



Richard Epstein

Delightfully so! Here is Adrian Vermuele (no secret Kenyan Muslim socialist he) in *The New Republic*, [reviewing Epstein's latest](#):

Many scholars have offered withering critiques of the Epstein program, but there is little sign that the arguments of the critics have been heard and considered. Epstein's latest book targets the administrative state as the enemy of classical liberalism, and argues that the administrative state is inconsistent with the rule of law, but Epstein fails to come to grips with objections that have been made many times to arguments of this sort. Indeed, James Landis, a New Dealer and dean of the Harvard Law School, addressed similar arguments in 1938 and offered root-and-branch objections about which Epstein says barely a word. Is there a word to describe a thesis that was refuted before it was written? Prefuted, perhaps? If there is such a thing, Epstein's book has been prefuted.

There is nothing new in this. Thomas Grey's epic review of Epstein's 1985 book *Takings* accurately described it as a "travesty of constitutional scholarship....The book presents the reader with the picture of a sincere and intelligent man in the grip of a pervasive obsession." None of this, of course, prevented the book from being cited in the Supreme Court's *Palazzolo* opinion.

And yet...and yet...I can't help but think that there is something wonderful and admirable in all of this. So many academics are obsessed with what other academics think of them: their whole modus operandi is to try to get others to think that they are brilliant. Now, perhaps Epstein doesn't have to worry about this because of his chaired professorship at the University of Chicago and now at NYU, but lots of other tenured folk at other high-level institutions are still trying to get a series of [Sears Prizes](#) long after law school graduation. I

vividly recall Guido Calabresi explaining to my *first-year Torts class* why he got a “B” in his first-year Torts class.

Epstein couldn’t care less. His obliviousness is inspiring (although for the record, he is supposed to be a very nice man). A friend of a friend recalls taking a class with Epstein, either at USC or Chicago (I can’t remember which), in which the Prof was amidst a full-throated, impassioned defense of private property rights — so much so that he stuck his foot in the wastepaper basket. No matter: Epstein continued on without a beat for the rest of the class, the wastebasket going “*ka-dunk, ka-dunk, ka-dunk*” for the better part of an hour.

There is actually an important moral to this. One of my first bosses in practice was pretty incapable of relating to other people: no matter what I did, I couldn’t get the least bit of praise (or blame) out of him. Finally, I decided, “who cares? I’m not going to try to satisfy him. I’m going to try to satisfy me.” I had to work a lot harder, actually, but was much happier about it. You are actually in control of your own destiny that way.

When I was on the teaching market, I consulted with one of my law school advisors, and mentioned to him that I wanted to try to be at a place where I could part of a scholarly community. “Don’t worry about that, Jonathan: all writing is basically autistic.”

So: is Richard Epstein autistic? Absolutely! And we should all be so lucky.

What this all says about the efforts of legal academy to Search For Truth is an exercise left to the reader.