
SIGNING, NEGOTIATING, OPTING OUT, AND STARTING OVER: A NEW APPROACH TO APPROVAL OF HUMAN RIGHTS TREATIES

Lisa Baldez¹

A COMMENTARY ON A. L. COMSTOCK (2021), *Committed to Rights: UN Human Rights Treaties and Legal Paths for Commitment and Compliance*. Cambridge: Cambridge University Press.

ABSTRACT

While much of the research on human rights treaties focuses on ratification, countries can also commit to treaties through signature, accession, and succession. Audrey L. Comstock identifies these four types of approval as distinct “legal commitment paths.” In her forthcoming book, *Committed to Rights*, Comstock derives thoughtful hypotheses about the ways that each of these options shapes a country’s performance on human rights and subjects them to qualitative and quantitative tests. In this essay, I review each of these paths in turn, evaluating the claims that Comstock makes and illustrating her logic in light of an analogy between approval of human rights treaties and the process of drafting diversity statements in the context of the Black Lives Matter movement.

Introduction

IN THE WAKE of the murders by police shooting of Ahmaud Arbery, Breonna Taylor, and George Floyd, thousands of organizations around the country responded by issuing statements affirming their commitment to diversity, anti-Black racism and the Black Lives Matter movement. These statements drew a lot of criticism for being

¹ Dartmouth College. Email: Lisa.Baldez@Dartmouth.edu

insufficient (Ross 2020), insincere (Bensinger 2020), absurd (Rao 2020), appearing years after they should have (NFL Players Black Lives Matter video 2020) and meaningless in the absence of commitment to real change. Activist Esther A. Armah (2020) powerfully warned against “statementism,” which she defined as “the act of crafting, researching, devising, perfecting and delivering a public statement by an institution or corporation on your commitment to do better on issues of systemic discrimination and inequity as a replacement for action, investment in organizational reform on issues of race, systemic racism and structural inequity.”

My colleagues in the Department of Government at Dartmouth College and I were keenly aware of these issues as we started the process of writing a statement of our own. Our primary goal was to make concrete commitments that we could and would actually carry out. What surprised me, however, was the degree to which the process of drafting itself created consensus and resolve among us. Writing “A Vow to Act” (Dartmouth College 2020) involved several weeks of meetings, lengthy discussions, and multiple rounds of revisions. The process itself generated collective commitment to a shared set of goals. When we finally voted to approve the document, it passed easily because almost everyone was already bought in.

At one point during our deliberations, I quipped that the drafting process gave me a newfound appreciation for the United Nations. But, joking aside, as someone who studies international law, I saw clear parallels between diversity statements and human rights treaties. Skeptics view UN treaties as hollow rhetorical promises that divert energy and resources away from real change. My own department’s experiences challenged this view by illustrating the importance of the process of negotiating and approving such a statement. Activists are not wrong to demand action but the process itself felt like a necessary precursor to concrete change.

These less visible aspects of agreement are the focus of Audrey L. Comstock’s forthcoming book, *Committed to Rights: UN Human Rights Treaties and the Legal Paths for Commitment and Compliance*. Comstock argues that “treaty commitment [is] more complex and nuanced than a simple coding of whether or not states ratified treaties.” Countries can also commit through signature, accession, and succession, in addition to ratification. She identifies these four types of

approval as distinct “legal commitment paths” and derives thoughtful hypotheses about the ways that each of them shapes a country’s performance on human rights. She then presents qualitative and quantitative evidence to evaluate the impact of each of them on the nine core human rights treaties overseen by the UN Office of the High Commissioner for Human Rights. Her analysis draws attention to important aspects of treaty law that had been overlooked and opens up new avenues for research.

In this essay I review each of these paths in turn, evaluating the claims she makes and illustrating her logic in light of the analogy between human rights treaties and the process of drafting diversity statements written by many organizations in the context of the Black Lives Matter movement during the spring of 2020.

Signature, Accession, and Succession

Signature is a non-binding action that signals intent to ratify a treaty but does not require any subsequent action. While the “non-binding” aspect of signature has led many to presume its political insignificance, Comstock leverages research on the power of informal norms to argue that signing a treaty sets in motion efforts aimed at pressuring states to improve their practices. As she puts it, “NGOs, other states, and the UN do not wait for binding ratification to begin pressuring, shaming and socializing a signatory state toward compliance” (38). Moreover, she maintains, we should expect signature to have stronger valence in countries where treaties require legislative approval. In those cases, signing a treaty allows an executive to signal intent without having to court legislative support; shifts in human rights practices will occur once “the head of state is on board.”

I was initially skeptical that signature had any independent effect but these arguments resonated with me on the basis of my department’s experiences. The decision about whether to write a diversity statement in the first place was not trivial. In the past we have tended to avoid political issues in the hopes of being as inclusive of diverse points of view as possible. Our decision to move forward, prior to articulating any substantive claims, felt momentous in and of itself.

Overall, the evidence that Comstock provides is suggestive but not persuasive. She evaluates the argument that signature matters in case studies of Nigeria, the United States, and Canada. She claims, for

example, that Nigeria's signature of the Convention of the Rights of Persons with Disabilities spurred the creation of new organizations that raised awareness of disability rights and prompted the legislature to pass a bill implementing the provisions of the treaty. In the United States, she links President Johnson's signature of the Convention on the Elimination of Racial Discrimination in 1966 with the passage of civil rights legislation. In each of these cases, it is difficult to discern the precise causal impact of a treaty from the factors that led to the adoption of the treaty in the first place, or to distinguish it from other factors such as the civil rights movement in the case of the U.S. One path for future research might be to compare NGO activity before and after signature. What kinds of behaviors should we expect to see before and after?

In a quantitative analysis that compares signature to ratification, she finds evidence that merely signing a treaty leads to improved human rights practices. Countries that require both executive and legislative approval for treaty ratification improve rights *earlier* than other states. In the book it is not clear exactly how the signature variable is measured or whether the years that a country has signed but not ratified are distinct from the years that a country has signed *and* ratified. I also wonder whether the time that elapses between signature and ratification matters. Comstock invites other scholars to replicate existing studies of the impact of ratification on domestic policy change with the addition of the signature variable but I would find her results more persuasive had she done that work here.

Next, Comstock turns her attention to *accession*, the term given to states that commit to a treaty that was negotiated and signed by other states. According to the United Nations Treaty Collection Glossary (n.d.), "accession usually occurs after the treaty has entered into force."² States enter a treaty by accession either because they opted out of the negotiation process or they did not exist at the time the treaty was being negotiated. In a de facto sense, ratification refers to approval by states that negotiated a treaty, a point of which I was not aware before reading this book.

² Entry into force is the formal legal term stipulating when a treaty takes effect; this is either a specific date or, in the case of human rights treaties, ratification by a certain number of countries.

Comstock squeezes a surprising and compelling amount of analytical juice out of this legal distinction. States that participate in the process of drafting a treaty ought to be more likely to adhere to it, because the negotiating process socializes them to human rights norms and allows them to build their preferences into the treaty text. She finds that the human rights score for states that helped to draft the International Convention on Civil and Political Rights was above the mean for all states but the score for those that opted out or became independent later did not differ from the mean. She also sheds light on the nuts and bolts of the negotiating process by examining the degree to which a country voted for “winning” proposals during the myriad negotiations of treaty drafts; this analysis shows a positive correlation between level of voting alignment and human rights practices.

The analogy between treaties and diversity statements applies to accession as well and highlights the value of being involved in the drafting process. One of the issues on which my department deliberated concerned whether to sign on to statements written by our colleagues in other departments. We chose not to because we did not participate in writing them and we disagreed with some of the claims they made, further testament to Comstock’s claims about the value of the drafting process in and of itself.

Joining treaties through *succession*, the third category that Comstock explores, applies to new states that form through gaining independence from colonial powers or through the dissolution of existing states. Succession—not to be confused with secession—refers to the choice of whether the new country will abide by international agreements made by the “parent” country. As she asks, “when new states emerge, what happens to old legal obligations?” (198).

Illustrating the relevance of succession to my department’s deliberations about a diversity statement perhaps stretches this analogy too far, but humor me. Let’s say my department approved a statement but then, later on, some other issue (say a dispute over hiring) prompted a faction of the faculty to split from the department and create a new one. This is a purely hypothetical example and one that my department does not face at the moment but the question this scenario raises is this: would that new department choose to be bound by the diversity statement of the original department or not?

The main reason that a country would choose to succeed to a treaty is to gain recognition by other states and the international community. Comstock views succession as a sort of “signal booster” that new states can employ to increase the legitimacy of their claims for international recognition. The qualitative discussion of how specific countries made decisions about succession is fascinating and far more persuasive than the quantitative analysis of the impact of succession versus ratification, largely because there are so few cases. I would like to have seen a more extensive discussion of the nature of the decisions by the fourteen countries that entered treaties by succession. How many of them did so for all of the treaties that their parent country had ratified? Were there treaties that they could have committed to but chose not to?

One might think that succession is an anachronistic category that applies only to a handful of cases in the past but Comstock identifies seventeen non-self-governing territories that have not yet been decolonized as potential cases where succession might be an issue in the future. Scotland and Catalunya could join this pool if secessionist movements were to succeed there. This analysis should clarify some of the stakes involved should that occur.

Conclusion

Committed to Rights highlights nuances in the process by which human rights treaties are approved. Comstock provides some suggestive, although not always persuasive, evidence that different paths to approval influence human rights outcomes in particular ways. Thinking about my own department’s actions in terms of the four categories she identifies illustrates the power of her claims. First, whether to respond as a department, like the decision to sign a treaty, was not trivial. By making a decision to draft a response, we were pre-committing ourselves to a promise of future action. That decision, it turns out, launched a process that had an impact on our behavior. Second, our deliberations over the statement underscore Comstock’s point that ratification is effective as a result of countries’ participation in the process of negotiating a treaty because it socializes them about rights and allows them to influence the text.

Nonetheless, there are reasons to be skeptical of rhetorical commitments, regardless of how they are achieved. *Committed to Rights* shines light on the ways in which decisions made on the front

end of treaty ratification shape a country's human rights record. This differentiates it from existing research that examines what happens after ratification. My own work on U.S. efforts to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (Baldez 2014) argues that the mechanism by which human rights treaties impact human rights practices lies in the periodic reporting process that commences upon ratification. As #BLM activists demand that universities, corporations, and organizations of all kinds commit to concrete action, so does ratification obligate countries to take action and to commit to an ongoing process of ensuring accountability. In the case of my department, our decision to write a statement and the weeks we spent drafting it will mean nothing if we fail to take actions to implement those provisions. For that reason, we sought to incorporate internal and outward-facing mechanisms of accountability. In the case of human rights treaties, the real commitment comes not through declaring an intention to act but through making binding obligations and holding countries accountable to them into the future.

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