

Overcoming Corporate Separateness: The Early Origins of Group Liability for Workers and Beyond

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Abstract

This Article documents and examines Brazil's pioneering imposition of joint and several liability for labor obligations on parent companies since 1937, complicating existing narratives about the German origins of group law. We uncover evidence that nationalism and resistance to foreign corporate groups contributed significantly to this legal development. Central to Brazil's groundbreaking 1937 reform holding parent companies liable for subsidiaries' labor obligations was the concern about protecting local workers from foreign groups attempting to evade legal responsibilities through separate legal entities. This innovation has shown remarkable durability and contemporary relevance. A 2024 decision by the Brazilian Supreme Court applied the economic group doctrine to enforce its orders against X (formerly Twitter) by freezing the assets of the Brazilian subsidiaries of Starlink, also controlled by Elon Musk. Our comparative analysis reveals a gradual, if contested, trend toward eroding corporate separateness to protect workers across jurisdictions. Moreover, this development appears to be more common in the Global South, with Portugal standing as the sole Global North country examined to converge with Brazil's comprehensive statutory approach—and only after a 70-year delay. These findings suggest that challenges in state capacity and the geographic divide between capital and labor, often pronounced along North-South lines, can shape the evolution of limited liability and corporate separateness doctrines in ways that challenge conventional narratives in corporate and comparative law.

Keywords: corporate law, groups of companies, limited liability, workers

JEL Classifications: F23, F54, K22, K31, N26

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Our comparative analysis reveals a gradual, if contested, trend toward eroding corporate separateness to protect workers across jurisdictions. Moreover, this development appears to be more common in the Global South, with Portugal standing as the sole Global North country examined to converge with Brazil’s comprehensive statutory approach—and only after a 70-year delay. These findings suggest that challenges in state capacity and the geographic divide between capital and labor, often pronounced along North-South lines, can shape the evolution of limited liability and corporate separateness doctrines in ways that challenge conventional narratives in corporate and comparative law.

Introduction

Limited liability is the most paradigmatic and celebrated attribute of the corporate form.¹ At the same time, its use as a defense against vulnerable creditors is controversial from both

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¹ STEPHEN M. BAINBRIDGE & M. TODD HENDERSON, LIMITED LIABILITY: A LEGAL AND ECONOMIC ANALYSIS 2 (2016) (defining limited liability as “[t]he key feature of the corporation that makes it such an attractive form of human cooperation and collaboration”); FRANK H. EASTERBROOK & DANIEL R. FISCHER, THE ECONOMIC STRUCTURE OF

efficiency and justice perspectives. Scholars have long questioned the efficiency of limited liability when applied to involuntary creditors.² This inefficiency similarly affects non-adjusting creditors, such as workers,³ and is most pronounced in the context of corporate groups.⁴ Corporate law scholars and human rights advocates have long argued for imposing liability on parent companies for harms caused to vulnerable stakeholders.⁵ Nevertheless, conventional wisdom maintains that, although exceptions to limited liability in corporate groups are growing, they have been and remain overly narrow.⁶ There is also insufficient understanding of the comparative strength of limited liability in the labor context.⁷

In this Article, we document and analyze the pioneering approach adopted by Brazilian labor law, which, as early as 1937, imposed joint and several liability on parent companies for obligations of their subsidiaries. Commentators of the time remarked that, even before the statutory innovation, caselaw had already considered the integration between companies as grounds for overcoming corporate separateness to protect workers.⁸ Brazil's subsequent 1943 Consolidation

CORPORATE LAW 40 (1991) (“Limited liability is a distinguishing feature of corporate law—perhaps *the* distinguishing feature”). *But see* HOLGER SPAMANN & JENS FRANKENREITER, *CORPORATIONS* (3rd ed., 2025) (questioning the view that “large corporations also could not exist without limited liability” by noting that “California provided for proportional shareholder liability until 1931, and American Express was organized with unlimited shareholder liability until 1965”). It appears that shareholders largely viewed the shift to limited liability with indifference both in California and in American Express.”

² See, most forcefully, Henry Hansmann & Reinier Kraakman, *Toward Unlimited Shareholder Liability for Corporate Torts*, 100 YALE L.J. 1879 (1991). See also Richard A. Posner, *The Rights of Creditors of Affiliated Corporations*, 43 U. CHI. L. REV. 499, 520 (1976) (arguing that separate incorporations for purposes of evading tort liability are socially inefficient in permitting the externalization of harm).

³ Lucian A. Bebchuk & Jesse M. Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy*, 105 YALE L.J. 857 (1996) (arguing that workers are non-adjusting creditors that are largely unable to protect themselves through contract).

⁴ ELVIN R. LATTY, *SUBSIDIARIES AND AFFILIATED CORPORATIONS: A STUDY IN STOCKHOLDERS' LIABILITY* 203-204 (1936); Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 111 (1985); Henry Hansmann & Richard Squire, *External and Internal Asset Partitioning: Corporations and Their Subsidiaries*, in OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 253 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2017) (arguing that “the case for enforcing external partitions [outside the group] is stronger than the case for enforcing internal partitions [inside the group]”).

⁵ See, e.g., ELVIN R. LATTY, *SUBSIDIARIES OF AFFILIATED CORPORATIONS: A STUDY IN STOCKHOLDERS' LIABILITY* 195 & 201-2 (arguing that the case for shareholder liability is stronger in corporate groups and with respect to involuntary creditors); Hansmann & Kraakman, *supra* note 2 (questioning the efficiency of limited liability with respect to corporate torts); Hansmann & Squire, *id.* (on the weaker case for asset partitioning within corporate groups); Radu Mares, *Liability within corporate groups: parent companies' accountability for subsidiary human rights violations*, RESEARCH HANDBOOK ON BUSINESS AND HUMAN RIGHTS (Surya Deva & David Birchall, 2000) (arguing for greater exceptions of the separation principle to impose liability on parent companies for human rights abuses).

⁶ See, e.g., Meredith Dearborn, *Enterprise Liability: Reviewing and Revitalizing Liability for Corporate Groups*, 97 CALIF. L. REV. 195 (2009); Martin Petrin & Barnali Choudhury, *Group Company Liability*, 19 EUR. BUS. ORG. L. REV. 771 (2018); Virginia Harper Ho, Gerlinde Berger-Walliser & Rachel Chambers, *Toward corporate group accountability*, in RESEARCH HANDBOOK ON CORPORATE LIABILITY 292 (Martin Petrin & Christian Witting eds., 2023) (discussing “continued efforts to strengthen corporate accountability and responsibility in ways that include but extend beyond legal liability”).

⁷ We focus on exceptions to limited liability from a functional standpoint. From a technical legal perspective, the imposition of joint and several liability on third parties, including shareholders or parent companies, is not inconsistent with the concept of limited liability, though it does reduce the practical benefits of shareholders' limited liability.

⁸ José Domingos Ruiz, Carolino de Campos Salles & Ruy de Mello Junqueira, *Glosas: O empregador único dos grupos industriais*, 2 LEGISLAÇÃO DO TRABALHO 105 (1938). See note 55 *infra* and accompanying text.

of Labor Laws (*Consolidação das Leis do Trabalho* – CLT) incorporated a similar rule. A 2017 reform—although primarily intended to reduce worker protections—ultimately served to further expand the scope of the liability regime.

Brazil’s development of a distinct and bold legal regime for corporate groups so early in history adds to traditional understandings in comparative law. Global South jurisdictions are typically assumed to be importers, rather than innovators, of private law solutions.⁹ Moreover, the law on corporate groups is widely perceived as a distinctly German legal invention, which influenced a few other jurisdictions while mostly maintaining the strength of limited liability.¹⁰ This German-focused narrative, which emphasizes the treatment of corporate groups within corporate law while eschewing its intersection with other areas of law, is also prevalent among Brazilian scholars.¹¹ The notion that other fields of law could take a markedly distinct approach to corporate separateness in groups of companies has largely escaped attention.

We then explore the background and context for Brazil’s pioneering adoption of parent company liability in 1937. Notably, nationalism and North-South dynamics played a crucial role in this legal development. In justifying the need for reform, Brazilian lawmakers highlighted the risk that foreign companies employ different legal entities to evade legal protections granted to Brazilian workers. The law prioritized the interests of workers, their ability to enforce their rights and monetary claims, at the expense of a rigid conception of corporate separateness.

While Brazil’s system of group liability might initially seem like mere legal heterodoxy “on the books” with little effect on the “law in action,” this is not the case. Labor courts have consistently applied, and expanded, the scope of joint and several liability in the group context. Moreover, the concept of economic group—which encompasses but is not limited to corporate

⁹ See, e.g., DANIEL BONILLA MALDONADO, *LEGAL BARBARIANS: IDENTITY, MODERN COMPARATIVE LAW AND THE GLOBAL SOUTH* 24 (2021) (critiquing the traditional legal family conception by which Global South jurisdictions “only [have] the capacity to reproduce, diffuse, and apply legal knowledge created in the metropolis locally.”).

¹⁰ Holger Fleischer, *Kämpfe und Kontroversen um das Konzernrecht*, in *GESELLSCHAFTSRECHT IM SPIEGEL GROßER DEBATTEN*, S. 2. 370 (2024) (“Germany is a ‘Konzern’ law country. The provisions of... the German Stock Corporation Act (AktG)... are a creation of the corporate law legislator of 1965, who thereby presented the world’s first Konzernrecht codification.”) (free translation); René Reich-Graefe, *Changing Paradigms: The Liability of Corporate Groups in Germany*, 37 *CONN. L. REV.* 785, 786 (2005) (noting how the German *Konzernrecht* is credited for its “innovative approach” of adopting the “modern, revolutionary concept of group or enterprise liability (“Konzernhaftung”) in the law of corporate groups which—in its most radical form—will allow (and even mandate) a court to penetrate all horizontal and vertical “corporate separateness barriers” within a collective, polycorporate business enterprise as the rule and without exception”). But see Mariana Pargendler, *The New Corporate Law of Corporate Groups*, 14 *HARV. BUS. L. REV.* 339 (2024) (hereinafter “The New Corporate Law of Corporate Groups”) (finding that the United States and the United Kingdom have more quickly and strongly disregarded corporate separateness in corporate groups for purposes of shareholder protection than Germany). The core of Germany’s actual innovation in the legal regime of corporate groups concerns its highly formalistic—and mostly ineffective—regime of contractual groups.

¹¹ See, e.g., Rubens Requião & Fábio Konder Comparato, *O Anteprojeto de Lei de Sociedades por Ações*, 17 *REVISTA DE DIREITO MERCANTIL* 111, 122 (1975) (portraying the German system as the only one to boast a “law on economic groups”); Viviane Muller Prado, *Grupos Societários: Análise do Modelo da Lei 6.404/1976*, 1 *REVISTA DIREITO GV* 5, 9 (2005) (describing how Brazil’s 1976 corporations statute on corporate groups was “[i]nspired by the German model—the only legal system at the time with a systematic framework for corporate groups”).

groups¹²—continues to exert significant influence in various domains of Brazilian law. Other doctrines that similarly authorize the disregard of corporate separateness also remain influential in areas as varied as environmental law, consumer law, tax law, and financial regulation.¹³ A recent example concerns the high-profile confrontation between the Brazilian Supreme Court (*Supremo Tribunal Federal* – STF) and X (formerly Twitter), controlled by Elon Musk. In response to X’s continued refusal to comply with court orders, STF boldly appealed to the concept of an economic group, as established in the CLT, to freeze the assets of the Brazilian subsidiaries of Starlink—another company controlled by Elon Musk, but which has a different shareholder base—as an enforcement measure for X’s noncompliance. This heterodox enforcement measure, which was framed as protecting Brazil’s national sovereignty, effectively pressured X to eventually comply with the Court’s order.

We next map the evolving treatment of corporate separateness with respect to employees of corporate groups across various jurisdictions. To this end, we surveyed the principal and company statutes, as well as labor and employment statutes,¹⁴ of the 100 largest economies of the Global North and South.¹⁵ Here, a caveat is in order: traditional understandings of the common and civil law traditions would suggest that this statute-based research methodology may not capture judicial developments and therefore may appear particularly ill-suited to common law jurisdictions, although the accuracy of this characterization has been contested.¹⁶ We also examine qualitative legal developments, including caselaw, in a select number of jurisdictions—notably France, Germany, the United Kingdom, and the United States in the Global North, as well as Argentina, Brazil, Chile, China, India, Panama, Peru, South Africa, Venezuela, and Uruguay in the Global South.

All the Global North jurisdictions analyzed have specific exceptions to corporate separateness of group companies in the labor context for the benefit of workers. The United States and France have developed doctrines that permit courts to deem group companies “joint employers” or “integrated enterprises” based on an intermediate test—less stringent than traditional veil piercing but not as expansive as Brazil’s comprehensive regime. Only Portugal adopted a comparably broad statutory approach to parent company liability, though more than 70 years after Brazil’s innovation. In the United States, the state of New York has maintained a

¹² On the expansion of the concept, *see* Part II.A.

¹³ For a discussion of the broad and diverse exceptions to asset partitioning in Brazil, *see* Mariana Pargendler, *How Universal Is the Corporate Form? Reflections on the Dwindling of Corporate Attributes in Brazil*, 58 COLUM. J. TRANSNAT’L L. 1 (2019); BRUNO MEYERHOF SALAMA, O FIM DA RESPONSABILIDADE LIMITADA NO BRASIL: HISTÓRIA, DIREITO E ECONOMIA (2014).

¹⁴ U.S. law draws a sharp distinction between labor law, focusing on collective bargaining and action, and employment law, focusing on the rights of individual employees. In this Article, we use these terms interchangeably to refer to laws aimed at regulating the employment relationship and protecting workers.

¹⁵ By GDP (current US\$) according to World Bank 2023 data. *See World Bank Open Data*, WORLD BANK GROUP, <https://data.worldbank.org/>. We searched the following words in the company and employment law statutes: (i) joint and several, (ii) jointly, (iii) severally, (iv) joint and severally, (v) jointly and severally, (vi) joint liability, (vii) solidary, (viii) group, (ix) employer (for employment laws), (x) company (for employment laws), (xi) corporate (for employment laws), (xii) economic, (xiii) parent, (xiv) controlling, and (xv) controller.

¹⁶ *See* Holger Spamann, *Civil v. Common Law: The Emperor Has No Clothes* (Working Paper, 2025), <https://ssrn.com/abstract=4937647>, at 26 (“To the extent statutes can govern, statute is nowadays the dominant source of law everywhere, and it has always been supreme”).

longstanding rule of shareholder liability for wage claims, which has been further strengthened in the last decades. Moreover, the EU Corporate Sustainability Due Diligence Directive requires large companies to identify, prevent, and address adverse human rights impacts—including workers’ protection against forced labor, unsafe working conditions and unfair wages—in their subsidiaries and supply chains,¹⁷ but conditions parent company liability on proof that the parent failed to comply with its due diligence obligations.

A strict regime of parent company liability in the labor context appears to be somewhat more common, if still rare, in the Global South. Beyond Brazil, only Venezuela (2006) and possibly Chile (2014) have a strong regime of parent company liability for labor obligations by statute, while the recent company law statutes of Cabo Verde (1999), Angola (2004) and Mozambique (2022) have gone further by adopting a broader regime of parent company liability for all subsidiary obligations. Moreover, other Latin American jurisdictions, such as Peru and Uruguay, have developed robust forms of joint and several liability in corporate groups through caselaw based on constitutional values of worker protection and the principle of reality in labor law despite the absence of statutory authorization.

Taken together, these findings point to gradual, if partial, convergence toward the erosion of corporate separateness for the benefit of workers in corporate groups, with significant developments emerging in several jurisdictions since the turn of the twenty-first century. Interestingly, the observed variation does not neatly correspond to the civil-common law divide—the traditional dichotomy among comparativists. Germany and the U.K. are more likely to uphold limited liability vis-à-vis workers, while the United States and France occupy intermediate positions. Jurisdictions typically categorized as having a French civil law origin¹⁸—such as Portugal, certain Latin American countries, and former Portuguese colonies—have more strongly imposed liability on parent companies. However, each of the Global South jurisdictions imposing liability on parent companies for labor obligations by statute—Brazil, Venezuela and Chile—had previously done so through precedents. We also find strong examples of parent company liability

¹⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 2024 O.J. (L 1760). Other areas of EU regulation also disregard corporate separateness in corporate groups for different purposes, though the scope of existing exceptions to limited liability in areas such as antitrust and the GDPR remain contested. For a discussion of the controversies with respect to group liability in different areas of EU law in the context of an expert opinion, see Marc-Philippe Weller, Victor Habrich, Laura Korn & Anton Zimmermann, *Liability of the Economic Unit – A General Principle of EU Law?*, 2023 ECFR 759, 793 (concluding that “EU law does not recognize a general legal principle of corporate liability based on the economic unit”).

¹⁸ This is the classification adopted in the highly cited theory on “legal origins.” See, e.g., Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J. ECON. LIT. 285 (2008). But see, for critiques of this categorization, Mariana Pargendler, *Politics in the Origins: The Making of Corporate Law in Nineteenth-Century Brazil*, 60 AM. J. COMP. L. 805 (2012) (documenting diverse origins and deliberate rejection of French legal solutions in the history of Brazilian corporate law); Mariana Pargendler, *The Rise and Decline of Legal Families*, 60 AM. J. COMP. L. 1043 (2012) (“early Latin American comparativists classified the countries in the region not as the offspring of European traditions, as they are commonly understood today, but rather as belonging to a *sui generis* category of original legal systems”).

in Peru and Uruguay despite the absence of statutory authorization to date, which again cast doubt on generalizations about the essence of common and civil law regimes.¹⁹

The patterns we uncover do not conform with traditional accounts of legal transplants and “legal origins,” which presuppose that the diffusion of legal innovations—or the direction of legal convergence—flows from the Global North to the Global South. By contrast, Portugal followed, rather than preceded, developments in Brazil and other Global South jurisdictions.²⁰ This represents an instance of “reverse convergence” in corporate law, whereby legal systems in the Global North come to resemble those of the Global South, rather than the other way around.²¹ While we find evidence of diffusion from Brazilian law and scholarship to other Latin American jurisdictions,²² the erosion of corporate separateness in the labor context is, to a significant extent, a result of parallel developments in response to similar challenges rather than a product of foreign legal influence.

Our findings also align with the emerging literature on “legal heterodoxy in the Global South,” which highlights private law innovations in developing countries that are more responsive to distributive and public policy objectives than those in the Global North.²³ It also underscores the value of incorporating North-South comparisons in comparative law, as these illuminate patterns of legal development that are overlooked by traditional legal family frameworks and the customary focus on Global North jurisdictions.

¹⁹ The relatively strong prevalence of group liability for labor obligations in Latin America is consistent with Ben Ross Schneider’s characterization of the prevailing variety of capitalism in the region as “hierarchical market economies,” which are marked, among other things, by diversified business groups, multinational corporations, low-skilled labor, atomistic labor relations, and relatively stringent labor regulation. See Ben Ross Schneider, *Hierarchical Market Economies and Varieties of Capitalism in Latin America*, 41 J. LATIN AM. STUD. 553, 562 (2009) (finding that labor regulation in Latin America is stronger than in both coordinated and liberal market economies, though it has limited application given high levels of informality). Schneider’s work, like the original studies on varieties of capitalism focusing on Global North jurisdictions, does not examine exceptions to corporate separateness in labor and employment law or otherwise. See Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, in VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (Peter A. Hall & David Soskice eds., 2001).

²⁰ For a similar finding of Global South jurisdictions pioneering socially-oriented solutions in private law that were later adopted in the Global North, see Kevin Davis, Mariana Pargendler & Maria Eduarda Lessa, *Legal Heterodoxy in the Global South: Priority of Workers versus Secured Creditors in Insolvency*, AM. J. COMP. L. (forthcoming) (describing how Mexico preceded France in adopting first priority of workers’ claims in insolvency).

²¹ Mariana Pargendler, *Corporate Law in the Global South: Heterodox Stakeholderism*, 47 SEATTLE U. L. REV. 535, 542 (2024) (hereinafter “Heterodox Stakeholderism”).

²² See, e.g., José Luis Ugarte Cataldo, *El Concepto Legal de Empresa y El Derecho Laboral: Cómo Salir del Laberinto*, 20 REVISTA CHILENA DE DERECHO PRIVADO 185, 188 (2013) (citing Brazilian and Argentine law); Rafael Alfonso Guzman, *La empresa en el derecho del trabajo*, 63 REVISTA DE LA FACULTAD DE CIENCIAS JURÍDICAS Y POLÍTICAS DE LA UNIVERSIDAD CENTRAL DE VENEZUELA 7, 8-9 (1982) (citing Brazilian scholar Antônio Ferreira Cesarino Junior); Diego Ledesma Iturbide, *El Art. 31 LCT de cara al fenómeno de descentralización empresarial y grupo empresario*, 2 REVISTA DE DERECHO LABORAL 193 (2016) (describing the Brazilian rule as a precedent for the Argentine law of 1974); Corte Suprema de Justicia, Sala de lo Contencioso Administrativo, Exp. 49678-2021, Dec. 29, 2021 (Pan.) (citing Brazilian labor and employment law expert Octávio Bueno Magano).

²³ Kevin Davis & Mariana Pargendler, *Legal Heterodoxy in the Global South: Adapting Private Laws to Local Contexts*, in LEGAL HETERODOXY IN THE GLOBAL SOUTH (Kevin Davis & Mariana Pargendler eds., 2025) (hereinafter “LEGAL HETERODOXY”); Davis, Pargendler & Lessa, *supra* note 20.

Various factors may help explain why Global South jurisdictions have shown earlier and relatively stronger enthusiasm for eroding corporate separateness for the benefit of workers. First, Brazil's experience is consistent with emerging theories that underscore the enduring influence of nationalism on corporate law²⁴ and the distinct distributional implications of limited liability along North-South lines.²⁵ The historical role of many Global South jurisdictions as capital importers means that the targets of group liability are often foreigners, while the beneficiaries are domestic workers. Moreover, Global South jurisdictions may be more sensitive to inequality and often lack complementary institutions that would make the strict enforcement of asset partitioning in corporate law more functional.²⁶ Limitations in state capacity also mean they likely face greater difficulty both in effectively policing related-party transactions in corporate groups—which further reduces the benefits and increases the costs of enforcing asset partitioning—and in adequately upholding labor obligations through the regulatory state and other means.²⁷ This suggests that the problem posed by limited liability vis-à-vis workers may be more acute in the Global South than in the Global North. Global South jurisdictions also likely have less efficient mechanisms for enforcing workers' claims, which serves both to explain and to temper the effectiveness of these legal innovations.

Indeed, our goal is not to suggest that the imposition of group liability is a panacea, or even a superior mechanism of worker protection from a functional standpoint. A functional account of worker protection must consider other full or partial substitutes in the legal system, such as shareholders' and directors' liability for wage theft, public enforcement of labor regulations, workers' priority in insolvency, the existence of wage guarantee funds or even the strength of the broader social security system.²⁸ Our aim, instead, is to map the doctrinal evolution of the key institution of corporate separateness in an important, but understudied, context—an effort that reveals surprising findings that run contrary to conventional understandings in this area.

The remainder of this Article proceeds as follows. Part I provides a novel account of the process leading to the adoption of parent company liability in labor law in 1937 and the consolidation of this regime in 1943. Part II examines the continued relevance and recent expansion of group liability in Brazil since the 2017 labor law reform. Part III describes how the Brazilian Supreme Court deployed the concept of the economic group as a last resort to enforce its orders against X (formerly Twitter). Citing labor legislation and other applications of the concept, the Court froze the assets of Brazilian subsidiaries of Musk-controlled Starlink while expressing concerns over national sovereignty. Parts IV and V map the gradual and contentious

²⁴ Mariana Pargendler, *The Grip of Nationalism on Corporate Law*, 95 IND. L. J. 533 (2000).

²⁵ Pargendler, *Heterodox Stakeholderism*, *supra* note 21, at 542, 578.

²⁶ This is the hypothesis explored by Davis & Pargendler, *LEGAL HETERODOXY*, *supra* note 23.

²⁷ Areas that might offer partial functional substitutes include the delineation of statutory rights, including with respect to asset transfers, the rights of works councils, the scope and treatment of collective bargaining agreements, among others.

²⁸ For a companion study on workers' priority in insolvency, see Davis, Pargendler & Lessa, *supra* note 20 (finding broader and innovative forms of workers' priority in insolvency in the largest economies of the Global South and greater prevalence of wage guarantee in the largest economies of the Global North).

trend toward the erosion of corporate separateness vis-à-vis workers in the Global North and South, respectively, which appears in both contexts but is stronger in the South. Part VI concludes.

I. The Early Introduction of Group Liability for Labor Obligations in Brazil (1937-1943)

Brazil first imposed liability on parent companies of corporate groups through Law 435 of May 17, 1937.²⁹ The statute, specifically enacted to address this issue, contained only one substantive provision, quoted below. Article 1 is notable both for explicitly recognizing the concept of an “industrial or commercial group of enterprises”—an early move in comparative corporate law—and for imposing the stringent consequence of joint and several liability on parent companies for labor obligations of their subsidiaries. This approach remains pioneering from a comparative perspective.

Article 1. Whenever one or more enterprises, despite each of them having separate legal personality, are under the direction, control, or management of another, forming an industrial or commercial group, the main company and each of the subsidiaries will be jointly and severally liable for purposes of labor legislation.

Sole Paragraph: This joint and several liability will not apply among the subsidiary firms, neither directly nor through the main firm, except for the sole purpose of considering all of them as a single employer (Law No. 62 of 1935).

A. Nationalistic Rhetoric in the Legislative Process and Background

The legislative debates preceding the enactment of the statute reveal that legislators were principally concerned about *foreign* corporate groups using separate legal entities to evade the legal rights of Brazilian workers. The official justification for the original bill, introduced in the House of Representatives in August of 1935, begins by noting that “industrial groups, or the assembly of various firms with distinct legal personality under the rules of commercial and administrative law, are very common in Brazil, and their number tends to increase.” It then highlights the risks of legal arbitrage being used to circumvent emerging labor protections for Brazilian workers:

“Consider that a single *foreign* firm controls more than forty different business corporations within Brazil, managing them as it sees fit, and only for legal purposes do they have their own boards of directors. In fact, the employees of such industrial groups, being subject to transfer at any moment from one managed firm to another according to the discretion of the central administration, can be completely deprived of advantages that social legislation assures them [...].”³⁰

The original version of the bill did not aim to address limited liability or asset partitioning, but rather regulatory partitioning (veil peeking)—the legal separation between different entities

²⁹ Lei No. 435, de 17 de maio de 1937, Diário Oficial da União [D.O.U.] de 21.5.1937 (Braz.).

³⁰ República dos Estados Unidos do Brasil, Annaes da Câmara dos Deputados, Primeira Legislatura: Sessões de 28 de agosto a 4 de setembro de 1935, 15º Volume (1936), 173-74 (Braz.) (emphasis added).

for purposes of applying various protective rules.³¹ Lawmakers were particularly concerned that corporate groups could use separate legal personalities to circumvent statutory protections by shuffling workers among entities, thereby avoiding the minimum time requirements for benefit accruals, especially the guarantee of job tenure.³² In the original version of the bill, the proposed solution to this problem was to consider the principal company as the “sole employer” and require such a sole employer to formally register all employees of the firms constituting the group.

The Commission on Social Legislation recognized that “the objective of the bill is to safeguard the employees of industrial groups from possible loss of rights or benefits that are conferred on them by social legislation, such as vacation... social insurance,” due to the “harm of being subject of constant and arbitrary relocations from one firm to another within the same group, depriving them of such benefits.” However, the Commission issued an opinion (*parecer*) proposing a substitute bill to achieve the goals of the original proposal, arguing that the model of a “sole employer” would generate “much confusion” and opportunities for legal arbitrage.

The substitutive report noted that group members “maintain ‘distinct legal personality,’ not entailing the conflation of the respective assets and budgets, which will remain separate and distinct.”³³ Consequently, the report argued that under the proposed “sole employer” model, group members would no longer be liable for the payment of salaries and other amounts owed to workers. This, in turn, could “facilitate the evasion of social laws, with managing companies being constituted with minimum capital,” thereby leaving workers without remedy given their status as “sole employers.”

The report further observed that “grouped companies have headquarters in different states, the enforcement of compliance with social laws would become almost impossible, not to mention that simple adherence to them would be difficult, given the volume of records, notes, endorsements, and entries to be made, among such a colossal multitude of employees.”³⁴ It then proposed using the mechanism of joint and several liability as a “small change” aimed “precisely to achieve in a more practical manner” the goal of the bill’s proponents³⁵—though this purportedly “small change” was highly consequential in mitigating asset partitioning in addition to regulatory

³¹ On the distinction between asset and regulatory partitioning, see Mariana Pargendler, *Veil Peeking: The Corporation as a Nexus for Regulation*, 169 U. PA. L. REV. 717 (2021); and Mariana Pargendler, *Regulatory Partitioning as a Key Function of Corporate Personality*, in RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD (Elizabeth Pollman & Robert B. Thompson eds, 2021). Indeed, Brazil’s pioneering legal solution may also be explained by the prevailing conflation, which persists in legal scholarship worldwide to this day, between asset and regulatory partitioning.

³² As described by the report of the Commission on Social Legislation chaired by House Representative João Beraldo. Republica dos Estados Unidos do Brasil, Annaes da Câmara dos Deputados, Primeira Legislatura: Sessões de 3 a 5 de outubro de 1935, Volume XIX (1936), 223 (Braz.).

³³ Annaes da Câmara dos Deputados, *supra* note 32, at 223.

³⁴ *Id.* at 224.

³⁵ *Id.*

partitioning.³⁶ Another amendment in a subsequent session added the term “control” to the original language, to capture entities under the “direction, *control* or administration” of another.³⁷

Following the publication of the substitute bill, Waldemar Ferreira, a House member and prominent Brazilian commercial law scholar, requested a hearing before the parliamentary Commission of Constitution and Justice to assess its constitutionality.³⁸ Supporters of the bill argued that there was no precedent for such a hearing after a bill’s publication, leading to heated discussions. Refuting the notion that the bill was unconstitutional, Representative Abilio de Assis reiterated the nationalist rationale for the proposal, arguing that “all of the country’s economic assets are, in fact, in the hands of foreigners, who miserably exploit the workers and remain unpunished,” with the bill’s aim being “to support [*apadrinhar*] these workers.”³⁹

The nationalistic rhetoric preceding the 1937 statute could hardly have been clearer. To be sure, this does not mean that foreign companies dominated the Brazilian economy or employment as a whole at the time. Foreign direct investment was less significant in Brazil than in other Global South countries during that period,⁴⁰ but it was growing and attracting resistance. By 1940, foreign companies accounted for 41% of manufacturing assets in Brazil and had an even more significant presence in public utilities.⁴¹ For instance, the Canadian company Light, which has been described as “the largest private employer in Brazil for more than sixty years,”⁴² captured cultural references that “air[ed] anxieties about corporate dominance, foreign influence, modernization, market capitalism, and exploitation.”⁴³ Nationalism was also visible in laws aimed at favoring Brazilian over foreign workers, as in the 1930 requirement that Brazilian-born citizens make up at least two-thirds of employees.⁴⁴ Finally, a prevailing perception among lawyers was that foreign companies dominated the corporate group structures then prevailing in Brazil.⁴⁵ Notably, foreign companies

³⁶ See *supra* note 32 and accompanying text.

³⁷ República dos Estados Unidos do Brasil, Annaes da Câmara dos Deputados, Primeira Legislatura: Sessões de 7 a 12 de agosto de 1936, 11º Volume (1936), 362 (Braz.).

³⁸ República dos Estados Unidos do Brasil, Annaes da Câmara dos Deputados, Primeira Legislatura: Sessões de 21 a 27 de agosto de 1936, 13º Volume (1936), 156 (Braz.).

³⁹ *Id.* at 324.

⁴⁰ Sylvia Ann Hewlett, *The Dynamics of Economic Imperialism: The Role of Foreign Direct Investment in Brazil*, 2 LATIN. AM. PERSP. 136, 137-38 (1975) (noting how new tariffs made foreign direct investment in Brazil more attractive for U.S. corporations in the 1930s).

⁴¹ *Id.* at 138.

⁴² BARRY G. BUYS, CANADIANS IN BRAZIL: BRASCAN AND BRAZILIAN DEVELOPMENT 68 (thesis submitted in partial fulfillment of the requirements for the Masters of Arts in International Development Studies) (1996).

⁴³ SOPHIA BEAL, BRAZIL UNDER CONSTRUCTION: FICTION AND PUBLIC WORKS 18 (2013).

⁴⁴ Decreto No. 19.482, de 12 de dezembro de 1930, D.O.U. de 1.2.1931, (Braz.), art. 3. Scholars have also attributed such hostility to foreign workers as spreading subversive “foreign ideologies” such as socialism. See Endrica Geraldo, *O combate contra os “quistos étnicos”: identidade, assimilação e política imigratória no Estado Novo*, 15 LOCUS: REVISTA DE HISTÓRIA 171, 173 (2009) (“Immigrant workers were easily accused of spreading “foreign ideologies,” ranging from anarchism and socialism to fascism and Nazism, which often served to delegitimize class conflict in Brazil.”).

⁴⁵ Fortunato Azulay, 3º *Rapport de M. Fortunato Azulay*, 5 REVUE INTERNATIONALE DE DROIT COMPARÉ 329, 330 (1953) (“The commercial companies that are established here [in Brazil] are either subsidiaries of firms headquartered abroad and authorized to operate in Brazil, or national companies in which a minimum number of Brazilian shareholders predominate, who appear only as “figureheads,” with the absolute majority of the capital always belonging to foreign shareholders.”); Germany’s legislative 1956 study of the comparative treatment of corporate groups, which preceded the enactment of its landmark 1965 *Konzernrecht*, concluded that Brazil’s Corporations Law

featured prominently in the emerging legal controversies involving corporate groups. For instance, a 1934 article published in the *Labor Review* (*Revista do Trabalho*) strongly criticized the “eccentricities” of Leopoldina Railway and Companhia Cantareira as outliers in their disregard for Brazilian labor laws, noting that although they presented themselves as two distinct entities, they were in fact the same enterprise managed by the same board.⁴⁶ It sharply condemned the English firm for attempting to avoid the application of Brazilian labor laws on the grounds of its “financial condition”—“a solution that would never be accepted in England.”

As discussed in Section B below, an important dispute decided in 1936, which was later identified as a precedent for the legislation, involved a major foreign group in the power sector—an industry that came to be dominated by foreign firms and was subject to major nationalistic backlash. However, that was not an isolated instance of a legal clash involving foreign corporate groups and the issue of corporate separateness. A major 1936 “scandal”—which received ample media coverage at the time—concerned the mass firing of employees of the British Bank following the acquisition of its parent company, Anglo South American Bank, by the Bank of London.⁴⁷ The firings took place in connection with the judicial liquidation of the British Bank, which would cease to exist.⁴⁸ Nevertheless, employees claimed that the continuation of the group required the preservation of their right to job tenure despite the absence of legislative authorization.⁴⁹ By 1941, the federal attorney general opined in favor of the workers based on the highly anti-formalist theory that “whenever two undertakings (*estabelecimentos*) are combined,” even if there is no formal merger between them, job tenure guarantees are maintained “so long as the undertaking exists.”⁵⁰ Moreover, relevant disputes following the enactment of the 1937 statute similarly concerned foreign groups.⁵¹

of 1940 did not mention corporate groups “because Brazilian stock corporations are almost exclusively either non-group-affiliated family companies or subsidiaries of foreign holding companies.” Bundesjustizministerium [Federal Ministry of Justice], Aktienrechtsreform – Konzernfragen im Aktienrecht (Ausarbeitung von LGR Dr. Kropff) [Company Law Reform – Corporate Group Issues in Company Law (prepared by LGR Dr. Kropff)], Bundesarchiv 3505/1- h, Volume 8, Oct. 12, 1956 (Ger.), at 28-29 [hereinafter “Company Law Reform”]. The report did not examine the treatment of corporate groups in other statutes, thereby failing to capture Brazil’s innovation in this area.

⁴⁶ *As excentricidades da Leopoldina diante das nossas leis sociaes*, 2 REVISTA DO TRABALHO 8, 8 (Dec. 1934).

⁴⁷ See, e.g., Julio Santos Filho & Antenor Vieira dos Santos, *A liquidação do British Bank e o Sindicato dos Bancários: Os advogados do British Bank são maus brasileiros* (Discurso do Deputado Surek, na Câmara dos Deputados), DIÁRIO DE NOTÍCIAS, Mar. 6, 1937, at 4-5; *Dous pesos e duas medidas: O julgamento do caso do British Bank e um inquérito que precisa ser aberto – Acusações que merecem resposta a bem do Conselho Nacional do Trabalho*, O RADICAL, June 1, 1938, at 1-2; *Assim é de mais! O sr. Barbosa de Rezende sempre contra os funcionários do British Bank – Chamando a atenção do titular do Trabalho para as manobras da advocacia administrativa*, O RADICAL, Aug. 28, 1938, at 3. See also Oliveira Viana, *Estabilidade dos bancários – Não provada a sucessão do British Bank*, 7 REVISTA DO TRABALHO 35, 35 (Jan. 1939) (observing, in his capacity as legal consultant for the Ministry of Justice, that this case “sparked one of the broadest and most heated debates in our administrative records” and arguing, under the facts at hand, that share ownership did not entail business succession).

⁴⁸ Filho & Santos, *supra* note 47, at 5.

⁴⁹ Erick Chiconelli Gomes, *A atuação do Conselho Nacional do Trabalho na Agenda Política para os Direitos Sociais no Brasil (1925 a 1946)* (2023) (unpublished PhD Dissertation, Universidade de São Paulo), at 29.

⁵⁰ Hannemann Guimarães, *Reunião de Estabelecimentos e a Estabilidade dos Empregados Bancários*, 8 REVISTA DO TRABALHO 35, 36 (1941).

⁵¹ See note 69 *infra* and accompanying text.

Strikingly, the British Bank controversy became deeply entangled in nationalistic rhetoric, concerns about sovereignty, and an emphasis on distinctly Brazilian values. In a Congressional speech, Representative Moraes de Andrade argued that morality demanded either the continuation of operations or the payment of compensation to the bank's employees prior to dividends to shareholders—"a notion of morality that we, *mestizos* of this part of the America, recognize, but that the Aryans beyond the Atlantic do not know or do not want to recognize, brazenly circumventing and tearing apart our sovereignty."⁵² He concluded that these foreign banks "ought to know that, in Brazil, there is social legislation that they must abide by and show reverence to, because national sovereignty itself so requires."⁵³ Interestingly, the takeover of the Anglo South American Bank by the Bank of London produced significant labor litigation not only in Brazil but also in other Latin American jurisdictions.⁵⁴

B. 1936 Precedent

While Law 435 of 1937 formally codified group liability in Brazil, the concept did not emerge in a legal vacuum. A contemporary legal commentary (*glosas*) published in a labor law journal in 1938 argued the new statute was not an innovation but a consolidation of existing precedent.⁵⁵ Law 435, it argued, "did nothing more, upon close examination, than make mandatory a doctrine that had already been established in our legal circles"—"it did not represent an innovation for Brazil, nor did it come without warning." The commentary cited the decision by the National Labor Council (*Conselho Nacional do Trabalho*) dated April 2, 1937, where "the principles later embodied in Law 435 are rigorously applied."⁵⁶

In the 1937 decision by the National Labor Council, the appellant employee sought to annul his dismissal, arguing it violated the job stability guarantee provided by Article 53 of Decree 20,465 of 1931 after ten years of service. The employee claimed he had worked from 1919 to 1924 for Companhia Brasileira de Energia Elétrica (CBEE) and thereafter for Companhia Linha Circular de Carris da Bahia, both part of the same "financial group." Predictably, the appellee employer argued that, because the companies had distinct legal personalities, the worker was not entitled to job stability guarantee since he had not completed ten years of service with the second employer.

The National Labor Council sided with the employee, making two types of arguments that would become a staple of Brazilian labor law in years to come, including in the context of corporate groups and limited liability.⁵⁷ First, it foreshadowed the later recognition of the "principle of reality" in labor law by emphasizing the relevance of economic reality and the need to combat

⁵² *Dispensa dos Empregados do British Bank*, 5 REVISTA DO TRABALHO 77, 79 (Feb. 1937).

⁵³ *Id.*

⁵⁴ *Encampação do British Bank: A dispensa dos Bancários na Venezuela* 5 REVISTA DO TRABALHO 129, 129 (Mar. 1937) (noting that the takeover of the Anglo South American Bank by the Bank of London and South America was "tumultuous" and generated "great uproar," leading it to labor litigation "in almost all the countries of South America where that credit institution maintained its establishments").

⁵⁵ Ruiz, Campos Salles & Junqueira, *supra* note 8.

⁵⁶ *Id.* at 105.

⁵⁷ Conselho Nacional do Trabalho, Segunda Câmara, Processo nº 4.886-303, Relator: Juiz Manoel da Silva, decided on Apr. 2, 1937, D.O. June 14, 1937, p. 12736 (Braz.).

regulatory arbitrage facilitated by formalism.⁵⁸ Highlighting the prevalence of “industrial integration,” the decision considered the “*sui generis* situation, created by the *imperatives of economic facts*, at the margin of corporate legislation, results in a similarly special situation for the employee.”⁵⁹ It pointed to the risk for workers who must “adapt to the contingency of sometimes serving one company and sometimes another within the same capitalist group,” causing job stability to become “precarious” or, “in many instances, become even impossible.”⁶⁰ This foresight presages the “principle of reality,” which would become a defining feature of Latin American labor law and also play a role in the treatment of corporate groups by other jurisdictions in the region, as described in Part V below.

The second argument employed by the National Labor Council, which would also anticipate subsequent developments, used expansive methods of statutory construction, relying on progressive legislative gains in one area as an argument for extending rights in another. The Council’s decision referenced Decree 20,465 of 1931, which mentioned both “enterprises” (*empresas*) and “groups of enterprises” (*agrupamentos de empresas*) in establishing the obligation for public service providers to create retirement and pension funds for their employees.⁶¹ It used this 1931 decree as evidence that “the legislator did not turn a blind eye to the reality of the time during which they were legislating.”⁶² Consequently, the decision argued that the guarantee of job stability “cannot be interpreted in a coldly restrictive manner, because it is not permissible for the interpreter and enforcer of the law to dissociate one provision from the other, when it is not admissible that the legislator intended to do so, given their purpose of support and guarantee expressed” in the statutory provision. It therefore allowed the time served at both companies within the same economic group to be counted for purposes of job stability.⁶³

This approach of using statutory developments in one area of law to address corporate separateness in other areas would reappear decades later. As described in Part II below, beginning in the 1990s, labor courts began applying the very broad veil piercing provisions of the Consumer Protection Code—allowing courts “to disregard legal personality whenever it is an obstacle to the compensation of consumers”—by analogy, to impose liability on individual shareholders or partners with respect to workers’ claims.⁶⁴ Moreover, the controversial 2024 Brazilian Supreme Court decision imposing fines on the Brazilian subsidiaries of Starlink for noncompliance with court orders by X, another company controlled by Elon Musk, cited Article 2, Paragraph 2, of

⁵⁸ *Id.* Years later, this principle was described by Uruguayan scholar Américo Plá Rodrigues. According to Rodrigues, if there is a discrepancy between what occurs in practice and what emerges from documents (agreements, records, etc.), preference should be given to the facts. Thus, what happened in reality should prevail over the legal form. AMÉRICO PLÁ RODRIGUES, PRINCÍPIOS DE DIREITO DO TRABALHO 144 (1996). The principle of reality in employment law was subsequently incorporated into the constitutions of Venezuela and Colombia. See note 180 *infra* and accompanying text.

⁵⁹ Conselho Nacional do Trabalho, *supra* note 57.

⁶⁰ *Id.*

⁶¹ Decreto No. 20.465, de 1º de Outubro de 1931, D.O.U. de 3.10.1931 (Braz.).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Élisson Miessa, *Incidente de Desconsideração Da Personalidade Jurídica: Forma de Aplicação no Direito Processual do Trabalho*, 82 REVISTA DO TRIBUNAL SUPERIOR DO TRABALHO 101 (2016).

CLT—even though the type of legal issue differed significantly, a topic to which we will return in Part III.

Unlike the legislative debates preceding the adoption of Law 435 of 1937, the National Labor Council’s decision was doctrinal in form and made no explicit reference to the foreign ownership of corporate groups. However, nationalist backlash against foreign ownership may well have been an underlying factor. CBEE, the first employer mentioned, had previously been at the center of one of the main clashes between national and foreign capital in Brazil in the first part of the twentieth century.⁶⁵ Initially controlled by a Brazilian group, CBEE sought to challenge its foreign competitor Light. Known as “the Canadian octopus” due to its numerous subsidiaries and expanding influence in the Brazilian economy, Light “epitomized the threat of foreign exploitation.”⁶⁶ However, CBEE was ultimately sold to American Foreign & Power Co. (AMFORP) in 1927, which was itself a subsidiary of U.S. conglomerate General Electric.⁶⁷ This means that, after initially spurring nationalistic sentiment, the CBEE group was already under foreign control at the time of the National Labor Council’s 1937 decision. Together, Light and CBEE dominated Brazil’s electric power market and were subject to the nationalistic backlash of the Vargas era before their subsequent nationalization.⁶⁸ Both Light and CBEE were taken over by Eletrobras, the state-owned power giant, in the following decades before transitioning to ownership by state governments.

C. Subsequent Decisions and Legislative Consolidation

The 1937 statute was subsequently applied to recognize Brazilian labor protections for multinational groups, even with respect to work partially performed extraterritorially. Eugene Joseph Depalle sued the Brazilian subsidiary of Michelin seeking to obtain job tenure, including recognition for the years he had worked for other companies in the group. A 1942 decision by the Regional Council for the First Region of Labor Justice held that “the Brazilian firm is responsible for the service time performed by appellant for the organizations with which it is jointly and severally liable,” thereby rejecting the allegation of extraterritoriality.⁶⁹

⁶⁵ Alexandre Macchione Saes, *Modernizing Electric Utilities in Brazil: National vs. Foreign Capital, 1889-1930*, 87 BUS. HIST. REV. 229 (2013).

⁶⁶ *Id.* at 249.

⁶⁷ Maurico Puls, *Light and Power*, 252 PESQUISA FAPESP, Feb. 2017; Marcelo Mollica Jourdan, *A Light, Investimento Estrangeiro no Brasil: Uma Luz sobre o Ciclo Privado-Público-Privado em 80 Anos pela Análise de Taxa de Retorno* (Masters Dissertation, FGV, 2006), at 52 <https://repositorio.fgv.br/server/api/core/bitstreams/3f27fd75-9233-4d9c-9c78-6ab40b1b3a65/content>.

⁶⁸ Saes, *supra* note 65, at 234 (noting how the “huge foreign companies” Light and AMFORP dominated Brazil’s electric markets, with the remainder of the market being served by “small and archaic municipal companies”); Puls, *supra* note 67 (describing the changes of concessions contracts implemented by Vargas’s Water Code of 1934, which changed the calculation of rates to limit the remuneration of the companies’ capital). Nationalist impulses also inspired the adoption of Brazil’s first antitrust efforts in the 1940s. See PAULA FORGIONI, OS FUNDAMENTOS DO ANTITRUSTE 109 (2022).

⁶⁹ *Empresas solidárias – Responsabilidade relativamente aos direitos de seus empregados – contagem de tempo de serviço*, Proc. n° 58-41, 1942 REVISTA FORENSE 218. Nevertheless, this issue became contested in subsequent decades, with some decisions arguing that the relevant statutory provision only covers *liability*. See, e.g., TRT-SP, Acórdão No. 11.713/76, Terceira Turma, Relator: Juiz Wilson de Souza Campos Batalha, Diário da Justiça [D.J.] 14.6.1977

The Brazilian system of group liability introduced in 1937 would be consolidated with minor modifications in the CLT, the landmark statute enacted in 1943, in the provision defining the concept of employer, as follows:

Article 2. An employer is considered to be any enterprise, whether individual or collective, that assumes the risks of economic activity and employs, pays, and directs the personal provision of services.

§ 2º. Whenever one or more enterprises, even if each has its own legal personality, are under the direction, control, or administration of another, forming an industrial, commercial, or any other type of economic group, the main firm and each of its subsidiaries will be jointly liable for purposes of the employment relationship.

Even among Brazilian scholars, it is common to encounter claims that reduce the CLT to a copy of the *Carta del Lavoro* or consider the Italian fascist text as the sole or primary influence on the Brazilian law.⁷⁰ While this is not to deny the influence of *Carta del Lavoro* on Brazilian labor law (particularly on the labor law aspects of the 1937 Constitution that flirted with the single union model), this view significantly downplays the substantial deviations and innovations of the CLT.⁷¹ The original version of the CLT has 922 articles, whereas the *Carta del Lavoro* has only 30 provisions. Interestingly, the provision on economic groups and group liability (as well as the very definition of employer) were entirely absent from the original draft bill officially published on January 5, 1943,⁷² but appeared in the final version of the statute after receiving numerous comments.

One of the innovations of the CLT vis-à-vis the *Carta del Lavoro* lies precisely in the joint and several liability among companies within an economic group.⁷³ Orlando Gomes, a prominent private law scholar, described CLT authors' "audacity" in "not limiting themselves to introducing a new technique for the treatment of the legal employment relationship" but anticipating the relevance of the economic concept of the firm in the evolution of labor law.⁷⁴ Article 2, Paragraph

(Braz.) (declining to allow the computation of periods of employment in other enterprises in the corporate group, arguing that "the concept of single employer, contained in art. 2, § 2º, of the CLT refers *only to joint liability* of the various enterprises comprising the group") (emphasis added). *But see* TRT-SP, Acórdão No. 1.496/78, Terceira Turma, Relator Juiz Wilson de Souza Campos Batalha, D.J. 13.4.1978 (Braz.) ("The configuration of a single employer, under the terms of art. 2, § 2 of the CLT, imposes not only joint liability on all enterprises in the group where the claimant has worked, but also requires the aggregation of service periods rendered to all of them").

⁷⁰ ARION SAYÃO ROMITA, *O FASCISMO NO DIREITO DO TRABALHO BRASILEIRO* (2001); MAGDA BARROS BIAVASCHI, *O DIREITO DO TRABALHO NO BRASIL, 1930-1942: A CONSTRUÇÃO DO SUJEITO DE DIREITOS TRABALHISTAS* (2007).

⁷¹ Arnaldo Lopes Sussekund, *Discurso do Ministro Arnaldo Sussekund no 21º aniversário da Academia Brasileira de Letras Jurídicas*, 10 REVISTA DA ACADEMIA BRASILEIRA DE LETRAS JURÍDICAS 251, 254 (1996).

⁷² Ministério do Trabalho, Indústria e Comércio, Gabinete do Sr. Ministro, *Ante-projeto da Consolidação das Leis de Proteção do Trabalho*, DIÁRIO OFICIAL DOS ESTADOS UNIDOS DO BRASIL, Jan. 5, 1943 (Braz.).

⁷³ BIAVASCHI, *supra* note 70.

⁷⁴ Orlando Gomes, *Reflexos da Consolidação das Leis do Trabalho na Vida Social e Econômica Brasileira*, 32 LTR – LEGISLAÇÃO DO TRABALHO 655, 659 (1968).

2, has had increasingly broad application in the decades that followed, a topic to which we now turn.

II. The Evolution of Group Liability in Brazilian Labor Law

A. Economic Groups in Brazilian Courts

Brazil's system of group liability for labor obligations, adopted surprisingly early in history, has also proven to be highly consequential in practice. Contrary to stereotypes about enforcement challenges in Global South jurisdictions, this is far from a legal innovation “on the books” that lacks practical application. A quick search of decisions issued by Brazil's highest labor court, the Superior Labor Court (*Tribunal Superior do Trabalho* – TST), reveals 5,744 decisions mentioning “economic group” in the year 2024. A similar search of the platform of the Regional Labor Court of the Second Region (*Tribunal Regional do Trabalho da Segunda Região* – TRT2)—the largest appellate labor court in the country—returns more than 13,700 decisions mentioning the term “economic group” in 2024 alone.⁷⁵ Most of these decisions cover procedural matters, and several do not recognize the existence of an economic group given the facts of the case. Many cases on economic groups concern issues of business succession, asset transfers, and family ties—rather than issues involving corporate groups in the form of parent, subsidiary, or sister company liability. The doctrine of economic groups remains significant despite the increasing use of veil piercing (*desconsideração da personalidade jurídica*) in shareholder liability cases. While these doctrines have become functional substitutes to a considerable extent, economic groups continue to play a distinctive role in Brazilian jurisprudence.

Consistent with the statutory mandate, Brazilian courts do not hesitate to impose joint and several liability on group companies based on Article 2, Paragraph 2, of the CLT when they encounter the appropriate fact pattern. For instance, in the *Nolem* decision issued by TST, an employee was seeking damages for the nonpayment of meal allowances, a benefit received by colleagues but not by him.⁷⁶ The employee sought to enforce this right not only against Nolem Comercial Importadora e Exportadora, his actual employer, but also against its parent companies Trana Transporte Ltda. and Gadelha Empreendimentos S.A. on the basis of joint and several liability. In a 2015 decision, the TST imposed joint and several liability on the parent companies as controlling shareholders of the employing entity and, therefore, as members of the same economic group.⁷⁷

Economic groups are also recognized with respect to foreign parent companies. A 2024 decision by the Regional Labor Court of the Second Region recognized the existence of an

⁷⁵ Decisions of the TST mentioning economic group account for approximately 4.2% of the 134,215 decisions issued by that court in 2024 alone, illustrating the scale of mass employment litigation in Brazil. In a speech delivered at the Brazil Forum UK in 2017, Justice Luís Roberto Barroso of the Brazilian Supreme Court observed that Citibank's Brazilian operations accounted for 1% of its global revenue, but for 93% of its employment lawsuits. *See* Luís Roberto Barroso, Keynote Address at the Brazil Forum UK 2017: O Momento Institucional Brasileiro e uma Agenda para o Futuro 17 (2017).

⁷⁶ *Tribunal Superior do Trabalho*, Processo nº132600-90.2010.5.21.0012, Relator: Alberto Luiz Bresciani de Fontan Pereira, decided on May 8, 2015.

⁷⁷ *Id.* at 12-13.

economic group to impose joint and several liability on the foreign controlling shareholders of Uber's Brazilian subsidiary, the alleged employer.⁷⁸ The decision noted that the fact that these companies "have headquarters in a foreign country does not preclude their joint operation on Brazilian soil, with all being part of the Uber Group."⁷⁹ Similarly, a 2023 decision involving the recognition of joint and several liability among foreign companies belonging to the Avianca group highlights the distributive concerns that inspire the broad imposition of liability in an economic group in the context of labor law.⁸⁰ This approach, the court noted, "depends on less strict criteria than those required in other legal spheres, because, in the labor context, the aim is to ensure the protection of credits of a food-related nature, derived from the workforce and essential to the employee."⁸¹

B. Expansion of the Economic Group Concept and Related Doctrines

The concept of the economic group is no longer the sole basis for imposing liability on affiliated companies under Brazilian law. A review of judicial precedents reveals the adoption of alternative doctrinal frameworks to accomplish similar outcomes, most notably the broad application of an objective strand of veil piercing doctrine that does not require abuse or commingling of assets. In addition, the concept of the economic group itself has been expanded to encompass broader contexts, including supply chain liability and informal groupings based on family ties.

Following the enactment of the Brazilian Consumer Protection Code (*Código de Defesa do Consumidor* – CDC) in 1990, labor courts in Brazil began applying its expansive and protective veil piercing provision by analogy. Article 28, Paragraph 5, of the CDC authorizes disregard of the corporate entity "whenever legal personality constitutes, in any way, an obstacle to compensation of losses suffered," even in the absence of fraud or abuse.⁸² This use of a distinct statutory framework by analogy to strengthen worker protection against separate legal entities echoes Brazil's earlier legal innovations of the 1930s.⁸³ The application of the CDC by analogy persists to this day as the majority position, but is increasingly contested.⁸⁴

⁷⁸ Tribunal Regional do Trabalho da 2ª Região, Processo nº 1000519-03.2022.5.02.0261, Relator: Paulo Eduardo Vieira de Oliveira, decided on June 27, 2024.

⁷⁹ *Id.* at 3.

⁸⁰ Tribunal Regional do Trabalho da 2ª Região, Processo nº 1000726-33.2019.5.02.0705, Relator: Rilma Aparecida Hemeterio, decided on June 6, 2023.

⁸¹ *Id.* at 1.

⁸² Lei No. 8.078, de 11 de setembro de 1990, Diário Oficial da União [D.O.U.] de 12.9.1990., Art. 13.

⁸³ See notes 61-64 *supra* and accompanying text.

⁸⁴ See, e.g., Luis Miguel Roa Florentin, *Recuperação Judicial, Responsabilidade Limitada e Justiça do Trabalho: Um Convite à Desconsideração da Personalidade Jurídica*, in DIREITO SOCIETÁRIO, DIREITO FALIMENTAR E DESENVOLVIMENTO (Eduardo Secchi Munhoz ed., 2025) (finding that 2024 decisions by labor courts applied strict CDC standards to allow veil piercing in the context of companies subject to judicial restructuring (*recuperação judicial*)).

Finally, labor courts have also relied on family ties to establish the boundaries of economic groups subject to joint and several liability.⁸⁵ When multiple related companies are controlled by members of the same family, courts have, in certain cases, recognized the existence of a “family economic group” based on common family administration and shared economic interests.⁸⁶ In the *Bertin* family group case, for example, the Superior Labor Court upheld the recognition that companies under common control by the Bertin family were part of the same economic group as the employer entity to hold them jointly and severally liable under Article 2, Paragraph 2, of the CLT.⁸⁷

C. The 2017 Labor Law Reform

The original CLT provision established what labor lawyers refer to as a “vertical group” or a “group by subordination,” based on the existence of common corporate control—the “direction, control or administration” of one company by another, as articulated by the statute.⁸⁸ In 2017, a comprehensive labor reform was enacted to introduce greater flexibility in labor relations.⁸⁹ The reform amended approximately 100 provisions of the CLT and introduced structural changes to Brazilian labor law. It introduced nuanced modifications to Article 2 regarding joint and several liability of firms belonging to an economic group, both expanding and restricting the concept’s scope, as detailed below.

The legislative process preceding the 2017 reform was highly contentious. Out of the 833 proposed amendments in the House of Representatives and 864 in the Senate, we identified and analyzed 31 amendments focused on economic group liability alone. Some amendments were proposed by supporters of group liability (27 parliamentary opinions), aiming to expand it as a mechanism to ensure the payment of labor claims amid enforcement challenges in labor courts.⁹⁰ However, critics of this regime proposed amendments (4 parliamentary opinions) seeking to “enhance legal certainty,” such as by restricting the scope of economic groups to firms within the same sector so as to avoid joint and several liability among unrelated businesses owned by the same individual.⁹¹ The final wording of the 2017 statute sought to address both sets of concerns

⁸⁵ For similar developments in antitrust law in Brazil and other Global South jurisdictions, see Mariana Pargendler, Maria Luiza Mesquita & Lucas Vispico, *Family Ties and the Boundaries of the Firm in Antitrust Law*, RESEARCH HANDBOOK ON COMPETITION AND CORPORATE LAW (Florence Thépot and Anna Tzanaki eds., 2025).

⁸⁶ See, e.g., Tribunal Superior do Trabalho, Processo N° TST-AIRR-461-36.2012.5.15.0057, 8ª Turma, Relatora: Jane Granzoto Torres da Silva, 03.09.2014, D.J. 05.09.2014; Tribunal Superior do Trabalho, Processo N° TST-AIRR-285-86.2010.5.12.0000, 4ª Turma, Relatora: Maria de Assis Calsing, 12.05.2010, D.J. 21.05.2010.

⁸⁷ Tribunal Superior do Trabalho, Processo N° TST-RR-10302-10.2015.5.03.0146, 7ª Turma, Relator: Ministro Vieira de Mello Filho, 28.5.2019, D.J. 30.5.2019.

⁸⁸ The distinction between groups by subordination and coordination has been advanced by German scholarship at least since 1923. FRITZ HAUSSMANN, *DIE TOCHTERGESELLSCHAFT: EINE RECHTLICHE STUDIE ZUR MODERNEN KONZERNBILDUNG UND ZUM EFFEKTENKAPITALISMUS* 18-19 (1923).

⁸⁹ MAURÍCIO GODINHO DELGADO & GABRIELA NEVES DELGADO, *A REFORMA TRABALHISTA NO BRASIL: COM OS COMENTÁRIOS À LEI N. 13.467/2017* (1st ed. 2017).

⁹⁰ See, e.g., Amendment 764, Federal Senate (proposed by Senator Vanessa Grazzitin, party PCdoB/AM).

⁹¹ Amendment 489, Chamber of Deputies (proposed by Deputy Daniel Vilela, party PMDB/GO); Amendment 254, Chamber of Deputies (proposed by Deputy Mauro Lopes, party PMDB/MG).

by broadening the language of Paragraph 2 (§ 2º) and adding restrictions in a newly created Paragraph 3 (§ 3º).

The new Paragraph 2 goes beyond vertical groups (also known as groups by subordination) to recognize horizontal groups (or groups by coordination), allowing for the imposition of joint and several liability among sister companies. While horizontal groups had been recognized for rural employers under Law 5,889 of 1973,⁹² they were only incorporated into the general labor law regime with the 2017 CLT reform. Our analysis of TST decisions reveals a notable expansion in the concept of the economic group after the reform.

This jurisprudential shift is illustrated by the *Pirelli* case,⁹³ in which the employee sought compensation for nonpecuniary damages (*danos morais*) from two companies: Pirelli Pneus Ltda. (his direct employer) and Prometeon Tyre Group Indústria Brasil Ltda. The employee contended that both companies were part of the same economic group, as they shared a common partner and operated in the same business sector (tire manufacturing). The TST specifically limited the imposition of joint and several liability to the period after the 2017 reform took effect, recognizing that this legislative change had expanded liability to include horizontal groups.⁹⁴

At the same time, the new Paragraph 3 aims to restrict the recognition of economic groups, departing from earlier caselaw that had relied solely on the existence of common shareholders or partners. The TST has already applied Paragraph 3 in multiple decisions to reject the characterization of an economic group. In the *São Bernardo Transport Consortium – SBCTrans* case,⁹⁵ for example, the regional labor court had recognized an economic group among the companies comprising the consortium, based exclusively on the identity of partners and the engagement in the same business activity. The TST overturned that decision, holding that, under Paragraph 3, mere common ownership is insufficient to establish the existence of an economic group.

III. The Economic Group Doctrine Beyond Workers: High-Profile Application in the Musk-X-Starlink Case

The concept of the economic group played a central role in the high-profile confrontation between Elon Musk’s X (formerly Twitter) and Brazil’s Supreme Court—particularly Justice Alexandre de Moraes—in 2024. The clash originated in investigations related to the insurrection of January 8, 2023, which challenged the election of President Lula.⁹⁶ As part of these investigations, Justice Moraes ordered X and other social media platforms to block several

⁹² Lei No. 5.889, 8 de junho de 1973, Article 3, Paragraph 2.

⁹³ Tribunal Superior do Trabalho, Processo nº TST-Ag-ED-RRAg-20886-68.2017.5.04.0234, Relatora: Morgana de Almeida Richa, decided on November 29, 2024.

⁹⁴ *Id.*

⁹⁵ Tribunal Superior do Trabalho, Processo nº TST- Ag-RR-1000416-55.2020.5.02.0361, Relator: Luiz José Dezena da Silva, decided on December 11, 2024.

⁹⁶ *A copycat insurrection in Brazil, and its troubling aftermath*, THE ECONOMIST, Jan. 12, 2023.

accounts accused of spreading misinformation and promoting anti-democratic actions, including against Justice Moraes himself and enforcement officers.⁹⁷

However, X refused to comply with the Court's orders, characterizing the actions as censorship. In response to this defiance, a judicial order was issued for the arrest of X's legal representative in Brazil.⁹⁸ On August 17, 2024, X's Global Government Affairs team posted on the platform: "To protect the staff, we have made our decision to close our operation in Brazil, effective immediately," while noting that "[t]he X service remains available in Brazil."⁹⁹

Interpreting these events as an affront to Brazilian sovereignty and an attempt to evade judicial accountability through the use of corporate structures, the Court invoked the legal doctrine of the "de facto economic group" (*grupo econômico de fato*) to enforce its rulings. On August 24, 2024, following X's continued noncompliance and the insufficient assets held by its Brazilian subsidiary (X Brasil Internet Ltda.) and its immediate shareholders (Twitter International Unlimited Company and T.I. Brazil Holdings LLC), Justice Moraes ordered the freezing of assets belonging to two separate Brazilian subsidiaries of Starlink.¹⁰⁰ Though operating in different industries and being legally distinct, these entities were also under the control of Musk and thus considered part of the same economic group for enforcement purposes.

As argued in the ruling, "[t]here is no doubt that the disobedience of the orders of this SUPREME COURT was directly determined by its foreign majority shareholder and controlling figure of all these companies: ELON MUSK."¹⁰¹ The decision further asserted that X Brazil and the two Brazilian Starlink subsidiaries:

"constitute, within national territory, together with SPACE X (a foreign company), what our legal system refers to as a 'de facto economic group.' Although lacking a formal and explicit agreement, and despite being autonomous and distinct business entities, they operate under the same coordination and control of ELON MUSK and pursue entirely convergent objectives."¹⁰²

Interestingly, the decision cited the CLT provision and other forms of erosion of corporate separateness in different areas of Brazilian law, even though they did not directly relate to the facts

⁹⁷ Brazil's Civil Rights Framework for the Internet provides that Brazilian law applies to "activities carried out by a legal entity headquartered abroad, provided that it offers services to the Brazilian public or that at least one member of the same *economic group* has an establishment in Brazil." See Lei No. 12.965, de 23 de abril de 2014, art. 11, § 2 (emphasis added).

⁹⁸ Supremo Tribunal Federal, Decisão na Petição No. 12.404-DF, Primeira Turma, Relator: Ministro Alexandre de Moraes, 16.8.2024 (Braz.).

⁹⁹ Global Government Affairs (@GlobalAffairs), *Decision to close X's operation in Brazil*, X (formerly Twitter) (Aug. 17, 2024, 11:42 AM); Mateus Rodrigues & Marcelo Parreira, *Rede social X diz que vai fechar escritório no Brasil após Moraes ameaçar prender diretora por desobedecer decisões*, G1, Aug. 17, 2024.

¹⁰⁰ Supremo Tribunal Federal, Decisão na Petição No. 12.404-DF, Primeira Turma, Relator: Ministro Alexandre de Moraes, 24.08.2024 (Braz.), at 19-20. The Brazilian Starlink entities affected by the order were Starlink Brazil Holding Ltda. and Starlink Brazil Serviços de Internet Ltda.

¹⁰¹ Supremo Tribunal Federal, Decisão na Petição No. 12.404-DF, Primeira Turma, Relator: Ministro Alexandre de Moraes, 30.08.2024 (Braz.), at 35.

¹⁰² *Id.* at 45.

of the case. It observed that “the joint and several liability of firms that are part of the same de facto economic group is recognized under Brazilian law, particularly in the context of labor liabilities, pursuant to Article 2, Paragraph 2, of the CLT, as well as under the settled caselaw of the Superior Court of Justice in the field of Civil Law.”¹⁰³ The decision also invoked the doctrine of veil piercing based on the abuse of legal personality to justify the imposition of joint and several liability on all related entities for the payment of daily fines arising from their continued noncompliance with judicial orders.¹⁰⁴

More broadly, the ruling—which also ordered the suspension of X’s operations in Brazil and featured multiple emphatic statements in all-caps—underscored the Court’s view that Elon Musk, as X’s majority shareholder and controlling figure, had “demonstrated complete disrespect for Brazilian sovereignty and, in particular, for the Judiciary, positioning himself as a true supranational entity, immune to the laws of individual countries.”¹⁰⁵ As described by a New York Times headline: “Brazilian Court Makes One Musk Company Pay Fines of Another.”¹⁰⁶ From a corporate law perspective, this is a particularly aggressive decision, applying in the absence of specific statutory authorization, toward a company that had a different purpose and a distinct shareholder base, and in the context of corporate punishment.

The original order to freeze the assets of the Brazilian subsidiaries of Starlink was issued by Justice Moraes, a polarizing figure who has drawn sustained criticism from Brazil’s right-wing factions. However, the order was promptly and unanimously upheld by a five-justice panel of the Supreme Court¹⁰⁷ and received the endorsement of the Attorney General of the Union, underscoring the institutional cohesion behind the ruling.¹⁰⁸ In a concurring opinion, Justice Flávio Dino emphasized the sovereign prerogatives of the Brazilian state, explicitly invoking the nation’s “SOVEREIGNTY” in capitalized text and asserting that “[e]conomic power and the size of one’s bank account do not give rise to a bizarre immunity from jurisdiction.”¹⁰⁹

On September 21, the New York Times reported that “Elon Musk’s X Backs Down in Brazil,” noting that the companies had agreed to comply with the Court’s order and pay the penalties for noncompliance.¹¹⁰ The STF subsequently unblocked X in Brazil on October 8, 2024, following compliance and payment of penalties.¹¹¹

¹⁰³ *Id.* at 46.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 16.

¹⁰⁶ Jack Nicas, *Brazilian Court Makes One Musk Company Pay Fines of Another*, THE N.Y. TIMES, Sept. 13, 2024.

¹⁰⁷ Supremo Tribunal Federal, Referendo na Petição No. 12.404, Primeira Turma, Relator: Ministro Alexandre de Moraes, 3.9.2024, D.J. 4.9.2024 (Braz.).

¹⁰⁸ Supremo Tribunal Federal, Referendo na Petição No. 12.404, Plenário Virtual, Minuta de Voto (Vogal), Ministro Cristiano Zanin, 2.9.2024 (Braz.).

¹⁰⁹ Supremo Tribunal Federal, Referendo na Petição No. 12.404, Plenário Virtual, Minuta de Voto (Vogal), Ministro Flávio Dino, 2.9.2024 (Braz.), at 3.

¹¹⁰ Jack Nicas & Ana Ionova, *Brazil Unblocks X After Musk Backs Down*, THE N.Y. TIMES, Oct. 8, 2024. *See also* Supremo Tribunal Federal, Decisão na Petição No. 12.404-DF, Primeira Turma, Relator: Min. Alexandre de Moraes, 8.10.2024 (Braz.).

¹¹¹ Supremo Tribunal Federal, *supra* note 110, at 8.

Central to the Court’s approach was its bold deployment of the economic group doctrine, which proved pivotal in shaping the outcome of the case. Here, once again, Brazilian adjudicators employed an expansive view of enterprise liability in service of nationalism, refusing to allow foreign manipulation of legal entities to subvert domestic public policy.

IV. Group Liability for Labor Obligations in the Global North

We turn now to the treatment of corporate separateness within corporate groups under the labor and employment law of five Global North jurisdictions: the United States, the United Kingdom, Germany, France, and Portugal. At the more formalist end of the spectrum, the United Kingdom and Germany permit only limited incursions into the principle of separate legal personality. While both jurisdictions recognize specific exceptions in the form of “veil peeking”¹¹²—most notably in relation to continuity of employment or other narrowly framed statutory rights—neither has developed a general doctrinal basis for relaxing limited liability in the group setting in order to protect workers. The United States and France adopt an intermediate approach, allowing the overcoming of corporate boundaries among group entities that qualify as joint employers or integrated enterprises—frameworks that, while more permissive than traditional veil-piercing standards, nevertheless fall short of the categorical joint and several liability regime enshrined in Brazilian labor law.

Of the five jurisdictions examined, only Portugal has formally converged with the Brazilian model, extending joint and several liability for labor obligations across affiliated companies within a corporate group. Even so, such convergence materialized more than seventy years after Brazil’s initial adoption of its enterprise liability regime. This underscores the exceptionalism and temporal precocity of the Brazilian approach.

A. United States

The United States was an early leader not only in caselaw disregarding corporate separateness and in articulating the doctrine of piercing the corporate veil,¹¹³ but also in legal scholarship advocating for the expansion of enterprise liability within corporate groups. In 1936, just as Brazil was debating its pioneering statute, Elvin R. Latty published his doctoral dissertation, “Subsidiaries and Affiliated Corporations: A Study in Stockholders’ Liability.”¹¹⁴ He observed that “an American investigator in this field can get little help from comparative law sources,” as the issue of parent-subsidary relationships has “received scant attention” outside of Germany and “the particular problem of liability for the subsidiary’s debts has received practically none.”¹¹⁵ He further noted that “even in Germany, where alone the system of parent and subsidiary corporations

¹¹² Pargendler, *Veil Peeking*, *supra* note 31.

¹¹³ Maurice Wormser, *Piercing the Veil of Corporate Entity*, 12 COLUM. L. REV. 496 (1912). Wormser’s seminal work on piercing the corporate veil conflated exceptions to both asset partitioning (veil piercing) and regulatory partitioning (veil peeking). *See* Pargendler, *Veil Peeking*, *supra* note 31, at 722.

¹¹⁴ ELVIN R. LATTY, *SUBSIDIARIES AND AFFILIATED CORPORATIONS: A STUDY IN STOCKHOLDERS’ LIABILITY* (1936).

¹¹⁵ *Id.* at 2.

has developed to a point distantly comparable to ours,” the only substantive treatment he could cite was a monograph by Hamburger.¹¹⁶

Latty’s core argument was that limited liability “is subject to the law of diminishing returns.”¹¹⁷ His book both analyzed existing caselaw and proposed a normative framework in which limited liability within corporate groups should be treated differently from liability of ultimate shareholders, who continued to enjoy the protection of limited liability.¹¹⁸ Latty’s analysis relied heavily on a distinction that would later be central to law-and-economics literature: the difference between voluntary creditors, against whom limited liability should generally be enforced, and involuntary creditors, against whom it generally should not.

Interestingly, foreshadowing the later analysis by Lucian Bebchuk and Jesse Fried, Latty suggested a possible distinction among contract creditors—specifically identifying “non-investigating creditors” who might be treated similarly to involuntary creditors.¹¹⁹ He argued that “wage claimants may very well be treated differently from a bank creditor,” such that “[a] decision holding that a wage creditor of an insolvent subsidiary can recover from the solvent parent would not be surprising.”¹²⁰ This indicates that, although U.S. legal doctrine offered support for the protection of labor claimants within corporate groups, the legal regime had not yet embraced the bold solution soon to be adopted by Brazil. It was not until 1947 that Adolf Berle—who had written the preface for Latty’s book—published his seminal article on “The Theory of Enterprise Entity,” in which he sought to explain and justify judicial decisions imposing liability on parent or affiliate companies. In Berle’s theory, a single enterprise did not immediately follow from corporate equity control; rather, it required operational integration “bringing the two operations together into a single enterprise.”¹²¹ Interestingly, Berle had served as the U.S. Ambassador to Brazil just years before writing this article, though we could not find evidence that he was aware of, or influenced by, the Brazilian experience with enterprise liability in labor law.

While U.S. law has not adopted Berle’s vision for a unified standard of enterprise liability in corporate groups,¹²² it has developed specific doctrines over time in the context of labor and employment law. These doctrines are distinct from, and arguably more expansive than, the general requirements for veil piercing—though they have also been criticized as unduly narrow.¹²³ Two

¹¹⁶ *Id.* (citing Georg M. Hamburger, *Schuldenhaftung für Konzerngesellschaften*, in WIRTSCHAFTSRECHTLICHE ABHANDLUNGEN, 8 HEFT (1932)).

¹¹⁷ *Id.* at 199.

¹¹⁸ *Id.* at 196.

¹¹⁹ *Id.* at 203-204.

¹²⁰ *Id.* at 204.

¹²¹ Adolf Berle, *The Theory of Enterprise Entity*, 47 COLUM. L. REV. 343, 357 (1947).

¹²² Meredith Dearborn, *Enterprise Liability: Reviewing and Revitalizing Liability for Corporate Groups*, 97 CALIF. L. REV. 195, 245 (2009).

¹²³ See, e.g., David Borgen, *Advanced Issues in FLSA Collective Actions: Joint Employment*, 10 EMP. RTS. & EMP. POL’Y J. 447, 449 (2006) (“The Department of Labor (DOL) regulation does not employ a common law or ‘piercing the corporate veil’ test. The FLSA provides one of the most expansive and employee friendly tests for proving that a parent corporation or some other entity may be liable as an employer under a joint employer theory.”). But see Alvin Velazquez, *When Labor Law Protects Corporate Interests Better than Corporate Law Does*, LPE BLOG, Sep. 15, 2022 (“the prevailing joint employer standard requires a showing of greater control than state-based corporate law requires when applying traditional concepts of agency law to parent-subsidiary and franchisor-franchisee relationships”). The

key frameworks have emerged to erode the legal boundaries between parents, subsidiaries, and affiliates for purposes of monetary liability for violations of workers' rights and obligations related to collective bargaining. First, related companies may be deemed a *single employer* when the operations of entities under common ownership comprise an "integrated enterprise."¹²⁴ Second, companies may be considered joint employers when two or more entities exert control over the terms and conditions of employment.¹²⁵

The joint employer doctrine does not require common ownership and is frequently applied in the context of merely contractual relationships. However, it also applies within corporate groups. For instance, the joint employer concept—based on an entity's significant control over an employee—has been used to hold a foreign company jointly and severally liable for age and national origin discrimination committed against an employee of a U.S. subsidiary, even though the parent and subsidiary in the case were not deemed to be sufficiently "operationally or financially entangled" to constitute a single employer.¹²⁶

Yet legal developments in this area have not followed a linear trajectory. Instead, they have been highly controversial and politicized. For example, a 2015 decision by the Obama-era National Labor Relations Board (NLRB) expanded the definition of joint employer by reinstating earlier precedents of decades prior, under which even indirect or "reserved" (i.e., unexercised) control was sufficient to establish joint employment.¹²⁷ The decision was partially overturned by the D.C. Circuit in 2018 and later superseded by a 2020 regulation under the Trump administration, which required the actual exercise of "direct and immediate control" to establish joint employment status. A 2023 rule issued by the NLRB under the Biden administration sought to return to a broader standard allowing for either direct or indirect control—a shift described as having "monumental implications" for parent-subsidiary relations¹²⁸—but was enjoined by a federal court.¹²⁹

While distinct and more expansive than the traditional veil piercing standards (by, for instance, not requiring fraud or injustice), U.S. doctrine in this area generally remains more demanding and less protective of workers than Brazil's legal approach. Under the Fair Labor Standards Act (FLSA), courts will look into the "economic realities" to qualify employment relationships—a framing that echoes concerns found in Brazilian law but that is more narrowly

labor movement has sought to expand the definition of "joint employer." For example, see the proposed Protecting the Right to Organize Act of 2021, H.R. 842, 117th Cong. § 101 (2021).

¹²⁴ *Radio & Television Technicians Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965) (per curiam) (using the criteria of "interrelation of operations, common management and ownership, and centralized control of labor relations").

¹²⁵ See, e.g., Charles Wynn-Evans, *A Solution to Fissuring? Revisiting the Concept of the Joint Employer*, 50 IND. L.J. 70, 87-88 (2021).

¹²⁶ *Middlebrooks v. Teva Pharmaceuticals USA, Inc.*, No. 17-00412 (E.D. Pa. Feb. 1, 2018). See, for a commentary, Steven D. Baderian & John L. Sander, *Foreign Parent Company is Joint Employer with Subsidiary for Employment Claims*, *Court Rules*, JACKSONLEWIS, Feb. 23, 2018.

¹²⁷ *Nat'l Lab. Rel. Bd. v. Browning-Ferris Indus. of Pennsylvania, Inc.*, 691 F.2d 1117 (3d Cir. 1982).

¹²⁸ Steven Porzio & Alexander J. Blutman, *NLRB Issues New Rule Relaxing Joint Employer Standard*, PROSKAUER, Oct. 23, 2023.

¹²⁹ *Chamber of Com. v. Nat'l Lab. Rel. Bd.*, 723 F. Supp. 3d 498 (E.D. Tex. 2024).

construed.¹³⁰ In *In re Enterprise Rent-A-Car Wage & Hour Employment Practices Litigation*, the Third Circuit declined to find the holding company of 38 domestic subsidiaries to be a joint employer under the FLSA for purposes of joint and several liability for unpaid overtime wages.¹³¹ Even though all companies shared the same three board members and the parent company's HR department provided services and guidance to subsidiaries, the court found that "significant control" was lacking, as the policies were merely advisory and not mandatory.¹³²

To be sure, some U.S. state laws have gone further in eroding limited liability for the benefit of workers beyond the context of corporate groups. New York law, for example, has recognized shareholders' joint and several liability for wages since the Manufacturing Corporations Act of 1848,¹³³ which sought to protect employees engaged in the construction of public works against the fraud or insolvency of their direct employers.¹³⁴ In 1952, following the failure of *The New York Compass*, a city newspaper, 15 of over 2,300 shareholders—including some who owned only a single share or were unaware of their ownership—were held liable for unpaid severance and vacation pay.¹³⁵ Enacted in 1961, Section 630 of the New York Business Corporation Law limited the imposition of liability to the 10 largest shareholders of close corporations.¹³⁶ Interestingly, New York has expanded shareholder liability for the benefit of workers in recent years. A 2015 amendment extended Section 630 liability to the ten largest shareholders of foreign corporations (i.e., corporations constituted in other jurisdictions operating primarily in New York), and a 2019 amendment did the same for the largest equity holders of foreign LLCs.¹³⁷

B. United Kingdom

U.K. labor law considers the group context to erode corporate separateness through the concept of "associated employer," but only with respect to regulatory partitioning and in a limited set of circumstances. Under the Employment Rights Act of 1996, two companies are considered associated employers when one company is controlled by another or when both companies are under the control of a third person.¹³⁸ Yet this mechanism operates narrowly, applying to a limited

¹³⁰ For an influential articulation of the test, see *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983) (focusing on four factors: "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.").

¹³¹ *Hickton v. Enter. Holdings Inc. (In re Rent-A-Car Wage & Hour Emp't Practices Litig.)*, 683 F.3d 462 (3d Cir. 2012).

¹³² *Id.* at 469-71.

¹³³ N.Y. Sess. Laws 1848, ch. 40, §18. See also HERBERT HOVENKAMP, ENTERPRISE AND AMERICAN LAW, 1836-1937 52 (1991) (describing the provision distinguishing wages from other debts for purposes of limited liability as "very common in nineteenth-century general incorporation acts," though noting it was narrowly interpreted by New York courts).

¹³⁴ *Warner v. Hudson River R. Co.*, 5 How. Pr. 454 (N.Y. Sup. Ct. 1851) ("The legislature, aware of the condition and habits of that class of persons usually engaged in the construction of public works, have sought to protect them against the fraud or insolvency of their immediate employers. The purpose was benign, and the act should be liberally construed.").

¹³⁵ *Shareholder Liability for Wages: Section 630 of the New York Business Corporation Law*, 30 FORDHAM L. REV. 471, 473 (1962).

¹³⁶ *Id.* at 475.

¹³⁷ A.B. 737, 2015-2016 Leg. Sess. (N.Y. 2015); A.B. 453, 2019-2020 Leg. Sess. (N.Y. 2019).

¹³⁸ Employment Rights Act 1996 c. 18, § 231.

range of employment protections, most notably to preserve continuity of employment—a function that closely parallels early doctrinal developments in Brazil during the 1930s.¹³⁹ As Deakin and Morris point out, however, the associated employer doctrine only addresses “the more obvious routes by which the application of statutory rights could be avoided by the adoption of separate corporate personality.”¹⁴⁰ It does not capture all potential avenues for avoidance, nor does it serve to mitigate limited liability within group structures.¹⁴¹

That said, U.K. law has also gradually opened other pathways for eroding corporate separateness for the benefit of workers. In the landmark 2012 decision in *Chandler v. Cape plc*, the Court of Appeal allowed an employee of the subsidiary, which had been dissolved, to pursue compensation from the parent company for the asbestosis he contracted at work.¹⁴² Far from imposing a strict regime of joint and several liability, the ruling established that a parent company has a duty of care toward employees of subsidiaries under particular circumstances.¹⁴³ While *Chandler* involved a domestic liability claim in the context of employment, it reverberated as a foundational precedent for parent company liability in business and human rights litigation.¹⁴⁴ Furthermore, in *Uber BV v. Aslam* [2021], the U.K. Supreme Court rejected formalistic arguments based on contractual form, holding that Uber drivers were “workers” under domestic labor protections vis-à-vis Uber London Limited, despite the existence of formal contracts only with Uber BV—a Dutch affiliate that had characterized drivers as “customers.”¹⁴⁵

C. France

Despite the initial absence of an authorizing statutory provision, French courts began recognizing that parent and subsidiary could constitute “joint employers” for labor law purposes in the 1960s. Echoing developments in Brazil in the 1930s, one of the earliest scenarios was the recognition of continuity of employment for workers who had successively been employed by different entities within the same corporate group, typically for purposes of calculating rights tied to seniority, such as benefits and legal guarantees.¹⁴⁶ Beginning in 1965, French courts invoked a

¹³⁹ Employment Rights Act 1996 c. 18, § 108. *See also* JEREMIAS PRASSL, THE CONCEPT OF THE EMPLOYER 216 (2015) (“The most frequent application in practice [of the notion of associated employer] is in the context of employment rights that are subject to statutory minimum periods”). The concept is also used in the discrimination context, as the claimant may rely on an employee of an associated employer as a relevant comparator. PRASSL, *id.*

¹⁴⁰ SIMON DEAKIN & GILLIAN S. MORRIS, LABOUR LAW 232 (6th ed., 2005)

¹⁴¹ Paul Davies & Mark Freedland, *Changing Perspectives Upon the Employment Relationship in British Labour Law*, in THE FUTURE OF LABOUR LAW: LIBER AMICORUM BOB HEPPLER 137 (Catherine Barnard, Simon Deakin & Gillian S. Morris eds., 2004) (“provided the legal formalities pertaining to the different companies making up the group are properly observed by group management, the fact that the business organisation of the group ignores the separate legal entities of the group companies will not enable the employee to go behind or beyond his or her employing company”).

¹⁴² *Chandler v Cape plc* [2012] EWCA Civ 525.

¹⁴³ *Id.* at 3131.

¹⁴⁴ In its 2019 decision in *Vedanta*, the UK Supreme Court applied the parent company’s duty of care in the context of environmental harm caused by a foreign subsidiary. *Vedanta Resources Plc and Konkola Copper Mines Plc (Appellants) v Lungowe and Ors. (Respondents)* [2019] UKSC 20. For a discussion of the recent expansion of the duty of care of parent companies in the UK, *see* EWAN MCGAUGHEY, PRINCIPLES OF ENTERPRISE LAW 297-98 (2022); Dalia Palombo, *Business, Human Rights and Climate Change: The Gradual Expansion of the Duty of Care*, 44 OXFORD J. LEGAL STUD. 889 (2024).

¹⁴⁵ *Uber BV v Aslam* [2019] IRLR 257. For a discussion of the case, *see* Wynn-Evans, *supra* note 125, at 80-1.

¹⁴⁶ Bruno Oppetit, *Groupe de sociétés et droit du travail*, 91 REVUE DES SOCIÉTÉS 69, 70-71 (1973).

range of doctrines to impose joint and several liability on group companies when their operations were “extremely intertwined.”¹⁴⁷ Courts have also acknowledged the existence of corporate groups to expand protections against dismissal, requiring that employers verify, before dismissing employees for economic reasons, the possibility of redeploying the workers within another entity of the corporate group within the same line of business (*obligation de reclassement*).¹⁴⁸

Beginning in 2007, courts embraced the “triple confusion” test—consisting of confusion of interests, activities, and management—to support findings of joint employment.¹⁴⁹ Although French courts held Finnish and German parent companies liable as co-employers with their French subsidiaries in 2007 and 2011,¹⁵⁰ respectively, a 2013 decision declined to qualify the parent company as joint-employer with its wholly-owned subsidiary, despite its handling of the subsidiary’s distributions, sales and accounting.¹⁵¹ French courts have continued to require fact-specific elements of integration beyond equity control and common direction to justify joint and several liability.¹⁵²

D. Germany

Germany, long hailed as a pioneer in “group law” and a global exemplar of worker protection through board representation (codetermination), has remained a laggard in mitigating limited liability for the benefit of workers in corporate groups.¹⁵³ As corporate groups became increasingly prevalent in the 1920s,¹⁵⁴ German scholarship began debating the regulatory framework applicable to such groups (known as *Konzern*), including intricate discussions of parent

¹⁴⁷ *Id.* at 71 & 73.

¹⁴⁸ Corazza & Razzolini, *supra* note 139, at 148. A 2017 amendment under Macron limited the economic hardship assessment to group activities carried out within France. Sylvaine Laulom, *Improving Compliance with Labor Laws: The Role of The French Courts*, 43 COMP. LABOR L. & POL’Y J. 129, 147 (2023).

¹⁴⁹ This test was articulated in the landmark decision in *Aspocomp*. See Cour de cassation, soc., June 19, 2007, 05-42570 (Fr.). Some scholars trace it back to French jurisprudence in the 1960s. See, e.g., Yannick Pagnerre, *Regard historique sur le co-emploi*, 6 DROIT SOCIAL 550, 551.

¹⁵⁰ Cass. soc., *supra* note 149; Cour de cassation, soc., Nov. 30, 2011, 10-22964 (Fr.). See Mounir Hedda, *La réception des groupes de sociétés par le droit du travail : Interrogation sur la position du droit du travail à l’égard de la structuration des rapports de travail et la protection des salariés à l’intérieur des groupes de sociétés* 73-75 (2014) (Ph.D. dissertation, Université Panthéon-Sorbonne – Paris I).

¹⁵¹ Cour de cassation, soc., Sept. 25, 2013, 12-14353 (Fr.). See also Hedda, *supra* note 150, at 79-80.

¹⁵² Corazza & Razzolini, *supra* note 139, at 148. A 2020 decision further narrowed the scope of the doctrine of triple confusion, leading commentators to declare the demise of joint employment in France. Catherine Davico-Hoarau, *Chronique d’une mort annoncée du co-emploi*, DAF MAGAZINE, Jan. 29, 2021; Barbara Gomes, *Le coemploi en voie de disparition*, 872 LE DROIT OUVRIER 215, 217 (2021). Subsequent decisions, however, broadened the criteria for establishing joint employment. See Sébastien Ranc, *Coemploi: rien n’est impossible !*, BULLETIN JOLY TRAVAIL 37 (2023).

¹⁵³ To be sure, worker protection through codetermination may be a substitute for worker protection through other legal rules. Interestingly, recent work has demonstrated that Germany is also a laggard in overcoming corporate separateness for purposes of shareholder rights. See Pargendler, *The New Corporate Law of Corporate Groups*, *supra* note 10, at 375 (describing the “continued grip of entity formalism” in the German law of corporate groups compared to other jurisdictions).

¹⁵⁴ According to official statistics, more than 60% of capital invested in business corporations in the mid-1920s was linked to corporate groups. Statistisches Reichsamt, *Konzerne, Interessengemeinschaften und ähnliche Zusammenschlüsse im Deutschen Reich Ende 1926* 13; Statistisches Reichsamt, *Aktienkapital* 108.

company liability in private law.¹⁵⁵ Nevertheless, as Professor Holger Fleischer notes, “a general legal principle implying that the *Konzern* is a single entity has rarely been advocated in corporate law literature.”¹⁵⁶

Writing in 1935, Georg Hamburger observed that German caselaw on the concept of *Konzern* dealt primarily with tax law.¹⁵⁷ Subsequent developments in corporate law focused mostly on the duties of parent companies to subsidiaries and on disclosure obligations. The first statutory references to *Konzern* in the corporations statute, which appeared in the 1931 amendments, were limited to prohibiting cross-shareholdings and requiring accounting reports on the relationship between parent and subsidiaries.¹⁵⁸ The Stock Corporation Act of 1937 further regulated *Konzern* relationships but explicitly disavowed the “unity theory,” defining group companies as “legally independent enterprises brought under unified management for economic purposes.”¹⁵⁹ Germany’s landmark legislation on group law, the *Konzernrecht* section of the 1965 Stock Corporation Act similarly preserves the principle of limited liability among group companies vis-à-vis creditors. Interestingly, a 1956 comparative study commissioned by the Ministry of Justice in response to *Konzern* reform proposals covered Brazil as well as several other jurisdictions that had amended their company statutes after or shortly before Germany’s 1937 statute.¹⁶⁰ However, because the study was limited to the corporations statute, Brazil’s treatment of corporate groups in labor law went unnoticed.

Various areas of German law, including labor law, embrace veil peeking—exceptions of corporate separateness for purposes of the imputation of different legal consequences—within corporate groups for regulatory purposes. Under the Codetermination Act of 1976, German-based employees of subsidiaries are treated as employees of the parent company for purposes of worker board representation.¹⁶¹ Certain statutes also aggregate time worked across different entities within a group.¹⁶² Additionally, corporate groups benefit from a special exemption under German labor law that excludes intra-group employee transfers from the scope of temporary agency work regulations.¹⁶³

¹⁵⁵ See, e.g., RUDOLF ISAY, *DAS RECHT AM UNTERNEHMEN* (1910); HAUSSMANN, *supra* note 88, HEINRICH FRIEDLÄNDER, *KONZERNRECHT: DAS RECHT DER BETRIEBS- UND UNTERNEHMENSZUSAMMENFASSUNG* (1927), GEORG M. HAMBURGER, *SCHULDENHAFTUNG FÜR KONZERNGESELLSCHAFTEN* (1932).

¹⁵⁶ Holger Fleischer, *Kämpfe und Kontroversen um das Konzernrecht*, in *GESELLSCHAFTSRECHT IM SPIEGEL GROßER DEBATTEN* 369, 385 (Holger Fleischer, Jens Koch & Klaus Ulrich Schmolke eds., 2024).

¹⁵⁷ Georg M. Hamburger, *Konzernrecht*, 5 *RECHTSVERGLEICHENDES HANDBUCH FÜR DAS ZIVIL- UND HANDELSRECHT DES IN- UND AUSLANDES* 220 (1936).

¹⁵⁸ Holger Fleischer, *Vor §§ 311 ff. para 6*, in *AKTIENGESETZ: GROßKOMMENTAR* (Klaus J. Hopt & Herbert Wiedemann eds., 4th ed. 2020).

¹⁵⁹ Fleischer, *supra* note 156, at 385-6.

¹⁶⁰ Company Law Reform, *supra* note 45, at A4 and 28 (also examining the laws of Italy, Sweden, England, Spain, Japan, Canada, India, the United States (New York), and Switzerland).

¹⁶¹ Gesetz über die Mitbestimmung der Arbeitnehmer, May 4, 1976, BGBl. I at 1153, § 5(1).

¹⁶² Betriebsverfassungsgesetz, Sept. 25, 2001, BGBl. I at 2518, § 8(1). See, for a discussion, Christine Windbichler, *Labor Effects of Corporate Groups in Germany*, 3 *IUSLABOR* 37 (2017).

¹⁶³ Arbeitnehmerüberlassungsgesetz, Feb. 3, 1995, BGBl. I at 158, § 1(3)(2). However, the Federal Labor Court recently narrowed this exemption’s scope. See L&E Global, *Germany: Federal Labour Court Restricts the Corporate Group Privilege for Temporary Agency Work*, LEXOLOGY, Feb. 25, 2025.

Nevertheless, German law continues to firmly uphold limited liability of group companies vis-à-vis workers, absent exceptional circumstances such as fraud or instances of veil piercing. Expressing a minority view, Professor Felipe Temming lamented in 2017 that Germany was a “kind of developing country” in this regard—failing to adopt the joint employer doctrines and integrated group liability frameworks found in France, Spain, the United Kingdom and the United States.¹⁶⁴ This formalist adherence to corporate separateness, he argued, allowed workers’ rights to be “crushed by the principle of limited liability.”¹⁶⁵ Ironically, what Temming may not have anticipated is that developing jurisdictions such as Brazil have developed a group liability regime that is more expansive and protective of workers than the Global North models he references. In any case, there appears to be no evidence of systematic abuse in the use of separate legal entities to the detriment of workers’ rights in Germany, suggesting the existence of functional substitutes. This reinforces the point that the treatment of corporate separateness in corporate groups should not be examined in isolation, but rather in the context of complementary rules and institutions.

E. Portugal

Among the Global North jurisdictions examined, Portugal stands out as the only one to have introduced joint and several liability within the corporate group for labor obligations—a move codified in its 2009 Labor Code.¹⁶⁶ Since 1986, Portugal’s company law has contained a special regime for corporate groups, inspired by the German regime and the draft Ninth EU Directive, but which—unlike its sources of inspiration—imposes liability on parent companies for the debts of wholly owned subsidiaries.¹⁶⁷ The relevant rule explicitly cross-referenced the rule in the company law that restricted the application of the special group law regime to companies with their registered office in Portugal.¹⁶⁸ That territorial limitation, however, was subsequently declared unconstitutional by the Constitutional Court of Portugal as a violation of the principle of equality enshrined in the Portuguese constitution—first through incidental review in 2015, and

¹⁶⁴ Felipe Temming, *The Co-Employer (Mitarbeitgeber) – Can He Be Regarded as Employer for the Purpose of EU Labour Law?*, 14 ZEITSCHRIFT FÜR DAS PRIVATRECHT DER EUROPÄISCHEN UNION 125, 130 (2017).

¹⁶⁵ *Id.* at 130. However, the few *Konzern* cases cited by Temming in support of his proposition concern issues of regulatory partitioning that have a more limited scope: Bundesarbeitsgericht [BAG] [Federal Labor Court] Jan. 15, 2013, 144 ENTSCHEIDUNGEN DES BUNDESARBEITSGERICHTS [BAGE] 180 (Ger.) and Bundesarbeitsgericht [BAG] [Federal Labor Court] Mar. 10, 2015, 151 BAGE 94 (Ger.) (declining to look at the group as a whole, rather than the individual entity, in calculating inflation-based adjustments to pensions); Bundesarbeitsgericht [BAG] [Federal Labor Court] Oct. 14, 1982, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 381, 1984 (Ger.) (ruling that the employer is not required to find alternative employment in another group company following the employee’s dismissal after a plant closure).

¹⁶⁶ Código do Trabalho, art. 334 (“*Joint and Several Liability of Companies in Cases of Reciprocal Shareholdings, Control, or Group Relations.* For claims arising from an employment contract, or from its breach or termination, which have been due for more than three months, the employer and any company that is in a relationship of reciprocal shareholdings, control, or is part of the same corporate group shall be jointly and severally liable, under the terms set out in Articles 481 and following of the Portuguese Commercial Companies Code”).

¹⁶⁷ Código das Sociedades Comerciais, art. 501, no. 1. See António Menezes Cordeiro, *A responsabilidade da sociedade com domínio total (501.º/1, do CSC) e o seu âmbito*, 3 REVISTA DE DIREITO DAS SOCIEDADES 83, 102 (2011) (describing the provision on parent company liability as a “specialty of Portuguese law, with no parallel either in German law or in the draft of the 9th Directive”).

¹⁶⁸ Código das Sociedades Comerciais, art. 481, no. 2 (“This title applies only to companies with their registered office in Portugal,” subject to specified exceptions).

later through abstract review in 2021.¹⁶⁹ On both occasions, the Court reasoned that the disparate treatment afforded to workers of foreign and Portuguese corporate groups, disadvantaging the former, lacked any reasonable justification.¹⁷⁰

Thus, it was only after more than 70 years—or 80 years, if counting from the abstract review ruling—that Portugal came to align with Brazil’s longstanding approach of imposing joint and several liability for labor obligations within corporate groups. This represents a striking example of reverse convergence,¹⁷¹ with a Global North jurisdiction adopting a regime first embraced in the Global South, and doing so with a significant time lag. Importantly, this is not an isolated incident. Rather, it exemplifies a broader pattern in which socially-oriented private law innovations have originated in the South and only later been adopted in Northern jurisdictions.¹⁷²

V. Group Liability for Labor Obligations in the Global South

A. Latin America

Five Latin American jurisdictions have explicit provisions on joint and several liability for corporate groups in their labor statutes. However, the provisions in three of these countries—Argentina, the Dominican Republic, and Panama—are considerably restrictive, limiting joint and several liability to cases of fraud or the simultaneous use of the employees’ services by different firms.¹⁷³ Promulgated in 1974, Argentina’s original provision on this issue was remarkably similar to CLT’s Article 2.¹⁷⁴ However, merely two years later, the provision was amended to restrict the

¹⁶⁹ Tribunal Constitucional, Precedent No. 227/2015, Proceedings No. 269/14, DR 111 Series 2 of 9-6-2015, 15174 (Port.); Tribunal Constitucional, Precedent No. 272/2021, Proceedings No. 1161/2019, DR 129 Series 1 of 6-7-2021, 15 (Port.).

¹⁷⁰ Precedent No. 227/2015, *supra* note 169, at 15178-9; Precedent No. 272/2021, *supra* note 169, at 24-8. For a critique of the 2021 decision by Portugal’s Constitutional Court, see Rui Pereira Dias, *Haverá um Direito dos Trabalhadores a que os Empregadores Sejam Todos Iguais? A Responsabilidade de Sociedades Coligadas por Créditos Laborais no Acórdão do Tribunal Constitucional n.º 272/2021*, 2 REVISTA PORTUGUESA DE DIREITO CONSTITUCIONAL 105 (2022).

¹⁷¹ See Pargendler, *Heterodox Stakeholderism*, *supra* note 21, at 541-2.

¹⁷² See, e.g., Pargendler, *Heterodox Stakeholderism*, *supra* note 21; Davis, Pargendler & Lessa, *supra* note 20.

¹⁷³ Law No. 20.744, Sept. 20, 1974 [23003] B.O. 2 (as amended) (Arg.), art. 31 (enterprises “under the direction, control, or administration of others, or so related that they constitute an industrial, commercial, or any other type of group” are jointly liable in case of “fraudulent maneuvers or reckless management.”); Código de Trabajo, art. 13 (Dom. Rep.) (enterprises “under the direction, control, or administration of others,” or constituting “an economic group” are jointly and severally liable in case of “fraudulent maneuvers”). Panamanian courts have generally applied the restrictive criteria of the statute. See, e.g., Corte Suprema de Justicia, Sala Tercera de lo Contencioso Administrativo y Laboral, Exp. No. 555-06, Nov. 24, 2006 (Pan.) (the fact that two enterprises are part of the same economic group does not imply joint and several liability in the absence of simultaneous or indistinct provision of services to both entities); Corte Suprema de Justicia, Sala Tercera de lo Contencioso Administrativo y Laboral, Exp. No. 738-13, Feb. 27, 2015 (Pan.) (declining to find joint and several liability among enterprises owned by the same shareholder since they had separate addresses and management, and the employee did not provide services to both entities). Interestingly, the same decision also cites with approval lessons by Brazilian scholar Octavio Bueno Magano describing an expansive conception of enterprise unity for employment law purposes. *Id.* at 5.

¹⁷⁴ Law No. 20.744, Sept. 20, 1974 [23003] B.O. 2, art. 33 (as enacted) (“Whenever one or more enterprises even if each has its own legal personality, are under the direction, control, or administration of others, or are so related that they constitute an industrial, commercial, or other type of group—whether permanent or temporary, or formed for the execution of specific works or tasks—they shall be jointly and severally liable, for the purposes of the obligations contracted by each of them with their workers and with social security institutions.”).

application of joint and several liability to instances of “fraudulent maneuvers” or “reckless management.”¹⁷⁵ Scholars note that this amendment was detrimental to workers by significantly reducing their enforcement options.¹⁷⁶ While Argentinean judicial decisions on shareholders’ and directors’ liability in the labor context have fluctuated considerably, the most influential precedents by the Supreme Court uphold limited liability in the absence of fraud or exceptional circumstances.¹⁷⁷

Currently, at least two other Latin American jurisdictions have broadly followed Brazil’s approach by explicitly imposing joint and several liability in corporate groups through statute, irrespective of abuse: (i) Venezuela since 2006, and (ii) Chile since 2014.¹⁷⁸ In both Venezuela and Chile, the legislative provisions were preceded by caselaw extending such liability to corporate groups.¹⁷⁹

Venezuela explicitly recognizes the principle of primacy of reality in its 1999 constitution, which provides that “[i]n labor relations, reality shall prevail over forms or appearances.”¹⁸⁰ A 2012

¹⁷⁵ Art. 31, Law No. 20.744, *supra* note 173.

¹⁷⁶ See, e.g., Horacio Schick, *La Solidaridad Laboral y su Prueba en Dos Supuestos: Grupos Económicos y Desestimación de la Personalidad Jurídica*, EDITORIAL LA LEY, Feb. 2, 2009; Alejandro Roger Witemburg, *Responsabilidad Solidaria Por Incumplimientos Laborales de Terceros*, PETROTECNIA 54 (2008).

¹⁷⁷ See, e.g., Emilio F. Moro, *Responsabilidad de socios y gerentes de sociedades de responsabilidad limitada por irregularidades laborales y fraudes societarios*, 8 REVISTA ARGENTINA DE DERECHO SOCIETARIO (2014); Marina Martínez, *Inoponibilidad de la personalidad societaria en materia laboral. Fundamentos de su justicia vs. inseguridad jurídica*, 5 REVISTA ARGENTINA DE DERECHO SOCIETARIO (2013). “P., A.E. c/ T.P. S.A. s/ Indemnización de Ley,” Cámara Civil, Comercial, Laboral y Minería, 5 de marzo de 2004, Sumario de Fallo, SAIJ: SUQ0016726 illustrates this interpretation: “It is correct that the mere existence of a close relationship among enterprises forming a permanent economic group is not sufficient to impose joint and several liability on entities that were not the direct employer of the worker. The current wording of Article 31 of the Employment Contract Law (L.C.T.) — which differs from the original version of Law No. 20,744 — requires, in addition, the presence of fraudulent maneuvers or reckless conduct on the part of the employer.”

¹⁷⁸ Decreto No. 4.447, Apr. 25, 2006, Gaceta Oficial No. 38.426 of Apr. 28, 2006 (Reglamento de la Ley Orgánica del Trabajo) (Venez.), art. 22 (“Employers who form part of a group of enterprises shall be jointly and severally liable among themselves for labor obligations contracted with their workers.” Art. 22, paragraph one, defines “group of enterprises” as enterprises “subject to common management or control” which “constitute a permanent economic unit, regardless of the different natural or legal persons responsible for operating them”); Código del Trabajo [Cód. Trab.] (Labor Code) (as amended by Law No. 20760, Julio 4, 2014, Diario Oficial, art. 3 (“Two or more enterprises shall be considered as a single employer for labor and social security purposes when they share a common labor management and meet conditions such as the similarity or necessary complementarity of the products or services they produce or provide, or the existence of a common controlling entity.”)).

¹⁷⁹ Venezuelan scholars trace the “single entity” doctrine back to the 1981 case *Caballero Hurtado de Mendoza v. Procter & Gamble*, which held both P&G Venezuela and its Ohio-incorporated parent jointly and severally liable as a single economic reality. See Guzman, *supra* note 22, at 7 Héctor Armando Jaime Martínez, *La empresa y los grupos de empresa*, ENSAYOS LABORALES, TRIBUNAL SUPREMO DE JUSTICIA, COLECCIÓN DE ESTUDIOS JURÍDICOS N° 12 477 (Fernando Parra Aranguren ed., 2005) (noting that labor courts began recognizing the concept of corporate groups in the 1980s). Subsequent decisions both drew upon and expanded these concepts to extend liability for labor-related obligations to groups of companies. See, e.g., Iván Alí Mirabal Rendón, *Sustitución de Patrono, transferencia del trabajador y la Unidad económica. Algunas precisiones conceptuales*, 1 ÉTICA Y JURISPRUDENCIA 109, 134 (2003) (referring to the ruling *Gonzalez Rodríguez v. Aéreos Portugueses* in 1985); Luis Durán Gutiérrez v. Inversiones Comerciales, S.R.L. et al., Tribunal Supremo de Justicia, Sala de Casación Social, Sentencia 1165/2003, Sept. 18, 2003 (Venez.).

¹⁸⁰ CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA (1999), art. 89; CONSTITUCIÓN POLÍTICA DE COLOMBIA, art. 53.

Venezuelan reform further eroded limited liability by making shareholders responsible for wage payments.¹⁸¹

Chilean scholars identify a 1991 decision as a precursor to the doctrine of economic unity in corporate groups, despite the absence of statutory authorization at that time.¹⁸² This legal construction gained traction in the 2000s, particularly through rulings of the Chilean Supreme Court.¹⁸³ These jurisprudential developments were grounded in general principles of labor law, most notably the principle of the primacy of reality.¹⁸⁴ In 2014, Law 20,760—commonly known as Ley Multirut, as it was designed to fight the abusive proliferation of legal entity registrations (RUT)—imposed joint and several liability by statute for the first time. The law provides that “[t]wo or more companies shall be considered a single employer for labor and social security purposes when they share a common labor direction and meet conditions such as the similarity or necessary complementarity of the products or services they produce or provide, or the existence of a common controlling entity.”¹⁸⁵

The Supreme Court of Chile has made clear that fraud or abuse are not prerequisites for a finding of joint employment under Ley Multirut.¹⁸⁶ However, “common labor direction” is

¹⁸¹ Ley Orgánica del Trabajo, los Trabajadores y las Trabajadoras, Apr. 30, 2012, Gaceta Oficial No. 6.076 of May 7, 2012 (Venez.), art. 151. *See, e.g.*, José Luis García López v. Inversiones La Cita, S.R.L. et al., Tribunal Supremo de Justicia, Sala de Casación Social, Sentencia 449, Dec. 13, 2019 (Venez.); Mariana Coromoto Guevara Mayz y Mariolghy Carolina Indavec León v. Grupo de Especialidades Odontológicas Alto Centro, C.A. et al., Tribunal Supremo de Justicia, Sala de Casación Social, Sentencia 724, July 22, 2016 (Venez.).

¹⁸² Corte de Apelaciones de Santiago, 6 de junio de 1991, “Transporte de Valores Brink’s Chile Ltda c. Servicios Brink’s Ltda,” Rol de la causa: 307-91, recurso de apelación, Boletín Dirección del Trabajo No. 151/2001, p. 41 (Chile). *See* Irene Rojas Miño, *La Evolución de Los Grupos de Empresas en El Derecho del Trabajo en Chile: Desde su Irrelevancia Hasta la Ley N° 20.760 de 2014*, 43 REVISTA CHILENA DE DERECHO 137, 142 (2016).

¹⁸³ Rojas Miño, *supra* note 182. *See also* Sérgio Gamonal Contreras, *La Libertad Sindical y Grupos de Empresa*, REVISTA LABORAL CHILENA 49, 53 (2000); Historia de la Ley N° 20.760, Segundo Trámite Constitucional: Senado, Segundo Informe de Comisión de Trabajo, May 20, 2014 (Chile), at 10 (noting, in the preparatory works to Ley Multirut, that the Supreme Court had already adopted the notion of economic unity, recognizing joint and several liability in corporate groups).

¹⁸⁴ Raúl Fernández Toledo, *Empleador Único (Unidad Económica): Requisitos de Configuración, Alcance de la Exigencia Dirección Laboral Común y Procedencia de la Acción de Subterfugio. Comentario a la Sentencia de Nulidad de la Corte de Apelaciones de Concepción, Rol Reforma Laboral N° 76-2015*, 6 REVISTA CHILENA DE DERECHO DEL TRABAJO Y DE LA SEGURIDAD SOCIAL 195, 195 (2015).

¹⁸⁵ “Art. 3. (...) Two or more enterprises shall be considered as a single employer for labor and social security purposes when they have a common labor management and when conditions such as similarity or necessary complementarity of the products or services they produce or provide, or the existence of a common controller, are present. The mere fact of participation in the ownership of the enterprises does not, by itself, constitute any of the elements or conditions referred to in the previous paragraph. Enterprises that meet the criteria set out in the fourth paragraph shall be jointly and severally liable for compliance with labor and social security obligations arising from the law, individual employment contracts, or collective instruments. (...) Workers of all enterprises considered as a single employer may form one or more unions that group them together or maintain their existing organizations. They may also engage in collective bargaining with all the enterprises considered a single employer, or with each of them individually. Inter-enterprises unions that exclusively group workers from enterprises declared to be a single employer may submit collective bargaining proposals, and the employer shall be obliged to negotiate with such unions.”

¹⁸⁶ *See, e.g.*, Corte Suprema, 24 abril 2023, “Mondaca Ulloa Jorge Manuel c. Sociedad Transportes Andina del Sud Limitada,” Rol de la causa: 10060-2022, unificación de jurisprudencia laboral, Buscador Jurisprudencial de la Corte Suprema (Chile); Corte Suprema, 5 junio 2024, “Delgado Jofré Víctor c. Agencia de Viajes Andina del Sud,” Rol de la causa: 133250-2023, unificación de jurisprudencia laboral, Buscador Jurisprudencial de la Corte Suprema (Chile).

necessary, and mere common ownership does not suffice.¹⁸⁷ Nevertheless, the practical effect of the statute has been to ensure that individual workers have access to a broader pool of assets for satisfying their claims.¹⁸⁸ Unions seeking to fight excessive corporate fragmentation continue to face an uphill battle due to litigation costs and the strategic use of different human resource managers by firms—a practice that can defeat the application of the statute.¹⁸⁹ A striking example of such fragmentation is Japanese firm Komatsu, which prior to 2017 had established a record of 90 separate collective agreements in Chile.¹⁹⁰

Despite the lack of explicit statutory authorization, other Latin American jurisdictions have imposed joint and several liability in the group context through caselaw. Similar to other civil law jurisdictions, Article 1,183 of Peru’s Civil Code requires statutory or contractual authorization for the imposition of joint and several liability, which cannot be presumed.¹⁹¹ Nevertheless, a series of judicial decisions have held that Article 1,183 does not apply in the labor context, where the principle of primacy of reality and constitutional principles on worker protection are deemed to authorize the imposition of joint and several liability in corporate groups.¹⁹²

While some restrictive decisions were found as late as 2012 and 2014,¹⁹³ the most recent rulings favor joint and several liability in corporate groups in view of economic integration.¹⁹⁴ In a 2021 decision, Peru’s Constitutional Court upheld a ruling that found Logística y Transportes Alfa S.A.—a company within the same group but operating in a related, yet distinct, line of business—jointly and severally liable, at the enforcement stage, for the original employer’s labor debts.¹⁹⁵ This liability was imposed notwithstanding the fact that Logística y Transportes Alfa had not been a party to the original proceeding in which the obligations were established.¹⁹⁶ Similarly, Uruguay also has a longstanding tradition of recognizing liability within corporate groups in the

¹⁸⁷ See Corte Suprema, 21 agosto 2023, “Rodríguez Abarca Susana c. Servicios y Asesorías u Virtul S.A. y otro,” Rol de la causa: 10548-2022, unificación de jurisprudencia laboral, Buscador Jurisprudencial de la Corte Suprema (Chile).

¹⁸⁸ See, e.g., Pablo Scheihing Cuevas & Katerin López Cartagena, *Análisis de la Ley N° 20.760 sobre declaración de un solo empleador: revisión jurisprudencial a cinco años de su entrada en vigencia*, 3 REVISTA JURÍDICA DIGITAL UANDES 94, 111 (2019).

¹⁸⁹ Gonzalo Durán, *Marginalised and Fragmented Collective Bargaining—Impact on Workers’ Power, the Chilean Case*, 37 SOCIALISM & DEMOCRACY 12, 25 (2023).

¹⁹⁰ *Id.*

¹⁹¹ Article 1,183 of the Civil Code provides that “solidarity is not presumed. Only the law or the legal instrument establishing the obligation may expressly provide for it.”

¹⁹² For early decisions, see Corte Superior de Justicia de Lima, Sala Laboral, Exp. N° 5732-2005-IND (AyS), Lima, 10 de enero de 2006 (Peru); Corte Superior de Justicia de Lima, Sala Laboral, Exp. N° 176-2004-BE-AYS, Lima, 31 de mayo de 2004 (Peru). This interpretation was formally consolidated in 2008. See Corte Suprema de Justicia, Pleno Jurisdiccional Nacional Laboral, Tema 2: Responsabilidad Solidaria en las Obligaciones Laborales (2008) (Peru).

¹⁹³ See Corte Suprema de Justicia, Sala de Derecho Constitucional y Social Permanente, Casación Laboral No. 328-2012, Lima, 21 de septiembre de 2012 (Peru); Corte Suprema de Justicia, Sala de Derecho Constitucional y Social Permanente, Casación Laboral N° 13685-2013, La Libertad, 21 de junio de 2014 (Peru).

¹⁹⁴ Corte Suprema de Justicia, Segunda Sala de Derecho Constitucional y Social Transitoria, Casación Laboral N° 10759-2014, Lima, 19 de marzo de 2015 (Peru); Corte Suprema de Justicia, Segunda Sala de Derecho Constitucional y Social Transitoria, Casación Laboral N° 4871-2015, Lima, 29 de marzo de 2016 (Peru).

¹⁹⁵ Tribunal Constitucional, Pleno, Sentencia 604/2021, Exp. N° 00169-2021-PA/TC, Lima, 18 de mayo de 2021 (Peru).

¹⁹⁶ *Id.*

labor context based on the principle of primacy of reality, despite the lack of specific statutory authorization.¹⁹⁷

B. Other Global South Jurisdictions

(i) Statutory provisions

While several jurisdictions maintain a stricter regime of group liability for labor obligations, an increasing number of Global South jurisdictions have, since the turn of the twenty-first century, adopted a general rule of parent company liability. We observe the emergence of a broad standard of parent company liability for subsidiary obligations in the group law sections of the company law statutes of Angola, Cabo Verde, and Mozambique. These jurisdictions, all former Portuguese colonies, depart from Portugal's general group law regime since 1986, which limits parent company liability to cases involving 100% ownership or the existence of a contract of subordination—a framework that is often circumvented in practice by avoiding full ownership.¹⁹⁸ By contrast, under the most recent company law statutes of Cabo Verde (1999), Angola (2004), and Mozambique (2022), mere corporate control is sufficient to hold parent companies liable for debts of their subsidiaries, including, but not limited to, labor obligations.¹⁹⁹

Other Global South jurisdictions impose subsidiary liability on certain parent companies in cases of insolvency, or establish a presumption of such liability. Libya's Companies Act of 2010 imposes liability on parent companies for the debts of insolvent subsidiaries when they own more than 75% of the subsidiary's capital.²⁰⁰ Colombia's insolvency statute of 2006, in turn, creates a presumption of parent company liability for the debts of subsidiaries.²⁰¹ Kuwait's Companies Law of 2016 imposes liability on holding companies if the subsidiary has insufficient funds to fulfill its

¹⁹⁷ Américo Plá Rodríguez, *Los grupos de empresas*, 6 REVISTA ESPAÑOLA DE DERECHO DEL TRABAJO 187 (1981). For judicial decisions applying joint and several liability to firms within the same economic group, see, e.g., Tribunal de Apelaciones del Trabajo de 2º Turno, Sentencia 301/2011, 24 de agosto de 2011 (Uru.); Tribunal de Apelaciones del Trabajo de 3º Turno, Sentencia SEF-0014-000180/2013, 24 de junio de 2013 (Uru).

¹⁹⁸ Código das Sociedades Comerciais, art. 501, no. 1. See *supra* note 167 and accompanying text.

¹⁹⁹ For Cabo Verde, see Decreto-Legislativo n.º 3/1999 de 29 de Março de 1999, Boletim Oficial N.º 9, Série I (Mar. 29, 1999) (Cabo Verde), art. 413, no. 1 (“The controlling company is liable for the obligations of the controlled company, whether arising before or after the establishment of the control relationship and until its termination.”). A similar provision is reproduced in art. 413, no. 1, of the 2019 Code of Commercial Companies. Decreto-Legislativo n.º 2/2019 de 23 de Julho de 2019, Boletim Oficial N.º 80 Série I (July 23, 2019). For Angola, see Lei n.º 1/04 de 13 de Fevereiro de 2004 (Commercial Companies Law), Diário da República N.º 13 Série I (Feb. 13, 2004) (Angl.), art. 473, no. 1 (“The controlling company is liable for the obligations of the controlled company, whether arising before or after the establishment of the control relationship and until its termination.”); for Mozambique, see Decreto-Lei n.º 1/2022 de 25 de Maio de 2022 (Commercial Code), Boletim da República N.º 99, Série I (May 25, 2022) (Mozam.), art. 509, no. 1 (“The controlling company is liable for the obligations of the controlled company, whether arising before or after the establishment of the control relationship and until its termination.”).

²⁰⁰ Law No. 23 for the Year 1378 PD 2010 Regarding Commercial Activities (June 27, 2010) (Libya), art. 255 (“The Holding Company shall not be considered responsible for debts of its Subsidiaries. Although, the Holding Company shall be responsible for debts of its Subsidiary in case of its bankruptcy if the ration of what its owns exceeds (75%) seventy-five percent of its capital.”).

²⁰¹ L. 1116, diciembre 27, 2006, DIARIO OFICIAL (Colom.).

obligations, though commentators disagree on whether the relevant statutory rule also requires that the subsidiary has served the interest of the parent to its or its creditors' detriment.²⁰²

(ii) China, India, and South Africa

We also briefly review the legal regimes of China, India, and South Africa, which are jurisdictions that have embraced heterodox legal innovations for the benefit of stakeholders in corporate law.²⁰³ While each demonstrates some willingness to disregard corporate formalities to protect workers, their approaches currently fall short of the more stringent solutions found in Portugal and some Latin American jurisdictions.

China has no statute or judicial interpretation specifically addressing the treatment of limited liability vis-à-vis workers in corporate groups, and Chinese scholars have referred to the U.S. system of joint employment as a useful model.²⁰⁴ However, this does not mean that workers are invariably left without recourse to other legal entities in the corporate group. Chinese courts have relied on the emerging doctrine of "mixed employment" to hold companies within the same group jointly and severally liable as joint employers in special circumstances.²⁰⁵ Moreover, veil-piercing claims and other doctrines that mitigate asset partitioning are particularly common in China and appear more successful with respect to weaker creditors.²⁰⁶ Nevertheless, James Zeng's empirical study of asset departitioning cases in corporate groups through 2018 identified only two

²⁰² Law No. 1 of 2016 on the Promulgation of the Companies Law (Kuwait), Article 249 ("The company shall be jointly liable for fulfilling the obligations of its subsidiary companies in the following cases: 1. If the subsidiary company has insufficient funds to fulfil its obligations. 2. If the company holds in the subsidiary company a percentage of its capital enabling it to appoint most of the members of the board of directors or managers or to control decisions issued by the management. 3. If the subsidiary company takes decisions or performs acts aimed at the interest of the parent and controlling company, which negatively affecting the interest of the subsidiary company or its creditors, and which constitute the main reason for the subsidiary company's inability to fulfil its obligations."). Compare Edoardo Betto, *The New Company Law of Kuwait: A Small Step for Humankind, a Giant Leap for Kuwait*, 2013 INT'L BUS. L.J. 559, 572 (2013) ("the holding company will be jointly liable for the liabilities of its subsidiaries in instances where the latter is unable to fulfill its obligations due to insufficient funds or acts of the holding company affecting the interests of the subsidiary of its creditors") to Ibrahim Sattout & Gladys Doubet, *Reform of the Kuwaiti Companies Law: Simplification and Innovation to Encourage Investments*, 2015 INT'L BUS. L.J. 153 (2015) (suggesting that the requirements of article 249 are cumulative).

²⁰³ Mariana Pargendler, *The Global South in Comparative Corporate Governance*, in OXFORD HANDBOOK ON CORPORATE LAW AND GOVERNANCE (Jeffrey N. Gordon & Wolf-Georg Ringe eds., forthcoming).

²⁰⁴ 李梦云 [Li Mengyun], 多主体用工背景下刺破面纱理论在劳动法中的适用 [*Application of Piercing the Veil in Labor Law in the Context of Multi-Employer Relationships*] 5 南大法学 [NANJING UNIVERSITY LAW JOURNAL] 85 (2023) (translated by ChatGPT).

²⁰⁵ 民营企业劳动争议审判白皮书暨典型案例发布 [Guangzhou Labor Dispute Adjudication White Paper and Release of Typical Cases] (2020). We thank James Zeng for this reference. *But see* 重庆一/二/三/四中院发布三十个劳动争议典型案例 [Chongqing No. 1 / No. 2 / No. 3 / No. 4 Intermediate People's Courts Release Thirty Model Cases on Labor Disputes], AllBright Law Offices, Apr. 30, 2024.

²⁰⁶ Sharon Belenzon, Honggi Lee & Andrea Pattaconi, *Managing Risk in Corporate Groups: Limited Liability, Asset Partitioning, and Risk Compartmentalization*, 44 STRAT. MGMT. J. 2888, 2902 (2023) (finding that China had the highest piercing rate of 61% among the jurisdictions examined); James Si Zeng, *Entity Shielding and the Rule of "Debts-Follow-Assets" in China: An Empirical Law and Economics Analysis*, 95 AM. BANKR. L.J. 243, 270 (2021) (suggesting that courts are more likely to mitigate asset partitioning when the creditor is a non-financial institution).

examples involving labor claims.²⁰⁷ While veil piercing cases in the labor context appear to be increasing, no empirical studies have been conducted on this issue, which remains underexplored.²⁰⁸

In India, concerns with workers' protection and the "myriad devices" that could undermine it have a long historical pedigree linked to social justice considerations in its "Third World Jurisprudence."²⁰⁹ However, the Indian Supreme Court has relied on traditional notions of corporate separateness between parents and subsidiaries in the labor context.²¹⁰ South African courts, in turn, have recognized companies within the same group as joint employers under appropriate circumstances²¹¹ and have disregarded corporate separateness in cases of abuse,²¹² but have otherwise upheld the separateness of group companies in other instances.²¹³

VI. Conclusion

By examining the pioneering 1937 adoption of parent company liability for labor obligations in Brazil and mapping the erosion of corporate separateness in connection with workers' rights in other jurisdictions, this Article sheds new light on the evolution of corporate separateness and limited liability in corporate groups across jurisdictions and over time. First, the Brazilian experience shows how conflicts between local stakeholders and foreign capital—

²⁰⁷ James Si Zeng, *Entity Shielding and the Rule of "Debts-Follow-Assets" in China: An Empirical Law and Economics Analysis*, 95 AM. BANKR. L.J. 243, 270 (2021).

²⁰⁸ We thank James Zeng for this observation.

²⁰⁹ *Hussainbhai v. Alath Factory Thozhilali*, (1978) SCR (3)1073 (India). In this decision, which addressed whether a person hired by an independent labor contractor qualified as an employee for purposes of labor protections, the Supreme Court of India stated the following: "The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearance when myriad devices are resorted to when labour legislation casts welfare obligations on the real employer based on Articles 38, 39, 42, 43, and 43A of the Constitution. The contention of the petitioner as to the non-existence of the *vinculum juris* between the respondent and himself is, if at all, impeccable only in *laissez faire* economics 'red in tooth and claw' and under the Contract Act rooted in English common law as the human gap of a century yawns between this strict doctrine and the industrial Jurisprudence of today.").

²¹⁰ *Balwant Rai Saluja & Others v. Air India Ltd. & Others*, (2013) AIRONLINE 2013 SC 652 (India); *Globe Ground India Employees Union v. Lufthansa German Airlines*, (2019) 2 SCT 759 (India) § 18 (noting that "the corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes."). *But see*, piercing the corporate veil of a state-owned enterprise to hold the state liable as a controlling shareholder, *Kapila Hingorani v. State of Bihar*, 2003 (6) SCC 1 ("The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest.").

²¹¹ *Boumat Ltd v. Vaughan* 1992 (13) Indus. L.J. (Juta) 934 (S. Afr.) (holding that the holding company was the employer of the managing director of a subsidiary company); *Board of Executors Ltd v. McCafferty* 2000 (1) All SA 295 (A) (S. Afr.) ("If the appellant had direct ultimate control over the respondent's activities within the group the appellant was at least a co-employer of the respondent").

²¹² *Footwear Trading CC v. Mdlatose* 2005 (26) Indus. L.J. (Juta) 443 para 39 (S. Afr.) (the companies "were separate legal personalities but the effect of the machinations (...) was such that they were in effect joint or co-employers").

²¹³ *Group 6 Security Services (Pty) Ltd and Another v. Moletsane NO and Others* 2005 (26) ILJ 1693 (LC) para 58 (S. Afr.) (holding that "[t]here has to be some fault on the part of the directors or shareholders to make them jointly liable with the company."); *National Union of Metal Workers of South Africa v. Intervolve (Pty) Ltd and Others* 2015 (2) BCLR 182 (CC) para 54 (S. Afr.) (the majority opinion found that "[t]he separate legal personality of the three employers (...) cannot be willed away because there was some overlap in their corporate operations.").

operating through corporate group structures—can reshape the political economy of corporate separateness in favor of avoiding the use of legal entities to evade rules designed to protect domestic interests. The Brazilian Supreme Court has recently demonstrated the enduring power of this concept when it controversially employed the economic group doctrine to enforce compliance with its orders against the foreign company X by freezing the assets of the Brazilian subsidiaries of Starlink, another company under Elon Musk’s control.

Second, we find that most jurisdictions examined in both the Global North and South have evolved toward distinct, and more permissive, standards for disregarding corporate separateness for the benefit of workers—a trend that accelerated in the twenty-first century. This evolution, however, is not strictly linear and remains subject to political struggle and backlash. Such variation may also be due to the existence of other mechanisms for protecting workers in corporate groups besides parent company liability. Third, we document how Brazil’s statutory regime of joint and several liability for labor obligations within corporate groups has not only endured but expanded. Variants of this approach have emerged in a growing number of Global South jurisdictions but in only one Global North country examined: Portugal. Interestingly, Portugal aligned with the regime of its former colony more than 70 years after Brazil’s innovation. This pattern provides a striking example of reverse convergence in corporate governance, with the North adopting solutions first implemented in the South.

This evolution reveals how nationalist considerations and the North-South divide—influential across other aspects of corporate governance—can shape foundational doctrines such as corporate separateness and limited liability, which are traditionally regarded as technical legal constructs immune from such pressures. The gradual erosion of corporate separateness for the benefit of workers also highlights an important, yet underexplored, intersection between corporate law and social protection, distinct from the more prominent debates about shareholder value, corporate social responsibility, corporate purpose, or ESG. Taken together, these developments underscore the value of broadening both the substantive issues and the range of jurisdictions examined in comparative corporate governance, as well as considering the treatment of limited liability and corporate separateness in different areas of law.

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