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*Dynamic*  
Statutory  
Interpretation

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WILLIAM N. ESKRIDGE, JR.

# Dynamic Statutory Interpretation Dynamic Statutory Interpretation

**William N. Eskridge**



## **Dynamic Statutory Interpretation Dynamic Statutory Interpretation:**

**Dynamic Statutory Interpretation** William N. Eskridge, 1994 Contrary to traditional theories of statutory interpretation which ground statutes in the original legislative text or intent legal scholar William Eskridge argues that statutory interpretation changes in response to new political alignments new interpreters and new ideologies It does so first of all because it involves richer authoritative texts than does either common law or constitutional interpretation statutes are often complex and have a detailed legislative history Second Congress can and often does rewrite statutes when it disagrees with their interpretations and agencies and courts attend to current as well as historical congressional preferences when they interpret statutes Third since statutory interpretation is as much agency centered as judge centered and since agency executives see their creativity as more legitimate than judges see theirs statutory interpretation in the modern regulatory state is particularly dynamic Eskridge also considers how different normative theories of jurisprudence liberal legal process and antiliberal inform debates about statutory interpretation He explores what theory of statutory interpretation if any is required by the rule of law or by democratic theory Finally he provides an analytical and jurisprudential history of important debates on statutory interpretation Dynamic Statutory Interpretation William N. Eskridge, 2023-08-10 **Interpreting**

**Statutes** Suzanne Corcoran, Stephen Bottomley, 2005 Interpreting Statutes was cited 4 times by the High Court in *Momcilovic v The Queen* 2011 HCA 34 8 September 2011 Interpreting Statutes has been written for lawyers and judges who must interpret statutes on a daily basis as well as for students and scholars who have their own responsibility for the future This book takes a new approach to statutory interpretation The authors consider the fundamental importance of context in statutory interpretation across various fields of regulation and explore the problems which arise from the frequent disjunction between regulatory design and subsequent statutory interpretation As a result they bring to the fore fundamental theoretical questions underlying interpretive choice and expand our appreciation of how critical interpretive issues are to the proper functioning of our legal system The book is divided into two parts The first covers several areas dealing with fundamental theoretical issues The second deals with particular areas of the law such as criminal law or corporate law addressing the utility and functionality of the general theories from different legal perspectives and illustrating the fact that different interpretive principles may take precedence in different areas of the law It reveals the complexity of statutory interpretation when applied to actual practice in a particular area of law Despite this complexity and the unique problems of statutory interpretation within each area of law some major themes emerge including the strong influence of constitutional interpretation tension between common law rights and statutory innovation questions about the interaction of domestic law with international law tension between settled judicial principles of interpretation and principles embedded in legislation issues concerning the interpretation of delegated legislation and questions about gap filling and discretion in the interpretation of statutes and codes **The Injustice of Dynamic Statutory Interpretation** Anthony D'Amato, 2010 How

can we possibly plan our lives on the basis of the law of tomorrow when we can't predict what that law will be Are courts that are attracted to dynamic statutory interpretation teaching us that we can no longer know and rely on the rule of law in our daily lives because months or years later they can use policy considerations to make new law and apply that law retroactively to us Doesn't dynamic statutory interpretation amount to unconstitutional ex post facto legislation Hasn't justice become impossible to get from courts if judges insist on upsetting both sides' expectations of what law was when their case or controversy arose and instead pull the rug out from under their feet with new law based on the judges' own idea of general social and governmental policy Isn't this just a case of judges appropriating the rights of the parties without compensation in order to announce new social legislation Isn't this the very definition of injustice

**The Theory and Practice of Statutory Interpretation** Frank B. Cross, 2008-11-19 Today statutes make up the bulk of the relevant law heard in federal courts and arguably represent the most important source of American law The proper means of judicial interpretation of those statutes have been the subject of great attention and dispute over the years This book provides new insights into the theory and practice of statutory interpretation by courts Cross offers the first comprehensive analysis of statutory interpretation and includes extensive empirical evidence of Supreme Court practice He offers a thorough review of the active disputes over the appropriate approaches to statutory interpretations namely whether courts should rely exclusively on the text or also examine the legislative history The book then considers the use of these approaches by the justices of the recent Rehnquist Court and the degree to which they were applied by the justices either sincerely or in pursuit of an ideological agenda

Demystifying Legal Reasoning Larry Alexander, Emily Sherwin, 2008-06-16 Demystifying Legal Reasoning defends the proposition that there are no special forms of reasoning peculiar to law Legal decision makers engage in the same modes of reasoning that all actors use in deciding what to do open ended moral reasoning empirical reasoning and deduction from authoritative rules This book addresses common law reasoning when prior judicial decisions determine the law and interpretation of texts In both areas the popular view that legal decision makers practise special forms of reasoning is false

**Statutes in Court** William D. Popkin, 1999 A history of the discretion accorded U S judges in interpreting legislation from the Revolution to the present culminating in the author's own theory of the proper scope of judicial discretion

**Intertemporal Linguistics in International Law** Julian Wyatt, 2019-12-12 Intertemporal Linguistics in International Law examines and offers an overdue solution to a specific problem central to the resolution of an ever increasing number of international legal disputes how to interpret a treaty with terms that change in meaning over time A wide ranging review of the relevant international case law and scholarship reveals that no rule principle or authority of international law including even the oft cited evolutionary interpretation doctrine provides international adjudicators with the firm and practical guidance on this specific question that contemporary international litigants demand Using an analytical approach inspired by the comparative method and drawing on specific concepts from external fields including private law legal theory and

principally modern day linguistics Intertemporal Linguistics in International Law restructures the most relevant international case law around a new conceptual framework that offers fresh insight into the process of treaty interpretation It demonstrates that by distinguishing between resolving ambiguity and resolving vagueness and by identifying the temporal sense intention with which a treaty term is used international adjudicators can avail themselves of a more predictable and appropriate method for solving this complex and practically important problem of international law

**Legal Theory and Interpretation in a Dynamic Society** Alexander Bruns, Yuanshi Bu, Hanno Merkt, Sonja Meier, Michael Pawlik, Eiji Takahashi, Silja Vöneky, Jan von Hein, 2021-07-02 Der Band versammelt Beiträge die anlässlich des 7. Seoul Freiburger Rechtswissenschaftlichen Symposiums im September 2019 in Seoul gehalten wurden Die Zusammenarbeit und der akademische Austausch zwischen den juristischen Fakultäten der Seoul National University SNU und der Albert Ludwigs Universität Freiburg hat eine alte und wertvolle Tradition der engen Beziehungen zwischen dem koreanischen und dem deutschen Recht lebendig gehalten Das 7. Symposium war dem Thema Rechtstheorie und Auslegung in einer dynamischen Gesellschaft gewidmet und deckte ein breites Spektrum an Themen ab die in sechs Sektionen unterteilt waren I Rechtstheorie und Auslegung II Unternehmensrecht III Internationales Privatrecht und Zivilprozessrecht IV Recht der künftigen Intelligenz Eigentumsrecht und Strafrecht V Vertragsrecht und VI das Verhältnis von supranationalem und innerstaatlichem Verfassungsrecht Die meisten der auf dem Symposium gehaltenen Vorträge sind in diesem Band versammelt

The Seaweed Rebellion Edward A. Fitzgerald, 2001-01-01 This study examines the role of the courts in the public policy process by analyzing the federal state conflicts over offshore energy development known as the Seaweed Rebellion from the Roosevelt through Clinton administrations Dr Edward A Fitzgerald posits that the courts play an important role interpreting statutes and overseeing administrative actions to ensure that important legislative purposes heralded in the halls of Congress are not lost or misdirected in the vast hallways of the federal bureaucracy He concludes that the courts' interpretations and deference towards executive decisions undermined the important statutory role of the coastal states decreased environment protection and has caused a breakdown in the program of outer continental shelf energy development

**The**

**Internationalisation of Law** Mary Elizabeth Hiscock, William van Caenegem, 2010-01-01 This insightful book explores the acute challenges presented by the internationalisation of law a trend that has been accelerated by the growing requirement for academics and practitioners to work and research across countries and regions with differing legal traditions The authors have all confronted these challenges of internationalisation through their extensive knowledge and experience in civil law common law and mixed jurisdictions around the globe Their analysis of the implications for researchers and teachers as well as practitioners law makers and reformers is original and their different proposals for dealing with the challenges are both practical and at times radical

**University of Chicago Law Review: Volume 78, Number 4 - Fall 2011** University of Chicago Law Review, 2012-04-11 A leading law review now offers a quality eBook edition The fourth and final issue of 2011

Volume 78 features articles and essays from internationally recognized legal scholars and governmental leaders including Cass Sunstein on empirically informed regulation Jonathan Bressler on jury nullification and Reconstruction Daniel Schwarcz on standardized insurance policies and Bertral Ross II writing against constitutional mainstreaming in statutory interpretation In addition the issue includes a review essay on the book *The Master Switch* as well as student Comments on such subjects as same sex divorce religious practices by prisoners falsely claiming Medal of Honor status and enhancement in federal sentencing The issue is presented in modern eBook formatting and features active Tables of Contents linked footnotes and URLs and legible graphs and tables

**The Oxford Handbook of Law and Politics** Keith E. Whittington, R. Daniel Kelemen, Gregory A. Caldeira, 2010-06-11 The study of law and politics is one of the foundation stones of the discipline of political science and it has been one of the most productive areas of cross fertilization between the various subfields of political science and between political science and other cognate disciplines This Handbook provides a comprehensive survey of the field of law and politics in all its diversity ranging from such traditional subjects as theories of jurisprudence constitutionalism judicial politics and law and society to such re emerging subjects as comparative judicial politics international law and democratization The Oxford Handbook of Law and Politics gathers together leading scholars in the field to assess key literatures shaping the discipline today and to help set the direction of research in the decade ahead

**Judging Statutes** Robert A. Katzmann, 2014-08-14 In an ideal world the laws of Congress known as federal statutes would always be clearly worded and easily understood by the judges tasked with interpreting them But many laws feature ambiguous or even contradictory wording How then should judges divine their meaning Should they stick only to the text To what degree if any should they consult aids beyond the statutes themselves Are the purposes of lawmakers in writing law relevant Some judges such as Supreme Court Justice Antonin Scalia believe courts should look to the language of the statute and virtually nothing else Chief Judge Robert A Katzmann of the U S Court of Appeals for the Second Circuit respectfully disagrees In *Judging Statutes* Katzmann who is a trained political scientist as well as a judge argues that our constitutional system charges Congress with enacting laws therefore how Congress makes its purposes known through both the laws themselves and reliable accompanying materials should be respected He looks at how the American government works including how laws come to be and how various agencies construe legislation He then explains the judicial process of interpreting and applying these laws through the demonstration of two interpretative approaches purposivism focusing on the purpose of a law and textualism focusing solely on the text of the written law Katzmann draws from his experience to show how this process plays out in the real world and concludes with some suggestions to promote understanding between the courts and Congress When courts interpret the laws of Congress they should be mindful of how Congress actually functions how lawmakers signal the meaning of statutes and what those legislators expect of courts construing their laws The legislative record behind a law is in truth part of its foundation and therefore merits consideration Law and the

Humanities Austin Sarat, Matthew Daniel Anderson, Cathrine O. Frank, 2010 A review and analysis of existing scholarship on the different national traditions and on the various modes and subjects of law and humanities      **Thinking about Statutes** Andrew Burrows, 2018-08-02 We are in the age of statutes and it is indisputable that statutes are swallowing up the common law Yet the study of statutes as a coherent whole is rare In these three lectures given as the 2017 Hamlyn Lecture series Professor Andrew Burrows takes on the challenge of thinking seriously and at a practical level about statutes in English law In his characteristically lively and punchy style he examines three central aspects which he labels interpretation interaction and improvement So how are statutes interpreted Is statutory interpretation best understood as seeking to effect the intention of Parliament or is that an unhelpful fiction Can the common law be developed by analogy to statutes Do the judges have too much power in developing the common law and in interpreting statutes How can our statutes be improved These and many other questions are explored and answered in this accessible and thought provoking analysis      **Democratic Government and Constitutional Jurisdiction** Clèmerson Merlin Clève, Bruno Lorenzetto, 2022-01-24 Democratic Government and Constitutional Jurisdiction brings together a series of articles produced in recent years and contains elements that can provide a panoramic view of the most prominent discussions in constitutional law in our time The book is divided in five main parts each of them is an article and addresses issues related to constitutional law democracy and institutions It brings about the challenges that Brazil must confront as part of the process of constructing a free just and compassionate society this book is intended to be an additional tool for improving the country's institutions In the inevitable presence of doubts and dreams we seek to offer alternatives in order to ensure that this project continues      **Judith S. Kaye in Her Own Words** Judith S. Kaye, 2019-06-01 An autobiography and selected writings by the former Chief Judge of New York's highest court the Court of Appeals In 1983 Judith S Kaye 1938 2016 became the first woman appointed to the Court of Appeals New York's highest court Ten years later she became the first woman to be appointed chief judge of the court and by the time she retired in 2008 she was the longest serving chief judge in the court's history During her long career she distinguished herself as a lawyer jurist reformer mentor and colleague as well as a wife and mother Bringing together Kaye's own autobiography completed shortly before her death as well as selected judicial opinions articles and speeches Judith S Kaye in Her Own Words makes clear why she left such an enduring mark upon the court the nation and all who knew her The first section of the book Kaye's memoir focuses primarily on her years on the Court of Appeals the inner workings of the court and the challenges she faced as chief judge in managing a court system populated by hundreds of judges and thousands of employees The second section a carefully chosen selection of her written opinions and occasional dissents reveals how she guided the law in New York State for almost a quarter century with uncommon vision and humanity Her decisions cover every facet of New York and federal law and have often been quoted and followed nationally The final section of the book includes selections from her numerous articles and speeches which cover the field from common law

jurisprudence to commercial law to constitutional analysis all with an eye to the future and above all how the law can best affect the everyday lives of people who come to court willingly or unwillingly including not least those most in need of the law

BACK FLAP Judith Kaye was one of the most admired judges in the nation and a wonderful real often funny person as well This collection captures the full range of the judge and the woman and it serves as a great reminder of her enduring legacy

Jeffrey Toobin An extraordinary woman jurist and leader who had a striking impact on the law and the administration of justice in New York State and beyond This collection is more than a simple record of a remarkable life It is a treasure not only for those of us who knew and admired Judith but for all who may seek to understand and appreciate the profound impact she had on the law the legal profession and the administration of justice from the Foreword by Honorable Janet DiFiore

Gadamer and Law Francis J. Mootz III, 2017-07-05 Hans Georg Gadamer's philosophical hermeneutics is especially relevant for law which is grounded in the interpretation of authoritative texts from the past to resolve present day disputes In this collection leading scholars consider the importance of Gadamer's philosophy for ongoing disputes in legal theory The work of prominent philosophers including Fred Dallmayr P. Christopher Smith and David Hoy is joined with the work of leading legal theorists such as William Eskridge Lawrence Solum and Dennis Patterson to provide an overview of the connections between law and Gadamer's hermeneutical philosophy Part I considers the relevance of Gadamer's philosophy to longstanding disputes in legal theory such as the debate over originalism the rule of law and proper modes of statutory and constitutional exegesis Part II demonstrates Gadamer's significance for legal theory by comparing his approach to the work of Nietzsche Habermas and Dworkin

Law and Truth Dennis Michael Patterson, 1999 Taking up a single question What does it mean to say a proposition of law is true this book advances a major new account of truth in law Drawing upon the later philosophy of Wittgenstein as well as more recent postmodern theory of the relationship between language meaning and the world Patterson examines leading contemporary jurisprudential approaches to this question and finds them flawed in similar and previously unnoticed ways He offers a powerful alternative account of legal justification one in which linguistic practice the use of forms of legal argument holds the key to legal meaning



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