



HKU Law Distinguished Public Law Lecture Series 2023

The Rule of Law Through Thick and Thin: International Law from the Internal Point of View



Professor David Dyzenhaus

University Professor of Law and Philosophy and Albert Abel
Chair, University of Toronto

Visiting Research Professor of Law, HKU

Date: 28 April, 2023 (Friday)

Time: 6:15pm - 7:45pm

Venue: Academic Conference Room, 11/F, Cheng Yu Tung Tower
The University of Hong Kong (*in-person only*)

The rule of law is in trouble internationally as states increasingly flout the norms of international law even as they purport to abide by them. It can thus be claimed that the interaction of state legal orders with the international order presents a 'dual order'. On the one hand, international space is ruled by executive prerogative, by the executives of the most powerful states doing as they will. On the other hand, within the space of the state the executive is subject to the rule of law as instantiated in its legal order. This image is of course due to Ernst Fraenkel's classic study of the Nazi state as a 'Dual State'. Applied in this context, the image requires us to assume that within their own legal spaces, states are subject to the rule of law, but that when they act in international space, they emerge like Superman from his change of clothes in the telephone box, unleashed from their domestic constraints to contest each other in international space as purely 'political sovereigns', in effect the executive organ of each state, constrained only by power politics. However, entailed in this assumption is that even within the space of the state, the executive is no more constrained by law than it is in international space, since every state is internally a Dual State.

This lecture will explore the resources of legal theory that enable us to contest this assumption, which may seem foolhardy, given that philosophers of law struggle to explain the legality of international law. Professor Dyzenhaus will argue, first, that there is a moral imperative to adopt what HLA Hart called the 'internal point of view' towards international law, to accept its authority in order to constitute its authority as a legal order. Second, he will argue that a normatively 'thin' theory of legality is needed to make sense of the legality of international law, the theory presented by Lon Fuller. Only such a thin theory is capable of getting us through the 'thick and thin' of our current turmoil.

SPEAKER:

David Dyzenhaus is a University Professor of Law and Philosophy at the University of Toronto. A Fellow of the Royal Society of Canada and of the British Academy, he works on the rule of law in contexts in which that idea is under stress. His *The Long Arc of Legality: Hobbes, Kelsen, Hart* was published by Cambridge University Press in 2022 and he is currently working on a project on 'The Politics of Legal Space', which investigates how different configurations of legal space affect the potential for human rights lawyering.

CHAIR:

Dr Cora Chan, Associate Professor of Law, HKU

This is an in-person event. Please register at <https://bit.ly/3FRtXwQ> or through the QR code.

For inquiries, please contact Ms. Phoenix To at pxto@hku.hk.

