

## CURRICULUM VITAE

Name: Edward A. Purcell, Jr.

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Education:

Harvard Law School	J.D. 1979 <u>cum laude</u> Book Review Editor, <u>Harvard Civil Rights/Civil Liberties Law Review</u>
University of Wisconsin	Ph.D. 1968 (history)
University of Kansas	M.A. 1964 (history)
Rockhurst College	A.B. 1962 (history)

Teaching Experience:

New York Law School	Joseph Solomon Distinguished Professor, 2000-present Professor, 1991-2000 Associate Professor, 1989-91
Yale Law School	Visiting Professor and Oscar M. Ruebhausen Distinguished Senior Fellow, Spring, 2017 Visiting Professor, Fall, 2010
Harvard University	Teaching Fellow, 1978-79
Wellesley College	Visiting Associate Professor, 1974-75

University of Missouri,  
Columbia

Associate Professor, 1973-78  
Assistant Professor, 1969-73

University of California,  
Berkeley

Assistant Professor, 1967-69

Legal Practice:

Paul, Weiss, Rifkind, Wharton  
& Garrison, N.Y.

Associate, 1980-89 (on leave  
1979-80, 1982-83, 1988-89)

Community Law Office of The  
Legal Aid Society, N.Y.

Volunteer, 1981-88

Admitted to Practice:

New York State, 1980

United States District Courts for the  
Southern and Eastern Districts of  
New York, 1980

United States Courts of Appeals:  
Second Circuit, 1984  
Fourth Circuit, 1982  
Fifth Circuit, 1984  
Eighth Circuit, 1984

United States Supreme Court, 1986

Books:

Antonin Scalia and American Constitutionalism: The Historical Significance of a Judicial  
Icon (Oxford University Press, 2020)

Originalism, Federalism, and the American Constitutional Enterprise: A Historical  
Inquiry (Yale University Press, 2007)

Brandeis and the Progressive Constitution: *Erie*, the Judicial Power, and the Politics of  
the Federal Courts in Twentieth-Century America (Yale University Press, 2000)

Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America, 1870-  
1958 (Oxford University Press, 1992)

The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value (University Press of Kentucky, 1973)

Articles and Review Essays:

- “Exploring the Interpretation and Application of Procedural Rules: The Problem of Implicit and Institutional Racial Bias,” 169 University of Pennsylvania Law Review – (scheduled publication in 2021)
- “Race and the Law: The Visible and the Invisible,” 66 New York Law School Law Review – (scheduled publication 2021)
- “The Historical Significance of Judge Learned Hand: What Endures and Why?” 50 Arizona State Law Journal 855 (2018)
- “Exploring the Origins of America’s ‘Adversarial’ Legal Culture,” 70 Stanford Law Review Online 37 (2017)
- “What Changes in American Constitutional Law And What Does Not?” 102 Iowa Law Review Online 64 (2017)
- “The Judicial Legacy of Louis Brandeis and the Nature of American Constitutionalism,” 33 Touro Law Review 5 (2017)
- “Capitalism and Risk: Concepts, Consequences, and Ideologies,” 64 Buffalo Law Review 23 (2016)
- “Reflections on the Fiftieth Anniversary of the March and the Speech: History, Memory, Values,” 59 New York Law School Law Review 17 (2015)  
--reprinted in 19 Legal History eJournal (July 15, 2015)
- “Paradoxes of Court-Centered Legal History: Some Values of Historical Understanding for a Practical Legal Education,” 64 Journal of Legal Education 229 (2014)
- “From the Particular to the General: Three Federal Rules and the Jurisprudence of the Rehnquist and Roberts Courts,” 162 University of Pennsylvania Law Review 1731 (2014)
- “Democracy, the Constitution, and Legal Positivism in America: Lessons from a Winding and Troubled History,” 66 Florida Law Review 1457 (2014)
- “Semi-Wonderful Town, Semi-Wonderful State: Bill Nelson’s New York,” 89 Chicago-

Kent Law Review 1085 (2014)

“*National League of Cities: Judicial Decision-Making and the Nature of Constitutional Federalism*,” 91 Denver University Law Review Online 179 (2014)

“Understanding *Curtiss-Wright*,” 31 Law and History Review 653 (2013).

“Scholarly, Graceful, and Illuminating: The Books of James F. Simon,” 57 New York Law School Law Review 483 (2013)

“The Ideal of Judicial Independence: Complications and Challenges,” 47 Tulsa Law Review 141 (2012)

“Barry Friedman’s *The Will of the People: Probing the Dynamics and Uncertainties of American Constitutionalism*,” 2010 Michigan State Law Review 663

“*Ex parte Young* and the Transformation of the Federal Courts, 1890-1917,” 40 University of Toledo Law Review 931 (2009)

“Naming and Blaming: The Case of ‘The Rehnquist Court’,” 37 Reviews in American History 440 (2009)

“The Class Action Fairness Act in Perspective: The Old and the New in Federal Jurisdictional Reform,” 156 University of Pennsylvania Law Review 1823 (2008)

“Evolving Understandings of American Federalism: Some Shifting Parameters,” 50 New York Law School Law Review 635 (2006)

“The Particularly Dubious Case of *Hans v. Louisiana: An Essay on Law, Race, History, and Federal Courts*,” 81 North Carolina Law Review 1927 (2003)

“Caseload Burdens and Jurisdictional Limitations: Some Observations from the History of the Federal Courts,” 46 New York Law School Law Review 7 (2002)

“On the Complexity of ‘Ideas in America’: The Origins and Achievements of the Classical Age of Pragmatism,” 27 Law & Social Inquiry 967 (2002)

“The New Deal ‘Constitutional Revolution’ as an Historical Problem,” 78 Virginia Quarterly Review 238 (2002)

“Review of Louis Menand, *The Metaphysical Club: A Story of Ideas in America*,” H-law, H-Net Reviews, April, 2002. URL: <http://www.h-net.msu.edu/reviews/showrev.cgi?path=201351019153478>

“Brandeis, *Erie*, and the New Deal ‘Constitutional Revolution,’” 26 Journal of Supreme

Court History 257 (2001)

“Reconsidering the Frankfurterian Paradigm: Reflections on Histories of Lower Federal Courts,” 24 Law & Social Inquiry 679 (1999)

“Learned Hand: The Jurisprudential Trajectory of an Old Progressive,” 43 Buffalo Law Review 873 (1995)

“Rethinking Constitutional Change,” 80 Virginia Law Review 277 (1994)

“Geography as a Litigation Weapon: Consumers, Forum-Selection Clauses, and the Rehnquist Court,” 40 U. C. L. A. Law Review 423 (1992)

“Social Thought,” 35 American Quarterly 80 (1983)

“The Professionalization of Philosophy,” 7 Reviews in American History 51 (1979)

“Alexander M. Bickel and the Post-Realist Constitution,” 11 Harvard Civil Rights/Civil Liberties Law Review 521 (1976)

“Service Intellectuals and the Politics of 'Science',” 15 History of Education Quarterly 97 (1975)

“Brandeis and the Democratic Vision,” 1 Reviews in American History 253 (1973)

“American Jurisprudence Between the Wars: Legal Realism and the Crisis of Democratic Theory,” 75 American Historical Review 424 (1969)

“Ideas and Interests: Businessmen and the Interstate Commerce Act,” 54 Journal of American History 561 (1967)

Book Chapters:

“The Supreme Court and International Law, 1901-1945: Historical Commentary,” in David L. Sloss, Michael D. Ramsey and William S. Dodge, eds., International Law in the U.S. Supreme Court: Continuity and Change (Cambridge University Press, 2011), 285-313

“Comment on Sosa v. Alvarez-Machain” in David L. Sloss, Michael D. Ramsey and William S. Dodge, eds., International Law in the U.S. Supreme Court: Continuity and Change (Cambridge University Press, 2011), 499-504

“Some Horwitzian Themes in the Law and History of the Federal Courts,” in Daniel W. Hamilton and Alfred L. Brophy, eds., Transformations in American Legal History: Law, Ideology, and Methods—Essays in Honor of Morton J. Horwitz (Harvard

University Press, 2010), Vol. 2, 271-286.

“The Story of *Michigan v. Long*: Supreme Court Review and the Workings of American Federalism,” in Judith Resnik and Vicki C. Jackson, eds., Federal Courts Stories (Foundation Press, 2009), 115-139.

“The Courts, Federalism, and the Federal Constitution: 1920-2000,” in Christopher Tomlins and Michael Grossberg, eds., The Cambridge History of Law in America, (Cambridge University Press, 2008), Vol. 3, 127-174.

“Progressive Lawyering: An Historical Overview,” in Claire Dalton, ed., Progressive Lawyering, Globalization and Markets: Rethinking Ideology and Strategy (Buffalo, N.Y., 2007), 7-22

“The Story of *Erie*: How Litigants, Lawyers, Judges, Politics, and Social Change Reshape the Law,” in Kevin M. Clermont, ed., Civil Procedure Stories (Foundation Press, 2004), 21-74  
–second edition, revised (2008), 21-79.

“The Action Was Outside the Courts: Consumer Injuries and the Uses of Contract in the United States, 1875-1945,” in Willibald Steinmetz, ed., Private Law and Social Inequality: Comparative Studies of France, Germany, Great Britain, and the United States in the Industrial Age (Oxford University Press, 2000), 505-35

“Violence and Social Change: The Homestead Strike,” in Armin Rappaport and Richard Traina, eds., Present in the Past (Macmillan, 1972), 259-85

#### Encyclopedia and Dictionary Entries:

“Henry M. Hart, Jr.,” The Yale Biographical Dictionary of American Law, ed. Roger K. Newman (Yale University Press, 2009), 255-56.

“*Erie v. Tompkins*,” Federalism in America: An Encyclopedia, Vol. 1, ed. Joseph Marbuch, Ellis Katz, and Troy E. Smith (Greenwood, 2006), 196-98

“Consensus,” in A Companion to American Thought, ed. Richard Wightman Fox and James T. Kloppenberg (Blackwell, 1995), 140

“Bennett Champ Clark,” Dictionary of American Biography, Supp. Vol. 5 (Charles Scribner’s Sons, 1977) 113

“Dudley Field Malone,” Dictionary of American Biography, Supp. Vol. 4 (Charles Scribner’s Sons, 1977) 541

“Martin Conboy,” Dictionary of American Biography, Supp. Vol. 3 (Charles Scribner’s

Sons, 1973) 180

“Frederick Hill Wood,” Dictionary of American Biography, Supp. Vol. 3 (Charles Scribner’s Sons, 1973) 839

Internet Posts and Op-Eds:

“Trump’s ‘Big Lie’ is Just a Ploy,” The Hill, May 19, 2021, available at <https://thehill.com/opinion/civil-rights/554359-trumps-big-lie-is-just-a-ploy?rnd=1621444447>

“Senate Has to Confront Sworn Duty with Critical Second Impeachment,” The Hill, Feb. 2, 2021, available at <https://thehill.com/opinion/white-house/536893-senate-has-to-confront-sworn-duty-with-critical-second-impeachment>

“Amy Coney Barrett will cement the legacy of Republicans if confirmed,” The Hill, Oct. 6, 2020, available at <https://thehill.com/opinion/judiciary/519758-amy-coney-barrett-will-cement-the-legacy-of-republicans-if-confirmed>

“Donald Trump Sacrifices His Own Base to Secure His Hold on Power,” The Hill, Sept. 16, 2020, available at <https://thehill.com/opinion/white-house/516749-donald-trump-sacrifices-his-own-base-to-secure-his-hold-on-power>

“The Republican Party Goes for Broke,” The Hill, Aug. 14, 2020, available at <https://thehill.com/opinion/white-house/511992-the-republican-party-goes-for-broke>

“The Fateful Republican Party Gamble,” The Hill, Feb. 24, 2020, available at <https://thehill.com/opinion/white-house/484331-the-fateful-republican-party-gamble>

“The Senate Itself is on Trial,” The Hill, Jan. 21, 2020, available at <https://thehill.com/opinion/judiciary/479117-the-senate-itself-is-on-trial>

“Why Law of Evidence Supports the Verdict that the President is Guilty,” The Hill, Jan. 7, 2020, available at <https://thehill.com/opinion/judiciary/477186-why-law-of-evidence-supports-the-verdict-that-the-president-is-guilty>

“Nancy Pelosi is defending the Constitution with her actions,” The Hill, Dec. 27, 2019, available at <https://thehill.com/opinion/judiciary/476021-nancy-pelosi-is-defending-the-constitution-with-her-actions>

“Republicans Must Not Abandon Originalism of the Constitution,” The Hill, Dec. 3, 2019, available at <https://thehill.com/opinion/judiciary/472778-republicans-must-not-abandon-originalism-of-the-constitution>

“Trump and the Coming Moment of Truth for the Federal Judiciary,” The Hill, July 6, 2019, available at <https://thehill.com/opinion/judiciary/451826-trump-and-the-coming-moment-of-truth-for-the-federal-judiciary?rnd=1562430671>

“Issues and Readings on the Recent History of the Federal Judiciary,” Legal History Blog (posted by Daniel Ernst), Monday, Oct. 21, 2013

“The Umpire Changes the Rules,” (with Brandt Goldstein), Huffington Post, Oct. 7, 2013, available at [http://www.huffingtonpost.com/brandt-goldstein/the-umpire-changes-the-ru\\_b\\_4041479.html](http://www.huffingtonpost.com/brandt-goldstein/the-umpire-changes-the-ru_b_4041479.html)

#### Short Book Reviews:

- 35 Law and History Review 267 (2017)
- H-Law, H-Net Reviews. January, 2011, URL: <http://www.h-net.org/reviews/showrev.php?id=31486> (2011)
- 97 Journal of American History 841 (2010)
- 95 Journal of American History 250 (2008)
- 67 The Historian 587 (2006)
- 23 Law and History Review 481 (2005)
- New York Law Journal (June 7, 2002), p. 2
- 107 American Historical Review 248 (2002)
- 106 American Historical Review 588 (2001)
- New York Law Journal (July 28, 2000), p. 2
- New York Law Journal (Nov. 3, 1998), p. 2
- 102 American Historical Review 1264 (1997)
- 15 Law and History Review 206 (1997)
- 83 Journal of American History 254 (1996)
- 61 Journal of Southern History 620 (1995)
- 80 Journal of American History 750 (1994)
- 79 Journal of American History 1567 (1993)
- 70 Journal of American History 201 (1983)
- 68 Journal of American History 443 (1981)
- 49 New England Quarterly 314 (1976)
- 19 American Journal of Legal History 240 (1975)
- 48 New England Quarterly 298 (1975)
- 17 American Journal of Legal History 393 (1973)
- 78 American Historical Review 180 (1973)

#### Prizes and Awards:



Outstanding Scholar Award for 2013, Fellows of the American Bar Foundation

Otto L. Walter Distinguished Writing Award, New York Law School, 2014

Otto L. Walter Distinguished Writing Award, New York Law School, 2008

Coif Triennial Book Award, The Order of the Coif and the Association of American Law Schools, 2004

Class of 2004 Teaching Award, New York Law School, 2004

Silver Gavel Award (book), Honorable Mention, American Bar Association, 2001

Erwin N. Griswold Triennial Book Prize, Supreme Court Historical Society, 2001

Otto L. Walter Distinguished Writing Award, New York Law School, 2000

Jeffords Faculty Writing Award, New York Law School, 1993

Pro Bono Service Recognition Award, New York State Bar Association, 1988

Outstanding Pro Bono Participation Award, The Legal Aid Society, 1986-87

Best Article Award, American Quarterly, 1984

Frederick Jackson Turner Prize, Organization of American Historians, 1973

Louis Pelzer Prize, Organization of American Historians, 1967

University Distinguished Teaching Fellowship, University of Wisconsin, 1966-67

Fellowships and Grants:

New York University School of Law, Golieb Fellowship, 1988-89

American Council of Learned Societies, Ford Foundation/ACLS Fellowship, 1988-89

Harvard Law School, Mark DeWolfe Howe Research Grant, 1979

National Endowment for the Humanities, Independent Research Fellowship, 1977-78

American Council of Learned Societies, Summer Research Grant, 1975

American Philosophical Society, Summer Research Grant, 1974

University of Missouri, Summer Fellowship, 1976, 1973

Harvard Law School, Charles Warren Fellowship in American Legal History, 1971-72

Social Science Research Council, Research Fellowship, 1971-72

Public Lectures and Presentations (selected):

New York Law School and the McInerney Inn of Court, “Qualified Immunity and Police Officers: A Candid Discussion on the Doctrine’s Past, Present, and Future,” (panel member), April 15, 2021

The University of Pennsylvania, “Alternate Perspectives in Civil Procedure,” (panel member), February 13, 2021

New York Law School, “Perspectives on the Supreme Court’s Term, 2020-21 (panelist), Oct. 16, 2020

New York Law School, Panel Discussion of the Nomination of Judge Amy Coney Barrett to the Supreme Court, Oct. 7, 2020

New York Law School, Impact Center for Public Interest Law, “Qualified Immunity and Police Officers: A Candid Discussion on the Doctrine’s Future,” (panel member), Nov. 3, 2020

New York Law School, “The Historian’s Perspective: The Red Scare of 1919” in symposium, “A Century of Targeting Immigrants: From the Red Scare to the Travel Ban” (panel moderator/commentator), Nov. 8, 2019

New York Law School, “Perspectives on the Supreme Court’s Term, 2019-20,” (panelist) Oct. 17, 2019

Weil, Gotshal & Manges, Washington D.C., “Conversation with James F. Simon: *Eisenhower vs. Warren*,” May 3, 2018.

New York Law School, “Conversation with James F. Simon: *Eisenhower vs. Warren*,” April 18, 2018

New York University School of Law, “A Decision for the Ages: A Symposium Marking the Centenary of *Masses Publishing Co. v. Patten*” (panelist), Oct. 20, 2017

University of Pennsylvania Law School, Symposium on Civil Procedure: Burbank & Farang, Rights and Retrenchment (panelist), Sept. 25, 2017

American Society for Legal History, “Creation and Recreation of Procedure” (panel

- moderator/commentator), Oct. 28, 2016
- University of Wisconsin Discussion Group on Constitutionalism, “Reconstitution: Politico-Legal History as Constitutional Change” (panelist/commentator), Sept. 30-Oct. 1, 2016
- Federal Judicial Center, “Conference: The History of the Federal Courts,” (panelist/commentator) April 7-8, 2016
- Touro Law Center, “Conference: Louis D. Brandeis: An Interdisciplinary Retrospective” (keynote luncheon address), March 31-April 1, 2016
- New York Law School, “Conference: Twenty Years of South African Constitutionalism” (panel moderator/commentator), Nov. 14-16, 2014
- Baldy Center for Law and Social Policy, Law School of the State University of New York at Buffalo, “Symposium on Opportunities for Law’s Intellectual History” (panelist/commentator) Oct. 10-11, 2014
- University of Pennsylvania Law School, “Symposium: The Federal Rules at 75” (panelist), Nov. 15-16, 2013
- American Society for Legal History, “Symposium in Honor of William E. Nelson” (panelist), Nov. 7, 2013
- New York Historical Society/Institute for Constitutional History, “Modern Constitutional War Powers,” (with Marty Lederman) (teaching series of six weekly seminars), Oct. 16 to Nov. 20, 2013
- New York Law School, “Conference: Reflections on the Fiftieth Anniversary of the March on Washington and Martin Luther King’s ‘I Have a Dream’ Speech” (panelist), Sept., 2013
- Indiana Judicial Center, The Indiana Graduate Program for Judges, “Free Speech, National Security, and Separation of Powers, 1890-1974” (series of five lectures on foreign relations law), June 3-8, 2012.
- New York Law School, “Symposium in Honor of James F. Simon” (panelist), April 12, 2012
- University of Texas Law School, “Conference on Federalism and Its Future” (panelist), Feb. 10-12, 2011
- Boston College School of Law, “Panel on Alison LaCroix, The Ideological Origins of American Federalism” (panelist), Oct. 27, 2010

Michigan State University Law School, “Symposium: Responding to ‘The Will of the People’ by Barry Friedman” (panelist), April 8-9, 2010

Santa Clara University School of Law, “Conference on The U.S. Supreme Court and International Law” (panelist/commentator), Nov. 6-7, 2009

University of Toledo Law School, “Ex parte Young Symposium: A Centennial Recognition” (panelist), March 20, 2009

Harvard Law School, “Conference in Honor of Professor Morton J. Horwitz” (panelist), Sept. 25-27, 2008

Association of the Bar of the City of New York, “Celebration of Seventieth Anniversary of Erie RR. v. Tompkins” (panelist), New York, N.Y., Sept. 20, 2008

American Bar Association, Annual Meeting, Section panel on Erie RR. v. Tompkins (panelist), New York, N.Y., Aug. 8, 2008

University of Pennsylvania Law School, “Conference on Class Action Fairness Act of 2005” (panelist), Nov. 30-Dec. 1, 2007

Columbia University, School of Law, “Conference on Positivism and Democracy” (panelist/commentator), May 17-18, 2006

Association of American Law Schools, Annual Meeting, San Francisco (panelist), 2005

American Society for Legal History, Annual Meeting (commentator), Austin, Texas, 2004

Northeastern Law School, “Conference on Progressive Lawyering” (keynote lecture), Boston, 2003

Association of American Law Schools, Conference on Civil Procedure (panelist), New York, 2003

Association of American Law Schools, Conference on Federal Courts (concluding conference summary and remarks), Washington, D.C., 2002

New York Law School, Joseph Solomon Distinguished Professorship, Inaugural Lecture, April 24, 2002

Supreme Court Historical Society, Erwin N. Griswold Prize Lecture, Washington, D.C., May 23, 2001

Association of American Law Schools, Annual Meeting (panelist), New Orleans, 1999

American Society for Legal History, Annual Meeting (panelist), Seattle, 1998

German Historical Society, “Conference on Comparative Law and Industrialization”  
(panelist/commentator), London, December, 1994

American Society for Legal History, Annual Meeting (panelist), Philadelphia, 1987

Southern Historical Association, Annual Meeting (panelist), Houston, 1985

Professional and Public Service Activities:

Advisory Board, Supreme Court Historical Society and Federal Judicial Center, for Peter Charles Hoffer, William James Hoffer, and N.E.H. Hull, The Federal Courts: An Essential History (forthcoming, 2015)

Advisor, Federal Judicial Center, for Daniel S. Holt, ed., Debates on the Federal Judiciary: A Documentary History, 1875-1939, Vol. 2 (2013)

Editorial Board, Continuity and Change (Cambridge University Press), 2006-2011

Coif Triennial Book Award Committee (two terms), Order of the Coif and the Association of American Law Schools, 2003-08

Supreme Court Historical Society, Griswold Prize Selection Committee, for 2001-04

Law & Society Association, 2003-present

--Selection Committee, Best Book Award, 2003-04

--Selection Committee, Best Article Award, 2004-05

Institute for Constitutional Studies (George Washington University/New York Historical Society), Academic Advisor Board, 2001-present

Federal Courts Section, Association of American Law Schools

--Section Chair, 2004-2005

--Executive Committee, 2005-2020

United States Court of Appeals for the Second Circuit, Committee on History and Commemorative Events, 1995-2000

The Legal Aid Society/The Association of the Bar of the City of New York, Special Consultant on the Housing Court, 1992-2004

American Society for Legal History, member, 1988-present

--Board of Directors, 1989-92

--Surrency Prize Committee, 2008-2011

Association of the Bar of the City of New York, 1981-present

--Committee on the Legal Needs of the Poor, 1990-1994

--President's Committee on the Pro Bono Housing Court Project, 1988-89

--Committee on the Housing Court, 1986-90

Lawyers for Legal Aid, Executive Committee, 1986-88

Community Law Office of the Legal Aid Society, Board of Directors, 1983-88

Pro Bono Coordinator, Paul, Weiss, Rifkind, Wharton & Garrison, 1982-88

University of Missouri

--Honors College Council 1973-77

--Faculty Senate, 1975-77

Organization of American Historians, member, 1966-present