Loot: The Battle Over the Stolen Treasures of the Ancient World

By Sharon Waxman

Times Books/Henry Holt and Company, New York, NY, 2008. 414 pages, $30.00.

Reviewed by George W. Gowen

Loot is an entertaining book on a hot topic. In the last two years, the Metropolitan Museum of Art, the J. Paul Getty Museum, the Museum of Fine Arts, and the Princeton Art Museum returned artifacts to Italy. In November 2008, the Cleveland Museum followed suit. For better or worse, more objects will be sent back to the land of their origin.

The word "Loot" in the title of this book, followed by the words "Battle" and "Stolen Treasures," have a wartime ring, and might be thought to refer to the West European works of art that the Nazis and Soviets stole and that were recovered under the leadership of the United States and returned to their owners. In fact, however, the loot and treasures that are the subject of Sharon Waxman's *Loot* are objects that were seemingly abandoned, buried in desert sands, engulfed by seas, or otherwise lost, then harvested by colonialists, armies, explorers, romantics, robbers, and thieves. The "battle" in Waxman's subtitle refers to the multibillion-dollar war for illicit art treasures that is waging between nations, private collectors, knaves, and the world's leading cultural institutions.

In *Loot* we read of the Rosetta Stone, stumbled upon by Napoleon's legions in the Egyptian desert, acquired by England, and now encased in the British Museum; the Elgin Marbles, pried from the Parthenon in Greece and now, almost two centuries later, exhibited in the British Museum; the Lydian Hoard, which mysteriously traveled from an ancient tomb in Turkey to the Metropolitan Museum of Art in New York and back to Turkey and is now lost or perhaps stolen; the Euphronios krater, which was dug up in Italy, displayed in New York, and is now back in Italy; and the magnificent Macedonian gold wreath from Turkey, purchased by the Getty Museum but now back in Turkey. American museums have been the eager recipients of such "loot" and are now its unwilling repatriators; although the Rosetta Stone and the Elgin Marbles remain in London, where they have seemingly been transformed by time into British patrimony.

For centuries, explorers, adventurers, and scholars brought artifacts from past civilizations back to England and Western Europe. Leading museums, such as the Louvre and the Metropolitan Museum of Art, felt impelled to enlarge their collections and sought to house art representing all civilizations. The only practical way to accomplish this was to deal with those who were willing to sell these artifacts—no matter how they were acquired. In the 20th century, the ever-expanding market in America and elsewhere for antiquities—such as Cycladic sculpture, Mayan stele, Buddhist carvings, Greek vases, and pre-Columbian gold—led to the destruction of archaeological sites and the denuding of countries (usually underdeveloped nations) of their indigenous treasures. Increasingly, the removal of such artifacts was considered plundering, and, in 1970, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a convention banning the illegal export of cultural property, which the United States signed in 1983. The UNESCO convention and the rising tide of national pride fueled demands for restitution that culminated in the last five years.

Waxman calls for museums to apologize for their decades of unchecked looting and to admit to the cloudy provenance of their collections. Somewhat sarcastically, she gives time to the then director of the Metropolitan, Philippe de Montebello, and describes a talk he gave in 2006 as follows:

> For an hour, he lamented the fact that museums had been far too slow to react to the rising tide of "politically correct" "nationalistic ideology" that had been taking hold when it came to the question of cultural property. People should not so "blithely" accept the idea that cultural objects belong in the countries where they happen to have been dug up. ... "The new chauvinism does a great disservice to mankind," he observed. Should that approach have been taken two hundred years ago, "our knowledge of the ancient past would still be in its infancy," he said. "And notions of the encyclopaedic museum would be nonexistent."

The crux of this argument is that, for thousand of years, these treasures were largely abandoned, with no one taking care of them. Even today, there are few suitable museums where these treasures may be preserved, studied, and exhibited. Without the encyclopedic collections housed in museums such as the Metropolitan and the Louvre, the argument goes, civilization would be denied the knowledge of their very existence and the treasures might have been left to decay or to be melted down for a quick profit.

In rebuttal, Waxman recruits an earlier director of the Metropolitan Museum of Art, Thomas Hoving, who admits, "I bought a lot of smuggled stuff" but then, with perhaps a touch of professional one-upmanship adds, "Don't be taken in by the dulcet tones of Philippe de Montebello. I've heard that lecture; it's mostly specious." Aside from almost glorying in past misbehavior, this argument admits guilt and seemingly denies that leading museums are guardians of civilization.

Although Waxman's scholarship is reflected throughout this work, the 144 pages devoted to the Getty Museum and its curator, Marion Tree, are enlivened by tales of sex, greed, tax fraud, and betrayal. Missing from the text and the bibliography is any reference to Paul Bator's seminal article, "An Essay on the International Trade in Art" (published in *Stanford Law Review* in 1982 and republished by the University of Chicago Press in 1988 as *The International Trade in Art*), which is a worthy supplement to *Loot* and should be read by all who have a deeper interest in the topic.

The UNESCO convention seeks to prohibit the illegal export of objects constituting the cultural heritage of a nation and to leave to each nation the right to determine which of its objects should be protected. The embargo may be broad, preventing the export of virtually all cultural art, as is the case with the laws of the Mediterranean nations and those of Central and South America, or it may be narrow, as is the case in England, which does not require an export license for works made within the last 100 years and for those of a low value. Even if an export license is required and issued, the object may remain in England if an English collector steps up and pays the market price. In the case of a painting by Velázquez that was considered part of England's patrimony, the needed money could not be raised locally and the work was exported.

Bator comments on these laws, writing that "any attempt to embargo the export of a broad category of art treasure for which there is a substantial demand is fated to be ineffective, for two (connected) reasons: (a) its structure creates irresistible pressure against itself; and (b) it is administratively unenforceable. ... The international black market thrives because no alternative is allowed to exist for either buyer or seller, so that all economic incentives are pushed in favor of the illegal trade."

Bator adds, "Art is a good ambassador." Perhaps this is another way of saying that great art is to be shared. De Montebello's encyclopedic museums certainly protected and shared with a broad public the great works of art that may have been illicitly acquired. Arguments that lands of origin have neither the facilities nor the means to safeguard their treasures while they exhibit them to an international public still have resonance, but the basis in fact of these positions is weakening.

Waxman tempers her demands that "looted" art should be repatriated with suggestions of exchanges and long-term loans between museums. Perhaps the Elgin Marbles have served their term as ambassadors from Greece to England and should now be returned to Greece to be housed in the new museum overlooking the Parthenon that has been especially built for them. On the other hand, it might have benefited all involved—including a broad public—if an accommodation had been reached to allow some of the Greek and Roman objects repatriated by the Getty Museum to remain where they were so stunningly displayed in the Getty Villa. **TFL**

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Brethren and Sisters of the Bar: A Centennial History of the New York County Lawyers' Association

By Edwin David Robertson

New York County Lawyers' Association and Fordham University Press, New York, NY, 2008. 416 pages, $29.95.

Reviewed by Carol A. Sigmond

Do you know who advised female lawyers to "look like a girl, act like a lady, think like a man and work like a dog"? Do you know what Chief Justice Charles Evans Hughes Sr. had in common with John W. Davis and Alton B. Parker? Do you know what Justice Benjamin N. Cardozo had in common with Lawrence E. Walsh, the special prosecutor in the Iran-Contra affair? Do you know what Elihu Root and Hillary Rodham Clinton have in common? The answers, in order, are the following: Caroline K. Simon, a member of the New York County Lawyers' Association (NYCLA), gave the quoted advice; Hughes, Davis, and Parker were all NYCLA officers and unsuccessful candidates for presidency of the United States (Hughes as a Republican and Davis and Parker as Democrats); Cardozo and Walsh were both vice presidents of NYCLA; and both Root and Clinton were named honorary members of NYCLA (in addition to both being appointed secretary of state).

But Edwin David Robertson's history of the New York County Lawyers' Association is more than just the dry recitation of facts and figures: It is a tableau of America's 20th century, because the history of NYCLA is the history of various features that marked the era, such as the shortcomings of a political system that requires judges to stand for election; the Prohibition era; the increasing diversity of the legal profession; the bar's steady commitment to pro bono activities; and the horrors of the last century, including two world wars and the rise of international terrorism that culminated in the Sept. 11, 2001, attack on the World Trade Center and the Pentagon.

On the evening of Oct. 1, 1907, at the Carnegie Lyceum (located on 57th St. and 7th Ave.), about 100 reform-minded attorneys, active in the practice of law in New York and Bronx Counties, met to discuss the feasibility of forming an organization to make bipartisan nominations for judicial positions. The need for this meeting arose because Tammany Hall controlled the Democratic Party and an equally rigid group controlled the Republican Party. Judges endorsed by these parties would be beholden to their sponsors—not to justice.

Just 10 years before this extraordinary meeting, five counties and boroughs of Kings, Queens, Richmond (that is, Staten Island), the Bronx, and New York (that is, Manhattan) had been consolidated into the City of New York. In 1908, the young city had 25 judicial positions, including two positions on the court of appeals, on the ballot.

Over the next six months, under the leadership of John F. Dillon, Alton B. Parker, John F. Daly, and Charles Strauss, the organization now known as NYCLA emerged. Between April 7 and April 21, 1908, scores of lawyers joined these four men in signing the articles of incorporation, which were approved by Justice Henry A. Gildersleeve on April 21, 1908.

To join the new bar association, applicants needed only to show that they were members in good standing of the Bar of the State of New York and to

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pay their annual dues of $10. This community of men and women shared (and still share) only their status as lawyers.

The first meeting of the membership occurred on May 21, 1908. John Dillon, a major force in the law—having served as a state court judge in Iowa, a federal appeals judge in the Eighth Circuit, president of the American Bar Association, and professor at Columbia University Law School—was elected president of the association. Democrat Parker and Republican Daly were elected vice presidents. Dillon's inaugural speech was notable in reaffirming three important principles. The first was that bar membership would be the only requirement for membership in NYCLA, because lawyers were brothers and sisters in the law (and yes, there were women attorneys involved in the founding of NYCLA). Second, judges must be independent of political influence and guardians of our individual liberties. Third, the selfish, the partisans, the zealots, and extremists of all varieties were not welcome at NYCLA. The association would not lend its name or support to the "vagaries, schemes or projects" of such advocates.

The New York County Lawyers' Association certainly avoided involvement in "vagaries, schemes or projects" in its board of directors' machinations relative to the repeal of Prohibition. Suffice it to say, through the early 1920s, the board had "wet" and "dry" members. By 1928, Prohibition appeared to have failed, with the trade in wine and spirits driven underground, which spawned criminal syndicates to meet the demand for alcohol. In early 1928, at a general membership meeting, a motion was made to examine the effects of Prohibition. The motion was deferred to a special membership meeting, at which it was debated for three hours before it was passed. NYCLA then formed the Special Committee on the Constitutionality of the 18th Amendment. A year later, the Special Committee concluded that the direct issue of "wet" versus "dry" was political and therefore not one that the NYCLA should address. The committee finally settled on recommending a challenge to the constitutionality of the way that the Eighteenth Amendment had been adopted.

The constitutional issue arose under Article V of the Constitution, which provides two methods for proposing amendments: (1) Congress may propose them by a vote of two-thirds of both houses, or (2) on the application of the legislatures of two-thirds of the states, Congress must call a convention to propose amendments. (In either case, three-quarters of the states must then approve the amendment for it to be ratified.) NYCLA's Special Committee, however, prepared and adopted a report that maintained (to quote *United States v. Sprague*, 282 U.S. 716 (1931), rather than the Special Committee's report) that the Constitution implicitly mandated "that proposed amendments conferring on the United States new direct powers over individuals," as opposed to "mere changes in the character of federal means or machinery," be ratified by a convention. The Eighteenth Amendment, being of the former type, was therefore alleged to be invalid. In *Sprague*, the Supreme Court rejected this contention and upheld the Eighteenth Amendment. Although NYCLA did not play a role in *Sprague*, Chief Justice Hughes, who was a former president of the NYCLA, recused himself from the case.

The report of the Special Committee on the Constitutionality of the 18th Amendment was presented to NYCLA's board of directors in early 1930. The board, which was still divided between "wet" and "dry" members and preoccupied with completing and occupying the "Home of Law" at 14 Vesey St., deferred. The report remained in purgatory under a "no publicity" ban until it was published by the Association Against Prohibition later that year. At that point, NYCLA gradually shifted course, moving away from a challenge to the Eighteenth Amendment and toward support for outright repeal of Prohibition, but Prohibition was swept aside by the Twenty-first Amendment while NYCLA dithered.

There are other similar vignettes in *Brethren and Sisters of the Bar*. Women played a role in NYCLA from the beginning. The organization had one founding female member, and its first woman officer was Ruth Lewinson, who was elected treasurer in 1931 and served until 1975; she was also the first woman to have her portrait hung in NYCLA's headquarters. The Nov. 11, 1954, issue of the *New York Daily Mirror* marked the occasion with the headline: "New York Lawyers Hang First Woman." After that headline, it is little wonder that it was not until 20 years after Lewinson's retirement that NYCLA elected its first female president, Rosaline S. Fink.

African-American attorneys also participated in NYCLA's activities and government from the outset: two founding members, D. Malcolm Webster and Wilford H. Smith, were African-American. NYCLA was one of the bar associations that successfully pressed the American Bar Association to abandon its discriminatory membership practices. But the most striking piece of history on this front was that, as a young lawyer in New York, Thurgood Marshall used NYCLA's library and reportedly said that NYCLA made him feel more comfortable than other bar associations.

NYCLA has had only two residences in its 100-year history: at 165 Broadway and at 14 Vesey St. The latter residence was designed by Cass Gilbert and constructed under his supervision as the Roaring Twenties gave way to the Great Depression. William Cromwell, the president of NYCLA from 1927 to 1930, headed the effort to build the headquarters on Vesey Street. Cromwell and Gilbert did not get on, and the construction of the building was a constant struggle between the two men.

Christened "Home of Law" in a Masonic-like proceeding on May 26, 1930, the NYCLA headquarters building stood essentially unchanged inside and out as it watched the 20th century pass by. NYCLA's headquarters witnessed many events—none more horrifying than the airplanes flying into the World Trade Center towers on Sept. 11, 2001. The association's headquarters was closed for two weeks following the attacks. Like New York itself, NYCLA cleaned up the debris and reopened the building so that the organization could continue its work, providing one of the most complete law library services in

the United States, studying and reporting on important legal issues, and providing pro bono services for the elderly and needy of New York County and the Bronx.

As a member of NYCLA's board of directors, I am hardly the most objective reviewer of this book, but there is no doubt that Edwin Robertson has skillfully weaved two world wars, Prohibition, the Great Depression, the civil rights movement, the women's rights movement, and international terrorism into NYCLA's history. And, through it all, the three principles cited above that the association's first president John F. Dillon espoused have continued in force at the New York County Lawyers' Association. **TFL**

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The Activist: John Marshall, Marbury v. Madison*, and the Myth of Judicial Review*

By Lawrence Goldstone

Walker & Company, New York, NY, 2008. 294 pages, $25.00.

Reviewed by Charles S. Doskow

The term "activist" is normally applied to a judge who has made a decision that the speaker deplores. No doubt, John Marshall was as activist a judge as has ever graced the U.S. Supreme Court. But, as a judge devoted to the concept of a strong central government and in his pivotal role in establishing a strong federal judiciary, he remains a major figure in the history of the early nation.

Lawrence Goldstone, however, undoubtedly intended the usual connotation when he chose *The Activist* as the title of his new book. He treats Marshall's signature creation, *Marbury v. Madison*, as an example of strong-arming to achieve a desired result. Goldstone does not believe in judicial review, and he uses *Marbury* to make his case that the doctrine has no sound historical basis.

Goldstone devotes a substantial part of the early pages of *The Activist* to showing that neither the Constitutional Convention of 1787, nor the ratification debates, justified Marshall in finding in the Constitution the power of the Supreme Court to set aside laws duly enacted by Congress. Admittedly, the early evidence for judicial review may be thin, but, as every law student knows, our constitutional history begins with *Marbury v. Madison*, and it seems too late in the day to challenge it.

Nevertheless, in *The Activist*, Goldstone—who earned a Ph.D. in American Constitutional studies from the New School for Social Research in 1973 and has written a well-received book on slavery and the Constitution, historical medical mysteries, and (with his wife) books on book collecting—gives us a first-rate description of the earliest days of the federal court system.

It is hard to relate the importance with which we treat each appointment to the Court today to the first attempts to fill the seats on that body. Prior to appointing the first Chief Justice, President Washington received a great deal of advice and several subtle applications (to ask outright would have been infra dig). Being Washington, the President played it cool and kept the selection process to himself. After considering all the candidates, he selected John Jay, who had little legal experience and a great deal of political baggage, but who was a loyal Federalist. Jay served as Chief Justice from 1789 until 1795, when he resigned to become the governor of New York. Jay also went to England in 1974 and negotiated Jay's Treaty, which averted the threat of war with England. He was succeeded as Chief Justice first by John Rutledge, who received an interim appointment and was never confirmed, then by Oliver Ellsworth in 1796.

In 1801, John Adams appointed John Marshall as the fourth Chief Justice. Marshall's appointment was made in the dying days of the Adams administration, as the Federalists prepared to cede power to Thomas Jefferson and the Republican Party. As both Congress and the presidency fell into opposition hands, the Federalists took the only steps they could to preserve some modicum of influence: they created judgeships (forever known as the "midnight judges") at all levels, and Marshall was a committed Federalist and advocate of a strong central government.

Among the new offices that the Federalists created were 43 justices of the peace for the District of Columbia, one of which went to William Marbury. (That number tells us how insignificant the office was, considering that, at the time, the District of Columbia was little more than a village.) In the hectic final hours before Jefferson's inauguration, Marshall's brother, James, attempted to deliver the signed and sealed commissions to the appointees, but he missed some and returned their commissions to the secretary of state's office.

James Madison found the commissions in his desk when he assumed his position as secretary of state, and there they remained. Marbury subsequently sued in the Supreme Court to require Madison to deliver his commission. When the suit came to the Court in 1803, Madison ignored it, but the Court was in a pickle. There was great concern that the Republicans would impeach the Federalist judges and equal concern that, if the Court ruled for Marbury, the administration would thumb its nose at the judgment and prompt a constitutional crisis.

Marshall had several outs—none of them satisfactory. He could have recused himself, based on his intimate knowledge of the facts and his brother's involvement. He could have found Madison in default because Madison made no appearance in the case. And Marshall could have found the commissions invalid because they had never been delivered. But he took none of these courses and chose to tackle the problem head-on.

Marshall's masterful opinion first found that Marbury had a right to the commission and that the law gave him a remedy. The Chief Justice then found, however, that the Constitution did not give the Supreme Court the power to issue the writ that Marbury sought. Marbury had brought suit in the wrong

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court, and Marshall decided that the statute (the Judiciary Act of 1789) that would have enabled the Court to grant the writ could not, consistently with the Constitution, be enforced. The opinion achieved this result by giving Article III of the Constitution an extremely limiting reading.

Marshall thus had his cake and ate it too: He established the right of the Federalist Marbury to his commission, embarrassing his archenemy President Jefferson. Marshall then avoided being impeached or creating a standoff between the executive and judicial branches by finding the law allowing the Court to enforce the right unconstitutional. In so doing, he established the power of the Court to declare acts of Congress void. Point, set, and match.

There are interesting unanswered questions here. How was Marshall able to craft *Marbury* without a single comment—concurring or dissenting—from any of the other five justices on the Court? In later years, Marshall's dominating personality brooked little dissent (there were terms when the Court sat without a single dissent), but these were the early days. Was the rest of the Supreme Court composed entirely of wusses? Or did they simply share Marshall's preference for self-preservation? Goldstone criticizes *Marbury* because Marshall made no reference to language in Article III, which, he argues, gives Congress the power to amend the Supreme Court's jurisdiction. Did none of the other five justices catch this omission?

Having established judicial review, the Marshall Court never used it again. The next Supreme Court decision that invalidated a law enacted by Congress was the *Dred Scott* decision in 1857.

In *The Activist*, Goldstone quotes Marshall's familiar language from *Marbury* that "[i]t is, emphatically, the province and duty of the judicial department, to say what the law is" as something to which "justices of all stripes have retreated in support of judicial activism ever since." Maybe, but this language is universally accepted and is quoted in many decisions—not all of which could be characterized as judicial activism. After all, as Marshall wrote in the same paragraph of *Marbury* as the sentence that Goldstone quotes: "If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must ... determine which of these conflicting rules governs the case: this is of the very essence of judicial duty." 5 U.S. (1 Cranch) 137, 178 (1803). Thus, if one acknowledges that it is the province of the courts to say what the law is, then one must acknowledge the legitimacy of judicial review. But not all judicial review is judicial activism.

John Marshall, a man of great vision, was a firm believer in a strong central government. In 1819, in *McCulloch v Maryland*, he referred to "this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific," even though at the time there was virtually no American presence beyond the Mississippi River.

Goldstone notes Marshall's partisan bias in other decisions and considers him the father of judicial activism. Goldstone deplores the lack of checks and balances limiting the power of the judiciary. But Goldstone acknowledges that even as devoted an originalist as Justice Antonin Scalia accepts judicial review, despite its appearing nowhere in the Constitution. Marshall's vision has prevailed.

In *John Marshall and the Judicial Function*, published in *Harvard Law Review* (vol. 69, p. 217) in 1955, Justice Felix Frankfurter wrote:

> When Marshall came to the Supreme Court, the Constitution was still essentially a virgin document. By a few opinions—a mere handful—he gave institutional direction to the inert ideas of a paper scheme of government. Such an achievement demanded an undimmed vision of the union of states as a nation and the determination of an uncompromising devotion to such insight. Equally indispensable was the power to formulate views expressing this outlook with the persuasiveness of compelling simplicity.

The early days of the new republic under the Constitution make for a fascinating story and, whatever one's view of judicial review, *The Activist* tells it well. **TFL**

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Plumes: Ostrich Feathers, Jews, and a Lost World of Global Commerce

By Sarah Abrevaya Stein

Yale University Press, New Haven, CT, 2008. 256 pages, $30.00.

Reviewed by Henry S. Cohn

Sarah Stein, a professor at the University of California at Los Angeles, presents a history of the trade in ostrich feathers—an account that deals with flighty fashion, transnational commerce, and an ethnic group's business ventures before World War I. She notes that, although historical studies exist of commercial activities by Jews—such as those in New York City's garment district—little has been written on Jews' involvement in international commerce. Stein believes that this is the case because historians have feared promoting anti-Semitic stereotypes. Stein, however, argues that, to the contrary, studying links between Jewish commerce in Europe, the United States, and other parts of the world will bring about a heightened appreciation for Jews in the modern world as well as a better understanding how markets function. In *Plumes*, therefore, Stein traces the feather trade from the bird handlers to the financiers and from the bird to the bonnet. She demonstrates that, at least until the feather crash of 1914, Jewish business acumen, familiarity with various related industries, and contacts with kith and kin throughout

the world produced global profits in ostrich feathers.

The story begins with a depiction of the style of the 1870s in Paris that dictated that ostentatious ostrich plumes adorn hats, dresses, and shawls. *Plumes* includes illustrations of French postcards picturing models displaying their ornate plumage as de rigueur fashion.

There were three sources for these feathers. The primary source was the Western Cape of South Africa, centered in and around the town of Oudtshoorn. Breeders there had established bird farms and harvested the feathers, and traders purchased and bundled the product for further sale. Stein sets forth, complete with photographs, the mechanics of raising ostriches and removing their feathers.

A second source for ostrich feathers was the Tripoli region of Northern Africa, on the shores of the Mediterranean. The trade there had started earlier than it had in South Africa, but, as fashion called for more feathers in the 1870s, South African production outpaced that in the Tripoli region. In the Tripoli region, incidentally, the feathers were harvested from dead birds, in contrast to how it was done in Oudtshoorn, where the birds were plucked while alive.

The third source for the feathers, as the 1900s began, was California and Arizona. Carl Hayden, who was to become the longest serving member of Congress in history, began his political career in 1912 by encouraging Arizona's farmers to establish ostrich farms. California's industry gained a supporter when Edwin Cawston imported birds from South Africa and found that it was profitable to compete with the fruit farms. According to Stein, "Ostriches required little water or space, the plumes themselves were compact and easy to package and ship, and, more significantly still, they were not perishable, did not require refrigeration, and were not prone to decay or to bug infestations."

After the feathers were graded and bundled at the point of production, those in the western United States were sometimes shipped to New York City, but most feathers were shipped to London, which was the center of the trade. Workers in London prepared the feathers for garment use under unpleasant conditions—similar to those found in other sweatshop industries. London brokers conducted auctions of variously graded feathers and facilitated the transfer of the feathers to the United States and Western Europe. The process was regulated by Britain's Ostrich and Fancy Feather and Artificial Flower Trade Board.

In New York City, working conditions in the feather industry differed little from those in the garment industry. The workers in both industries were immigrants—mostly women—who worked in unhealthy settings and occasionally attempted feeble job actions. Stein shares photographs of sweatshops where the feathers were stripped for clothing use as well as a touching remembrance of one worker's throat illness caused by feather dust. With dark humor, Stein points out that there was one difference between the feather and garment industries—the feather rooms were much quieter than the garment industry's cutting and sewing rooms.

Stein shows that, as long as ostrich feathers were in demand, the breeders and brokers involved in the trade were financially successful. The feather venture was comparable to what was going on in the diamond market, which also had its major source and central organization in South Africa. Oudtshoorn had its "feather mansions," which were "luxurious homes adorned with, in one contemporary's description, 'paneled walls, tiled bathrooms, hand-painted friezes; the finest mahogany, walnut, and oak furniture ... imported mostly from Birmingham, but also from the Continent, ... [and] gilt concave mirrors, silver and Sheffield plate, the best Irish linen.'"

The birds themselves were celebrities; they were displayed at world fairs in the United States, London, and Paris. In fact, at one British exhibition, Queen Alexandra "clipped plumes from a live bird." The value of the feathers may be judged from reports that, when the Titanic sank in 1912, £20,000 ($100,000) in plumes were lost.

In 1904, developments led to the closing of the Tripoli supply of ostrich feathers. The native population threatened Europeans as they traveled over the routes from the interior of northern Africa to Tripoli, and the Ottoman government imposed new taxes and made changes that undercut profits and ended special privileges that traders held in the market. As the trade ended, some merchants chose to liquidate, others moved their operations to South Africa; only one major trader held out until the 1940s through cost-cutting measures and expanding their operations into other products.

In 1914, the entire feather industry suffered a collapse from which it never fully recovered. Stein sets forth several reasons for the turnabout. The first reason was the shift in Paris fashion away from feathers, but there were less obvious reasons as well: Bird-protection societies lobbied governments to pass "anti-plumage" legislation to spare the ostriches from harm, and the female workforce during World War I wanted to wear simple garb on the assembly line. In addition, Stein blames the feather brokers for their reckless speculation when they were receiving massive cash inflows. In 1919, a small rally for feathers took place, but it soon died.

With the financial collapse in South Africa in 1914, the feather mansions fell to ruin; many brokers even ended up on the dole. In London, the hub of the industry, some merchants continued their operations into the 1950s, sustained less by feathers (which were then sold mainly for use in feather dusters) than by their holdings of real property. Stein's book includes a recent photograph of the last trace of one company's abandoned building on Shaftesbury St. in London. In California, Cawston Farms survived for a time as a tourist attraction, but it closed in ruin in the 1920s.

Plumes also focuses on the fact that the feather trade was predominantly a Jewish business. Other businesses that Jews dominated were more successful, especially diamond mining in South Africa (Jewish businessmen organized De Beers), although, at the height of the feather trade, it was said that fine ostrich feathers "hold their place like the diamond." Stein notes that, at the turn of the 20th century and afterward, Jews dominated other businesses as well, in-

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cluding the garment, scrap metal, banking, and motion picture industries.

Not only were the feather traders and auctioneers Jewish, but the workers in the sweatshops in New York City and London were also Jewish; they were drawn from the numerous immigration waves from Eastern Europe. In South Africa, the workers who tended the ostriches and plucked them were usually not Jewish but "colored." Stein discusses the organizational structure that developed between these workers and their Jewish employers. In Tripoli, the Jews faced challenges in coping with the Arabs who opposed the intrusion of foreigners, but at the same time, the Jews and Arabs found common ground that proved to be financially rewarding.

As the feather business expanded and contracted, the Jews involved in it were subject to anti-Semitism. When they were living in riches, people accused the Jews of overreaching, and, when the market collapsed, the Jews were deemed the cause of the workers' suffering. This was inevitable because, as Stein writes, "Jewishness provided the crucial economic thread that knit together global markets."

Plumes is a fascinating history, well researched and clearly explained, and certainly has echoes of the commercial boom of the last few years as well as the current global economic downturn. **TFL**

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Dear Mr. Buffett: What an Investor Learns 1,269 Miles from Wall Street

By Janet M. Tavakoli

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Reviewed by Christopher C. Faille

The title of this book refers to Warren Buffett. As far as I know, the author of this book, Janet Tavakoli, has no interest whatsoever in the resident of Margaritaville who is also named Buffett. The finance world's Buffett—sometimes known without irony as the Oracle of Omaha—has various claims on our attention. He's the chairman and chief executive of Berkshire Hathaway, the wildly successful conglomerate holding company behind GEICO, General Re, and Wesco Financial Corporation.

Buffett has made a career out of keeping his head while all about him were losing theirs, whether they were losing their heads to fear or to greed. It was largely in recognition of his head-retaining skill that, in 1999, the Carson Group named him the top money manager of the 20th century, rating him ahead of two other near-legendary figures, Peter Lynch and John Templeton.

His annual letters to Berkshire Hathaway shareholders are extremely quotable, in a pithy *Poor Richard's Almanac* sort of way. Indeed, it was in one of those letters—written in 2002—that Buffett coined a now famous characterization of financial derivatives. In a play on a phrase that the Bush administration was then employing to talk the nation into war, Buffett called derivatives "financial weapons of mass destruction."

Derivatives and Credit

In finance, a "derivative" is anything that derives its value from something else (namely, the "underlying," which is used as a noun). The connection between a derivative and its underlying can be fairly simple. A stock option is a derivative, because its value depends on the value of the stock that the option empowers the holder to buy at a pre-set price. And as the new secretary of state surely remembers, a cattle futures contract is a derivative too—the underlying is the physical cattle.

But what Buffett had in mind in 2002 were more complicated instruments—in particular, credit derivatives. The underlying in a credit derivative isn't an asset at all in the traditional sense; it's the reliability of a stream of payments or, conversely, the risk of some party's default.

Probably the easiest credit derivative to understand is known as a credit default swap (CDS). If I own a lot of Argentine government bonds, for example, I might worry enough about the risk of default to buy protection—a quasi-insurance contract. As the buyer of protection, I'll make a series of fixed payments, and the seller of protection will make one big payout if and only if Argentina defaults on those bonds.

In some crucial senses, though, a CDS is not an insurance contract. I have to have a home in order to buy fire insurance on it; I have to have an automobile in order to buy liability or theft insurance on it. But I don't have to own any Argentine bonds in order to buy a CDS against its default. My position in the CDS, in other words, doesn't have to involve hedging risks elsewhere in my portfolio. It can be a simple speculative play: my bet that Argentina will default. If there is a liquid market in CDS contracts for Argentine bonds, then the price of those contracts serves as an ongoing market referendum on the creditworthiness of that country's treasury. Any bad news for Argentina is likely to drive up the price of the bonds, whereas good news will drive it down.

Credit derivatives can get much more complicated than that, and, whether simple or complex, they are not always liquid. Indeed, they are often the least liquid assets on a company's books. In such a case, the question of the value of a particular CDS position for a company in this market (negative or positive) can become a difficult quandary, with the answer having grave implications for that company's balance sheet.

What may be even more important is that credit derivatives represent leverage. For very small sums of money, a trader or an institution can make very large bets that will earn or lose it boatloads of money down the road. It isn't hard to imagine a cascade of defaults: Argentina, in defaulting on its bonds, would force large payoffs from companies that had bet the other way. Some of those companies may not have properly funded or leveraged their liability and, therefore, may then default on their own bonds, putting in play another class of CDS contracts, and so on.

It would be wrong to say that this is how the financial crises of 2007–2008 played out. First, it would be wrong,

because Argentina is totally innocent of the role I've hypothetically assigned to it. Moreover, discussing the real catalysts of the financial crisis is beyond the scope of this book review. Second, it would be wrong, because the above explanation suggests something—similar to a row of falling dominoes—that is more mechanical than was the reality of the situation. Still, such a cascade of events is what Warren Buffett had in mind back in 2002, and his concern now seems prescient.

Buffett and Tavakoli Meet

Janet Tavakoli is the principal partner of Tavakoli Structured Finance, a consulting firm that helps financial institutions grasp the significance of the more exotic, hard-to-value products on their balance sheets. She is also the author of *Credit Derivatives & Synthetic Structures* (published in 2001) and *Collateralized Debt Obligations and Structured Finance* (published in 2003). These books, which—as their titles may hint—are not written in the generally accessible style of *Dear Mr. Buffett*, warned that the markets for credit derivatives were expanding much more quickly than was the institutional competence necessary to make proper use of them.

Tavakoli's concerns meshed with Buffett's, so it was natural that the two should come together, and *Dear Mr. Buffett* begins with a brief account of their meeting in 2005: "We both knew the market was overleveraged, rating agencies misrated debt, and investment banking models were incorrect, but neither Warren nor I was aware that our interests would become more closely aligned as the largest financial debacle in the history of the capital markets began to unfold."

Buffett makes further appearances throughout the book as an organizing motif, but he isn't the subject of the book. The real subject, rather, is what ails us—what the ongoing credit and securities crisis is about.

In a word, the crisis is about groupthink. Both in Washington, D.C., and in lower Manhattan, the same people deal with one another year after year in an all-too-clubby context and share the same assumptions. They don't fear making a bad investment or a bad regulatory call. What they fear is being out of step with the consensus.

Buffett's success owes much to geography—to the simple fact that he keeps his home and operations 1,269 miles away from Wall Street. Tavakoli writes, "Investment banks tend to lend money just because another investment bank has lent money due to *pluralistic ignorance*. The second bank to lend will assume the first bank checked out the borrower, and it will skimp on its due diligence. We look around to see what the other guy is doing, and if everyone else is doing it, we go ahead."

Abandoning Laissez-Faire

As recently as September 2007, Tavakoli thought of herself as a laissez-faire capitalist. In a comment of that vintage that she quotes here, she said, "I ... do not believe in protecting consenting adults from making informed decisions, even if that decision is to make a blind bet." Furthermore, it isn't obvious that regulation resolves the problem of "pluralistic ignorance," since the regulators are made of the same human clay as those they oversee.

More recently, Tavakoli has changed her tune. Wall Street has received what amounts to a no-strings-attached bailout from the consequences of its irresponsibility. The money for the bailout is coming from present and future generations of taxpayers, and those taxpayers are entitled to attach strings. The country's taxpayers are entitled to expect that their political representatives will create a system of competent regulation. In *Dear Mr. Buffett*, Tavakoli writes: "Watching the regulatory system is like watching bad doubles tennis players. No one hits the ball thinking the other guy will get it. ... The global capital markets are suffering from too little competent regulation where it counts most."

Even though this book is certainly worth reading for anyone who wants to understand the issues with which it wrestles, I must conclude by noting my unhappiness that she has abandoned what I think was the better view of these issues—the laissez-faire view she held less than two years ago. The intervening events are proof of the folly of bailouts, not of the need to keep bailing out companies and to attach regulations to the measures in the hope of getting it done right the next time!

Indeed, recent events remind me of something that the great Austrian economist Ludwig von Mises wrote in 1936. I will give Mises the last words in this review—words that explain not only the crisis through which the world was making its way as he wrote those words but that also explain every economic crisis that arose since that time, including this one. His advice ends with a brief description of the only real remedy:

> It will be necessary to understand that the attempts to artificially lower the rate of interest which arises on the market, through an expansion of credit, can only produce temporary results, and that the initial recovery will be followed by a deeper decline which will manifest itself as a complete stagnation of commercial and industrial activity. The economy will not be able to develop harmoniously and smoothly unless all artificial measures that interfere with the level of prices, wages, and interest rates, as determined by the free play of economic forces, are renounced once and for all. **TFL**

Christopher Faille, the managing editor of Hedge Fund Law Report, www.bflawreport.com, has written on a variety of legal and historical issues. He is the author of The Decline and Fall of the Supreme Court.