

CURRICULUM VITAE

James W. Ely, Jr.
Milton R. Underwood Professor of Law, Emeritus
and Professor of History, Emeritus

July 6, 2010

I. Education and Honors

Princeton University: B.A. with honors; C.O. Joline Prize for American Political History, 1959.

Harvard University: LL.B., 1962.

University of Virginia: M.A., 1968, Ph.D. (History), 1971.

II. Employment

Law Practice: admitted to the practice of law in New York, 1962. Associated with Harris, Beach, Wilcox, Dale, and Linowitz, Rochester, New York.

University of Virginia: Instructor, spring semester 1970, summer session, 1970.

Virginia Commonwealth University: Instructor of History, 1970-1972; Assistant Professor of History, 1972-1973.

Vanderbilt University: Visiting Assistant Professor of Law, spring semester, 1973; Assistant Professor of Law, 1973-1975, Associate Professor of Law, 1975-1978; Professor of Law, 1978- ; Milton R. Underwood Chair in Free Enterprise, 1999 -; Professor of History, 1988 -; Fed Ex Research Professor, Spring 2003; Emeritus, 2009.

University of Leeds: Visiting Professor of Law, 1981-1982.

University of Tulsa: Chapman Distinguished Visiting Professor of Law, spring semester 1985.

III. Published Works

Books

The Crisis of Conservative Virginia: The Byrd Organization and the Politics of Massive Resistance (University of Tennessee Press, 1976).

Cases and Materials on Modern Property Law (West Publishing Co. 1984) (with Jon W. Bruce) (second edition 1989, third edition 1994, fourth edition 1999, fifth edition 2003, sixth edition, 2007)).

Ambivalent Legacy: A Legal History of the South (University Press of Mississippi, 1984) (with David J. Bodenhamer, eds.).

Legal Papers of Andrew Jackson (University of Tennessee Press, 1987) (with Ted Brown, eds.).

The Law of Easements and Licenses in Land, (Warren, Gorham & Lamont, Inc. 1988) (with Jon W. Bruce) (revised edition 1995) (reissued West Group 2001) (revised edition March 2010).

An Uncertain Tradition: Constitutionalism and the History of the South (University of Georgia Press, 1989) (with Kermit L. Hall, eds.).

The Guardian of Every Other Right: A Constitutional History of Property Rights (Oxford University Press, 1992, second edition, 1998, third edition, 2008).

Oxford Companion to the Supreme Court (Oxford University Press, 1992), Editor (with Kermit L. Hall, Editor in Chief, and Joel B. Grossman and William M. Wiecek, editors) (second edition, 2005).

The Bill of Rights in Modern America: After 200 Years (Indiana University Press, 1993) (with David J. Bodenhamer, eds.), revised and expanded edition 2008.

The Chief Justiceship of Melville W. Fuller, 1888-1910 (University of South Carolina Press, 1995).

Property Rights in American History (six volumes, Garland Publishing, 1997), Series Editor.

Railroads and American Law, (University Press of Kansas, 2001).

A History of the Tennessee Supreme Court, editor and co-author, University of Tennessee Press, 2002.

Oxford Companion to American Law (Oxford University Press, 2002), Editor, with Kermit L. Hall, Editor-in-Chief, and David S. Clark, Joel B. Grossman, and N.E.H. Hull, editors.

The Fuller Court: Justices, Rulings, and Legacy (ABC-CLIO, 2003).

American Legal History: Cases and Materials, third edition (Oxford University Press 2005) (with Kermit L. Hall and Paul Finkelman).

The New Encyclopedia of Southern Culture, Volume 10: Law and Politics (University of North Carolina Press, 2008), Editor with Bradley G. Bond.

The Oxford Guide to United States Supreme Court Decisions, second edition (Oxford University Press, 2009) (with Kermit L. Hall, eds.).

Monograph

Federalism Across the Nineteenth Century, 1787-1905, pamphlet series, American Historical Association, 2010.

Articles and Chapters in Books

"American Independence and the Law: A Study of Post-Revolutionary South Carolina Legislation," 26 *Vanderbilt Law Review* 939 (October 1973).

"Negro Demonstrations and the Law: Danville as a Test Case," 27 *Vanderbilt Law Review* 927 (October 1974). [reprinted in Kermit L. Hall, ed., *Civil Rights in American History* (Garland Publishing, 1987), in David J. Garrow, ed., *We Shall Overcome: The Civil Rights Movement in the United States in the 1950's and 1960's*, Volume one (Carlson Publishing, 1989) and in Paul Finkleman, ed., *The Era of Integration and Civil Rights, 1930-1990* (Garland Publishing, 1992)].

"Harper's Ferry Revisited: Father Costello's 'Short Sketch' of Brown's Raid," 85 *Records of the American Catholic Historical Society* 59 (March-June 1974) (with Daniel P. Jordan, eds.)

"Charleston's Court of Wardens, 1783-1800: A Post-Revolutionary Experiment in Municipal Justice," 27 *South Carolina Law Review* 645 (February 1976). [reprinted in Kermit L. Hall, ed., *The Courts in American Life* (1987)].

"'That no office whatever be held during life or good behavior': Judicial Impeachments and the Struggle for Democracy in South Carolina," 30 *Vanderbilt Law Review* 167 (March 1977).

"Forward: Symposium on the Legal History of the South," 32 *Vanderbilt Law Review* 1 (January 1979) (with Terry Calvani).

"Law in a Republican Society: Continuity and Change in the Legal System of Post-Revolutionary America," in Richard A. Preston, ed., *Perspectives on Revolution and Evolution* (Duke University Press, 1979).

"The Legal Practice of Andrew Jackson," 38 *Tennessee Historical Quarterly* 421 (Winter 1979). [reprinted in Kermit L. Hall, ed., *The Legal Profession* (1987)].

"Patterns of Statutory Enactment in South Carolina, 1720-1770," in Herbert A. Johnson, ed., *South Carolina Legal History* (University of South Carolina, 1980).

"Andrew Jackson as Tennessee State Court Judge, 1798-1804," 40 *Tennessee Historical Quarterly* 144 (Summer 1981).

"The Chicago Conspiracy Case," in Michal R. Belknap, ed., *American Political Trials* (Greenwood Press, 1981, rev. ed. 1994).

"J. Lindsay Almond and the Politics of School Desegregation," in Edward Younger and James Tice Moore, eds., *The Governors of Virginia, 1860-1978* (University Press of Virginia, 1982).

"Poor Laws of the Post-Revolutionary South, 1776 - 1800," 21 *Tulsa Law Journal* 1 (1985).

"The Eighteenth-Century Poor Laws in the West Riding of Yorkshire," 30 *American Journal of Legal History* 1 (January 1986).

"'There are few subjects in political economy of greater difficulty': The Poor Laws of the Antebellum South," 1985 *American Bar Foundation Research Journal* 849.

"Regionalism and American Legal History: The Southern Experience," 39 *Vanderbilt Law Review* 539 (April 1986) (with David J. Bodenhamer).

"'The Good Old Cause': The Ratification of the Constitution and Bill of Rights in South Carolina," in Robert J. Haws, ed., *The South's Role in the Creation of the Bill of Rights* (University Press of Mississippi, 1991).

"'that due satisfaction may be made: the Fifth Amendment and the Origins of the Compensation Principle,'" 36 *American Journal of Legal History* 1 (January 1992).

"The Railroad Question Revisited: *Chicago, Milwaukee, & St. Paul Railway* and Constitutional Limits on State Regulations," 12 *Great Plains Quarterly* 121 (Spring 1992). [reprinted in John R. Wunder, ed., *Law and the Great Plains: Essays on the Legal History of the Heartland* (1996)].

"Property Rights and Liberty: Allies or Enemies?" 22 *Presidential Studies Quarterly* 703 (Fall 1992).

"The South, the Supreme Court, and Race Relations, 1890-1965" in Larry J. Griffin and Don H. Doyle, eds., *The South as an American Problem* (University of Georgia Press, 1995).

"Property Rights and the Supreme Court in World War II," 1996 *Journal of Supreme Court History*, vol. I, 19-34.

"The Fuller Court and Takings Jurisprudence," 1996 *Journal of Supreme Court History*, vol. II, 120-135.

"Reflections on *Buchanan v. Warley*, Property Rights, and Race," 51 *Vanderbilt Law Review* 953-973 (May 1998).

"Melville Fuller Reconsidered," 1998 *Journal of Supreme Court History*, vol. I, 35-49.

"The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process," 16 *Constitutional Commentary* 315-345 (Summer 1999).

"The Marshall Court and Property Rights: A Reappraisal," 33 *John Marshall Law Review*, 1023-1061 (Summer 2000).

"Property Rights and Judicial Activism," Inaugural Issue, *Georgetown Journal of Law & Public Policy* 125-127 (2002).

" 'the railroad system has burst through State limits:' Railroads and Interstate Commerce," 55 *Arkansas Law Review* 933-980 (2003).

"Can the 'Despotic Power' Be Tamed? Reconsidering the Public Use Limitation on Eminent Domain," 17 *Probate and Property* 30-36 (November/December 2003).

"Property Rights and Free Speech: Allies or Enemies?," 21 *Social Philosophy and Policy* 177 - 194 (2004).

"Property Rights and Environmental Regulation: The Case for Compensation," 28 *Harvard Journal of Law and Public Policy* 51-60 (2004). [reprinted in A. Dan Tarlock and David L. Callies, eds., *Land Use & Environmental Law Review*, 2006 Edition, 39-47].

"Thomas Cooley, 'Public Use,' and New Directions in Takings Jurisprudence," 2004 *Michigan State Law Review* 845-857 (2004).

"The Protection of Contractual Rights: A Tale of Two Constitutional Provisions," 1 *NYU Journal of Law & Liberty* 370-403 (2005).

"Property Rights and Democracy in the American Constitutional Order," in Kermit L. Hall, and Kevin T. McGuire, eds. *The Judicial Branch*. In Institutions of American Democracy Series, ed. by Jaroslav Pelikan. (Oxford University Press, 2005).

" 'Poor Relation' Once More: The Supreme Court and the Vanishing Rights of Property Owners," 2004-2005 *Cato Supreme Court Review* 39. [reprinted in M. N. Bhavani, ed. *Eminent Domain: Use or Abuse?* (Icfai University Press, 2008).

"A Welcome Blow for Property Rights" in Dwight H. Merriam and Mary Massaron Ross, eds., *Eminent Domain Use and Abuse: Kelo in Context* (ABA Section of State and Government Law, 2006), pp 79-80.

"*Kelo*: A Setback for Property Owners," 20 *Probate and Property* 14-15 (January/February 2006). [reprinted Best of ABA Sections, 23 *GP/Solo* 22-23, 44 (September 2006)].

" 'to pursue any lawful trade or avocation': The Evolution of Unenumerated Economic Rights in the Nineteenth Century", 8 *University of Pennsylvania Journal of Constitutional Law* 917-955 (2006).

"The Impact of Richard A. Epstein," 15 *William and Mary Bill of Rights Journal* 421 (2006).

“Economic Liberties and the Original Meaning of the Constitution,” 45 *University of San Diego Law Review* 673 (2008).

“Rufus W. Peckham and Economic Liberty,” 62 *Vanderbilt Law Review* 591 (2009).

“Post-*Kelo* Reform: Is the Glass Half Full or Half Empty?,” 17 *Supreme Court Economic Review* 127 (2009).

“Whatever Happened to the Contract Clause?,” 4 *Charleston Law Review* 371 (2010).

Book Reviews

Lawrence M. Friedman, *A History of American Law*, 27 *Vanderbilt Law Review* 1353 (November 1973).

Donald F. Anderson, *William Howard Taft: A Conservative's Conception of the Presidency*, 52 *Texas Law Review* 408 (January 1974).

William H. Harbaugh, *Lawyer's Lawyer: The Life of John W. Davis*, 72 *Michigan Law Review* 1495 (June 1974).

Leonard Baker, *John Marshall: A Life in Law*, 41 *Journal of Southern History* 106 (February 1975).

Herbert A. Johnson, ed., *The Papers of John Marshall, I, 1775-1788*, 55 *Boston University Law Review* 153 (January 1975).

Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process*, 1975 *Washington University Law Quarterly* 265.

William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830*, 28 *Vanderbilt Law Review* 1147 (October 1975).

A. E. Dick Howard, *Commentaries on the Constitution of Virginia*, 20 *American Journal of Legal History* 75 (October 1975).

Richard M. Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism*, 76 *Columbia Law Review* 361 (March 1976).

George M. Dennison, *The Dorr War: Republicanism on Trial, 1831-1861*, 1977 *Wisconsin Law Review* 293.

Lino A. Graglia, *Disaster by Decree: The Supreme Court Decisions on Race and the Schools*, 14 *Houston Law Review* 955 (May 1977).

Jethro K. Lieberman, *Milestones: 200 Years of American Law; Milestones in our Legal History*, 43 *Journal of Southern History* 444 (August 1977).

Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969*, 36 *Tennessee Historical Quarterly* 425 (Fall 1977).

J. Willard Hurst, *Law and Social Order in the United States*, 31 *Vanderbilt Law Review* 227 (January 1978).

Randall Bridwell and Ralph U. Whitten, *The Constitution and the Common Law: The Decline of the Doctrines of Separation of Powers and Federalism*, 53 *Indiana Law Journal* 277 (1978).

Charles T. Cullen, and Herbert A. Johnson, eds., *The Papers of John Marshall, II, 1788-1795*, 37 *Tennessee Historical Quarterly* 231 (Summer 1978).

Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment*, 23 *Villanova Law Review* 1187 (1978).

Frank T. Read and Lucy S. McGough, *Let Them Be Judged: The Judicial Integration of the Deep South*, 45 *Journal of Southern History* 302 (May 1979).

Thomas G. Barnes, *Hastings College of the Law: The First Century*, 66 *Journal of American History* 178 (June 1979).

Michael S. Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*, 47 *Journal of Southern History* 273 (May 1981).

William F. Duker, *A Constitutional History of Habeas Corpus*, 9 *Reviews in American History* 319 (September 1981).

John Wunder, *Inferior Courts, Superior Justice: A History of the Justices of the Peace on the Northwest Frontier, 1853-1889*, 2 *Criminal Justice History* 186 (1981).

Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity*, 69 *California Law Review* 1755 (December 1981).

Thomas A. Lund, *American Wildlife Law*, 26 *American Journal of Legal History* 79 (January 1982).

Richard Holcombe Kilbourne, Jr., *Louisiana Commercial Law: The Antebellum Period*, 68 *Journal of American History* 935 (May 1982).

Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York*, 31 *UCLA Law Review* 294 (October 1983).

- Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, 59 *Notre Dame Law Review* 485 (1984).
- W. Hamilton Bryson, ed., *Legal Education in Virginia, 1779-1979: A Biographical Approach*, 28 *American Journal of Legal History* 381 (1984).
- Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South*, 44 *Tennessee Historical Quarterly* 103 (Spring 1985).
- Norman Landau, *The Justices of the Peace, 1679-1760*, 3 *Law and History Review* 431 (Fall 1985).
- Charles M. Haar and Daniel W. Fessler, *The Wrong Side of the Tracks*, 38 *Hastings Law Journal* 1297 (August 1987).
- Marylynn Salmon, *Women and the Law of Property in Early America*, 71 *Georgia Historical Quarterly* 497 (Fall 1987).
- Paul W. Keve, *The History of Corrections in Virginia*, 95 *Virginia Magazine of History and Biography* 505 (October 1987).
- Nicholas N. Kittrie and Eldon D. Wedlock, *The Tree of Liberty: A Documentary History of Rebellion and Political Crime in America*, 21 *Law and Society Review* 875 (1988).
- Gail Williams O'Brien, *The Legal Fraternity and the Making of a New South Community, 1848-1882*, 19 *Journal of Interdisciplinary History* 151 (1988).
- Mark V. Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950* and Michal R. Belknap, *Federal Law and Southern Order: Racial Violence and Constitutional Conflict in the Post-Brown South*, 55 *Journal of Southern History* 155 (February 1989).
- Donald S. Lutz, *The Origins of American Constitutionalism*, 9 *Journal of the Early Republic* 247 (Summer 1989).
- Raoul Berger, *The Fourteenth Amendment and the Bill of Rights*, 73 *Georgia Historical Quarterly* 870 (Winter 1989).
- Robert Cray, *Paupers and Poor Relief in New York and Its Rural Environs, 1700-1830*, 71 *New York History* 100 (January 1990).
- Deborah J. Barrow and Thomas G. Walker, *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform*, 76 *Journal of American History* 1327 (March 1990).
- Don E. Feherenbacher, *Constitutions and Constitutionalism in the Slaveholding South*, 34 *American Journal of Legal History* 324 (July 1990).

Anne Hobson Freeman, *The Style of a Law Firm: Eight Gentlemen from Virginia*, 98 *Virginia Magazine of History and Biography* 677 (1990).

Paul Kens, *Judicial Power and Reform Politics: The Anatomy of Lochner v. New York*, 44 *Vanderbilt Law Review* 213 (1991).

Richard C. Cortner, *A 'Scottsboro' Case in Mississippi: The Supreme Court and Brown v. Mississippi*, 9 *Law and History Review* 167 (Spring 1991).

Andrew J. King, ed., *The Papers of Daniel Webster, Legal Papers, Volume 3: The Federal Practice*, 8 *Constitutional Commentary* 246 (Winter 1991).

George R. Boyer, *An Economic History of the English Poor Law, 1750-1850*, 35 *American Journal of Legal History* 340 (July 1991).

Clint Bolick, *A Civil Rights Strategy for America's Third Century*, John Brigham, *Property and the Politics of Entitlement*, and G. Richard Hill, ed., *Regulatory Taking: The Limits of Land Use Controls*, 9 *Constitutional Commentary* 111 (Winter 1992).

Loren P. Beth, *John Marshall Harlan: The Last Whig Justice*, 21 *Reviews in American History* 57 (March 1993).

Paul Finkelman and Stephen E. Gottlieb, eds., *Toward a Usable Past: Liberty Under State Constitutions*, 37 *American Journal of Legal History* 101 (January 1993).

Donald G. Nieman, ed., *The Constitution, Law, and American Life: Critical Aspects of the Nineteenth-Century Experience*, 77 *Georgia Historical Quarterly* 174 (Spring 1993).

Albro Martin, *Railroads Triumphant: The Growth, Rejection & Rebirth of a Vital American Force*, 13 *Great Plains Quarterly* 204 (Summer 1993).

J. Stuart Anderson, *Lawyers and the Making of English Land Law, 1832-1940*, 37 *American Journal of Legal History* 392 (July 1993).

Richard C. Cortner, *The Iron Horse and the Constitution: The Railroads and Transformation of the Fourteenth Amendment*, 92 *Register of the Kentucky Historical Society* 97 (Winter 1994).

Edward A. Purcell, Jr., *Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America, 1870-1958*, 60 *Journal of Southern History* 595 (August 1994).

John McLaren, Hamar Foster, and Chet Orloff, eds., *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West*, 38 *American Journal of Legal History* 237 (April 1994).

Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right*, 52 *William and Mary Quarterly* 212 (January 1995).

John J. Jeffries, Jr., *Justice Lewis F. Powell, Jr.*, 82 *Journal of American History* 367 (June 1995).

David J. Langum, *Crossing Over the Line: Legislating Morality and the Mann Act*, 93 *Register of the Kentucky Historical Society* 362 (Summer 1995).

Shelton Stromquist, *A Generation of Boomers: The Pattern of Railroad Labor Conflict in Nineteenth-Century America*, 15 *Great Plains Quarterly* 212 (Summer 1995).

William H. Pease and Jane H. Pease, *James Louis Petigru: Southern Conservative, Southern Dissenter* and Eugene D. Genovese, *The Slaveholders' Dilemma: Freedom and Progress in Southern Conservative Thought, 1820-1860*, 15 *Journal of the Early Republic* 685 (Winter 1995).

David N. Mayer, *The Constitutional Thought of Thomas Jefferson*, 1 *The Independent Review* 135 (Spring 1996).

Hadley Arkes, *The Return of George Sutherland*, 40 *American Journal of Legal History* 221 (April 1996).

Matthew J. Franck, *Against the Imperial Judiciary: The Supreme Court v. the Sovereignty of the People*, 102 *American Historical Review* 173 (February 1997).

Ronald L. Heinemann, *Harry Byrd of Virginia*, 83 *Journal of American History* 1450 (March 1997).

Glenn W. Fisher, *The Worst Tax? A History of The Property Tax in America*, 84 *Journal of American History* 217 (June 1997).

John Briggs, Christopher Harrison, Angus McInnes and David Vincent, *Crime and Punishment in England: An Introductory History*, 29 *Albion* 644 (Winter 1997).

Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* and Jean Edward Smith, *John Marshall: Definer of a Nation*, 2 *The Independent Review* 450 (Winter 1998).

William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America*, 64 *Journal of Southern History* 164 (February 1998).

Charles M. Haar, *Suburbs and Siege: Race, Space, and Audacious Judges*, 42 *American Journal of Legal History*, 73 (January 1998).

Gregory S. Alexander, *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776-1970*, 43 *American Journal of Jurisprudence* 227 (1998).

John E. Semonche, *Keeping The Faith: A Cultural History of the U.S. Supreme Court*, 66 *Journal of Southern History* 115 (2000).

Mark Whitman, *The Irony of Desegregation Law*, 66 *Journal of Southern History* 163 (2000).

Matthew D. Lassiter and Andrew B. Lewis, eds., *The Moderates' Dilemma: Massive Resistance to School Desegregation in Virginia*, 87 *Journal of American History* 301 (2000).

Harry N. Scheiber, ed., *The State and Freedom of Contract*, 5 *The Independent Review* 149 (2000).

Barbara H. Fried, *The Progressive Assault on Laissez-Faire: Robert Hale and the First Law and Economics Movement*, 44 *American Journal of Legal History*, 88 (2000).

David Delaney, *Race, Place and the Law, 1836-1948*, 44 *American Journal of Legal History*, 293 (2000).

Linda Prybyzewski, *The Republic According to John Marshall Harlan*, 106 *American Historical Review*, 192 (February 2001)

G. Edward White, *The Constitution and the New Deal*, 6 *The Independent Review*, 615 (2002).

Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920*, H-NET Book Review (2002).

Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*, 108 *American Historical Review* 197 (2003).

Steven W. Usselman, *Regulating Railroad Innovation: Business, Technology, and Politics in America, 1840-1920*, 46 *American Journal of Legal History* 504 (2004).

James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War*, 91 *Journal of American History* 1021 (2005)

Terry L. Anderson and Fred S. McChesney, *Property Rights: Cooperation, Conflict and Law*, 9 *The Independent Review* 595 (2005).

Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South*, 23 *Law and History Review* 473 (2005).

Ken I. Kersch, *Constructing Civil Liberties: Discontinuities in the Development of American Constitutional Law*, 11 *The Independent Review* 133 (2006).

Silvana R. Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861-1862*, 24 *Law and History Review*, 687 (2006).

Mark Aldrich, *Death Rode the Rails: American Railroad Accidents and Safety, 1828-1965*, 112 *American Historical Review* 516 (2007).

Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy During the Civil War*, 22 *Continuity and Change* 562 (2007).

Walter W. Manley II and Canter Brown, Jr. *The Supreme Court of Florida, 1917-1972*, 74 *Journal of Southern History* 784 (2008).

Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*, 27 *Law and History Review* 474 (2009).

Robert A. Levy and William Mellor, *The Dirty Dozen: How Twelve Supreme Court Cases Radically Expanded Government and Eroded Freedom*, 14 *The Independent Review* 141 (2009).

Aaron W. Marrs, *Railroads in the Old South: Pursuing Progress in a Slave Society*, 117 *Virginia Magazine of History and Biography* 295 (2009).

Bernie D. Jones, *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South*, forthcoming 28 *Law and History Review* (2010).

Encyclopedias

Contributor to *Encyclopedia of Southern Culture*, eds. Charles Reagan Wilson and William Ferris (University of North Carolina Press, 1989). (four essays)

Contributor to *Historic U.S. Court Cases, 1690-1990: An Encyclopedia*, ed. John W. Johnson (Garland Publishing, Inc., 1992) (second edition, Routledge, 2001) (four essays).

Contributor to *Oxford Companion to the Supreme Court*, Kermit L. Hall, Editor in Chief (Oxford University Press, 1992). (fourteen essays).

"Melville Weston Fuller," in *A Biographical Dictionary of U.S. Supreme Court Justices*, ed. Melvin I. Urofsky (Garland Publishing, Inc., 1994).

Contributor and Consulting Editor, *The Tennessee Encyclopedia of History and Culture*, ed. Carroll Van West (Tennessee Historical Society, 1998) (one essay).

Contributor to *Law in the Western United States*, ed. Gordon M. Bakken (University of Oklahoma Press, 2000) (five essays).

Contributor to *Encyclopedia of New England Culture*, eds. Burt Feintuch and David H. Watters (Yale University Press, 1999) (two essays).

Contributor to *Encyclopedia of the United States in the Nineteenth Century*, ed. Paul Finkelman (Charles Scribner's Sons, 2001) (three essays).

Contributor to *Great American Lawyers: An Encyclopedia*, ed. John R. Vile (2 vols., ABC-CLIO, 2001) (four essays).

Contributor to *Great American Judges: An Encyclopedia*, ed. John R. Vile (2 vols., ABC-CLIO, 2003) (two essays).

Contributor to *Encyclopedia of the Great Plains*. ed. David J. Wishart (University of Nebraska Press, 2004) (one essay).

Contributor to *Encyclopedia of Civil Liberties in America* (M.E. Sharpe, 2005) (three essays).

Contributor to *The Encyclopedia of New England*, eds. Burt Feintuch and David H. Watters (Yale University Press, 2005) (two essays).

Contributor to *The American Midwest: An Interpretive Encyclopedia* (Indiana University Press, 2006) (six essays).

Contributor to *Encyclopedia of American Civil Liberties*, ed. Paul Finkelman (Routledge, 2006) (five essays).

Contributor to *Federalism in America: An Encyclopedia*, eds., Joseph R. Marbach, Ellis Katz, and Troy E. Smith (2006) (two essays).

Contributor to *Encyclopedia of North American Railroads*, eds., William D. Middleton, George M. Smerk, and Roberta L. Diehl (Indiana University Press, 2007) (two essays).

Contributor to *Oxford International Encyclopedia of Legal History* (Oxford University Press, 2009) (two essays).

Contributor to *Milestone Documents of American Leaders* (Schlager Group, Inc., 2009) (essay on Stephen J. Field).

Contributor to *Encyclopedia of the United States*, (Facts on File, 2009) (three essays).

Contributor to *The Yale Biographical Dictionary of American Law* ed. Roger K. Newman (Yale University Press, 2009) (two essays).

IV. Scholarly Papers and Programs

Panelist, "Writing the Legal History of Virginia," American Society for Legal History, November 2, 1972.

"The Ideology of Massive Resistance," Duquesne University History Forum, November 2, 1973.

"'That no office whatever be held during life or good behavior': Judicial Impeachments and the Struggle for Democracy in South Carolina," American Society for Legal History, November 8, 1975.

Discussant, Conference on William Gilmore Sims and the Revolution in South Carolina, May 1976.

"Law in a Republican Society: Continuity and Change in the Legal System of Post-Revolutionary American," Bicentennial Conference on Revolution and Evolution, Duke University, October 15, 1976.

Chairman, "Race Relations and the Law in the Post-Bellum United States," American Society for Legal History, October 23, 1976.

"Patterns of Statutory Enactment in South Carolina, 1720-1770," Reynolds Conference on South Carolina Legal History, December 2, 1977.

"'You will Discover how Loosely Business is Transacted in the Courts of this State': The Legal Practice of Andrew Jackson," American Society for Legal History, October 20, 1978.

Commentator, "Law and Society in the Antebellum South," Organization of American Historians, April 12, 1979.

"I am of the opinion that a good Judiciary lends much to the dignity of a state and the happiness of the people': Andrew Jackson as Tennessee State Court Judge, 1798-1804," American Historical Association, December 30, 1979.

Panelist, "Looking for a Better Way: Canadian Constitutional Development as a Rejection of the American Experience," Legal History Section, American Association of Law Schools, January 5, 1980.

"Andrew Jackson's Experience as a State Court Judge," annual banquet, Tennessee Historical Society, May 13, 1980.

Chairman, "Slavery, Law, and the Legal Profession," Brief Communications Session, American Society for Legal History, October 24, 1980.

Commentator, "School Segregation and the Constitution," Southern Historical Association, November 13, 1980.

Commentator, "The United States in a Nuclear Age," Organization of American Historians, April 4, 1981.

"The United States Supreme Court and Positive Discrimination in American Higher Education," American Studies Group, University of Leeds, May 26, 1982.

"'The Poor Should Always Be an Object of Legislative Attention': Poor Laws of the Post-Revolutionary South," Southern Historical Association, November 5, 1982.

"The 18th Century Poor Laws in the West Riding of Yorkshire," American Society for Legal History, October 21, 1983.

Panelist, "Developing a New Field: The Emergence of Southern Legal History," Southern Historical Association, November 1, 1984.

"'There are few subjects in political economy of greater difficulty': the poor laws of the Antebellum South," Shelby Cullom Davis Center for Historical Studies, Princeton University, December 14, 1984.

"Through A Crystal Ball: Legal Education - Its Relation to the Bench, Bar and University Community," University of Tulsa College of Law, April 10, 1985.

"Regionalism and American Legal History: The Southern Experience," American Society for Legal History, October 18, 1985 (with David J. Bodenhamer).

Discussant-at-Large, The Conference on British Legal Manuscripts, April 3-5, 1986.

Commentator, "Debt and Debt Collection in England," American Society for Legal History, October 25, 1986.

Chairman, "Federal Response to Southern Dissent: Contrasting Approaches," Southern Historical Association, November 13, 1986.

"Legal Outcasts: Vagrants and Unmarried Parents in 18th-Century Yorkshire," Southern Conference on British Studies, November 13, 1986.

Discussant, Conference on Original Intent and the Fifth Amendment, February 12, 1987.

"'the good old cause': The Ratification of the Constitution and Bill of Rights in South Carolina," Chancellor's Symposium on Southern History, University of Mississippi, October 9, 1987.

"'Property was certainly the principal object of society:' The Fifth Amendment and the Origins of the Compensation Principle," Society for Historians of the Early American Republic, August 3, 1990, and Organization of American Historians, April 14, 1991.

Constitutional Law Resource Center Speaker, Drake University Law School, September 27-28, 1990.

"The Railroad Question Revisited: *Chicago, Milwaukee and St. Paul Railway* and Constitutional Limits on State Regulations," Symposium on Law, the Bill of Rights, and the Great Plains, University of Nebraska, March 8, 1991.

"Property Rights and Liberty: Allies or Enemies?" Conference on America's Bill of Rights at 200 Years and the New Democracies, Richmond, Virginia, November 3, 1991.

Commentator, "Virginia Lawyers Fight Discrimination: A Black Law Firm at Mid-Twentieth Century," Southern Historical Association, November 6, 1992.

"Conservative Jurisprudence in the Age of Enterprise: The Fuller Court Reconsidered," American Society for Legal History, October 23, 1993.

"The Role of Professionals in the Early National Period of American History: The Example of Andrew Jackson," Conference on Professionals as Guarantors and Interpreters of Rights, Notre Dame Law School, September 16, 1994.

"Property Rights and the Supreme Court in World War II," Supreme Court Historical Society and Friends of the Law Library of Congress, Washington, D.C., February 9, 1995.

Participant, Liberty Fund Colloquium, "Liberty, the Supreme Court, and the Powers of Congress," Freeport, Maine, June 13-16, 1996.

"Toward a Legal History of American Railroads: Lessons from Antebellum Charters," Pacific Coast Branch of the American Historical Association, San Francisco, August 9, 1996.

Commentator, "Abraham Lincoln and American Law," Abraham Lincoln Association, Springfield, Illinois, February 12, 1997.

"One of the greatest improvements of modern times': Law and the Encouragement of Railroad Enterprise in Antebellum America," Legal History Workshop, Cumberland School of Law, Samford University, April 11, 1997.

Participant, Liberty Fund Colloquium, "Liberty and the History of Property in Land in America," Williamsburg, Virginia, May 15-18, 1997.

"Melville Fuller Reconsidered," Supreme Court Historical Society, Washington, D.C., May 21, 1997.

Commentator, "Theory and Practice of Corporation Law in Late Nineteenth and Early Twentieth Century America," American Society for Legal History, October 17, 1997.

Participant, Donner Conference on Freedom of Contract in Property Law, George Mason University School of Law, December 5-7, 1997.

"The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process," Faculty Workshop Series, George Mason University School of Law, April 14, 1998.

Participant, Liberty Fund Colloquium, "Liberty, Judicial Rationalism, and the Equal Protection of the Laws," Freeport, Maine, May 28-31, 1998.

Panelist, "Southern Law: Is It Distinctive?", Southeastern Conference of the AALS, Marco Island, Florida, July 25, 1998.

Participant, Liberty Fund Colloquium, "Property: Old and New," Tucson, Arizona, December 3-6, 1998.

Panelist, "Environmental Justice, Property Rights and American Values," Dialogue on Environmental Justice, College of William and Mary, February 20, 1999.

Participant, Liberty Fund Colloquium, "Liberty or License: Self-Government and the Regulation of Speech," Freeport, Maine, June 10-13, 1999.

Commentator, "The Poor Laws in Historical Perspective," American Society for Legal History, October 23, 1999.

"The Marshall Court and Property Rights: A Reappraisal," Symposium on Chief Justice John Marshall and the United States Supreme Court, 1801-1835," John Marshall Law School, Chicago, Illinois, April 5, 2000.

Participant, Liberty Fund Colloquium, "The Four Horsemen and Liberty," Alexandria, Virginia, April 13-16, 2000.

Participant, Liberty Fund Colloquium, "Roman Law and Liberty," Newport, Rhode Island, May 10-13, 2001.

Panelist, "Property Rights Protection: Judicial Activism on a Return to First Principles?," Federalist Society National Lawyers Convention, Washington, D.C., November 17, 2001.

"'the railroad system has burst through State limits': Railroads and Interstate Commerce, 1830-1920," The Commerce Clause, Past, Present and Future, University of Arkansas School of Law, March 14-15, 2002.

"Can the 'Despotic Power' be Tamed? Reconsidering the Public Use Limitation on Eminent Domain," Distinguished Lectureship in Real Property, William S. Richardson School of Law, University of Hawaii, November 22, 2002.

Panelist, "The Role of Property in Other Constitutional Rights," Constitutional Law Section, Association of American Law Schools, January 3, 2002.

“Property Rights and Free Speech: Allies or Enemies?”, Freedom of Speech Conference, Bowling Green State University, April 10-13, 2003.

Panelist, “Problems of Official Histories: Ensuring Fairness and Balance in Court History Projects,” American Association for State and Local History, Providence, Rhode Island, September 19, 2003.

Panelist, “Regional and State Legal History in the Age of the New Federalism,” Section on Legal History, Association of American Law Schools, Atlanta, Georgia, January 5, 2004.

Panelist, “The Death of *Poletown*: The Future of Eminent Domain and Urban Development After *County of Wayne v. Hathcock*,” Michigan State University College of Law, November 12, 2004.

Commentator, “The Public/Private Tension and Its Implications for Art Law,” Symposium on International Dimensions of Art and Cultural Property, Vanderbilt University Law School, February 19, 2005.

“Origins and Development of the Contract Clause,” Center of Law and History, Washington and Lee University, School of Law, April 8, 2005.

“Abraham Lincoln as a Railroad Attorney” and “Lincoln and the Rock Island Bridge Case,” Indiana Historical Society, April 16, 2005.

Panelist, “Academic Reflections on Professor Epstein’s Work,” Brigham-Kanner Property Rights Conference, William and Mary School of Law, October 29, 2005.

“Property and Liberty and the American Constitutional Order: An Historical Analysis, with a Focus on Just Compensation,” Eminent Domain and Land Valuation Litigation, American Law Institute [≠] American Bar Association, San Diego, January 5, 2006.

“ ‘to pursue any lawful trade or avocation’: The Evolution of Unenumerated Economic Rights in the Nineteenth Century,” Symposium on the Future of Unenumerated Rights, University of Pennsylvania Journal of Constitutional Law, February 10, 2006, Philadelphia.

“Magna Carta and the Evolution of Property Rights,” Contemporary Art Center of Virginia, April 24, 2007.

“Economic Liberties and the Original Meaning of the Constitution,” Siegan Conference on Economic Liberties and the Constitution, University of San Diego, November 16-17, 2007.

Panelist, “Post-*Kelo* Reform,” Federalist Society Faculty Conference, New York, New York, January 4, 2008.

Participant, Liberty Fund Colloquium, "The Federalists, the Anti-Federalists, and the Constitution They Created," La Jolla, California, January 24-27, 2008.

Commentator, "The United States Supreme Court: Contested Constitutional Doctrines," Michigan State University, East Lansing, Michigan, March 27-March 29, 2008.

"Rufus W. Peckham and Economic Liberty," Judicial Reputation: A Conference on Neglected Justices, Vanderbilt University Law School, Nashville, Tennessee, April 4, 2008.

"Property Rights in American History," Free Market Forum, Hillsdale College, September 26, 2008.

Panelist, "Separation of Powers and Property Rights," Brigham-Kanner Property Rights Conference, William and Mary School of Law, October 17, 2008.

"Post-*Kelo* Eminent Domain Reforms," Nelson Symposium, University of Florida College of Law, February 13, 2009.

Chair, "Uncertain Traditions: Reconsidering Constitutionalism and Southern History," Organization of American Historians, Seattle, March 28, 2009.

"Is Property the Cornerstone of Liberty?" Carl Menges Lecture, Alexander Hamilton Institute, April 30, 2009.

"Whatever Happened to the Contract Clause?," Clough Center for the Study of Constitutional Democracy, Boston College, September 30, 2009.

Panelist, "The Contract Clause Reconsidered" and "Richard E. Pipes's Property Rights Scholarship," Brigham-Kanner Property Rights Conference, William and Mary School of Law, October 16-17, 2009.

Discussant, Federalism Roundtable, Vanderbilt University Law School, Nashville, Tennessee, February 25, 2010.

Participant, Federalist Society and Liberty Fund Colloquium, "Constitutional Economics," Cambridge, Mass., June 18-19, 2010.

Panelist, "Defining Just Compensation," Brigham-Kanner Property Rights Conference, William and Mary School of Law, October 1, 2010.

"Railroad Regulation in the Nineteenth-Century United States," Conference on Regulation Between Legal Norms and Economic Reality: Intentions, Effects, and Adaptation. The German and American Experiences," German Historical Institute, Washington, D. C., April 28-30, 2011.

Paper on the Progressive Movement and Individual Rights, Symposium on Natural Rights, Individualism and Progressivism in American Political and Legal Philosophy, Liberty Fund, Perrysburg, Ohio. May 11-14, 2011.

V. Legal History Conferences

Discussant, Federalism Roundtable, Vanderbilt University Law School, Nashville, Tennessee, February 25, 2010.

Participant, Federalist Society and Liberty Fund Colloquium, "Constitutional Economics," Cambridge, Mass., June 18-19, 2010.

Coordinator, Vanderbilt Symposium on the Legal History of the South, Nashville, Tenn., March 31 - April 1, 1978.

Co-Organizer, Conference on the Legal History of the South, Gulf Park, Mississippi, February 3-5, 1983.

Co-Organizer, Conference on the South and the American Constitutional Tradition, Gainesville, Florida, March 5 - 7, 1987.

VI. Fellowships, Grants and Awards

National Endowment for the Humanities, summer stipend, 1972.

Vanderbilt University Research Council, summer stipends, 1974, 1975.

American Bar Foundation, Grant-in-aid, 1975.

Fellow, Robert Penn Warren Center for the Humanities, Vanderbilt University, 1992-1993.

Visiting Fellow, Law Program of the Research School of Social Sciences, The Australian National University, summer 1994.

Hall-Hartman Outstanding Professor Award, first year teaching, 1991, 1995, 1997, 1998 (co-recipient), 2005, 2008.

Tennessee History Book Award, 2002, presented for *A History of the Tennessee Supreme Court*.

Probate and Property 2003 Excellence in Writing Award: Best Overall Real Property Article.

Crystal Eagle Award, 2006, Owner's Counsel of America.

Brigham-Kanner Property Rights Prize, 2006, William and Mary Property Rights Project and the Institute of Bill of Rights Law.

Probate and Property 2006 Excellence in Writing Award: Best Overall Real Property Article.

VII. University Service

Faculty Senate, 1974-1977, 1990-91, 2001-2004

Senate Executive Committee, 1975-1977.

Secretary, Faculty Senate, 1976-1977.

Member, Advisory Budget Council, 1975-1976.

Secretary, Consultative Committee, 1977-1978.

Chair, Committee on Professional Ethics and Academic Freedom, 2002, 2004

University Research Council, 1977-1980, 1995-1998.

Scholarly Publications Support Fund Advisory Committee, 1978-1980.

Chairman, Law School Dean Search Committee, 1979-1980.

Member, Law School Dean Search Committee, 1995-1996.

Board of Directors, University Club of Nashville, 1979-1981.

Treasurer, 1980-1981.

Proxy Committee, 1980.

University Lectures Committee, 1983-1986, 2001-

Central Library Advisory Committee, 1986-1988

University Promotion and Tenure Review Committee, 1986-1990

Chairman, 1989-1990

Member, Divinity School Dean Search Committee, 1999-2000.

Chair, University Reappointment, Tenure, and Promotion Grievance Process, 2005-2007.

VIII. Professional Activities

American Journal of Legal History: Assistant Editor, 1987-1999

The Independent Review: Contributing Editor, 1995 -

American Society for Legal History:

Membership Committee, 1974-1977.
Board of Directors, 1977-1979, 1988 -
Treasurer, 1980-1981, 1982-83, 1984-1985.
Ad Hoc Practices and Procedures Committee, 1987.

American Association of Law Schools:

Secretary, Legal History Section, 1981.
Chairman, Legal History Section, 1983, 1988

National Endowment for the Humanities:

1987 Summer Stipend Panel Member

Service as Manuscript Referee:

Cambridge University Press, Princeton University Press, Oxford University Press, Yale University Press, University of North Carolina Press, University of Tennessee Press, Rutgers University Press, Vanderbilt University Press, University Press of Kentucky, University of Georgia Press, University Press of Kansas, University Press of Virginia, Duke University Press, University of Missouri Press, *Journal of Southern History*, *Virginia Magazine of History and Biography*, *Journal of American History*, *Journal of the Early Republic*, *Register of the Kentucky Historical Society*, *Law and History Review*, *Western Legal History*, *The Independent Review*, *Supreme Court Economic Review*

IX. Community Service

"Conservation Easements: A General and Historical Perspective," Seminar on the Business of Historic Preservation, Historic Nashville, Inc., May 15, 1984.

Merit Selection Committee for Magistrate, U.S. District Court, Middle District of Tennessee, August - October 1984.

Panelist, "The Constitution and Religious Pluralism," Vanderbilt University Divinity School, September 27, 1987.

Panelist, "Some Features of the Law Pertaining to Utility Easements," Tennessee Valley Public Power Association, Annual Legal Conference, February 18, 1994.

Witness, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, February 10, 1995.