



WILLIAM N. ESKRIDGE, JR.

128 Wall Street
New Haven, Ct 06520
(203) 432 9056 (Yale office)

209 "C" Street. S.E.
Washington, DC 20003
(202) 543-2980 (D.C. office)

EDUCATION

Davidson College, Bachelor of Arts (History), 1973

Summa cum laude, high departmental honors
Algernon Sydney Sullivan Award
Phi Beta Kappa, Phi Eta Sigma (president), Omicron
Delta Kappa, Delta Sigma Rho-Tau Kappa Alpha
(president)

Harvard University, Master of Arts (History), 1974

Reading ability certified in French, German, Latin
Passed Ph. D. oral examinations (with distinction)

Yale University, Juris Doctor, 1978

The Yale Law Journal, 1976-78
Note & Topics Editor (volume 78), 1977-78
Yale prison services clinic, 1975-78

POSITIONS HELD

John A. Garver Professor of Jurisprudence, Yale Law School, 1998 to present
Deputy Dean, 2001-02

Visiting Professor of Law
NYU, 1993, 2004
Harvard, 1994
Yale, 1995
Stanford, 1995
Toronto, 1999, 2001
Vanderbilt, 2003
Columbia, 2003
Georgetown, 2006, 2012

Scholar in Residence
Columbia, 2005, 2011
Fordham, 2008

Simon A. Guggenheim Fellow, 1995

Professor of Law, Georgetown University
Full Professor, 1990 - 1998
Associate Professor, 1987 - 1990

Assistant Professor of Law, University of Virginia, 1982 - 1987

Attorney, Shea & Gardner, Washington, D.C., 1979 - 1982

Law Clerk, The Honorable Edward Weinfeld, Southern District of New York (U.S.),
1978 - 1979

(SELECTED) PUBLICATIONS

Books

Interpreting Law: A Primer on How to Read Statutes and the Constitution
(Foundation 2016)

Statutes, Regulations, and Interpretation: Legislation and Administration in the Republic of Statutes (West 2014) (co-authored with Abbe R. Gluck and Victoria F. Nourse)

A Republic of Statutes: The New American Constitutionalism (Yale 2010)
(co-authored with John Ferejohn)

Dishonorable Passions: Sodomy Law in America, 1861-2003 (Viking 2008)

Gay Marriage: For Better or For Worse? What We Have Learned from the Evidence (Oxford 2006) (co-authored with Darren Spedale)

Equality Practice: Civil Unions and the Future of Gay Rights (Routledge 2002)

Legislation and Statutory Interpretation (Foundation, 1999; 2d ed. 2005) (co-authored with Philip Frickey and Elizabeth Garrett)

Gaylaw: Challenging the Apartheid of the Closet (Harvard 1999)

Constitutional Tragedies and Stupidities (NYU 1998) (co-authored and edited with Sanford Levinson)

Sexuality, Gender, and the Law (Foundation 1997; 2d ed. 2003; abridged ed. 2005; 3d ed. 2011) (co-authored with Nan Hunter)

The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment? (Free Press 1996)

Henry M. Hart Jr. and Albert M. Sacks, **The Legal Process: Basic Materials in the Making and Application of Law** (Foundation 1994) (historical and critical edition of 1958 tentative draft) (co-author and -editor with Philip P. Frickey)

Dynamic Statutory Interpretation (Harvard 1994)

Cases and Materials on Constitutional Law: Themes for the Constitution's Third Century (West Publishing Co. 1993; 2d ed. 1998; 3d ed. 2004, 4th ed. 2009; 5th ed. 2013) (co-authored with Daniel Farber & Philip Frickey and, with fifth edition, Jane Schacter)

Legislation: Statutes and the Creation of Public Policy (West 1987; 2d ed. 1994; 3d ed. 2001; 4th ed. 2007; 5th ed. 2014) (co-authored with Philip Frickey and, after second edition, Elizabeth Garrett; starting with fifth edition, add James Brudney)

A Dance Along the Precipice: The Political and Economic Dimensions of the International Debt Problem (Lexington 1985) (editor and author of one chapter) (also published in Spanish and Portuguese editions)

(Selected) Articles

“The First Marriage Cases, 1970-74,” in *Love Unites Us: Winning the Freedom to Marry in America* 21-27 (Kevin M. Cathcart & Leslie J. Gabel-Brett, eds., 2016)

“Law and the Production of Deceit,” in Austin Sarat ed., *Law and Lies: Deception and Truth-Telling in the American Legal System* 254-312 (2015)

“Original Meaning and Marriage Equality,” 52 *Hous. L. Rev.* 1067 (2015)

“Congressional Overrides of Supreme Court Statutory Interpretation Decisions, 1967-2011,” 92 *Tex. L. Rev.* 1317 (2014) (with Matthew R. Christiansen)

“Backlash Politics: How Constitutional Litigation Has Advanced Marriage Equality in the United States,” 93 *B.U.L. Rev.* 275 (2013)

“Expanding *Chevron*’s Domain: A Comparative Institutional Analysis of the Relative Competence of Courts and Agencies to Interpret Statutes,” 2013 *Wis. L. Rev.* 411

“The New Textualism and Normative Canons,” 113 *Colum. L. Rev.* 531 (2013) (book review)

“Marriage Equality: An Idea Whose Time Is Coming,” 37 NYU Rev. L. & Soc. Change 245 (2013)

“Nino’s Nightmare: Legal Process Theory as a Jurisprudence of Toggling Between Facts and Norms,” 57 St. Louis U.L. Rev. 865 (2012)

“Vetogates and American Public Law,” J.L. Econ. & Org. (April 2012), available online at <http://jleo.oxfordjournals.org/content/early/2012/04/19/jleo.ews009.abstract>

“Family Law Pluralism: A Guided-Choice Regime of Menus, Default Rules, and Override Rules,” 100 Geo. L.J. 1881 (2012)

“Noah’s Curse: How Religion Often Conflates Status, Belief, and Conduct to Resist Antidiscrimination Norms,” 45 Ga. L. Rev. 657 (2011)

“Is Political Powerlessness a Requirement for Heightened Equal Protection Scrutiny?,” 50 Washburn L.J. 1 (2010)

“Chevron as a Canon, Not a Precedent: An Empirical Study of What Motivates Justices in Agency Deference Cases,” 110 Colum. L. Rev. 1727 (2010) (with Connor N. Raso)

“The California Proposition 8 Case: What Is a Constitution For,” 98 Calif. L. Rev. 1235 (2010)

“Sexual and Gender Variation in American Public Law: From Malignant to Tolerable to Benign,” 57 UCAL L. Rev. 1333 (2010)

“The California Supreme Court, 2007-2008—Foreword: The Marriage Cases, Reversing the Burden of Inertia in a Pluralist Democracy,” Calif. L. Rev. (2009)

“A Pluralist Theory of Equal Protection,” U. Pa. J. Const’l L. (2009)

Constitutional Horticulture: Deliberation-Respecting Judicial Review, 87 Tex. L. Rev. 1273 (2009) (with John Ferejohn)

Vetogates, Preemption, *Chevron*, 83 Notre Dame L. Rev. 1441 (2008)

The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from *Chevron* to *Hamdan*, 96 Geo. L.J. 1083 (2008) (co-authored with Lauren Baer) (the Ryan Lecture)

America’s Statutory Constitution, 41 U.C. Davis L. Rev. 1 (2007) (the Barrett Lecture)

No Frills Textualism, 119 Harv. L. Rev. 2041 (2006) (book review)

Chevron and Agency Norm Entrepreneurship, 115 Yale L.J. 2623 (2006) (essay co-authored with Kevin Schwartz)

Body Politics: *Lawrence v. Texas* and the Constitution of Disgust and Contagion, 57 Fla. L. Rev. 1011 (2005) (the Dunwoody Lecture)

Pluralism and Distrust: How Courts Can Support Democracy by Lowering the Stakes of Politics, 114 Yale L.J. 1279 (2005)

Lawrence v. Texas and the Imperative of Comparative Constitutionalism, 2 Int'l J. Const'l L. 555 (2004)

Lawrence's Jurisprudence of Tolerance: Judicial Review to Lower the Stakes of Identity Politics, 88 Minn. L. Rev. 1021 (2004)

Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century, 100 Mich. L. Rev. 2062 (2002)

Structuring Lawmaking to Reduce Cognitive Bias: A Critical View, 87 Cornell L. Rev. 616 (2002)

Channeling: Identity-Based Social Movements and Public Law, 150 U. Pa. L. Rev. 419 (2001)

All About Words: Early Understandings of the >Judicial Power= in Statutory Interpretation, 1776-1806, 101 Colum. L. Rev. 999 (2001)

The Relationship Between Obligations and Rights of Citizens, 69 Fordham L. Rev. 1721 (2001)

Super-Statutes, 50 Duke L.J. 1215 (2001) (co-authored with John Ferejohn)

Equality Practice: Reflections on the Jurisprudence of Civil Unions, 64 Alb. L.J. 853 (2001) (Sobota Lecture)

January 27, 1961: The Birth of Gaylegal Equality Arguments, 58 NYU Ann. Survey Am. Law 39 (2001)

No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review, 75 NYU L. Rev. 1327 (2000)

Destabilizing Due Process and Evolutive Equal Protection, 47 UCLA L. Rev. 1183 (2000)

Comparative Law and the Same-Sex Marriage Debate: A Step-by-Step Approach Toward Recognizing Gay Unions, 31 McGeo. L.J. 641 (2000)

The Circumstances of Politics and the Application of Statutes, 100 Colum. L. Rev. 558 (2000)

Multivocal Prejudices and Homo Equality, 100 Ind. L.J. 558 (1999) (Harris Lecture)

Norms, Empiricism, and Canons in Statutory Interpretation, 66 U. Chi. L. Rev. 671 (1999)

Hardwick and Historiography, 1999 U. Ill. L. Rev. 631 (Baum Lecture)

Relationships Between Formalism and Functionalism in Separation of Powers Cases, 22 Harv. J.L. & Pub. Pol'y 21 (1998)

Should the Supreme Court Read the *Federalist* But Not Statutory Legislative History?, 66 Geo. Wash. L. Rev. 1301 (1998)

Textualism, the Unknown Ideal, 96 Mich. L. Rev. 1509 (1998) (book review)

A Jurisprudence of "Coming Out": Religion, Homosexuality, and Collisions in Liberty and Equality in American Public Law, 106 Yale L.J. 2411 (1997)

Privacy Jurisprudence and the Apartheid of the Closet, 1946-1961, 24 Fla. St. U.L. Rev. 703 (1997) (Mason Ladd Lecture)

Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, Nomos, and Citizenship, 1961-1981, 25 Hofstra L. Rev. 817 (1997) (Visiting Scholar in Residence Lecture)

Willard Hurst, Master of the Legal Process, 1997 Wis. L. Rev. 1181

From the Sodomite to the Homosexual: American Regulation of Same-Sex Intimacy, 1885-1945, 82 Iowa L. Rev. (1997) (Murray Lecture)

Steadying the Court's "Unsteady Path": A Theory of Judicial Enforcement of Federalism, 68 U. So. Cal. L. Rev. 1447 (1995) (co-authored with Jenna Bednar)

Virtual Logrolling: How the Court, Congress, and the States Multiply Rights, 68 U. So. Cal. L. Rev. 1545 (1995)

Regulatory Variables and Statutory Interpretation, 73 Wash. U.L.Q. 1103 (1995) (co-authored with Judith Levi)

"Fetch Some Soupmeat," 16 Cardozo L. Rev. 2209 (1995)

The Supreme Court, 1993 Term Foreword: Law as Equilibrium, 108 Harv. L. Rev. 26 (1994) (co-authored with Philip Frickey)

The Elastic Commerce Clause: A Political Theory of American Federalism, 49 Vand. L. Rev. 1355 (1994) (co-authored with John Ferejohn)

The Making of "The Legal Process," 107 Harv. L. Rev. 2031 (1994) (essay, co-authored with Philip Frickey)

From Handholding to Sodomy: The First Amendment and the Regulation of Homosexual Conduct, 29 Harv. C.R.-C.L. L. Rev. 319 (1994) (co-authored with David Cole)

The Economics Epidemic in an AIDS Perspective, 61 U. Chi. L. Rev. 733 (1994) (review essay co-authored with Brian Weimer)

Gaylegal Narratives, 46 Stan. L. Rev. 607 (1994)

Post-Enactment Legislative Signals, 57 Law & Contemp. Probs. 75 (Winter 1994)

The Judicial Review Game, 88 Nw. U.L. Rev. 382 (1993)

Race and Sexual Orientation in the Military: Ending the Apartheid of the Closet, 2 Reconstruction 52 (1993)

The Case of the Speluncean Explorers: Twentieth Century Statutory Interpretation in a Nutshell, 61 Geo. Wash. L. Rev. 1731 (1993)

A History of Same-Sex Marriage, 79 Va. L. Rev. 1419 (1993)

The Relationship Between Theories of Legislatures and Theories of Statutory Interpretation, in *The Rule of Law (Nomos)*, 1993 (co-authored with John Ferejohn)

A Gay Constructionist Critique of Posner's Sex and Reason: Steps Toward a Gaylegal Agenda, 102 Yale L.J. 333 (1992) (review essay)

Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking, 45 Vand. L. Rev. 593 (1992) (co-authored with Philip Frickey)

The Article I, Section 7 Game, 80 Geo. L.J. 523 (1992) (co-authored with John Ferejohn)

Overriding Supreme Court Statutory Interpretation Decisions, 101 Yale L.J. 331 (1991)

Making the Deal Stick: Enforcing the Original Constitutional Understanding, *J.L. Econ & Org.* (1991) (co-authored with John Ferejohn)

Reneging on History? Playing the Court/Congress/President Civil Rights Game, 79 Calif. L. Rev. 613 (1991)

The New Public Law Movement: Moderation as a Postmodern Cultural Form, 89 Mich. L. Rev. 707 (1991) (co-authored with Gary Peller)

The Case of the Amorous Defendant: Criticizing Absolute Stare Decisis for Statutory Cases), 88 Mich. L. Rev. 2450 (1990)

Legislative History Values, 66 Chi.-Kent L. Rev. (1990)

Dynamic Interpretation of Economic Regulatory Statutes, 21 L. & Pol'y Int'l Bus. 663 (1990)

Gadamer/Statutory Interpretation, 90 Colum. L. Rev. 609 (1990)

The New Textualism, 37 UCLA L. Rev. 621 (1990)

Statutory Interpretation as Practical Reasoning, 42 Stan. L. Rev. 321 (1990) (co-authored with Philip Frickey)

Spinning Legislative Supremacy, 78 Geo. L.J. 319 (1989)

Public Values in Statutory Interpretation, 137 U. Pa. L. Rev. 1007 (1989)

Metaprocedure, 98 Yale L.J. 945 (1989) (review essay)

Interpreting Legislative Inaction, 87 Mich. L. Rev. 67 (1988)

Overruling Statutory Precedents, 76 Geo. L.J. 1361 (1988)

Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation, 74 Va. L. Rev. 275 (1988)

Dynamic Statutory Interpretation, 135 U. Pa. L. Rev. 1479 (1987)

Legislation Scholarship & Pedagogy in the Post-Legal Process Era, 48 U. Pitt. L. Rev. 691 (1987) (co-authored with Philip Frickey)

Les Jeux Sont Faits: Structural Origins of the International Debt Problem, 25 Va. J. Int'l L. 281 (1985)

One Hundred Years of Ineptitude, 70 Va. L. Rev. 1083 (1984)

The Iranian Nationalization Cases, 22 Harv. Int'l L.J. 525 (1981)

Dunlop v. Bachowski & the Limits of Judicial Review under Title IV of the LMRDA, 86 Yale L.J. 885 (1977) (student note)

ENDOWED LECTURES

Henry J. Miller Lecture, Georgia State University College of Law, “Marriage Equality, 1967-2017,” September 15, 2016

Frankel Lecture, University of Houston Law Center, “Marriage Equality as a Testing Ground for Original Meaning,” November 2014, published as “Marriage Equality and Original Meaning,” 52 Hous. L. Rev. 1057 (2015)

Mathew O. Tobriner Memorial Lecture on Constitutional Law, University of California at Hastings, College of Law, “Marriage Equality’s Cinderella Moment,” September 6, 2013

2012 Distinguished Lecture, Boston University School of Law, “Beyond Backlash: How Constitutional Litigation Has Advanced Marriage Equality in the United States, 1970-2012,” November 15, 2012, published as “Backlash Politics: How Constitutional Litigation Has Advanced Marriage Equality in the United States,” 93 B.U.L. Rev. 275 (2013)

Foulston Siefkin Lecture, Washburn University School of Law, March 26, 2010, published as “Is Political Powerlessness a Requirement for Heightened Equal Protection Scrutiny?”

Sibley Lecture at the University of Georgia, School of Law, March 18, 2010, published as “Noah’s Curse and Paul’s Admonition: What the Civil Rights Cases Can Teach Us about the Clash Between Gay Rights and Religious Liberty”

Centennial Visitor, Public Lecture, Chicago-Kent College of Law, “Administrative Constitutionalism,” March 5, 2009

Edward Barrett Lecture at the University of California, Davis, School of Law January 17, 2007, published as America’s Statutory constitution, U.C. Davis L. Rev. (2008).

Ryan Lecture at Georgetown University Law Center, November 4, 2006, published as The Supreme Court’s Deference Continuum, An Empirical Study (from *Chevron* to *Hamdan*), 86 Geo. L.J. (2008)

Center for Religious Studies at Princeton University, November 2005, Nordic Bliss: What the American Same-Sex Marriage Debate Can Learn from Scandinavia

Lockhart Lecture at University of Minnesota School of Law, “Same-Sex Marriage and Equality Practice,” October 2005,

Dunwoody Lecture at University of Florida School of Law, March 2005, published as

Body Politics: *Lawrence v. Texas* and the Constitution of Disgust and Contagion, Fla. L. Rev. (2005)

President's Lecture at Davidson College, March 2004, The Case for Same-Sex Marriage

Brennan Lecture at Oklahoma City University School of Law, March 2004, *Lawrence v. Texas* and Constitutional Regime Shifts

Dean's Diversity Lecture at Vanderbilt University School of Law, February 2000, Prejudice and Theories of Equal Protection

Steintrager Lecture at Wake Forest University, February 1999, Jeremy Bentham and No Promo Homo Arguments

Adrian C. Harris Lecture at the University of Indiana School of Law, October 1998, published as Multivocal Prejudices and Homo Equality, Ind. L.J. (1999)

Robbins Distinguished Lecture on Political Culture and the Legal Tradition at the University of California at Berkeley School of Law, February 1998, Implications of Gaylegal History for Current Issues of Sexuality, Gender, and the Law

Baum Lecture at the University of Illinois School of Law, November 1997, published as *Hardwick* and Historiography, 1998 U. Ill. L. Rev.

Visiting Scholar in Residence Lecture at Hofstra University School of Law, October 1996, published as Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, *Nomos*, and Citizenship, 1961-1981, 25 Hofstra L. Rev. 817 (1997)

Mason Ladd Lecture at Florida State University College of Law, April 1996, published as Privacy Jurisprudence and the Apartheid of the Closet, 24 Fla. St. U.L. Rev. 703 (1997)

Murray Lecture at the University of Iowa, January 1996, published as From the Sodomite to the Homosexual: American Regulation of Same-Sex Intimacy, 1885-1945, Iowa Law Review (1998)

Cutler Lecture at William and Mary School of Law, February 1995, published as The Many Faces of Sexual Consent, 37 Wm. & Mary L. Rev. 47 (1995)

Donley Lectures at West Virginia University School of Law, published as Public Law from the Bottom Up, 97 W. Va. L. Rev. 141 (1994)

Congressional Testimony and Consultation

Senate Comm. on Labor, Pensions, 111th Congress, 1st Sess., *Proposed Employment*

Non-Discrimination Act of 2009 (Nov. 2009) (written testimony only)

House Comm. on Education & Labor, 111th Congress, 1st Sess., *Proposed Employment Non-Discrimination Act of 2009* (Sept. 2009)

Senate Comm. on the Judiciary, Senator Arlen Specter (Chair), Confirmation of Judge John Roberts as Chief Justice, United States Supreme Court (2005) (consultation only)

H.R. 1283, The Fairness in Asbestos Compensation Act, House Comm. on the Judiciary, 106th Cong., 1st Sess. (1999) (written testimony only) (jumbo consolidations in asbestos litigation)

Senate Comm. on the Judiciary, Senator Joseph Biden (Chair), Confirmation of Judge Stephen Breyer as Associate Justice, United States Supreme Court (1994) (consultation only)

S. 420, the Ethics in Government Reform Act of 1993, and S. 79, the Responsible Government Act of 1993, Subcomm. on Oversight of Government Management of the Senate Comm. On Governmental Affairs, 103d Cong., 1st Sess. (1993)

Interpreting the Pressler Amendment: Commercial Military Sales to Pakistan, Senate Comm. on Foreign Relations, 102d Cong., 2d Sess. (1992)

S. 2279, the Lobbying Disclosure Act of 1992, Subcomm. On Oversight of the Senate Comm. on Governmental Affairs, 102d Cong., 2d Sess. (1992)

Statutory Interpretation and the Uses of Legislative History, Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary, 101st Cong., 2d Sess. (1990)

Adjustable Rate Mortgages (ARMs), Subcomm. On Housing and Community Development of the House Comm. on Banking and Urban Affairs, 98th Cong., 2d Sess. (1984)