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THE SMUG SATISFACTION OF THE MEDIA MENTIONED

PUBLIC INTELLECTUALS: A STUDY OF DECLINE.
By Richard A. Posner.¹ Harvard University Press. 2001 Pp.
408. \$29.95.

*Stephen Presser*²

Most Americans have never heard of Richard Posner, but law professors know that he is one of the country's more interesting and bizarre natural phenomena. He is now a judge on the United States Court of Appeals for the Seventh Circuit, one rung below the United States Supreme Court, and Posner would be a Supreme Court Justice except for the fact that he is constitutionally incapable of suffering fools gladly, has never hidden his opinions of them, and would not likely be well-received at his Senate confirmation hearings. Even so, there is something about Posner that appeals even to the liberal media. For example, in a recent admiring profile, *The New Yorker* reported that Posner publishes a new book "every half hour," and in the *New York Times* review of this book it was declared that Posner issues a tome "more or less after every meal." Actually, there are only thirty-one of them, which is still unprecedented for federal judges, most of whom can't find time to read many books, let alone write them.

In truth, there is much to admire about Posner. He is one of the only two authentic geniuses former Supreme Court Justice William Brennan ever met, he was the one man that all parties turned to to mediate the Microsoft Antitrust case (he was able to get the federal government and Microsoft on the same page, although he couldn't succeed in bringing the state attorneys gen-

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eral into line, so the settlement foundered), and he helped create the most influential modern movement in legal scholarship (law and economics). According to some accounts, Posner packed away a small fortune as a result of his founding, when he was a mere law professor at the University of Chicago Law School (where he is still a senior lecturer), a law and economics consulting firm, Lexicon. Much, if not most legal scholarship in the last two decades of the twentieth century has been, in effect, a dialogue with Posner, as legal scholars, particularly those on the left, have tried, without much success, to poke holes in his theories.

Posner himself, in recent years, has become something of an equal opportunity excoriator, and in his latest work, here under review, he has harsh things to say about virtually everyone on the right or the left. This book, in gestation for several years, was prompted by Posner's belief that the profession of public intellectual in our country has fallen on exceedingly hard times. A "public intellectual" for Posner is a person, usually from the academy, who takes advantage of his learned status, and the podium it provides, to make public pronouncements on issues of ideological or political concern, usually having nothing to do with the academician's scholarly area of expertise. Not surprisingly, Posner reveals that most of these folks don't know what they are talking about, have a notoriously poor record of success in predicting what's likely to happen, are wearing ideological blinders, and are splendidly lucky that no one ever holds them to account for the stunningly stupid things they say. As Posner puts it, noting that in prior eras our public intellectuals did not come almost exclusively from the academy and think-tanks, "a successful academic may be able to use his success to reach the general public on matters about which he is an idiot," (p. 51) and "Intelligence is not a synonym for good sense, let alone for character." (p. 397).

Posner, whose personal loyalty is to the free market of Adam Smith, the individual liberty of John Stuart Mill, and the Olympian cynicism of Oliver Wendell Holmes, Jr., offers a few suggestions for improving the market for public intellectuals, including requirements that they post their pronouncements on web sites (so that they can later be checked for accuracy), that they reveal their outside income from consulting and publishing gigs (so that their biases will be clearer), and that they cooperate in the founding of a *Journal of Retractions* where they could publish and admit their mistakes. Posner is also characteristically

candid in revealing that he is guilty of many, if not most, of the faults he ascribes to other public intellectuals.

All of this makes a certain amount of surface sense, but that's not the reason for reading this book. After all, there is no chance any of Posner's remedies for the malaise of the public intellectual that he believes infects us will be accepted, since each of them could only be effectuated if public intellectuals agreed, and their acceptance would probably make impossible the practice of their shady craft. So why spend time with this work? The reason is to discover whether the reader has made it onto Posner's all-star list of 546 public intellectuals, and whether, in particular, one has achieved the august status of Posner's top 100, in terms of "media mentions," an honor reserved for only 68 living, practicing public intellectuals (32, including such luminaries as George Orwell, George Bernard Shaw, H.L. Mencken, Ayn Rand, and Ezra Pound, are deceased, but are still frequently mentioned in the media).

Alas, your reviewer is only number 298 (which is fortunate, because the reviewer's wife claimed that she would have divorced him if he were over 300). Most of the 546 may not be household names (the *New Republic's* cruel reviewer, Alan Wolfe, who just squeaked into the top 100, at 98, blasted Posner's listing as ignoring too many public intellectuals regarded as significant by Mr. Wolfe, and including too many (including your reviewer) not "especially well known" persons from the right of the political spectrum). Indeed, Posner's list is heavily weighted in favor of lawyers and conservatives, and is light on the more insubstantial leftists, but this is understandable, since lawyers and conservatives are the groups Posner probably knows best, and the temptation to elevate those like one, in this, as in everything else, is probably irresistible. Not surprisingly, then, Posner himself lands in the top 100, with a respectable number 70, sandwiched in between John Kenneth Galbraith and Ralph Ellison, only three behind his idol Holmes (who comes right after Jean-Paul Sartre, John Maynard Keynes and Camille Paglia)

But since the thrill of reading one's name on the lists will be limited to a paltry few (368 out of the 546 are still living), it should be noted that there are some other reasons to savor this volume. It is true that the main Posner themes expressed here do not differ from his recent work—praise for economics as one of the few useful and improving social sciences, disdain for philosophy and religion as unrealistic at best and debilitating at worst, scorn for the sexually unliberated and the vulgar, and an almost

Panglossian faith that sensible pragmatic judges and public officials can bring us prosperity in the present. If you've perused Posner's last two books, on the Clinton impeachment, and the 2000 election imbroglio, you won't find much of great moment here, since "Public Intellectuals" traces much of the same territory, albeit in more detail and with a sharper focus on pummeling the punditocracy. If you're a pessimist, or if you've already read recent (or perhaps even earlier) Posner works, it's not clear that you'll change your life by reading *Public Intellectuals*, and, one suspects, Posner wrote this mostly for the fun of it, without really expecting much of an impact.

But if you haven't tried Posner yet, and you're not mired in the dogmas of left or right, you should understand that in moments of doubt or despair a dose of Posner is bracing and brightening, because it never hurts to see how happy and seemingly-well adjusted someone so clearly brilliant can be. Reading Posner is fun for the same reason one watches kung-fu movies; to see the bad guys pulverized by a master at his craft. If you've ever wanted to see Paul Krugman, Alan Dershowitz, Noam Chomsky, Richard Rorty, or John Rawls handed their heads, you'll be delighted with this work. Your vocabulary will be stretched (I picked up "vatic," "rent-seeking," "*shadenfreud*," "fallibilist," and "*feinschmecker*," among others) and your literary horizons will be widened (you'll get some excellent critical evaluation of George Orwell, Aldous Huxley, Henry James, the Marx Brothers and Charles Dickens, and you'll be reminded of what you liked in Yeats, Tolstoy, Plato, Aristotle, Flaubert, Homer, Hemingway, Stendahl, and Shakespeare). You'll understand the powerful economic arguments to be made in favor of homosexual rights, equal education for women in the third world, and, of all things, infibulation. And all of this inspired analysis by someone who claims just to be a "sourpuss" (p. 311) and a "cynic" (p. 318), a claim pretty much belied by everything he writes.

To mix a metaphor in a manner that Posner, the master of limpid prose, never would, Posner bends over backwards to be even-handed. As should be clear by now, if he has awful things to say about the left, and he does, he is no kinder to many on the right, and he is particularly (and, to my mind, unfairly) dismissive of Christianity, Robert Bork, Allan Bloom, and Russell Kirk. He inexplicably takes a gratuitous swipe at those who believe The Earl of Oxford, Christopher Marlowe, or Francis Bacon penned the works of Shakespeare (p. 371), weirdly lumping

them with "Holocaust deniers." (p. 371). He blasts what he calls the conservative "declinists," those who issue Jeremiads about the dire peril of the current secular culture in this country, and who seek to recall the glory days of an earlier era. He has Gertrude Himmelfarb mostly in mind, but he paints with a broad enough brush to wet many to the right of center in the academy, your reviewer included. Posner believes that whatever ails us is either being solved through the march of science and free markets, or can be, with a little judiciously supplied cost-benefit analysis.

And so it might be, if the world were composed exclusively of Richard Posners. Since it's not, however, and since the problems of evil, the solace of religion, and the intractability of the foibles of human nature to science are likely to remain for most of us to deal with, one shouldn't live by Posner alone. He still provides a bit of guilty pleasure, however, and will give smug satisfaction to some.