

The Reality of Law

Prof. Keith Hawkins

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**Academic Conference Room, 11/F., Cheng Yu Tung Tower
Centennial Campus, The University of Hong Kong**

This lecture discusses the reality of law in practice taking the central position of legal rules as a starting point. There are various problems with legal rules, most notably the fact that rules do not apply automatically, but are used by human beings who choose whether and how to act. Law in practice is a human process. The idea of choosing means the introduction of discretion, a concept which causes difficulties for formalist lawyers. Discretion is controversial, and is distrusted by lawyers who see it as the embodiment of arbitrary or capricious behaviour. This in turn is criticised for being unpredictable in practice. In fact, however, discretion in the real world is often rule governed. If discretion causes problems in practice, legal rules can equally cause problems. This is because the meaning of legal rules is not clear and self-evident as formalist lawyers like to claim. One consequence of the problem of rules as experienced in the real world of legal practice is the extent to which lawyers and legal officials have to rely upon discretion: the practical power to decide whether or how to use the law. This is the power to translate the words of the law into action. Discretion is both inevitable and central to the legal order.



Keith Hawkins (LL.B Birm., Dipl Criminol., MA, PhD Cantab.) is Professor Emeritus of Law and Society at Oxford University, Fellow Emeritus of Oriel College, Oxford, and Visiting Professor at the Centre for Risk and Regulation at the London School of Economics. His research is concerned with the sociology of legal processes, and specifically with legal decision-making. His work has mostly been conducted in areas of criminal justice and in governmental regulation, especially in environmental protection and occupational health and safety.

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