

# 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. Bebchuk has made fundamental, influential, and lasting contributions to the field of corporate 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 coauthor 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 major impact on scholarship, practice, and policy.

The field of corporate governance strives to understand how corporate rules, arrangements, and structures governing the relationships among various participants (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 subsequent research on a wide range of issues. In the course of his career, Bebchuk has published more than one hundred 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 try to provide a fuller picture.

Part I discusses Bebchuk's contributions. I first consider the broad range of areas in corporate governance to which Bebchuk's work has made major and influential contributions. I then consider certain aspects of Bebchuk's research that have made it so

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consequential and led others to engage with it, whether by agreeing with and building on it or by presenting alternative positions that address his insights. Here, I also discuss Bebachuk'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 Bebachuk's impact. I first show how his studies have shaped and influenced subsequent academic work as well as discourse among practitioners and policy makers. I then consider the influence he has had through his mentorship of many important corporate scholars. I conclude in Part III by discussing the substantial 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 Bebachuk 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,<sup>1</sup> consumer law,<sup>2</sup> property,<sup>3</sup> settlement decisions,<sup>4</sup> suits made solely to extract a settlement offer,<sup>5</sup> fee-

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<sup>1</sup> See generally Lucian Arye Bebchuk & Steven Shavell, *Information and the Scope of Liability for Breach of Contract: The Rule of Hadley v. Baxendale*, 7 J.L. ECON. & ORG. 284 (1991); Lucian Arye Bebchuk & Steven Shavell, *Reconsidering Contractual Liability and the Incentive to Reveal Information*, 51 STAN. L. REV. 1615 (1999); Lucian Arye Bebchuk & Omri Ben-Shahar, *Precontractual Reliance*, 30 J. LEGAL STUD. 423 (2001).

<sup>2</sup> See generally, e.g., Lucian A. Bebchuk & Richard A. Posner, *One-Sided Contracts in Competitive Consumer Markets*, 104 MICH. L. REV. 827 (2006).

<sup>3</sup> See generally Lucian Arye Bebchuk, *Property Rights and Liability Rules: The Ex Ante View of the Cathedral*, 100 MICH. L. REV. 601 (2001). See also Oren Bar-Gill & Lucian Arye Bebchuk, *Consent and Exchange*, 39 J. LEGAL STUD. 375 (2010).

<sup>4</sup> See generally Lucian Arye Bebchuk, *Litigation and Settlement Under Imperfect Information*, 15 RAND J. ECON. 404 (1984).

<sup>5</sup> See generally Lucian Arye Bebchuk, *Suing Solely to Extract a Settlement Offer*, 17 J. LEGAL STUD. 437 (1988); Lucian Arye Bebchuk, *A New Theory Concerning the Credibility and Success of Threats to Sue*, 25 J. LEGAL STUD. 1 (1996).

shifting rules,<sup>6</sup> enforcement,<sup>7</sup> antitrust remedies,<sup>8</sup> regulation of financial crises,<sup>9</sup> and the normative foundations of law and economics.<sup>10</sup> However, over time, he has been increasingly focused on the corporate field, and this Essay will be devoted exclusively to his contributions to this field.

## I. CONTRIBUTIONS: RANGE, SIGNIFICANCE, AND NATURE

### A. Range

When Bebchuk was elected as a fellow of the American Academy of Arts and Sciences about two decades ago, the Academy had already cited him for making “major contributions to the study of corporate control, governance and insolvency.”<sup>11</sup> Since that time, Bebchuk’s contributions have continued to accumulate and shape additional areas in the corporate field, and by now his contributions cover nearly every important area in this field.

In every area he has studied, Bebchuk’s research has provided a foundational analysis of key issues, a classic statement of the case for certain policy positions, or both. Below I list key corporate areas to which Bebchuk has made such major contributions. Since the focus of this Essay is on the contribution of Bebchuk’s corpus of work, I refer below to all articles coauthored by him as “Bebchuk articles” and leave for the citations in the footnotes to indicate coauthorships.

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<sup>6</sup> See generally Lucian Arye Bebchuk & Howard F. Chang, *An Analysis of Fee Shifting Based on the Margin of Victory: On Frivolous Suits, Meritorious Suits, and the Role of Rule 11*, 25 J. LEGAL STUD. 371 (1996); Lucian Arye Bebchuk & Howard F. Chang, *The Effect of Offer-of-Settlement Rules on the Terms of Settlement*, 28 J. LEGAL STUD. 489 (1999).

<sup>7</sup> See generally, e.g., Lucian Arye Bebchuk & Louis Kaplow, *Optimal Sanctions When Individuals Are Imperfectly Informed About the Probability of Apprehension*, 21 J. LEGAL STUD. 365 (1992).

<sup>8</sup> See generally Lucian Arye Bebchuk & David I. Walker, *The Overlooked Corporate Finance Problems of a Microsoft Breakup*, 56 BUS. LAW. 459 (2001).

<sup>9</sup> See generally Lucian A. Bebchuk, *Buying Troubled Assets*, 26 YALE J. ON REG. 343 (2009); Lucian A. Bebchuk & Itay Goldstein, *Self-Fulfilling Credit Market Freezes*, 24 REV. FIN. STUD. 3519 (2011).

<sup>10</sup> See generally, e.g., Lucian A. Bebchuk, *The Pursuit of a Bigger Pie: Can Everyone Expect a Bigger Slice?*, 8 HOFSTRA L. REV. 671 (1980).

<sup>11</sup> See *Bebchuk in American Academy of Arts and Sciences*, HARV. L. TODAY (Oct. 16, 2000), <https://perma.cc/STJ7-CQUN>.

*Management accountability and shareholder rights.* For companies led by professional managers without a controlling shareholder, Bebchuk's articles showed the importance of shareholder rights. One major article put forward a comprehensive case for strengthening shareholder power to replace directors.<sup>12</sup> Subsequent articles played a key role in the proxy access debate over shareholders' right to place candidates on the corporate ballot<sup>13</sup> and in the debate over annual elections of directors.<sup>14</sup> Finally, another major article provided a basis for granting shareholders the power to make some major corporate decisions, including decisions to amend the corporate charter.<sup>15</sup>

*The costs of insulation.* Bebchuk also conducted empirical studies that contributed substantially to understanding the costs of management insulation. An important Bebchuk article was the first to show that staggered boards are associated with lower valuation.<sup>16</sup> A subsequent and highly influential article identified six entrenching provisions that are associated with lower firm valuation and combined these provisions into a widely used index (the E-Index).<sup>17</sup>

*Executive compensation.* For Bebchuk, executive pay arrangements serve as a window to assess a company's corporate governance. In a widely acclaimed book (coauthored with Professor Jesse Fried), and the articles on which it was based, Bebchuk put forward a "managerial power account" of how management

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<sup>12</sup> See generally Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 VA. L. REV. 675 (2007).

<sup>13</sup> See generally Lucian Arye Bebchuk, *The Case for Shareholder Access to the Ballot*, 59 BUS. LAW. 43 (2003); Lucian A. Bebchuk & Scott Hirst, *Private Ordering and the Proxy Access Debate*, 65 BUS. LAW. 329 (2010).

<sup>14</sup> For Bebchuk articles providing a basis for opposing staggered boards and supporting annual elections of directors, see generally Lucian Arye Bebchuk, John C. Coates IV & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence & Policy*, 54 STAN. L. REV. 887 (2002); Lucian A. Bebchuk & Alma Cohen, *The Costs of Entrenched Boards*, 78 J. FIN. ECON. 409 (2005).

<sup>15</sup> See generally Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833 (2005) [hereinafter *The Case for Increasing Shareholder Power*]. For a sequel article replying to responses to this 2005 article, see generally Lucian A. Bebchuk, *Letting Shareholders Set the Rules*, 119 HARV. L. REV. 1784 (2006) [hereinafter *Letting Shareholders Set the Rules*].

<sup>16</sup> See generally Bebchuk & Cohen, *supra* note 14.

<sup>17</sup> See generally, e.g., Lucian Bebchuk, Alma Cohen & Allen Ferrell, *What Matters in Corporate Governance?*, 22 REV. FIN. STUD. 783 (2009). For a follow-up Bebchuk article on the association between entrenching provisions and valuation, see Lucian A. Bebchuk, Alma Cohen & Charles C.Y. Wang, *Learning and the Disappearing Association Between Governance and Returns*, 108 J. FIN. ECON. 323 (2013).

influence distorts pay arrangements and showed that this account is supported by a wide array of empirical studies.<sup>18</sup> Bebchuk's subsequent articles on executive pay identified how pay arrangements should be redesigned to address distortions,<sup>19</sup> showed how financial firms' pay schemes contributed to excessive risk-taking,<sup>20</sup> and analyzed opportunistic timing in the granting of options.<sup>21</sup>

*Short-termism.* Management insulation has long been defended as necessary to avoid pressures on corporate leaders that could induce short-termism and underinvestment in long-term projects. Bebchuk's research challenged this defense of management insulation. His articles showed that the short-termism arguments have disregarded substantial benefits of management accountability, failed to provide evidence that short-termism produces significant countervailing costs, overlooked substantial overlap of interests between short-term and long-term investors, and failed to recognize that short-termism is substantially driven by internal pay decisions that can be addressed without costly management insulation.<sup>22</sup>

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<sup>18</sup> See LUCIAN BEBCHUK & JESSE FRIED, PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION 61–79 (2004). For several articles on which this book builds, see generally Lucian Arye Bebchuk, Jesse M. Fried & David I. Walker, *Managerial Power and Rent Extraction in the Design of Executive Compensation*, 69 U. CHI. L. REV. 751 (2002); Lucian Arye Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSPS. 71 (2003) [hereinafter *Executive Compensation as an Agency Problem*]. For an overview of the book, see generally Lucian A. Bebchuk & Jesse M. Fried, Pay Without Performance: *Overview of the Issues*, 30 J. CORP. L. 647 (2005).

<sup>19</sup> See generally Lucian A. Bebchuk & Jesse M. Fried, *Paying for Long-Term Performance*, 158 U. PA. L. REV. 1915 (2010). For a summary overview of the principles of pay design for inducing long-term value creation put forward in this article, see generally Lucian A. Bebchuk & Jesse M. Fried, *How to Tie Equity Compensation to Long-Term Results*, 22 J. APPLIED CORP. FIN. 99 (2010).

<sup>20</sup> See generally Lucian A. Bebchuk & Holger Spamann, *Regulating Bankers' Pay*, 98 GEO. L.J. 247 (2010); Lucian A. Bebchuk, Alma Cohen & Holger Spamann, *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008*, 27 YALE J. ON REG. 257 (2010); Lucian A. Bebchuk, *How to Fix Bankers' Pay*, 139 DAEDALUS 52 (2010).

<sup>21</sup> See generally Lucian A. Bebchuk, Yaniv Grinstein & Urs Peyer, *Lucky CEOs and Lucky Directors*, 65 J. FIN. 2363 (2010).

<sup>22</sup> See generally Lucian A. Bebchuk, *The Myth That Insulating Boards Serves Long-Term Value*, 113 COLUM. L. REV. 1637 (2013) [hereinafter *Insulating Boards*]; Lucian A. Bebchuk, Alon Brav & Wei Jiang, *The Long-Term Effects of Hedge Fund Activism*, 115 COLUM. L. REV. 1085 (2015); Lucian A. Bebchuk & Doron Levit, *Should Short-Term Shareholders Have Less Rights?* (Jan. 12, 2021) (unpublished manuscript), <https://perma.cc/8TCW-JQF5>; Lucian A. Bebchuk, *Don't Let the Short-Termism Bogeymen Scare You*, HARV. BUS. REV. (Jan.–Feb. 2021), <https://perma.cc/K4SL-QNRQ>.

*Investor oversight and activism.* The effectiveness of investor oversight depends not only on the strength of shareholder rights but also on shareholders' incentives to use them. Bebchuk's corpus includes substantial research on these incentives and how to facilitate investor oversight. Several influential articles analyzed the agency problems afflicting the stewardship of institutional investors in general, and large index-fund families in particular.<sup>23</sup> This research shows and empirically documents that investment fund managers have incentives to underinvest in stewardship and to be excessively deferential to corporate leaders. Given these problems, Bebchuk's research explained and empirically supported the beneficial role that hedge fund activists play in providing effective investor oversight.<sup>24</sup>

*Controlling shareholders.* Bebchuk also conducted substantial research about companies with a controlling shareholder. Early on, Bebchuk put forward influential theories for understanding why some public companies have a controlling shareholder while others do not. He also developed a rent-protection theory linking the dominance of controlled companies with the weakness of investor protection for minority shareholders,<sup>25</sup> as well as a theory of path dependence explaining why differences in the incidence of controlled companies persist among countries with advanced economies.<sup>26</sup>

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Although Bebchuk's work over the past decade questions whether the potential distortions arising from short-termism provides a basis for insulating corporate leaders from investor and market pressures, his early work provides one of the first models of such potential distortions. See generally Lucian Arye Bebchuk & Lars A. Stole, *Do Short-Term Managerial Objectives Lead to Under- or Overinvestment in Long-Term Projects?*, 48 J. FIN. 719 (1993).

<sup>23</sup> See generally Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSPS. 89 (2017); Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy*, 119 COLUM. L. REV. 2029 (2019) [hereinafter *Index Funds and Corporate Governance*]; Lucian Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. REV. 721 (2019). For an article by Bebchuk and Hirst replying to responses to these three articles, see generally Lucian Bebchuk & Scott Hirst, *The Power of the Big Three, and Why It Matters*, 102 B.U. L. REV. (forthcoming Sept. 2022).

<sup>24</sup> See generally Lucian A. Bebchuk & Robert J. Jackson, Jr., *The Law and Economics of Blockholder Disclosure*, 2 HARV. BUS. L. REV. 39 (2012); Bebchuk et al., *The Long-Term Effects of Hedge Fund Activism*, *supra* note 22; Lucian A. Bebchuk, Alon Brav, Wei Jiang & Thomas Keusch, *Dancing with Activists*, 137 J. FIN. ECON. 1 (2020).

<sup>25</sup> See generally Lucian Arye Bebchuk, *A Rent-Protection Theory of Corporate Ownership and Control* (Nat'l Bureau of Econ. Rsch., Working Paper No. 7203, 1999).

<sup>26</sup> See generally Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. REV. 127 (1999).

Subsequently, a major article identified the different policy problems presented by companies with a controller and provided a framework for assessing and addressing them.<sup>27</sup> Other research by Bebchuk analyzed sales of control blocks and freezeouts, two key issues presented by controlled companies.<sup>28</sup> Finally, another major article showed the problems with the common reliance on independent directors as a cleansing mechanism of controller conflicts and put forward an alternative approach for corporate choices in the presence of such conflicts.<sup>29</sup>

*Controlling minority shareholders.* A controlling minority shareholder is a party that controls a majority of a company's votes but owns only a minority, or even a small minority, of the equity capital. An early article introduced the concept of "controlling-minority shareholders" and analyzed the mechanisms enabling such shareholders and the distortions and inefficiencies that they generate.<sup>30</sup> More recently, two Bebchuk articles (coauthored with me) address dual-class structures, which are increasingly used for separating cash flow and voting rights.<sup>31</sup> These articles identify the types of dual-class structures that are likely to be value-decreasing and put forward policies for addressing these problems.

*Corporate acquisitions.* Bebchuk's research sought to identify the rules that would best ensure that acquisitions take place if and only if they would be value-enhancing. With respect to bidder regulation, Bebchuk's first articles focused on ensuring that targets would be acquired by the buyer that would place the target's assets in their most valuable use.<sup>32</sup> His subsequent articles

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<sup>27</sup> See generally Lucian A. Bebchuk & Assaf Hamdani, *The Elusive Quest for Global Governance Standards*, 157 U. PA. L. REV. 1263 (2009).

<sup>28</sup> See generally Lucian Arye Bebchuk, *Efficient and Inefficient Sales of Corporate Control*, 109 Q.J. ECON. 957 (1994); Lucian Arye Bebchuk & Marcel Kahan, *Adverse Selection and Gains to Controllers in Corporate Freezeouts*, in CONCENTRATED CORPORATE OWNERSHIP 247 (Randall K. Morck ed., 2000).

<sup>29</sup> See Lucian A. Bebchuk & Assaf Hamdani, *Independent Directors and Controlling Shareholders*, 165 U. PA. L. REV. 1271, 1284–1304 (2017).

<sup>30</sup> See generally Lucian Arye Bebchuk, Reinier Kraakman & George G. Triantis, *Stock Pyramids, Cross-Ownership, and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control from Cash-Flow Rights*, in CONCENTRATED CORPORATE OWNERSHIP, *supra* note 28, at 295.

<sup>31</sup> See generally Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585 (2017); Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 GEO. L.J. 1453 (2019).

<sup>32</sup> See generally Lucian A. Bebchuk, *The Case for Facilitating Competing Tender Offers*, 95 HARV. L. REV. 1028 (1982) [hereinafter *Competing Offers I*]; Lucian A. Bebchuk,

analyzed the pressure-to-tender problem, which could push shareholders into accepting an acquisition offer below the target's long-term value as an independent company, and how it could be best addressed.<sup>33</sup> With respect to the rules governing target managements, Bebchuk put forward a comprehensive case for precluding takeover defenses and thereby enabling shareholders to decide the outcome of acquisition offers.<sup>34</sup> Another influential article identified staggered boards as the key takeover defense, documented its power empirically, and advocated precluding managers from combining staggered boards with poison pills to block offers indefinitely.<sup>35</sup>

*Corporate insolvency.* Bebchuk also authored major articles on corporate reorganizations.<sup>36</sup> Three articles addressed the deadweight costs of reorganization procedures, including an article putting forward an ingenious scheme for using options to distribute value quickly and without any participant being in a position to complain that they received less than the value to which they are entitled.<sup>37</sup> In addition, three other articles identified and

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*The Case for Facilitating Competing Tender Offers: A Reply and Extension*, 35 STAN. L. REV. 23 (1982) [hereinafter *Competing Offers II*]; Lucian Arye Bebchuk, *The Case for Facilitating Competing Tender Offers: A Last (?) Reply*, 2 J.L. ECON. & ORG. 253 (1986).

<sup>33</sup> See generally, e.g., Lucian Arye Bebchuk, *Toward Undistorted Choice and Equal Treatment in Corporate Takeovers*, 98 HARV. L. REV. 1695 (1985); Lucian Arye Bebchuk, *The Pressure to Tender: An Analysis and a Proposed Remedy*, 12 DEL. J. CORP. L. 911 (1987); Lucian Arye Bebchuk, *The Sole Owner Standard for Takeover Policy*, 17 J. LEGAL STUD. 197 (1988).

<sup>34</sup> See generally Lucian Arye Bebchuk, *The Case Against Board Veto in Corporate Takeovers*, 69 U. CHI. L. REV. 973 (2002).

<sup>35</sup> See generally Bebchuk et al., *supra* note 14. For a follow-up piece that replies to several responses to this article, see generally Lucian Arye Bebchuk, John C. Coates IV & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants*, 55 STAN. L. REV. 885 (2002). A later Bebchuk article showed that state law rules authorizing the use of staggered boards together with poison pills to block takeover bids for a long time could be invalidated on grounds of their being preempted by the federal Williams Act. See generally Lucian A. Bebchuk & Robert J. Jackson, Jr., *Toward a Constitutional Review of the Poison Pill*, 114 COLUM. L. REV. 1549 (2014).

<sup>36</sup> See generally Lucian Arye Bebchuk, *A New Approach to Corporate Reorganization*, 101 HARV. L. REV. 775 (1988) [hereinafter *A New Approach to Corporate Reorganization*]; Lucian Arye Bebchuk & Howard F. Chang, *Bargaining and the Division of Value in Corporate Reorganization*, 8 J.L. ECON. & ORG. 253 (1992); Lucian Arye Bebchuk, *Ex Ante Costs of Violating Absolute Priority in Bankruptcy*, 57 J. FIN. 445 (2002).

<sup>37</sup> For the seminal article that put forward the options approach to corporate reorganizations, see generally *A New Approach to Corporate Reorganization*, *supra* note 36. For a subsequent Bebchuk article providing a formal model of this approach, see generally Lucian Arye Bebchuk, *Using Options to Divide Value in Corporate Bankruptcy*, 44 EUR. ECON. REV. 829 (2000).

sought to address the inefficiencies resulting from some creditors' attempts to obtain priority over others using security interests.<sup>38</sup>

*Jurisdictional competition.* State law is an important source of the rules governing companies, and many scholars believe that competition over incorporations incentivizes states to provide value-enhancing rules. By contrast, Bebchuk's research showed how competition provides states with incentives to favor managers on certain issues or at least insufficient incentives to provide value-maximizing rules.<sup>39</sup> His research also provided evidence supporting these concerns.<sup>40</sup> Furthermore, subsequent research put forward an approach to improving state competition, both by enabling shareholders to initiate and approve a reincorporation in another state and by providing a federal incorporation option.<sup>41</sup>

*Privately adopted governance arrangements.* Some corporate governance arrangements are provided by privately adopted

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<sup>38</sup> See generally Lucian Arye Bebchuk & Jesse M. Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy*, 105 YALE L.J. 857 (1996); Lucian Arye Bebchuk & Jesse M. Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy: Further Thoughts and a Reply to Critics*, 82 CORNELL L. REV. 1279 (1997); Lucian Arye Bebchuk & Jesse M. Fried, *A New Approach to Valuing Secured Claims in Bankruptcy*, 114 HARV. L. REV. 2386 (2001).

<sup>39</sup> For four Bebchuk articles analyzing the problems with the incentives of states, see generally Lucian Arye Bebchuk, *Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law*, 105 HARV. L. REV. 1435 (1992); Lucian Arye Bebchuk & Allen Ferrell, *Federalism and Takeover Law: The Race to Protect Managers from Takeovers*, 99 COLUM. L. REV. 1168 (1999); Lucian Arye Bebchuk & Assaf Hamdani, *Vigorous Race or Leisurely Walk: Reconsidering the Competition Over Corporate Charters*, 112 YALE L.J. 553 (2002); and Oren Bar-Gill, Michal Barzuz & Lucian Bebchuk, *The Market for Corporate Law*, 162 J. INST. & THEORETICAL ECON. 134 (2006).

<sup>40</sup> For three Bebchuk articles providing such evidence, see generally Lucian Arye Bebchuk & Alma Cohen, *Firms' Decisions Where to Incorporate*, 46 J.L. & ECON. 383 (2003); Bebchuk & Hamdani, *supra* note 39; and Lucian A. Bebchuk & Assaf Hamdani, *Federal Corporate Law: Lessons from History*, 106 COLUM. L. REV. 1793 (2006). For a critical review of earlier empirical work that purported to show that state competition was value-enhancing, see generally Lucian Bebchuk, Alma Cohen & Allen Ferrell, *Does the Evidence Favor State Competition in Corporate Law?*, 90 CALIF. L. REV. 1775 (2002).

<sup>41</sup> See generally Lucian Arye Bebchuk & Allen Ferrell, *A New Approach to Takeover Law and Regulatory Competition*, 87 VA. L. REV. 111 (2001); Bebchuk & Hamdani, *supra* note 39. For replies to two response articles taking issue with this proposed approach, see generally Lucian Arye Bebchuk & Alan Ferrell, *Federal Intervention to Enhance Shareholder Choice*, 87 VA. L. REV. 993 (2001) (replying to the response by Jonathan Macey, *Displacing Delaware: Can the Feds Do a Better Job Than the States in Regulating Takeovers?*, 57 BUS. LAW. 1025 (2002)); and Lucian Arye Bebchuk & Alan Ferrell, *On Takeover Law and Regulatory Competition*, 57 BUS. LAW. 1047 (2002) (replying to the response article by Stephen Choi & Andrew Guzman, *Choice and Federal Intervention in Corporate Law*, 87 VA. L. REV. 961 (2001)).

charters and bylaws, and a common view among corporate scholars holds that such private ordering is presumptively efficient and legal arrangements should be reluctant to constrain it.<sup>42</sup> By contrast, Bebchuk's research casts doubt on the general optimality of arrangements that are privately adopted, both in midstream and at the time of going public, and provides a basis for mandatory corporate law rules.<sup>43</sup> Bebchuk's research also identified basic corporate law changes that could partially address some of the identified problems with private ordering. In particular, his analysis of the impediments to shareholders' ability to obtain value-enhancing governance changes disfavored by corporate leaders led him to support both enabling shareholders to initiate charter amendments<sup>44</sup> and setting corporate law defaults in ways that take these impediments into account.<sup>45</sup>

*Corporate political spending.* In the aftermath of *Citizens United v. Federal Election Commission*,<sup>46</sup> with interest in corporate political spending intensifying, an article by Bebchuk explained that the corporate right to spend on politics does not imply that management should control political spending decisions and that there are good reasons for corporate governance constraints on such decisions.<sup>47</sup> The view that companies should at a minimum be required to disclose their political spending to investors led Bebchuk to serve as codraftsman of a rulemaking petition

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<sup>42</sup> See generally, e.g., FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* (1996).

<sup>43</sup> For articles analyzing problems with private ordering in midstream, see generally Lucian Arye Bebchuk, *Limiting Contractual Freedom in Corporate Law: The Desirable Constraints on Charter Amendments*, 102 HARV. L. REV. 1820 (1989) [hereinafter *Limiting Contractual Freedom*]; Lucian A. Bebchuk & Ehud Kamar, *Bundling and Entrenchment*, 123 HARV. L. REV. 1551 (2010); and Bebchuk & Hirst, *supra* note 13.

For studies analyzing problems at the IPO stage, see generally Lucian Arye Bebchuk, *The Debate on Contractual Freedom in Corporate Law*, 89 COLUM. L. REV. 1395, (1989); Lucian Arye Bebchuk, *Why Firms Adopt Antitakeover Arrangements*, 152 U. PA. L. REV. 713 (2003); and Lucian Arye Bebchuk, *Asymmetric Information and the Choice of Corporate Governance Arrangements* (Harv. John M. Olin Ctr. for Law, Econ. & Bus. Law Discussion Paper No. 398, 2002).

<sup>44</sup> See generally *The Case for Increasing Shareholder Power*, *supra* note 15; *Letting Shareholders Set the Rules*, *supra* note 15.

<sup>45</sup> See generally Lucian Arye Bebchuk & Assaf Hamdani, *Optimal Defaults for Corporate Law Evolution*, 96 NW. U. L. REV. 489 (2002).

<sup>46</sup> 558 U.S. 310 (2010).

<sup>47</sup> See generally Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83 (2010).

urging an SEC rule mandating such disclosure.<sup>48</sup> The petition subsequently attracted the filing with the SEC of a greater number of supportive comments than any other rulemaking petition in history,<sup>49</sup> and two subsequent articles by Bebchuk provided a comprehensive policy argument for the proposed SEC rule.<sup>50</sup>

*Stakeholder capitalism.* Bebchuk's recent research has focused on "stakeholder capitalism," the increasingly influential view that advocates encouraging and relying on corporate leaders to use their discretion to protect stakeholders.<sup>51</sup> While Bebchuk shares growing concerns about the externalities that corporations impose on their stakeholders,<sup>52</sup> his research suggests that stakeholder capitalism would be a counterproductive approach to protecting stakeholder interests. His articles on the subject show that corporate leaders have incentives not to provide benefits to stakeholders beyond what would serve shareholders<sup>53</sup> and document empirically that corporate leaders have indeed acted in this way even when awarded discretion to protect stakeholders.<sup>54</sup> Furthermore, his research suggests that acceptance of stakeholder capitalism would impose large costs, including on stakeholders themselves, by making corporate leaders less accountable to anyone and by impeding outside reforms that could deliver real protections for stakeholders.<sup>55</sup>

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<sup>48</sup> See generally Letter from Comm. on Disclosure of Corp. Pol. Spending to Elizabeth M. Murphy, Sec'y, U.S. Sec. & Exch. Comm'n (Aug. 3, 2011), <https://perma.cc/AH2M-74ZC>.

<sup>49</sup> See Lucian Bebchuk & Robert J. Jackson, Jr., *The Million-Comment-Letter Petition: The Rulemaking Petition on Disclosure of Political Spending Attracts More Than 1,000,000 SEC Comment Letters*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Sept. 14, 2014), <https://perma.cc/3XVG-XV84>.

<sup>50</sup> See generally Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923 (2013); Lucian A. Bebchuk, Robert J. Jackson, Jr., James D. Nelson & Roberto Tallarita, *The Untenable Case for Keeping Investors in the Dark*, 10 HARV. BUS. L. REV. 1 (2020).

<sup>51</sup> See generally Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91 (2020) [hereinafter *Illusory Promise*]; Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *For Whom Corporate Leaders Bargain*, 93 S. CAL. L. REV. (forthcoming 2021); Lucian A. Bebchuk & Roberto Tallarita, *Will Corporations Deliver Value to All Stakeholders?*, 75 VAND. L. REV. (forthcoming 2022).

<sup>52</sup> *Illusory Promise*, *supra* note 51, at 96 ("[T]he effects of corporations on stakeholders do raise serious policy concerns and [ ] addressing these concerns should be a first-order goal.").

<sup>53</sup> See *id.* at 139–64.

<sup>54</sup> See generally Bebchuk et al., *supra* note 51.

<sup>55</sup> *Illusory Promise*, *supra* note 51, at 164–76.

## B. Tools and Modes of Analysis

Bebchuk's corpus of work reflects the broad set of tools that he acquired during his academic studies. Bebchuk arrived at Harvard in 1978, at the age of twenty-two, from his native Israel after completing an LL.B. degree at Tel Aviv University and a B.A. in mathematics and economics at the University of Haifa. He then completed an LL.M. and S.J.D. at Harvard Law School (with a dissertation on corporate takeovers) and a Ph.D. at the Harvard Economics Department (with a dissertation on microeconomic theory). Having made significant research contributions already early in his graduate studies,<sup>56</sup> Bebchuk was elected in 1982 to the Harvard Society of Fellows, which appoints individuals from all fields of knowledge who exhibit exceptional promise for three-year positions. In the course of his fellowship at the Society, he received an offer to join the Harvard Law School faculty.

Much of Bebchuk's body of research is based on an incentives analysis that is invariably developed and presented with exceptional analytical sharpness and clarity. When he examines a subject, his research commonly provides a novel analytical framework for assessing problems, for analyzing the consequences of proposed solutions, and for generating new insights into the issue. Bebchuk's analytical research benefits from his strong training not only in law but also in economics.

A significant feature of Bebchuk's research is his dedication to assessing his theoretical, conceptual insights in light of the evidence and to examining the extent to which they are supported by observed factual patterns and empirical studies. For example, the managerial power account he put forward for executive pay was influential partly because the incentives analysis was related to—and shown to be supported by—a vast number of empirical studies.<sup>57</sup> And where existing evidence was lacking, Bebchuk has

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<sup>56</sup> In 1980, at the end of his first year of doctoral studies, Bebchuk published an article in a symposium on the normative foundations of law and economics alongside such luminaries as Ronald Dworkin, Frank Michelman, and Richard Posner. *See generally* Bebchuk, *supra* note 10. In 1982, as a law school student, he published articles in both the *Harvard Law Review* and the *Stanford Law Review*. *See generally* *Competing Offers I*, *supra* note 32; *Competing Offers II*, *supra* note 32. He also completed in 1982 a paper developing a model of settlement negotiations that, following its subsequent publication, became a standard framework for much subsequent work on the subject. *See generally* Bebchuk, *supra* note 4.

<sup>57</sup> *See* BEBCHUK & FRIED, *supra* note 18, at 61–174.

rolled up his sleeves and obtained new evidence, conducting empirical research and hand collecting data to identify factual patterns. Among other things, his research provided novel evidence on a number of important issues, including state competition,<sup>58</sup> staggered boards,<sup>59</sup> the value effects of entrenching provisions,<sup>60</sup> the effects of hedge fund activism,<sup>61</sup> and the stewardship activities of large index fund families.<sup>62</sup>

### C. Unity and Common Themes

While Bebchuk's work has made distinct and important contributions to various disparate areas in corporate law, the whole is substantially more than the sum of the parts. There is a significant "family resemblance" between the various modes of analysis that Bebchuk has employed in the different corporate subjects he has studied.<sup>63</sup> Thus, a "Bebchuk view" or a "Bebchuk approach" has emerged from his corpus. Scholars of corporate governance have come to recognize and appreciate his unique perspective, regardless of whether they agree 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. One theme common to his analysis in disparate settings is the identification of 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 private interests of managers lead to distorted pay arrangements or value-decreasing outcomes of acquisition offers,<sup>64</sup> his examination of how the private interests of controlling shareholders and controlling minority shareholders distort their incentives with respect to selling their controlling blocks and forgoing

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<sup>58</sup> See *supra* note 40.

<sup>59</sup> See generally Bebchuk & Cohen, *supra* note 16.

<sup>60</sup> See *supra* notes 16-17.

<sup>61</sup> See generally Bebchuk et al., *supra* note 22; Bebchuk et al., *supra* note 24.

<sup>62</sup> See *Index Funds and Corporate Governance*, *supra* note 23.

<sup>63</sup> For the introduction of the concept of family resemblance, see LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 32 (Basil Blackwell ed., G.E.M. Anscombe trans., 3d ed. 1967) (1953).

<sup>64</sup> See *supra* notes 18-19, 34-35.

their control,<sup>65</sup> and his research on how the private interests of shareholders in enhancing their reorganization payoffs might lead to value-reducing inefficiencies.<sup>66</sup> 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.<sup>67</sup>

Second, Bebchuk uses incentive analysis to identify not only problems that rules and arrangements need to address but also 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<sup>68</sup> and how independent directors can be incentivized to effectively oversee controller conflicts.<sup>69</sup>

Other recurring themes I would like to note are the careful attention to midstream problems and to the evolution of governance arrangements over time,<sup>70</sup> the concerns that some choices and arguments by insiders may play a camouflaging role in making less salient how their private interests are being served,<sup>71</sup> and the recognition that arrangements that have been viewed as instruments for addressing agency problems (such as pay schemes and charter provisions) might themselves be a product of agency problems.<sup>72</sup> These and other common themes explain why Bebchuk's many separate contributions to disparate corporate

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<sup>65</sup> See *supra* notes 28, 30–31.

<sup>66</sup> See *supra* note 36.

<sup>67</sup> See, e.g., *supra* notes 18–19, 28–29, 31.

<sup>68</sup> See *supra* notes 12–15, 23–24.

<sup>69</sup> See Bebchuk & Hamdani, *supra* note 29.

<sup>70</sup> See, e.g., *supra* notes 31, 39–43.

<sup>71</sup> See, e.g., BEBCHUK & FRIED, *supra* note 18, at 67–70, 99–102, 105–07, 115–17 (explaining how various aspects of executive pay arrangements and practices serve a camouflaging purpose).

<sup>72</sup> See generally, e.g., *Executive Compensation as an Agency Problem*, *supra* note 18 (explaining how the pay arrangements are not merely an instrument of addressing agency problems but are themselves shaped by such problems); *Limiting Contractual Freedom*, *supra* note 43 (explaining how charter provisions are not merely an instrument for addressing agency problems but are themselves shaped by agency problems).

areas fuse together into a paradigmatic approach which provides a valuable basis for others to build on and use.

## II. IMPACT—IN ACADEMIA AND BEYOND

### A. Shaping Corporate Law 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.<sup>73</sup> It is worth highlighting, however, that Bebchuk's research also stands out in another way: there is a wide array of prominent academics who have not merely cited and referred to Bebchuk's analysis but have also written response articles devoted to engaging with his research. Below I list several significant areas in which Bebchuk's influence is reflected in such responses by prominent scholars.

*Takeover regulation.* When Bebchuk was still a graduate student, the University of Chicago's Frank Easterbrook and Northwestern's Daniel Fischel took part in an influential *Stanford Law Review* exchange with Bebchuk on takeover regulation;<sup>74</sup> soon thereafter, Yale's Alan Schwartz published three responses to Bebchuk's research on the subject.<sup>75</sup>

*Shareholder power and rights.* Bebchuk's article on increasing shareholder power was the subject of a response article by UCLA's Stephen Bainbridge<sup>76</sup> (who subsequently addressed Bebchuk's positions in numerous posts on his popular blog),<sup>77</sup> a

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<sup>73</sup> For SSRN's current list of most-cited law faculty, see *SSRN Top 3,000 Law Authors*, SSRN (May 1, 2021), <https://perma.cc/HG2A-YJAD>. For Professor Bebchuk's SSRN webpage, which lists the citations to each of his articles, see *Lucian A. Bebchuk*, SSRN (May 1, 2021), <https://perma.cc/BH2G-2KX9>.

<sup>74</sup> See generally 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, Frank H. Easterbrook & Daniel R. Fischel, *The Case for Facilitating Competing Tender Offers*, 95 HARV. L. REV. 1028 (1982)). For Bebchuk's reply to this Easterbrook and Fischel reply, see generally *Competing Offers II*, *supra* note 32.

<sup>75</sup> See generally 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); Alan Schwartz, *The Sole Owner Standard Reviewed*, 17 J. LEGAL STUD. 231 (1988).

<sup>76</sup> See generally Stephen Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735 (2006) (responding to *The Case for Increasing Shareholder Power*, *supra* note 15).

<sup>77</sup> A search on [www.ProfessorBainbridge.com](http://www.ProfessorBainbridge.com) has identified seventy-nine posts during the past fifteen years that engage with Bebchuk's research and policy proposals.

response article by Yale's Jonathan Macey, and two response articles by UCLA's Lynn Stout.<sup>78</sup>

*State competition.* Bebchuk's proposal for a new approach to jurisdictional competition in corporate law attracted response articles by Macey, as well as by NYU's Stephen Choi and Berkeley's Andrew Guzman.<sup>79</sup>

*Executive compensation.* Bebchuk's widely acclaimed book on executive pay was the subject of response pieces by Columbia's Jeffrey Gordon and former SEC chair Arthur Levitt<sup>80</sup> as well as of a large number of book review essays by prominent academics.<sup>81</sup>

*Corporate political spending.* Bebchuk's research in support of mandatory disclosure of corporate spending was the subject of a symposium in the *Harvard Business Law Review* with five response articles.<sup>82</sup>

<sup>78</sup> See 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) (responding to Bebchuk, *supra* note 12). See generally Lynn A. Stout, *Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex Post/Ex Ante Valuation Problem*, 55 STAN. L. REV. 845 (2002) (responding to Bebchuk et al., *supra* note 14); Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 VA. L. REV. 789 (2007) (responding to Bebchuk, *supra* note 12).

<sup>79</sup> For these responses to Bebchuk & Ferrell, *supra* note 41, see generally Choi & Guzman, *supra* note 41; Macey, *supra* note 41.

<sup>80</sup> See generally Jeffrey N. Gordon, *Executive Compensation: If There's a Problem, What's the Remedy? The Case for "Compensation Discussion and Analysis"*, 30 J. CORP. L. 675 (2005); Arthur Levitt, Jr., *Corporate Culture and the Problem of Executive Compensation*, 30 J. CORP. L. 749 (2005).

<sup>81</sup> See generally, e.g., Stephen M. Bainbridge, *Executive Compensation: Who Decides?*, 83 TEX. L. REV. 1616 (2005); William W. Bratton, *The Academic Tournaments over Executive Compensation*, 93 CALIF. L. REV. 1 (2005); John E. Core, Wayne R. Guay & 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. LEGAL STUD. 219 (2006); 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*, 45 J. ECON. LIT. 419 (2007).

<sup>82</sup> See generally 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 (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 (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 (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.

Beyond articles dedicated to responding to Bebchuk's work, there is a vast number of articles that engage with his research. Indeed, according to Google Scholar, twenty-five Bebchuk articles attracted more than five hundred citations each, with ten of these articles attracting more than one thousand citations each. In the various areas of corporate law to which Bebchuk made major contributions as noted in Part I.A, subsequent research was commonly shaped and influenced by his contributions.

#### B. Influencing Discourse in Economics and Finance

More than any other corporate law professor, Bebchuk has bridged corporate law, and the questions it studies, with the academic fields of economics and finance. The articles that he has published in law reviews benefited much from his use of tools, insights, and empirical evidence from the economics and finance literatures. Furthermore, and importantly, Bebchuk has had considerable influence on, and has directly made substantial contributions to, the literature in economics and finance.

To the best of my knowledge, he is the only corporate law professor that has published numerous articles in top journals in economics and finance. He published ten articles in the three leading journals in finance: the *Journal of Finance*, the *Journal of Financial Economics*, and the *Review of Financial Studies*. And he has published articles in top economics journals such as the *Quarterly Journal of Economics*, the *Rand Journal of Economics*, and the *Journal of Economic Perspectives*. These articles have had considerable influence, attracting collectively more than ten thousand citations according to Google Scholar.

Bebchuk's finance article introducing the E-Index was especially influential and widely used by researchers in economics and finance. This study was cited by more than 4,000 studies according to Google Scholar, and, importantly, more than 1,200 empirical studies have actually applied the E-Index put forward by this study.<sup>83</sup> Another Bebchuk article, which investigated the costs of staggered boards, is listed in the *Journal of Financial Economics'* Hall of Fame of most-cited articles.<sup>84</sup> Other Bebchuk articles from

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<sup>83</sup> See Leeor Ofer, *More Than 1,200 Empirical Studies Apply the Entrenchment Index of Bebchuk, Cohen and Ferrell (2009)*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 24, 2021), <https://perma.cc/2ZPP-E4ET>.

<sup>84</sup> *The Journal of Financial Economics, Hall of Fame, Volumes 1-111, 1974-2012*, <https://perma.cc/6U6D-552N>.

economics and finance journals that greatly influenced subsequent research in these fields include articles on sales of control blocks,<sup>85</sup> the CEO pay slice,<sup>86</sup> and director and CEO luck.<sup>87</sup>

Economics and finance scholars have also closely followed Bebchuk's work when it has been published outside economics and finance journals. To illustrate, Bebchuk's work on executive compensation was the subject of response articles by Economics Nobel Laureate Bengt Holmstrom and former chairman of the Council of Economic Advisers Glenn Hubbard,<sup>88</sup> and has significantly influenced research on executive pay in the past two decades. The option scheme that Bebchuk's *Harvard Law Review* article put forward for corporate reorganizations was embraced by Economics Nobel Laureate Oliver Hart as a key element of his proposal for improving bankruptcy procedures.<sup>89</sup> And Bebchuk's current research on stakeholder capitalism was the subject of response articles by Oxford's Colin Mayer, as well as the center of high-profile debates that Bebchuk held with Mayer, the London Business School's Alex Edmans, and Harvard's Rebecca Henderson.<sup>90</sup>

### C. Mentorship of Future Academics

It has been said that “[t]he one concerned with days, plants wheat; with years, plants trees; with generations, educates people.”<sup>91</sup> Bebchuk has had an unparalleled impact on the field

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<sup>85</sup> See generally Bebchuk, *supra* note 28.

<sup>86</sup> See generally Lucian A. Bebchuk, K.J. Martijn Cremers & Urs C. Peyer, *The CEO Pay Slice*, 102 J. FIN. ECON. 199 (2011).

<sup>87</sup> See generally Bebchuk et al., *supra* note 21.

<sup>88</sup> See generally Bengt Holmstrom, *Pay Without Performance and the Managerial Power Hypothesis: A Comment*, 30 J. CORP. L. 703 (2005); Glen Hubbard, *Pay Without Performance: A Market Equilibrium Critique*, 30 J. CORP. L. 717 (2005).

<sup>89</sup> See OLIVER HART, FIRMS, CONTRACTS, AND FINANCIAL STRUCTURE 170–72 (1995) (using the option mechanism put forward in *A New Approach to Corporate Reorganizations*, *supra* note 36).

<sup>90</sup> For a video of the Oxford “big debate” between Bebchuk and Mayer, see Saïd Bus. Sch., Univ. of Oxford, *Capitalism The Great Debate – Stakeholder v Shareholder*, YOUTUBE (June 25, 2020), <https://youtu.be/cUpyL1zVF50>. For a video of the debate between Bebchuk and Edmans, see London Bus. Sch., *Stakeholder Capitalism: The Case for and Against*, YOUTUBE (Dec. 15, 2020), <https://youtu.be/3tMYfLLzoi4>. For a podcast of the debate between Bebchuk and Henderson, see Leadership Next, *Are CEOs Truly Committed to Purpose Beyond Profit?*, FORTUNE (Nov. 3, 2020), <https://perma.cc/BNW6-R5WT>.

<sup>91</sup> This quote has been attributed to Janusz Korczak. *Statement by Michael Freeman, Rights of Children*, PERMANENT MISSION OF ISR. TO THE UNITED NATIONS (Oct. 18, 2012),

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.<sup>92</sup>

One key model that 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 coauthor articles with him. By working closely with Bebchuk on a joint project at his "studio," his mentees have been able to learn firsthand from him how to create, develop, hone, and present ideas. This unique experience, as I can attest firsthand, significantly contributes to his mentees' professional development into scholars, improving their work for many years to come.

Fourteen law professors coauthored 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 Harvard's Oren Bar-Gill, University of Virginia's Michal Barzuza, University of Pennsylvania's Howard Chang, Harvard's Allen Ferrell, Harvard's Jesse Fried, University of Southern California's Andrew Guzman, Tel Aviv University's Assaf Hamdani, Boston University's Scott Hirst, NYU's Robert Jackson, Yale's Christine Jolls, NYU's Marcel Kahan, Harvard's Holger Spamann, and Boston University's David Walker.

Bebchuk's coauthorship with mentees has not been limited to future law professors. Two well-known business school professors with whom Bebchuk coauthored articles when they were students are University of Chicago's Lars Stole and Harvard's Charles Wang.

Over the years, some of Bebchuk's mentees have gone on to produce works that are consistent with Bebchuk's approach, while others have developed opposing views on various issues.<sup>93</sup> Regardless of the policy positions these mentees have reached, however, all of their research since leaving the Bebchuk "studio" benefited from and was often inspired by what they learned there.

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[https://embassies.gov.il/un/statements/committee\\_statements/HumanRights/Pages/Rights-of-Children.aspx](https://embassies.gov.il/un/statements/committee_statements/HumanRights/Pages/Rights-of-Children.aspx).

<sup>92</sup> See *Former Supervised Students and Postdoctoral/Graduate Fellows*, LUCIAN BEBCHUK HARV. L. SCH. FACULTY PROFILE (last updated May 2021), <https://perma.cc/XW2U-EZC7>.

<sup>93</sup> See generally, e.g., Marcel Kahan & Edward B. Rock, *Index Funds and Corporate Governance: Let Shareholders Be Shareholders*, 100 B.U. L. REV. 1771 (2020) (engaging with and developing a different view from Bebchuk's view of index fund stewardship).

#### D. 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 substantial engagement by prominent practitioners. For example, the law firm Wachtell, Lipton, Rosen & Katz devoted a great deal of time and effort to responding to Bebchuk's writings on the importance of shareholder rights and the costs of management insulation. Martin Lipton, the firm's cofounder and the creator of the poison pill, coauthored three substantial law review articles addressing articles by Bebchuk on takeover defenses, shareholder rights to proxy access, and reforming corporate elections.<sup>94</sup> Several other senior firm partners authored three additional law review response articles to Bebchuk's articles on shareholder power to set the rules, hedge fund activism, and stakeholder capitalism.<sup>95</sup>

Furthermore, Wachtell 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 thirty such memos that were issued over the past decade.<sup>96</sup>

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<sup>94</sup> See generally Martin Lipton, *Pills, Polls, and Professors Redux*, 69 U. CHI. L. REV. 1037 (2002) (responding to Bebchuk, *supra* note 34); 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 Bebchuk, *supra* note 13); Martin Lipton & William Savitt, *The Many Myths of Lucian Bebchuk*, 93 VA. L. REV. 733 (2007) (responding to Bebchuk, *supra* note 12).

<sup>95</sup> See generally Theodore N. Mirvis, Paul K. Rowe & William Savitt, *Bebchuk's "Case for Increasing Shareholder Power": An Opposition*, 120 HARV. L. REV. F. 43 (2007) (responding to *The Case for Increasing Shareholder Power*, *supra* note 15); Adam O. Emmerich, Theodore N. Mirvis, Eric S. Robinson & William Savitt, *Fair Markets and Fair Disclosure: Some Thoughts on the Law and Economics of Blockholder Disclosure, and the Use and Abuse of Shareholder Power*, 3 HARV. BUS. L. REV. 135 (2013) (responding to Bebchuk & Jackson, *supra* note 24); William Savitt & Aneil Kovvali, *Stakeholder Governance in the Corporate Boardroom*, 106 CORNELL L. REV. (forthcoming 2021) (responding to *Illusory Promise*, *supra* note 51).

<sup>96</sup> My search was based on a review of the Harvard corporate governance blog and was thus limited to Wachtell Lipton memos published as posts on this blog. See, e.g., Martin Lipton, *Empiricism and Experience; Activism and Short-Termism; the Real World of Business*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 28, 2013), <https://perma.cc/37ED-W4LM>.

Delaware judges have also engaged with Bebchuk's writings. During the time he served on the Delaware Chancery Court and Supreme Court, Chief Justice Leo Strine Jr. published four law review articles responding to Bebchuk's articles on takeover defenses, staggered boards, shareholder power, and the myth of short-termism, respectively.<sup>97</sup> Although some of Bebchuk's research suggested that Delaware has incentives to be excessively promanagement, many significant Delaware opinions have cited his work.<sup>98</sup> In the important Delaware case *Air Products and Chemicals v. Airgas*,<sup>99</sup> Chancellor William Chandler—recognizing Bebchuk to be the leading academic supporter of 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.<sup>100</sup>

Business leaders and practitioners have also grappled with Bebchuk's writings. Two high-level executives of BlackRock, Barbara Novick and Matthew Mallow, wrote two response articles engaging in detail with Bebchuk's analysis of the stewardship of the Big Three index-fund managers.<sup>101</sup> Similarly, Bebchuk and Fried's book on executive pay was the subject of response articles by prominent executive pay advisors Joseph Bachelder and

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<sup>97</sup> See generally William T. Allen, Jack B. Jacobs & Leo E. Strine, Jr., *The Great Takeover Debate: A Meditation on Bridging the Conceptual Divide*, 69 U. CHI. L. REV. 1067 (2002) (responding to Bebchuk, *supra* note 34); 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) (responding to Bebchuk et al., *supra* note 14); 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) (responding to *The Case for Increasing Shareholder Power*, *supra* note 15); 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) (responding to *Insulating Boards*, *supra* note 22).

<sup>98</sup> See, e.g., *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1379, 1382 (Del. 1995). A Lexis search identified over twenty Delaware Supreme Court and Chancery Court Opinions that cited Bebchuk's articles.

<sup>99</sup> 16 A.3d 48 (Del. Ch. 2011).

<sup>100</sup> *Id.* at 123 n.487 (“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.”).

<sup>101</sup> See generally Barbara Novick, “*The Goldilocks Dilemma*”: *A Response to Lucian Bebchuk and Scott Hirst*, 120 COLUM. L. REV. F. 80 (2020); Matthew Mallow, *Asset Management, Index Funds, and Theories of Corporate Control* (Dec. 22, 2019) (unpublished manuscript), <https://perma.cc/A8VZ-FWHK>.

Ira Kay, as well as former business leaders John Biggs, John Bogle, and Kenneth West.<sup>102</sup>

#### E. Impact on Policy and Practice

Although Bebchuk's writings suggest that structural problems impede the adoption of optimal constraints 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 and influenced by his writings:

- The evolution of widespread opposition among institutional investors to staggered boards and the resulting removal of staggered boards by many public companies;<sup>103</sup>
- The growing opposition by institutional investors to supermajority provisions and the resulting removal or weakening of such provisions;<sup>104</sup>
- The SEC's adoption of a proxy access rule (which was invalidated on procedural grounds by the D.C. Circuit Court of Appeals<sup>105</sup>) and the subsequent proliferation of privately adopted proxy access bylaws;<sup>106</sup>

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<sup>102</sup> See generally Ira Kay, *CEO Pay for Performance: The Solution to Managerial Power*, 30 J. CORP. L. 785 (2005); John H. Biggs, *Executive Compensation: Perspectives from a Former CEO*, 30 J. CORP. L. 755 (2005); John C. Bogle, *The Executive Compensation System Is Broken*, 30 J. CORP. L. 761 (2005); Kenneth West, *Pay Without Performance: An Executive's Perspective*, 30 J. CORP. L. 791 (2005).

<sup>103</sup> For Bebchuk articles that developed the case against staggered boards and contributed to these developments, see *supra* note 14.

<sup>104</sup> For a Bebchuk study putting forward evidence on the association between supermajority provisions and lower firm valuation, see generally Bebchuk et al., *supra* note 17.

<sup>105</sup> See *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1156 (D.C. Cir. 2011).

<sup>106</sup> For Bebchuk articles that developed the case for proxy access and contributed to these developments, see generally Bebchuk, *supra* note 13; and Bebchuk & Hirst, *supra* note 13.

- The expansion of disclosure requirements for executive compensation, including disclosure of executive pensions;<sup>107</sup>
- The increasing support for tightening the link between executive pay and long-term results;<sup>108</sup>
- The recognition by regulators that ill-designed pay arrangements can significantly contribute to excessive risk-taking;<sup>109</sup>
- The recognition that hedging by executives can undo the incentives provided by equity compensation and the resulting disclosure regarding such hedging;<sup>110</sup>
- The growing openness among institutional investors to support proposals of activist hedge funds;<sup>111</sup>
- The SEC's reluctance to adopt without careful consideration the additional impediments to hedge fund activism urged by management advisors;<sup>112</sup>

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<sup>107</sup> See BEBCHUK & FRIED, *supra* note 18, at 67–70, 99–102, 105–07, 115–17 (stressing the problems of transparency and camouflage in connection with executive pay and proposing disclosure improvements). For the Bebchuk article that first identified and analyzed in detail the lack of transparency with respect to executive pensions, see generally Lucian Bebchuk & Robert Jackson, *Executive Pensions*, 30 J. CORP. L. 823 (2005).

<sup>108</sup> For the early Bebchuk analysis that stressed the connection between short-termist distortions produced by pay arrangements and the need for tightening the link between executive pay and long-term results, see BEBCHUK & FRIED, *supra* note 18, at 174–88, 189–92. For Bebchuk articles putting forward a detailed blueprint for such tightening, see articles cited in *supra* note 19.

<sup>109</sup> For Bebchuk articles that analyzed how executive pay arrangements contributed to excessive risk-taking in the run-up to the financial crisis of 2008, see *supra* note 20.

<sup>110</sup> See BEBCHUK & FRIED, *supra* note 18, *supra* note 18, at 176–77, 191 (identifying the problem with executive hedging and the need to address it). For subsequent detailed analysis of the problems with executive hedging, see articles cited in *supra* note 19.

<sup>111</sup> For Bebchuk articles that supported hedge fund activism and contributed to this development, see *supra* note 24.

<sup>112</sup> For a Bebchuk article that raised concerns about the proposal to tighten the rule regulating the disclosure of large blocks of stock in public companies, see generally Bebchuk & Jackson, *supra* note 24.

- The SEC's consideration of a rule mandating disclosure of corporate political spending;<sup>113</sup> and
- The initiatives with respect to dual-class structures of the Council of Institutional Investors and index providers.<sup>114</sup>

Finally, this Section would not be complete without noting an important initiative in which Bebchuk took a direct and active role. His research suggested that, due to legal rules and collective action problems, governance improvements disfavored by management may not be adopted even when such reforms are supported by most investors.<sup>115</sup> This research led Bebchuk to establish (and direct for three academic years) a clinic at Harvard Law School, the Shareholder Rights Project (SRP), that represented several public pension funds and a foundation in submitting board declassification proposals to major public companies.<sup>116</sup> Bebchuk's mentee Scott Hirst was the SRP's Associate Director, and other mentees currently in academia who worked at the clinic include University of Wisconsin's Yaron Nili and myself.

The SRP's efforts resulted in board declassification in more than one hundred public companies, with most declassifications resulting from binding agreements that the SRP negotiated with these companies on behalf of SRP-represented investors. This initiative dramatically reduced the incidence of board classification among S&P 500 companies, with companies adopting the annual elections arrangement that enjoys 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.<sup>117</sup>

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<sup>113</sup> For the rulemaking petition codrafted by Bebchuk and contributing to this consideration, and for the Bebchuk articles developing the case for a mandatory SEC rule in this area, see *supra* notes 48, 50.

<sup>114</sup> For Bebchuk articles that analyzed the problems with dual-class structures and contributed to these initiatives, see *supra* note 31.

<sup>115</sup> See generally, e.g., Bebchuk & Hamdani, *supra* note 45; Bebchuk & Hirst, *supra* note 13.

<sup>116</sup> Information about the SRP and what it accomplished can be found at S'HOLDER RTS. PROJECT, <https://perma.cc/BR62-EEAH>, and in Lucian A. Bebchuk, Scott Hirst & June Rhee, *Towards the Declassification of S&P 500 Boards*, 3 HARV. BUS. L. REV. 157 (2013).

<sup>117</sup> See generally Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. CAL. L. REV. (forthcoming 2021).

### III. GOING FORWARD

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