

The Contrarian

Stephen Bainbridge vs. Lucian Bebchuk: an intellectual battle.

by Dan Slater,
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"Yes, accountability is important, but there are countervailing advantages to authority that people like Lucian Bebchuk don't give credence to," says Stephen Bainbridge, a corporate law professor at the University of California, Los Angeles, who's waged an intellectual battle against Bebchuk in law reviews and on his well-read blog. "He's too caught up with this image of American businessmen and women as rapacious people who must be controlled by activist shareholders."

A graduate of Western Maryland College, Bainbridge, 48, got a master's in biophysical inorganic chemistry at University of Virginia before checking in to UVA law school in 1982. "After a series of unfortunate lab accidents, my research adviser suggested I might be better off in a field that didn't involve potentially explosive chemicals," he says. Unlike Bebchuk, Bainbridge spent a two-year stint in practice, at Arnold & Porter LLP's Washington office. There, he worked on a team supporting a Business Roundtable lobbying effort. In 1988, he joined the faculty at the University of Illinois College of Law. He moved to UCLA in 1996. "As I started doing my own research, I began to understand that the issue Berle and Means raised in the 1930s — that the separation between ownership and control is a problem we need to fix — is really the thing that makes the American corporation, which I regard as the greatest economic engine in our history, possible."

Bainbridge first dueled directly with Bebchuk in a 2005 exchange of Harvard Law Review articles. Bainbridge responded to Bebchuk's "The Case for Increasing Shareholder Power" with, "Director Primacy and Shareholder Disempowerment." Given that the power to review a decision is really the power to make it, he says, boards and managers should be left to, well, manage.

Bainbridge concedes Bebchuk's shareholder-primacy model maintains the stronger toehold in academia, and he sees his own notoriety as a function of its dissidence. "One of the reasons my director-primacy model — and I was the person that coined that name — has gotten a lot of attention is because it's strongly contrarian. I don't know that I'll ever succeed in supplanting the shareholder-primacy theorists. They're too well entrenched. And Lucian turns out a constant stream of students going into teaching who've been indoctrinated with his view."

He continues: "What Lucian has managed to do quite well is to separate himself from the pack of academics and to stand out as a successful combination of thoughtful scholarship and successful activism. He's forged his own prominent position, and he's done it mostly on his own. I give him tons of kudos. He's made himself into the go-to guy in shareholder activism."

If Bainbridge hasn't made quite the same impact, it could be that his interests in food and wine, subjects he covers copiously on his blog, divert him from legal scholarship. When Bainbridge's literary agent, who represented his most recent book, "The Complete Guide to Sarbanes-Oxley," asked him to consider writing about corporate boards for Wiley Publishing Inc.'s "For Dummies" series, he countered with a pitch for a food-and-wine book. "I like to cook and drink good wine," he says. "And so I started making notes on the computer so I could keep track of what I liked and didn't like. Now I can't go out to dinner with law professors or bloggers without being handed the wine list and asked to pick something. I've been drinking wine for years now and have developed pretty strong opinions about it. Practically as strong as my opinions on director primacy.