

James Madison Program
in American Ideals and Institutions

THE UNFULFILLED PROMISE OF THE ANTI-DISCRIMINATION LAWS

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The Annual Walter F. Murphy Lecture in American Constitutionalism

Cosponsored by The Program in Law and Public Affairs
Funded by the Bouton Law Lecture Fund

Monday,
NOVEMBER 26, 2018

4:30 - 6:00 PM
Bowen Hall 222

James Madison Program
in American Ideals and Institutions
609-258-1122
jmp.princeton.edu

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The anti-discrimination laws were passed with great confidence in the 1960s and yet in the eyes of their intended beneficiaries, these programs have not achieved their initial promise, whether we speak about employment, education, or housing. Most individuals think that the proper cure for the disappointment is to strengthen their enforcement. Richard Epstein argues that the basic mistake of these laws is that they all extended the anti-discrimination norms outside of areas of common carriers and public utilities where they operate as a counterweight to monopoly power. In most of these settings, the risk of monopoly is weak, but the dangers of excessive enforcement can often prove counterproductive. In some cases, the solution may well be to eliminate these statutes in connection with private institutions. But even if that alternative proves infeasible or unacceptable, the relaxation of many key features of these laws, including most critically the application of disparate impact tests, would help improve opportunities across the board for all individuals.

RICHARD A. EPSTEIN is the Laurence A. Tisch Professor of Law at New York University Law School, the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law, Emeritus and Senior Lecturer at the University of Chicago Law School. He has written and taught on a wide range of topics and is the author of, among other works, *Forbidden Grounds: The Case Against Employment Discrimination Laws*, *Simple Rules of a Complex World*, and *The Classical Liberal Constitution: The Uncertain Quest for Limited Government*. He has been a member of the American Academy of Arts and Sciences since 1985 and won the Bradley Prize in 2011. He writes and teaches on a wide range of public and private law subjects. Professor Epstein received his B.A. from Columbia University, his B.A. in Jurisprudence from Oxford University, and his L.L.B. from Yale Law School.

