

Five questions with legal scholar Richard Epstein

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Considered by many to be among the most important “[legal thinkers](#)” in America, Richard Epstein is currently the Laurence A. Tisch Professor of Law at New York University Law School and a senior lecturer at the University of Chicago Law School. He is also an adjunct fellow at the libertarian Cato Institute and a senior fellow at the Hoover Institution.

On Wednesday evening at the Kennedy Center in Washington, D.C., Epstein will be among four recipients of the 2011 Bradley Prize, which has been compared to the MacArthur “genius grant” for conservative and libertarian thinkers and leaders. The prize comes with a \$250,000 cash award.

In the days leading up to Wednesday’s ceremony, The Daily Caller is publishing interviews with this year’s recipients, who beside Epstein include former Florida Gov. Jeb Bush, Harvard Government Professor Harvey Mansfield and [economist Allan Meltzer](#).

TheDC: You have been working to overturn the health-care law. Are you focusing on the mandate or do you think the law more broadly is unconstitutional?

Richard Epstein (RE): The mandate is the issue of the day, and the ability to win on it depends on persuading the court that this case goes beyond the all-too-generous limits under the commerce clause. There are other challenges that might mature in time, but not on a facial basis. These involve encroachment on the state’s abilities to use their own tax revenues, and on the sharp restriction on the rates that regulated companies can recover from their customers once the full range of disguised price control measures kick in.

TheDC: Do you think there is a good chance that the Supreme Court, when it ultimately hears the case, will take your side?

RE: This is an uphill battle given the unwillingness of both liberal and conservative justices to take on Congress on issues of economic regulation. But the team that has been assembled to raise this challenge has already been far more successful than anyone might have guessed a year ago. Let us hope that it can continue to do well.

TheDC: Are there any candidates who are likely to run in 2012 that you could get behind?

RE: The Republicans need to pick a candidate who is small government across the board. It will not be credible for a Republican candidate to redirect subsidies towards his political allies or to take strongly interventionist positions on social issues. The first term of Ronald Reagan is not a bad model for a prospective nominee to follow.

TheDC: Which three books most influenced your worldview?

RE: That is a hard question. But here are some. [Gaius’s “Institutes](#)” is one that is distinctive to me as a lawyer. But it showed the ability to systematize private law in ways that could resist the deadening influences of moral relativism and legal realism.

John Locke, the “[Second Treatise of Government](#),” for the way in which a unified vision can start with the nature of man and end with a coherent account of the function of government. There are countless small errors in Locke, but these are correctable and the overall vision is the one that should help drive the reformation of American politics today.

Frederic Maitland, “[The History of English Law](#)” (Frederick Pollock is on the title, but we all know who wrote the book). This historical account of early English law helped solidify in me the view that a careful knowledge of early history can illustrate the fundamental principles of social organization.

There are all sorts of great authors excluded from this list. To mention only some of the H’s, there are Hart, Hayek, Hobbes, Holmes and Hume.

TheDC: Does winning the Bradley Prize mean anything special to you? Do you have any thoughts on your fellow prize recipients?

RE: How could it not. The list of prior recipients is an all-star cast of libertarian and conservative thinkers, writers, and actors who have dominated American intellectual and public life for years. It is a great honor to be added to their number.

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