

# Statutory (and Constitutional) Interpretation and the Separation of Powers

**Professor Richard Ekins**

*University of Oxford*

**Tuesday, 12<sup>th</sup> December 2017, 12:00 – 13:00**

**Room 723, 7/F., Cheng Yu Tung Tower**

**Centennial Campus**

**The University of Hong Kong**

The issues of statutory and constitutional interpretation and the separation of power have taken centre stage in recent cases in Hong Kong. This talk will offer insights on how these issues should be approached. In his paper, Professor Ekins aims to think about statutory (and constitutional) interpretation by way of the idea of the separation of powers. The paper attempts to distinguish legislative and judicial power and begins by reflecting on the unity of justified authority before and apart from separation, which helps make clear the reasons for separation. The exercise of legislative power, I argue, is the making of reasoned choices to change the law; the judicial power involves no power of interpretation, properly so-called, but is framed by and helps support the exercise of the legislative power. The location of executive power bears on the nature of legislative power and different types of legislature, structured in different ways, vary in their capacity to legislate well. There are good reasons for interpretive practice to centre on inferring the legislature's lawmaking intentions, which helps settle various points, including the meaning of statutes over time and the relevance of international law and legislative history to statutory meaning. This analysis, the paper argues, extends in large part to the interpretation of constitutional law. However, the separation of powers in this context is often attenuated, which helps explain why constitutional interpretation sometimes comes apart from statutory interpretation.

**Prof. Richard Ekins** is a Tutorial Fellow in Law at St John's College and an Associate Professor in the University of Oxford. He received his BA, LLB (Hons) and BA (Hons) degrees from The University of Auckland, before going on to read for the BCL, MPhil and DPhil at Oxford. He has worked as a Judge's Clerk at the High Court of New Zealand at Auckland, and a Lecturer at Balliol College, and was a Senior Lecturer in Law at The University of Auckland for several years before moving (back) to Oxford. He is an Articles Editor of the Oxford Journal of Legal Studies. He leads Policy Exchange's Judicial Power Project and, with Nick Barber, the Programme for the Foundations of Law and Constitutional Government.



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