One Man a Committee Does Not Make:

Henry Manne, the AEA-AALS Joint Committee, and the Struggle to Institutionalize Law and Economics

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Abstract: In 1965, Henry Manne convinced the Association of American Law Schools and the American Economic Association to establish an ad hoc Joint Committee to explore the possibilities of collaborative efforts between economists and legal scholars. This paper examines the origins and activities of this Joint Committee and reveals that its work was far less about promoting increased interaction between economists and legal scholars than about a conscious attempt to use this committee to help fashion a particular form of law and economics that would reshape legal analysis in a way consistent with Manne's vision. Though the Committee's effective life was very short and its direct influence negligible, the lessons learned informed Manne's subsequent efforts to institutionalize law and economics within the legal academy.

Keywords: Law and economics, Henry Manne, American Economic Association, Association of American Law Schools, products liability, George Stigler, Roland McKean

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I. Introduction

Histories of how "law and economics" came to occupy a prominent place in legal and economic analysis typically focus on the ideas and their influence, with little attention paid to the institutions and entrepreneurial efforts that supported the development, dissemination, and diffusion of these ideas. Yet law and economics was first and foremost an intellectual *movement* driven and molded by academic entrepreneurs and institution-builders. The most important of these, Henry Manne, was honored as one of the field's "four founders" by the American Law and Economics Association at its inaugural meeting in 1991. Manne's entrepreneurial efforts focused primarily on education and programming: over the course of the 1970s he created institutes that provided economics training to law professors and federal judges, and established the first "Law and Economics Center" at the University of Miami, which provided a model for similar centers that sprang up at a host of leading US law schools over the next two decades. These efforts left a lasting imprint on legal education and the judiciary in America (Teles 2008; Priest 2020; Ash et al 2022)

Manne earned his B.A. in economics from Vanderbilt University (1950) and his J.D. from the University of Chicago Law School (1952) at a time when Aaron Director was having a transformative influence on scores of students (Kitch 1983). But it was his interactions with UCLA's Armen Alchian in the early 1960s that enabled him to grasp the potential import of economic reasoning for law. Though his scholarship bringing economics to bear on corporations and securities law in the years that followed was of no

small consequence, his efforts to transform legal education from the *inside* are at the heart of his legacy (Ribstein 2009). While research into the making of Manne's programs is now getting off the ground (Gindis 2020a), much remains to be written about his earlier entrepreneurial efforts, two of which failed but laid the groundwork for subsequent successes. The first of these, and the subject of this paper, was a joint committee of the American Economic Association (AEA) and the Association of American Law Schools (AALS), established in December 1965 while Manne was a Professor at the George Washington University Law School.[1] The committee's stated purpose, as AALS President Myres McDougal (1966: 460) noted the following May, was to explore "matters of common concern in education and scholarship in law and economics." For Manne, on the other hand, it was a launching point for his efforts to integrate what he viewed as "sound" economic thinking into law and legal education (Medema 2017).

The endeavor began with some promise as Manne, clearly energized for this effort, was able to draw prominent economists and legal scholars into its orbit. Yet, though the committee persisted for more than a decade, its initial promise was never realized; indeed, it is fair to say that it had no direct influence on the development of law and economics. Nevertheless, this was an important moment in the history of law and economics, for two reasons. First, it represented an overt attempt to *create* and give a particular shape to the field. In the process, it highlighted the challenges the field would confront in establishing a toehold within both economics and law. Second, it provided Manne with lessons that he would apply in developing other and far more successful efforts to infuse what had come to be known as "Chicago-style" economic thinking into law and legal education.

[1] The second venture, to be treated in subsequent papers, was Manne's unsuccessful attempt to set up an economics-oriented law school at the University of Rochester at the turn of the 1970s.

From the outset, the Committee's existence seems to have been a conscious attempt on Manne's part to use the stamp of double legitimation provided by the AEA and the AALS to start reshaping legal thinking in the image of economics—or, rather, that brand of economics that Manne saw as the essential foundation of sound legal-economic policy making. But reshaping an entire discipline, or even establishing a beachhead toward that end, requires not just a forceful and entrepreneurial leader, but also a set of effective foot soldiers, a commonality of vision, a venue for bringing the revolutionaries together, appropriate funding, and organizational vehicle, and so on.[2] It was not long before the Committee revealed itself ill-suited for this task, beset by contending visions for what law and economics could and should be and how best to accomplish this. Despite the stated aim of promoting increased interaction between economists and legal scholars, what emerged was something far more narrowly drawn, and this is what ultimately determined the Committee's fate. When Manne drifted away toward other endeavors more aligned with his interests and perspective, there was no one with a similar missionary zeal to pick up the torch, and the committee slid into oblivion.

II. First Steps

Manne's proposal for a joint committee came at an opportune time. It was addressed to AEA President-Elect Fritz Machlup, who for some years had been working on the economics of intellectual property and was likely to find the idea appealing. The proposal, which ran to a page and a half, outlined "two basic interests" that might occupy the committee. The first involved "matters of education in law for economic students and

[2] This is not unlike the ingredients necessary for the establishment of a "research school," about which there is an extensive history of science literature. See Geison and Holmes (1993).

education in economics for law students," while the second entailed engaging economists and law professors in "matters of mutual substantive interest."[3] To illustrate how this could play out, Manne set down eight specific topics the committee "might profitably explore," four aligned with each of these "basic interests." On the education front, Manne highlighted:

> 1) The place of law materials in the undergraduate and graduate economics curricula, including a critique of existing materials available for that purpose;
>
> 2) Economics as a possible course in law schools, including questions of jointly taught materials and the appropriateness of existing introductory texts for law school purposes;
>
> 3) A round table discussion of methodological differences between economists and lawyers, including a discussion of statistical techniques, economic analysis, case law reasoning and the somewhat institutional approach reflected in modern legal scholarship; 4) A discussion of various programs, institutes and journals which might aid in the development of meaningful interdisciplinary programs.[4]

The priority given to education here is no surprise to anyone familiar with Manne's career trajectory. But unlike the plans for an economics training program for law professors, an explicitly unidirectional effort to change legal writing and teaching which Manne began formulating at roughly the same time,[5] the proposed joint committee agenda suggested an

[3] Manne to Machlup, October 12, 1965, AEA Box 920, Association of American Law Schools folder. Unfortunately, we have not been able to locate any sources of information that go to the AALS-side aspect of the committee's origins.
[4] Manne to Machlup, October 12, 1965, AEA Box 920.
[5] Manne to Rostow, October 15, 1965, Eugene Rostow Papers, Accession 1985-M-004, Correspondence Box 5 1965-1966.

overt effort to foster significant interactions between the disciplines, without one dominating the other.

The remaining topics identified by Manne focused on legal issues of the moment that Manne considered emblematic of "the kind of areas in which meaningful joint investigations would be possible." These included:

> 5) A round table discussion of regulated industries, including economic and legal analysis of such matters as allocation of radio and TV channels and the regulation of securities markets;
>
> 6) A discussion of the legal and economic aspects of the fault principle versus the compensation principle in personal injury liability;
>
> 7) A discussion of the economic and legal aspects of the modern large corporation, including consideration of the theory of Adolf Berle;
>
> 8) A discussion of legal and economic aspects of corporate mergers.[6]

It is easy to see why these topics were mentioned. Coase's recent writings and testimony on broadcast frequency allocation and Guido Calabresi's work on accident law had successfully, albeit controversially, applied economic analysis to legal issues. Manne, meanwhile, was personally invested in developing a legal understanding of corporations and securities markets grounded in economics, and had just published what was to become a heavily cited piece on mergers and the market for corporate control in the *Journal of Political Economy* (Manne 1965).

Machlup put the proposal to the AEA Executive Committee at its December 1965 meeting, and the Executive approved a motion "to have the President appoint an ad hoc

[6] Manne to Machlup, October 12, 1965, AEA Box 920.

committee to discuss the possibilities of cooperating with the American Association of Law Schools on questions of mutual interest" (AEA 1966: 611). Three days later the AALS Executive Committee, too, put its formal stamp on this effort "to consider cooperative projects of the two associations in fields of common interest" (AALS 1966: 78). The committee's legitimacy thus established, Manne was free to set his plan in motion.

III. Turning the Wheels

The first order of business was securing representatives from the two associations. Manne had a direct hand in the AALS selections, with McDougal readily approving Manne's proposal to serve as chairman and his recommendation to approach former Yale Law School Dean Eugene Rostow, at the time Manne's Yale SJD advisor, and Kenneth Dam, a regulatory and international law specialist from Chicago, about joining the committee.[7] Both Dam and Manne's next choice, his former University of Wisconsin colleague William Klein, were unavailable so,[8] on Rostow's recommendation, Manne secured Columbia's Harlan Blake,[9] an outspoken critic of the new push to weaken antitrust law (see for example Blake and Jones 1965).

Exactly how the initial members on the AEA side were chosen and the degree of Manne's input is unclear. Machlup's copy of Manne's initial proposal has scribbled on it a "Note by F.M." listing the names of "Possible members from AEA": Coase (Chicago), Alchian (UCLA), Stigler (Chicago), Jesse Markham (Princeton), Corwin Edwards

[7] Manne to Rostow, February 23, 1966, Rostow Papers. The SJD is a research doctorate in law.
[8] Klein was a business law expert at the time in post at the Internal Revenue Service.
[9] Rostow to Manne, February 28, 1966, Rostow Papers.

(Oregon), and Mark Massel (Brookings). Each, like Manne, brought economic thinking to bear on legal issues and had a strong interest in competition policy, regulation, and antitrust. That said, not all of them were likely to have viewed these issues in the same way as Manne, with Edwards and Massel being clear outliers (see for example Edwards 1962; Massel 1962).

The committee's initial composition was unbalanced, with just three AALS representatives—Manne, Rostow, and Blake—against five from the AEA—Alchian, Coase, Massel, Stigler and Gerald Meier (McDougal 1966: 460).[10] But there should be no doubt that this was Manne's committee.[11] His May 1966 letter welcoming the members to the committee noted that he was writing to them "at the request of" the AEA and AALS presidents, but made clear that "the initiative has been given to me." Manne indicated that he wanted to set up a summer planning meeting, running one or two days, and invited "suggestions" as to specific projects the committee might undertake. In doing so, he did not pass up the opportunity to offer his own thoughts on the subject where, once again, his interest in "law and economics education" came to the fore.[12] As it happened, however, this was also where the seeds of his eventual drift away from the committee were first sown.

The reactions to Manne's missive do not survive, save for that from Stigler who, apart from Manne, was the biggest cheerleader for these efforts. But that is a telling statement, as even Stigler's response was muted. After noting that he was unavailable for a

[10] See also Manne to Alchian et al, May 6, 1966, George J. Stigler Papers, Box 10, folder: Manne, Henry G. Meier was a Stanford economist with an interest in international economic law.
[11] That this was the case was reflected in George Stigler's reference to a "Manne Committee" on one of the early draft committee reports. See Stigler Papers, Box 10.
[12] Manne to Alchian et al, May 6, 1966, Stigler Papers, Box 10, folder: Manne, Henry G.

summer meeting, Stigler suggested that Manne was biting off quite a lot here and, worse still, was skeptical about what the committee could accomplish:

> The main task of the committee is to determine why a past tradition of indifference or slight mutual hostility between lawyers and economists should now be interrupted. Quite seriously, the question is whether formal joint association is a necessary or helpful instrument of increased knowledge—and the answer isn't obvious to see.[13]

Though Stigler's concerns were to prove prescient, they did not flow from a lack of interest in the subject-matter. Indeed, he was only too willing to extol the benefits of bringing economic thinking to bear on legal issues, even in front of potentially hostile audiences (Bertrand 2020). His reaction, though, was very much of a piece with his concerns, shared by Manne, about the ability of intellectuals, whom he considered both insufficiently disposed toward the market process and excessively predisposed toward government solutions, to assimilate the insights of economics.[14] If economics was to influence the law, the route, in Stigler's estimation, did not run though conversion of the latter's professoriate.

IV. The Initial Meeting

Manne was undeterred by Stigler's hesitancy, going so far as to postpone the committee's initial meeting until late fall to facilitate his attendance. It took place in Chicago on November 12, 1966, and already the committee's composition had changed. Rostow had resigned following his appointment as Under-Secretary for Political Affairs in the Johnson

[13] Stigler to Manne, May 13, 1966, Stigler Box 10, Manne, Henry G. folder.
[14] Compare Manne (1964) and Stigler (1965). See also Nik-Khah (2020).

administration, and the AALS side had been augmented by Klein, who had returned to academia after his stint in government, the rising Yale antitrust specialist Robert Bork, who in 1952 had served as an Associate Editor of the *University of Chicago Law Review* alongside Manne, and James Rahl, a torts expert from Northwestern.[15] This gave the committee equal numbers on both sides and aligned member specialisms with the four research topics listed in Manne's original proposal. Though many of the details of this meeting are unknown, we can reconstruct its basic thrust from the report that Manne drafted only days after the meeting.[16]

A. Law v. Economics

The AEA report opens innocently enough, stating that the committee members had engaged in "a general discussion of the contributions law and economics could make to each other," and that "various devices which could be used to improve the dialogue between lawyers and economists were considered" (AEA 1967: 715). But in elaborating the particulars, Manne's motive for this effort came into view:

> It was the consensus of the group that law professors today frequently write about legal subjects without sufficient awareness of the economic implications of their statements. In considerations of policy in many areas, for example, a greater use of economic analysis would frequently make this legal work more cogent, thus leading to the formulation of more desirable policies. In addition to correction of implicit and explicit errors of economic analysis, legal writing could be improved

[15] We have not found any sources explaining how Rahl got involved.

[16] A copy of Manne's draft appears in the Stigler papers, accompanying Manne's letter to Stigler of November 15, 1966 (Stigler Papers, Box 10). The final version was published as part of the proceedings from the 1966 AEA meetings (AEA 1967a). The report indicates that only eight of the ten members attended this initial meeting, but it is not clear precisely who was and was not present.

> by new modes of formulating issues which economics offers. Finally, economics may be able to improve academic legal analysis by suggesting those areas in which empirical proof for or against a proposition is available or is needed. (AEA 1967: 715)

The problem with law, in a nutshell, was methodological: The lawyers were guilty of bad economics, economic ignorance, or both, and the economist was well-placed to provide the remedy. Of course, it was also a matter of employing the right brand of economics, though that was left unsaid.

All of this might seem benign—one side of a two-way street of intellectual interchange—were it not for the subsequent discussion of what the committee felt that economists could learn from law and legal scholarship. The problem with economics, the report argued, was that much of its literature "lacks relevancy for current problems," contrary to the "generally more topical" legal literature. The result was problematic, in that, "Too frequently social or economic developments initiated, or at least closely followed, by lawyers are over and done with before the economist begins to consider them." The committee's contention was that the policy-making process "could be improved" if economists took up these problems in a timelier fashion rather than "from the more comfortable but less helpful vantage point of hindsight." Economists were furthermore "unaware" of the many interesting legal problems that would benefit from their insights. Even on those occasions when economists *were* active in a legal area, the report continued, their analysis and that of the lawyer seemed often to be "at cross-purposes," suggesting the need for better communication between the two groups (715).

The problem with economics, then, was largely topical: Economists needed to be more aware of legal issues and address them in timely fashion. The committee's task was to correct this by making lawyers aware of the economist's product—"both in an affirmative and critical sense" (715)—and by making economists aware of the large, untapped market for its insights. Economics was to be the dominant player here, providing the tools that could inform legal analysis and the discussion of contemporary policy issues. What the study of law might offer to the economist's understanding of the workings of the economic system was left unremarked. As the first report that Manne drafted for the AALS almost 10 months later sounded similar notes (AALS 1967), the message was unambiguous. What remained was to elaborate a path that would end in the realization of these ambitions.

B. Charting a Course

To highlight the contributions that economic reasoning could make to legal analysis, the committee recommended the following experimental plan:

> A competent economics scholar would be paid to prepare a monograph on the legal literature of a specified area of law. This monograph would constitute a critique of the economic content of the legal literature. Errors in economics as well as omissions of relevant economic inquiry would be pointed out and proposals for improving the formulation of policy positions would be made. This monograph would then be circulated to interested parties and a conference on the subject would be held. (AEA 1967a: 716)[17]

[17] See also AALS (1967: 31). The idea of a conference had been floated by Machlup at the outset. See Manne to Rostow, February 23, 1966, Rostow Papers.

It was suggested that this experiment be attempted in three areas of law—"one which is currently in the process of development, one which has recently seen a major shift in the law's position, and one in which both lawyers and economists have worked for some time." The three areas thus recommended were, respectively, criminal law, products liability, and antitrust.

Given that this was a *joint* committee, it is striking that this initial research effort—the monograph writing—was not envisioned as an interdisciplinary collaboration between economists and lawyers. Instead, an *economist* would be appointed to write each of the monographs and they would be written over the course of a summer.[18] The committee was willing to provide names of relevant law professors or lists of relevant readings, leaving the economist free to "consult with anyone as much as he wishes," but it was explicit about its view that "*a collaborative effort was not indicated*" (717, emphasis added). (In fact, Manne's initial draft read, "not at all desirable."[19]) The feeling was that, if such collaboration were allowed, "the desired critical flavor might thereby be lost."

The interdisciplinary aspect of these ventures would commence only *after* each monograph had been completed. The finished product would be "distributed for comments to a prominent group of readers in both law and economics," who would write up their responses. A conference would then be convened, consisting of about twenty invited participants, equally divided between lawyers and economists, to discuss the monograph and the appraisals. Each monograph would then be published, along with the associated appraisals and conference proceedings. It was anticipated that this experiment could cost

[18] The AEA Report recommended that two economists be appointed for antitrust, given the size of the literature in that area.
[19] The original draft is appended to Manne's November 15, 1966 letter to Stigler (Stigler Papers, Box 10).

approximately $40,000, which meant securing external funding. The committee thus requested the permission of the AEA and AALS Executive Committees to commence fundraising and, doubtless aware that their imprimaturs could be useful when approaching prospective funders, that this permission be accompanied by the removal of this committee's *ad hoc* status, establishing it "as a permanent standing committee of the two associations" (717).[20]

Manne sent a draft of his report to Stigler for comments, and with Stigler's thumb's up,[21] sent it on to the AEA, informing Machlup in his covering letter that "The members of the Committee who attended the meeting expressed satisfaction with the outcome" and that their proposal was "both workable and extremely important." The hope, he said, was that the committee would begin its work in the summer of 1967, contingent on securing the necessary funding.[22]

Machlup "found the report very interesting," noting that he would put it on the AEA Executive's agenda with his endorsement, and applauded Manne for "the expeditious way in which [he had] seen this thing through.[23] That Machlup was truly keen on this effort is evident from his note to Stigler, to whom he copied his response to Manne: "You deserve our special thanks," he said; "This looks like an excellent idea."[24] From there, it was smooth sailing. Stigler presented the report to the AEA Executive Committee at its

[20] Potential funders included "the American Bar Foundation, Walter E. Meyer Foundation, Russell Sage Foundation, Ford Foundation, Social Science Research Council, Carnegie Foundation, National Institute of Health (for product liability and safety area), and National Science Foundation (for criminal law area)" (AEA 1967a: 717). Given the propensity to associate the rise of "law and economics" with the financial support of conservative-leaning funders such as the John M. Olin Foundation, it is noteworthy that the contemplated funding sources did not reflect these leanings, suggesting that the committee believed that efforts to increase interactions between economists and lawyers would have broad-based support.
[21] Stigler to Manne, November 18, 1966, Stigler Box 10, Manne, Henry G. folder.
[22] Manne to Machlup, November 28, 1966, AEA Papers, Box 920, AALS folder.
[23] Machlup to Manne, December 7, 1966, Stigler Box 10, Manne, Henry G. folder.
[24] Machlup to Stigler, December 7, 1966, Stigler Box 10, Manne, Henry G. folder.

December meeting, and the Executive voted "to approve the plan recommended in the report" (AEA 1967b: 683).[25]

It is noteworthy that the proposed program of activity, consisting solely of holding "research consultations" on what Manne had initially called "matters of mutual substantive interest,"[26] did not reflect the priority Manne placed on educational efforts. Yes, these monographs and "consultations" held the promise of exposing some people working in a particular area of law to the economic method, but they were hardly the large-scale transformation-through-education vehicles that Manne considered so essential to infusing economics into legal thinking on a broad scale. Though the details of the committee's deliberations remain a mystery, it appears that Manne had trouble bringing his colleagues around to his vision, and that it was Stigler, rather than Manne, who ultimately guided the committee to its chosen plan of action. Manne acknowledged as much in a post-meeting letter to Stigler, which said:

> I want to thank you very sincerely for making that meeting a success. I suspect that without your suggestions it would have foundered mightily, perhaps doing something foolish *like approving an economics school for law professors*![27]

Manne had in fact secured the approval of George Washington University to run a summer economics school for law professors in Washington D.C. during the summer of 1966.[28] When this plan fell through, Manne contemplated holding the school during the summer of

[25] We have no record of AALS receiving a report in late 1966—there is only the shorter report mentioned above that Manne drafted in October 1967—or giving its approval to its recommendations though, as subsequent events make clear, it obviously did so.
[26] Manne to Machlup, October 12, 1965, AEA Box 920.
[27] Manne to Stigler, November 15, 1966, emphasis added. Stigler Box 10, Manne, Henry G. folder.
[28] Manne to Rostow, October 15, 1965, Rostow Papers.

1967 at Wisconsin, where he had held a visiting professor position in the late 1950s.[29] This division of Manne's vision into two parallel projects offered the potential to expand the reach of the market for economic reasoning.

V. Moving Forward, But Not Without Controversy

With its standing committee status secured, Manne's next task was to select a topic for the first monograph, and to identify a suitable author. He found Stigler's suggestions of Becker for the crime project, himself for the products liability project, and Coase for the antitrust project—an all-Chicago cast—"exciting," gushing that it offered the prospect of "a far more significant impact on law, legal education, and government policy than we had thought possible."[30] He was eager to get rolling and, knowing that having authors lined up was key for attracting funding, pressed Stigler to sound out Becker about the criminal law monograph.

A. Some Early Controversy

Things seemed to be going about as well as Manne could have hoped, but in early January, 1967, AEA president Milton Friedman received a letter from Massel who, as Stigler reported, apparently "blew his top" upon seeing Manne's committee report.[31] Though listed as a signatory, Massel said that he could not support the committee's decisions, objecting both to the premature move from *ad hoc* to standing committee status and the process of drafting monographs, which he felt would be of dubious quality given the short

[29] Manne to Hurst, January 5, 1966; Hurst to Manne, January 11, 1966, J. Willard Hurst Collection, 1932-1997, Correspondence Box 7, folder 58, 1966.
[30] Manne to Stigler, December 19, 1966, Stigler Box 10, Manne, Henry G. folder. No copy of Stigler's letter survives, but its contents are clear from Manne's response.
[31] Stigler to Manne, January 31, 1967, Stigler Papers, Box 10.

timeline for their preparation and the lack of direct involvement by law faculty in the writing process. Massel requested that his name be removed from the report and resigned from the committee.[32] Friedman was "distressed" by Massel's letter and set out to determine which committee members had actually approved the report.[33] Rahl confirmed that the committee members "*did not* have a hand in drafting [the] report"[34] but, in the end, it was published anyway, without Massel's name attached to it.[35]

This dustup was not the only indication of discontent. A letter from Meier to his Stanford colleague and AALS president-elect Joseph Sneed written around the same time reveals some behind-the-scenes maneuvring to steer committee membership, and thus the committee's direction, along a different course when the next set of appointments was made. Following up on their recent exchange about the committee's work, Meier offered Sneed the names of five economists who he believed "would have some real interest in the problems of the committee, *show some imagination*, *and speak from some contact with the two disciplines* (or their practitioners)": Charles Lindblom (Yale), Carl Kaysen (Princeton), Edward Mason (Harvard), Kermit Gordon (Brookings), and Richard Musgrave (Harvard).[36] Each was a flavor of economist very different from the group that Manne had recruited to the committee, and certainly none could be accused of having a "Chicago school" tilt.[37]

[32] Massel to Friedman, January 6, 1967, AEA Papers, Box 920, AALS folder.
[33] Friedman to Harold Williamson, January 17, 1967, AEA Papers. Box 920, AALS Folder. Williamson was the AEA Secretary-Treasurer.
[34] Undated Notes, AEA Papers, Box 920, AALS folder, emphasis added. That these are Williamson's notes is inferred from their discussion of the conversation with Rahl. Rahl was obviously unaware that Manne had shown the report with Stigler prior to its submission.
[35] Even so, Massel's name appeared on the AEA's listing of Joint Committee members through 1967.
[36] Meier to Sneed, January 30, 1967, Gerald Meier Papers Box C1, Correspondence 1967-1969, emphasis added.
[37] Lindblom had done his graduate work at Chicago in the late 1930s and early 1940s but was not associated with the Chicago school.

Meier's concerns were not confined to committee make-up per se. He also found its topical interests "too conventional" and one-sided and wanted to push it to "explore substantive problems *involving the two disciplines on a parity*, and raise questions that would not otherwise be asked."[38] Meier, like Manne, believed economics had much to contribute to law, but his approach to the subject, which highlighted market imperfections and potential governmental remedies, was not what Manne envisioned in the way of exporting the economics toolkit. Less than wholly pleased with the direction in which things were trending, Meier saw in Sneed a useful ally for bringing a greater variety of perspectives into the mix.

None of this disquiet seemed to have much immediate effect on the committee's work. Manne's funding inquiries had attracted the attention of the Walter E. Meyer Research Institute of Law, of which Rostow had been an initial trustee (Schlegel 1995: 244). The Meyer Institute, under the leadership of Harvard law professor David Cavers,[39] was particularly concerned with "advancing the use in law of the techniques and knowledge of the other social science disciplines" (Anon 1958: 571) and was already funding Calabresi's research on the legal and economic analysis of accidents. This, on the face of it, made the committee's project a good fit with the Foundation's objectives (Cavers 1997), but sealing the deal, Manne sensed, required getting a monograph author officially on board. The Meyer Institute's 1962 grant policy statement singled out crime and products liability as funding priorities (Meyer Institute 1968: 22), and with no near-term prospects on the criminal front, he pressed Stigler to commit to the monograph on

[38] Meier to Sneed, January 30, 1967, emphasis added.
[39] Cavers had studied economics as an undergraduate at Penn in the 1920s before taking his law degree from Harvard. He was on good terms with Coase, the two having met in the late 1950s when they held fellowships at Stanford's Institute for Advanced Study in the Behavioral Sciences (Medema 2021).

products liability.[40] Stigler, though, was cool to the idea, both because of his existing engagements and his sensitivity to this whole thing being perceived as a sort of "inside" job. At the same time, however, he acknowledged that the paucity of economists "with interests in the application of economics to other fields" made it difficult to come up with other suitable options. He thus suggested that Manne solicit names from all committee members and gauge their preferences regarding the various possibilities—including (reluctantly) himself.[41]

Manne's letter to the committee passed along the happy news regarding the "probable" Meyer Institute funding but also impressed upon his colleagues the need to move things along. Because the funding would be for a single monograph–cum–research consultation and a suitable author for a monograph on criminal law had not been found, Manne suggested that products liability law offered the most fruitful way forward. This area of law was "undergoing a substantial and radical change," Manne had noted in the AEA Report (AEA 1967a: 716), alluding to the growing number of product liability suits reaching the courts since the start of the 1960s. As courts increasingly held manufacturers liable for defective or dangerous products even in the absence of negligence, the American Law Institute's *Restatement (Second) of Torts*, adopted in 1965, extended this strict liability standard to sellers of such products (§402A), initiating a genuine revolution in the law of torts (see White 1985). These changes occurred just as the consumer movement

[40] Manne to Stigler, February 16, 1967, Stigler Papers Box 10.
[41] Stigler to Manne, March 2, 1967, Stigler Papers Box 10. Stigler mentioned Gary Becker, Simon Rottenberg, Jack Hirshleifer, James Buchanan, Warren Nutter, Lester Telser, Sam Peltzman, and William Landes, but thought each would be unwilling for one reason or another. That Stigler was interested in this topic and had seriously considered preparing the monograph is evident from his archive. See Stigler Papers, Box 14, Joint Committee of Law and Economics folder.

spearheaded by Ralph Nader had succeeded in making auto and product safety more generally a matter of intense public and political debate.[42]

Manne asked committee members for author recommendations.[43] This solicitation, however, had only limited success. As Manne told Stigler in a follow-up letter, the one reply that he received, from Meier, listed Stigler as the "first choice" to prepare the monograph,and Manne was only too happy to attribute the silence of others to "their approval." He thus requested Stigler's permission to list him as the monograph author on the Meyer Institute application and asked him to recommend the names of "several economists who might be invited to comment on the monograph," adding that he himself would approach the law professors on the committee for a corresponding set of names from the legal side.[44]

B. Back On Track

On May 31, Manne informed Friedman that the Meyer Institute had agreed to provide the AEA and the AALS a grant of $11,500 to support "an interdisciplinary study" of products liability and that UCLA's Roland McKean had been enlisted to prepare the monograph on the subject.[45] Why Stigler ultimately dropped out and how Manne came to tab McKean for the job—despite the fact that McKean had no legal background and had done no work in the economic analysis of law—is unknown, though the fact that McKean had been Manne's mentor during his undergraduate days at Vanderbilt likely played a role here.[46]

[42] Manne was later to have a series of pitched battles with Nader (see Gindis 2020b).
[43] Manne to Members of the Joint Committee AALS-AEA, March 7, 1967, Stigler Papers Box 10. Manne's failure to identify an author for a monograph on the economics of criminal law was due in part, he noted, to the work on the subject already underway and the fact that the authors of such work (presumably including Gary Becker) were unavailable.
[44] Manne to Stigler, April 6, 1967, Stigler Papers Box 10.
[45] Manne to Friedman, May 31, 1967, AEA Papers, Box 920, AALS folder.
[46] It was McKean, who had done his Ph.D. in economics at Chicago and knew of Aaron Director's work in the law school there, who urged Manne to attend Chicago for his law degree.

Regardless, McKean's task was clear: He would provide "a critique of the legal literature on this topic as well as discuss additional work that could be done by economists."[47]

Manne's report to the AALS for 1967 highlighted McKean's "reputation and writings in economic theory [that] made him eminently suited for this project," as well as his enthusiasm for it. This left Manne brimming with optimism, believing that, "If other economists can be encouraged to follow suit, this project could represent a very significant breakthrough in the development of interdisciplinary law and economics research" and open up additional funding possibilities down the road (AALS 1967: 32).[48] As McKean intended to complete the monograph in the fall of 1967, Manne noted that they were on track to hold the research consultation the following fall. Once again, however, reality got in the way of Manne's intentions.

C. Troubles and Transitions

On May 22, 1968, Manne wrote to Sneed, who had by this point assumed the presidency of the AALS, to announce "some damn bad luck": A serious illness in the family had set McKean back by several months and so called into question the plans to hold the research consultation in the fall of that year. This also threw the committee appointments "somewhat out of kilter," given that the terms of current members would expire at year's end and thus prior to the now-delayed research consultation. The eye-opening aspect of this otherwise mundane business was Manne's statement that, "with one exception"—Klein—"I do not necessarily recommend reappointment of the same people."[49] This was not the first time he had addressed the topic with Sneed, who had solicited names of

[47] Manne to Friedman, May 31, 1967, AEA Papers, Box 920.
[48] See also Manne to Friedman, May 31, 1967, AEA Papers.
[49] Manne to Sneed, May 22, 1968, AALS Box 3, 1967-69.

potential committee appointees from Manne the previous fall. At that time, Manne had recommended Dam (Chicago), Bill Jones (Columbia), Robert Park (George Washington), Roger Cramton (Michigan), and Calabresi (Yale), a fact of which Manne reminded Sneed in his latest letter.[50] Manne also noted that the committee's chairmanship should rotate to one of the economists. He favored Meier, Sneed's Stanford colleague, for the position and indicated that he would be writing to Kenneth Boulding, the AEA President-Elect, to this effect that same day.

Sneed, for his part, was not entirely comfortable with the way all of this was playing out. He was already aware of Meier's discontent, but his letter to AALS president-elect William Lockhart suggests that Meier was not alone. "There has been from time to time some criticism of the way Henry conducted his part of this show," Sneed informed Lockhart, but he had "not been able to determine the exact reason for these murmurings." His guess, which he emphasized was "only a guess," was that Manne's "brand of economics does not please those of a more liberal persuasion."[51] Meier certainly fit that description, but it seems that the same could be said for some of the law professors on the committee.

Following Manne's recommendation,[52] Boulding offered Meier the committee chairmanship, effective in 1969—an offer that Meier was "glad" to accept.[53] If this hinted at a bit of change in perspective and direction, Boulding's choices for the next round of economists to join Meier in representing the AEA—Louis De Alessi (Duke), Harold Demsetz (Chicago), Richard Musgrave (Harvard), and Peter Steiner (Michigan)—provided

[50] The names can be found in Manne to Sneed, September 25, 1967, AALS Box 3, 1967-69.
[51] Sneed to Lockhart, June 19, 1968, AALS Box 3, 1967-69.
[52] Manne to Sneed, May 22, 1968, AALS Box 3, 1967-69.
[53] Meier to Boulding, 7 August 1968, AEA Papers, Box 920, AALS.

a much clearer signal.[54] We do not know what role Meier may have played in their selection, though Musgrave was among the names he had mentioned to Sneed some months earlier, or whether Boulding had any sense for the committee and its history when making these appointments. But the change in perspective from the AEA side that they represented was striking. Though De Alessi, Manne's former George Washington colleague who had studied under Alchian at UCLA, and Demsetz were very much the type of people Manne wanted for this effort, the same could not be said of Musgrave and Steiner. Both, like Meier, had joint appointments in law schools and so had a strong interest in promoting interdisciplinary efforts. But they also, like Meier, were decidedly *not* in the Chicago mold. Whether Boulding's choices reflected an effort by the AEA to diversify membership is hard to say, but it is not an unreasonable conclusion to draw given Boulding's antipathy toward economics imperialism of the Chicago type (see for example Boulding 1969: 8), to say nothing of his politics.

VI. The "Research Consultation"

McKean completed his draft monograph in October, 1968 (AALS 1968: 21) and the one-day "research consultation," with thirty-one people in attendance (see Table 1), took place at Stanford on March 18, 1969.

[54] Boulding to Meier, December 4, 1968, Meier Papers, S1.

Table 1[55]

AEA - AALS RESEARCH CONSULTATION ON
"PRODUCTS LIABILITY: TRENDS AND IMPLICATIONS"

Participants

Armen Alchian*	Economics, UCLA
Joe Bain	Economics, U.C. Berkeley
Kenneth Bass III	Yale Law School
Abram Bergson	Economics, Harvard University
Walter Blum	University of Chicago Law School
Robert Braucher	Harvard Law School
James Buchanan	Economics, UCLA
Guido Calabresi	Yale Law School
David Cavers	Harvard Law School
William Cohen	UCLA Law School
William Comanor	Economics, Stanford University
Kenneth Dam+	University of Chicago Law School
Louis De Alessi+	Economics, George Washington University
Harold Demsetz+	Economics, University of Chicago
Aaron Director	Economics, University of Chicago
Robert Dorfman	Economics, Harvard University
Marc Franklin	School of Law, Stanford University
Grant Gilmore	University of Chicago Law School
Dean Page Keeton	University of Texas Law School
William A. Klein*+	University of Wisconsin Law School
Richard Kummert+	University of Washington Law School
Henry G. Manne*+	University of Rochester Law School
Julius Margolis	Economics, Stanford University
Roland N. McKean	Economics, University of Virginia
Gerald M. Meier*+	Economics, Stanford University
Richard A. Musgrave+	Economics, Harvard University
Walter Oi	Economics, University of Rochester
Melvin Reder	Economics, Stanford University
Marshall S. Shapo	School of Law, University of Texas
Peter O. Steiner+	Economics, University of Michigan
George Stigler*	Economics, University of Chicago

* Member of the original Joint Committee
+ Member of the 1969 Joint Committee

[55] Meier Papers, Box S1.

A. McKean's Monograph[56]

It was with a mindset geared toward the systematic assessment of the efficiency of alternative allocation systems—acquired during his days at the RAND Corporation, where from 1951 to 1963 he brought economic principles to bear on governmental budgeting processes—that McKean prepared his monograph.[57] Though "fairness or equity" loom large in the choice among legal rules, he noted in the introduction, "*Most thoughtful persons* will also be concerned with the ways in which behavior and hence resource allocation are affected" (McKean 1970: 4, emphasis added). Hence in surveying the products liability literature, his goal was to ascertain whether the economic implications of "alternative arrangements" of products liability law were being discussed "critically and carefully," using "tested hypotheses about the consequences of alternative actions," as opposed to "individual judgements about untested propositions."

Being aware of his audience, McKean offered an elementary economics tutorial that laid out what he considered the basic elements of a toolkit for legal-economic analysis: cost, comparative advantage, efficiency, and Pareto optimality.[58] For McKean, the key link between these concepts and products liability was what Stigler (1966) had called the "Coase theorem," which he defined as follows: "If there were zero transaction costs, and if people eschewed the use of coercion or interference with voluntary exchanges, it would not matter, as far as resource allocation is concerned, how the legal rights or liabilities were

[56] Quotes in this section and the next two are taken from the proceedings published in 1970.
[57] He was listed among the potential instructors in Manne's plan for a summer school in economics for law professors, which suggested that "McKean might deal with the economics of government procurement." Manne to Rostow, October 15, 1965, Rostow Papers.
[58] It is worth noting that McKean referred the reader to Alchian and William Allen's (1967) *University Economics*, rather than, say, a more popular textbook such as Samuelson's (1967) *Economics*. Alchian and Allen had been McKean's colleagues at UCLA, and their text is generally considered to have a more market-oriented flavor than Samuelson's. It was also the text that Manne was planning to use for his summer economics school for law professors. See Manne to Rostow, October 15, 1965, Rostow Papers.

initially assigned, that is, whether the purchaser or the manufacturer was liable for injuries and damages" (McKean 1970: 30). The result would be efficient in any case.

Despite its "*fairly heroic*" assumptions, McKean considered the Coase theorem a useful "point of departure" for thinking about products liability (31, emphasis added). Its suggestion that "Voluntary exchange puts risk bearing on the shoulders of the person with a comparative advantage in bearing it," he argued, has empirical content in that, if transaction costs are sufficiently low, the appropriate combination of product safety features and user precaution could well emerge through the marketplace. McKean admitted that there was ample reason to question making efficiency concerns the law's "supreme objective," but he was concerned that the recent move by the courts toward strict liability had failed to consider the efficiency implications—something that economics was well placed to address (36).

Though the Coase theorem implied that strict liability and *caveat emptor* had identical efficiency implications, McKean contended that *caveat emptor* offered the more efficient way forward in the real world of positive transaction costs. Customer liability, he reasoned, would make "certain transaction costs … relatively low," given that "market relationships" for products allow consumers to register their preferences for safety features, safety information, and the like via their willingness to pay for these things (44). Some will prefer lower risk and higher product price, others higher risk and a lower price—and producers will adjust their behavior accordingly. In short, the competitive system gives consumers what they want, in the sense of the package of "outputs"—including risk and injury prevention—that they prefer to purchase. The same could not be said of producer liability schemes.

None of this, for McKean, demonstrated the overall superiority of *caveat emptor*. Instead, the crux of the matter was that the legal literature had largely ignored efficiency issues and that, with only a few exceptions, the implications of alternative legal rules were not being discussed critically or with much precision. Though he did not think equity or fairness unimportant, McKean found that the legal literature emphasized them "almost to the exclusion of any other considerations" (56), with many legal authorities seemingly concerned with little more than which party "deserves sympathy" (58). Economic analysis was sorely needed.

B. The Responses

Having made his case, the floor passed to the four scholars—two economists, James Buchanan (UCLA) and Robert Dorfman (Harvard), and two law professors, Guido Calabresi (Yale) and Grant Gilmore (Chicago), each of significant stature in his field—enlisted to provide commentaries. No direct evidence is available to shed light on why or how these respondents were selected, but it would be hard to sustain an argument that they were picked to reinforce McKean's position. All but the Chicago-educated Buchanan recoiled at McKean's advocacy of *caveat emptor*, and neither Dorfman nor Gilmore saw much use for economics as a tool for either positive or normative legal analysis.

Buchanan and Calabresi (whose comment was written with his student Kenneth Bass) were in agreement with McKean on the utility of economics for legal reasoning, but they parted company on its implications for products liability law. Buchanan more or less sided with McKean by suggesting that courts should "Commence with some prejudice for *caveat emptor* and be sophisticated in the application of departures from this principle" (Buchanan 1970: 73). Calabresi, though no stranger to either economic logic or the Coase

theorem, considered transaction costs a far more significant obstacle than did McKean, calling into question the ability of markets to efficiently allocate risk. Economic reasoning, in his estimation, recommended locating liability on the manufacturer as the "cheapest cost avoider" with a "comparative advantage in safety" (Calabresi and Bass 1970: 89-90).

Buchanan and Calabresi's optimism about the utility of economics was challenged by Dorfman and Gilmore. Dorfman, an economic theorist with a strong interest in environmental economics, was not convinced that economics had much to offer law, largely because economists and lawyers "approach problems in very different ways and with different purposes in view." The lawyer is very much in the fray, applying "standards of ethics and justice" derived from law, while the economist stands above it, examining the consequences of particular courses of action. Economists were not wrong, he said, in feeling that lawyers employed "low standards of analytical rigor, nor lawyers for seeing economists as "wildly impractical types," but these were simply derivative of their professional environments (Dorfman 1970: 92-93). Dorfman also had little use for McKean's economic analysis, grounded as it was in the Coase theorem and competitive markets. This effectively *ruled out* the very problem—externalities—that products liability sought to address. Even more damning was his contention that the law of demand, which both he and McKean agreed is among the most important tools of economic analysis, "is *largely irrelevant* to predicting the effects of changing the law of products liability," given the long odds of such accidents and the difficulties people have in processing low-probability events (101, emphasis added).[59] All in all, Dorfman had little confidence in the ability of economics to shine useful light on basic legal questions.

[59] As evidence for this, Dorfman cited the finding that people seem to treat a one-in-one-thousand risk identically to a one-in-one-hundred-thousand risk.

Gilmore, who declared that he "was known to know nothing" about either economic theory or recent legal trends products liability, was even more convinced that "the Emperor had no clothes on" here (Gilmore 1970: 103).[60] Economists, he objected, could not provide answers to the questions about how cases should be decided or what statutes should be adopted that lawyers and judges were professionally required to address. The economist's reliance on simple models to deal with complex reality, of which the Coase theorem was emblematic, gave the impression that the "secular movement" that led to the expansion of the manufacturer's liability "has been a great waste of everyone's time," and that in making judgments about the real world "we should do nothing" (106). As the products liability revolution was, at its heart, political, Gilmore saw little prospect that this could be altered by economic reasoning, or any other form of ostensibly clear thinking. Nor was he convinced that it should, noting in the ensuing group discussion that making one small piece of the law of obligations, products liability, subject to the dictates of economics would conflict with other areas of obligation and "set up intolerable strains within the legal system" (in Manne 1970: 123).

The general discussion revolved largely around the two major threads that emerged from the four comments—the appropriateness of *caveat emptor* as against manufacturer liability and the utility of economic thinking for decisions about legal questions. In both instances, the lines were drawn along rather predictable contours, with Buchanan, Stigler, Demsetz, and Alchian notably carrying the torch for the utility of both *caveat emptor* and McKean's brand of economic reasoning against Dorfman, Musgrave, Steiner, and the legal

[60] Gilmore was one of the architects of the Uniform Commercial Code.

scholars (save for Calabresi).[61] Divergent views about the ability of the market to generate appropriate levels of information about product characteristics and dangers, and of consumers, government, and judges to acquire and respond appropriately to it, featured prominently, with no small amount of the debate centering on the utility of the Coase theorem as a tool for legal-economic analysis.

Despite the qualms expressed by a number of the participants about the insights to be drawn from and the appropriateness of applying economics to these issues, Manne and Meier came away from the conference believing that "most of the participants seemed to feel that desirable legal effects would ultimately flow from sound economic analysis," and expressed the hope that "the exercise published here will have intellectual influence well beyond the small question of what a judge may do with his next products liability case" (Manne and Meier 1970: 2).

VII. The Aftermath

The committee's reports for 1969, transmitted to the AEA and the AALS and published in their respective *Proceedings*, are more interesting for their contrasts than for their similarities. Both briefly cover the research consultation, but the AALS report, presumably authored by Manne, was more effusively positive, twice referring to the products liability conference as "extremely successful" and suggesting that "several publishers" were jockeying to publish the proceedings (AALS 1969: 17). The AEA report, written by Meier, differed in more than tone, however, speaking of a "desire to go beyond" the organization of research consultations to "have an eventual impact on some forms of curriculum

[61] The transcript does not include a complete record of the discussion, due to problems with the quality of the recording and the need to edit it down to meet the publication guidelines (Manne and Meier 1970).

revision in Schools of Law and possibly also Economics Departments." The report accordingly proposed "a special meeting of economists who teach in Law Schools," targeted at "sharing their common problems and noting some opportunities," and for which AEA and AALS support might be requested (AEA 1970: 518).[62] Both reports also mentioned plans, formulated when the committee met immediately prior to the Stanford gathering, to have another research consultation the following year. An economist had been tentatively chosen to prepare a monograph on the topic of "property rights in non-patentable and non-copyrightable ideas" (AALS 1969: 17), but the Meyer Institute's announcement of a moratorium on research support while undergoing reorganization meant that this and any future activities were contingent on identifying a new source of funding (AEA 1970: 518).[63]

Despite the optimism suggested by these reports, there were no additional meetings or activities scheduled and no agenda being overtly pursued beyond securing a publication outlet for the products liability proceedings. And even this proved to be much more difficult than Manne had anticipated. Though the committee was originally interested in publishing the proceedings as a book, no offers were apparently forthcoming, and they eventually settled on the *University of Chicago Law Review*, which agreed to publish the material in its Autumn 1970 issue.[64] Such was the state of affairs that Musgrave, by this time the committee's incoming economics co-chair, was under the impression that the

[62] See also Meier Papers, C1, Correspondence 1967-69. Interestingly, only the AALS report mentions that McKean's analysis involved "an economics critique" of recent developments in and the legal literature on products liability and so gets to the one-sidedness of this whole affair.
[63] See Meier Papers, C1, Correspondence 1967-69; Williamson to Meier, February 18, 1970, AEA Box 920. The Meyer Institute ceased its operations in the summer of 1969, channelling the bulk of its funds to its successor organization, the Council on Law-Related Studies, which Cavers also presided (Rosenberg 1988).
[64] Calabresi to Meier, April 27, 1970; Meier to Calabresi, May 1, 1970, Meier Papers, C1. Calabresi had sounded out the *Yale Law Journal*, but no definitive answer was received. It was apparently Kenneth Dam who smoothed the path to the *University of Chicago Law Review*.

proceedings would *not* be published—learning otherwise when Meier mentioned it to him only weeks before publication.[65]

Interestingly, Cavers, though present at Stanford, elected not to include a discussion of the joint committee in his review of the Meyer Institute's grant-making history (Cavers 1997). This may have been a bit of buyer's remorse—ironic, given the focus on *caveat emptor*—in that the Meyer Institute's grant program, and Cavers himself, were instrumental in the development of the "law and society" movement, which came to be defined in part by its opposition to Chicago-style economic analysis of law.

A. Organizational Follies

The products liability conference was the high-water mark of the committee's efforts, after which it began a slide into oblivion. The lack of funding to support a second research consultation or any other activities was clearly a barrier,[66] and efforts made by Manne and Dam to secure additional funding, including an entreaty to the Koch Foundation with Alchian dangled as the likely monograph author, were unsuccessful.[67] The real culprit, though, was the diversion of Manne's attention to other, education-related entrepreneurial activities at the University of Rochester, where he had moved in 1968 to set up a new economics-oriented law school and was preparing to run his long-contemplated summer economics school for law professors..

[65] Musgrave to Meier, 5 August 1970, AEA Box 974; Meier to Musgrave, August 18, 1970, Meier Papers, S1.

[66] It is clear from correspondence found in various archives that a good deal of unsuccessful legwork had been done to attract financial support. See, e.g., "List of materials of AEA-AALS 'research consultation' held on March 18, 1969 sent to Professor Peter Steiner for reference" (Meier Papers, S1) which included copies "Letters and answers from various Foundations."

[67] Dam to Musgrave, August 6, 1970, Meier S1. This was not the now well-known foundation established by Charles Koch, but instead a separate foundation established by his parents.

The turn of the calendar to 1970 brought new leadership to the committee, with Musgrave and Dam taking over as co-chairs—the former on Meier's recommendation.[68] This new blood came at the cost of missionary zeal for the cause and the influence of perspectives that did not reflect Manne's vision. The result was a committee in complete disarray, plagued by ineffective leadership, uncertainty about membership, and an overall lack of interest in the effort. The AEA and AALS records show that neither society had a clear sense for what the committee was about nor for ensuring that, as a *standing* committee of each society, it actually carried out a program of activities consistent with the mission they had endorsed.[69] And with the growing number of economists being appointed to law faculties, the AALS was questioning whether a joint committee was even necessary at this point.[70]

B. The Emperor Changes Clothes

The appointment of Dam and Musgrave as co-chairs virtually assured that there would be difficulties. Though both had been committee members since 1968, their perspectives, in terms of both brand of economics and ideology, were radically different.

In early August of 1970, Musgrave received a two-page letter from Dam, copied to Meier, reporting on the committee's business and seeking Musgrave's advice on next steps.[71] No suitable monograph author had been found for the second research consultation

[68] Leontief to Meier, June 12, 1970, AEA Papers, Box 974; Musgrave to Leontief, June 23, 1970, AEA Box 974. Fordham to Dam, November 4, 1969, AALS Box 3, 1969-70; Fordham to Manne, November 4, 1969, AALS Box 3, 1969-70.

[69] On this almost farcical situation, see Conard to Tobin, July 15, 1970, AEA 974; Tobin to Leontief, July 27, 1970, AEA 974; Conard to Tobin, October 22, 1970, AEA 974; Tobin to Conard, October 29, 1970, AEA 974; Leontief to Stigler, November 2, 1970, AEA 974; Conard to Leontief, November 6, 1970, Fels to Meier, December 15, 1970, AEA 974; Stigler to Fels, December 15, 1970, AEA 974; and Fels to Stigler, December 19, 1970. AEA 974.

[70] Conard to Tobin, July 15, 1970, AEA 974.

[71] Dam to Musgrave, August 6, 1970, Meier, S1.

dealing with property rights in non-patentable and non-copyrightable ideas, and Dam suggested that a study of educational vouchers might be a good replacement. The vouchers subject, he said, was at once topical and of interest to both lawyers and economists. And, as an added benefit, Dam indicated that the Koch Foundation, with whom both he and Manne had been in correspondence, "might be willing to underwrite" it, given the Foundation's "strong interest in educational problems, and in particular in private schools."[72]

Meier, for his part, was very leery about the idea of a conference on vouchers financed by the Koch Foundation. Though professing ignorance of the Foundation's activities, he noted that its literature, pieces of which he sent along to Musgrave, "does seem to be strongly private school oriented," and that "it definitely has an interest in strengthening these schools, while criticizing the public schools." Given this, he said, any contemplated funding relationship "should be cleared with" the AEA.[73]

But Meier's concerns went well beyond the selection of topics and funders. "As you know," he continued, "the history of the Joint Committee is very much 'Chicago-oriented'." He saw his own role as that of trying to "represent the 'silent majority' within the economics profession more adequately." He was convinced that "this could be an important committee if its activities were broadened, and if it escaped the Chicago mold.". Meier had been unable to accomplish this, but his recommendation of Musgrave—rather

[72] It is clear from Dam's letter that the idea of a voucher's conference was his, not the Foundation's, and though this might appear to be squarely in line with Manne's market-oriented perspective, it was far removed from his original vision for the committee and yet another signal both of Manne's drift away from the committee and of its drift away from him.

[73] Meier to Musgrave, August 18, 1970, Meier S1. The AEA has, since its founding, had a clear policy against taking positions on political questions.

than, say, Stigler—as his replacement was almost certainly driven by the hope that Musgrave could do more along those lines.

Though emphatic about his displeasure with the committee's orientation, Meier's letter also contains a clue as to why he seems not to have pushed back more forcefully against Manne's efforts or, like Massel, parted company with the committee. Despite their differing perspectives, Meier and Manne shared a deep-seated desire for bringing more economics—albeit not exactly the same brand of it—to bear on legal scholarship and education. This goal, at the heart of Manne's original proposal, is echoed in Meier's 1969 report to the AEA and his suggestion to Musgrave that the committee move "beyond simply research consultation meetings" and appeal to the National Science Foundation (NSF) or some similar organization "for substantial support that would have an impact on curriculum within the Law Schools and Economics Departments."[74]

If Musgrave was inclined toward a dim view of Dam's suggestions, Meier's letter only reinforced those priors. Musgrave pronounced himself "not very enthusiastic" about the topic of vouchers, as it was both highly "specialized" and involved "much the same type of economic reasoning" as the first conference. He also objected to having an economist author the second monograph, arguing instead for a lawyer or a lawyer–economist team. "At the Stanford Conference," he noted, "the discussion was conducted almost entirely by economists, or more correctly, in terms of the economist's approach." This, he argued, did not serve "the purpose of cross-fertilization between law and economics as well it should," so he was "anxious to have a more balanced presentation and pattern of discussion at the next meeting."[75] The "balance" Musgrave sought was exactly

[74] Meier to Musgrave, August 18, 1970, Meier S1.
[75] Musgrave to Dam, 24 August 1970, Meier S1.

what Manne had wanted to avoid, on the grounds that it risked soft-pedaling the insights and much-needed alterations of perspective economics could bring to the conversation.

If Dam thought that Musgrave would welcome the vouchers proposal, he was wide of the mark. Musgrave had, after all, pioneered and championed the economic analysis of public and merit goods, such as education, as well as the need for a strong state hand in ensuring their adequate provision (Desmarais-Tremblay 2017). But even apart from his own "prejudices," Musgrave was concerned that "a discussion of the voucher plan might involve us in a basic debate about cultural and educational objectives which are not in the area of technical competence for either lawyers or economists." Perhaps motivated by his recent tenure on Harvard's standing committee on an Afro-American Studies department, Musgrave proposed the topic of discrimination, which he found at once "more exciting," amenable to analysis from a variety of angles (e.g., housing, zoning, employment), and "of considerable importance" in both legal and economic senses. Though cool to the idea of seeking funding from the Koch Foundation, Musgrave was optimistic about the prospect of attracting long-term support from the NSF and suggested that they meet in Chicago when he passed through in early October to "get acquainted and exchange our ideas" on next steps.[76]

Alas, there is no record of any progress, almost certainly because little if any real progress was made. Dam's appointment as Assistant Director for National Security and International Affairs at the Office of Management and Budget in the spring of 1971 led him to suspend his academic activities, and AALS President-Elect Alfred Conard of Michigan tabbed Chicago's Richard Posner to fill out Dam's term. Noting that Dam and

[76] Musgrave to Dam, 24 August 1970, Meier S1. Musgrave also echoed Meier's concerns about seeking funding from a foundation that "appears to take a rather decided position" on the topic.

Musgrave had "some projects cooking," Conard expressed to the committee his hope that Musgrave and Posner would "keep the pot boiling."[77] If the pot had indeed been "boiling," Dam's resignation effectively threw water on the fire.

VIII. A Last Gasp

The 1972 reorganization of the AALS brought with it the creation of a Section on "Law and Economics," the stated purpose of which was to "promote economic analysis of law and legal institutions, to encourage its proper use in legal education, to facilitate exchange of ideas, discussions and activities among members, and to make recommendations on teaching and improvement of the law."[78] With the AEA doing nothing and the AALS going its own way, the joint committee seemed to be on life support. But one final chance for survival presented itself in the early summer of 1973, when Musgrave stepped down as co-chair. AEA President Kenneth Arrow, charged with appointing his replacement, did not have an overly positive view of the committee's efforts to date. Arrow's first two solicitations went to Steiner and Meier, no fans of Manne's approach, his letter to Steiner expressing the "hope" that he would "*broaden the orientation*" of the conferences.[79] When Steiner and Meier declined his entreaties, Arrow turned to Stigler, who readily agreed.[80] Though he was happy to have this little problem solved, Arrow, doubtless with the

[77] Conard to Members of the Joint Committee of the American Economic Association and the Association of American Law Schools, June 2, 1971, Meier S1.
[78] Association of American Law Schools Bylaws of the Section on Law and Economics, https://www.aals.org/wp-content/uploads/2020/12/Law-and-Economics.pdf. That Manne was deeply involved here is signaled in Manne's letter to Tulane's William Lovett, the section's initial chairman. Manne to Lovett, May 13, 1974 (Stigler Papers Box 10).
[79] Arrow to Steiner, October 11, 1973, AEA Box 974. See also Arrow to Klevorick, October 11, 1973, AEA Box 974.
[80] Arrow to Stigler, December 4, 1973, AEA Box 974; Stigler to Arrow, December 18, 1973, Stigler Papers Box 14. . It was AEA Secretary-Treasurer Rendigs Fels who recommended Stigler to Arrow. Fels to Arrow, November 26, 1973, AEA 974.

products liability conference in mind, expressed to Stigler his hope that "the activity of the Committee not consist entirely in following up the implications of the Coase theorem." "This is indeed a vital and important line of work," Arrow smirked, "but clearly there must be other aspects of legal-economic interaction."[81]

With Stigler in the chair and Yale Law School's Alvin Klevorick tabbed to fill Musgrave's slot, it seemed that the committee was back in business. Stigler wasted little time in attempting to jump-start it, soliciting the input of the economist members about the committee's next steps.[82] However, only one of the several respondents, De Alessi, echoed his own enthusiasm for the cause. When Stigler dutifully reported the economists' lukewarm reactions to his AALS counterpart, William Lovett, he all but made clear that any initiative would need to come from the AALS side. In short, Stigler himself had little interest in doing the heavy lifting here despite his enthusiasm for the cause.[83]

Though Manne was by that point departing Rochester for Miami to set up the first Law and Economics Center in the country, and so hip-deep in other entrepreneurial efforts, his original missionary foray was not far from his mind. Writing to Lovett only a few weeks after Stigler had signaled the AEA's position, he pitched the idea of an AALS conference session entitled, "Is Economics Valuable in Law?" This was a subject that Stigler had suggested for a second research consultation[84] and which, as the title implies, was much closer to Manne's own interests in legal-economic education. Manne's plan was to bring in present and former committee members, as well as some fresh blood, and he

[81] Arrow to Stigler, January 4, 1974, emphasis added. Stigler Papers Box 14.
[82] Stigler to De Alessi, Demsetz, Meier, Steiner, and Klevorick, January 21, 1974, Stigler Papers Box 14.
[83] Stigler to Lovett, April 23, 1974, Stigler Papers, Box 14. Stigler sent copies of this letter to the economists on the committee.
[84] Stigler to De Alessi, Demsetz, Meier, Steiner, and Klevorick, January 21, 1974, Stigler Papers Box 14.

was even open to discussing whether the AALS Law and Economics section, of which he had just become the Chairman-Elect, should attempt to establish "a formal arrangement with the AEA."[85] It is apparent, then, that both the AALS section and Manne were moving ahead on their own. And when Manne's proposed session did not materialize, any remaining prospects for renewed engagement with the AEA seemed to have faded away.

IX. Dying Quietly

On January 16, 1975, AEA Secretary-Treasurer Rendigs Fels wrote to Stigler at the request of AEA President Aaron Gordon to inquire about the joint committee's status.[86] When Stigler finally responded to this query nearly two years later in a letter to Fels's successor Elton Hinshaw, his earlier optimism had disappeared. The committee, Stigler said, had been "inactive for some years," and his "overtures to the chairman-elect several years ago (Henry Manne) revealed no viable joint activities." "The committee," he concluded, "should therefore be discharged or reconstituted."[87] Hinshaw thanked Stigler for his report, noting that he would forward it to AEA President Franco Modigliani "with the recommendation that the committee be discharged."[88]

The end came with little fanfare. On January 24, 1977, Hinshaw sent a brief letter to Millard Ruud, the Executive Director of the AALS, noting that the committee "seems to have been inactive for several years and may have outlived its usefulness." As such, he continued, "The AEA is willing to allow it to die quietly if the AALS concurs."[89] Ruud

[85] Manne to Lovett, May 13, 1974, Stigler Papers Box 10.
[86] Fels to Stigler, January 16, 1975, AEA Box 974.
[87] Stigler to Hinshaw, December 9, 1976, AEA Box 974. De Alessi, Demsetz, Steiner, and Meier were still listed as committee members at this time, despite the fact that their terms were long expired.
[88] Hinshaw to Stigler, December 14, 1976, AEA Box 974; Hinshaw to Modigliani, December 14, 1976, AEA Box 974.
[89] Hinshaw to Ruud, January 24, 1977, AEA Box 974.

responded only days later, saying that Hinshaw's suggestion that the committee "be allowed to die quietly makes sense."[90] And die quietly it did, with Hinshaw writing to Stigler, Meier, Steiner, and Klevorick to thank them for their service in letters that made no mention of the committee's demise.[91]

Ironically, and channeling Massel's early objection to Manne's agenda, Ruud's response to Hinshaw went on to suggest that, in the future, "The more effective way to deal with our common interests is to establish *ad hoc* committees from time to time to work on special joint projects as they arise."[92] Then again, if "common interests" and "joint projects" had been part of the committee' *raison d'être* from the get-go, it might have been something other than a failed start-up venture early on along Manne's entrepreneurial trail.

X. Conclusion

If Manne's goal was to engineer a "scientific revolution" wherein his preferred brand of economic analysis came to dominate important aspects of legal thinking and decision making, the AEA-AALS Joint Committee was a full-on failure. But why? Scientific schools and the creative communities at the root of many such intellectual revolutions are typically reliant on the presence of an acknowledged leader for their success, and the committee certainly had that. But this is just one ingredient. Others include an associated group that exhibits a commonality of purpose and attendant passion for the cause, and

[90] Ruud to Hinshaw, January 24, 1977, AEA Box 974. In fact, a six-page report in the 1975 AALS *Proceedings*, discussing the AALS's relations with other organizations, including to promote interdisciplinary approaches to law, made no mention of the joint committee.
[91] See Hinshaw letters to Klevorick, Meier, Steiner and Stigler, February 1, 1977, AEA Box 974.
[92] Ruud to Hinshaw, January 28, 1977, AEA Box 974.

resources and organizational structures sufficient to the task. Though the lack of funding for a second research consultation slowed whatever momentum the committee had, its demise owed to far more than this. The most significant problem was the collective nature of the endeavor and the fact that no one, save for Manne, was deeply invested in this effort. Yes, the committee members shared an interest in the growth of something vaguely described as "law and economics." But their perspectives on it, visions for it, and willingness to dig in to promote either a new field of research or, on even a larger scale, a reformation within legal thinking did not, and no doubt could not, add up to the level of mobilization needed to realize Manne's vision. Add to this the fact that the economist members—and the AEA, one might add—had little incentive to work to transform *legal* analysis, and that this was still in a period when the application of economic analysis beyond its traditional boundaries was still widely frowned upon as "not economics" within the profession, and you have a recipe for exactly what did, and did not, transpire.

The disinterest of the AEA and the AALS leadership may also have played some small role in its fizzling, but one gets a sense that this is how Manne wanted things—to be flying under the radar and free to operate as he saw fit. The problem, of course, is that success required ongoing institutional and financial support, and the joint committee setup did not really offer that, at least not in a way that would give Manne a free hand to pursue his goals. Certainly, it is safe to say that the AALS would have had little interest in throwing its weight behind an effort to remake vast swaths of law in the image of Chicago (or any other) economics.

The committee's post-1969 history makes crystal clear the extent to which the entire effort had been Manne's show.[93] Once he was no longer controlling the process and driving it forward, including by putting together a set of committee members with a strong interest in the goals he was championing, all momentum was lost. It was not so much that Manne was the "glue" that held things together as that Manne *was* the committee during his period of active engagement. He drove the agenda—even if it was not always exactly what he wanted, as evidenced by the lack of progress in getting the committee to devote attention to the law school curricular front—saw to the administration of the committee's affairs, and kept the committee on the radars of the AEA and AALS, not least through his efforts relating to the appointments of committee members during the late 1960s.

If the story of Manne's influence on the development of law and economics ended here, it would be tempting to conclude that, "A single zealot does not a revolution make." Of course, the story does not end here, and Manne would soon give the lie to that conclusion, his later entrepreneurial efforts informed by the successes and failures of this initial excursion. In particular, the reservations about the usefulness of economics to address legal issues expressed by Gilmore and other law professors at the Stanford conference confirmed in Manne's mind the utmost importance of training law professors in what he viewed as sound economics. And the need for an independent organizational vehicle, capable of attracting regular, as opposed to ad hoc, funding was also plain. Manne's ill-fated attempt to set up an economics-oriented law school at the University of Rochester was an effort to address these issues. The subsequent establishment of the Law and Economics Center at the University of Miami provided the type of organizational

[93] This was confirmed in an interview with Louis de Alessi, dated March 25, 2021.

environment in which a one-man-driven show could succeed, and the result was a well-funded effort featuring a variety of educational and research programs, with transformative effects (Teles 2008; Gindis 2020a; Ash et al, 2022). It is noteworthy that the Liberty Fund Law and Economics Seminars that Manne ran at Miami from 1975 retained the format of the Stanford conference.

The present narrative calls into question histories built around the mythology of "economics imperialism," the ostensible move by economists to colonize the other social sciences. There can be no question that the committee's early efforts had the strong Chicago flavor so often ascribed to these efforts. This, however, is hardly a "Gotcha!" moment for those who subscribe to the imperialist thesis. Manne, the clear star of this show, was certainly attempting to remake law in one variant of the Chicago economics image. But the merry band of Chicago school economists—of both Hyde Park and University of Chicago at Los Angeles stripes—whom he enlisted to support his cause did not exactly put their weight behind the effort. While doubtless interested in seeing the regulatory environment revamped along lines they found more congenial, they were content to let Manne—the legal scholar—row the boat while they took in the view. Empires are not built by free riders.

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