I recall a scene in television dramatization of the discovery of the double helix structure of DNA in which the James Watson character is showing Rosalind Franklin the tinker toy model that he and Francis Crick have constructed. As he tries to explain it to her, she shushes him and says something to the effect that “It is so beautiful and simple it must be true” I love that scene: if it did not happen that way in real life it ought to have!

Why do I begin this short essay honoring four of the giants of law and economics who have recently passed with a reference to an entirely foreign intellectual discipline? Because I believe that their work partakes in the same beautiful fundamental quality. All that the mind appears capable of understanding is the simple. The trick of course it to discern that simple clear melody concealed by the cacophony of noise that envelops it. This characteristic of mind to seek out and embrace the simple unitary explanation appears to be fortuitously aligned with the rules of the universe. That is, it seems that there is much that can be understood about the natural and social world by simple elegant beautiful insights.

The perverse effect of this is that once the simple melody is heard it often cannot be unheard and may--not very gradually--come to seem obvious and trivial. So I take keyboard in hand to briefly note for the reader the core simple fundamental melodies that these recently departed gentlemen have revealed to us, revelations that given the stickiness of dogma were often not appreciated immediately. For those readers who would like a more thorough discussion of the scholarly impact of these (and other) giants of the field I commend to them the series of essays that Joshua Wright and I edited on the subject.\(^2\) I also note in passing that no slight is intended to other major figures who passed not long ago and are worthy of like honor. In addition I am happy to report that there are still law & economics giants who sleep on the green side of the grass: Demsetz, Epstein, Posner, Landes, Williamson, and Calabrese among others.

So in this brief essay I shall set myself the task of reciting the simple core insight that each has supplied to the intellectual world, the insight that on reflection seems obvious—and it is, once a genius points it out.

**Gary Becker**

Gary Becker is the man who opened the door. In the almost two centuries from the publication of Adam Smith’s Wealth of Nations till the emergence of Becker economics proceeded as a discipline to formalize, refine and extend the original insights of the founding generation, Adam Smith in particular. What had eluded the economic world prior to the emergence of Becker was that the concepts and tools

\(^2\) PIONEERS OF LAW AND ECONOMICS (Lloyd Cohen & Joshua Wright eds., 2009).
that had been developed over the years to help us understand and model the commercial relations in currency denominated exchanges had a generality that allowed, indeed invited, application to a much wider set of human actions and interactions. That is it.

Purposive rational behavior does not only apply to commercial transactions. Crime\(^3\), crime prevention\(^4\), mating\(^5\), household division of labor\(^6\), investment in human capital (one’s own and one’s children’s)\(^7\), racial discrimination\(^8\) and a host of other human activities are as subject to it as is the production and sale of soybeans and razor blades. Similarly in our efforts to serve our interests the concepts of marginality and opportunity cost are as applicable to those activities that do not center on cash market prices as on those that do. It is merely less publicly visible in the former category. Finally, in all these cases markets clear; prices move and quantities adjust, albeit imperfectly and usually not instantaneously. Farmers sell wheat and customers buy until no one seeks to enter the market, and prices adjust to reflect their relative numbers and intensity of desire to trade. Similarly men seek women as mates, and women seek men, each looks at a subset of those available constrained by search costs and seeks the optimal barter exchange.\(^9\)

This all now seems so obvious. But it wasn’t always so. Someone had to open the door. That someone was Gary Becker.

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\(^9\) I cannot say that my own work on marriage and divorce, *Marriage, Divorce, and Quasi Rents or, ‘I Gave Him the Best Years of My Life,’* 16:2 J. of Legal Stud. 267 (1987), was directly derivative of Becker, but I can unequivocally say that in the world before Becker such scholarship would have not been nearly as welcome or appreciated.
Perhaps my favorite of his articles was one written with Kevin Murphy in 1988, *The Family and the State*. The heart of this paper is the demonstration by Becker and Murphy that there is likely “market failure” in the market for parental expenditure on their children’s education among those with too little wealth to plan on purposely leaving a financial legacy to their descendants. Their argument is that because of uncertainty as to whether a particular investment will pay off, and more importantly the unenforceability of any contract between parents and children as regards support and payment for their education during their minority in exchange for support for the parents in their old age means that even loving altruistic parents will be less inclined to invest in the human capital of their children than would be the case if such contracts were enforceable and an insurance market to cover the risk could be imagined. They conclude that the modern innovation of taxpayer financed elementary and secondary education combined with old age insurance in the form of social security is an efficiency enhancing—more or less Paretian—solution to this market failure.

Perhaps you are inclined to say “Of course. This is obviously true. I must have known it all along.” Well, I didn’t. In addition to being a revelation of a simple truth this paper had other characteristic Becker virtues. First, it was a big idea. This is no piddling “behavioral economic” speculation about some trivial cognitive bias. This is a simple insight justifying and explaining two enormous roles for the state: public finance of education and state support in old age. None of this is to say that this paper closes the book on the question of these two state roles, only that Becker supplies the simple clear efficiency basis for the argument in their favor. Second, note something else about this argument. It comes from Gary Becker one of the recognized giants of the Chicago school of economics. This is a realm of the discipline rightly known for a deep skepticism about the role of the modern state’s heavy hand in the economy. Yet here is Becker justifying two major economic roles for the state in one fell swoop. Where the path of clear economic thinking leads Becker walks, without ideological constraint.

I am honored that I knew Gary Becker, presented a paper at the workshop that he ran at the University of Chicago with the late James Coleman, and flatter myself with the unverified belief that we were distant cousins.

**Ronald Coase**

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10 Becker & Murphy, *supra* note 7, at 1.
It was sometime in 1989 or 1990. I was reading the newspaper in the faculty lounge at the University of Chicago law school. In walked a highly lauded member of the faculty and inquired as to my opinion of the merits of a rumor he had heard. Apparently Dick Posner’s name had made it on to the short list for the Nobel prize in economics. What did I think of the justice of such an award? He inquired. I said that I thought him a worthy candidate especially if joined by Guido Calabrese and Henry Manne. I added however that there was someone else in the building more worthy of the award. “Who is that?” “Ronald Coase.” “But” he responded, “Coase has only written one thing.”

Fortunately the Nobel committee was not so besotted with “the reign of quantity.” Coase didn’t write an awful lot and most of his work focused on two related core ideas. First came the “The Nature of the Firm” when he was still a young man just returned from a tour of the United States, and almost three decades later came the more celebrated work on “The Problem of Social Cost”. Both articles explored a still now somewhat opaque concept of transactions cost. Were the latter the only article that Coase had ever written he would have been deserving of all the accolades that the profession and the intellectual world could bestow. It is brilliantly simple and obviously true (once Coase explains it to us!) and as a result it transformed the thinking of economists and legal scholars.

When I teach the “Coase Theorem”--I prefer to call it a tautology--to my students I first recount for them the prior universally accepted view of the problem that Coase sought to upend. Coase was responding to an understanding of the problem of externalities associated with the work of A.C. Pigou. Markets sometimes fail to reach a wealth maximizing allocation of resources because some participants would either suffer uncompensated costs or receive unpaid for benefits from the actions of others. In the former case there would be over engagement in the activity

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11 I was not a member of the faculty but had the sweet “job” as a John M. Olin Research Fellow in Law and Economics.


14 I am currently struggling to finish an article with a significantly different take on the nature of these costs. But as this involves possibly butting heads with another formidable giant in the field, Harold Demsetz I may never muster the power to finish it.


causing the noxious side effects—think air pollution. Pigou’s solution to the problem would be for the state to impose a pollution tax on the offending activity thereby forcing the actor to internalize the externality. The answer seemed so clearly right that a suggestion that it was not merely incomplete but fundamentally in error seemed almost unthinkable.

Knowing that I will bore even the poorly educated reader of this journal I will rehearse for the reader the well established Coasean transactions costs understanding of the problem. If a wealth maximizing deal that reduced the offending activity to the efficient level were possible then why is a Pigovian tax necessary? Won’t the parties reach a deal on their own? No. Why not? The answer to that question must turn on some substantial cost to engaging in the transaction. These “transaction” costs, rather than the externality itself bars the efficient outcome. Moreover, given that it is the cost of transacting that is the ultimate source of the inefficiency no simple remedy such as a Pigovian tax on the offending activity will necessarily get one to the efficient outcome. For it may well be that lowest cost means of reconciling the competing activities is for the one on whom the pollution falls to bear it or adjust to it as he sees fit.

The reason when teaching Coase I start with Pigou is that once Coase’s powerful tautology of transactions costs is understood it seems so obvious as to be trivial. Many years ago I asked Coase whether it ever seemed trivial to him. It had been my experience that if I lived with an insight very long before writing it down and sharing it with others I came to wonder whether it was so obviously true that everyone already knew it. So, I thought, perhaps that was how it was for Coase with respect to the transactions costs root of the externality problem. Coase said no, even though it was clearly a tautology albeit an extraordinarily useful one, it hadn’t seemed trivially obvious to him even after having it occupy a secure place in his mind for some time. Why? I asked. “Because everyone I told about it said I was wrong.”

And that brings us to another marvelous part of our intellectual heritage memorialized by George Stigler.17 Sometime in 1959 Coase was invited to Aaron Director’s home to present his paper on the means of allocating portions of the radio spectrum, the paper that first outlined his understanding of the nature of transactions costs,18 to the heavy hitters at the University of Chicago. Among others, there were at least three future Nobel prize winners in attendance. As

17 GEORGE J. STIGLER, MEMOIRS OF AN UNREGULATED ECONOMIST 76 (1988).

Stigler tells the story, when the discussion began the implicit vote on the question of Pigou versus Coase was 20 votes for Pigou and 1 for Coase,--only the man himself thought he was right. But as the discussion got going and Milton Friedman entered the fray it became clear that Coase (with Friedman’s lightning help) had a killer response to every objection. By the time the smoke had cleared the vote was 21 to 0 for Coase. I wish I was there. That is the gold standard.

So that is it. Coase’s article on transactions costs explicates a tautology. It cannot be wrong. But what a tautology! It informs perhaps half of all serious work in law and economics. And once more as in the case with Becker once the simple truth is pointed out to the reader, the common and indeed proper response is, “of course.” Do people actually win great prizes for such obvious propositions? Indeed they do and rightly so, for it is only obvious once someone with great imagination sees it and points it out to the rest of us.

Gordon Tullock

Gordon Tullock was a colleague of mine for the better part of a decade at George Mason University School of Law. For several of those years we team taught a small enrollment course in advanced (or more accurately, idiosyncratic) law & economics. The idea of team teaching the course was mine, and perhaps an illustration of my less than stellar application of economic reasoning. You see, we were each independently teaching a course when I discovered that we were both employing David Friedman’s excellent Law’s Order as a background text. So, thought I, perhaps there were economies to be gained by combining our efforts. How did it work out? I don’t know. Perhaps one might ask the students. From my perspective it was always an adventure coming into class. I normally had something prepared to cover but before we went down that road Gordon would take the floor and ask something like, “Is there any good reason why the U.S. doesn’t just take dominion over the Brazilian rain forest? After all the Brazilians aren’t making proper use of it.” And off we went.

That example is illustrative of the breadth of Gordon Tullock’s interest and imagination. There was seemingly no social, economic, political, evolutionary and historical subject about which he did not have substantial knowledge and interest. But it was not merely knowledge and interest. Gordon was a great natural economist. Though he had little formal training in economics, he made singular contributions to the field.
This is not the place to discuss the many stellar books and papers he authored.\textsuperscript{19} Rather, in the spirit of this essay I want to highlight what I think to be the single simple insight that he (in collaboration with the late James Buchanan) imparted to the profession and thereby set in course a new great river of scholarship, public choice economics.\textsuperscript{20} The central beginning proposition of public choice economics is that those who seek to employ government and those that they petition within government will be motivated by self-interest. This was hardly a thoroughly modern idea. Nevertheless it needed to be resurrected and investigated with some degree of rigor.

We can look to James Madison’s famous line in Federalist 51 for an early and eloquent representation of this understanding:

\begin{quote}
But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.\textsuperscript{21}
\end{quote}

Within the economics profession Knut Wicksell may be viewed as a founder of sorts of this approach to the economic understanding of government, and Anne Krueger an important modern architect of that understanding.\textsuperscript{22} But somehow all that was dropped into a memory hole of sorts for most of the 20\textsuperscript{th} century development of economics. Why?

As part of the scientific enterprise one assumes away the smaller questions in order to focus on the larger ones. So the great path of economics as an intellectual


\textsuperscript{20} James M. Buchanan & Gordon Tullock, \textit{The Calculus of Consent} (1962).

\textsuperscript{21} The Federalist No. 51 (James Madison).

pursuit started with the market and explored its general character, focusing on its tendency toward efficient allocation of resources. Then came the heightened recognition of the various forms of market failure in the sense of the tendency of the market to misallocate resources in the presence of monopolies, externalities, and collective goods. Given the presence of market failure it seemed natural for the general flow of the river of economics to focus on the possible role of the government to ameliorate these failures. In this exercise the government was characteristically treated as an inanimate lever that could simply be directed to do God’s work.

Buchanan and Tullock told us that by following that path we were throwing out the baby with the bathwater; indeed perhaps throwing out the baby instead of the bathwater. That is, the problems of misallocation rooted in self-interest that can on occasion pollute market allocation are even more persistent and unconstrained when they do their work in the less competitive world of state allocation.

Having become attuned to the problem Buchanan and Tullock began to think seriously about a solution. Not content with merely resurrecting the insight of self-interest within government, they tackled the serious and fiendishly difficult question the question of constitutional design. In this effort they may be seen once again as the intellectual heirs of James Madison. The Calculus of Consent addressed the perhaps insurmountable problem is of designing a constitution that constrains the socially wasteful predatory behavior of those with access to political power and yet still permits an effective functioning government.

Here too--as with Becker and Coase--once expressed the central Tullock insight that state actors are anything but immune from self-interested behavior appears all too obvious. Living with it for a while one is tempted to assume one always knew it to be true. Well if so, it was certainly not a part of the language and modeling process of the profession prior to development of “public choice” economics. The lens of rent-seeking, its cousin rent extraction, and the awareness of regulatory capture are now part of the toolbox of legal and economic scholars because the words were invented to capture a theoretical category that would otherwise have been ignored, assumed away, and swept under the modeling rug. After Tullock no thoughtful erstwhile legal reformer can treat government as a benign beneficent deus ex machina.

**Henry Manne**

23 Buchanan & Tullock, supra note 20.

25 First coined by Kreuger, supra note 22.
While I knew all four of these scholars, it was Henry Manne with whom I had the longest, closest, and most varied relationship. While given the theme of this essay I want to especially highlight what I take to be the clean beautiful insight at the bottom of Henry’s work, I cannot resist recounting his tremendous personal impact on my career.

My first acquaintance with Henry Manne occurred when I chanced upon his book of readings THE ECONOMICS OF LEGAL RELATIONSHIPS: READINGS IN THE THEORY OF PROPERTY RIGHTS26 while teaching economics at Denison University in 1976 or 77. I adopted the book for a class I was developing at the time. While I was hopping from one teaching job to another in the backwaters of academia Henry was establishing a program in law & economic studies at the University of Miami; and, lucky for me he was. Several years later I saw a poster offering John M. Olin Fellowships to Ph.D. economists to attend law school at the University of Miami and be compensated for the privilege. I applied and was accepted. But for this program, it is a virtual certainty that I would not have gone to law school, and almost equally certain, given my desultory work habits, I would not have made the contributions—modest though they may be—to the field of law & economics.

Before the new school year began Henry had moved the program from the University of Miami to Emory University. I, and four other new Olin Fellows, arrived at Emory in the summer of 1980. At the time neither Henry nor any member of the miniscule Law and Economic Center staff had yet moved to Atlanta. We were on our own.

Six weeks into the semester Henry arrived and took us out for dinner at a Chinese restaurant—Henry liked to eat well and had ecumenical tastes. How to capture the impact of that initial meeting? I am by nature a skeptic, loner, and rebel, not inclined to be enthused by any movement. But Henry can be likened to the Reverend Billy Graham27 of law & economics. He made one want to step forward and walk this path to intellectual salvation. He genuinely believed in his scholarly and entrepreneurial project. He knew that economics had already brought insights into the law of antitrust, torts, contract, property, and corporations, and had many more to offer. In addition, the world of lawyers and judges were largely ignorant of what had already been learned. They could and should be educated. Now that he had already made his own stellar intellectual contributions, it was his task to spread the gospel of law & economics. Henry had become the great entrepreneur of law & economics. On a shoestring--with modest funding from the Olin Foundation and other benefactors--he created the Law & Economics Center. By the time I joined

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27 Or for those more comfortable with Mosaic references, the Lubavitcher Rebbe, Menachem Mendel Schneerson.
the program in the first Emory class a couple of dozen Olin Fellows had passed through the program at Miami, and hundreds of judges and professors had already attended his law & economics boot camps—Pareto in the pines.

Thirteen years later, I was to join Henry again this time at George Mason University School of Law, where he was now dean. Once more on a shoe string, Henry transformed George Mason, an intellectual backwater, into a premier law & economics law school.

After his retirement as dean, we remained friends and business associates. To the very end we would frequently correspond on a variety of legal and economic questions, most recently those subjects included: libertarianism; Justice Ginsburg’s views on *Hobby Lobby*; university structure and governance; and insider trading.

Henry Manne, like Gordon Tullock, held no advanced degree in economics. They were both naturals. As a scholar Henry was principally honored for his contribution to understanding the public corporation and its governance. First, and of greatest importance is his invention of the concept, and investigation of, the market for corporate control. Much like Becker’s metaphor of “human capital” the creation of a term served to focus thought in a way that had eluded those who came before. Berle and Means had taught us that the public corporation was a deeply flawed institution because of the separation of ownership and control. Those who built directly on their insight tended to look to courts and legislatures to regulate the corporation to alleviate the inefficiencies that this monitoring problem would inevitably give rise to. Henry went in a different direction.

As a natural economist Henry began his inquiry with the tacit assumption that the market was usually smarter than he was. He was always on the lookout for purposive, usually self-interested, behavior channeled through some sort of market. If the public corporation was so deeply flawed then why were there so many of them? and why were they so successful? There was likely some forces at work to mitigate the seemingly massive agency cost problems of the public corporation. Those very agency costs presented an opportunity for a profit to he who could reduce or eliminate them. Sounds obvious, doesn’t it? Well it was Henry Manne who showed us that mergers (friendly or hostile), tender offers, proxy fights were all different venues for the market for control of the corporation. And that to the extent those venues could operate freely they would tend to move control of the corporation into the hands of those who would maximize the value of the firm.

Henry’s work on the market for corporate control dovetails with that of Coase and Tullock. The agency cost problem embodied in the separation of ownership and control is just a species of transactions costs, and the legislative pushback that Henry’s proposals for enlivening the market for corporate control have suffered
such as the Williams Act and state anti-takeover statutes reflect successful rent seeking behavior engaged in by target management.

I note in passing that Henry also was much interested in the governance of universities—instances with a Berle and Means like separation of ownership and control problem on steroids.

I cannot conclude this section without mentioning the other area of corporate law in which Henry’s contribution is singularly honored (or more often decried), insider trading. Henry argued that insider trading was an innocent efficiency enhancing practice and that the SEC’s prosecution of it was pernicious. Here I think Henry’s core insight was spot on, though his explanation of the efficiency justification of insider trading was perhaps slightly off the mark.

Henry’s observed that as far as he knew, prior to the development of the doctrine of insider trading as a legal wrong by the SEC, no public corporation prohibited its officers and directors from trading in its securities based on inside information. If such trading was a breach of a fiduciary duty one would have thought that all, many, or even some, corporations would have expressly barred it. Henry’s theory of why such trading was efficiency enhancing was that it provided the closest analog to an entrepreneurial risk and return for senior managers, and thus would serve to overcome agency costs by providing the incentives of a residual claimant to the managers. This explanation is I think somewhat overstated. A simpler explanation is that information about the future prospects of a corporation is valuable, and though it is the property of the corporation, there is no straightforward way in which the corporation or its shareholders can profit from such information in the hands of individual managers. The corporation can however profit indirectly if the managers earn profit for themselves by trading on that information. Managers will accept lower salaries if they can expect to profit from insider trading. In personal correspondence Henry accepted this alternative justification as a friendly amendment.

Henry’s work on the market for corporate control (and even moreso insider trading) has not garnered universal acceptance. That is a failing of the legal profession rather than Dean Manne’s. The world of corporate law is infected by far too many misleading metaphors and similes. Talk of “raiders” “looting” and “destroying” fine old companies, “unfairness”, and “level playing fields” addles the brain and

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prevents serious understanding of the economic and moral dynamic of the institution. For those of us who have learned from Henry it is now impossible to not think of a dynamic market for control of the corporation that increases social wealth—a market that can either be encouraged or stifled by legislative, regulatory and judicial action.

Conclusion:

So there you have it. The heart of what Becker, Coase, Tullock and Manne contributed is obviously correct. My fondest professional hope is that when I pass from the scene someone will write, or at least say, “everything Cohen wrote was obvious.”