**Jane Manners**

Curriculum Vitae

Temple Beasley School of Law

1719 North Broad Street

Philadelphia, PA 19122

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**ACADEMIC APPOINTMENTS**

Temple Beasley School of Law, Philadelphia, PA

Assistant Professor, July 2021-

Columbia Law School, New York, NY

Academic Fellow, 2019-2021

The New School University, New York, NY

Bernard and Irene Schwartz Fellow, 2018-19

**EDUCATION**

Princeton University, Princeton, NJ

Ph.D. in History, November 2018

Dissertation: Congress and the Problem of Legislative Discretion, 1790 – 1870

M.A. in History (with distinction), September 2013

General Exam Fields: U.S. History, 1787-1877; Anglo-American Legal History; Capitalist Transformations in New York City

Harvard University, Cambridge, MA

J.D., Harvard Law School, June 2009

Teaching Fellow, Morton Horwitz

Articles Editor, *Harvard Civil Rights-Civil Liberties Law Review*

Research Assistant (Lani Guinier, Alex Keyssar, Morton Horwitz)

Intern, Brookline Campaign Finance Reform Committee

Pre-Law Tutor, Mather House

B.A., Harvard College, magna cum laude with high honors in History and Literature, June 1997. John Harvard Scholarship for Academic Achievement of the Highest Distinction.Varsity Cross Country, Indoor and Outdoor Track (Captain 1996- 97). Adams House Neighborhood Development Program (Director 1994-95).

**CLERKSHIP**

2010 Honorable Mark L. Wolf, Chief Judge, United States District Court for the District of Massachusetts

**AWARDS, GRANTS, AND FELLOWSHIPS**

2022 Public Policy Lab Fellow, Temple University

2019 Academic Fellowship, Columbia Law School

2018 Bernard and Irene Schwartz Fellowship, New-York Historical Society

2018 Kathryn T. Preyer Scholar, American Society for Legal History

2018 AHA Littleton-Griswold Research Grant

2017 Mellon/ACLS Dissertation Completion Fellowship

2017 J. Willard Hurst Summer Institute in Legal History Fellowship

2016 Samuel I. Golieb Fellowship in Legal History, New York University School of Law

2016 Patricia and John Klingenstein Short-Term Fellowship, New-York Historical Society

2016 Max-Planck Institute for European Legal History Summer Academy Fellowship

2014 Laurance Rockefeller Graduate Prize Fellow, Princeton University Center for Human Values

2014 William Nelson Cromwell Fellowship, American Society for Legal History

2014 Graduate Alumni Award for Excellence in Teaching, Princeton University

2013 Program in American Studies Summer Research Prize, Princeton University

2013 Student Research Colloquium Fellow, American Society for Legal History

2009 Post-Graduate Research Fellowship, Harvard Law School

2008 Bok Center Certificate of Distinction in Teaching, Harvard University

2008 Summer Research Fellowship, Harvard Law School

2008 International Achievement Summit Student Delegate, Kailua-Kona, Hawaii

2006 Heyman Fellowship for Government Service, Harvard Law School

1995 Radcliffe Traveling Fellowship

1993 National Merit Scholarship

**ACADEMIC PUBLICATIONS**

2022 “*New Democracy* and the Problem of Legislative Discretion (review),” *Yale Journal on Regulation Blog* (Aug. 3, 2022) (symposium on William Novak’s *New Democracy: The Creation of the Modern American State*).

https://www.yalejreg.com/nc/symposium-novak-new-democracy-11/

2022 “Impunity for Acts of Peremptory Enslavement: James Madison, the U.S. Congress, and the Saint Domingue Refugees,” 79 *William and Mary Quarterly* 425 (2022) (co-authored with Andrew J. Walker, Ana María Silva Campo, Jean M. Hébrard, and Rebecca J. Scott).

2021 “Executive Power and the Rule of Law in the Marshall Court: A Re-Reading of *Little v. Barreme* and *Murray v. The Charming Betsy,***”** 89 *Fordham Law Review* 1941 (2021) (symposium issue).

2021 “The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence,” 121 *Columbia Law Review* 1 (2021) (with Lev Menand).

2021 “*Inventing Disaster: The Culture of Calamity from the Jamestown Colony to the Johnstown Flood* by Cynthia A. Kierner (review),” *Journal of the Early Republic*, Summer 2021.

2020 “Recovering the Lost History of Presidential Removal Law,” *Administrative & Regulatory Law News*, Spring 2020 (with Lev Menand).

2019 “Not Just a Contract Case: Dartmouth College v. Woodward’s Law-of-the-Land Legacy.” *HistPhil Dartmouth College v. Woodward Forum.* https://histphil.org/2019/07/25/not-just-a-contract-case-dartmouth-college-v- woodwards-law-of-the-land-legacy/

2019 “The Great New York Fire of 1835 and the Marketing of Disaster,” *New-York Historical Society: From the Stacks*. http://blog.nyhistory.org/the-great-new-york-fire-of-1835-and- the-marketing-of-disaster/

2017 “The Township, The Hope of Democracy?: History as Moral Act,” 70 *Vanderbilt Law Review En Banc* 101 (2017)

2016 “Disaster Relief in Antebellum America,” *Law and LAPA at Princeton*, vol. 1, no. 3

2013 “Stephen G. Breyer,” *The Supreme Court Justices, Illustrated Biographies, 1789-2012* (Clare Cushman, ed., 3rd edition)

2012 Review of Kenneth E. Marshall, *Manhood Enslaved: Bondmen in Eighteenth- and Early- Nineteenth-Century New Jersey* in *Annual Bulletin of Historical Literature* (vol. 96)

1998 “Repackaging Segregation?: A History of the Magnet School System in Montclair, NJ,” *Race Traitor*, Winter 1998

**OTHER SELECTED PUBLICATIONS**

2020 “Democrats Have Been Right to Insist on a Relief Package That Helps All Americans,” *The Washington Post*. Op-ed tracing the 185-year history of disaster relief to the well-off.

2020 “Will the Supreme Court Protect Agencies from Trump’s Reach?,” *The New York Times* (with Lev Menand)*.* Op-ed urging preservation of agency independence.

2006 “A Model for Fair Campaigns,” *The Boston Globe* (with Christine A. Desan). Op-ed critique of Supreme Court campaign finance decision.

2002 “Voiding Checkbook Politics,” *The Nation*. Review of Bruce Ackerman and Ian Ayres’ *Voting With Dollars*.

2001 “Joe Hill Goes to Harvard,” *The Nation*. Student living wage activism.

2000 “Can’t Keep a Good Man Down,” *Brill’s Content*. The professional resurrection of disgraced former *Boston Globe* columnist Mike Barnicle.

**ARTICLES IN PROGRESS**

“**Seeking Impunity for Acts of Enslavement:** **An 1809 Petition from Saint-Domingue Refugees to President James Madison” (with Jean Hébrard, Rebecca J. Scott, Ana María Silva, and Andrew J. Walker) (forthcoming July 2022, *The William and Mary Quarterly*)**

In 1809, a group of men fleeing the aftermath of the Haitian Revolution and styling themselves “French refugees from Saint-Domingue” petitioned President James Madison for an unusual indulgence: permission to bring with them to New Orleans their Black “domestiques.” Aware of the United States’ 1807 ban on transporting captives of African descent onto American shores, the petitioners sought an exception to the rule. Conspicuously absent from their request was the fact that, thanks to the legal abolition of slavery by the French National Assembly in 1794, the men, women, and children the petitioners sought to bring with them were in fact citizens, not slaves. This Article, based on a recently-discovered copy of the petition, traces the request as it moved through Congress, ultimately resulting in a bill granting the petitioners’ request in June 1809. The re-enslavement thus achieved with Congress’s willing complicity calls for a re-evaluation of both the early years of the 1807 importation ban and the complicated racial politics underlying the ban itself.

“**The Great New York Fire of 1835 and the Legal Architecture of Disaster”**

**Chapter in *Rethinking American Disaster*, in press (LSU Press, Spring 2023)**

Today, officer immunity from tort liability is a well-settled common law doctrine: American government officers are not liable for discretionary acts within the scope of their employment. In early America, however, no such immunity existed; instead, liable officers sought legislative indemnification. This paper investigates an early experiment with officer immunity. In 1806, New York passed a statute authorizing New York City’s mayor to destroy buildings to create a firebreak, promising compensation to property owners. When, in 1835, the mayor exercised this authority, the lawsuits that followed highlighted the political complications of officer immunity and suggest the roots of today’s doctrine.

**“’Storehouse of the Industry of the Nation’: Fire and Federalism in the Age of Jackson”**

**(currently at revise & resubmit stage at Law and History Review)**

This article, on the aftermath of the Great New York Fire of 1835, focuses on an understudied aspect of nineteenth century American federalism: the politics of special legislation. Scholars often analyze the constitutional dimensions of the storied congressional debates of the era—over the tariff, internal improvements, and slavery—in terms of vertical federalism: the extent to which federal activity was seen as encroaching on state sovereignty. But in the aftermath of the fire, which destroyed the wealthy commercial district surrounding the city’s port, the central tension in congressional debates over relief to the fire’s victims was not jurisdictional. It was instead the conviction that the relief conferred, in the words of Kentuckian Benjamin Hardin, “exclusive benefits upon certain merchants and importers in the city of New York.” Hardin’s charge lay at the heart of the Jacksonian critique of government: that legislation, variously labeled “partial,” “special,” “local,” or “class,” benefited one group over, and often at the expense of, another. Although scholars have studied the politics of special legislation at the state level, tracking the populist ferment that ultimately led most states, by the turn of the 20th century, to constitutionally mandate “general laws,” they have largely overlooked its federal counterpart. This oversight has caused scholars of federalism to miss the extent to which antipathy to special legislation animated congressional debate—and conceptions of federal power—in the Jacksonian era. This Article begins to fill in this gap, analyzing debate over the New York fire relief bill through the lens of special legislation and showing how accusations of unconstitutional favoritism ultimately led relief proponents to put forward two novel arguments, rooted in claims of right, on the one hand, and necessity, on the other. Importing merchants effectively functioned as the nation’s tax farmers, the first argument went, paying duties to the government in exchange for the privilege of selling imported goods in the domestic market. The fire had destroyed this “consideration,” and so the merchants were owed relief, in the form of returned duties on burnt goods, as a matter of right. Second, proponents argued that Congress could not afford to ignore a fire in the nation’s commercial center, the effects of which would be felt throughout the country. In the nation’s increasingly interconnected economy, they insisted, New York’s importing merchants were too big to fail; by relieving them, Congress would relieve the nation. This Article thus calls attention to a neglected register of constitutional debate, in which accusations of special legislation gave rise to arguments rooted in claims of right and of necessity.

This article received the Kathryn T. Preyer Scholars Award for best paper in legal history by a junior scholar from the American Society for Legal History in 2018.

**“The Constitution’s Phantom Menace: Equality of the States, Necessity, and the Port Preference Clause in Congress, 1790-1836”**

“The fundamental principle of equal sovereignty remains highly pertinent,” Justice Roberts wrote in 2013’s *Shelby County v. Holder*, “in assessing…disparate treatment of States.” Scholars looking for the roots of this doctrine have largely concluded that it is “made up,” although its logic corresponds with earlier Court efforts, beginning with *Dred Scott*,to limit the implications of the privileges and immunities of citizenship. The Constitution safeguards federalism, the prevailing analysis goes, not through a doctrine of equal sovereignty but through political structure: the requirement that each state gets two senators, for instance, and the guarantees of state representation in the House of Representatives and the Electoral College. This Article argues that the search for an elusive constitutional principle of state equality is nothing new, and that by looking for the roots of this quest in Congress, rather than in case law, we discover its true historical significance. Beginning in debates over the admission of Missouri as a slave state in 1820, it reveals, members of Congress looked to the language of the Constitution for evidence of a foundational commitment to state equality, using obscure provisions like Article I, Section 9’s Port Preference Clause as textual proxies for a broader constitutional prohibition on any law deemed to give one state preferential treatment. As the nation’s debates over the major political questions of the antebellum era—internal improvements, the tariff, slavery—dug deep trenches between sections of the country, this Article shows, the Constitution’s phantom mandate of state equality became a key terrain on which these battles were fought in Congress.

**“The Forgotten Tenure of a Term of Years” (with Lev Menand)**

In recent years, judges and scholars have puzzled over statutes like the Securities Exchange Act, which appear to create independent agencies but whose officers, appointed for a term of years, are not removable “for cause.” This has led some to speculate that the President’s authority to remove these officers is unlimited. This Article, the second in a three-part series, builds on “The Three Permissions” (Columbia Law Review, 2021) to show that as a matter of legislative intent, this speculation is wrong. A term of years tenure, it reveals, has since at least the seventeenth century been understood to be inviolable: absent statutory or constitutional language to the contrary, term-tenured officials are only removable via impeachment. Surprisingly, given the contemporary confusion, this widespread understanding endured until well into the twentieth century, and Congress repeatedly used the tenure to shield key officials from political interference and executive dismissal. Drawing on legal treatises, case law, and legislative history, this Article excavates this forgotten meaning, showing that this understanding predominated as recently as the 1970s. In so doing, it clarifies the intended relationship between some of the most powerful officials in our government and underscores the muddled nature of several recent Supreme Court opinions, which misread the statutes at issue in the ongoing jurisprudential contest over presidential removal power.

**“Gaslighting the Administrative State: The Rise of Unitary Executive Theory and the Transformation of Federal Removal Law” (with Lev Menand)**

This Article, the third in a three-part series, seeks to explain how the term of years tenure, one of the fundamental building blocks of agency design, got lost. It traces the intellectual history of a multi-century effort to locate an inherent power of removal in the executive. This effort has its roots in eighteenth century England; reached an initial climax in mid-nineteenth century America; and broke out into the mainstream in 1926 when former President William Howard Taft wrote a 6-3 majority opinion in *Myers v. United States* striking down a law requiring the President to seek Senate consent before removing a postmaster. Although much of Taft’s achievement was cut down by a unanimous Court nine years later, and seemingly buried for good by Justice Rehnquist in the mid-1980s, the rise of the unitary executive theory on the right and presidential administration on the left subsequently eroded the structural law of the administrative state and revived the dicta in *Myers* regarding executive power. First in 2010, and again this year, the Court struck down agencies created by the political branches. These opinions purport to locate an inherent executive power to remove in Article II—a power few if any thought was there for most of our history but which many committed presidentialists have spent much of the last two hundred years hoping to find.

**TALKS, PRESENTATIONS, PANELS & WORKSHOPS**

2022 “Constitutional History is Political History.” American Political History Conference Roundtable. Purdue University (broadcast on C-SPAN 2). June 11.

2022 “The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence” (invited talk via Zoom). Tel Aviv University, Buchmann Faculty of Law. May 16.

2022 “Corruption and the Political Preconditions of Regulatory Reform.” Networks, Platforms, and Utilities Conference (invited panelist). Vanderbilt Law School. April 22.

2022 “The Great New York Fire and the Legal Architecture of Disaster.” Faculty Colloquium Workshop. Penn State Law (via Zoom). April 14.

2022 Interview with Alexander Keyssar, Matthew W. Stirling, Jr. Professor of History and Social Policy, Harvard Kennedy School. Temple Public Policy Lab Interview Series. March 25.

2022 “Cities and Countrysides: The Making of Modern Political Space in Mexico and the United States.” American Historical Association Roundtable (via Zoom). February 22.

2021 “Fighting Fire: A Story of Disaster, Officer Liability, and Public Power.” Writers’ Bloc(k) Workshop. University of Pennsylvania Law School (via Zoom). July 16.

2021 “Precedent, Charity, and the Equitable Consideration of Congress: Disaster Relief in the Early Republic.” Congress and History 2021. University of Kansas (via Zoom). June 10.

2020 “The Law of Nations in a Footnote: A Re-Reading of *The Charming Betsy*.” The Federalist Constitution: A Forum at Fordham Law School (via Zoom). October 2.

2020 “The Three Permissions: The Statutory Limits of Agency Independence.” Administrative Law New Scholarship Roundtable (with Lev Menand). Yale Law School (via Zoom). August 31.

2020 “Review of *Seila Law v. CFPB*.” Columbia Law Faculty Public Law Workshop (via Zoom). July 22.

2020 “The History of The Insurrection Act.” Columbia Law Faculty Public Law Workshop (via Zoom). July 1.

2020 “Presidential Removal: Defining Inefficiency, Neglect of Duty, and Malfeasance in Office.” Writers’ Bloc(k) Workshop (with Lev Menand). University of Pennsylvania Law School (via Zoom). April 15.

2020 “Removal Permissions and the Statutory Limits on Agency Independence.” Columbia Legal History Workshop. January 29.

2019 “The Problem of Legislative Discretion, 1790-1870.” American Society for Legal History. November 23.

2019 “Executive Power, Officer Indemnity, and A Government of Laws, Not of Men: A Re-Reading of*The Charming Betsy* and *Little v. Barreme*.” Writers’ Bloc(k) Workshop. University of Pennsylvania Law School. July 29.

2019 “The Great New York Fire of 1835 and the Roots of Federal Disaster Relief.” Society for Historians of the Early American Republic (SHEAR) Annual Meeting. July 19.

2019 “The Public/Private Law Divide.” Northwestern University Book Manuscript Workshop (Justin Simard, *Legal Economy: Lawyers and the Development of American Commerce, 1780-1870*). May 17.

2019 “The Great Fire of 1835.” Weekend With History, New-York Historical Society. April 13.

2019 “Congress as a Court of Equity: Joseph Story, Law Reform, and the Forming of Charles Sumner’s Legal Mind.” History Workshop, The New School University. April 9.

2019 “Individualized Lawmaking and the Problem of Legislative Discretion.” Boston College Legal History Roundtable. March 14.

2019 “The Great Fire of 1835 and Disaster Relief.” Fellows Talk Series, New-York Historical Society. January 9.

2019 “’Storehouse of the Industry of the Nation’: Fire and Federalism in the Age of Jackson.” American Historical Association (AHA) Annual Meeting. January 5.

2018 “’Storehouse of the Industry of the Nation’: Fire and Federalism in the Age of Jackson.” American Society for Legal History (ASLH) Kathryn T. Preyer Panel. November 10.

2018 “The Constitution’s Phantom Menace: Equality of the States and Tax Relief in Congress, 1790-1836.” Society for Historians of the Early American Republic (SHEAR) Annual Meeting. July 20.

2017 “Whose Disaster? What Responsibility? Disasters and Research Strategies.” American Political Science Association (APSA) Annual Meeting. August 31.

2016 “’To Bring About a Result So Desirable’: Crafting a Right to Duty Remission in the Wake of the Great New York Fire of 1835.” University of Maryland Washington Area Early American Seminar. Dec. 2.

2016 “’To Bring About a Result So Desirable’: Crafting a Right to Duty Remission in the Wake of the Great New York Fire of 1835.” NYU Law School Legal History Colloquium. October 26.

2016 “’Infinitely Dangerous to the Revenue of the United States’: The Great New York Fire of 1835 and the Law of Disaster Relief in Jacksonian America.” Max Planck Institute for European Legal History. July 18-29.

2016 “’The Storehouse of the Industry of the Nation’: The Great New York Fire of 1835 and the Politics of Disaster Relief.” Law and Society Association (LSA) Annual Meeting. June 2-5.

2016 “The Great New York Fire of 1835: A Right to Tax Relief in Early America?” Brown University Legal History Graduate Student Conference. April 23.

2016 “The Great New York Fire of 1835 and Its Role in the Evolution of the U.S. Antebellum Political Economy.” Program in Law and Public Affairs (LAPA). April 6.

2015 “Disaster Relief in the Early Republic.” Modern America Workshop. October 22.

2015 “The Great New York Fire of 1835 and Its Role in the Evolution of the U.S. Antebellum Political Economy.” UCHV Graduate Prize Fellows Seminar. February 23.

2015 “The Great New York Fire of 1835: An Early Instance of Too Big to Fail?” Princeton Area Alumni Association. January 9.

2014 “An Early American Federal Bailout.” ASLH Student Research Colloquium. October 29-31.

2014 “Customs Revenue and the New York Fire of 1835.” Program in American Studies Graduate Salon. April 18.

2013 “The Great New York Fire of 1835 and the Politics of Disaster Relief.” The History Project Annual Conference on Commerce, Corporations and the Law. September 27-28.

2002 “’Can This Be A Woman?’: An Irish Maidservant and Murderer in Nineteenth-Century Toronto.” Organization of American Historians Annual Meeting. April 11-14.

**TEACHING EXPERIENCE AND PROFESSIONAL DEVELOPMENT**

**Temple Beasley School of Law**

Torts. Fall 2021.

American Legal History. Spring 2022.

**Columbia Law School**

Legal Research and Writing for LLMs. Fall 2019 and Spring 2021.

**The New School University**

Disaster!: Earthquakes, Floods, Fires, and Other Calamities in American History. Twice-weekly undergraduate seminar. Fall 2018.

Exit and Exclusion in American History. Twice-weekly undergraduate seminar. Spring 2019.

**Princeton University**

American Legal Thought. Preceptor for Hendrik Hartog. Fall 2013.

**Harvard University**

The Warren Court and the Pursuit of Justice, 1953-1969. Teaching Fellow for Morton Horwitz. Fall 2009 & Fall 2008.

American Constitutional History from the Framing to the Present. Teaching Fellow for Morton Horwitz. Fall 2007.

**UNIVERSITY AND COMMUNITY SERVICE**

Editorial Board, Journal of American Constitutional History 2022-present

Cromwell Fellowship Committee Member, American Society for Legal History 2022

Award ~$50,000 in financial support to promising junior scholars

Hurst Fellowship Fundraising Committee, American Society for Legal History 2019

Raised over $25,000 to support the Hurst Summer Institute in Legal History.

Princeton Community Democratic Organization (PCDO) Executive Board 2021-present

Vice President, 2022. Organize support for Democratic candidates for local,

state, and national office.

Kenya Scholar Access Project (KenSAP) Board of Directors 2009-present

Secretary, 2009-present. Help low-income Kenyan high school students

apply to highly selective US colleges and universities.

**NON-ACADEMIC WORK EXPERIENCE**

2008 & 2009 Summer Associate, Ropes & Gray LLP, Boston, MA

2007 Summer Intern, The Advancement Project, Washington, DC

2004 Associate Producer, On Point with Tom Ashbrook, WBUR, Boston, MA

2003 Director of Scheduling, Wesley Clark Presidential Campaign, Manchester, NH

2000-2003 Senior Program Associate, US Governance and Public Policy, Open Society Institute (Soros Foundation), New York, NY

1999-2000 Staff Writer, *Brill’s Content*, New York, NY

1999 Intern, *The Nation*, New York, NY

1997-1998 Teacher (1st and 6th grade), The American International School of Genoa, Italy

**LANGUAGES**

French: conversational

Italian: good

Spanish: good

**ACADEMIC AND BAR MEMBERSHIPS**

American Historical Association

American Society for Legal History

American Political Science Association

Massachusetts Bar Association

**REFERENCES**

Elizabeth S. Blackmar

Mary and David Boies Professor of American History

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Hendrik Hartog (advisor)

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