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Abstract

This Chapter in the book Pioneers of Law and Economics discusses the remarkable career of Henry Manne. Writing when there was a theory vacuum in legal academia, Manne breathed life into corporate law by using economic principles to formulate a sweeping new theory of the corporation. Then he took his show on the road with seminars, programs and ultimately a law school to create a market for his ideas. The Chapter shows that Manne was an entrepreneur not only in bringing people and ideas together, but also in the Schumpeterian sense Manne discussed in his work on insider trading – an active participant in the creative destruction of the existing paradigm rather than merely a manager of existing ideas. Manne's career demonstrates that, under the right conditions, a single scholar can leave noticeable ripples in the stream of intellectual history. By demonstrating that corporations, and by inference other important institutions, are best analyzed in market terms, and by creating an intellectual market for these and other economic ideas, Manne changed the way scholars, judges, regulators and others think about the role of law in society.

HENRY MANNE: INTELLECTUAL ENTREPRENEUR

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ABSTRACT

This Chapter in the book *Pioneers of Law and Economics* discusses the remarkable career of Henry Manne. Writing when there was a theory vacuum in legal academia, Manne breathed life into corporate law by using economic principles to formulate a sweeping new theory of the corporation. Then he took his show on the road with seminars, programs and ultimately a law school to create a market for his ideas. The Chapter shows that Manne was an entrepreneur not only in bringing people and ideas together, but also in the Schumpeterian sense Manne discussed in his work on insider trading – an active participant in the creative destruction of the existing paradigm rather than merely a manager of existing ideas. Manne's career demonstrates that, under the right conditions, a single scholar can leave noticeable ripples in the stream of intellectual history. By demonstrating that corporations, and by inference other important institutions, are best analyzed in market terms, and by creating an intellectual market for these and other economic ideas, Manne changed the way scholars, judges, regulators and others think about the role of law in society

Henry G. Manne's remarkable career has spanned path-breaking theorizing and writing, teaching, and organizing and has made him a seminal figure in law and economics. Manne began by forging the first detailed law and economics theory of the firm. But this formidable intellectual achievement was only the beginning of Manne's career. Manne understood that he needed to prepare an audience for his ideas.

Manne's second achievement was creating an extensive intellectual enterprise for the manufacture, promotion and dissemination of ideas. This included seminars bringing leading scholars together to create and discuss papers, law and economics education to train legal scholars and judges in basic economic principles and economists in basic legal principles, and a law school to create a long-term intellectual community and train tomorrow's lawyers and policymakers. Manne's influence rests at least as much on this entrepreneurial effort as on his intellectual achievements.

I. MANNE'S THEORY OF THE FIRM

In order to understand Manne's contributions to corporate theory, it is necessary to peek at the World Before Manne (WBM). In WBM, thinking about the corporation was dominated by Berle & Means' work, The Corporation and Modern Private Property (Berle & Means (1932)). Berle and Means found that each individual shareholder in the 200 largest non-financial corporations owned no more than a small fraction of the company's stock. Berle & Means theorized that given such small and scattered holdings, managers could virtually perpetuate themselves by using corporate funds to solicit proxies. Thus, a large chunk of private property in the U.S. was controlled by non-owner managers who had little incentive to use it wisely. Berle & Means thought the solution to what they thought was a problem was to view the corporation as a political institution. The shareholders should act like good corporate citizens, think hard about how to use their vote, and certainly not sell it. In order to make shareholders into better corporate citizens, they should be given enough information to vote intelligently. Business leaders, entrusted like political leaders with large segments of the economy, should act like statesmen. And when managers and shareholders do not act as they are supposed to under this theory, they should be despised as mercenaries and banished from power.

Manne saw that missing from this picture was any appreciation of the role of markets. Berle & Means and their followers did not take account of the fact that, unlike citizens of a political entity, shareholders are not born into corporations. Rather, they willingly exchange their cash for securities at prices set in an active auction market. These prices depended on the existence of market mechanisms to constrain managers and empower the owners, giving firms a strong incentive to provide such protection. Since the corporation has survived for a long time in free markets, it makes more sense to identify the market devices that contribute to the corporation's survival than to assume that shareholders have for generations given themselves up as sheep to be shorn.

This insight motivated Manne's work throughout the 1960's and early 1970's. However, the existing theory of the firm offered Manne little help in finding the mechanisms that make corporations work. Coase (1937) had described the firm as a device for minimizing transaction costs in which control by a profit-motivated

entrepreneur substituted for setting prices in markets. Coase's paper had received little attention by the time Manne started writing in the late 1950s. Moreover, Coase's theory was really no more than a sketch that posed more questions than it answered. For example, what is the source of the profit that the entrepreneur supposedly produces through his or its control? Alchian & Demsetz's (1972) theory of the entrepreneur's role in team production was a decade away when Manne started writing. What if there are many profit-sharers — how can they effectively control the manager? Jensen & Meckling's (1976) theory of agency costs was still a decade and a half away when Manne started writing. In light of these gaps in the theory of the firm, it is no wonder that Berle & Means' handy political analogy continued to dominate the field more than 40 years after these works were published.

Manne's background, which he discussed in a recent interview (Manne 2007) motivated him to look for things that made markets work rather than to doubt that they did. Manne had been raised in a commercial background and worked in his father's store in Memphis even before being exposed to the theory of free markets. He went to the University of Chicago Law School, a rare oasis in what was then the intellectual desert of American legal education. It was the home of Aaron Director, who was in turn linked by marriage to another important theoretician of free markets, Milton Friedman. Chicago was also a venue for the prominent libertarian thinker Friedrich A. Hayek, whose seminars Manne attended, and whose thinking was reflected very early in Manne's writing (Manne (1961)). Manne's readings sustained him through uninspiring graduate studies at Yale, and he was prepared to hit the ground running when he entered legal academia. Though Manne entered a law teaching profession that was still solidly anchored in the tradition of law as an autonomous discipline, he was armed with theoretical tools that only much later (and partly because of his own efforts) became standard equipment for young law teachers.

Manne applied to corporations and corporate law the same rules that apply to other market institutions. As in all markets, securities markets can be expected to cause assets to flow to their highest and best use, including well-governed and well-managed firms. Business people who fail the market test, including by trying to be statesmen, will be unemployed. As we will see, by asking the right questions about what makes the firm work as a market institution, Manne was able to produce answers that were both provocative and plausible.

A. EARLY WORK

Very early in his career as a young legal scholar at St. Louis University Manne was already discussing the themes that were to make his scholarly career. While he was still in his twenties, Manne was puncturing the prevailing myths of corporate governance. Manne (1956), reviewing a review of a book by the manager of public relations research at General Electric advocating corporate charitable contributions, expressed the fear that

[t]o the extent that business has moved out of its traditional profit-making function and into quasi-governmental and social welfare areas, fuel will be available to those in government who may wish to control this vast corporate power.

Manne (1958), reviewing J.A. Livingston's criticism of existing devices for disciplining managers, criticized Livingston's reliance on such self-appointed shareholder activists as Lewis Gilbert, and on improving the conscience of institutional investors. But in a discussion that provides an interesting glimpse into Manne's later work, Manne criticizes Livingston for dismissing what Manne believes is the very important tool of the shareholder's right to sell his shares (id. p. 311). Manne for the first time discusses the market for control and its relationship to efficient stock markets:

[Livingston] overlooks the obvious fact that a 'raider' in a proxy fight is not simply interested in gaining the votes of other shareholders. It may be and usually is a prerequisite to victory that he own or control a substantial block of shares. And nothing, absolutely nothing, will serve as quite the inducement for this venture as a relatively low price for the shares. This low price, of course, is often a direct result of the attitudes of many small shareholders, who, in there own infinitesimal fashion, by selling their shares, add to the probability of success of a raid on management.

Manne observed that, even if they occur infrequently, the mere threat of a proxy fight may have a "substantial and often severe impact. . . on the management of the corporation." Later he notes that while the derivative suit may be a partial discipline, because of the business judgment rule "the only solution to mild but continuing inefficiency will be an attempt to win corporate control. The fight for control is a mechanism by which the market operates to weed out the inefficient and less productive."

Manne (1961) aggregated Manne's review of the prevailing paradigm of corporate governance, notably including Berle & Means (1932), and began his detailed criticism of it. This article was an important though little-noticed jumping off point for Manne's later theorizing. Manne mainly used the footnotes to weave his own views through the presentation of the views of others, and reiterated some of his points in the earlier book reviews.

Most importantly, Manne bemoaned "the near silence of the economists" on the subject of the modern corporation (Manne (1961), p. 583). He discussed three exceptions. First, Lintner (1959), who Manne believed had "undercut" the empirical foundation of Berle & Means by showing that capital markets do constrain corporate managers because managers rely on the capital markets rather than internally generated earnings to fund expansion (Manne (1961), p. 583). Second, Rostow (1959), as had Manne in his first book review, emphasized that corporations should maximize profits, and criticized (as Manne was often to do) the failure of managerialist theories of corporate governance "to

¹ Manne's discussion of whether corporate governance is actually failing as Livingston suggests includes an aside on executive compensation, which is interesting in view of the similar debates occurring fifty years later (Manne (1958), p. 313):

One may question whether [executive compensation] is an area in which the market is operating to guarantee no more than a competitive return to the participants. The availability of managerial talen must be taken into consideration; it is a relatively scarce commodity. One wonders all the more when one sees Mr. Livingston's list of the 22 top paid corporate executives in the country, omitting stock option and deferred payment plans. Perhaps it is only envy which makes us concerned by these figures but they do not disturb.

provide any substitute for the traditional economic defense of market allocation of scarce resources by utilization of a price mechanism" (id. p. 584). Third, Manne discussed Friedrich Hayek's more detailed defense of the profit-maximization goal (id. p. 585-88). Manne noted that while most writers saw a danger in corporate power, Hayek saw that the "historical enemy of individual liberties has been political power" (id. 586).

Manne (1961) began by noting that Manne's footnote criticisms of the existing paradigm were "not intended to present an integrated theory of the corporation," but that "[i]n time I hope to offer such a work." Manne then concluded that "the single weakest factor in the current intellectual development of a corporate philosophy is the lack of a coherent theory of how corporations should work when they have grown large" (id. p. 587). In this article Manne offered some hints of what his complete theory will look like. In discussing Rostow's defense of the corporate raider Manne notes (id. p. 584, n. 85), that "[t]he implication of his remarks is that there is need for an economic study of the 'market' for corporate managers," as well as of the markets for capital and for shareholders' votes – the three markets that later were to form the foundation of the broad theory of the corporation in Manne (1967).

In a paper published the following year Manne began to deliver on his promise and fill the gap he had identified in corporate theory.

B. THE 'HIGHER CRITICISM' OF THE MODERN CORPORATION (1962)

In *Higher Criticism*, Manne laid out his basic challenge to the prevailing wisdom concerning corporate law. Manne identified the problem with Berle & Means (1932) as their "belief that the modern corporation could no longer be analyzed in traditional economic terms" (Manne (1962), p. 407). That insight had several important implications. First, Manne observed that there is a market for managers (id. p. 402, n. 10), and that this market determines how profits are allocated between managers and owners (id. p. 402).

Second, Manne challenged the notion in Berle & Means and elsewhere that the corporation should be analyzed as a political institution. Shareholders have purely economic incentives, and they may lack incentives to be informed (id. p. 412). It follows that they should be able to sell their votes (id. p. 411) – a significant basis of the market for control, which Manne developed in later articles.

Third, given the essentially market nature of the corporation and how it selects and compensates managers, it is absurd to conceive of corporate managers as statesmen (id., p. 414). Rather, Manne noted that they are best judged by their ability to earn profits for the firm (id., p. 415). The firms of managers who engage in charity rather than maximizing profits will be driven from competitive markets (id. p. 416-17).

Fourth, this last observation suggests a reason why corporate managers should favor corporate social responsibility: it provides a public interest justification for monopoly power, and thus for insulating managers from market pressures (id., p. 417-18).

Fifth, Manne again used the market perspective to criticize traditional notions that managers should be monitored by "super boards" of directors or by institutional shareholders. Directors cannot analyze all aspects of managers' judgment, providing a

significant basis for the business judgment rule (id. p. 422). Institutional investors should monitor through the market by selling their shares (id. p. 421).

In short, Manne showed how scholars had ignored the real economic constraints on firms. Scholars' emphasis on moral standards, constitutionalism, paternal watchdogs "all represent disguised efforts to find and alternative to the price mechanism in economic matters." (id., p. 431). Manne said:

It will be surprising if such matters as insider trading, derivative suits, cumulative voting, and many other aspects of corporation law cannot be fitted into a comprehensive economic analysis of the modern corporation. Such an analysis is need for many reasons, but the most important advantage to be anticipated is a standard by which we may make improvements without inadvertently destroying the entire complex arrangement. Until we have developed a satisfactory body of theoretical analysis of the modern corporation, it perhaps behooves us to tread very slowly in the direction of change.

Over the next five years Manne developed the ideas in *Higher Criticism*, providing the comprehensive economic framework that had been missing from the corporate literature.

C. THEORETICAL ASPECTS OF SHARE VOTING (1964)

Manne's first step in completing the ambitious agenda set in *Higher Criticism* was to demonstrate how voting in corporations differs from voting in politics. This paper also laid the foundation for Manne's next major article on the market for control.

In *Share Voting* Manne continues his response to Berle & Means. They criticized corporate governance on the basis that apathetic shareholders ceded control to managers, thereby separating control from ownership. The regulatory response to the Berle & Means problem was the federal securities laws, and particularly the federal proxy rules, which gave the shareholders information in connection with corporate elections so they could act like owners. But Manne points out that, given the costs of processing information, it still may not be worthwhile for shareholders to be informed (Manne (1964), p. 1440). In other words, shareholders' apathy is rational. Giving them more to read does not significantly change the calculus.

The shareholders' solution to the apathy problem is relying on or selling their shares to those who have the incentive to incur the costs of being informed. Relying on larger shareholders is unlikely to expose the passive shareholders to harmful conflicts of interests because shareholders all have basically the same interests in maximizing profits (id., p. 1441). This observation was consistent with the capital assets pricing model, which was only then being developed. Even if shareholders generally have diverse preferences regarding payouts, they can invest in firms whose shareholders have compatible preferences (id., p. 1442).

In short, Manne saw that Berle & Means' political model of the corporation had overlooked the market forces that made the corporation work. Rather than relying on active participation by immobile shareholders, the corporation works because investments are mobile and therefore can flow easily from passive to active investors (id. p. 1445). Indeed, given these market forces, Manne concluded that "the corporation is

probably a far more democratic mechanism from the viewpoint of shareholders than is government from the point of view of voters" (id). It follows that the federal proxy rules addressed a non-problem. Indeed, these rules may have made things worse by raising the costs of competing for corporate control, thereby subverting the control market as a solution to shareholder apathy (id. p. 1443).

D. MERGERS AND THE MARKET FOR CONTROL (1965)

Manne's most famous article is actually a "companion article" with the share voting article discussed in the preceding section (Manne (1965), p. 110, n.1). While the share voting article examines the sell side of the market for control, *Mergers* discusses the buy side. This short article (only eleven pages in print) is a significant part of Manne's overall agenda in outlining an economic theory of the firm and includes several important and original insights. The article proceeds from the basic point Manne made in previous papers —corporations work as economic institutions because shareholders need not themselves actively participate in governance, but rather can sell to those who have the right economic incentives to maximize the value of control.

The paper's central point is that stock prices reflecting managerial inefficiency make takeovers attractive. Manne observes that compared to the disciplinary force of takeovers (citing the example of Louis Wolfson's fight for control of Montgomery Ward), "the efforts of the SEC and the courts to protect shareholders through the development of a fiduciary duty concept and the shareholder's derivative suit seem small indeed" (id. p. 113).

An effective market for control presupposes an efficient securities market that accurately reflects the quality of a firm's management. This insight is contained in a notable footnote (id. p. 112, n. 10) that essentially encapsulates the efficient capital markets hypothesis, which was then only being developed and had not yet been tested. Manne began the footnote by noting that the correlation he was supposing "would seem at first blush to raise an empirical question." Indeed, a control market is a dubious proposition if share prices do not provide a reliable basis for testing management efficiency. But Manne was confident about proceeding without evidence of market efficiency because of "compelling reasons. . . . for believing that this correlation [between stock prices and managerial efficiency] exists." He theorized that profitmotivated insiders "perform a kind of arbitrage function for their company's stock," thereby causing share prices to reflect management quality. While many uninformed shareholders also trade, these trades will be randomly distributed and therefore will not affect stock prices over time. More informed trades will influence stock prices, so that "over some period of time it would seem that the average market price of a company's shares must be the 'correct' one."2

This footnote, which is merely a step in Manne's overall analysis, is remarkably prescient and original. It anticipates not only the efficient capital markets hypothesis (which itself relied on the still-developing capital assets pricing model), but also work on the mechanisms of market efficiency, synthesized twenty years later in Gilson &

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² Manne (1964), p. 1435, and id. n. 23, had earlier discussed the relationship of the control market with securities markets in offering a brief but sophisticated explanation of the premium price of a tender offer.

Kraakman's notable article (Gilson & Kraakman (1984)). The footnote also anticipates Manne's own work several years later on the economics of insider trading. And Manne even envisioned the invention of the event study by noting how the efficiency of the control market could be tested by seeing whether the price of an acquired company falls and the acquired company rises (Manne (1965), p. 119).

Manne observed that a takeover would not occur unless the premium for control was less than the cost of managerial inefficiency (Manne (1965), p. 117). It follows that efforts to regulate the market for control may reduce the efficiency of corporate governance by raising the costs of takeovers. This observation anticipated Easterbrook & Fischel's famous takeover defenses article seventeen years later (Easterbrook & Fischel (1982)). In particular, antitrust doctrine reduces corporate efficiency to the extent that it discourages mergers. Manne noted that horizontal mergers between firms in the same industry have an important cost advantage because the competitor usually has information about the target that other firms lack (id. p. 118-19). This suggests a reason to be careful about prohibiting horizontal mergers, particularly where competitors have low costs of entry. Similarly, securities regulation may make proxy fights expensive, as by forcing insurgents to guarantee the accuracy of statements about incumbent managers despite having little access to facts inside the corporation (id. p. 115, n. 18). And Berle's proposal to force control sellers to share their control premium with non-controlling shareholders would have the perverse effect of discouraging control transfers (id., p. 116).

E. CASH TENDER OFFERS FOR SHARES (1967)

This article begins with the basic insights from the articles discussed immediately above: control is an economic good for which people compete, and information is valuable and subject to a market (Manne (1967), p. 236). Because shareholders get "fantastic protection" from the control market, interfering with this market may do "profound injury" to investors (id. p. 237).

Manne emphasized the extent to which the market for control turns previous notions of corporate governance upside down. Though control purchasers who quickly sell the company are disparaged as "liquidators," in fact they have an incentive to liquidate only if this is the best use of the assets. Manne suggested that "garbagemen" would be more accurate than "liquidators," adding, "[a]nyone for 'corporate redeemer?" (id. p. 236-37, n. 14).

As in his 1965 *Mergers* article, Manne praised the notorious corporate "raider" Louis Wolfson, in a discussion that included important insights about securities markets and corporate governance, and specifically the precise mechanism by which the control market produces value (id. p. 239-240, n. 23). Focusing on Wolfson's notorious takeover of Capital Transit, Manne observed that the most obvious problem with the target seemed to be its low dividend despite significant accumulated cash. However, consistent with Manne's observation about dividend policy in the *Share Voting* article, Manne noted that low dividends alone could not affect corporate value because the firm could attract a clientele of shareholders who preferred this policy. Manne pointed out that Capital Transit's earnings had been declining for years, and that "[i]t is quite possible that accounting procedures obscured even greater losses." Thus, the shareholders' only hope

was that a savior like Wolfson would come along and buy control, thereby offering them more for their shares than they were worth under current management.

The Wolfsons of the world need the right incentive to work their magic in the control market. Because they are risk-taking entrepreneurs in the Schumpeterian sense, they are motivated by the sort of significant profit in the takeover that would justify the risk. Regulating takeovers would reduce the profits from taking control, thereby weakening the incentive that makes the control market work. In particular, Manne criticizes an article by Manuel Cohen (1966), then chair of the SEC, defending the proposed takeover legislation. Cohen's assertion that insurgents should be on an "equal footing" with target shareholders ignored the incentives that make the control market work (Manne (1967), p. 243). Manne said that "[m]oralistic aspirations for equality of wealth have nothing to do with rigorous analysis and clear understanding of the corporate field" (id. p. 241). Other proposed federal takeover regulations that would raise the costs of takeovers were similarly perverse, including requiring tendering shareholders get the highest price (id. p. 248), and giving shareholders a seven-day option to withdraw (id. p. 251).

Instead of rules that frustrate the market for control, Manne suggested rules that would bolster the market by encouraging auctions, letting shareholders propose transactions, or forcing incumbent directors to show that they have explored feasible alternatives (id. p. 245).

F. INSIDER TRADING AND STOCK MARKET (1966)

This book applies Manne's basic insight that the corporation must be analyzed an economic institution to trading in the firm's shares. Manne begins by challenging the ancient notion that insider trading should be illegal because it is immoral. Though Manne recognizes morality's role in making markets work, he emphasizes that this morality needs to be based on "institutions, practices and consequences" (Manne (1966), p. 15). Interestingly, this idea contains the inkling of an economic theory of morality embedded in what people actually do and in the market-based consequences of their actions rather than in Kantian first principles.

Manne reviewed the slight extant economic theory of insider trading and found it wanting. The literature supposed that insider trading erodes investor confidence and thus causes investors to avoid the market (id. p. 8), and that it increases the risk of stock manipulation (id). But there was no evidence supporting these notions. Indeed, the common law did not recognize a broad remedy for insider trading – only one based on fraud or breach of fiduciary duty (id. p. 17-18, 24). Spurred more by emotion and rhetoric than evidence or analysis (id. p. 8-10), Congress enacted a limited remedy for insider trading in §16(b) of the Securities and Exchange Act of 1934 (id. p. 26-30). The SEC undertook no additional analysis when it later recognized insider trading liability under its Rule 10b-5, disregarding the common law limitations on the duty (id. p. 46).

Manne embarked on the project that the SEC already should have done of analyzing the costs and benefits of insider trading. As in the footnote in *Mergers*, Manne hypothesized that insider trading moves transactions, and therefore prices, in the direction indicated by the information because the reservation prices of informed insiders change, while those of uninformed outsiders remain the same (id. p. 98). Outsiders who are in the

market irrespective of price buy and sell at more accurate prices than would have existed in the absence of insider trading. Although those trading in the same direction as the insiders may be said to have been injured by higher purchase prices or lower sale prices, the winners balance the losers (id. p. 101). Only those who traded *because of* insider-trading-induced price fluctuations might be said to have been hurt by insider trading. But whether insider trading has caused net social losses depends in part on how many of these traders there are, and on whether the benefit to long-term investors of more accurate securities prices outweighs the losses to traders (id. p. 102, 107).

Even if insider trading can be said to hurt some investors, this does not end the analysis under Manne's approach. That is because insider trading may be a valuable, if not the only, way to fully compensate entrepreneurs operating in large firms. Manne distinguished *capitalists*, who assumed and were paid for undertaking risk in the sense of predictable future variations, and *entrepreneurs* who Schumpeter viewed as *creating* uncertainty by disrupting the future (id. p. 114-18, discussing Schumpeter (1942)). If the entrepreneur's compensation is to adequately motivate his activity, it must reflect the profits he created (id. p. 119-24). If large firms could not adequately compensate entrepreneurs, the latter would work elsewhere (id. p. 125).

The key to adequately compensating entrepreneurs in large firms, according to Manne, was to permit entrepreneurs to trade on inside information. Other forms of incentive compensation were more suited for those who merely manage risk rather than entrepreneurs who create uncertainty (id. p. 137). Salary and bonus could not isolate the entrepreneur's contribution, due partly to the limitations of accounting rules (id. p. 124). Profit-sharing rewards the payoffs from past investments rather than encouraging investments in the future (id. p. 135). Stock options had to be granted prior to the manager's innovation, so that the entrepreneur's gains depended on the number of shares he happened to own at the relevant time, not the value of the innovation (id. p. 136). If they cannot keep the profits from insider trading, entrepreneurs may be tempted to work for smaller companies, putting large firms at a competitive disadvantage (id. p. 144).

In sum, Manne showed how insider trading could be understood from the standpoint of an overall theory of the corporation. This effectively converts insider trading from a moral dilemma and item on the public regulatory agenda to a term in the corporate contract.

G. OUR TWO CORPORATION SYSTEMS (1967)

This article ties the writings discussed above into the sort of comprehensive theory of corporate law that Manne had sketched in *Higher Criticism*. The article includes many powerful insights concerning the function of corporate rules that were embraced in the later law and economics literature. In his analysis of differences between closely held and publicly held corporations, Manne demonstrates how the contrast between these two contexts highlights the important role of markets in shaping corporate law.

Manne situates the public corporation in three markets – for capital by entrepreneurs, the secondary market in corporate shares, and the market for control (Manne (1967), p. 265). With respect to the first market, Manne describes the public corporation as basically a device by which entrepreneurs raise capital (id. p. 260). The

entrepreneurs or promoters not only bring in capital but also select managers. Returning to the theme of *Higher Criticism*, Manne reiterates the inappropriateness of viewing the corporation as a political institution.

With respect to the secondary share market, Manne explains limited liability as facilitating capital-raising by enabling small investments (id. p. 262) – an explanation embraced by later commentators (Easterbrook & Fischel (1985), p. 96; Halpern, et al, (1980), p. 130). Securities markets permit individual shareholders to express dissatisfaction with current management by selling their shares (Manne (1967) p. 264). This avoids the need to facilitate dissolution by minority holders, which would frustrate other shareholders' need to rely on stability of the corporation (id. p. 264) – an idea that Hansmann & Kraakman (2000) recently characterized as the "essential" function of corporate law.

With respect to the market for control, Manne picks up on his observation in *Mergers* that this market assumes efficient securities markets. Here Manne (1967, p. 266) notes the point developed in more detail in *Insider Trading* that prices accurately reflect reality because of trading by knowledgeable insiders.

These markets help explain many of the details of corporate law. For example, the business judgment rule, which prevents judges from second-guessing business decisions, is made possible by market discipline of managers, including the market for control (id. p. 273).

Analysis of the market context of public corporation assists in understanding close corporations, where these markets do not function. Manne speculates that corporation statutes dealt exclusively with public corporations because these statutes were conceived of as primarily regulatory (id. p. 276-77). The corporation statutes were conscripted for use by closely held corporation as a device to avoid increasing personal income tax rates by sheltering it in corporations (id. p. 277). But this development caused fundamental differences between closely held and publicly held corporations to be "overlooked" (id. p. 278). In contrast to the publicly held corporation, the close corporation was not a device by entrepreneurs to raise capital, but rather a way to aggregate owners' multifarious contributions. With respect to the secondary share market, owners were not passive capitalists and their management rights were not freely transferable. The absence of a ready market for shares impedes operation of the market for control (id. p. 280).

The sharply different market context of close corporations leads to very different rules. With a less active market for control, the owners of closely held corporations would have less use for a hands-off business judgment rule (id. p. 280). They also would want restricted transferability, veto rights, direct control rights, some power to dissolve the firm, and devices for dealing with the deadlock that may result from direct shareholder power (id. p. 282-84).

In addition to explaining specific corporate rules, Manne sees lessons about the role and development of corporate law. He notes that the corporation evolved to meet business needs and should not be regarded as having been rooted in older business forms (id. p. 260). Manne attributes the permissiveness of corporate law to the ability to shop for law in a federal system (id. p. 269-70, n. 20), thereby providing an early analysis of

the importance of the market for corporate law. This permissiveness accommodated the needs of closely held firms by allowing them to opt out of public corporation norms (id. p. 284). Thus, in Manne's theory, the key to the corporation is not law but economic theory, with the federal system providing a mechanism for adapting law to theory. Manne closes with the observation that "our general corporation laws seem to be in the process of becoming general close corporation laws with only incidental relevance to large companies" and that "[o]ne is almost tempted to suggest that the large corporation system could and would function substantially as it does if there were almost no state corporation statutes corporation statutes beyond provisions for corporation" (id. p. 284). These remarks anticipate Bernard Black's (1990) much later observations about the "triviality" of state corporation law.

H. WALL STREET IN TRANSITION (1974)

As discussed so far, Manne's theory demonstrates significant disparities between the regulatory view of the corporation and the contractual view that arises from economic theory. In *Wall Street in Transition*, Manne provided a political explanation of why these disparities can arise, focusing on the important example of the federal securities laws.

Manne hypothesized that the securities laws resulted, not from investors pushing for protection from fraud, but from firms pushing for protection from competition. The anticompetitive effect of disclosure laws may not seem obvious, since they apply to all publicly traded firms. Moreover, by providing a mechanism by which firms can "bond" their disclosure and by subsidizing the work of securities analysts, the securities laws would seem to help smaller firms compete for capital with more well-known and trusted larger firms. But Manne argued that the securities laws actually favor larger firms because of economies of scale of disclosure, and because disclosure is more burdensome for higher-risk firms, which are likely to be smaller and newer (Manne (1974) p. 49). For example, rules requiring "hot issues" to disclose their plans of operation hurt newer firms whose initial plans are unreliable (id. p. 52). Indeed, Manne turns on its head the rationale for the securities laws that they are necessary to reduce risk. He notes that some investors prefer risk (id. p. 50) and that it is the riskier firms (such as, for example, the mining industry in its infancy) that drive the economy. The securities laws, by discriminating against riskier firms, protect the established and politically influential firms from the competition they most fear – the "unorthodox invader" that does not merely marginally affect prices or costs, but can drive existing firms (and of course their managers) out of business (id. p. 31-35).

Manne suggests that we might find evidence of his theory by asking whether after the enactment of the securities the rate of return of larger firms rose more than their competitors (id. p. 36), or private placements increased (id. p. 47). Interestingly, the strongest evidence of Manne's theory has come more than thirty years later with the Sarbanes-Oxley Act. Just as Manne predicted, this increase in disclosure requirements disproportionately hurt smaller firms (Kamar, et al (2005)). This may help explain the observed flight of small firms from U.S. public securities markets following the enactment of Sarbanes-Oxley.

The political explanation of securities regulation becomes more plausible given the questionable value of federal disclosure laws. Manne debunks the standard argument for securities laws as necessary to increase investor confidence in the markets: Losses, not fraud, drive investors out of the markets (id. p. 64). Manne observes that most of the information the securities laws provide is historical and therefore has little value to investors (id. p. 38, 65-66). The subsidy for information gathering is unnecessary because market participants can capture the value of the information (id. p. 43). Worse, the securities laws interfere with firms' property rights in their information (id. p. 33) and accordingly reduce incentives to produce information (id. p. 41). Evidence supporting these arguments about the net costs of securities disclosures includes the fact that shares were not revalued in the wake of the additional disclosures required by the Securities and Exchange Act of 1934 (id. p. 63).

Wall Street in Transition includes additional Manne observations on the economics of information and securities markets, following up on his work in *Insider Trading* and initial insights in *Mergers*. Manne put his theories in the context of recent evidence of market efficiency and the "random walk" of securities prices (id. p. 66). This work shows that information moves market prices (id. p. 77). As he first observed in *Mergers* and later developed in *Insider Trading*, the ability to profit on information, including through insider trading, helps keep stock prices efficient (id. p. 83). It is difficult to provide direct evidence of efficiency by correlating the occurrence and importance of an event with stock price movement because the movement itself indicates that a material event has occurred (id. p. 81-82). Here Manne anticipated the emergence of cumulative average return studies in determining securities liability and damages.

Manne concluded his analysis of securities regulation by describing the powerful forces preserving the status quo. The specialized securities bar gains from new rules that make more work for lawyers in general, and securities lawyers in particular (Manne (1974) p. 93-95). Securities lawyers are in a particularly good position to exploit the benefits of securities regulation through their close working relationship with federal securities regulators. Government bureaucrats and lawyers have strong incentives to promote regulation, have persuaded themselves of the social desirability of their objectives, and have significant clout.

Though Manne seems to paint a dismal prospect, he concludes on a hopeful note by observing, with Schumpeter, that "it is the business of intellectuals to question the established order" (id. p. 96). Indeed, as discussed below in Part III, Manne's chief influence lay in spurring intellectuals to pursue their "business."

II. AN EVALUATION OF MANNE'S SCHOLARSHIP

This Part puts Manne's work into broader intellectual perspective. Subpart A summarizes Manne's intellectual innovations. Subpart B discusses some qualifications of Manne's analysis and framework that scholars have put forward in the wake of Manne's theories. However, as discussed in Subpart C, Manne has shown in his recent work how these apparent qualifications actually fit well into his general framework.

A. MANNE'S CONTRIBUTIONS

Part I presents an impressive list of intellectual achievements. Most importantly, Manne formulated a broad economic framework of the corporation that explains the corporation's success and effectively answers Berle & Means, whose criticism of the

public corporation had dominated discourse for thirty years. This framework gave Manne a rich opportunity for theorizing that gave rise to several seminal observations:

- (1) The market for control protects dispersed and passive shareholders from inefficient managers.
- (2) In the context of this market, shareholders' voting power is essentially exercised in the stock market rather than by voting as in a political election. Thus, efforts to legislate "shareholder democracy" are fundamentally misguided.
- (3) The efficient stock market plays a key role in the economic theory of the corporation by, among other things, accurately discounting the value of incumbent management and thereby providing the foundation of the market for control.
- (4) Given the important role of the market for control in disciplining managers, regulation that increases the costs of takeovers can injure shareholders.
- (5) Publicly traded shares and the market for control provide an economic rationale for many of the details of corporate governance, including the business judgment rule.
- (6) This economic framework explains the structure not only of public corporations, but also of closely held firms, where legal rules must adjust for the absence of the public securities markets.
- (7) Insider trading can be understood as a mechanism of market efficiency and way to reward entrepreneurial activity by managers of large firms.
- (8) The structure of corporate law could be explained by political as well as efficiency considerations. Competition among the states can erode inefficient mandatory state corporation laws, while interest groups may cause federal regulation of securities markets to diverge from efficiency.

B. QUALIFICATIONS OF MANNE'S ANALYSIS

Although Manne's body of work was a considerable achievement, his framework left room for debate about the details. Manne's theories can best be viewed as hypotheses for which many of the tools of modern empirical analysis, including event studies (which Manne was arguably the first to envision) had not even been invented when Manne wrote. Moreover, even if Manne was correct across the board in 1965, one would expect that corporations would change, creating a need for new theories and to qualify existing ones. In other words, Manne's framework was necessarily contingent on a particular state of the world. But the framework nevertheless holds up well because it provides tools that remain useful even in a complex and dynamic environment.

With that perspective in mind, it is worth noting some of the qualifications of Manne's theories that have emerged since he wrote in the 1960s and early 1970s. First, some scholars have raised issues concerning both the costs and benefits of the market for control. Just as Manne argued that property rights were essential to encourage the production of information and efficient securities markets, so managers need to have property rights in their jobs in order to have the incentive to develop job-specific expertise (Haddock, Macey & McChesney (1987)). Also, there are alternatives to the market for control for addressing the free rider problem of dispersed ownership. In

particular, we might expect to see more concentrated ownership when the control benefits of such ownership outweigh the costs, including foregone risk diversification (Demsetz & Lehn (1985)). There are also alternative control structures such as private equity that might address the agency problems of particular types of firms better than relying on the market for control (Jensen (1989); Ribstein (2004)).

Second, by the late 1980s, the combined effects of federal and state takeover regulation arguably reduced the role of hostile tender offers in corporate governance. Indeed, some of these impediments to takeovers result from the very managerial power that Manne argued was essential. Manne argued that the strong business judgment rule, which tells courts not to interfere with corporate management, is backed by disciplinary force of the market for control (Manne (1967), p. 1392). Yet this very business judgment rule made room for the poison pill and other takeover defenses. Manne argued that increased costs of takeovers would reduce their effectiveness. This raises a question whether the market for control as it exists today can support all of the corporate governance implications that Manne argued for.

Third, Manne recognized that an efficient stock market was a necessary prerequisite of the market for control, and by extension of Manne's theory. Yet Manne had to posit the existence of such a market in the absence of reliable data. In a recent interview, Manne (2007) remarked that it was "[g]reat fun to do a piece where you weren't relying on data, but had locked up the logic and it was something new." There is today significant evidence of market efficiency. However, there is also a vast literature on behavioral finance that raises questions about market efficiency.

Fourth, Manne theorized that insider trading was necessary to encourage entrepreneurial efforts in large corporations. Yet insider trading in the classic sense of managers trading in the shares of their firms continues to be illegal. Does it follow that large corporations are not entrepreneurial? Manne's economic framework suggests that we may need to find a substitute for the incentive effects of insider trading.

Fifth, Manne only briefly touched on an important aspect of the market context of corporations, the market for corporate law. However, the post-Manne scholars such as Winter (1977) who pioneered the study of this area owe much to Manne's market-oriented approach. For example, while Cary's (1974) theory of the race to the bottom in corporate law was in the spirit of Berle & Means theory of the helpless dispersed shareholders, Winter responded with the Manne-esque observation that it was unlikely such behavior would survive in vigorous capital markets.

C. MANNE'S RECENT WORK

In recent years, particularly following his retirement from full-time teaching and administration, Manne has written a series of articles that help put recent scholarship and developments, including some of those discussed in subpart B, in the perspective of Manne's economic theory of corporate law.

First, in an article in a symposium on behavioral finance (Manne, 2006), Manne discussed the implications of behavioral finance theory. He argued that behavioral economics is just another of the many attacks on neoclassical economics that have ultimately strengthened the discipline by eliciting a theoretical response. Just as Coase

answered the challenge of externalities to classical market economics, so Manne answered Berle & Means' challenge to the corporation. Manne argues that the law and economics response behavioral finance is likely to be a deeper theory of price formation. For example, this theory may help determine the relationship between efficient market prices and the number of irrational or fully informed traders in a market.

Second, Manne (2005) returned to the topic of insider trading. Manne revised his theory to recognize insider trading's role in communicating enterprise information that assists in managing the firm. Manne also wondered why, in light of the importance of insider trading, it did not elicit a strong corporate response. The answer is that markets adjust. Some insider trading "went underground," outside the law's reach. Moreover, Manne suggests that if regulation does make insider trading more costly, we would expect other market devices to arise to deal with the problem. An important candidate is prediction markets that operate outside the SEC's jurisdiction over stock markets. Manne argued (id., p. 185):

If the stock market cannot itself be used to gain certain information because of insider trading restrictions, then managers . . . can create a virtual market to provide some of that same information. Virtual markets even have some benefits the actual stock market does not, such as the ability to segregate specific causes of share-price changes. [T]hese markets can ameliorate some of the costs of the SEC's campaign against insider trading, and we can expect them to flourish."

Third, Manne (2003), written in the wake of Enron and Sarbanes-Oxley, took the opportunity to challenge extensive regulation of markets just as Congress was enacting the broadest securities laws since 1934. Manne returned to his theories about the market for control and insider trading to show that they could support efficient corporate governance without extensive regulation, that the demand for regulation reflected interest groups rather than public interest. In other words, Manne's lessons are still valid; we have only to learn them.

III. THE IMPACT OF MANNE'S IDEAS: THE INTELLECTUAL AS ENTREPRENUER

How influential was Manne's work? William Carney (1999) has shown that Manne's works, and particularly his *Mergers* article, have been very widely cited. But such citation studies tend to establish *recognition*. The *influence* of Manne's work is harder to show (Priest 1999). This Part addresses Manne's influence in two ways. Section A looks beyond scholarly impact to attempt a qualitative analysis of the real world impact of Manne's theories. Section B then focuses on Manne's strongest contribution – his importance as an intellectual entrepreneur and network builder.

A. REAL WORLD IMPACT

As shown in Part I, Manne provided a thorough and convincing rejoinder to the Berle-Means paradigm that had prevailed since the 1930s. Many commentators accepted Berle & Means' conclusions that the corporation was a dysfunctional institution in need of regulatory assistance, managers functioned as quasi-public servants, and corporate governance was to be modeled after the political institutions of democracy. Manne responded that the corporation had to be understood in the context of markets, that it was

an economic and not a political institution, and that the market for control provided the discipline that was missing from the Berle-Means model. Because these ideas were original and ran totally counter to the prevailing wisdom, the emergence of these ideas in the real world and in popular discourse provides an indication of Manne's influence.

The precise extent of Manne's influence is hard to measure. It is certainly possible that law and economics in general, and its application to corporate governance in particular, would have happened without Manne. Yet it is noteworthy that while many of the ideas that Manne drew on had been expressed by Hayek, Coase, Schumpeter and others, nobody prior to Manne had brought these ideas into the legal literature. And this was no accident. After all, Manne was bucking a paradigm that had a great deal of influence in the legal academy, and on which many prominent scholars had staked their careers.

The prevailing paradigm's power is reflected in the legal academy's reluctance for many years to admit Manne's theories into the mainstream and the heavy criticism he faced from the legal academic establishment. Notably, Manne's market for control article (Manne (1965)), though written by a law professor, was published in a finance journal. Much of the criticism leveled at Manne stemmed from his temerity in defending insider trading. Manne (1966) sparked significant negative commentary from law professors and prompted Manne to publish a defense (Manne (1970)). As Jonathan Macey has commented (Macey (1999), p. 271):

Perhaps even more important than the nature of Dean Manne's discourse about insider trading was the sheer moral courage Manne displayed. Legal academia is a club, and to be ostracized by its elite can curtail or ruin a young academic's career, even a career with Manne's stellar credentials. I wonder how many people in academics today would have the courage to risk everything to write what they want to write, to reach the conclusions they think are justified, and then to stand by those conclusions in the midst of the unprecedented criticism that Dean Manne initially received for his work. I am sure that the number is not very large. For this alone, Dean Manne deserves recognition.

Manne's theories were not only original and creative, but had the significant attraction of creating a comprehensive framework for corporate law. Established scholars may have been tempted to ignore Manne as a challenge to their life's work. But after Manne wrote, scholars, particularly younger scholars, had little temptation to ignore the edifice Manne had constructed. Instead, they could, and did, proceed to empirically test the theories as Manne repeatedly invited them to do, criticize or reject them on theoretical grounds, or share in the attention the theories were generating by elaborating on them. Manne therefore set the agenda for much future work in corporate scholarship. It is certainly plausible that corporate theory would have proceeded very differently but for his work.

Manne was also, in a sense, lucky in that his ideas became well known just at the time they started playing out on the public stage (Carney 1999). Manne's theories therefore provided a handy explanation for current events. Indeed, Manne even seems to have seeped into popular culture. Consider the film *Other People's Money* (1991), in which a corporate raider responds to criticism that he is a destroyer of firms by telling the

shareholders, "Who cares [about you shareholders]? . . . Me. I'm your only friend. I'm making you money; that's the only reason you became shareholders." The echo from Manne (1967)'s praise of corporate "garbagemen" seems more than coincidental.

If Manne's views were seeping into the public consciousness they might also be influencing public policy. In the 1960s takeover artists like Louis Wolfson could appeal only to their self-interest, while profligate corporate managers could wrap themselves in the public good. By the 1980s Manne had provided a public interest justification for takeovers and for viewing the corporation in economic terms that made it easier to resist calls for tighter takeover regulation.

However, takeovers ultimately were regulated. Similarly, the old views of the unfairness of insider trading and image of the corporation as a political democracy still hold considerable sway today, both in politics and in scholarship. Congress ignored Manne's lessons in the regulatory frenzy that followed Enron and culminated in the Sarbanes-Oxley Act. Seventy years after adopting the federal securities laws, legislators again forgot about dynamic capital markets and the strong incentives they give firms to provide effective governance (Ribstein 2002). Another massive federal law had been enacted ostensibly to "restore investor confidence," but actually to hobble newer and more entrepreneurial competitors.

While the persistence of the Berle-Means paradigm testifies to the power of popular distrust of large corporations, there has been a change that may owe something to Henry Manne. After Sarbanes-Oxley, unlike in the 1930s, a substantial group of leading legal scholars immediately questioned the reforms, a larger group of finance economists had the theories and tools to test their costs and effectiveness, and there was a large audience in academia, think tanks, Congress and the SEC for this theory and evidence. The skeptics of regulation are playing an increasing role in the public debate.

To be sure, it is hard to argue that one individual caused a change in the regulatory environment. One might argue that, given the work of other pioneers of law and economics, scholars writing in this vein eventually would have turned to the economics of corporate governance, and eventually would have come to similar conclusions. After all, part of the power of Manne's work is that he was so often right, which suggests that others would have come to the same conclusions on their own. But as discussed in the next section, the acceptance of law and economics itself owed much to Manne's entrepreneurial efforts.

B. MANNE AS ENTREPRENEUR

Manne saw that the quality of ideas alone may not be enough to make them influential. Once people have become convinced of a particular point of view, it is hard to change their minds. That is particularly so for scholars who have invested a career in the point of view. Yet scholars hold an important key to public opinion. Contending interest groups may be tarred in the public view by their self-interest. Interest groups therefore can increase their clout by turning to the apparently disinterested intellectual elites who float above partisan squabbles. Moreover, under the right circumstances, scholars can be influenced to change their minds. After all, outside the prevailing wisdom lie the substantial rents accruing to originality. Manne had both an incentive and an opportunity to make scholars more receptive to his views.

Manne influenced mainly through the seminars, many supported by the Liberty Fund, and the Law & Economics educational programs for law professors, economists and judges. The warm sun, vigorous walks, pleasant golf and good food helped to soften stubborn minds and make them receptive to the morning and afternoon lectures, papers and discussions. Manne may have nudged things along by tweaking the agenda to at least slightly stack the intellectual deck (Priest (1999)). And the relationships formed during these programs helped germinate an intellectual network that leveraged the effect of these programs (Rubin (1999)).

These efforts could be viewed as interventions in the distribution chain. Manne saw the importance of getting involved in the manufacturing process – in law school, where legal minds were formed. Manne noted at the beginning of his insider trading book lawyers' tendency to focus on individuals and one-to-one unfairness, while economists consider the general allocation of resources (Manne (1966), p. 3). Before lawyers would accept Manne's theories, they had to learn to think more like economists. Thus, after many years of working outside of the legal education establishment, Manne's career led almost inevitably back into legal education and to his deanship at George Mason University School of Law.

George Mason was a natural fit. The President of George Mason University, George Johnson, was seeking a quick route to prominence and therefore had more tolerance than the usual university administrator for an entrepreneurial dean (Interview (2007)). Moreover, located within sight of Washington, D.C., a public policy role for George Mason Law School seemed appropriate. At any rate, the symbolism was apt: Manne, who had begun working in his family's dry goods store, found himself managing a law school out of a former department store (Demsetz (1999)).

Manne believed that both law schools and law students should specialize. For the law school, Manne focused hiring on law and economics scholars and integrated economics into the whole law school curriculum. Until Manne's efforts at GMU, law and economics had been consigned to (at most) a one or two-person outpost at most schools and to a special "law and economics" elective course. Within the law school, Manne instituted specialization through several specialty "tracks," through which students could concentrate on developing expertise in fields like corporate law and intellectual property (Adams (1999)).

GMU Law School ended up being less important in training lawyers than as part of the intellectual network Manne had established with the seminars and programs. The specialty tracks garnered some attention, but ultimately there was not enough demand for the sort of full-blown specialization in law school that Manne had envisioned. Manne's approach to intellectual specialization in legal education has not yet caught on, and its graduates do not seem to have played an important role in promoting the use of law and economics. On the other hand, the intellectual specialization of the law faculty paid rich dividends. GMU gave a critical mass of scholars an opportunity to write and teach together on a long-term basis. Those who remain at George Mason and the "diaspora" of scholars who left for other schools form a significant body of law and economics scholars.

GMU Law School was also important because of the entrepreneurial spirit Manne brought to it. Before the mid-1980s when Manne came to GMU, there was no real culture of competition among law schools. Indeed, law schools really did not have distinct products to sell. But competition and a distinctive product was exactly what Manne had in mind for GMU as part of his plan for creating a market for his ideas. The sudden visibility that Manne brought to GMU, and the fact that it was able to vault from nowhere to the first tier of law schools in only a few years, created a model for other law schools. It helped that around the same time US News & World Reports started ranking law schools, and that an early ranking announced the arrival of GMU Law as a top "up and coming" school.

The new competition among law schools and the advent of law school rankings have created an opportunity for the kind of product differentiation that Manne hoped to bring to legal education. Law schools have more incentive than ever to be distinctive, and there is still a chance that might include the specialization that Manne advocated. The biggest impediment to this sort of development is the internal governance structure of universities in general, and law schools in particular. Manne (1993) pointed out that universities are run as non-profit institutions under a board of trustees, a system in which nobody has a property right in the institution's success. Power therefore has devolved to university faculties. This is complicated in the case of law schools by the lawyer cartel's significant control over legal education. In other words, unlike the corporations that Manne studied, universities and law schools are not basically market institutions. Thus, even if the market demanded specialization and product differentiation, it is not clear that the governing bodies of universities would respond to this demand. Instead, schools could be expected to continue to make things comfortable for their tenured faculties. There is no market for control to deal with recalcitrant university administrators.

IV. CONCLUDING REMARKS

Henry Manne has had a remarkable career. Writing when there was a theory vacuum at the heart of legal academia, Manne breathed life into corporate law by using economic principles to formulate a sweeping new theory of the corporation. Then he took his show on the road with seminars, programs and ultimately a law school to create a market for his ideas.

Manne was an entrepreneur in two important respects – not only in the literal sense of bringing people and ideas together, as discussed in subpart III.B, but also in the sense discussed in Manne's work on insider trading – that is, more than merely a manager of existing ideas, but an active participant in the creative destruction of the existing paradigm.

Manne's career demonstrates that a single scholar can leave noticeable ripples in the stream of intellectual history. Even the most innovative thinkers make only incremental contributions that are difficult to isolate from the general ferment of ideas. But because of both the originality of his work and the network that he created for disseminating his ideas, Manne was unusually influential. By demonstrating that corporations, and by inference other important institutions, are best analyzed in market terms, and by creating an intellectual market for these and other economic ideas, Manne

changed the way scholars, judges, regulators and others think about the role of law in society.

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