THE NATURE OF CONSTITUTIONAL RIGHTS

What does it mean to have a constitutional right in an era in which most rights must yield to “compelling governmental interests”? After recounting the little-known history of the invention of the compelling-interest formula during the 1960s, The Nature of Constitutional Rights examines what must be true about constitutional rights for them to be identified and enforced via “strict judicial scrutiny” and other, similar, judge-crafted tests. The book’s answers not only enrich philosophical understanding of the concept of a “right,” but also produce important practical payoffs. Its insights should affect how courts decide cases and how citizens should think about the judicial role. Contributing to the conversation among originalists, living constitutionalists, and legal realists, Richard Fallon explains what constitutional rights are, what courts must do to identify them, and why the protections that they afford are more limited than most people think.

Richard H. Fallon Jr. is Story Professor of Law at Harvard Law School and Affiliate Professor in the Harvard Government Department. A former Rhodes Scholar, Fallon served as a law clerk to Justice Lewis F. Powell of the United States Supreme Court. Fallon has written extensively about Constitutional Law and is the author of multiple books including, The Dynamic Constitution (2d ed. 2013) and Law and Legitimacy in the Supreme Court (2018).
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General Editor: Alexander Tsesis, Loyola University, Chicago
The Nature of Constitutional Rights

THE INVENTION AND LOGIC OF STRICT JUDICIAL SCRUTINY

RICHARD H. FALLON JR.
Harvard Law School, Massachusetts
For Libby, Joseph, Doug, and Maggie
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