

**Climate Change Localism:**  
***Creating a Platform for International Non-State Political Agreements***  
Ashley Gjovik | International Law | Paper 1

Global climate change is a large, complex issue that requires the support of all levels of the government, non-governmental groups, companies, and private individuals. International climate treaties should allow a formal political commitment from these actors with an integrated framework for reporting on climate goals.

**I. Climate Change requires a bottom-up and multi-tiered response.**

The model for climate agreements has already shifted to a bottom-up “pledge and review” framework, with states determining their own commitments.<sup>1</sup> The *Paris Agreement* also encouraged anyone to register their commitment in the “Non-State Actor Zone for Climate Action” (NAZCA).<sup>2</sup> The NAZCA portal currently monitors the progress of 18,465 non-state actors: 10,693 cities, 243 regions, 4,302 companies, 1,144 investors, and 1,983 organizations.<sup>3</sup>

Even with strong national leadership, states still require engagement and support from below to meet their climate goals. This is even more critical when there is weak or even adversarial national climate leadership. Even before the Trump administration, the U.S. federal government struggled to keep up with its peers. The federal response to reduce greenhouse gases was rated as “critically insufficient.”<sup>4</sup> The U.S. Senate has failed to pass meaningful domestic

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<sup>1</sup> Daniel C. Esty & Dena P. Adler, *Changing International Law for a Changing Climate*, 112 AJIL UNBOUND 279–284 (2018).

<sup>2</sup> *Id.*

<sup>3</sup> UNFCCC, Global Climate Action, NAZCA, <https://climateaction.unfccc.int> [accessed 1/20/2021]

<sup>4</sup> Ann Carlson, *The Trump Administration's Assault on California's Global Climate Leadership*, 112 AJIL UNBOUND 269–273 (2018).

**Climate Change Localism:  
*Creating a Platform for International Non-State Political Agreements***

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climate change legislation following the *Clean Air Act* in 1963.<sup>5</sup> This has made the role of sub-national governments and private actors even more critical in the United States.

**II. Subregions and non-state actors have tools available to strategically combat climate change.**

Climate change issues often require on-the-ground delivery of solutions.<sup>6</sup> Thus, in addition to national leadership, local implementation and industry support is critical. Governors, mayors, premiers, NGOs, CEOs, and philanthropists play a key role in delivering climate change solutions.<sup>7</sup> Sub-national governments can drive greenhouse gas reduction and other climate goals through building codes, zoning rules, energy standards, land use, and public transportation projects.<sup>8</sup> Companies can make business decisions that directly impact greenhouse gas emissions.<sup>9</sup>

Non-state actors can also stimulate normative change and shape public perceptions about climate issues.<sup>10</sup> The potential impact of this local power was evident in the U.S. during the Donald Trump presidency, where efforts of non-state actors effectuated positive change despite the chasm in federal climate leadership.

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<sup>5</sup> Jean Galbraith, *Two Faces of Foreign Affairs Federalism and What They Mean for Climate Change Mitigation*, 112 AJIL UNBOUND 274–278 (2018).

<sup>6</sup> Esty & Adler, *supra*.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Cinnamon P. Carlarne, *On Localism and the Persistent Power of the State*, 112 AJIL UNBOUND 285–289 (2018).

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**III. Neither International Law nor the U.S. Constitution bar non-binding international agreements with sub-national governments or private actors.**

Nothing in international law expressly prohibits international agreements between sub-national entities.<sup>11</sup> While the traditional Westphalian model only recognizes states as actors with legal personalities, today international law has evolved into a “hybrid body of international and domestic law developed by a large number of public and private transnational actors.”<sup>12</sup>

There may still be domestic law constraints. ARTICLE I, SECTION 10 of the U.S. CONSTITUTION contains two Clauses which can restrict international climate change agreements.<sup>13</sup> The U.S. Department of State has interpreted these restrictions to only apply to legally binding agreements.<sup>14</sup> Thus, agreements that are simply politically binding should not offend the Constitution.

The U.S. Supreme Court ruled that the power over “external affairs” is vested exclusively in the federal government.<sup>15</sup> However, non-binding international climate agreements are likely to pass preemption analysis unless they intrude upon the federal government’s foreign affairs power and their “real purpose” is a matter of foreign affairs rather than an area of traditional state responsibility.<sup>16</sup> <sup>17</sup> For example, in July 2020, a federal judge upheld California Governor Gavin Newsom and Quebec Premier François Legault’s nonbinding 2013 compact coordinating a cap-and-trade program.<sup>18</sup>

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<sup>11</sup> Esty & Adler, *supra*.

<sup>12</sup> Sharmila L. Murthy, *States and cities as “norm sustainers”: a role for subnational actors in the Paris Agreement on Climate Change*, 37 Va. Envtl. L.J. 1 (2019)

<sup>13</sup> U.S. Congressional Research Service, *Constitutional Limits on States’ Efforts to “Uphold” the Paris Agreement*, Legal Sidebar (2017); U.S. CONST. art. 1, § 10, cl. 1.; U.S. Const. art. 1, § 10, cl. 3

<sup>14</sup> U.S. Congressional Research Service, *supra*.

<sup>15</sup> *United States v Pink*, 315 U.S. 203 (1942)

<sup>16</sup> U.S. Congressional Research Service, *supra*

<sup>17</sup> *United States v State of California*, No. 2:19-cv-02142 WBS EFB (E.D. Cal. July 17, 2020)

<sup>18</sup> *Id.*

**Climate Change Localism:  
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**IV. The U.S. already has successful leadership and partnerships at a local level.**

Supreme Court Justice Louis Brandeis famously wrote that U.S. states can act as laboratories of novel social and economic experiments.<sup>19</sup> Of all U.S. states, California is the strongest leader on climate change response experiments. California has special authority under the federal *Clean Air Act* to regulate tailpipe emissions more stringently than the federal government.<sup>20</sup> California also initiated the invention of the catalytic converter, leading to global adoption, reduced exhaust emissions, and widespread unleaded gasoline usage – all making a significant impact on the environment and human health.<sup>21</sup> Further, California sent a significant delegation to the *Paris Agreement* negotiations, led global climate conventions, and entered into numerous international commitments with other countries and sub-national governments.<sup>22 23 24</sup>

California is not the only local leader. 2,700 mayors, governors, business executives, university presidents, tribal chiefs, and faith leaders signed the “*We Are Still In*” coalition, pledging to continue to uphold the *Paris Agreement* after President Trump withdrew the United States.<sup>25</sup> Not to mention the *C40 Cities Climate Leadership Group* (97 global mayors), *We Mean Business* (1,499 global businesses), and many other local and non-state climate coalitions.<sup>26 27</sup>

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<sup>19</sup> *New State Ice Co. v Liebmann*, 285 U.S. 262 (1932)

<sup>20</sup> Carlson, *supra*.

<sup>21</sup> *Id.*

<sup>22</sup> Galbraith, *supra*.

<sup>23</sup> Esty & Adler, *supra*.

<sup>24</sup> James Salzman, *Introduction to the Symposium on Climate Change Localism*, 112 AJIL UNBOUND 266–268 (2018).

<sup>25</sup> Esty & Adler, *supra*.

<sup>26</sup> *Id.*

<sup>27</sup> C40 Cities, <https://www.c40.org/cities> [accessed 1/20/2021]

**Climate Change Localism:  
*Creating a Platform for International Non-State Political Agreements***

Ashley Gjovik | International Law | Paper 1

**V. Non-state international political commitments can be integrated with state international legal agreements.**

The *Paris Agreement's* NAZCA portal was a good start, however there are better methods to document non-state commitments. For example, the *Paris Agreement* could be amended to include sub-national governments and other non-state actors who wish to make a political commitment to the goals of the treaty. Or similarly, it could be amended to reference existing agreements from non-state coalitions. Another option would be to build off of the existing NAZCA portal and offer a new registration category that includes a formal commitment, including status reporting and other transparency expectations.<sup>28</sup>

**VI. Conclusion**

In conclusion, there are very few restrictions or concerns related to providing sub-national governments, NGOs, companies, and other private actors a more formal political platform in international climate agreements. Non-state agents and local governments have unique tools and localized strategies that are already of great benefit in the fight against climate change. In the U.S., there is no reason to prevent them from entering into politically binding international commitments as long as the agreements do not violate the Constitution or intrude into formal federal foreign policy.

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<sup>28</sup> Murthy, *supra*.