

# Grounding Global Norms in Domestic Politics: Advocacy Coalitions and the Convention on the Rights of the Child in Argentina\*

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*Abstract.* How do global rights regimes promote compliance? Can they form the basis for effective advocacy campaigns at the domestic level? In this paper, we address these questions via a case study of the role played by the Convention on the Rights of the Child in Argentinian politics. We argue that ratification of the convention strengthened the coherence and leverage of rights-based domestic activists and ultimately led to the introduction of a new rights-inspired legal code for children. We trace the emergence of a local compliance coalition for children's rights and the subsequent campaign for rights-based reform. Our analysis suggests that global rights conventions can alter the domestic political opportunity for advocacy, strengthen rights-based claims and bring about changes on the ground.

*Keywords:* human rights, children's rights, Argentina, the Convention on the Rights of the Child, norms, compliance, advocacy

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That globalisation changes the nature of contentious politics is beyond dispute.<sup>1</sup> Scholars now pay considerable attention to transnational alliances, advocacy efforts and protest movements that operate beyond the framework of the state.<sup>2</sup> The field of human rights advocacy gained a particular prominence in these debates in response to the expansion of activist networks at the domestic, regional and global levels. New kinds of transnational openings emerged in the 1980s when activists in the developing world, often working under authoritarian rule, found domestic avenues for protest closed down. The trend toward democratisation across much of the global South, however, meant that opportunities for domestic contention in many countries gradually re-emerged. In places where both international and domestic structures offer potential sites for contentious politics, Kathryn Sikkink posits that activism can take the form of an ‘insider-outsider coalition’, where activists concentrate on the domestic level but draw strength strategically from the existence of supportive international structures.<sup>3</sup> This is an important insight, taking us beyond an either/or, transnational/domestic analysis of contemporary non-state activism and directing attention toward the multiple and complex ways in which globalisation affects on the politics of advocacy.

In this article, we explore the influence of the Convention on the Rights of the Child (CRC) on domestic advocacy politics in Argentina. Many authors have already stressed the importance of global instruments in bringing about domestic change.<sup>4</sup> A state’s commitment to international law tends to stimulate political changes at the domestic level by raising the profile of certain issues that might not otherwise be regarded as important, providing

<sup>1</sup> See Alison Brysk, *Human Rights and Private Wrongs: Constructing Global Civil Society* (New York, 2002); Sidney Tarrow, *The New Transnational Activism* (Cambridge, 2005); Alison Brysk (ed.), *Globalisation and Human Rights* (Berkeley, 2005); Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge, 2005); and Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca, 1998).

<sup>2</sup> Joe Bandy and Jackie Smith (eds.), *Coalitions Across Borders: Transnational Protest and the Neoliberal Order* (Oxford, 2005); Ken Conca, *Governing Water: Contention, Transnational Politics and Global Institution Building* (London, 2005); Kathryn Hochstetler, ‘Fading Green: Environmental Politics in the MERCOSUR Free Trade Agreement’, *Latin American Politics and Society*, vol. 45, no. 4 (2003), pp. 1–33; Deborah Yashar, ‘Globalisation and Collective Action: A Review Essay’, *Comparative Politics*, vol. 34 (2002), pp. 355–75.

<sup>3</sup> Kathryn Sikkink, ‘Patterns of Dynamic Multilevel Governance and the Insider-Outsider Coalition’, in Donatella Della Porta and Sidney Tarrow (eds.), *Transnational Protest and Global Activism* (Oxford, 2005), pp. 151–73. See also Shareen Hertel, *Unexpected Power: Conflict and Change among Transnational Activists* (Ithaca, 2006).

<sup>4</sup> Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge, 2009). See also Andrew Cortell and James Davis, ‘Understanding the Domestic Impact of International Norms: A Research Agenda’, *International Studies Review*, vol. 2, no. 1 (2000), pp. 65–87; and Amy Gurowitz, ‘Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State’, *World Politics*, vol. 51, no. 3 (1999), pp. 413–45.

a resource for litigation in cases where treaties have the status of domestic law and facilitating the mobilisation of advocacy networks to demand compliance and institutional change.<sup>5</sup> Obviously, the mere ratification of a treaty or convention does not automatically lead to political change. Treaties do not perform miracles. Under certain circumstances, however, they can alter domestic politics in ways that contribute to the advancement of rights agendas.<sup>6</sup> This article will explore one concrete case where this has happened. The CRC has reshaped children's rights advocacy in post-dictatorship Argentina and had a direct impact on domestic politics in that country.

This case study is important for the general theoretical debate on the role and influence of global norms on domestic politics because it refers to a subset of rights that was not salient in Argentinian politics before ratification of the CRC.<sup>7</sup> A significant part of the literature on global norms identifies local salience as a crucial variable; global norms work, according to Cortell and Davis, when domestic publics and institutions are open to their influence.<sup>8</sup> Our case study, however, demonstrates limited initial congruence between the normative principles enshrined in the CRC and the local political culture. Despite the relevance that human rights issues in general had in post-dictatorial Argentina, the specific agenda of children's rights had never received much public consideration, even within otherwise active human rights networks<sup>9</sup>. The ratification of the CRC introduced the first ever serious debate over children's rights within Argentinian society. Our analysis, then, shows that global rights norms and treaties can assist in the creation of a more conducive environment for rights advocacy and policy development even in areas that were not previously considered priorities either by state authorities or by civil society organisations.

The weaknesses of the children's rights advocacy network and the minimal salience that the children's rights agenda enjoyed in Argentina before ratification can be explained as follows. Firstly, children and young people, the issue's 'natural' constituency, are largely silenced in Argentina and elsewhere by their age and social position. This means that a vocal or mobilised

<sup>5</sup> Simmons, *Mobilizing for Human Rights*.

<sup>6</sup> *Ibid.*

<sup>7</sup> On Argentina's history of innovative rights politics and the creation of new mechanisms of transitional justice, see Kathryn Sikkink, 'From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights', *Latin American Politics and Society*, vol. 50, no. 1 (2008), pp. 1–29.

<sup>8</sup> Cortell and Davis, 'Understanding the Domestic Impact of International Norms'.

<sup>9</sup> The Argentinian human rights movement was active on issues related to the fate of the children of the disappeared. The Grandmothers of the Plaza de Mayo engaged in an active search for the children of their loved ones who had been secretly given away in adoption by the military, while the grown children of the disappeared established their own association (*Hijos por la Identidad y la Justicia contra el Olvido y el Silencio*, HIJOS). The focus of those actors was largely on issues related to the legacy of state terrorism, however. It was not framed within a broader agenda of children's rights.

grassroots ‘victims’ movement tends to be lacking. The presence of ‘victims’ had been particularly decisive in Argentina in putting the spotlight on the disappeared and the victims of state terrorism in previous struggles for human rights.<sup>10</sup> Secondly, the heterogeneous nature of the subgroup of civic organisations that specialised in children’s issues in Argentina exacerbated ideological divisions among them concerning the status and rights of children, and prevented them from reaching even a functional consensus in their evaluations of existing institutional arrangements for children and young people.

Our argument is that the CRC was crucial in fostering a domestic advocacy coalition: the CRC, combined with concerned global organisations such as UNICEF, jumpstarted children’s rights politics in Argentina and dramatically reshaped the terrain of domestic advocacy. Firstly, the CRC promoted a rights-based discourse and delegitimised alternative approaches to children’s issues. It provided a discursive opening for what had been until then a politically irrelevant and small group of rights-oriented actors, shifting the axis of domestic rhetoric on children’s issues towards a rights-oriented approach. Secondly, it encouraged the formation of a rights-based civil society coalition that went on to act as a compliance constituency: once consolidated, this coalition turned the CRC from a mere declaration of principles into the inspiration for a rights-oriented politics aimed at introducing concrete legislative and institutional reforms.

In Sikkink’s influential insider-outsider model, the international dimension exists as a kind of strategic alternative for domestic activists in cases where domestic avenues are temporarily blocked. Our case is a variant within the insider-outsider model. Here, the global norm transforms the direction of domestic politics in the area of children’s issues, bringing into existence a rights-based advocacy coalition that had not existed before. In contrast with the hostile attitude displayed by the Argentinian state towards human rights

<sup>10</sup> The Mothers of the Plaza de Mayo was the most visible and vocal actor within the Argentinian network of human rights organisations and played the most significant role in exposing human rights violations. The fact that the Mothers of the Plaza de Mayo were ordinary citizens, concerned mothers who were desperately searching for their children, gave their claims a special force. The presence of extensive primary and secondary groups, such as family and friends of human rights victims, who were able and willing to mobilise against human rights abuses was also a central characteristic of successful human rights initiatives under democratic rule. The human rights cases with most impact on public opinion have been those led by ordinary people who have been personally affected by state violence and who were able to express their grief and their demands in everyday language. These types of movements succeeded where other initiatives that relied solely on the activities of professional activists failed. See Enrique Peruzzotti, ‘The Different Meanings of Participation and Their Contribution to Civil Society Politics’, *Development and Change* (forthcoming).

legislation under the military dictatorship, the launching of significant efforts in favour of children's rights was the direct result of the state's adoption of the CRC. It was this step that transformed the domestic environment and allowed for the emergence of an effective local compliance constituency.

This paper is presented in four sections. Section one outlines the background theoretical debates and traces the global codification of the rights of children and young people instituted via the CRC. Sections two and three discuss why the campaign for children's rights that emerged after Argentina ratified the CRC took the shape it did. Section two summarises the historical context of the *Patronato* system established early in the twentieth century, drawing attention to the legal framework regulating state treatment of children, the 'adults know best' culture and the class prejudices inherent to the system. Section three analyses the emergence of a local coalition for children's rights inspired by the CRC, and the subsequent campaign for rights-based reforms. Lastly, we reflect on the relationship between globalisation, global norms and domestic advocacy in light of the case study.

### *Advocacy on Behalf of Children: Theoretical Perspectives*

#### *Globalisation, human rights and advocacy processes*

The salience of activism, particularly human rights activism, in global politics has increased steadily over recent years. Although human rights have been consistently violated by states, liberal rights especially, such as the rights to personhood, individuality, freedom of expression and freedom from torture and abuse, are now firmly fixed within discourses of contemporary global governance.<sup>11</sup> Intellectually, the rights 'turn' in international relations reflects an increasing awareness that ideas and principles, as well as material interests, form part of the bedrock of global politics.<sup>12</sup> The view that ideas are significant in their own right also rests on a growing awareness of the importance of principled civil society organisations, motivated not by materialism but by moral concerns, in global and local political life. Together these theoretical and empirical developments have created a burgeoning research agenda, shaped by social constructivism, concerned with the capacity

<sup>11</sup> Jean Grugel and Nicola Piper, *Critical Perspectives on Global Governance: Rights and Regulation in Governing Regimes* (London, 2007).

<sup>12</sup> Stefano Guzzini, 'A Reconstruction of Constructivism in International Relations', *European Journal of International Relations*, vol. 6, no. 2 (2000), pp. 142–82; Emanuel Adler, 'Constructivism and International Relations', in Walter Carlsnaes, Beth Simmons and Thomas Risse (eds.), *Handbook of International Relations* (London, 2002), pp. 95–118; Cortell and Davis, 'Understanding the Domestic Impact of International Norms'; Jeffrey T. Checkel, 'Why Comply? Social Learning and European Identity Change', *International Organisation*, vol. 55, no. 3 (2001), pp. 553–88.

of norms – understood as inter-subjective standards of ‘appropriate’ or ‘proper’ behaviour<sup>13</sup> – to play an ‘independent role ... in affecting international and domestic policy outcomes’.<sup>14</sup> For constructivists, globalisation should be understood as the spread of ideas and standards as much as material interconnectedness.

An emphasis on the external facets of state activities meant that the first wave of scholarship on norms tended to focus heavily on the role of ideas strictly within the international arena.<sup>15</sup> Gradually, however, the question of whether international norms can affect state behaviour within the *domestic* context has come to be regarded as equally important.<sup>16</sup> It is clear that ideas do not spread or seep seamlessly into domestic political structures without political struggle or contestation, nor do they affect or fit all countries and regions equally and at the same time. Which ideas transfer, as well as how they are carried from the international context to domestic settings, thus becomes a critical question. One approach has been to focus on resonance or norm salience. To take root, this argument goes, international norms must resonate culturally and institutionally.<sup>17</sup> Legro shows how some international norms are not translated into domestic contexts at all due to their lack of fit or legitimacy.<sup>18</sup> In a similar vein, Cortell and Davis suggest that the domestic salience of the norm is of particular importance for understanding the impact of international norms in domestic settings.<sup>19</sup> By salience, they mean:

a durable set of attitudes toward the norm’s legitimacy in the national arena ... [S]alient norms give rise to feelings of obligation ... [and their] invocation by relevant actors legitimates a particular behaviour or action, creating a *prima facie* obligation or delegitimizing alternative choices.<sup>20</sup>

It almost goes without saying that the salience of norms is very difficult to measure. Even the relatively simple scale of high, moderate, low and no salience developed by Cortell and Davis remains difficult to apply in practice,

<sup>13</sup> Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization*, vol. 52, no. 4 (1998), pp. 887–917.

<sup>14</sup> Hans Peter Schmitz and Kathryn Sikkink, ‘International Human Rights’, in Thomas Risse and Beth Simmons (eds.), *Handbook of International Relations* (London, 2002), p. 521.

<sup>15</sup> See Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical Legal Reasoning in International Relations and Legal Affairs* (Cambridge, 1989); and Martha Finnemore, *National Interests in International Society* (Ithaca, 1996).

<sup>16</sup> Cortell and Davis, ‘Understanding the Domestic Impact of International Norms’.

<sup>17</sup> Martin Marcussen, Thomas Risse, Daniela Engelmann-Martin, Hans-Joachim Knopf and Klaus Roscher, ‘Constructing Europe? The Evolution of French, British and German Nation-State Identities’, *Journal of European Public Policy*, vol. 6, no. 4 (1999), pp. 614–33; Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’.

<sup>18</sup> Jeffrey W. Legro, ‘Which Norms Matter? Revisiting the Failure of Internationalism’, *International Organization*, vol. 55, no. 1 (1997), pp. 31–61.

<sup>19</sup> Cortell and Davis, ‘Understanding the Domestic Impact of International Norms’, p. 67.

<sup>20</sup> *Ibid.*, p. 69.

especially since norm salience is almost certainly not fixed.<sup>21</sup> Salience is perhaps best seen as an unstable process in which norms become important, if they do so at all, unevenly and over time. Norms have to be *made* salient; agency, in other words, is crucial. Advocacy movements are among those actors that sometimes seize on global norms in order to interpret them and use them to try to bring about domestic change.

Keck and Sikkink have traced paradigmatically the ways in which global ideas can frame activist struggles and have explored in detail the boomerang strategy whereby domestic civil society actors go outside their own state in order to build transnational alliances.<sup>22</sup> More recently, Sikkink has posited that democratisation might mean, if not an end to the boomerang strategy, then a logical re-evaluation of the domestic sphere of contentious politics by activists.<sup>23</sup> This has led to the emergence of what she refers to as ‘insider-outsider coalitions’, in which domestic activists ‘privilege domestic political change but ... keep international activism as a complementary and compensatory option’. For an ‘insider-outsider coalition’ to occur, both the international opportunity structure – that is, the degree of openness of international institutions to the participation of transnational NGOs, networks and coalitions – and the domestic opportunity structure – or ‘how open or closed domestic political institutions are to domestic social movement or NGO influence’ – must be relatively amenable to advocacy.<sup>24</sup>

Argentina has been an important protagonist in the area of human rights, making significant contributions to the agenda at both the regional and global levels. Sikkink frequently refers to the Argentinian experience to illustrate her arguments regarding the different modes of articulation of the local and the global in human rights activism.<sup>25</sup> In so doing, she acknowledges the dramatic change in the domestic political structure that the country experienced as a result of its transition to democracy: in a brief period of time the structure of political opportunities changed from a closed and extremely repressive regime, in which the human rights movement was forced to adopt a boomerang strategy in order to exert pressure on the government, to an open one, in which norm entrepreneurs from both the state and civil society played prominent and active roles. This dynamic culminated in a human rights ‘norm cascade’. As a result, the international standing of Argentina changed rapidly; Argentina was able to leave its pariah state status behind and became a global leader in the promotion of human rights.<sup>26</sup>

We return to the Argentinian case once more here, this time to focus on the dynamics of children’s advocacy rights politics under democracy. The

<sup>21</sup> *Ibid.*

<sup>22</sup> Keck and Sikkink, *Activists Beyond Borders*.

<sup>23</sup> Sikkink, ‘Patterns of Dynamic Multilevel Governance’, p. 165.

<sup>24</sup> *Ibid.*, pp. 156–7.

<sup>25</sup> *Ibid.*

<sup>26</sup> Sikkink, ‘From Pariah State to Global Protagonist’, p. 23.



politics of children's rights in Argentina has proved different in some key respects from the transitional justice initiatives that were the main focus of Sikkink's analysis. Children's rights politics in Argentina is a distinctive area of human rights politics that (a) did not enjoy the high level of norm salience that the transitional justice agenda enjoyed in post-dictatorship Argentina, and (b) did not rest on a strong and visible local advocacy coalition, as was the case with the network of families of victims of human rights violations. The ratification of the CRC by Argentina, as in the rest of the region, was simply part of a general regional trend of domestic incorporation of international human rights norms after or alongside democratisation.<sup>27</sup> The CRC was ratified, then, not because of domestic pressure on this specific issue, but as part of a broader process of change as regional states chose to adhere to international rights-based treaties and conventions. Ratification reflected the regional 'norm cascade' on human rights issues generally.<sup>28</sup> Norm cascades do not automatically lead to norm internalisation, however, nor do they necessarily give domestic salience to an issue.<sup>29</sup> It took time, agency and advocacy in Argentina to turn the ratified norms of the CRC into something akin to the status of prescription domestically.<sup>30</sup>

Ratification opened what turned out to be quite a lengthy struggle for state compliance. It created the conditions for the organisation of a compliance coalition, one that did not exist before the adoption of the CRC, to actively push for legal and institutional reform. It was only after the state granted the CRC constitutional status that a significant local advocacy coalition emerged on behalf of children's rights and gradually came to coalesce around the demand for legislative reform that would bring Argentina into line with the precepts of the convention. As one children's rights activist told us, 'the CRC inaugurated children's rights politics in Argentina'.<sup>31</sup> Moreover, international organisations, in particular UNICEF, also played an important role in sponsoring and financing activities oriented towards establishing and consolidating the nascent NGO coalition and in keeping the groups focused on rights issues. So, unlike the cases that were the focus of Sikkink's analysis (which led her to emphasise the innovative role of domestic norms entrepreneurs), in the area of children's rights, it was global norms (via state ratification) and associated global organisations such as UNICEF (via ideological and material support, funding and agenda setting) that contributed to

<sup>27</sup> Ellen Lutz and Kathryn Sikkink, 'International Human Rights Law and Practice in Latin America', *International Organisation*, vol. 54, no. 3 (2000), p. 655. <sup>28</sup> *Ibid.*

<sup>29</sup> Thomas Risse and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction', in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge, 1999), pp. 21–2. <sup>30</sup> *Ibid.*, pp. 29, 33.

<sup>31</sup> Interview with the authors, Buenos Aires, Dec. 2005.



the formation and consolidation of the network of advocacy organisations that went on to play the role of a compliance coalition.

### *Children's rights*

Children's rights are not an entirely new concern within human rights activism, but children did not figure prominently in international human rights treaties in the twentieth century. Although there have been attempts to establish minimum international standards of welfare for children in extraordinary situations such as war or devastation since the early twentieth century, it was generally assumed that parents, especially mothers, would provide for the well-being of children. By the 1970s, however, a greater awareness of the complex roles children play within society and the economy, coupled with a more critical understanding of family structures, led to a loss of faith in the notion of the all-sustaining family. The myth that the well-being of children could be left entirely to the family gave way under pressure from child-centred social movements that focused on the needs and entitlements of children themselves. The view that children might have rights and that they enjoy personhood began seriously to influence debates for the first time. The 1989 Convention on the Rights of the Child marked the triumph of the rights-based approach. It works by encouraging states to recognise and act upon an extensive set of individualised entitlements – political, social and economic – for children. The CRC establishes, in a very broad sense, standardised global rules for the treatment of children and affirms their existence as individualised rights-bearing subjects. As such, it marks a genuinely paradigmatic shift in the ways in which childhood is conceptualised and suggests a new, and more emancipatory, frame of governance for them. By setting standards that all states should meet across a range of issue areas, from education, culture and identity to labour, development and medical care, it denies states the ultimate sovereign authority to decide how children and young people living within their borders should be treated.

As children's rights are codified in the CRC, the problem of 'specifying where they are lodged' internationally does not arise.<sup>32</sup> The difficulties are, instead, ones of justiciability and implementation.<sup>33</sup> Although it was quickly ratified by most states in the early 1990s, the CRC's regime is very weak in terms of monitoring government performance and sanctioning state failures and omissions. As is well known, the UN system lacks the bureaucratic

<sup>32</sup> Sidney Tarrow, *Transnational Politics: Contention and Institutions in International Politics* (undated), p. 14.

<sup>33</sup> The term 'justiciability' refers to the issue of whether or not courts have legal authority on a given question.

autonomy and authority to defend human rights effectively.<sup>34</sup> As a result, the Office of the United Nations High Commissioner for Human Rights is at the centre of a global system of rights protection related to childhood that has little or no direct authority to compel states to deliver on their promises. Nevertheless, the CRC has normative authority deriving from the fact that it is, in the strictly formal sense, an internationally binding agreement, and moreover, that it constitutionalises norms reflective of the liberal tenor of the contemporary order.<sup>35</sup> As a result, it has led to the creation of informal mechanisms of accountability via mobilised constituencies of children's NGOs and rights activists. One of the typical demands that rights activists make is for the provisions of the CRC to be incorporated into domestic law, since this is seen as an important step towards making rights justiciable.

### *Childhood and the State in Argentina*

The guiding principles of the CRC – namely, that children are rights-bearing individuals and that the role of the state is to respect, uphold and advance their rights – tend to contradict traditional and established approaches to welfare and philosophies of childhood. The latter are, in Western societies at least, heavily influenced by notions of paternalism and the idea of the child as a 'legal minor'. Many states encoded these philosophies into law from the early twentieth century onwards. In Argentina, this norm set was embedded in the *Ley del Patronato* (literally, Law of Trusteeship), which gave rise to what became more generally known as a state culture of *tutela* (guardianship).

The construction of Argentina's Patronato system began with the passing of the so-called *Ley Agote* in 1919. Named after its sponsor, Senator Luis Agote, this law laid the institutional foundations of the *Patronato Nacional de Menores Abandonados y Delinquentes* (known simply as the Patronato). The law and the Patronato system it institutionalised were viewed as central planks in the process of state building that characterised late nineteenth- and early twentieth-century Argentina. Infused with a faith in the rule of law and, after Yrigoyen's victory in 1916, a belief that the state should mediate social tensions, Argentina's elites embarked on a range of state-sponsored modernising initiatives.<sup>36</sup> These included encouraging migration into urban areas on a massive scale. The ensuing social conflict and consequent fear of disorder, as more and more migrants crowded into Buenos Aires in the early years of

<sup>34</sup> Michael Barnett and Martha Finnemore, *Rules for the World: International Organisations in Global Politics* (Ithaca, 1994).

<sup>35</sup> Andrew Gamble, 'Economic Governance', in Jon Pierre (ed.), *Debating Governance* (Oxford, 2000), pp. 110–37.

<sup>36</sup> Luis Alberto Romero, *A History of Argentina* (Philadelphia, 2002); David Rock, *State Building and Political Movements in Argentina, 1860–1916* (Stanford, 2002).

the twentieth century, form the backdrop to the new law, which was the first in Latin America to create the category of ‘legal minors’ and to codify the state’s responsibilities with regard to them. With the passing of the Ley Agote, Argentina joined the small group of countries that had developed a specific body of law directed at children and young people.<sup>37</sup> And, while the Ley Agote was to become a much-derided object of criticism over the course of the twentieth century, in its origins it undoubtedly had something of a progressive – albeit elitist and paternalist – air about it in that the state took on certain responsibilities for the welfare of what it saw as abandoned children.

The Ley Agote meant that state elites had to consider, firstly, when state intervention in the previously private world of the family was appropriate, and secondly, what the state’s own role vis-à-vis children might be. It quickly became clear that the state would understand its primary responsibility as providing for children in social or familial situations considered extremely damaging to the children themselves and/or to society more widely. The Ley Agote was mainly directed at poor and immigrant children and young people, who had until then been left largely to their own or their family’s devices, or who had been the object of ad-hoc intervention by private or church-based charitable organisations. In this sense, whatever its intentions, the legislation reflected the class-based, child-saving morality typical of the time, and it automatically generated a process of segregation. A certain group of children was isolated – these were the so-called ‘minors in moral danger’, who fell outside of the protection of their family group or whose family was deemed unable to provide them with appropriate living or educational standards.<sup>38</sup>

The significance of the law for the poor, especially in Buenos Aires, can only be understood in the context of the major changes to Argentina’s demography at the time. Children and young people became a significant sector of the urban population: in 1904, 20 per cent of Buenos Aires’ population was between six and 15 years of age. Many of these children could be found working – or looking for work – on the street, as part of the emerging informal labour market. Children took on newly created, low-paid service jobs, and indeed were regarded by employers as particularly suited to some kinds of employment, if only because they were willing to work for extremely low wages. The development of a mass press generated

<sup>37</sup> The law was the first of its type in Latin America and came only 20 years after the creation of the first courts for minors in Illinois. See Mary Beloff, ‘Constitución y derechos del niño’, in David Baigún et al., *Estudios sobre justicia penal. Homenaje al Profesor Julio B. J. Maier* (Buenos Aires, 2005), pp. 765–94.

<sup>38</sup> On child saving in Argentina, see, Donna Guy, ‘The State, the Family and Marginal Children in Latin America’, in Tobias Hecht (ed.), *Minor Omissions: Children in Latin American History and Society* (Madison, 2002), pp. 139–64.

opportunities as newspaper sellers, and children were also needed to shine shoes, open doors, wash windows and so forth. Bands of child-age petty thieves and beggars were also organised. In short, children and young people were a visible and, for some, disturbing presence in the city landscape.<sup>39</sup> The breakdown of families following migration, meanwhile, meant that there were also more abandoned children than ever before. Within Buenos Aires alone, around 40,000 children were identified as ‘abandoned’ in the early years of the twentieth century, although this figure is very rough and difficult to trust, since ‘abandonment’ was contentiously defined and many poor children were classified as such simply because they were in the street without an adult.<sup>40</sup> The presence of poor children roaming the streets created a mix of fear and concern among Argentina’s governing elite, a moral panic that is nicely captured in Agote’s own defence of the law in Congress:

One of the deficiencies of our [current] legislation refers to the extremely high number of children who wander the streets and alight, like birds, on abandoned land, in public squares, on river banks, in door fronts and in filthy hovels and who go on, as a consequence of the irregular life they lead, to fill our prisons.<sup>41</sup>

Whatever the intentions of the law, in practice it served to cement social divisions in place. Rather than mediating class divisions, the *Ley Agote* set in stone the different experiences of childhood along class lines. Upper- and middle-class children were protected and socially integrated via the public educational system. Upper-class children attended a reduced number of prestigious schools such as the *Colegio Nacional de Buenos Aires*, while middle-class sectors usually found themselves in less distinguished institutions. The families of these children were trusted by the state to provide an appropriate moral tone for their children’s upbringing and to ensure their socialisation and integration through the schooling system, which was free from 1900. Poor children, on the other hand, found themselves increasingly forming part of the labour market and were, inevitably, visible to the public gaze. As Julio César Ríos and Ana María Talak show, the discourses surrounding childhood at the time sharply distinguished between respectability and the street. While the middle and upper classes ensured the respectability of their children by upholding schooling, inculcating ‘family values’ and forming what was referred to at the time as a family ‘*bien constituida*’ (one whose

<sup>39</sup> See Juan Suriano, ‘Niños trabajadores. Una aproximación al trabajo infantil en la industria porteña de comienzos de siglo’, in Diego Armus (ed.), *Mundo urbano y cultura popular. Estudios de historia social argentina* (Buenos Aires, 1990), pp. 251–79; and Eduardo Ciafardo, *Los niños en la ciudad de Buenos Aires (1890/1910)* (Buenos Aires, 1992).

<sup>40</sup> Julio Cesar Ríos and Ana María Talak, ‘La niñez en los espacios urbanos (1890–1920)’, in Fernando Devoto and Marta Madero (eds.), *Historia de la vida privada en la Argentina. La Argentina plural 1870–1930* (Buenos Aires, 1999), p. 148.

<sup>41</sup> Quoted in Beloff, ‘Constitución y derechos del niño’, p. 771.

internal norms and external behaviour met with conservative approval), poor children were socialised in the street, which was

understood as a space of helplessness and abandonment, the consequence of an inexistent or inadequate set of family relationships ... The street was a space of vagrancy, begging, illness, exploitation and labour, prostitution and delinquency.<sup>42</sup>

The result was that poor and immigrant children became a specific target of public policies. They were to be driven, forcibly if necessary, into basic primary education, which was set up in the early years of the twentieth century to socialise and monitor the children of immigrants and the poor and to establish some degree of control over their health and civic education. There were also attempts to establish stable, nuclear family relations, promote legal marriage, encourage the registration of births and deaths, and treat pregnancy and childbirth as states requiring medical intervention.<sup>43</sup>

The most lasting of these initiatives was the creation of a system of institutional care for orphans and 'abandoned' children. More than anything else, the punitive character of the culture of *tutela* was dependent on the threat or reality of taking poor or 'unrespectable' children or those found working on the streets into the direct care of the state. Where the state could allege the 'moral or material abandonment' of children – and evidence for this was understood to be their presence begging, loitering or selling in public spaces – family courts were authorised to assert the state's right to assume the *patria potestad* – that is, the legal guardianship – of children, and remove them from their social or familial environment. These actions were taken independently of any objections the parents might make or indeed the wishes of the children, who then found themselves committed to orphanages under the care of the state. The Patronato thus provided services for children ostensibly 'for their own good', but its structure was utterly in violation of the CRC and the idea of children as rights-bearing individuals.

We should note too that the state's assumptions about the ease with which the poor 'abandoned' their children were frequently misplaced. Many children working in the street, then as now, were not, in fact, abandoned at all, if by abandonment we understand that the parents have lost interest in or contact and emotional attachment with their children. The street was, and remains, a complex space in Latin America.<sup>44</sup> For many poor children, it has come to exist as a complement, rather than an alternative, to the home.<sup>45</sup> At

<sup>42</sup> Ríos and Talak, 'La niñez en los espacios urbanos', p. 139.

<sup>43</sup> Susana Torrado, *Historia de la familia en la Argentina moderna (1870–2000)* (Buenos Aires, 2003), p. 604.

<sup>44</sup> Tobias Hecht, *At Home in the Street: Street Children of Northeast Brazil* (Cambridge, 1998).

<sup>45</sup> Judith Ennew, 'Why the Convention is not about Street Children', in Deirdre Fottrell (ed.), *Revisiting Children's Rights: 10 Years of the UN Convention on the Rights of the Child* (The Hague, 2000), pp. 169–82.

the beginning of the twentieth century, this may have been even more the case than it is today. Many of the *conventillos* that housed migrants in Buenos Aires forbade the presence of children during the day. Additionally, conditions were generally overcrowded, with the result that children often chose to be absent whenever possible.<sup>46</sup> Many contributed to family incomes from their activities outside the home; making money did not mean that they were trying to survive on their own. Nevertheless, the state saw such living arrangements and the apparent lack of appropriate parental guidance as intrinsically ‘irregular’, morally suspect and dangerous for all concerned.

The Ley Agote led to the creation of a network of private and public institutions aiming to provide ‘homes’ for children under state guardianship. There were different kinds of children’s residences, including publicly run agrarian colonies, where children were taken out of the city and put to work on the land, as well as more traditional orphanages, but all such institutions were effectively closed off from public scrutiny. Many children were sent miles away from their family or their own community. Around 2,900 children were under the control of the Patronato by 1943, and the regime continued to expand in the 1950s and 1960s.<sup>47</sup> The government of Juan Domingo Peron (1946–55), despite its discursive emphasis on the welfare of children, simply transferred the system from private to state-controlled institutions. This was once again reversed in the 1990s when, under the aegis of neoliberal reforms and changing concepts of the state, a decision was made to transfer state-run care homes into the hands of NGOs run by the Catholic Church and civil society organisations. Nothing was done, however, to reform the system itself, and the principle of *tutela* remained unchallenged. Indeed, by this time, *tutela* had acquired a different connotation, implying not care by the state but rather the multiple ways in which the state neglected the emotional and material needs of poor young people while at the same time failing to protect them from abuse, harassment, arbitrary detention and violence. Its class character had become even more marked. As Florencia Ellorreaga, from the children’s department in Buenos Aires, explained:

Middle-class children ... did not even realise that the Patronato existed ... but as soon as [poor] families began to experience problems or go to the hospital, for example, there it was ... All the children who were classified as at risk, the Patronato was for them. The worst [thing about it] was how children who were themselves victims were judged and institutionalised.<sup>48</sup>

At a time when many Western governments were radically revising their guidelines for looked-after and at-risk children, the Patronato in Argentina

<sup>46</sup> James R. Scobie, *Buenos Aires: Plaza to Suburb, 1870–1910* (Oxford, 1974).

<sup>47</sup> Guy, ‘The State, the Family and Marginal Children’.

<sup>48</sup> Interview with the authors, Dec. 2005.

remained untouched. It is estimated that in 2003, in the province of Buenos Aires alone, over 15,000 children were living in care homes, the conditions of which had deteriorated steadily during the years of state retrenchment after the 1980s.<sup>49</sup> Moreover, it was becoming increasingly clear, even to the authorities, that many of these children had not been abandoned in any sense. One family court judge explained:

Young people came before the court for misdemeanours, minor crimes such as swearing in public, disorderly behaviour, drunkenness of course. It was an offence for anyone under 18 years old to sell in the street ... there was an infinite array of legal norms which were ... simply a form of police control over young people.<sup>50</sup>

Some vulnerable young people even found themselves caught up in the Patronato after they had sought protection from physical or sexual abuse. According to Florencia Ellorreaga, girls from poor families ran the risk of coming before the family courts 'for their own good' if they contacted the police in connection with abuse by family members.<sup>51</sup> Perhaps not surprisingly, many children from the care homes eventually ended up in prison; one estimate suggests that around 75 per cent of the prison population in Buenos Aires had lived in care homes as children and adolescents.<sup>52</sup>

Beyond this, the culture of tutela shaped policy more generally in fields as diverse as welfare, education and urban planning. Despite quite an extensive welfare state, children never became subjects of welfare in their own right. Public spaces were rarely child-friendly; schools were hierarchical and disciplinarian. Child labour was simultaneously hidden and tolerated, especially in the informal non-unionised sectors of the economy. The culture of the Patronato even came to inform the repression unleashed in Argentina in the 1970s – many of the children of those deemed 'enemies of the state' by the military junta were treated as 'enemies' themselves. There are children as young as 14 among the disappeared, and evidence that children as young as three were forced to watch their parents being tortured.<sup>53</sup> The trade in the babies of the disappeared that thrived under the military, meanwhile, suggests a twist on the 'child-saving' mentality that underpinned the Ley Agote itself. It was this culture, as much as the care home system and the 'omnipotent power of the family court judge' that rights-inspired reformers objected to after Argentina ratified the CRC in 1991.<sup>54</sup>

<sup>49</sup> Observatorio de la Infancia y la Adolescencia, *Informe de situación del conurbano bonaerense. Documento 4 Julio* (Buenos Aires, 2005).

<sup>50</sup> Interview with the authors, Dec. 2005.

<sup>51</sup> Interview with the authors, Dec. 2005.

<sup>52</sup> Sesiones de Congreso de la Nación, 2005, p. 44.

<sup>53</sup> Antonius C. G. M. Robben, *Political Violence and Trauma in Argentina* (Philadelphia, 2005).

<sup>54</sup> Interview with Horacio Barberis, Dec. 2005.



*The Road to Reform**The CRC opens a new opportunity*

Ratification was part of a broader trend of incorporating human rights treaties into domestic law that began with democratisation in 1983. After years of isolation during which the military regime of terror was denounced in every international forum, Argentina was eager to rejoin the global community.<sup>55</sup> Ratification did not mean that the state was ready to commit immediately to the introduction of rights-based internal reform, however. Nevertheless, ratification opened the door to a new opportunity structure and became, over time, a ‘crucial watershed’ for children’s rights advocacy.<sup>56</sup> The incorporation of the CRC changed the domestic environment in three ways:

1. *Framing.* The CRC provided a new and ‘official’ way of framing children’s issues that was reiterated through contact with UNICEF and international organisations and that forced state and non-state actors eventually to adapt their rhetoric to the language of rights.
2. *The creation of a compliance constituency.* Treaties have agenda-setting capacities, especially when they are legally binding.<sup>57</sup> International treaties such as the CRC enjoy constitutional status in Argentina. The CRC encouraged the formation of a ‘compliance constituency’ concerned with monitoring the pace and progress of the process of internalisation of the principles of the CRC through legislative and policy change.
3. *Strengthening the moral authority of rights-based advocacy organisations.* The re-framing of the language along the lines of a rights discourse discredited competing discourses within civil society and increased the legitimacy and authority of advocacy organisations within the compliance coalition.

In relation to the first point, the CRC legitimised a new rhetoric of rights in the area of children’s issues. In this sense, it helped to redefine the discursive terrain on which state and civic actors concerned with children’s issues operated, forcing all of them to ‘talk rights talk’ or at least pay lip service to it. The introduction of the CRC was consequently relevant in giving salience to a rights-oriented approach to children’s issues and in delegitimising alternative ways of framing the issue. In particular, it questioned the culture of tutela and the Patronato, which had hitherto been hegemonic. In the arena of civil society, and more specifically within the subsector of organisations

<sup>55</sup> Enrique Peruzzotti, ‘Toward a New Politics: Citizenship and Rights in Contemporary Argentina’, *Citizenship Studies*, vol. 6, no. 1 (2002), pp. 77–93.

<sup>56</sup> Interview with Facundo Hernández, of the *Colectivo de Derechos de Infancia y Adolescencia*, Dec. 2005.

<sup>57</sup> Simmons, *Mobilizing for Human Rights*.

that specialised in children's issues, this discursive shift granted moral authority to advocacy organisations that had historically promoted a rights-based approach but had, until that point, operated outside the sphere of childhood.

Following the example of other countries, and encouraged by UNICEF, several of the Argentinian organisations specialising in children's issues decided to establish a national network of civic associations in order to strengthen local advocacy efforts, generate independent information about the state of children in the country and evaluate the state's progress in designing and introducing new policies that would be in line with CRC principles. The influence of such networks depends inevitably on the strength of local non-state actors, the strategies they adopt and the institutional matrix in which they operate. In Argentina, this particular network brought together a range of non-state groups that were extremely diverse and ideologically divided and, as a consequence, the *Comité de Seguimiento y Aplicación de la Convención sobre los Derechos del Niño* (Committee for the Follow-up and Application of the CRC, CSACIDN) initially found it very difficult to operate, let alone become genuinely effective. On the one hand, there were grassroots organisations such as the *Fundación Pelota de Trapo*, the *Movimiento de los Chicos del Pueblo* and SURCOS, dating from the 1980s, concerned mainly with supporting vulnerable young people on their own terms. These groups initially took the view that redistribution and economic reform were more important than civic rights, which they tended to view as a legal concept with little direct relevance to children's everyday lives.<sup>58</sup> Their position shifted quite quickly, however, to one that endorsed rights reform as a route to other kinds of reform.<sup>59</sup> On the other hand, there were a considerable number of NGOs that mainly offered services to the state; effectively, the privatisation of social services in the 1990s meant that these NGOs 'delivered' the Patronato and were closely tied to it. The service-type NGOs were not only more robust organisationally and better resourced than the grassroots groups, they were also more directly hostile to rights-based approaches with regard to children. As a result, these groups were far less critical of Patronato, as Irene Konterllnik of Argentina's UNICEF office explained:

The [service] NGO sector was united in seeking grants and running programmes for the state ... They were not concerned with advocacy. Basically, they were service organisations, running children's homes, and their perspective was closely tied to the logic of the Patronato.<sup>60</sup>

<sup>58</sup> Jean Grugel and Enrique Peruzzotti, 'Claiming Rights under Global Governance: Children's Rights in Argentina', *Global Governance*, vol. 13, no. 2 (2007), pp. 77–93.

<sup>59</sup> Interview with Facundo Hernández, Dec. 2005.

<sup>60</sup> Interview with the authors, Dec. 2005.

Argentina's ratification of the CRC, however, presented real difficulties for these groups. In particular, they could not avoid recognising that the punitive culture of the Patronato was utterly in contradiction with the paradigm of childcare embodied in the CRC. Many service NGOs were gradually forced to face up to the fact that what they delivered to children fell very short of international standards, but they did not reach this conclusion unanimously, immediately or openly – or, indeed, completely on their own.

Following ratification, UNICEF began work to try to socialise service-delivery NGOs into rights-based approaches. This was carried out with a range of other international actors including the EU and the Inter-American Bank, both of which provided small amounts of funding for seminars and training programmes. At the same time, the CRC brought the notion of childhood explicitly into domestic human rights debates. One consequence was the development of a new type of NGO, explicitly based around the concept of rights, that went on to swell the ranks of NGOs sympathetic to rights within CSACIDN.<sup>61</sup> These were, moreover, the first children's groups exclusively dedicated to advocacy work. Although interested in dialogue with government officials, they were neither part of the service sector nor typical grassroots movements. Both of these developments were important.

The most significant shift inside the children's rights movement, however, occurred when experienced human rights activists, hitherto unconnected to the childhood sector, took up the issue of children's rights unequivocally and directly in the mid-1990s. Before that, Argentinian human rights groups had some awareness that the CRC could be used as a tool for advocacy. The Grandmothers of the Plaza de Mayo had lobbied the Argentinian courts to use children's 'right to an identity' in order to establish, via genetic testing, the identity of children they suspected were children of the disappeared.<sup>62</sup> The *Centro de Estudios Legales y Sociales* (Centre for Legal and Social Studies, CELS) had also appealed to the CRC in relation to policing and police violence. By and large, however, Argentinian human rights groups had remained uninterested in broader notions of rights for children. Yet, by the mid-1990s, important human rights organisations such as CELS and the *Servicio de Paz y Justicia* (Peace and Justice Service) had come to see the CRC as a treaty with very radical implications, and they threw their weight behind a campaign for reform. With CELS and the other human rights groups engaged, the CRC was turned into a legal norm set whose legitimacy was difficult to question. It could be used domestically as a tool to judge government performance, and it became a script for rights claims and the foundation of activist arguments.

<sup>61</sup> Interview with Nora Pulido of the Asociación para los Derechos de la Infancia, Dec. 2005.

<sup>62</sup> Sikkink, 'Patterns of Dynamic Multilevel Governance'.

Due to their advocacy experience and the gradual seepage of rights talk into policymaking for children, the more professional and cohesive rights-based groups were able to balance and, over time, outmanoeuvre the service NGOs. In so doing, the children's NGO and civil society sector, which had begun in the early 1990s as an extremely disparate and weak set of organisations with little capacity for independent mobilisation, was transformed into an effective network with the concept of rights at its centre. Tensions between groups were not eliminated, of course, and the threat of fragmentation did not disappear. Nevertheless, a collective organisation that could act as a local entrepreneur on behalf of the norms and principles of the CRC had emerged. The compliance constituency was born, and the network went on to establish a permanent presence for itself in domestic debates, lobbying for the introduction of legislation and policies that would reflect the spirit of the CRC.

*The campaign for legislative reform gets under way*

The argument that the ratification of the CRC implied an automatic legal obligation to overhaul government policy towards children and young people met with failure when it was first made. Acting in isolation, some senior legal figures and academics such as Emilio García Méndez and Mary Beloff, as well as family court judges such as Horacio Barberis, put forward the view shortly after ratification that the constitutional reform of 1994, because it explicitly granted constitutional status to international treaties and conventions, implied the need to overhaul policy and dispense with the Patronato. Whatever the legal correctness of their position, however, their limited connections with broader civil society and the world of childhood policy, combined with the institutional weight of the Patronato, meant that their arguments were simply ignored.

It was clear that reform would require a conscious and organised campaign that would combine social mobilisation, insider negotiation with public officials, education and diffusion strategies, and legal knowledge – all of which were only possible once CSACIDN had come together. Through CSACIDN, the NGOs and rights groups agreed on priorities, mobilised support and, in effect, built a domestic coalition for reform. But CSACIDN became truly operational only in stages and over time. The prestige of individual human rights activists once they threw their weight into a campaign for reform was crucial in keeping the network on course. Long-standing campaigners for children such as Silvia Stucklick and individual human rights activists such as Estela de Carlotto and Adolfo Pérez Esquivel provided leadership inside the network and offered the opportunity for publicity and contacts outside it, using the knowledge they had gained in earlier human

rights campaigns. As one of our interviewees succinctly put it, the human rights campaigners ‘knew how to open doors’.<sup>63</sup>

Also important were the series of meetings that were generated by the need to write alternative reports to accompany official submissions to the UN on progress towards implementation of the CRC. In 1996, CSACIDN presented its first shadow report to the UN. Writing the report allowed the network leaders to flesh out an agenda for action and promote an internal discussion between the members that would eventually lead to the clear articulation of priorities and strategies for an internal campaign.<sup>64</sup> It was agreed at this stage that reform required allies inside the state, in particular in Congress and within the state bureaucracy.<sup>65</sup> Establishing these contacts was made easier by the fact that some NGOs had, on their own account, begun to work with government officials around this time, as the state came to realise that ratification implied some process of policy change. The *Asociación para los Derechos de la Infancia* (ADI), for example, began to cooperate with the Department of Education in producing materials to be used in schools explaining what the CRC meant.<sup>66</sup> Without the ‘glue’ of having to report to the UN, however, tensions between the members surfaced and a breakaway network, the *Colectivo de Derechos de Infancia y Adolescencia de Argentina* (Collective for the Rights of Children and Adolescents in Argentina) was formed. For a while, relations between the two networks were poor, and it was really only with the writing of the second report in 2002 that momentum for a united campaign for change began in earnest once again. The second report counted on the support not only of UNICEF but also of the Swedish branch of Save the Children. CELS also submitted a report, emphasising the need for rights-based reform, as did Amnesty International. With more groups involved and some strategic international support, this time the momentum did not come to an end once the report was submitted. The report signalled a rapprochement between CSACIDN and the Colectivo that was matched by a broad acceptance of rights discourses across the sector. As Silvia Stucklick, president of CSACIDN, explained:

It’s complex ... there is [still] no single approach [within the network]. What happened is that, because of our frustration, the differences between us, we have tried, since 2002, to build alliances between the different groups, develop positions of tolerance ... as a result, communication between the groups has improved a lot.<sup>67</sup>

<sup>63</sup> Interview with Silvia Stucklick, President of CSACIDN, Nov. 2005.

<sup>64</sup> Interview with Silvia Stucklick, Nov. 2005.

<sup>65</sup> Interview with Irene Konterllnik, Dec. 2005.

<sup>66</sup> Interview with Nora Pulido, Dec. 2005. <sup>67</sup> Interview with the authors, Nov. 2005.

Internal cohesion finally meant that from around 2003 to 2004, CSACIDN, now with the support of the *Colectivo*, could agree on the detail of its campaign, which focused on the central need for legislative reform and the introduction of a rights-centred Children's Code. The issues of reform of the juvenile justice system and the introduction of universal child benefit were deemed important but secondary, and later became campaigning issues once legislative reform was achieved. These demands reflected the priorities of different sectors within CSACIDN and therefore provided the basis for winning support across the network. Making decisions on priorities in this way made a huge difference both to the campaign and to the confidence of the network. At the same time, it was agreed that legal reform would have to be the first priority. Overturning the *Patronato* was accepted as a precedent from which other reforms would have to follow, since it would constitute an important step towards making rights justiciable and would embed the CRC in the domestic legal order. Strategically, fighting for the introduction of a new Children's Code had another advantage: it could plausibly be packaged as an act of modernisation rather than as a radical piece of legislation, making it possible to build alliances with actors from inside the state. From their own experience of working with certain actors within the state, some NGOs were able to attest to the fact that many of those actors, especially the bureaucracies concerned with delivering services for children, could see the need for reform of the *Patronato*. On this issue at least, CSACIDN realised that cooperation from Congress and some key state actors might be forthcoming even if other rights issues, such as policing or welfare, were more contentious because of potential political costs.

The network framed the campaign for legislative reform mainly as an effort to modernise Argentina's antiquated system of care. The idea was that this would cut away support for opponents of reform within the Catholic Church, who saw rights-based reform as a radical act that would undermine the family, and right-wing sectors in the press who claimed that rights-based reform equated to policies that were 'soft' on young criminals. As a result, after 2003, the network focused its attention and almost all its energy on putting forward the case for legislative reform. CSACIDN began to lobby in the press, organise meetings and seek contacts and alliances with state officials and within Congress. Once mobilised, CASCIDN found that it was able to exercise a considerable degree of leverage over state actors, especially those who worked in the delivery of children's services. This was due to the fact that ratification of the CRC had meant that state officials had adapted their language – although not their policies – to the CRC. They had, in other words, begun to speak 'rights talk', and state policies, whatever their actual content, were being enunciated and justified through the concept of 'rights'. Even when officials privately remained attached to the *Patronato*, the CRC

was forcing them to make substantive changes to their vocabulary. Moreover, some state officials – including some (although not all) from within the children’s departments in the Ministry of Welfare – even began to take the new rights-based discourses seriously.

Legal reform could not be achieved without support in Congress. The difficulty of obtaining that support cannot be underestimated, for by 2005, Argentina’s socially conservative, fractious, divided Congress had already rejected two attempts at reform. One failed because of the difficulties of building sufficient cross-party support for reform of any sort, the other because it mentioned adolescent reproductive rights and was, as a result, roundly rejected by conservative and Catholic deputies. The modernisation argument – the idea that legislation was needed simply to bring the country up to date – along with suggestions that Argentina was lagging behind many of its neighbours in the region and needed to catch up, worked to persuade Congress to think again about the need for reform.<sup>68</sup> The sticking point remained, however, that members of Congress could not agree on the text of a new law. The idea that it might contain references to the sexual and reproductive rights of young people horrified the social conservatives. In the end, reformers had to agree to a bill that made no mention of sexual or reproductive rights at all. As a result, on the third attempt, a bill introducing a new Children’s Code passed its first reading in 2004 and was sent to the Senate for discussion. CSACIDN counted on a range of cross-party allies in the Senate and felt confident that it would be consulted on amendments. Working directly with some senators who had already declared themselves in favour of reform, CSACIDN argued persuasively to bring the text of the bill more closely in line with the language used in the CRC. According to one observer of the Senate debate, this was the crucial moment:

The process in the Senate was really interesting because it was cross-party. That is, there were Peronist, Radical and Socialist senators who agreed with a text based on the Convention, with practices that derived from the rights-based paradigm. It made agreement possible ... The Convention was taken as a frame for discussion ... the spirit [in the Senate] was to take the Convention and try and make it law.<sup>69</sup>

With these amendments in place, the bill was returned to the Chamber of Deputies. As CSACIDN has fewer allies in the lower house, it opted at that stage for mass mobilisation – together with the human rights groups, it took out advertisements in the press and used opportunities in the media and contacts with journalists to build a popular momentum in support for

<sup>68</sup> By 2005, not only was Argentina lagging behind its neighbours, but central government legislation was also antiquated compared to the provinces. The provinces of Buenos Aires, Chubut, Mendoza, Neuquén and Salta as well as the autonomous city of Buenos Aires had already introduced local legislation that brought children’s services in line with the CRC.

<sup>69</sup> Interview with anonymous children’s rights activist, Dec. 2005.



reform. The idea was to embarrass Congress into passing the bill and, at the same time, to reassure the public that reform was a necessary but moderate step without which Argentina would be out of line with the rest of the international community. On the day the bill was discussed in the Chamber of Deputies, a pro-rights demonstration took place outside Congress. As a result of all this mobilisation, Congress gave in and Law 26061, the *Ley de Protección Integral de los Derechos del Niño* (Law of Integral Protection of the Rights of the Child), was passed in October 2005. It entered into force in April 2006.

*From legislative to institutional and policy-based reform: The limits of the new opportunity structure*

Law 26061 was the culmination of international and domestic opportunity structures that were opened up around the need to reform the legal status of children and recognise their rights, combined with intense and effective domestic mobilisation. Legal reform, though important, was not an end in itself for most children's rights activists, however. The introduction of a new Children's Code was regarded as only the first step toward more effective, inclusive and rights-based social policies and reforms of the juvenile justice system. These tasks have proved much harder to achieve, and it has quickly become clear that the new opportunity structure that emerged as a result of the deployment of global norms in the domestic context has had limitations.

In the first place, there is institutional resistance to further reform – and indeed even to implementing aspects of the new law. The adoption of Law 26061 did not mean that the century-old institutional network that supported the Patronato system and the culture of tutela had simply been swept away. Different actors embedded in the established system continue to offer opposition to change, with the result that there is now a de facto dual situation in operation, in which the rights-oriented approach of the new law coexists with institutions that are still largely imbued with the Patronato culture. Although many service NGOs accept the language of rights and support the new law, at least discursively, their old practices often remain unchanged and unchallenged. An important part of the institutional web of the Patronato simply continues as it was. The government has no choice but to continue to rely on NGOs for services, as so many children remain in their care. For many service-delivery NGOs, further reform would eat away at an important source of their income and force them to implement expensive changes. According to activist Emilio García Méndez, this means in effect that institutional reform is held up by a 'a system of childcare that is like the PAMI [Argentina's notoriously corrupt health system] in miniature in

which it suits many that everything stays the same so that their business remains safe'.<sup>70</sup> Some government departments, including those that supported reform and favour a rights-based agenda in theory, are also implicated in holding back further reform and a full implementation of the new law. The children's department in Buenos Aires, as well as other city- and provincial-level institutions such as the *consejos escolares* (school councils), are, in the end, part of corrupt clientelist networks of exchange that divert public funds into illegal activities.<sup>71</sup> Meanwhile, reform of the national welfare system, in particular the dismantling of the children's department (the *Consejo Nacional de Niñez, Adolescencia y Familia*) in the Ministry of Welfare and the establishment of a national welfare agency promised under Law 26061, is still pending.<sup>72</sup>

There is also ideological resistance to further or more substantive reform. This is clear with regard to reform of the juvenile justice system, without which the influence of the new law on children in the legal system will be extremely limited. Some criminal court judges have consistently opted to ignore the CRC. Since 1997 the courts have sentenced 12 adolescents to life in prison, in open violation of the norms of the CRC, leading to an appeal to the Inter-American Commission on Human Rights. More recently, the new law has meant that Congress has begun to express some concerns about juvenile justice, suggesting that people under the age of 18 should be tried in juvenile courts, in accordance with the CRC and in the spirit of the new law. So far, however, this has had little effect.

Ideological opposition to reform means that the government and Congress are cautious because they fear antagonising key voters. One reason, in fact, why reform of the criminal justice system is not a priority for government is that there is a fear that reform will provoke domestic opposition. This certainly happened in Central America.<sup>73</sup> In Argentina, the fear

<sup>70</sup> Quoted in Pablo Antonini, 'Chicos sin ley', *La Pulseada*, 28 March 2005. Available at [www.lapulseada.com.ar/28/minoridad.htm](http://www.lapulseada.com.ar/28/minoridad.htm).

<sup>71</sup> There are innumerable allegations of corruption within the *Consejo Escolar Provincial*, which has an annual budget of approximately US\$ 200 million. See Perfil.com, 'La caja negra de la política bonaerense accede a \$600 millones anuales destinados a las escuelas', 6 May 2007, at [www.diarioperfil.com.ar/edimp/0175/articulo.php?art=1005&ed=0175](http://www.diarioperfil.com.ar/edimp/0175/articulo.php?art=1005&ed=0175). On the importance of clientelism generally, see Javier Auyero, 'The Logic of Clientelism: An Ethnographic Approach', *Latin American Research Review*, vol. 35, no. 3 (2000), pp. 55–81.

<sup>72</sup> Ernesto Blanck, '¿Y el Consejo Federal de Niñez, Adolescencia y Familia? ¿Cuanto más va haber que esperar para su conformación?' (Buenos Aires, 2007), available at [www.surargentina.org.ar/actfebo7.htm](http://www.surargentina.org.ar/actfebo7.htm). The old children's department is, in fact, still in existence, thanks to a presidential decree, and forms part of the well-established clientelist service network.

<sup>73</sup> Richard Maclure and Melvin Sotelo, 'Children's Rights and the Tenuousness of Local Coalitions: A Case Study in Nicaragua', *Journal of Latin American Studies*, vol. 36, no. 1 (2004), pp. 85–108; José Luis Rocha, 'Mapping the Labyrinth from Within: The Political Economy of Nicaragua Youth Policy Concerning Violence', *Bulletin of Latin American Research*, vol. 26, no. 4 (2007), pp. 533–49.

of crime and considerable social support for tough policing have given rise to 'iron fist' discourses that run counter to some of the precepts of the CRC. Prominent figures such as Carlos Blumberg, who has headed several massive demonstrations to press for tougher policies on crime, employ a discourse that openly stigmatises poor children. In one speech broadcast on national television, Blumberg denounced rights-based reform for young people, claiming:

Those minors are killing our sons and daughters. They should be penalised the same way as adults are. There are degenerate parents who forced them to engage in crime and murder. That is why we are demanding a lowering of the age of criminal responsibility. I can't see why human rights organisations see this as a problematic demand. We have to understand that those children are murdering our sons and daughters, ours, the citizens. It is imperative to isolate them from society.<sup>74</sup>

With all this in mind, it is perhaps not surprising that the momentum of reform has slowed down and the window of opportunity for reform that had opened with ratification has closed again. The tragedy is that it has done so at a time when the situation for many children in Argentina is more critical than ever. Deteriorating levels of well-being, rising levels of marginality, poverty, under-employment and unemployment, and increasing and more violent criminality have created risks for children and young people that are more acute even than those that gave rise to the Patronato itself. Income disparity grew throughout the 1990s, and the crisis of 2002, in which the country's GDP dropped a record 18.4 per cent, led to unprecedented levels of poverty (57.5 per cent) and indigence (27.5 per cent).<sup>75</sup> While these have recently improved (40.2 per cent and 15 per cent respectively), children and young people remain particularly badly affected. Seven out of ten live in poverty, and in the provinces of the north-east and north-west, the numbers are even more dramatic: three out of four children are poor, and one third are indigent. Of the 700,000 children born in 2002, 11,703 died before the age of one, 60 per cent of them from preventable diseases.<sup>76</sup> According to official figures, 7 per cent of children between five and 13 and 20 per cent of adolescents between 14 and 17 work; these statistics translate to around 900,000 children and young people in total. Independent experts put the figure even higher at around 1.5 million.<sup>77</sup> As recently as ten years ago, however, there were only 250,000.<sup>78</sup>

<sup>74</sup> Speech delivered by Juan Carlos Blumberg at a rally on 23 April 2004. Quoted in Periodismo Social, 'Los derechos del niño, la otra deuda interna', Nov. 2004, available at [www.periodismosocial.org.ar/area\\_infancia\\_informes.cfm](http://www.periodismosocial.org.ar/area_infancia_informes.cfm).

<sup>75</sup> Periodismo Social, 'Los derechos del niño'.

<sup>76</sup> *Ibid.*

<sup>77</sup> Mariela Macri et al., *El trabajo infantil no es un juego. Estudios e investigaciones sobre trabajo infanto-adolescente en Argentina, 1900–2003* (Buenos Aires, 2005).

<sup>78</sup> *Ibid.*

*Global Norms and Domestic Advocacy: Drawing Conclusions*

Let us return now to our central question: can global instruments (and in particular global rights charters) shape domestic advocacy and contention and ground rights-based reform at the local level, even in cases where their normative foundations find little initial domestic resonance? Answering this general question means, with regard to our case study, asking whether and how the CRC helped to trigger a rights-oriented agenda in Argentina. We have shown that ratification of the CRC transformed the landscape of advocacy for children and young people in Argentina, creating a situation of leverage for rights-based advocacy groups over other kinds of organisations within the domestic network of civic organisations concerned with childhood. We suggest that this example indicates, firstly, that ratifying global conventions and treaties can alter the relation of forces within domestic civil society, strengthening the position of certain groups and discourses and weakening others. Secondly, global rights charters can redefine the domestic structure of political opportunity for advocacy organisations vis-à-vis the state. Global instruments such as the CRC can help kick-start rights-based advocacy processes even in domestic settings where rights-oriented approaches have little initial resonance either within the state or in civil society, strengthening the influence of non-governmental actors working in that issue-area.

Reflecting on the CRC's influence on domestic contention in Argentina, we could argue that Argentina's ratification of the CRC opened up a *group-specific opportunity* for rights-oriented organisations in two different senses.<sup>79</sup> Firstly, it opened a group-specific opportunity for advocacy organisations within the non-state network concerned with children, strengthening rights-based children's organisations that were originally in a minority in relation to ideologically conservative and service-oriented groups in civil society. The CRC provided the opportunity for creating an effective coalition that proved crucial in redefining the ideological landscape of the non-state sector in an area where conservative groups had traditionally been dominant. The formal adoption of the CRC by the Argentinian state, the growing presence of global discourses supporting the CRC and the established influence and know-how of human rights organisations in domestic politics were fundamental in repositioning a minority group of advocacy organisations within CSACIDN, the broad network of organisations devoted to children's issues. The new global and domestic legitimacy acquired by rights-oriented

<sup>79</sup> Sidney Tarrow, 'States and Opportunities: The Political Structuring of Social Movements', in Doug McAdam, John D. McCarthy and Mayer N. Zald (eds.), *Comparative Perspectives on Social Movements. Political Opportunities, Mobilizing Structures, and Cultural Framings* (Cambridge, 1996), pp. 41–61.

approaches, meanwhile, sufficiently shifted moral authority from Church-related conservative groups to rights-based advocacy organisations to make Argentina's traditionally hostile Congress accept the need for reform.

Secondly, the CRC opened a group-specific opportunity for civil society groups to lobby the state. As soon as rights-oriented discourses became the dominant identity within CSACIDN, even if only at a discursive level, advocacy organisations genuinely committed to rights-based change were able to take advantage of the new structure of political opportunity that was created after the CRC was ratified. The CRC forced the state formally to adopt rights discourses. Even when the incorporation of the CRC had little immediate effect in the institutional culture that supported the Patronato system, at the level of public discourse state officials and elected representatives had to make adjustments to bring their vocabulary in line with the Convention. As one of our interviewers argued, it became politically costly to speak against the CRC, and all actors, civil and political, were forced to pay lip service to it even if they privately disagreed with it.<sup>80</sup> This provided a unique opportunity for advocacy groups to lobby for the implementation of rights-oriented legislation and policies.

Over time, the non-state network of organisations created after ratification came to focus its energies on the task of creating a new legal framework for children that would reflect the principles of the CRC. In this sense, the CRC could be said to have also contributed to opening a *policy-specific opportunity*<sup>81</sup> – namely, that of forcing public officials and institutions to deliver on the normative and legal promises inherent in ratification. Making use of this opportunity depended on whether activists could operate effectively in the domestic environment, however. In their efforts to promote legislative change, rights activists worked on several fronts. They had to operate within the network itself to try and build a cohesive group that would be committed to rights but also elastic enough to include different kinds of NGOs and thereby overcome internal tensions and rifts. The network had to build sufficiently cooperative relations with state actors, especially in children's services, so that those actors would not oppose reform, and they had to build a coalition for rights reform in Congress, a particularly difficult task given Argentina's divided parliament. That they were successful on all these different fronts bears out Sikkink's observation that 'Argentine social movement activists [are] ... among the most innovative protagonists in the area of domestic human rights activism'.<sup>82</sup>

<sup>80</sup> Interview with Mariano Martínez Ibarreta, Dec. 2005.

<sup>81</sup> Tarrow, 'States and Opportunities', p. 42.

<sup>82</sup> Sikkink, 'Patterns of Dynamic Multilevel Governance', p. 171.

Perhaps the key insight of our study is that global rights instruments and domestic activist frameworks influence each other in manifold ways. The global level does not simply provide an alternative arena for local activists when domestic channels are closed, but can also redefine the very landscape of domestic advocacy, even in those areas where there might be little initial norm salience. This case shows that state commitment to ratification of the CRC contributed to the inauguration of a politics of rights in an area where rights-oriented organisations were weak and lacked influence even within civil society. The adoption by the Argentinian state of the CRC opened the door for the emergence of a rights-oriented compliance constituency and the shift in state discourse after ratification helped to tilt the balance of power within civil society by strengthening the moral authority of advocacy organisations. We are not, of course, arguing that international rights norms always work in this way, but our analysis does suggest that global rights conventions can, in some circumstances, contribute to domestic reform in situations where there is no immediate congruence between the global normative framework and domestic norms. The norms embodied in the CRC shaped domestic civil society politics, modified the identity of local activists and brought into being a rights-based compliance constituency. Without the CRC, it is highly unlikely that a relatively cohesive network, based on the principle of rights, would have come into existence at all in Argentina. The 'global' was brought into the domestic environment by the ratification of the CRC, and it would be impossible to understand the process by which the law on childhood eventually changed in Argentina in 2005 without paying attention to the international level. Nevertheless, in the end, it was domestic advocacy that provided the push that led to policy change. Our research shows that domestic rights-based advocacy movements, even when they represent only a minority voice in local civil societies, can use global instruments to leverage their position when they take ratification of rights treaties as their point of departure. In short, it is local struggles to turn global promises into policies on the ground that ultimately determine whether rights-based international norms are useful promoters of change or empty declarations of utopian principles.

#### *Spanish and Portuguese abstracts*

*Spanish abstract.* ¿Cómo pueden los regimenes globales de derechos humanos promover su cumplimiento? ¿Pueden éstos crear las condiciones para montar campañas efectivas de garantía de derechos a nivel doméstico? Nosotros respondemos a estas cuestiones a través de un caso de estudio sobre el papel jugado por la Convención sobre los Derechos del Niño en la política argentina. Señalamos que la ratificación de dicha Convención fortaleció la coherencia e impulso de los

activistas locales de derechos humanos y llevó al final a la introducción de un nuevo código legal para niños basado en tales garantías. Rastreamos el surgimiento de una coalición local trabajando a favor de los derechos de los niños y la subsiguiente campaña de reforma legal basada en tales derechos. Nuestro análisis sugiere que las convenciones globales sobre derechos humanos pueden incidir sobre las oportunidades políticas locales para la defensa de garantías individuales, fortalecer reclamos sobre derechos e introducir cambios en el terreno.

*Spanish keywords:* derechos humanos, derechos de los niños, Argentina, la Convención sobre los Derechos del Niño, normas, cumplimiento, defensa

*Portuguese abstract.* De que maneira os regimes de direitos universais promovem a cooperação? Terão eles a capacidade de criar uma base para campanhas de direitos dentro de um país? Analisamos estas questões através de um estudo de caso que aborda o papel desempenhado pela Convenção sobre os Direitos da Criança na política argentina. Argumentamos que a ratificação da Convenção fortaleceu a coerência e o espaço de manobra de ativistas por direitos humanos nacionais, resultando enfim na introdução de um novo código inspirado em direitos para crianças. Traçamos a emergência de uma coalizão de cooperação local pelos direitos da criança e a campanha subsequente por reformas baseadas nestes direitos. Sugerimos que convenções globais de direitos possam incrementar oportunidades políticas domésticas pela defesa de direitos, fortalecer reivindicações baseadas em direitos e fomentar mudança na base.

*Portuguese keywords:* direitos humanos, direitos da criança, Argentina, Convenção sobre os Direitos da Criança, normas, cooperação, advocacia