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The Domestic Incorporation of Human Rights Treaties

A dissertation submitted in partial satisfaction
of the requirements for the degree
Doctor of Philosophy in Political Science

by

Andrea Vilán

2018

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ABSTRACT OF THE DISSERTATION

The Domestic Incorporation of Human Rights Treaties

by

Andrea Vilán

Doctor of Philosophy in Political Science

University of California, Los Angeles, 2018

Professor Leslie Nicole Johns, Chair

After ratifying a human rights treaty, all states are required to incorporate the treaty's standards into domestic law. However, the incorporation of treaty standards varies widely around the world. Why have some states changed their laws to incorporate treaty standards while others have not? I argue that to understand this variation it is necessary to consider how domestic politics affects treaty incorporation. As in other domains of international law, incorporation reflects the strength of rival interest groups in society. I contend that treaty incorporation creates supporters and opponents because human rights treaties can have distributional effects and generate conflict among competing moral values. When groups that oppose incorporation are strong, they can hinder treaty incorporation. I test this argument by examining legislation adopted in Latin America against child labor and child marriage. Making use of two original datasets and over 60 semi-structured interviews with civil society leaders, legislators, and representatives of international organizations in six Latin American countries, I show that groups that oppose human rights treaties can undermine their incorporation. This is important as it suggests a previously unexplored reason for some states' failure to incorporate human rights treaties: governments' response to domestic political pressure. As incorporation is often a first step towards compliance, this dissertation contributes theoretically and empirically to the analysis of the causal mediating steps between treaty ratification and compliance.

The dissertation of Andrea Vilán is approved.

Arthur A. Stein

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Leslie Nicole Johns, Committee Chair

University of California, Los Angeles

2018

Para mi abuela Adelfa

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CHAPTER 1

Introduction

1.1 Motivation

In July 2014, Bolivia adopted a new Child and Adolescent Code. Among different provisions that aimed to protect children, Article 129 prohibited the employment of children under 14. However, the Code also introduced significant loopholes that made it possible for ten-year-olds to work independently and twelve-year-olds to work under contract with an employer.¹ These loopholes do not comply with the international human rights treaties to which Bolivia is a signatory. The committee that supervises the implementation of one of these treaties, for instance, stated that “the derogation from the minimum age for admission to employment under section 129 of the Children’s and Adolescents’ Code is not in conformity with... the Convention” (International Labour Organization CEACR, 2015). In practice, these exceptions enable employers to hire thousands of children. This failure of incorporation exemplifies the puzzle that drives this dissertation: Why do governments ratify international treaties and then fail to fully incorporate the treaty’s standards into their domestic law? As I argue below—and as the Bolivian case shows—to answer this question it is important to consider how interest groups campaign for and against the incorporation of treaty standards.

In the case of Bolivia, perhaps surprisingly, the main opponents to strong prohibitions against child labor were organized groups of child workers themselves. Indeed, a proposal for the Code that had been circulated in December 2013 drew wide condemnation from the

¹Article 129 (II) of the code establishes that these exceptions are only allowed when there is no risk to education rights and when working does not endanger the health or dignity of children. However, skeptics believe these protections are not enough to eradicate child labor. The text of the Children and Adolescent Code may be accessed here: <http://www.silep.gob.bo/silep/masterley/1129059> (last accessed May 20, 2018).

children it was meant to protect. After the Chamber of Deputies approved this proposal, members of the Bolivian Union of Working Children and Adolescents (*Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia*, known as UNATSBO) protested through the streets of La Paz, chanting “Down with the ILO agreements!” and “Long live child labor!” (Pacosillo Mamani, 2015).² Organizations of working children—of which UNATSBO is just one example—argue that minimum ages of employment should not exist. In their view, governments’ efforts should be directed towards raising employment standards instead of eradicating child labor. When the Code proposal was announced, for example, one representative said that “[the proposal] attacks our bases ... We want work to be voluntary and respected” (El Diario, 2013).

UNATSBO’s mobilization was a success because it persuaded legislators to modify the proposed Code. After UNATSBO secured meetings with a number of legislators and President Morales himself, the final version of the Code introduced numerous loopholes that effectively lowered the age at which children can work. Importantly, these exceptions are not contemplated by the international treaties against child labor that Bolivia has ratified. To the international community, they constitute violations of Bolivia’s international commitments. The new Code was criticized in the media—where newspapers ran articles proclaiming that Bolivia had legalized child labor (El Tiempo, 2014)—and the European Parliament allegedly debated placing economic sanctions on Bolivia (Strak, 2015). In this dissertation, I ask: How does domestic political opposition influence the adoption of laws that incorporate treaties? Further, why do the intended beneficiaries of human rights treaties mobilize against laws that incorporate international standards? These questions are important because theories in international relations contend that the alignment of the domestic legal system to international standards is essential for compliance.

²On their way to the city’s main square, the children protesting met with police forces who used tear gas in an attempt to disband them (La Razón 2013b, El Mundo 2013).

1.2 The Domestic Politics of Treaty Incorporation

In the chapters that follow, I offer an explanation that puts domestic politics at the center of the study of compliance. My dissertation builds on a rich literature that links treaty ratification to the improvement of human rights outcomes through the mediating effect of domestic politics (e.g. Hafner-Burton and Tsutsui 2005, Cardenas 2007, Simmons 2009, Sanchez 2009, Dai 2014, Lupu 2015). These theories suggest that, under certain conditions, when treaties are implemented domestically respect for human rights will improve.

I focus on the first stage of the implementation process, which corresponds to the incorporation of specific treaty provisions into domestic legislation. By collecting data on domestic legislation, I identify an incorporation gap by which some states do not align their domestic laws to reflect international human rights standards. I argue that the incorporation gap cannot be explained without considering the intervening effect of domestic politics.

In particular, I highlight the role of interest groups in treaty incorporation. Interest groups can be any type of association, including domestic non-governmental organizations (NGOs), trade unions, business associations or religious groups, that organizes to take concrete actions for policy change. Importantly, some interest groups see incorporation as undesirable and indeed believe that treaties hurt their interests. I contend that groups within society disagree about the value of human rights treaties because these create opposing effects.

The incorporation of international treaties can have both economic and moral consequences that conflict with the interests of influential domestic forces. Sometimes, human rights treaties have economic costs and affect the material well-being of individual citizens. The child workers in Bolivia oppose child labor prohibitions because they work to support themselves and their families, and child labor bans take away this income or force them to work clandestinely in exploitative conditions. Child labor bans can thus have distributional effects and incentivize groups to mobilize against treaty incorporation. In other cases, treaties impinge on the moral values of citizens. Conservative religious groups and women's activists, for example, often find themselves at odds, seeking policy goals that prioritize dif-

ferent values. When individuals feel that treaty incorporation has costs, they have incentives to overcome collective action barriers to influence government decisions that negatively affect them (Olson, 1965).

But interest groups do not operate in a vacuum. In fact, they usually face counter-mobilization efforts by rival groups trying to achieve the opposite policy goal. This pits organizations against each other as they work to achieve opposing policy outcomes. These rival domestic interest groups influence the incorporation of treaties. The central tenet of this dissertation is that all else being equal, when groups that oppose incorporation are strong, they can successfully delay or block the adoption of laws that align a country's legal system with the international treaty standards.

Scholars of international relations argue that the ratification of treaties is the starting point of a long implementation process that can lead to improvements in human rights outcomes. Incorporation matters because it is the central intervening mechanism in achieving compliance. For example, Simmons (2009) argues that treaty ratification can, under certain conditions, encourage compliance by influencing legislative agendas, encouraging litigation in courts, and mobilizing domestic human rights advocates who push the government to change its behavior. Similarly, Powell and Staton (2009) show that states with an effective judiciary are less likely to torture citizens if they have signed the Convention Against Torture. Their work links the decision to ratify with the enforcement stage of implementation, contending that the state's choice to violate human rights depends on the effectiveness of the domestic legal system.

While these studies have advanced the literature on compliance with human rights treaties, very little is known about the first step in the implementation process: the incorporation of international standards into domestic law. This issue has been examined mostly by scholars of international law, who focus on how differences in domestic legal systems affect incorporation. Their analyses highlight the differences between monist and dualist systems, a distinction which, while perhaps theoretically fruitful, is uninformative in practice, as most states are in practice hybrid systems (Verdier and Versteeg, 2015).

In political science, only a handful of studies have focused on the incorporation of treaties. Sanchez (2009) assesses the impact of governments' preferences and their ability to change the status quo on whether signatories to the Mine Ban Treaty adopted implementing legislation. She also examines how implementation affected compliance with the treaty. Maylee and Appel (2018) similarly study the effects of treaty incorporation, suggesting that governments who have incorporated key provisions of the Rome Statute are less likely to repress their citizens.

In part, this research agenda has been hampered by the lack of cross-national data required to test hypotheses about incorporation. Collecting information on domestic laws is time-consuming and requires broad language expertise. As a consequence, scholars have not examined incorporation in detail. Previous studies, by focusing on later stages of the implementation process, have either simplified or overlooked what happens politically at the incorporation stage. However, before we can consider how bureaucratic execution or judicial enforcement affect compliance, it is necessary to consider whether the laws being implemented or enforced reflect the treaty's standards. If domestic laws do not adequately reflect treaty standards, it is not clear what can be inferred about what is happening in the later stages of the implementation process. For example, a state may have a strong judiciary but enforce legislation that does not adequately incorporate treaty standards. In this case, it is unclear what analyzing the relationship between ratification and human rights outcomes would show about the effect of human rights treaties.

This dissertation advances our understanding of how treaty ratification empowers domestic stakeholders that pressure governments to adopt a certain human rights policy by problematizing the advocacy of groups that *oppose* treaty incorporation. Because human rights treaties can have distributional consequences or create conflict among competing values, the incorporation of treaties can be delayed or blocked when groups that oppose incorporation are strong. Importantly, even when the international community and domestic activists support incorporation, the government may not incorporate as a response to the advocacy of these groups. Consequently, this dissertation suggests an unexplored reason for why governments fail to comply with treaties: the response of politicians to domestic pressure not to

incorporate a treaty.

By including in the analysis groups that oppose treaties, this dissertation brings the human rights literature closer to the study of other international agreements. In other areas of international law, such as international trade and the environment, scholars have recognized that groups within the state have divergent policy preferences about international cooperation because they are differentially affected by government policies. Trade scholars have long argued that “[a]gricultural and trade groups haunt legislative chambers of the industrial world arguing for special tariffs and subsidies” (Downs and Rocke, 1995, 76) and that politicians pay attention to interest groups because they need their support. To get it, “they must promote (retard) the policies that help (hurt) these groups” (Milner, 1997, 35). Similarly, Dai (2005) examines how anticompliance interests affected compliance with an environmental treaty seeking reductions in sulphur emissions. In contrast, the literature on human rights, by focusing mostly on the interactions between the state and pro-rights activists, has obscured divisions within civil society that are important to an understanding of human rights outcomes.³ One scholar has noted that “the current literature seldom analyzes rival networks, suggesting that they have little impact and that civil society speaks with one voice against state and corporate obstruction” (Bob, 2012, 35).

A few scholars have examined the role of anti-rights groups in slowing down or reversing the progress made toward the realization of human rights. Bob (2012) examines rival networks fighting over gay/homosexual rights and gun policy, showing how conservative groups from the global right mobilize to obstruct the expansion of rights. Kang (2015) shows that the mobilization of conservative activists made the government of Niger less likely to adopt reforms to women’s rights policies. She explains that when the *Association Islamique du Niger* sided with conservative groups in the country, the government was less likely to adopt reforms to the family code and to ratify the Maputo Protocol. The groups used locally meaningful symbols and counternarratives to delegitimize potential policy changes proposed by women’s organizations (153).

³A notable exception is Chaudoin (2016), who models how indictments from the International Criminal Court can affect the mobilization of anticompliance groups.

While scholars have only recently begun examining how conservative groups affect policy, these findings come as no surprise to activists on the ground. Those that I interviewed during my fieldwork were not only aware of counter-mobilization by conservative groups but were concerned that it increased the likelihood of policy reversals. A feminist activist in Montevideo told me she knew that all of the progress they had achieved might be reversed very quickly. A political analyst I met in Bogotá told me that “the legislative advances that seem absolutely invulnerable or armored against any movement are not.” To provide another example, in 2015 a group of feminist organizations established a collaborative project that “aims to monitor, analyze, share information, and support advocacy” on “anti-rights initiatives now threatening and weakening human rights systems” (The Observatory on the Universality of Rights, 2018). They claim that the universality of human rights is “under attack” from anti-rights religious fundamentalists that, as a response to the progress made in the past three decades by progressive feminist organizations, mobilized nationally and internationally.

A comprehensive understanding of activist pressure that includes rival interest groups can help explain countries’ evolution towards the realization of human rights. For the cases of child marriage and child labor I examine in this dissertation, although generally the ages to work and marry have been rising, one reason progress has stalled or reversed is that anti-incorporation groups mobilize to protect their interests. Indeed, the actions of UNATSBO in Bolivia are not the only example of groups mobilizing to oppose incorporation and child worker unions are not the only organizations working to delay or block the incorporation of child labor prohibitions. In Brazil, legislators with ties to agricultural interests have proposed reducing legislation that would reduce the minimum age to work from 16 to 14.⁴ The same is true for the child marriage case. These examples suggest that incorporating anti-rights groups into the analysis is useful for understanding why incorporation, far from being a linear, progressive process, is instead characterized by movement in all directions—even backsliding—as a consequence of the changing strength of rival activist networks.

⁴See Chapter 6 for more information on proposals to reverse incorporating legislation in Brazil.

1.3 Research Design and Case Selection

1.3.1 Research Design

To assess my argument that interest groups affect the incorporation of human rights treaties, I combine quantitative data with information from semi-structured interviews with policy-makers, civil society advocates and representatives of international organizations. Using these data, I demonstrate the connection between interest group strength and the incorporation of treaties.

I employ empirical evidence at two levels of analysis. First, I have assembled two cross-national datasets on the legislation adopted in Latin American states against child marriage and child labor. I use a detailed scheme to code national legislation from 1980 to 2016 and collect data to proxy for the strength of different interest groups. The first dataset relates to legislation against child marriage, which I analyze in Chapter 4. The second dataset, on laws regulating child labor, is the basis of the analysis in Chapter 5. The data show not only whether, in a given year, a law was adopted, but also what exceptions or loopholes were included in the law. For example, in some states, laws allow children to work in activities considered hazardous for their development if they have government authorization. Similarly, loopholes allow children to get married if they have the authorization of their parents. These loopholes are important because they impair the protections that children are meant to enjoy under international treaties.⁵ I use these datasets to explore how interest groups influence treaty incorporation. By compiling two new datasets of laws against child labor and marriage in Latin America, this dissertation provides new evidence for the first mediating causal step between treaty ratification and compliance, something which, in the past, has been hindered by the lack of cross-national information.

Second, I look sub-nationally at the variation in legislators' votes in Brazil on a legislative proposal to raise the age to work. Specifically, I examine a proposal in 1998 that raised the minimum age to work to 16. I find that legislators from provinces that grow crops using child

⁵For a review of international prohibitions against child labor and child marriage, see Section 2.2.

labor, such as sugar cane, were less likely to vote for the proposal, even when controlling for a host of potential confounders, such as partisanship, political ideology, economic development, and the number of citizens living in rural areas.

I complement the quantitative data with in-depth interviews I conducted in more than five months of extended field research in Argentina, Bolivia, Chile, Colombia, Peru and Uruguay. During my fieldwork, I conducted over 60 interviews with local civil society advocates, legislators, government representatives, business leaders and lawyers, among others. In all the countries I visited, I strived to meet with representatives from organizations such as UNICEF and the ILO. On average, interviews lasted approximately one hour, but some lasted two hours. The information I gathered from interviews has helped develop the theory and allows me to contextualize the quantitative results of this dissertation, helping to provide a richer account of the incentives of different players that matter in the incorporation process.

1.3.2 Why Children’s Rights?

To test the argument presented above, I focus, among all human rights treaties, on treaties designed to protect children. I choose child protection treaties for three reasons. First, because millions of children around the world enter the labor market or marriage prematurely every year, and the negative consequences of child labor and child marriage will be felt for years to come. The research shows that these practices put children’s health, education, and overall well-being at risk. For example, child marriage often interrupts or ends a child’s education, negatively affecting the child’s economic independence (UNICEF, 2014). Child marriage can also have devastating effects on girls’ health; indeed, complications during pregnancy and childbirth are the second leading cause of death for girls between 15 and 19 (WHO, 2014). Child labor exposes children to physical, social, and emotional risks, particularly for the 73 million children around the world who work in hazardous occupations (International Labour Organization, 2017, 6). Moreover, child labor reduces educational attainment by making it harder for children to attend school or dedicate time to their

studies (e.g., Psacharopoulos 1997, Heady 2003).⁶ By preventing necessary investments in education, child labor perpetuates poverty and decreases human capital. Child labor also negatively affects children’s health. Research has shown that it is positively correlated with adolescent mortality and infectious disease (Roggero et al., 2007).

Second, I focus on child protection treaties because, despite their importance, they have been relatively neglected in political science, particularly when compared to treaties that protect physical integrity rights.⁷ The focus of the political science literature on treaties that protect physical integrity rights is understandable: physical integrity is usually a precondition for the enjoyment of other human rights. However, for the purposes of studying the effect of treaties on human rights outcomes, this narrow focus is troubling because fewer than one in four human rights agreements deals with the protection of physical integrity rights (von Stein, 2018, 7), which, in turn, raises concerns about the generalizability of the findings in the literature. By examining a different subset of treaties, I hope to broaden our understanding of the universe of human rights treaties.

Finally, given that international standards for children’s rights often establish age prohibitions to protect children, they provide clearly-defined standards that national legislation should incorporate. Compared to trying to identify whether the right to education or to be free from discrimination has been incorporated into domestic law, the age focus of child protection treaties makes it easier to know whether the national law reflects the treaty standard and to measure progress by the same yardstick across states. This is especially important in a project like this dissertation which requires coding multiple years across different states.

The theory presented here has implications beyond the issues of child labor and marriage. Human rights treaties aspire to establish rights that we enjoy because of our shared humanity and in principle garner broad support. But when these rights are translated into domestic laws, disagreement arises much like they do for other domestic issues. Students of international political economy have emphasized the domestic costs of international cooperation. A

⁶Indeed, research shows that child labor bans help increase secondary school enrollment (Heymann, Raub and Cassola, 2013).

⁷A notable exception is von Stein (2016) and Chapter 8 of Simmons (2009) on compliance with the CRC.

free trade agreement, for example, might disproportionately affect a domestic industry that was protected by tariffs, but in exchange for lowering tariffs, a state gets access to foreign markets that help compensate domestic constituencies. My dissertation shows that although the implementation of human rights agreements does not exchange trade benefits with other countries,⁸ the implementation of human rights treaties still creates domestic winners and losers. So far, the translation of human rights norms, however, has been assumed to be unproblematic. While I show that in the case of children's rights this is not true, other domestic issues regulated by international treaties create domestic opposition to incorporation too.

1.4 Overview of the Dissertation

This dissertation proceeds as follows. The next chapter sets up the motivation for the dissertation. It begins by describing the status of children around the world as it pertains to child labor and child marriage. I then describes the standards contained in treaties that oblige states to protect children against child labor and child marriage. In the last section, I ask: Have states incorporated these obligations into their domestic legal systems? Using original data, I show the uneven incorporation of treaty prohibitions against child labor and child marriage.

Chapter 3 develops a theory of how domestic politics affects the incorporation of human rights treaties. I explain why some domestic interest groups oppose the incorporation of human rights treaties. Sometimes human rights treaties generate distributional conflicts. For example, the laws banning child labor, while welcomed by the ILO, also limit the pool of workers from which businesses can hire, thus increasing their production costs. At other times, treaties generate conflicts among different values. For instance, while organizations working to curb adolescent pregnancy promote laws that raise the age of marriage, conservative religious groups see these laws are seen as threatening. For the cases of child labor and child marriage, I describe the organizations working in favor of and against treaty in-

⁸Some preferential trade agreements, however, include human rights clauses. See Hafner-Burton (2005).

corporation. This chapter draws on interviews I conducted during my fieldwork to support my theory of the overlooked role of opposition interest groups.

In Chapter 4, I use an original dataset on laws against child marriage adopted in Latin America since 1980 to test my argument that interest groups have affected the legal incorporation of treaties. The data on child marriage laws coded as the dependent variable consider not only whether a law has been passed in a given year but also multiple dimensions that speak to the extent of incorporation, i.e., taking into account legal loopholes that allow states to bypass prohibitions. Thus, for example, I examine how interest groups affect the age of marriage with parental consent and government authorization. I focus on two groups that work to affect child marriage policy: conservative religious groups and women’s advocacy groups. I find that the strength of religious groups has an inverse relationship with the age of marriage for girls. In contrast, the strength of women’s activist network—measured as the number of organizations serving girls and women in the country—is positively related to the age of marriage. As my theory expects, I also show that the interaction between these groups is negative, suggesting that the effect of pro-incorporation groups is moderated by the strength of anti-incorporation groups.

In Chapter 5, I perform an analysis similar to the previous chapter but for the child labor case. Drawing on original data collected for Latin American countries between 1980 and 2016, I show that the strength of anti-incorporation groups is negatively related to the age at which children can work. I consider a number of benchmarks that are important in the international law governing the minimum age of employment, such as when are children allowed to work in hazardous occupations and the loopholes that permit children to work at a younger age. I find that the strength of labor is associated with more protection for children, whereas the strength of employers is negatively related to child labor protection. The interaction between these two also reduces the marginal effect that labor has on the minimum age of employment. Overall, these two chapters show that interest groups help explain the variation in how treaties against child labor and child marriage are incorporated.

Chapter 6 provides an in-depth study of a change in legislation in Brazil to demonstrate more closely the relationship between interest groups and the minimum age of employment.

In this chapter, I focus on how business interests affect child labor laws. Specifically, I examine how agricultural interests influenced the voting patterns of a bill adopted in 1998 that raised the age to work from 14 to 16. I have collected Brazilian roll call data on legislators' votes and use data on the agricultural land use for different crops from Dias et al. (2016) to approximate the strength of groups that hire children. I find that legislators from areas that employ children are more likely to vote against child labor laws that incorporate the treaty. This chapter demonstrates that the distributive effects of child labor bans influence the propensity of domestic actors to incorporate international treaty requirements against child labor, even after controlling for political variables, such as party and ideology.

Together, these chapters show that domestic interest groups matter for treaty incorporation. Chapter 7 concludes by highlighting what this dissertation contributes to the study of human rights. It also discusses the generalizability of my findings and examine the implications of my findings for governments and human rights advocates.

CHAPTER 2

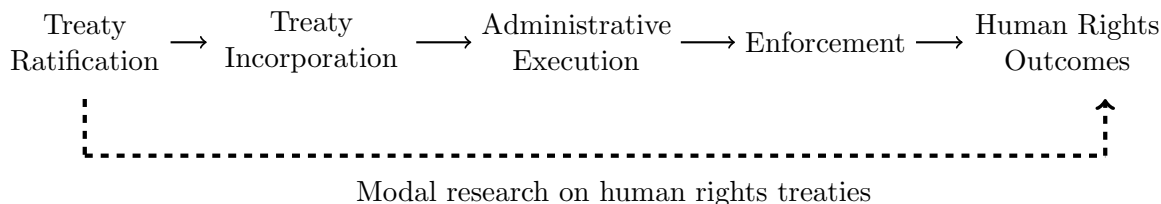
The Incorporation Gap

Although states around the world have signed and ratified human rights treaties, these commitments are not always upheld. Indeed, human rights are violated every day. Scholars have devoted considerable efforts to explaining the so-called compliance gap: the distance between the provision or standard of an international agreement and a state's actual behavior. Some scholars suggest that states generally intend to comply but lack the capacity to do so (Chayes and Chayes, 1993). Other scholars argue that states ratify treaties strategically to obtain material or symbolic rewards with no intention of complying with the treaty (Smith-Cannoy 2012, Simmons and Nielsen 2015). For decades, the debate between these two schools of thought has dominated the study of human rights treaties. No consensus on the origins of the compliance gap has emerged, despite the increasing availability of data and the use of novel research techniques in the field.

One reason progress has stalled is that the indirect effects that treaties have on state behavior are not yet fully understood (Dai 2013, Dai 2014). To better understand compliance, it is necessary to comprehend what happens domestically after a treaty is ratified, which is challenging because it requires examining the process of treaty implementation. This multi-step process involves various actors within a country, each with its own preferences and incentives. Figure 2.1 depicts a theoretical treaty implementation process. After treaty ratification, the incorporation of the treaty standards into national legislation is presumably the first step towards the full implementation of treaties. It is followed by administrative execution—involving government agencies and bureaucracies that develop national policies to reach the targets set forth by the law—and enforcement of the law through litigation in the courts. Existing theories in the discipline suggest that if these steps work as expected,

then treaties will improve respect for human rights, and the compliance gap will disappear.

Figure 2.1: Treaty Implementation Process



While understanding the implementation process is crucial to understand how treaties improve human rights outcomes, to date this process remains relatively understudied in political science. Indeed, “[t]he modal research of the 2000s looks directly for correlations between treaty ratification and improvements in rights behavior” (Simmons, 2013, 53), either treating the implementation process as a black box or making assumptions about the intermediate steps of the implementation process.¹ The dashed lined in Figure 2.1 represents the modal research in the field.

A few scholars have analyzed what occurs in the mediating steps between treaty ratification and human rights outcomes. They focus narrowly on variables that matter for the implementation of human rights treaties. For example, Cole (2015) argues that a state’s bureaucratic efficiency is important for improving human rights outcomes. In his view, effective bureaucratic institutions “empower states to fulfill their human rights obligations” (414). He finds that bureaucratically strong states are better able to implement the civil and political rights obligations imposed by the International of the International Covenant for

¹Studies that look at whether ratification is correlated with higher respect for human rights reach different conclusions. Some scholars link ratification to improvement of human rights practices (see Simmons 2009, Hill Jr. 2010, and Lupu 2015, for example). Other studies, however, find that treaty ratification does not improve human rights outcomes and, furthermore, that members are more likely to violate human rights than non-members (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Hollyer and Rosendorff 2011). More recently, Fariss (2014) shows that if we account for the changing standards of what constitutes a human rights violation, we will conclude that they have actually been improving. These mixed results are all the more surprising considering that most studies look at the same treaties, most often the International Covenant of Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).

Civil and Political Rights (ICCPR). Other scholars have argued that an effective judiciary is the key to explaining variation in human rights outcomes because it makes treaties domestically enforceable. Powell and Staton (2009) argue that treaties can be enforced domestically through an effective judiciary that is willing and capable of imposing penalties on the state for human rights violations. In a similar vein, Keith (2002) analyses how constitutional guarantees of judicial independence can have a positive impact on human rights outcomes. For instance, she finds that provisions that restrict the removal of judges during their term improve respect for civil rights and liberties.

While these studies have advanced the literature on compliance with human rights treaties, very little is known about the first step in the implementation process depicted in Figure 2.1: the incorporation of international standards into domestic law. As previous studies focus on later stages of the implementation process, they simplify or overlook what is happening politically at the incorporation stage. But before we can consider the effect of administrative execution or judicial enforcement on compliance, it is necessary to consider whether the legislation being implemented or enforced reflects the treaty's obligations or standards. If not, scholars run the risk of drawing incorrect inferences about what is happening in the later stages of the implementation process.

In this dissertation, I focus on the incorporation of treaty standards. While previous work has assumed that this step in the implementation process is more or less automatic, I identify an incorporation gap—a distance between treaty provisions and the laws that countries have in place to protect those rights. This incorporation gap can affect all the subsequent steps in the implementation process and, as a result, is crucial for understanding the implementation of human rights treaties. I define incorporation as the adoption of treaty provisions containing human rights standards into domestic legislation. This definition refers to specific treaty provisions or standards that need to be incorporated in domestic law and not the way a treaty as a whole becomes part of a domestic legal system. Consequently, the concept of incorporation used here is different from the usual distinction between monist and dualist systems. For instance, in the case of prohibitions against child marriage, treaty incorporation takes place when there is a domestic law that explicitly sets the age of mar-

riage at 18 and not when legislators adopt a law ratifying the CRC. The incorporation of international standards, as defined here, is relevant for both monist and dualist systems.²

Human rights treaties usually contain specific articles directing states to implement their provisions in domestic laws. The Convention on the Rights of the Child (CRC), for instance, mandates states to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” (Article 4). Similarly, Article 2(b) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires members “[t]o adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women,” and Article 7 of the Convention 182 from the International Labour Organization (ILO)—which prohibits children from working in hazardous occupations—mandates members to “take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention.” The treaties themselves, therefore, highlight treaty incorporation as an important element of compliance.³

More broadly, understanding treaty implementation is important because it affects compliance.⁴ Few scholars would argue that treaty ratification, on its own, can change human rights practices. Instead, most scholars argue that formal accession to international legal norms is the starting point of a long implementation process that, through the mediating

²Indeed, examining national legislation reveals that even countries that fall in the same category vary greatly in their treaty incorporation. More broadly, the distinction between monist and dualist systems, while theoretically fruitful, has been increasingly challenged by empirical studies of the relationship between international and domestic law. Verdier and Versteeg (2015), for example, study 101 countries during the 1815–2013 period and find that most national systems combine aspects of each approach. For example, many countries classified as monist actually “require the executive to obtain legislative approval prior to ratification” (518). They conclude that “the monist-dualist distinction has fundamental limitations for the purpose of classifying national approaches to international law” (516), and so, in this dissertation, I go beyond this traditional distinction.

³The text of the treaties may be accessed through the UN Treaty Collection website, available here: <https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A> (last accessed May 19, 2018).

⁴Of course, it is theoretically possible that compliance might not require implementation. If compliance refers to whether a state’s behavior conforms to a provision in an international agreement, then one state might be in compliance from the outset, especially if the treaty merely codifies existing behavior. As Raustiala (2000) explains, “[i]f an international commitment matches current practice in a given state, for instance, implementation is unnecessary and compliance is automatic” (392). Whether this is the norm, or whether most countries need to implement treaties to comply, is an empirical question.

effect of domestic politics, links international law to human rights outcomes. For example, Simmons (2009) argues that treaty ratification can, under certain conditions, encourage compliance by influencing legislative agendas, encouraging litigation in courts, and mobilizing domestic human rights advocates who push the government to change its behavior. In her own words, “like other formal institutions, *treaties are causally meaningful to the extent that they empower individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties*” (125). Thus, a treaty’s effect is conditional on domestic politics. The incorporation gap documented in this chapter affects treaty implementation and can thus explain, at least partly, why we observe a compliance gap: because states have not adopted the national legislation that scholars theorize links treaty ratification to state behavior.

To study this gap, I examine two issues that relate to the human rights of children: child marriage and child labor. While child protection treaties are a subset of all human rights treaties, they illustrate the theory advanced in this dissertation about how treaties can mobilize domestic groups against incorporation.

This chapter begins with an examination of the status of children around the world. Focusing on the issues outlined above, I show that children work and get married worldwide at alarming rates. I then outline international efforts to curb these practices, focusing, in particular, on efforts to codify international treaties against child labor and child marriage. In the third section, I introduce original data showing the uneven incorporation of international prohibitions against child labor and child marriage throughout the world. The chapter concludes with the puzzle that motivates the dissertation: if all member states have a mandate to implement treaty prohibitions against child labor and child marriage, what explains the variation in legal incorporation?

2.1 The Status of Children Around the World

This section examines two issues that affect children’s development around the world: child labor and child marriage. International law defines a ‘child’ as anybody under 18, and I use

this definition throughout the dissertation.

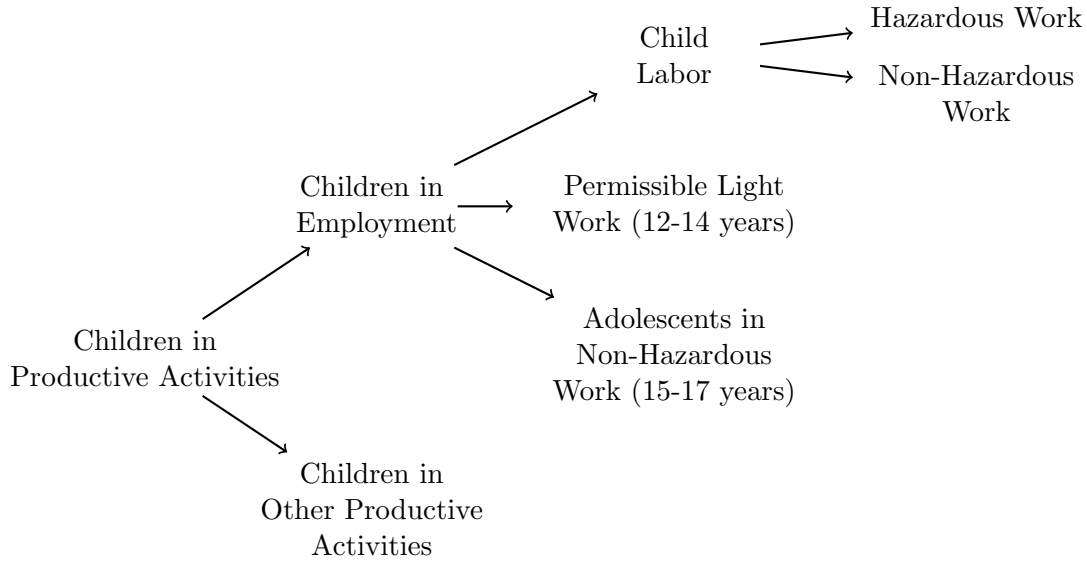
2.1.1 Children Who Work

Over the years, the International Labour Organization (ILO) has strived to define as clearly as possible what child labor is. Figure 2.2 illustrates the different categories children might find themselves in as defined by the ILO. Children engaged in productive activities—that is, any activity falling within the general production boundary of the System of National Accounts—can either be employed or be engaged in other productive activities such as unpaid household services for consumption within their own household.⁵ The ILO estimates that throughout the world, around 218 million children are employed. Only about 152 million of these children, however, are engaged in what the organization defines as ‘child labor’. This is still a staggering figure, as it means that almost one in ten of all children worldwide are engaged in child labor. To reiterate, this does not include children engaged in productive activities in their own households, nor those doing permissible light work or those above the minimum age of employment performing work that is not hazardous.⁶

⁵Instead, doing household services for a third-party household, whether paid or unpaid, is considered employment.

⁶For a review of concepts and definitions, see Resolution II regarding statistics of child labor adopted at the 18th International Conference of Labour Statisticians in 2008 and available here: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_112458.pdf (last accessed January 23, 2018).

Figure 2.2: Children in Productive Activities as Defined by the ILO



Moreover, nearly half of all children engaged in child labor—73 million children—work in hazardous activities that put their health, safety and moral development directly at risk (International Labour Organization, 2017, 3).⁷

Children work in every part of the world, including in developed countries.⁸ While poverty is an important determinant of child labor, the statistics show that “countries with similar per capita income can have very different levels of child labour, especially at low levels of income, and even relatively prosperous countries present a high incidence of child labour” (Cigno and Rosati, 2005, 4).

However, the distribution of child workers around the world is uneven. Table 6.1 shows the distribution of child labor per region. The largest number of child workers is found in

⁷Hazardous work is thought to be an activity that directly hurts a children’s safety, well-being or morality. For a detailed definition, see paragraphs 3 and 4 of the ILO’s Resolution 190, available here: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312528,en:NO (last accessed January 23, 2018).

⁸Human Rights Watch, for example, has denounced that children work in tobacco farms in the United States, a job considered hazardous because it exposes children to nicotine and toxic chemicals. To access their report, see Wurth (2014).

Africa, with more than 72 million children working, or almost 1 in 5 children.⁹

Table 2.1: Child Labor by Region, 5–17 years, 2016

| Region | Number (millions) | % |
|-------------------------|-------------------|------|
| Africa | 72.1 | 19.6 |
| Arab States | 1.16 | 2.9 |
| Asia and Pacific | 62.1 | 7.4 |
| Americas | 10.7 | 5.3 |
| Europe and Central Asia | 5.5 | 4.1 |

Source: International Labour Organization (2017)

Table 2.2 shows the distribution of children engaged in hazardous work by region. The distribution of this subset of working children reveals patterns similar to those in Table 6.1: Africa has the highest absolute number of children working in hazardous activities, as well as the higher percentage of children in the relevant age group worldwide who work as laborers. Although there are fewer children engaged in child labor in the Americas, and Europe and Central Asia, most of the children engaged in child labor in these regions are, in fact, engaged in hazardous work. In the Americas, 61% of children in child labor work in hazardous occupations.

⁹The data uses the new regional classification system developed by ILO-STAT. In accordance with this system, the Africa region comprises northern and sub-Saharan Africa; the Americas region comprises northern America, Latin America and the Caribbean.

Table 2.2: Hazardous Work by Region, 5–17 years, 2016

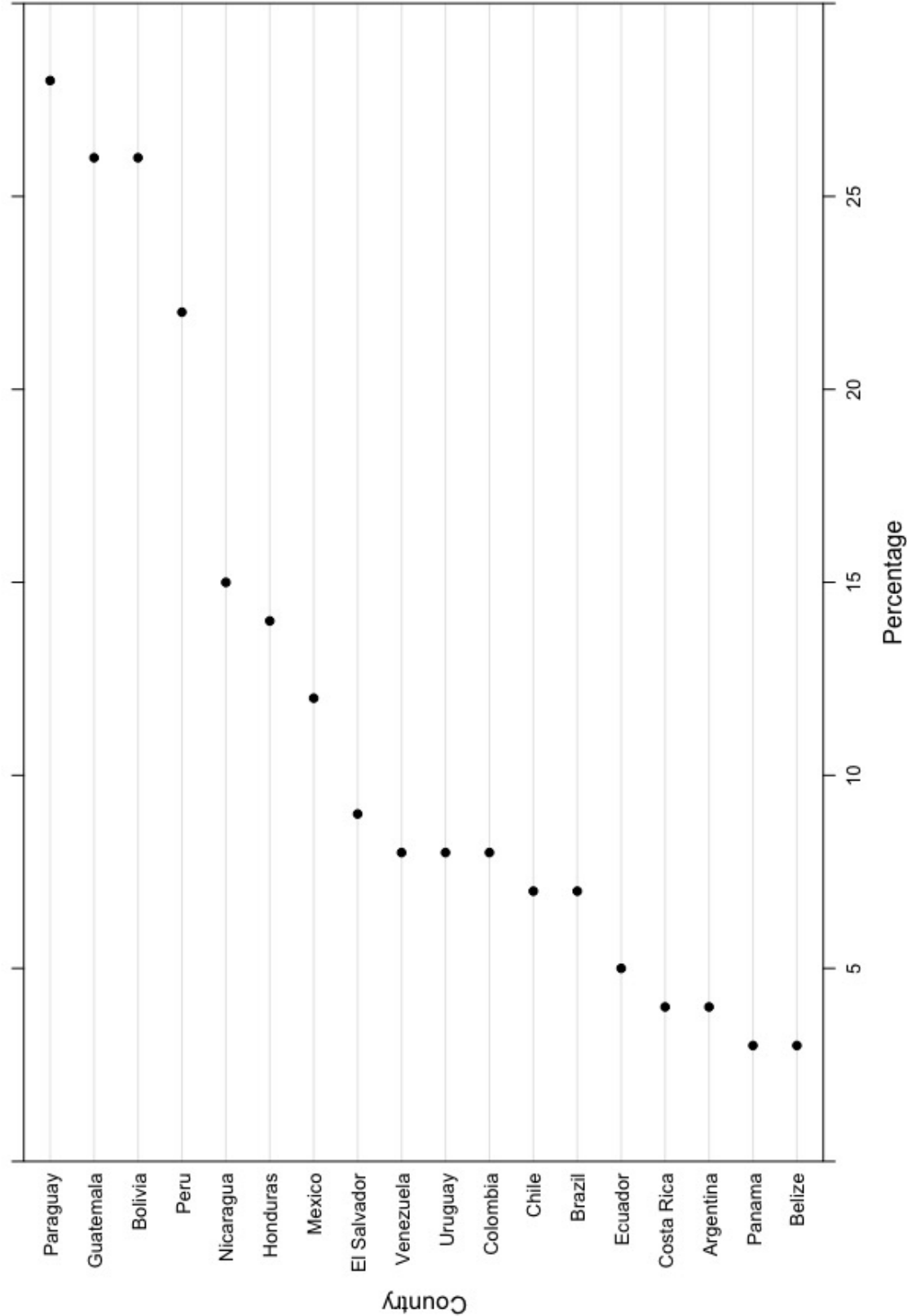
| Region | Number (millions) | % |
|-------------------------|-------------------|-----|
| Africa | 31.6 | 8.6 |
| Arab States | 0.62 | 1.5 |
| Asia and Pacific | 28.47 | 3.4 |
| Americas | 6.55 | 3.2 |
| Europe and Central Asia | 5.34 | 4.0 |

Source: International Labour Organization (2017)

According to UNICEF’s State of the World’s Children report, the Latin American countries with the highest percentage of child labor are Bolivia (26%), Guatemala (26%), Paraguay (28%) and Peru (22%) (UNICEF, 2017). Figure 2.3 plots the percentage of children engaged in child labor per country, in decreasing order, using data from national surveys collected from 2012 to 2016.¹⁰ It is often claimed that in the Andean region of Latin America, it is culturally acceptable for children to work—a statement that seems to be confirmed by the high participation rates of children in the economy in Bolivia and Peru. However, it is interesting to note that Ecuador exhibits percentages comparable to countries in the Southern Cone (like Argentina, Brazil and Chile) which has some of the lowest percentages in the region, and Colombia and Venezuela—also considered Andean states—have an average percentage of children engaged in child labor. Thus, Figure 2.3 casts doubt on cultural explanations for children’s participation in the labor force.

¹⁰For definitions and information on data sources, see UNICEF 2017, 182–185.

Figure 2.3: Percentage of Children in Child Labor, Latin America, 2012-2016



Source: UNICEF 2017, 182-185

Children are engaged in many different kinds of work that pose different risks. Some children work part-time or seasonally. This is why different surveys show that, in fact, many children both work and attend school. Other children, however, have effectively dropped out of school and work full-time. Some children work with their families, either in the family business or informally in the parents' workplace, while others are employed for a salary by third parties (including for domestic service, in which children are normally separated from their families for long periods of time). These differences are important because children face different risks in each situation even if they are all, according to the coding, engaged in child labor.

Globally, agriculture is the sector with the largest concentration of child workers, with approximately 71% (108 million) of all child workers (International Labour Organization, 2017). While not all work in agriculture is hazardous, a lot of it is, which makes this figure worrisome to child protection advocates.¹¹ In Latin America, the global pattern of the preeminence of child labor in agriculture is repeated; almost half of the children who work are employed in agriculture.

The number of children engaged in child labor has been declining. In fact, the number of working children has declined by more than one third since 2000, from 246 million to 152 million children (International Labour Organization, 2017, 24). Similarly, the number of children estimated to be involved in hazardous work has decreased from 171 million in 2000 to 73 million. However, there remain two causes for concern. First, these average patterns conceal the fact that in some countries, like in Brazil, child labor has been rising.¹² Second, the ILO warns that at the current rate, the Sustainable Development Goal (SDG) 8.7 of eliminating child labor by 2025 will not be reached, and, in fact, there will still be 121 million child laborers by that year (International Labour Organization, 2017, 26)

¹¹For instance, children in Latin America are regularly engaged in tobacco farming or sugar cane production. In terms of the other sectors, the ILO estimates that, globally, 17% of children (26 million) are employed in the service sector and around 12 % of children (18 million) work in industry (International Labour Organization, 2017, 34).

¹²A survey released in June of 2017 shows that the number of children working between the ages of 5 and 9 has been increasing. See <http://www.observatoriosocial.org.br/?q=noticia/pesquisa-mostra-aumento-do-trabalho-infantil-no-brasil> (last accessed January 24, 2017).

These patterns are concerning because child labor is thought to have long-lasting negative effects on a child's life. To start, working can have negative consequences in the short-term, by putting children at physical risk, particularly for work done in hazardous industries. Physical injuries will persistently affect children during their lifetime. Working also puts children at social and emotional risk. Children in domestic service, for instance, are frequently separated from their families and live with their employers, who can renege on promises to allow time for education and recreation. Moreover, child labor reduces educational attainment by making it harder for children to attend school or have time to dedicate to their studies (e.g. Psacharopoulos 1997, Heady 2003). Indeed, research shows that child labor bans help increase secondary school enrollment (Heymann, Raub and Cassola, 2013). By not making necessary investments in education, child labor perpetuates poverty and decreases human capital. Child labor has a negative effect on health outcomes. Research has shown that it is positively correlated with adolescent mortality and infectious disease (Roggero et al., 2007).

2.1.2 Children Who Are Married

Child marriage is defined as any formal marriage or informal union in which one or both parties are under 18 years of age. While some boys are also married before they turn 18, it is a practice that disproportionately affects girls. UNICEF (2014) estimates that over 720 million women alive today were married before the age of 18. Table 2.3 shows the percentage by region of women aged 20 to 49 years who were married before they turned 18. It shows that the incidence of child marriage is higher in South Asia and West and Central Africa.

Table 2.3: Percentage of Women Aged 20 to 49 Years Old Who Were Married or in Union as Children, 2014

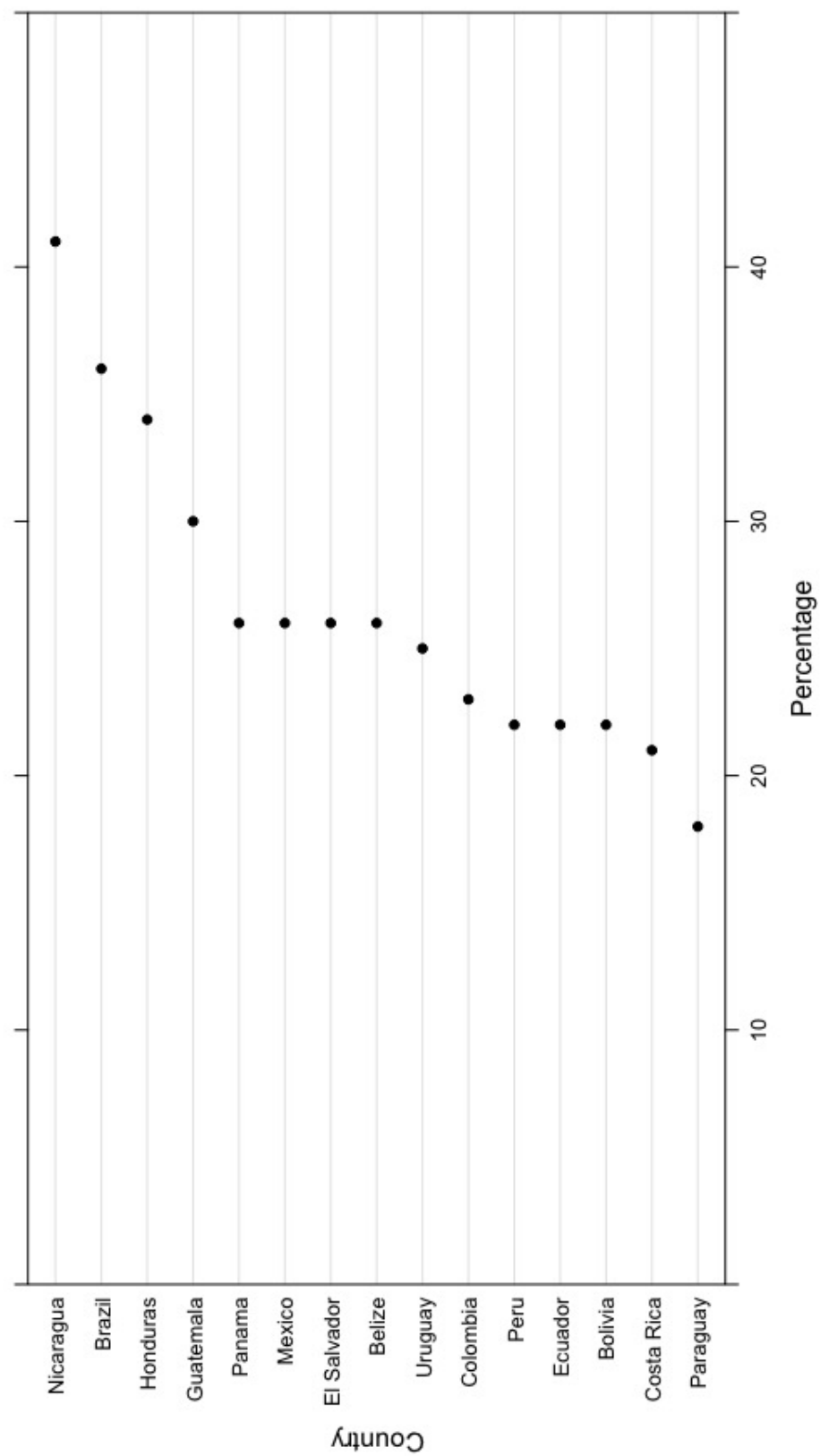
| Region | Percentage (%) |
|--|----------------|
| South Asia | 56 |
| West and Central Africa | 46 |
| Eastern and Southern Africa | 38 |
| Latin American and the Caribbean | 30 |
| Middle East and North Africa | 24 |
| East Asia and the Pacific | 21 |
| Central and Eastern Europe and the Commonwealth of Independent States | 14 |

Source: UNICEF (2014)

Although child marriage is common in every region of the world, its incidence is higher in developing countries and, within each country, among the poorest households. In the least developed countries, more than 60% of women in the lowest income quintile were married before they turned 18. The world rate for the lowest quintile is a little over 40%. Within Latin America and the Caribbean, while about 10% percent of women in the richest quintile were married before 18, almost 40% in the lowest income quintile were married by this age (UNICEF, 2014). Figure 2.4 plots the percentage of children married by the age of 15 and 18, in decreasing order, using the latest available national data.¹³ The figure shows that although child marriage rates in Latin America are not the highest in the world, certain countries in the region exhibit rates comparable to other regions in the world where the issue of child marriage has garnered much more attention. For example, over 40% of women were married as children in Nicaragua. In Guatemala, Brazil and Honduras, this percentage is over 30%. This is why child marriage is an important policy problem affecting women in Latin America.

¹³No data is available for Argentina, Chile or Venezuela.

Figure 2.4: Percentage of Married Children, Latin America, 2012-2016



Source: UNICEF 2017, 182-185

Child marriage can have long-lasting, detrimental effects on a child’s well-being. For example, child marriage often interrupts or ends a child’s education and consequently harms the child’s economic independence (UNICEF, 2014). Child marriage can also have devastating effects on girls’ health; indeed, complications during pregnancy and childbirth are the second leading cause of death for girls between 15 and 19 (WHO, 2014). Given these negative consequences and that each year, 12 million girls are married before they turn 18,¹⁴ ending child marriage has been added as one of the targets of SDG 5, which focuses on gender equality. Specifically, target 5.3 seeks to “[e]liminate all harmful practices, such as child, early and forced marriage and female genital mutilation.”¹⁵

2.2 International Efforts against Child Labor and Child Marriage

Recognizing the harmful consequences of early marriage or entry into the workforce, states have created international treaties to protect children. This section outlines the major international legal standards against child labor and child marriage.

2.2.1 Treaties against Child Labor

The Convention on the Rights of the Child (CRC) is an all-encompassing treaty that establishes civil, political, economic, social, health and cultural rights for children. Article 32 (1) establishes “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous... or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” The treaty defines a child as a human being under the age of 18, except for those cases in which the age of majority is attained earlier under domestic legislation. Thus, by CRC standards, anybody under 18 is a child and should be protected from hazardous work.

¹⁴Data from Girls Not Brides, a global partnership of more than 900 civil society organizations working to end child marriage. See <http://www.girlsnotbrides.org/about-child-marriage/> (accessed 15 May 2018).

¹⁵See <https://sustainabledevelopment.un.org/sdg5> (last accessed May 31, 2018).

After obtaining many ratifications in the year it opened for signature, the treaty entered into force in September 1990. The CRC has been ratified by every country in the world except for the United States.¹⁶ However, many states have introduced reservations, declarations and understandings that qualify their commitment to the treaty.¹⁷

Besides the CRC, a number of treaties from the ILO establish international standards for working children. The ILO, established in 1919 by the Treaty of Versailles, focuses generally on defending the right to work and establishing humane working conditions. While the ILO has opposed child labor since its foundation, it was only in 1973 that it set out to establish general standards on the minimum age to work. Convention 138 (C138) is different from preceding ILO conventions because instead of focusing on specific industries (as did Convention 7 from 1920, for example, which fixes the age for children to work at sea at 14 years old) it creates general obligations for states regarding all working children. C138 specifies 15 years as the age at which, in normal circumstances, a child may participate in economic activity. Article 2(3) of C138 allows developing countries to temporarily lower the age of 14 years old.¹⁸

Convention 138 also establishes standards regarding two other types of work: ‘light’ and ‘hazardous’ work. The convention allows light work for those 13 and older. Mirroring the exception to the general age to work, the treaty allows developing countries to temporarily set the age for light work at 12 years old. Article 3 regulates the obligations regarding hazardous work. The article establishes that the minimum age for admission to hazardous work “shall not be less than 18 years” and that the types of activities considered hazardous

¹⁶Usually countries vary in how long they take to ratify a treaty, but the CRC appears to be unique in this respect because it obtained many ratifications quickly. Indeed, by the end of 1990 —the first year after it opened for signature— 32% of countries had deposited their ratifications within the UN, and only a year later this number had increased to 54%.

¹⁷For a review of these, see Simmons 2009, 316-317.

¹⁸The article states that “[t]he minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.” Moreover, even in this case, the age should not be less than the age of completion of compulsory schooling. The rest of article 3 establishes the procedures by which a member state must justify the need for a lower age of admission to employment in every report it submits to the Committee. The text of C138 may be accessed here: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::N0::P12100_ILO_CODE:C138 (last accessed May 31, 2018).

“shall be determined by national laws or regulations or by the competent authority” (Article 3 (2)). The last part of Article 3 introduces an exception to the rule:

national laws or regulations or the competent authority may...authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 3(3) of C138 therefore introduces only one exception to the prohibition on using children for hazardous work. It permits such employment only if the child is at least 16 years old and receives adequate vocational training for the activity he or she is doing and if there are guarantees that the work will not hurt the child. Importantly, while the CRC treaty also regulates the work of children in hazardous activities, it does not contemplate this exception.

The 1990s saw renewed efforts to eliminate child labor. For example, the ILO decided to “undertake a major push on child labor” (Fontana and Grugel, 2017, 4) and began working with countries to establish national committees to supervise the eradication of child labor. Then, in 1999, the Convention on the Worst Forms of Child Labor (C182) was adopted at the ILO’s 87th session in Geneva. In C182, member states agree to work to prevent children from being engaged in slavery, prostitution, illicit activities and hazardous work. The convention also requires that states develop a list of the activities considered hazardous and renew them periodically (Article 4(3)). The convention allowed no exceptions for the occupation of children in hazardous work.

The international treaty standards against child labor can be summarized as follows:

1. The age of employment should be set at 15, with a possible temporary exception for developing countries, which can set the age at 14 (if adequately justified).
2. The age of employment for hazardous work should be set at 18, with a possible exception allowed by C138 (and not the CRC or the C182) for those 16 and older, provided

that children receive vocational training.

3. State members will publish a list of hazardous activities and establish national procedures to review it periodically.

2.2.2 Treaties against Child Marriage

The international community tried to regulate the age of marriage at least as early as 1962, when the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was opened for signature.¹⁹ This convention has not been widely ratified: in all the years that it has been open for signature, it has been ratified by only 55 countries, some of which have ratified it relatively recently.²⁰ This convention does not specify a minimum age for marriage, but leaves it up to member states to “take legislative action to specify a minimum age for marriage” (article 2).²¹ In 1965, just one year after the convention entered into force, the UN’s General Assembly adopted resolution 2018 (XX), formally the “Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,” in which it is recommended that the minimum age for marriage “shall not be less than fifteen years of age” (Principle II).²²

CEDAW, which opened for signature in 1980, also covers the right to protection from child marriage in article 16(2), which states:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age

¹⁹Note that, for UNICEF, this principle is also recognized in the Universal Declaration of Human Rights given that it established that “consent cannot be ‘free and full’ when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.” See <http://data.unicef.org/topic/child-protection/child-marriage/\#> (last accessed May 31, 2018).

²⁰Cyprus, France, Liberia, Libya, Montenegro and Rwanda all ratified it in the 2000s, for example.

²¹The text of the Convention on Consent to Marriage can be accessed here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx> (last accessed May 31, 2018).

²²The text of the recommendation can be viewed here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RecommendationOnConsentToMarriage.aspx> (last accessed May 31, 2018).

for marriage...

The quote shows that the CEDAW treaty did not specify a minimum age for marriage but instead left countries to decide on an age and incorporate it into their domestic legislation. Nevertheless, the committee that supervises CEDAW's implementation has sought to clarify the recommended minimum age and in 1994 wrote that "the Committee considers that the minimum age for marriage should be 18 years for both man and woman." It went on to say that

[s]ome countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right to freely choose a partner.²³

Similarly, the CRC does not specify a minimum age to marry, but the Committee that supervises its implementation has clarified what the international standard is. Several articles in the treaty make clear that establishing minimum ages below 18 would violate multiple articles of the treaty, particularly the right to freedom of expression, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices. In 2003, just two years after the CRC Committee began issuing 'general comments' to its member states, it stated:

State parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent.

²³The text can be accessed here: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38\(SUPP\)_4733_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf) (accessed August 18 2017).

These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17).

[...]

The Committee strongly recommends that State parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination Against Women has made a similar recommendation (general comment No. 21 of 1994) (CRC/GC/2003/4, Paragraphs 9 and 20, page 6).

What emerges from this review of treaty prohibitions against child marriage is that member states must incorporate two main standards in their domestic legislation:

1. The age of marriage should be set at 18, without exceptions.
2. The age of marriage should be the same for girls and boys.

Although the treaties do not enumerate these requirements as explicitly, no state has, to my knowledge, expressed doubt that these are the standards that treaty incorporation requires. In my review of multiple country reports and articles, I have never found a statement by a state denying that these are the standards it agreed to upon ratification. Thus, there seems to be a consensus that these are the standards required by treaty commitments.

2.3 The Incorporation of Child Protection Treaties

Have countries incorporated the international obligations outlined in Section 2.2? To answer this question, it is necessary to review domestic legislation in each country and compare it to the treaty's standards. I construct two original datasets with information on all Latin

American laws adopted against child marriage and child labor between 1980 and 2016. The resulting datasets include 666 country-year observations with information on the laws of 18 countries over 37 years.²⁴

2.3.1 Why Latin America?

I focus on Latin America for several reasons. First, although the issues of child labor and child marriage have received less attention in this region than in other parts of the world, all statistics suggest that these are important policy problems. As shown in Section 2.1.1, 152 million children are engaged in child labor. Moreover, in four Latin American countries at least 30% of girls marry before they turn 18; Nicaragua, at 41%, has the highest prevalence rate of the region. These rates are very similar to those in high-prevalence countries in Africa and Asia, where more attention has been paid to the issue of child marriage. Second, focusing on one region allows me to hold certain institutional heterogeneity characteristics constant: all Latin American countries have presidential systems, for instance, and they share a common colonization past. These shared characteristics help reduce confounding from domestic variables. Finally, as there are no overlapping legal systems in Latin America, as there are in other regions of the world, I am able to better isolate the sources of variation in legal incorporation.

The coding process required identifying the relevant domestic legislation pertaining to the age of marriage and work in each country. Depending on the issue, this process varied slightly. In the case of child labor, I relied on archival copies of Work Codes and national legislation that could be found in online repositories. For child marriage legislation, I use national repositories and old versions of Civil or Family Codes to track the evolution of legislation in

²⁴The list of countries included are Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela. I follow the classification made by the statistical office of the United Nations. See <https://unstats.un.org/unsd/methodology/m49/> (last accessed March 7, 2018). This means that Caribbean and certain quasi-independent territories such as the Bouvet Island, Falkland Islands, French Guiana, and the South Georgia and the South Sandwich Islands are not included. Guyana and Suriname are excluded because they are usually considered Caribbean nations—as shown for instance by their classification as Small Island Developing States and their participation in organizations, such as the Association of Caribbean States.

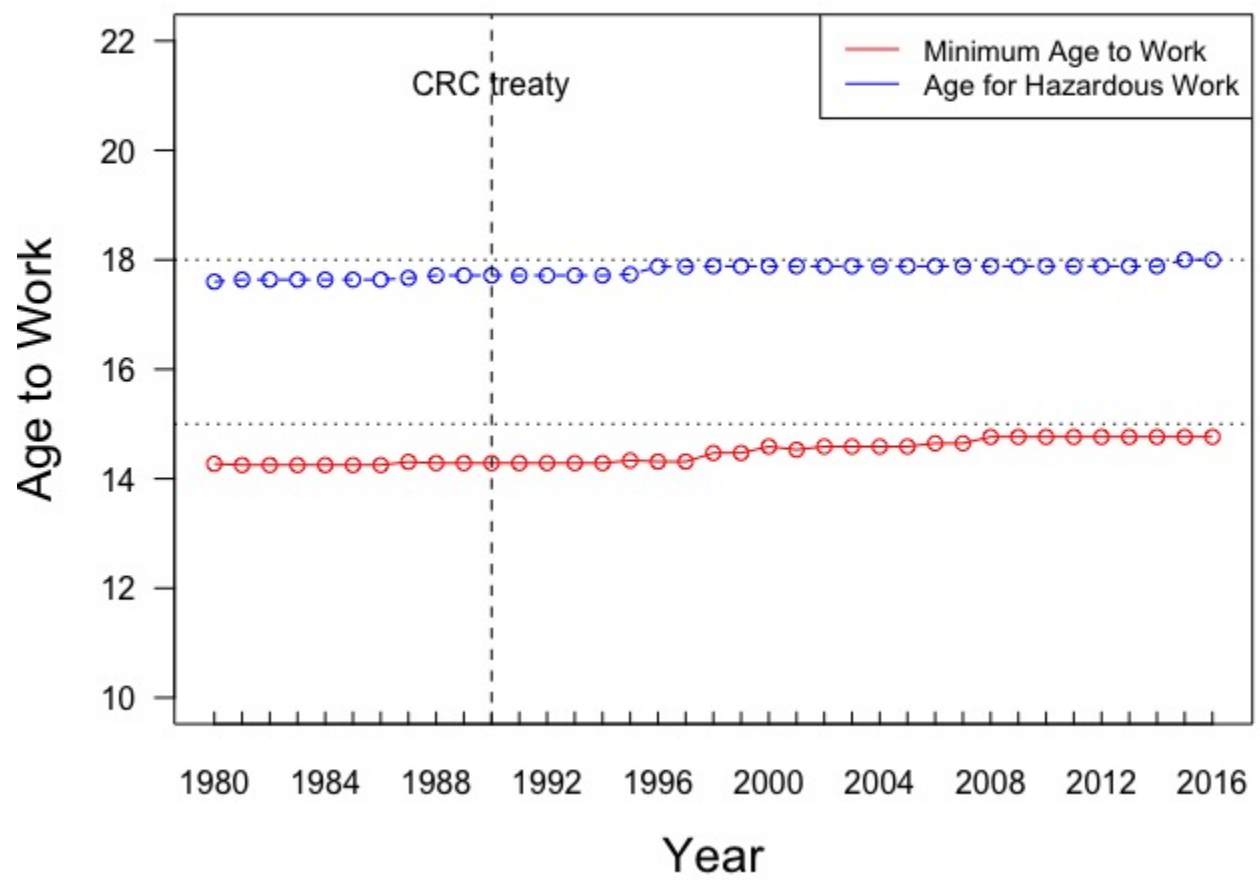
each country. Occasionally, I also relied on the reports states send to the committees that supervise the implementation of the CRC and the ILO conventions to identify legislation. Once the laws have been identified, I codified their content according to the codebook I developed.²⁵

2.3.2 The Incorporation of Child Labor Prohibitions

Figure 2.5 plots the average legal ages to work in the region. The red line shows that the minimum age to work has been slightly increasing since 1980, approaching the standard set by C138 of 15 years old. The graph seems to suggest that, on average, compliance with C138 has been high since the 1980s. Similarly, the top blue line represents the average legal age for hazardous work established in the region. Interestingly, the average age for hazardous work was close to 18 even before the CRC entered into force, which suggests that the CRC might have merely codified a trend that already existed. If this was the case, then the treaty's effects in terms of child labor would not seem very large. Since 1990, once the CRC entered into force, more countries have adopted this standard, and by 2014 all countries in the region had legislation in place explicitly adopting this benchmark. In sum, a first look at domestic legislation would suggest that member states have done reasonably well at adopting legislation that reflects their treaty obligations.

²⁵I describe the data collection process in detail in Chapters 4 and 5.

Figure 2.5: Average Legal Age of Employment in Latin America, 1980-2016



However, the domestic laws adopted contain a number of exceptions or loopholes that effectively lower the age to work in hazardous and regular jobs. As these exceptions are not contemplated by the treaties, they violate the international prohibitions against child labor. For the case of the general minimum age to work, for instance, many states include exceptions that go beyond the exceptions contemplated in the C138 for so-called ‘light’ work (an exception which would not generate non-compliance). For example, sometimes states allow the relevant government authority to allow the child to work if the family is poor. For example, Guatemala’s *Decreto 1441* from 1988 allowed minors under 14 to work if the family needed the child’s work for subsistence. Other times, domestic law makes exceptions if the child works under the supervision of a family member, even for businesses that are not family-owned. As there is no provision in international treaties permitting this exception, this loophole constitutes a violation of international law.

Another way in which countries violate prohibitions against child labor is that sometimes the laws leave out entire categories of work that need not respect the minimum age to work. For instance, it is common in Latin America to set specific regimes for agricultural work where the age of employment is lower. This is problematic especially given that so many of the children in the region are employed in agriculture, as shown in Section 2.1.²⁶

Compliance with international treaties against child labor requires specifying 18 as the age under which no child can perform hazardous work. As mentioned earlier, Article 32 of the CRC explicitly mentions that member states commit to preventing children from working in hazardous occupations and agree to “take legislative... measures to ensure the implementation of the present article.” In practice, this obligation implies that states need to specify which industries or activities they consider hazardous under the domestic legal system. The ILO conventions similarly let states determine what these hazardous jobs are.

The data shows that there is great variation in how states have regulated children’s haz-

²⁶Some of these loopholes might be in the process of being eliminated, however. For instance, Colombia’s *Decreto 13* from 1967 established that those under 18 could work as domestic service, even if this implied an exception to the prohibitions against night-time work of minors. In 2005, the country passed a resolution that explicitly states that domestic service for third parties is prohibited for those under 18, thus eliminating the loophole.

ardous work. Some have prohibited hazardous work of minors but have not adopted any sort of list or guidance as to what these jobs might be. If the government does not require minors to obtain a work permit, moreover, this means that the work of children in hazardous industries is completely unregulated. Other states have adopted a simple paragraph mentioning certain jobs—such as mining or selling alcoholic beverages—that children are not allowed to do. Finally, some states have produced a detailed and comprehensive list that outlines many different types of work that they consider hazardous.

The treaty monitoring committees make clear in their recommendations that they consider the adoption of a comprehensive list of hazardous work necessary for compliance. Nonetheless, not all states comply with this standard. Table 2.4 shows the percentage of country-year observations in the data for which countries had no, minimal, or comprehensive lists of hazardous jobs.²⁷ Only in about 35% of the country-year observations are children protected against hazardous work in a detailed list as mandated by child labor treaties. Most states only have a minimal list that defines what hazardous work is and states that children should not engage in it. This means that for those country-years, the law was not easily enforceable because the government had not determined which the hazardous occupations were.

Table 2.4: Percentage of Country-year Observations with Detailed Lists of Hazardous Jobs

| | Percentage (%) |
|--------------------|----------------|
| No list | 2 |
| Minimal list | 63 |
| Comprehensive list | 35 |

Furthermore, having a detailed list of hazardous activities might not be enough to protect children from hazardous work, as states sometimes include loopholes even to these regulations. In 2011, El Salvador adopted *Acuerdo 241* which listed the hazardous occupations for children. In Salvadorean legislation, children are not allowed to work in hazardous work if they are under 18. However, after establishing a long list of activities that are prohibited in

²⁷Following the coding explained in Chapter 5, I group categories 1 and 2 in “minimal list” and categories 3 and 4 in “comprehensive list”.

Article 1 and specifying that children cannot perform those activities in Article 2, Article 3 goes on to say that the authorities may authorize the work of children in the sugar cane, coffee, and fishery industries for those 16 and older. This is problematic because coffee and sugar cane are two industries known to hire children in the country (US Department of Labor 2015). Consequently, this loophole effectively takes away the protections exactly where children most need them.

This section has shown that while at first glance Latin American countries seem to be complying with international treaties against child labor, a closer examination reveals that while the states have adopted prohibitions against hazardous work, legal loopholes render those protections weak or ineffective. This shows that there is an incorporation gap for child labor and that the translation of international standards to domestic laws is not an automatic process. Indeed, loopholes persist even after clear guidelines from monitoring committees about existing violations and the need for reform.

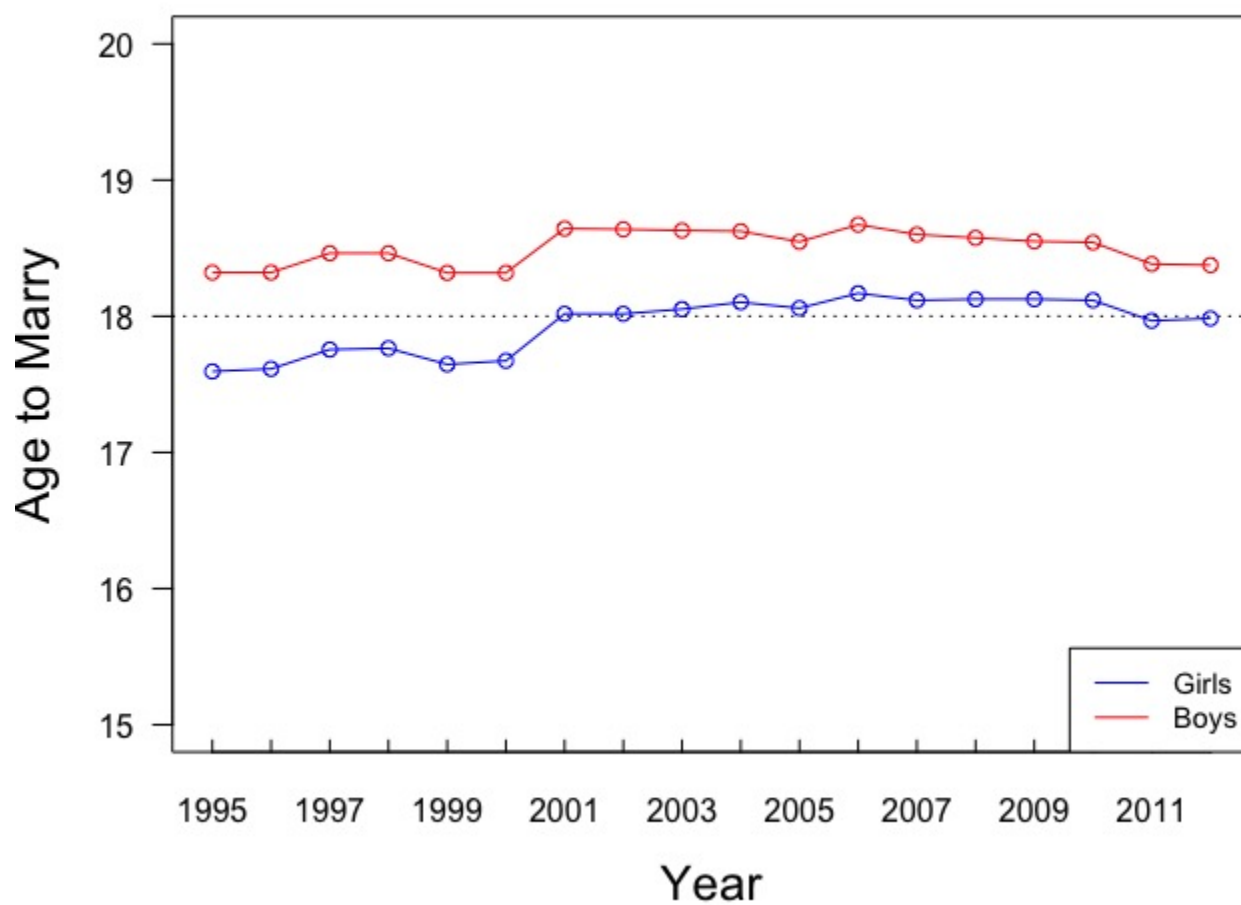
2.3.3 The Incorporation of Child Marriage Prohibitions

Have countries adopted national legislation to comply with international child marriage standards? A cursory look at the data would suggest that countries have sought to keep their laws in compliance with the treaty: most countries in the world have introduced legislation that sets the minimum legal age of marriage at 18, in essence, banning child marriage.²⁸ Figure 2.6 shows the average legal age to marry for girls and boys in over 121 low and middle-income countries for the 1995-2012 period.²⁹

²⁸Some of these efforts have been quite recent. In 2015, for example, Malawi, Chad and Guatemala all raised the minimum age of marriage to 18 years.

²⁹Data from MACHEquity dataset. This data is available here: <http://machequity.com/>.

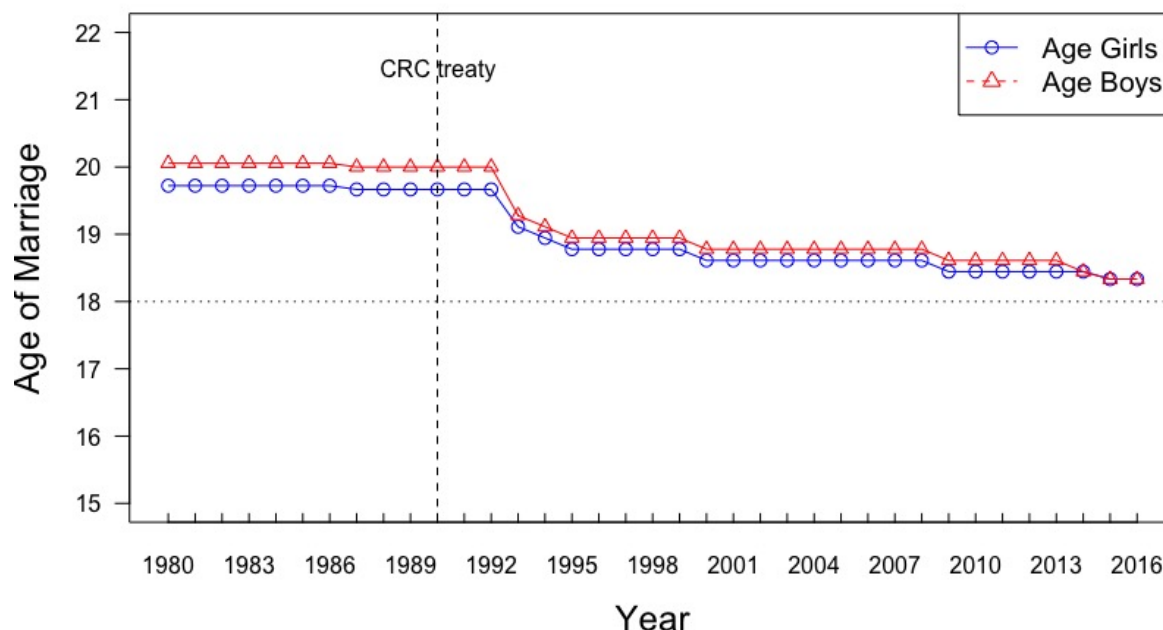
Figure 2.6: Average Legal Age of Marriage for Girls and Boys, Selected Countries, 1995-2012



The figure shows that the average legal age to marry for boys and girls reached 18 around 2001 and has stayed at that level since then. The figure also shows that the legal age of marriage for boys has been higher than for girls throughout the period. The gap, however, has been closing. While in 1995 the difference between genders was more than half a year (0.73), in 2012 that difference fell to 0.4. Thus, the overwhelming majority of countries have placed restrictions on the legal age of marriage that conform to international standards.

The Latin American countries are no exception. Figure 2.7 plots the average legal ages of marriage in the region as in Figure 2.6 from 1980 to 2016. The black vertical line represents the year in which the CRC entered into force (1990). The advantage of an extended period in this figure is that it allows us to see what the age of marriage was before the CRC entered into force. The plot shows that before the CRC entered into force in 1990, most Latin American countries had legislation setting the minimum age to marry above the CRC standard. In 1980, the average legal age to marry in Latin America was 19.72 for girls and 20.06 for boys. This graph suggests that the Latin American countries were, in fact, overcomplying before the treaty entered into force. After the treaty entered into force, the averages ages to marry have gone down. There is a sharp decline in 1993. This could suggest that countries have adapted their laws regulating the age to marry to reflect the CRC's standard of 18 years old. Another interesting feature shown in the graph is that, although girls' age has traditionally lagged behind boys, for the last three years this gap has been eliminated. Again, this suggests that states' laws are in line with international standards.

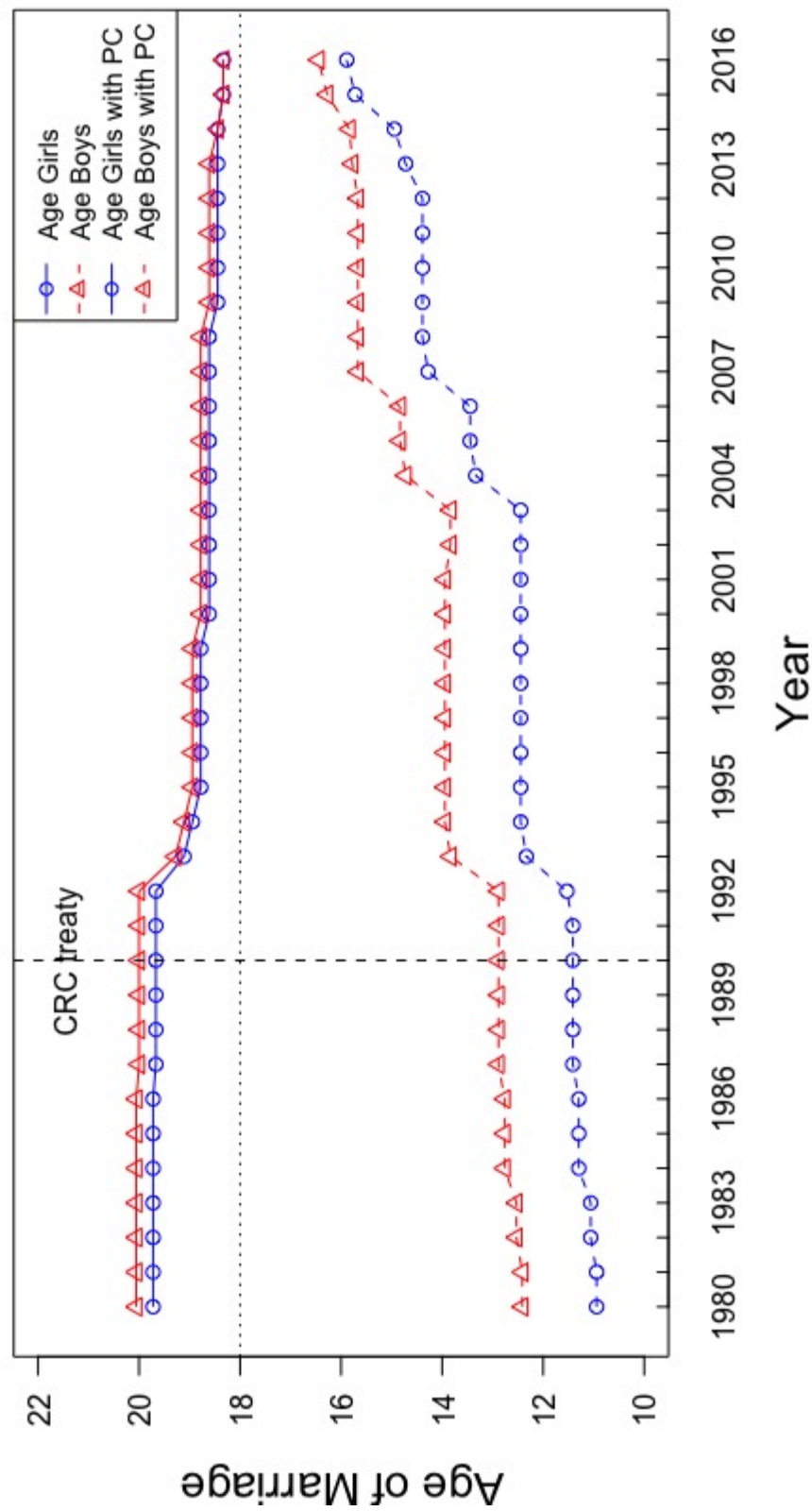
Figure 2.7: Average Legal Age of Marriage for Girls and Boys in Latin America, 1980-2016



Taken together, these two figures suggest that compliance with prohibitions against child marriage is high. Both in Latin America and around the world, countries have adopted legislation that restricts marriage to those 18 or older. In part, this is because some countries already had that legislation in place before they adopted the CRC. But as the averages have reflected more closely the CRC standard, it also suggests that some countries have adapted their legislation to be in compliance with international standards. Non-compliance in this issue area seems to be low or non-existent.

This conclusion is misleading, however, because while countries have incorporated the treaty standard of 18 into their domestic legislation, they have also introduced loopholes that effectively lower the minimum age at which children can get married if certain conditions are present. For example, parents can often authorize children to get married at a younger age. This exception renders the effective legal age of marriage with parental consent much lower. Figure 2.8 shows the evolution of the legal age of marriage in Latin America with and without parental consent.

Figure 2.8: Average Legal Age of Marriage for Girls and Boys with Parental Consent (PC) in Latin America, 1980-2016



The data shows the same general trend as in Figure 2.7 where the minimum age to marry without parental consent dropped for both genders after the CRC entered into force. At the same time, the age to marry with parental consent—represented by the dashed lines—has been increasing. In 1980, the average age to marry in Latin America was almost 20 years. This is because in some countries, the age of majority (*“mayoría de edad”*)—the age at which children gain all the rights of adults, such as voting and being able to own property—was 21. But when parental consent loopholes are considered, then the effective average age to marry in 1980 was 10.94 for girls and 12.41 for boys. The gap has been decreasing over time. While in 1980, the difference between the formal and effective age was 8.78 years for girls and 7.65 for boys, in 2015, this difference had dropped to 2.61 and 2.05, respectively. In 2016, for the first time, the average legal age to marry with parental consent was 15.89 for both girls and boys.

Laws regulating the age of marriage frequently include other loopholes besides parental consent. Some Latin American countries allow minors that have not reached the legal ages to marry if the girl is pregnant or has given birth. This loophole is considered discriminatory against girls because boys cannot fall into this category and are thus protected longer against the harmful consequences of child marriage.

Another common practice is the use of loopholes to stop the prosecution of an adult who is charged with statutory rape if the adult marries the child. Child marriage, in these cases, allows adults to marry their victims to avoid criminal prosecution. These loopholes exist around the world and have recently been the focus of multiple reform efforts. For instance, Brazil and El Salvador have eliminated such loopholes in the past years. More recently, several countries in the Middle East, such as Jordan and Lebanon, have also eliminated these so-called ‘marry-the-rapist’ provisions from their penal codes.³⁰

What explains the variation across countries in the legal age of marriage? In interviews, feminists activists trying to persuade the government to increase the age of marriage for girls mentioned that they run into opposition from religious conservative groups that do

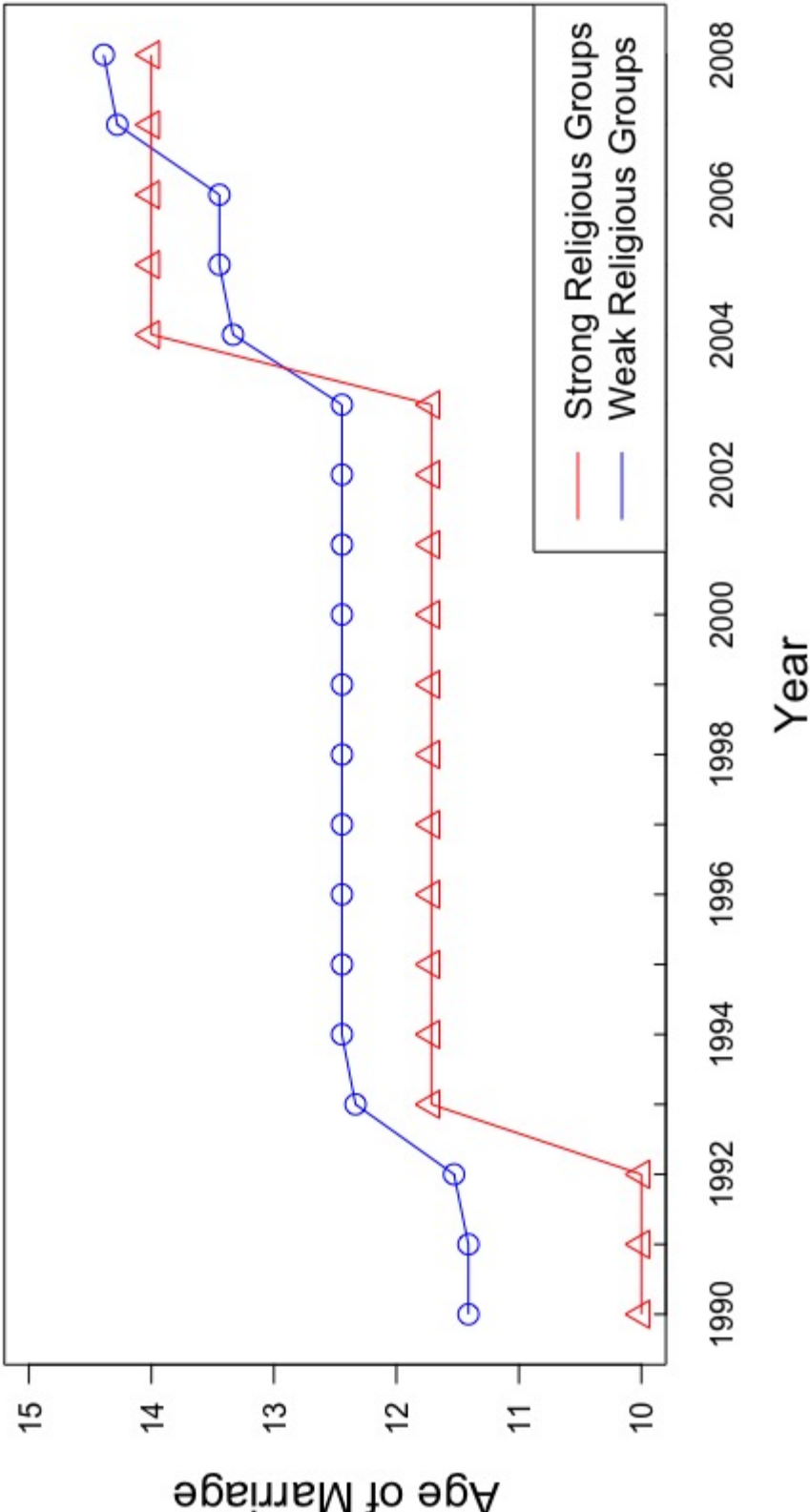
³⁰See, for instance, this report from the New York Times: <https://www.nytimes.com/2017/08/01/world/middleeast/jordan-rape-law.html> (accessed August 22, 2017).

not share this policy goal. To explore the possibility that religious groups explain part of the variation in states' minimum age of marriage, in Figure 2.9 I plot the minimum age of marriage according to whether states have strong or weak religious groups in place.³¹ As we can see, the red line, representing states where religious groups are strong, is lower than in states where religious groups are weak (represented in the blue line). This suggests that interest groups might be important to explain the age of marriage.

In sum, while many states have adopted legislation that on the surface seems to comply with international obligations against child marriage, just as in the case of child labor, states have kept legal loopholes in their legislation that do not conform with international treaties. This points to the existence of an incorporation gap for child marriage as well as child labor.

³¹I proxy for the strength of religious groups by using data on the number of religious legislation from the Religion and State Project. This data covers the period 1990-2008. I break the data into two groups depending on whether the number of religious laws was below or above the mean.

Figure 2.9: Age of Marriage for Girls with Parental Consent (PC) in Latin America According to Strength of Religious Groups, 1990-2008



2.4 Conclusion

This chapter has established that children around the world are at risk of entering the labor force and getting married at a young age and that, although states have made international commitments to mitigate these risks, the implementation of these human rights treaties remains imperfect. In particular, although states have adopted legislation that, at first glance, seems to align domestic laws with international treaties, a deeper analysis shows that these domestic laws contain many loopholes that render these protections ineffective.

These loopholes are important to the study of treaty implementation because they create an *incorporation gap*: a distance between the treaty standard and the standard established in domestic law. When there is an incorporation gap, the effective ages at which children can work and marry are different from those set by the treaty standard. Importantly, loopholes rarely increase the ages at which children are protected, so the incorporation gap means that the loopholes normally violate international commitments and lower the protections that children enjoy around the world. Thus, although treaties mandate all countries to incorporate its standards, in reality there is significant variation in the protection of children because each state has incorporated treaty commitments differently.

Understanding the existence and origin of the incorporation gap is important for other studies of compliance because it influences all subsequent phases of the implementation process. For example, when scholars study the impact of judicial independence on compliance with international treaties, they have typically assumed that judges enforce laws that conform to treaty standards. The number of legal loopholes contained in the relevant laws casts doubt over this assumption. It is possible that even in the face of a more permissible domestic law, judges use the international standards as the basis of their decisions. There is evidence, however, that points in the opposite direction: even when faced with clear domestic laws, judges fail to apply even these laws in full form. For instance, in Brazil it was reported that judges had authorized 33,000 children to work below the minimum age of employment guaranteed by the Constitution (Rodrigues, 2011).

In the next chapter, I explain why the incorporation gap exists. I trace the origin of

these loopholes to the fact that some groups within society oppose legislation that would bring domestic legislation in line with international treaties. Indeed, certain social groups see labor and marriage bans as detrimental to their interests and mobilize against treaty incorporation. The legal exceptions contained in domestic laws that create the incorporation gap are responses from lawmakers to domestic pressure not to incorporate international treaties.

CHAPTER 3

Chapter 3: Theory

3.1 Introduction

On the morning of December 18, 2013, a group of children marched through the streets of La Paz chanting, “Down with the ILO agreements!” (Pacosillo Mamani, 2015). They were members of the Bolivian Union of Working Children and Adolescents (*Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia*), also known as UNATSBO, a national organization of children working to promote their labor rights. On this day, UNATSBO members were protesting a proposed reform to Bolivia’s Child and Adolescent Code that prohibited children under 14 from working. In their view, children have a right to work, so government efforts should not have been directed towards eradicating child labor—the view advocated by the ILO—but towards protecting children from exploitative working conditions.¹ The proposal to reform the Code had been approved in the Chamber of Deputies the day before, and UNATSBO members were angered that “once more [the lawmakers] had not taken into account the organization of working children of the country in the drafting of the code” (Pacosillo Mamani, 2015, 77).

To UNATSBO’s members, the reform of the Child and Adolescent Code was an opportunity to further their policy agenda. For a number of years, they had been working to influence the reform process. In 2010, they developed their own proposal for the new code. It included 70 articles that recognized children’s right to work at any age, their right to education, and, more broadly, emphasized how their work contributes to society. In an effort to protect children from working in hazardous conditions, the proposal listed 20 hazardous jobs that

¹The goals of organizations of working children such as UNATSBO are detailed in Section 3.4.3.

children should not be allowed to do at any age and limitations on the number of hours they could work according to their employment activity. Most importantly, UNATSBO members circulated the proposal among legislators in an effort to advance their policy agenda (El Diario, 2011). Then, during 2013, the group planned an “intervention strategy” that included protests in La Paz’s main square—known as *Plaza Murillo*—outside the presidential palace (Pacosillo Mamani, 2015). Throughout this time, UNATSBO representatives gave several press conferences explaining their position in hopes of influencing public opinion in their favor.

For a few months in 2013, UNATSBO members believed that lawmakers drafting the new code were seriously considering their viewpoints. When on December 11 the Chamber of Deputies approved a version of the proposed code that prohibited work for those under 14, however, they were outraged. They claimed that the apparent shift was caused by the advocacy of lobbyists close to the ILO and by lawmakers’ deference to the feelings of the middle and upper classes who did not understand the perspective of children who must work to survive (Strak, 2015, 44).

Emboldened by the news, UNATSBO decided to publicly protest against the proposed version of the code. On their way to *Plaza Murillo* on December 18, the protesters clashed with police forces who attempted to block their way to the square and used tear gas to try to disband them (La Razón 2013b, El Mundo 2013). Undeterred, the children reached the square around noon, where they remained until the afternoon. At 4 p.m. they met with congressman Javier Zabaleta, a leading legislator on children’s issues, and expressed their concern over the proposed code. The next day, UNATSBO representatives met Senator Gabriela Montaña and talked to members of the press in *Plaza Murillo*, including *Radio Fides* and several leading TV channels.²

Then, on the morning of December 23, UNATSBO members were welcomed into the Presidential Palace where they met with President Evo Morales. Over breakfast, they discussed UNATSBO’s objections to the proposal that the Chamber of Deputies had approved

²Some of these were *Canal 18 Católica*, *Canal 11 Red Uno*, *Canal 9 ATB* and *Canal 39 PAT* (Pacosillo Mamani, 2014).

the previous week. During the meeting, President Morales said he believed that the age at which children may start working should not be limited. Instead, he recommended protecting child workers from exploitative working conditions and suggested that efforts to eradicate child labor would only push children into clandestine work. In his own words, “the work of children and adolescents should not be eliminated, but they should also not be exploited” (La Razón, 2013a). His statement emphasized the dangers of exploitative work—instead of child labor in general—and the futility of eradication efforts. In a context where political actors disagree over the value of efforts to eradicate child labor, Morales’ choice of words was meaningful. In this meeting, Morales showed that his position was aligned with that of UNATSBO’s members and not that of child protection advocates who seek to eradicate child labor.³

A few months later, in July 2014, the new Child and Adolescent Code (*Ley 548*) was adopted. The final version did not grant children the right to work as UNATSBO’s members, encouraged by President Morales’ endorsement of their views, had hoped. In fact, the Code maintained the minimum age of employment at 14 which had been established in previous legislation. However, the new Code introduced significant exceptions to the minimum age of employment that effectively lowered the age at which children can work. These exceptions allow ten-year-olds to work as independents (“*por cuenta propia*”) and twelve-year-olds to work under contract to an employer (“*por cuenta ajena*”).⁴ Significantly, these exceptions are not contemplated by the international treaties against child labor to which Bolivia is a party. To the international community, they constitute violations of Bolivia’s international commitments. Although some UNATSBO members objected the code for maintaining an “abolitionist” view towards child labor and recognizing certain exceptions to the minimum

³After meeting with President Morales, the UNATSBO members were then received by the Parliamentary Commission, the *Defensoría del Pueblo* and the Ministry of Justice. Various legislators, such as Adolfo Mendoza, began giving UNATSBO’s proposals a voice in Congress (La Razón, 2013b).

⁴Article 129 (II) of the code establishes that these exceptions are only allowed when there is no risk to education rights and when working does not endanger the health or dignity of children. However, skeptics believe these protections are not enough to eradicate child labor. The text of the Code may be accessed here: <http://www.silep.gob.bo/silep/masterley/1129059> (last accessed May 20, 2018).

age only temporarily,⁵ the majority of UNATSBO members considered the wording of the new Code a victory for their organization. Their advocacy efforts had been successful.

The media and international organizations criticized the new code. Newspapers proclaimed that by approving the Code, Bolivia had legalized child labor (El Tiempo, 2014). For example, The Telegraph's headline read that "Bolivia becomes first nation to legalise child labour from age 10" (The Telegraph, 2014). The ILO Committee issued a number of statements making it clear that Bolivia's new Code was not in conformity with its international commitments. For example, the Committee said:

The Committee ***strongly deplores*** the recent amendments to Section 129 of the Children's and Adolescents' Code...The Committee emphasizes that the objective of the Convention is to eliminate child labour and that it allows and encourages the raising of the minimum age but does not permit the lowering of the minimum age once specified. The Committee recalls that the Plurinational State of Bolivia specified a minimum age of 14 years when ratifying the Convention and that the derogation from the minimum age for admission to employment under section 129 of the Children's and Adolescents' Code is not in conformity with this provision of the Convention (International Labour Organization CEACR, 2015).

The European Parliament allegedly considered placing economic sanctions on Bolivia. According to one observer, some conservative and Christian Democrats in the European Parliament rallied against the Code, secretly threatening to keep Bolivia out of the European Union's preferential Generalised Scheme of Preferences (Strak, 2015, 35-49).

Interestingly, the government had anticipated the negative reactions to its adoption of the new code. In fact, the government had adopted the Code aware that the perception in the international community would be that the country had chosen to violate with its international commitments, a move that would incur reputational costs. For instance, in announcing the new Code, Vice President Álvaro García Linera said:

⁵The debate between the abolitionist and critical perspectives on child labor is explained in Section 3.4.3.

It has been hard to write [this Code] because there is a group of international agreements that the state has signed about the rights of children and adolescents and then there is the Bolivian reality, our own way of thinking about and the situation of children and adolescents in our country (Vicepresidencia de la Nación, 2014).

He continued his speech, saying that it would have been easy to adopt a bill that complied with the obligations enshrined in international agreements, but these would not have been followed because the “reality has other characteristics and needs” (Vicepresidencia de la Nación, 2014). What these statements by the Vice President show is that the government anticipated the negative reactions that the Code would provoke.

Why did Bolivia introduce changes to the legislation that violated treaty commitments, incurring reputational costs from the international community? The literature in political science suggests two main reasons why states violate human rights treaties: either governments lack the ability to comply (Cole 2015, Chayes and Chayes 1993) or they enter into treaties with which they do not intend to comply (Smith-Cannoy 2012, Simmons 2009). But these reasons do not entirely apply to the Bolivian example. Considering the first reason, it is worth noting that the laws in place in Bolivia before the reform of the Code conformed with the standards of the CRC and ILO conventions. It is hard to argue that the government did not have the ability to comply, at least in terms of adequately incorporating treaty standards into domestic laws. In the second case, it is not really accurate to say that the government that ratified the CRC and the ILO conventions was the same as the one that adopted the new Code, given that the conventions were ratified before Evo Morales became President in 2005. Thus, in practice, it is difficult to claim that President Morales acted insincerely when ratifying the conventions.

The Bolivian case illustrates two important theoretical points that are currently missing in the literature. First, it shows that there are groups in society that oppose the adoption of laws that incorporate human rights treaties. Moreover, this case shows that sometimes the group that opposes the incorporation of an international treaty—which I call the “anti-

incorporation” group for ease of presentation but without detriment to their views—can be composed of the intended beneficiaries of such human rights treaties, i.e., in this case, children who work. In other words, the advocacy efforts by UNATSBO show that some children may oppose the incorporation of treaties that were created to protect them. Second, the Bolivian case shows that states’ progress in incorporating human rights treaties can backslide when interest groups that oppose incorporation are able to influence the policy process, as the new Code adopted in 2014 lowered the effective minimum age of employment, reversing decades of progress in this regard.

In this chapter, I present a theory that explains the Bolivian case and others like it. I argue that the incorporation gap identified in Chapter 2 results from the intervening effect of domestic politics on the treaty incorporation process. I contend that groups within society disagree about the value of a human rights treaty because treaties create opposing effects. Sometimes, human rights treaties have distributional effects that affect the material well-being of individual citizens in a state. The Bolivian case shows that child workers sometimes oppose child labor prohibitions and mobilize to abolish them. In other cases, treaties impinge on the moral values of citizens. For instance, while organizations working to promote gender equality support laws that raise the minimum age of marriage, religious and conservative groups see them as a threat to traditional family values. Thus, not all groups within society support the incorporation of human rights treaties. When individuals within a state feel that treaty incorporation has costs, they have incentives to overcome collective action barriers to influence government decisions that negatively affect them. This pits organizations against each other as they work for opposing policy goals and outcomes.

This chapter proceeds as follows. The next section situates the theory of this dissertation within the existing literature on human rights treaties. I provide examples of the distributional and moral effects of treaties. The third section describes the interest group framework that underlies the theory advanced in this chapter. Section 4 explains how human rights treaties can have distributional consequences that affect interest groups differently by describing the groups in favor and against child labor bans. Section 5 discusses the ethical debates that lead interest groups to challenge each other’s views on child marriage. The fi-

nal section concludes by addressing the chapter's contributions to the study of international human rights law.

3.2 The Opposing Effects of Human Rights Treaties

Human rights treaties aim to protect individuals and groups from violations to their common humanity and dignity, such as their right to life, their right to be free from discrimination, and their right to freely organize. The human rights literature in political science has focused on the reasons why states create international laws⁶ and the role of state leaders as the main violators of these laws. Two leading scholars in the field, for example, write that “[g]overnments are the primary “guarantors” of human rights, but also their primary violators” (Keck and Sikkink, 1998, 12).

An influential model in the literature, known as the boomerang model (Keck and Sikkink, 1998), contends that when NGOs that oppose a government do not have access to traditional channels to hold governments accountable—because they are repressed or persecuted, for example—they may turn to the international community which, in turn, pressures the government to change its behavior ‘from above’ (Brysk, 1993). The international community thus influences governments by pressuring them to respect human rights and by supporting domestic NGOs that hold the government accountable to its international commitments. Another important model in the literature, known as the spiral model, similarly assumed that NGOs were dealing with a recalcitrant government that violated human rights (Risse, Ropp and Sikkink, 1999, 19).

While this literature has been foundational in the field of human rights, it has two limitations. The first is that these theories focus on the actions taken by the state—assumed to violate human rights—and pro-rights activists—who support human rights treaties—without problematizing how anti-rights activists affect human rights protections. This limitation is partially explained by the fact that most human rights scholars have focused on personal

⁶For a discussion of why states sign and ratify human rights treaties, see for example Moravcsik (2000), Hathaway (2007), and Chapter 3 of Simmons (2009).

integrity rights, such as the right to be free from torture, disappearance, and extrajudicial killings. The violation of these rights was particularly serious at the time these theories were developed, given that many states had experienced brutal authoritarian regimes that violated the physical integrity rights of their citizens. Risse, Ropp and Sikkink (2013), for instance, acknowledge that “[t]he original spiral model was developed and applied only to states with authoritarian and repressive regimes” (16). Given this focus, it is easy to see why scholars have framed the battle for human rights as a conflict between governments and their citizens: few individuals benefit from allowing a government to torture or subject prisoners to inhumane treatment. But human rights treaties often activate conflict within societies when they generate distributional conflicts or challenge competing values. Present theories oversimplify the domestic battles among political actors that take place over whether to incorporate a treaty. The Bolivian example shows this theoretical limitation clearly because in this case, the government is not the primary perpetrator of child labor violations—children do not work in government offices, for example. The literature, by focusing on a subset of human rights treaties, does not speak to the issues that arise in areas where the government is not necessarily the primary violator of rights.

The second limitation is a restricted view of the number of organizations working domestically to affect treaty compliance. Most of the literature focuses on advocacy groups as the main organizations operating domestically. In particular, the literature focuses on advocacy groups that are supported by the international community. Scholars have paid considerably less attention to conservative groups and more generally to groups that oppose treaty incorporation. In other areas of international law, such as international trade, scholars have recognized that groups within the state have divergent policy preferences about international cooperation because they are differentially affected by government policies. Trade scholars have long argued that “[a]gricultural and trade groups haunt legislative chambers of the industrial world arguing for special tariffs and subsidies” (Downs and Rocke, 1995, 76) and that politicians pay attention to interest groups because they need their support and to get it, “they must promote (retard) the policies that help (hurt) these groups” (Milner, 1997, 35). Dai (2005) examines how anticompliance interests affected state compliance with

an environmental treaty seeking reductions in sulphur emissions. In contrast, the literature on human rights, by focusing on the interactions between the state and pro-rights activists, has obscured divisions within civil society that are important to an understanding of human rights outcomes.⁷ As noted by Bob (2012), “the current literature seldom analyzes rival networks, suggesting that they have little impact and that civil society speaks with one voice against state and corporate obstruction” (35). Again, the Bolivian example shows that this is simply not true.

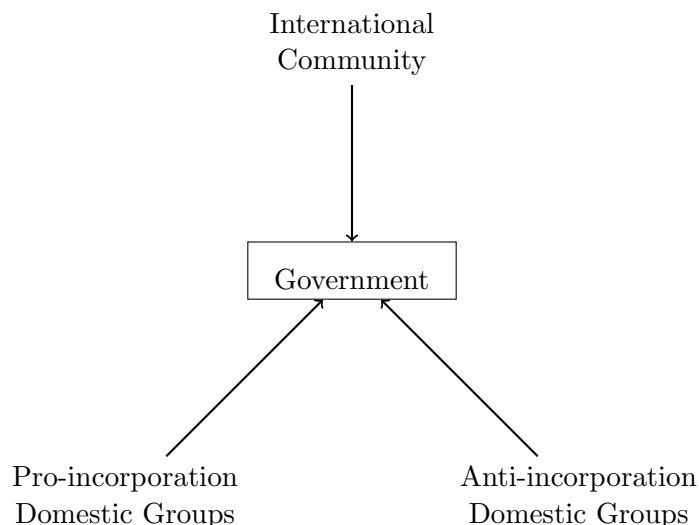
In this dissertation, I explain why human rights treaties have opposing effects within society. Some groups support treaties and push governments to comply with their international commitments. Other groups, however, dislike treaties because they have distributional effects or challenge moral values they consider positive and important. As human rights treaties create divergent preferences within society, they have both supporters and opponents. Divergent preferences, in turn, influence policy because domestic groups mobilize to change policy in a way that advances their interests. Highlighting the existence of divergent preferences over the incorporation of human rights treaties represents a departure from previous work in which scholars implicitly assumed that civil society as a whole favors treaty incorporation.

In this chapter, I argue that one reason why governments fail to incorporate treaties is that they face competing pressures from international and domestic interest groups. Figure 3.1 illustrates the competing pressures that governments face when incorporating treaties. On one hand, the government faces international pressure ‘from above’ to incorporate and implement human rights treaties. This pressure stems from the international community, which includes Western powers, human rights international nongovernmental organizations (INGOs) such as Amnesty International, international organizations, and human rights regimes, including treaty monitoring bodies, much in the same way as the boomerang model (Keck and Sikkink, 1998) argued that the global human rights polity pressured governments. On the other hand, the government faces pressure ‘from below’ from domestic interest groups. Some groups support incorporation and some oppose it. These are represented in the left and right sides of

⁷A notable exception is Chaudoin (2016), who models how indictments from the International Criminal Court can affect the mobilization of anticorruption groups.

Figure 3.1. This configuration of different domestic players with different preferences leaves the government vulnerable to pressure both in favor of and against treaty incorporation.

Figure 3.1: Competing Pressures on Governments



Within each side of the incorporation debate, there are a number of domestic groups working together to influence the government. Keck and Sikkink (1998) propose that organizations or groups that share common causes and ideas communicate voluntarily to exchange information and resources in what they call an advocacy network (8). For the issues of child labor and child marriage, I observe that groups on each side of the debate—as detailed in Sections 3.4 and 3.5 below—often work together towards the same policy objective, much in the way that we know that advocacy networks in other policy areas work together to advance their policy positions. These coalitions aim to influence politicians’ preferences. For example, NGOs working to advance women’s rights oppose child marriage and often work in conjunction with organizations such as UNICEF and UN Women, exchanging information and funds. A recent legislation change in Honduras exemplifies the advocacy network that has developed around child marriage. Until recently, girls 16 and older could be married with parental consent. In February 2015, congresswoman Fátima Mena presented a proposal to ban child marriage by raising the age to marry with parental consent to 18. Her initiative

was motivated by a desire to bring domestic law into conformity with international treaties of which Honduras is part. At a press conference held in October 2015 to launch the bill proposal, various women’s advocacy groups, such as Plan International Honduras, as well as UNICEF and UN Women, spoke about the bill’s importance and the need to end child marriage. The fact that all these organizations were speaking at the event in conjunction with legislators illustrates how organizations with the same causes and ideas work together to achieve policy outcomes.⁸

I argue that to fully understand compliance with human rights, scholars must account for rival activism between different interest groups and how it affects laws that incorporate human rights treaties. My expectation is that the degree of incorporation of treaties—whether they are incorporated fully, with many loopholes, or not at all—depends largely on the strengths of rival interest groups. The central tenet of this dissertation is that the mobilization of a strong anti-incorporation group will reduce the degree of treaty incorporation. Thus, I expect to observe the following:

Hypothesis 1: The stronger anti-incorporation groups are, the lower the minimum employment or marriage age will be.

The first hypothesis predicts a negative relationship between the strength of anti-incorporation groups and the minimum age of employment or marriage. The second hypothesis states a positive relationship between pro-incorporation groups and the ages at which children can work or marry.

Hypothesis 2: The stronger pro-incorporation groups are, the higher the minimum employment or marriage age will be.

The weakness of one of the groups depicted in Figure 3.1 should tip the balance towards the policy preference of its rival group.⁹ Thus, for example, it will be harder for domestic

⁸This law finally passed in July 2017.

⁹This theoretically applies also to situations in which one group is absent, although empirically I do not encounter this situation, at least in the states I examine in the following chapters.

stakeholders to push for policy changes on issues that the international human rights community does not care about.¹⁰ Similarly, there are issues that have not been taken up by strong pro-incorporation domestic groups, which will preclude or delay treaty incorporation if anti-incorporation groups are actively trying to influence government policy.

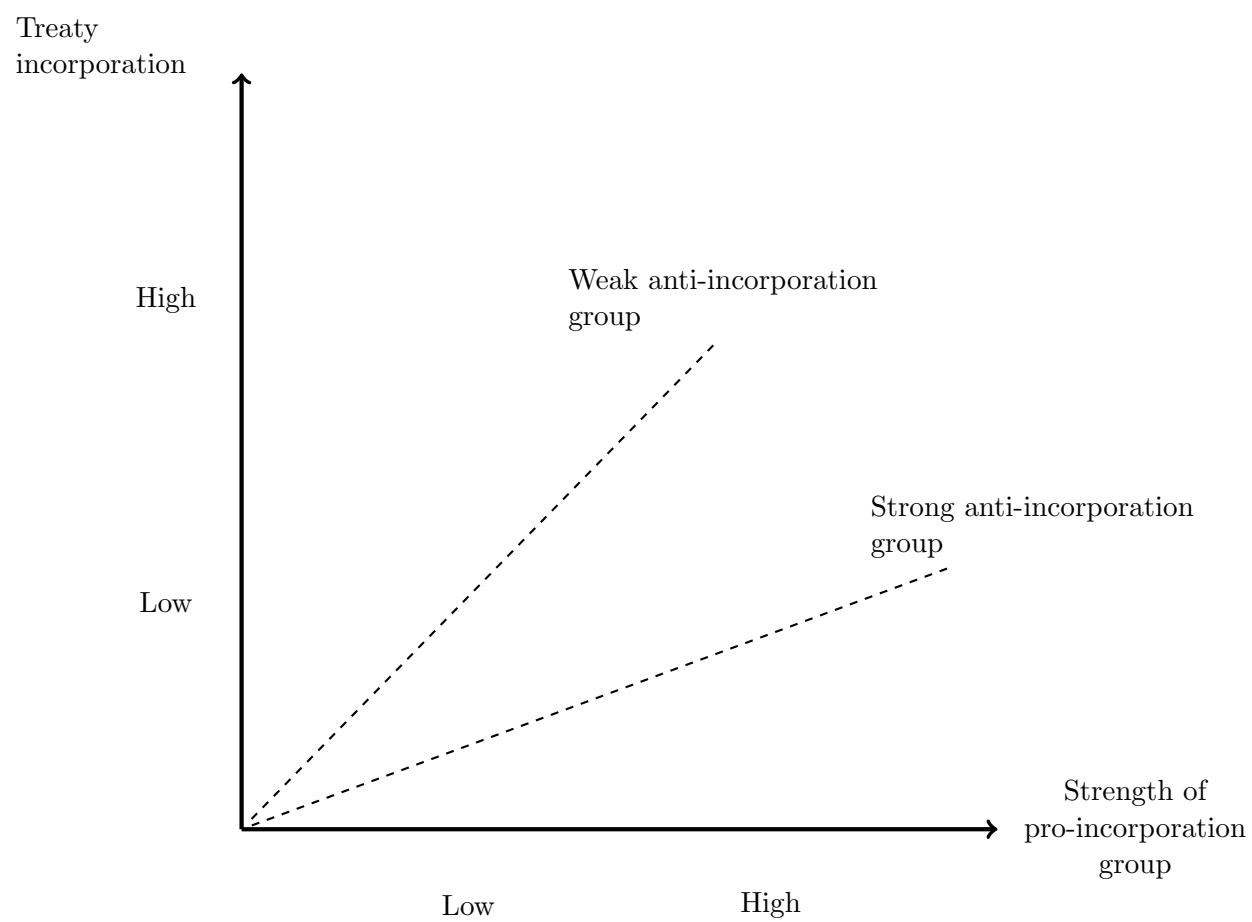
What happens when both rival groups are strong? I expect the presence of a strong rival interest group to abate the influence that the other group has on the age of employment or marriage. Thus, I expect to observe the following:

Hypothesis 3: The strength of an anti-incorporation group decreases the effect that an interest group that supports incorporation has on the age of employment or marriage.

Empirically, I expect the interaction between the strength of these two groups to be negative, so that the effect of an interest group on the age of employment or marriage is moderated by the strength of its rival group. For example, if pro- and anti-incorporation groups are strong, I expect that the degree of treaty incorporation will decrease compared to the scenario where anti-incorporation groups are weak. Often, this will be reflected in the many legal loopholes that effectively weaken the protections that laws offer to children. Figure 3.2 presents a visual representation of the expected interaction effect between rival interest groups. Treaty incorporation is expected to be higher when pro-incorporation groups are strong and anti-incorporation groups are weak.

¹⁰This is why the literature suggests that the ratification of human rights treaties can support the mobilization of advocacy groups that pressure the government to respect human rights (e.g. Simmons 2009).

Figure 3.2: Theoretical Expectation of the Interaction Between Rival Interest Groups



The next subsections provide information on the roles of two actors in Figure 3.1: the lawmakers in the government and the international community. Section 3 then describes the theoretical framework underlying the interest group story.

3.2.1 The Role of the Government

Once a treaty has been ratified, lawmakers choose whether to incorporate the provisions of the treaty or not. Significantly, this is rarely a dichotomous decision, as incorporating legislation can create loopholes that allow non-compliant behavior. For example, a country could adopt a law that establishes a minimum age of marriage of 18 to comply with international standards against child marriage and then include the possibility of marrying earlier if the child belongs to a religious minority.

In this dissertation, I argue that the choice the government makes reflects competing pressures from pro- and anti-incorporation groups within society. As I focus on the incorporation of international standards into domestic law, I consider the incentives of every actor in the government that has law-making abilities. This includes members of the legislature but also the executive. Legislators know that institutional arrangements give them discretion in determining if and how the legal status quo will change. But executives also play a role, because they introduce bills, and can veto legislation and introduce executive orders.¹¹ To simplify the analysis, in this chapter I do not consider in detail potential disagreements within governments regarding treaty incorporation.¹²

¹¹The executive also plays a role in other phases of the implementation process described in Chapter 2, particularly in the administrative execution of the bill, as they are responsible for assigning budgets and enjoy a fair amount of control over the bureaucracy. In this dissertation, I do not examine these phases of the implementation process nor do I focus on how the judiciary works to enforce legislation, but there are reasons to believe that the competing pressures from domestic interest groups faced by lawmakers in the incorporation stage affect other phases of the implementation process as well.

¹²The government actor depicted in Figure 3.1 could, in theory, be further disaggregated into pro-incorporation and anti-incorporation ministries, agencies, and individuals. Indeed, in Chapter 6 I show that even within one organization—the legislature—individuals have different preferences over the incorporation of human rights treaties. For example, while some legislators might support a child labor ban, other legislators might oppose a ban if it would hurt influential sectors of voters in their district. Similarly, in the interviews I conducted during my fieldwork, I learned, for example, that the Ministries of Work usually adopt the ILO’s view against child labor. This is not surprising given that these ministries usually collaborate with the ILO on a range of labor issues. While in La Paz in 2016, I attended the launch of a program by the

3.2.2 The Role of Monitoring Committees

Previous work has highlighted how the international community works to support activists on the ground in their efforts to improve human rights outcomes (e.g. Keck and Sikkink 1998). The international community includes different types of actors, such as states—in particular, Western states—international organizations, and global international non-governmental organizations.

In this section, I focus on one small but understudied actor in the international community by looking at the committees that monitor compliance with international treaties. According to von Stein (2018), half of all human rights agreements and all of the nine “core” UN human rights agreements have monitoring bodies (7).¹³ While the role of these monitoring committees has been understudied in the discipline,¹⁴ their role is theoretically important because they help rule out alternative explanations for why states have not incorporated human rights treaties. Specifically, they show that at least for the cases under examination in this dissertation, (1) treaty obligations are not vague, and (2) states know when their laws do not conform with international obligations. I address these issues in this subsection.

The Committee on the Rights of the Child monitors the implementation of the CRC. It is composed of 18 experts who are elected to four-year terms. They receive periodic reports from member states every five years. The ILO conventions are also monitored by a

Bolivian Ministry of Work that aimed to support the parents of working children in an effort to “eradicate child labor.” The terminology used in the event was significant as it showed that the position of the Ministry of Work was closer to that of the ILO, despite the recent approval, in 2014, of the new Child and Adolescent Code that I described above.

¹³The core UN human rights agreements, as determined by the UN, include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture (CAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), the Convention on the Rights of Persons with Disabilities (CRPD), the CRC, and the corresponding optional protocols. They can be viewed here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (last accessed 10 December, 2017).

¹⁴Creamer and Simmons (2016) are a notable exception. They examine the impact of monitoring on compliance with the international regime against torture and find that frequent and regular reports can lead to improvement in practices against torture. Their findings suggest that ILO and CRC monitoring bodies could play an important role in compliance with human rights treaties.

committee, which in this case is formally called the Committee of Experts on the Application of Conventions and Recommendations. This Committee of Experts was originally set up in 1926 and is composed of 20 eminent jurists who are appointed for three-year terms. As with the CRC, this Committee receives country reports from member states.

Treaty monitoring committees require governments to provide information. A significant focus in their analysis of the information is placed on understanding whether the member state has adequately adopted legislation to incorporate the treaty standards. For instance, committee members might ask the government to send copies of laws that have recently been adopted or are in the process of being drafted or negotiated. If the legislation in place conforms to international standards, then the committees ask the governments to send information about its enforcement. In the child labor case, for example, the ILO Committee frequently requests that states report the number of convictions given for hiring children.¹⁵

Monitoring bodies also receive information from domestic stakeholders that often contradict the government's country report. Some of these shadow reports come from NGOs working on the ground to advance the rights of children. For the case of child labor, employers' and workers' organizations—institutions that form part of the tripartite governing structure of the ILO—can also send shadow reports to the committee with their own comments on how the conventions are being implemented in the country.¹⁶

Another of the monitoring bodies' tasks is to issue recommendations. While these are not legally binding, they help clarify compliance gaps and can have reputational effects. These recommendations can also be an important advocacy tool for domestic stakeholders seeking to pressure the government to comply with its international commitments. Many of the recommendations made by these monitoring committees are about legislation. For instance, in its observations to Honduras in 2011, the ILO committee remarked:

¹⁵ Although the reported statistics often suggest that thousands of children work in the country, the number of convictions is often surprisingly low.

¹⁶ These organizations also receive a copy of the country report that the government submits to the ILO. For more information on the ILO's monitoring system, visit: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> (last accessed May 22, 2018).

Observing that Honduras ratified the Convention over 30 years ago and that the question of the revision of the Labour Code has been raised for a number of years, the Committee urges the Government to take the necessary measures to ensure that no young person under 14 years of age is permitted to work. . . (International Labour Organization CEACR, 2011).

Similarly, in an observation to the government of Uruguay adopted in 1998, the Committee said that it considered it necessary

to take particular measures to unify the national legislation in an adequate manner so as to fix 15 years clearly as the minimum age for admission to employment or work. The Committee considers it essential in the application of the Convention to establish a general minimum age unequivocally and to make it known to everyone in the country so that measures of enforcement could be taken effectively (International Labour Organization CEACR, 1998).

The ILO and CRC monitoring committees often reference each other's recommendations to states regarding child labor. For instance, in a direct request to the government of Argentina in 2006, the ILO committee

noted that in its concluding observations on the second periodic report of Argentina in October 2002 (CRC/C/15/Add.187, paragraphs 56 and 57), the Committee on the Rights of the Child...expressed concern at the limited access to education and the high drop-out and repetition rates [...] Being of the view that education contributes to eliminating many of the worst forms of child labour, the Committee strongly encourages the Government to pursue its efforts to make education available to all children and young persons in the country. . . (International Labour Organization CEACR, 2006).

The fact that these committees cross-reference their recommendations is significant because it shows that if a member state is not complying with a convention, its non-compliance can

impact how other institutions evaluate the government's efforts to protect human rights. This magnifies the reputational effects that a negative monitoring report can have, given that its impact can reverberate across multiple institutions.

The role of the monitoring bodies is important for two reasons. First, their reports suggest that states are aware of the standards they need to comply with. These standards have not changed over time and, consequently, states cannot claim that they have not had enough time to incorporate the treaties' standards. A review of the documents adopted by these monitoring committees shows that they have focused on the issues of child labor and child marriage since their establishment and that the committees consider them crucial to the implementation of the treaties outlined in Chapter 2. For example, following Bolivia's first country report submission, the CRC Committee said that because girls were allowed to marry earlier, they had less protection than boys, which deprived girls of the benefits of the other protective measures of the Convention (paragraph 9, CRC/C/15/Add.1).

Second, these monitoring bodies are important because the precise phrasing of their recommendations eliminates claims of vagueness. Consequently, they suggest that, at least for child labor and marriage, the explanations of the managerialist school (Chayes and Chayes, 1993) are not enough to explain non-compliance. Most of the recommendations issued by these bodies are so specific that they should eliminate any ambiguity or vagueness that may have existed before (if any) that prevented sincere governments from complying. Moreover, as the issues under examination here are laws and not policies, it is hard to argue that the government should need time to comply. Of course, in its fight against child labor and child marriage, the government might adopt public policies that take time to implement and affect on human rights outcomes. But changing legislation is something that a willing government should have been able to do in the more than twenty years that these treaties have been in force. In sum, the recommendations from the monitoring bodies are meaningful as they suggest that any delay in achieving incorporation cannot be blamed on the ambiguity of the treaty standard or the claim that governments do not have the ability to adopt legislation that is in conformity with international treaties.

This section has argued that governments face competing pressures to comply with human

rights treaties. The international community—including international treaty monitoring bodies—pressure governments to comply with human rights. But, domestically, governments face competing pressures from groups that support and that oppose treaty incorporation.

3.3 How Interest Groups Affect Policy

Even in democracies, policy outcomes are often not necessarily the result of a simple aggregation of votes that reveals the preference of the majority. Instead, outcomes are the result of an aggregation process that favors some preferences over others. In this system, special interest groups are formed when there are incentives to overcome collective action problems to push a certain policy forward (Olson, 1965). A textbook example of the actions of interest groups is the application of tariffs that favor a small minority of producers competing against a foreign product, while the majority of people are forced to pay a higher price as a result of decreased competition. According to this view, public policies are the result of a myriad of interest groups trying to influence policies and the lawmakers who respond to these competing pressures. This is the model of politics underlying this dissertation.

I follow Thomas and Hrebenar (2008) and define an interest group as “[a]n association of individuals or organizations or a public or private institution, which on the basis of one or more shared concerns, attempts to influence public policy in its favor” (4). The literature suggests that there are many types of groups. Some represent business interests, such as trade associations and corporations. There are also groups that represent occupational interests, such as labor unions and student groups. Finally, some groups share ideological or social views, such as religion, gun control policy, LGBTQ rights, and environmental groups.

The distinctive feature of all these groups is that they share a certain policy preference and take concrete actions to further their political objectives. Frequently, the political objective of an interest group is to change a certain existing policy. But sometimes, they use their influence to push for the non-adoption of a policy that could harm the group. The influence of a group could happen, for instance, by not allowing the floor to debate a legislative proposal or by burying it in a congressional committee.

Interest groups also work to carve out special exceptions or loopholes that, in essence, protect them from the effect that a law may have on them. Two experts in the field point out that “[s]pecial interest groups might also reap their returns in the fine details of legislation—in, for example, the exclusions of a trade agreements, the exceptions to an environmental regulation, the special deductions allowed under a new tax law, or the formulas adopted for apportioning federal aid to municipalities” (Grossman and Helpman, 2001, 12). In the issues examined here, anti-incorporation groups similarly influence politics to carve out exceptions to laws that incorporate human rights treaties. These exceptions form the basis for the incorporation gap identified in Chapter 2 for child labor and child marriage treaties. They are sometimes so significant that in practice they nullify the intended effects of the law.

The tactics that interest groups use to affect policy are similar across countries and policy dimensions. The most common activity is to try to persuade lawmakers of the positions or views of the group. Such lobbying activities may include meeting with legislators, making informal contacts at lunches and conventions, and preparing testimony for congressional or agency hearings. For example, in Latin America many NGOs I spoke to during my fieldwork told me they had an area dedicated to political advocacy (“*incidencia política*”) that focused on following legislative proposals, providing the point of view of the organization to legislators, and helping with the drafting of legislation, among others.

Central to all the activities of interest groups is the transmission of information. Interest groups have incentives to devote resources to produce information that they can then convey to legislators. Their members “are already familiar with many of the technical issues from their everyday involvement in the areas where policies are to be determined” (Grossman and Helpman, 2001, 5), and so they can help lawmakers be aware of which laws are already in place, what the likely effects of the new policy are, how their district will be affected and how other legislators will vote.¹⁷

These are direct tactics available to interest groups that already have some sort of connec-

¹⁷For a discussion on whether the information conveyed by interest groups is informative or unreliably biased (i.e. whether politicians can believe that interest groups are telling the truth), see for example Lohmann 1993 and Grossman and Helpman 2001.

tion to policymakers and are thus considered “insiders.” “Outsider” groups rely on indirect tactics to influence policymakers, such as demonstrations and protests, media activities and public relations campaigns to educate the public and voters (Thomas and Hrebenar, 2008, 4). The goal of all of these activities is to sway public opinion so that policymakers will then change their minds. In this way, indirect tactics have the same goal as direct tactics, but they rely on the mediating role of public opinion. In Bolivia, for example, members of UNATSBO used indirect tactics to influence their decisions by staging a protest and presenting their views through multiple media outlets. Through the use of these indirect tactics, they were able to obtain access to lawmakers and thus influence the policy-making process of the new Child and Adolescent Code.

In sum, interest groups use direct and indirect tactics to influence the lawmakers’ decisions about the issues they care about. When a change to the legislation will impose a cost on an individual, selective incentives emerge that push the individual to invest resources to try to change the situation (Olson, 1965). Thus, individuals are able to overcome the costs of changing policy. The key is that they must care about the issue enough to overcome collective action problems. The next two sections focus on the different types of costs that might arise in the incorporation of human rights treaties. Some are distributional and some are ethical. In each case, I show how interest groups have conflicting views regarding child labor and marriage.

3.4 The Distributional Effects of Human Rights Treaties

The debate over the incorporation of child protection treaties pits pro-incorporation groups—those that believe that incorporating human rights treaties into laws will benefit their interests—against groups that oppose incorporation. In this section, I explain why domestic groups such as labor unions, employers, and organizations of working children support or oppose the incorporation of human rights treaties. The existing literature in political science has identified the role played by civil society advocates in pushing the government to comply with treaties. Less is known, however, about how labor unions work to support

compliance with treaties against child labor. Of course, not every organization will fit these general trends perfectly; not every advocacy group, for example, wants to ban children from working. But I expect that, on average, organizations behave in the way I outline in this section.

3.4.1 Employers

One group that suffers the distributional costs of child labor bans is employers. When labor costs are low, their profits are higher. Consequently, employers benefit when the labor supply is high and workers must compete for a limited number of positions because this pushes wages down. In this way, employers might benefit when children work because children expand the number of workers in the market. Thus, I expect employers to oppose the incorporation of treaty standards against child labor.

Employers might prefer hiring children for a number of reasons. First, the literature suggests that employers might prefer hiring children over adults because they are more docile, complain less, and are easier to work with. One observer stated that “many employers prefer to employ children rather than adults because adult workers are more organized, know their rights and are vocal about them” (Myrstad, 1999, 77).

Second, employers might prefer to hire children because, in many cases, children’s salaries are lower than those for adults. Historically, it was legal to pay children less than adults. For example, Uruguay’s law 13.245 established a minimum salary for agricultural workers of \$530 pesos per month if they were over 18 and \$283 for workers under 18 years old. Similarly, the law established that it was legal to pay children in domestic service 25% less than adult workers.¹⁸ More recently, states have introduced legislation to eliminate this discriminatory practice,¹⁹ but while wage discrimination is no longer legal in many countries, there are

¹⁸This law was adopted in 1964. It can be accessed here: <https://legislativo.parlamento.gub.uy/temporales/leytemp6256701.htm> (last accessed May 31, 2018).

¹⁹Thus, for instance, Argentina’s Law 26.390 establishes in its Article 5 that children cannot be offered lower salaries—unless they are learning the craft or have a reduced work schedule, derogating a provision that had been in place throughout the twentieth century that allowed wage discrimination.

reasons to think that informally, the practice remains pervasive in the labor market. For instance, in Bolivia, children complained that in certain sectors they were paid half of what adult workers were paid (Coster, 2010), even though the practice was explicitly prohibited in national legislation.²⁰ Further evidence of the wage differential between children and adults is the fact that the children who worked in public transport in the city of La Paz were fired *en masse* after government offices coordinated policies to make sure that adolescents were paid the same minimum wage as adults.²¹ In Argentina, children are paid so little that one rural employer said that if a labor inspector came to his farm and fined him, paying the fine would be cheaper than producing without the use of child labor (Colombres, 2009). These examples suggest that it is often beneficial for employers to hire children instead of adults.

Employers within the same sector often have similar preferences regarding child labor, particularly in industries with simple or labor-intensive production processes where children might not be at a disadvantage compared to adult workers. Agricultural production in particular is known to bring together employers for the same product who might lobby lawmakers to stop the incorporation of treaties against child labor. In the United States, for instance, employers in the tobacco industry have influenced labor standards to prevent raising the age of work. Currently, children of any age can work on small farms with parental permission, and children as young as 12 can work on tobacco farms—an activity considered hazardous by international standards. A Human Rights Watch advocate claimed that interest group pressure had prevented lawmakers from changing these regulations:

For years my colleagues at Human Rights Watch and other children’s advocates pushed for a bill in Congress to provide child farmworkers with the same protections as workers in other sectors, but the bill was never brought to a vote. In 2011, the U.S. Department of Labor introduced regulations that would have updated the decades-old list of hazardous occupations prohibited for children under

²⁰Wage discrimination was prohibited at the time by Article 129 of the 1999 Child and Adolescent Code.

²¹This action spurred protests in front of the Minor Commission of the legislature asking for lawmakers to retract the measure. Reported in Bolivia’s CRC/C/3/Add.2 report to the CRC, which can be accessed here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.2&Lang=en (last accessed 2 April 2017).

sixteen working in agriculture, and banned all work by these children in tobacco farming. The proposal was withdrawn after it drew opposition from agricultural interest groups (Wurth, 2015).

Further evidence of the sectorial dimension is the fact that many laws carve out exceptions that are specific to certain industries or sectors. For example, when in 1998 Costa Rica raised the minimum age of employment for light work to 15, it also adopted *Decision 349-98* that authorized children under 15 from working in the coffee harvest under certain conditions. This loophole is meaningful because coffee is one of the main exports of the country, so the law carved out an exception exactly where the law was meant to have an impact.

3.4.2 Labor Unions

Labor unions bring together groups of workers, usually from the same industry or related occupations, in order to advance their collective interests. For workers, organizing themselves through a labor union increases their bargaining power vis-à-vis employers. This can help them push for higher wages, more benefits, and better working conditions.

Throughout the world, labor unions vary greatly. In some countries, labor unions are generally strong and frequently influence the policymaking process. In other countries, union membership and participation has always been weak. Recently, developed countries have experienced a decline in union participation. In Latin America, unions were weakened during the authoritarian regimes common in the region before the last democratization wave.

Labor unions are an important interest group favoring incorporation. There are two reasons why I contend that labor unions support the incorporation of treaties against child labor: first, because adult workers who are members of the unions compete for jobs with children; second, because labor unions are part of the ILO's tripartite structure and this association makes labor unions natural allies in the fight against child labor.

Labor unions have an objective interest in combatting child labor because the presence of a large number of children in the labor force undermines the labor union's bargaining position and the extra supply of workers can bring wages down. Of course, the availability

of children to work would not be a problem if employers did not want to hire them, but for the reasons mentioned above, employers might prefer hiring children over adults, especially in those jobs where adults do not have a comparative advantage at doing the work. Labor unions also see their quest for higher wages as a way to solve the child labor problem, because if parents had more income, they could better provide for their children and there would be no need for children to work.

The second reason why labor unions support child labor bans is that they support the ILO's more general goals. Importantly, labor unions are a key component of the ILO's tripartite structure, which includes governments, employers and workers. According to the ILO website, "[t]he ILO is based on the principle of tripartism—dialogue and cooperation between governments, employers, and workers—in the formulation of standards and policies dealing with labour matters". The tripartite approach is thought to guarantee that the standards adopted "have broad support from all ILO constituents."²² Thus, for instance, the ILO has always stressed the need to have the three components participate when drafting conventions and national legislation that aims to improve international labor standards. As part of the ILO, labor unions contribute to many of the goals of the organization, including the eradication of child labor. In fact, the ILO considers labor unions "vital partners" in the fight against child labor (International Labour Organization, 2016, 2). In a manual on best practices for trade unions in the fight against child labor, the ILO states that child labor is a trade union issue because it "means a loss of jobs for adults" as "children provide cheap substitute labour" which "weaken[s] the bargaining power of unions" and damages the health of future workers, among others (International Labour Organization, 2016, 16).

Labor unions collaborate in the eradication efforts of the ILO by monitoring government compliance with the conventions. For instance, in 2016, the ILO received complaints about

²²ILO website, available here: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/tripartite-consultation/lang--en/index.htm> (last accessed January 30, 2017). There is also an ILO Convention from 1976 that specifically advocates for the use of tripartite consultations known as the "Tripartite Consultation (International Labour Standards) Convention" from 1976 (C144). The text of this convention can be viewed here: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144 (last accessed January 30, 2017).

the Peruvian government from the Autonomous Workers' Confederation of Peru. The Committee's report "notes the allegations of the [Autonomous Workers' Confederation of Peru] that the Government has taken no real action to end child labour in mines."²³ Also, in 2014, the Trade Union of Workers of Guatemala sent comments to the ILO criticizing the government's enforcement of C138, particularly with regard to labor inspections in rural settings.²⁴ That same year, the ILO Committee received complains about Bolivia's new Child and Adolescent Code from the International Trade Union Confederation.²⁵ These examples show that labor unions contribute to the ILO's mission to eradicate child labor by monitoring governments' efforts to incorporate treaties and enforce them. For all these reasons, I expect labor unions to oppose child labor and to support the incorporation of treaties against child labor.

3.4.3 Organizations of Working Children

Since the 1970s, organizations and social movements of working children have emerged in various parts of the Southern Hemisphere.²⁶ These organizations operate like labor unions for children. In Latin America, some important national movements include the National Movement of Street Boys and Girls of Brazil, the National Movement of Organized Working Children and Adolescents of Peru, and the UNATSBO of Bolivia. In other parts of the world, influential groups of working children include the African Movement of Working Children and Youth in Senegal and the Bhima Sangha organization in the Indian state of Karnataka, to name a few.

²³The monitoring report can be accessed here: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3298436 (last accessed January 30, 2017).

²⁴See the ILO's observation to Guatemala here: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3252854:NO (last accessed February 5, 2017).

²⁵The International Trade Union Confederation is the world's largest organization grouping trade unions from around the world. Their website states that their primary mission "is the promotion and defense of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions". Available here: <https://www.ituc-csi.org/about-us> (last accessed May 3, 2018).

²⁶Some evidence also exists of working children getting organized at the turn of the nineteenth century in the Northern hemisphere to defend their rights, such as newspaper boys in New York. See Liebel (2004).

Working children's organizations evolved into national movements and then came together to form an international advocacy network. In Latin America, national organizations of working children met for the first time in late 1988 at a conference that included representatives from Argentina, Bolivia, Brazil, Chile, Paraguay and Peru. It was followed by another meeting in Argentina (1990) and many since.²⁷ Today, the Latin American organizations are formally grouped in an umbrella organization known as the Latin American and Caribbean Movement of Working Children and Adolescents (*Movimiento Latinoamericano y del Caribe de Niñas, Niños y Adolescentes Trabajadores*, or MOLACNATS).²⁸ These relationships are important because they help identify channels through which information and resources flow in the advocacy network.²⁹

Organizations of working children consist mainly of children between the ages of 10 and 16 (Liebel, 2004, 20). While their activities vary depending on the country they are in and the level of organization they have achieved, many of the children that are members of these groups work in large cities, in the informal sector of the economy, either on the streets or in domestic service. While children from rural areas and girls tend to be underrepresented in the organizations' membership (Liebel, 2004, 20), some organizations have evolved over time to have national coverage, such as Peru's MANTHOC organization.

Organizations of working children are relatively independent from adults, even though they rely on them for certain functions. For instance, some organizations were outgrowths of other movements, mostly led by adults, that supported worker's rights and, more generally, the empowerment of the poor (Fyfe, 2007, 73). Others were initiated by a group of youth activists who organized the movement or organization with the assistance of adults. However, despite their role in the foundation of these movements, the adults that participated

²⁷National organizations of working children have also come together in sub-regional conferences, such as the meetings of Central American countries in Guatemala (1990), Costa Rica (1991) and Nicaragua (1992).

²⁸The organization includes members from Argentina, Bolivia, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru and Venezuela. Their website can be accessed here: <http://molacnats.org/> (accessed June 21, 2017).

²⁹For example, a well-known institute in Lima (Peru), the *Instituto de Formación para Educadores de Jóvenes, Adolescentes y Niños Trabajadores de América Latina y el Caribe* (IFEJANT), has worked very closely with UNATSBO members, offering them training and other types of support.

did so as consultants and facilitators and not as executive directors. Even today, adults usually work *ad honorem* and strive to give the children as much independence as possible. Organizations of working children tend to have a flexible and democratic structure that emphasizes representation and participation (Liebel, 1994, 125); these groups hold elections to elect representatives that are in charge of different aspects of the advocacy efforts.

Despite their institutional heterogeneity, organizations of working children have similar goals. They argue that children have a right to work and demand that their contributions to family income and the country's economic well-being more generally be recognized. They want to be heard and for governments to take their views into account. In particular, they push governments to prevent situations where children are forced into exploitative work conditions.

Many of these goals contradict the objectives of organizations of the international community, such as the ILO. Organizations of working children tend to criticize the role of the ILO and its efforts to “eradicate” child labor. Thus, for example, UNATSBO members often point out that the recommendations against child labor are not culturally appropriate for a developing country like Bolivia. The following is a quote from Lourdes Cruz Sánchez, a representative from the child worker council from the Bolivian city of Potosí:

I wish to make an appeal to the organizations that cooperate with the ILO: before you create laws or social programs for countries, you need to know their reality. [...] To make programs you must know the situation in the country (Strak, 2015, 41).

A common form of action in children's movements is to help each other in cases of economic need. Some groups even have a small fund for emergencies. For example, the Peruvian group MANTHOC has organized a fund to help families that do not have income due to the parents' prolonged illness. These funds come from other children's income and from special fund-raising activities (Liebel, 1994, 53). Working children also engage in more traditional labor union actions, including protests and strikes.

Many organizations of working children receive material support from adult humanitarian organizations (Liebel, 2004, 20). For example, international non-governmental organizations have supported the work of UNATSBO. In particular, organizations such as *Terre Des Hommes* and Save the Children have given them funding to organize meetings and to conduct research to help their advocacy goals. Other organizations that have supported organizations of working children are Defence for Children International (DCI) and World Vision (Fontana and Grugel, 2015, 70).

Like most interest groups, organizations of working children produce information that (1) helps them understand better what their policy objective should be and (2) can later be used in advocacy efforts to persuade lawmakers in government. Pacosillo Mamani (2013), a former member of UNATSBO, interviewed 320 children and adolescents in the city of El Alto, the second-largest city in Bolivia and one of the poorest. His study, funded by the *Fundación Wiphala* and published in a small book that I obtained during my fieldwork, reviews the debate over child labor and presents a quantitative analysis of children's responses to the survey, including the percentage of children who work, their ages, their jobs, and whether they attend school.

To influence policy, organizations of working children rely on 'outsider' tactics aimed at influencing lawmakers' decisions through the mediating effect of public opinion. In this way, some of their efforts are devoted to publicly protesting incorporation efforts. In November of 2017, for instance, MOLACNATS staged a number of events in response to the ILO's IV Global Conference on the Sustained Eradication of Child Labour, held in Argentina. First, they sent a letter to the CRC Committee denouncing the ILO for not complying with the CRC's Article 12, which establishes that children shall be "provided the opportunity to be heard in any judicial or administrative proceedings affecting [them]", as they had been rejected from attending the conference for 'security reasons'.³⁰ MOLACNATS then organized its own "anti-ILO" conference, to coincide exactly with the dates of the ILO conference, as a sign of protest.

³⁰The letter can be accessed here <http://molacnats.org/wp-content/uploads/2017/11/Carta-Reclamo-Comite-DDNN.pdf> (last accessed February 1, 2017).

As organizations of working children face economic costs with child labor bans, they are usually at odds with adult labor unions over policy. In fact, these two groups do not collaborate very much. During an interview with a former member of a working children organization in Bolivia, I asked about the relationship between the organizations of working children and the labor unions in the country. He said that the Bolivian Workers' Center (*Central Obrera Boliviana*)—the oldest labor union in the country, representing 2 million workers—had not helped them at all. In fact, he said, they work against UNATSBO and talk about “eradicating child labor”—terminology associated with the “abolitionist” perspective of child labor. He explained that part of the reason is that the labor union works very closely with the Ministry of Labor, and the Ministry of Labor, in turn, works closely with the ILO and even receives money for various programs from the ILO. He cited two brief moments of cooperation among children and adult labor unions—one in rural areas, one in Potosí, a mining region—but they were short-lived and insignificant.

3.4.4 Families

The economics literature suggests that families have incentives for children to work. While families are obviously not formally organized as an interest group, I analyze their motivations in this section as they may indirectly influence treaty incorporation. With the caveat that these phenomena are not determined only by poverty,³¹ this section sketches out a theory that shows that families that are income-restricted may benefit when children work.

I follow the household model of child labor, which sees parents as agents maximizing at the household level (Basu and Van, 1998). This theory rests on two basic propositions. The first is that children allocate their time between schooling, work, and leisure. This allocation is decided at the household level to maximize its present and future welfare. The second proposition is that child labour increases current income and schooling is an investment that generates future income. To meet present basic needs, poor households are more likely to allow their children to work, thus forgoing higher income in the future.

³¹Poverty increases children's susceptibility to child labor and child marriage, but there are other factors that affect whether they work, too. See Section 2.1.

From this model it follows that the entire household can benefit when children work. Parents can benefit if children contribute to the household income, even if they are not completely selfish and instead only rely on this income to push the household above subsistence level (Basu and Van, 1998). If the family had enough income, it would invest in children's education more than it does. Children, as part of the household, also benefit if being employed pushes them above subsistence levels, even if working does not allow them to make long-term investments that will raise their future income levels. Cigno and Rosati (2005) explain the trade-off in the following way:

“[C]hild labour generates current income. If a family is credit rationed, child labour thus serves to relax the liquidity constraint on current consumption. If a family cannot buy insurance, child labour serves also as a buffer against severely adverse events. There are thus trade-offs. To the extent that current consumption has a positive effect on future health (hence, on the child's future earning capacity), the trade-off between present and future consumption may be lower than one might think. In certain circumstances, it might conceivably be negative. In other words, there may be circumstances in which a child and his family are better off working than not working” (1-2).

Support for the household model comes from the fact that many children report giving their families most of their earned income (Pacosillo Mamani, 2013).

In sum, this section has explored the distributional effects of human rights treaties. Importantly, not all groups benefit from treaty incorporation. Employers, families and organizations of working children all suffer costs when child labor bans are implemented. In contrast, labor unions benefit when treaties against child labor are incorporated. I expect them to favor the incorporation of treaties against child labor.

3.5 The Moral Conflicts of Human Rights Treaties

In this section I explore a second type of opposing effects that human rights treaties have when they create conflict among moral values within society. First, I discuss the role that advocacy groups play in the incorporation of child marriage and child labor bans. Then, I explain why human rights treaties can garner opposition from domestic groups that support competing moral values. In this section I describe each in turn.

3.5.1 Advocacy Groups

In this dissertation, I use the term ‘interest groups’ to refer to all the groups described in this chapter, and reserve the term ‘advocacy groups’ for specific interest groups that, being non-governmental organizations and non-profits, have policy goals that are organized around ideas or values. Internationally, examples of these advocacy groups would be Amnesty International, CARE International, and Human Rights Watch. The role of advocacy groups in pushing the government to change its behavior has long been recognized as a powerful force in the fight for human rights. Their influence has increased since the end of the Cold War, spurred in part by the reduction in costs of organization and operation (Simmons, 2009, 32). International relations scholars have shown that advocacy groups help keep governments accountable by pushing for the ratification of international human rights treaties, producing information about rights violations, and pressuring the government to change its policies through the use of advocacy networks and ‘naming and shaming’ tactics (e.g., Keck and Sikkink 1998, Hafner-Burton and Tsutsui 2005, Murdie and Davis 2012).

For the case of child labor and child marriage, advocacy groups are important drivers of treaty incorporation, usually working in conjunction to pressure the government to comply with international treaties.

3.5.1.1 Child Labor

There are many human rights advocacy groups working to protect children from child labor. The EU-based “Stop Child Labour” campaign argues that all child labor should be abolished, and works instead to generate “child labor-free zones” in developing countries. In its mission statement, the organization asserts that

[e]very child has the right to education and protection against child labour. . . Stop Child Labour advocates an area-based approach involving all children who live in a certain area. Focusing only on children who work in certain sectors or on the worst forms of child labour does not bring lasting change. As long as some forms of child labour are accepted, children will continue to work and they will continue to be denied the right to education (Stop Child Labour, 2017).

There are many organizations like Stop Child Labour operating in Latin America as well. Even in Bolivia, where the Children and Adolescent Code was adopted in 2014, there are some local groups—such as the *Centro de Multiservicios Educativos* and the *Fundación Desarrollo y Autogestión*—that believe that child labor should be abolished (Fontana and Grugel, 2015, 69).

Although the majority of advocacy groups working to protect children aim to eradicate child labor, there is a small but growing group of organizations that take a different approach. In their view, prohibiting child labor does not solve the underlying problems that cause child labor and only pushes children into dangerous jobs in which they have no legal protections. This “critical” perspective on child labor agrees on the need to defend and promote children’s rights but believes that the best way to do so is to focus on preventing the exploitation of children in certain hazardous industries and not through the use of a blanket prohibition of child labor as the “abolitionist” perspective proposes (Bourdillon et al. 2010, Pacosillo Mamani 2013, 22-25). In Bolivia, UNATSBO’s legislative proposal for the new Child and Adolescent Code, for example, was drafted with the help of the national coordinators of Save the Children, *Terre des Hommes* Germany and *Terre des Hommes* Switzerland.

These organizations provided financial support for UNATSBO and organized events where children met to discuss the views that would inspire their proposal.

A recent example helps illustrate the intensification of the debate between the abolitionist and the critical perspectives on child labor. In 2016, a letter signed by over 50 academics and practitioners was sent to the CRC Committee urging its members to avoid referencing the ILO's Convention 138—which sets out minimum age standards—in a general comment that was being drafted about Article 32 of the CRC which relates to child labor. The letter states that “[t]he work that children and adolescents perform. . . can have positive as well as negative effects” and that the practitioners “have reservations about using ILO Convention 138 (Minimum Age Convention)” to prevent the exploitation of children. A few months later, Human Rights Watch responded with its own open letter to the CRC Committee arguing against all the points made in other letter. For instance, Human Rights Watch clarifies that C138 allows children aged 15 and older to work if they are employed safely and have completed the mandatory schooling years.³² Human Rights Watch also criticizes the original letter because “[g]overnments should not be encouraged to cherry-pick international law.”

Despite the debate between these two perspectives on child labor, most international and local advocacy groups adopt the “abolitionist” view and believe that child labor should be eliminated. Consequently, they support the incorporation of treaties against child labor because they believe in the ideas and principles behind the eradication of this practice. In sum, most advocacy groups working to protect children are against child labor and in favor of treaty incorporation.

3.5.1.2 Child Marriage

Advocacy organizations have also been at the forefront of efforts against child marriage. They often oppose child marriage because it is related to a host of other goals that their organizations work towards. For example, child marriage is thought to interrupt (or end)

³²The response from Human Rights Watch can be accessed here: <https://www.hrw.org/news/2016/04/04/when-it-okay-children-work> (last accessed February 5, 2017).

a girl's access to education. This, in turn, will deprive her of life-long earnings (UNICEF, 2014). Child marriage can also have devastating effects on girls' health; indeed, complications during pregnancy and childbirth are the second leading cause of death for girls between 15 and 19 (WHO, 2014).

For these reasons, advocacy groups around the world devote considerable efforts to stop child marriage. Given that states often have not fully incorporated international standards against child marriage, many of these efforts are directed towards pushing the government to adopt child marriage bans. In Guatemala, for example, groups dedicated to children's and women's rights were the driving force behind the recent raising of the marriage age. Since 1963, the country's civil code had allowed the marriage of 14-year-old girls and 16-year-old boys if they had parental consent. Moreover, girls were allowed to marry at any age if they were pregnant or had a child.³³ In August 2013, a group of 13 advocacy groups—including Save the Children and Plan International—presented a legislative proposal to raise the marriage age to 18 for both sexes (Proposal 4711). This proposal, presented to the Women's Commission in the national congress, was adopted by the *Partido Patriota*, but faced opposition in the Commission on Constitutional Affairs (*Comisión de Asuntos Constitucionales*) and, in the end, did not get a favorable ruling. The next year, these advocacy groups redoubled their efforts and worked on another proposal that was finally adopted in 2015 (Proposal 4746) with support from the same party. This law established a minimum age of marriage of 18 for girls and boys and maintained exceptions for those 16 and older, who could get married with authorization from a judge. To pressure legislators to adopt the proposal, the groups relied on their advocacy network to launch a media campaign supporting the bill. For instance, a few months before the proposal was adopted, Plan International and UNICEF released a study on teenage pregnancy in Latin America and argued that prohibiting child marriage would reduce the rates of teenage pregnancies.³⁴

³³For a discussion of why these standards are considered discriminatory and violate international agreements, see Chapter 2.

³⁴More recently, in August 2017 the Guatemalan congress eliminated the exception that allowed children 16 and older to get married with judicial authorization. Children can no longer legally marry in Guatemala.

3.5.2 Churches and Religious Groups

The clearest voice acquiescing to child marriage comes from religious groups or churches which, for a variety of reasons, see child marriage as beneficial for children. For instance, in Trinidad and Tobago, the Inter-Religious Organization—a group consisting of members from the Anglican, Catholic, Mormon, Presbyterian and other churches—voted in May 2016 to preserve a law that allows girls as young as 12 years old to marry. Under current law, the age of sexual consent is 18, but certain religious faiths allow for marriage at 12. Child marriage is seen as a way to “solve” teenage pregnancies of children from religious families. The vote was criticized by local advocacy groups. For example, Stephanie Leitch, Founder and Co-Director of the local advocacy group WOMANTRA, rejected the suggestion that marriage was a way to protect under-age pregnant women. In her words, “marriage is not an acceptable solution” for girls who, not being able to legally give consent, got pregnant (Doodnath, 2016). The vote was criticized by local UN offices and reported on the websites of international NGOs, the most important NGO against child marriage being Girls Not Brides.³⁵

The churches’ position is not surprising given that even today there are religious documents that officially condone child marriage. While Sharia law is usually singled out as discriminating against girls, ministers from the Church of England could marry 12-year-olds in Britain until 1929, and the Roman Catholic Canon Law authorizes priests to marry girls at 14 and boys at 16 even today.³⁶

Further evidence for the role of religious groups in propagating child marriage is the

³⁵After the uproar over the vote, the government issued a statement saying that “[t]he gap between the age of marriage (currently 12, 14 and 16) and the age of consent... must be harmonized”, which was viewed as an indication that the law will be reformed. Statement from the Office of the Prime Minister (Gender and Child Affairs), released on 18 May 2016, and available here: <http://www.opm-gca.gov.tt/News/Post/1277/Office-of-the-Prime-Minister-Gender-and-Child-Affairs-Position-on-Child-Marriage> (last accessed 1 July 2016).

³⁶Pope John Paul II’s version from 1983 (still in force) gives the minimum age as 14 for girls and 16 for boys. Canon 1083 Part 1 calls them “woman” and “man,” but these are children according to international treaty standards and have not attained the age of majority specified under this same Canon Law, which is given as 18. The text of the law can be accessed here http://www.vatican.va/archive/ENG1104/_P3Y.HTM (last accessed May 22, 2018).

fact that many policy interventions aim to convince religious leaders of the negative consequences of child marriage. These policy interventions identify religious leaders as one of the main barriers to changing this discriminatory traditional practice. For instance, the Ford Foundation funded a program aimed at changing the opinion of Islamic opinion leaders in Nigeria.³⁷

More broadly, religious and conservative organizations are opposed to other policy issues that are important for feminist activists, such as access to reproductive health care, laws against violence against women, and the economic empowerment of women. Kang (2015), for example, discusses how conservative religious activists mobilized against women's rights reforms in Niger. Recent evidence of the rivalry between women's advocacy groups and religious groups is the establishment in 2015 of the Observatory on the Universality of Rights, a collaborative project between feminist groups seeking to protect women's rights against the "attack" from anti-rights religious fundamentalists. They claim these groups hide a "dangerous agenda" behind seemingly harmless titles that emphasize the protection of the family, the importance of parental rights (over the rights of children), and national sovereignty, among other things (The Observatory on the Universality of Rights, 2018).

The positions of the churches matters because they can influence political discussions about laws regulating child marriage. For instance, when the Congress of Trinidad and Tobago debated a proposal in January 2017 to eliminate the exception allowing minors to marry referenced above, Senator Maulana Mohammed voiced his opposition in a way that clearly stated the position that the churches had maintained, saying that

Muslims believe that the marriage age of females begins with puberty... and as such, it is not an offence if a girl is allowed to be married after attaining that age (Ramdass, 2017).³⁸

The influence of religious groups need not be overt or visible to be effective. Gryzmala-Busse (2016) explains that churches are often able to influence policy through institutional

³⁷For an evaluation of this program, see Walker (2015).

³⁸In the end, the proposal was adopted.

access that is “covert, frequently informal, and highly desirable to churches because it maintains influence over time at a relatively low cost” (2). According to the author, this influence could take the form of joint church-parliamentary commissions, the church’s involvement in informal legislative proposals, extensive parliamentary and ministerial consultation, and others. All of these would fall under the definition of lobbying used in Section 3.3. Through these mechanisms, churches are often able to influence policy regarding abortion, religious education in schools, and other issues. I contend that another area in which churches are influential is the laws regulating the age of marriage. Religious groups can influence policy regarding the age of marriage even if their efforts are not visible to the public. This is important because churches frequently support child marriage.

The literature shows that the institutionalization of religious influence is problematic for gender equality. As child marriage is a practice that disproportionately affects girls, the debates surrounding the incorporation of treaty prohibitions against child marriage reflect broader discussions about family law reform. Family law is an area of law that governs the formation and dissolution of a family unit as well as the relationship among its members.³⁹ Laws regulating the age of marriage are part of family law as they establish when a person is legally allowed to enter the state of marriage and, in many cases, this is formally considered the initiation of a family unit.

While family law historically conformed to patriarchal and religious models, over time some states have introduced reforms to give women equal rights before the law. Scholars have studied the evolution of different areas of family law such as divorce and the rights of parents over children (Htun 2003, Htun and Weldon 2015). These studies suggest that the relationship between church and state is crucial to explain gender equality. Htun and Weldon (2015) find a strong association between the institutionalization of religious influence and family law equality for law. They find that when secular and religious institutions are separate, family law tends to be more egalitarian. Conversely, “[w]hen religion is institutionalized, pa-

³⁹Family law includes “rules about marriage and its dissolution; the respective rights, obligations, and capacities of spouses; the relationship between parents and children; marital property; child custody or guardianship; and inheritance” (Htun and Weldon, 2015, 454).

triarchal interpretations—and interpreters—of family law gain greater authority and more immunity to contestation” (453). The authors conclude that the key factor associated with discriminatory family law is “the institutional role states have crafted for religions” (Htun and Weldon, 2015, 470). Similarly, Kang (2015) argues that “[w]here church and state are closely intertwined, religious authorities have greater powers over policymaking” (10).

One indication of the institutionalization of religion is when the line between church and state is porous. In some Latin American countries, children can enter into marriages without the authorization of the government because churches can authorize these marriages. For instance, in Colombia, those 14 or older can be married by a Catholic priest if they have been authorized by their parents. Father Diego Guzmán, a priest from the Cali department, explained in 2015 that

[a]s priests, we follow up with the people who want to get married and explain to them the arguments of that commitment, because the issue is not the age, but their maturity in the Faith. When a marriage is decided it is because their Faith is sufficiently mature to assume that emotional role (El País, 2015).

This example shows how a representative of the church downplays the importance of age in determining whether a marriage should take place. Instead, he emphasizes religious factors—such as how much faith children have—to determine whether they should be allowed to marry. These arguments are in direct opposition to the standards of international child protection treaties. This example shows one way in which the church’s influence can become institutionalized.

Of course, it is theoretically possible that some religious leaders oppose child marriage. Indeed, “[a] religious community may become internally divided over women’s issues, with some supporting women’s rights reforms and others opposing reforms” (Kang, 2015, 8-9). However, in the child marriage, these voices are still a minority.

It should be noted that opposition to child marriage prohibitions is common not only in developing countries. In 2017, multiple states in the United States have seen legislative battles to eliminate loopholes that allow children to marry. For example, in 2017 lawmakers

in New Jersey passed a bill to ban marriage of people under 18, but the law was blocked by governor Chris Christie who sent it back citing ‘religious customs.’⁴⁰ More generally, the reasons cited to oppose the bills in the US are the same as in other countries of the world, as “[o]pponents worry that raising the age will lead to out-of-wedlock births. . . As in Africa and Asia, the reasons for such marriages in the U.S. are often cultural or religious; the American families follow conservative Christian, Muslim or Jewish traditions” (Kristof, 2017).

In sum, churches of different religions and denominations and in different places of the world oppose the incorporation of international standards against child marriage. These churches often have covert, institutionalized access to lawmakers and might, more broadly, influence public opinion, especially of members of society that are socially conservative.

3.5.3 Families

Most child marriages are either permitted or encouraged by the child’s parents. Often, marriage is seen as a way to escape negative social repercussions from an early or unwanted pregnancy, particularly in conservative families or societies where pregnancy out of wedlock is seen as casting shame upon an entire family. A recent study in Brazil identified as one of the main causes for child marriage the “desire, often by a family member, to deal with an unwanted pregnancy in order to protect the girl’s and family’s reputation and to “ensure” the man’s responsibility for the girl and potential baby” (Taylor et al., 2015, 13). Families thus support child marriage for moral or ideational reasons.

It should be noted, however, that in the most extreme cases, treaties against child marriage might have distributional consequences as well, because marrying a child may increase household income. First, because when a child marries, the family typically stops providing for that child. As child marriage affects mostly girls, this usually means that the girl becomes

⁴⁰ “Protecting the well-being, dignity, and freedom of minors is vital, but the severe bar this bill creates is not necessary to address the concerns voiced by the bill’s proponents and does not comport with the sensibilities and, in some cases, the religious customs, of the people of this state” he said, according to a report from the PBS Newshour, which can be accessed here: <http://www.pbs.org/newshour/rundown/activists-in-n-j-push-to-ban-child-marriage-before-christie-leaves-office/> (accessed May 31, 2018).

the financial responsibility of the husband and not the girl’s family. This decreases the household’s costs. Second, it may contribute to the family income if the family receives a marriage payment for a child to be married. The practice of brideprices, for example, suggests that families may benefit when a girl gets married.⁴¹ Even in states where the tradition is that the bride’s family pays the groom a dowry, the payment is smaller the younger the bride, which also incentivizes families to marry their daughters young.⁴² Furthermore, in many countries girls have reportedly been offered as payment to settle family debts. While this practice is less visible in Latin America than in other parts of the world, it is by no means absent in the region. For instance, an article from a Honduran local newspaper, *La Tribuna*, denounced that girls are “offered as currency to men of economic power in exchange for a cow, a piece of land or an object of value”.⁴³ Similarly, a study by Plan International in the Dominican Republic revealed that families that allow their children to get married negotiate a ‘price’ according to certain ‘attributes.’ In the case of girls, these could be whether they are virgins or not, whether the girl is pregnant or not, and if she is perceived as being attractive and/or reliable (Plan International, 2017). For all these reasons, families may have economic incentives—as well as moral reasons—to support child marriage.⁴⁴

3.6 Conclusion

This chapter argues that domestic politics matters for the incorporation of human rights treaties. The incorporation gap identified in Chapter 2 is the result of the opposition of some

⁴¹See for example Anderson (2007)

⁴²See “Why Does Child Marriage Happen?” from Girls Not Brides, available here: <https://www.girlsnotbrides.org/why-does-it-happen/> (last accessed April 29, 2018).

⁴³My translation. The article can be accessed here: <http://www.latribuna.hn/2017/02/13/ninas-pierden-la-inocencia-uniones-arregladas/> (last accessed July 25, 2017).

⁴⁴To counteract the distributional effects that prohibiting child marriage might have, some policy interventions have been designed to reward families for delaying marriage for girls. For instance, cash transfers have been introduced to incentivize parents and children to delay marriage. In India, cash transfer programs have been in place at least since the 1990s aimed at changing parents incentives in support of child marriage. More recently, the NGO CARE has enrolled Syrian refugees in Jordan in an effort to delay their marriage. See <http://www.khaleejtimes.com/news/general//news/general/uae-ngo-rescues-refugee-girls-from-child-marriages> (last accessed April 29, 2018).

social groups to treaty incorporation. Social groups oppose incorporation because treaties have opposing effects among citizens. These can be distributional or create conflict between competing values. The costs encourage individuals to solve collective action problems and lobby together to influence government policy.

I describe how human rights treaties affect the interests of different interest groups. In both cases, advocacy groups mostly favor incorporation of treaties against child labor and child marriage, except for some groups that believe in ‘critical’ perspectives of child labor and argue that child labor bans only push children to work clandestinely in hazardous jobs. Labor unions are also strong opponents of child labor, as they benefit economically when children cannot work. Conversely, employers and organizations of working children support child labor because labor bans raise their costs and reduce their income, respectively. Churches and religious groups support child marriage because they believe that child marriage bans go against traditional values that prioritize the family over the individual rights of women. Families, while not strictly an interest group, often have moral and economic reasons to support both practices.

This theoretical framework advances the literature on compliance with human rights treaties by extending the classic boomerang model (Keck and Sikkink, 1998) by incorporating the role of anti-incorporation groups. This helps understand how rival activism affects policy outcomes. This is important because “[m]ost global issues involve not just a single ‘progressive’ movement promoting a cause, but also rivals fighting it”, and analysts have so far provided one-sided accounts that “focus on movements of the political left” (Bob, 2012, 2). By including the role of conservative groups in the theoretical framework, this chapter helps to fill the gap.

The framework developed here leads to a revision of the way in which the existing literature has conceptualized the role of the state in treaty violations. While others point to governments as the main perpetrator of human rights violations, this chapter is more in line with theories of domestic politics in which the government is seen as reacting to competing pressures emanating from society. The difference arises because instead of focusing on treaties that protect physical integrity rights, in this dissertation I focus on child protection

treaties in which, crucially, the government—although ultimately sharing some responsibility for the adoption of laws and their enforcement—is not the main perpetrator in the sense that children are not hired for government positions or married to government officers. Expanding the scope of the treaties examined uncovers another way in which we might observe non-compliance with treaties: the response of governments to domestic concerns raised by their constituents.

As the government faces competing pressures that vary over time, a key take-away from this chapter is that reversals are not only possible but should, in fact, be expected. While the literature has focused on the advances made by progressive groups, analyzing rival groups and how their strength influences outcomes helps explain delays in adopting reforms and also backsliding. In Chapter 6, I describe proposals currently circulating in the Brazilian legislature to overturn recent advances against child labor. The Bolivian example shows not only how anti-incorporation groups can push for policy change that effectively lowers the age to work, but also that, sometimes, it is precisely the intended beneficiaries of human rights treaties that oppose incorporation. In this way, one of the advantages of the theory presented in this chapter is that it helps us understand why we observe a wider range of policy outcomes, including delays in adopting legislation and, in some cases, policy reversals. The message for scholars is that we need to pay more attention to the possibility that states will roll-back the extension of human rights.

Interestingly, while scholarship has overlooked the possibility for backsliding of rights, the activists I met on the ground in Latin America were very aware that policy reversals in the human rights arena are likely. One political analyst I met in Bogotá said, for instance, that “[t]here is a great threat that the pendulum will change quickly, that is, the legislative advances that seem absolutely invulnerable or armored against any movement are not. It is absolutely not like that”. A feminist activist I met in Montevideo said she knew that all of the progress achieved might be reversed very quickly. “The possibility is always present”, she said. Another activist said that today we are seeing “not only the risk of reversals but very clear reversals. The situation is not very good.” And yet, current theories seem to suggest a progressive progression towards laws that incorporate human rights treaties because they

obscure the mobilization of groups that oppose treaties.

CHAPTER 4

The Incorporation of Child Marriage Prohibitions in Latin America

4.1 Introduction

In July of 2017, Honduras’ national congress eliminated a provision of the Family Code that allowed girls to marry at any age if they were pregnant or had given birth. This provision constituted an exception to the minimum age to marry, which was set at 21. The legal change was significant because it had been in place for many years and was the only remaining exception in Honduran legislation allowing children to get married.¹ The elimination of this loophole meant that Honduras banned child marriage entirely, thus bringing the state formally in compliance with international treaty standards against child marriage.

The reactions of domestic actors to the legislative change were varied. Given that child marriage disproportionately affects girls, the law had been championed by a number of different advocacy groups and international organizations working to advance girls’ and women’s rights, including Plan International Honduras, UNICEF, UNFPA, and UN Women. In a statement released after the vote, the director of Plan International Honduras thanked the legislators and called their decision to ban child marriage “historic” (La Vanguardia, 2017). Some religious leaders, however, were unsupportive. The president of the Evangelical Fraternity of Honduras, Alberto Solórzano, stated that the law would encourage children to have extramarital relationships—or what he called “free associations”—if they could not formally be married. He said that his organization believes that “[the law] will stimulate free as-

¹A previous reform introduced in 2013 by Decree 35 had elevated the age to marry for girls with parental consent to 18.

sociation and that it will diminish the rights of parents over their children” (El Heraldillo, 2017).²

To understand why Honduras adopted this legislation, I argue that it is necessary to consider how domestic political actors influence the incorporation of international treaties. I define incorporation as the adoption of international treaty standards into domestic legislation. In particular, I highlight the role that interest group politics plays in the alignment of national policies to international standards after the ratification of a treaty. In Chapter 3 I explain that not all interest groups agree that treaty incorporation is desirable: indeed, some groups believe that treaties hurt their interests. Treaty incorporation thus depends on the strength of different interest groups that compete to influence government policy. I contend that when groups that oppose incorporation are strong, they can successfully delay or block the adoption of laws that align a country’s legal system with the international treaty’s standards.

I evaluate this argument by examining the extent to which countries have incorporated international prohibitions against child marriage into their legislation. I construct a dataset with information on all laws regulating the age of marriage in Latin America between 1980 and 2016. The data shows not only whether, in a given year, a law was adopted, but also what exceptions or loopholes the law contained. For instance, the dataset has information on whether the law allows children to marry at a younger age with parental consent. These exceptions lower the effective age to marry and violate international treaty commitments.

I analyze how the strength of women’s advocacy groups and religious groups affects national legislation prohibiting child marriage. I find that where religious groups are strong and have institutionalized access to policymakers, the legal age to marry is lower. In contrast, the strength of women’s advocacy groups is associated with higher ages to marry. In both cases, these effects are found when loopholes are considered. This suggests that a cursory look at child marriage legislation that does not account for exceptions would miss important

²The second part of his statement highlights a paternalistic view that emphasizes the rights of parents over those of their children, in opposition to the rights enshrined in international treaties like the Convention on the Rights of the Child.

differences in the degree to which states have incorporated treaties against child marriage. There is also an interaction effect between religious groups and women's advocacy groups: I find that when religious groups are strong and have institutionalized access, they moderate the effect of women's advocacy groups on the age of marriage.

This chapter is organized as follows. The next section provides information on the international standards against child marriage and the theoretical expectations derived from the argument developed in Chapter 3. Then, section 4.3 introduces the data collected to test the observable implications of the theory and 4.4 presents the results of the analysis. The last section concludes.

4.2 Theoretical Expectations

A number of international treaties have established obligations for state parties regarding child marriage. In particular, the CRC and the Convention on the Minimum Age of Consent to Marriage establish two important standards: that the age of marriage should be 18, without exceptions, and that the age of marriage should be the same for girls and boys.³ Chapter 2 presents evidence that although superficially it may seem that countries are in compliance with these standards, once loopholes are taken into account it is clear that not all countries have incorporated treaties fully. What explains this variation?

I argue that to understand this variation it is necessary to consider how domestic politics affects treaty incorporation. I examine how interest groups influence the decisions lawmakers take regarding laws that incorporate treaties. I contend that not all groups within society support human rights treaties. In fact, different societal groups disagree about the value of treaties and mobilize to affect lawmakers' choices. Thus, the ratification of treaties creates domestic coalitions in favor of and against treaty incorporation that mobilize to influence the policymaking process. Politicians face competing pressures from rival domestic special interest groups and the international community.

³For a review of these treaty standards, see Chapter 2.

In the case of child marriage, religious groups usually favor a lower age to marry, at least partially to prevent girls and boys from having relations outside of marriage that could lead to unwanted pregnancies. As the quote from Solórzano shows, priests fear that if the age to marry is too high, this will encourage extramarital relations among children. In contrast, women's advocacy groups, in conjunction with international organizations, work to raise the age of marriage. The director of Plan International Honduras, for example, said that eliminating child marriage was an important strategic goal for them, as "the fight against child marriage is a strategic way to promote the rights and empowerment of women in different areas, such as health, education, work and freedom from violence."⁴ Similarly to what happens in activist networks (Keck and Sikkink, 1998), foundations, NGOs and international organizations work together, exchanging information and funds, with the goal of raising the age of marriage.⁵

Given the interest groups' views on child marriage, I expect to observe the following:

1. **Hypothesis 1:** The stronger religious groups are, the lower the age of marriage will be.
2. **Hypothesis 2:** The stronger women advocacy groups are, the higher the age of marriage will be.

Each group will work to influence policymakers to enact its preferred policy. Of course, not all attempts will be successful, but, on average, I expect that stronger groups will be more influential than weak groups. The first hypothesis thus predicts a negative relationship between the strength of religious groups and the age of marriage. The second predicts a positive relationship between the strength of advocacy groups devoted to advance girls' and women's rights and the age of marriage.

What happens when both groups are strong? I expect the presence of a strong, rival interest group to abate the influence that the other group has on the age to marry. For

⁴See the press release from Plan International here: <https://plan-international.org/es/latin-america/Honduras-avanza-contra-matrimonio-infantil> (last accessed March 5, 2018).

⁵See Chapter 3 for more detailed accounts of the competing interest of domestic groups.

religious groups, this means that strong women's advocacy groups will diminish or counteract the influence they have over policy, thus making it more likely that the age of marriage will be higher than it would be in the absence of strong civil society organizations. The inverse is expected for women's advocacy groups. I thus state the following third hypothesis:

3. **Hypothesis 3:** Women's advocacy groups will have a bigger positive effect on the age of marriage in those cases where they face religious groups that are weak. Similarly, religious groups will have a stronger negative effect on the age of marriage when the strength of women's advocacy groups is weak.

Consequently, I expect that the interaction of rival groups will be negative, as the influence of one group when the other is strong decreases its influence on the dependent variable. If pro-incorporation and anti-incorporation groups are strong, treaties will be weakly incorporated compared to the situation in which the pro-incorporation group is strong and the other is weak. Another way to think about these expectations is that the presence of a strong, anti-incorporation group always reduces the degree of treaty incorporation, but a strong civil society can counteract their effect, thus increasing incorporation. More generally, my expectation is that treaties' degree of incorporation—whether they are incorporated fully, with exceptions, or not at all—depends largely on the strength of rival interest groups.

4.3 Data

This section describes the data compiled to test the three hypotheses about how interest groups affect the incorporation of treaty prohibitions against child marriage in Latin America. In each subsection, I explain data sources and present descriptive statistics, relegating the discussion of the analytical results to the next section.

To test the argument that interest groups have affected the legal incorporation of treaties against child marriage, I construct an original dataset with information on legislation adopted in Latin American countries from 1980 to 2016. Throughout this chapter, I focus on the

legal age to marry for girls because child marriage disproportionately affects them, but the data set includes information on the age to marry for boys as well.⁶

4.3.1 Data Collection

Studying treaty incorporation requires identifying the domestic laws that states have adopted to align the legal system with the treaty's standards. Presently, information on the laws that regulate child marriage is found in the reports that states submit every five years to the committee at the UN that supervises compliance with the CRC. It is common in these reports to include information on specific provisions of the domestic legal system.⁷

However, this periodic review process has important limitations. To start, states regularly fail to submit reports when they are due.⁸ Thus, for example, Belize's third country report was due in 2007 and has yet to be submitted.⁹ State's submission delays are not always due to lack of will to comply: completing the reports requires significant resources, personnel and technical expertise. Moreover, even if states diligently submit their reports, the information is only updated at five-year intervals. Even so, this information is not easily comparable across states, as they are mostly qualitative, spanning multiple pages (Heymann, McNeill and Raub, 2014), and, moreover, not all state reports contain the same information.

To overcome these limitations, some datasets have constructed measures of whether states are in compliance (or not) with the treaty's standards in a given year. For example, the WORLD Policy Analysis Center has coded each countries' laws on child marriage as of June 2013. Datasets like these represent an improvement from the reliance on country self-reports but they do not provide information about when each law was adopted. As such, they cannot

⁶The age of marriage for girls and boys are not always the same. In fact, it is common for the age of marriage for girls to be lower than for boys.

⁷When not provided, CRC Committee members frequently ask states for it. See Chapter 3 for more detailed description of the CRC's monitoring system.

⁸For a discussion, see Alston and Crawford (2000) and Bayefsky (2001).

⁹The reports, along with information about due dates, may be accessed at the United Nations website: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BLZ&Lang=EN (last accessed 5 March 2018).

be used to answer questions about the incorporation process. For instance, if a country's laws are in compliance with the CRC treaty today, were the changes adopted in the 1950s, before the treaty was even drafted, or were they introduced in the past ten years as a response to treaty obligations? Cross-sectional data does not allow researchers to distinguish between these two scenarios. The data does not tell us that Belize, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Peru and Venezuela had all set the legal age for girls to marry at 18 (without exceptions) before the CRC was drafted, for instance. For the purposes of this chapter, they also do not allow researchers to study closely the effect of changing domestic political variables. The lack of data has meant that scholars have not been able to test in detail what actually happens between treaty ratification and human rights outcomes. This chapter begins to fill this gap by providing information on the mediating step of treaty incorporation.

To identify and codify child marriage legislation, I use primary documents from Latin American countries. In rare occasions, these were found in online national repositories. Most often, these laws were not available online or there was no historical version of the law (only an updated version that did not allow me to track changes over time), so I mostly work with archival copies of laws and codes, such as civil codes, family codes, and children and adolescent codes. For cross-validation, I also look at the reports that states send to the CRC Committee to make sure that all relevant laws are included. Occasionally, I have relied on secondary sources (such as news articles) to identify changes in legislation, particularly for very recent changes that might not yet have been uploaded online or published in print.

4.3.2 Dependent Variables: Legal Age of Marriage

The resulting dataset includes information on the laws of all sovereign countries from Central and South America except Guyana and Suriname.¹⁰ The unit of analysis is the country-year.

¹⁰The list of countries included are Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela. I follow the classification made by the statistical office of the United Nations. See <https://unstats.un.org/unsd/methodology/m49/> (last accessed March 7, 2018). This means that Caribbean and certain quasi-independent territories such as the Bouvet Island, Falkland Islands, French Guiana, and

The dataset consists of 666 country-year observations for 18 countries for the 1980-2016 period (37 years). The start date was chosen to include information on what the age of marriage was before the CRC entered into force in 1990.

The resulting dataset contains information not only on whether a law was passed or not in a given year but also on the law's content. In addition to a variable measuring the legal age to marry for girls, I construct other variables that include the loopholes or exceptions that these laws include to lower the effective age of marriage. This section outlines the variables from the dataset that are included in the analysis presented in this chapter.

Parental Consent Most Latin American countries have, at some point, allowed children to get married earlier if their parents consented to the union. These provisions respond to the paternalistic view exemplified by Alberto Solórzano's statement in the Honduran case, where he suggests that raising the age to marry violates parents' rights, as opposed to children's rights, the focus of treaties like the CRC. Since 1980, states have changed their laws to raise the age to marry with parental consent. For example, in 2008 Argentina eliminated a provision that allowed girls to get married at 16 with parental consent. However, these exceptions are still common in the region. This variable is coded as an integer that reflects the age at which girls are allowed to marry with parental consent.

Government Authorization Another common exception is to allow girls and boys to marry if the minor has the authorization of a government representative, such as a judge or representative from a council established to protect children's rights. In some cases, government authorization is required when the child's parents or legal guardians are dead or otherwise unavailable. In other cases, judges are sometimes required to act when parents disagree about whether the child should be allowed to marry. For example, Article 53 of Bolivia's Family Code from 1975 states that if parents disagree, a judge can decide whether

the South Georgia and the South Sandwich Islands are not included. Guyana and Suriname are excluded because they are usually considered Caribbean nations—as shown for instance by their classification as Small Island Developing States and their participation in organizations, such as the Association of Caribbean States.

the child will be allowed to marry or not. This variable is coded as an integer that reflects the age at which girls are allowed to marry with government authorization.

Parental consent and government authorization are the two most common loopholes in child marriage legislation, but they are not the only ones. Some Latin American countries allow children that have not reached the minimum legal age to marry if the girl is pregnant or has given birth. This exception might appear in two ways: either as a specific provision allowing the marriage or as a reason to prevent a marriage from being annulled. Pregnancy exceptions violate international treaties protecting the rights of girls and women as it defines girls' strictly by their biological functions. Furthermore, as boys cannot fall within this category, pregnancy exceptions are considered discriminatory as they extend protections from early marriage to boys that girls do not enjoy.¹¹

Another exception to the legal age exempts adults from criminal prosecution for statutory rape if the adult marries the child. This situation could arise if the age of sexual consent prohibits relations with a minor but the adult is not charged if a marriage occurs, even if this is below the legal age to marry. In the analysis that follows in Section 4.4, I do not include these variables because either there is not enough information or enough variation to sustain multivariate regression analysis. Instead, I focus on the loopholes for parental consent and government authorization, two of the most common exceptions to age of marriage legislation.

4.3.3 Independent Variables: Interest Group Strength

The specific interest groups that constrain state leaders from incorporating treaties vary by issue area. For the case of child marriage, two groups are especially important: non-

¹¹Lately, some states have worked to eliminate this loophole. For instance, in 2014 Nicaragua passed a law (*Ley 870*) that not only raised the minimum age to marry with parental consent to 16 for both girls and boys but also eliminated Article 115 of the Civil Code that *ipso jure* validated underage marriage below 14 for girls if they gave birth. This provision had been in place since 1904. Since 2010, Guatemala, Panama, Nicaragua, Uruguay, and El Salvador have eliminated this exception. Other countries, however, such as Brazil, Colombia, Honduras, Mexico, Peru and Venezuela, continue, until this day, to include this exception in their legislation.

governmental organizations focused specifically on women's and girls' issues and religious groups. An ideal test of the hypotheses would leverage data on the strength of each rival interest group, including information on funding, number of members, organizational resources (such as political connections and past mobilization experiences), and leadership, among other things. Unfortunately, this information does not exist in a cross-national longitudinal setting for the groups under examination in this chapter. Consequently, I use information from the datasets that different scholars have compiled to study each interest group separately. To my knowledge, this is the best data available on the interest groups under examination.

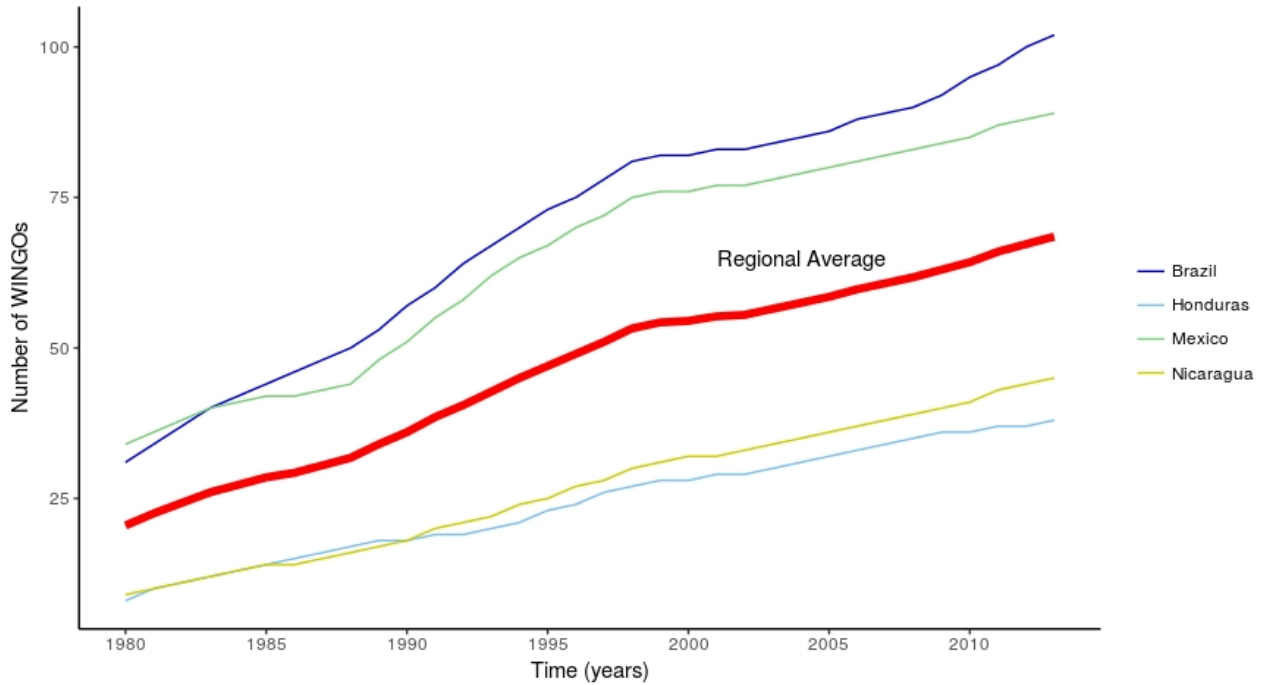
WINGOs Scholars of transnational advocacy networks have relied on measures of the number of organizations within a country to proxy for their strength or influence (e.g. Murdie and Davis 2012). In this chapter I follow their approach and use data collected by Hughes et al. (2017) that counts the number of organizations per country serving women's and/or girls. Using information from the *Yearbook of International Organizations*, they identify women's advocacy groups and then count the presence of these organizations in different countries. This measure is more precise than many studies of transnational advocacy because instead of having information on all advocacy groups in a state, the dataset compiled by Hughes et al. (2017) only includes organizations dedicated to girls' or women's issues. In their coding, the authors were careful not to include groups that, while focusing mainly on other issues (e.g. democracy), contained phrases like "especially targeting women" in their mission statements. This meant that the authors could not rely on the subject index 'Women' provided in the *Yearbook of International Organizations*, and instead they read the description of each organization and, whenever possible, conducted internet searches to corroborate that they primarily served girls and/or women. To count as a women's international NGO (which the authors label WINGO), the organization must have presence in more than three countries as reported by the *Yearbook* (Hughes et al., 2018, 12). The variable thus represents a count of how many international NGOs devoted to women's issues

there are in a country.¹²

While this is the best data available to measure the influence of NGOs, it has some limitations. First, the original dataset, by starting in 1950, covers a long period and is best suited to study long-term trends of transnational activism. For the purposes of this study, which focuses on the 1980-2016 period, the dataset only has observations for seven years, measured at five-year intervals. A look at the original data, however, suggests that the number of WINGOs has been increasing in a linear fashion over time. Figure 4.1 plots the number of WINGOs in select Latin American states over time. I plot the values for the two countries with the lowest number of WINGOs in 1980 (Nicaragua and Honduras) and the two countries with the higher number (Brazil and Mexico). I also plot the regional average with a red line. Figure 4.1 shows that there has been an increase in the number of WINGOs over the years, but the slope of the increase has been more pronounced in some states than others.

¹²Data is provided for 160 countries with over one million people for the following years: 1950, 1955, 1965, 1973, 1978, 1983, 1988, 1993, 1998, 2003, 2008, and 2013. I use the variable ‘WINGO imputed’ from the database because this measure addresses the problem with counts for newly-sovereign countries, by which, because of lags in the *Yearbook of International Organizations*, states typically are included at the beginning with too few organizations counted. This variable corrects that problem. For more information, see Hughes et al. (2017) and Hughes et al. (2018).

Figure 4.1: The Growth of WINGOs in Latin America, 1980-2013



Thus, I interpolate information between the five-year intervals to complete the dataset. The last observation available is for 2013 and I do not extrapolate past that year, so when the WINGO variable is included in the analysis, observations from 2014 to 2016 drop out of the analysis.

Second, WINGOs represent a subset of all organizations that might be working in a country to advance girls' and women's rights. The authors recognize that the *Yearbook of International Organizations* from which they originally draw their data is likely to systematically underreport organizations "that are small, have fewer resources, and existed for only a short time" (Hughes et al., 2017). I still consider this a useful measure because it serves as a proxy for the strength of local advocacy groups as well, as these are usually aided by stronger international advocacy groups. This measure serves as an instrument for the strength of girls' and women's advocacy groups.

Finally, the last limitation is that the data excludes observations for Belize, presumably because it does not meet the requirement for having over one million people, so the state drops out of the dataset entirely whenever this variable is included.

To measure the strength of religious groups, I follow the literature that examines the political institutionalization of religious influence. This literature has shown that churches and religious groups can be most influential not necessarily where there are more adherents or individual members, but rather when they have institutional access to policymakers. Thus, rather than, for instance, looking at the percentage of population that belong to one or another religion, I follow Htun and Weldon (2015) and use data from the Religion and State Project to measure the political institutionalization of churches and religious groups. This data covers the period 1990-2008.¹³ This dataset contains multiple variables that lie at the intersection of government and religion and capture the relationships between the state and religious groups, such as prohibitions to observe religious holidays or mandatory religious education in public school. Out of all these variables, I focus on a variable that captures the influence of religion on legislation and which I describe next.

Religious Legislation This variable is a count variable that adds up 51 dummy variables categorized under “Specific Types of Religious Legislation” in the RAS project. In essence, it adds up dummies for whether religious legislation exists in a number of different dimensions. For instance, whether there are restrictions on public dress of women, whether laws of inheritance are defined by religion, and also a few laws that, while affected by religion, are not necessarily tied to women, such as whether religion is listed in identity cards, whether there are religious symbols on a state’s flag, or whether there are blasphemy laws in place in that state. While theoretically this variable could range from 0 to 51, the maximum value observed throughout the whole period is 42 and corresponds to Saudi Arabia.¹⁴ In the case of Latin America, the maximum value throughout the period is 9, which is close to the world’s mean score of 8.6. So while religious laws are less common in the region than in other parts of the world, this variable still offers variation within and across countries, so I use this to measure the influence of religious groups. Table 4.1 presents summary statistics for

¹³I use data from the second round of the RAS project as it extends the original data for the 2002-2008 period.

¹⁴Saudi Arabia is followed by Brunei with a score of 31.

the key explanatory variables, including minimum and maximum values, averages, standard deviation (SD), and number of missing observations (NAs).¹⁵

Table 4.1: Descriptive Statistics, Explanatory Variables

| Variable | Min | Mean | Median | Max | SD | NAs |
|-----------------------|-----|-------|--------|-----|-------|-----|
| WINGOs | 12 | 44.86 | 41.50 | 102 | 20.39 | 547 |
| Religious Legislation | 2 | 5.01 | 5 | 9 | 1.88 | 342 |

4.3.4 Control Variables

I include a number of control variables that could affect the legal age to marry through channels other than the advocacy of interest groups. The data for the first two control variables comes from the Database of Political Institutions (DPI, from Cruz, Keefer and Scartascini 2018), which contains information on a number of states’ institutional features until 2017.¹⁶ The data for the last control variable comes from the PolityIV Project. Finally, I include country and year fixed effects to control for unobserved country characteristics and time trends. I describe each variable in detail and provide descriptive statistics for these control variables in Table 4.2.

Veto Players According to Tsebelis (1995), “[a] veto player is an individual or collective actor whose agreement is required for a policy decision” (293). Veto players are thus needed to change the status quo, and the theory suggests that more veto players increase policy stability because they make it harder to change the status quo. As more veto players might make it harder to change the laws regulating the age of marriage regardless of rival activist groups, I control for the number of veto players in each state within a given year, because more veto players will generally make it the harder to change any legislation. Veto

¹⁵The interpolated data for WINGOs only has 88 missing observations. These are caused by the exclusion of Belize and the years 2014-2016.

¹⁶The data can be accessed here <https://publications.iadb.org/handle/11319/8806> (last accessed May 13, 2018).

players account for both institutional divisions of power and the fact that lawmakers might face partisan opposition to change legislation. So, for example, if the legislature and the executive are controlled by different parties, the DPI database adds one veto player. I use the “checks_lax” variable from the DPI database to control for the institutional and partisan barriers that affect how hard it is to change legislation. The variable ranges from 1 to 6, with higher values representing more veto players. Given that at the start of the period under examination the ages of marriage were lower, I thus hypothesize that more veto players will be associated with lower ages to marry (a negative relationship).

Political Orientation To control for the possibility that the political orientation of governments makes them more or less likely to incorporate treaties against child marriage, I include the “execrlc” variable from the DPI database that measures whether the government is left, center or right-wing. I recode the original variable so that this variable takes on values of 1 for left-leaning governments, 2 for center and 3 for right-wing governments, thus taking on higher values to represent more right-leaning governments. For the case under examination here, it is possible that incorporation is favored by right-wing groups with ties to religious and conservative groups, so I include this variable in the analyses that follow.

Democracy Because between 1980 and 2016 many countries were in the process of transitioning to democratic government, I control for the level of democracy in each country-year by using data from the PolityIV Project (Marshall, Gurr and Jaggers, 2017). For ease of interpretation, I rescale the original “polity2” variable—which ranges from -10 to 10—to a 20-point scale where 0 is the minimum value indicating the most autocratic state and 20 represents the most democratic state.

Country and Year Fixed Effects In addition, I include country and year fixed effects whenever possible. This allows me to control for unobserved country or year level trends that make it more or less likely that a country will change its laws against child marriage in a given year.

Table 4.2 presents key descriptive statistics of the control variables, including measures of central tendency, variance, and the number of missing observations (NAs).

Table 4.2: Descriptive Statistics, Control Variables

| Variable | Min | Mean | Median | Max | SD | NAs |
|-----------------------|-----|------|--------|-----|------|-----|
| Veto Players | 1 | 3.16 | 3 | 6 | 1.28 | 10 |
| Political Orientation | 1 | 2.2 | 3 | 3 | 0.92 | 120 |
| Democracy | 1 | 16.2 | 18 | 20 | 4.53 | 37 |

4.4 Results

I use regression analysis to explore the relationship between interest group strength and the legal age to marry. I use different dependent variables to explore the different loopholes that laws regulating the age of marriage usually include. In each subsection, I present bivariate and multivariate models estimated using ordinary least squares (OLS). The last column of each table, labeled ‘model 6’, includes all controls and fixed effects for country and year.

4.4.1 Parental Consent

Table 4.3 presents the results using the dependent variable for the age of marriage for girls with parental consent. Across all models, the relationship between religious legislation and the age to marry is negative, as expected by hypothesis 1. In model 2, which includes the control variables described in Section 4.3.4, this relationship is statistically significant at the 10% level. Substantively, adding two religious laws lowers the age of marriage by half a year.

I examine also the relationship between the strength of women’s advocacy groups in the country and the legal age to marry for girls with parental consent. As described, the strength of the civil society organizations is measured by looking at the number of organizations working on girls’ and women’s issues (WINGOs) in each country-year. Model 3 presents the bivariate model for the WINGO variable. As expected, higher values in this variable

Table 4.3: The Effect of Interest Groups on the Age of Marriage for Girls with Parental Consent

| | <i>Dependent variable:</i> | | | | | |
|----------------------------------|---|----------------------|----------------------|----------------------|----------------------|---------------------|
| | Age of Marriage for Girls with Parental Consent | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Religious Legislation | −0.091 (0.129) | −0.272* (0.153) | | | −0.468 (0.509) | −1.148* (0.650) |
| WINGOs | | | 0.043*** (0.010) | 0.048*** (0.013) | 0.016 (0.050) | −0.029 (0.073) |
| Religious Legislation* WINGOs | | | | | 0.004 (0.010) | −0.020** (0.010) |
| Veto Players | | 0.591** (0.259) | | 0.470** (0.217) | 0.466* (0.267) | −0.146 (0.168) |
| Political Orientation | | 0.553 (0.337) | | 0.380 (0.268) | 0.837** (0.370) | −0.179 (0.272) |
| Democracy | | −0.752*** (0.161) | | −0.157** (0.067) | −0.720*** (0.162) | 0.200* (0.114) |
| Country & Year Fixed Effects | — | — | — | — | — | yes |
| Constant | 13.105*** (0.693) | 23.611*** (2.999) | 10.558*** (0.457) | 10.415*** (1.276) | 22.045*** (3.721) | — |
| Observations | 339 | 267 | 565 | 457 | 267 | 267 |
| Years | 90-08 | 90-08 | 80-13 | 80-13 | 90-08 | 90-08 |
| R ² | 0.001 | 0.108 | 0.034 | 0.059 | 0.121 | 0.206 |

Note:

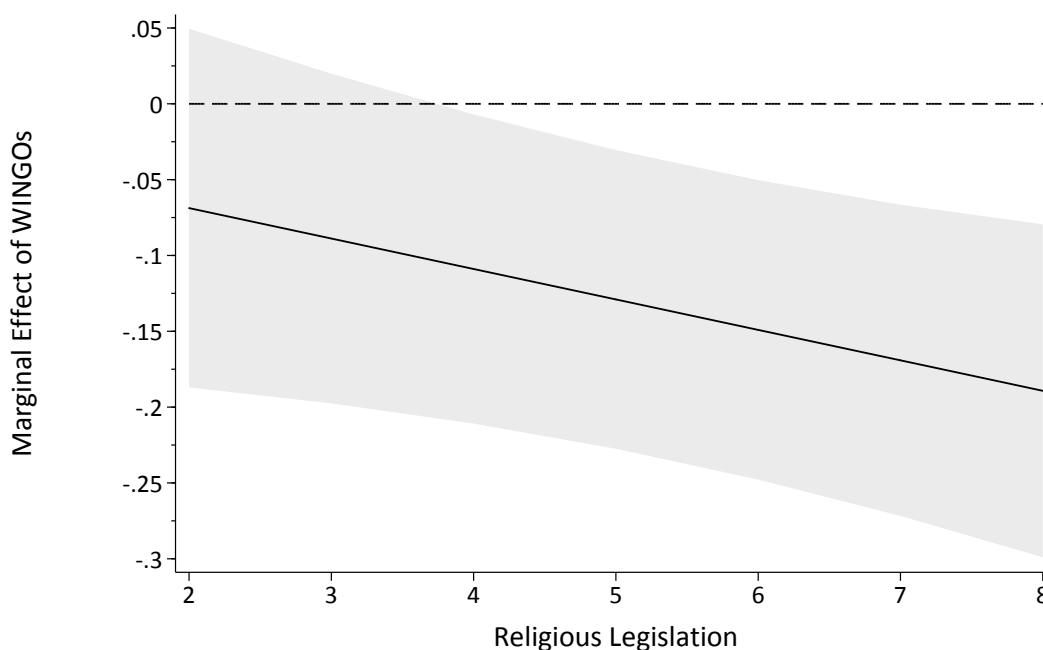
*p<0.1; **p<0.05; ***p<0.01

are associated with higher ages to marry for girls, even when controls are included (model 4). Substantively, adding about ten WINGOs increases the age of marriage by half a year. The presence of WINGOs is associated with higher ages to marry with parental consent for girls. This was expected given that women's NGOs usually push for the incorporation of child marriage prohibitions (hypothesis 2). As treaties do not allow exceptions for parental consent, this suggests that WINGOs could be important to increase compliance with treaties.

In models 5 and 6, I test hypothesis 3. Model 5 includes the variables for religious legislation, WINGOs, and all of the control variables, and model 6 adds fixed effects to the regression. Model 6 includes an interaction term to test for hypothesis 3 about how the strength of a group abates the influence of its rival group. The coefficient of interest for the interaction term is negative—as expected—and statistically significant. The coefficient for religious legislation in the absence of WINGOs—a situation that is not observed in the data—is negative and significant at the 10% level. In model 6, the coefficient for the control variables are in the expected direction: more veto players and right-wing governments are associated with lower ages of marriage, but these effects are not statistically significant. The democracy variable is positive, as expected, and significant at the 10% level.

To visualize the interaction term more clearly, I plot the marginal effect of the number of WINGOs with respect to the age of marriage as a function of the strength of religious groups in Figure 4.2. The figure shows that as the strength of religious groups increases, the effect of WINGOs on the age of marriage decreases. This supports hypothesis 3, which states that religious groups moderate the effect that pro-incorporation groups—in this case, WINGOs—have on the age of marriage for girls.

Figure 4.2: The Marginal Effect of WINGOs as a Function of Religious Legislation on the Age of Marriage for Girls with Parental Consent



4.4.2 Government Authorization

In Table 4.4 I present the results using the same specifications as in the previous subsection but using the dependent variable that measures the age of marriage when loopholes for government authorization are included. In many countries, children can get married if they have the authorization of a judge or government representative. In the model presented in the first column, I use the variable on religious legislation, and the coefficient is negative and statistically significant, as expected. This effect is robust to the inclusion of control variables (model 2). In fact, the coefficient is negative across specifications, as in the case for the parental consent loophole. These results provide evidence for hypothesis 1 for the laws that include loopholes for government authorization. The effects are substantively bigger here, as adding two religious laws decreases the age of marriage by over two years.

Surprisingly, in this case women's advocacy groups are not associated with higher ages of marriage, as the coefficient sign is negative and significant. The results from models 3

Table 4.4: The Effect of Interest Groups on the Age of Marriage for Girls with Government Authorization

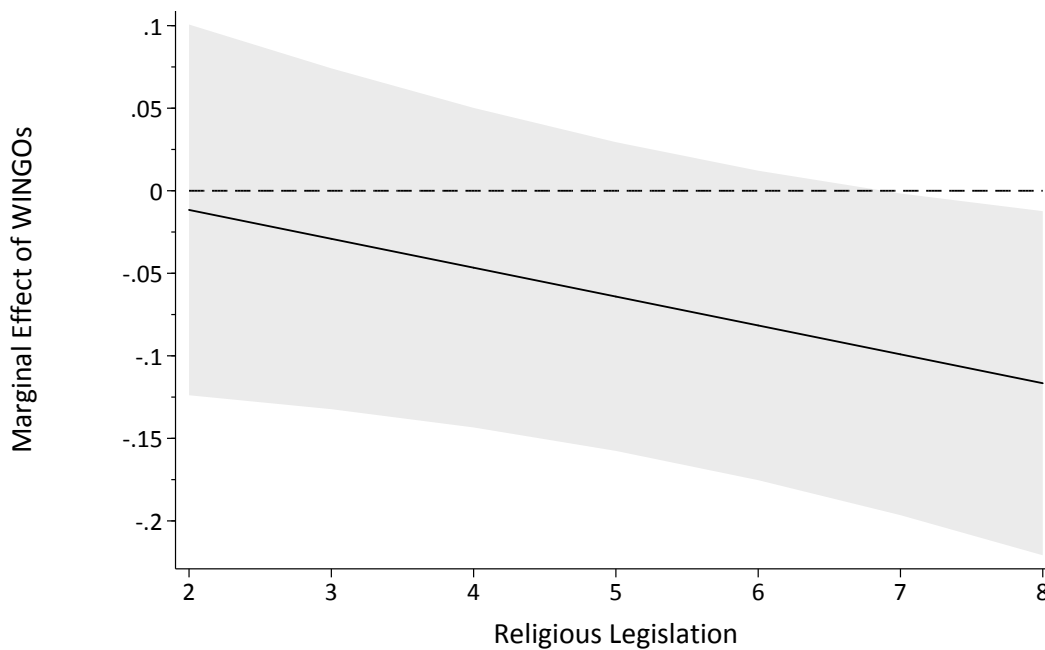
| | <i>Dependent variable:</i> | | | | | |
|-------------------------------|---|----------------------|----------------------|----------------------|--------------------|---------------------|
| | Age of Marriage for Girls with Government Authorization | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Religious Legislation | −0.653*** (0.229) | −1.118*** (0.269) | | | −0.733 (0.890) | −1.240** (0.617) |
| WINGOs | | | −0.061*** (0.017) | −0.065*** (0.023) | −0.045 (0.087) | 0.023 (0.069) |
| Religious Legislation* WINGOs | | | | | −0.008 (0.018) | −0.017* (0.009) |
| Veto Players | | −1.044** (0.456) | | −0.347 (0.378) | −0.746 (0.468) | −0.329** (0.159) |
| Political Orientation | | 0.604 (0.593) | | 0.046 (0.466) | −0.075 (0.648) | 0.041 (0.259) |
| Democracy | | 0.678** (0.283) | | 0.266** (0.117) | 0.604** (0.283) | 0.357*** (0.108) |
| Country & Year Fixed Effects | — | — | — | — | — | yes |
| Constant | 14.718*** (1.235) | 5.878 (5.279) | 13.992*** (0.816) | 10.042*** (2.219) | 9.899 (6.512) | — |
| Observations | 339 | 267 | 565 | 457 | 267 | 267 |
| Years | 90-08 | 90-08 | 80-13 | 80-13 | 90-08 | 90-08 |
| R ² | 0.023 | 0.094 | 0.022 | 0.032 | 0.117 | 0.224 |

Note: *p<0.1; **p<0.05; ***p<0.01

and 4 suggest that the strength of women’s advocacy groups is associated with lower ages of marriage with government authorization.

This effect is reversed in the final model that includes the interaction term, however, as the coefficient becomes positive, as expected. The interaction term in model 6 is negative and significant at the 10% level, as expected. In Figure 4.3 I plot the marginal effect of WINGOs with respect to the dependent variable with government authorization as a function of the strength of religious groups, captured by the variable measuring religious legislation. As expected, the figure shows that as the number of religious legislation increases, the effect of WINGOs on the age of marriage decreases, suggesting that anti-incorporation groups moderate the effect of WINGOs on protections against child marriage.

Figure 4.3: The Marginal Effect of WINGOs as a Function of Religious Legislation on the Age of Marriage for Girls with Government Authorization



Across specifications, more veto players are negatively associated with the age to marry for girls, suggesting that veto players can make it harder to adopt legislation in this issue (as

well as in others). The variable on political orientation is inconsistent across specifications, switching signs and never reaching conventional thresholds of statistical significance. The democracy behaves as expected: across all specifications, democracies are associated with higher ages to marry.

4.5 Conclusion

Despite national and international efforts to curb child marriage, this practice is far from eliminated: each year, 12 million girls are married before they turn 18, an estimate of about 23 girls per minute.¹⁷ While laws cannot change practices overnight, adopting legislation that incorporates treaties' standards against child marriage can set off a chain of events that leads to better human rights outcomes. Thus, at least part of the problem in reducing child marriage today is that not all states have adopted legislation that fully incorporates international treaties. Why have states failed to incorporate treaties into laws that protect children against early marriage?

To answer this question it is necessary to recognize that the ratification of human rights treaties creates supporters and opponents. Importantly, the strength of the opponents can shape how domestic politics influences treaty incorporation and subsequent compliance. Unfortunately, the study of how domestic politics influences treaty incorporation has been hindered by the lack of longitudinal cross-national data. In response to this gap, in this chapter I present a new dataset on the legislation introduced in Latin American countries over the last 37 years to study the incorporation of treaties against child marriage.

In this chapter, I show that interest groups matter to understand the legal age of marriage. Following theories arguing that strong religious groups are those with institutional access to policymakers and influence over the state,¹⁸ I proxy for their influence with a variable

¹⁷Data from Girls Not Brides, a global partnership of more than 900 civil society organizations working to end child marriage. See <http://www.girlsnotbrides.org/about-child-marriage/> (accessed May 13, 2018).

¹⁸For a review of these theories, see Chapter 3.

coding whether religious legislation exists in a state. I find that countries where religious groups are strong are more likely to have lower ages to marry for girls once exceptions for parental consent and government authorization are taken into account (hypothesis 1). I also find support for hypothesis 2 for the case of parental consent. This hypothesis stated that given the gender dimension of child marriage, girls' and women's advocacy groups should be associated with higher ages to marry. The evidence supports hypothesis 3 as well. This hypothesis argued that the presence of rival groups weakens the effect that one group has on the age of marriage.

Overall, the results suggest that domestic interest groups are associated with different ages to marry, as suggested by the theory. Considering legal loopholes is important because, as Chapter 2 shows, all Latin American states are formally in compliance with international treaties against child marriage—as they have set the age to marry at 18—but these states have also not eliminated the loopholes in their laws that are not in conformity with international law. As monitoring bodies routinely call states to eliminate these loopholes, I argue that states know their laws are not in conformity.

This chapter makes several contributions. First, it advances our understanding of how treaty ratification can empower domestic stakeholders that pressure governments to comply with international standards by problematizing the advocacy of groups that oppose incorporation. Because human rights treaties can have distributional consequences or create conflict among competing values, the incorporation of treaties can be delayed or blocked when groups that oppose incorporation are strong. Consequently, this study suggests a previously unexplored reason for non-compliance with human rights treaties: the fact that anti-incorporation groups have successfully pressured the government not to comply with its international obligations. The implication of this argument is that improved respect for human rights will only be possible when the pro-incorporation groups are able to overcome or neutralize the opposition of rival interest groups in society.

Second, by contributing a new dataset of laws against child marriage in Latin America, this chapter is able to test one of the mediating causal steps between treaty ratification and compliance, something which, in the past, has been hindered by the lack of cross-national

information. These insights will inform human rights advocates, scholars and policymakers about how domestic politics can facilitate or block the incorporation of human rights treaties. This, in turn, will enhance our understanding of how to improve human rights outcomes.

CHAPTER 5

The Incorporation of Child Labor Prohibitions in Latin America

5.1 Introduction

Legislation regulating children’s work first emerged in Britain in the late eighteenth century. The *Act for the Better Regulation of Chimney Sweepers and their Apprentices* of 1788 specified that chimney sweepers could not hire children under eight years old as apprentices. Throughout the first half of the nineteenth century, the minimum age for apprenticeships was raised multiple times, first to ten and then sixteen in 1840. Regulations on child labor expanded to other industries in the country, such as textile mills and mines.¹ Similar child labor regulations spread to North America and other countries in Europe. In 1841, for instance, France adopted new legislation that prohibited children under eight years old from working in manufacturing, factories and workshops.

As they evolved, child labor laws followed a similar pattern, progressively establishing higher minimum ages to work and banning more child labor occupations. Industry was usually prohibited first, followed by an extension to other sectors, like agriculture. Guatemala’s labor code from 1961, for example, prohibited those under sixteen from doing hazardous work, but then stated that “agricultural work can only in exceptional cases be considered hazardous.” This statement thus lowered the age at which children were allowed to work in agriculture as compared to the protections children enjoyed in industrial jobs.

Eventually, international labor standards emerged and were codified into international

¹For a review of these laws, see Chapter 3 in Bourdillon et al. (2010).

law. The ILO, created in 1919, was crucial to the development of international treaties protecting labor standards. The organization has developed 189 international conventions regulating collective bargaining, humane working conditions, child labor, occupational safety and freedom of association, among others. The two fundamental conventions prohibiting child labor are C138 and C182, regarding child labor and child labor in hazardous industries, respectively. The Convention on the Rights of the Child (CRC) also regulates child labor. Article 32(1) establishes the “right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous... or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” As the treaty defines a child as a human being under the age of 18, by CRC standards, children under 18 should not be engaged in hazardous work.²

Over the years, states have ratified treaties against child labor and adopted national laws prohibiting children from working. However, as Chapter 2 shows, the incorporation of child labor standards has been uneven. A cursory look at protections against child labor might conclude that states are in compliance with these standards, as for example most countries have set as 18 the age for hazardous work. However, once loopholes are taken into account it is clear that not all states have incorporated treaties fully. What explains this variation?

To examine what factors may account for the uneven incorporation of international standards into domestic legislation, I have first assembled a new dataset, covering the adoption and level of incorporation of ILO standards on child labor into national laws by all Latin American countries between 1980 and 2016. This dataset allows me to focus on two dependent variables. The first one looks at the number of loopholes that states have introduced in the laws that regulate the minimum age of employment. By international standards, this age should be set at 15—with a possible exception for developing countries, which may establish the age at 14 temporarily—but states often include legal loopholes decreasing this age further. For instance, these loopholes carve out exceptions for entire categories of workers—such as those in agriculture or that are self-employed—, allow judges to authorize any child

²For a review of these treaty standards, see Section 2 of Chapter 2.

to work if it is considered necessary for economic reasons, and allow children to work if they are supervised by a family member. The second dependent variable focuses on the number of activities that the state considers as hazardous. I examine the lists that states have adopted that enumerate the types of jobs that children cannot perform. With these data, I am able to explore the role of different interest groups on the incorporation of child labor standards. The findings support the theoretical expectations from Chapter 3. I find that the strength of pro-incorporation groups is positively associated with child labor protections, whereas the opposite is true for anti-incorporation groups.

5.2 Theoretical Expectations

To understand the variation in the incorporation of human rights treaties, I argue that it is necessary to consider how domestic politics mediates the adoption of international standards. In the child labor case, many different interest groups are involved in the incorporation process. Some groups suffer economic costs when child labor bans are adopted. For example, child labor bans hurt employers because they decrease the labor supply. Organizations of working children also support child labor because working provides them and their families with income. In contrast, labor unions and advocacy groups seek to raise the minimum age of employment; they oppose child labor on both economic and moral reasons.

For reasons described in Section 5.3.3, in this chapter I focus on the relationship between employers and adult labor groups. Given the interest groups' views on child labor describes in Chapter 3, I expect to observe the following:

1. **Hypothesis 1:** The stronger adult labor groups are, the higher the age of employment will be.
2. **Hypothesis 2:** The stronger employer groups are, the lower the age of employment will be.

The first hypothesis predicts a positive relationship between the strength of pro-incorporation groups and the minimum age of employment. The second hypothesis predicts a negative

relationship between the strength of anti-incorporation groups and the minimum age of employment. Each group will work to influence policymakers to enact its preferred policy.

I also expect the presence of strong anti-incorporation groups to mitigate the influence that pro-incorporation groups have on the age to work. Opposition groups moderate the effect that pro-incorporation groups have on treaty incorporation. For example, labor unions pushing for the incorporation of labor standards will have less of an impact over policy as the strength of employers increases. I thus state the following third hypothesis:

3. **Hypothesis 3:** The effect of labor groups on the minimum age of employment decreases when employer groups are strong.

My expectation is that the interaction of these two interest groups will be negative, as the influence of pro-incorporation groups on the minimum age to work—which is normally positive—decreases with the strength of anti-incorporation groups. In sum, the presence of a strong, anti-incorporation group always reduces the degree of treaty incorporation, thus moderating the effect that pro-incorporation groups will have on incorporation. More generally, my expectation is that treaties’ degree of incorporation—whether they are incorporated fully, with exceptions, or not at all—depends largely on the strength of rival interest groups.

5.3 Data

To test the argument that interest groups have affected the legal incorporation of treaties against child labor, I construct an original dataset with information on laws adopted in Latin American countries from 1980 to 2016. In this section, I describe the data collection process and the variables that I use in the empirical analysis. The next section presents the results.

5.3.1 Data Collection

To understand the variation in the incorporation of treaties against child labor, first it is necessary to identify the domestic laws that states have adopted to align the legal system

with the treaties' standards. At present, this information can be found in the reports that states submit every five years to the UN Committee that supervises compliance with the CRC. These reports usually include a few paragraphs dedicated to child labor, but are not exclusively related to this issue, as the Committee also monitors the implementation of other children's rights, including for example health and education. However, as mentioned in Chapter 4, this periodic review process has important limitations.³

The ILO also has a monitoring system in place to regulate compliance with treaties against child labor. Once a state becomes a signatory to a convention, they are required to submit country reports to this monitoring body. The ILO has even developed a standardized form with submission guidelines that states can access through their webpage. It provides states with details of the information the Committee would like to have when assessing the state's compliance with the conventions.⁴ Unfortunately, the states' reports are not available online in the same way as they are for the CRC. However, the recommendations made by the ILO Committee to member states are available online, and in the data collection process I have used these to help identify child labor legislation.

On occasion, I was able to use one of the ILO's databases to identify relevant laws. The organization has a special database called "NATLEX" in which they compile different legislations regarding labor standards. Reviewing the database, however, I have found that sometimes they exclude important laws. Moreover, when they have an entry for a law, sometimes the link is broken, which means the reader cannot access the text of the law itself. As my purpose was to code the law's content, including the details about all the loopholes, this meant that many times I could not rely on this database.

Instead, I relied on national repositories to find legislation on child labor. This presented its own difficulties, as national repositories usually provide the updated version of a law but not the original text, which makes tracking changes over time hard. Consequently, I primarily

³See Section 3.1.1 from Chapter 4.

⁴The standardized form for C182 and C138 may be accessed here http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:51:0::NO:51:P51_CONTENT_REPOSITORY_ID:2543248:NO and here http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:51:0::NO:51:P51_CONTENT_REPOSITORY_ID:2543160:NO, respectively (last accessed April 30, 2018).

relied on archival copies of laws, mainly contained in work codes and children codes. I have also collected legislation during my fieldwork and through the help of research assistants in the countries where I was not able to travel. Once the relevant laws were identified, I coded their content. The next section describes in detail two key variables that resulted from this data collection process.

5.3.2 Dependent Variables

In the analysis that follows, I focus on two dependent variables that measure the incorporation of child labor standards. The first variable contains information on the number of loopholes contained in the laws regulating the minimum age of employment. One way in which states create loopholes is to exclude categories for which the standards in the law do not apply. For example, it is common to exclude agricultural workers from the protections in a labor code. Self-employed workers are also sometimes excluded, even though the treaties also apply to them.

The ILO's monitoring committee frequently discusses these loopholes with member states. For example, in a 2003 monitoring report to Bolivia, the Committee warned the government that by excluding apprentices from minimum age prohibitions they were violation Convention 138. In the report, the Committee said that

the organization's goal is to prevent apprenticeship contracts from being used to employ children of 14 years of age under conditions and for wages that are below established standards ... The Committee notes that in implementation of the provisions of sections 58 and 28 of the General Labour Act, children aged below 14 years can work as apprentices, with or without pay, under conditions that fall short of those set out in Article 6 of the Convention. The Committee hopes that the Government will take the necessary measures to ensure that the provisions of the Convention are applied with regard to the minimum age for employment under apprenticeship contracts and the conditions of such employment (International Labour Organization CEACR, 2003).

Other loopholes include work done in family companies or with family members, work that does not interrupt schooling or that is permitted if it is considered important for economic reasons for the survival of the child. I condense all of the information on the multiple loopholes into one variable. In Chapter 4, I created two dependent variables—one for parental consent and one for government authorization—that measured the most common loopholes in child marriage bans. However, in the child labor case there is greater variation in the types of loopholes, so I do not test the effects of each independently, but rather aggregate them to a measure that counts how many loopholes there are. For presentation purposes, I recode this variable so that higher values represent stronger protections for children. I call this variable “loophole protection”.

Loophole Protection To construct this variable, first I count the number of loopholes that a state has in a given year allowing children to work below the established minimum age of employment. The maximum number of loopholes observed in the data is eight. Then, I transform this data so that higher values represent less loopholes. I subtract the number of loopholes from the maximum observed amount to create a new variable that counts the number of protections from possible loopholes that a state has in a given year. This transformation preserves the relationship among values while making interpretation easier.

The second variable I examine measures the extent to which states have regulated child labor prohibitions against hazardous work. International treaties leave governments to determine which activities are considered hazardous and will be included in this list, but they do specify certain requirements this list should have. The monitoring bodies consider this list key to comply with prohibitions against child labor. In its first monitoring report following Belize’s first submission, the ILO Committee noted

that a general prohibition of hazardous work, without additional measures, is unlikely to have much practical effect. If the types of employment or work which are too hazardous for young persons to perform are not designated specifically, there is usually no way for a young person to be prohibited from performing a

particularly dangerous job . . . Therefore, the Committee request the Government to take the necessary measures to determine the types of work to be considered hazardous, for which the minimum age for employment should be 18 years. . . in accordance with Article 3, paragraph 2, of the Convention (International Labour Organization CEACR, 2005)

But the lists of hazardous jobs vary a lot in detail. Some of them merely define what hazardous work is, and say that children are not allowed to be employed in that type of work. Others include specific industries and types of jobs in which children should not be allowed to work before they turn 18. The second dependent variable codifies this into four categories.

Hazardous List A categorical variable that codifies the level of detail of the industries and activities considered hazardous and thus prohibited for girls and boys under 18. This variable ranges from 0 to 4. The minimum value represents cases in which there is no list.⁵ The next category is reserved for situations where they give broad examples, such as “jobs that hurt the morality of the child” or “the well-being of the child”, which are, by definition, what a hazardous job is. The variation between two and four depends on the amount of detail given in the industries that are prohibited. For states coded with a two, usually the list will specify a few types of jobs that are hazardous—such as working underground or in cabarets—that are included in Recommendation 190 from the ILO on the worst forms of child labor and includes work performed underground, done with dangerous machinery, that requires the transportation of heavy loads, and that exposes children to hazardous substances, among others.⁶ Lists coded with a four include prohibitions not only by industry (e.g. blanket prohibitions stating that children cannot work in gold mining) but also specific types of jobs that, while not exclusive to one industry, are prohibited to children. To

⁵This includes states in which they mention that the government shall adopt a list, but the list has not been adopted.

⁶This recommendation can be accessed here http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312528,en (last accessed May 20, 2018).

give an example of a state that received the highest score for their list on hazardous work, Colombia's *Resolución 4448* from 2005 includes eleven pages of industries and activities that are considered hazardous for children. That same year, Argentina's legislation merely prohibited children from working in places where alcohol, explosives, glass, or toxic materials were made, which received a coding of two. My expectation is that pro-incorporation groups are positively related to this variable, as higher values represent laws that protect children against more types of hazardous jobs.

Table 5.1 presents descriptive statistics for the two dependent variables. I include minimum and maximum values, measures of central tendency, and the number of missing observations out of the database created, which has 666 country-year observations.

Table 5.1: Descriptive Statistics, Dependent Variables

| Variable | Min | Mean | Median | Max | SD | NAs |
|---------------------------|-----|------|--------|-----|------|-----|
| Protection from Loopholes | 0 | 5.06 | 5 | 8 | 1.83 | 23 |
| Hazardous List | 0 | 2.21 | 2 | 4 | 0.97 | 21 |

5.3.3 Independent Variables: Interest Group Strength

In Chapter 3, I explain how different groups within society work to influence national policies against child labor. In particular, I describe how adult labor unions and advocacy groups work against child labor, and employers, organizations of working children, and families often support child labor.

An ideal test of the theory would account for the influence of all of these groups. Unfortunately, data limitations prevent me from doing this analysis in a cross-national setting. For example, there is no data readily available that could provide information on the strength of organizations of working children, and so I am not able to include them in the analysis. Perhaps surprisingly, there are no cross-national measures of labor union strength in Latin America. Ideally, I could measure the strength of labor unions by looking at union

density, but this data, to my knowledge, only exists for developed countries (Golden, Lange and Wallerstein, 2014). The ILO has developed a small database that compiles information on labor union density from national surveys (International Labour Organization STAT Database, 2018), but it has several limitations. First, the database begins in 2004, so the analysis would leave out information for the years 1980-2003. Second, some states do not have information at all. For instance, there is no data on labor union density for Ecuador or Honduras, which would mean that these countries would drop out of the analysis completely. Lastly, some countries have information for more years than others, and these differences might systematically bias the results. For all these reasons, the amount of missing data does not allow me to use the measure developed by the ILO.

Instead, I proxy for the strength of adult labor unions by using an estimate from the ILO on the percentage of adults employed in agriculture out of total employment. This data is the best available for cross-national comparisons. It has been carefully constructed by the ILO to include as much national information as possible while still accounting for missing data.⁷ The data specifically measures adult labor, so I am not capturing the effect of working children.

Agricultural Employment To proxy for the strength of labor groups, I use information on adult agricultural employment. I focus on agriculture because it is the primary source of employment in most countries in the region, so this variable captures the effect of a larger share of the adult labor force. Unfortunately, this data is only available since 1991, so when this variable is included the years 1980-1990 are excluded from the analysis. I expect that the percentage of agricultural employment will be positively related to higher incorporation of laws against child labor, as labor groups push for treaty incorporation.

Exports (% of GDP) I proxy for the strength of employers by looking at a variable from the World Bank that measures exports as a percentage of GDP. In particular, I focus on

⁷For a description of this process, visit <http://www.ilo.org/ilostat-files/Documents/TEM.pdf> (last accessed May 25, 2018).

industries that export goods and services because in my review of the industries that hire child workers, industries in which states are important world producers are regularly reported by the US Department of Labor to hire children. I expect that when exports contribute a larger share to GDP, exporting firms will have more leverage over policy, as policymakers will consider their interests when making decisions that affect them. This includes legislation regulating who they can employ. This variable also has the benefit of avoiding multicollinearity with the other explanatory variable and being available since 1980.⁸

Table 5.2 provides descriptive statistics for these two key explanatory variables.

Table 5.2: Descriptive Statistics, Explanatory Variables

| Variable | Min | Mean | Median | Max | SD | NAs |
|-------------------------|------|-------|--------|-------|-------|-----|
| Agricultural Employment | 0.34 | 21.93 | 21.61 | 44.21 | 10.73 | 198 |
| Exports (% GDP) | 5.06 | 29.05 | 25.63 | 76.99 | 15.16 | 14 |

5.3.4 Control Variables

I include a number of control variables that could affect the legal age to work through channels other than the advocacy of interest groups. As in Chapter 4, I control for the number of veto players, the political orientation of the government, and the level of democracy. The data for the first two control variables comes from the Database of Political Institutions (DPI, from Cruz, Keefer and Scartascini 2018), and the data for the last control variable comes from the PolityIV Project. I also add another control variable to control for the economic development of the state, as richer countries might be able to ‘afford’ stricter laws against child labor, and might thus be more likely to have strong legislation that incorporates treaties. Finally, I include country and year fixed effects to control for unobserved country characteristics and time trends. I describe each variable in detail and provide descriptive

⁸The correlation between these two variables is 0.11.

statistics for these control variables in Table 5.3.

Veto Players As explained in Chapter 4, more veto players might make it harder to change the status quo, so they increase policy stability (Tsebelis, 1995). I control for the number of veto players in each state within a given year, because more veto players will generally make it the harder to change any legislation. Veto players account for both institutional divisions of power and the fact that lawmakers might face partisan opposition to change legislation. Information for this variable comes from the DPI database. The variable ranges from 1 to 6, with higher values representing more veto players.

Political Orientation To control for the possibility that the political orientation of governments makes them more or less likely to incorporate treaties against child labor, I include the “execrlc” variable from the DPI database that measures whether the government is left, center or right-wing. I recode the original variable so that this variable takes on values of 1 for left-leaning governments, 2 for center and 3 for right-wing governments, thus taking on higher values to represent more right-leaning governments. For the case under examination here, it is possible that incorporation is favored by left-wing governments that represent labor interests, so I include this variable in the analyses that follow. I expect a negative relationship, as higher values on this variable represent right-leaning governments, which should thus be associated with less incorporation.

Democracy Between 1980 and 2016, many countries in the region were in the process of becoming more democratic, and this might affect the laws adopted regardless of the theory developed here. Thus, I control for the level of democracy in each country-year by using data from the PolityIV Project (Marshall, Gurr and Jaggers, 2017). For ease of interpretation, I rescale the original “polity2” variable—which ranges from -10 to 10—to a 20-point scale where 0 is the minimum value indicating the most autocratic state and 20 represents the most democratic state. Note, however, that in the observed data the minimum value is one, as no state in the dataset received the minimum score throughout the period.

GDP Per Capita Finally, I control for the possibility that economic development affects child labor legislation. Given that, as Chapter 2 shows, child labor is more common in poorer countries, I include this variable because richer states may pass child labor laws because not many children work in the country. Unfortunately, child labor estimates are very sparse to be included in multivariate regression analysis, so I proxy for economic development using GDP per capita. As is common practice in analyses that use GDP, I use the log of GDP per capita in this chapter. I use indicator “NY.GDP.PCAP.CD” from the World Bank which measures GDP per capita in current dollars.⁹

Table 5.3: Descriptive Statistics, Control Variables

| Variable | Min | Mean | Median | Max | SD | NAs |
|-----------------------|-----|------|--------|------|------|-----|
| Veto Players | 1 | 3.16 | 3 | 6 | 1.28 | 10 |
| Political Orientation | 1 | 2.2 | 3 | 3 | 0.92 | 120 |
| Democracy | 1 | 16.2 | 18 | 20 | 4.53 | 37 |
| GDP Per Capita (log) | 5.5 | 7.92 | 7.91 | 9.73 | 0.81 | 11 |

5.4 Results

I use regression analysis to explore the relationship between interest group strength and the legal minimum age of employment. I use two different dependent variables to analyze the protections that children have in national laws against child labor. In each subsection, I present multivariate regression models estimated using ordinary least squares (OLS). Some models include fixed effects for country and year, and model 6 includes an interaction term between the two key explanatory variables.

⁹This data is available here: <https://data.worldbank.org/> (last accessed May 20, 2018).

5.4.1 Loophole Protection

First I consider the dependent variable in which I measure the protections that children have against common exceptions or loopholes to the minimum age of employment. These loopholes are important because they lower the effective minimum age of employment. This dependent variable can take on a maximum value of eight. I expect pro-incorporation groups to be positively associated with the number of loopholes that children are protected from. Alternatively, I expect anti-incorporation groups—in this analysis, captured by employers—to be negatively associated to loophole protection. The results of the regression analysis using the first dependent variable are presented in Table 5.4.

Table 5.4: The Effect of Interest Groups on the Protection from Loopholes Lowering the Minimum Age of Employment

| | <i>Dependent variable:</i> | | | | | |
|------------------------------------|----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | Loophole Protection | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Labor | 0.070*** (0.014) | 0.048*** (0.015) | | | 0.046*** (0.015) | 0.081*** (0.020) |
| Firms | | | -0.004 (0.006) | -0.027*** (0.009) | -0.027*** (0.010) | 0.017 (0.020) |
| Labor*Firms | | | | | | -0.001** (0.001) |
| Veto Players | 0.070 (0.078) | 0.112** (0.046) | 0.058 (0.070) | 0.008 (0.042) | 0.086* (0.047) | 0.097** (0.047) |
| Political Orientation | -0.404*** (0.107) | -0.061 (0.074) | -0.472*** (0.090) | -0.015 (0.060) | -0.079 (0.073) | -0.087 (0.073) |
| Democracy | 0.006 (0.054) | -0.175*** (0.035) | -0.055* (0.029) | -0.139*** (0.021) | -0.163*** (0.035) | -0.170*** (0.034) |
| GDP Per Capita | 0.514** (0.211) | -0.324 (0.262) | -0.236** (0.105) | 0.034 (0.218) | -0.491* (0.267) | -0.232 (0.283) |
| Country & Year Fixed Effects | — | yes | — | yes | yes | yes |
| Constant | -8.100*** (2.361) | — | 0.827 (0.945) | — | — | — |
| Observations | 362 | 362 | 487 | 487 | 362 | 362 |
| Years | 91-16 | 91-16 | 80-16 | 80-16 | 91-16 | 91-16 |
| R ² | 0.138 | 0.112 | 0.062 | 0.152 | 0.133 | 0.151 |

Note:

*p<0.1; **p<0.05; ***p<0.01

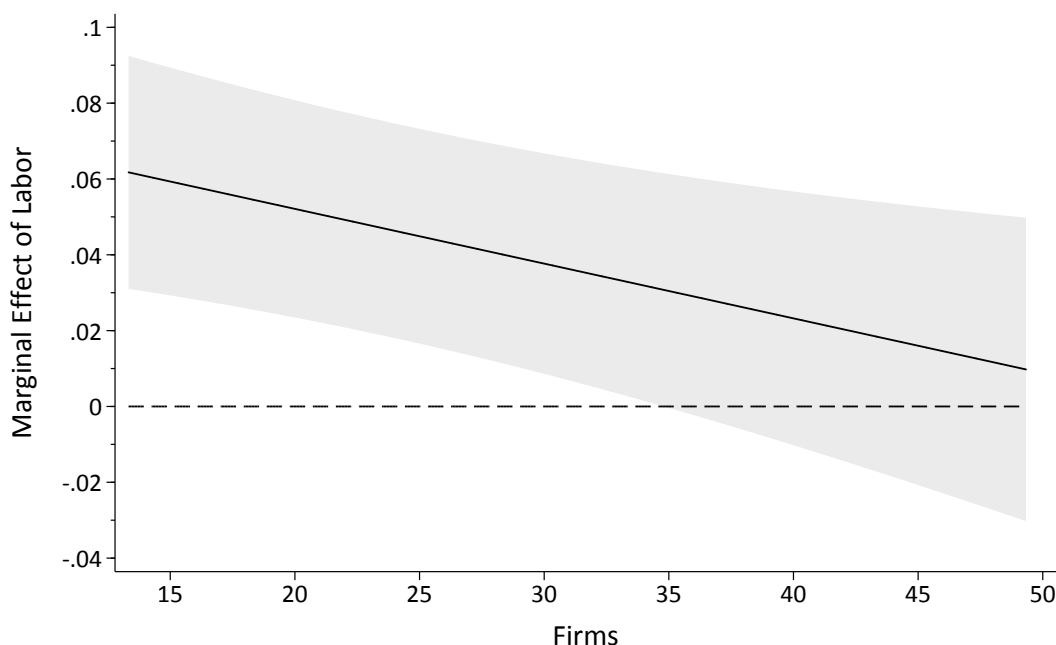
I find that the relationship between the percentage of agricultural employees (reported as “labor”) and the number of loopholes contained in laws regulating the minimum age of employment is as expected. The coefficient for this variable is consistently positive and statistically significant across all specifications. The first and second models include this variable and all the control variables described in Section 5.3.4 but these models do not include the variable capturing the employer effect, which I refer to as “firms” for ease of presentation. Models 1 and 2 are different because the second model includes country and year fixed effects. The effect of labor on the protection from loopholes is robust to the inclusion of these controls, although the size of the coefficient decreases in model 2. Models 3 and 4 present the results considering only the effect of employers on the minimum age of employment. In these specifications, as the strength of firms increases, the number of protections goes down. This negative relationship is preserved when all the controls are fixed effects are included in model 4.

The fifth model presented in Table 5.4 includes both explanatory variables without the interaction effect. This model helps test hypothesis 1 and 2 simultaneously. For labor, the result is positive (as expected) and statistically significant. The result is substantively significant as well, as moving this variable one standard deviation increases the number of protections by one category. This finding supports hypothesis 1. At the same time, firms are negatively associated with loophole protection, as suggested by hypothesis 2. To move the dependent variable by one unit, it would be necessary to increase the percentage of firms by 37 percent, which is about one standard deviation away from the mean. Another way to understand the substantive effect is to consider how the dependent variable changes across the range of observed values of the explanatory variable. In the case of firms, the effect of this variable across the range is 2 while holding all other variables fixed.

In model 6, I test hypothesis 3 about how the effect of labor groups on the minimum age of employment is moderated by the strength of employers. I include the interaction term, all control variables, and fixed effects by country and year. To visualize the interaction effect more clearly, I plot the marginal effect of labor with respect to loophole protections as a function of the number of firms in Figure 5.1. The figure shows that as the number of

firms increases, the effect of labor on the number of protections decreases. Furthermore, in Table 5.4 we can see that the interaction effect is negative and statistically significant. This supports hypothesis 3, which states that anti-incorporation groups moderate the effect that pro-incorporation groups have on child labor legislation.

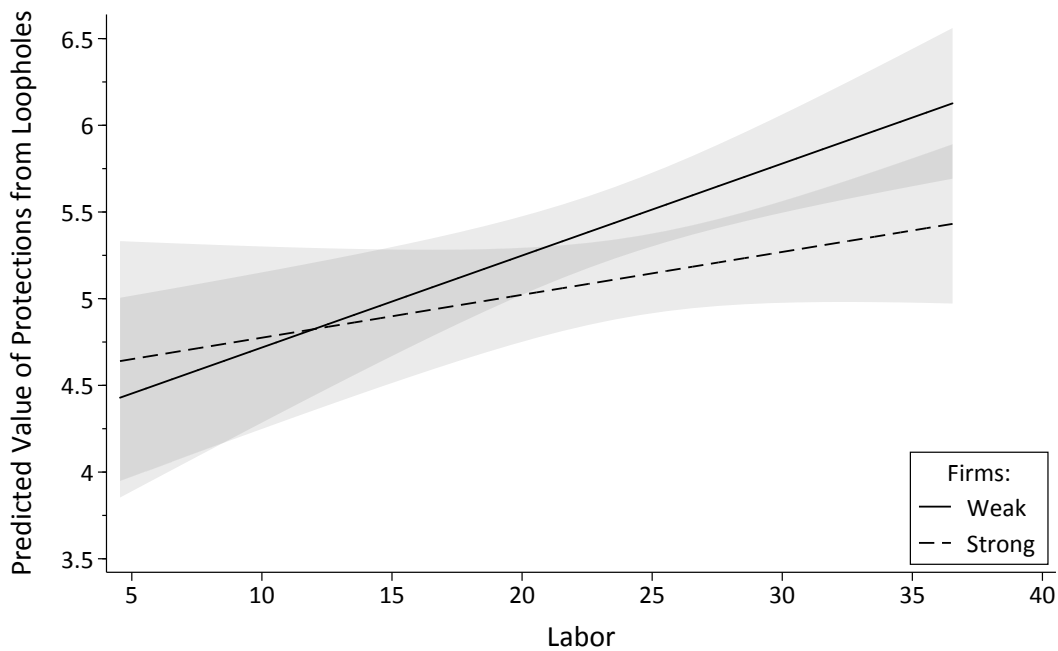
Figure 5.1: The Marginal Effect of Labor as a Function of Firms on the Number of Protections from Loopholes



To provide another visualization of the interaction effect, I plot the predicted values of model 6 in Figure 5.2. The range on the x-axis represents the 10th to the 90th percentile of the observed range of the agricultural employment variable. The y-axis I the number of predicted loopholes from model 6. Although the variable measuring firms is continuous, I use two values to present the findings from model 6 more easily. I graph two lines that represent “weak” and “strong” employers. A weak employer (solid line) is the value for this variable at the 25th percentile, and a strong group (dashed line) is the value for this variable at the 75th percentile. I include the 95% confidence intervals in the figure as well. The figure

shows that although labor is always positively related to the number of protections, its effect is moderated in the presence of a strong rival group, as can be seen from the more shallow slope of the ‘strong’ employer line.

Figure 5.2: The Predicted Effect of Labor on Loophole Protection



Across the models, the veto players variable is positively associated with the number of loopholes. This could be explained by the fact that multiple veto points make it hard to agree on which loopholes to place or eliminate. The political orientation of the government is negatively associated to the dependent variable, although it is not always statistically significant. The sign of the coefficient suggests that right-leaning governments are associated with less loopholes, which is contrary to expectations. Democracies are negatively associated with the dependent variable, and the variable on economic development behaves as expected, as poorer countries are associated with fewer loophole protections.

5.4.2 Hazardous List

In this section, I explore the second dependent variable that categorizes the level of detail included in the lists for hazardous work. This variable ranges from 0 to 4. Table 5.5 presents the results of this analysis.

Across the different models, labor is positively associated with having a more detailed list of activities considered hazardous. This effect supports hypothesis 1 and is robust to the inclusion of controls and country and year fixed effects. In model 5, which includes the variable on firms but not the interaction effect, the effect is statistically significant. The effect of labor on the lists of hazardous work is also substantively significant; as moving one standard deviation away from the mean changes the dependent variable by 1.86, so almost two categories. As the maximum value for the dependent variable is four, this effect is large. In this specification, there is not enough support in model 5 for hypothesis 2, as the coefficient is positive, statistically insignificant, and substantively small.

In model 6, I include the interaction term between the labor and firm variables. This coefficient is negative (as expected) and significant at the ten percent level. Figure 5.3 shows the interaction effect and indicates that as the strength of employers increases, the marginal effect of labor on the lists of hazardous work decreases. This effect is statistically significant.

Table 5.5: The Effect of Interest Groups on the Protections of Children from Hazardous Work

| | <i>Dependent variable:</i> | | | | | |
|------------------------------------|----------------------------|---------------------|----------------------|--------------------|---------------------|---------------------|
| | Hazardous List | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Labor | 0.054*** (0.006) | 0.057*** (0.009) | | | 0.057*** (0.009) | 0.074*** (0.013) |
| Firms | | | 0.014*** (0.003) | 0.006 (0.006) | 0.001 (0.006) | 0.022* (0.013) |
| Labor*Firms | | | | | | −0.001* (0.0004) |
| Veto Players | 0.016 (0.034) | 0.006 (0.030) | 0.078** (0.033) | −0.034 (0.027) | 0.006 (0.030) | 0.012 (0.030) |
| Political Orientation | −0.231*** (0.046) | 0.038 (0.047) | −0.271*** (0.042) | 0.023 (0.038) | 0.038 (0.047) | 0.035 (0.047) |
| Democracy | 0.051** (0.023) | 0.004 (0.022) | −0.030** (0.014) | −0.021* (0.013) | 0.004 (0.022) | 0.001 (0.022) |
| GDP Per Capita | 0.808*** (0.091) | 0.675*** (0.168) | 0.387*** (0.049) | 0.057 (0.138) | 0.679*** (0.172) | 0.806*** (0.184) |
| Country & Year Fixed Effects | — | yes | — | yes | yes | yes |
| Constant | −5.729*** (1.019) | — | −0.269 (0.445) | — | — | — |
| Observations | 362 | 362 | 487 | 487 | 362 | 362 |
| R ² | 0.344 | 0.125 | 0.258 | 0.022 | 0.125 | 0.135 |

Note:

*p<0.1; **p<0.05; ***p<0.01

Figure 5.3: The Marginal Effect of Labor as a Function of Firms on Laws Regulating Hazardous Work

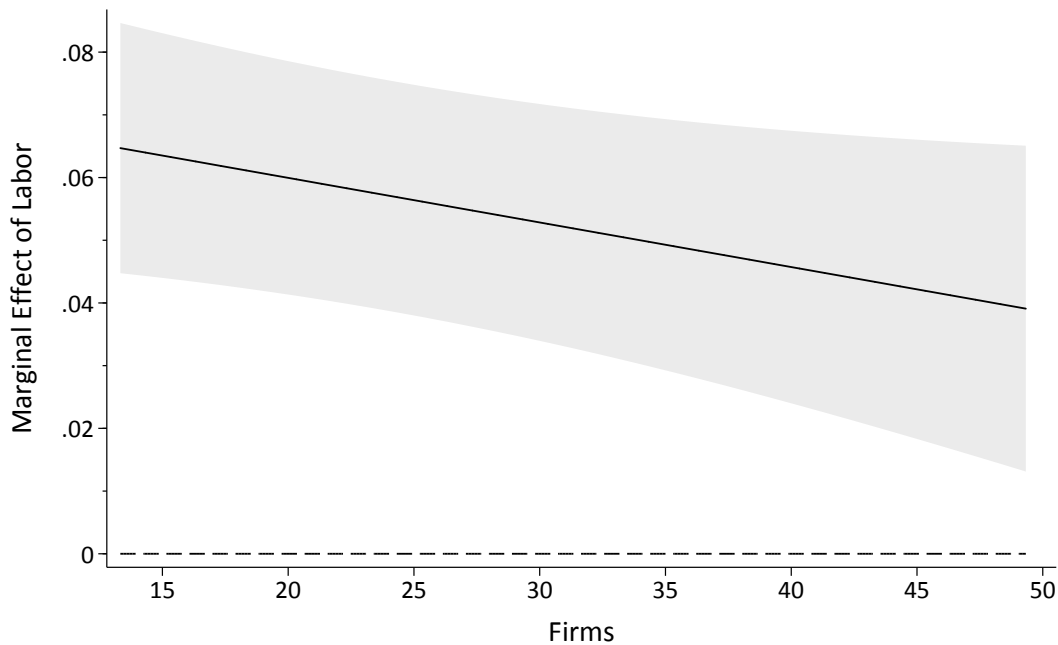
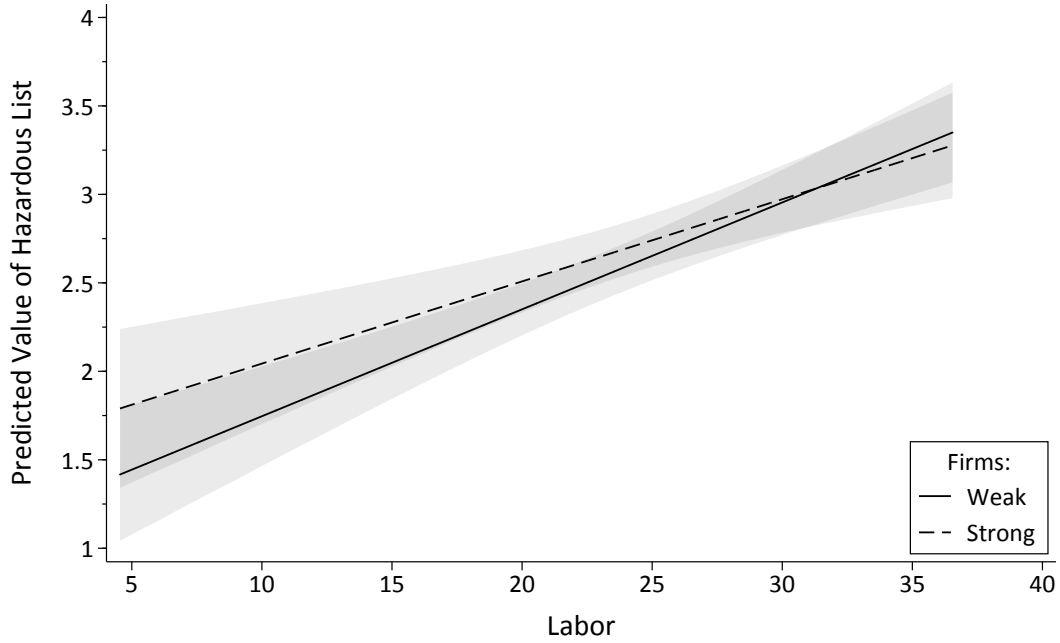


Figure 5.4 shows predicted values as the strength of labor increases. The figure shows that the strength of labor is positively related to the comprehensiveness of the lists that states have adopted to regulate the hazardous work by children. The figure also shows how the strength of labor interacts with the strength of employers. Again, in the figure, the solid line represents weak groups and the dashed line represents strong groups. The key feature in this graph is the difference between the slopes of the two lines. The slope for strong employer groups is smaller than for weak groups, although not by a lot. As Table 5.5 shows, the effect is small but statistically significant.

Figure 5.4: The Predicted Effect of Labor on Hazardous Lists



In sum, the results show strong support for hypothesis 1, which stated that strong adult labor groups would be positively related to more protections against child labor. For both dependent variables, the effect of labor is statistically significant and substantively important. I find support for hypothesis 2, which looked at how employer groups affected these regulations, for the dependent variable that measures loophole protections. This effect is robust to the inclusion of control variables and country and year fixed effects. I do not find a similar effect for the variable measuring the amount of detail of lists prohibiting hazardous work, where the effect is inconsistent across specifications. Models 6 for both dependent variables support hypothesis 3, which stipulated that the effect of labor groups on the minimum age of employment decreases when employer groups are strong. This interaction effect is substantively more important for the case of the number of loopholes.

5.5 Conclusion

In this chapter, I leverage information from a new dataset on laws on child labor to explore how interest groups affect treaty incorporation. I examine the effect of interest groups using two dependent variables. The first one, which I call loophole protection, provides information on the number of loopholes that minimum age laws have. For presentation purposes, I recode this variable as the number of *protections* that children in a state have against common loopholes. In this way, higher values of the variable are associated with more incorporation, as in other chapters of the dissertation. The second variable measures how comprehensive lists against hazardous work are. As international treaties mandate member states to adopt lists prohibiting children under 18 from working in hazardous industries, this variable captures another important aspect of the international obligations regarding child labor. Together, these two variables capture two of the most important standards contained in treaties against child labor.

Due to data limitations, I proxy for the strength of labor unions by using information on the percentage of adults employed in agriculture. I also use information on the relative weight of exports on GDP to proxy for the strength of employers, who presumably reap the benefits of exporting firms. I hypothesize that the higher the percentage of national income coming from exports, the more that the government will pay attention to the interests of exporting firms. In the analysis, I include a host of control variables to control for potential confounders and country and year fixed effects.

I find strong support for the first hypothesis in which the strength of labor groups is associated to more incorporation. I find a positive and statistically significant effect of agricultural employment on loophole protections and the level of detail in lists prohibiting hazardous work. I also find that the export share of GDP is negatively associated to loophole protection, suggesting that employers influence lawmakers to carve out exceptions to the minimum age to work that benefit them. In support of hypothesis 3, I find a negative interaction effect between the two explanatory variables, suggesting that the effect of pro-incorporation groups is moderated by the presence of strong anti-incorporation groups.

These empirical analyses highlight two important theoretical contributions of this chapter. The first is that it is important to consider how interest groups affect the laws that states have adopted to incorporate international treaties. Moreover, the results from this chapter suggest that the interaction between interest groups is important to understand these results.

The second contribution is to show that it is crucial to consider the loopholes that states have included when they incorporate international treaties. As Chapter 2 shows, most states in Latin America have established minimum ages of employment that conform to international standards against child labor. For example, many Latin American states have set the minimum age for hazardous work at 18. However, there is a lot of variation in the effectiveness of these laws. Some states do not have any list detailing which activities are considered hazardous. For those with a list, some of them do not protect against work considered hazardous, such as mining or work in the street. This variation is important because when lists do not include these types of jobs, they do not help make international standards against child labor enforceable. Similarly, states incorporate legislation regulating the minimum age of employment with many loopholes. These usually violate international treaty commitments and ignoring them would overestimate the extent to which states have complied with international obligations.

CHAPTER 6

The Influence of Business Interests on Child Labor Legislation: Evidence from Brazil

6.1 Introduction

In 2011, congressman Dilceu João Sperafico introduced a proposal in the Brazilian legislature that would allow children aged 14 to work. This proposal, formally known as the *Proposta de Emenda á Constituição* (PEC) 18/2011, is meant to reform article 7 of the Brazilian Constitution, which prohibits children under 16 from working.¹ The proposed PEC 18/2011 would allow children 14 and older to work for 25 hours a week.

A number of organizations working to eradicate child labor declared themselves against the proposed reform. For instance, the International Labour Organization (ILO) participated in an audience at the Chamber of Deputies on July 14, 2015, where Stanley Gacek—then Deputy Director and Officer in Charge of the ILO Office in Brazil—said:

“[a] country that reduces the minimum age, years after the ratification of the 138 Convention, would be in direct contravention of the norm, as this is exactly what the PEC 18/2011 would do” (International Labour Organization, 2015).²

Similarly, the Fundação Abrinq, one of the most important advocacy groups working to protect children in the country, pronounced itself against the bill, making clear on its website

¹Some exceptions to this minimum age of employment exist. For example, children 12 and older can be hired as apprentices and those under 18 cannot be hired in hazardous activities.

²My translation.

that PEC 18/2011, by reducing the minimum age for admission to employment, would violate Brazil's international commitments.³

Faced with national and international opposition, why would a legislator like Sperafigo introduce a bill that promotes child labor? To answer this question, it is necessary to analyze the potential distributional effects of the bill. The justification given in the proposal is that it would help formalize the work of those who are poor and must work.⁴ But this does not necessarily mean that legislators from poorer states in Brazil are more likely to support proposals like PEC 18/2011, because not all states that are relatively poor have the same workforce or produce the same products. The latest survey conducted in Brazil shows that children working in agriculture represent 30.8% of child labor in Brazil and 7.1% of the total workforce of the sector (Fórum Nacional de Prevenção e Erradicação do Trabalho Infantil, 2016, 16). Were the proposal to pass, it would mostly benefit Brazilian companies in states that produce agricultural products that use child labor.

Sperafigo is a congressman from the Brazilian state of *Paraná*, the fourth-largest national producer of sugar cane, a product that has reportedly relied on child labor for a very long time. He is known for being a member of the *bancada ruralista*, a parliamentary caucus that acts in defense of rural owners. In fact, Sperafigo presided over the Agriculture Commission in the Chamber of Deputies in 1999 and 2000. As in other legislation proposals that he supports, his endorsement of PEC 18/2011 suggests that these interests might be driving his efforts to lower the age of employment.

Importantly, this is not the only proposal in the Brazilian Congress that aims to make it easier for employers to hire children. In fact, there have been a number of other proposals regarding the minimum age of employment, in particular PEC 274 (2013), PEC 77 (2015), PEC 107 (2015) and PEC 108 (2015). For example, Edson Bez de Oliveira, another Brazilian congressman and member of the *bancada ruralista*, has introduced another proposal, PEC

³See their position here: <https://observatoriocrianca.org.br/agenda-legislativa/temas/trabalho-infantil/601-camara-pec-18-2011#posicionamento> (last accessed 14 January 2017).

⁴The text of the PEC 18/2011 can be accessed here: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=865344&filename=PEC+18/2011 (last accessed January 12, 2017).

35/2011, that would allow children to work full time starting at 14 years old. On top of condemnation from the ILO and children's advocacy groups, this proposal was denounced by the national workers' union, which explained that "the recent conservative wave and attacks on labor and human rights opens space for some congressmen to invest in proposals to reduce the minimum age for work" with the objective of "reducing the cost of labor."⁵

The theory developed in previous chapters suggests that the ratification of human rights treaties creates winners and losers who form domestic coalitions to influence politicians' decisions regarding the incorporation of legislation. In the case of treaties against child labor, such as the CRC and conventions 138 and 182 from the ILO, there are a group of organizations that support child labor bans, among them UNICEF, ILO and domestic advocacy groups working in tandem with these international organizations. Moreover, trade unions have traditionally supported child labor bans because the unions are part of the ILO's representative body and because restricting the labor supply increases wages.

The theory also suggests that working children are less likely to support raising the minimum age of employment, as this reduces their families' income. Similarly, employers who hire children oppose raising the legal age at which children can work because this increases their production costs. An observable implication of this argument is that if agricultural employers oppose child labor bans, then legislators who are sensitive to these agricultural interests should be less likely to vote for such legislation in congress. As child labor bans are less likely to be supported by legislators when they hurt the material wellbeing of influential groups in their electorate, I expect that the more a constituency produces goods that rely on child labor, the less likely it is that a legislator of that state will support raising the minimum age of employment.

In this chapter, I examine how agricultural interests influenced the voting of the *Emenda Constitucional 20*, a bill adopted in 1998 that raised the age to work from 14 to 16. The case is important because it illustrates how domestic politics mediates the incorporation of

⁵The statement by Alfredo dos Santos Júnior, National Secretary of Youth for the *Central Única dos Trabalhadores* can be found here: <https://cut.org.br/noticias/deputados-agora-querem-reduzir-idade-para-crianca-trabalhar-f7c5/> (last accessed January 15, 2017).

the standards of human rights treaties. As globally most children are employed in agriculture, this case helps illustrate the barriers to incorporation in other countries that rely on agriculture as well.

This chapter is organized as follows. The following section provides background information on child labor and explains why I study this hypothesis in the context of Brazil. Afterwards, I describe the data used to test the observable implication of my argument that human rights treaties have distributional effects. The fourth section of the chapter presents the results, and the last section concludes.

6.2 Background

Brazil is a federal republic with 26 states and a federal district in Brasília. The head of state is the President, who can serve up to a maximum of two four-year terms. The legislature is a bicameral national Congress with two chambers. The first, the Chamber of Deputies, has 513 members elected directly by citizens for a term of four years. The second chamber is the Senate, with 81 members directly elected for a term of eight years.

Throughout much of the twentieth century, the country has been under authoritarian rule. With the return to democracy in 1985, a multi-party system was re-established. In comparison to their counterparts in some developed economies, Brazilian political parties are considerably weaker, to the point that some argue that the legislature in Brazil operates as an agent of the executive (Figueiredo and Limongi, 1999). Parties are weak because they are relatively new, because there is a high turnover for members of Congress (particularly in the lower chamber), and because the proportional electoral system “facilitates the election of many legislators representing special interest from agriculture to business to various trade unions. These Members of Congress form blocs or factions representing their particular interests and often place loyalty to their organization or interest above party” (Oliveira Gozetto and Thomas, 2014, 215). This, in turn, generates incentives for clientelism and the exchange of votes, thus fragmenting the policy-making process.

6.2.1 Child Labor in Brazil

Brazil is an agricultural powerhouse, leading in the production of a number of crops, such as sugar, soybeans and coffee, among others. Child labor in Brazil is most frequent in the agricultural sector, although a considerable number of children work in industry and the service economy. Table 6.2.1 shows the latest information available regarding the number of children working by occupation in Brazil. The second column shows the absolute number of children working in each sector. The third column shows the percentage of children that work in that sector out of all children, and the fourth column provides information on the percentage of workers per industry that are children.

Table 6.1: Child Labor by Occupation, 5–17 years, 2014

| Activity | Number | Percentage | Percentage of Workforce |
|--|-----------|------------|-------------------------|
| Agriculture | 1,024,403 | 30.8 | 7.1 |
| Commerce | 795,466 | 23.9 | 4.4 |
| Services | 461,425 | 13.9 | 2.5 |
| Mining, oil, gas, electricity | 356,129 | 10.7 | 2.7 |
| Public administration, education, health | 286,123 | 8.6 | 1.5 |
| Construction | 231,438 | 6.9 | 2.5 |
| Domestic Service | 174,826 | 5.2 | 2.7 |
| Others | 1,568 | 0.0 | 2.4 |

Source: Fórum Nacional de Prevenção e Erradicação do Trabalho Infantil (2016)

In 1998, when the *Emenda Constitucional 20* was adopted, the trends by occupation were similar, although overall child labor has declined in Brazil, at least until 2014. In 1999, UNICEF estimated that 11% of children between the ages of 5 and 15 in Brazil were working. In 2001, a special section on child labor was added to the *Pesquisa Nacional por Amostra*

de Domicílios (PNAD), a nationally-representative survey conducted yearly.⁶ The survey found that at the time, there were more than 3 million children between the ages of 5 and 15 working in Brazil. Table 6.2 shows the breakdown of child labor by occupation and age group.

Table 6.2: Percentage of Child Labor by Occupation, 5–17 years, 2001

| Age Group | Agriculture (%) | Non-Agriculture (%) |
|----------------|-----------------|---------------------|
| 5 to 9 years | 76 | 24 |
| 10 to 14 years | 56 | 44 |
| 15 years | 41 | 59 |
| 16 to 17 years | 30 | 70 |

Source: PNAD 2001

Table 6.2 shows that children under 14 were more likely to work in agriculture, presumably because they are able to perform some of the tasks that an adult would do. As they grew older, however, children became more likely to work in non-agricultural sectors like service and commerce.

This does not mean that the work they performed was appropriate for their age. In fact, in 2001, it was illegal for any child under 14 to work in Brazil, except for those aged 12-14 who, enrolled in an apprenticeship program, were allowed to work for a few hours a week. The ILO considers a number of agricultural activities as hazardous for a child’s wellbeing because many children suffer work-related accidents. Table 6.3 shows the number of children aged 5 to 15 who were harmed while working by occupation. The data from the same survey in 2001 show that both in absolute and relative terms, agriculture was the most dangerous activity for children. This is because agricultural work usually requires workers to operate machines that can cut, and it expose workers to chemical products that are toxic and can cause harm to the skin and respiratory problems. Certain agricultural activities also expose

⁶The data from this section can be accessed here: <https://sidra.ibge.gov.br/pesquisa/pnad/suplementos/trabalho-infantil> (last accessed May 31, 2018).

workers to the sun for long periods of time and require them to exert great physical effort. For this reason,

Table 6.3: Children Injured While Working, 5–15 years, 2001

| Activity | Number | Percentage |
|--------------|---------|------------|
| Agriculture | 143,772 | 8.7 |
| Services | 22,720 | 4.0 |
| Commerce | 13,663 | 3.0 |
| Industry | 15,051 | 6.8 |
| Construction | 3,246 | 5.1 |
| Others | 3,182 | 3.1 |

Source: PNAD 2001

The illegal nature of child labor makes it hard to know specifically how many children work in which industry. The US Department of Labor has since 2001 collected information about the use of child labor in each country through the US embassies around the world. The results are published annually. Given that Brazil is the world’s biggest producer of sugar,⁷ it is perhaps not a surprise that since 2001, the US Department of Labor has reported that children are hired in sugar cane production. This is especially problematic because sugar cane harvesting is usually considered an especially dangerous activity given the application of agrochemicals and the use of machetes to cut the cane.⁸ The first report available from Brazil for 2001 also reports the use of child labor in footwear production and in domestic service, along with other ‘worst forms’ of child labor, such as prostitution and sexual exploitation.

⁷Brazil produces about 36 million tons annually. Source: https://www.commoditybasis.com/sugar_prices (accessed May 31, 2018).

⁸According to the ILO, “[t]he two main activities that may be classified as hazardous in sugarcane cultivation are the application of agro-chemicals and manual harvesting” (ILO, 2017, v).

6.2.2 Why Brazil?

Why does Brazil make a good subject to study the domestic barriers to the incorporation of human rights treaties? The most important reason is related to data availability. Studying legislative activity in Latin America is usually impossible given that most countries do not normally record the votes in the legislature. Unlike other systems like the United States, roll call in Latin America is a rare event. It can be mandatory in certain exceptional situations (for instance, to change the constitution) or can be requested by legislators specifically, but in general, these records do not exist for most countries. Brazil is one of the few countries that has been recording votes for over 20 years and, as a result, offers a unique opportunity to observe voting patterns in the legislature in 1998.⁹

Moreover, with more than 205 million citizens, Brazil is the most populous country in Latin America and, politically, one of the most important. Indeed, the country has led regional efforts to eradicate child labor and collaborated closely with the ILO on a number of different programs to this end. Brazil also has an institutionalized interest group system with “widespread sophistication of advocacy group organization, general access of civil society groups to the policy-making process, widespread knowledge in society of lobbying strategies and tactics, and a high degree of competition between a wide range of formalized and informal interests” (Oliveira Gozetto and Thomas, 2017, 411-412). In this sense, the Brazilian system meets minimum scope conditions for the argument presented here.

The next section explains Brazil’s national and international efforts to eradicate child labor. It focuses on the years preceding the vote in 1998 to raise the minimum age of employment to describe the context under which *Emenda Constitucional 20* was adopted.

⁹See Carey (2009) for a detailed explanation of which votes are recorded in each country, particularly pages 55–65.

6.3 Brazil's Efforts to Incorporate Child Labor Prohibitions

Over the course of the years, the Brazilian government has ratified international treaties against child labor and introduced a number of laws that regulate different aspects of children's involvement in the workforce, such as the minimum age to work, the activities that they can perform and the hours in which they can perform the work. On January 26th, 1990, Brazil signed the CRC treaty, just a few months after the UN's General Assembly adopted the treaty and opened it for signatures on November 1989. A few months later, Brazil adopted the Child and Adolescent Code (*Lei 8.069*) which, in the words of the Brazilian government, is "a juridical instrument which transposes to the national plane the rights set forth in the Convention on the Rights of the Child."¹⁰ Then, on September 24th, the country formalized its commitment to the international standards contained within the treaty by ratifying the CRC and, unlike other countries, did not attach any reservations, declarations or understandings that qualified this commitment to the treaty.

During the 1990s, the Brazilian government began a collaboration with the ILO that led to the implementation of a number of programs in the country. For example, in 1992 Brazil became one of the six original countries to participate in the International Programme on the Elimination of Child Labour (IPEC), an operational program of the ILO that funds technical cooperation projects with governments to strengthen their capacity to fight child labor.¹¹ In 1994, the National Forum for the Prevention and Elimination of Child Labour (FNPETI) was established with the support of the ILO and UNICEF. This forum is comprised of government organizations, representatives of employers and workers and advocacy groups working to reduce the number of child workers in the country.

In 1995, Fernando Henrique Cardoso became Brazil's 34th president. That same year, on March 28th, the government introduced PEC 33/1995 with the objective of reforming a

¹⁰From Brazil's first state party report to the CRC Committee in 2003 (CRC/C/3/Add.65). Available here: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.65&Lang=en (last accessed January 3, 2017).

¹¹More information about the IPEC can be found here: <http://www.ilo.org/ipec/programme/lang--en/index.htm> (last accessed January 12, 2017).

number of constitutional provisions protecting workers. The proposal aimed, among other reforms, to change article 7 (33), which at the time read:

prohibition of night, dangerous or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice;

The wording of this article, dating from the 1988 Constitution, thus established a special apprenticeship regime for those 12-14 years old, a minimum age of employment starting at 14, and a minimum age for hazardous work set at 18.

Debate over the proposed bill began in the Chamber of Deputies in 1995, but voting did not commence until 1996. In December 1998, PEC 33/1995 was finally adopted as a constitutional amendment, formally known as *Emenda Constitucional 20*. This law raised the minimum age of employment from 14 to 16 years. It maintained an exception for apprenticeships that was present in the previous legislation, but only for those 14-16 years old.¹²

It is interesting that by the end of 1998, when Brazil adopted the amendment, the country was still not a state party to the ILO's C138 convention. Convention 182 (C182), which protects children against the worst forms of child labor, was adopted in 1999 in Geneva at the organization's meeting in June. A few months later, on December 14th, 1999, Brazil ratified conventions 182 and 138 through the *Decretos Legislativos* 178 & 179, respectively.

Since then, a number of legislative proposals have been presented in Congress to revert the minimum age of employment back to 14, some of which were mentioned at the beginning of the chapter. More recently, the Senate debated PLS 231/2015, which aims to allow children who work in the arts or sports to work even if they have not attained the minimum age of employment if they have the consent of their parents or legal guardians.¹³ The proposal

¹²The law was published on 16 December 1998, in the *Diário Oficial*, number 241-E, pages 1-2, and may be accessed here: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc20.htm (last accessed May 31, 2018).

¹³The text of the proposal can be accessed here: <http://legis.senado.leg.br/sdleg-getter/documento?dm=583835&disposition=inline> (last accessed May 31, 2018).

has been criticized by advocacy groups working to protect children’s rights because it does not require the authorization of a judge and consequently violates Brazil’s international commitments.

6.4 Data

This section describes the data used to test the proposition that legislators from constituencies where children produce agricultural products are less likely to support raising the minimum age of employment.

6.4.1 Dependent variable: Vote

The dependent variable is the vote cast by an individual legislator of the Chamber of Deputies. The data comes from the *Núcleo de Estudos Comparados e Internacionais* (NECI), a research center in São Paulo that collects different types of Brazilian legislative data. As there were multiple votes across the years associated with the constitutional amendment, I consider the first vote on substantive matters regarding the age to work, which took place on February 11th, 1998.¹⁴

The original data has information on four possible categories for each legislator: whether they voted in favor, against, were absent or abstained. Table 6.4 shows the frequency breakdown of these values for the dependent variable.

Table 6.4: Descriptive Statistics for Votes Cast

| Original Coding | Condition | Frequency |
|-----------------|-----------|-----------|
| A | Abstain | 3 |
| F | Absent | 13 |
| N | Against | 152 |
| S | In Favor | 345 |
| Total | | 513 |

¹⁴The data can be accessed here <http://neci.fflch.usp.br/node/506> (accessed June 4, 2017). The ID of the vote considered here is 1998017. I thank Andréa Junqueira for her assistance obtaining this data.

There are a total of 513 legislators in the lower chamber. In total, less than 3% of legislators were absent or abstained in that vote. Excluding the 16 legislators who were absent or abstained from voting, a total of 497 votes were cast expressing support for or opposition to the bill. In the analysis that follows, I create a dummy variable that only considers votes cast in favor of and against the law.

6.4.2 Independent variable: Agricultural Interests

To examine how agricultural interests affect legislative action, I use data on agricultural land use to approximate the importance that certain industries have in each Brazilian state. As legislators are elected at the state level, my expectation is that the more important an industry that hires child labor is in that state, the more likely it is that a legislator of that state will oppose an increase in the minimum age of employment.

The data comes from Dias et al. (2016). The authors have compiled information on agricultural land use by municipality for three crops: sugar cane, maize and soy. Together, these crops represent 72% of the crop area in Brazil and about 90% of the production of temporary crops in the country (Dias et al., 2016, 2894). The authors use yearly data from the government's Municipal Agricultural Survey from 1990 to 2012, but perform a number of transformations—such as interpolating missing years—that simplify the analysis. I aggregate the data to the state level, as this is the relevant political unit in the legislature.

This variable measures the number of hectares planted of each crop by state. As the number of hectares dedicated to crops may vary by state, I control for this possibility by using the percentage of land dedicated to each crop over the number of hectares planted per state. This variable thus gives a sense of the relative importance that each crop has for legislators of that state.

Given that the US Department of Labor reports the use of child workers only in the sugar cane industry in 2001 (the closest year available to the year of the vote), my expectation is that the more a state relies on sugar cane production, the less likely it is that a legislator will vote in favor of the bill. I do not expect the agricultural use of maize and soy to have a

similar effect.

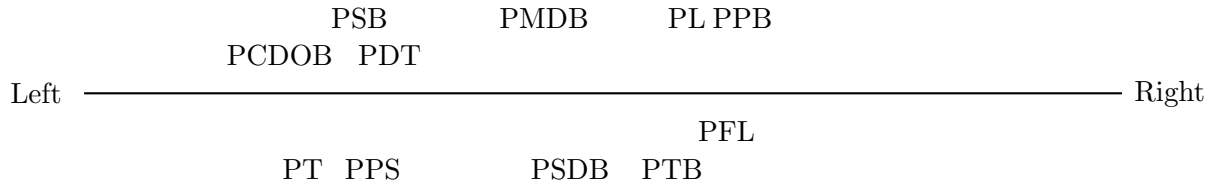
6.4.3 Control Variables

To control for possible confounders, I include a number of control variables that could affect legislators' votes and are unrelated to the influence of agricultural interest groups. This section explains the data used for these control variables in detail.

Ideology: To control for how the ideology of the party might affect a legislator's vote, I use estimates of the ideology of Brazilian legislative parties constructed by Power and Zucco Jr. (2009). These authors have conducted multiple surveys of legislators in Brazil's two chambers. Specifically, they ask legislators to place themselves and other parties on an ideological scale where 1 is "left" and 10 is "right." Their data is rescaled to account for variation in how legislators use this scale (for instance, some legislators cluster parties together while others use the whole scale) and other idiosyncrasies in their responses. The surveys were fielded in 1990, 1993, 1997, 2001 and 2005. To examine the effect on ideology on the vote in February 1998, I look at information from 1997, which is the only survey fielded during the legislative term in which the Members of Congress debated PEC 33/1995.¹⁵ The authors report that the survey had 162 respondents, presumably from both chambers in the legislature, although the exact distribution of members of Congress and senators for this year is not reported. Ideally, I would be able to obtain information on the ideology of each individual legislator, but this information has not been made available in an effort to preserve their anonymity. Thus, the information is clustered by party. With the information provided, I have plotted the values for each party on a scale from 1 to 10:

¹⁵I use the 1997 measure because although there have not been major changes to the rank ordering of parties over time, the authors do report some small changes. For example, the PPS has gradually moved right, and some parties have switched positions for a few years with their close parties. For this reason, I chose to use the closest measure possible to 1998, in case parties moved on the ideological scale (and some ceased to exist) (Power and Zucco Jr., 2009, 228). The original data can be accessed here: <https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/11567> (last accessed May 31, 2018).

Figure 6.1: Ideology of Brazilian Political Parties, 1997.



Source: Power and Zucco Jr. (2009)

Government coalition: Another factor that might affect voting on the bill is whether the party belonged to the government coalition or not. This is important given that Latin American presidents typically have significant agenda power and might expect legislators from their parties to pass the legislation they want. The information for this variable comes from the roll call information collected by the *Núcleo de Estudos Comparados e Internacionais* (NECI). It is a dummy variable that scores 1 if the party was a member of the coalition and 0 if it was not. For the particular vote under examination, the parties that are marked as being part of the governing coalition are PFL, PSDB, PMDB, PPB and PTB. Together, these parties had 394 legislators in the Chamber of Deputies (77%). In the opposition, there were 119 legislators, and most of them belonged to the PT. Table 6.5 shows the exact number of legislators in the Chamber of Deputies by party.

Rural Population: I also control for the possibility that it is the ‘ruralness’ of a state, and not the area dedicated to a certain crop, that affected the legislative vote in 1998. I use government information from the *Instituto de Pesquisa Econômica Aplicada* (IPEA) on the absolute numbers of people living in rural areas (as defined by the government). In the analysis, I use the information from 1996, a few years before the vote on the *Emenda* took place, as data for 1997 or 1998 are unavailable.

Table 6.5: Number of Legislators in the Government Coalition by Party

| Party | Number of Legislators | Government Coalition |
|-------|-----------------------|----------------------|
| PFL | 111 | yes |
| PSDB | 95 | yes |
| PMDB | 88 | yes |
| PPB | 78 | yes |
| PTB | 22 | yes |
| PT | 50 | no |
| PDT | 23 | no |
| PSB | 14 | no |
| PL | 10 | no |
| PCdoB | 9 | no |
| PPS | 6 | no |
| PSD | 3 | no |
| PMN | 1 | no |
| PRONA | 1 | no |
| PSTU | 1 | no |
| PV1 | 1 | no |
| Total | 513 | |

6.5 Results

Given that the dependent variable is a dummy variable measuring whether a legislator cast a vote in favor or not of the proposed bill, I run the analysis using logistic regression. The results are presented in Table 6.6. The results suggest that the number of hectares planted with sugar cane is related to the voting patterns for the *Emenda Constitucional 20*, even after controlling for a number of potential confounders.

Specifically, the higher the percentage of crop land dedicated to sugar cane, the less likely are legislators from those states to vote to raise the minimum age of employment, while holding other variables—such as party ideology and government coalition—fixed. Substantively, moving the independent variable by one standard deviation decreases the probability of a legislator voting in favor of the bill by 15%.

Importantly, the coefficient for the percentage of crop land where maize and soy were planted are not statistically significant. This suggests that they do not affect a legislator's propensity to vote in favor of the bill. This supports the hypothesis that it is not just any

agricultural interest, but specifically those that benefit from child labor, that are affected by child labor bans.

A party's ideology and membership in the government coalition affect the likelihood that a legislator will vote in favor of the bill. As expected, the association is positive: being part of the government coalition makes it more likely that the legislator will vote in favor of the bill. This coefficient is large and statistically significant. This is not surprising, given that it was the government that first proposed PEC 33/1995. In terms of party ideology, the results suggest that parties towards the right of the spectrum were more likely to vote in favor of the bill. The coefficient for rural population is not statistically significant.

In sum, the results support the argument that legislators from states with a large percentage of crop land dedicated to sugar cane are less likely to vote in favor of a law banning child labor than those that are not. This result holds even when other important controls are included, such as whether the legislators are from a party that is in the ruling coalition and ideology.

6.6 Robustness Check

In this section, I present show that the results of Table 6.6 hold when I exclude the variable for soy. I include this check because the soy variable has 138 missing observations and including this variable could thus bias the results. Table 6.7 presents the results of the logistic regression that includes information for the percentage of land dedicated to soy in a state. This analysis now includes 474 observations. The effect of sugar cane on the probability of voting in favor of the bill is still negative and statistically significant.

Table 6.6: The Effect of Agricultural Crop Use on Votes

| | <i>Dependent variable:</i> |
|----------------------|-----------------------------|
| | Vote |
| Sugar | −0.027*** (0.010) |
| Maize | −0.002 (0.023) |
| Soy | −0.006 (0.012) |
| Government Coalition | 2.632*** (0.597) |
| Ideology | 0.921*** (0.215) |
| Rural Population | 0.000 (0.00000) |
| Constant | −5.060*** (1.401) |
| Observations | 348 |
| Log Likelihood | −111.953 |
| Akaike Inf. Crit. | 237.907 |
| <i>Note:</i> | *p<0.1; **p<0.05; ***p<0.01 |

Table 6.7: The Effect of Agricultural Crop Use on Votes Excluding Soy

| | <i>Dependent variable:</i> |
|----------------------|-----------------------------|
| | Vote |
| Sugar Cane | −0.016** (0.008) |
| Maize | −0.015 (0.019) |
| Government Coalition | 3.328*** (0.553) |
| Ideology | 0.682*** (0.180) |
| Rural Population | 0.000 (0.00000) |
| Constant | −4.462*** (1.045) |
| Observations | 474 |
| Log Likelihood | −157.746 |
| Akaike Inf. Crit. | 327.491 |
| <i>Note:</i> | *p<0.1; **p<0.05; ***p<0.01 |

6.7 Conclusion

Why do legislators have different preferences about the eradication of child labor? I contend that the more a constituency produces goods that rely on child labor, the less likely it is that a legislator of that district or state will support a ban on the use of child labor. This is the case because legislators whose constituents rely on the work of children are more sensitive to the distributive costs that a ban would have on their constituents. Consequently, they are less eager to adopt restrictions on the minimum age of employment.

This chapter examines the votes in the Brazilian legislature of 1998 on whether to increase the minimum age of employment from 14 to 16. I show that legislators from states dependent on sugar cane—an industry known to rely on child labor—are less likely to support a ban on child labor, even after controlling for potential confounders such as party identification, ideology, and how rural a state is.

The Brazilian case illustrates two important theoretical points. First, it shows the distributional effects of human rights treaties, as it is clear from the analysis of this case that not all legislators vote the same way when considering the extension of human rights. This happens because treaties have opponents who mobilize to shape the way the government incorporates human rights protections. The Brazilian case shows that those legislators who were more sensitive to the cost of a child labor ban were less supportive of legislation that would have expanded human rights for children in Brazil. Failing to recognize that some citizens see treaties as detrimental to their interests is problematic because it leads scholars and advocates to underestimate the barriers to reducing the incorporation gap identified in Chapter 2. It is not because it highlights that the incorporation of human rights treaties is not a linear process by which rights become entrenched and guaranteed to future generations. The proposals currently being debated in the Brazilian Congress show that the discussion over the minimum age of employment is far from over. Members of Congress like Sperafico are working to revert child protections, and these proposals signal that the legal changes adopted to raise the minimum age of employment could be temporary. It is possible that countries like Brazil might revert the legislation they previously adopted to incorporate human rights

treaties. Of course, there are still legislators who will oppose such proposals. For instance, in October 2016, Congressman Betinho Gomes said in the Chamber of Deputies:

The constitutional amendment number 20, from 1998, that prohibited any work for those under 16 years, except in the case of apprenticeships, starting at 14, represented, then, the first real advance with the respect to the age to work since 1932. To pretend that today, 84 years after the first legal norm about the issue, Brazil is going back to the same levels is certainly a social regression that this house cannot condone.¹⁶

However, the point is that scholars and advocates need to be consider the potential for backsliding in the incorporation of human rights treaties. The Brazilian case shows that child labor bans are fragile and vulnerable to shifts in domestic politics. The aftermath of the constitutional amendment shows that although more and more countries worldwide have adopted legislation that complies with international treaties, these are by no means settled issues. In fact, the theory of this dissertation predicts that if anti-incorporation groups are important and can influence policy, backsliding is possible and should be expected.

¹⁶My own translation from the original. From a debate in the *Comissão de Constituição e Justiça e de Cidadania*. The records can be accessed here: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1495967&filename=Tramitacao-PEC+18/2011 (accessed May 31, 2018).

CHAPTER 7

Conclusion

7.1 Domestic Politics and the Incorporation of Human Rights Treaties

Seventy years ago the United Nations General Assembly adopted the Universal Declaration of Human Rights. Since then many of the rights in the Declaration have been included and expanded in multiple international treaties that are legally binding for member states. The international legal regime for human rights that has developed offers individuals and groups a sweeping number of protections, including the right to education, freedom of movement, and to be free from discrimination or torture, among others.

A central goal in political science and international law has been to determine whether human rights treaties make a difference. Are human rights treaties effective international institutions? The empirical analyses conducted over the years have yielded mixed results. Some scholars have linked treaty ratification to human rights improvements (e.g., Neumayer 2005, Simmons 2009, Hill Jr. 2010, Fariss 2014, Dai 2014, Lupu 2015). Others, however, have found that ratification does not improve respect for human rights and, furthermore, that sometimes states that have ratified treaties are more likely to violate human rights than those who have not (e.g., Hathaway 2002, Hafner-Burton and Tsutsui 2005, von Stein 2005, Hollyer and Rosendorff 2011).

While there is no consensus in the literature about whether human rights treaties matter, many scholars agree that domestic politics are important for compliance. As human rights treaties are not directly enforceable, scholars suggest that treaties may indirectly affect compliance by influencing domestic stakeholders (e.g., Simmons 2009, Dai 2014). In this

dissertation, I build on the work of these scholars and focus on the interaction between domestic politics and international law. I examine one phase of the process by which treaties are implemented that links treaty ratification to compliance: the incorporation of treaty standards into domestic law. I define incorporation as the adoption of treaty provisions containing human rights standards into domestic legislation.¹ So far, political scientists have generally neglected the study of treaty incorporation, at least partly due to data limitations.² However, incorporation greatly matters for compliance, especially because treaty incorporation can influence all subsequent stages of the implementation process, such as the judicial enforcement of laws.

Studying the incorporation of human rights treaties into domestic law requires understanding the preferences of lawmakers. As most lawmakers do not prioritize human rights issues, these are often placed on the national agenda when activists pressure the government to do so. For example, scholars have shown that violence against women is rarely placed on the agenda without pressure from autonomous feminists movements (Weldon 2002, Weldon and Htun 2012). To understand incorporation, it is thus necessary to understand how domestic groups work to influence policymakers' preferences about human rights law.

To study the incorporation of human rights treaties, I have focused on two issues: child labor and child marriage. I choose these issues for three reasons. First, because child marriage and child labor affect millions of children around the world. It is estimated that about 152 million children are engaged in child labor—almost 1 in 10 children around the world (International Labour Organization, 2017)—and 12 million girls are married each year before they turn 18.³ While these practices are more common in some countries, child labor and child marriage, like other human rights violations, happen everywhere around the world.

¹Incorporation, as defined here, happens at the provision level, and does not refer to the way in which a treaty as a whole becomes part of a domestic legal system.

²A few scholars have collected information on whether states adopted an implementing law or not against child soldiers (Chapter 9 in Simmons 2009), the Mine Ban Treaty (Sanchez, 2009), and the Rome Statute (Maylee and Appel, 2018).

³Data from Girls Not Brides, a global partnership of more than 900 civil society organizations working to end child marriage. See <http://www.girlsnotbrides.org/about-child-marriage/> (accessed 15 May 2018).

Even in the United States, children as young as 12 can legally work in tobacco farms—an activity that is considered hazardous by international standards. Similarly, child marriage is legal in many states around the country. In May 2018, Delaware became the first state to fully ban child marriage (New York Times, 2018). The negative consequences that these practices have make it important for social scientists to examine the reasons why states fail to comply with child protection treaties. Second, I analyze the incorporation of child protection treaties because, despite their importance, they have been relatively understudied in political science, especially compared to treaties that protect physical integrity rights.⁴ By examining these issues, I help diversify the study of human rights treaties. This is important because fewer than one in four human rights treaties address physical integrity rights (von Stein, 2018). Lastly, choosing these issues has allowed me to measure the incorporation of treaties against child labor and child marriage with the same yardstick across states. Certain treaties, for example, prohibit children from working in hazardous work and marrying before they turn 18. This has made it easier to develop benchmarks of what states should include in their legislation that could then be used to code national legislation.

The argument advanced here is not exclusive to child protection treaties, however. Many of the theoretical points made in the dissertation can be applied to other human rights treaties. Groups that oppose the extension of women rights or migrants rights will mobilize against treaties, for instance.⁵ In this way, the theory developed brings human rights treaties theoretically closer to studies in other areas of international law in which groups against and in favor of international cooperation have been identified as key to compliance.

7.2 Summary

This dissertation makes several contributions to the study of international human rights treaties. The first chapter showed that although the issues of child labor and child marriage

⁴Simmons (2009) and von Stein (2016) study treaties against child labor.

⁵Similarly, the focus on considering loopholes is as important for child labor as it is for the Convention Against Torture. The United States added a provision under the implementing legislation under which the government can deny asylum petitions in the name of national security (Sanchez, 2009, 56).

are important policy problems, and although many treaties have been developed to ban these harmful practices, states have not incorporated the treaties fully. Indeed, there is an incorporation gap between what treaties require and the laws that states have adopted for each issues. This is not just a Latin American problem. For example, although almost all states around the world have ratified the Convention on the Rights of the Child, almost half of them have not established 18 as the minimum age to work in hazardous occupations (Heymann, McNeill and Raub, 2014, 437), in violation of international obligations. This sets up the puzzle of the dissertation: if all member states have a mandate to implement treaty prohibitions against child labor and child marriage, what explains the variation in legal incorporation?

I argue that interest groups disagree on whether treaty incorporation is desirable. Some groups believe that treaties hurt their interests, because incorporation can have *economic* and *moral* consequences that conflict with the interests of interest groups. Sometimes, human rights treaties have distributional effects when incorporation deprives citizens of income they would have otherwise received, as in the case of child labor. Other times, treaties impinge on the moral values of citizens. Because treaty incorporation has costs, interest groups mobilize to influence the adoption of international standards into domestic law.

In the first empirical chapter of the dissertation, I argued that religious conservative groups can hinder the incorporation of prohibitions against child marriage. To support this argument, I used a new dataset on all the laws adopted in Latin America from 1980 to 2016 against child marriage. Importantly, the dataset includes information not only on whether a law was passed during this period but also on multiple dimensions that reflect the extent of treaty incorporation. Because laws against child marriage frequently include legal loopholes that decrease the protection that children have—for parental consent or government authorization, for example—this finding has practical relevance. The results show that in states where conservative religious groups are stronger, the age of marriage is lower. In contrast, the strength of organizations serving girls and women is positively related to the age of marriage.

In the second empirical chapter, I replicate this analysis for the case of child labor. Hy-

pothesizing that anti-incorporation groups mitigate the effect that interest groups in favor of incorporation have, I focus on the role of labor groups and employers to test how they influence the incorporation of child labor standards. To conduct the analysis, I compiled another dataset on laws adopted in Latin America to regulate the minimum age of employment and the activities that, being considered hazardous, are prohibited to children. This chapter shows that as labor becomes stronger, protection against loopholes is higher. Specifically, moving the variable on agricultural employment one standard deviation increases the number of protections by one category out of eight. At the same time, as the contribution of employers to GDP increases—i.e., as they become stronger—the positive effect that labor has on child labor prohibitions diminishes. This suggests that rival groups interact with each other over policy, moderating each other’s effect.

The third empirical chapter examines how domestic politics influences incorporation by collecting data at a different level of analysis. I use roll call data from the *Núcleo de Estudos Comparados e Internacionais* (NECI)—a research center in São Paulo that collects Brazilian legislative data—to study legislator’s votes on a law adopted in 1998 that raised the minimum age of employment from 14 to 16. I show that legislators were more likely to vote *against* the adoption of this law if they were from provinces that produce crops known to use child labor. This finding supports the argument that policymakers are reluctant to adopt legislation that would hurt their constituents. This result is robust to the inclusion of a host of other variables, such as ideology and belonging to a party of the government coalition.

7.3 Empirical Contributions and Theoretical Significance

To test the argument of this dissertation, I developed two new datasets on the incorporating legislation adopted in Latin America against child labor and child marriage. In developing countries it is often difficult to collect data, as important records are not available online. Thus, to collect information on national laws I have primarily relied on archival copies of legislation and systematized it to allow cross-national comparisons. This represents, to my knowledge, the most detailed data that exists on laws against child labor and child marriage

in the region.

Importantly, these datasets have information on the content of the law. I have collected information on the multiple loopholes that policymakers build into the law to provide special exemptions to domestic groups, including employers and religious minorities. These loopholes are important because, as Grossman and Helpman (2001) explain, “[s]pecial interest groups might also reap their returns in the fine details of legislation—in, for example, the exclusions of a trade agreements, the exceptions to an environmental regulation, the special deductions allowed under a new tax law, or the formulas adopted for apportioning federal aid to municipalities” (12). In the issues examined here, anti-incorporation groups similarly influence politics to carve out exceptions to laws that incorporate human rights treaties. These loopholes are important because they decrease the effectiveness of incorporating laws, and by extension, of the impact that human rights treaties will have on human rights practices.

By placing domestic politics at the center of treaty incorporation, I am able to observe the disagreements between domestic groups about how to translate human rights treaties into national legislation. The fact that domestic groups disagree about policy is hardly surprising, but theories about how human rights treaties matter have obscured these disagreements by focusing mostly on the interaction between the government and pro-compliance civil society advocates. By selecting treaties that are not about the protection of physical integrity rights, I have been able to observe the divisions within society regarding treaty incorporation.

In this way, in addition to contributing to the human rights literature, the results are relevant to two other literatures. The first is the study of interest groups in developing democracies, an area of political science on which there is very little published work. As Thomas and Hrebenar (2008) have said, “[t]he lack of research is not because interest groups do not exist in those countries—of course these systems have interest groups! All societies have such organizations, always had and likely always will” (1).⁶ At least in part, the study of interest groups in Latin America has been hindered by the lack of reliable cross-national data. By using various sources to proxy for the strength of different domestic interest groups,

⁶The authors explain why the study of interest groups has been neglected in developing democracies in page 8.

this dissertation contributes to the study of how interest groups influence policymaking in the region.

Additionally, by examining how rival groups influence policy, this dissertation contributes to the literature highlighting how groups that oppose human rights can affect outcomes. To date, a few case studies have examined competing pressures from interest groups. For instance, Keck and Sikkink (1998) examine how women's activists clashed with anti-abortion networks at the UN Population Conference in Cairo in 1994 and the Women's Conference in Beijing a year later. But opposition to human rights exists for many other issues beyond women's access to health care. During my time in the field, several activists spoke of the barriers they faced in their efforts to incorporate and enforce legislation. But as Bob (2012) argues, "[a]lthough little noted by analysts, most global issues involve not just a single 'progressive' movement promoting a cause, but also rivals fighting it" (2). In this way, this dissertation contributes to studies that highlight how anti-compliance groups influence policy.

Analyzing how rival groups affect human rights policy is important because it suggests that incorporation of human rights treaties is not a linear process by which rights become entrenched and guaranteed to future generations. Indeed, the adoption of laws incorporating human rights treaties could fluctuate over time following broader patterns of how the strength of groups varies. In Chapter 6, for instance, I describe several proposals being debated in the Brazilian Congress to lower the age of employment or introduce legal loopholes into current legislation. Other states have recently seen reversals of this kind. In 2016, India's parliament reformed a three-decade-old law by allowing children to work for family businesses and shortening the list of hazardous occupations (Al Jazeera, 2016). Similarly, in 2017 Bangladesh's Parliament reformed the Child Marriage Restraint Act to allow girls under the age of 18 to marry under certain circumstances. The change lowered the effective protections that girls had enjoyed in Bangladesh. The introduction of this loophole was "met with praise from Islamist groups", who argued that it was more in line with religious practices, and defended by government officials, who argued that "the new loophole is necessary to save pregnant teenagers from social ostracism" (New York Times, 2017). These examples

illustrate that reversals in the adoption of laws against child marriage and child labor happen. I argue that to explain them, it is necessary to examine how legislation that incorporates human rights treaties is often vulnerable to power shifts in domestic politics, and scholars and advocates need to be consider the potential for backsliding in the incorporation of human rights treaties.

7.4 Broader Implications

This dissertation has focused on the legal incorporation of international human rights standards into domestic law. While legislation cannot change practices overnight, the evidence suggests that adopting laws that are in conformity with treaties can help improve human rights outcomes. For instance, Piza and Portela Souza (2017) show that a child labor ban in Brazil reduced the participation rates for boys by four percentage points. In the case of child marriage, Kim et al. (2013) show that a number of low and middle income countries that established strict laws prohibiting child marriage were able to reduce adolescent fertility over time. Bharadwaj (2015) investigates a 1957 amendment to Mississippi's marriage law that raised the minimum age for women to get married to fifteen and finds that the new law reduced the number of underage marriages and the birth rate and increased school enrollment.

Thus, treaty incorporation matters because it is a crucial step in the causal chain linking treaty ratification to compliance. I argue that interest groups mobilize to influence policy-makers' choices regarding the adoption of laws that translate international treaty standards into national legislation. When groups that oppose incorporation are strong, they can successfully delay or block treaty incorporation.

I suggest that governments may not comply with human rights treaties as a response to domestic pressure from constituents. Even when the international community and domestic activists support incorporation, the government may not incorporate a treaty as a response to the advocacy of anti-incorporation groups not to comply with its international obligations. This explanation for non-compliance is different from arguments that suggest that non-

compliance results from the lack of capacity to comply (Chayes and Chayes, 1993) or the insincere motivations of strategic states (Smith-Cannoy 2012, Simmons and Nielsen 2015). I do not exonerate governments from the responsibility to comply with treaties; of course, governments make international commitments and are ultimately responsible for upholding them. But the analysis of this dissertation paints the government in a more benevolent light than much of the literature on human rights, which has traditionally focused on actions taken by the state—assumed to violate human rights—and pro-rights activists who support human rights treaties.

Furthermore, the analysis of the child labor and child marriage cases suggests that sometimes opposition to treaty incorporation comes from the intended beneficiaries of human rights treaties. In Chapter 3, I describe how members of a child labor union lobbied the government of Bolivia to lower the minimum age of employment. Similarly, research suggest that, at least for some girls, marriage is a choice they make—albeit in contexts in which their educational and economic opportunities are limited—and, as such, is a sign of their agency (Taylor et al., 2015). Even if we do not share these policy positions, it is a sobering thought to consider that treaties have failed to convince children that incorporation would benefit them.

A central take-away of this dissertation is that the preferences of domestic players need to be taken seriously. This requires engaging with groups that have opposing policy preferences to understand what the perceived costs of incorporation are and, more broadly, how these costs will affect compliance. Once the costs are acknowledged, policies can be developed to overcome or neutralize the opposition of interest groups in society. Consider for example the child labor case. The ILO knows that primary compulsory and free education will decrease the number of children working. In a direct request that the ILO Committee sent in 2009 to the government of Peru, for instance, the Committee said:

“Noting that poverty reduction programmes contribute to breaking the poverty cycle, which is essential for the elimination of the worst forms of child labour, the Committee hopes that.... the Government will take measures... for the effective

reduction of poverty among children who are at risk of or who are engaged in the worst forms of child labour.”⁷

Poverty reduction programs are harder to implement than child labor bans because they require an active commitment from the state through many years to help reduce poverty. But adopting a child labor ban without establishing mechanisms to compensate those who suffer the costs from incorporation makes the law vulnerable to efforts by anti-incorporation groups to reverse the law. Similarly, in the child marriage case, elevating the age of marriage should go hand in hand with other measures designed to support children’s development, including access to reproductive health care, investments in girls’ education, and changing traditional gender stereotypes. This is a daunting task, and harder from the government’s point of view than adopting a law. As the different examples here show, however, for those that want to see more compliance with human rights treaties, the message is that ignoring competing preferences leaves the policy gains of the past decades vulnerable to backsliding.

⁷This direct request can be accessed here: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::N0:13100:P13100_COMMENT_ID:2309340 (last accessed April 25, 2018).

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