

A Dream Deferred?

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Date : March 29, 2018

Mariana Pargendler, *How Universal is the Corporate Form? Reflections on the Dwindling of Corporate Attributes in Brazil* (2017), available at [SSRN](#).

The proliferation of what might generally be called the convergence literature over the past several decades has brought new insights into the study of corporate governance. In particular, it has allowed scholars to identify and seek to understand diversities in corporate practices, despite what appears to be more or less unity of form.

Mariana Pargendler's excellent new paper brings exciting insight to the conversation. Acknowledging the apparent universality of the core features of corporate law, she engages in a study of Brazilian law and its evolution over the past several decades to demonstrate that Brazilian courts and legislators have significantly diluted these elements. Significant diminution of the protection of limited liability, legal personality and capital lock-in, share transferability, delegated management, and ownership by investors are leading to a well-functioning but distinctly different concept of business enterprise, while continuing to appear to maintain most of the structural features of the corporate form.¹ Whether this transformation eventually will result in new legislation creating a new form of business enterprise is anybody's guess, and Pargendler sensibly notes the recency of these developments and the inability to predict where they go. Nevertheless, as she notes: "In some respects, Brazilian law is dream come true for progressive corporate law scholars . . ." (P. 53.) Her facilitation of that dream is a welcome addition to the literature.

Pargendler emphasizes these phenomena as uniquely Brazilian. But she also claims that "in many, though not all respects, there is at least a theoretical case that Brazil's watered down corporate regime is the most efficient model – not only for Brazil, but everywhere," (P. 5) observing that Brazil can be seen as "unknowingly" adopting a number of corporate reforms proposals developed by U.S. scholars.

This core argument derives from her analysis of the efficiency and distributional effects of Brazil's reforms, as well as the complementarity of the core features of the corporate form. Several arguments she suggests might support her view: (i) the contingency of efficiency on the institutional environment, suggesting elimination of the formal causes of agency problems when the institutional environment is unable to properly address them, (ii) the self-reinforcing nature of decorporatization due to the complementarity of core features of the corporate form, and (iii) the promotion of greater distributional equity through decorporatization.

The paper proceeds through a careful and detailed description of the principal changes in Brazilian corporate law, encompassing the five core areas identified above. Pargendler then provides persuasive analysis of each of the efficiency arguments she proposes, at the same time cautioning that the recent development of these phenomena prohibits strong conclusions at this point. Finally, she explores the applicability of Brazil's reforms and her arguments to other nations, especially developing countries.

The paper is fascinating. More important, Pargendler has opened up a truly new perspective for thinking about the way we should understand the corporate form and how we should think about its universal applicability. We have long understood that practices within the standard form diverge among nations. Pargendler takes the bold new step of proposing that forms can and, perhaps, should, change (and perhaps converge) as well.

1. Some of the changes apply primarily to close corporations, "but the trend toward decorporatization in Brazil is not limited to close corporations." (P. 53.) In addition Pargendler notes, among other arguments that even if the major changes were limited to close corporations, they nevertheless would be important because of the importance of close corporations to the economies of many countries. [?]

Cite as: Ezra Mitchell, *A Dream Deferred?*, JOTWELL (March 29, 2018) (reviewing Mariana Pargendler, *How Universal is the Corporate Form? Reflections on the Dwindling of Corporate Attributes in Brazil* (2017), available at SSRN), <https://corp.jotwell.com/a-dream-deferred/>.