Markham’s Opus Remembering the Past—Watching It Repeat From the Great Recession to the Covid-19 Pandemic: A Financial History of the United States 2010–2020 (by Jerry W. Markham 2022)

Christian A. Johnson
Widener University Commonwealth Law School, cajohnson2@widener.edu

Follow this and additional works at: https://ecollections.law.fiu.edu/lawreview

Part of the Banking and Finance Law Commons, and the Law and Politics Commons

Online ISSN: 2643-7759

Recommended Citation
DOI: https://dx.doi.org/10.25148/lawrev.18.3.6

This Article is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.
MARKHAM’S OPUS
REMEMBERING THE PAST—WATCHING IT REPEAT
FROM THE GREAT RECESSION TO THE COVID-19 PANDEMIC:
A FINANCIAL HISTORY OF THE UNITED STATES
2010–2020 (by JERRY W. MARKHAM 2022)

Christian Johnson*

Professor Jerry Markham has added another leg to his now seven volume opus on the financial history of the United States.1 Volume 7, entitled From the Great Recession to the Covid-19 Pandemic: A Financial History of the United States 2010-2020, is an essential explication of a tumultuous decade. It brings the serious reader an exhausting and thorough recounting of a paradoxical time of booms and busts. Markham recounts the picking up of financial pieces from the Great Recession, the profiting from the stock market boom of the Trump years, and finally chronicles the deadly and equally fiscally disastrous Covid-19 pandemic. Like the previous volumes, the book details the rich, fascinating, rocky, unpredictable, and volatile U.S. financial markets that have characterized the country’s financial history since its founding. An important unstated theme that emerges from this and Markham’s other volumes is that no matter how much we remember the financial past, we appear to be condemned to repeat it, albeit in different flavors, different participants, and in different ways.

* Commonwealth Professor of Law and Business Advising, Director of the Business Law Advising Program, Widener University Commonwealth Law School.

George Santayana has been immortalized for his aphorism that “those who cannot remember the past are condemned to repeat it.” The assumption behind his aphorism is that if we study history, we have the ability to anticipate and avoid repeating past problems and events. By understanding the financial history of the United States, policy makers, regulators, and market participants theoretically can avoid the excesses and losses experienced in the past. Ironically, however, even the best efforts at understanding the U.S.’s past financial history appear to only alert us to watch for, and anticipate, the inevitable (and unavoidable) repetition of bubbles, scandals, market volatility, and financial losses.

Markham’s book is illustrative of the difficulty in learning from history in order to avoid repeating it in the future. For example, the U.S. appears to have learned little from the Spanish Flu pandemic, finding itself flatfooted and ill-prepared for the Covid-19 pandemic. The U.S. continues to close regulatory barn doors after a crisis. Stock market crashes occur in spite of regulators and market participants best efforts to rein them in. Bad actors repeatedly take advantage of the financial system, bringing carnage and destruction to main street, as well as to Wall Street.

Professor Markham’s seven volume opus is a prodigious summary of U.S. financial history. The seven volumes consist of over 3,000 pages and 2,100 footnotes. Although Markham’s seven volume work joins an illustrious host of other financial histories, his appears to be unique in its depth,

---

2 GEORGE SANTAYANA, REASON IN COMMON SENSE 312 (2009).
3 See, e.g., MARKHAM, FROM J.P. MORGAN, supra note 1, at 90 (“The insurance industry faced a major challenge when flu killed approximately 5 percent of the American population in the winter of 1918 and 1919. This loss of life nearly bankrupted the life insurance industry.”).
4 See MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 196–290.
5 See, e.g., MARKHAM, FROM J.P. MORGAN, supra note 1, at 189–215 (“Regulating Finance”); MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 5–21 (“Post Dodd-Frank Issues”).
6 See, e.g., MARKHAM, FROM J.P. MORGAN, supra note 1, at 123–86 (“The Crash”); MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 51–52 (discussing software problems); id. at 200 (discussing the March 2020 COVID stock market crash).
7 See, e.g., MARKHAM, FROM ENRON TO REFORM, supra note 1 (discussing Enron); MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 93–95 (discussing the LIBOR scandals).
8 See sources cited supra note 1.
coverage, and detail. This appears to stem not only from his prodigious academic research and writings,¹⁰ but also due to his eclectic background.

Markham arrived in law school academia over thirty years ago. Prior to that, however, he spent nearly two decades on-the-ground with the CFTC, the SEC, and as a partner in Big Law, observing first-hand the behavior of the U.S. financial markets, its regulators, and participants. Given the mixture of practical and academic experience that he brings to the table, he is a unique voice and commentator on the scandals, mistakes, volatility, regulatory actions, innovations, bubbles and other ups and downs of the financial history of the U.S. Markham is not a historian by academic training or discipline. He personally, however, has studied, experienced, taught about, and lived through much of the financial history that he writes about.

Partisans searching for support or dirt for their particular theory or cause will be disappointed in Markham’s effort. Markham is for the most part, apolitical and non-judgmental in his commentary. He strives to resist the siren song and temptation for the historian to play the role of pundit and to disclose the “one root cause” of everything. He generally never pontificates whether decisions by presidents, governors, regulators, or CEOs were wise or foolhardy. He resists the urge to come in after the battle was fought and stab the wounded. In fact, it is impossible to discern from his text whether Markham is conservative or liberal. Instead, he provides the context, the timeline, the profits made and losses suffered, and who the players were, to help the reader understand an uncommonly odd decade of economic ups and downs.

Markham’s history in fact, often upends commonly held assumptions or myths about the decade. For example, as Markham points out, it was generally assumed that the Troubled Assets Relief Program (“TARP”) that was developed to deal with the Great Financial Crisis, would cost taxpayers over $34 billion.¹¹ In fact, it actually generated profits of over $30 billion for the Federal Government, with the government earning over $110 billion from its different bail out programs coming out of the Great Financial Crisis.¹² The end result of these programs and recovery efforts, however, appear to be old news with no one claiming credit or glory for the end results as time moves forward and new crises evolve.

In his volume’s conclusion,¹³ Markham describes how the decade was “bookended” by recovery efforts to first deal with the devastation of the Great

¹⁰ In addition to his seven volume U.S. financial history, Professor Markham has co-authored five law school case books, a dozen book chapters, over fifty law review articles, as well as dozens of other publications.

¹¹ MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 7.

¹² Id.

¹³ Id. at 291.
Recession, and second by the medical and fiscal fight against Covid-19, which left an unparalleled path of death and economic destruction. Out of the two bookends, however, the discussion of the pandemic may prove to be the most important historically. It is estimated that approximately 385,000 individuals in the United States died during 2020 alone from Covid-19.\(^\text{14}\) On the fiscal side, it is estimated that the federal government response to Covid-19 totaled more than $4.3 trillion through 2023, an unimaginable amount of taxpayer money and deficit spending.\(^\text{15}\)

As Markham illustrates, it may be impossible to separate several different themes in chronicling the U.S. response to Covid-19. Markham first shows in his history that one cannot understand the fiscal devastation and government response without understanding the spread of death and human suffering of Covid-19.\(^\text{16}\) As the federal government and state governments dealt with the human carnage inflicted by Covid-19, this response quickly resulted in a tsunami of unemployment, stock market plunges, logistical nightmares, and product and commodity shortages as businesses and individuals were locked down and economic uncertainty ruled.\(^\text{17}\)

Second, Markham chronicles the unprecedented stimulus that governments blasted out by the federal government. The Federal government responded through PPP loans, stimulus, extended unemployment benefit, moratoriums on evictions, vaccine funding, and other efforts.\(^\text{18}\) The amounts spent and funded through taxpayer dollars and deficit funding were breathtaking and will serve as a drag and mortgage on future generations of American taxpayers.

Finally, Markham describes the mixed result of successes and failures experienced by individual states as they exercised their police powers of lockdowns, check points, and mask mandates. New York, Florida, California, Texas, and other states\(^\text{19}\) each adopted and customized their own peculiar and varied approaches to fight a literal force of nature. The only conclusion that one can truly reach is that there was no state approach that was consistently more successful than another, as the physical and economic toll of the pandemic is carefully parsed and discussed by Markham.

\(^\text{14}\) Farida B. Ahmad et al., COVID-19 Mortality Update – United States 2022, CTRS. FOR DISEASE CONTROL (May 5, 2022), https://www.cdc.gov/mmwr/volumes/72/wr/mm7218a4.htm#T1_down. In addition, it is estimated that 462,000 and 245,000 individuals died in 2021 and 2022, respectively. See id.


\(^\text{16}\) See MARKHAM, FROM THE GREAT RECESSION, supra note 1, at 196–200.

\(^\text{17}\) See id. at 200–06.

\(^\text{18}\) See id. at 231–63 (“Covid-19 Federal Relief Efforts and Market Recovery”).

\(^\text{19}\) See id. at 206–30 (discussion of states’ approaches to the pandemic).
Volume 7 of Markham’s opus is important. The subject is complicated. If you think the analysis of U.S. financial markets and the U.S. economy is easy, you probably don’t understand them. As American society has become increasingly more polarized and the political rhetoric more frantic, facts, context, and accurate information delivered by impartial voices matter more than ever. Without scholars such as Markham to pull back the financial and economic curtains, the reality of the need for sound regulation, solid financial market practices, and consistent and transparent ethical norms and standards, could easily be lost.

---