

HENRY MANNE AND THE MARKET MEASURE OF INTELLECTUAL INFLUENCE

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There is an important difference between intellectual achievement and intellectual influence. There are many bright and intelligent people in the world. Most of them, however, generate no intellectual influence whatsoever. Our common indicia of academic rank—tenure, named chairs, tributes, and the like—are related to some base level of intellectual achievement and then, to longevity, but seldom to actual intellectual influence. Most faculty members granted tenure have demonstrated some level of achievement. Named chairs are distributed largely, though not entirely, according to years of service. Tributes presented formerly at retirement (since abolished) and now at death, measure more the professor's encouragement of his or her students than influence over those the professor never knew.

The most prominent modern metrics of achievement—such as the Nobel or Templeton Prizes—prominent because very substantial monetary awards attend them—seem chiefly awarded on the basis of originality. Originality is surely not an unfair measure of intellectual achievement. Indeed, there is substantial merit to it. Other papers in this Symposium have addressed the unique originality of Manne's ideas regarding the market for corporate control and the benefits and functions of insider trading, which are surely of Nobel caliber. Other participants in this Symposium are also responsible for ideas of great originality including, among others, Armen Alchian and Harold Demsetz, easily equal of Nobel merit.

Pure originality, however, is a peculiar standard for intellectual influence. Originality does not correspond to influence; most commonly, the relationship might be reversed. The most legitimately original ideas are often charitably described as zany. A person original in all respects would be hospitalized; the truly original would challenge current categories of mental conditions.

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Originality is an especially peculiar standard of influence to be adopted by economists, particularly economists who believe in markets. (Indeed, it is, perhaps, a form of corruption for the economics establishment to have embraced the Nobel idea so completely.) Originality is not highly valued in markets. For example, Edwin Drake was apparently the first to drill specifically for petroleum.¹ But it was certainly Rockefeller and his partners in Standard Oil who created the broad market for petroleum products and influenced the world with its sale.² Similarly, scientist Hans Christian Orsted first produced the derived metal aluminum in 1825.³ But the market for aluminum and the influence of its discovery was created by Hall and his associates after founding the Aluminum Corporation of America.⁴

There is, of course, an important difference between measuring influence with respect to markets for commodities, such as oil and aluminum, and measuring intellectual influence. In dealing with commodities, market-creating activity—market influence—can be measured in dollars, as sales to consumers register precisely minimum estimates of the value of the commodity, and net profits measure the benefit of market creation. Thus, Drake, the first oil driller, died almost in poverty;⁵ Rockefeller, not so. There are some intellectual creations for which these purely market measures approximate influence. Bill Gates' fortune is an example. On the whole, however, direct intellectual influence does not necessarily possess a dollar correlate.

This is hardly surprising. There are well-known appropriability problems with respect to the market for ideas. This is the purpose of the patent and copyright laws that, for all their success, extend to and provide property right protection to only a small range of intellectual endeavor.

Groups such as the Nobel Committee revert to originality as an intellectual metric, most plausibly, because originality can be measured and identified. Intellectual influence in areas that are non-appropriable has no clear and unambiguous measure. In contrast, it is relatively easy to identify the first person to articulate some idea. It

¹ See 19 THE NEW ENCYCLOPAEDIA BRITANNICA 573 (15th ed. 1997).

² Indeed, in a remarkable parallel to the Nobel idea, Drake ended his life near poverty but for a pension from the Pennsylvania State Legislature given to reward his innovation. See 4 THE NEW ENCYCLOPAEDIA BRITANNICA 211 (15th ed. 1997).

³ See 1 THE NEW ENCYCLOPAEDIA BRITANNICA 303 (15th ed. 1997).

⁴ See *id.* Again—an interesting parallel—Orsted is remembered today through the Orsted Medal, awarded for outstanding contributions by Danish physical scientists. See 8 THE NEW ENCYCLOPAEDIA BRITANNICA 1014 (15th ed. 1997).

⁵ See *supra* note 2.

does require some undefinable judgment to determine that the idea is important—this judgment distinguishes and excludes those originals whom we describe as crazy. But it is our lack of a metric for influence that allows the various prize committees to focus on originality, which has no relation by itself to the benefit to the citizenry from the idea. True influence is a good definition of benefit.

A market measure of intellectual influence—who caused the broadest populace to adopt the idea—would require us to revise several intellectual myths. Should the award for intellectual influence be given to Charles Darwin or to Herbert Spencer or Thomas Henry Huxley who popularized Darwin's ideas?⁶ Immanuel Kant and John Locke were surely smart guys, but is their influence more attributable to Thomas Jefferson or, perhaps, Martin Luther King, Jr.? Jesus is an important figure, but the spread of Christian influence must surely be attributed to Saint Paul or, maybe for our modern world, Billy Graham?

With these examples, let me turn to Henry Manne and law and economics.

Law and economics is an intellectual movement and the person most centrally responsible for its influence in a market sense is Henry Manne.

The origins of law and economics were attended by great brilliance. Ronald Coase is a brilliant man and, by the originality standard, Coase's *The Problem of Social Cost* is a work of high significance, as recognized by the Nobel Committee.⁷ By a market standard of intellectual influence, however—that is, what work actually changed people's ideas and ways of thinking—and how many ideas and ways were changed by this work—it is not clear that Coase's great article is first. It took roughly a decade for scholars working in the field to understand Coase's ideas.⁸ Reviewing this history, it is not evident that Harold Demsetz's articles explicating, applying, and expanding Coase were not more important to the ultimate influence of Coase's underlying ideas.⁹

⁶ See generally JAMES R. MOORE, *THE POST-DARWINIAN CONTROVERSIES: A STUDY OF THE PROTESTANT STRUGGLE TO COME TO TERMS WITH DARWIN IN GREAT BRITAIN AND AMERICA, 1870-1900* (1979).

⁷ R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 2 (1960).

⁸ Indeed, I believe that many prominent law and economics scholars, including my friend Steven Shavell, continue to misunderstand important parts of Coase's work. See G.L. PRIEST, *INTERNALIZING COSTS* (forthcoming, 1999).

⁹ See, e.g., Harold Demsetz, *When Does the Rule of Liability Matter?*, 1 J. LEGAL STUD. 13 (1972); Harold Demsetz, *Wealth Distribution and the Ownership of Rights*, 1 J. LEGAL STUD. 223 (1972).

Similarly, scholars such as Richard Posner and my colleague Guido Calabresi are figures of transcendent importance to the field. Although I shall describe a different form of influence in a moment, it is difficult to identify a continuing influence of Calabresi's *ideas* in the modern world. His distinction between property rules and liability rules remains a dominant way of thinking.¹⁰ But the idea is not clearly "seminal" in the powerful sense, although the idea has surely generated many articles thereafter—one definition of "seminal." It is not evident how truly influential the article has been in affecting the law or the way we understand relationships in the actual world.

Richard Posner's work comes closer to satisfying a market measure of influence. Posner is essentially an intellectual entrepreneur. His most important contribution to law and economics (though there are so many that this judgment must be a rough one) is his claim that common law rules are defined in terms of economic efficiency, which is more an assertion than an idea. There is no conceptual foundation behind the efficiency-of-the-law claim; that is why it is better appreciated as an assertion or, perhaps better yet, as an intellectual project.

Posner's efficiency-of-the-law project, however, had great intellectual influence—defined even in market terms—because it electrified the academy by compelling them to learn something about law and economics. Here, Calabresi had an important role as well. Calabresi and Posner both had substantial influence over the market for law and economics through their decade-long debate over the importance of efficiency as a value. Note, however, that this influence derives not so much from the originality of any idea or from its attempted refutation, but from the debate itself. It was the debate between the Chicagoan and the Yale, the conservative and the ultra-liberal, which had the influence. And that influence derived not from any idea, but from the debate itself and, especially, from the fact that both parties embraced the core of economic analysis as a mechanism for thinking about legal problems; they simply differed in that embrace in many respects. At heart, what was important in the Posner-Calabresi debate was the economic analysis that they agreed upon. Observers could side with one or the other combatant regarding their differences. To do so convincingly, however, each observer had to *learn* the common areas of agreement.

¹⁰ See, e.g., Symposium, *Property Rules, Liability Rules, and Inalienability: A Twenty-Five Year Retrospective*, 106 YALE L.J. 2083 (1997).

Even accepting this market-based measure of influence of Demsetz, Calabresi, and Posner, I believe that it is undeniable that Manne has had the greatest intellectual influence over the field of law and economics. However helpful Harold Demsetz's articles, however riveting to many of us the Posner-Calabresi debate, those who paid careful attention to either could not have numbered more than one hundred.

In contrast, Manne introduced, popularized, and extended law and economics to thousands. Manne achieved this influence in three basic ways: first, his instructional programs of law for economists and economics for lawyers; second, his programs on various law and economics topics for judges; third, and to my mind just as important, the academic conferences that he organized, many supported by the Liberty Fund. The instructional programs for economists, lawyers, and judges will be addressed separately. I would like to add a few words about his academic conferences, the importance of which—in market terms—has not been sufficiently appreciated.

Prior to Manne's innovation of them, conferences were very rare in academics, especially in legal academics. Putting aside Manne and his successors, they remain rare today. It is very common for social scientists to list conferences attended as a separate category on their resumes, with two or three entries for even an experienced scholar. Many of my colleagues at the various law schools at which I taught had never been invited to a topical conference, attending only the annual meeting of the trade association (AALS).

Manne's many law and economics conferences created extraordinary value for law and economics scholars and especially young law and economics scholars (as I once was). These conferences both enhanced existing markets and created markets of their own. Within a law school, again because of the rarity of academic conferences, it was a distinction to be invited to an academic conference of this nature; to be asked to deliver a paper was a special distinction.¹¹ Thus, attendance at one or more of Henry Manne's conferences greatly enhanced the positions of law and economics scholars within existing schools and with other schools to which they might be recruited. Secondly, Manne's conferences were markets within themselves. For reasons to be described below, Manne was able to attract prominent scholars from prominent schools

¹¹ There were many subsidiary benefits as well. At one school at which I taught, the Dean believed that it was such a sufficiently important distinction that he relieved me of the responsibility of attending the AALS Hiring Convention in favor of attending the Manne Conference though I was Chair of the Appointments Committee. I do not believe that I have ever adequately expressed my gratitude to Henry for this occurrence.

as attendees. The opportunity for youngsters to meet eminent scholars of this nature was unparalleled; these figures would infrequently attend AALS conferences and, if they did, would even more infrequently enter extended discussions with unknowns from the provinces.

Henry Manne had many shrewd ideas with respect to creating this market, and the analogies to Rockefeller or the founders of Alcoa are not exaggerated.

1) Manne paid the expenses of all attendees. Expense-paid conferences seem commonplace today (at least to us in the law and economics community). It is a rarity in other disciplines. At one school at which I taught, it was necessary to beg the Dean for support to attend the AALS conference; one year I was refused.

2) Manne secured the attendance of prominent scholars in the field by paying them honoraria. Again, this was generally unheard of in the law and inconceivable in fields such as history or the social sciences.

3) Manne conducted these conferences in luxury resorts. This feature was adopted solely to expand the market for law and economics.¹² The resort feature, plus the honoraria to the eminents, made the Manne conferences a very attractive invitation.

4) Finally, Manne paid very careful attention to the content of the conference and to the approaches and positions of the attendees. None of the many Manne conferences that I attended were ideological directly. There was no clear or, to my mind, subterranean agenda. Nevertheless, while Manne, both in terms of content and attendees, provided for balance, he did not provide for too much balance. As befits a clever market-maker, Manne's balance was ingenious. Commonly, extremely prominent liberal economists would attend--such as Paul Samuelson or Ken Arrow. Though both are irrepressible, their positions were often cabined by topics far from familiar to them. Similarly, Manne would typically invite liberal economists to teach at his Judges' programs. His faculties uniformly showed political and ideological balance. But again, Manne was in charge of the curriculum. A liberal economist teaching supply and demand is hardly dangerous. A liberal economist becomes dangerous when addressing how to improve the world with unlimited spending of other citizens' tax monies. That, Henry Manne would never allow.

Together, Manne's programs for lawyers and economists, for judges, and his academic conferences had enormous intellectual

¹² That these resorts were uniformly near fancy golf courses was coincidence.

influence. They created markets that vastly enhanced the position of many of us in the field (including myself). In the aggregate, their influence in creating, enhancing, and expanding the field of law and economics is extraordinary and unprecedented.

I believe that, in a truly just world,¹³ awards for intellectual influence should be given to market-makers. Given the world we are in, a Nobel laureate for work in the field of law and economics such as Ronald Coase should rightly share that prize with the persons who most centrally developed the influence of the Coasian approach: Harold Demsetz and Henry Manne. If Richard Posner and Guido Calabresi are awarded the Prize (as is often rumored), they should share it with the person most responsible for the intellectual influence of the law and economics field—Henry Manne.

As most students of Henry Manne believe, however, the ideal world is not defined in terms of abstract justice, but in terms of effective markets. More particularly, I believe that those who believe in markets should rebel against the Nobel distinction,¹⁴ and press for a prize defined in terms of the market measure of intellectual influence. There is little doubt, for the field of law and economics, who the first recipient of that prize would be.

¹³ A concept I have discovered at my current school, not from any Manne conference.

¹⁴ It is, perhaps, not surprising that a prize indifferent to market measures derives from Sweden, a last refuge of market resistance.

