

BOOK REVIEW

THE GOLD RING: JIM FISK, JAY GOULD, AND BLACK FRIDAY, 1869. Author: Kenneth D. Ackerman.† New York: Dodd, Mead & Co. (1988). \$21.95.

REVIEWED BY ALLEN BOYER††

INTRODUCTION

Few books on commodities trading begin with vignettes of the Old West. Kenneth Ackerman, however, opens *The Gold Ring* with a news report of a bar-room shootout and vigilante justice. Ackerman's subject is Jim Fisk and Jay Gould — how they controlled the Erie Railroad (and milked it dry), how they conspired with Boss Bill Tweed of New York City, and how they tried to corner the gold market. As Ackerman observes, the frontier had no monopoly on lawlessness: "In 1869 the only real law on Wall Street was the barrel of a gun or the power of one man's fortune against another."¹

REVIEW

The Gilded Age's financiers can best be remembered for their cunning, the free rein which governments allowed them, and the ruin they caused to the financial markets. To Ackerman's credit, he appreciates this history. He writes ably, with an insider's grasp of issues and with a good reporter's ability to interpret technical mat-

† Special Counsel to the United States Senate Committee on Agriculture, Nutrition, and Forestry, which oversees the futures industry. The author was legal counsel to the U.S. Commodity Futures Trading Commission from 1981 to 1988. B.A., Brown, 1973; J.D., Georgetown, 1976.

†† Visiting Associate Professor, New York Law School. B.A., Vanderbilt, 1978; J.D., University of Virginia, 1982; Ph.D., University of St. Andrews, Scotland, 1984.

¹ K. ACKERMAN, *THE GOLD RING: JIM FISK, JAY GOULD, AND BLACK FRIDAY, 1869* 111 (1988) [hereinafter *THE GOLD RING*].

ters. *The Gold Ring* conveys an understated point: before there was deregulation, there was regulation; and before there was regulation, there was anarchy.

Jim Fisk and Jay Gould were an archetypal pair of adventurers: the flamboyant corporate pirate and the metal-minded introvert. Fisk's great strength was his affability. He cheerfully drank and ate too much, installed his mistress in a Manhattan brownstone, bought a fleet of steamships and posed in an admiral's uniform—but he charmed politicians, and the Erie Railroad's workers looked up to him. Once, during a railroad control battle, a mob even followed him out to seize stations and rolling stock. Gould, by contrast, was respected, not loved. He drove one of his mentors to suicide and another to destitution. He specialized in manipulating stocks. For more than two decades, he would be singled out (often accurately) as the man behind every financial panic.²

What Fisk and Gould did while they controlled Erie reads like a catalogue of corporate misconduct. They put Boss Tweed on the Erie board. They bought Manhattan's Grand Opera House, put it in their own names, charged it to Erie, and rented back the top floors for \$70,000 per year. They launched a bear raid on their own railroad, combining it with a currency lock-up. (That is, they pulled funds out of New York City's banks, which meant tighter money, which brought a sag in the stock market as brokers called in margin purchases.) Erie was then put into receivership. Gould was appointed its receiver, and he had Erie buy back at \$50 the shares he and Fisk had bought at \$35.³

In the 1860s, the United States had two currencies. To finance the Civil War, Lincoln's government had printed greenback dollars. These circulated alongside gold—the currency in which U.S. bonds were paid, and the medium of international exchange. The rate hovered at between \$130 and \$140 in paper per \$100 in specie. With gold and greenbacks floating against each other, it was possible to arbitrage across the markets, trading gold as a commodity. This was done on the floor of the New York Gold Exchange, better known as the Gold Room.

² See generally R. SOBEL, PANIC ON WALL STREET 115-226 (1988 ed.). Ackerman cites one revealing fact: "On the morning of Jay's death in December 1892, Wall Street rallied." *THE GOLD RING*, *supra* note 1, at 285.

³ To forestall shareholder rebellions, Fisk and Gould classified Erie's board and gave themselves five-year terms. Tweed's influence in Albany, and several hundred thousand dollars from what Gould called "the India Rubber Account," helped pass the enabling statute. Tweed also assisted in the money lock-up: when Erie pulled its funds out of the banks, the City of New York promptly followed suit.

In April, 1869, Gould turned his attention to gold. If he and Fisk could buy enough coin and bullion to push the price to \$150, he reasoned, they could sell out at a profit. If they could hold up the price during the harvest months, they could push up farm prices. (Since exported grain was paid for in gold, higher gold prices meant farmers would get more greenbacks for the same amount of grain.) As farmers shipped crops east, along the Erie Railroad, Fisk and Gould would make enough money carrying the grain to extend Erie's lines, making it the first transcontinental system. And along the way, the Gold Ring — as Gould's cabal was dubbed — would ruin anyone who bet against it by selling gold short.

Financing posed few problems. The Gold Room set no margin requirements. Fisk and Gould, therefore, could buy in on credit, financing these deals by loaning their gold out again. The traders who borrowed from them would put up collateral equal to the bullion's market price, which the Ring would use to pay the purchase price. "By loaning out all [the gold] that they bought," Ackerman writes, "Jay's clique could buy all the gold in New York, lend it back to other traders, then buy it back again from the borrowers, loan it out again, buy it back again."⁴

The only risk came from the U.S. Treasury. In 1869, some \$15 million in gold coin was circulating in New York. A group of speculators could buy enough of this to drive up gold prices, but the corner would collapse if the government released its reserves of \$100 million. Treasury policy leaned toward lower gold prices.

Without gold, foreign trade could dry up, causing farm prices to collapse and the price of imported goods to skyrocket. A steep gold price hike would mean devaluation of every greenback dollar held in every American pocket or bank account. What was more, the spectacle of gold gamblers manipulating the national currency could destroy confidence in U.S. finance. Foreign creditors would see the United States as a sick joke, a "banana republic." Selling U.S. bonds overseas would become impossible.⁵

Moreover, hard money (that is, cheap gold) was favored by the

⁴ THE GOLD RING, *supra* note 1, at 116. As Ackerman comments, these borrow-sell and buy-lend practices were "archaic" even at the time. "Modern-style 'futures contracts' had been used for over a decade in New York and Chicago The Gold Room's renegade past — it had sprung up overnight and matured underground during the Civil War — left it peppered with anachronisms." *Id.* at 305. See also C. COWING, *POPULISTS, PLUNGERS, AND PROGRESSIVES: A SOCIAL HISTORY OF STOCK AND COMMODITY SPECULATION 1890-1936* (1965).

⁵ THE GOLD RING, *supra* note 1, at 126.

country's new president, Ulysses S. Grant.

Gould's attempt to win over the government created the first scandal of the Grant administration. A gold account for \$500,000 was opened for Horace Porter, a White House aide. Daniel Butterfield, in charge of the New York Sub-Treasury, received a check for \$10,000 and a gold account for \$1.5 million.⁶ Abel Corbin, the President's brother-in-law, was Gould's closest collaborator. As the Ring's man in Grant's inner circle, Corbin lobbied Grant in favor of higher gold prices. For exercising this influence, he received a \$25,000 check and a \$1.5 million gold account.

Despite heavy pressure from Fisk, Gould, and Corbin, Grant remained close-lipped on his monetary policy. He favored higher farm prices, but hedged on committing himself to any particular course of action. At the end of the summer, trying to stay out of the fray, he told the Treasury to avoid gold sales. Gould chose to read this as acquiescence. Mistakenly believing that Grant would keep the Treasury coffers closed, the Ring went into action.⁷

On Friday, September 18, Fisk's brokers began buying gold. (It was the brokers, not Fisk, who made and closed bids — a point which became important later.) On Wednesday, September 22, the price opened at \$137. On Thursday, September 23, it closed above \$144. That day \$325 million in gold changed hands, five times the usual amount.

The Gold Ring now held "calls" that gave it the legal right to demand more than six times the total amount of gold coin and certificates publicly accessible around New York The Ring's calls certainly topped \$100 million No one could buy gold except from the clique. No one could sell gold without borrowing it from the clique.⁸

The Gold Room assumed that Fisk and Gould had bought off the government. By this time, Gould knew better: he knew that Grant had uncovered the facts, and had warned Corbin to distance himself

⁶ Porter indignantly refused the bribe. Butterfield, on his own initiative, bought another \$700,000 in bonds (which paid interest in gold) in his wife's name. *Id.* at 162.

⁷ The President was vacationing in rural Pennsylvania. Corbin sent a letter, by private courier, to confirm Grant's monetary views. Grant read the letter and said nothing. The messenger reported by telegram, "LETTER DELIVERED ALL RIGHT." The telegraph clerk, however, transmitted "LETTER DELIVERED. ALL RIGHT." *Id.* at 138-39, 146.

⁸ THE GOLD RING, *supra* note 1, at 171. The Ring was now imperiled by its own success. The high prices would draw enough gold to New York to eventually break the corner. If the bears had to borrow gold from the Ring, it was only because the Ring kept re-loaning gold that it was able to keep buying. That night, Fisk and Gould decided to push on, while forcing settlements with the bear traders.

from speculators. The corner was doomed. By Friday morning, Gould had found his own way out. While Fisk and his brokers continued to buy, Gould would quietly unload the \$50 million of gold he owned.

Black Friday, September 24, was, as the name implies, the day that gold trading reached fever pitch. By this point, the bulls of the Ring stood to gain about \$1 million for each \$1 increase, while the market's bears faced ruin. Gold opened at \$145; by noon, Fisk had pushed it to \$160. His brokers were shouting buy orders; the bear traders, having formed their own clique, were waiting to counter-attack. And across the floor, Gould was carrying out a legendary double-cross — selling his gold to Fisk's men. Except, as Ackerman suggests, there may have been schemes within schemes.

By all accounts Jim Fisk had no idea that morning that Jay, sitting just across from him, was systematically undercutting his corner by selling gold willy-nilly. The image of Jay Gould on Black Friday coldly cheating his partner by silent winks and whispers has been a popular piece of Americana ever since, but it is unfair. Jim Fisk, if anyone, appreciated Jay's role as master puppeteer in their financial ventures, even with himself as the trusting marionette. Maybe Jim knew exactly what Jay was up to; maybe he didn't. But by his silence Jay forever placed the blame for Black Friday on himself and gave his friend a cunning alibi.⁹

At noon, Fisk's chief broker made a shrieking bid: "\$162 for five millions." No one replied. Then, across a silent trading floor, James Brown, the bears' leader, called back, "Sold one million at 162." Brown saw that Fisk had reached too far, and the bears rallied behind him. Word arrived that the Treasury would be selling gold — news which routed Fisk and his bulls. With a touch of high drama, the bells of Trinity Church could be heard tolling the hour. In minutes, the price of gold dropped from \$160 to \$138.

FROM BLACK FRIDAY TO BLACK MONDAY

When it comes to greed and panic, Ackerman believes that the Gilded Age holds up a not-so-distant mirror to our own.¹⁰ (There are few "corners" nowadays; even so, the Hunt brothers nearly pulled

⁹ *Id.* at 184.

¹⁰ See, e.g., E. KIRKLAND, *DREAM AND THOUGHT IN THE BUSINESS COMMUNITY 1860-1900* (1956); L. AUCHINCLOSS, *THE VANDERBILT ERA: PROFILES OF A GILDED AGE* (forthcoming 1989).

one off ten years ago in the silver market.) Problems are perennial; progress is measured by reforms. This theme emerges in the last third of *The Gold Ring*, where Ackerman's background as former counsel to the Commodity Futures Trading Commission is evident. In recounting how the Gold Ring came apart, he demonstrates how far markets have come in this century.¹¹

Fisk and Gould operated within New York City's semi-feudal government structures. Although the city stood at the center of United States finance, the only body which enforced order was the New York City Police Department. The police were not trained to stop financial misdealing. They were perfectly able, however (at Boss Tweed's request), to protect Fisk and Gould from a mob of angry brokers.

In 1869, the law governing United States finance was to be found in the decrees of the city's Supreme Court justices, who sat without a Court of Appeals to review them, and who owed their appointments to Tammany Hall. Justices George Barnard and Albert Cardozo proved themselves among history's most obedient jurists. In the wake of Black Friday, both judges were willing to endorse any order which Fisk and Gould presented.

Cardozo handed the Gold Room clearinghouse and the Gold Exchange Bank over to the Ring's hand-picked nominees. Despite a barrage of lawsuits, Fisk slipped away — held not liable for his gold purchases. He claimed that his brokers had bought for their own accounts, and the receivers, appointed by Cardozo, let matters drop there.¹² Gould, not surprisingly, was allowed to keep his profits.

Take Jay's \$10 to \$12 million in gains selling gold at high prices; add in his winnings on manipulating the stock market during the panic; subtract his losses on Friday's crash — a fat zero; take out a million or two in lawyers' fees and settlements. All in all, not bad for a few weeks' work, even after splitting the loot with Jim and paying a well-

¹¹ One incident shows how low corporate standards once were. In 1868, when Commodore Cornelius Vanderbilt tried to buy control of Erie, Gould masterminded the defense. Over the weekend, he issued 50,000 new shares, then quietly fed them into the market on Monday morning — soaking up Vanderbilt's funds and diluting the stake he had purchased in Erie. After this experience, the New York Stock Exchange began requiring that shares be registered in order to be traded. Whatever the shortcomings of modern regulation, one can no longer issue shares simply by cranking them out on a printing press. *THE GOLD RING*, *supra* note 1, at 8-9.

¹² Barnard, who had zealously done whatever the Erie Railroad's management asked, was later impeached. Cardozo resigned under fire; his son Nathan's judicial career has been seen as one long expiation of this misconduct. See J. NOONAN, *PERSONS AND MASKS OF THE LAW* (1975). The court orders were drafted by Thomas Shearman, who later founded Shearman & Sterling.

earned title to Big Bill Tweed.¹³

Government corruption went hand-in-hand with corruption in the banking system. Six weeks before Black Friday, Gould bought control of New York's Tenth National Bank (using money from Tweed and his cronies at Tammany Hall). During the week of Black Friday, the Tenth National would certify any check Fisk presented. These checks were for tens of millions of dollars, and the funds were used by the Ring to buy its gold.

Black Friday's aftermath, littered with bankruptcies, shows why brokers are now required to meet capital requirements: without them, too many will spend themselves into bankruptcy.¹⁴ Black Friday also bears witness to the strength of the herd instinct among market traders. The down-tick rule in the securities markets, which allows a specialist to sell short only after a stock's price rises, has helped to restrain this. When the mess of Black Monday 1987 is sorted out, one hopes that similar controls will be found for the lemming-like rush of program trading.

If Fisk and Gould were to try their gold spree today, they would face filing daily reports with the federal Commodity Futures Trading Commission The exchange would keep hourly watch on their margin accounts, and at the first sign of problems, a flock of auditors could demand to inspect their books. In an emergency, the exchange or the government could close or limit trading, raise margins, or force a liquidation [E]xchange rules today set ceilings on how much gold a trader can hold for speculation — a reform adopted after the 1979-80 Hunt silver experience. Federal statutes bar price manipulation.¹⁵

The exchanges, too, have matured as institutions.¹⁶ No longer can they be captured by those they supervise — at least, not as directly

¹³ THE GOLD RING, *supra* note 1, at 276.

¹⁴ On Black Monday, October 19, 1987, half a trillion dollars vanished from the stock market — yet not a single major brokerage house went bankrupt. *Id.* at 330.

¹⁵ *Id.* at 111.

¹⁶ The Gold Room and other early exchanges did little more than provide trading space. "Henry Benedict, the Exchange chairman and president of the Gold Exchange bank, did little more than bang a gavel and preside over clerks. In 1868, when the Board of Trade in Chicago tried to expel a member for 'cornering' the wheat market, the members rebelled and forced the board itself to resign." *Id.* at 306. If a trader defaulted, the Exchange's only remedy was to sell the gold in the open market, and then recover from the defaulting party. *Id.* at 322; see also R. SOBEL, THE CURBSTONE BROKERS: THE ORIGINS OF THE AMERICAN STOCK EXCHANGE (1970) (history of minor exchanges); R. SOBEL, THE BIG BOARD: A HISTORY OF THE NEW YORK STOCK MARKET (1965).

as Fisk and Gould seized control of the Gold Room. And with deposit insurance and the Federal Reserve Board, there is greater security in today's banking system.

Some things, however, have not changed. In 1989, as in 1869, the U.S. economy floats on foreign capital — Japanese now, British then. (British investors held two-thirds of the Erie Railroad's shares, and it was to England's Baring Brothers that Commodore Vanderbilt turned for funds.) Newspapers still act as public watchdogs. Fisk wooed newsmen with promises of "astounding revelations." Michael Milken, in a light moment, once offered to pay a reporter *not* to write a book. Both reporters filed honest stories.

Part of *The Gold Ring's* interest lies in its snapshots of nineteenth-century finance in action. In 1869, the New York Stock Exchange opened by being gaveled to order. Stocks were traded one at a time, ten minutes at a time — if brokers wished to keep trading when the next stock was given the floor, they carried their business out into the street. Fugitive financiers did not have to flee to the Bahamas or the Cayman Islands; rowing over to Jersey City, as Fisk and Gould once had to do, was quite enough. And amid the crowd of speculators, one sometimes spots a familiar face. Among those watching the Gold Room floor battle was Thomas Alva Edison, then a young technician tending the wires which ran gold-price tickers throughout New York City.

One likes Fisk, despite knowing better; his ebullience disguises his failings. One distrusts Gould; "spidery" is Ackerman's word. One finds much to admire, however, in their rival Cornelius Vanderbilt. Of the three financiers, only Vanderbilt left an enduring legacy. When stock prices wavered after the debacle in gold, Vanderbilt fought up the price of his companies' shares — single-handedly staving off a stock market crash. He had the self-possession to buy when others were selling. While Fisk and Gould were welching on their debts, he forged ahead to build a national rail network. And while he was a hard-headed businessman, not very good at spelling or grammar, he chose to found a university.

Thirty-seven pages of footnotes testify to Ackerman's research.¹⁷

¹⁷ It is worth reading these notes for the details they provide: Gould's confession that he kept all of his records in his head; the fact that Horace Porter, who resisted the blandishments of Fisk and Gould, may have taken \$15,000 in watered stock from financier Jay Cooke; and the particulars of the blonde-and-brunette chorus-show extravaganza that Fisk staged in winter 1869. *Id.* at 311, 328. For sources, Ackerman relies mostly upon contemporary newspapers and government reports. Readers wanting to follow through should consider C. F. ADAMS & H. ADAMS, *CHAPTERS OF ERIE* (1871); M. KLEIN, *THE LIFE AND LEGEND OF JAY GOULD* (1986); and W. SWANBERG, *JIM FISK: THE LIFE AND CAREER OF A PROMINENT RASCAL* (1959).

The Gold Ring, however, reads as quickly as a novel. Ackerman is not the first writer to see the story's appeal; when Mark Twain wrote *The Gilded Age*¹⁸ he had Fisk and Gould in mind. High finance holds us in perennial fascination. To those who follow the markets, it is hardly a surprise that Ivan Boesky's life could make an Oscar-winning role.

¹⁸ M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TO-DAY* (1873).