

# **Priority of Workers versus Secured Creditors in Insolvency: A Comparative Analysis of the Global North and South**

Kevin E. Davis  
New York University School of Law

Mariana Pargendler  
Harvard Law School

Maria Eduarda Lessa  
University of São Paulo Law School

## **ABSTRACT**

We examine how priority of workers' claims vis-à-vis secured claims in insolvency varies across jurisdictions as a window into the evolution of distribution or social justice considerations in private law. A common assumption is that laws in the Global South are legal transplants from their common or civil law origins or have more recently acceded to "neoliberal" prescriptions of international organizations. Our findings challenge these assumptions by showing (i) Global South-driven legal innovation and cross-fertilization, with Mexico's 1917 constitution granting workers' claims priority over secured claims more than a decade before comparable French legislation was enacted, and (ii) significant persistence – and, in some cases, growing recognition – of priority for workers' claims across jurisdictions, despite strong contrary pressures from international organizations such as the World Bank and UNCITRAL. This study highlights the pitfalls in deducing global trends from the discourse of international organizations and the experiences of a handful of jurisdictions such as the United States, Germany, and China. We also discuss the role of institutional capacity, institutional complements and the economic environment as potentially relevant variables in explaining variation across jurisdictions.