FOREWORD

This issue of the *University of Colorado Law Review*, the second of Volume 80, addresses myriad topics—some of particular interest to those in the Mountain West and others of importance to readers on a global scale. Whatever their geographic reach, the legal scholarship ably demonstrated by these articles is, without question, a testament to the passion with which each author has addressed his or her subject. And so it is with particular pride that I present you with the following:

In *Accredited Indians: Increasing the Flow of Private Equity into Indian Country as a Domestic Emerging Market*, Gavin Clarkson examines the estimated $44 billion private equity deficit plaguing one domestic emerging market—Indian Country. The genesis of this shortfall can be traced to existing securities laws that fail to designate tribes as "accredited investors." Consequently, tribes that might otherwise invest in private-equity funds designed to assist Indian-run businesses are unable to participate in the private-equity market. Professor Clarkson argues that there is no principled reason to exclude tribes from the list of accredited investors and makes the case for extending accredited investor status to tribes.

States often play a central role in perpetrating genocide and other atrocities, yet the international community has been reluctant to entertain suits against states, reasoning that holding states responsible for mass atrocity will renew conflict and prevent peace. Saira Mohamed, author of *A Neglected Option: The Contributions of State Responsibility for Genocide to Transitional Justice*, challenges the notion that state responsibility for genocide is incompatible with transitional justice. Establishing state responsibility, she argues, contributes to improved accountability and truth-telling by holding the state institutions that urged, organized, and facilitated the crimes committed by individuals responsible.

In his article, *Not a Failed Experiment:* Wilson-Saucier *Sequencing and the Articulation of Constitutional Rights*, Paul W. Hughes sets forth the results of his empirical study of *Wilson-Saucier* sequencing's effect on constitutional articulation in cases where government officials claim qualified immunity. Developed by the U.S. Supreme Court to ensure that constitutional and statutory rights are fully expressed and refined,

Wilson-Saucier sequencing has earned its share of critics, including Justice Stephen Breyer, who famously questioned whether the doctrine in fact achieves this goal. Hughes concludes that mandatory sequencing promotes articulation of constitutional rights by the lower courts, thus enhancing predictability and benefiting future plaintiffs and defendants.

Increasingly, states have demonstrated a willingness to abandon the strict against-the-drafter doctrine historically applied to contract interpretation. In his article, *Flipping the Script:* Contra Proferentem *and Standard Form Contracts*, David Horton identifies the flawed rationale behind this doctrinal shift, ultimately urging a return to the against-the-drafter paradigm where the contract at issue is a standard form. For Horton, the against-the-drafter doctrine is of particular importance for mass-produced forms because it encourages uniformity of meaning and prevents large corporations from unfairly implementing strategic ambiguity even as they reap the cost- and efficiency-benefits of standardization.

In this issue's first student comment, *The Changing Scope of the United States' Trust Duties to American Indian Tribes:* Navajo Nation v. United States, Kimberly C. Perdue examines the Navajo Nation's claim that the United States breached its trust duties of care, candor, and loyalty by intervening—to the Navajo's detriment—in the negotiation of a mining lease between the Navajo and Peabody Coal. Perdue analyzes the previous iterations of *Navajo Nation v. United States* in the context of the Federal-Tribal trust doctrine and concludes that the Supreme Court's current approach to the trust doctrine is inconsistent with controlling precedent and inimical to tribal sovereignty and self-determination.

In his comment, *The Rocky Path from Section 601 of the IIRIRA to Issue-Specific Asylum Legislation Protecting the Parents of FGM-Vulnerable Children*, Andy Rottman argues that Congress should draft issue-specific legislation granting asylum to parents of children who are at risk of female genital mutilation. Previously, Congress adopted section 601, which protected individuals who resisted China's coercive population control measures in exactly this way. According to Rottman, Congress has avoided drafting similar legislation since that time due to the political fall out caused by the ambiguity of the population-control legislation as well as a renewed focus on national security following the 9/11 terrorist attacks. Rottman concludes by proposing a model statute that provides issue-

specific protection for the parents and that addresses and avoids the problems so considered.

The final student comment here published is *Why Waste Water? A Bifurcated Proposal for Managing, Utilizing, and Profiting from Coalbed Methane Discharged Water*. In it, Samuel S. Bacon proposes a system for collecting the subsurface water captured by Coalbed Methane companies and selling it on the open market. Considering the Powder River Basin in Wyoming as a case study, Bacon advocates applying the framework already established under the Clean Water Act to distinguish between poor- and high-quality water, with an emphasis on creating a comprehensive regional system to maximize the utility and profitability of the high-quality water.

BRENT JORDHEIM
Editor-in-Chief