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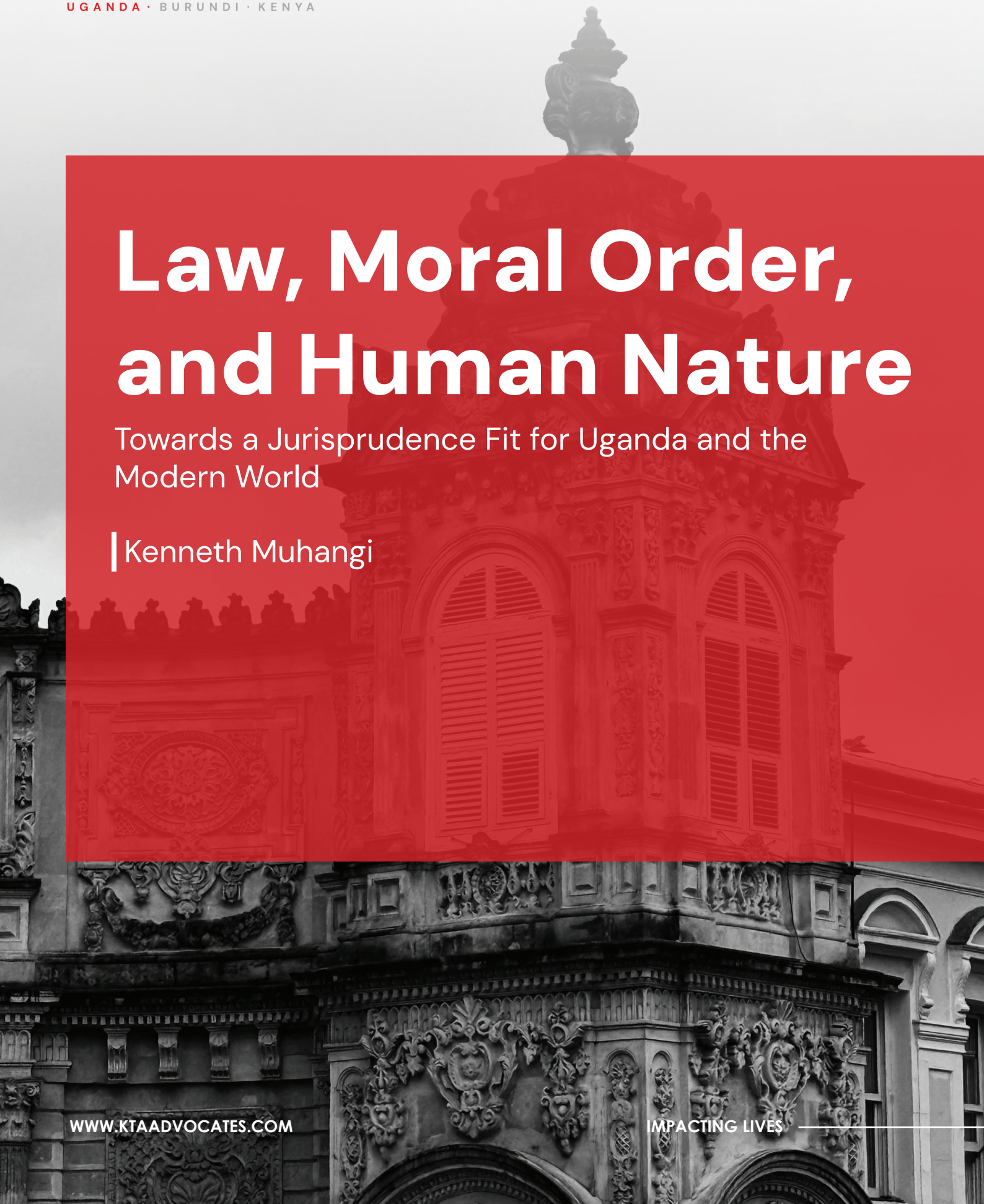

# Law, Moral Order, and Human Nature

## Towards a Jurisprudence Fit for Uganda and the Modern World

Kenneth Muhangi

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## Abstract

This essay advances a jurisprudential argument for legal systems cognizant of human nature and our dispensation towards wrongdoing. It argues that law must be designed on the assumption that somebody will abuse power and exploit vulnerability, and the law must therefore reflect this nature, incorporating institutional restraints, proportional accountability, and restorative mechanisms. Drawing on comparative legal traditions, including Mosaic law, Islamic commercial jurisprudence, common law equity, and post-conflict restorative justice models, the essay illustrates how legal systems have historically grappled with human fallibility. It then situates these insights within Uganda's constitutional experience, examining the reception of equity, the promise and limits of Article 126 of the 1995 Constitution, and contemporary judicial practice. The essay concludes by proposing a jurisprudence fit for Uganda and the modern world: one that recognizes the human condition and considers the role of society and belonging in accountability and restitution.

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*"The norm system that presents itself as a legal order has essentially a dynamic character.... Therefore, any kind of content might be law (Pham). There is no human behavior which, as such, is excluded from being the content of a legal norm."*

***Hans Kelsen, Pure Theory of Law, trans. Max Knight (Berkeley: University of California Press, 1967), p. 198.***

You may read this observation as an assertion of the influence human nature has in law making, and many readers do, but it is more accurately understood as a warning: that without an anchoring higher normative framework, law can legitimize domination, cruelty, or injustice.

## Part I (introduction): A Jurisprudential Argument for Realistic and Restorative Legal Systems

*In this first part I set out what I take to be the core jurisprudential problem: how law should be designed when human beings are neither purely rational nor purely malicious, and when power, incentives, and vulnerability shape behavior more consistently than ideals. I propose a theory of law grounded in realism about human nature, restraint of power, and restoration of harm.*

Every legal system rests, whether explicitly or implicitly, on a theory of a human person. Law does not arise in a vacuum; it is shaped by assumptions about human nature, power, and moral capacity shape it. The central jurisprudential question is therefore not merely what laws say, but what informs them and what this assumes about who we are. Contemporary legal systems often oscillate between two extremes: legal positivism, which treats law as the command of authority, and moral idealism, which assumes rational, self-regulating actors. Both fail to account adequately for the persistent human capacity for wrongdoing. A more durable legal framework must instead be grounded in a higher moral order while remaining honest about human fallibility.

Legal theorists such as Kelsen argue that a nation's law derives validity from a normative hierarchy culminating in a Grundnorm, a foundational rule accepted by that nation. Yet Kelsen deliberately detaches this norm from moral content, rendering law procedurally valid but normatively indifferent to justice; functioning largely as a means to an end. This detachment produces systems that may be lawful yet unjust in their outcomes. By contrast, a jurisprudence attentive to moral order insists that law must answer to values beyond institutional authority. The deeper question, then, is not merely whether law rests on a higher order, but whether that order is universally acknowledged, shared, or obscured and whether it takes into account human nature and the realities of power.

A legal system that takes human nature seriously must begin with a sober anthropology. History demonstrates that humans are capable of reason, cooperation, and moral insight, but are also prone to self-interest, exploitation, and violence. Law should not be designed on the assumption of virtue alone. Nor can it surrender to cynicism. The task of law, then, is to restrain human wrongdoing while enabling social cooperation. This dual function demands norms that are firm in accountability yet oriented toward restoration.

Kelsey's claim that laws should follow the nature of man is helpful if taken seriously, not sentimentally. If by the nature of man, we mean what human beings are actually

like in practice, then law must not be built on an optimistic view of human behavior. It must assume that people will sometimes lie, exploit loopholes, prey on weakness, externalize costs, and abuse power. But if laws follow that nature without reference to a higher norm, law becomes a mirror of appetites rather than a discipline of justice. The more coherent position, in my view, is this: law should follow a higher order and should be drafted with full realism about the human tendency to do evil and to wrong, while also recognizing the human capacity for repentance, reform and restoration. The Higher order supplies moral direction; realism supplies institutional design.

## Part II: Law, Moral Order, and Human Nature: Comparative Lessons for the Modern World

### Mosaic Law as Jurisprudence

The Bible is rich with stories about human nature and our propensity for repeatedly doing the wrong things. Exodus articulates this particularly clearly; after the Israelites escape from Egypt, they enter a covenant with God at Mount Sinai, accepting obligations meant to order their life as a people (see Exodus 19–24). Yet shortly after that covenant is made, it is broken: while Moses remains on the mountain, the people fashion a golden calf angering God (see Exodus 32). This moment is not exceptional. From Adam and Eve's disobedience in Eden (see Genesis 3), through Cain's violence against his brother (see Genesis 4), to Israel's recurring rebellions in the wilderness, the biblical narrative consistently presents human beings as prone to wrongdoing even when moral instruction is clear. At the same time, these stories also emphasize patience, mercy, and the possibility of repentance. Judgment is present, but it is repeatedly paired with restoration rather than abandonment.

It is against this background of repeated human failure, God's patience, and the constant possibility of repentance that the Mosaic legal tradition must be understood. God's law does not emerge in the abstract, nor as a response to ideal moral agents, but as a practical framework for real people, living in a broken world, whose failures are anticipated and whose restoration remains the ultimate aim.

The Mosaic legal tradition provides a useful jurisprudential illustration, built on three connected premises: moral accountability to a higher order, realism about human wrongdoing, and a commitment to social repair. The laws in Exodus, particularly the rules governing theft, negligence, economic loss, vulnerability, and power, reveal a coherent legal philosophy. Harm is treated relationally, power is restrained, and vulnerability is legally protected (see Exodus 21:28–36; 22:1–15, 21–27 (ESV). These principles transcend religious context and speak directly to modern legal design.

*Harm is not an offence against the state, but rather is a rupture in social and economic relationships.*

At the heart of the Mosaic legal system is a restorative conception of justice. Harm is not an offence against the state, but rather is a rupture in social and economic relationships. Theft, negligence, breach of trust, and loss are addressed through restitution rather than retribution. The offender is required to repair the damage caused, often exceeding the original loss, thereby restoring balance and discouraging future wrongdoing. This contrasts sharply with many modern punitive systems that prioritize incarceration and fines paid to the state, often leaving victims uncompensated and social harm unresolved.

In Uganda today, the limitations of punitive justice are starkly visible in the overcrowding of prisons. According to the Uganda Prisons Service[1], facilities designed for far fewer inmates now hold many times their intended capacity, with occupancy rates in some units exceeding 300 percent and reports of four prisoners squeezed into a space meant for one. By December 2025, nearly 80,000 people were incarcerated across the country's 269 prisons[2], despite the system being built to hold far fewer, and thousands are detained on remand for minor offences or inability to meet bail conditions. Such congestion has precipitated a humanitarian crisis, undermining rehabilitation, degrading living conditions, and stretching limited resources to the breaking point. This situation illustrates how reliance on incarceration not only fails to repair harm but also generates new harms compounding social alienation and eroding the very social relationships restorative justice seeks to preserve.

## Restorative Justice: Comparative traditions to Mosaic Law

Restorative justice frameworks generally conceive wrongdoing as a rupture of social relationships and seek accountability through repair rather than exclusion. In Uganda, this approach was examined by the High Court in ***Uganda v Matthew Kanyamunyu***, *High Court of Uganda (Criminal Division), Criminal Case No. 144 of 2020, judgment of Mubiru J, delivered on 9 November 2020 (ULII)*. The Court defined restorative justice as a process through which remorseful offenders accept responsibility for their misconduct both to those injured and to the wider community, thereby enabling reintegration only where responsibility is admitted. However, the Court emphasized that traditional justice mechanisms such as Mato Oput presuppose the existence of relatively tight-knit moral communities characterized by shared norms, kinship, proximity, and enforceable social authority, and cautioned that such mechanisms lack sufficient regulation and oversight and cannot empirically be shown to address ordinary crimes committed far removed from those communal settings. The Court therefore held that traditional restorative processes should operate in a complementary, rather than substantive, role alongside the formal criminal justice system, and not serve to displace, undermine, or delay it.

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Comparatively, Rwanda's post-genocide Gacaca courts combined confession, community participation, reparative obligations, and limited punishment to address mass atrocity in circumstances where conventional courts were structurally incapable of reconciliatory justice. While differing in scope and context, both Mato Oput and Gacaca illustrate restorative models that prioritize accountability, healing, and social reintegration.

Similarly, Mosaic laws distinguish carefully between intentional wrongdoing, negligence, and unavoidable misfortune. Liability increases with control, benefit, and recklessness, while accidents and losses beyond human agency are treated with restraint. This reflects an early proportionality principle that remains foundational to modern tort and criminal law. The Mosaic covenant does not assume that every rule should be applied rigidly, without regard to circumstances (that would be moral absolutism), nor does it assume that wrongdoing is inevitable and therefore

[1] https://www.monitor.co.ug/uganda/news/national/-four-inmates-squeezed-in-space-for-one-prisoner-in-uganda--5311608 accessed 31st January, 2026

[2] Ibid 1

beyond meaningful judgment or correction (that would be legal fatalism).Instead, it expects judges and the community to look at context, responsibility, intent, harm, and vulnerability, and to respond in a way that is fair rather than mechanical.

Another defining feature of Mosaic law is its clear hierarchy of protected interests. Human life is consistently valued above property, and the use of lethal force is limited strictly to situations of immediate and unavoidable threat. Even where serious property crimes occur, economic loss does not justify the taking of life once danger has passed, placing firm limits on retaliatory force (see Exodus 21:12–14; 22:2–3). These moral considerations reject the commodification of life and offer a proportionality principle that remains instructive in legal systems where property and capital interests often dominate judicial reasoning.

Property is recognized within Mosaic law but never treated as irreplaceable. Ownership is inseparable from responsibility, and the exercise of property rights is constrained by duties not to cause harm, negligence, or exploitation. Individuals are held liable where their property causes foreseeable damage to others[3], and restitution is required where loss results from carelessness or omission (see Exodus 21:28–36; 22:5–6). Contemporary debates on land use, environmental harm, and corporate accountability stand to gain from this framework, which treats ownership as stewardship rather than entitlement.

Perhaps the most striking aspect of Mosaic law is its explicit protection of vulnerable persons. Widows, orphans, migrants, and the poor are singled out for heightened legal concern, and the law deliberately restrains the power of those more advantaged. Exploitation of vulnerability is framed not merely as a private wrong but as a moral and legal violation that triggers direct accountability (see Exodus 22:21–24). Poverty is treated not as personal failure but as a structural condition requiring legal sensitivity, anticipating modern approaches to human rights and substantive equality while grounding them in enforceable obligations rather than discretionary charity.

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Economic relations under the Mosaic covenant are governed by equity rather than market absolutism. Lending to the poor is regulated to prevent debt bondage, interest is restricted in contexts of vulnerability, and essential items pledged as security are protected from permanent seizure (see Exodus 22:25–27). These provisions reflect an early recognition that markets, when left unchecked, tend to amplify asymmetries of power and can become instruments of domination. By constraining profit where it threatens subsistence or dignity, the law embeds moral limits within economic regulation rather than treating economic activity as morally neutral.

A comparable logic appears in Islamic commercial jurisprudence, particularly in the prohibition of riba (interest or unjust gain detached from risk, labour, or productive activity) and in the emphasis

[3] The Mosaic conception of property as inseparable from responsibility finds a close analogue in the common law doctrine articulated in Rylands v Fletcher (1868) LR 3 HL 330 (HL). In that case, the House of Lords held that a person who brings onto their land something likely to cause harm if it escapes must keep it at their peril, and is strictly liable for damage resulting from its escape, regardless of negligence.

on risk-sharing and asset-backed financing. Islamic banking does not reject profit, but conditions it on shared exposure to risk and real economic value, reflecting a concern that wealth accumulation divorced from human welfare corrodes social trust. Read comparatively, both traditions reject the premise that financial markets are self-correcting and instead insist that law must actively restrain exploitative gain where bargaining power is unequal.

## Political economy and neoliberal critique (Mamdani)

Neoliberalism is an approach to economic governance that minimizes state interference in markets and assumes that market outcomes are legitimate so long as transactions are formally voluntary. In Uganda, this approach has shaped post-independence economic reforms with profound social and legal consequences. Mahmood Mamdani. In Slow Poison: Idi Amin, Yoweri Museveni, and the Making of the Ugandan State (*Nairobi: Jahazi Press, 2025*), analyses post-independence Uganda as a political economy shaped by a gradual "slow poison": the re-fragmentation of the state into increasingly tribalized administrative units and the steady erosion of national citizenship. He argues that this trajectory was not merely inherited from the past, but deliberately systematized, and that it coincided with the adoption of Washington Consensus reforms particularly privatization and deregulation promoted by international financial institutions.

Mamdani situates these reforms within a broader critique of neoliberalism, contending that market liberalization in Uganda functioned less as a pathway to broad-based development than as a legal and institutional mechanism for upward redistribution. Privatization, in his account, enabled the enrichment of a comprador political-economic class closely aligned with state power, including regime insiders, while simultaneously shifting economic risk downward onto ordinary citizens and weakening public accountability. The result is a formally liberalized economy that remains structurally poor, socially fragmented, and legally insulated against redistributive correction.

Read together, the Mosaic regulation of lending, Islamic prohibitions on exploitative finance, and Mamdani's critique of neoliberal reform converge on a shared jurisprudential insight: markets require moral and legal limits since power is unequal. Economic law that treats profit maximization as an overriding good risks legitimizing domination through formally lawful means. By contrast, legal systems that embed equity, restraint, and accountability within economic regulation affirm that efficiency cannot be severed from justice, and that markets, like all social institutions, must remain subordinate to human dignity and social cohesion.

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The Mosaic laws also classify certain conduct not merely as private wrongdoing but as threats to public order and communal stability. Sexual exploitation, fraud, and breaches of trust are regulated because they corrode social cohesion and undermine the moral foundations of collective life (see Exodus 22:16–20; 22:7–13). Law is therefore understood not simply as a mechanism for dispute resolution, but as a guardian of the conditions necessary for peaceful coexistence. This stands in contrast to modern legal fragmentation,

where moral, social, and legal domains are often artificially separated, and where it is politics not law that articulates the role of sustaining social trust.

Underlying the entire covenant is the principle of higher accountability. Legal authority does not originate from rulers, markets, or majorities, but from a transcendent moral order. Judges, leaders, and citizens alike are subject to standards beyond their own interests. While modern secular states may not frame this accountability in theological terms, the concept itself remains indispensable. Without a normative reference point beyond power, law risks becoming an instrument of domination rather than justice.

Even Hans Kelsen's rigorously positivist account of law concedes this structural dependence on a higher norm. As Hans Kelsen explains[4], "a legal norm is not valid because it has a certain content … but because it is created in a certain way, ultimately in a way determined by a presupposed basic norm." Validity, in Kelsen's theory, does not arise from power, morality, or utility, but from conformity to a foundational normative reference point that stands above individual officials and institutions. Without such a presupposed basic norm, the authority of law collapses into mere coercion rather than a binding legal order.

It is against this jurisprudential backdrop that the Mosaic legal system is best understood. The Mosaic laws embody God's wisdom for a specific people in their time and place. The morals, customs, and values of the Israelites' ancient Near Eastern context were often very different from our own. God's laws work within that culture, not by abolishing it wholesale, but by patiently and powerfully restoring Edenic conditions. We should also remember that God's laws accommodate a world marred by sin and death. In an Eden-like world, women would not experience the immense grief of widowhood nor the fear of someone exploiting their vulnerable state. The command to care for widows shows that God knows the world bends toward brokenness. His commands, therefore, restrain evil and do good, often cutting against prevailing social norms. When understood in their context, God's laws reveal his ultimate desire for his people to produce love, justice, goodness, and peace.

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This is also why the laws in Exodus that include slavery, and other practices we now find morally unacceptable, are so important for jurisprudence. They show that God's laws follow his people through their culture, beliefs, and historical moment. They follow the times in the sense that they address what exists, not what ought to exist in a perfected world. That is a major lesson for modern legal drafting: legislation often cannot abolish social facts overnight, but it can hem them in, protect the weak against them, and set the society on a trajectory toward a more humane order.

This accommodative character of Mosaic law becomes clearer when read comparatively with the Code of Hammurabi[5]. The code also regulates theft, injury, and property loss, but does so

[4] Hans Kelsen, Pure Theory of Law, trans. Max Knight (Berkeley: University of California Press, 1967), 193–204.

[5] Code of Hammurabi, 6–8, 21–25, 196–202, trans. L. W. King, The Code of Hammurabi (London: Luzac & Co., 1902).

through rigid retaliation and class-based penalties. Punishment varies depending on social status, and justice is measured by equivalence rather than restoration. By contrast, Mosaic law consistently resists class stratification, applying moral accountability across social lines and emphasizing restitution over vengeance. Where Hammurabi reflects imperial order, Mosaic law reflects covenantal responsibility.

*The common law tradition later introduced equity as a corrective to rigid legalism. Courts of equity intervened where strict application of law produced injustice, emphasizing conscience, fairness, and proportionality.*

Similarly, Roman law[6] developed a sophisticated system of property, contract, and delict, laying foundations for modern civil law. Yet Roman jurisprudence treated slaves as property and prioritized state stability over individual dignity. Mosaic law, while operating within a slave-holding society, places significant constraints on ownership and embeds protections for the weak that undermine absolute dominion. The contrast matters. Both systems are legal, but they reveal different moral imaginations: one centered on state order and property, the other on covenant obligation and social repair.

The common law tradition later introduced equity as a corrective to rigid legalism. Courts of equity intervened where strict application of law produced injustice, emphasizing conscience, fairness, and proportionality. This mirrors the Mosaic insistence that law must bend toward mercy without abandoning accountability. Equity, like Mosaic law, assumes that rigid rules alone cannot govern flawed human beings justly. It also assumes something else: that law can be valid and still be wrong in its operation and therefore needs internal mechanisms for correction.

## Uganda's constitutional struggle with equity

This equitable tradition entered Uganda through the colonial reception of English law. By virtue of the reception clause, Uganda inherited the common law, doctrines of equity, and statutes of general application in force in England as at 11 August 1902. Equity recognized that justice could not be achieved through technical legality alone.

This commitment to equity is expressly entrenched in Uganda's post-independence constitutional order, most notably through Article 126 of the Constitution of the Republic of Uganda, 1995. Article 126(1) provides that judicial power is derived from the people and shall be exercised in conformity with the law and the values, norms, and aspirations of Ugandans, while Article 126(2)(e) requires that "substantive justice shall be administered without undue regard to technicalities." This constitutional instruction effectively constitutionalizes equity, transforming it from a discretionary judicial practice into a binding normative principle of legal interpretation and adjudication, and requiring courts to treat procedural rules as handmaids to justice rather than barriers to it.

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[6] Corpus Juris Civilis, Institutes 1.3.2; 2.1.12; Digest 9.2, trans. T. Mommsen & P. Krueger (Philadelphia: University of Pennsylvania Press, 1985).

On judicial interpretation of Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995, the Supreme Court has consistently affirmed that the directive to administer substantive justice without undue regard to technicalities is not a license to disregard established procedural law but must be exercised within the framework of the law itself. ***In Utex Industries Ltd v Attorney General***, Civil Application No. 52 of 1995; [1995] UGSC 38 (4 August 1995), the Court emphasized that Article 126(2)(e) cannot be invoked to cure fundamental procedural defects or to override mandatory legal requirements. This position was reaffirmed in ***Kasirye, Byaruhanga & Co. Advocates v Uganda Development Bank***, Civil Application No. 2 of 1997; [1997] UGSC 11 (22 May 1997), where the Court cautioned that procedural rules remain essential to the orderly administration of justice and that Article 126(2)(e) must be applied judiciously rather than mechanically. Robert Kirunda, in An Analysis of Article 126(2)(e) of the 1995 Constitution of Uganda: Application and Interpretation by the Courts (LAP Lambert Academic Publishing, 2011), observes that Ugandan courts have tended to treat Article 126(2)(e) as a principle guiding judicial discretion rather than a substantive right capable of displacing procedural law, resulting in a jurisprudence that privileges procedural certainty over equitable justice.

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*Although the High Court subsequently granted him bail, the broader context of the case including concerns about arbitrary jurisdictional assertions and due process highlights the ongoing struggle to ensure that the constitutional promise of substantive justice, without undue regard to technicalities, is realized in practice.*

Recent high-profile cases further demonstrate the stakes of this constitutional mandate. In ***Kiiza Eron v. Uganda*** (Criminal Miscellaneous Application No. 118 of 2025, High Court of Uganda, Criminal Division, ruling of 4 April 2025), the applicant, human rights advocate Eron Kiiza, challenged his summary conviction by a military tribunal as inconsistent with fundamental legal protections, including fair trial norms grounded in Articles 23 and 28 of the Constitution. Although the High Court subsequently granted him bail, the broader context of the case including concerns about arbitrary jurisdictional assertions and due process highlights the ongoing struggle to ensure that the constitutional promise of substantive justice, without undue regard to technicalities, is realized in practice. The case illustrates how constitutional equity often advances not through settled doctrine, but through individual judicial willingness to take the Constitution seriously.

Read together, the equitable tradition of the common law, its reception into Ugandan law, and the constitutional emphasis on substantive justice reflect a shared jurisprudential conviction: legality is not self-justifying. Law must be interpreted,

applied, and corrected in light of its human consequences. Where rigid application of rules entrenches injustice, the legal system must possess the moral and institutional capacity to intervene. In this sense, equity within Uganda's legal order performs the same function seen in Mosaic law and other moral legal traditions, restrains the excesses of formal power, repairs harm where possible, and keeps law accountable to justice rather than mere authority.

Natural law theory, articulated by thinkers such as Thomas Aquinas, similarly holds that human law must derive from moral law and serve the common good[7]. Where human law departs from justice, Aquinas argued, it loses its binding moral force. This insight aligns closely with the Mosaic conception of higher accountability, reinforcing the idea that legality divorced from morality is ultimately unstable.

Modern legal positivism, by contrast, largely rejects these premises. By separating law from morality, it offers procedural certainty at the cost of moral legitimacy. The result is legal systems capable of enforcing injustice efficiently.

Taken together, the comparative traditions examined in Part II give concrete institutional form to the jurisprudential principles outlined in Part I.

## Conclusion

What does all of this imply for Uganda and the modern world? It suggests that we should consider a serious legal reform agenda that does more than amend statutes and rearrange institutions. It must state, clearly, what it believes about human nature and what higher principles will govern power.

For Uganda, the challenge is not simply better laws, but laws designed for the realities we actually live in. We live with predictable incentives for corruption, predictable abuses of office, predictable exploitation of poverty, predictable impunity for the powerful, and predictable vulnerability for those without networks, wealth, or social protection. Our laws and judicial processes should be cognizant of these realities and keep in step with them if justice is to be done and seen to be done. A jurisprudence that pretends otherwise will keep producing elegant texts with poor outcomes, undermining both public trust in the judicial system and the moral authority of law itself.

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[7] Aquinas, Summa Theologica, I-II, q. 90, a. 4)