

Dynamic
Statutory
Interpretation

WILLIAM N. ESKRIDGE, JR.

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Dynamic Statutory Interpretation Dynamic Statutory Interpretation

Howard Gillman, Cornell W. Clayton



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 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 *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 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

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

Law making is the Regime of Legislature. A Critical Overview of the Partnership Model, 2021-04-20 Essay from the year

2021 in the subject Law Public Law Constitutional Law Basic Rights grade A language English abstract The main topic of this paper is to frame a critique of the so called partnership model in jurisdiction between the legislature and the judiciary The hallmark of 19th and 20th century doctrines of interpretation has been that they premise themselves on the principle that a court ought to interpret law as it stands The function of the court is to interpret the language of a statute whereas it is for the legislature to make enactments and for the courts to enforce such enactments Courts are not legislators they have to carry out loyally the directions of the legislature Two models of interpretation stands in present world agency and partnership model According to the agency model while interpreting a statute the Court has to discover the intent of the legislature or the purpose behind legislation The partnership model views the Court as a partner in legislative enterprise with legislature hence while interpreting a statute the Court should seek a sensible to avoid rigors of law Judge does not create normative text but rather gives it meaning The static vision of statutory interpretation prescribed by traditional doctrine is strikingly outdated Interpretation of a statute evolves over time because of changing factual contexts and the changing perspectives of its interpreters Statutory interpretation should appropriately balance a number of factors including predictability and certainty economic efficiency fairness and the public interest

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

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 **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 **William and Mary Environmental Law and Policy Review** ,2007 **California Law Review** ,1920 *The Canterbury Law Review* ,2003

Antonin Scalia's Jurisprudence Ralph A. Rossum, 2006 This book is the first comprehensive reasoned and sympathetic analysis of how Scalia has decided cases during his entire nineteen year Supreme Court tenure Ralph Rossum focuses on Scalia's more than 600 Supreme Court opinions and dissents carefully wrought passionately argued and filled with well turned phrases which portray him as an eloquent defender of an original meaning jurisprudence He also includes analyses of Scalia's Court of Appeals opinions for the D C Circuit his major law review articles as a law professor and judge and his provocative book *A Matter of Interpretation* Jacket The Supreme Court in American Politics Howard Gillman, Cornell W. Clayton, 1999 For decades political scientists studying the Court have adopted behavioral approaches and focused on the relatively narrow question of how the justices' policy preferences influence their voting behavior This emphasis has illuminated important aspects of Supreme Court politics but it has also left unaddressed many other important questions about this unique and fascinating institution Drawing on the new institutionalism in the social sciences the distinguished contributors to this volume attempt to fill this gap by exploring a variety of topics including the Court's institutional development and its relationship to broader political contexts such as party regimes electoral systems social movements social change legal precedents political identities and historically evolving economic structures The book's initial chapters examine the nature of the Court's distinctive norms as well as the development of its institutional powers and practice A second section relates the development of Supreme Court politics to the historical development of other political institutions and social movements Concluding chapters explore how its decision making in particular areas of law or periods of time is influenced by and influences its socio political milieu These contributions offer provocative insights regarding the Court's role in maintaining or disrupting political and economic structures as well as social structures and identities tied to ideology class race gender and sexual orientation *The Supreme Court in American Politics* shows how we can develop an enriched understanding of this institution and open up exciting new areas of research by placing it in the broader context of politics in the United States Michigan Law Review ,1998 The Georgetown Law Journal ,1989 **Journal of Legal Education Volume 45, March 1995 .Number 1** Association of American Law Schools, Jonathan L. Entin, Erik M. Jensen, William P. Marshall, Editors., 1995 SMU Law Review ,2000

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