A Business Lawyer's Bibliography: Books Every Dealmaker Should Read

Robert C. Illig

Introduction

There exists today in America's libraries and bookstores a superb if underappreciated resource for those interested in teaching or learning about business law. Academic historians and contemporary financial journalists have amassed a huge and varied collection of books that tell the story of how, why and for whom our modern business world operates.

For those not currently on the front line of legal practice, these books offer a quick and meaningful way in. They help the reader obtain something not included in the typical three-year tour of the law school classroom—a sense of the context of our practice.

Although the typical law school curriculum places an appropriately heavy emphasis on theory and doctrine, the importance of a solid grounding in context should not be underestimated. The best business lawyers provide not only legal analysis and deal execution. We offer wisdom and counsel. When we cast ourselves in the role of technocrats, as Ronald Gilson would have us do, we allow our advice to be defined downward and ultimately commoditized.[1] Yet the best of us strive to be much more than legal engineers, and our advice much more than a mere commodity. When we master context, we rise to the level of counselors—purveyors of judgment, caution and insight.

The question, then, for young attorneys or those who lack experience in a particular field is how best to attain the prudence and judgment that are the promise of our profession. For some, insight is gained through youthful immersion in a family business or other enterprise or experience. For most, wisdom accumulates with age. Yet these pathways require the luck of circumstance and the passage of time. There is, however, a strategy that

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1. For his famous argument that business lawyers are "transaction cost engineers," see Ronald J. Gilson, Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 Yale L.J. 239, 243 (1997). For a more up-to-date and context-rich approach to the question of "why lawyers," see Karl S. Okamoto, Teaching Transactional Lawyering, 1 Drexel L. Rev. 69, 122 (2009).

is open to us all and that can take place at a time of our choosing. We can leverage the many superb books that have been written on business history and contemporary economic affairs as a tool for immersing ourselves in the details of modern industrial culture and the mechanics of finance.

The goal of this kind of self-education is not solely—or even predominantly—to gain a mastery over the history and evolution of business regulation. Although the structure and content of modern business law owes much to the workings of path dependency, an historical perspective by and for itself is not always of paramount relevance. Rather, the point is to immerse yourself in the world of dealmaking without (or before) actually doing a deal. Law school teaches how options are taxed and the disclosure rules that apply to their offer and sale, for example, but leaves out any discussion of how the market for these derivative securities works or even how, why and by whom they are traded. Delving into the literature on dealmakers and dealmaking can often illuminate not only the culture and perspectives of our clients, but also many of the technical aspects of financial markets and products.

This article briefly surveys the ever-expanding literature on business and finance with the goal of helping you discover those books that best provide an awareness and familiarity with those aspects of the business world most relevant to your future (or current) practice.[2]

In Part I of this article, I introduce books whose primary value lies in their depiction of business culture. Whether wholly correct in their arguments or accurate in their accounts of events, these books provide insight into the attitudes and mores of modern financiers and business leaders.

In Part II, I present books that illuminate the workings of major financial institutions. Through these volumes, the history, operations and role of investment banks, pooled investment funds, regulators, and non-profit sources of capital are explained. If you pick and choose from among them, these books provide an ideal way to learn more about one or more particular market segments.

In Part III, by contrast, I examine major financial institutions and events from an historical perspective. Whereas Part II is structured vertically, institution-by-institution, Part III is structured horizontally, thereby exposing the evolution of the political economy and the complex interaction among generations of market participants.

In Part IV, I change gears again and recommend books that describe some of the most significant theoretical debates related to the regulation of business. I include topics such as corporate governance, corporate social responsibility, and the role of markets in a post-Lehman Brothers world.

2. Note that, in this respect, this article is ideal for students who, after arriving at law school with the intention of practicing something like environmental or civil rights law, find themselves attracted to the private law aspects of a transactional practice. Often, such students feel handicapped by their relative lack of knowledge of business affairs. If you are such an individual, fear not—but read on!

Finally, in Part V, I discuss books in fields related to the regulation of business, including economics, accounting, and psychology. I also suggest several skills-oriented books on negotiation and drafting. These volumes are introductory in their scope and I recommend them for practitioners whose formal education omitted or treaded lightly on one or another of these topics.

To achieve the greatest relevance, I have avoided overly narrow tomes as well as most textbooks and academic treatises. Instead, whenever possible, I have favored books written by journalists with inside access and market participants with real-world experience. As a result, I am certain to have overlooked many excellent and important volumes. Additionally, some of the books I cite may over time become outdated or be superseded by other, better treatments.

In choosing the topics to be included, I have focused on fields that I believe are of particular importance to dealmakers—finance and corporate governance being chief among them. Finally, I have striven to be as ideologically neutral as is reasonably possible. However, in several instances I felt it important to include topics and books that one political faction or another find particularly relevant to a given policy debate. Knowing your enemy, after all, is as important to dealmaking as it is to war.[3]

Note too that I do not expect you to read all or even many of these books. Nor am I so taken with my approach as to recommend reading as a substitute for practice. Rather, I have attempted to provide a list of gap-fillers. These are volumes that will help the uninitiated bring themselves up to speed, and the well-initiated to both stay current and fill any holes in their education.

On the whole, these are absorbing and sometimes surprising books that are well worth the time. More importantly, perhaps, they are simultaneously highly readable and highly illuminating. All of them, I believe, work on multiple levels. They not only introduce a particular subject matter. They provide insight into the author's attitudes and approach to business as well as a feel for the context in which business takes place.

I. The Practice and Culture of Law, Finance and Business

One of the most important skills exhibited by gifted transactional lawyers is the ability to relate to one's clients—the ability to understand how business leaders think and what they care about, to blend in culturally, and to translate legal and financial doctrines into words and concepts that lay businesspeople can readily understand.

Thus, as a starting point, you might consider reading books that are particularly strong on the point of business attitudes and mores. Whether or not such books convey an accurate sense of history or a precise description of operations—many are emphatically *not* accurate or even particularly

3. For business historians—and more particularly for aficionados of the movie *Wall Street*—sentiments like these can be traced to Sun Tzu, the Chinese military strategist whose works found a renewed interest among 1980s Wall Street financiers. *See, e.g.,* Mark McNeilly, Sun Tzu and the Art of Modern Warfare (Oxford Univ. Press 2003).

insightful—the best of them offer something even more important and perhaps more elusive. They provide the reader with a feel for how businesspeople and financiers think and approach problems and plan strategies.

The best known of these must be *Liar's Poker*, Michael Lewis's classic and somewhat outrageous portrayal of bond trading at Salomon Brothers during the heady boom days of the late 1980s.[4] A gifted storyteller and former bond trader himself, Lewis is a superb observer of human folly, so much so that his glib account of Wall Street has become as much a generator as observer of modern business culture. One cannot credibly claim to be literate in modern financial affairs without having first contemplated this volume.

For a window into more recent business culture, I had hoped that the closest equivalent to *Liar's Poker* would be Ben Mezrich's *The Accidental Billionaires*.[5] Without question, the movie version of his account of the founding of Facebook—*The Social Network*—captures the deep sense of yearning and anxiety that seems indicative of our increasingly self-centered and entitled business culture.[6] Indeed, for the founders of Facebook, as for Mazrich himself, the masculine betrayals and courtroom vindications—entrepreneurship as cage fight—appear more important than the value a firm creates for society or the wealth it generates for investors. The book, however, lacks the movie's pace and sense of urgency and can at times seem bland. Both also mix fact and fiction in a manner that raises serious questions regarding their accuracy.

Another avenue for understanding business culture is through accounts of purely fictional events. Tom Wolfe's depiction of the Wall Street of the 1980s, for example, made *The Bonfire of the Vanities* an instant cultural touchstone.[7] Because the story is more about the attitudes and social life of New York's financial elite than about high finance itself, Wolfe is able to deftly skewer the culture that Lewis implicitly (but perhaps unconsciously) celebrates.

In a similar vein, Kurt Eichenwald's *The Informant*, though a true story, reads like a fast-paced fictional account of corrupt corporate executives during the early 1990s.[8] Indeed, the mix of hubris, naiveté and casual dishonesty that is on display may be jarring to many readers, not least because the activities center not on Wall Street but on Archer Daniels Midland, a supposedly quiet Midwestern industrial enterprise.

4. Michael Lewis, Liar's Poker (W.W. Norton & Co. 2010).

5. Ben Mezrich, The Accidental Billionaires: The Founding of Facebook (Doubleday 2009).

6. The film, released by Columbia Pictures in 2010, has been aptly described as "the true sequel to [Oliver Stone's cult classic] *Wall Street*" for its depiction of a contemporary American business culture that "might as well be in the pre-civilized Wild West." Frank Rich, The One-Eyed Man is King, N.Y. Times, Jan. 23, 2011, at WK10.

7. Tom Wolfe, The Bonfires of the Vanities (Picador 2008). Note, by contrast, that Brian De Palma's 1990 movie version, starring Tom Hanks and Bruce Willis, was not well received.

8. Kurt Eichenwald, The Informant: A True Story (Broadway Books 2001). Eichenwald's book was made into a movie by director Steven Soderbergh in 2009. Starring Matt Damon, it is an uncomfortable mix of comedy, exposé and drama that ultimately does not work.

A somewhat awkward addition to this list is John Perkins's mostly implausible account of his own financial wrongdoing, *Confessions of an Economic Hit Man*.[9] Occupying an uncomfortable position somewhere between confession and paranoid delusion, this volume created a minor stir at the time of its publication. Its premise is that an unnamed consulting firm had hired Perkins, an economist by training, for the explicit purpose of sabotaging various foreign economies by encouraging them to borrow excessive amounts of capital from the West. Whether fictional or merely exaggerated, Perkins's hand-wringing unwittingly captures the angst felt by many financiers in the wake of 9/11 and the near-contemporaneous collapse of what had been hailed by many as a new world financial order.[10]

Finally, it is worth remembering that some of the most notable writers of the English language have made business culture an important theme of their work. Anthony Trollope, for example, flawlessly depicts the social mores of early-industrial English financial reformers in *The Prime Minister*, and Shakespeare's *The Merchant of Venice* forcefully lays bare the historical tension between Jewish lenders and Christian borrowers.[11] For Dickens, the culture and attitudes of the British Industrial Revolution serve as the backdrop for works as wide-ranging as *Little Dorrit*, *Bleak House*, *The Pickwick Papers, A Christmas Carol*, and others.[12] Although each of these works is undoubtedly dated, one is struck when reading them that the world may not have changed so much as we would like to think.

II. Institutions and Major Market Players

Although I have been teaching law for more than a few years, it always surprises me that many top students are able to obtain a keen mastery of legal and business concepts yet remain largely ignorant of our nation's major market players. Law school simply does not make it a priority to systematically introduce students to the real-world context of a business practice. We teach law and theory, as we should, and the best of us teach legal imagination and transactional problem-solving. Yet we seldom take the time to explain just what it is that investment bankers, hedge fund managers and endowment officers do all day. As a result, students who lack prior experience with Wall Street frequently fail to enter practice with a firm understanding of the institutions that shape our economy.

Nor does this ignorance magically disappear upon graduation. Certainly the bar exam pays no attention to such real world savvy, and few law firms

9. John Perkins, Confessions of an Economic Hit Man (Berrett-Koehler Pub. 2004).

10. *See, e.g.,* Steven Weber, The End of the Business Cycle?, Foreign Affairs, July–Aug. 1997, at 65 ("The recent American combination of minimal inflation and very low unemployment may not be an aberration, but the beginning of a new worldwide trend.").

11. Anthony Trollope, The Prime Minister (Oxford Univ. Press 2011) (the fifth book in the Palliser Novels); William Shakespeare, The Merchant of Venice (Simon & Brown 2011).

12. Charles Dickens, Little Dorrit (Penguin 2004); Bleak House (Atlantic Books 2011); The Pickwick Papers (Oxford Univ. Press 2008); A Christmas Carol (SoHo Books 2011).

provide lessons on the who's who of financial markets before throwing their newest associates into the high-pressured world of billable hours. Instead, these young lawyers are left to fend for themselves, filling in gaps in their knowledge on a piecemeal basis.

In order to fill these gaps, I present in the following sections books that describe in-depth one or more significant market players. You can read these volumes individually, to shore up a particular area of knowledge, or as a group. Either way, and whether or not you agree with the authors' ultimate conclusions on policy or historical causation, they provide an excellent introduction to the role and incentives of our economy's most important business and financial players.

A. Wall Street

Dominating the market for securities, as they do, Wall Street's major investment banks have played a critical role in the financial history of the United States. Beginning primarily as underwriters of utilities and then railroads, they added M&A advisory services in the 1970s and 1980s, as well as more complex (and controversial) forms of financing during recent decades. In theory, at least, they perform the important function of matching the nation's capital resources with those companies holding the greatest growth potential.[13]

Fortunately for the interested reader, Wall Street's largest and most famous investment banks have been the subjects of a number of superb institutional biographies. Foremost among these are investment manager Charles Ellis's lively history of Goldman Sachs and historian Ron Chernow's epic story of the house of Morgan (in all of its many guises).[14] Also on the list are William Cohan's histories of Lazard Freres and Goldman Sachs, as well as two excellent biographies of Lehman Brothers, one by Vicky Ward and another by Peter Chapman.[15]

Each of these highly readable corporate biographies not only details the workings of an industry, but also provides insights into many of the major financial developments of the past 150 years. As such, they are an indispensable resource for those seeking to learn more about what it is that actually occurs in the canyons of lower Manhattan.

13. For an easy-to-digest discussion of the social value provided by the financial sector, see John Cassidy, What Good Is Wall Street?, New Yorker, Nov. 29, 2010, at 48.

14. Charles D., Ellis, The Partnership: The Making of Goldman Sachs (Penguin Books 2008); Ron Chernow, The House of Morgan: An American Banking Dynasty and the Rise of Modern Finance (Grove Press 2010).

15. William D. Cohan, The Last Tycoons: The Secret History of Lazard Freres & Co. (Doubleday 2008); William D. Cohan, Money and Power: How Goldman Sachs Came to Rule the World (Doubleday 2011); Vicky Ward, The Devil's Casino: Friendship, Betrayal, and the High-Stakes Games Played Inside Lehman Brothers (John Wiley & Sons 2010); Peter Chapman, The Last of the Imperious Rich: Lehman Brothers, 1844–2008 (Portfolio Hardcover 2010).

Alternatively, for a very readable account focused specifically on the Wall Street of the 1980s, Ken Auletta, a political reporter for *The New Yorker*, offers a historical snapshot of the sale of Lehman Brothers to newcomer Shearson/American Express in *Greed and Glory on Wall Street*.[16]

The investment banking industry can also be understood through the first-hand accounts of the bankers themselves, the best of which is probably Jonathan Knee's *The Accidental Investment Banker*.[17] As the book's title suggests, Knee considers himself an outsider to investment banking, though he is not. Using the perspective of a novice serves him well, however, as Knee is able to walk the reader through his introduction to the different aspects of investment banking. His account is thoughtful and detailed, though he clearly pines for the days of old-fashioned "relationship banking."

It should be noted, however, that the nation's major investment banks have undergone nothing less than a revolution during the past few years, with only the venerated Goldman Sachs remaining independent.[18] This transformation is probably best understood through the lens of the economic turmoil of 2008 and 2009, an episode covered in Part III. G. below. One book worth mentioning here, however, is Richard Goldberg's *The Battle for Wall Street*, a report on the growing tension between the traditional investment banks and Wall Street's relative newcomers, the hedge funds.[19]

B. Private Equity

Although much of the power on Wall Street has traditionally been in the hands of investment banks, the past two decades have witnessed the rapid rise of private investment funds. Prior to the recent market disruptions, for example, the hedge fund industry alone controlled an estimated $2 trillion of investor capital, the impact of which was magnified greatly as a result of

16. Ken Auletta, Greed and Glory on Wall Street: The Fall of the House of Lehman (Overlook Press 2001).

17. Jonathan Knee, The Accidental Investment Banker: Inside the Decade that Transformed Wall Street (Oxford Univ. Press 2006).

18. Of the nation's five largest pre-2008 investment banks, Bear Stearns was acquired by JP Morgan Chase, with significant governmental assistance, during the spring of 2008; Lehman Brothers, which filed for federal bankruptcy protection in the fall of 2008, sold the bulk of its North American operations to the British firm Barclays; Merrill Lynch was acquired by Bank of America in the spring of 2009; and Morgan Stanley ultimately succumbed to Wachovia, also in the spring of 2009. *See generally* Andrew Ross Sorkin, Too Big to Fail: The Inside Story of How Wall Street and Washington Fought to Save the Financial System—And Themselves (Penguin Books 2011). Note, however, that even Goldman did not survive the panic unscathed. It was forced to convert into a regulated bank holding company in order to qualify for much-needed financial support from the government. *See* Robert Schroeder, Goldman, Morgan To Become Bank Holding Companies: Companies Get Access to Fed Lending in Exchange for Oversight, Wall St. J., Sept. 21, 2008, at C1.

19. Richard Goldberg, The Battle for Wall Street: Behind the Lines in the Struggle that Pushed an Industry Into Turmoil (John Wiley & Sons 2009).

the industry's use of leverage.[20] As a result, transactional lawyers must now understand how venture capital funds, buyout funds and hedge funds operate, where they raise their money, and how and why they spend it.

Regarding venture capital, Harvard business school professors Paul Gompers and Josh Lerner have published two helpful volumes that seek to make sense of the industry. The first, *The Venture Capital Cycle*, focuses on how venture capital works.[21] The second, *The Money of Invention*, makes the case that venture capital has played a critical role in America's long-term economic success.[22]

Meanwhile, Michael Lewis captures a sense of the culture and attitudes of many prominent venture capital and angel investors in *The New New Thing*, while Martin Kenney's *Understanding Silicon Valley* provides a who's who of the valley's elite during the heyday of the dotcom craze.[23] Together, they provide an excellent introduction to the attitudes and prejudices of the major players.

Also of interest regarding venture capital is Jerry Kaplan's *Startup*.[24] The value of this book is not as analysis but as primary source material. Written in 1994—well before the peak of the dotcom bubble—it describes, from the point of view of the entrepreneur, the struggle involved with raising money and negotiating with Silicon Valley's top players.

Notably, each of the above books was written prior to the collapse of the dotcom bubble in 2001. As a result, they present a favorable, almost euphoric, vision of the valley's potential. Not surprisingly, it is difficult to find an equally positive study of the venture capital industry written after the bubble burst.

Though it has an even longer history, much less has been written about the leveraged buyout industry, perhaps because it lacks the sex appeal and sense of adventure of venture capital. Indeed, the only book of note that specifically explores the workings of leveraged buyout investors is *The New Financial Capitalists*, George Baker and George Smith's 1998 biography of Kohlberg Kravis Roberts, the financiers credited with perfecting the junk bond-financed leveraged buyout.[25] Fortunately, it is an excellent read and provides a detailed picture of the LBO market.

Hedge funds, by contrast, have garnered much attention lately. Unfortunately, however, the popular press has too often portrayed them in a

20. Jack Willoughby, The Hedge Fund 100: Acing a Stress Test, Barron's, Nov. 23, 2009.

21. Paul Gompers & Josh Lerner, The Venture Capital Cycle (MIT Press 2006).

22. Paul A. Gompers & Josh Lerner, The Money of Invention: How Venture Capital Creates New Wealth (Harvard Bus. Rev. Press 2001).

23. Michael Lewis, The New New Thing: A Silicon Valley Story (Penguin Books 2001); Understanding Silicon Valley: The Anatomy of an Entrepreneurial Region (Martin Kenny ed., Stan. Bus. Books 2000).

24. Jerry Kaplan, Startup: A Silicon Valley Adventure (Penguin Books 1996).

25. George P. Baker & George David Smith, The New Financial Capitalists: Kohlberg Kravis Roberts and the Creation of Corporate Value (Cambridge Univ. Press 1998).

simplistic way as behind-the-scenes agents of international conspiracy. Perhaps in response, several journalists have produced tell-all books that purport to draw back the veil of mystery that surrounds the industry. Analyst Steven Drobny, for example, interviewed thirteen fund managers and investors to uncover the people behind the trades. The result is *Inside the House of Money*, an insider's account of the attitudes and mores of the market leaders.[26] Similarly, in *Hedge Hunters*, Bloomberg reporter Katherine Burton interviews eighteen hedge fund managers about their attitudes toward life and money.[27] Her conclusion is that they approach the world like a casino, with all of its high-stakes excitement and opportunities for huge gains and losses.

Financial reporter Sebastian Mallaby, meanwhile, provides what is perhaps the most definitive account of the industry in the unfortunately titled *More Money than God*.[28] In it, he takes the reader from the days of Alfred Winslow Jones, the man generally credited with founding the first hedge fund in 1949, up through the recent crisis, and in doing so provides a glimpse of the major players and developments that have defined the industry.

In *The Quants*, veteran *Wall Street Journal* reporter Scott Patterson provides a peek into the mathematically driven world of computer models and numerical trading strategies.[29] This somewhat breathless account of several prominent statistical arbitrage hedge funds benefits from its particular timing. Patterson was fortunate enough to be writing both before and after the subprime mortgage crisis. As a result, he is able to report first-hand on the reactions of Wall Street's self-styled "quants" to what was arguably the market's greatest failure since the Depression. What he found was, above all else, confusion and disbelief. Having placed their faith in data-driven models, most of these hedge fund managers seemed to have trouble understanding—or even believing—what went wrong.

Similarly, in *How I Became a Quant*, Richard Lindsey and Barry Schachter present twenty-five mini-memoirs of mathematicians, economists, computer scientists and physicists who turned their skills onto the world of hedge funds.[30] Their essential point: although finance and physics share a superficial resemblance, it is easy to forget that economic models are just that—artificial representations that can never truly capture the complexities and mysteries of the humans who operate in financial world.

26. Steven Drobny, Inside the House of Money: Top Hedge Fund Traders on Profiting in the Global Markets (John Wiley & Sons 2009).

27. Katherine Burton, Hedge Hunters: Hedge Fund Masters on the Rewards, the Risk, and the Reckoning (Bloomberg Press 2007).

28. Sebastian Mallaby, More Money than God: Hedge Funds and the Making of a New Elite (Penguin Press 2010).

29. Scott Patterson, The Quants: How a New Breed of Math Whizzes Conquered Wall Street and Nearly Destroyed It (Crown Business 2011).

30. Richard Lindsey & Barry Schachter, How I Became a Quant: Insights from 25 of Wall Street's Elite (John Wiley & Sons 2009).

For an institutional biography of a hedge fund, the best entry is *The King of Capital*, a recent account of the industry-leader Blackstone Group by David Carey and John Morris.[31] Included are many clear and detailed explanations of modern financing techniques.

For a look at the growth of international hedge funds and sovereign wealth funds, consider Eric J. Weiner's *The Shadow Market*.[32] In it, he recounts how countries like China, Singapore, Norway and even Libya have used investment funds to diversify their wealth and increase their leverage vis-à-vis the traditional economic powers.

Finally, David Einhorn, the thirty-something short-seller and founder of Greenlight Capital, offers the provocatively titled *Fooling Some of the People All of the Time*.[33] This book is based on a speech Einhorn had given attacking questionable accounting practices at Allied Capital. Ironically, however—and emblematic of the sad state of government oversight that prevailed prior to 2008—the speech resulted not in a Securities and Exchange Commission investigation of Allied, but in an investigation of Einhorn himself. This history alone makes the book well worth reading.

C. The Regulators

In addition to knowing something about the market's participants, business lawyers need a clear understanding of the institutions charged with regulating our nation's economy. This includes their incentive structures and institutional cultures, as well as their manner of operating and political pressure points.

Unfortunately, perhaps because of the apparent dryness of the topic, relatively few regulatory bodies have been the subject of high-quality treatment. Two notable exceptions are the Securities and Exchange Commission and, to a lesser degree, the Federal Reserve.

The best book by far on the SEC is Joel Seligman's *The Transformation of Wall Street*.[34] This volume, which traces the agency's history from its founding in 1934, describes in detail the ongoing struggle between Wall Street and its chief regulator. It is not, however, an easy read, and I recommend it only for those with a strong background in securities. Note too that the first edition covers only the period up to 1977. Thus, you want to read the third edition, which adds the years 1977 through 2001.

31. David Carey & John E. Morris, The King of Capital: The Remarkable Rise, Fall, and Rise Again of Steven Schwarzman and Blackstone (Crown Business 2010).

32. Eric J. Weiner, The Shadow Market: How a Group of Wealthy Nations and Powerful Investors Secretly Dominates the World (Simon & Schuster 2010).

33. David Einhorn, Fooling Some of the People All of the Time: A Long Short Story (John Wiley & Sons 2008).

34. Joel Seligman, The Transformation of Wall Street (Aspen Pub., 3d ed. 2003).

With respect to the Federal Reserve, you might try the first three volumes of Allan Meltzer's unfinished chronicle, *A History of the Federal Reserve*.[35] These volumes, though brilliantly researched and superb in their detail, however, presume an understanding of monetary policy (and scholarly interest in the topic) and so may not be suitable for all readers.

As an alternative to Meltzer's comprehensive approach, the best way to trace the recent history of the Federal Reserve may be through a series of biographies of its most powerful chairmen. David Wessel, economics editor for the *Wall Street Journal*, provides a blow-by-blow account of the drama of the early Bernanke years in *In Fed We Trust*.[36] Wessel has a generally positive view of both the Fed and the Treasury Department, and he praises Ben Bernanke and Timothy Geithner especially. Alan Greenspan, by contrast, is cast as a villain who brought on the subprime mortgage crisis almost single-handedly.

William Greider, meanwhile, in *Secrets of the Temple*, recounts Paul Volcker's heroic attempt to tame inflation during the 1980s.[37] Unfortunately, Greider falls prey to the historical American tendency to see shadows of conspiracy throughout the world of central banking. For him, the true villain is what he perceives as the Fed's excessive lack of transparency.

Banking regulators have also been the subject of several treatments, most conspicuously in connection with the savings and loan crisis of the late 1980s. In *Other People's Money*, for example, Paul Pilzer and Robert Dietz recount how Congress and the Federal Deposit Insurance Commission created significant moral hazard by combining government-insured deposits with financial industry deregulation.[38]

With respect to the stock exchanges, the best source may be Charles Gasparino's biography of Richard Grasso, the high-profile leader of the New York Stock Exchange who was tossed out when it was discovered in 2003 that his public-sector compensation package topped $140 million.[39] Although Gasparino focuses primarily on Grasso's downfall, the setting for the drama provides a helpful introduction to the most important issues facing the exchanges as they try to adjust to the computerized business world of the 21st century. Certainly, Grasso was a heroic figure as he navigated the NYSE through the aftermath of the 9/11 attack.

35. Allan H. Meltzer, A History of the Federal Reserve, Volume I: 1913–1951 (Univ. of Chicago Press 2004); A History of the Federal Reserve, Volume II, Book 1: 1951–1969 (Univ. of Chicago Press 2010); A History of the Federal Reserve, Volume II, Book 2: 1970–1986 (Univ. of Chicago Press 2010).

36. David Wessel, In Fed We Trust: Ben Bernanke's War on the Great Panic (Crown Business 2010).

37. William Greider, Secrets of the Temple: How the Federal Reserve Runs the Country (Simon & Schuster 1989).

38. Paul Zane Pilzer & Robert Dietz, Other People's Money: The Inside Story of the S&L Mess (Simon & Schuster 1989).

39. Charles Gasparino, King of the Club: Richard Grasso and the Survival of the New York Stock Exchange (HarperBusiness 2007).

Finally, for a sense of the international regulation of finance, consider Barry Eichengreen's *Globalizing Capital*.[40] Though dated, Eichengreen's history of international monetary controls surveys the various institutional approaches to monetary cooperation that have prevailed over the past century and a half.

D. Advisors and Counselors

The fall of Enron in 2001 made clear that economic players other than financiers, industrialists and regulators also play a critical role in our economy. These include credit-rating agencies, stock analysts, management consultants, accountants, and even corporate spies, among others.

The best comprehensive treatment of these and other financial advisors (including corporate lawyers) is John Coffee's *Gatekeepers*.[41] Written from the perspective of a law professor, this volume focuses on the role that professional service providers play in corporate governance. His thesis is that the board of directors is largely captive to its outside advisers and other agents. As a result, only when these gatekeepers provide proper advice and warning can the board steer its corporation toward a socially useful end.

With respect to the decidedly unsexy world of stock analysis, Randall Smith provides a useful window via his unauthorized biography of Frank Quattrone, *The Prince of Silicon Valley*.[42] Although Quattrone came to symbolize all that is wrong with the industry, Smith's account nonetheless provides a broad introduction to the world of IPOs and high-tech stocks. It also makes clear what analysts do—and shouldn't do.

Matthew Stewart flays the consulting industry in *The Management Myth*.[43] This volume is valuable both as a primer on the rise of management consulting and for its biographical sketches of the likes of Frederick Winslow Taylor, Elton Mayo, Peter Drucker, Michael Porter and Tom Peters. For more on how management consultants think, you might also consider a collection like *The Essential Drucker* or Edwards Deming's *Out of the Crisis*.[44] Written by two titans of the consulting industry, these works summarize many of their most important ideas.

Regarding the accounting profession, there is an overabundance of quality fare. David Allen and Kathleen McDermott, for example, provide a very

40. Barry Eichengreen, Globalizing Capital: A History of the International Monetary System (Princeton Univ. Press 1996).

41. John C. Coffee, Jr., Gatekeepers: The Professions and Corporate Governance (Oxford Univ. Press 2006).

42. Randall Smith, The Prince of Silicon Valley: Frank Quattrone and the Dot-Com Bubble (St. Martin's Press 2010).

43. Matthew Stewart, The Management Myth: Debunking Modern Business Philosophy (W.W. Norton & Co. 2009).

44. Peter F. Drucker, The Essential Drucker: The Best of Sixty Years of Peter Drucker's Essential Writings On Management (HarperBusiness 2001); W. Edwards Deming, Out of the Crisis (MIT Press 2000).

readable—if somewhat dated—biography of Price Waterhouse in *Accounting for Success*, while Gary Previts and Barbara Merino chronicle the history of the accounting industry from its roots in the colonial period up through the modern era in *A History of Accountancy in the United States*.[45] Paul Clikeman, meanwhile, recounts the development of accounting through the lens of scandal in *Called to Account*.[46] Any one of these volumes will provide an excellent introduction to the workings of the profession.

For tales of recent accounting fraud, award-winning financial historian Jerry Markham offers a blow-by-blow recitation of the industry's response to Enron in *A Financial History of Modern U.S. Corporate Scandals*.[47] Also helpful is *Final Accounting*, Barbara Toffler and Jennifer Reingold's story of the downfall of Arthur Andersen.[48]

For a more theoretically focused treatment, J.R. Edwards provides a review of the accounting industry's most important thinkers in the aptly titled *Twentieth Century Accounting Thinkers*, while Richard Mattessich edits a collection of important papers in *Two Hundred Years of Accounting Research*.[49]

Finally, in perhaps the most unexpected work on corporate advisors, *Politico*-reporter Eamon Javers exposes the increasingly pervasive use of spies by major corporations in *Broker, Trader, Lawyer, Spy*.[50] Although he traces the roots of corporate espionage back to the Pinkertons of the mid-19th century, his reporting appears to have come as a revelation to many. Indeed, his book prodded Congress into asking for a formal review of the CIA's moonlighting policy, whereby active agents are permitted to work for private clients and even foreign governments during their spare time.[51]

E. Foundations, Families and Endowments

Finally, often overlooked as sources of capital and market influence are the foundations, families and endowments that funnel private capital into the

45. David Grayson Allen & Kathleen McDermott, Accounting for Success: A History of Price Waterhouse in America, 1890–1990 (Harvard Bus. Sch. Press 1993); Gary John Previts & Barbara Dubis Merino, A History of Accountancy in the United States: The Cultural Significance of Accounting (Ohio St. Univ. Press 1998).

46. Paul M. Clikeman, Called to Account: Fourteen Financial Frauds that Shaped the American Accounting Profession (Routledge 2008).

47. Jerry M. Markham, A Financial History of Modern U.S. Corporate Scandals: From Enron to Reform (M.E. Sharpe 2005).

48. Barbara Ley Toffler & Jennifer Reingold, Final Accounting: Ambition, Greed, and the Fall of Arthur Andersen (Doubleday 2004).

49. J.R. Edwards, Twentieth Century Accounting Thinkers (Routledge 1994); Two Hundred Years of Accounting Research: An International Survey of Personalities, Ideas and Publications (Richard Mattessich ed., Routledge 2008).

50. Eamon Javers, Broker, Trader, Lawyer, Spy: The Secret World of Corporate Espionage (HarperCollins 2010).

51. Kasie Hunt, CIA Moonlighting to Be Investigated, Politico, Feb. 3, 2010, *available at* http://www.politico.com/news/stories/0210/32459.html.

economy, often via venture capital funds. These entities, though operating largely outside of Wall Street's direct sphere of influence, control significant amounts of capital. Before the financial turmoil of 2008, for example, Harvard's endowment had approached $40 billion, while the Ford Foundation managed $11 billon.[52] The Rothschild family, at the height of its power, was so rich that Nathan Rothschild was declared "the most powerful man in England" by no less an observer than the Prime Minister.[53]

On the foundation and endowment side, Joel Fleishman's recent treatment of these stand-alone charities argues that our nation's private foundations constitute a sort of secret weapon that keeps society in balance.[54] Meanwhile, famed Yale endowment manager David Swensen provides an inside view from his world in *Pioneering Portfolio Management*.[55] Though this volume is focused primarily on investment strategy, you can clearly discern the world of endowment management lurking in the background.

On the family side, historians have unearthed a rich and fascinating subject in the rise and fall of some of the world's most powerful dynasties. Given the importance of family wealth, both in the early days of investment banking and during the growth of the venture capital industry, their accounts introduce important market players and offer surprising insights into the nature of capital-raising. Among the very best family biographies are Ron Chernow's history of the Warburgs (known as "those shits" among the old money of London's City) and Niall Ferguson's two-volume history of the Rothschilds.[56] Also of interest is Ferguson's recently published biography of Warburg founder Siegmund Warburg.[57]

Given the continuing dominance of family enterprises in many European states, comprehensive studies like David Landes's *Dynasties* and Harold James's study of "the Continental European Model" of family-led enterprise provide not only an historical perspective but also insights into ongoing foreign

52. Geraldine Fabrikant, Harvard and Yale Report Losses in Endowments, N.Y. Times, Sept. 10, 2009, at B3; About Us, Ford Foundation, 2012, *available at* http://www.fordfoundation.org/about-us.

53. Paul Johnson, A History of the Jews 319–20 (Harper & Row 1988).

54. Joel L. Fleishman., The Foundation: A Great American Secret; How Private Wealth is Changing the World (PublicAffairs 2007).

55. David F. Swensen, Pioneering Portfolio Management: An Unconventional Approach to Institutional Investment (Free Press 2000).

56. Ron Chernow, The Warburgs: The Twentieth-Century Odyssey of a Remarkable Jewish Family (Vintage 1994); Niall Ferguson, The House of Rothschild: Volume 1: Money's Prophets, 1798–1848 (Penguin Books 1999); Niall Ferguson, The House of Rothschild: Volume 2: The World's Banker, 1848-1999 (Penguin Books 2000).

57. Niall Ferguson, High Financier: The Lives and Time of Siegmund Warburg (Penguin Press 2010).

business structures.[58] For the story of an American industrialist family, Julia Siler gives us *The House of Mondavi*.[59]

III. Historical Context

Much modern economic behavior (and the regulation of that behavior) can undoubtedly be understood as a reaction to prior events. Although excessive attention to tales of a far distant tulip mania may not seem necessary for modern deal lawyers, you simply cannot understand where we are in terms of contemporary markets—and where we are headed—without knowing from whence we came.

Set forth below are a series of books that describe the history of America's financial and economic architecture. Many of the older entries are by historians and so address ongoing scholarly debates that are relevant to the field but perhaps less so to transactional attorneys. The more recent books tend to be written by journalists who offer contemporary perspectives but may lack some of the rigor and distance that are applied by professional historians. All of the entries, however, work to tell the tale of an economy and of how that economy was perceived and regulated.

A. Early American Business

The economic development of the colonial and early-American periods probably has little relevance to today's practitioner. However, for the sake of thoroughness, I have included a small selection of recent works that an interested reader might enjoy. Each provides a helpful glimpse into rapidly changing economic conditions and the manner in which industry and commerce were organized during the pre-industrial period.

These include, in roughly chronological order: *Immigrant and Entrepreneur*, the story of an early-18th century commercial innovator; *A Country Storekeeper in Pennsylvania*, a case-study of Revolutionary-era commerce; and *Women at Work*, a description of the rapidly industrializing textile industry of antebellum New England.[60]

With regard to the early history of finance, Jane Kamensky provides an account of "America's first banking collapse" in *The Exchange Artist*.[61] In it,

58. David S. Landes, Dynasties: Fortunes and Misfortunes of the World's Great Family Businesses (Viking 2006); Harold James, Family Capitalism: Wendels, Haniels, Falcks, and the Continental European Model (Harvard Univ. Press 2006).

59. Julia Flynn Siler, The House of Mondavi: The Rise and Fall of an American Wine Dynasty (Gotham Books 2008).

60. Rosalind Beiler, Immigrant and Entrepreneur: The Atlantic World of Caspar Wistar, 1650–1750 (Penn. St. Univ. Press 2008); Diane E. Wenger, A Country Storekeeper in Pennsylvania: Creating Economic Networks in Early America, 1790–1807 (Penn. St. Univ. Press 2009); Thomas Dublin, Women at Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826–1860 (Columbia Univ. Press 1993).

61. Jane Kamensky, The Exchange Artist: A Tale of High-Flying Speculation and America's First Banking Collapse (Viking 2008).

Kamensky not only describes the life and times of Revolutionary-era real estate speculator Andrew Dexter, but provides a helpful history of some of America's earliest regional exchanges.

B. The Industrial Revolution and the Rise of the Corporation

The industrial revolution—and in particular the development of railroads—led to major changes in American law and business. In addition to the development of time zones and standardized accounting practices, the period witnessed the maturation of the business corporation. Centralized management, limited liability and corporate personhood developed as a means to meet the capital-raising and administrative needs of America's first great industrial enterprises. As a result, an appreciation for the economic history of this era is helpful for any lawyer seeking a deeper understanding of the nature of the modern corporation.

For a general history of the period, it is hard to equal the newly expanded third edition of Glenn Porter's classic, *The Rise of Big Business*, which combines new and old scholarship to trace the financial, political and social changes that shaped America's industrial revolution.[62] However, if any author were to do so, it would be veteran historian H.W. Brands in his 2010 entry, *American Colossus*.[63] Meanwhile, Charles Morris covers the period through the lens of biography in *The Tycoons*, his anecdote-heavy account of four industrialists who dominated the developing economy of the post-Civil War era—Carnegie, Rockefeller, Gould, and Morgan.[64]

Among the best histories of the railroad are David Bain's *Empire Express*, a narrative account of the visionaries, entrepreneurs, politicians, engineers and workingmen whose toil and determination united the nation by rail.[65] Stephen Ambrose, author of popular histories like *Undaunted Courage* and *Band of Brothers*, covers similar ground in *Nothing Like It in the World*, his upbeat social history of the period.[66]

The financial turmoil that may be said to have largely ended the era, the Panic of 1907, is covered by Robert Bruner and Sean Carr in their book of the same name.[67] In it, they not only cover the unfolding of events—including an attempted corner in the copper industry, the near bankruptcy of New York

62. Glenn Porter, The Rise of Big Business, 1860-1920 (Harlan Davidson, 3d. ed. 2006).

63. H.W. Brands, American Colossus: The Triumph of Capitalism, 1865-1900 (Doubleday 2010).

64. Charles R. Morris, The Tycoons: How Andrew Carnegie, John D. Rockefeller, Jay Gould, and J.P. Morgan Invented the American Supereconomy (Times Books 2005).

65. David Haward Bain, Empire Express: Building the First Transcontinental Railroad (Penguin Books 2000).

66. Stephen E. Ambrose, Nothing Like It In the World: The Men Who Built the Transcontinental Railroad, 1863-1869 (Simon & Schuster 2001).

67. Robert F. Bruner & Sean D. Carr, The Panic of 1907: Lessons Learned from the Market's Perfect Storm (John Wiley & Sons 2009).

City, J. Pierpont Morgan's heroic rescue of Wall Street, and the birth of the Federal Reserve—but offer insights into how and why financial panics erupt in the first place.

In *Pullman*, Stanley Buder focuses on a very different aspect of the period—one of the "model workers communities" that were established by industrialists like Henry Ford and George Pullman.[68] By using historical evidence from the period, Buder investigates whether these communities are better understood as exploitation or naïve paternalism. For an understanding of the roots of organized labor, you can juxtapose Buder's account with David Papke's *The Pullman Case*, a history of the 1894 railroad strike that helped open a new chapter in America's history of labor unrest.[69]

For an eye-witness account of the social and economic upheavals that followed in the wake of industrialization, there is of course *The Jungle*, Upton Sinclair's contemporary novel of Lithuanian immigrants trying to survive in the stockyards of Chicago.[70] Another well-known muckraker of the era is Ida Tarbell, who skewers Rockefeller's monopolistic business practices in *The History of the Standard Oil Company*.[71] Hailed as a landmark in the development of investigative journalism, her turn-of-the-century account of Rockefeller's unsavory tactics originally appeared as an influential, 19-part exposé in *McClure's*.

Though not generally considered a muckraker, future-Supreme Court Justice Louis Brandeis takes on the power of big finance in *Other People's Money and How the Bankers Use It*.[72] In a critique that resounds even today, he argues that early 19th century lenders had ceased to be supporters of entrepreneurship and had instead become champions of big industry and the status quo—thus failing in their job to steer American capital toward its best use.

Finally, a more recent account of the social challenges posed by industrialization is *Triangle*, the story of the Triangle Shirtwaist Factory fire that killed 146 immigrant girls and young women in 1909.[73] Writing at the time of the 9/11 terrorist attacks, also in lower Manhattan, historian David Von Drehle recounts the lack of safety measures that doomed the working-class

68. Stanley Buder, Pullman: An Experiment in Industrial Order and Community Planning, 1880–1930 (Oxford Univ. Press 1970). *See also* Andrew Carnegie & David Nasaw, The "Gospel of Wealth" Essays and Other Writings (Penguin Classics 2006) (presenting Carnegie's thesis that the rich in society owe an obligation to the poor and uneducated).

69. David Ray Papke, The Pullman Case: The Clash of Labor and Capital in Industrial America (Univ. Press of Kansas 1999).

70. Upton Sinclair, The Jungle (Simon & Brown 2012).

71. Ida M. Tarbell, The History of the Standard Oil Company (Cosimo Classics 2009). For the company's official response to Tarbell's reporting, see Gilbert Holland Montague, The Rise and Progress of the Standard Oil Company (Kessinger Pub. 2005).

72. Louis D. Brandeis, Other People's Money and How the Bankers Use It (Bedford/St. Martin's 1995).

73. David Von Drehle, Triangle: The Fire That Changed America (Grove Press 2004).

seamstresses. In doing so, he highlights the tension between workers' rights and capitalist growth that were laid bare in the wake of industrialization.

C. The Great Depression

In light of recent parallels on Wall Street, it has never seemed so important to understand the causes, course and impact of the Great Depression. It is easy to forget, for example, that the stock market actually performed reasonably well after Black Tuesday in 1929 and only began its permanent descent some eighteen months after the initial panic. Likewise, the era is generally perceived from afar as a consistent whole, with few recalling that the economy rebounded within the first few years of the Roosevelt administration. Its darkest days began in 1937 after Roosevelt attempted to rein in the federal budget by tightening spending in the mistaken belief that the worst was over.

On this topic, the classic—and competing—accounts are John Kenneth Galbraith's *The Great Crash* and Milton Friedman and Anna Schwartz's *A Monetary History of the United States*.[74] Galbraith, of course, was a leading liberal economist in the tradition of John Maynard Keynes, while Friedman was a devoted monetarist and leader of the conservative Chicago school of economics. Indeed, re-reading these books now may be doubly worthwhile, as the aftermath of the subprime mortgage crisis appears to have resuscitated old debates about the proper role of government during times of economic turmoil.

In a more recent account of the Great Depression, professional money manager Liaquat Ahamed chronicles the lives and work of "the bankers who broke the world" in his Pulitzer Prize-winning entry, *Lords of Finance*.[75] In it, Ahamed argues that the Depression was brought on not by unseen historical or economic forces, but as a result of specific, identifiable decisions made by the central bankers of the United States, England, Germany and France. In particular, he blames their almost theological adherence to the gold standard in the years following World War I.

For a contemporary account of the social upheaval caused by the economic slump, consider *Since Yesterday*, by Frederick Lewis Allen, editor of *Harper's Magazine*.[76] While interesting as history in its own right, this account commands the reader's attention as it recounts events and reactions that cannot help but seem familiar to the modern observer—protest encampments (known then as Hoovervilles), Ponzi schemes, a government unsure of whether and how to intervene in the economic cycle, and a national debate over the merits of increased spending versus cost cuts aimed at balancing the budget.

74. John Kenneth Galbraith, The Great Crash of 1929 (Mariner Books 2009); Milton Friedman & Anna Jacobson Schwartz, A Monetary History of the United States, 1867–1960 (Princeton Univ. Press 1971).

75. Liaquat Ahamed, Lords of Finance: The Bankers Who Broke the World (Penguin Books 2009).

76. Frederick Lewis Allen, Since Yesterday: The 1930s in America (Borgo Press 1994).

Finally, law professor and former securities litigator Michael Perino offers a look at the fallout of the Great Crash in *The Hellhound of Wall Street*.[77] In it, he recounts how Ferdinand Pecora's Congressional investigation of Wall Street provided the moral clarity and case for regulatory reform that seem missing from our present experience.

D. The Status Quo of the Post-War Era

The post-war decades of the 1950s, 1960s and 1970s appear in retrospect to have been fairly uneventful in terms of the development of the modern political economy. Financial legislation was relatively rare—only the Williams Act governing tender offers and the Foreign Corrupt Practices Act come readily to mind—and major economic scandals were mostly absent. In this respect, you might think to skip this era and head directly to Ronald Reagan's inauguration in 1980.

Before you do, however, consider that not all was as quiet as it seemed. As Diana Henriques details in *The White Sharks of Wall Street*, for example, early corporate raiders like Thomas Mellon Evans had begun perfecting their trade as early as the 1950s and 1960s.[78] Meanwhile, to grow their empires without running afoul of aggressive antitrust enforcement, mid-century corporate managers took advantage of buoyant stock prices to build conglomerates like ITT and Gulf & Western. As Robert Sobel aptly explains in *The Rise and Fall of the Conglomerate Kings*, it was the creation of these mega-enterprises that created the fodder for the leveraged buyouts of the 1980s.[79]

The post-war era also witnessed the rise of middle management as a profession, according to Alfred Chandler in his Pulitzer Prize-winning book, *The Visible Hand*.[80] In it, he argues that this new professional class of non-owner managers was capable of possessing organizational expertise that was independent of the content of the businesses they were managing.

On the darker side, the period is also significant as the crucible for the corporate alienation that continues to be felt within the ranks of middle management today. We are all familiar with the image of the man in the grey flannel suit depicted by Sloan Wilson in his saga of the same name.[81] This feeling was captured in a more scholarly volume—*The Organization Man*—by sociologist William Whyte, also in the mid-1950s.[82] Certainly, you can sense in the self-consciously anti-establishment business culture of the dotcom

77. Michael Perino, The Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance (Penguin Press 2010).

78. Diana B. Henriques, The White Sharks of Wall Street: Thomas Mellon Evans and the Original Corporate Raiders (Scribner 2000).

79. Robert Sobel, The Rise and Fall of the Conglomerate Kings (Beard Books 1999).

80. Alfred D. Chandler, Jr., The Visible Hand: The Managerial Revolution in American Business (Belknap Press 1993).

81. Sloan Wilson, The Man in the Grey Flannel Suit (Da Capo Press 2002).

82. William H. Whyte, The Organization Man (Univ. of Pennsylvania Press 2002).

entrepreneurs a new generation eager to reject the stultifying bureaucracy that had developed in previous decades.

E. The Go-Go '80s

During this turbulent and pivotal decade, America regained its economic mojo, but at the cost of scandal and a culture of corporate excess. The decade began with the election of Ronald Reagan—a small-government, anti-regulation president—and quickly morphed into an economic free-for-all that brought renewed economic vigor coupled with convulsions of greed and corruption. Gone were the days of stagflation, tight antitrust enforcement, and fixed bond prices. Replacing them were rising stock prices coupled with an orgy of leveraged buyouts and workforce layoffs.

Significantly for business lawyers, it was during the takeover wars of the 1980s that many of Delaware's most important judicial opinions regarding board and management fiduciary duties were decided.[83] Likewise, the federal common law regarding securities fraud and insider trading was largely shaped by the events of this era.[84] Knowledge of the cultural upheaval in which these decisions were handed down is therefore critical to an understanding of the development of the case law.

Several accounts of leveraged buyouts and hostile takeovers have become classics of the genre. Best known of these must be *Barbarians at the Gate*, Bryan Burrough and John Helyar's account of the epic buyout of RJR Nabisco.[85] Sometimes referred to as the "Cliff Notes version of high finance," *Barbarians at the Gate* serves as an excellent primer for students of leveraged buyouts and junk bonds. Reading, as it does, like a first-rate thriller, it also provides a compelling glimpse into the attitudes and motivations of corporate leaders like CEO F. Ross Johnson. Without question, this is the most thoughtful and comprehensive book ever written about a single deal. Moreover, the buyout itself remains one of the largest deals ever undertaken on Wall Street—and is remembered primarily for its massive destruction of shareholder value.

83. *See, e.g.*, Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983); Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985); Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985); Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986); Blasius Industries, Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988); Paramount Comm., Inc. v. Time, Inc. 571 A.2d 1140 (Del. 1989); Shamrock Holdings, Inc. v. Polaroid Corp., 559 A.2d 278 (Del. Ch. 1989).

84. *See, e.g.*, Vincent F. Chiarella v. United States, 445 U.S. 222 (1980); Dirks v. S.E.C., 463 U.S. 646 (1983); S.E.C. v. Switzer, 590 F. Supp. 756 (W.D. Okla. 1984); Carpenter v. United States, 484 U.S. 19 (1987).

85. Bryan Burrough & John Helyar, Barbarians at the Gate: The Fall of RJR Nabisco (HarperCollins 2009). HBO also produced an entertaining made-for-TV version in 1993 starring James Garner.

Another classic of its day was *The Predator's Ball*, Connie Bruck's account of the rise and fall of junk bond impresario Michael Milken.[86] The title of Bruck's work refers to an annual party, hosted by the now-defunct investment bank Drexel Burnham Lambert, in honor of the nation's most prominent hostile raiders. Bruck's account benefits from her inside access to many of the protagonists of the 1980s hostile takeover wars. It also provides a detailed biographical sketch of Milken, one of the nation's most notorious modern financiers.

To understand the massive insider trading that took place on the Wall Street of the 1980s, consider James Stewart's classic, *Den of Thieves*.[87] Like all of Stewart's books, this is a recreation of the inside dealings and is based on countless hours of interviews with the major players—among them Ivan Boesky and lawyer Dennis Levine. The story manages to be simultaneously gripping and revolting in its depiction of unremitting greed and casual overindulgence.

Almost lost among the excesses of the late 1980s was the savings and loan crisis that ultimately required a government rescue at a cost to taxpayers in excess of $130 billion.[88] The story of the hucksters and other shady developers who took advantage of the Reagan-era deregulation of thrifts is recounted in crime story-style by James Adams in *The Big Fix* and by Stephen Pizzo, Mary Fricker and Paul Muolo in *Inside Job*.[89] Both books appear to take moral hazard for granted and focus instead on the sensational stories of the private-sector criminals themselves. Though interesting in this respect, neither attempts to grapple with the governmental policies that gave rise to the crisis in the first place.

Finally, for a critical appraisal of the 1980s written contemporaneously with their unfolding, consider John Coffee, Louis Lowenstein and Susan Rose-Ackerman's *Knights, Raiders and Targets*, a collection of scholarly essays debating the impact and implications of the growth of hostile takeovers.[90] Also, try Michael Lewis's *The Money Culture*, his superb depiction of 1980s business

86. Connie Bruck, The Preditors' Ball: The Inside Story of Drexel Burnham and the Rise of the Junk Bond Raiders (Penguin Books 2005).

87. James B. Stewart, Den of Thieves (Simon & Schuster 1991).

88. As with most such rescues, the true cost is open to debate, with most experts putting total government expenditures in the range of $130 to $170 billion. Carl Felsenfeld, Savings and Loan Crisis, 59 Fordham L. Rev. S7, S29 n.144 (1991). Others, however, have argued that, if interest is included, the total price tag was closer to $1 trillion. *See, e.g.,* Christian G. Hill, A Never Ending Story: An Introduction to the S&L Symposium, 2 Stan. L. & Pol'y Rev. 21, 24 (1990).

89. James Ring Adams, The Big Fix: Inside the S&L Scandal: How an Unholy Alliance of Politics and Money Destroyed America's Banking System (John Wiley & Sons 1990); Stephen Pizzo, Mary Fricker & Paul Muolo, Inside Job: The Looting of America's Savings and Loans (HarperPerennial 1991).

90. Knights, Raiders and Targets: The Impact of the Hostile Takeover (John C. Coffee, Jr., Louis Lowenstein & Susan Rose-Ackerman eds., Oxford Univ. Press 1988).

ethics.[91] In addition to glimpsing the overall attitude of the time, you will meet many of the people who made the era so colorful, including Michael Milken, Leona Helmsley, T. Boone Pickens, Ivan Boesky, and others.

F. The Dotcom Craze

Much as some historians describe the Korean War of 1952 to 1955 as more an extension of World War II than a stand-alone conflict, there is a strong argument that the economic turmoil of 2008 and 2009 was really a delayed reaction to the collapse of the dotcom era.[92] Whether this account ultimately proves to be accurate, no practicing business lawyer can understand the present economic environment without an appreciation for the events and attitudes of the late 1990s.

As the Clinton era progressed, not only did many prominent observers declare that we had once and for all conquered the business cycle, but real wages were rising for all Americans and wealth seemed assured for many. Meanwhile, it seemed that every garage-based technology stock soared to new heights, lofting the nation's 401(k) plans into the stratosphere alongside them. Optimism, in other words, was not only prevalent but apparently well deserved.

And then came the shock of 2001, when the 9/11 terrorist attack shook our confidence in our personal security. Soon after, the domino-like collapse, first of Enron, then of WorldCom, Arthur Andersen, Global Crossing and others, rattled our sense of economic wellbeing. The result was a decade of economic unease coupled with the enactment of the Sarbanes-Oxley Act, arguably the most far-reaching piece of federal commercial regulation since the Great Depression.

Roger Lowenstein chronicles the events that led to the simultaneous bursting of the dotcom and telecom bubbles in *Origins of the Crash*, his noteworthy account of the rise of stock options and executive pay and their indirect influence on markets.[93] Meanwhile, *Wall Street Journal* reporter Charles Gasparino recounts how top research analysts and investment bankers conspired to game the system in *Blood on the Street*.[94]

The fraud uncovered at Enron brought us two excellent accounts: Kurt Eichenwald's *Conspiracy of Fools* and Bethany McLean and Peter Elkind's *The*

91. Michael Lewis, The Money Culture (W.W. Norton & Co. 2011).

92. According to this theory, Federal Reserve Chairman Alan Greenspan knowingly created a housing bubble in order to soften the landing as the dotcom and telecom bubbles burst simultaneously in 2001. The housing bubble itself proved unstable, however, and burst in 2008, leading inevitably to the panic and credit contraction that followed.

93. Roger Lowenstein, Origins of the Crash: The Great Bubble and Its Undoing (Penguin Press 2004).

94. Charles Gasparino, Blood on the Street: The Sensational Inside Story of How Wall Street Analysts Duped a Generation of Investors (Free Press 2005).

Smartest Guys in the Room.[95] Bethany McLean is one of the journalists credited with breaking the Enron story and her reporting benefits from her deep involvement in its unfolding. Eichenwald's, by contrast, appears to be more meticulously researched and is perhaps the better read. Unfortunately, however, he follows the journalistic convention of protecting the names of his sources, thereby leaving us to wonder whether to believe his ultimate verdict—that CEO Kenneth Lay was more ignorant stooge than active participant, and that the real blame should be placed on the incompetence and greed of CFO Jeffrey Skilling.

Another helpful entry is Roger Lowenstein's *When Genius Failed*.[96] This account of the collapse of Long-Term Capital Management—the high-flying hedge fund that claimed two Nobel laureates among its managers—feels like a dry run for the credit contraction and subsequent government bailout that resulted from the turmoil of 2008. More importantly, Lowenstein provides elegant and easy to understand descriptions of many of the hedge fund's operations and trading strategies. As such, it not only serves as a window into an era's excesses, but as a guide for how an industry operates.

On a related front, journalist James Stewart offers *Disney War*, an unflinching yet even-handed account of boardroom politics at the turn of the millennium.[97] Relying on his extensive access to the players, Stewart provides a detailed look at how executive power can turn—not to obvious corruption—but to myopia, arrogance, flawed decision-making, and even paranoia. It is a must-read for any student of corporate hierarchy and firm governance.

Bruce Wasserstein, meanwhile, dissects the world of mergers and acquisitions in his updated version of *Big Deal*.[98] Starting his career as an attorney at Cravath and ending as the head of the eponymous investment bank, Wasserstein provides a true insider's account of the strategies and tactics that led to the 1990s mergers boom. Logging in at a hefty 832 pages, however, this volume may be more easily approached as a reference book than as a straight-through read.

Another deal-oriented book that is well worth the time is *War at the Wall Street Journal* by former *Journal* writer Sarah Ellison.[99] The story of how media baron Rupert Murdoch acquired the Dow Jones Company from a reluctant Bancroft family is especially interesting in a world where hostile takeovers are

95. Kurt Eichenwald, Conspiracy of Fools: A True Story (Broadway Books 2005); Bethany McLean & Peter Elkind, The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron (Penguin Books 2003).

96. Roger Lowenstein, When Genius Failed: The Rise and Fall of Long-Term Capital Management (Random House 2001).

97. James B. Stewart, Disney War (Simon & Schuster 2006).

98. Bruce Wasserstein, Big Deal: 2000 and Beyond (Warner Books 2000).

99. Sarah Ellison, War at the Wall Street Journal: Inside the Struggle to Control an American Business Empire (Houghton Mifflin Harcourt 2010).

all but absent from the landscape.[100] Also illuminating is the psychodrama that unfolds when a family who believes that protecting the venerable paper amounts to a public trust is confronted with an offer to sell out at a whopping 70 percent premium.

Finally, to understand the culture of the 1990s and the uncritical faith in business that resulted from the Dow's long and relentless climb, consider several primary sources, such as Jim Collins's *Built to Last* or Thomas Peters's *In Search of Excellence*.[101] The slavishly pro-business accounts of these management gurus were widely read in the 1990s and remain popular today. Also typical of the era's faith in economic progress was the unfortunately titled *Dow 36,000*, James Glassman and Kevin Hassett's erroneous prediction that America's stock markets were headed nowhere but up.[102]

G. The Subprime Mortgage Crisis

Whether we refer to it as the Great Recession, the Great Unwinding, the Panic of 2008, the Meltdown of 2009, or some other as-yet-untried catchphrase, the bursting of the sub-prime mortgage bubble in the fall of 2008 undoubtedly wreaked devastation on the world's economy. According to the International Monetary Fund, for example, worldwide credit write-downs attributable to the crisis could reach $4 trillion, making it "the deepest post-World War II recession by far."[103] As a result, knowledge of the panic's causes—as well as a grounding in the ever-expanding menu of synthetic and derivative securities that were at its root—is of critical importance to the modern practitioner.

Predictably, the crash unleashed a torrent of books attempting to summarize the events, lay blame for the losses, and predict the aftermath. Most were rushed to market and are not worth mention. Others are nothing less than extraordinary in their analysis of modern financial dealings. In terms of their clarity and importance, three stand out as being particularly relevant.

In *Too Big to Fail*, Andrew Ross Sorkin provides a near-contemporary insider's account of the activities of the bankers and regulators in the weeks leading up to and immediately following the collapse of Lehman Brothers.[104]

100. *See, e.g.,* Joseph A. Grundfest, Just Vote No: A Minimalist Strategy for Dealing with Barbarians Inside the Gates, 45 Stan. L. Rev. 857, 858 (1993) (announcing some fourteen years before the Murdoch deal: "The takeover wars are over. Management won.").

101. Jim Collins, Built to Last: Successful Habits of Visionary Companies (HarperCollins 2004); Thomas J. Peters & Robert H. Waterman, In Search of Excellence: Lessons from America's Best-Run Companies (HarperCollins 20004). *See also* Jim Collins, Good to Great: Why Some Companies Make the Leap … and Others Don't (HarperCollins 2001).

102. James K. Glassman & Kevin A. Hassett, Dow 36,000: The New Strategy for Profiting from the Coming Rise in the Stock Market (Three Rivers Press 2000). As of the time of this writing, the Dow Jones Industrial Average is hovering in the vicinity 13,000. Christine Hauser, Caution Sets In as Indexes Hit Feel-Good Heights, N.Y. Times, Feb. 25, 2012, at B1.

103. International Monetary Fund, World Economic Outlook: Crisis and Recovery xii (April 2009).

104. Sorkin, *supra* note 18.

Writing shortly after the crash, Sorkin's superb reporting benefits from his prior personal relationships with many of the key players, as well as his comprehensive understanding of Wall Street. As a result, although he makes little attempt to explain the long-term causes of the market turmoil, Sorkin's account will probably survive as one of the definitive chronicles of the events that actually unfolded.[105]

Equally definitive but more attentive to causation is *All the Devils Are Here*, by veteran financial reporters Bethany McLean and Joe Nocera.[106] This well-researched volume rejects easy answers and argues instead that the roots of the crisis involved many different players and developments. Read together with Sorkin's descriptive account, *All the Devils Are Here* provides the clearest account yet of why the political economy is where it is today.

Finally, the third of this triad of must-read accounts is *The Big Short*, by Michael Lewis.[107] Here, Lewis focuses not on the losers but on the winners—the handful of short-sellers and market pessimists who bet against the future of the American financial system. This riveting account of how the largest investment banks became "the dumb money at the poker table" details how the entire US financial system came to be organized around a single, unified bet on the quality of sub-prime mortgages. Lewis's gifts as a storyteller, his alternative perspective, and his ability to help the reader decipher the collateralized debt obligations, credit-default swaps, and other exotic securities that were at the center of the turmoil make it a superb complement to *Too Big to Fail* and *All the Devils Are Here*.

Although these three stand above the others in their comprehensiveness and analysis, there are many other treatments of the crash that deserve serious attention. Among these is *The End of Wall Street*, by veteran financial reporter Roger Lowenstein.[108] In this thoughtful account, Lowenstein traces the roots of the crisis back to a multi-year record of poor regulatory oversight, financial hubris, and a broad-based over-leveraging in all aspects of the economy. His

105. Several other financial journalists have followed Sorkin's narrative approach, but with a narrower focus. These include no fewer than three detailed volumes on the collapse of Bear Stearns—William D. Cohan, House of Cards: A Tale of Hubris and Wretched Excess on Wall Street (Doubleday 2009); Bill Bamber & Andrew Spencer, Bear Trap: The Fall of Bear Stearns and the Panic of 2008 (Brick Tower Press 2008); Kate Kelly, Street Fighters: The Last 72 Hours of Bear Stearns, the Toughest Firm on Wall Street (Portfolio Trade 2010)—an account of the final days of Lehman Brothers-Lawrence G. McDonald & Patrick Robinson, A Colossal Failure of Common Sense: The Inside Story of the Collapse of Lehman Brothers (Crown Business 2010)—and a recounting of the demise of Merrill Lynch and its rescue by a non-investment bank, Bank of America—Greg Farrell, Crash of the Titans: Greed, Hubris, the Fall of Merrill Lynch, and the Near-Collapse of Bank of America (Crown Business 2010). All are excellent reads and provide important details, but none are as comprehensive or authoritative as Sorkin's account.

106. Bethany McLean & Joe Nocera, All the Devils Are Here: The Hidden History of the Financial Crisis (Portfolio Hardcover 2010).

107. Michael Lewis, The Big Short: Inside the Doomsday Machine (W.W. Norton & Co. 2011).

108. Roger Lowenstein, The End of Wall Street (Penguin Books 2010).

description of the development of the "shadow banking system" is especially enlightening.

Simon Johnson and James Kwak—coauthors of the economic blog *The Baseline Scenario*—take a similar approach to Lowenstein in *13 Bankers*, but with a sharper political edge.[109] In it, they argue persuasively that the immediate legacy of the crash has not been a crippled financial industry, but rather an intensifying of power among an increasingly small banking cartel. With respect to what they view as a failure of post-2008 reform efforts, they concede that the economy needs a strong financial sector but pose the provocative question of whether it needs *this* one.

Finally, Pulitzer-prize winning financial reporter Gretchen Morgenson teams up with housing- and finance-expert Joshua Rosner to present their take on the roots of the crisis in *Reckless Endangerment*.[110] More than most, they blame specific individuals for bringing on "economic Armageddon," including Fannie Mae CEO James A. Johnson, as well as a revolving door of influence between Washington and Wall Street.

For an economist's take on the causes of the meltdown, Nobel laureate Joseph Stiglitz offers *Freefall*.[111] As well as being a gifted teacher of all things financial, Stiglitz deserves credit for being one of the few economists to consistently predict the market collapse. Meanwhile, noted economist Robert Shiller offers two treatments of the crash, one to explain its causes and another recommending ways to avoid the next great panic. In the second (and revised) edition of his bestseller, *Irrational Exuberance*, Shiller blends economics with psychology to explain why investors responded to the housing market bubble in a fundamentally irrational manner.[112] In *The New Financial Order*, he outlines six information technologies and financial theories that could be employed to mitigate the impact of future bouts of market irrationality.[113] Finally, in *Slapped by the Invisible Hand*, Gary Gorton builds on a report commissioned by the Federal Reserve to officially explain the panic.[114] So well received was his report within regulatory circles that Gorton expanded it into book form. Notably for those wanting a sense of perspective, Gorton compares the recent market turmoil to the panics of 1907 and 1893, among others.

109. Simon Johnson & James Kwak, 13 Bankers: The Wall Street Takeover and the Next Financial Meltdown (Vintage 2011).

110. Gretchen Morgenson & Joshua Rosner, Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Led to Economic Armegeddon (Times Books 2011).

111. Joseph E. Stiglitz, Freefall: America, Free Markets, and the Sinking of the World Economy (W.W. Norton & Co. 2010).

112. Robert J. Shiller, Irrational Exuberance (Princeton Univ. Press, 2d ed. 2005).

113. Robert J. Shiller, The New Financial Order: Risk in the 21st Century (Princeton Univ. Press 2003).

114. Gary B. Gorton, Slapped by the Invisible Hand: The Panic of 2007 (Oxford Univ. Press 2010).

Closely related to the panic—in timing, at least—was the Bernie Madoff affair that shocked investors by exposing one of the nation's most reputable market makers as the sponsor of history's largest Ponzi scheme.[115] Here, although several books have attempted to dissect the $60 billion sham, the most definitive thus far is undoubtedly *The Wizard of Lies*, by Diana Henriques.[116] In it, she details the major points of the scandal, including Madoff's extensive use of so-called "feeder funds" and the mostly ineffectual nine-year effort by Harry Markopolos to convince the SEC that the chairman of the Nasdaq stock exchange was a confidence man with an estimated 20,000 victims. Unfortunately, Henriques fails to address the larger picture presented by the Madoff affair—a Wall Street characterized by unregulated hedge funds, complicit banks who earned huge fees from Madoff even while privately voicing suspicions, a ban on the regulation of most derivative securities, and an SEC whose budget had been eviscerated by successive presidential administrations.

Lastly, though the panic certainly demands significant attention, the years leading up to 2007 also witnessed other significant developments that are worthy of notice. For example, in *The World is Flat*, Pulitzer Prize-winning *New York Times* columnist Thomas Friedman captures the angst experienced by many in the face of increased globalization and the threat of climate change.[117] Meanwhile, Roger Lowenstein outlines the largely unnoticed yet potentially seismic impact of demographic change in *While America Aged*.[118] Finally, historian Nelson Lichtenstein's *The Retail Revolution* places the unprecedented growth of Wal-Mart and other big box retail outlets in context by delving into the Reagan-Bush-Clinton policies that enabled such companies' success.[119]

H. The Business Cycle in Context

In addition to studying particular events and institutions, I find it equally if not more helpful to step back and survey the sweep of our nation's economic history. Although contemporary financial crises often feel unique and

115. It should be noted, however, that although the Madoff affair occurred contemporaneously with the height of the crash, it was neither a cause nor contributing factor to the general turmoil. Rather, the timing of his demise was more likely the result of an adage oft-repeated by famed investor Warren Buffett: "You only learn who has been swimming naked when the tide goes out...." Warren E. Buffett, Chairman's Letter to the Shareholders of Berkshire Hathaway Inc. 3 (February 2008), *available at* http://www.berkshirehathaway.com/letters/2007ltr.pdf.

116. Diana B. Henriques, The Wizard of Lies: Bernie Madoff and the Death of Trust (Times Books 2011).

117. Thomas L. Friedman, The World Is Flat: A Brief History of the Twenty-first Century (Farrar, Straus & Giroux 2005).

118. Roger Lowenstein, While America Aged: How Pension Debts Ruined General Motors, Stopped the NYC Subways, Bankrupted San Diego, and Loom as the Next Financial Crisis (Penguin Press 2008).

119. Nelson Lichtenstein, The Retail Revolution: How Wal-Mart Created a Brave New World of Business (Metropolitan Books 2009).

unprecedented, for example, they may more correctly be understood as part of a long-term cycle of scandal and reform. Indeed, in collecting the books for this article, one of my chief goals has been to help lawyers and law students gain a better feel for how current events compare with—and result from—prior economic goings-on.

Charles Geisst looks beyond scandal in his meticulous histories of Wall Street and the credit card industry. *Wall Street*, published shortly before the dotcom crash, traces the development of America's stock exchanges from their beginnings in the 1790s through the Clinton years.[120] *Collateral Damaged* begins with the establishment of consumer credit by Sears Roebuck in 1911 and makes a strong case that modern credit deregulation has caused unnecessary injury to consumers.[121]

For a general economic history of the world, historian Niall Ferguson offers *The Ascent of Money*, a volume that may have been underestimated by its critics because a more superficial PBS series accompanied its release and overshadowed its nuances.[122] In the written version, Ferguson claims that political and social history are ultimately driven by financial history. He argues provocatively, for example, that the outcome of the American Civil War was ultimately determined by the operation of 19th-century bond markets. Perhaps of greater interest to lawyers, he also drives home the point that money is merely "trust encoded," thereby offering helpful insights about how money—which began in the form of rare seashells and precious metals—has ultimately been transformed into mere blips on a computer screen.

Where Ferguson addresses broad economic trends and events, historian H.W. Brands takes a biographical approach. In *The Money Men*, he explores the long-standing tension between America's democratic values and capitalism's inherent conservatism by tracing the life stories of financiers Alexander Hamilton, Nicholas Biddle, Jay Cooke, Jay Gould and J.P. Morgan.[123]

For a biography of the corporation itself, John Micklethwait and Adrian Wooldridge, editors of the *Economist*, provide a fascinating account, beginning with the corporation's roots in Italy and continuing through the fall of Enron.[124]

120. Charles R. Geisst, Wall Street: A History: From Its Beginnings to the Fall of Enron (Oxford Univ. Press 2004).

121. Charles R. Geisst, Collateral Damaged: The Marketing of Consumer Debt to America (Bloomberg Press 2009).

122. Niall Ferguson, The Ascent of Money: A Financial History of the World (Penguin Books 2009). For a less successful, but still fun, attempt to combine the sweep of Ferguson with the readability of Malcolm Gladwell, see Alan Beattie, False Economy: A Surprising Economic History of the World (Riverhead Books 2009) (discussing hypothetical economic events that did *not* happen, such as the economic rise of Argentina, a nation with the population and natural resources—but not the wealth—of the United States).

123. H.W. Brands, The Money Men: Capitalism, Democracy and the Hundred Years' War Over the American Dollar (W.W. Norton & Co. 2007).

124. John Micklethwait & Adrian Wooldridge, The Company: A Short History of a Revolutionary Idea (Modern Library 2005).

Besides being both short and well written, this gem also includes discussions of the cultural impact of corporations. Who knew, for example, that Gilbert and Sullivan produced a once popular and widely viewed operetta called "The Corporation"? The authors also remind us how important the corporation has been to the development of society, including the fact that these United States were initially founded not by freedom-loving individualists but by corporations in search of profit.

In the aptly named *Colossus*, Jack Beatty also focuses on the history of the corporation and our complicated relationship with it.[125] However, he chooses to replace direct narrative with a collection of important writings and essays from our nation's history. This volume is heavy lifting but well worth the effort, for it manages to draw attention to something that is too easily forgotten—the fundamental nobility (and even romance) of the corporate enterprise.

For a comprehensive treatment of all that can go wrong, Edward Chancellor's *Devil Take the Hindmost* provides a detailed tour through the history of financial speculation.[126] In it, he covers everything from the Dutch tulip mania of the 1630s and the Mississippi and South Sea Bubbles of the colonial era, to the Japanese bubble economy of the 1980s and the Mexican and Asian meltdowns of 1994 and 1997. Another high quality account of economic manias is *This Time is Different*, by Carmen Reinhart and Kenneth Rogoff.[127] Like Chancellor, they provide a rich and enjoyable survey of economic turmoil through the ages, though their account is the more up-to-date. Meanwhile, in *Wheels of Fortune*, historian Charles Geisst's subject is not the panic and turmoil itself but the speculators and charlatans who lead us astray.[128] The most beautifully written history of financial scandal, however, must be Charles Kindleberger's 1978 classic, *Manias, Panics and Crashes*.[129] Now in its sixth edition—and updated with the help of Chicago economics professor Robert Aliber—this volume details the threads that link financial manias over centuries and across continents.

Of particular interest to lawyers and law students may be David Skeel's *Icarus in the Boardroom*.[130] Skeel takes a law professor's perspective in response to the excesses of the dotcom era. His thesis is that American business has taken on too much risk by allowing entrepreneurial spirits to take over management of our largest corporate enterprises.

125. Colossus: How the Corporation Changed America (Jack Beatty ed., Broadway 2001).

126. Edward Chancellor, Devil Take the Hindmost: A History of Financial Speculation (Plume 2000).

127. Carmen M. Reinhart & Kenneth S. Rogoff, This Time is Different: Eight Centuries of Financial Folly (Princeton Univ. Press 2009).

128. Charles R. Geisst, Wheels of Fortune: The History of Speculation from Scandal to Respectability (John Wiley & Sons 2003).

129. Charles P. Kindleberger & Robert Z. Aliber, Manias, Panics, and Crashes: A History of Financial Crises (Palgrave Macmillan, 6th ed. 2011).

130. David Skeel, Icarus in the Boardroom: The Fundamental Flaws in Corporate America and Where They Came From (Oxford Univ. Press 2006).

Peter Bernstein, by contrast, takes a triumphalist tone in *Against the Gods*, his history of risk.[131] For Bernstein, the taming of risk via statistics and scientific analysis is what divides modern finance from the ancient world. Despite his apparent over-optimism, *Against the Gods* fills an important hole by surveying the Western world's evolving approach to risk management from 16th-century Italy through the mid-1990s.

I. Business Biography as a Window on History

An alternative path through history, of course, is biography. And fortunately for the reader, our nation's financial history boasts a motley crew of economic statesmen, cheats and scoundrels that could entertain and amaze the most jaded cynic. Never should you give in to the ignorant conceit that ours is the most corrupt generation to rule Wall Street!

I therefore offer the following volumes as some of the best written, most relevant and most accessible books on each subject, arranged in roughly chronological order. Each entry provides insights on multiple levels—regarding the era in which the subjects operated, the traits that drove them to success (or failure), and the manner in which they proceeded.

In considering my recommendations, however, I was cognizant that the most enlightening subjects are not always the most important or influential in real life, and vice versa. Thus, the story of a relatively minor player who happens to live at the epicenter of change can be much more instructive than that of a famous leader presiding over times of economic stasis. Likewise, the best biographies are often the ones written by the best authors.

With this in mind, I have omitted many important personages, and included some relatively obscure ones. In particular, you will find a dearth of offerings regarding the current crop of leading financiers and industrialists—people like Bill Gates, Steve Jobs, Warren Buffett, Jack Welch and Robert Rubin. Though each has been the subject of multiple books, most seesaw somewhere between hagiography and hack job, and so offer little in the way of insight.

Thus, for interesting and enlightening biography, consider the following historical figures whose experiences I believe may be of particular interest to new and experienced business lawyers:

- John Hancock[132]
- Alexander Hamilton[133]
- Robert Fulton[134]

131. Peter L. Bernstein, Against the Gods: The Remarkable Story of Risk (John Wiley & Sons 1998).

132. William M Fowler, Baron of Beacon Hill: A Biography of John Hancock (Houghton Mifflin 1980).

133. Ron Chernow, Alexander Hamilton (Penguin Books 2005).

134. Kirkpatrick Sale, The Fire of His Genius: Robert Fulton and the American Dream (Touchstone 2002).

- Nicholas Biddle[135]
- Jay Gould[136]
- Cornelius Vanderbilt[137]
- Andrew Carnegie[138]
- John D. Rockefeller[139]
- George Eastman[140]
- Henry Ford[141]
- Ivan Kreuger[142]
- Pierre S. DuPont[143]
- Andrew Mellon[144]
- Henry J. Kaiser[145]
- Alfred P. Sloan[146]
- Joseph Schumpeter[147]
- Alan Greenspan[148]

Most of these names are well-known and need no introduction. However, some of the more interesting—for example, Nicholas Biddle, Henry Kaiser, Ivan Kreuger and even Andrew Mellon—may be unfamiliar to many readers.

135. Thomas Payne Govan, Nicholas Biddle: Nationalist and Public Banker, 1786-1844 (Univ. of Chicago Press 1975).

136. Edward J. Renehan, Jr., Dark Genius of Wall Street: The Misunderstood Life of Jay Gould, King of the Robber Barons (Basic Books 2006).

137. T.J. Stiles, The First Tycoon: The Epic Story of Cornelius Vanderbilt (Vintage 2010).

138. Harold C. Livesay, Andrew Carnegie and the Rise of Big Business (Longman, 3d ed. 2006); Les Standiford, Meet You in Hell: Andrew Carnegie, Henry Clay Frick, and the Bitter Partnership That Changed America (Three Rivers Press 2006).

139. Ron Chernow, Titan: The Life of John D. Rockefeller, Sr. (Vintage 2004).

140. Elizabeth Brayer, George Eastman: A Biography (Univ. of Rochester Press 2006).

141. Steven Watts, The People's Tycoon: Henry Ford and the American Century (Vintage 2006).

142. Frank Partnoy, The Match King: Ivar Kreuger, The Financial Genius Behind a Century of Wall Street Scandals (Public Affairs 2010).

143. Alfred D. Chandler, Jr. & Stephen Salsbury, Pierre S. duPont and the Making of the Modern Corporation (Beard Books 2000).

144. David Cannadine, Mellon: An American Life (Vintage 2008).

145. Mark S. Foster, Henry J. Kaiser: Builder in the Modern American West (Univ. of Texas Press 1989).

146. David Farber, Sloan Rules: Alfred P. Sloan and the Triumph of General Motors (Univ. of Chicago Press 2005).

147. Thomas K. McCraw, Prophet of Innovation: Joseph Schumpeter and Creative Destruction (Belknap Press 2010).

148. Bob Woodward, Maestro: Greenspan's Fed and the American Boom (Touchstone 2001).

Nicholas Biddle, for example, earned renown for his battle with President Andrew Jackson over the re-chartering of the Second Bank of the United States, an incident that laid bare the power of money vis-à-vis our political leadership. Meanwhile, Henry Kaiser, an industrialist with many interests, is of significance primarily because of his focus on developing the economy of the American West.

Ivan Kreuger—nicknamed the "match king" after he managed to corner nearly two-thirds of the world's match production during the period between the First and Second World Wars—was at the same time an advisor to President Herbert Hoover and a forerunner of Bernie Madoff. A pioneer of such questionable practices as off-balance sheet financing, earnings management, and Ponzi-style accounting, his story is ably told by Frank Partnoy, whose background as both a law professor and Wall Street banker makes him particularly well qualified to dissect Kreuger's opaque and inadequate financial statements. And finally, who can help but cringe at Herbert Hoover's account of the advice he received from Treasury Secretary and multi-millionaire Andrew Mellon in response to the stock market crash that preceded the Depression:

> Liquidate labor, liquidate stocks, liquidate the farmers, liquidate real estate… purge the rottenness out of the system.[149]

Note that although I said I would omit most contemporary figures, I did include Bob Woodward's 2001 biography of Alan Greenspan. In part, I did so because it was written at the height of Greenspan's reputation—hence its cloying one-world title, *Maestro*. Given that Greenspan was so closely involved in market developments of the last two decades, and given that his reputation has been so sullied by recent economic events, his story might elucidate much about where we find ourselves today. I will trust the reader to recognize the truths and fictions buried in Woodward's mostly unquestioning portrayal.

Alternatively, if you prefer autobiography, both Carnegie and Rockefeller have written revealing accounts of their lives, as have Benjamin Franklin and Lee Iacocca, the CEO credited with saving Chrysler in the 1980s.[150] Also revealing is Felix Rohatyn's recent autobiography, *Dealings*, which recounts his experiences as a Wall Street dealmaker from the 1950s through the present day.[151] Meanwhile, Alfred Sloan provides a sort of dual-autobiography of himself and his company in *My Years with General Motors*.[152]

149. Herbert Hoover, Memoirs: The Cabinet and the Presidency, 1920–1933 30 (Macmillan 1952).

150. Andrew Carnegie, Autobiography of Andrew Carnegie (Public Affairs 2011); John D. Rockefeller, Random Reminiscences of Men and Events (Univ. Press of the Pacific 2003); Benjamin Franklin, The Private Life of the Late Benjamin Franklin, LL.D. Originally Written By Himself, And Now Translated From the French (Gale Ecco 2010); Lee Iacocca & William Novak, Iacocca: An Autobiography (Bantam 2007).

151. Felix Rohatyn, Dealings: A Political and Financial Life (Simon & Schuster 2010).

152. Alfred P. Sloan, Jr., My Years with General Motors (Crown Business 1990).

Admittedly, each of these entries suffers from the usual problems with autobiography. That is to say, the authors gloss over and occasionally re-imagine some of their less savory dealings. They also tend to reinterpret the often disparate and unconnected pieces of their lives into a common, thematically consistent narrative. Nonetheless, each provides a contemporaneously written window into the minds of some of the most significant economic figures of the past few centuries. How, for example, can anyone with a knowledge of modern finance fail to give a knowing smile when Carnegie proudly proclaims:

> [I] made up my mind to go entirely contrary to the adage not to put all one's eggs in one basket. I determined that the proper policy was "to put all good eggs in one basket and then watch that basket."[153]

Finally, if you are busy and prefer an all-in-one treatment, H.W. Brands offers *Masters of Enterprise*, a series of mini-biographies of successful industrialists ranging from John Jacob Astor to Bill Gates and Oprah Winfrey.[154]

IV. Theory and Policy Debates

Context is not just about people and events. It is also about ideas. In order to advise clients on how to plan for an unknown future, practitioners should therefore have at least a rudimentary sense of the major academic and policy debates that are likely to drive the prospect of regulation. Admittedly, however, the details of these debates can be highly complex. Many may even lack real consequence. I would therefore be overstating the case were I to argue that every member of the practicing bar must be immersed in the ins and outs of legal scholarship. Thus, rather than proposing an entire new course of study, I offer the following fare to be sampled as an introduction—a gentle ride through the most salient literature.

A. Corporate Governance

Much of the scholarly debate over the regulation of large businesses falls under the rubric of "corporate governance." Beginning with Adolf Berle and Gardiner Means's classic 1933 account of *The Modern Corporation and Private Property*, this field has focused primarily on agency costs.[155] These are the inefficiencies that result when a principal—in this case, a shareholder, partner or other equity investor—engages an agent or manager to do his or her bidding. Because the interests of the agent inevitably differ from those of the principal, losses arise from the agent's predictably divergent behavior. The goal of corporate governance reform is to minimize those losses.

153. Carnegie, *supra* note 150, at 206.

154. H.W. Brands, Masters of Enterprise: Giants of American Business from John Jacob Astor and J.P. Morgan to Bill Gates and Oprah Winfrey (Free Press 1999).

155. *See* Adolf A. Berle & Gardiner C. Means, The Modern Corporation and Private Property (Transaction 1991).

Conservative law professor Stephen Bainbridge describes the origins and development of this field in *The New Corporate Governance*.[156] Bainbridge, though a partisan law and economics scholar, is an unusually clear and well-organized writer. As a result, so long as you are able to judge the ideological overlay within the confines of your own prejudices, you will find this volume to be a thorough and understandable introduction to the field. For an introduction by an equally lucid but left-leaning scholar, consider *Progressive Corporate Law*, Lawrence Mitchell's compilation of essays on the subject.[157]

In *Institutional Investors and Corporate Governance*, Carolyn Brancato, a long-term advocate for institutional investor rights, lays out various corporate governance best practices circa 1997.[158] Although somewhat dated, many of her suggestions were made into law in the wake of the Enron fiasco and her recommendations probably remain closest to the consensus approach among scholars even today.

In a similar vein, economist Paul MacAvoy teams up with legendary corporate attorney Ira Millstein in *The Recurrent Crisis in Corporate Governance* to advocate for good corporate governance.[159] In it, they argue in favor of a stronger role for independent directors and make the case that good governance can result in higher profits. By contrast, fiduciary law expert Tamar Frankel argues in her latest book, *Trust and Honesty*, that improved governance requires reinvigorated social norms.[160] For her, change must come from outside the corporation, rather than from within.

Integral to the overall question of corporate governance is the narrower question of why American executives are paid so much relative to the average worker (and their foreign counterparts). This debate is captured by law professors Lucian Bebchuk and Jesse Fried in their excellent summation of the current literature, *Pay Without Performance*.[161] For a more expansive critique of how society allocates resources, try Robert Frank and Philip Cook's *The*

156. Sephen Bainbridge, The New Corporate Governance In Theory and Practice (Oxford Univ. Press 2008).

157. Progressive Corporate Law (Lawrence E. Mitchell ed., Westview Press 1995). For those with less time to spare, a more straightforward and far shorter overview of the agency problem can be found—as Bainbridge himself has noted—in Dr. Seuss's poem about the Bee-Watcher who, having failed in his oversight responsibilities, was subjected to the supervision of a Bee-Watcher-Watcher. *See* Dr. Seuss, Did I Ever Tell You How Lucky You Are? 26–29 (Random House 1973). *See also* Stephen M. Bainbridge, The Politics of Corporate Governance, 18 Harvard J.L. & Pub. Pol'y 671, 723 (1995) (quoting the poem).

158. Carolyn Kay Brancato, Institutional Investors and Corporate Governance: Best Practices for Increasing Corporate Value (Irwin Prof. Publishing 1997).

159. Paul W. MacAvoy & Ira Millstein, The Recurrent Crisis in Corporate Governance (Palgrave Macmillan 2003).

160. Tamar Frankel, Trust and Honesty: America's Business Culture at a Crossroad (Oxford Univ. Press 2008).

161. Lucian Bebchuk & Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation (Harvard Univ. Press 2006).

Winner-Take-All Society, their exploration of the broad economic causes of income inequality.[162]

Harvard law professor Mark Roe tackles the historical roots of America's system of dispersed share ownership in both *Strong Managers, Weak Owners* and *Political Determinants of Corporate Governance*.[163] He then joins Jeffrey Gordon to compare the American system to that of most other major world economic powers in *Convergence and Persistence in Corporate Governance*.[164] Roe's (and Gordon's) broad thesis is that America's system of corporate governance and business regulation arose from identifiable historical choices rather than being the result of the invisible—and hence inevitable—hand of the market. A reformer at heart, Roe implies that our system could be changed if we make different choices in the future. It should be noted, however, that these are serious academic studies and are not appropriate for the casual reader.

Another important look at comparative corporate governance is *Political Power and Corporate Control*, by Peter Gourevitch and James Shinn.[165] For them, the key to understanding the interactions between minority and controlling shareholders lies in the behavior and incentives of financial intermediaries, such as pension plans and mutual funds. In making their case, they present data on the politics and economic structure of thirty-nine countries. Thus, it is a valuable addition if only for its comprehensive, world-wide perspective.

Two other important academic texts on corporate governance are Roberta Romano's *The Genius of American Corporate Law* and Erin O'Hara and Larry Ribstein's *The Law Market*.[166] Romano, a law and economics professor at Yale, argues in favor of federalism in business regulation, while O'Hara and Ribstein trust the competition among states to create an optimal system of corporate governance. Each sees virtue primarily in market forces and believes that state competition for corporate charters encourages less—and hence, in their view, better—governmental regulation.

Finally, famed corporate economist Oliver Williamson offers an overview of corporate governance from the perspective of the dismal science in *The Mechanics of Governance*, while Douglas Branson has authored two excellent books that

162. Robert H. Frank & Philip J. Cook, The Winner-Take-All Society: Why the Few at the Top Get So Much More Than the Rest of Us (Penguin Books 1996).

163. Mark J. Roe, Strong Managers, Weak Owners: The Political Roots of American Corporate Finance (Princeton Univ. Press 1996); Political Determinants of Corporate Governance: Political Context, Corporate Impact (Oxford Univ. Press 2006).

164. Convergence and Persistence in Corporate Governance (Jeffrey N. Gordon & Mark J. Roe, eds., Cambridge Univ. Press 2004).

165. Peter A. Gourevitch & James Shinn, Political Power and Corporate Control: The New Global Politics of Corporate Governance (Princeton Univ. Press 2005).

166. Roberta Romano, The Genius of American Corporate Law (AEI Press 1993); Erin A. O'Hara & Larry E. Ribstein, The Law Market (Oxford Univ. Press 2009).

take a look at the failure of corporate America to adequately involve women, *The Last Male Bastion* and *No Seat at the Table*.[167]

B. Corporate Social Responsibility

Closely related to the study of corporate governance is the field of corporate social responsibility. Here, the question is not how to minimize the inefficiencies that arise within the corporate agency relationship, but what corporations are for. Put differently, while corporate governance asks how to incentivize managers to behave as society desires, corporate social responsibility asks what it is that society desires.

Because it implicates the fundamental duties of a corporation, the social responsibility movement frequently serves as a battleground between conservative observers, who generally prefer a model of strict shareholder wealth maximization, and liberal observers, who see room for corporate managers to pursue societal interests such as environmental health and worker autonomy. Wise practitioners may find it useful to sample one or more books that question the role of business in society, if only to understand what is at stake.

Kent Greenfield, a law professor and frequent contributor to the *Huffington Post*, attacks the question from a progressive point of view in *The Failure of Corporate Law*.[168] In it, he attempts to develop and extend the argument that putting shareholder interests first does not necessarily translate into benefits for society as a whole. Instead, he believes corporate law should be approached as a branch of public law in which corporations serve important societal goals, including dignity, fairness, compassion, equality and autonomy.

Fellow progressive law professor Lawrence Mitchell similarly attacks the short-term profit maximization norm in *Corporate Irresponsibility*.[169] Like Greenfield, Mitchell questions whether shareholder interests are accurate proxies for society's larger interests. However, his particular concern seems centered on the risk that managers, in pursuing shareholder wealth, are abdicating their personal and moral obligations to the larger world.

Stepping back a generation, Louis Lowenstein attacks what he viewed as the corporate excesses of his day—short-term speculation and the rise of derivative securities—in *What's Wrong with Wall Street*.[170] This lucid and erudite

167. Oliver E. Williamson, The Mechanics of Governance (Oxford Univ. Press 1990); Douglas M. Branson, The Last Male Bastion: Gender and the CEO Suite in America's Public Companies (Routledge 2010); Douglas M. Branson, No Seat at the Table: How Corporate Governance Keeps Women Out of America's Boardrooms (N.Y.U. Press 2007).

168. Kent Greenfield, The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities (Univ. of Chicago Press 2006).

169. Lawrence E. Mitchell, Corporate Irresponsibility: America's Newest Export (Yale Univ. Press 2001).

170. Louis Lowenstein, What's Wrong With Wall Street: Short-Term Gain and the Absentee Shareholder (Addison-Wesley 1989).

account provides a useful explanation of the growing unease that has been developing among progressive scholars since the early 1980s.

Finally, environmentalist and social activist John Elkington lays out the argument in favor of corporations treating both employees and nature as important constituents in *Cannibals with Forks*.[171] His "triple bottom line" approach argues that, to be successful over the long-term, managers must make decisions not merely with the goal of increasing shareholder wealth, but with an eye toward the emerging bottom lines of environmental quality and social justice. While neither an easy read nor a book about law or finance *per se*, it nonetheless raises essential questions about the role of corporations in society.

C. The Role of Markets

Given the economic turmoil of 2008 and 2009, it is no surprise that the role of markets has come under increased scrutiny. Beginning soon after the crash of 2001 and accelerating into 2008 and beyond, a host of economists, historians and other critics have begun to systematically challenge the notion that Wall Street can be regulated by the invisible hand alone.

Leading the assault on neoclassical economic theory are books like *Animal Spirits*, written by Nobel laureate George Akerlof and Yale finance professor Robert Shiller, and *The Return of Depression Economics and the Crisis of 2008*, by fellow Nobel laureate Paul Krugman.[172] Together, these two books—which attempt to resuscitate popular interest in the work of John Maynard Keynes and the fundamental irrationality of human behavior—represent a formidable attack on neoclassical faith in efficient markets. Also weighing in on the side of market irrationality is John Kenneth Galbraith, who surveys various manias and crashes from the 1630s up to and including 1987's Black Tuesday. In *A Short History of Financial Euphoria*, Galbraith argues that all speculative bubbles are inevitably the result of a "mass escape from sanity."[173]

Lawrence Mitchell, like Galbraith, attempts to understand market failure from an historical perspective in *The Speculation Economy*.[174] For Mitchell, the story of market regulation in the United States is one of tension between finance and industry, with the former generally ascendant. The result is an overabundance of speculation and resulting panics.

171. John Elkington, Cannibals with Forks: The Triple Bottom Line of 21st Century Business (New Soc'y Publishers 1998).

172. George A. Akerlof & Robert J. Shiller, Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism (Princeton Univ. Press 2009); Paul Krugman, The Return of Depression Economics and the Crisis of 2008 (W.W. Norton & Co. 2008).

173. John Kenneth Galbraith, A Short History of Financial Euphoria 52 (Viking Penguin 1993).

174. Lawrence E. Mitchell, The Speculation Economy: How Finance Triumphed Over Industry (Berret-Koehler Publishers 2008).

Steven Ramirez picks up this argument and applies it to the subprime mortgage crisis in his recently published *Lawless Capitalism*.[175] For Ramirez, the fundamental problem is that corporate law has failed in its larger mission of limiting the concentration of economic power. High levels of inequality, excessive CEO autonomy, and the consolidation of the financial sector have combined to put more economic power in fewer hands than ever before. The result: a predictable subversion of law and regulation in favor of corporate and financial elites.

Michael Lewis, meanwhile, provides a collection of news articles about recent market turmoil in *Panic*.[176] Covering the panic of 1987, the Asian meltdown of 1997 to 1998, and the collapse of the dotcom bubble in 2001, this anthology powerfully depicts the unreasonable optimism and associated greed that preceded each event. It also rather embarrassingly highlights our society's consistent failure to learn from past crises.

Rather than blame history or the internal functioning of the markets, Richard Bookstaber finds the causes of modern panics in the financial instruments Wall Street developed to control risk. In the provocative *A Demon of Our Own Design*, Bookstaber notes that, given improved technology and increased access to information, risk should be decreasing.[177] The fact that it is not, he argues, is due to a combination of bounded rationality—human beings' natural inability to predict every possible future menace—and the increased complexity and interconnectedness that is created by derivative and synthetic securities.

A rare right-wing take on how the conservative faith in markets has been impacted by the stock market crash of 2001 and the credit panic of 2008 comes from famed law and economics scholar (and judge) Richard Posner. In *A Failure of Capitalism*, he attempts to save faith in markets by arguing that the recent economic disruption is the result of decisions that were made by specific individuals—generally those in the government—rather than by the free and unchecked flow of commerce.[178]

Meanwhile, Nassim Taleb, a colorful former trader, produced the best-selling *The Black Swan* shortly before the panic began in the fall of 2008, thereby gaining a reputation for prescience.[179] In it, he provides the memorable metaphor of the life of a typical American turkey: assuming one's data set

175. Steven A. Ramirez, Lawless Capitalism: The Subprime Crisis and the Case for an Economic Rule of Law (NYU Press 2012).

176. Michael Lewis, Panic: The Story of Modern Financial Insanity (W.W. Norton & Co. 2009).

177. Richard Bookstaber, A Demon of Our Own Design: Markets, Hedge Funds, and the Perils of Financial Innovation (John Wiley & Sons 2008).

178. Richard A. Posner, A Failure of Capitalism: The Crisis of '08 and the Descent into Depression (Harvard Univ. Press 2011). *See also* Richard A. Posner, The Crisis of Capitalist Democracy (Harvard Univ. Press 2011).

179. Nassim Nicholas Taleb, The Black Swan: The Impact of the Highly Improbable (Random House 2007). *See also* Nassim Nicholas Taleb, Fooled by Randomness: The Hidden Role of Chance in Life and in the Markets (Random House 2008).

includes only the days before Thanksgiving but omits that ominous yet inevitable event, one would likely extrapolate a continued existence for the turkey of ever expanding utility (in the form of increased helpings of turkey feed). In this way, Taleb cautions investors—as well as others who rely on data-driven models, such as environmental scientists and city planners—to avoid relying too heavily on recent data, especially if it is consistently positive.

Although most recent books addressing the role of markets have attempted to reconcile the spectacular failure of rational thinking that led to the crash of 2001 and the panic of 2008, you might also want to go back a few years to try to understand the ideas that gave neoclassical economic theory such a following in the first place. Here, the easiest place to start is with Ayn Rand, whose classics, *Atlas Shrugged* and *The Fountainhead*, led a generation of scholars and economists—most notably Milton Friedman and Alan Greenspan—down an intellectual path of strict opposition to government regulation.[180] Alternatively, if you would prefer to read *about* Rand and her influence on the Chicago school of economics, consider instead (or in addition) Edward Younkins's *Ayn Rand's Atlas Shrugged*.[181]

For the traditional alternative to the neo-classical approach to economic policy, you might revisit John Maynard Keynes's classic work, *The General Theory of Employment, Interest and Money*.[182] In it, he introduces the argument that the overall level of a nation's economic activity is the result of aggregate demand—and that government stimulus of aggregate demand through fiscal and monetary policy can impact the level of unemployment.

For a comprehensive intellectual history of economic regulation, Herbert Hovenkamp and Thomas McCraw, respectively, have written *Enterprise and American Law* and the Pulitzer Prize-winning *Prophets of Regulation*.[183] Both are extremely well-written and provide easy access to important and ongoing debates regarding the relationship between governments and markets.

Finally, Nicholas Phillipson has written a superb new intellectual biography of Adam Smith that argues that his writings have been greatly simplified and thus misunderstood.[184] By focusing not only on Smith's *The Wealth of Nations* but also on his *Theory of Moral Sentiments*, Phillipson attempts to expand our

180. Ayn Rand, Atlas Shrugged (Plume 2001); The Fountainhead (Siget 1996). For a recent polemic attacking the social and economic impact of the Chicago school's policies, see Naomi Klein, The Shock Doctrine: The Rise of Disaster Capitalism (Metropolitan Books 2007).

181. Edward Wayne Younkins, Ayn Rand's Atlas Shrugged: A Philosophical and Literary Companion (Ashgate Pub. Co. 2007).

182. John Maynard Keynes, The General Theory of Employment Interest and Money (Martino Fine Books 2011).

183. Herbert Hovenkamp, Enterprise and American Law, 1836–1937 (Harvard Univ. Press 1991); Thomas K. McCraw, Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn (Belknap Press 1986).

184. Nicholas Phillipson, Adam Smith: An Enlightened Life (Allen Lane 2010).

understanding of Smith's ideas and his belief that the political economy must be understood as part of a larger moral philosophy.

V. Skills and Related Disciplines

The theme of this article has been the importance to business lawyers of understanding the context of our practice. So far, I have explored context in the realms of culture, history and theory. Skills, such as negotiation and drafting, are contextual to the legal field in that they form much of the content of an attorney's daily activities. Similarly, accounting, economics and psychology are important influences on policymaking and frequently intrude into judicial decision-making. Each therefore is a worthy subject matter for the dedicated self-educator, especially for those who did not encounter them during their formal studies.

Collectively, these topics represent the technical context of our profession. Yet each also represents a significant field unto itself. Thus, I introduce below a small selection of works from each discipline without attempting to be comprehensive. Rather, my goal is to highlight those texts that best introduce context. For further study, I direct you to the library or, better yet, a program of advanced study.

A. Negotiation and Drafting

Negotiation and drafting in some ways constitute the most fundamental skills of a transactional lawyer. Neither, however, receives much attention from the traditional law school curriculum. Rather, young lawyers are left to acquire them, apprentice-style, over the course of their legal careers. Although I am comfortable that this is largely as it should be, I worry that the world of legal practice may be changing in ways that make such apprentice-style learning less feasible.[185]

Regarding negotiation theory, Roger Fisher and William Ury (with assistance from second-year law student Bruce Patton) combined ideas from game theory, social and cognitive psychology, engineering, and linguistics into the highly readable *Getting to Yes*.[186] In its second edition, this volume single-handedly transformed an intuition-driven talent into a serious academic discipline and in doing so created the promise that even the least of us could one day become adept at negotiation. A staple of both business schools and airport bookstores, it is rumored among its followers to have sold more copies than the Bible.

Another classic of negotiation theory, *Difficult Conversations*, by Douglas Stone, Bruce Patton, Sheila Heen and Roger Fisher, was originally intended

185. *See generally* Robert C. Illig, The Oregon Method: An Alternative Model for Teaching Transactional Law, 59 J. Legal Educ. 221 (2009).

186. Roger Fisher, William L. Ury & Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In (Penguin Books, 2d ed. 2011).

as a sequel to *Getting to Yes*.[187] Instead, it evolved into an explication of the communication skills necessary to successfully resolve uncomfortable interpersonal conflicts.

Two texts that attempt to delve a little deeper into the context of negotiation are Robert Mnookin, Scott Peppet and Andrew Tulumellow's *Beyond Winning*, and David Lax's *The Manager as Negotiator*.[188] Both books attempt to provide more specifics than are offered in *Getting to Yes*, with the first being aimed more at lawyers and the second at business executives.

Finally, if you are so inclined, the pre-*Getting to Yes* classic is Howard Raiffa's *The Art and Science of Negotiation*.[189] In it, the Harvard business school economist provides a much more analytical description of negotiation theory. Think of it as *Getting to Yes* with math.

In terms of contract drafting, I am sad to report that there is nothing on the market that is remotely equivalent in quality or general relevance to the literature on negotiation. Probably, this is because the real art of contract drafting lies not in word choice or sentence structure, but in issue spotting and risk allocation. No matter how well an agreement is crafted in terms of language and clarity, it is worse than useless if it omits treatment of critical issues. Moreover, careful writing can even be counterproductive if the result is to re-draft language that has been previously interpreted by a court as having a particular meaning. Ironically, in such a case, changing the words—even for the better—can only increase uncertainty.

Treating contracting as a language art also misses the essential element of plagiarism inherent in the drafting process. Once a contract drafter has identified the issues to be addressed, her next step is commonly to search her own files, or possibly her firm's files, for sample language that has been used successfully in the past to address similar issues. Even better, she may peruse the catalogue of "material contracts" that all public companies must file with the SEC and that is available via its online EDGAR database.[190] By taking the latter route, she can access the latest industry-specific and market-tested responses to common issues.

187. Douglas Stone, Bruce Patton & Sheila Heen, Difficult Conversations: How to Discuss What Matters Most (Penguin Books 2010).

188. Robert H. Mnookin, Scott R. Peppet & Andrew S. Tulumellow, Beyond Winning: Negotiating to Create Value in Deals and Disputes (Belknap Press 2000); David A. Lax, The Manager as Negotiator (Free Press 2011).

189. Howard Raiffa, The Art and Science of Negotiation: How to Resolve Conflicts and Get the Best Out of Bargaining (Belknap Press 1985).

190. Unfortunately, I have been unable to identify the kind of reference book that would assist the reader with the question of how to leverage the SEC's database for optimal negotiation and drafting purposes. The only books that focus on EDGAR are volumes like Gene Walden, EDGAR: The Investor's Guide to Making Better Investments (McGraw-Hill 2003), which is intended as an investment guide rather than as a practitioner's aid to drafting. This represents a significant hole in the literature.

Given the nature of drafting, then, the best books for the drafter are probably those that are specific to particular areas of law. For example, famed deal lawyer James Freund's *Anatomy of a Merger* describes each major provision of an acquisition agreement, line-by-line, presenting not only the issues raised but the common positions taken by both buyer and seller.[191] Though dated, this volume remains essential reading for any serious M&A attorney.

Meanwhile, the American Bar Association has taken Freund's approach one step further by institutionalizing it in a committee. The forerunner of the Committee on Mergers and Acquisitions has begun publishing excellent model merger, stock purchase, asset purchase and other agreements.[192] Each not only identifies sample language and the issues such language is intended to address, but how each provision in the contract can be tailored to the interests of the buyer or seller. As a result of their provenance, these model agreements have the potential to define "standard" contract terms and so serve as the starting point for many future negotiations.

Also helpful with regard to certain specific contexts are the various market surveys that have begun to be published and that purport to explicate the market regarding a particular deal structure. An excellent example of this is the Dow Jones Corporation's periodic survey of private equity deal structures.[193] Such surveys not only identify important legal issues but also catalogue their most common resolutions. In doing so, they attempt to answer the perennial question of what is the industry norm.

Finally, there are a variety of texts that seek to provide an overview of negotiated transactions from a business and deal-execution point of view. The most comprehensive of these are by business school professors Robert Bruner and Patrick Gaughan.[194] They are, however, heavy tomes that cover their subjects broadly and in a textbook-like manner. Though not specifically focused on drafting, their comprehensive treatment of topics like valuation, financial accounting, options theory, and post-merger integration could prove useful for an up-and-coming deal lawyer.

For an alternative approach to understanding deal structure, Robert Bruner offers *Deals from Hell*, a fun and informative read that chronicles many of the best

191. James C. Freund, Anatomy of a Merger: Strategies and Techniques for Negotiating Corporate Acquisitions (Law Journal Press 1975).

192. *See, e.g.,* American Bar Association, Committee on Negotiated Acquisitions, Model Merger Agreement for the Acquisition of a Public Company (A.B.A. 2011); Model Asset Purchase Agreement with Commentary (A.B.A. 2001); Model Stock Purchase Agreement with Commentary (A.B.A. 1995); Model Joint Venture Agreement (A.B.A. 2007). The committee continues to update these and other related publications, as well as to publish an informative newsletter.

193. *See, e.g.,* Private Equity Partnership Terms & Conditions (Jennifer Rossa, ed., Dow Jones 2009).

194. Robert F. Bruner, Applied Mergers & Acquisitions (John Wiley & Sons 2004); Patrick A. Gaughan, Mergers, Acquisitions, and Corporate Restructurings (John Wiley & Sons, 3d ed. 2002).

and worst negotiated transactions of the past half-century with an eye toward understanding what went wrong and why.[195] In a similar vein, Julie MacIntosh has produced *Dethroning the King*, a detailed description of the background and execution of the 2008 hostile takeover of Anheuser-Busch.[196] In it, she not only describes how the deal was planned and executed, but how market changes and changes inside Anheuser-Busch made such a deal logical.

Finally, Wall Street historian Charles Geisst provides a less-analytical but more wide-ranging counterpart to *Deals from Hell* in *Deals of the Century*.[197] Though neither is focused on either negotiation or drafting, both provide an excellent window into the process of planning, structuring and executing a transaction, especially for someone without much in the way of previous deal experience.

B. Accounting

As a teacher, I frequently ask practicing attorneys some version of the question, "what course do you wish you had taken in law school?" Invariably, the answer is accounting. Accounting, it appears, is one of those subjects—like tax, perhaps—that appears superficially unappealing yet remains critical to an understanding of deal structure.

Ultimately, what most lawyers need is not a lesson in debits and credits, auditing procedures, or the virtues of double-entry bookkeeping, but a tutorial on financial statement analysis. Our role is not to create financial statements but to decode them in order to understand a business and identify its weaknesses. In this vein, the two most relevant offerings for lawyers are probably *Financial Statement Analysis*, by Robert Dickie, and *Understanding the Corporate Annual Report*, by Lyn Fraser and Aileen Ormiston.[198]

To learn more about how companies abuse accounting standards and thus present a false impression of their financial health, try *Business Fairy Tales*, by Cecil Jackson, which examines real-world accounting scandals to highlight the most common ways in which companies cheat in their reporting.[199] *Financial Shenanigans*, by Mark Schilit and Jeremy Perler, also takes a lively look at the

195. Robert F. Bruner, Deals from Hell: M&A Lessons that Rise Above the Ashes (John Wiley & Sons 2009).

196. Julie MacIntosh, Dethroning the King: The Hostile Takeover of Anheuser-Busch, An American Icon (John Wiley & Sons 2010).

197. Charles R. Geisst, Deals of the Century: Wall Street, Mergers, and the Making of Modern America (John Wiley & Sons 2005).

198. Robert B. Dickie, Financial Statement Analysis and Business Valuation for the Practical Lawyer (A.B.A., 2d ed. 2006); Lyn M. Fraser & Aileen Ormiston, Understanding the Corporate Annual Report: Nuts, Bolts and a Few Loose Screws (Prentice Hall 2002).

199. Cecil W. Jackson, Business Fairy Tales: Grim Realities of Fictitious Financial Reporting (South-Western Educ. Pub. 2006).

world of illegal accounting.[200] I recommended both as being simultaneously enjoyable and edifying.

For treatises aimed specifically at recent accounting changes, consider choosing from among *After Enron*, edited by William Niskanen, *Financial Gatekeepers*, edited by Yasuyuki Futhita and Robert Litan, and *Accounting and the Global Economy*, by Don Garner, David McKee and Yosra Abu Amara McKee.[201] Each of these three books looks at accounting policy from the standpoint of contemporary political and economic developments. Meanwhile, Thomas King sheds further light on many of the most significant policy issues implicit in financial accounting in his superb treatment, *More Than a Numbers Game*.[202]

Finally, there are several reference works that may be useful. Among the best of these are *Accountants' Handbook* and *Accounting Handbook*.[203] For a resource that stresses the international aspects of accounting while continuing to aim at non-professionals, try *International Financial Reporting Standards*.[204]

C. Economics and Corporate Finance

Although the field of economics is far too broad to fully master as a sideline, there are a number of high-quality texts that introduce topics, like corporate finance, that are of interest to deal lawyers.

For an overview of basic economic theory, you can safely begin with Thomas Sowell's *Basic Economics*.[205] This is a straightforward read that successfully translates complex economic theory into understandable prose. For readers with a strong business background, one of Sowell's later works, *Economic Facts and Fallacies*, may also be of interest.[206] In this volume, the author uses logic and irony to break down preconceived notions about the way the economy functions. Together, the two books present a serious yet accessible overview of the field as well as an introduction to some of its detractors.

200. Howard M. Schilit & Jeremy Perler, Financial Shenanigans: How to Detect Accounting Gimmicks and Fraud in Financial Reports (McGraw-Hill 2010).

201. After Enron: Lessons for Public Policy (William A. Niskanen ed., Rowman & Littlefield Pub. 2005); Financial Gatekeepers: Can They Protect Investors? (Yasuyuki Fuchita & Robert E. Litan eds., Brookings Inst. 2006); Don E. Garner, David L. McKee & Yosra Abu Amara McKee, Accounting and the Global Economy After Sarbanes-Oxley (M.E. Sharpe 2007).

202. Thomas A. King, More Than a Numbers Game: A Brief History of Accounting (John Wiley & Sons 2006).

203. D. R. Carmichael, O. Ray Whittington & Lynford Graham, Accountants' Handbook: Volume One: Financial Accounting and General Topics (John Wiley & Sons 2007); Joel G. Siegel & Jae K. Shim, Accounting Handbook (Barron's Educ. Series, 4th ed. 2006).

204. Hennie van Greuning, International Financial Reporting Standards: A Practical Guide (World Bank 2004).

205. Thomas Sowell, Basic Economics: A Common Sense Guide to the Economy (Basic Books, 3d ed. 2007).

206. Thomas Sowell, Economic Facts and Fallacies (Basic Books 2008).

If you are already comfortable with the *lingua franca* of the dismal science, Peter Bernstein's *Capital Ideas* provides an astute intellectual history of the foundations of Western economic thought.[207] Bernstein followed this 1992 success with an updated version of the book in 2007, aptly named *Capital Ideas Evolving*.[208] Though much has changed between these two works, Bernstein maintains his firm commitment to the efficiency of capital markets.

For an introduction to the blending of law and economics, Steven Shavell's *Foundations of Economic Analysis of Law* provides an excellent beginning.[209] Meanwhile, Frank Easterbrook and Daniel Fischel cover much of the same ground in *The Economic Structure of Corporate Law*.[210] Between the two, Easterbrook and Fischel's work has a decidedly less neutral tone, it being mostly an adaptation of law review articles they had previously authored.

After you gain a basic grounding in the neoclassical economic tradition, it may be worth reading Duncan Foley's *Adam's Fallacy*.[211] In it, he delves into the lives and theories of the great economic thinkers from the 1700s through today. More importantly, it serves as a counterpoint to Robert Heilbroner's most recent version of *The Worldly Philosophers*.[212] Both volumes describe and interpret the same set of theories and ideas, but draw vastly different conclusions. As a result, if you take on both, you will arrive at the end with a rich understanding of economic theory.

Also of interest is Louis Lowenstein's dated but still powerful *Sense and Nonsense in Corporate Finance*.[213] Aptly named, this book explores both the good and bad of Wall Street's wild ride through the 1980s. Given the similarity of that era to our recent financial scandals, I suspect that his work deserves renewed attention.

Of course, if you are interested in delving deeper into the relationship between economics and corporate law, there are a number of classic treatises that are well worth your attention. Adam Smith, often considered the father of modern economic thought, began the inquiry in 1776 with *The Wealth of Nations*.[214] Also foundational is *The Firm, the Market and the Law*, a collection of R.H. Coase's

207. Peter L. Bernstein, Capital Ideas: The Improbable Origins of Modern Wall Street (John Wiley & Sons 2005).

208. Peter L. Bernstein, Capital Ideas Evolving (John Wiley & Sons 2009).

209. Steven Shavell, Foundations of Economic Analysis of Law (Belknap Press 2004).

210. Frank H. Easterbrook & Daniel R. Fischel, The Economic Structure of Corporate Law (Harvard Univ. Press 1996).

211. Duncan K. Foley, Adam's Fallacy: A Guide to Economic Theology (Belknap Press 2006).

212. Robert L. Heilbroner, The Worldly Philosophers: The Lives, Times and Ideas of the Great Economic Thinkers (Touchstone, 7th ed. 1999).

213. Louis Lowenstein, Sense and Nonsense in Corporate Finance: An Antidote to Conventional Thinking About LBOs, Capital Budgeting, Dividend Policy, and Creating Shareholder Value (Perseus Books 1991).

214. Adam Smith, Inquiry Into the Nature and Causes of the Wealth of Nations (Smith & Brown 2012). *See also* Adam Smith, The Theory of Moral Sentiments (Empire Books 2011).

seminal works.[215] In it, you can find his famous claim that business firms exist under circumstances in which it is more efficient to organize production through autocratic management structures than through markets. Albert Hirschman's classic, *Exit, Voice, and Loyalty*, argues that corporate shareholders can have liquidity (exit) or the power to influence management (voice), but not both.[216] Finally, Michael Jensen, the economist most responsible for the revolution in corporate compensation that gave us the stock option, provides an overview of the relationship between economics and corporate governance in his 2000 work, *A Theory of the Firm*.[217]

D. Psychology and the Rise of Behavioral Economics

From time to time, the intellectual context of our profession must confront a new idea or paradigm. One such shift in the intellectual landscape may be the recent rise of behavioral economics. For students of this field, it is not enough to assume, as classical economists do, that human beings are rational maximizers of utility. Rather, they seek to make economics more robust by augmenting its insights with new learning from the field of psychology. Notably, beginning with the "irrational exuberance" of the dotcom era and reaching a crescendo during the economic turmoil of the subprime mortgage crisis, their ideas have garnered significant real-world support. As a result, their influence may be expanding.

Thus far, the most accessible treatments of behavioral economics have been directed toward narrow, individual topics. Most seem also to have been written as much to entertain as to inform. This is unfortunate because the subject would benefit greatly from a high-quality, all-in-one volume that seeks to define the field and introduce its major elements to a thoughtful if unacquainted audience—a behavioral economics version of *Getting to Yes*.

That being said, one of the best applications of psychology to the problems of economics is *Nudge*, in which economist Richard Thaler and legal scholar Cass Sunstein explain their theory of "libertarian paternalism."[218] Their goal is to use psychology to identify our various innate tendencies toward irrationality. Armed with this knowledge, they believe policymakers can design policies that "nudge" us toward economically advantageous behaviors—all without limiting our freedom to choose differently if we so desire.[219]

215. R.H. Coase, The Firm, the Market and the Law (Univ. of Chicago Press 1990).

216. Albert O. Hirschman, Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States (Harvard Univ. Press 1970).

217. Michael C. Jensen, A Theory of the Firm: Governance, Residual Claims, and Organizational Forms (Harvard Univ. Press 2003).

218. Richard H. Thaler & Cass R. Sunstein, Nudge: Improving Decisions About Health, Wealth, and Happiness (Penguin Books 2009).

219. For real-life applications of the theory, see Elizabeth Harris, Investing: In These 401(k)'s, Workers Do Less to Save More, N.Y. Times, Aug. 31, 2003, at C6.

Other well-written treatments of our flawed decision-making processes include Dan Ariely's *Predictably Irrational*, an occasionally preachy yet highly entertaining counterpoint to the conception of humans as rational, self-knowing utility maximizers.[220] Its final chapter, contrasting behavioral and neoclassical economics, is particularly helpful for the uninitiated.

Also of interest is Ori and Rom Brafman's *Sway*, a book very much like *Predictably Irrational* in its cataloguing of human folly, but with less time spent describing the research studies upon which the Brafmans base their observations.[221] Gary Belsky and Thomas Gilovich also cover similar ground, but with a particular emphasis on economic decisions, in *Why Smart People Make Big Money Mistakes and How to Correct Them*.[222]

In *How We Decide*, Jonah Lehrer tells the story of human irrationality from the inside out.[223] Whereas most behavioral economists draw on observations from psychology and sociology, Lehrer takes the reader on a tour through the operation of the brain's decision-making centers.

Barry Schwartz, meanwhile, takes a slightly different approach to the problem of decision-making in *The Paradox of Choice*.[224] For him, having too many choices can be bewildering and often leads to less satisfaction. His conclusion is that it is often better to attempt only to satisfy needs rather than struggle to optimize decisions.

As regards group decision-making, James Surowiecki, economic columnist for *The New Yorker*, offers some surprising insights in *The Wisdom of Crowds*.[225] In it, he argues that groups inevitably possess greater knowledge (and so often perform better) than any one of its members alone, even if the member in question is an expert and the others complete novices. Meanwhile, in *Crowdsourcing*, Jeff Howe uses examples such as Wikipedia and Netflix to make much the same point.[226] Crowds, however, can also be led astray, as is demonstrated by Charles Mackay in *Extraordinary Popular Delusions and the Madness of Crowds*, his survey of popular historical delusions—economic and otherwise.[227]

220. Dan Ariely, Predictably Irrational: The Hidden Forces That Shape Our Decisions (HarperCollins 2009). *See also* Dan Ariely, The Upside of Irrationality: The Unexpected Benefits of Defying Logic at Work and at Home (HarperCollins 2010).

221. Ori Brafman & Rom Brafman, Sway: The Irresistible Pull of Irrational Behavior (Broadway Books 2009).

222. Gary Belsky & Thomas Gilovich, Why Smart People Make Big Money Mistakes and How to Correct Them: Lessons from the New Science of Behavioral Economics (Simon & Schuster 2010).

223. Jonah Lehrer, How We Decide (Houghton Mifflin 2009).

224. Barry Schwartz, The Paradox of Choice: Why Less Is More (HarperCollins 2004).

225. James Surowiecki, The Wisdom of Crowds (Anchor Books 2005).

226. Jeff Howe, Crowdsourcing: Why the Power of the Crowd is Driving the Future of Business (Crown Business 2009).

227. Charles Mackay, Extraordinary Popular Delusions and the Madness of Crowds (CreateSpace 2011).

Unfortunately, many of the books in this section suffer from the more or less transparent aspirations of their authors to become the next best-selling literary celebrity.[228] As a result, they tend toward overly superficial treatments of otherwise serious and important scholarship. Though they are fun reads and a good beginning, I am still waiting for a truly excellent overall treatment of this important yet still-evolving subject area.

Conclusion

Learning, of course, is a lifelong activity. It keeps us fresh and it challenges us when our biases begin to calcify. Moreover, our world is ever-changing and we must keep up with its many developments. With this in mind, reading can supplement experience and speed us on the road to wisdom.

More specifically, reading can create an access point into the world of business. Too many students arrive at law school only to discover that they find deep satisfaction in transactional lawyering yet lack even a rudimentary understanding of our nation's financial institutions and history. Such individuals need to find a way to fill the gaps in their knowledge. A carefully designed course of reading can start them down that path.

The books I have identified in this article are just a sample. I am certainly not suggesting that they are the only or even the best books to read. Nor am I arguing that you need to read them all. Rather, I offer them as a menu of useful editions from which to sample. They are intended not as a closed set, but as a course of appetizers that will pique your curiosity.

Consider starting with topics with which you are unfamiliar, or perhaps with those that sound most interesting. Then follow your interests further. Not only will you enjoy the endeavor, but you will begin to cultivate that quality that distinguishes the very best of business lawyers—an understanding of the context in which our clients operate.

Epilogue (Just for Fun)

In the final analysis, though reading can be edifying, it should also be fun. Lawyers, like everyone else, but perhaps a little more so, need more fun in their lives. Thus, some volumes should be read with nothing more to be gained than a pleasant afternoon at the beach. Often, such reads will be of no particular import. However, there are a variety of business-related non-fiction entries that fall comfortably within the category of beach-friendly.

For a not particularly taxing yet very satisfying read, it is hard to top *Freakonomics*, a lighthearted exploration into economist Steven Levitt's more serious academic work.[229] Having begun life as a *New Yorker* article by Stephen

228. In the spirit of cheekily identifying and naming irrational human tendencies, let's call this propensity the "Gladwell heuristic."

229. Steven D. Levitt & Stephen J. Dubner, Freakonomics: A Rogue Economist Explores the Hidden Side of Everything (Harper Perennial 2009). For several lesser imitations that seek to profit from the make-economics-entertaining genre that Levitt and Dubner pioneered, see

Dubner, this pleasant little book makes no attempt at a grand theme or argument. Rather, it simply strives to make economics fun and interesting—and in this respect it succeeds admirably.

By the same token, Malcolm Gladwell's trilogy of one-named (or nearly one-named) bestsellers are undeniably enjoyable.[230] Gladwell, a frequent contributor to *The New Yorker*, is a superb writer and a practiced collector of anecdotes. Like Levitt and Dubner, his *modus operendi* is to translate serious scholarly studies into lighthearted vignettes that are accessible to the lay reader. Unlike Levitt and Dubner, however, his understanding of the social sciences is occasionally superficial and his main themes can sometimes appear contradictory. Still, if your goal is nothing more than fun at the beach, Gladwell clearly delivers.

Continuing on the theme of journalists as collectors of stories, financial columnists Joe Nocera of the *New York Times* and James Surowiecki of *The New Yorker* each have published entertaining volumes that collect some of the best of their respective writings.[231] By reprinting then-contemporaneous reactions to unfolding events, these books provide surprisingly insightful—not to mention readable—glides through recent economic history. Of the two, Surowiecki's selection holds together better, but Nocera's is the more relevant vis-à-vis current events.

And then, of course, for a truly fun read, we find ourselves back at Michael Lewis's classic, *Liar's Poker*, and we must start again from the beginning….[232]

Steven E. Landsburg, More Sex is Safer Sex: The Unconventional Wisdom of Economics (Free Press 2008), and Steven D. Levitt & Stephen J. Dubner, SuperFreakonomics: Global Cooling, Patriotic Prostitutes, and Why Suicide Bombers Should Buy Life Insurance (HarperCollins 2011).

230. Malcolm Gladwell, The Tipping Point: How Little Things Can Make a Big Difference (Back Bay Books 2002); Blink: The Power of Thinking Without Thinking (Back Bay Books 2007); Outliers: The Story of Success (Back Bay Books 2011).

231. Joe Nocera, Good Guys & Bad Guys: Behind the Scenes with the Saints and Scoundrels of American Business (And Everything in Between) (Portfolio 2008); James Surowiecki, Best Business Crime Writing of the Year (Anchor Books 2002).

232. Lewis, *supra* note 4.