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**The Morrill Act as Racial Contract: Settler-
Colonialism and U.S. Higher Education**

by Rosalie Zdzienicka Fanshel

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JOSEPH A. MYERS

CENTER FOR RESEARCH ON
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Abstract: The Morrill Act of 1862 established agricultural and mechanical arts colleges by granting public lands to states to promote the liberal and practical education of (white, male, Christian) U.S. citizens of average means. In this paper, I use Charles Mills' (1997) Racial Contract framework and Patrick Wolfe's (2007) concept of *corpus nullius* to situate the Morrill Act in a white supremacist political system that intimately entwined settler-colonial expansion, agricultural knowledge production, and the founding of U.S. public higher education through creation of the land-grant universities.

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Introduction

The federal Morrill Act of 1862 established agricultural and mechanical arts¹ colleges by granting public lands to existing states “in order to promote the liberal and practical education of the industrial classes” (National Archives and Records Administration, 1862, Sec. 4). The land-grant university movement is lauded as the first major federal funding for higher education and for having brought the ideals of equality and opportunity to (white, male, Christian) Americans by reducing geographic and class barriers to education. However, in recent years several scholars have exposed a nefarious side of “democracy’s colleges” (Ross, 1942): mainly, their role in serving settler-colonial interests via redistribution of Indigenous lands and institutionalization of agricultural knowledge production that entrenched white supremacy (paperson, 2017; Stein, 2017; Nash, 2019, Lee and Ahtone, 2020). In 1890, a second wave of land-grant institutions were established for Black Americans, who were denied admission into the original 1862 schools in the South. In 1994, a third wave of tribal colleges obtained land-grant status. Yet the 1890 and 1994 colleges have never received resource allocation at the

¹ The “mechanic arts” in relation to the Morrill Act are usually defined as engineering and other fields that require expertise of machinery. This follows on the medieval definition as weaving, blacksmithing, war, navigation, agriculture, hunting, medicine, and the *ars theatrica*. See <https://www.yourdictionary.com/mechanic-arts> and <https://www.definitions.net/definition/mechanic+arts>. The land-grant universities still teach these fields today.

level of the 1862 institutions, nor have their faculty and students benefited from the same opportunities (Lee and Keys, 2013; Martin and Hipp, 2018).

In this paper, I use Charles Mills' (1997) Racial Contract framework to situate the Morrill Act in the context of a white supremacist political system that intimately entwined settler-colonial expansion with the founding of public higher education. I begin with a brief explanation of the Racial Contract framework, and follow with an overview of how the Morrill Act established a system of "land-grant" universities across the United States through the sale of expropriated Indigenous land. Crucially, the land-grant universities were created first and foremost as *agricultural* schools. I describe how the Morrill Act's expansion of a Eurocentric agricultural industry was premised on negation of Native subjecthood and Indigenous epistemologies of land use. The land-grant university movement was, and continues to be, both a material and ideological expression of the Racial Contract. I conclude with suggestions of how land-grant universities might serve justice to Native communities through financial reparations and land repatriation, and though becoming "epistemological traitors" (Leonardo, 2015) to fully recognize Indigenous personhood and knowledge production.

In this short paper, I will focus on the Historically White Colleges and Universities² founded through the first Morrill Act of 1862. In future writing, I will explore how, by

² Using the term Historically White Colleges and Universities to describe the 1862 land-grant universities explicitly names race—and white supremacy—where it is typically elided. While "HBCU" is common parlance for Historically Black Colleges and Universities, including the 19 land-grant HBCUs, the fact that "HWCU" is not a widely-used term is indicative of the linguistic dimension of the Racial Contract. White spaces are simply "space" and white education is simply "education." In the actual wording of the policy, the first Morrill Act also appears "neutral" on the question of race. However, race is written between the lines. As Deondra Rose (2017) notes, "Although the first Morrill Act did not explicitly exclude African-Americans, the fact that the policy charged the states with implementing the policy resulted in the overwhelming exclusion of Black citizens from its benefits" (p. 24).

designating African Americans as subhuman, the Racial Contract ensures that the Historically Black land-grant institutions founded through the second Morrill Act of 1890 (without the benefit of land sales) are always already separate and unequal. In subsequent work, I will also look at how the Racial Contract undermines the Tribal Colleges that were given land-grant status (also without land) through the third Morrill Act of 1994.

The Racial Contract

Mills radically innovated mainstream social contract theory—a political philosophical explanation for why and how individuals form civil society and government—by revealing the contract for what it really is: a set of formal and informal agreements *among whites* to privilege themselves as a group through domination and exploitation of nonwhites as a group. In naming the reality of the Racial Contract, Mills elucidates that “society” is not made up of free and equal individuals, as European humanism declares, but rather is a “partitioned social ontology ...divided between persons and racial subpersons” (1997, p. 16). If social contract theorists tacitly concur that the emperor has no clothes yet can proudly proceed in his prance through the streets, Mills shows the truth about the emperor’s hitherto invisible clothes (and body): they are in fact white, and so are those of the townsfolk—the *Herrenvolk*—who surround him.

The Morrill Act of 1862 exemplifies several subcontracts within the Racial Contract, such as an epistemological contract, expropriation contract, and somatic contract. Zeus Leonardo (2015) elaborates that Mill’s innovative framework *embodies* idealist social contract theory and Marx’s economic materialism through naming the corporeal material effects of white supremacy: “it is a social relation written onto the body of the individual reimagined as a racial subject” (p. 88). Following this somatic thread, I show that in the case of Manifest Destiny (the

ideological context under which the Morrill Act was written) the Racial Contract performed a double twist in regards to America's Indigenous people. Unlike Blacks, who were deemed subhuman and violently exploited for labor via the slavery contract, in the case of Native Americans, their bodies were *in the way* of the white state. Through four hundred years of policies that denied their subjecthood combined with legal and extralegal genocidal terrorism, Native Americans were deemed *nonexistent*; to use Patrick Wolfe's (2007) powerful phrase, they were *corpus nullius*.³

How the Morrill Act Founded the Historically White Land-Grant Universities

In the popular imagination, the 1862 Morrill Act simply provided land on which each state in the union could build schools. In reality the story of the granted land is more complicated. 30,000 acres were given per representative and senator of each state and territory in the form of scrips (vouchers worth 160 acres each) to buy "public land," which was land that the federal government claimed through Native American dispossession. The states and territories were then mandated to sell this land to fund the construction and maintenance of new colleges of agriculture and mechanic arts or expand an existing institution. Since states in the eastern portion of the U.S. no longer had much public land—due to a longer history of settler-colonial occupation—they were given scrips for land in states and territories further to the west (and because eastern states were more populated, they had more representatives in Congress and thus received greater land designations). Over all, approximately 10,685,000 in 24

³ I independently thought of the term *homo nullius*, and then found Wolfe's compelling article that used the term *corpus nullius* to the same end.

states and territories ranging in geographic location from Wisconsin to California was sold via the Morrill Act to fund 52 present-day universities across 47 states (Lee, 2020).⁴

Furthermore, use of direct capital via construction or repair of buildings was specifically banned by the Morrill Act. Instead, the earnings from land sales were to be invested in stocks that would form a perpetual endowment for each university. The long-term financial benefit to universities was extraordinary. Robert Lee and Tristan Ahtone (2020) show that in 1914 (the last year for which detailed records exist) the collective value of the endowments raised from Morrill Act parcels was \$22.8 million, which, when adjusted for inflation, amounts to \$596 million in 2020 dollars. Native Americans received paltry financial reward for the lands that became “public.” Via treaties, congressional acts, executive acts, and other agreements, the federal government only paid \$397,250 to tribes for the parcels of land subsequently sold through the Morrill Act (Lee, 2020).⁵ The financial benefits to white individuals (who bought land with the Morrill Act scrips), white institutions (who sold the scrips and invested the profits into a perpetual endowment), and white inheritance in general exemplify how the economic dimension of the Racial Contract guarantees the domination of white capital (Mills, 1997).

The Morrill Act, the Racial Contract, and Settler-Colonialism

Between May and July, 1862, Congress passed the Morrill Act alongside the Pacific Railway Act and Homestead Act, which also granted so-called public land to corporations and

⁴ When the U.S acquired the State of California from Mexico in 1848, it benefited from the land-grabbing legacy of two prior settler-colonial governments, the Spanish and Mexican. Between federal and state policies, in the 1850s through 1860s California oversaw a particularly brutal attempt to eliminate Native people through violence and assimilation. California became the largest supplier of land sold via Morrill scrips: 1,764,842 acres were sold, primarily in the 1860s through 1880s, to benefit 32 institutions across 27 states (Lee, 2020).

⁵ In California, Indigenous people *did not receive a single cent* for the land sold. This is relevant to the discussion of the University of California, below.

individuals for westward expansion. This trio of legislation, which I hereby name the “Settler-colonial Acts of 1862,” were part and parcel (pun intended) of the 19th century doctrine of Manifest Destiny, or the belief that white, capitalist, Christian settler expansion across America was divinely justified and inevitable. Between the establishment of nationhood in 1776 and the 1880s, the U.S. government seized 1.5 billion acres of land from Indigenous people, with close to 1 billion of those acres expropriated between 1850 and 1890 alone (Saunt, 2015). Manifest Destiny is a salient example of the political, moral, and epistemological elements of the Racial Contract. Mills states: “The *establishment* of society thus implies the denial that a society already existed; the creation of society *requires* the intervention of white men, who are thereby positioned as *already* sociopolitical beings” (1997, p. 13, italics in original).⁶

In passing of the Settler-colonial Acts of 1862, Congress signed their names, literally, on a subsidiary of the Racial Contract, the expropriation contract. The laws adhered to the Lockean playbook. In the *Second Treatise* Locke states: “God and his Reason commanded [Man] to subdue the Earth, i.e. improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour” (1978, p. 20). The U.S. government did not acknowledge the legitimacy of Native American relationships to land, which were not regimes of private property-based agriculture, as practiced by colonizers. Space itself becomes a racialized tautology: property, and by extension personhood—or vice versa, personhood, and by extension, property (cf. Harris, 1995)—is rendered “real” by particular conceptions of

⁶ In Manifest Destiny, as in other enactments of the Racial Contract, *Christian* is a further requirement for sociopolitical personhood, in addition to white and male. Though Mills argues that since the modern era of European colonialism race replaced religion as the “common conceptual denominator” (1997, p. 21). (Or rather, the common dominator?)

production, specifically *agricultural* production and the extractive industries that became the founding educational mission of the land-grant colleges (more on this mission below). The government willfully, blindly declared the land as *terra nullius*—nobody’s land—legally deemed it unoccupied, and thus available to be made real through white production. As Wolfe states, “Property starts where Indianness stops” (2007, p. 134). Mass murder was the tool on hand to enforce the legal designation of *corpus nullius*. Mills explains the Racial Contract’s double-twisted logic in regards to Indigenous people as follows:

So the basic sequence ran something like this: there are no people there in the first place; in the second place, they’re not improving the land; and in the third place—oops!—they’re already all dead anyway (and, honestly, there really weren’t that many to begin with), so there are no people there, as we said in the first place” (1997, p. 50).

It is in this context that U.S. public higher education was born.

Agriculture as an Epistemology of Imperialism

Today the agricultural identity of some land-grant universities—such as UC Berkeley—is buried a few inches beneath the topsoil.⁷ Yet recognizing the agro-industrial-martial epistemological underpinnings of the Historically White land-grant universities is crucial to understanding U.S. public higher education. To add to Leonardo’s (2015) maxim that “imperialism is one part military, one part knowledge project” (p. 92), I would add that imperialism is also one part food production. As Christopher Mayes says, “Food has been vital

⁷ In fact, UC Berkeley has been and still is a major contributor to agricultural knowledge production, from leading development of Integrated Pest Management in the 1950–70s to the recent development of the CRISPR-Cas9 gene editing system (with its controversial somatic consequences for humans, animals, plants, bacteria, and other lifeforms). UC Berkeley was the first land-grant university to be established in the western U.S., and Davis and Riverside were agricultural field stations for Berkeley until they became independent campuses in 1959. Of note, all agricultural teaching and research at the Davis farm was shut down for the length of World War II so that the site could be used for military training. The Reserve Officer’s Training Corps (ROTC) program is still active on Berkeley’s campus (and predominately recruits students of color). Beyond agriculture and the military, Berkeley’s land-grant epistemological legacy is highly visible in its influential business and engineering schools.

to the settler-colonial project, as a necessary means of survival, but also an avenue through which the land was possessed and a culture cultivated” (2018, p. 2). The Morrill Act powerfully combined westward settler expansion and “the cultivating of culture” by strategically attaching distribution of land for private ownership to funding the creation of universities designed to spread formal knowledge production in agriculture and the mechanic arts. The spread of European-style agriculture, with its dependence on sedentary, permanent land occupation, was fundamental to U.S. nation-state formation. As noted above, the Lockean ideological element of the Racial Contract meant white land occupation equaled dominion (dominion conveniently becomes dominant through the act of eating), whereas Indigenous land occupation was decoupled from the right to the very act of *being*.

Wolfe (2006) describes settler-colonialism as “a structure not an event,” whereby invaders “come to stay” (p. 388). It is an ongoing set of relations, upheld in the always already present by economic, political, and cultural practices—including universities, the most esteemed of ideological state apparatuses (Althusser, 1971). La Paperson (2017) argues that the specific epistemological “prioritization of settler-colonial technologies—agricultural and mechanical engineering, not to mention military tactics—reflects how land-grant universities were commissioned as part of the empire-self-making project of the United States” (p. 27–28). It is important to recognize not only land-grant institutions’ specific historic role in both physical and philosophical settler expansion, but the ongoing benefits these universities derive from settler-colonialism as a continuing structure. The benefits are material, such as continued financial returns from the endowments set up through the original sale of Indigenous lands, and

intellectual, such as the chronically recapitulated narrative of land-grant universities as the people's colleges to serve the public good.

This discourse of the land-grants as democracy's colleges is not incommensurable with their financial benefit from expropriated Indigenous land because under the Racial Contract only whites (and those who get chosen for incorporation into the moving target of whiteness) are guaranteed the democratic benefits of public institutions like universities. Acknowledging the Racial Contract explains how land-grant universities, as institutions thoroughly and proudly intellectually grounded in Enlightenment liberalism, can reconcile the values of "equal rights, autonomy, and freedom of all men" with genocide and expropriation (Mills, 1997, p. 64).

Edward Said's (1979) method in *Orientalism* is also a useful tool for understanding how the United States "invented" America's Indigenous people—yet could necropolitically render them nonexistent—through a myriad of representations ranging from laws that erased Indigenous sovereignty to works of visual art that celebrated the Settler Colonial Acts of 1862. In this case the Native American "Other" under the Occidental gaze was geographically west of west, but the cultural imperial discourse of orientalism still applies in principle.⁸ For example, the 1872 John Gast painting, "American Progress," perhaps the most famous artistic rendition of Manifest Destiny, depicts Indigenous people fleeing from the orderly, literally enlightened (as in rendered with light pigment) advancement of white America. In this representation, while Indigenous bodies are shown—along with a bear and buffalo, their animal stand-ins—they are visually fated to disappear off the western horizon.

⁸ Columbus, after all, thought that he was in East Asia when he arrived to Guanahani Island in 1492.

California was the “final frontier” of the 19th Century era of U.S. colonial expansion (before U.S. imperialism morphed into many new iterations of the Racial Contract), and the University California’s has done its part to represent Indigenous people as *corpus nullius* via absence from cultural narratives. In 2018, the UC Office of the President-produced a 150 Anniversary celebratory website which declares that “On March 23, [1868] Gov. Henry Haight signed the charter that creates UC, setting in motion the bold idea that college should be available for everyone” (UC Office of the President, 2018). Complete with an animated timeline celebrating settler expansion into California along with agricultural and medical advances, the website jubilantly proclaims that the founding of the university “[set] in motion the audacious idea that California should have a great public university—one that would serve equally the children of immigrants and settlers, landowners, and industrial barons.” Native Americans are notably absent, and the emphasis on just which populations the university would “serve equally” is a textbook case of the Racial Contract’s universalization of white capitalist personhood.

Agricultural Education at the Historically White Land Grant Universities Today

If the Racial Contract writes Indigenous land and bodies as *terra et corpus nullius*, by contrast the land-grant universities and the bodies who inhabit them are actually *terra et corpus album*. Mills (1997) writes, “Space is just *there*, taken for granted, and the individual is tacitly posited as the white adult male, so that all individuals are obviously equal” (p. 41, italics in original). Universities—sharing a color-coded root word with “universal”—are deemed whites-only spaces because, according to the Racial Contract, only “European cognizers” (Mills, 1997, p. 44) have knowledge: that is, rationality, science, and cultural achievement. The

Historically White Colleges and Universities are no longer exclusively the physical domain of white bodies, but, as Mills points out, “the nonwhite body is a moving bubble of wilderness in white political space, a node of discontinuity which is necessarily in permanent tension with it” (p. 53).

In the agricultural pedagogical and research space, both white bodies and white supremacist knowledge still dominate, even if other corners of land-grant universities (such as education and some humanities and social science disciplines) have seen more significant shifts in corporeal and epistemological diversity. In fact, mainstream contemporary agricultural education fits Said’s (1994) definition of imperialism as “the practice, the theory, and the attitudes of a dominating metropolitan center ruling a distant territory” (p. 9). Non-white and non-human bodies are included in the “territorial” domain, and the “distant” is sometimes physically close to “home” albeit ontologically othered. A hegemonic discourse common to land-grant agricultural education—which critics call the “feed the world narrative”—is that the United States and other western nations are destined to alleviate hunger in the growing world population through ever-increasing agricultural yields that can only be achieved through technological fixes spread via neoliberal pathways. Furthermore, the violence of industrial agriculture that disproportionately affects nonwhite Americans in the form of unsafe and exploitative working conditions, toxic runoffs from chemical inputs, and the deleterious health effects of unnutritious food are 1) not named as violence, and 2) seen as in need of improvement but inevitable, rather than fundamentally questioned. This brutality extends to non-human species: land-grant agricultural curriculum and research focuses intensely on “scientific innovations” that, for example, make cows produce more milk than is safe for their

bodies; disable plants from reproducing seed; and fundamentally alter the genomes of soil microorganisms.

As these examples of prevailing land-grant curriculum show, the “culture” in agri-culture follows the schema of the Racial Contract. Said’s (1994) articulation of culture “as a refining and elevating element” that utilizes narrative to separate “us” from “them” (p. xiii) is a useful framework for examining the particular stories we tell in agricultural *education*. Said explains, “The power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them” (p. xiii). Uncritical education (and perhaps even that which views itself as critical) is, after all, a formal “elevated” structure for passing along narratives from generation to generation. Here Anibal Quijano’s (2000) concept of “the coloniality of power” further explains the reproductive cycle white supremacy, through which Europe (and European-American) global power “concentrated all forms of the control of subjectivity, culture, and especially knowledge and the production of knowledge under its hegemony” (p. 540). Thus, agriculture education today tells variations of the same settler-colonial stories that it did in the 1860s, when the Historically White land-grant universities first broke ground on expropriated land.

Breaking the Cycle: Indigenizing the Future of Agricultural Education

As a mode of production, agriculture is historical in the Marxist sense. As a form of culture, agriculture is also historical in the Saidian sense, in that “culture and the aesthetic forms it contains derive from historical experience” (1994, p. xxii). We can extend these historical views to agricultural education as it manifests in the ideological state apparatuses of land-grant universities. Whether economics or ideology determines the first or final instance,

the Historically White Colleges and Universities founded through the Morrill Act of 1862 adhere to the Racial Contract. Economically, they were founded through the investment of capital from sales of white possession of Indigenous land. This material process was driven by a 19th century permutation of the ideology of white supremacy, Manifest Destiny, and continues through what Mills calls our present period of de facto white supremacy. Epistemologically, land-grant universities teach competencies (knowledge, skills, attitudes) that further Eurocentric Enlightenment imperialism under the guise of objective science (which, due to the epistemology of ignorance, is read as neutral). Both the base and superstructure of agricultural higher education are ripe for moving from a space of othering to one of belonging (with a nod to both Said and UC Berkeley's Othering and Belonging Institute). If de facto white supremacy includes "*the failure to ask certain questions, taking for granted as a status quo and baseline the existing color-coded configurations of wealth, poverty, property, and opportunities*" (Mills, 1997, p. 73, italics in original), then it's time to start asking new questions.

In a fall 2020 conference co-organized by the University of California's four land-grant institutions,⁹ "The University of California Land Grab: A Legacy of Profit from Indigenous Lands" (Bauerle et al., 2020), academics and community activists offered dozens of material (base) decolonial interventions to move toward "corrective justice" (Mills 2003, p. 246) for Native Americans. Solutions included re-investing a percentage of the UC endowment tied to the original Morrill Act land sales into a fund specifically for Indigenous communities; offering free tuition across the UC campuses to all Native Californians; opening land in the vast UC Reserves

⁹ Berkeley, Davis, Riverside, and the statewide Division of Agriculture and Natural Resources.

system to Indigenous environmental stewardship via co-management agreements; and plainly returning parcels of land in an unprecedented act of repatriation.

At the superstructural level, land-grant faculty can become “epistemological traitors” (Leonardo, 2015). As traitors, they sign off from the clauses of the educational Racial Contract that deem as valid only Eurocentric Enlightenment-driven curriculum, pedagogical strategies, and research methods. In this configuration, professors (whether as individuals they are phenotypically white or otherwise) revoke the privilege that, by default of the Racial Contract, allows them to be “epistemically disadvantaged in seeing the social truth” (Mills, 2003, p. 230). Again, using UC Berkeley as an example, we can see glimmers of hope. There are now a few extremely popular courses in the Department of Environmental Science, Policy and Management (ESPM, which formed in 1994 through merging of several agricultural departments) that frame the crises in the United States agri-food system as emerging from its foundation as a system of slave labor on stolen land. We also teach experiential agroecology, which is a science, practice, and social movement rooted in Latin American Indigenous and peasant epistemologies that applies ecological concepts and principles to agri-food systems. In 2021, Peter Nelson (Coast Miwok and tribal citizen of the Federated Indians of Graton Rancheria) joined UC Berkeley as a joint ESPM-Ethnic Studies faculty member, and teaches courses in Indigenous Environmental Science.¹⁰

¹⁰ In the original version of this paper I included a reference to ESPM faculty member Elizabeth Hoover, who joined the department in 2020 under the pretense that she was Native American. She taught courses in Native American Food Sovereignty and Indigenous Environmental Sciences. In 2022 Hoover was publicly exposed in her false claims of Indigenous identity. I condemn the ongoing harm Hoover is causing Indigenous individuals and communities and support the full realization of the demands of a Collective Statement written by her former students (Cesspooch et al., 2022).

Mihesuah and Wilson (2004), speak of “indigenizing the academy” rather than “decolonizing,” to articulate the future-facing project of centering Native personhood and knowledge production. I challenge Historically White land-grant colleges to sign off from the Racial Contract by attending to the interwoven tasks of 1) Taking responsibility for material/economic restitution to Indigenous communities for the expropriated land sold through the Morrill Act, and 2) Indigenizing agricultural curriculum. By responding to calls for a “counterinterpellative pedagogy” (Backer, 2018), “pedagogy of lovingness” (De Lissovoy, 2010), and a “traveling curriculum” (Leonardo, 2018), HWCUs could seriously interrogate Eurocentric epistemologies, name the cultural-imperial exploitation embedded in higher education, and create spaces for “differing paths and differing truths” (De Lissovoy, 2010, p. 290) where “knowledge is forged in the interstices between self and other” (Leonardo, 2018, p. 17). Thus, universities might become contrapuntal spaces (Said, 1994) where Indigenous bodies and epistemologies—and land—are learned into being.

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¹¹ See <https://cejce.berkeley.edu/ohloneland>

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