In R (Privacy International) v Investigatory Powers Tribunal ([2019] UKSC 22), the Supreme Court ‘reinterpreted’ an ouster clause. The clause in question stated that decisions of the Investigatory Powers Tribunal, including decisions as to whether it had jurisdiction, could not be questioned by the courts. A majority of the Supreme Court concluded that the clause did not remove the ability of the courts to review determinations of the IPT which made a legal error. Obiter dicta from Lord Carnwath, with whom Lady Hale and Lord Kerr agreed, also suggested that Parliament could not legislate to remove the power of the high court to judicially review determinations of inferior courts and tribunals with limited jurisdiction.

The case could be read as a classic battle between common law and ultra vires justifications of judicial review; between legal and political constitutionalism; or between parliamentary and judicial sovereignty. This paper will first place the case in context, before explaining how both of these traditional views fail to give full justice to the reasoning in Privacy International, or to provide a convincing account of judicial authority. It will instead re-examine the case through the lens of inter-institutional interactions, both to explain the case and to provide a stronger justification of judicial authority than that provided by the more traditional justifications drawing on common law and ultra vires justifications.

About the speaker:

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