WEBBER'S BEST WEAPON: WORKING-CLASS SHAREHOLDERS AS DAVID TO CORPORATE MANAGEMENT'S GOLIATH

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INTRODUCTION

In his recent book, *The Rise of the Working-Class Shareholder: Labor's Last Best Weapon*, Professor David Webber argues that workers' ownership of shares, primarily through pension funds, could be a source of power and leverage in labor's battle against corporate managers.[1] Professor Webber previously wrote several law review articles studying public pension funds in various contexts, including the extent to which such funds invest in ways that are contrary to the economic interests of their participants and beneficiaries.[2] He has used several weapons during recent years to argue on behalf of various labor interests.[3]

This book might not be the last weapon Professor Webber uses on behalf of labor against management, but it is likely to prove his best. It is important to recognize up front how difficult this book was to write. We give stars to books based on their quality on Amazon or Goodreads, but perhaps we also should rate books in terms of their difficulty to execute, as if we were judges at the Olympics. Of course, writing any book is hard. But writing a book-length argument advocating the use of shareholder rights by labor interests is a doubly difficult dive.

The reason I say the dive is doubly difficult is that Webber's argument cuts against the grain of mainstream corporate law scholarship in two significant ways by simultaneously advocating that (1) labor and pension funds generally might achieve economically meaningful success versus corporate management;

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1 DAVID H. WEBBER, THE RISE OF THE WORKING-CLASS SHAREHOLDER: LABOR'S LAST BEST WEAPON 17 (2018) (stating "case for expanding the power of worker shareholders . . . as an important tool for rebalancing economic outcomes").

2 *See, e.g.*, David H. Webber, *The Use and Abuse of Labor's Capital*, 89 N.Y.U. L. REV. 2106, 2106 (2014); David H. Webber, *Is "Pay-to-Play" Driving Public Pension Fund Activism in Securities Class Actions? An Empirical Study*, 90 B.U. L. REV. 2031, 2032-36 (2010) (analyzing securities litigation activity of public pension funds between 2003 and 2006 and role of beneficiary board members in driving cases).

3 *See* David Webber, *The Real Reasons the Investor Class Hates Pensions*, N.Y. TIMES (Mar. 5, 2018), https://www.nytimes.com/2018/03/05/opinion/investor-class-pensions.html (reporting on attacks on pensions and pension fund activism).

and (2) labor and pension funds specifically might achieve such success by exercising their rights as shareholders. For decades, numerous scholars have demonstrated wide-ranging skepticism about both of these assertions. For example, scholars argued forcefully in the 1990s that pension funds were particularly ineffective from a financial perspective.[4] More recently, scholars have argued that, with the possible exception of hedge fund activists,[5] shareholder power is limited.[6] Tackling both areas of scholarship is the business law academic's equivalent of jumping off a three-meter springboard and doing a reverse three-and-a-half somersault with a half twist.[7]

Professor Webber and I have had many conversations about this book over the years, in terms of both substance and craft, and it was a thrill to read through the published version to see how he dealt with many of the issues we discussed. It was also interesting for me, as a friend and commentator, to see which suggestions Professor Webber reflected in the final text, and which ones he rejected. For example, as he notes in the "Acknowledgements" section, I proposed "a different title than the one that wound up on the jacket."[8] The various titles I proposed, which he rejected, were various riffs on the David vs. Goliath story; my favorite was "Labor vs. Goliath." Sadly, his publisher said no. Happily, I have an apt subtitle here.

In this Essay, I want to discuss three substantive issues I see as Professor Webber's important contributions in this book, and also cover a few of the questions about the craft of writing that he and I have discussed. He uses several writing techniques quite eloquently that help guide the reader along at various points. They are worth noting for anyone interested in craft.

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[4] *See* Roberta Romano, *Public Pension Fund Activism in Corporate Governance Reconsidered*, 93 COLUM. L. REV. 795, 802-03 (1993) (noting lack of funding for state pension funds); *see also* Frank Partnoy & Randall Thomas, *Gap Filling, Hedge Funds, and Financial Innovation*, *in* NEW FINANCIAL INSTRUMENTS AND INSTITUTIONS: OPPORTUNITIES AND POLICY CHALLENGES 101, 102 (Yasuyuki Fuchita & Robert E. Litan eds., 2007) (providing background on criticisms of institutional investor activism).

[5] *See* Alon Brav et al., *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. FIN. 1729, 1731 (2008) (demonstrating that announcement of hedge fund activism is associated with large cumulative abnormal returns that are not later reversed).

[6] *See* LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 10 (2012) (discussing myth that purpose of corporation is to maximize shareholder wealth); Steven M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735, 1736 (2006) (proposing "director primacy" regime in contrast to proposals to empower shareholders); Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 836 (2005) (presenting regime for expanding shareholder power to improve corporate governance).

[7] *See FINA Table of Degree of Difficulties*, USADIVER.COM, http://www.usadiver.com/dd_table.htm [https://perma.cc/GHP9-2Y3W] (last visited Dec. 21, 2018) (describing dive difficulties).

[8] WEBBER, *supra* note 1, at 319 (referring to conversations related to book).

I will focus on three aspects of Professor Webber's book—the role of shareholder voice, the possibility of united activism, and the potential bias of scholars—that are relevant both to the general point about labor power and the specific point about labor as shareholder. First, Professor Webber shows that one source of a pension fund's power as a shareholder arises from an often-underappreciated shareholder right: voice. Whereas scholars often describe shareholder rights as limited to voting, suing, and selling,[9] voice also can have an important impact. Indeed, when I teach business law, I ask students to recite a poem as a device to help them remember the scope of shareholder rights: "vote, sue, sell, and yell." Professor Webber's book emphasizes "yell."

Second, some aspects of Professor Webber's narrative support the notion that pension funds might work together with other constituencies as united activists. Indeed, one of the most powerful (and previously unreported) stories in the book involves a surprising partnership between a public pension fund and a large bank to achieve an important common objective. Increasingly, activists of various kinds are working on issues where there is commonality, and this overlap presents an interesting set of opportunities, consistent with many of the stories in the book.[10]

Finally, I want to discuss briefly the ways in which Professor Webber addressed how both he and others might be potentially biased as observers and, occasionally, participants in important matters that warrant academic inquiry. After the documentary *Inside Job*, which addressed academic conflicts of interest and portrayed several professors in unfavorable lights, there has been increased focus on how scholars might and should disclose how their own views might have been influenced, not only by financial incentives, but by their own backgrounds and experiences.[11] In his book, Professor Webber points to several interesting related examples, involving both himself and others.

I was not entirely persuaded by all of Professor Webber's arguments. For example, I remain skeptical about whether labor interests will be able to exercise the kind of shareholder power and voice he suggests is possible, especially relative to shareholder litigation and voting rights. The Supreme Court's decision in *Janus v. American Federation of State, County, & Municipal Employees* ("AFSCME"),[12] which banned forced union dues (and came after

[9] *See* Robert Thompson, *Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue*, 62 LAW & CONTEMP. PROBS. 215, 216 (1999) (outlining limited role of shareholders).

[10] *See* David Gelles, *Prodding Apple on Addiction*, N.Y. TIMES, Jan. 9, 2018, at B1 (exemplifying activist efforts to change company behavior and raise awareness).

[11] *See* John A. Byrne, *"Inside Job" Causes Changes at Columbia*, POETS AND QUANTS, (May 18, 2011), https://poetsandquants.com/2011/05/18/inside-job-causes-changes-at-columbia/ [https://perma.cc/AET4-6Q8D] (describing Columbia's policy requiring business school professors to publicly disclose all outside activities).

[12] 138 S. Ct. 2448 (2018) (noting requirement that employees must affirmatively consent to pay union dues).

publication of this book), has made it even more difficult for public pension funds to play a significant role advancing the interests of workers, while other shareholder activists continue to be more focused on litigation and voting than voice.[13] Many of the narrative threads in the book are interesting at least in part because they are unique, rather than widespread or representative.

Nevertheless, while I and perhaps others will remain somewhat skeptical, Professor Webber's book makes a forceful and passionate argument—his best yet, if not his last—on behalf of the shareholder rights of public pension funds. It is worth pausing in this Essay to reflect on the importance of a few aspects of this contribution.

I. THE IMPORTANCE OF "YELL"

As I noted above, my shareholder rights poem is: "Vote, sue, sell, and yell." Professor Webber weaves stories about all four of these shareholder rights into his book, but what I found particularly interesting and unique about his narrative was the important role played by shareholder voice (referred to above as "yell").

Voice has been a part of the scholarly discussion about corporations for many decades.[14] Finance scholars have included voice in their formal models of shareholder behavior.[15] The idea of giving shareholders a voice has provided support for a variety of rules, including regulation of shareholder proposals and "say on pay" requirements.[16]

Professor Webber introduces the potential power of shareholder voice in the first major story in the book, about the decline of the supermarket chain Safeway and the use of voice by shareholders to pressure Safeway's CEO, Steven Burd, after he announced cuts in wages and benefits.[17] Safeway is a mixed example, because the result is not a very good one financially for either shareholders or labor, but the narrative illustrates how shareholders can use voice as a weapon.

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[13] *See* C.N.V. Krishnan, Frank Partnoy & Randall S. Thomas, *The Second Wave of Hedge Fund Activism: The Importance of Reputation, Clout, and Expertise*, 40 J. CORP. FIN. 296, 297 (2016) (demonstrating continuing importance of litigation and voting rights among shareholder activists).

[14] *See* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES 30 (1970) (discussing use of voice as attempt to change "objectionable state of affairs"); Bernard S. Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, 39 UCLA L. REV. 811, 830 (1992) (highlighting importance of shareholder voice).

[15] *See* Anat R. Admati & Paul Pfleiderer, *The "Wall Street Walk" and Shareholder Activism: Exit as a Form of Voice*, 22 REV. FIN. STUD. 2645, 2646-47 (2009) (examining threat of exit as alternative to activism).

[16] *See* Randall S. Thomas, Alan R. Palmiter & James F. Cotter, *Dodd-Frank's Say on Pay: Will It Lead to a Greater Role for Shareholders in Corporate Governance?*, 97 CORNELL L. REV. 1213, 1215-17 (2012) (reporting on progression of say-on-pay requirements).

[17] *See* WEBBER, *supra* note 1, at 2 (utilizing Safeway's cut of worker benefits in 2003 to exemplify shareholder power).

The Safeway saga is interesting in two ways. First, Professor Webber takes the reader inside Burd's mind as he cashes in his own shareholdings before announcing the cuts (which triggered a labor strike and a decline in Safeway's share price): "Beginning weeks before the strike, and continuing up until one week before he announced the cuts, Burd personally sold $21.4 million of Safeway stock after executing stock options."[18] Professor Webber notes there was no insider trading investigation of Burd, primarily because he "used a legal loophole to sell his shares just before announcing."[19] The book helpfully explains in a footnote the details of the type of Rule 10b5-1 plan Burd used, as well as academic research related to such plans.[20] This level of detail provides the reader with comfort that Webber is not merely telling a one-sided anti-manager story, but in fact is backing up his allegations with scholarly analysis and detail (the footnotes in total span nearly sixty pages).

Once Professor Webber has made it clear that Burd's "first move was to cash in,"[21] he then spends twenty pages on the details of the public and private shareholder campaigns against Burd. Webber argues that even if Burd's actions were legal, they nevertheless opened him up to criticism, and to voice as a powerful shareholder right.[22] The other shareholder rights—vote, sue, and sell—were more limited at the time: pension funds that were upset with Burd's actions did not have enough votes at the time to replace the board; there was no obvious basis for litigation related to Burd's sale of shares, and any such litigation would have been expensive; and selling was not a viable option, particularly given the recent decline in Safeway's share price. Still, there was voice.

Professor Webber describes how shareholders, particularly the California Public Employees' Retirement System ("CalPERS") led an effort to make board members, and ultimately the public, aware of their concerns about Burd's sale of stock (and the fate of Safeway generally).[23] The battle between the pension funds and the board members was public and spirited. But it was the funds' targeted use of their voice privately, directed at certain individual board members, that was more persuasive.

Professor Webber sets up this part of the story—the private efforts to influence two board members who were not up for reelection (George Roberts and James Greene, from the private equity firm KKR)—with a clever writer's technique.[24] He starts the key transition paragraph by simply stating, "Ed Smith described for me what happened."[25] The reader has not previously been

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[18] *Id.* at 3.

[19] *Id.* (noting Burd's actions were "not barred by insider trading laws").

[20] *Id.* at 261-62 (citing Alan Jagolinzer's research on Rule 10b5-1 and insider strategic trading).

[21] *Id.* at 3.

[22] *Id.* (describing Burd's use of legal loopholes and criticism that followed).

[23] *Id.* at 7 (noting groundwork set up by labor and labor-affiliated shareholders).

[24] *Id.* at 27 (recalling start of private shareholder campaign).

[25] *Id.*

introduced to Ed Smith; the name comes out of the blue. But the sentence is loaded with intrigue. Who is Ed Smith? What did he personally tell Professor Webber? The reader sees immediately that Professor Webber interviewed Ed Smith, and presumably found some interesting facts related to the pension funds' private efforts to use voice.

Then Professor Webber delivers on this story. He describes the new modern threat as a kind of drone-like threat against board members. It is particularly interesting how Webber compares the effectiveness of the strike at Safeway with the targeted use of voice in the campaign by shareholders. He concludes that labor strikes are in relative decline as a means of struggle, and cites shareholder campaigns as a potentially more effective, modern approach.[26] Webber traces the subsequent expansion of the use of shareholder campaigns during the decade following the Safeway incident to a generation of activists that followed Ed Smith and his colleagues.[27] The key point with respect to voice is that shareholders' capacity to target individuals with a specific message has been underestimated. Webber concludes that voice is a promising and underutilized shareholder right, especially for pension funds.

II. THE POTENTIAL FOR UNITED ACTIVISM

Professor Webber's book includes evidence both for and against the notion of united activism: the idea that activists working in their different silos might benefit generally from combining their interests to form a unified front.[28] United activism is a potential hybrid form of activism, in which various constituencies, including categories of "special interest" shareholders might find common ground. The problem united activism addresses is that shareholder activism typically is subject to a free riding problem: an activist with a relatively small stake will find that the vast majority of the benefits associated with any success are enjoyed by others; moreover, shareholder activists of various kinds can work at cross purposes.[29] Webber's book is an obvious rallying cry for labor as shareholder, but it also will be interesting to see if other shareholder activists embrace the idea as well, and attempt to partner with labor to persuade managers to be more sympathetic to their proposals.

Two potential candidates for united activism are pension funds and hedge funds. However, as Professor Webber shows, there have been tensions between pension funds and hedge funds, particularly as pension funds have faced

[26] *Id.* at 30-31 (contrasting shareholder campaigns with labor strikes).

[27] *See id.* at 42-43 (describing impact of Ed Smith and other shareholder activists).

[28] *See* Rupert Younger & Frank Partnoy, THE ACTIVIST MANIFESTO, http://www.activistmanifesto.org/ [https://perma.cc/E5WA-Z7TV] (last visited Dec. 21, 2018) (asserting united front of shareholder activists joined with political and social activists).

[29] *See* Frank Partnoy, *U.S. Hedge Fund Activism*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 99, 104 (Jennifer G. Hill & Randall S. Thomas eds., 2015) (describing disparity between voting and economic interests).

pressure recently to avoid paying high fees. For example, CalPERS, which made its first investments in hedge funds in 2001,[30] decided just thirteen years later to divest entirely from its four-billion-dollar hedge fund portfolio.[31] One major reason was performance: hedge fund investments had returned just 7.1%, while the rest of CalPERS's portfolio had returned 18.4%; in addition, CalPERS had paid $135 million in management fees, which generated a range of criticism.[32]

Still, pension fund divestments do not preclude partnerships, and eliminating some potential conflicts might even make them more possible. It is not difficult to imagine labor shareholders and hedge funds finding areas of overlap, and then persuading managers that they have common interests. Indeed, Webber references "the pursuit of investment goals that simultaneously advanced more generally applicable political ones like environmental or diversity improvements."[33] Webber lauds such united activism as potentially desirable, noting that all shareholders have special interests and the key question about whether common interests exist about which sufficiently large groups of shareholders agree.

One recent example is the California State Teachers' Retirement System ("CalSTRS"), which has undertaken a range of partnerships with different activist hedge funds on issues that blend social and economic policy. CalSTRS worked with Jana Partners, an activist hedge fund, to pressure Apple Inc. to examine more closely the effects of phone screen time on children.[34] CalSTRS also worked with Relational Investors, another activist hedge fund, to break up Timken Company.[35] These campaigns involved a combination of voice and other threats, and were remarkable in that they were united partnerships.

Indeed, one of the highlights of Professor Webber's book involves a campaign by AFSCME that could have been strengthened by launching a more united activist front, perhaps with assistance from other shareholders. In that campaign, Lisa Lindsley and Lee Saunders of AFSCME challenged Jamie Dimon, the chief executive of JPMorgan, to separate the positions of CEO and board chair (both of which Dimon held).[36] First, AFSCME and other pension funds pressed for a

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[30] WEBBER, *supra* note 1, at 103 (describing CalPERS's first investment in hedge funds).

[31] *Id.* at 107 (recalling CalPERS's surprising decision to divest from hedge funds).

[32] *Id.* (discussing CalPERS's reasons for divesting).

[33] *Id.* at 131.

[34] *See* Gelles, *supra* note 10 (noting letter from Jana and CalSTRS trying to raise awareness about screen time of children).

[35] *See* Ricardo Duran, *CalSTRS Proposal to Split Timken Approved by Shareholders*, CALSTRS (May 7, 2013), https://www.calstrs.com/statement/calstrs-proposal-split-timken-approved-shareholders [https://perma.cc/FGM4-H5F6] (describing split as way to increase shareholder value).

[36] WEBBER, *supra* note 1, at 119 (describing efforts to file shareholder proposal at JPMorgan).

proposal to revise JPMorgan's by-laws to require that the company have a separate board chair.[37] Both proposals failed.

But then, in the book's most remarkable vignette, Professor Webber describes how Dimon called Saunders to request an in-person meeting, citing three sources from interviews.[38] There is no record of what was discussed, but following the meeting, JPMorgan began what Webber describes as "an unusual and high-profile effort . . . to protect the pensions of AFSCME workers whose retirement funds were in dire jeopardy in the harrowing Detroit bankruptcy."[39] AFSCME and JPMorgan found a shared interest: the bank made a one hundred million dollar investment in Detroit, in part to protect AFSCME pensions, and in part because JPMorgan expected to profit from various related investments, including the privatization of public services.[40]

If a pension fund like AFSCME is willing to partner with JPMorgan, it should be willing to partner with just about any institution. The open question is whether, and to what extent, pension funds might work with hedge fund activists to pressure managers in various ways.

III. Academic Conflicts of Interest

Finally, I want to discuss how Professor Webber addresses potential conflicts of interest faced by scholars, both from his own experiences and based on those of others. With respect to personal experiences generally, one challenge for academics is being clear about the extent to which scholarship is based on special access to information. Some law academics write about topics related to areas of their previous private practice. Indeed, those topics can be among the most valuable and fruitful sources of material for academic treatment. Professor Webber's approach to this kind of material is a useful roadmap for how academics can navigate such situations.

The setting for one of Professor Webber's examples is one of the most successful shareholder lawsuits in recent years, the shareholder litigation against UnitedHealth and its CEO William McGuire, who was forced to resign because of the lawsuits.[41] Professor Webber previously worked for one of the firms that represented the shareholders in the UnitedHealth litigation.[42] It is important for the reader to understand Professor Webber's involvement, and he discloses it, with color: "I was a midlevel, bag-carrying, law firm associate."[43] Thus, the reader understands Webber's perspective and background.

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[37] *Id.* at 126 (describing shareholder campaign of AFSCME and other pension funds).
[38] *Id.* at 128, 292 n.38 (referencing private meetings requested by Dimon).
[39] *Id.* at 128.
[40] *Id.* at 130 (analyzing shared interests of AFSCME and JPMorgan).
[41] *See id.* at 172-73 (discussing derivative lawsuit against UnitedHealth and McGuire).
[42] *Id.* at 173-74 (stating Webber's connection to UnitedHealth litigation).
[43] *Id.* at 173.

But Professor Webber faced a challenge in discussing the litigation, both because he worked on aspects of the matter and therefore was aware of information and was privy to privileged conversations. Some researchers might decline to write about their experience in this kind of situation, but Professor Webber was able to do so, with care. First, instead of reporting his own recollections, he went back and interviewed the general counsel of one of the pension fund plaintiffs in the litigation, post litigation, and reported on the counsel's reaction.[44] That reaction was highly informative: the pension fund counsel's view was "to send a message that we would defend ourselves against the titans running these corporations."[45] The lawyers, including the pension fund's outside counsel, had been looking for cases where there was a need for policing in the market, notwithstanding the fact that the pension fund was broadly diversified, and therefore, as some legal scholars have noted, much—if not all—of any recovery likely would come from other shareholders (including themselves) and would be distributed among other shareholders as well.[46]

Second, Professor Webber noted explicitly that he "limited [his] entire discussion of this case to information that is in the public record."[47] He did not discuss or rely on confidential documents or privileged conversations. Instead of deciding to avoid discussing the case, Professor Webber opted to make it clear that he was only discussing information in the public record. The result is an interesting narrative counterpoint to the scholarly literature criticizing shareholder litigation, one that scholars would not have available as part of the literature if Webber had kept his experience a secret.[48]

The book also addresses the potential conflicts of interest of other people. Webber turns his sights on the Henry G. Manne Law and Economics Center at the George Mason University School of Law, which announced in December 2016 that it would host a conference on public pension reform.[49] Professor Webber notes that George Mason has received significant funding from both the Koch brothers (including a ten-million-dollar gift to rename the school the Antonin Scalia Law School) and the Laura and John Arnold Foundation.[50] With respect to the conference, Professor Webber described "a $12,000 total honorarium (inclusive of travel expenses)" that would be paid to authors of the eight accepted papers, concluding that: "That's $96,000 for eight papers undermining the economic and legal foundations for pensions."[51] Webber also

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[44] *See id.* at 174 (reporting on interview with pension fund's general counsel).

[45] *Id.* at 174.

[46] *See* Jill E. Fisch, *Confronting the Circularity Problem in Private Securities Litigation*, 2009 WIS. L. REV. 333, 348 (describing compensation for shareholders).

[47] WEBBER, *supra* note 1, at 174.

[48] *See id.* at 165-80 (referencing Webber's account of shareholder litigation).

[49] *See id.* at 231 (reporting on conference).

[50] *Id.* at 231-32 (stating recent funding to George Mason University School of Law).

[51] *Id.* at 232 (noting payment to paper authors).

noted that the call for papers announced that each attendee would receive one thousand dollars; Webber attended the conference, and reported that around two hundred people attended, implying that perhaps two hundred thousand dollars was spent overall.[52]

Professor Webber includes a detailed description of the conference. He takes the reader inside the room, giving the lunch speaker's perspective on the Detroit bankruptcy and even noting which suggestion by one attendee elicited loud laughter (it was the one time anyone at the conference mentioned raising taxes, according to Webber).[53] Webber also reports that during his colleague Jack Beermann's talk, one judge sitting behind him said to another attendee, in a deep southern accent, "Jack Beerman is a smart guy."[54]

Not everyone will agree with Professor Webber's criticism of this conference, or his more general claim that "massive mobilization of resources focuses just on labor's pensions."[55] But any reader should find the detailed reporting and Professor Webber's conclusions provocative and interesting, and the book presents a useful moment for academics generally to reflect on how our role might be influenced by various political and economic forces. Indeed, that bigger picture perspective is Webber's objective. As he notes, "I recognize that discussing a law school conference sounds like very, very small potatoes in the grand scheme of these debates. But it illustrates the larger point about the pervasiveness of the forces aligned against pensions."[56]

CONCLUSION

One concluding point: Professor Webber's book raises an important question about the role that legal scholars, particularly business law scholars, should play in the world. During the latter part of the twentieth century, books played only a minor part in that role. Leading business law scholars generally did not publish books, with the exception of compilations and treatises; books with a trade or policy focus were not very common in the business law area.

More recently, business law scholars have been writing books, and appealing to broader audiences through shorter writings as well. The two other panelists who commented on Professor Webber's book at a lecture hosted at Boston University are excellent examples: Kent Greenfield and Jennifer Taub have published recent important books and also have taken their message to audiences outside the academic world.[57] Numerous other business law scholars have taken

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[52] *Id.* at 232-33 (stating payment for conference attendees).

[53] *Id.* at 233 (highlighting notable conference moments).

[54] *Id.* at 234 (repeating response to Beerman's talk).

[55] *Id.* at 235 (summarizing efforts of conference).

[56] *Id.* at 231.

[57] *See generally* KENT GREENFIELD, CORPORATIONS ARE PEOPLE TOO: (AND THEY SHOULD ACT LIKE IT) (2018) (exploring corporations' claims to constitutional rights); JENNIFER TAUB, OTHER PEOPLE'S HOUSES: HOW DECADES OF BAILOUTS, CAPTIVE REGULATORS, AND TOXIC

similar approaches, writing books in recent years that seek to influence policy in a variety of ways.[58]

Ultimately, books are an important weapon in the quiver of any academic who seeks to contribute to the world's stock of knowledge and influence policy. Professor Webber has seized this weapon, and with sharp stabs at the corporate establishment has made what is perhaps the strongest possible case in favor of efforts by labor interests to leverage their power as shareholders. Whether those interests might succeed in any meaningful way remains an open question.

BANKERS MADE HOME MORTGAGES A THRILLING BUSINESS (2014) (responding to 2008 financial crisis).

[58] *See generally* WILLIAM A. BIRDTHISTLE, EMPIRE OF THE FUND: THE WAY WE SAVE NOW (2016) (reporting on downfalls of mutual funds and other common investment strategies); STEVEN M. DAVIDOFF, GODS AT WAR: SHOTGUN TAKEOVERS, GOVERNMENT BY DEAL, AND THE PRIVATE EQUITY IMPLOSION (2009) (providing explanation of deals and deal-making); KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS (2011) (explaining political and financial failures that led to subprime crisis); CRISTIE FORD, INNOVATION AND THE STATE: FINANCE, REGULATION, AND JUSTICE (2017) (providing new approach to financial regulation); SIMON JOHNSON & JAMES KWAK, 13 BANKERS: THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN (2010) (discussing need for banking reform); DONALD C. LANGEVOORT, SELLING HOPE, SELLING RISK: CORPORATIONS, WALL STREET, AND THE DILEMMAS OF INVESTOR PROTECTION (2016) (explaining securities regulation in terms of economic and political behavior); STOUT, *supra* note 6 (2012) (challenging idea of shareholder value); DAVID A. WESTBROOK, OUT OF CRISIS: RETHINKING OUR FINANCIAL MARKETS (2010) (identifying issues in financial thinking and risk management); ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS (2018) (describing how corporations gained constitutional protections).