

# Jurisprudence 5760D

## Reading List

Professor Manish Oza

(\*\*\* = optional extra reading)

### 1. Introduction

Lon Fuller, "The Case of the Speluncean Explorers"

### 2. Why do we need law? & Discussion with Justice Rowe

St Thomas Aquinas, *Summa Theologiae*, Part 1-2, Question 90 and Question 95 (Articles 1, 2)  
Gertrude Elizabeth Margaret Anscombe, "On the Source of the Authority of the State", ss. I, III  
\*\*\* John Finnis, *Natural Law and Natural Rights*, ss. VI.1, VI.2, VI.6, IX.1

### 3. "An unjust law is not a law."

Martin Luther King Jr., "Letter from Birmingham Jail"  
Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law"  
HLA Hart, "Positivism and the Separation of Law and Morals"  
\*\*\* John Gardner, "Positivism: 5 ½ Myths"

### 4. Positivism and the structure of a legal order

HLA Hart, *The Concept of Law*, chapters V, VI  
Simeon CR McIntosh, "Legitimacy, Validity and the Doctrine of Necessity"  
*State v Dosso*, P.L.D. 1958 S.C. 533 (reasons of Muhammad Munir CJ)  
\*\*\* Hans Kelsen, "The Concept of the Legal Order"

### 5. The rule of law

Lon Fuller, *The Morality of Law*, ch 2  
Anna Lukina, "Making Sense of Evil Law"  
*Canada v Vavilov*, 2019 SCC 65, paras 133-138  
\*\*\* Jeremy Waldron, "All We Like Sheep"

### 6. Interpretation and underlying principles

Ronald Dworkin, "Law's Ambitions for Itself"  
*Reference re Secession of Quebec*, [1998] 2 SCR 217  
Antonin Scalia, "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws"  
\*\*\* Ronald Dworkin, "The Model of Rules (I)"

### 7. Legal pluralism

Jorge Fabra Zamora, "The Conceptual Problems Arising from Legal Pluralism"  
Val Napoleon, "Thinking About Indigenous Legal Orders"  
Aaron Mills, "Aki, Anishinaabek, kaye tahsh Crown"  
*Dickson v Vuntut Gwitchin First Nation*, 2021 YKCA 5  
\*\*\* Lon Fuller, "Human Interaction and the Law"

### 8. Codification and custom

Robert E Rodes, "On the Historical School of Jurisprudence"  
Andrew P. Morriss, "Codification and Right Answers"  
\*\*\* Frederick Beiser, "Savigny and the Historical School of Law"  
\*\*\* HLA Hart, "Bentham and the Demystification of the Law"

### 9. Critiques of law and adjudication

Karl Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes are to be Construed"  
Duncan Kennedy, "Legal Education as Training for Hierarchy"  
Kimberlé Crenshaw, "Race, Reform and Retrenchment"  
\*\*\* Patricia Williams, "The Pain of Word Bondage"  
\*\*\* Brian Leiter, "American Legal Realism"

### 10. Law and power

Karl Marx & Frederick Engels, *The Communist Manifesto* parts 1, 2  
Catharine MacKinnon, "The Liberal State"  
Angela Davis, *Are Prisons Obsolete?* Chs 1, 2  
\*\*\* Amia Srinivasan, "Sex, Carceralism and Capitalism"