates the lease rental revenue collected by ASLD for university trust lands. The surface revenue includes agriculture, commercial, grazing, rights of way, use permits, and U.S. government leases. The subsurface leases include prospecting permits and mineral material (e.g. sand, rock) extraction. The university trust land is not generating revenue from mineral (e.g. copper) extraction at this time.[265]

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[256] ARIZ. STATE LAND DEP'T, Grazing Lease No. 05-1103 (Nov. 2022) (on file with the authors). Yavpe' Ma'Ta Co. reassigned the lease of 1,522.42 acres to the Yavapai-Prescott Indian Tribe to complete the ten-year term ending in September 2032.

[257] ARIZ. STATE LAND DEP'T, Arizona State Land Trust Parcel Viewer, https://land.az.gov/maps-gis [https://perma.cc/64SV-4R49] and State Trust Parcels dataset in ArcGIS, https://www.arcgis.com/apps/mapviewer/index.html?layers=36ab68eb467340849978bd76be1c990c [https://perma.cc/78L4-K8XY] (last visited July 3, 2025). The authors used the ASLD State Trust Parcels dataset as a finding aid for state lease information to subsequently make public records requests. The terms of use to access the State Trust Parcels feature layer states as follows: "The Arizona State Land Department makes no warranties, implied or expressed, with respect to the accuracy and the use of this data for any specific purpose. Users are required to make their own assessment of the data for any specific use." Note that the ASLD may restrict access to this feature layer such that the data is unavailable.

[258] *Id.* According to the data in the feature layer, the Navajo Nation leases more parcels from ASLD than any other lessee. However, upon public record requests for Navajo Nation's leases, the documents provided by ASLD were recently expired leases and ASLD provided no information as to their renewal status.

[259] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9, 10–11.

[260] ARIZ. CONST. art. X, § 3(2).

[261] ARIZ. CONST. art. X, § 3(3).

[262] ARIZ. REV. STAT. § 27-231 to -239 et seq.

[263] JOINT LEGIS. BUDGET COUNCIL, *supra* note 230.

[264] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9, at 10–11.

[265] *Id.* Lease rental does not include royalties, penalty and interest, sales principal, or sales interest.

2024 Lease Rental*	A&M Colleges	Military Institutes	Normal Schools	School of Mines	UA Land Code	UA 1881	TOTAL
Surface	$1,265,469	$54,895	$595,266	$181,092	$409,704	$654,411	**$3,160,837**
Subsurface	$29,084	$8,120	$30,162	$88,906	$24,367	$19,208	**$199,847**

Table 2: FY 2024 revenue from surface and subsurface leases.

ASLD deposits revenue derived from the land grants into the corresponding accounts of the Arizona State Treasury.[266] In their 2024 Annual Report,[267] ASLD reported the following revenue and deposits:

[266] ARIZ. REV. STAT. § 37-522 to -525.
[267] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9.

2024 Fund (June 30, 2024)	**Expendable Receipts**[268]	**Permanent Fund Receipts**[269]	**Total Collected**	**Treasurer's Formula Distribution** [270]	**Grand Total Expendable (distributed to universities)**[271]	**Permanent Fund Balance**[272]
Normal Schools	$637,449	$1,353,422	$1,990,871	$476,871	$1,114,320	$9,750,662
A&M Colleges	$1,294,697	$155,911	$1,450,608	$959,419	$2,254,116	$15,018,942
Military Institutes	$63,024	$0	$63,024	$54,801	$117,825	$845,608
School of Mines	$269,927	$331,856	$601,783	$1,100,126	$1,370,053	$17,238,759
University Land Code*	$2,910,033	$10,545,377	$13,455,410	$2,511,227	$5,421,260	$61,385,121
U of A (Act of 2/18/1881)*	$1,092,146	$1,391,069	$2,483,215	$7,715,105	$8,807,251	$125,434,830
TOTAL	$6,267,276	$13,777,635	$20,044,911	$12,817,549	**$19,084,825**	**$229,673,922**
*Combined University funds (Eminent Scholars)					$14,228,511	$186,819,951

Table 3: FY 2024 revenue generated from the state land trust for higher education, including both expendable fund distributions and permanent fund balances.

[268] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9, at 6–7; *see also* JOINT LEGIS. BUDGET COUNCIL, *supra* note 230 ("Expendable receipts are typically generated as recurring revenue by the Land Department through leases and permits (agricultural, grazing, commercial, etc.), interest from sales contracts, and other revenue from the nonpermanent disposition of Trust assets. . . . The Treasurer also generates expendable receipts by managing the monies in the permanent funds and investing them in stocks, bonds, and interest-bearing securities.").

[269] JOINT LEGIS. BUDGET COUNCIL, *supra* note 230. ("Permanent receipts come from the one-time sale of state trust lands or royalty payments for the extraction of natural resources such as minerals, oil, and natural gas from those trust lands.").

[270] ARIZ. STATE LAND DEP'T ANN. REP., *supra* note 9, at 10–11. *see also* JOINT LEGIS. BUDGET COUNCIL, *supra* note 230, at 4 ("The Treasurer's distributions from the Permanent Funds to the beneficiaries are based on the formula outlined in Article X, Section 7 of the Arizona Constitution.").

[271] ARIZONA STATE TREASURER, *Annual Audited Financial Statements, Fiscal Year 2024,* at 25–29 (2024). The Grand Total Expendable is the sum of the Expendable receipts and the Treasurer's formula. This is the amount that is distributed to the universities.

[272] *Id.* The Permanent Fund is held in perpetuity, and the corpus is not spent. The corpus, which is nearly $230 million in 2024, is invested in a variety of securities, mutual funds, bonds, and other financial instruments. A portion of the interest earned is distributed to the designated beneficiaries.

In sum, Arizona's revenue distribution system operates through two parallel channels. As noted, the permanent fund, with a corpus of nearly $230 million in 2024, receives proceeds from land sales and non-renewable resource extraction, creating an intergenerational endowment managed by the State Treasurer.[273] This arrangement preserves the corpus of the trust while generating investment returns for distribution to beneficiaries. Both the Treasurer and ASLD distribute funds monthly to ABOR: the Treasury transfers the interest income earned from its investment strategy and formula from the permanent endowment fund, while ASLD distributes the expendable fund receipts earned from the land leases.[274] Direct distributions from the expendable accounts for leasing activities and permits provide immediate fiscal support to beneficiaries while maintaining state ownership of the underlying assets. This bifurcated approach balances current needs with trust obligations, reflecting the perpetual nature of the trust relationship established in Arizona's Enabling Act of 1910.[275]

B. Arizona State Treasury

As noted above, the Arizona State Treasurer functions as the official custodian of all funds derived from trust lands, assuming responsibility for the prudent investment of permanent endowment funds established under Arizona's Land Code[276] and required by the Arizona State Constitution.[277] The Treasurer's office develops and implements investment strategies carefully calibrated to achieve an optimal balance between growth, income generation, and risk mitigation within the parameters prescribed by the constitution and statute.[278] The Treasurer's office also distributes income from funds to designated beneficiaries according to the distribution formulas codified Arizona's Education Code.[279]

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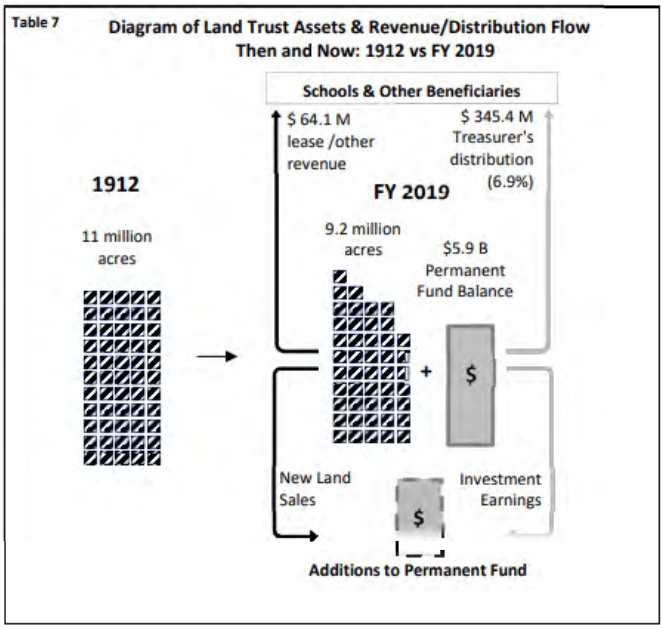
[273] ARIZ. REV. STAT. § 37-527.
[274] ARIZ. CONST., art. X, § 7; *see also* e-mail from Ariz. State Land Dep't to authors, *supra* note 226.
[275] JOINT LEGIS. BUDGET COUNCIL, *supra* note 230, at 3–4; *see also* 2016 ARIZ. STATE LAND DEP'T ANN. REP. 10. This is the last annual report to contain helpful background information and definitions of terms and accounts. For example, "ASLD generates two types of revenue: Permanent – Revenue earned from the sale of State Trust land or assets such as, minerals or other natural products including royalties. This revenue is deposited into the appropriate beneficiary's Permanent Fund, which is administered by the State Treasurer. It is generally one time revenue.[…] Expendable – Revenue from leases, permits, interest from sales contracts, and other revenue from the non-permanent disposition of Trust assets. It is generally recurring revenue."
[276] ARIZ. REV. STAT. § 37-522 to -525.
[277] ARIZ. CONST., art. X, § 7D.
[278] ARIZ. CONST., art. X, § 7D-K, art. XI (2021); ARIZ. REV. STAT. § 15-901.01.
[279] ARIZ. REV. STAT. § 15-1662; *see also* JOINT LEGIS. BUDGET COUNCIL, JOINT LEGIS. BUDGET COUNCIL, *supra* note 230, at 4 (2019): "The Treasurer's distributions from the Permanent Funds to the beneficiaries are based on the formula outlined in Article X, Section 7 of the Arizona Constitution. Prior to 2012, the distribution formula was based on a 5-year average inflation-adjusted investment return, which was multiplied by the 5-year average of a beneficiary's Permanent Fund balance. In 2012, Proposition 118 set a fixed distribution rate of 2.5% of the 5-year average value of a beneficiaries' Permanent Fund to reduce the year-to-year volatility of distribution payouts. Proposition 123 (approved by voters at the May 2016 special

The following excerpt from JLBC's *State Land Trust: Land Department & State Treasurer Program Summary*[280] is a helpful visual of the revenue and distribution flow.

Table 7 provides a summary diagram of the flow of funds related to the Land Trust: Over time, 1.8 million of the original 11 million acres have been sold, leaving 9.2 million acres and resulting in a $5.9 billion fund balance as of September 2019, including investment returns. Each year, the investment earnings on the fund balance (6.38% in FY 2019) and the proceeds from additional land sales ($143.9 million in FY 2019) increase the value of the beneficiaries' permanent funds. At the same time, the Treasurer distributes 6.9% of the fund balance to the beneficiaries ($345.4 million in FY 2019) while the Land Trust generates lease revenues ($64.1 million in FY 2019) that also go directly to the beneficiaries.



Flowchart 2: Diagram of state land trust revenue distribution flow.

Similar to ASLD, the Arizona State Treasurer is required to maintain separate accounts for the funds established by the Enabling Act of 1910. They are: (1) universities (which combines University Land Code and University of Arizona 1881 funds), (2) normal schools, (3) agricultural and mechanical colleges, (4) school of mines, and (5) military institutes.[281] As prescribed by law and articulated in the state constitution, the state treasurer distributes funds as dictated by the legislature to ABOR for distribution to Arizona's three public universities.[282]

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election) increased the annual distribution rate from the State Land Trust Permanent Fund from 2.5% to 6.9% from FY 2016 through FY 2025."

[280] JOINT LEGIS. BUDGET COUNCIL, *supra* note 230, at 6 (2019).

[281] *Id.*; *see also* ARIZ. REV. STAT. § 15-1662(A).

[282] ARIZ. CONST., art. X, § 7G–I.

C. Arizona Board of Regents

ABOR exercises governance and budgetary oversight over Arizona's three public universities.[283] For the land-grant funding, the Board serves as an intermediary between universities and the state's treasurer, legislature, and ASLD, facilitating appropriate fund transfers.[284] ABOR also maintains policies for how the land-grant revenue is to be distributed and spent by the universities according to statutorily defined purposes.[285]

As noted previously, Arizona Territory's first set of codified laws contemplated a territorial university that would be managed, directed, and governed by a board of regents.[286] When the Thirteenth Territorial Legislature created the University of Arizona in 1885, they simultaneously created the Arizona Board of Regents.[287] At the same time, the legislature established the Normal School in Tempe that would operate under the direction of a board of education.[288] Shortly thereafter, the legislature created Northern Arizona Normal School (1899), which was governed by a second board of education.[289]

In 1945, the Governor signed into law a bill that provided for the consolidation of the management of the three schools under the university's board of regents, to be called the "board of regents of the university and state colleges of Arizona."[290] Since then, the Arizona Board of Regents has governed all three of Arizona's public institutions of higher

[283] ARIZ. REV. STAT. § 15-1626.
[284] ARIZ. REV. STAT. § 15-1663.
[285] ARIZ. BD. OF REGENTS, POLICY MANUAL 3-606, ALLOCATION OF LAND FUND INCOME, REDESIGNATION AND REALLOCATIONS OF UNIVERSITY TRUST LAND (2018), https://public.powerdms.com/ABOR/documents/1491862 [https://perma.cc/SG6D-MFVX].
[286] TERRITORY OF ARIZONA, THE HOWELL CODE: ADOPTED BY THE FIRST LEGISLATIVE ASSEMBLY OF THE TERRITORY OF ARIZONA 168 (Office of the Arizona Miner, 1864).
[287] LAWS OF THE TERRITORY OF ARIZONA, Act No. 99, at 272–273 (1885).
[288] LAWS OF THE TERRITORY OF ARIZONA, Act No. 94, at 247–248 (1885). Normal schools trained teachers for a state's public primary and secondary schools.
[289] TERR. ARIZ. REV. STAT., tit. 56, Ch.6, at 926 (1901); *see also id.* at 919 (clarifying that the Flagstaff schools' board of education is distinct from that of the Tempe school).
[290] H.B. 136, 17th Leg., 1st Reg. Sess., at 194-196 (Ariz. 1945). While there is an explicit provision granting the board of regents control over the state colleges' funds, the law does not amend any provisions pertaining to the allocation of land-grant income to the University of Arizona. This bill also removed the word "Teachers" from the two Arizona state colleges. *See also* J. MORRIS RICHARDS, HISTORY OF THE ARIZONA STATE LEGISLATURE, 1912-1966, at 18–23 (1990).

education, all of which are now public universities.[291] Today, ABOR's governance over Arizona's public universities is firmly entrenched in the state's constitution and statutes.[292]

The evolution of Arizona's Education Code and Land Code have clarified ABOR's role in the management and distribution of land-grant revenue. In 1981, the Arizona Legislature passed House Bill (H.B.) 2005, which, when signed into law by Governor Bruce Babbitt, wholly replaced the existing Education Code.[293] While the new code "rearranges existing education law into a more logical order and sequence," the "substance of the law" did not change.[294] At the time, the Education Code provided for university land-grant funds to go exclusively to the University of Arizona.[295]

One year later, in 1982, Governor Babbitt signed into law H.B. 2454, containing amendments to Arizona's education and land codes, eliminating land-grant distributions from the university funds to the University of Arizona exclusively and making them available to all of Arizona's public universities.[296] In a February 22, 1982, memorandum to the House of Representative Education Committee, the authors summarized H.B. 2454, as amended by Representative Patricia Wright:

> This bill clarifies the Board of Regents authority by specifying that all 3 universities are under the control of the board. Additionally, it entitles ASU and NAU to monies deposited in the "university land fund," "university timber

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[291] In 1958, the Normal School in Tempe, which by then was known at Arizona State College, was renamed Arizona State University; and in 1966, the Arizona State College at Flagstaff became Northern Arizona University. *See* ARIZ. STATE UNIV., *History and Milestones*, https://www.asu.edu/about/university-history-and-milestones [https://perma.cc/X3TH-PR7Q] (last visited Apr. 2, 2025). Proposition 200 in 1958 called on voters to consider a name change from Arizona State College to Arizona State University. The proposition passed by a 2-to-1 margin. See generally an account of the name change battle in the legislature in RICHARDS, *supra* note 290, at 113-25 ; *see also* N. ARIZ. UNIV., *Arizona State College to Northern Arizona University*, https://library.nau.edu/speccoll/exhibits/nau50/themes/asc2nau.hml [https://perma.cc/ZH22-EKSP] (last visited Apr. 2, 2025) ("On April 6, 1965, Governor Sam Goddard signed Senate Bill 98 into law, creating a change of name and status for Arizona State College at Flagstaff. The new Northern Arizona University officially came into being on May 1, 1966.").

[292] ARIZ. CONST., art. XI, § 5. ARIZ. REV. STAT. § 15-1662(B), -1663.

[293] Education Code, H.B. 2005 (1981) codified at ARIZ. REV. STAT. § 15 (effective Jan. 23, 1981). On Jan. 12, 1981, the first day of the legislative session, the Journal of the House of Representatives notes that H.B. 2005 repeals ARIZ. REV. STAT. tit. 15 and replaces it with a new tit. 15, Education Code. H.R. JOURNAL, 35TH LEG., 1ST SESS., at 19 (Ariz. 1981).

[294] Ariz. State Senate, *Legislative Summary* 21 (1981).

[295] ARIZ. REV. STAT. § 15-1662, -1663 (1981). *See, e.g.*, §15-1662 is titled, "University of Arizona funds and accounts" in 1981; and §15-1663 is titled, "Expenditure of university of Arizona funds."

[296] STATE OF ARIZONA, SESSION LAWS, H.B. 2454 (1982), 688-698. ARIZ. REV. STAT. §15-1662- to -1663 and § 37-522 to -525. The Universities Timber Land Account Fund is comprised of revenue generated from timber on the land in the University Land Fund. Arizona State Land Department, *FY2026 Budget Request* 39 (2024).

> land fund," and "university fund." Under existing law, only the U of A is entitled to the funds."[297]

A memorandum to Speaker Frank Kelly and others a few weeks later provided an account of the House Education Committee's work, including a summary of H.B. 2454:

> H.B. 2454 - Universities; board of regents
>
> As amended, this bill clarifies the Board of Regents' authority by specifying that all three universities are under their jurisdiction. Additionally, it entitles ASU and NAU to monies deposited in all of the land grant funds. Under existing law, only the UofA is entitled to the funds. This bill was given a do pass as amended recommendation by a 9-1, 5 absent, vote. (emphasis in original)[298]

H.B. 2454 (as amended) made clear that the revenue generated by the university land funds, which had been going exclusively to the University of Arizona until this time, was to be made available to all three public universities.[299] Functionally, H.B. 2454 achieved this by modifying the text to reflect this expanded distribution obligation. For example, H.B. 2454 replaced "University of Arizona" and "university" (singular) with "universities" (plural) throughout the relevant sections of the education code[300] and the land code.[301]

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[297] Joyce Earl & Jessica Franklen, *Memorandum to the H. Educ. Comm. re H.B. 2454* (Feb. 22, 1982). The Committee voted to approve and adopt H.B. 2454 with Rep. Wrights amendments by a vote of 9 ayes – 1 nay – 0 present – 5 absent. The following day, the House Committee on Appropriations passed H.B. 2454 as amended by Rep. Wright with a unanimous vote of 15–0–0–0.

[298] Joyce Earl & Jessica Franklen, *Memorandum to Frank Kelley, Speaker, Burton S. Barr, Majority Leader, James J. Sossaman, Majority Whip* at 3 (March 11, 1982).

[299] The text of ARIZ. REV. STAT. § 15-1662 makes clears that the Normal Schools land fund, Agricultural and Mechanical Colleges land fund, and Military Institutes land fund were already distributed to all three public universities' colleges of education, engineering, and ROTC programs, respectively. To this day, only the University of Arizona has a college of agriculture and school of mines. The 1928 General Laws and 1943 Land Code each clearly indicate that the Normal Schools fund was to be distributed to all the state's teacher's colleges, while the Agricultural and Mechanical and School of Mines funds go exclusively to the University of Arizona. It is unclear when ASU and NAU began receiving funding from the Agricultural and Mechanical fund for their colleges of engineering. ARIZ. REV. CODE §§ 3018–3021 (1928); ARIZ. LAND CODE § 11-1102 to -1105 (1948).

[300] H.B. 2454, 36th Leg., 2d Reg. Sess. (Ariz. 1982), H.B. 2545, as amended by Rep. Wright, 36th Leg., 2d Reg. Sess., at 1–2 (Ariz. 1982); see, e.g., the "University Land Fund" was renamed: "~~University~~ Universities land fund. H.B. 2454 (1982), 691. ARIZ. REV. STAT. § 15-1662 and -1663.

[301] H.B. 2545 as amended by Rep. Wright, 36th Leg., 2d Reg. Sess., at 2–3 (Ariz. 1982). ARIZ. REV. STAT. § 37-522 to -524 (1982); *see, e.g.*, §37-524(B). The funds provided for in this section shall be and remain perpetual funds for the benefit and support of the agricultural and mechanical colleges and the ~~school~~ SCHOOLS of mines at the ~~university of Arizona~~ UNIVERSITIES, and the interest only of the funds together with the money derived from the rental of the lands and property shall be used. H.B. 2454 (1982), 696; ARIZ. REV. STAT. § 37-522 to -525.

Without a doubt, the legislative intent of the 1982 amendments to the education and land codes was to make the land-grant funds available to all three of Arizona's public universities.[302] Ultimately, the legislature passed H.B. 2454 and Governor Babbit signed the bill into law, thus modifying how Arizona's state trust land revenue (specifically from the university funds, normal schools land fund, agricultural and mechanical colleges land fund, school of mines land fund, and military institutes land fund) is distributed to Arizona's three public universities.[303]

Shortly before the effective date of H.B. 2454 (July 1, 1983), ABOR adopted a policy manual governing all three public universities. The original March 1983 Policy Manual had no written policies on how to manage or distribute the land-grant-related revenue. It was quickly amended and by October 1983, the ABOR Policy Manual included policies that aligned with the Arizona statutes governing the distribution of applicable funds to all three universities.[304]

In 1998, the Arizona legislature passed H.B. 2485, amending, *inter alia*, the general expenditure provision of the land-grant funds in Arizona's education code.[305] The text provides that, "Beginning with the 1998–1999 fiscal year, the universities land fund shall be known as the eminent scholars matching grant fund and shall consist of the annual income from the universities land fund."[306] As a result of this amendment, each of Arizona's public universities now has an eminent scholars program with the intent of recruiting and retaining some of the nation's top researchers and teachers.[307] Thus, the eminent scholars program at each of Arizona's public universities is funded in large part by revenue generated from land originally allocated by the federal government to the state of Arizona at the time of the Enabling Act of 1910.

ABOR is required to maintain a separate permanent fund for each of Arizona's three public universities, and within each university account are the five separate land-grant fund accounts.[308] ABOR distributes the revenue from each of these funds to each of the universities pursuant to statute[309] and in accordance with ABOR's Policy Manual, as follows:

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[302] H.B. 2454, 35th Leg., 2d Reg. Sess. 696 (Ariz. 1982). During the March 10, 1982, Education Committee meeting, Esther Capin, President of the Arizona Board of Regents stated that ABOR "did not have a formal position on the bill and amendment… because it had not been discussed. [T]he board is interested in this piece of legislation because it will have an impact on the universities." Arizona House of Representative, Committee on Education, Minutes of Meeting 4 (March 10, 1982).
[303] ARIZ. REV. STAT. § 15-1662(A) (1982) (approved by the Governor, Apr. 23, 1983, effective, July 1, 1983).
[304] ARIZ. BD. OF REGENTS, POLICY MANUAL, revised Oct. 1983 to align with new ARIZ. REV. STAT. § 15-1662 to -1663 (1983).
[305] H.B. 2110 (1998), ARIZONA STATE LEGISLATURE, SESSION LAWS (VOL. 1), 1022–23 (1998).
[306] *Id.*; ARIZ. REV. STAT. § 15-1663(B).
[307] ARIZ. REV. STAT. § 15-1663(B).
[308] ARIZ. REV. STAT. § 15-1662(B).
[309] ARIZ REV. STAT. § 15-1662, -1663.

- The Universities Land Fund/Eminent Scholars Matching Grant Fund: allocated proportionately among the three universities "based upon the total student credit hours in the fall of the previous fiscal year, from the university's fall 21-day enrollment report."[310]
- Normal School Land Fund: allocated equally among the three universities.[311]
- Agricultural and Mechanical Colleges Land Fund: one-half of the income shall be allocated to the University of Arizona; one-half of the income shall be allocated proportionately among the three universities based upon the student credit hours in the engineering programs at each university.[312]
- School of Mines: allocated solely to the University of Arizona as the only Arizona university with a mining and minerology school.[313]
- The Military Institutes Land Fund: allocated proportionately among the three universities based upon the student credit hours generated in ROTC or military science programs at each university.[314]

The table below is a snapshot of ABOR allocations from the land-grant funds to Arizona's public universities in fiscal year 2024 (July 1, 2023–June 30, 2024):

Land Fund	**Institution**	**FY 2024 Distribution**
Agriculture and Mechanical Colleges	**TOTAL**	**$2,220,285**
Allocated to	ASU	$915,867
	NAU	$78,820
	UA	$1,225,598
Military Institutes	**TOTAL**	**$117,613**
Allocated to	ASU	$46,927
	NAU	$19,290
	UA	$51,396
University Land Funds (Eminent Scholars)	**TOTAL**	**$14,639,155**
Allocated to	ASU	$9,120,195
	NAU	$2,005,564

[310] ARIZ. BD. OF REGENTS, POLICY MANUAL, 3-606(A)(1) https://public.powerdms.com/ABOR/documents/1491862 [https://perma.cc/SG6D-MFVX].
[311] *See id.* 3-606(A)(2).
[312] *See id.* 3-606(A)(3).
[313] *See id.* 3-606(A)(4).
[314] *See id.* 3-606(A)(5).

	UA	$3,513,396
Normal Schools	**TOTAL**	**$1,161,242**
Allocated to	ASU	$387,081
	NAU	$387,080
	UA	$387,081
School of Mines	**TOTAL**	**$1,370,053**
Allocated to	ASU	$0
	NAU	$0
	UA	$1,370,053
TOTAL		**$19,508,348**
	ASU Total	$10,470,070
	NAU Total	$2,490,754
	UA Total	$6,547,524

Table 4: ABOR allocations from the land-grant funds to Arizona's public universities in fiscal year 2024, including endowment distributions from the Arizona State Treasurer and lease income managed by the Arizona State Land Department.[315]

D. Beneficiary: University of Arizona

Arizona's public universities are the direct beneficiaries of land-grant funds designated in the Enabling Act, Arizona State Constitution, Arizona statute, and ABOR policy. The universities submit structured annual budget requests through established ABOR channels, adhering to formalized processes for fund allocation. When the University of Arizona receives land-grant income from ABOR, it is deposited into one of two University of Arizona business accounts:

1. Eminent Scholars
2. Land-Grant Revenue

The Eminent Scholars account ingests revenue from the ABOR-combined University Land Funds, which includes ASLD's University Land Code and University of Arizona (Act of 1881) funds.[316] The Land-Grant Revenue account takes in revenue from the other four land-

[315] E-mail from the Ariz. Bd. of Regents to the authors (March 21, 2025) (on file with the authors). For several years, Ariz. Bd. of Regents reported each university's previous year's allocations in its budget request to the governor and the Joint Legislative Budget Committee for the following year. However, this detail of reporting was last provided in ABOR's fiscal year 2024 state budget request (reporting FY'2022 actuals).

[316] ARIZ. REV. STAT. § 15-1663(B).

grant funds: Normal Colleges, Agriculture and Mechanical Colleges, Military Institutes, and School of Mines.[317] Each account is discussed below in more detail.

1. Eminent Scholars Account

As previously noted, since 1998–1999, the legislature has mandated that the University Land Code and the University of Arizona 1881 funds be combined into the University Land Fund and earmarked for recruiting and retaining top scholars. Eminent Scholars is a matching fund with the same general parameters for each of Arizona's three public universities. It is distributed among Arizona's three public universities based on student credit hours.[318]

At the University of Arizona, the Eminent Scholars program operates through a sophisticated endowment mechanism designed to attract and retain elite faculty. The program is initiated when a donor contributes a minimum of $2 million over a five-year period to establish an endowed named chair. Subsequently, a department either recruits externally or designates an existing faculty member of exceptional standing in their field as an Eminent Scholar to hold the named chair. During the initial five-year period, the interest generated from the endowed gift is reinvested while Eminent Scholars matching funds support the scholar's salary, graduate assistants, and research activities. Upon completion of this 5-year cycle, the matching funds cease and the endowment, including the accrued interest from the original gift, thereafter supports the scholar's academic endeavors. Eminent scholar chairs may remain unoccupied until qualified candidates emerge. All funds associated with these endowments carry forward and are restricted to their designated purpose. Appointments to these prestigious positions are based exclusively on scholarly merit and disciplinary eminence, and donors are explicitly prohibited from influencing hiring decisions.[319] ABOR provided allocations data from the University Land Fund earnings to each of Arizona's three public universities in each of the last five years:[320]

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[317] E-mail from Univ. of Ariz. Office of Bus. Affs. to authors (May 2, 2024) (on file with authors).
[318] ARIZ. BD. OF REGENTS, *supra* note 310.
[319] Conversation between University of Arizona Vice Provost and the authors (March 19, 2025) (notes on file with authors).
[320] E-mail from Ariz. Bd. of Regents to the authors, *supra* note 315; *see also* ARIZ. BD. OF REGENTS, *supra* note 10, at 17 (reporting FY2022 actuals from the University Land Funds as reported in this table); ARIZ. BD. OF REGENTS, *FY 2023 State Budget Request* 18 (Sept. 1, 2021) (reporting FY 2021 actuals from the University Land Funds as reported in this table); ARIZ. BD. OF REGENTS, FY 2022 STATE BUDGET REQUEST 18 (Sept. 1, 2020) (reporting FY 2020 actuals from the University Land Funds as reported in this table); Ariz. Bd. of Regents state budget request available at https://www.azregents.edu/state-budget-request-archives [https://perma.cc/7JWA-WUVE].

Eminent Scholars (Combined University Land Funds)	**FY 2024**	**FY 2023**	**FY 2022**	**FY 2021**	**FY 2020**
Allocated to ASU	$9,120,195	$8,726,907	$6,218,500	$5,688,400	$6,033,100
Allocated to NAU	$2,005,564	$1,919,078	$1,964,800	$1,554,000	$1,759,200
Allocated to UA	$3,513,396	$3,361,890	$2,612,600	$2,350,200	$2,556,100

Table 5: Arizona state land trust revenue flowing to the Eminent Scholars fund at each of Arizona's public universities.

2. Land-Grant Revenue Account

At the University of Arizona, the Land-Grant Revenue account includes four funds: Normal Colleges, Agriculture & Mechanical Colleges, Military Institutes, and School of Mines. Each account is discussed below in more detail. Although it seems logical that the Normal Schools fund would go directly to the University of Arizona's College of Education, the Military Institutes fund to the ROTC and military education programs, the Agriculture & Mechanical Colleges fund to the colleges of Engineering and Agriculture, Life, and Environmental Sciences, and the School of Mines fund to the School of Mining Engineering and Mineral Resources, only the School of Mines fund goes directly to its originally-intended location—and only since 2024.[321]

In 2024, JLBC directed "One hundred percent of the land earnings and interest from the school of mines land fund shall be distributed to the University of Arizona school of mining and mineral resources in compliance with the enabling act and the Constitution of Arizona."[322] Prior to this directive, the University of Arizona had applied the School of Mines revenue toward general university operating expenditures, as it does with the military, normal and agriculture and mechanical school funds.[323] Therefore, as the University of Arizona receives the Land Grant Revenue allocation from ABOR, it immediately transfers the School of Mines fund revenue to a separate, dedicated account for the exclusive use of the School of Mining Engineering and Mineral Resources.

The remaining funds (Normal Schools, Agriculture & Mechanical Colleges, and Military Institutes) are retained in the Land Grant Revenue account and, as permitted by statute: "[T]he Arizona board of regents may expend, as it deems expedient and is not inconsistent with the provision of any appropriation, the income of the land funds established pursuant to the enabling act in accordance with the purposes specified in the enabling act for each land fund specified in § 15-1662."[324] The University of Arizona

[321] E-mail from Univ. of Ariz. Office of Bus. Affs. to authors, *supra* note 317.
[322] JOINT LEGIS. BUDGET COMMITTEE, FY 2024 APPROPRIATIONS REPORT 367 n.12 (2024), https://budget.arizona.edu/sites/default/files/2023-08/uarizona_combined_fy24_approps_report_8.4.23.pdf [https://perma.cc/6YCJ-A2LR].
[323] E-mail from Univ. of Ariz. Office of Bus. Affs. to authors, *supra* note 317.
[324] ARIZ. REV. STAT. § 15-1663(A).

spends far more on its colleges of education, agriculture, and engineering, as well as the ROTC program, than it receives from land-grant income. Since the university's investment in these areas already exceeds the land-grant funds, it is inefficient and financially impractical to directly allocate this income to those specific colleges and programs.[325]

3. University of Arizona Initiatives

The University of Arizona's 2019–2024 Strategic Plan recognized the university's "special obligation" to serve the federally recognized tribal nations in Arizona by fostering "appropriate programs and engagement with these sovereign governments and serve the needs of their students."[326] This led to, among other initiatives, the hiring of a Senior Vice President (SVP) for Native American Advancement and Tribal Engagement (NAATE), an outward facing senior administrative role that reported directly to the university president.[327]

The SVP (now Special Advisor) of NAATE has led numerous initiatives on campus over the last few years, including an annual summit for tribal leaders,[328] the opening of a university microcampus on the Pascua Yaqui Reservation in Tucson,[329] the founding of Native FORGE for entrepreneurs,[330] a collaboration with the University of Arizona Linguistics Department in which building names are displayed in both English and a Native

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[325] E-mail from Univ. of Ariz. Office of Bus. Affs. to authors, s*upra* note 317.

[326] UNIV. OF ARIZ., 2018 STRATEGIC PLAN (EXTERNAL) 15 (2019), https://arizona.app.box.com/s/u4g5d2a0vvurwc3gfdx63e5ftbg22u78 [https://perma.cc/GFH5-KZXE] (last visited Feb. 19, 2025). The University's new administration recently issued a set of three Strategic Imperatives, one of which is "Engagement with our Communities to Create Opportunity" in which the University "embrace[s] Indigenous knowledge through collaborative relationships with Native Nations…" *Delivering on Our Promise: Strategic Imperatives for Arizona's Keystone Institution*, UNIV. OF ARIZ. OFFICE OF THE PRESIDENT, https://president.arizona.edu/delivering-on-our-promise [https://perma.cc/YV69-UMHA] (last visited Oct. 17, 2025).

[327] Univ. of Ariz. Native Am. Advancement, Initiatives & Research, OFFICE OF NATIVE AM. ADVANCEMENT & TRIBAL ENGAGEMENT (NAATE), https://www.naair.arizona.edu/about/naate [https://perma.cc/66P8-L26R] (last visited Feb. 28, 2025). After a recent University of Arizona administrative reorganization undertaken by the University's new leadership, NAATE is now headed by a Special Advisor (rather than a Senior Vice President) who reports to the Provost rather than the President of the University.

[328] Kyle Mittan, *UArizona Welcomes Tribal Leaders From Across U.S. for Two-Day Summit on Education*, UNIV. OF ARIZ. NEWS (Oct. 26, 2021), https://news.arizona.edu/news/uarizona-welcomes-tribal-leaders-across-us-two-day-summit-education [https://perma.cc/U26K-47UE].

[329] Kyle Mittan, *UArizona Opens its First Tribal Microcampus to Serve the Pascua Yaqui Tribe*, UNIV. OF ARIZ. NEWS (Sept. 7, 2022), https://news.arizona.edu/news/uarizona-opens-its-first-tribal-microcampus-serve-pascua-yaqui-tribe [https://perma.cc/2TTF-2QJ7]. This project included the participation of many units and members of the Pascua Yaqui Tribe and the University of Arizona, including the NAATE office, James E. Rogers College of Law, the Indigenous Peoples Law & Policy Program, the Native Nations Institute. The Bachelor of Arts in Law was the first online degree offered at the microcampus.

[330] Univ. of Ariz. Native Am. Advancement, Initiatives & Research, NATIVE FORGE, https://naair.arizona.edu/campus-resources/native-forge [https://perma.cc/9A4N-8BPV] (last visited Feb. 28, 2025).

American language,[331] and the advancement of the Native Peoples Technical Assistance Office (NPTAO).[332] NPTAO trains researchers on tribal consultation and other best practices for working in Indigenous communities, and tracks externally funded research at the University that involves tribal communities. In fiscal year 2025, NPTAO documented more than $257 million in funding for such research.[333]

Additionally, the University of Arizona recently launched the Arizona Native Scholars (ANS) Grant program, which provides tuition coverage for enrolled undergraduate student members of the 22 federally recognized tribes in Arizona.[334] The ANS Grant is designed to cover tuition, mandatory fees, and college fees that undergraduate students incur after the application of their other gift aid, such as the Federal Pell Grant, non-tribal scholarships, merit scholarships, and other institutional aid. The university has no cap on the funds allocated to ANS and in each of the three years of its existence, the University of Arizona has distributed millions of dollars to hundreds of Native undergraduate students who are registered members of the federally recognized tribes and nations in Arizona:

Academic Year	**Total number of students receiving ANS Grant**	**Total financial distribution from the University of Arizona**	**Average award per student**
Year 1: 2022–2023	331 students	$2.25 million	$6,850
Year 2: 2023–2024	331 students	$2.5 million	$7,500
Year 3: 2024–2025	342 students	$2.99 million	$8,771

Table 6: Arizona Native Scholars data (AY 2023–AY 2025).

ANS Grant is not perfect—it does not cover books, transportation, housing, and food, which are all crucial to a student's success and which often puts the cost of college out of reach for students who do not have access to generational wealth or other means.[335]

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[331] Univ. of Ariz. Native Am. Advancement, Initiatives & Research, NATIVE LANGUAGES OF ARIZONA CAMPUS SIGN INITIATIVE, https://naair.arizona.edu/native-languages-campus-sign-initiative [https://perma.cc/LL4K-88BV] (last visited Feb. 28, 2025).

[332] Univ. of Ariz. Native Am. Advancement, Initiatives & Research: NATIVE PEOPLES TECHNICAL ASSISTANCE OFFICE, https://nptao.arizona.edu/about/nptao [https://perma.cc/K6CH-7XWC] (last visited Oct. 17, 2025).

[333] Kyle Mittan, *U of A Topped $257M in Total Funding for Active Research Partnerships that Included Native Tribes in Fiscal Year*, UNIV. OF ARIZ. NEWS (Sept. 2, 2025), *2025*, https://news.arizona.edu/news/u-topped-257m-total-funding-active-research-partnerships-included-native-tribes-fiscal-year [https://perma.cc/QQA6-LHHY] NPTAO tracks research projects in their searchable Research Database, https://nptao.arizona.edu/uarizona-initiatives-impact (last visited Oct. 17, 2025).

[334] Univ. of Ariz., Scholarships & Financial Aid, TRIBAL AID, [https://financialaid.arizona.edu/types-of-aid/tribal-aid, archived at https://perma.cc/4WVA-WNJ7] (last visited Apr. 28, 2025); *see also* Kyle Mittan, *UArizona to Ensure Tuition Coverage for Native American Undergraduates in Arizona*, UNIV. OF ARIZ. NEWS (June 27, 2022), https://news.arizona.edu/news/uarizona-ensure-tuition-coverage-native-american-undergraduates-arizona [https://perma.cc/2KYF-W72E].

[335] Univ. of Ariz., Scholarships & Financial Aid, ARIZONA NATIVE SCHOLARS GRANT, https://financialaid.arizona.edu/types-of-aid/undergraduate-grants/arizona-native-scholars

Nonetheless, ANS Grant is a significant and positive step in the land-grant university's efforts to recruit, retain, and graduate Indigenous students from federally recognized tribes in Arizona.

South Dakota State University's Wokini Initiative similarly supports Native students on campus. "Wokini" is a Lakota word for "new life" or "a new beginning"—an apt description for a collaborative framework supporting American Indian student success and Indigenous Nation-building.[336] The mission of Wokini to increase the number of American Indian students, provide support towards academic and personal needs and boost American Indian graduation rates."[337] The Wokini Initiative allocates revenue from land granted to SDSU through the 1862 Morrill Act to benefit the heirs from whom the land was taken and leverages this commitment to secure additional financial support from national organizations and foundations. President Barry Dunn (Sicangu Lakota) and his team raised funds matching the estimated $600,000 in annual income generated from the 160,000 acres taken from local tribes, directing these resources toward scholarships, support programs, and infrastructure, including the American Indian Student Center.[338]

While impressive and important, these initiatives and programs represent only the beginning of what could be a more comprehensive engagement with the complex legacy of land dispossession.

CONCLUSION: CONSIDERATIONS AND NEXT STEPS

The purpose of this paper is to examine the historical foundations of the United States land-grant system, and how that system is intertwined with the dispossession of Indigenous land in Arizona. The research quickly revealed that the University of Arizona was, and continues to be, a direct beneficiary of the U.S. government's nineteenth century Indian land cessions. This land was placed in the public domain and then redistributed to the state of Arizona to be held in perpetual trust for the University of Arizona and other

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[https://perma.cc/H6BR-55RH] (last visited Apr. 28, 2025). For a critique of the Arizona Native Scholars Grant, see generally 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. 2024), https://grist.org/project/equity/land-grant-universities-indigenous-lands-fossil-fuels/.

[336] S.D. State Univ., WOKINI INITIATIVE, https://www.sdstate.edu/american-indian-opportunities-sdsu/wokini-initiative [https://perma.cc/G273-A6NJ] (last visited Feb. 14, 2025).

[337] S.D. State Univ., WHAT IS THE WOKINI INITIATIVE? *Mission Statement*, https://www.sdstate.edu/american-indian-opportunities-sdsu/wokini-initiative/what-wokini-initiative [https://perma.cc/YFV6-KHLT] (last visited Feb. 14, 2025).

[338] Stephen Gavazzi, *Reckoning with the Original Sin of Land-Grant Universities: Remaining Land-Grant Fierce While Insisting on Contrition and Repentance*, 8(1) NATIVE AM. & INDIGENOUS STUD. 159 (2021); *see also* Barry Dunn, *The Wokini Initiative: A Strategic Investment to Better Serve the Dakota and Lakota Residents of South Dakota*, S.D. STATE UNIV. (Jan. 2, 2017), https://www.sdstate.edu/american-indian-opportunities-sdsu/wokini-initiative/wokini-initiative-white-paper [https://perma.cc/3AGD-25V4], for an historical summary of the land-grants to SDSU and the South Dakota Agricultural Experiment Station.

beneficiaries. The research further revealed that *all* of Arizona's public universities are continually benefiting from Arizona's land-grants.

Examining both historical and current financial data allows us to begin to understand how the University of Arizona and Arizona's other public universities have been enriched by this land, and to begin to consider what the state of Arizona and its public universities might owe to Indigenous peoples from whom this land was taken. After all, as Royce, Indian agents, and other contemporaries documented, every nook and cranny of what is now Arizona was, at the commencement of European and American settlement and colonization, inhabited and possessed by Indigenous peoples.

The financial data assembled in this paper reveals a stark reality: millions of dollars in annual revenue continue to flow to Arizona's three public universities from lands that were forcibly taken from Indigenous peoples without adequate compensation. In fiscal year 2024, Arizona's three public universities received over $19.5 million from state trust land revenues, with $14.2 million directed to eminent scholars programs to recruit and retain top scholars to the universities. The permanent funds associated with the 688,706 acres that benefit the universities have amassed a worth of nearly $230 million,[339] and their present-day value is over $3 billion.[340]

While Arizona's universities undeniably continue to benefit from colonial legacies, today's land-grant distributions represent a very small portion of the universities' total revenue compared to other sources. The University of Arizona, for example, has an annual budget of nearly $3 billion, so the land-grant annual revenue of $6.5 million represents only 0.22% of the university's overall budget. Though this funding was crucial in the early twentieth century, helping establish and grow the University into what it is today, it now functions more as supplementary income than essential support. This modest scale may explain why the land-grant distributions to the universities are difficult to track and often absent from financial reports—they simply do not register as significant line items any longer.

If the land-grant revenue is negligible to Arizona's universities, why not earmark it for programs that could meaningfully impact Native students, faculty, and staff in concrete, measurable ways—transforming what appears to be institutional spare change into resources that could make a real difference to individuals?[341] For the University of Arizona, this would amount to dedicating, for example, the $6.5 million (in 2024) ABOR allocation to Native students, faculty, and programming.

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[339] ARIZONA STATE TREASURER, *supra* note 272 (estimated value in 2024).

[340] The U.S. Dep't of Agric. reports the average farmland real estate value in Arizona in 2024 as $4,000 per acre, for a total estimated value of $2.75 billion. Cropland and real estate values are even higher. U.S. Dep't. of Agriculture, *Land Values, 2024 Summary* 5 (Aug. 2024), https://esmis.nal.usda.gov/sites/default/release-files/pn89d6567/vh53zm770/1c18g799h/land0824.PDF [https://perma.cc/6P7Z-NQUK].

[341] The authors recognize that an official change in allocation or the return of land would take an act of Congress to amend the Enabling Act of 1910 followed by Arizona statutory amendments.

It is quite possible that the University of Arizona dedicates more than $6.5 million annually to Native students, faculty, staff, and programming given the varied initiatives and projects underway across campus. Nonetheless, like the Wokini Initiative at SDSU, the intentional dedication of the land-grant revenue to Native students, faculty, staff, and programming, would signal an intentional recognition of the University's colonial legacy and its commitment to Indigenous peoples in Arizona whose land financed the establishment of the University and is responsible for its success today.

Monetary compensation alone cannot address the full scope of cultural, spiritual, and environmental losses suffered by Indigenous communities. As Meredith McCoy, Roopika Risam, and Jennifer Guiliano have observed, land valuation in this context is complicated, extending beyond simple calculations of acreage and market value:

> [L]and valuation is more complex, as institutions' longitudinal financial benefits from land accrued over time. For example, institutions cleared their lands, selling off timber or using the resources to build. The estimated value of those resources along with others like hunting rights, mineral rights, and access to water increases calculations of institutions' financial gains, as would calculations of tax benefits and other financial incentives. This more complex understanding of land valuation further illuminates the ways settler colonialism is extractive—not simply predicated on landownership and the sale of land but on its utility for continually generating profit over time.[342]

Where do we go from here? How should land-grant universities account for and address their historical and current enrichment at the expense of Indigenous peoples in their respective states? What moral, legal, and institutional responsibilities do the state of Arizona and its three public universities bear toward the Indigenous peoples of this state? What are the perspectives of Native nations and Indigenous peoples in Arizona on this matter? What are the appropriate questions to ask in exploring a path forward?

There is perhaps no better framework for thinking about these questions and next steps for land-grant universities than Article 3 of the Northwest Ordinance:

> Religion, Morality and knowledge of being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in

[342] Meredith McCoy, Roopika Risam & Jennifer Guiliano, *The Future of Land-Grab Universities*, 8(1) NAT. AM. & INDIG. STUDIES 169, 170 (2021).

> just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.[343]

While Congress has upheld the founding principles of knowledge and education, it has unequivocally failed to respect the rights and lifeways of the Indigenous peoples of Turtle Island.[344] Government continues to fund education with revenue generated from dispossessed Indigenous land while doing little to address the ongoing systemic challenges faced by Native Americans. This contradiction violates the very foundations of American society and warrants immediate change and redress.

If we can agree that redress is imperative, what form does that redress take? An historical accounting of land values and lost revenue is a possible next step toward answering this question. The engagement of economists to extrapolate and determine these losses would provide a baseline for discussions of restitution, revenue sharing, co-management, and landback options.[345] State legislatures might consider restructuring trust fund allocations to benefit Native peoples. State land departments might examine how their practices impact tribal members and governments. State trust beneficiary institutions could acknowledge their complicity in systems of Indigenous land dispossession and use that acknowledgment to make structural changes. And land-grant institutions, like the University of Arizona, could continue to strengthen relationships through tribal consultation and collaboration with Native leaders, faculty, and students, in the development of meaningful programs that address historical injustices and respect tribal sovereignty.

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[343] *Northwest Ordinance*, ch. 8, art. 3, 1 Stat. 50, 52 (1787); *see also* Vine Deloria Jr., *Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law*, 31 ARIZ. L. REV. 203, 220–23 (1989). The author advocates that both Congress and the federal courts "must remain faithful" to the ideas outlined in the Third Article of the Northwest Ordinance and emphasizes the departure of those values with the Supreme Court's decision in *Lone Wolf v. Hitchcock*, 187 U.S. 556 (1903), referring to it as "the most extreme expression of federal powers . . . ."

[344] "For some Indigenous peoples, Turtle Island refers to the continent of North America. The name comes from various Indigenous oral histories that tell stories of a turtle that holds the world on its back." *See generally*, Amanda Robinson, Turtle Island, THE CANADIAN ENCYCLOPEDIA (Nov. 6, 2018), https://www.thecanadianencyclopedia.ca/en/article/turtle-island [https://perma.cc/ZW9X-BHN6].

[345] *See*, *e.g.*, Craig Baker, *Landback: The Return of Upper Sioux Agency State Park to the Upper Sioux Community*, for an example of an effective return of land to a tribe; UNIV. OF ARIZ. NATIVE NATIONS INST., https://nni.arizona.edu/news/landback-return-upper-sioux-agency-state-park-upper-sioux-community [https://perma.cc/TNR4-6UA5]; *see also* Kevin K. Washburn, *Landback as a Federal Policy*, 71 UCLA L. REV. 1904 (2025). "Landback" and related policy mechanisms have been in place for decades with bipartisan support, and include tribes adding land to the federal trusts, renaming, co-stewardship, co-management, retrocession, reservation proclamations, and the restoration of tribal criminal jurisdiction.

Calls for institutional accountability by Indigenous scholars, students, and communities have grown following the 2020 Land-Grab Universities exposé.[346] Native scholars and journalists continue to document the impact of the Morrill land-grant legacy while exploring opportunities to move forward.[347] University leaders have begun implementing ideas for reparations beyond financial compensation. The SDSU Wokini Initiative and the Arizona Native Scholars program are valuable models and examples of alternative pathways to restitution and reconciliation.

While there are no easy answers to the questions raised in this study, what is clear is that meaningful redress requires more than symbolic gestures or isolated financial incentives. It requires engaging and consulting with Indigenous peoples to understand their needs and desires and then working toward reconciliation together. It also demands sustained engagement with the complex historical, legal, and ethical dimensions of land dispossession together with a commitment to structural transformation in how land-grant institutions conceptualize their relationships with Indigenous communities.

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[346] Stephen M. Gavazzi & John N. Low, *Confronting the Wealth Transfer from Tribal Nations That Established Land-Grant Universities*, ACADEME MAG. (Spring 2022) https://www.aaup.org/academe/issues/spring-2022/confronting-wealth-transfer-tribal-nations-established-land-grant [https://perma.cc/AEE9-C22L] (discussing the explosion of scholarship and dialogue following Lee & Ahtone's Land-Grab Universities publication).

[347] 8(1) NAT. AM. & INDIG. STUD. (2021).