

Anne C. Fleming, 1979–2020: An Exemplar of Interdisciplinary, Engaged Business History

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The historical profession is mourning the tragic passing of Anne Fleming, professor at the Georgetown Law Center. Anne died far too young at the age of forty, just a decade or so into what was shaping up to be an extraordinary career of scholarship, teaching, civic participation, and intellectual leadership. Within just a day of her death, the Legal History Blog posted a compelling overview of her life and career, which focuses on her contributions to legal history.¹ This remembrance offers a complementary meditation on the significance of Anne's historical research and writing within the fields of business history and the history of political economy.² I also consider some potential implications of her career for how we approach the crucial task of educating the next generation of business historians amid the growing imperative to think differently about how we structure PhD programs.

Any assessment of Fleming as a scholar should begin with appreciation for the path that led her to embrace the historian's craft. That route ran through not just the training that she received at Harvard Law School but also the extensive experience with the legal situations confronted by Americans in less well-off economic circumstances, and especially those individuals who faced crippling consumer debt. During her time as a law student, she worked for both the Harvard Legal Aid Bureau and the District of Columbia's Public Defender Service. After

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1. Ernst, Sharafi, and Tani, "Anne Fleming: In Memoriam."

2. This segment of this remembrance and reflection is a slightly revised version of a blogpost that I write for the Business History Conference's blog, *The Exchange*. See Balleisen, "In Memoriam: Anne C. Fleming, 1979–2020."

stints serving as a clerk for a United States district judge and then a United States appeals court judge, she spent two years working in Brooklyn, New York, for the Foreclosure Prevention Project, at the height of the 2007–2008 global financial crisis. Thus, as Fleming entered the PhD program in history at the University of Pennsylvania, she already knew quite a bit about the pressures faced by consumer debtors. This background shaped Fleming's choice of research topics, as she developed a dissertation on the legal and policy history of what she came to call "fringe finance," the provision of credit to Americans who arguably needed it most precisely because they lacked wealth and often struggled to sustain income. Her experiences fostered a bedrock empathy for the subjects of her research.

Although Fleming wrote several excellent journal articles and essays, her most significant scholarly achievement was *City of Debtors: A History of Fringe Finance*, published by Harvard University Press in 2018.³ The book won two prizes: the 2019 Ralph Gomory Prize, awarded by the Business History Conference (BHC) to an outstanding monograph that sheds particular light on the impacts that "business enterprises [have] on the economic conditions of the countries in which they operate;"⁴ and the annual best book award from the American College of Consumer Financial Services Lawyers. *City of Debtors* explores the roots and evolution of subprime lending through a case study of consumer debt markets and regulation in New York State, and especially in New York City, from the 1890s into the twenty-first century.

The book brilliantly conveys the enduring challenges of finding effective regulatory answers to the problems posed by fringe lending, with federalism always mediating state-level regulatory instruments and tools. Fleming demonstrates the repeated inclination of many innovative and more successful fringe lenders to seek legitimation and stability through legislation or administrative action that would provide a regulatory basis for their business models, and their frequent success through such efforts. She also reconstructs the remarkable ingenuity of fringe lenders in developing new business models to sidestep regulatory rules, whether through jurisdictional arbitrage, or "ontological" arbitrage, redefining lending products to evade prevailing rules. At the same time, she explores the recurring concerns over deceptive and abusive practices associated with fringe lending, which drove recurring attempts to clamp down on those practices, especially at the state level, but also sometimes through national policy making.

3. Fleming's personal website provides a full bibliography. See Anne Fleming's website, <http://annefleming.org/author.php> (accessed Aug. 27, 2020).

4. BHC, Ralph Gomory Prize, <https://thebhc.org/gomory>.

And she documents the enduring inventiveness of attorneys from all sides, whether in challenging regulatory constraints, looking to find a payday through representation of debtors, seeking to invent causes of action, or resetting legal thresholds.

At every stage in the narrative, moreover, Fleming keeps her reader focused on the inescapable features of the fringe lending business, which required interest rate premiums to cover the fixed costs of making small denomination loans. This crucial point implicitly echoes business historian Thomas McCraw's stress on the need to take account of sectoral structure in fashioning any regulatory scheme.⁵ Those requirements helped to set the boundaries for policy entrepreneurship about consumer lending regulation, whether located within organs of the state, a foundation like Russell Sage, or an organization like the American Bar Association. As Fleming repeatedly shows, protagonists in the evolving conflicts over policy making in this area exhibited considerable ingenuity in developing ideas for legal/administrative change, marshaling coalitions to support them, and then actually implementing reforms. But in the end, they always found themselves reckoning with the unavoidable economic realities associated with consumer credit. These are all important arguments, and they have a bigger collective impact than the mere sum of the individual contributions.

Like the very best historians, Fleming knew her way around archives, and was able to pull together a vast array of public and private sources to inform her narrative. Like the most intellectually ambitious historians, she built that analytical account over a significant expanse of time, showing readers the dialectical process by which economic forces generated new problems, which prompted reform ideas, and eventually new regulatory ecologies that stabilized markets for a time, while also generating new business opportunities that undermined that stability. Like the very best legal historians, she had a sophisticated grasp of "law in action"—how economic actors and lawyers respond to legal rules and institutional arrangements.

Far more than most historians of American political economy, Fleming directly and consistently engaged with insights and conceptual frameworks from other social sciences. She similarly never lost sight of the profound policy trade-offs posed by the subject matter of fringe lending—most obviously that rules and regulations to constrain interest rates and fees also constrained access to credit. Historians sometimes oversimplify—or worse, ignore—the pressures that policy makers face when grappling with such dilemmas.

5. McCraw, *Prophets of Regulation*.

Like the very best business historians, Fleming reconstructed the role of entrepreneurs in shaping markets, such as the expansion of personal finance companies in the early twentieth century, or the emergence of payday lending at its close. As she painstakingly documents, these processes of innovation frequently depended on successful efforts to bend the contours of law, policy, and regulation, or evade them altogether. Fleming also analyzed the business landscape in its full complexity. As a result, she carefully distinguished truly predatory firms from those that sought to establish a profitable business model by providing much needed credit to underserved populations (and so often had an interest in the state's curbing the most ruthless lenders).

By skillfully connecting these multifaceted dimensions of modern American capitalism, Fleming produced a beautifully written book that has attracted notice from multiple scholarly communities. Although just a couple of years past publication, the book has received citations from scholars who specialize in legal, business, or economic history, as well as sociologists, professors of public policy, and legal academics.⁶ As Fleming began to find her footing as a public-facing historian, the venues where she presented her work also widened to include protagonists in the policy-making and implementing processes, whether at the United States Consumer Financial Protection Bureau, among state and local officials, in consumer nongovernment organizations, or the consumer finance industry.

Over the past couple of years, Fleming had embarked on ambitious research into the racial dimensions of American consumer bankruptcy during the first half of the twentieth century. This project drew on all the skills that brought *City of Debtors* to life, as well as newly developed capacity with ArcGIS and digital mapping. Despite the extraordinarily rich evidence that bankruptcy records offer about the social experience of economic misfortune, as well as the operations of individual businesses, the consequences of the business cycle, and the dynamics of capitalist innovation and resistance to change, they have attracted only occasional attention from historians.⁷ Fleming developed a

6. Olegario, "History of Credit in America"; Hansen and Hansen, *Bankrupt in America*; Bittman, "Une économie raciale de l'obligation"; Ramsay and Williams, "Peering Forward, 10 Years After"; Baradaran, "Jim Crow Credit"; Atkinson, "Rethinking Credit as Social Provision."

7. My first book, *Navigating Failure*, which came out in 2001, relied heavily on manuscript bankruptcy court records, and I have long hoped that its example would prompt historians to tap them as core sources. (One can count on modern capitalism to generate a steady stream of business failures and individual insolvencies, which generate public documents.) Even with the further encouragement of Patrick Fridenson's 2004 BHC presidential address, "Business Failure and the Agenda of Business History," the subsequent scholarly output by historians has been less robust than one might have expected, and within American history, focused much more on the

sophisticated research plan to analyze consumer bankruptcy across several American cities—Birmingham, New York, Atlanta, Memphis, and Chicago. She was comparing the experiences of indebted workers from all racial identities, while also investigating key institutional innovations such as debt adjustment bureaus and the Debtors' Court in Birmingham, which served as the inspiration for the 1938 creation of Chapter 13 in the federal bankruptcy code (establishing a formal mechanism for stretching out repayment of consumer debt). As a measure of her creativity and versatility, she had planned to develop companion digital resources, including geographic visualizations of the incidence of indebtedness and insolvency.

This foray into twentieth-century consumer bankruptcy promised crucial insights into how Americans coped with the intensified growth of a wage-based, and increasingly debt-based, consumer society in which ever larger majorities of adults, from all races and ethnicities, would remain wage or salaried workers for their entire working lives, subject to the downward drafts of the business cycle. It would have furnished new perspectives on the growing reach and bureaucratic inventiveness of the national government. It would have cast new light on the integration of modern techniques of credit provision into mass marketing, and on the racial discrimination that has structured consumer finance throughout the American past. There are few senior scholars who could pull off this ambitious undertaking; Fleming would have done so with aplomb, reaching not only legal, policy, and business historians but also other social scientists, as well as policy makers and the broader public.

Fleming also demonstrated a knack for effective professional service. Elected to the BHC Board of Trustees in 2018, she stepped forward to join several important committees, including the Electronic Media Oversight Committee and an ad hoc group to finalize revision of the BHC bylaws. She brought careful thought, maturity, and insight to every leadership role that she took on, and in the last few weeks of her life, characteristically concluded successful searches for two critical positions related to the BHC's online endeavors.

As the business history community joins legal historians, the law school world, and the wider discipline of history in grieving, we should all pause and reflect on the many dimensions of what we have lost: the several thousand law students who will now not encounter Fleming's clarity of expression and insistence on wrestling with the hardest

significance of failure as a cultural problem or the evolution of bankruptcy law than on the experience of bankruptcy by firms or individuals. See Sandage, *Born Losers*; Skeel, *Debt's Dominion*; For important exceptions, see Thompson, *Reconstruction of Southern Debtors*; Hansen and Hansen, *Bankrupt in America*.

analytical questions; the many fellow historians who will not have additional access to her meticulous research, the trenchant analysis of how legal and policy institutions have mediated economic life, and the great talent for marshaling scholars to collective purpose; the legislators, agency officials, and informed citizens who will not benefit from her perceptive testimony, public comments on draft regulations, and opinion pieces; and the myriad friends and family members who will cherish her always calm presence, fundamental decency, and straightforward warmth.

Anne Fleming will be sorely missed.

Although we have lost a stellar scholar, business historians and the broader historical profession have an opportunity to learn from her example. There are several interconnected dimensions of her intellectual trajectory that should make those of us with roles in PhD education rethink how we go about that crucial work. Perhaps the most important lesson that we should take away from Fleming's career is the value of life experience to scholarly creativity and insight. As a historian, Fleming could draw on her time in law school, engagement with consumer-focused law clinics, a series of jobs with legal aid offices, and judicial clerkships. This background grounded her not just in legal technicalities but also the lived realities of those who had to rely on fringe finance. The melding of professional education, provision of legal services, and intensive engagement with appellate judging exposed her to the workings of multiple institutions and how legal rules shaped economic options and behavior. The results, so evident in her scholarship, were a more probing set of analytical questions, a rejection of easy moralistic posturing when grappling with the more challenging recognition of unavoidable policy dilemmas, and an enriched capacity for the exercise of historical imagination.

A pivotal implication here is that members of PhD admissions committees should highly value applicants who bring such life experience to graduate school. The business history community is already notably welcoming to scholars with backgrounds in the corporate world, finance, law, or consulting. Our field, and the wider discipline of history, could likewise benefit from the inclusion of more scholars who have spent at least a few years working for small businesses, in the gig economy, as social activists, for nonprofit organizations, within government agencies, or on behalf of some entrepreneurial venture (including those that failed). In a similar vein, faculty supervisors and graduate programs should remain open to their advisees incorporating a summer internship into the arc of their training. Internships will likely be especially appropriate for students whose path to the PhD has been a more direct one from college. And they make the most sense when they involve practical immersion in some organization's daily

operations, institutional culture, and processes of decision making. For younger scholars who lack Anne Fleming's extended engagement with the world of nonacademic work, internships also have the significant collateral benefit of furnishing students with more awareness of their career options and better perspective on their own career aspirations.⁸

A second lesson concerns the power of sustained interdisciplinary engagement, especially when linked to the production of accessible prose for multiple audiences. The analysis in *City of Debtors* required understanding of economics, law, politics, policy making, administration, psychology, social experience, and culture, alongside, of course, several overlapping subfields of history. Attaining both a law degree and a history PhD exposed Fleming to a variety of intellectual currents and methodological approaches, which she deployed so adroitly in her scholarly writing. She also did not hesitate to expand her horizons. The more recent bankruptcy research, for example, added geography and statistics to her epistemological toolbox. Fleming embraced interdisciplinary training and thinking because the complicated historical, legal, and policy problems that she tackled did not lend themselves to a more siloed disciplinary analysis.

Fleming, moreover, wanted her insights to shape more than scholarly inquiry. By the time of her passing, she had already developed considerable versatility as a writer. She could weave together compelling historical narratives, to be sure, whether embedded in scholarly articles or a full-length monograph. But she could also place informative op-eds in national publications—like *The Washington Post's* Made by History column, drawing on a century's worth of consumer lending regulation to critique a Trump administration proposal to rescind a payday lending rule that required assessment of prospective borrowers' ability to repay loans.⁹ Or, drawing on that same history, she could submit a tightly argued public comment on a proposed rule making to the National Credit Union Administration, cautioning that any interest rate caps on credit union lending had to allow for a profitable return, lest consumers find themselves unable to obtain small loans except by turning to predatory payday lenders or outright loan sharks.¹⁰

There will always be a place for deeply researched business history case studies framed predominantly by historiographic debates within the subfield. And we cannot expect the great majority of doctoral

8. Leonard Cassuto, "Doctoral Training Should Include an Internship," *Chronicle of Higher Education*, August 27, 2020; Rogers, *Putting the Humanities PhD to Work*. For two reflections on the value of internships by history PhD students, see Blackburn, "Under Construction"; Young, "Serving Up Food History."

9. Anne C. Fleming, "The Government Move That Threatens to Keep Americans Trapped in Debt," *Made in History*, *Washington Post*, May 2, 2019.

10. Fleming, "Comments on Notice of Proposed Rulemaking."

students interested in business history to earn a professional degree as well as a PhD, nor to land a faculty position in a professional school that esteems outputs like op-eds, public comments on draft rules, and congressional testimony. Indeed, we need to be mindful that many of even our most accomplished PhD recipients will not end up in any type of faculty position, with a significant number preferring to take their historical expertise outside the academy.¹¹

Regardless of their students' career aspirations, business, legal, and policy historians should be encouraging their advisees to undertake the kind of research projects that can historicize contemporary debates about core elements of political economy and the constitution of capitalist markets and business institutions. Shaped by her experiences as a law student and lawyer, Fleming gravitated toward historical inquiry about the evolution of consumer finance and consumer protection. The range of analogous topics is vast, stretching from antitrust, innovation policy, and the provision of public infrastructure, to oversight of labor relations and financial services, to the construction of trade regimes and environmental policy, to the regulation of information technology, agriculture, and energy.

To prepare students for the sort of research that Fleming carried out, faculty mentors need to emphasize the benefits of taking courses, reading scholarship, and becoming familiar with research methods outside of history. Business history has always had a close connection to economic analysis and management studies. More recently, reflecting widespread proclivities within the historical profession, a growing number of scholars in the field now display expertise in ethnography

11. Since 2005, the BHC has run a highly selective annual international Doctoral Colloquium for ten doctoral students conducting research in the field. In 2018, as the Colloquium director, and with the help of research assistant Kelly Reilly, I conducted an analysis of career outcomes for those who participated in the Colloquium between 2005 and 2014. Of the students whom we were able to trace, who had completed a PhD, and who had employment other than as a postdoc (84 percent of the total), over two-thirds had faculty positions, most on the tenure track, with over half in history departments and more than a third in business schools. But almost one in ten worked in academic administration, and another one in five worked outside of academia altogether. Among recipients of history PhDs more generally, a much lower percentage gain employment as faculty. In the Duke History Department (a top fifteen program), of the PhD recipients who have completed their PhDs between 2005 and 2020, who have known employment, and who have employment other than as postdocs ($n=104$), 46 percent have faculty positions on the tenure track, 10 percent have nontenure track faculty positions, 13 percent hold employment in academic administration, and nearly one in five work in the public sector, for an NGO, or for a private firm. (These statistics are drawn from Duke's Graduate School website, All Departments: PhD Career Outcomes Statistics, <https://gradschool.duke.edu/about/statistics/all-departments-phd-career-outcomes-statistics>, accessed January 22, 2021.) An additional advantage of Fleming's kind of research and writing is that it well prepared her for other career options.

and cultural studies.¹² These intellectual connections have been and will continue to be vital assets. If, however, business historians wish to investigate business-state relations and the role of government and law in shaping the business environment, alongside the role of business in shaping law and policy, they should engage more broadly across the social sciences, with economic, political, and legal sociology; institutional and behavioral economics; and political science.

In addition, we could do more to foster the capacity to engage in more public-facing scholarly communication. That aptitude requires focused attention and considerable practice, with both often having little place in history PhD curricula. Indeed, as advocates of doctoral education reform have long noted, PhD students frequently spend so much time honing arguments for circumscribed academic audiences that they become acculturated to jargon-filled prose, and dig so deeply into relatively narrow case studies that they struggle to condense their research findings, relate them persuasively to wider debates, or explain the significance of their research to nonspecialists.¹³ We should be providing our PhD students with opportunities to practice connecting their hard-won knowledge to contemporary issues and to translate their expertise for decision makers and more general audiences, even if their ability to place pieces in nonscholarly outlets typically will depend on prior scholarly demonstration of expertise. This kind of expectation may be easier to implement in PhD programs that have replaced qualifying examinations with the creation of a portfolio of work for fields; those programs might mandate that the overall portfolio include some examples of translational writing for nonspecialists. But any graduate seminar might include an assignment to link important course material to a contemporary issue through a mock op-ed or blogposts.

For Fleming, extensive experience representing consumers and working for organizations dedicated to consumer issues surely provided opportunities to develop an accessible prose style. Herein lies another reason to take life experience into account in graduate admissions, and to facilitate the right kind of internship experiences as part of doctoral education. The ability to integrate multiple strands of

12. For one important publishing channel for these more recent epistemological touchstones, see the book series *Columbia Studies in the History of U.S. Capitalism*, published by Columbia University Press, <https://cup.columbia.edu/hoc>.

13. See for example, Cassuto, *Graduate School Mess*; Marc Parry, "The New PhD," *Chronicle of Higher Education*, February 16, 2020; Jonathan Zimmerman, "The PhD Glut and What to Do About It," *Washington Monthly*, December 3, 2020, <https://washingtonmonthly.com/2020/12/03/the-ph-d-glut-and-what-to-do-about-it/>. Historians have maintained a greater commitment to accessible writing than many other disciplines. But the cultural turn has led more than a few scholars to equate sophistication with a writing style unwelcome to the uninitiated.

evidence, to convey long-term historical change, to translate complex ideas to nonspecialists, and to show how history matters, now, are essential skills. For historians who prefer and have the chance to pursue an academic career, those skills contribute enormously to effective teaching. For professors who wish to reach the broadest audiences through op-eds, blogposts, or other forms of popular communication, they are indispensable.¹⁴ Strong communications skills also greatly expand career options outside the higher education sector.¹⁵

Anne Fleming, of course, was an unusually accomplished early career scholar. Only the occasional PhD student or recent recipient of a doctorate can attain her level of intellectual sophistication and public engagement, especially less than a decade out from the PhD. We also must reckon with the limits to how much one can pack into doctoral education. If we add to the PhD curriculum (seminars outside history, internship opportunities, participation in research projects with public-facing goals), we must also subtract, lest we make the journey to a PhD even more of a marathon. The hard work of curricular reconfiguration and subtraction runs a significant risk of encountering entrenched opposition from faculty committed to current arrangements. As one telling measure of this conservatism, the highest-ranking PhD history programs in the United States, until recently, have mostly shied away from engagement with the American Historical Association's multifaceted career diversity efforts.

In addition, we must remain mindful that many business historians in faculty positions have appointments in departments or schools without PhD programs, and that members of our community who do supervise PhD students overwhelmingly operate within departments that focus far more on other historical subfields. Some of my suggestions pertain to matters within the purview of individual dissertation supervisors and committee members; others would require forging departmental consensus for reform of overall PhD programs, a much tougher undertaking. One very promising avenue is to embed collaborative, interdisciplinary research experiences into doctoral training. Working with collaborators who bring complementary disciplinary expertise to a research problem and/or public-facing project can build familiarity with methods and areas of knowledge without requiring the same

14. Consider the example of Stephen Mihm, whose experience as a financial journalist prior to pivot to academic history has greatly facilitated his capacity to produce biweekly commentaries for Bloomberg News, placing breaking stories in historical context. See Mihm's articles at <https://www.bloomberg.com/opinion/authors/AP8wRWjVDoM/stephen-mihm>.

15. See the American Historical Association website's extensive resource page, Career Diversity for Historians, <https://www.historians.org/jobs-and-professional-development/career-diversity-for-historians>.

degree of intensive study. It also cultivates skills in translational communication and project management.¹⁶ If we want to see more people like Anne Fleming in our field and discipline, we should think differently about how we build doctoral cohorts, how we construct graduate seminars and fields, and how we facilitate career exploration.

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16. For a wider discussion, see Balleisen, "Prospects for Collaborative Research in Business History."

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