

# **Tribes can serve as laboratories in fight against climate change**

November 20 2014, by Mike Krings

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Supreme Court Justice Louis Brandeis wrote that states had the opportunity to serve as laboratories, testing new ideas and policies in the American federalist system. A University of Kansas law professor has authored a study arguing that American Tribal Governments are in a unique position to serve as laboratories for the fight against climate change and innovation in environmental law, especially given the federal government's lack of action on the matter.

Elizabeth Kronk Warner, associate professor of law and director of the Tribal Law & Government Center at KU, has authored a study examining how 74 tribes in the United States are taking the lead in forming laws and measures to fight and adapt to climate change and lead in environmental law. The tribes are embodying Brandeis' idea at a critical time and could have lessons to teach the rest of the country.

"That's how we have viewed states from a legal view, as laboratories for new ideas, but why can't we view tribes the same way, especially in terms of environmental law where the federal government has really stalled out?" Kronk Warner said. "I thought it would be interesting to look and see what we can learn from tribes and how it can be applied to states."

In previous research Kronk Warner studied tribal codes to learn how they addressed climate change. For this study, which will be published in the Arizona State Law Journal, she analyzed tribal court decisions, regulations, customary laws, vision statements, tribal constitutions and

other tribal legal documents. Many tribes, such as the Nez Perce in Idaho, Confederated Salish and Kootenai of Montana and others are already taking innovative legal actions to fight climate change and develop innovative environmental law.

Many tribes have adopted or are now forming climate change adaptation plans. The plans, which spell out how the tribes will form laws to adapt to the realities of a changing climate, are notable because environmental law largely takes a mitigation stance. While a good idea in spirit, mitigation laws, which aim to stop carbon emissions and prevent further damage from climate change, are incredibly difficult to pass politically, and in many cases it may already be too late to prevent all forms of damage, Kronk Warner said.

The tribal plans also largely consider culture as part of the legal landscape. Maintaining cultural heritage is vitally important to many tribes and is reflected in one plan that calls for preserving certain plants through means such as greenhouses and similar means, for example. State and federal law could stand to gain from considering American culture as more of a factor in the formation of laws, Kronk Warner said. Her research also found that tribal governments are keenly aware of the knowledge their ancestors have of the land on which they live.

"I think that especially could be a valuable lesson for states and the federal government," Kronk Warner said. "Environmental knowledge is intensely regional. Having people share what they've learned in 100 years or more of living in an area can teach many lessons."

Tribal governments are in a unique position to experiment with environmental law because they often are not bound by the same restrictions and regulations state and federal lawmakers are. That freedom to act not only allows tribes to be creative, it allows them to act more quickly.

"In theory, you could argue that they have more authority than states. They are sovereign entities, and they did exist before the formation of the federal government," Kronk Warner said. "Tribes can also embrace the idea 'we don't need the [federal government](#) to be productive. We can do a lot on our own.'"

There are numerous examples throughout U.S. history of states experimenting, both successfully and unsuccessfully, with legal ideas. Slavery, legal drinking ages, speed limits, same-sex marriage, abortion and taxing philosophies all fit the mold.

Some of the tactics tribes are experimenting with have already started to show up in state and local governments. Cities such as Seattle and Miami, which face serious threats of salt water infiltrating fresh city water, have begun to enact climate change adaptation plans.

In future research, Kronk Warner plans to study how and whether tribes can use treaty rights to address [climate change](#) threats and how tribes enforce their environmental laws.

"I think it's great and very empowering," Kronk Warner said of tribes experimenting with environmental law. "It's largely what the United States was intended to be, a group of states that can experiment with laws and ideas and the best ones are adopted. We've gotten away from the idea of states taking the lead. But this is a chance for tribes, states and local governments to seize the lead on [environmental law](#)."

Provided by University of Kansas

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