

UNIVERSITY OF
COLORADO LAW REVIEW

Volume 96, Issue 3

2025

**CULTIVATING HOPE: A FUTURE WITH
ETHICS TOWARDS PEOPLE AND PLACES**

VANESSA ANN RACEHORSE*

What brought you to law school? I used to ask my peers in law school. Now, I often pose the same inquiry to my students and my colleagues. This talking point originated out of sheer curiosity, a way to get to know others who were on this journey with me. While the answers are often quite diverse, it has continuously proven to be an exciting reminder of the collective desire that so many in the legal profession have to do exceptional good in the world.

I believe that same ambition to enact fundamental, positive change within our legal system thoughtfully shines through in this Issue. It joins the many Issues of the *University of Colorado Law Review* that highlight novel scholarship that interweave themes of hope, resilience, attentive care towards the environment, and compassion for our fellow humans. We need this particular type of thought leadership now more than ever. Although we are only at the start of 2025, tremendous societal shifts have already been felt by many. In real time, we are seeing the attempted dismantling of major climate policies,¹ the

*Associate Professor of Law, University of Colorado Law School. Professor Racehorse is a member of the Shoshone Bannock Tribes, and a descendant of the Cherokee Nation and the Shoshone-Paiute Tribes. She has an LL.M in International Criminal Law from the University of Amsterdam and a JD from Columbia Law School. Professor Racehorse teaches in the American Indian Law Program at the University of Colorado Law School.

1. See, e.g., Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 20, 2025) (revoking multiple Biden-era executive orders addressing the climate crisis); Exec. Order No. 14,162, 90 Fed. Reg. 8455 (Jan. 20, 2025) (directing the withdrawal of the United States from the Paris Agreement under the United Nations Framework Convention on Climate Change and rescinding the US International Climate Finance Plan).

erasure of federal environmental justice initiatives,² and fissures being torn into bedrock human rights principles. Thus, the continuous cultivation of hope and critical thinking is imperative.

If one were to look at the legal system or the broader historical picture, there is no juncture in time that has been without friction, controversy, or battles worth fighting. As an American Indian Law professor and practitioner, this history is well understood in my world. Felix Cohen, often known as the Blackstone of Indian law, infamously wrote that “Like the miner’s canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians . . . reflects the rise and fall in our democratic faith.”³ Tribal⁴ nations and individual Native peoples have often been the focus of pointedly destructive policies.⁵ Yet, Tribes have continued to persist. There is an abundance of lessons to be garnered not only by the United States’ treatment of the continent’s original inhabitants, but also from how Indigenous Peoples have overcome what were, at many times, insurmountable odds.

Scholarship that focuses on environmental justice and the rights of Indigenous Peoples, as significant pieces in this Issue do, have larger implications for the environmental and social

2. See, e.g., Exec. Order No. 14,148, *supra* note 1 (rescinding President Biden’s Executive Orders that recognized and reaffirmed the United States’ commitment to environmental justice); Office of the Attorney General, *Rescinding “Environmental Justice” Memoranda* (Feb. 5, 2025) (rescinding former United States Attorney General Merrick Garland’s memorandums titled “Actions to Advance Environmental Justice” and “Comprehensive Environmental Justice Enforcement Strategy”).

3. Felix S. Cohen, *The Erosion of Indian Rights, 1950–1953: A Case Study in Bureaucracy*, 62 YALE L.J. 348, 390 (1953).

4. In this Foreword, the author elects to capitalize “Tribal Nation,” “Tribe,” “Indigenous,” and other references to Indigenous Peoples. See Angelique EagleWoman, *The Capitalization of “Tribal Nations” and the Decolonization of Citation, Nomenclature, and Terminology in the United States*, 49 MITCHELL HAMLIN L. REV. 623, 627 (2023) (“Capitalization signals dignity and importance in the English language . . . Tribal Nations are nationalities and, therefore, should be capitalized.”); see also GREGORY YOUNGING, *ELEMENTS OF INDIGENOUS STYLE: A GUIDE FOR WRITING BY AND ABOUT INDIGENOUS PEOPLES* 77 (2018) (explaining that “Indigenous style uses capitals where conventional style does not” because “[i]t is a deliberate decision that redresses mainstream society’s history of regarding Indigenous Peoples as having no legitimate national identities; governmental, social, spiritual, or religious institutions; or collective rights”).

5. See, e.g., Indian Removal Act, Act of May 28, 1830, ch. 148, 4 Stat. 411 (1830); General Allotment Act of 1887 (Dawes Act), ch. 119, 24 Stat. 388 (codified as amended at 25 U.S.C. §§ 331–358 (2012)).

issues that impact us all. Jason Anthony Robison's *Equity Along the Yellowstone*, examines the history of the Yellowstone River Compact, applying principles of equity that bring to bear the issues associated with the Compact's marginalization of the four Tribal Nations within the Yellowstone River Basin—the Crow, Eastern Shoshone, Northern Arapaho, and Northern Cheyenne.⁶ Dozens of Tribal Nations have ancestral ties to the area now known as Yellowstone,⁷ yet the four Tribal Nations in the basin were expressly excluded from the Compact; a profound misstep that Robison argues must be reexamined to safeguard basin Tribes' water rights.⁸

Robison's article is, in many ways, an ode to the indomitable spirit and legacy of Charles Wilkinson, particularly his devotion to the preservation of natural resources and the furtherance of the rights of Tribal Nations. In particular, it quotes Wilkinson's poetic advocacy for an ethic of place: "We need an ethic of place An ethic of place respects equally the people of a region and the land, animals, vegetation, water, and air."⁹ This beautiful idea has also inspired the title and theme for this Foreword because I find it to be an interconnecting theme for the articles and notes found herein. Each piece reflects upon historical and modern environmental and land use problems, while contributing important ideas on how to shape and refine an improved ethic and approach towards people and places.

Professor Nadine Padilla's article, *Abandoned Mines, Abandoned Treaties: The Federal Government's Failure to Remediate Abandoned Uranium Mines on the Navajo Nation*, brings necessary focus to the legacy of uranium mining on the Navajo reservation that traces back to the Nuclear Age. When World War II and the Cold War increased demand for uranium mining, the federal government partnered with private corporations to target Tribal lands for mining, particularly the Navajo Nation's reservation.¹⁰ With reckless abandon for the immediate harm to Navajo mine workers and long-term harm to

6. Jason Anthony Robison, *Equity Along the Yellowstone*, 96 U. COLO. L. REV. 599, 608–09, 647–53 (2025).

7. *Id.* at 605–06; Kekek Jason Stark et al., *Re-Indigenizing Yellowstone*, 22 WYO. L. REV. 397, 403–11 (2022) (discussing Native connections to Yellowstone).

8. Robison, *supra* note 6, at 606, 670–71.

9. CHARLES F. WILKINSON, *THE EAGLE BIRD: MAPPING A NEW WEST* 137–38 (1992).

10. Nadine Padilla, *Abandoned Mines, Abandoned Treaties: The Federal Government's Failure to Remediate Abandoned Uranium Mines within the Navajo Nation*, 96 U. COLO. L. REV. 673, 675–76 (2025).

Tribal members' health and the environment, mining companies descended upon the reservation for decades until they ultimately abandoned the mines and the associated radioactive waste.¹¹ Now, as Padilla's article explains, the federal government must atone for this longstanding exploitation of the land and the exploitation of the people.

In *Great Salt Lake and the Future of Environmental Law*, Brigham Daniels, Elisabeth Parker, Karrigan Börk, Andrew Follett and Danny Dudley bring vigorous urgency to the rapid disappearance of Great Salt Lake. The devastating shrinking of this "keystone ecosystem of hemispheric importance,"¹² is part of the astronomical pattern of existential threats posed by our rapidly changing climate. By examining the conditions of the Great Salt Lake, the authors argue for coordinated legal strategies at different levels of governance to effectively address not only the situation of the Great Salt Lake, but also some of the most pressing environmental issues of our time. Again, collaboration and a recognition for the interrelated nature of ecosystems and human outcomes must be part of charting the course forward.

Sarah Mische's note, *The Cost of PFAS Clean Up in Waterways: Who Pays and How?*, also examines a pressing issue when it comes to the protection and remediation of America's waterways: addressing the mass contamination of waterways with per- and polyfluoroalkyl substances (PFAS). Another story of mass pollution by private corporations, left largely unchecked by inadequate federal action, has compounded into significant environmental pollution and threats to human health, as most of the population of the United States has been exposed to PFAS.¹³ Mische provides an overview of the regulatory challenges facing the federal government and argues that the responsible private companies should shoulder the costs associated with remediation. Additionally, the note offers further solutions for effective use of EPA authority that could lend to better prevention of mass contamination in the future.

Hannah Corcoran's note, *Forget It, Florida. It's Chinatown: The Return of Immigrant Land Laws in America*, draws the link

11. *Id.* at 676.

12. Brigham Daniels et al., *Great Salt Lake and the Future of Environmental Law*, 96 U. COLO. L. REV. 741, 744 (2025).

13. Sarah Mische, *The Cost of PFAS Clean Up in Waterways: Who Pays and How?*, 96 U. COLO. L. REV. 901, 905 (2025).

between anti-Asian “Alien Land Laws,” and mounting concerns of xenophobia and infringements upon basic civil liberties.¹⁴ While these laws restrict certain immigrant populations from owning land purportedly for the sake of national security, the note points out the more likely outcomes of enhanced racism and discrimination against immigrants. In a deeply polarized political and social climate, this type of consideration for the equitable protection of civil liberties is paramount.

The ebb and flow of justice—and the frequent pang of injustice—is not only experienced by Tribal Nations and marginalized communities. Our population as a whole has often been failed by insufficient environmental protections at critical moments in time. In the majority of these pieces, there is a reflection on the past and a call for remediation of deep harm that has spanned decades and continues to this day.

The multi-layered solutions offered by this Issue’s authors demonstrate how complex and multifaceted the issues are; but each offer, in so many words, a call to action. These proposals mean that all is not lost and that there is much work that can and should be done. There is a role for federal, state, and Tribal governments; for private corporations who have been historical mass polluters; and for individual people and elements of nature who often bear the brunt of the harm done. After all, humankind and our surrounding environment share a collective future.

14. Hannah Corcoran, *Forget It, Florida. It's Chinatown: The Return of Immigrant Land Laws in America*, 96 U. COLO. L. REV. 807, 811–12.