**Lucian Bebchuk and the Study of Corporate Governance**

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# Introduction

It is with great pleasure that I write this Essay about Lucian Bebchuk, the James Barr Ames Professor of Law, Economics, and Finance at Harvard Law School. Professor Bebchuk is unquestionably the most prominent and influential scholar in the field of corporate field governance, and has mentored an exceptional number of corporate scholars. He has also been my own mentor and main doctoral supervisor, and the ten years that I have worked with him as a student, fellow, and co-author, have been an incomparable learning experience. This Essay provides a brief account of Bebchuk’s profound contributions to the field of corporate governance and his massive impact on scholarship, practice, and policy.

The field of corporate governance strives to understand how corporate rules, arrangements, and structures governing the relationships among companies’ directors, executives, shareholders and other stakeholders affect value creation. As discussed below, Bebchuk’s research has shed considerable light on the field, and created a basis for ensuing research on a wide range of issues. In the course of his career, Bebchuk has published more than 100 articles in the corporate field, and the Social Science Research Network (“SSRN”) has ranked him as fourth among all law professors in all fields–and *first* among all corporate law scholars–in terms of citations to his work. These numbers, however, tell only part of the story. Below, I will try to provide a fuller picture.

Part I discusses Bebchuk’s contributions. I first consider the broad range of areas of corporate research to which Bebchuk’s work has made major and influential contributions. I then consider certain aspects of Bebchuk’s research that has made it so consequential and that has led others to engage with it, whether by agreeing with and building on it, or by putting forward alternative positions in response to his insights. Here I discuss Bebchuk’s tools and modes of analysis, and some of the overarching themes and approaches shared by his work in disparate areas.

Part II then discusses Bebchuk’s immense impact. I first discuss how his studies have shaped and influenced subsequent academic work as well as discourse among practitioners and the judiciary. I then consider the influence he has had through his mentoring of many important corporate scholars. I conclude by discussing the substantial and concrete imprint his work has made on the evolution of policy and practice in the corporate field.

Due to space limitations, I will not discuss the significant contributions that Bebchuk has made outside the corporate field, especially in the earlier stages of his academic career. Here, it must suffice to mention that he has made significant contributions to the study of contracts,[[2]](#footnote-3) consumer law,[[3]](#footnote-4) property,[[4]](#footnote-5) litigation,[[5]](#footnote-6) procedure,[[6]](#footnote-7) enforcement,[[7]](#footnote-8) antitrust remedies,[[8]](#footnote-9) regulation of financial crises,[[9]](#footnote-10) and the normative foundations of law and economics.[[10]](#footnote-11) However, over time, he has been increasingly focused on the corporate field, and this Essay will be devoted exclusively to this field.

# Contributions: Significance and Nature

* 1. *Range*

When Bebchuk was elected as a Fellow of the American Academy of Arts and Sciences, already two decades ago, the Academy cited him for making “major contributions to the study of corporate control, governance and insolvency.” Since that time, Bebchuk’s contributions have continued to accumulate and shape additional areas in the corporate field, by now covering nearly every important area in this sphere.

In every area he has studied, Bebchuk’s research has provided a foundational analysis of key issues and/or a classic statement of the case for certain policy positions, always highly influential and leading to meaningful consequences. Below I list a number of key corporate areas to which Bebchuk has made such major contributions:

**[a short rider to be added later]**

*B. Tools and Modes of Analysis*

Much of Bebchuk’s research is based on an incentives analysis that is invariably executed and presented with exceptional analytical sharpness and clarity. When he examines a subject, his research almost always provides a novel analytical framework for assessing problems and the consequences of proposed solutions, and for generating new insights into the issue

Bebchuk’s research benefits from his strong training not only in law (he holds three law degrees) but also in economics. Bebchuk obtained a Ph.D. in Economics from Harvard with a dissertation on microeconomic theory. His command of the tools of financial economics is reflected by the publication of numerous articles in leading law reviews, and important and widely cited articles in all the leading journals in the fields of finance and economics.[[11]](#footnote-12)

A significant feature of Bebchuk’s research is his dedication to assessing his theoretical, conceptual insights in light of the evidence, examining the extent to which they are supported by observed factual patterns and empirical studies. For example, the managerial power account he and Jesse Fried (Harvard) put forward for executive pay was influential not just because of the persuasive force of its incentives analysis, but also because they grounded their position on a vast number of empirical studies. And where existing evidence was lacking, Bebchuk has rolled up his sleeves and done the hard work of obtaining new evidence, conducting empirical research and/or hand-collecting data to identify factual patterns. His original research has provided new evidence on a number of important issues, including state competition, staggered boards, the value effects of entrenching provisions, the long-term effects of hedge fund activism, and the stewardship activities of large index fund families. [[12]](#footnote-13)

All the above aspects of Bebchuk’s articles have led subsequent research closely engaging with his ground-breaking work. Some ensuing academic research has built on and taken advantage of analytical frameworks and concepts he advanced, while other studies have sought to debate his insights in order to posit alternative policy conclusions. As I will discuss further in Section II.A., Bebchuk’s research has considerably influenced subsequent academic discourse in every area in which he has worked, whether extending what he has done or even taking issue with it.

*C. Unity and Common Themes*

While Bebchuk’s work has made distinct and important contributions to many disparate areas in corporate law, the whole is substantially more than the sum of the parts. There is a significant “family resemblance”[[13]](#footnote-14) between the various modes of analysis that Bebchuk has employed in the different corporate subjects he has studied. Thus, a “Bebchuk view” or a “Bebchuk approach” has emerged from his corpus. Students of corporate governance have come to recognize and appreciate his unique perspective, regardless of whether they agree or disagree with Bebchuk’s policy positions on given issues.

While a detailed overview of the Bebchuk approach is beyond the scope of this Essay, I would like to briefly note some common themes. The first major one is incentive analysis, which identified how the desire of some participants to serve their private interests and thereby capture a larger fraction of the pie can produce distortions and inefficiencies that reduce the size of the available pie.

This common theme unites, for example, Bebchuk’s analysis of how the interests of managers to serve their private interests lead to distorted pay arrangements or value-decreasing outcomes of acquisition offers; his examination of how the private interests of controlling shareholders distort their incentives with respect to selling their controlling blocks and forgoing their control; and his study of how the private interests of shareholders in enhancing their reorganization payoffs might lead to value-reducing inefficiencies. Relatedly, Bebchuk’s research has shown in many different contexts how placing constraints on parties with power (e.g., executives considering a sale of their company or negotiating their pay, or controllers seeking related-party transactions) might be valuable, not just for the protection of weaker parties, but also for the sake of efficiency and value enhancement.

Second, Bebchuk uses sharp analysis to identify problems that rules and arrangements need to address, as well as identify those rules and arrangements that would work best. He often supports policies and designs remedies that seek to harness the power of incentives to obtain their goals. This common theme unites, for example, his analysis of how investor oversight and monitoring can be best used to address agency problems in companies, and how independent directors can be incentivized to effectively oversee controller conflicts.

Lastly, other recurring themes I would like to note are the careful attention to midstream problems and the evolution of governance arrangements over time; concerns that some choices and arguments by insiders may play a camouflaging role in making less salient how their private interests are being served; and the recognition that arrangements that have been viewed as instruments for addressing agency problems (including pay schemes and charter provisions) might themselves be a product of such agency problems. All these common concerns, and others, explain why Bebchuk’s many separate contributions to disparate corporate areas fuse together into a paradigmatic approach which provides a valuable basis for others to build on and use.

# Impact – In Academia and Beyond

1. *Shaping Academic Discourse*

A standard way of measuring the academic impact of a scholar’s research is by the number of citations to it. According to SSRN, Bebchuk has consistently been, and remains, the most cited corporate law scholar. It is worth highlighting, however, that Bebchuk’ research also stands out in another way: there is a wide array of prominent academics that have not merely cited and referred to Bebchuk’s analysis, but have also devoted articles addressing the substance of his work. Below I list several significant areas in which Bebchuk’s powerful influence is reflected in responses by prominent scholars.

*Takeover regulation:* When Bebchuk was still a graduate student, Professors Frank Easterbrook and Daniel Fischel (then at the University of Chicago) took part in an influential Stanford Law Review exchange with Bebchuk on takeover regulation;[[14]](#footnote-15) and soon thereafter, Professor Alan Schwartz (Yale University) published three response articles to Bebchuk’s research on the subject;[[15]](#footnote-16)

*Shareholder power and rights:* Bebchuk’s article on increasing shareholder power was the subject of a response article by Professor Steven Bainbridge (UCLA),[[16]](#footnote-17) who subsequently addressed Bebchuk’s positions in numerous posts on Bainbridge’s popular blog.[[17]](#footnote-18) Two articles by Professors Lynn Stout (then at UCLA) and an article by Professor Jonathan Macey (Yale) and also addressed Bebchuk’s views on this issue;[[18]](#footnote-19)

*State competition:* Bebchuk’s proposal for a new approach to jurisdictional competition in corporate law attracted response articles by Professor Jonathan Macey (Yale), Stephen Choi (NYU) and Andrew Guzman (then at Berkeley);[[19]](#footnote-20)

*Executive compensation:* Bebchuk’s widely acclaimed book co-authored with Jesse Fried (Harvard), on executive pay was the subject of response pieces by professor Jeffrey Gordon (Columbia) and former SEC Chair Arthur Levitt,[[20]](#footnote-21) as well as a large number of book review essays by prominent academics;[[21]](#footnote-22)

*Corporate political spending:* Bebchuk’s research in support of mandatory disclosure of corporate spending was the subject of a symposium law review issue with five response articles;[[22]](#footnote-23) and

*Stakeholder capitalism*: Bebchuk's current research on stakeholder capitalism is the subject of response articles by Professors Einer Elhauge (Harvard) and Colin Mayer (Oxford),as well as the center of high-profile debates at Oxford and London Business School.[[23]](#footnote-24)

Finally, while the above discussion has focused on corporate law scholarship, Bebchuk’s work has also had considerable influence on financial economists. To illustrate, his work on executive compensation was the subject of response articles by Economics Nobel Laureate Bengt Holmstrom and former Chairman of the Council of Economic Advisors Glen Hubbard; the option scheme he devised for corporate reorganizations was embraced by Economics Nobel Laureate Oliver Hart as a key element of his proposal for improving bankruptcy procedures; Bebchuk’s article on staggered boards was listed in the *Journal of Financial Economics’* Hall of Fame of most-cited articles; and more than 1,200 empirical studies have applied the entrenchment index developed in Bebchuk’s research with Alma Cohen and Alan Ferrell (Harvard).[[24]](#footnote-25)

*B. Mentoring of Future Academics*

It has been said that "[t]he one concerned with days, plants wheat; with years, plants trees; with generations, educates people." Bebchuk has had an unparalleled impact on the field not only because of the power of his writing, but also due to his educating and mentoring many of the field’s significant scholars over the years. During his years of teaching, Bebchuk has mentored over forty students and postdocs who are now full-time academics, most of them in the corporate field.[[25]](#footnote-26)

One key model he has widely used (to the best of my knowledge, more than any other law professor) is to provide many of his mentees the opportunity to co-author articles with him. In this way, working closely with Bebchuk on a joint project at his “studio,” his mentees could learn first-hand from how to create, develop, hone, and present ideas. This unique experience, as I can attest first hand, significantly contributed to the mentees’ professional development into scholars, improving their work for many years to come.

Fourteen legal scholars currently teaching at law schools co-authored articles with Bebchuk when they were students or postgraduate research fellows prior to embarking on their teaching careers. In addition to myself, this list includes the following thirteen law professors: Oren Bar-Gill (Harvard); Michal Barzuza (University of Virginia); Howard Chang (University of Pennsylvania); Allen Ferrell (Harvard); Jesse Fried (Harvard); Andrew Guzman (UCLA); Assaf Hamdani (Tel Aviv University); Scott Hirst (Boston University); Robert Jackson (NYU); Christine Jolls (Yale); Marcel Kahan (NYU); Holger Spamann (Harvard); and David Walker (Boston University).[[26]](#footnote-27)

Over the years, some of Bebchuk’s mentees have gone on to produce works that are quite consistent with Bebchuk’s pro-shareholder approach, while others took views opposing those of Bebchuk on various issues. Regardless of the policy positions these mentees have reached, all of their research since leaving the Bebchuk “studio” benefitted from and was often inspired by what they learned there.

*C. Practitioner and Judicial Discourse*

I now turn to discuss the considerable influence that Bebchuk’s research has had outside academia – on practitioners and policymakers, as well as on practices, policies, and rules in the corporate space. To begin, although practitioners often do not devote much attention to academic writings, Bebchuk’s research has attracted attention not only from academics but also from prominent practitioners. For example, the law firm of Wachtel Lipton. Rosen & Katz devoted a great deal of time and effort responding to Bebchuk’s writings on the importance of shareholder rights and the costs of management insulation. Martin Lipton, the firm’s co-founder and creator of the poison pill, co-authored three substantial law review articles addressing articles by Bebchuk on takeover defenses, shareholder rights to the proxy access, and reforming corporate elections.[[27]](#footnote-28) Other senior firm partners authored two additional law review articles responding to Bebchuk’s articles on shareholder power to set the rules and stakeholder capitalism.[[28]](#footnote-29)

Furthermore, Wachtel Lipton issued numerous widely circulated firm memos, which were often subsequently published online as blog posts in response to Bebchuk’s research and policy positions. In particular, I identified 30 such memos that were issued over the past decade, with a majority of them (24) authored or co-authored by the founding partner Martin Lipton.[[29]](#footnote-30)

Delaware judges have also responded to Bebchuk’s writings. During the time he served as a Delaware Chancery Court and Supreme Court, Judge Leo Strine published four articles discussing Bebchuk’s articles on takeover defenses, staggered boards, shareholder power, and the myth of short-termism.[[30]](#footnote-31) Although some of Bebchuk’s research suggested that Delaware offers excessively pro-management incentives, many significant Delaware opinions have cited his work.[[31]](#footnote-32) Such is Bebchuk’s impact on corporate law that in the important Delaware case of *Airgas Inc. v. Air Prods. And Chems., Inc.*, Chancellor Chandler, citing Bebchuk as supporting the view that management should let shareholders decide the fate of acquisition offers, stated in the course of his opinion that the bidder running a proxy fight could have nominated “… three Lucian Bebchuks” but chose not to do so.[[32]](#footnote-33)

Business leaders and practitioners have also grappled with Bebchuk’s writings. Two Vice Chairs of Blackrock, Matthew Mallow and Jasmin Sethi wrote an important article in NYU’s *Journal of Law & Business* discussing in detail with Bebchuk’s analysis of the stewardship of the Big Three index fund managers.[[33]](#footnote-34) Similarly, Bebchuk’s book on executive pay was the subject of response articles by prominent executive pay advisors Joseph Bachelder and Ira Kay, as well as former business leaders John Biggs, John Bogle, and Kenneth West.[[34]](#footnote-35)

*D. Impact on Policy and Practice*

Although Bebchuk’s writings suggest that strong structural problems impede the adoption of adequate constrains on corporate managers and controllers, his ideas and scholarship have made significant contributions to the adoption of practices and policies moving in the directions his research has recommended. The following is a (partial) list of developments that have been supported, influenced, and informed by his writings:

* The widespread opposition to takeover defenses in general, and to staggered boards in particular, among institutional investors, and the resulting dismantling of staggered boards and other structural defenses in many public companies;
* The growing openness among institutional investors to consider proposals of activist hedge funds;
* The SEC’s adoption of a proxy access rule (which was invalidated on procedural grounds by the U.S. Court of Appeals, D. C. Circuit) and the subsequent proliferation of proxy access by-laws;
* The expansion of disclosure requirements, including regarding executive pensions and hedging, for executive compensation;
* The rise in support for pay arrangements that tie compensation to long-term results;
* The acknowledgement by regulators that ill-designed pay arrangements can induce excessive risk-taking;
* The SEC’s expected consideration of a rule mandating disclosure of corporate political spending; and
* The Council of Institutional Investors’ and the index providers’ initiatives with respect to dual-class structures.

Finally, this section would not be complete without making mention of an important initiative in which Bebchuk took a direct and active role. His research suggested that collective action problems impede the adoption of governance improvements even when such reforms are supported by most investors. This work led Bebchuk to establish and direct a clinic at Harvard Law School for three academic years, the Shareholder Rights Project (SRP), that represented several public pension funds and a foundation in submitting board declassification proposals to major public companies.[[35]](#footnote-36) Bebchuk’s mentee Scott Hirst was the SRP’s Associate Director, and other mentees currently in academia who worked at the clinic include Yaron Nili (University of Wisconsin) and myself.

The SRP’s efforts resulted in board declassification in more than one hundred public companies, with most declassifications resulting from agreements negotiated with these companies. This initiative dramatically reduced the incidence of board declassification among S&P 500 companies, with companies moving to hold annual elections, for which there is massive support among institutional shareholders. The work of the SRP serves as an inspiring model for how large-scale adoption of an arrangement supported by investors can, in some cases, be produced with modest resources.[[36]](#footnote-37)

# Going Forward

As of the writing of this Essay, Bebchuk tirelessly continues making major contributions, acting as a key player in existing central debates, such as those on stakeholder capitalism and index fund stewardship, and working on joint research with his mentees. Therefore, although there is much to celebrate about Bebchuk’s work thus far, there are also substantial reasons to expect even more from the chapters of his career yet to be written. Judging by the past, students and scholars of corporate governance and more have much to look forward to.

1. \* Associate Professor of Law, Tel Aviv University; Senior Research Fellow and Lecturer on Law, Harvard Law School Program on Corporate Governance. This Essay was written for XXX. [↑](#footnote-ref-2)
2. See “Information and the Scope of Liability for Breach of Contract: The Rule of Hadley v. Baxendale,” 7 *Journal of Law*, *Economics, and* *Organization* 284-312 (1991); “Reconsidering Contractual Liability and the Incentive to Reveal Information,” 51 *Stanford Law Review* 1615-1627 (1999); Bebchuk and Ben-Shahar, “Pre-Contractual Reliance,” 30 *Journal of Legal Studies* 423-457 (2001). [↑](#footnote-ref-3)
3. See, e.g., Bebchuk and Posner, “One-Sided Contracts in competitive Consumer Markets,” 104 *Michigan Law Review* 827-836 (2006). [↑](#footnote-ref-4)
4. See, e.g., Bebchuk, “Property Rights and Liability Rules: The Ex Ante View of the Cathedral,” 100 *Michigan Law Review* 601-639 (2001); Bebchuk and Bar-Gil, “Consent and Exchange,” 39 *Journal of Legal Studies*375-397 (2010). [↑](#footnote-ref-5)
5. See, e.g., Bebchuk, “Litigation and Settlement under Imperfect Information,” 15 *Rand Journal of Economics* 404-415 (1984); Bebchuk, “Suing Solely to Extract a Settlement Offer,” 17 *Journal of Legal Studies* 437-450 (1988); Bebchuk, “A New Theory Concerning the Credibility and Success of Threats to Sue,” 25 *Journal of Legal Studies* 1-26 (1996). [↑](#footnote-ref-6)
6. See Bebchuk and Chang, “An Analysis of Fee-Shifting Based on the Margin of Victory: On Frivolous Suits, Meritorious Suits, and the Role of Rule 11,” 25 *Journal of* *Legal Studies* 371-403 (1996). Bebchuk and Chang, “The Effect of Offer-of-Settlement Rules on the Terms of Settlement,” 28 *Journal of Legal Studies* 489-513 (1999) [↑](#footnote-ref-7)
7. See e.g., Bebchuk and Kaplow, “Optimal Sanctions When Individuals are Imperfectly Informed about the Probability of Apprehension,” 21 *Journal of Legal Studies* 365-370 (1992). [↑](#footnote-ref-8)
8. See Bebchuk and Walker, “The Overlooked Corporate Finance Problems of a Microsoft Breakup,” 56 *The Business Lawyer* 459-481 (2001). [↑](#footnote-ref-9)
9. See Bebchuk,“Buying Troubled Assets” 26 *Yale Journal on Regulation*, 343-358 (2009); Bebchuk and Goldstein, “Self-Fulfilling Credit Market Freezes,” 24 *Review of Financial Studies* 3519-3555(2011). [↑](#footnote-ref-10)
10. See, e.g., Bebchuk, “The Pursuit of a Bigger Pie: Can Everyone Expect a Bigger Slice?” in 8 S*ymposium on Efficiency as a Legal Concern, Hofstra Law Review* 671-709 (1980). [↑](#footnote-ref-11)
11. Bebchuk’s research was published in in each of the three leading journals in finance, *the Journal of Finance*, the *Journal of Financial Economics*, and the *Review of Financial Studies*; in leading journals in economics including the *Quarterly Journal of Economics*, the *Rand Journal of Economics*, and the *Journal of Economic Perspectives*; as well as in each of the leading peer-reviewed journals in law and economics, the *Journal of Legal Studies*, the *Journal of Law and Economics*, and the *Journal of Law, Economics, and Organization*. [↑](#footnote-ref-12)
12. See, e.g., XXX, supra note XXX. [↑](#footnote-ref-13)
13. For the introduction of the concept of family resemblance, see Ludwig Wittgenstein, Philosophical investigation (1953). [↑](#footnote-ref-14)
14. Frank H. Easterbrook & Daniel R. Fischel, *Auctions and Sunk Costs in Tender Offers*, 35 STAN. L. REV. 1 (1982), replying to Lucian Bebchuk’s response to their earlier work, *The Case for Facilitating Competing, Tender Offers*, 95 HARV. L. REV. 1028 (1982). For Bebchuk's reply, *see* Lucian Bebchuk, *The Case for Facilitating Competing Tender Offers: A Reply and Extension*, 35 STAN. L.REV. 23 (1982). [↑](#footnote-ref-15)
15. Alan Schwartz, *Search Theory and the Tender Offer Auction*, 2 J. L. ECON. ORG. 229 (1986); Alan Schwartz, *Bebchuk on Minimum Offer Periods*, 2 J. L. ECON. ORG. 271 (1986) (responding to Bebchuk's pro-auctions theories); Allan Schwartz, *The Sole Owner Standard Reviewed*, 17 J. Leg. Stud. (1988) (responding to Bebchuk’s work on undistorted choice in corporate takeovers). [↑](#footnote-ref-16)
16. Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 Harv. L. Rev. 1735 (2006). [↑](#footnote-ref-17)
17. A search on [www.ProfessorBainbridge.com](http://www.ProfessorBainbridge.com) has identified 83 posts during the past [\_\_] years that engage with Bebchuk’s research and policy proposals. \ [↑](#footnote-ref-18)
18. Lynn A. Stout, *Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex Post/Ex Ante Valuation Problem*, 55 Stan. L. Rev. 845 (2002) (responding to Lucian Bebchuk et al., *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy*, 54 Stan. L. Rev. 887 (2002)); Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 VA. L. REV. 789 (2007); Jonathan R. Macey, *Too Many Notes and Not Enough Votes: Lucian Bebchuk and Emperor Joseph II Kvetch About Contested Director Elections and Mozart's Seraglio*, 93 Va. L. Rev. 759, 772 (2007) (both responding to Lucian A. Bebchuk, The Myth of the Shareholder Franchise, 93 Va. L. Rev. 675 (2007)). [↑](#footnote-ref-19)
19. See Stephen Choi & Andrew Guzman, *Choice and Federal Intervention in Corporate Law*, 87 Va. L. Rev. 961 (2001). Jonathan Macey, Displacing Delaware: Can the Feds Do a Better Job Than the States in Regulating Takeovers? Business Lawyer 1025 (2002) (both responding to Bebchuk and Ferrell, “Federal Intervention to Enhance Shareholder Choice,”87 *Virginia Law Review*, 993-1006 (2001)). [↑](#footnote-ref-20)
20. See Jeffrey N. Gordon, Executive Compensation: If There’s a Problem, What’s the Remedy? The Case for “Compensation Discussion and Analysis,” 30 Journal of Corporation Law 675-702 (2005); Arthur Levitt Jr., Corporate Culture and the Problem of Executive Compensation, 30 Journal of Corporation Law 749-754 (2005). [↑](#footnote-ref-21)
21. *See, e.g.,* Stephen M. Bainbridge, [*Executive Compensation: Who Decides?*](http://www.pay-without-performance.com/Bainbridge_Executive-Compensation_Who-Decides.pdf), 83 TEX. L. REV. 1616 (2005); William W. Bratton, The Academic Tournaments over Executive Compensation, 93 California Law Review 1-25 (2005); John E. Core, Wayne R. Guay, and Randall S. Thomas, *Is U.S. CEO Compensation Inefficient Pay Without Performance?,* 103 MICH. L. REV. 1142 (2005); Alexander Gümbel, *Managerial Power and Executive Pay,* 26 OXF. J. LEG. STUD. 219 (2006); and Michael S. Weisbach, [*Optimal Executive Compensation vs. Managerial Power: A Review of Lucian Bebchuk and Jesse Fried's Pay without Performance: The Unfulfilled Promise of Executive Compensation*](http://www.pay-without-performance.com/Weisbach_review.pdf), 45 J. ECON. LIT. 419 (2007). [↑](#footnote-ref-22)
22. Paul Atkins, *Materiality: A Bedrock Principle Protecting Legitimate Shareholder Interests against Disguised Political Agendas*, 3 Harv. Bus. L. Rev. 363 (2013); James R. Copland, *Against an SEC Mandated Rule on Political Spending Disclosure: A Reply to Bebchuk and Jackson*, 3 Harv. Bus. L. Rev. 381, 404-06 (2013); Matthew Lepore, *A Case for the Status Quo: Voluntary Disclosure*, 3 Harv. Bus. L. Rev. 413 (2013); Bradley A. Smith & Allen Dickerson, *The Non-Expert Agency: Using the SEC to Regulate Partisan Politics*, 3 Harv. Bus. L. Rev. 419, 422-23 (2013); J. W. Verret, *The Securities Exchange Act is a Material Girl, Living in a Material World: A Response to Bebchuk and Jackson’s “Shining Light on Corporate Political Spending,”* 3 Harv. Bus. L. Rev. 453, 468-70 (2013). An additional response to Bebchuk’s research on political spending was put forward by Michael D. Guttentag, *On Requiring Public Companies to Disclose Political Spending*, 2014 COLUM. BUS. L. REV. 593 (2014). [↑](#footnote-ref-23)
23. See Video of a debate between Lucian Bebchuk and Alex Edmans hosted by London Business School (Dec. 10, 2020), available at https://www.youtube.com/watch?v=3tMYfLLzoi4; and Video of the Oxford “Big Debate” between Lucian Bebchuk and Colin Mayer (Jun. 25, 2020), available at https://www.youtube.com/watch?v=cUpyL1zVF50. [↑](#footnote-ref-24)
24. *See* Leeor Ofer, *More than 1,200 Empirical Studies Apply the Entrenchment Index of Bebchuk, Cohen and Ferrell (2009)*, Harv. L. Sch. F. Corp. Gov. & Fin. Reg. (Feb. 24, 2021). [↑](#footnote-ref-25)
25. See list at <http://www.law.harvard.edu/faculty/bebchuk/students.shtml>. [↑](#footnote-ref-26)
26. [↑](#footnote-ref-27)
27. Martin Lipton, *Pills, Polls, and Professors Redux,* 69 U. Chi. L. Rev. 1037 (2002) (responding to Lucian Arye Bebchuk, *The Case Against Board Veto in Corporate Takeovers,* 69 U. Chi. L. Rev. 973 (2002); Martin Lipton & Steven A. Rosenblum, *Election Contests in the Company's Proxy: An Idea Whose Time Has Not Come,* 59 Bus. Law. 67 (2003) (responding to Lucian Arye Bebchuk, T*he Case for Shareholder Access to the Ballot,* 59 Bus. Law. 43 (2003); Martin Lipton & William Savitt, *The Many Myths of Lucian Bebchuk,* 93 Va. L. Rev. 733 (2007) (responding to Lucian A. Bebchuk, *The Myth of the Shareholder Franchise,* 93 Va. L. Rev. 675 (2007)). [↑](#footnote-ref-28)
28. Theodore N. Mirvis et al., *Bebchuk's "Case for Increasing Shareholder Power": An Opposition*, 120 Harv. L. Rev. F. 43 (2007) (*responding to* Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, [118 Harv. L. Rev. 833 (2005)); William Savitt, article forthcoming in Cornell.](https://advance.lexis.com/document/?pdmfid=1000516&crid=0e8372c8-8186-4e15-afea-3ad6d9f1cc8c&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A4JRT-1WT0-02BM-Y09S-00000-00&pdcontentcomponentid=7339&pdteaserkey=sr5&pditab=allpods&ecomp=7zt4k&earg=sr5&prid=129b5d44-288e-4f2b-b200-9a8d699e9e49)  [↑](#footnote-ref-29)
29. Based only on review of the Harvard blog and thus limited to memos published as such posts. For an example of such a post, see the 20+ page post on hedge fund activism, *see* Martin Lipton, *Empiricism and Experience; Activism and Short-Termism; the Real World of Business*, HARV. L. SCH. F. ON CORP. GOV. (Oct 28, 2013), https://corpgov.law.harvard.edu/2013/10/28/empiricism-and-experience-activism-and-short-termism-the-real-world-of-business/. [↑](#footnote-ref-30)
30. William T. Allen et al., *The Great Takeover Debate: A Meditation on Bridging the Conceptual Divide*, 69 U. Chi. L. Rev. 1067 (2002); Leo E. Strine, Jr., *The Professional Bear Hug: The ESB Proposal as a Conscious Effort to Make the Delaware Courts Confront the Basic "Just Say No" Question*, 55 Stan. L. Rev. 863 (2002); Leo E. Strine, Jr., *Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America*, 119 Harv. L. Rev. 1759 (2006); Leo E. Strine, Jr., *Can We Do Better by Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law*, 114 Colum. L. Rev. 449 (2014). [↑](#footnote-ref-31)
31. See, e.g., Unitrin. A lexis search identified over twenty Delaware Supreme Court and Chancery Court Opinions that cited Bebchuk’s articles. [↑](#footnote-ref-32)
32. *See* Air Prods. & Chems., Inc. v. Airgas, Inc., 16 A.3d 48, 203 (Del. Ch. 2011) (“As an example, Air Products could have proposed a slate of three Lucian Bebchuks (let's say Lucian Bebchuk, Alma Cohen, and Charles Wang) for election”). [↑](#footnote-ref-33)
33. Barbara Novick, *The “Goldilocks Dilemma:’ A Response to Lucian Bebchuk and Scott Hirst,”* 120 Colum. L. Rev. Forum 80 (2020); Matthew J. Mallow & Jasmin Sethi, *Engagement: The Missing Middle Approach in the Bebchuk-Strine Debate*, 12 N.Y.U. J.L. & Bus. 385, 392 (2016); Matthew Mallow, *Asset Management, Index Funds, and Theories of Corporate Control* 33 (Nov. 12, 2019) (unpublished manuscript), https://corpgov.law.harvard.edu/wp-content/uploads/2019/11/Matthew-J.-Mallow.pdf. [↑](#footnote-ref-34)
34. Ira Kay, *CEO Pay for Performance: The Solution to Managerial Power*, 30 Journal of Corporation Law 785-789 (2005); John H. Biggs, *Executive Compensation: Perspectives from a Former CEO*, 30 Journal of Corporation Law 755-760 (2005); John C. Bogle, *The Executive Compensation System is Broken,* 30 Journal of Corporation Law 761-765 (2005); Kenneth West, *Pay without Performance: An Executive's Perspective*, 30 Journal of Corporation Law 791-794 (2005). [↑](#footnote-ref-35)
35. Information about the SRP and what it accomplished can be found at http://www.srp.law.harvard.edu/index.shtml, and in an article about its work co-authored by Lucian Bebchuk, Scott Hirst, & June Rhee, *Towards the Declassification of S&P 500 Boards*, Harv. Bus. L. Rev. 157 (2013). [↑](#footnote-ref-36)
36. See Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. Cal. L. Rev. (forthcoming, 2021). [↑](#footnote-ref-37)