

Urban History as Legal History

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Kim Phillips-Fein, [**Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics**](#) (2017).

My mother, a life-long New Yorker, was an opinionated person. There were certain politicians she didn't like, and, if they came up in conversation, she would not hesitate to tell you so. At the top of this list was Richard Nixon—hardly a surprising entry considering my mother's identity as a postwar, Jewish liberal. (I don't think Nixon would have liked my mom very much either.) Not far below Nixon was Gerald Ford. His greatest crime, of course, was pardoning "that sleazy bastard Nixon." Ford's perfidy, however, also hit closer to home. In 1975, as my mother's beloved city spiraled closer and closer to bankruptcy, Ford refused to allow the use of federal resources to help New York weather its financial woes. "[Ford to City: Drop Dead](#)," read the *New York Daily News'* infamous headline after Ford announced that he would veto any federal legislation that would "bail out" the City. New York's fiscal crisis cost my father his job at the City University of New York, so, as far as my mom was concerned, the "Drop Dead" was aimed at our family.

When it came to New York's fiscal crisis, Ford was not the only politician who earned my mother's scorn. A large portion of it was reserved for a man who could not have been more different from the tall, athletic, Midwestern president: [Abraham Beame](#), the petite, uncharismatic accountant who had the misfortune to be the mayor of New York City when the crisis peaked. According to mom, it was Beame's incompetence, his tolerance for profligate spending, and his subservience to both the corrupt Democratic political machine and municipal labor unions that brought New York to the brink of ruin.

[Kim Phillips-Fein](#)'s marvelous book, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics*, argues that my mother's view of the crisis, which has become the received wisdom, is incorrect. She provides a detailed history of New York's financial woes. The City, she explains, was committed to promoting social-democratic urbanism by enacting programs that promoted economic egalitarianism. These programs—free higher education, a massive city-funded system of public hospitals, cheap mass transit, for example—were expensive, but they did not cause the fiscal crisis. Instead, Phillips-Fein argues that it was a combination of external circumstances (the end of the postwar economic boom, deindustrialization, and changes in securities markets) and the ideological desires of Republicans in the Ford Administration that drove New York to the brink of bankruptcy. Desperately in need of financial resources, the City was forced by Ford to cut its budget dramatically in exchange for the short-term loans that saved the City from bankruptcy.

Fear City also recounts how elites within the City used the crisis to create a new model of urban governance that emphasized austerity and government promotion of private economic development. This model, Phillips-Fein argues, has come to define our contemporary assumptions about the proper role of government. She demonstrates that these assumptions were justified by a morality tale about the fiscal crisis that was constructed by enemies of postwar liberalism. Leading this group were the austerity scolds of the Ford Administration, in particular, Chief of Staff Donald Rumsfeld and Treasury Secretary William Simon. Rumsfeld and Simon were intent on advancing a conservative, anti-statist political agenda by blaming the City's financial woes on irresponsible government spending rather than on external structural changes in the economy. These fiscal conservatives were joined by right-wing moralists (think Pat Buchanan and Midge Decter), who decried the enervating effect of the "entitlement

culture” created by the City’s generous social welfare programs. This narrative was then embraced by both local financial elites, who benefited tremendously from the new, low tax, “business friendly” policies of the City (Phillips-Fein demonstrates how a certain orange-haired son of a racist New York real estate developer benefited tremendously from the new financial order (pp. 257-60)) and “New Democrat” politicians (typified by Beame’s successor, Ed Koch), who rode to power attacking the social-democratic aspirations of their elders as hopelessly naïve and financially ruinous.

Fear City is, first and foremost, a political narrative—a gripping story, propulsively told. It is, of course, populated with the obvious characters: federal, state, and local politicians; New York business elites; powerful municipal union bosses; City bureaucrats. Phillips-Fein does not, however, limit herself to the politics that occurred in the halls of power. The book teems with grassroots activity. As the fiscal crisis forced the City to gut its public services, many New Yorkers rose up to defend their beloved institutions, be it a firehouse in working-class Williamsburg, Hostos Community College in the South Bronx, or Sydenham Hospital in Harlem. Phillips-Fein’s narrative thus forms around the push and pull that City officials were subjected to in the middle of the 1970s. Federal officials and the City’s elites demanded austerity, no matter the impact on the lives of New Yorkers. At the same time, those New Yorkers defended the services that they had come to depend on for their health, their safety, and their livelihoods. Phillips-Fein demonstrates that these New Yorkers lost this fight. Social-democratic New York—with its cheap transit fares, its free higher education, and its unparalleled public libraries—vanished. What replaced it was a city run for the benefit of corporate and financial elites. While New York is now portrayed as “the model of postindustrial urban triumph,” Phillips-Fein argues it is also a city of massive wealth disparities, crumbling infrastructure, and a shattered social contract. (P. 306.) As such, New York City is representative of the United States as a whole. It was a canary in the coal mine, the first victim of the ascendance of a new, austerity-oriented, privatized political economy over the egalitarian ambitions of postwar liberalism.

Fear City is not only a page-turning political history of the fiscal crisis. Phillips-Fein has also written an exceptional piece of legal history. Indeed, law courses through the veins of this book. Be it bankruptcy law, the law of municipal finance and taxation, or constitutional law, legal concepts are the armature upon which the story of the fiscal crisis hangs. Was the City approaching constitutionally mandated debt limits? Could the City legally suspend payments on municipal bonds to encourage investors to purchase state-backed debt instruments that would prop up the City’s failing finances? Did the advice of elite lawyers undermine the faith that banks had in municipal debt? What were the legal requirements of the budgeting process? One of Phillips-Fein’s triumphs in *Fear City* is to describe how the answers to these questions shaped the political narrative of the fiscal crisis.

Similarly, the story of the solution to the fiscal crisis sits on the boundary of legal and political history. New York State established hybrid municipal-state agencies to issue debt and control the fiscal operations of the City. The federal government’s support of the City was conditioned on the legal and constitutional authority of these novel agencies to assume control over the local policymaking. Then, as the crisis subsided, the City created new agencies—some public, other public-private hybrids—that implemented the new political order that combined austerity in traditional city programs with generous incentives for private economic development. Thus, Phillips-Fein’s story not only shows how law and legal actors were an integral part of the history of the fiscal crisis. She also demonstrates how the broad political shift that sits at the center of *Fear City*—from social-democratic liberalism to a privatized, market-driven political economy—required the creation of novel legal and administrative institutions.

This fact—that particular visions of urban governance come with their own novel legal institutions—is an obvious law and society platitude. Yet legal historians have not explored this intersection of urban history and legal history. Cities have often been a source of political and legal innovation. Phillips-Fein demonstrates this with respect to social-service provision and government finance, but it is also true in

many other policy areas: civil rights, the environment, education, public health, and economic development, to name only a few. Cities were institutional innovators as well. Phillips-Fein describes the various administrative manifestations of the fiscal reforms imposed on New York City. Each earlier era of reform spawned similar municipal institutional innovations, be they the bridge and tunnel authorities of the Progressive Era, the housing authorities of the New Deal, or the human rights commissions of the postwar period.

This abundance of law at the local level suggests that legal historians should spend more time studying cities. Twentieth-century American legal historians tend to focus on law-making by the federal government, or on high-profile doctrinal areas, such as constitutional law, that are not directly related to the governance of American cities. Additionally, the legal history of cities is very much a history focused on administrative agencies and administrative law, both subjects that, until recently, legal historians have shied away from. Indeed, even the more recent interest in the administrative state has not focused on cities. Legal historians are “bringing the state back in,” but we have left out the smallest units of government, particularly as we study twentieth-century legal institutions. We need to devote time and resources to studying local governments lest we miss an important location of state-building and policy creation. **Fear City** is a model of how this can be done, and it demonstrates the enormous dividends to be had by doing so.

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