

In Memoriam: Professor Anne C. Fleming

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The editors and staff of *The Georgetown Law Journal* respectfully dedicate Volume 109 to Professor Anne C. Fleming, who passed days before the start of the 2020–2021 academic year. Professor Daniel R. Ernst provides the following tribute.

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Anne C. Fleming became a law school colleague of mine when she joined the Georgetown Law faculty in 2014. However, I first met Professor Fleming as a potential disciplinary colleague and as a new entrant to the academic field of legal history. Her contributions to Georgetown Law and to American legal history are equally salient.

The principal learned society for legal history in the United States—the American Society for Legal History—offers a prize that is named for a great mentor of legal historians to the best papers written by graduate students, who present them at the Society’s annual meeting. I attended the Kathryn T. Preyer Award panel in November 2011. One of the commentators was Charles McCurdy, a historian at the University of Virginia, whose research I had admired since my early days as a legal historian. McCurdy commenced with the observation, “Kitty would have loved these papers,” then proceeded to explain why, and concluded that—with new entrants like these—the field of legal history was certain to thrive for years to come.¹ A similar thought occurred as I listened to the papers, and I was moved when McCurdy articulated it, thereby connecting a departed generation, represented by Kitty Preyer, to an entering generation. One of those recipients was Anne Fleming for *The Borrower’s Tale: A History of Poor Debtors in Lochner Era New York City*, which she subsequently published in the field’s top journal.²

By this point in time, Fleming was well accomplished. She was an honors graduate of Yale College and Harvard Law School. While at Harvard, she was an editor for the *Harvard Civil Rights-Civil Liberties Law Review* and worked at the Children’s Law Center of Massachusetts, the Public Defender Service for the District of Columbia, and the Harvard Legal Aid Bureau, where she was not only a student attorney but also Intake Director. After law school, she clerked for the Honorable Miriam Goldman Cedarbaum of the U.S. District Court of the Southern District of New York and then for the Honorable Marjorie O. Rendell

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1. Karen Tani, *Preyer Prizes to Fleming, Schoeppner, Arlyck*, LEGAL HIST. BLOG (Nov. 14, 2011, 5:30 PM), <https://legalhistoryblog.blogspot.com/2011/11/preyer-prizes-to-fleming-schoeppner.html> [<https://perma.cc/AE2C-DFEX>].

2. See 30 LAW & HIST. REV. 1053 (2012).

of the U.S. Court of Appeals for the Third Circuit. From 2007 to 2009, she served as a staff attorney in the Foreclosure Prevention Project in South Brooklyn Legal Services. She felt deeply for her low-income clients' distress during the subprime mortgage crisis. A fellow attorney recalled her as "fiercely dedicated to her clients" and a "brilliant and selfless advocate."³ Still, she realized that the problem of lending to the working poor had no simple answers. To understand small-sum lending in all its complexity, she enrolled in a doctoral program in the University of Pennsylvania's Department of History, where her dissertation advisor was Sarah Barringer Gordon.

In 2012, Professor Fleming returned to Harvard Law School as a Climenko Fellow and Lecturer in Law. For the following two years, she taught legal writing and a consumer debt and bankruptcy seminar, worked on her dissertation, and wrote *The Rise and Fall of Unconscionability as the "Law of the Poor."*⁴ Published in *The Georgetown Law Journal*, the article related *Williams v. Walker-Thomas Furniture Co.*⁵ to developments in consumer protection legislation and altered how many Contracts professors teach the case.⁶ She was "brilliant, generous-minded, and wryly hilarious," the director of the Climenko program recalled, and "regularly gave transformatively insightful comments on others' work even as she honed her own scholarship."⁷ Another Climenko Fellow remembered her as "a friendly, calming, and insightful presence."⁸

When she joined the faculty at Georgetown Law in the summer of 2014, my colleagues and I knew she was a successful scholar likely to make good on the great promise she had displayed as early as that Preyer Award panel. We also knew that her varied professional experiences gave her insight into the different roles Legal Practice, clinical, and J.D.–Ph.D. professors played on the faculty. But we did not quite anticipate how dedicated, caring, and successful of a professor she would be. She taught Contracts for the first time in the evening in the spring of 2015, after spending the preceding semester teaching her consumer debt and bankruptcy seminar, completing her dissertation, and successfully defending it at the University of Pennsylvania. Even so, she prepared so carefully that students forgot she was teaching a first-year course for the first time. "She was a great prof and an even better person," one of them wrote upon learning of her passing.⁹ At the time, his classmates raved that she was extremely organized,

3. Jessica Attie (@JessicaAttieG), TWITTER (Aug. 26, 2020, 8:04 PM), <https://perma.cc/56SL-LSKW>.

4. See 102 GEO. L.J. 1383 (2014).

5. 350 F.2d 445 (D.C. Cir. 1965).

6. See Fleming, *supra* note 4, at 1408–21.

7. Anne Fleming '05, *Legal Historian, Past Climenko Fellow*, HARV. L. TODAY (Sept. 2, 2020), <https://today.law.harvard.edu/anne-fleming-05-legal-historian-past-climenko-fellow> [<https://perma.cc/Y6MH-MS3Y>].

8. E-mail from Michael Morley, Assistant Professor, Fla. State Univ. Coll. of Law, to author (Aug. 27, 2020, 11:39 AM) (on file with author).

9. Anonymous DC Lawyer (@AnonymousDCLaw2), TWITTER (Aug. 26, 2020, 4:22 PM), <https://twitter.com/AnonymousDCLaw2/status/1298717407234539524> [<https://perma.cc/U564-TRAG>].

extraordinarily knowledgeable, helpful, kind, considerate, and went above and beyond for her students through her offers for recommendations and other assistance in securing employment. She displayed the same combination of rigor, conscientiousness, judgment, and empathy as she added Bankruptcy and Secured Financial Transactions to her teaching repertoire.

In *City of Debtors: A Century of Fringe Finance*, Professor Fleming shared the results of years of careful, meticulous, and indefatigable research into the history of small-sum lending in engaging, well-crafted prose that illuminated the work of today's policymakers and revealed the problems that advocates confront.¹⁰ Both practicing lawyers (American College of Consumer Financial Services Lawyers) and professional historians (Business History Conference) honored the book. The business historians described Professor Fleming's accomplishment when awarding their book prize to her:

In this deeply researched, well-crafted, and timely book, Anne Fleming offers a rich history of the small loan industry, across most of the twentieth century. Drawing on evidence from hundreds of court cases, among other sources, Fleming skilfully [sic] reconstructs the changing experiences and strategies of borrowers and lenders, as they navigated changing local and national regulatory regimes. Using crisp prose, Fleming provides a clear discussion of a long and complex story about business and regulation, while highlighting the struggles of individual human characters. *City of Debtors* is a detailed, scholarly study, but one that never loses sight of bigger, enduring problems and questions, including, as Fleming puts it, questions about the "meaning of justice within capitalism."¹¹

Professor Fleming did not rest on her laurels. After publishing *City of Debtors*, she wrote a path-breaking article, inspired by insights from teaching Contracts, that brought together bodies of law usually treated separately. It showed that judges frequently resorted to what she called the "antipauperism" argument—the need to keep households off the welfare rolls—when justifying changes to contract doctrine and other bodies of "private" law. It thus opened new avenues for assessing how judges and policymakers considered economic inequality even when revising doctrines never before understood to be part of "the law of the poor."¹²

Professor Fleming had fully embarked on a new book project on the history of consumer bankruptcy in the United States. Her entrée was a lead others had noted but never pursued: the provisions added as Chapter 13 to the federal bankruptcy laws in 1938 to allow financially distressed individuals to reorganize their debt

10. See ANNE FLEMING, *CITY OF DEBTORS: A CENTURY OF FRINGE FINANCE* (2018).

11. E-mail from Andrea Colli, Professor of Econ. History, Bocconi Univ., to Anne Fleming, Professor of Law, Georgetown Univ. Law Ctr. (Feb. 5, 2019, 3:29 AM) (on file with author) (italization added).

12. Anne Fleming, *The Public Interest in the Private Law of the Poor*, 14 HARV. L. & POL'Y REV. 159, 160 (2019).

under federal supervision were thought to have embodied the practices of an innovative “Debtor’s Court” in Birmingham, Alabama. Before her passing, her research into the Birmingham court’s personnel, docket, case files, litigants, and their lawyers had proceeded far enough to propose a conference paper on the origins of Chapter 13. But she also realized that the court records, once linked to census schedules, city directories, and other local sources, would let her tell a bigger story: how race has affected access to credit and debt relief in the United States. She embodied her preliminary findings in a website—which she was still revising at the time of her passing—that supplemented her research on Birmingham with sallies into similar records in Philadelphia and Washington, D.C., and was planning to sample bankruptcy files in other cities.¹³

Unsurprisingly, Professor Fleming was already looked upon as an established scholar at the time of her passing. With characteristic wryness, she shared with me her surprise the first time that a law school asked her to write a tenure letter. Another law school recruited her to comment at a “manuscript review” on a junior legal historian’s draft book. And in July 2019, she submitted written testimony to the U.S. House Committee on Small Business that drew upon her historical research to argue for extending bans on confessions of judgment from consumer to small business loans.¹⁴

In the brief time that Anne Fleming wrote legal history and in the even briefer time that she taught at Georgetown Law, she more than delivered on the promise that was obvious to me in November 2011. She was the kind of person who, when you realized she was engaged in the same enterprise that you were, made you believe that the activity must be worthwhile if someone that good was also committed to it. Now when legal historians and her Georgetown Law colleagues realize that she is not among them, we will feel diminished by her absence but also grateful for all she did when she was with us.

13. See Anne Fleming, *The Bankruptcy Capital of the World: Debt Relief in Birmingham, Alabama in the 1930s*, ARCGIS STORYMAPS (Sept. 29, 2019), <https://storymaps.arcgis.com/stories/1ef4c05990604965868a8a2638c4aefc> [https://perma.cc/P3TX-YSCZ].

14. See *Crushed by Confessions of Judgement: The Small Business Story: Hearing Before the H. Comm. on Small Bus.*, 116th Cong. (2019) (statement of Anne Fleming, Professor of Law, Georgetown Univ. Law Ctr.), http://annefleming.org/cms/uploads/file/Anne%20Fleming_written%20testimony_H%20Sm%20Biz%20COJ_2019.pdf [https://perma.cc/CV5F-G2KR].