

HARVARD LAW REVIEW

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IN MEMORIAM: PROFESSOR RICHARD H. FALLON, JR.

The editors of the *Harvard Law Review* respectfully dedicate this issue to Professor Richard H. Fallon, Jr.



*Justice Elena Kagan**

Forty years ago, I walked into Dick Fallon's Fed Courts class in the now-demolished wing of Pound Hall. Dick was young — only 33. It was his third year teaching at Harvard Law School. It was his third time teaching Fed Courts. But even then, more students than he could possibly teach sought out his class because they had heard it would make them better thinkers and lawyers. I took many wonderful classes and had many wonderful teachers at HLS. But if forced to pick just one — as the most rigorous, most challenging, and most exciting — I'd pick Fallon on Fed Courts.

I'm not sure I'd have guessed that on the first day. Dick didn't have an enormous classroom presence. He certainly wasn't a Kingsfield-type. He was as unfailingly kind — even gentle — inside the classroom as he was outside of it.

And yet he had the highest of standards — for both his students and the law. He treated every issue in Fed Courts as a kind of mystery: What explained how a given doctrine had developed? What was its purpose, and how did it work? Did it accomplish its objectives, and were its objectives worth accomplishing at all? Every question was hard, every follow-up still harder. Dick demanded more analytic precision, more clarity of thought than any teacher had asked of me before. Time and again, when he called on me, my answers sooner or later came up short. And it was the most thrilling experience I ever had in a classroom.

In the middle of that semester, Dick asked me and Carol Steiker (also one of Dick's later colleagues at HLS) to do some out-of-class work for

* Associate Justice, Supreme Court of the United States.

him. He asked if we would read an article he was working on and come talk with him about it — to tell him what we thought of it and how he could improve it. That article was published the next year as *A Constructivist Coherence Theory of Constitutional Interpretation*.¹ The worst thing about it was its title. The best thing about it was everything else. I very much doubt I had a single useful thing to say about how to make that article better. The benefit of the experience was 100% on my side. To be invited into an intellectual dialogue with a professor as brilliant as Dick Fallon? And then to soak up all I could from our talks? It blew me away. And it made me think that maybe I wanted to, and maybe I could, become a legal academic myself.

Which, I'm quite sure, was the whole point of Dick's proposal. In the months since his death, I've heard so many of his former students talk about the influence he had on their careers. How he gave them, as he gave me, the confidence to pursue some path. Or helped them to develop an idea. Or read multiple drafts of their first article. Or pushed hard for them to get hired in some job. He was not just a great classroom teacher but a great mentor. He got to know lots of students. He thought their ideas were worth spending time on, and he engaged with them as peers. The legal world is full of HLS alumni grateful to Dick Fallon. I'm certainly one.

When I returned to Harvard years later as a professor, I realized that Dick had a gift for personal relations of every sort. He was the best of colleagues; he was the best of friends. From David Shapiro and Lloyd Weinreb in a prior generation to Daphna Renan and Ben Eidelson in a much later one. I often heard from John Manning and Jack Goldsmith about the joys of working closely with Dick. But the person I most think of as in perfect synergy with him was Dan Meltzer. In all its long history, I doubt HLS has ever had such a partnership. I think what Dan would have said about it is that Dick's generosity knew no bounds. That Dick made everyone around him better. And that collaborating with Dick, on some of the greatest federal courts articles ever, was one of the prime joys of his academic life.

As much as anyone who has ever graced HLS, Dick loved doing scholarship. What he wrote was at times not very fashionable or trendy. In 1986, for example, a person had to go against the grain (and by more than a bit) to write something like *A Constructivist Coherence Theory of Constitutional Interpretation*. But Dick had a strong sense of his own identity as a scholar — what he cared about, what he was best suited to, and what he thought was valuable. And as the years went by, Dick's scholarship came to be seen by pretty much everyone as of transcendent quality and lasting importance.

Here are the three things I love most about it:

¹ Richard H. Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189 (1987).

First, it takes law — and particularly the enterprise of judging — deeply seriously. Dick didn't think that doing law was mechanical. He didn't believe in the "just call balls and strikes" view of the judge's role. He thought that values of various kinds did, had to, and indeed should enter the picture. But for all that, Dick believed that law had a there there — that it wasn't just politics or personal preferences by another name. And Dick thought that even when its determinacy ran out, law could be done with analytic rigor, adherence to principle, and fair-mindedness. Law could be done, that is, in much the way Dick wrote his articles. It's at once a realistic and an attractive vision of judging.

Second, and relatedly, Dick took great pains to get everything right. There's no cutting corners in his scholarship. There's no gliding over or eliding the toughest issues. Dick was a grappler. And he didn't stop working on an article until he had tried, to the best of his ability, to nail everything down. As a result, Dick's work has a deep integrity. His articles weren't essentially finished before they were started. Every line in them was the product of meticulous thought.

And third, Dick always showed respect for those who disagreed. He cast the views of his intellectual adversaries in their strongest form and their best light (before, that is, going on to shred them). The best example is his work on originalism. Dick wasn't a fan of the theory. But his work was scrupulously intent on giving its adherents their due. It's a good lesson in these contentious times. Dick didn't pull his punches. But he was never less than civil — indeed, he was generous — when engaging with those who held different views.

In my first year on the Court, the Chief Justice assigned me the majority opinion in a case that could have been a fed courts exam, called *Camreta v. Greene*.² It came out late in the Term, and Dick wrote me a letter about it that summer. The letter included some praise. And it included some trenchant criticism. All in all, I don't think Dick agreed with the opinion. But at the end of the letter, he wrote: "I will always be proud that I taught Federal Courts to the person who wrote *Camreta v. Greene*." I relate that line only to convey that no note I've received in my fifteen-plus years on the bench has made *me* more proud. That's how much Dick's opinion meant and means to me, I think rightly. It was a gift that Dick Fallon was my teacher, both forty years ago and ever since.

² 563 U.S. 692 (2011).

*John C.P. Goldberg**

Dick Fallon first joined the Harvard Law School faculty as an Assistant Professor in 1982.³ Over the next forty-three years, he established himself as a preeminent scholar in Constitutional Law and Federal Courts, taught and mentored generations of students, and was a pillar of our academic community. At HLS, he held two chairs: the Ralph S. Tyler, Jr., Professor of Constitutional Law, then the Story Professorship.⁴

Before starting at HLS, Dick earned a B.A. in history from Yale College, studied at Oxford as a Rhodes Scholar, where he earned a degree in philosophy, politics, and economics, then obtained his J.D. from Yale.⁵ After that, he clerked for two eminent jurists: Judge J. Skelly Wright of the D.C. Circuit, and Supreme Court Justice Lewis F. Powell. Each of them embodied a different approach to the judicial role — one the aggressive reformer, the other the cautious balancer. With characteristic generosity, Dick praised both men for their many virtues and accomplishments. With equally characteristic objectivity, he admitted to having reservations about each of their approaches.⁶

As a colleague, Dick was a true team player — the kind you didn't need to beg or bribe to serve on, or even lead, a committee. You just had to ask. At one level, his commitment to good citizenship was entirely unsurprising. He had that “how-can-I-help?” mentality. On the other hand, I am not revealing state secrets in reporting that he found the inner workings of academia more bemusing than inspiring. Here I must mention one of his lesser-known works: *Stubborn as a Mule*, a novel that positively delights in sending up academic administration.⁷ This was Dick — earnestness with a healthy dollop of cynicism, a harmonious combination of opposing tendencies.

In his scholarship, Dick was rigorous, fair-minded, prolific, and profound — the author of a body of work that, in 2006, earned him a deserved place in the American Academy of Arts and Sciences.⁸ In a slew of books and articles, he deployed his unmatched command of

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³ *Richard H. Fallon, Jr.*, HARVARD L. SCH., <https://hls.harvard.edu/faculty/richard-h-fallon> [<https://perma.cc/8HH8-XPUF>].

⁴ *Id.*; Adina Levine, *Fallon Appointed to Ralph S. Tyler, Jr. Professorship of Constitutional Law*, HARV. L. REC. (Feb. 13, 2005), <https://hlrecord.org/fallon-appointed-to-ralph-s-tyler-jr-professorship-of-constitutional-law> [<https://perma.cc/N3E7-868X>].

⁵ *Richard H. Fallon, Jr.*, *supra* note 3.

⁶ Richard H. Fallon, Jr., *Greatness in a Lower Federal Court Judge: The Case of J. Skelly Wright*, 61 LOY. L. REV. 29, 31 (2015); Richard H. Fallon, Jr., *In Remembrance of Justice Lewis F. Powell, Jr.*, 99 COLUM. L. REV. 544, 546 (1999).

⁷ R.H. FALLON, JR., *STUBBORN AS A MULE* (2009).

⁸ *Professor Richard H. Fallon*, AM. ACAD. OF ARTS & SCIS., <https://www.amacad.org/person/richard-h-fallon> [<https://perma.cc/5L74-RGMF>].

doctrine, history, and philosophy to enrich and add vital nuance to our understanding of the central components of our constitutional order.

To my mind, what stands out about this corpus is, once again, Dick's ability to combine qualities that, in the hands of others, wouldn't sit well together. Above all else, his writing is reasonable. By that I mean grounded, moderate, careful, and nuanced; the opposite of grandiose, flashy, or reductive. Yet while reasonable scholarship can be reasonable to a fault — that is, uninteresting or unilluminating — Dick's somehow manages to be both exceedingly careful yet also finely wrought, deeply edifying, and more than a little opinionated. He was highly skeptical that invocations of a comprehensive methodology or abstract principle could ever enable judges to avoid the highly practical, always contested, and dynamic business of adjudication.⁹ Yet he was not skeptical all the way down. Rejecting the thought that adjudication is judicial legislation, he emphasized both the norm-governed nature of legal reasoning,¹⁰ and the vital importance of a bench attuned and committed to the requirements of the (admittedly ambiguous) ideal of the rule of law.¹¹

For many years, Dick and I were upstairs-downstairs neighbors in Areeda Hall. I was thus fortunate to have occasion to drop into his office to get feedback on my own thinking. In his openness to discussing ideas, he couldn't have been more welcoming. But I confess I found these occasions mildly terrifying. Because I knew that — in his halting way — Dick, with a smile on his face and a twinkle in his eye, was going to make me realize that I had a lot more thinking to do. With apologies for the dated reference, in this context, as well as in workshops and seminars, he was the academic counterpart to Lieutenant Columbo.¹² Unassuming and a bit dowdy, he would invariably ask the simple but devastating question that would reveal the hole in his interlocutor's position. Needless to say, this is exactly what one hopes for in a colleague. I am beyond grateful to have had the benefit of his wisdom, and to have learned so much from him, both through his writing and our conversations.

So, Dick was a great colleague and a brilliant scholar. He was also an exemplary teacher and mentor who never pandered to his students, yet was completely devoted to helping them learn and grow. Whether teaching HLS students or undergraduates in his highly popular course

⁹ See, e.g., Richard H. Fallon, Jr., *Selective Originalism and Judicial Role Morality*, 102 TEX. L. REV. 221, 231 (2023); Richard H. Fallon, Jr., "The Rule of Law" as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1, 47 (1997).

¹⁰ RICHARD H. FALLON, JR., THE CHANGING CONSTITUTION: CONSTITUTIONAL LAW IN THE TRUMP-ERA SUPREME COURT 6–7 (2025).

¹¹ Richard H. Fallon, Jr., *Constitutional Remedies: In One Era and Out the Other*, 136 HARV. L. REV. 1300, 1365 (2023).

¹² Shaun Curran, *Why the World Still Loves 1970s Detective Show Columbo*, BBC (Sep. 9, 2021), <https://www.bbc.com/culture/article/20210909-why-the-world-still-loves-1970s-detective-show-columbo> [<https://perma.cc/LN67-NCKG>].

on American Constitutional Law, he loved the classroom, and it showed. He was twice honored by graduating law school classes with the Sacks-Freund Award for Teaching Excellence.¹³ And his students — many of whom have become prominent scholars, attorneys, advocates, and judges (even Justices) — admired and adored him. Academic legacies are built in the classroom as much as or more than through publications. From the outpouring of sentiment I received when news of his untimely death spread, I know that there are grateful Fallon students all over our country and the world.

There is a lot more to say, and others in this volume will say some of it. But words on a page can't adequately capture Dick Fallon. A colleague, scholar, and teacher extraordinaire, he was what we academics aspire to be, and, on our good days, actually manage to be. And this was Dick all the time, every day. His departure has left a gulf in our community that cannot be filled. But I know that all those who had the opportunity to work with him count themselves extraordinarily fortunate, and rightly so.

It's an awful thing to have to say goodbye. And yet there is comfort in knowing that Dick Fallon led a great life, and that his ideas and his example will be with us for a long, long time to come.

*James E. Pfander**

I first met Dick Fallon on the Harvard campus, where I had arranged to rummage around in the collected papers of Henry Hart as part of a research project on teaching the law of federal jurisdiction.¹⁴ Dick was instinctively and naturally gracious, chatting with me briefly, inquiring about my project, and mentioning a paper of mine that he had come across. From these modest beginnings we grew to be professional friends, sharing drafts from time to time and commenting on one another's work. One thing's for sure, he taught me a great deal more about the law of federal jurisdiction than he learned from me. But in keeping with his gentle ways, he treated me as a colleague rather than the student I was. In time, our friendship grew into one that no longer called for a "professional" qualification.

¹³ Caroline G. Henning & William C. Mao, *Harvard Law School Professor Richard Fallon Dies at 73*, HARV. CRIMSON (July 15, 2025), <https://www.thecrimson.com/article/2025/7/15/richard-fallon-death> [https://perma.cc/NP2P-CU6W].

* Owen L. Coon Professor of Law, Northwestern Pritzker School of Law.

¹⁴ See James E. Pfander, *Fifty Years (More or Less) of Federal Courts*, 77 NOTRE DAME L. REV. 1083 (2002).

One can only guess how many such relationships Dick worked to foster over his storied career. But the outpouring of grief at his untimely death — so widely and deeply felt — suggests the outlines of an answer. He went to great lengths in his upper-level classes to create opportunities for connection that his students treasured. He did the same with the stray law professors he encountered, inviting younger colleagues to lunch or attending a conference at their invitation as the undisputed guest of honor. He once told me how many such invitations he fielded in a typical year (scads) and how he worked (hard) to make time to participate in these forms of engagement and exchange while continuing to pursue his own scholarly agenda.

Pursue it he did, to great effect. Few have contributed more to the field of federal jurisdiction, fewer still have done so while producing truly formative work in constitutional law. Dick's articles — careful, thorough, and spellbinding — grip the reader and explain a feature of our public law world in an utterly original way. Like most of my fellow jurisdictional travelers, I suspect, the appearance of a new piece of Fallon scholarship was always a cause for joy and happy reading. Settling in, we instantly knew we were in good hands, embarking on a trip to a destination both familiar and exotic — made so by lucid insights that invited us to look again with new eyes.

Dick's facility with law and philosophy shows up in his engagement with the positivism of that other Hart (H.L.A.), with the work of Rawls and Dworkin, and with the puzzles of role morality and legal legitimacy. Often addressed to the job of judging (a career he contemplated but did not pursue), Dick's interest in role morality took seriously the idea that individual judges might act within a framework of deep commitment to the rule of law and yet reach decisions that aligned with their political priors, less as a matter of naked interest group voting than of motivated reasoning. As time passed, and the Court's selective commitment to originalism deepened the problems of judicial legitimacy and role morality, Dick's critique took on a sharper edge.¹⁵ He brought that same skeptical eye to his assessment of how well law professors comply with their own role morality as they participate in the amicus-brief-writing enterprise.¹⁶ But he continued to believe in reasoned argument, both to inform judicial (and professorial) morality and to shape the future course of the law.

In the field of federal jurisdiction, Dick made contributions too numerous to recount. To mention only a few, he and his friend and collaborator Dan Meltzer proposed that the Court's retroactive decision-

¹⁵ See Richard H. Fallon, Jr., *Selective Originalism and Judicial Role Morality*, 97 TEX. L. REV. 221, 232 (2019) (“document[ing] the phenomenon of ‘selective originalism’ among the Justices”).

¹⁶ Richard H. Fallon, Jr., *Scholars' Briefs and the Vocation of a Law Professor*, 4 J. LEG. ANALYSIS 223, 227–28 (2012).

making was best understood within a remedial framework that helped to explain qualified immunity and the qualified form of habeas relief articulated in *Teague v. Lane*¹⁷ (1989); he explored the equilibration of rights and remedies;¹⁸ he offered an enduring account of non–Article III adjudication;¹⁹ he explored the jurisdiction-stripping debate with clear eyes;²⁰ and he productively doubted that *Marbury*'s²¹ right-remedy framework offered the best account of constitutional adjudication.²² Was there any corner of the jurisdictional world (we might ask in the spirit of inquiry that animates the Hart and Wechsler casebook²³) that Dick did not illuminate?

One rarely finds a scholar with a stronger grasp of the enterprise of constitutional litigation. Rarer still to find a law professor of any stripe with Dick's sterling personal qualities: humility, gentility, open-mindedness, an understated sense of humor, a love of family, and a consistent desire to honor and support the work of others and to deflect attention from himself. That was true to the end, when he shared his devastating diagnosis with no trace of self-pity but with a simple desire to say goodbye while he could still set fingers to keyboard. It was an act of immense personal courage and fortitude, one that left me wiping away tears. But it offers one more glimpse into a life well lived, one more lesson, gracefully delivered, from a friend who selflessly taught so much to so many.

*Carol S. Steiker**

The French have an expression for goods and services, *le rapport qualité-prix*, that roughly translates as “quality-price ratio” (or more colloquially, “bang for your buck”). If we had an expression for people that gauged their “achievement-arrogance ratio,” Dick Fallon would measure

¹⁷ 489 U.S. 288 (1989); see Richard H. Fallon, Jr., & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 HARV. L. REV. 1731, 1734 (1991).

¹⁸ Richard H. Fallon, Jr., *The Linkage Between Justiciability and Remedies — And Their Connections to Substantive Rights*, 92 VA. L. REV. 633, 636 (2006).

¹⁹ Richard H. Fallon, Jr., *Of Legislative Courts, Administrative Agencies, and Article III*, 101 HARV. L. REV. 915 (1988).

²⁰ Richard H. Fallon, Jr., *Jurisdiction-Stripping Reconsidered*, 96 VA. L. REV. 1043, 1048 (2010).

²¹ 5 U.S. (1 Cranch) 137 (1803).

²² Richard H. Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 CALIF. L. REV. 933, 997 (2019).

²³ See generally RICHARD H. FALLON, JR., ET AL., *HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* (7th ed. 2015).

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off the charts. I cannot think of anyone nearly as accomplished as Dick who has resisted the self-importance that so often attends success. His scholarship, which comprises more than 100 works including several influential books,²⁴ has been celebrated for its intellectual rigor, theoretical sophistication, and fair-mindedness. When Dick's *Law and Legitimacy in the Supreme Court* was published by the prestigious Belknap imprint of Harvard University Press in 2018,²⁵ it was awarded the Thomas M. Cooley Book Prize by the Georgetown Center on the Constitution and was celebrated by a two-day event at Georgetown that included a full-day symposium devoted to the book.

As students will be the first to tell you, not every great scholar is a great teacher. But Dick also was celebrated for his contributions to the classroom. He won Harvard's coveted Sacks-Freund teaching award, voted each year by the Harvard Law School graduating class, not once, but twice, in 2001 and 2006.²⁶ And Dick was revered by undergraduates, too, for his enormously popular Harvard College course on the American Constitution, which many students have credited as a formative part of their undergraduate education. Dick was celebrated beyond the Harvard campus as well. In 2021, he was honored by the Association of American Law Schools with the Daniel J. Meltzer Award, which recognizes a professor of federal courts "who has exemplified over the course of their career Meltzer's excellence in teaching, careful and ground-breaking scholarship, engagement in issues of public importance, generosity as a colleague, and overall contribution to the field of federal courts."²⁷

Many would have their heads turned by such success, praise, and celebration — but not Dick. I sought his advice on many occasions regarding my own work, and Dick always offered his comments in a quiet, almost diffident, manner that belied the trenchant force of his remarks. I observed Dick over the years at many job talks and faculty workshops, and he never sought to dominate the conversation, score points, or show off. He avoided pretentious jargon when simpler language would do. But when Dick spoke in his usual unassuming, thoughtful way, his contributions often set the agenda for the remaining conversation, as others sought to amplify or build upon his insightful observations.

²⁴ HARVARD L. SCH.: FACULTY BIBLIOGRAPHY, "Fallon, Richard H.," 101 results (April 25, 2025), https://web.archive.org/web/20250422164250/https://hls.harvard.edu/bibliography/?instructor_reverse=Fallon,%20Richard%20H. [<https://perma.cc/Y7NM-JYF6>].

²⁵ RICHARD H. FALLON, JR., *LAW AND LEGITIMACY IN THE SUPREME COURT* (2018).

²⁶ Caroline G. Henning & William C. Mao, *Harvard Law School Professor Richard Fallon Dies at 73*, HARV. CRIMSON (July 15, 2025), <https://www.thecrimson.com/article/2025/7/15/richard-fallon-death> [<https://perma.cc/NP2P-CU6W>].

²⁷ *Fallon Receives 2021 Daniel J. Meltzer Award from American Association of Law Schools*, HARV. L. NEWS (Jan. 22, 2021), <https://hls.harvard.edu/today/fallon-receives-2021-daniel-j-meltzer-award-from-american-association-of-law-schools> [<https://perma.cc/QR6X-8XRZ>].

The same dynamic was observable at faculty meetings. When Dick spoke, a special kind of silence would fall. Everyone wanted to know what Dick thought about whatever governance issue was being debated. Although Dick was not one to seek influence through powerful administrative roles, he nonetheless wielded enormous influence on the faculty simply by virtue of his intellect, thoughtfulness, and fair-mindedness.

Although he could not have missed the obvious respect that he commanded, Dick deflected all direct compliments. When someone praised him to his face, he would blush and say something self-effacing or change the subject. But Dick's charming and obviously sincere humility was not at all the same thing as a lack of confidence. Dick clearly knew the worth of his ideas and defended them brilliantly, while remaining remarkably open both to the input of others and to intellectual revision.

I feel very lucky to have had Dick as a colleague, friend, and influential model for thirty-three years on the Harvard faculty. But Dick's biggest influence on my life came even earlier. Dick was an assistant professor when I was a law student at HLS in the mid-1980s. I had the privilege of taking Federal Courts with him (an experience that has connected me with more recent students). Being in Dick's class was both fascinating and a bit scary, given how smart he was and how smart I wanted him to think I was. Dick then hired me and my classmate Elena Kagan as research assistants to read his tenure piece — this was back in the days of THE (singular article) tenure piece — and to suggest edits. This, too, was scary in the same way. But it was also deeply gratifying to be taken seriously by such a serious scholar and to be invited into an intellectual dialogue with him. I don't think it is coincidental that Elena and I both became legal academics ourselves. Dick made that path seem weighty and important, and he also made it seem fun and full of opportunities for vigorous intellectual engagement.

More "fun" (if that is the right word) attended another project that Dick hired me for. Back in the 1980s, the creation of the record (all the pleadings and lower court opinions) for the Ames Moot Court final round — usually presided over by a Supreme Court Justice — was the job of a junior professor. The year I graduated, it fell to Dick to produce the fake case and its record for the final round, which he planned to do over the summer. He told me that he had been allotted extra research assistance funds for the task and that he would give the entire sum to me if I would produce the record. As an impoverished recent graduate looking to purchase my first PC (yes, this was the mid-1980s), it seemed like a princely fee. The only catch? Dick told me that I was under no circumstances to seek his guidance or ask him any questions until I had finished the job. Only upon completion of what was a more than hundred-page record would Dick review it and offer edits. Once again, a terrifying undertaking, but also one from which I learned a great deal — not least what it felt like to have a revered teacher confidently place his trust in me.

As with so many of Dick's students, I eventually grew into a confident lawyer and scholar, and I try in my own teaching career to pay it forward. Thank you, Dick.