

UNIVERSAL RIGHTS, UNEVEN IMPACTS:
THE DOMESTIC POLITICS OF TREATY INCORPORATION

CHAPTER 1: INTRODUCTION

For decades, activists and governments have pressed for the expansion, ratification, and implementation of human rights treaties, working under the presumption that they are universally desired. Yet human rights are violated every day. The conventional wisdom is that governments' failure to comply with treaty standards results from their defiance of limits on their coercive power or from their lack of capacity.

In this book, I argue and demonstrate that even governments that are committed and capable can fail to implement treaty obligations because of domestic opposition. I explore the role of domestic politics by focusing on a crucial stage of the implementation process: the legal incorporation of treaty standards into domestic law. Scholars and international organizations often single out incorporation as an essential condition for compliance—in fact, many human rights treaties explicitly demand that member states incorporate treaty standards into domestic laws. However, the existing literature has failed to study systematically if and how incorporation occurs.

Have all treaty members changed their laws to incorporate treaty standards? If not, what explains this variation? I argue that the incorporation of human rights treaties can have both distributive and moral effects that conflict with the interests of influential domestic groups. These opposing effects pit civil society organizations against each other as they work to influence implementation efforts. The central tenet of this book is that, all else being equal, when groups that oppose treaty incorporation are strong, they can successfully delay or block the incorporation of human rights treaties.

In addition to summarizing my argument, in this chapter I define key concepts and discuss scope conditions. I also explain the leverage obtained by focusing empirically on treaties protecting children and provide a roadmap for the book.

CHAPTER 2: EXPLAINING TREATY COMMITMENT

Why do states negotiate and ratify human rights treaties? This chapter draws on previous literature to explain state commitment to human rights treaties. I use two data sources to explore how existing research applies to children's rights. First, I revisit the *travaux préparatoires* to understand the negotiation of treaties against child labor and child marriage, including the Convention on the Rights of the Child and two conventions from the International Labour Organization. These archives illuminate if and when domestic actors mobilized to influence the negotiation of treaty standards. Second, I use original time-series data on state reservations to analyze the depth of commitment—a necessary step given that most states have ratified treaties protecting children.

CHAPTER 3: THE INCORPORATION GAP

After ratification, states must incorporate treaty standards into domestic law. Besides being explicitly mandated by the treaties, scholars argue that incorporation is a necessary condition for compliance. Have states adopted domestic laws that reflect their international treaty commitments? To date, scholars have not been able to answer this question given the available data.

This chapter uses original data to understand if and how states incorporated treaty standards against child labor and child marriage. The first part of the chapter describes these standards. In the second part of the chapter, I leverage two cross-national, time-series datasets on Latin American legislation to document the existence of an incorporation gap. I collected original data that not only identifies whether a law was passed or not in a given year but also codes the content of the law, including loopholes that allow individuals to bypass the international standards legally. Although a cursory look suggests states have incorporated treaty obligations into domestic law, once loopholes are included it is evident that many states have not adopted the laws needed to comply with treaty obligations.

CHAPTER 4: A THEORY OF DOMESTIC CONTESTATION TO INTERNATIONAL HUMAN RIGHTS NORMS

In this chapter, I argue that the uneven impact that incorporation has on civil society explains the observed incorporation gap. While treaty incorporation benefits some civil society groups, it also harms the interests of others.

Sometimes, human rights treaties have economic costs and affect citizens' material well-being. For example, child workers in Bolivia argue that the incorporation of treaties against child labor takes away much-needed income or forces them to work clandestinely in exploitative conditions. These distributive effects incentivize working children to mobilize against the incorporation of the child labor standards promoted by the international community.

In other cases, treaties impinge on citizens' moral values. Groups that oppose treaties against child marriage argue that these treaties restrict children's right to self-determination, pushing girls into informal unions where they have no legal protection.

I argue that human rights treaties exacerbate social conflict over distribution and morality by mobilizing activists against the incorporation of human rights standards into national legislation. When governments face domestic pressure against incorporation, they are more likely to violate treaty commitments. The rest of the chapter discusses which groups oppose child labor and child marriage treaties by incorporating qualitative evidence from my extended fieldwork in Latin America.

CHAPTER 5: THE INCORPORATION OF CHILD MARRIAGE PROHIBITIONS

This chapter makes use of the dataset on laws against child marriage to explore how competing moral values affect interest group support for treaty incorporation. The analysis focuses on two key constituencies that mobilize to shape child marriage policy: conservative religious groups and advocacy groups serving girls and women. Following the theory laid out in Chapter 4, I explain that women's advocacy groups support the incorporation of

prohibitions against child marriage because early marriage negatively affects a host of other goals these organizations care about, particularly those related to girls' health and education. At the same time, conservative and religious groups oppose treaty incorporation, especially when marriage laws are tied to girls' ability to get pregnant.

I consider loopholes that allow girls to marry with parental consent or government authorization. These loopholes dilute the effect that laws may have in reducing child marriage. I find that the strength of religious groups has an inverse relationship with the age of marriage for girls. In contrast, the strength of the women's activist network—measured as the number of organizations serving girls and women in the country—is positively related to the minimum legal age to marry, suggesting that the strength of pro-incorporation groups increases incorporation. As my theory expects, I also show that the effect of pro-incorporation groups is moderated by the strength of rival anti-incorporation groups. These results suggest that the interaction of rival interest groups matters for incorporation.

CHAPTER 6: THE INCORPORATION OF CHILD LABOR PROHIBITIONS

Drawing on insights from the distributive politics literature and economics, in this chapter I identify the domestic interest groups that support or oppose the incorporation of treaties against child labor. Besides international organizations and non-governmental organizations, adult labor unions support the incorporation of international standards against child labor because they restrict the supply of workers and drive wages up.

Given that no reliable data exists on labor union density for developing countries, I proxy for the relative strength of adult labor groups by using a measure of potential labor power. I consider several benchmarks that are important in the international law governing the minimum age of employment, such as when children may work in hazardous occupations and the loopholes that allow children to work at a younger age. Leveraging the second original dataset, I show that the strength of labor is associated with stronger domestic standards against child labor.

CHAPTER 7: BUSINESS INTERESTS AND TREATY INCORPORATION: EVIDENCE FROM BRAZIL

In this empirical chapter, I employ sub-national evidence to further demonstrate how distributive politics affect the incorporation of human rights treaties. Specifically, I examine how agricultural business interests influenced voting patterns for a bill that raised the minimum age of employment from fourteen to sixteen years old in Brazil. I explore the relationship between agricultural land use patterns and Brazilian roll call data to find that legislators representing constituencies that grow crops using child labor are less likely to support raising the minimum age of employment, even after considering other political variables, such as party and ideology. In other words, the more a state produces goods relying on child labor, the less likely it is for a legislator of that state to support the incorporation of international standards against child labor. This chapter suggests that legislators are sensitive to the material costs that treaties against child labor have on their constituents.

CHAPTER 8: CONCLUSION

I begin the concluding chapter by summarizing the book's empirical findings. Next, I discuss the generalizability of the theory. Treaties protecting civil, political, and physical integrity rights have attracted most scholarly attention but represent a small subset of all human rights treaties. Because this subset is not representative of the universe of human rights treaties, it obscures important factors impacting compliance, such as the virulence of domestic contestation. The theory developed in this book can be applied to other human rights issues, such as the rights of indigenous and disabled people, where treaty implementation raises costs for interest groups that oppose incorporation.

By emphasizing how domestic contestation affects compliance, my work puts the human rights field in dialogue with the broader international organizations literature, where, for example, scholars in international political economy have demonstrated the distributive effects of international cooperation. I conclude by drawing implications for the study of international organizations and human rights and discussing policy implications, focused in particular on what governments and activists can learn from this book to raise human rights standards around the world.