

# The Ever-Expanding University of California: Property Claims and the Battle Over People's Park

## Introduction

During the postwar boom in university student populations across the country, the University of California Regents (hereafter the Regents) used their power of eminent domain to lay claim to several tracts of land immediately to the south of the UC Berkeley campus, ostensibly to meet increasing demands for affordable student housing. The Regents proceeded to raze the existing low-cost housing complexes in the neighborhood, clearing the lots and evicting hundreds of residents, including students, in the process. Unbeknownst to the university at the time, this move was to precipitate a decades-long war between the university, students and community residents over eminent domain, property rights, and ultimately, the legitimacy of the university itself as a public institution.

One of those lots is now known as “People’s Park.” Although UC Berkeley built housing on three of the lots, one remained vacant for years. In the late 1960s, student and resident groups mobilized to occupy the then still-vacant, undeveloped land. Following several violent confrontations between students and the police, the university temporarily abandoned its claims to the park. Over the course of the next few years, students and Berkeley residents transformed the block into “People’s Park”, and reclaimed it as a site of protest, a center for community events, mutual aid, and a site or refuge and shelter for unhoused and transient communities.

Since then, the university has had several confrontations with students and community members over “People’s Park”, which has remained a site occupied by and cared for by unhoused people and community groups. People’s Park has grown increasingly important in the wake of the ongoing housing crisis. As UC Berkeley converts more and more of the land around its campus into profitable residential and commercial developments leased to private corporate entities, People’s Park has come to symbolize the resistance against the forces of the ever-expanding and quickly privatizing University of California.

In January of 2021, the Regents mobilized once again to claim the lot for student housing, and has been facing backlash from students and Berkeley residents, who have occupied the park to prevent [the university-led] development. As the university aims to assert its property rights over the contested site, I ask us to think about the legitimacy of the University of California as a public institution, and how its expansion and privatization has been financed and sustained by American state institutions, in pursuit of military-imperial interests.

## The Foundation of the University of California

In 1868, the first land-grant university in the state, the University of California at Berkeley was established through the Morrill Land Grant Act of 1862. The Act conferred a total of nearly 11 million acres of federally-owned lands across the country to state governments, whose sales provided funding for the construction and operation of new universities. These land sales created the endowments of 52 colleges and universities across the United States, including UC Berkeley.<sup>1</sup> Hidden from the university’s retelling of its history, these lands were obtained through

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<sup>1</sup> Lee, Robert and Tristan Ahtone (April 2020). “Expropriated Indigenous land is the foundation of the land-grant university system.” High Country News.

the dispossession of Indigenous peoples by the United States government through policies of coerced treaty-making and forced removal.

The Morrill Act was intended to open the fertile agricultural lands in the Western United States to Anglo settlement, a realization of the Lockean doctrine of Manifest Destiny that provided the basis for American westward expansion. The American conquest of Indigenous populations was fundamentally an agrarian project, alongside a military and legal-political one. In California, which was seen by many as the “final frontier” of American western expansion, the project of Indian removal and dispossession was particularly brutal. The state of California authorized and funded local militias, encouraging settler-farmers to murder and forcibly dislocate Indigenous communities, usually onto less fertile lands. From 1845 to 1870, the Indigenous population of California plummeted from roughly one hundred thousand to thirty thousand.<sup>2</sup> Indigenous land claims were dissolved, and California Indigenous peoples remained unrecognized by the federal government, and were therefore denied any compensation for the land sold to fund university endowments. Of the 2,395 parcels of land granted to the University of California, a full 96% were expropriated from 125 individual tribes without ratified treaties.<sup>3</sup>

The land vacated by Indigenous peoples was declared public, state-owned land, and was largely earmarked for agricultural production, the primary basis for the American economy at the time. The sales of these fertile agricultural lands converted landed property into capital. The logics undergirding this dispossession was that Indigenous lands were not being productively used, and should be claimed by those who worked on it. Much of the land was therefore sold or gifted to settlers for private property-based sedentary agricultural uses.<sup>4</sup> Some of it was conferred to newly founded universities via the Morrill Act, which required that universities offer courses in agriculture and mechanics, an attempt to ensure the proliferation of American farms and factories.<sup>5</sup> The Act also charged universities with agricultural research to develop new Western agricultural techniques to increase the productivity of land, in order to domesticate “wild” Indigenous lands and further the expansion of agribusiness. Finally, the Morrill Act stipulated that courses in military tactics be offered, though the decision of whether to require them was ultimately left to individual universities. In California, the State Organic Act of 1868 made two years of military training mandatory for students of the University of California.<sup>6,7</sup>

Land-grant universities were immensely successful in developing and deploying modern methods of agricultural production that transformed the American landscape into productive farmland. Plants procured from around the world were introduced through these research institutions, disrupting Indigenous land use patterns.<sup>8</sup> In California, education in mechanics also

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<sup>2</sup> Mamdani, M. (2021). *Neither settler nor native: The making and unmaking of permanent minorities*. Wits University Press.

<sup>3</sup> Lee, Robert and Tristan Ahtone (April 2020). “Expropriated Indigenous land is the foundation of the land-grant university system.” High Country News.

<sup>4</sup> National Archives and Records Administration. *The Homestead Act of 1862*.

<sup>5</sup> la paperson (2017). “Land. And the University Is Settler Colonial”. *A Third University Is Possible*. University of Minnesota Press.

<sup>6</sup> Provided they were male and under the age of 24

<sup>7</sup> Johnson, Robert. “The fight against compulsory R.O.T.C on UC Berkeley campus”. Free Speech Movement Archives.

<sup>8</sup> la paperson (2017). “Land. And the University Is Settler Colonial”. *A Third University Is Possible*. University of Minnesota Press.

propelled the growing gold-mining industry.<sup>9</sup> The University of California thus served as a site for the disposal of stolen, surplus agricultural lands, as well as a training ground to facilitate the agro-imperial expansion of the settler state. At the same time, it declared its mission to provide accessible, publicly subsidized higher education, and uplift middle class Americans, a legacy that the university still celebrates. A website commemorating the institution's 150th anniversary reads that the university was founded on "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."<sup>10</sup>

These dual goals should not be seen as contradictory, rather they were necessary to maintain the legitimacy of the settler colony. All of the groups mentioned allowed for the continued settlement and westward expansion of the American state, facilitated by the university. The university also served as an instrument for the production and proliferation of American agricultural knowledge.

### **The Cold War and University Expansion**

During and after World War II, the population of Berkeley boomed. Due to its proximity to the shipbuilding and naval procurement ports of Richmond, Albany and Oakland, the city attracted thousands of wartime workers. In the decade between 1940 and 1950, Berkeley's population grew by 28,258, a 33% increase.<sup>11</sup>

At the same time, universities across the country were strengthening their alliances with the federal government and establishing new institutions for defense research. As the American frontier shifted overseas, so too did the university's designs. The University of California was particularly critical in the American state's wartime efforts, as it operated the secret Los Alamos National Laboratory in New Mexico and staffed the Manhattan Project housed there, a massive undertaking to research, design and build the first atomic bomb. This laboratory eventually designed and built the nuclear bombs that were dropped on Nagasaki and Hiroshima in 1945. The team of scientists assembled for the Manhattan Project was led by Robert Oppenheimer and later Norris Bradbury, both of whom were nuclear physicists at the University of California.

The collaborative relationship between the federal government and university continued well after the end of the war, with universities providing critical knowledge production for the United States government, both ideological and scientific. With the start of the Cold War, there was an increase in the American state's demand for a skilled workforce for the fast-growing military-industrial complex. In the postwar period, the University of California became the largest educational recipient of federal defense spending, receiving annual grants from the Department of Defense and the Atomic Energy Commission.<sup>12</sup> In 1945, the Truman administration founded the National Science Foundation and allocated funding for university research from the budget of the Department of Defense, which later shifted to the Department of Energy, NASA, and the National Institutes of Health. Soon after, Ernest Lawrence, another leader of the Manhattan

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<sup>9</sup> "Science Education in Early California Colleges, 1850-1880" Michael Brett Weismeyer, Doctor of Philosophy in History, University of California, Los Angeles, 2017

<sup>10</sup> *Charter Day: A university is born*. Light the Way: The Campaign for Berkeley.  
<https://light.berkeley.edu/o/charter-day-a-university-is-born/>

<sup>11</sup> Winling, LaDale C. (2010). *Building the Ivory Tower: Campus Planning, University Development, and the Politics of Urban Space*. University of Michigan.

<sup>12</sup> Ibid.

Project, established two additional national laboratories managed by the University of California for the U.S. Department of Energy: the Lawrence Berkeley National Laboratory and the Lawrence Livermore National Laboratory. Together, Berkeley's nationally-funded research institutions had facilities and equipment valued at over half a billion dollars, and an annual budget of over \$250 million, an amount exceeding the state contribution to the entire University of California system at the time.<sup>13</sup>

As the eye of the empire shifted to the Third World, the research focus of American universities likewise moved from nuclear defense against the Soviet Union to knowledge production to facilitate the domination of newly independent Global South countries. In 1958, Congress expanded federal funding for universities, providing fellowships for study in areas deemed critical for national defense, most notably area studies in Russia, Eastern Europe, China and Southeast Asia, as well as programs in "Western Civilization".<sup>14</sup> In the same year, Guy Paulker, a UC Berkeley professor and consultant at the RAND Corporation, led a mission at the university's Center for South and Southeast Asian Studies to train a group of Indonesian military and economic leaders. Less than a year before a CIA-backed coup of the then Indonesian president, Paulker chastised his Indonesian military trainees for lacking "the ruthlessness that made it possible for the Nazis to suppress the Communist Party". In 1968, after an estimated one million were killed in military dictator Suharto's ruthless anti-communist purges and a million more were languishing in concentration camps under vague suspicions of ties to communist parties, a cadre of five Berkeley-trained economists, known as the "Berkeley Mafia", were appointed to key positions in Suharto's administration. These economists were integral to transforming the Indonesian economy into one friendly to international corporate investment.<sup>15</sup>

At the same time, the CIA continued to run domestic operations within universities across the country. At UC Berkeley, Vice President Earl Bolton secretly consulted for the CIA in the late 1960s on areas ranging from "student unrest, contracts for research and development, collection of covert information, [and] contacts with foreign scholars".<sup>16</sup> Recent Freedom of Information Act requests have revealed that the agency also provided funding to student organizations, sponsored seminars for select professors, and shared materials with approved faculty members about the Soviet Union and China.<sup>17</sup> The university thus continued to underwrite the expansion of the American empire as it grew beyond the borders of the continental United States.

Meanwhile, the end of the Second World War precipitated rapid growth in university populations, as returning veterans claimed government-sponsored education. The strain that this growth placed on the infrastructure of university towns was particularly acute in Berkeley.

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<sup>13</sup> Klare, M. (2007, September). "The Research Apparatus of U.S. Imperialism". NACLA.

<sup>14</sup> Szanton, David L. et. al. (2002). *The Politics of Knowledge: Area Studies and the Disciplines*. University of California Press.

<sup>15</sup> Bevins, Vincent. *The Jakarta Method: Washington's Anticommunist Crusade & the Mass Murder Program that Shaped Our World*. Public Affairs, Hachette Book Group, 2021.; Scott, Peter Dale. "North American Universities and the 1965 Indonesian Massacre: Indonesian Guilt and Western Responsibility 1965." *The Asia-Pacific Journal: Japan Focus*, 2014.

<sup>16</sup> Richter, L. (1978, February). "Papers Reveal CIA Ties to UC". *Triton Times*. UC San Diego.

<sup>17</sup> KPIX Eyewitness News (1967). "Ramparts Editors on CIA Activities". Bay Area Television Archive. <https://diva.sfsu.edu/collections/sfbatv/bundles/228147>

The student population from 1940 to 1947 grew from roughly 17,000 to 25,000.<sup>18</sup> Unable to support this rapid population growth, Berkeley experienced a severe housing shortage accompanied by a decrease in affordability. The influx of Black defense workers during the war combined with restrictive covenants which covered nearly 80% of the city exacerbated unaffordable housing prices by creating artificial housing shortages in submarkets, namely in the Black neighborhoods along the city's southern border.<sup>19</sup>

Immediately following the war, to address the postwar demand for housing, the Regents appropriated public funds from the state and fast-tracked the development of student dormitories in buildings gifted to them by wealthy benefactors. In the following years, the university rapidly ramped up the construction of student housing, with a stated goal of housing 25% of the student population in university-owned dormitories.<sup>20</sup>

The 1950s witnessed a period of rapid university expansion. In 1952, the university approved the acquisition of approximately 45 acres of land surrounding the campus using eminent domain. Nearly three quarters of the proposed acres were located to the immediate south of the campus in Berkeley's Southside neighborhood, where they intended to build four high-rise dormitory buildings.<sup>21</sup>

Much like other urban renewal programs across the country, university expansion relied on the forced displacement of vulnerable communities. In 1954, the university purchased the land on which the federal government had built low-cost, racially integrated housing for shipyard workers in the 1940s, to develop affordable housing for student families.<sup>22</sup> In the late 1960s, the university purchased the McKinley Continuation High School, forcing largely the Black and immigrant students to relocate. The Regents then leveraged this purchase to gain title to additional land held by the Berkeley Student Cooperative, an organization that provides some of the few remaining low-cost housing options near the university.<sup>23</sup> In 1980, after decades of petitioning the state Department of Education, UC Berkeley successfully moved the State of California to transfer ownership of the California School of the Blind and Deaf into the

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<sup>18</sup> Siegal & Strain Architects (March 2011). "Smyth-Fernwald Property: Historic Structures Report." UC Berkeley.

<sup>19</sup> Winling, LaDale C. (2010). *Building the Ivory Tower: Campus Planning, University Development, and the Politics of Urban Space*. University of Michigan.

<sup>20</sup> Siegal & Strain Architects (March 2011). "Smyth-Fernwald Property: Historic Structures Report." UC Berkeley.

<sup>21</sup> University of California, Berkeley. "Long Range Development Plan" (1962). Berkeley Capital Strategies.

<sup>22</sup> Codornices Village, as the development was then called, was at the time the only large-scale racially integrated housing development in the city, and one of the few developments in which Black people were permitted. As a result, by 1953, 80% of the residents of the housing complex were Black. In 1954, after having finished its wartime projects and facing no opposition from the university, the federal government closed the project and evicted the residents of Codornices Village. After the Cities of Berkeley and Albany turned down the opportunity to convert the structure into affordable housing and demolished it, UC Berkeley constructed housing for student families at the same site. Kamiya, Gary. "When WWII brought blacks to the East Bay, whites fought for segregation." San Francisco Chronicle, November 23, 2018.

<sup>23</sup> The Berkeley Student Cooperative lobbied to lease the land from the university to build student housing. In return, UC Berkeley demanded one of the cooperative's properties in return, thus further increasing its land holdings. In 2022, the Berkeley Student Cooperative's (BSC) lease with the university ended, and the future of the Rochdale Village cooperative is uncertain. The university is demanding that BSC pay for costly seismic upgrades in order to maintain their lease, in spite of owning the underlying land. BSCAA Living History. "Rochdale Village". BSCAA Wiki, 2022.

university's possession, claiming that the school was hazardously located on a fault line.<sup>24</sup> Over the years, the university's plans for the site ranged from an agricultural college and graduate institute to a medical school and intramural sports facility.<sup>25</sup> Eventually, the university constructed low-rise student housing on the site, which is now called the Clark Kerr Campus. A later investigation revealed that state and university officials had no concrete proof of an active earthquake fault line under the school.<sup>26</sup>

By the end of the 1950s, the university had constructed several new residence halls in the Southside neighborhood intended to house a total of over 2,400 students.<sup>27</sup> The university ran out of funds midway through the project and was therefore unable to acquire some of the lots, one of which was to later become People's Park.

### **The Battle for Lot 1875-2**

The pressure created by the growth in student populations also resulted in an increase in conflicts between students and the university, including contestations over public space and freedom of speech. Prior to the Second World War, the university had instituted policies banning political activity and speech on campus, cementing the idea of the university as a site for uncritical promotion of the American state-building project. In the midst of Cold War-fueled anxieties about the image of the university as a site of resistance, the California Regents passed a measure mandating that all university faculty sign an oath alleging loyalty to the California state constitution, and denouncing all organizations espousing communism or the overthrow of the US government.<sup>28</sup>

For years, the university quashed student and faculty resistance, firing any professors who failed to comply with these measures. In keeping with these rules, a group of students moved political activity off campus, setting up tables just south of the main campus on the corner of Bancroft and Telegraph, the main thoroughfare leading into the university.<sup>29</sup> In the fall of 1964, the Regents abruptly banned the tables from this area, proclaiming that the university had recently discovered that it, in fact, owned the corner on which these tables were set up, and that political activity was therefore forbidden.<sup>30</sup> As student frustration with the university's hardline policies continued to build, contests over political speech gave birth to the Free Speech Movement. Starting in the mid-1960s, the university's Southside neighborhood became a hub for the counterculture, free speech and anti-war movements, and was notorious for attracting anarchists, hippies, and communists. These conflicts ushered in a new era of university acquisition and expansion.

A decade after the Regents had proclaimed their intention to condemn the remaining privately-owned lots south of campus, property values in the neighborhood collapsed and

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<sup>24</sup> Kerr, Clark (1957). "Report of Special Committee to consider Possible Acquisition of the Heinz Plant and California Schools of the Blind and Deaf".

<sup>25</sup> Burrell, Charles (1979). "Shrouded UC Role in Deaf-Blind Removal" *The Daily Californian*.

<sup>26</sup> Burrell, Charles (1981). "Whose Fault?" *The Daily Californian*.

<sup>27</sup> University of California, Berkeley. "Long Range Development Plan" (1962). Berkeley Capital Strategies.

<sup>28</sup> Gardner, David (1967). *The California Oath Controversy*, UC Press.

<sup>29</sup> These students were a part of a student-led political party called SLATE, and were recruiting for an anti-discrimination campaign that confronted businesses in Berkeley that were refusing to hire or serve Black people. O'Donoghue, Liam (2018). "How a little-known Berkeley group sparked the 1960s student movement". *Berkeleyside*.

<sup>30</sup> Rorabaugh, W. J. (1990). *Berkeley at war: The 1960s*. Oxford Univ. Press.

residents abandoned buildings rapidly falling into disrepair. As housing conditions deteriorated in the neighborhood due to lack of upkeep, squatters moved in to occupy the low-cost housing.

In the mid-1960s, with the promise of newly allotted funding for urban renewal projects near universities, the city designated the Southside neighborhood as an urban renewal district.<sup>31</sup> In collaboration with the university, the city planned to use the federal funding obtained for the construction of dormitories in order to finance the complete renovation of the commercial area along the city's Telegraph Avenue. A Berkeley Police Department presentation to the city's Urban Renewal Committee fueled fears about the Southside neighborhood, asserting that narcotics and crime had taken over the area.<sup>32</sup> Over the course of the next several years, the Regents used their power of eminent domain to condemn 45 additional acres of land, primarily in the Southside neighborhood, most of them purchased far below the original market values.<sup>33</sup> The university demolished existing low-cost apartments and reduced population densities within the housing units, driving up rents and forcing out "beatniks and hippies".<sup>34</sup>

In 1967, citing a "desperate need" for a soccer field on the site, the Regents finally passed a resolution to condemn lot 1875-2, the largest remaining un-purchased site, via eminent domain. Many saw this move as a realization of the university's long-held desire to drive away radical groups that they saw as a threat to institutional stability and government approval.<sup>35</sup> Just a few years later, the university instead declared their intention of building student housing on the site due to an ongoing housing crisis. There is little evidence that the university had a need for either a soccer field or a dormitory.<sup>36</sup> The university's housing facilities were generally listed at rates above the average market rents, and therefore were in low demand. From 1964 to 1970, dormitory usage dropped by nearly half, as most students professed a preference for lower cost, off-campus housing.<sup>37</sup>

In November of 1967, the Regents began to issue eviction notices to the residents of the 25 buildings located on the lot, many of whom were students. Demolitions continued through the following summer, but development stalled soon after, and campus leadership left the lot vacant for nearly a year. In April of 1969, hundreds of students, nearby residents, and business owners decided to transform the vacant, now trash-ridden lot into a community park and a space for free speech. Over the next several weeks, thousands of people poured their energy into gardening, designing and constructing the park. Meanwhile on campus, tensions between students and the university administration continued to rise. The conflict was further fueled by the rhetoric of California Governor Ronald Reagan, whose rise to fame had been in no small part aided by his campaign promise to "clean up that mess in Berkeley".<sup>38</sup> The Regents were

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<sup>31</sup> A 1959 amendment to the 1949 Federal Housing Act called the "Section 112 credits program" allowed municipalities to obtain a two-to-one federal matching grant for an urban renewal project near a university campus. This aid could then be used for urban renewal projects anywhere in the city.

<sup>32</sup> Allen, Peter (2007). "Violent Design: People's Park, Architectural Modernism and Urban Renewal". UC Berkeley, ISSI Fellows Working Papers.

<sup>33</sup> Nixon, William B., Urban Renewal Coordinator, City of Berkeley (1961). "Berkeley's Opportunity for Urban Renewal," A talk before the Sather Gate merchants' Association. Bancroft Library Archives.

<sup>34</sup> Rorabaugh, W. J. (1990). *Berkeley at war: The 1960s*. Oxford Univ. Press.

<sup>35</sup> Cash, J. D. (2010). *People's Park: Birth and Survival*. *California History*.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Dalzell, T., Wasserman, S., & Gitlin, T. (2019). *The Battle for People's Park, Berkeley 1969*. Heyday.

clear that “a user-developed, user maintained park was unacceptable to a majority of the board, and especially the Governor's supporters.”<sup>39</sup>

On May 13, the UC Berkeley chancellor decided to erect a chain-link fence around the park, declaring that he was “just a janitor for the Regents”.<sup>40</sup> Two days later, a pro-Palestine rally unexpectedly shifted gears and students decided to “take the park”. The student procession headed down Telegraph Avenue toward the newly founded community park, where they encountered a troop of hundreds of police officers from several jurisdictions, including California Highway Patrol, the Berkeley Police Department, and the Alameda County Sheriff's Department. Things quickly spiraled out of control and Alameda County police officers fired lethal buckshot into a retreating crowd, killing a nearby bystander and wounding hundreds. The sheriff later admitted in a deposition that officers who had recently returned from Vietnam went into battle with the students as though they were Viet Cong.<sup>41</sup> That evening, Governor Reagan declared a state of emergency in Berkeley and sent in 2,700 members of the National Guard. The emergency order banned all meetings, demonstrations and speeches, and imposed a 10 p.m. curfew over the city. The state laid siege to the city for more than three weeks. Small gatherings of any more than four people were broken up by the National Guard, often by use of force. A few days after the shootings, at a vigil for the student who was killed, National Guard helicopters dropped tear gas over the Berkeley campus, which quickly spread over the entire city.<sup>42</sup>

After Reagan finally withdrew the National Guard in June, the university once more erected fencing around the park site to prevent the community from reclaiming the land. The Regents demolished the existing improvements, and decided to turn the site into a soccer field and parking lot. Intermittent confrontations between student demonstrators and administrators continued until 1972, when students tore down the fence during an anti-Vietnam war protest. Students, Berkeley residents, and a variety of community organizations rebuilt the park, primarily using donated materials.<sup>43</sup>

Over the last fifty years, the university has periodically attempted to reassert its property claims over the lot, stating intentions to convert the park variously into volleyball courts, soccer fields, parking lots, and high-rise dormitory buildings. The City of Berkeley worked in concert with the university to assert the latter's claims to the site; University of California Police Department (UCPD) and the Berkeley Police Department have a close relationship, and jointly patrol large portions of the Southside neighborhood, including Telegraph Avenue and People's Park. The university and city sporadically deployed campus police forces in order to destroy residents' improvements, including swingsets, bathroom facilities, benches, and trees. Protestors in turn destroyed university infrastructure, tearing out fences and asphalt whenever the Regents attempted to lay claim to the site.

The university finally abandoned its plans to raze People's Park in 1989, and leased it to the City of Berkeley for use as a public park.<sup>44</sup> Still, it retained a portion of the space for

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<sup>39</sup> McGill, William J. (1982). *The Year of the Monkey: Revolt on Campus, 1968-69*. New York: McGraw-Hill.

<sup>40</sup> Cash, J. D. (2010). People's Park: Birth and Survival. *California History*.

<sup>41</sup> Congressional Record (1969): Proceedings and Debates of the 91st Congress, Volume 115, Part 11.

<sup>42</sup> Rorabaugh, W. J. (1990). *Berkeley at war: The 1960s*. Oxford Univ. Press.

<sup>43</sup> Cash, J. D. (2010). People's Park: Birth and Survival. *California History*.

<sup>44</sup> Shiffman, Ron (2019). “Beyond Zuccotti Park: Freedom of Assembly and the Occupation of Public Space.” First edition, Project Muse.



“informal recreation use”, and continued trying to develop the site. In 1991, the university decided to bulldoze the southern end of the park in order to build volleyball courts. Anticipating resistance, the university called in police from various jurisdictions, some from as far away as Los Angeles.<sup>45</sup> The UCPD were instructed to enforce the 10 p.m. curfew, and evict the park’s unhoused residents. Protestors occupied the site for twelve days in an attempt to prevent bulldozers from entering. In response, the university filed a lawsuit against four of the protestors for “criminal activities”, including allegations that defendants distributed flowers and cardboard “hand-saws” at the volleyball courts.<sup>46</sup> After a series of riots and the partial dismantling of the newly installed volleyball courts by activists, the UC was finally forced to retreat and remove the courts.

In this way, the university consistently weaponized the presence of “criminal activity” and language of “undesirables”, in attempts to shift the demographics of and derive profits from the Southside neighborhood. Nevertheless, People’s Park has remained a holdout against university expansion and takeover of Berkeley. Resident and student claims to the space hold that it represents a reclamation of the park as common, collectively owned property, and one of the few remaining public spaces in the city from which to stage political claims and challenge the university’s authority and expansion.

### **The People’s Last Stand**

In 2018, the university released plans that earmarked ten potential sites for the construction of student housing, including People’s Park.<sup>47</sup> In June 2019, the City of Berkeley, alongside several community organizations, filed a lawsuit against the university for its plans to increase student enrollment by over a third without an accompanying environmental review or consideration of the costs to city facilities. Two years later, the Berkeley City Council dropped the remaining lawsuits following closed-door negotiations with the university that resulted in a \$82.6 million settlement. Several Berkeley Council members and Mayor Jesse Arreguin, formerly opposed to the development of People’s Park, endorsed the university’s plans.<sup>48</sup> The neighborhood groups continued to pursue the lawsuit, and a month after the settlement, the judge ruled against the university, ordering an enrollment freeze at previous year levels.<sup>49</sup>

In January 2021, the university evicted many of the homeless residents in People’s Park and put up fencing around a section of the park in order to conduct seismic testing and obtain

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<sup>45</sup> Cash, J. D. (2010). People's Park: Birth and Survival. *California History*.

<sup>46</sup> The university eventually built sand volleyball courts on the lot, which were then dismantled in another protest. Five years after they were installed, UC Berkeley finally removed the courts.

<sup>47</sup> Raguso, E. (2021, October 16). *Student housing complex across from Cal gets a 'yes' from Berkeley Zoning Board*. Berkeleyside. <https://www.berkeleyside.org/2018/10/29/student-housing-complex-across-from-uc-berkeley-gets-a-yes-from-zoning-board>

<sup>48</sup> Egelko, B. (2021, July 15). *Berkeley drops objections to UC construction project for \$82.64 million*. San Francisco Chronicle. <https://www.sfchronicle.com/bayarea/article/Berkeley-drops-objections-to-UC-construction-16315426.php>

<sup>49</sup> Brasuell, J. (2021, August 30). *Judge Caps Enrollment at UC Berkeley Pending Environmental Impact Report*. Planetizen News. <https://www.planetizen.com/news/2021/08/114515-judge-caps-enrollment-uc-berkeley-pending-environmental-impact-report>

soil samples in preparation for construction.<sup>50</sup> In response, hundreds of activists from a broad coalition of student and community organizations tore down the fences and started a 24-hour occupation of the park.<sup>51</sup> The group that formed out of this effort, “Defend People’s Park” has since released demands that the university immediately halt planned development, defund the UCPD, and expand social and health services at the park.<sup>52</sup>

The university has continued to assert that the development would help alleviate the ongoing housing crisis, and is therefore necessary for both students and Berkeley residents. The university points to the dire need for student housing, in particular the fact that it only houses 23% of its students, and had to turn away 5,000 students from university housing in 2021.<sup>53</sup> Following initial opposition, the university amended its original plans to include “supportive housing” for “very low-income and unhoused members of our community”, including those who currently live in the park, as well as below-market rate student housing.<sup>54</sup>

Still, activists point out that many of the people who use the park are extremely low or no-income, and are deeply concerned about the displacement of an essential public gathering place which thousands of people make use of each year.<sup>55</sup> Largely due to high costs, university-owned housing has been historically unpopular with students.<sup>56</sup> A 2017 survey administered by the university found that undergraduate students listed dormitories as their second-to-last preference for housing, only ranking above housing at another university campus altogether.<sup>57</sup> Activists agree with the university that a housing crisis exists, but point to the fact that the university has an abundance of land in Berkeley on which to build new housing.<sup>58</sup>

The university currently faces three lawsuits on its plan, from the union representing workers at UC Berkeley and the Lawrence National Laboratory, and the community organizations Make UC A Good Neighbor, the People’s Park Historic District Advocacy Group, People’s Park Council and Berkeley Citizens for a Better Plan.<sup>59</sup> The legal challenges assert that the university failed to adequately comply with the California Environmental Quality Act (CEQA).

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<sup>50</sup> Public Affairs. (2021, January 19). *Sections of People’s Park to close for soil assessment*. Berkeley News. <https://news.berkeley.edu/2021/01/19/sections-of-peoples-park-to-close-for-soil-assessment/>

<sup>51</sup> This resistance comprises a diverse coalition of East Bay residents, organizations, and student groups, many of whom have been organizing to defend the park since the 1960s, including the People’s Park Council.

<sup>52</sup> Defend the Park (2021). “People’s Park”, <https://defendthepark.org/>

<sup>53</sup> Asimov, N. (2021, October 1). *UC regents approve major housing plan for Berkeley’s historic People’s Park*. San Francisco Chronicle.

<https://www.sfchronicle.com/bayarea/article/Fate-of-Berkeley-s-historic-but-crime-riddled-16496472.php>

<sup>54</sup> Dinkelspiel, F. (2021, August 27). *4 stories shorter: UC Berkeley drops height of People’s Park student housing complex*. Berkeleyside.

<https://www.berkeleyside.org/2021/08/25/uc-berkeley-student-housing-peoples-park>

<sup>55</sup> Defend the Park (2021). “People’s Park”, <https://defendthepark.org/>

<sup>56</sup> Ibid.

<sup>57</sup> Office of Planning & Analysis, UC Berkeley (2018). “Housing Survey Findings.”

[https://housing.berkeley.edu/wp-content/uploads/HousingSurvey\\_03022018.pdf](https://housing.berkeley.edu/wp-content/uploads/HousingSurvey_03022018.pdf)

<sup>58</sup> Ibid.

<sup>59</sup> Dinkelspiel, F. (2021, August 26). *Labor, community groups file lawsuits to stop Cal ‘gobbling up Berkeley.’* Berkeleyside.

<https://www.berkeleyside.org/2021/08/23/afscme-uc-berkeley-growth-lawsuits-make-uc-a-good-neighbor-t-he-peoples-park-historic-district-advocacy-group>

Another lawsuit accuses the City of Berkeley and the university of violating the Brown Act, an act mandating transparency in public meetings, by settling a lawsuit behind closed doors.<sup>60</sup>

### **Police, Property and the Public University**

University claims to publicness rest primarily on the assumptions that the university provides low-cost, state-subsidized education to students predominantly hailing from California, and is accountable to a public governing board that is appointed by the state. Challenges to the university's status as a public institution then rely on the ability to refute each of these claims. However, over the past forty years, the university has become a quasi-private entity.

Starting in the 1980s, during a period of widespread disinvestment in public services, the state of California began to steadily make cuts to the public education budget. Voter initiatives that reduced property and income tax collections, alongside massive investments in state prisons and police largely came out of the coffers of the state department of education. Today, the state only provides 13% of the operating budget of UC Berkeley.<sup>61</sup> As a result, the past decades have seen the university increasingly turn to private donations, returns on its endowment, and private transactions and investments. The university instituted tuition fees for California residents for the first time in 1970, and has since raised tuition steadily. In-state tuition is now over \$14,000 per year.<sup>62</sup> UC Berkeley has also tripled its enrollment of international and out-of-state students, who pay tuition at rates nearly three times that of California residents.

Students have also claimed that the university is no longer acting with a public purpose, and instead operates as a private corporation with the intention of enriching investors and administrators. Indeed, multiple Board of Regents members have faced allegations of conflict of interest and corruption in their investments.<sup>63</sup>

Nowhere are these contestations over the publicness of the university more fraught than in the realm of property holdings. The sovereignty granted to the university by the state also conferred the power of eminent domain. This then expanded to a quasi-absolute power to take property at will via a 1976 amendment to the California Education code that stipulated that the Regents were authorized to take any property "necessary to carry out any of the powers or functions of the University of California".<sup>64</sup>

Following this amendment, the university presented an argument in the court proceedings of *Moore v. Regents of the University of California* that it had property rights to "samples or fluids that [UC Berkeley] physicians took from [Moore's] body for research purposes" pursuant to their power of eminent domain, because this fulfilled the university's purpose of being a "primary state-supported academic agency for research".<sup>65</sup> Although the court's disposition made it unnecessary to consider the validity of this eminent domain taking,

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<sup>60</sup> Dinkelspiel, F. (2021, July 22). *Neighborhood groups sue to stop Berkeley's \$83M settlement with Cal. Berkeleyside*.

<https://www.berkeleyside.org/2021/07/20/neighborhood-groups-sue-to-stop-berkeley-83m-settlement-wit-h-cal>

<sup>61</sup> Peterkovsky, David (2021). *The funding conundrum: Cal's dwindling state support*. Cal Parents and Families.

<sup>62</sup> Vega, L. (2018, May 8). *The history of UC tuition since 1868*. The Daily Californian.

<sup>63</sup> *The regents club*. (2011, April 15). Sacramento News & Review.

<sup>64</sup> CAL. EDUC. CODE § 92040. (1976)

<sup>65</sup> *Moore v. Regents of the University of California* (1990)

the argument presented by the university demonstrated the nature of power as absolute and unchallengeable in the eyes of the Regents. Unlike state and municipal governments, the university has spent little time justifying its eminent domain takings as necessary for the “public good”. Much like in the Moore case, the university has largely operated on a “do first, ask later” basis with respect to the limits of its mandate as a public institution.

In practice, the university has found that the actual exercise of eminent domain power is often unnecessary; the university’s statement of intent to develop land forces landowners to sell their property as quickly as possible as it rapidly becomes devalued. This allows the university to obtain this newly tax-exempt land at greatly reduced rates, which is then often developed in concert with private developers and leased out to private companies for a profit.

Real estate has increasingly become seen as an investment opportunity for the university, and the Regents’ investments in real estate have increased dramatically over the past twenty years. In the third quarter of 2018 alone, the Regents invested approximately \$300 million in real estate.<sup>66</sup> The largest real estate holder in the state of California, UC Berkeley owns over 48% of the property in Berkeley’s Southside neighborhood. Initially composed of 160 acres, the university now sits on a main campus of 6,679 acres, and oversees an additional 39,237 acre reserve system, the largest of its kind in the world.<sup>67</sup>

In total, the Regents own over \$16 billion in real property, not including the market valuations of several parking garages, campus buildings, non-profit cooperative housing, dormitory buildings, and large portions of agricultural and wilderness lands that are not valued in the Real Estate Services and Strategies database.<sup>68,69</sup> Some of these tracts of land were obtained for as little as \$13/acre, and many were financed through state and federal coffers during periods of mass acquisition through eminent domain in the 1950s and 1960s.<sup>70</sup> However, there is no record of the total number of properties obtained via eminent domain, as the Regents’ Public Records office stated that “the University does not have a list of property acquisitions for the University of California, Berkeley campus that were acquired by the Regents of the University of California through condemnation”.<sup>71,72</sup>

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<sup>66</sup> Huang, Y. (2019, January 30). *UC system increases alternative investments for economic stability*. The Daily Californian.

<https://www.dailycal.org/2019/01/28/uc-system-increases-alternative-investments-for-economic-stability/>

<sup>67</sup> Michaels, P. J. (2016). *From the Berkeley Hills to Bishop Peak: Acquisition and Use of Land at Cal Poly and UC Berkeley*. California Polytechnic State University, San Luis Obispo.

<sup>68</sup> Berkeley Capital Strategies maintains a systemwide database of real property, Real Estate Services & Strategies (RESS), owned by the Regents of the University of California (the Regents) for university-related purposes. In addition, the university’s systemwide Budget Office and Information Technology Services departments maintain a database of university-related buildings owned by the Regents.

<sup>69</sup> Berkeley Capital Strategies (Updated 2021). “Real Estate Services & Strategies database”.

<sup>70</sup> Ibid.

<sup>71</sup> This was in response to a request that I filed pursuant to the Freedom of Information Act and the California Public Records Act. By law, the Regents’ meeting notes should include resolutions of necessity in the cases of eminent domain takings. However, the Regents have only maintained online records of their meeting notes starting from the year 1997, long after the vast majority of university properties had already been acquired. Though the Regents’ website states that records of previous meetings are available upon request, the office, when contacted, stated that it would cost \$25,000 to obtain these records.

<sup>72</sup> Strangely, the property listings held by Berkeley Capital Strategies do not list several of the sites that we know from other records to have been taken via eminent domain, and the UC Public Records Office

The cover of “publicness” allows private developers and investors to profit off of the university’s tax-exempt land. In 2015, the university announced that its Residential and Student Service Programs, which previously administered custodial services, grounds services, and campus housing and dining, was transitioning into the Real Estate Division.<sup>73</sup> This division, in conjunction with Berkeley Capital Strategies, Berkeley’s construction and development department, has contracted with private companies to hire custodial staff, and has leased out several housing, dining and educational facilities to private corporations, including Microsoft and British Petroleum. In 2007, the Regents signed a contract with BP oil, giving the company financial oversight over all clean energy research at the university, as well as a building on the UC Berkeley campus with multiple floors dedicated entirely to BP staff.<sup>74</sup>

The Regents’ near-monopoly on land near the university campus creates a closed market of student renters, and drives up housing prices throughout the city, displacing not only low-income students, but the far lower-income surrounding resident population. This is then exacerbated by the university’s continued seizure of land in the East Bay. In 2021, UC Berkeley entered into negotiations to purchase a rent-controlled apartment building near the university campus. Because UC Berkeley is a state institution, it is not required to abide by Berkeley laws requiring the reconstruction of rent-controlled apartments in the event of demolition. Activists contend that the university has in this way continuously accelerated the gentrification of Berkeley, often under the guise of alleviating the housing crisis caused not in small part by their actions.

The acquisition of property for profitable ventures has not been limited to real property. The passage of the Bayh–Dole Act in 1980, which greatly expanded the breadth of research that universities were able to patent, led to increasing investments in patent licensing endeavors, often in tandem with private firms seeking to take advantage of the university’s tax-exempt land.<sup>75</sup> In California, biotechnology has proven particularly profitable, and over a tenth of all biotechnology companies in the world have been founded by University of California faculty.<sup>76</sup>

In the face of mounting accusations of privatization, UC Berkeley administrators have maintained that definitions of “public” versus “private” should not be contingent on financing, but rather on the public service that the university provides. In separate polemics, Carla Hesse, UC Berkeley’s Dean of Social Sciences, and George Breslauer, former executive vice chancellor and provost of UC Berkeley, argue that the university is vastly more public now than it was in the 1960s, due to the increased racial and ethnic diversity of its student population.<sup>77</sup> Both also cited the services that the university provides to state and federal agencies. Indeed, the university has continued to collaborate with the United States’ imperial endeavors. During the Clinton

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declined to answer any additional questions about why, stating only that “there is no... record that identifies how certain properties on the list were categorized and/or why properties may not have been included”.

<sup>73</sup> Kim, K. (2015, June 1). *UC profits, we see exploitation*. The Daily Californian.

<sup>74</sup> UC Berkeley. *EBI: Highlights of the Master Agreement*. (2007, November 14). UC Berkeley News.

<sup>75</sup> Baldwin, D. L. (2021). *In the Shadow of the Ivory Tower: How Universities Are Plundering Our Cities*. Bold Type Books.

<sup>76</sup> Ibid.

<sup>77</sup> Breslauer, George W. (2013, December 1). “UC Berkeley’s Adaptations to the Crisis of Public Higher Education in the US: Privatization? Commercialization? Or Hybridization?” UC Berkeley Research and Occasional Papers Series.

administration, UC campuses and UC Berkeley-managed Lawrence Berkeley Laboratory submitted proposals for a total of \$113 million in pursuit of “defense and base conversion activities”.<sup>78</sup> In 2003 and 2007, the UC, in partnership with Bechtel, BWX Technologies, and Washington Group International, formed the Lawrence Livermore and the Los Alamos National Security corporations. These corporations, co-managed by private companies and high-level UC administrators, are at the forefront of the design and development of nuclear weapons. The UC views its role in these operations as a “public service” that enhances the United States’ “national security”.<sup>79</sup>

This has continued to create tension between the university and its students. Many recent student-led movements have challenged the university’s property claims, attempting to “reclaim” university-held land into the public realm. Protests over UC Berkeley’s plans to pursue private development on the Gill Tract, a 20-acre agricultural research station in neighboring Albany demanded that the land be used for urban community farming.<sup>80,81</sup> During the “Occupy” movement in 2011, UC Berkeley students occupied university-owned public spaces and farmland in a continuation of earlier protests against privatization, tuition increases and budget cuts. On November 9 of 2011, the university responded in full force, deploying a joint force of officers from the UCPD and the Alameda County Sheriff’s Office in riot gear to beat back protestors.<sup>82</sup> UC Berkeley Chancellor Robert Birgeneau and Executive Vice Chancellor and Provost George Breslauer released a statement defending police actions. Breslauer later wrote an article calling the university’s “defense of its property rights” an indicator of its public nature, as this is by definition a power conferred to public entities.<sup>83</sup>

In parallel to university claims to publicness, student and community resistance to the university has consistently opposed American imperialism, both domestically and internationally. Recent student movements have also demanded reparations to Indigenous peoples as a recognition of land theft under the Morrill Act, divestment from American imperial projects including funding to Israel and the development of US state technology on Indigenous Hawaiian land, the dismantling of the UCPD, mass reductions to tuition fees, the housing of unhoused residents of Berkeley, and the redefinition of uses allowed in the public realm, including in People’s Park.<sup>84</sup>

Student-activist attempts to redefine “public” and reimagine a university that serves the needs of nearby residents and community members have pushed back against the university’s ceaseless expansion. As the university moves forward with its plans to demolish the park, it shatters any remaining illusion of its “public” nature with respect to the local community in Berkeley and Oakland. Thereafter, the university’s claim to publicness rests only upon its historical and ongoing ties to American military-imperial expansion.

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<sup>78</sup> Douglass, J. (2005). *University of California History Digital Archives*. University of California History: Digital Archives.

<sup>79</sup> “Disorientation Guide” (2021). <https://vxkat.info/pages/disorientation/>

<sup>80</sup> Seal Students (2015, April 16). “An Abbreviated History of the Gill Tract,” *Divided Land: Ongoing Struggle*. WordPress.

<sup>81</sup> Darling, Todd (2014, November 7). *Occupy the Farm*. Documentary Film.

<sup>82</sup> *Occupy Berkeley encampment broken up by police*. (2015, April 16). Los Angeles Times.

<sup>83</sup> Breslauer, George W. (2013, December 1). “UC Berkeley’s Adaptations to the Crisis of Public Higher Education in the US: Privatization? Commercialization? Or Hybridization?” UC Berkeley Research and Occasional Papers Series.

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