

CONTRACT LAW AND INEQUALITY

Mariana Pargendler

Fundação Getulio Vargas Law School in São Paulo

Kevin E. Davis

New York University School of Law

Does contract law have any role to play in tackling economic inequality, one of the most pressing problems of our time? The orthodox answer to this question is no: contract law should promote autonomy, efficiency and/or justice in exchange, while distributional objectives should be dealt with exclusively through the fiscal system. Critics of this orthodoxy struggle with the prevailing understanding that contract law around the world has converged on doctrines that are insensitive to distributional considerations. This Article contributes to this debate by showing how courts in South Africa, Brazil and Colombia—prominent developing countries from different legal traditions—have recently diverged from orthodoxy to embrace the task of using contract law to address inequality. The emergence of contract law heterodoxy in developing countries draws attention to the existing, if more limited, instances of heterodoxy in the contract laws of the United States and Europe and to the stakes of contract law more generally. This analysis highlights how mounting inequality may increase the appeal of contract law heterodoxy and suggests that the present reign of contract law orthodoxy is neither universal nor inevitable.