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## Title: The Judge and Criminal Justice: A Legal and Psychological Reading of an Alternative Concept of Justice

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Received: 02.10.2024   Accepted: 07.01.2025   Publishing: 18.05.2025   Doi: 10.56334/sei/8.4.68<sup>1</sup>

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### Abstract

The judge is not merely a mouthpiece for the law but also a living embodiment of comprehensive justice. Justice is not confined to the words uttered in the courtroom; it extends to the judge's demeanour, gestures, expressions, glances, and even emotional responses. Thus, justice must be reflected in the judge's character. Mastery of legal procedure should be only the minimum requirement; beyond that, the judge must possess intuitive sensitivity, the logic of silence, a balanced sense of meaning, perceptive understanding, and a vision that perceives the spirit of the law without being reactive or influenced by vanity or excessive sentiment. A judge may, at times, perceive an element of victimhood in the accused or detect culpability within the victim. Such perceptiveness requires cognitive flexibility and mental agility, allowing the judge to explore alternative paths towards achieving justice unbound by unintended biases, exaggerations, or omissions. Therefore, the judge is the living embodiment of law applied through the essence of both spoken and unspoken justice

**Keywords:** Custom; Expressive; Judiciary; Justice; Law; Movement; Nonverbal; Philosophy; Society.

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### Introduction

The administration of justice is among the noblest functions, one entrusted by God to judges following those divinely protected—prophets and messengers—and after those vested with worldly authority and power as such, it is only natural that individuals expect from the judge, whose actions impact their liberties, honour, dignity, and property, a heightened sense of commitment to justice. This expectation rests on the belief that the judge is a vessel through which rights triumph over injustice within the bounds

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**Citation.** Hadj H. (2025). The Judge and Criminal Justice: A Legal and Psychological Reading of an Alternative Concept of Justice. *Science, Education and Innovations in the Context of Modern Problems*, 8(4), 629-635; doi: 10.56334/sei/8.4.68. <https://imcra-az.org/archive/362-science-education-and-innovations-in-the-context-of-modern-problems-issue-4-volvi-2025.html>

of legality and insightful understanding.<sup>2</sup> Such qualities are necessary to preserve the dignity of both individuals and the state, given that the judge serves as a guardian of freedom and a guarantor of rights, embodying the essence of the constitutional state under the framework of institutional, legal thought.

## 1. Requirements of an Expressive and Kinetic Legal Disposition

The foundation of this principle may be analogously derived from a sense of moral repulsion.<sup>3</sup> everything.

We observe the thought and judicial philosophy of the Commander of the Faithful, ‘Umar ibn al-Khaṭṭāb. This is particularly evident in his view regarding judicial decorum, as illustrated in the letter he sent to ‘Amr ibn al-‘Āṣ upon hearing that the latter would preside over court proceedings while reclining. Notably, ‘Amr ibn al-‘Āṣ at the time was a governor of one of the provinces of the Islamic state. The letter stated:

“From ‘Abdullāh ‘Umar ibn al-Khaṭṭāb to al-‘Āṣ ibn al-‘Āṣ:

It has come to my attention that you preside over court sessions while reclining. Sit among the people in humility, O son of al-‘Āṣ, or I shall dismiss you.”<sup>4</sup>

### 1.1. Expressive Verbal Legal Requirements

Law is, at its core, a language—a civilised and responsible discourse. However, its purpose cannot be fully realised as an auditory message delivered by the judge within the courtroom unless it is accompanied by deliberate control over facial expressions, gestures, body posture, and tone of voice. The judge's words cannot truly resonate or carry authority without these essential expression elements.<sup>5</sup>

#### 1.1.1. Facial Expressions

Facial expressions constitute a fundamental component of communication, capable of conveying impressions that may affect the principle of judicial presence and the judge's impartiality, objectivity, and integrity—and, consequently, the fairness of the judgement rendered. As the judge is the author of judicial rulings, which serve as both the symbol and the instrument of justice and truth, such impressions can significantly influence public confidence.

These impressions, in turn, lay the foundation for legal rules that elevate the judicial function and distance it from any semblance of distortion (‘awar) that may compromise its refinement as a noble

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<sup>2</sup> Today's Judges cannot form their intellect solely from written texts to adjudicate the ever-evolving realities of human life. The judge's competence must not be confined to legal statutes in their legalistic form nor limited to the fields of Islamic jurisprudence or religious sciences alone. Instead, the judge must possess a deep understanding of the customs, traditions, and social norms of the society in which they live. They must remain attuned to social and technological contemporary developments, engaging with them intellectually and practically to achieve a genuine convergence between judicial truth and factual reality. Such insight is only attainable through rigorous intellectual engagement and responsive use of reason that aligns with society's evolving values and its pursuit of renewal and progress.

<sup>3</sup> The ‘Umarian’ value system is rooted in faith-based conviction, whereas the Nietzschean value system views power as the underlying force behind

<sup>4</sup> As the Prophet Muhammad (peace be upon him) said of him: “I have never seen a genius who surpasses him in his brilliance.” — ‘Abbās Maḥmūd al-‘Aqqād, *The Genius of ‘Umar* (Cairo: Al-‘Ināb Publishing House, 2017), 11.

<sup>5</sup> The “word” (kalima) occupies a distinct rank among the sources of Islamic legal evidence (dalīl fiqhī). As stated by God Almighty in the Qur’an: “Do you not see how God sets forth a parable? A good word is like a good tree—its roots are firm and its branches reach the sky.” (Qur’an, Sūrat Ibrāhīm, 14:24)

mission.<sup>6</sup> Angry, disgusted, contemptuous, surprised, excessive enthusiasm, involuntary tics, and frowning are among the expressions that can undermine judicial dignity. These may all negatively influence the public perception of the judiciary and its actors, portraying justice not as a structured and principled institution but rather as a transient, improvised, socially disconnected performance.<sup>7</sup>

### 1.1.2. The Gaze

Sometimes, a judge's competence may be conveyed through a simple gaze that can carry deliberate meaning. It may be steady, fleeting, shifting, circular, or even seemingly vacant. The movement and quality of the eyes often reveal the judge's intellectual scope and degree of attentiveness to the case at hand.

Indeed, the judge's awareness is reflected through the eyes—as a mirror to his or her actual presence. Moreover, the gaze can lay bare the judge's method and underlying convictions, which may constitute an implicit philosophy of justice. The gaze of a judge's mind differs significantly from mere sensory perception. Shaped by experience and judicial maturity, it varies from one judge to another.

An experienced judge, for example, directs their gaze toward the subject matter of the dispute itself rather than forming premature judgments or decisions while parties are still presenting their arguments.<sup>8</sup> In this sense, the perceptive, sensorial gaze is a translation of a more profound mental vision—an intellectual lens through which the judge aspires to attain justice, albeit on a more elevated plane.

### 1.1.3. Physiological Sensations

Sensations represent the initial step in a chain of biochemical and neurological events, beginning with the active stimulation of sensory organs and culminating in perception.

While the categorisation of sensations may vary across cultural contexts, physiological science classifies them into three main types: exteroception (external sensations), proprioception (deep or muscular sensations), and interoception (internal sensations). However, beyond these classical classifications, a judge must possess an essential internal discipline—the ability to neutralise the influence of certain behaviours or provocations exhibited by any party involved in a legal proceeding.

In this context, the judge's ability to manage internal psychological tension becomes a form of self-defense, safeguarding judicial decisions against emotional interference. Emotional or physiological

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<sup>6</sup> Thus, the principle of adversarial proceedings (*mabda' al-wijāhiyya*) is realised through equal opportunities to present claims and means of defence. This requires from the judge both verbal expression (*maṭṭūq*) and conceptual understanding (*maḥmūm*), since the word may indicate a spoken state, which is said to be *maṭṭūq*—that which is pronounced and expressed at the time of articulation—and it may also indicate an unspoken state, referred to as *maḥmūm*, meaning that its significance is conveyed without articulation. This *maḥmūm* is also known as *dalālat al-iqdā'*—the inferred meaning that expresses itself without being directly stated.

<sup>7</sup> The Prophet Muhammad (peace be upon him) said: “A judge must not pass judgment between two people while he is angry.” (*Ṣaḥīḥ al-Bukhārī*, 7158; *Ṣaḥīḥ Muslim*, 1717)

<sup>8</sup> The scale of an experienced judge is firm—it is not swayed by the winds of hearsay nor by the fanfare of flattery, applause, or spiritual theatrics from any party involved in the case. Some attempt to recite a poem of blame where praise is due or a eulogy in a moment of life and revival. The judge's scale, however, weighs such rhetorical projections against the standard of a sound and balanced mind in accordance with the factual reality of each incident without being misled by narrative styles that seek to obscure or distort elements of truth. This approach, one could say, resembles Descartes' philosophical method, which aims to democratise perception and ground it in reason. See: Magdy Hussein Kamel, *Descartes*, Arab Book House, 1st ed., Damascus, 2013, p. 9.

responses—such as pallor, flushing, sweating, muscular tension, or tremors—may compromise two critical qualities that every judge must uphold: deliberation and forbearance.

## 1.2. Kinetic Verbal Legal Requirements

### 1.2.1. Body Language

In today's communication context, specific physical postures represent implicit messages that a perceptive and experienced interlocutor can decipher.

In reality, the judge is an inherently cautious figure guided by the principle of judicial reserve, which is directly tied to impartiality and integrity. This principle influences not only the judge's verbal behaviour but also governs their nonverbal conduct. In preserving the dignity of the judicial office—as a high and authoritative public function—the judge remains acutely aware of maintaining restraint. This self-imposed discipline extends to body language, ensuring that the judge does not become an open book and is easily read and interpreted. Through deliberate control of physical expression, the judge shields his or her impressions from being disclosed prematurely or unintentionally in response to a party's conduct or behaviour.<sup>9</sup>

### 1.2.2. Body Movements

Courtroom proceedings commence with the judge's entrance (or judicial panel), followed by the presentation of scheduled cases and the conclusion of the session's adjournment. Notably, the judge does not typically rise to a full standing position during proceedings except in situations of marked displeasure, signalling a premature adjournment in response to a particular circumstance requiring such action.

Outside such exceptional cases, full standing during proceedings is not aligned with judicial decorum. Similarly, bodily gestures such as leaning forward may reflect fatigue or dissatisfaction with the working environment—indicators that contrast with the natural, composed posture expected of a judge. To maintain a balanced stance, the judge upholds personal authority and projects a sense of composure and professionalism to those who appear before the court.

## 2. Requirements of a Teleological Legal Disposition

The judge's gaze is constantly shifting—fixed upon the victim to ensure that their rights are not infringed upon, on the accused to protect against a wrongful conviction, particularly in cases of inadequate defence, and on the courtroom audience, aware of their perception of what constitutes a just verdict. The judge silently reflects on how the formed judgement aligns the judicial truth with the factual reality. This internal dialogue serves justice in the immediate case, preserves the broader social order, and safeguards the sovereignty of the law from potential violation.<sup>10</sup>

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<sup>9</sup> Even if our knowledge remains partial, recent studies in dialogical communication have confirmed that movement precedes speech—a form of language that is *seen* but rarely *perceived*. Hence, protecting the self from negative influences that may arise through such unnoticed communication becomes necessary. See: Joseph Messinger, *The Psychology of Body Language*, trans. Muḥammad 'Abd al-Karīm Ibrāhīm, 1st ed. (Syria: 'Alā' al-Dīn Publishing House, 2007), p. 7.

<sup>10</sup> The judge's mind is like a great lamp, seeking out distant angles and bringing them into realisation. In truth, he does reach those angles—but to varying degrees. His primary tool is the identification of the actual positions of the parties, not merely within the case file but in real life, in proportion to the depth of his judicial experience. The file may present someone as an accused

## 2.1. The Judge's Perspective and the Protection of the Parties' Interests

The judge stands at an equal distance, at the beginning, from the parties to the case—so much that one can hardly distinguish the accused from the victim. This is to allow himself, in calm deliberation, to reconsider the matter anew while still seated in his courtroom before deciding on the case that brings them together in terms of the actual positions of the parties within it.<sup>11</sup>

### 2.1.1. The Interests of the Accused

The judge protects the presumption of innocence. The accused must be considered innocent until proven guilty using conclusive evidence and compelling legal inferences. The mere status of the individual as a defendant in the proceedings should not provoke any bias or presumption in the judge's mind, except to the extent defined and clarified by the substantive and procedural law applicable to the case.

Accordingly, the judge must avoid adopting any personal stance or attitude towards the accused. Doing otherwise would result in premature judgement, compromising judicial impartiality and undermining the justice system's integrity. The legitimacy of judicial action relies on the judge's unwavering commitment to neutrality, ensuring that no presumption displaces the foundational principle of fairness.

### 2.1.2. The Interests of the Victim

While the law protects those harmed by punishable acts, the just judge actively seeks to remedy the harm suffered by the victim. The term "victim" in this context has two legal dimensions: a criminal law concept referring to the direct victim of the offence and a civil law understanding related to harm or injury—whether direct or indirect.

A competent and fair judge relies not solely on intellectual sharpness or analytical acumen. Instead, their ruling reflects a balanced consideration of competing interests, prioritising the victim's right to appropriate and proportionate redress. This compensation may take a material form aimed at repairing the tangible harm suffered in addition to the punitive sanction imposed on the perpetrator.

Even in cases where the victim has formally pardoned the offender, the judge may still deem it necessary to impose a symbolic or moral sanction to uphold the judgment's coherence and preserve its legal and social legitimacy.

## 2.2. The Judge's Perspective and Protection of the Public Interest

The judge's principal approach is the faithful and correct application of the law, upholding the overarching principles of criminal justice. This commitment not only serves the immediate aims of the

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who is, in reality, also a victim due to the victim's behaviour, as a legal party in the case. While the victim is undoubtedly a subject of legal protection, an intelligent and perceptive judge can recognise an element of responsibility in the victim's conduct. Accordingly, the judge may requalify the parties' legal positions—either in deed or thought—should the case file not provide explicit grounds for such requalification.— Prof. Dr. Ma 'tūq Jamāl A. Qadoulh, Nour El-Houda, "The Contribution of Victims to the Criminal and Violent Behaviours Committed Against Them in Algerian Society," Department of Social Sciences, University of Blida 2, p. 5

<sup>11</sup> In truth, the judge acts as a landmark, clarifying the undefined legal rule through the facts affirmed by the claimant or denied by the defendant.

See: 'Alī Sālim Ibrāhīm, *The Jurisdiction of the Judiciary over Arbitration*, doctoral thesis submitted to the Faculty of Law, Ain Shams University, 1995, p. 7.

legal process but also ensures the protection of society and the preservation of the dignity of the state and its institutions.

### 3. The Interest of the Law

The protection of the interest of the law requires a formidable effort on the part of the judge, who is considered one of the architects of legal rules—as well as a barrier against any attempt to undermine them.<sup>12</sup>

The judge is the guardian of legal rule in all its formal and substantive manifestations. It is the judge who gives it practical effect, whether within a constitutional framework or within the subsequent legal structures, be they statutory or regulatory.

Moreover, the judge gives substantive classification.<sup>13</sup> Through intellectual labor, interpreting the legal text by interpretative principles and doctrines depends on the clarity or ambiguity of the text in question.

The quality of a legal text—or its lack thereof—is one matter; its application, however, is another. The way it is implemented reflects the judge's acumen and the breadth of their awareness of societal dynamics and real-world circumstances.<sup>14</sup>

### 4. The Interests of Society and the State

The judiciary is a public institution directly engaged with society's evolving issues. It is the community's recurring pulse, shaping public opinion, affirming societal values, and censuring its wrongs. Accordingly, the judiciary must embody and defend the principles it protects, as it functions as a general mandate over essential public interests and societal affairs.

The state cannot survive without a robust judicial system. A strong and independent judiciary is a cornerstone of national progress and prosperity. Through justice, citizens reinforce their trust in the state, seeing it as an authority and a state of law and rights.<sup>15</sup>

### Conclusion

The judicial profession, in essence, is an intellectual institution before it is a structural institution. It is grounded in traditions dedicated to serving a foundational ideal—justice—at the heart of building a state governed by law and grounded in the rule of right. Although the judiciary is often perceived as a position

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<sup>12</sup> The justice of a legal text is established through the judge's determination. This principle was reflected in a judgment issued by the Family Affairs Division of the Court of First Instance in Safi, dated 28/01/2021, in case no. 492/1626/2020. In this case, the court dismissed a claim for divorce on the grounds of discord, on the basis that the defendant was pregnant and that among the future rights of the unborn child is the right to be born within the embrace and care of both parents. The court held that this reflects an application of the law grounded in fairness rather than mere literalism. Furthermore, it found that the balance of alleged harm and anticipated future consequences between the two parties rendered the divorce request premature, and therefore, it must be rejected.

<sup>13</sup> Perhaps the greatest substantive aim is the protection of rights within reasonable and acceptable timeframes—that is, navigating between the issues of undue haste and excessive delay so that such rights may be safeguarded without negligence in their enforcement. See: Heba Badr Ahmed Mohamed Sadeq, *Temporary Protection in Arbitration*, doctoral thesis submitted to the Faculty of Law, Ain Shams University, Egypt, 2009, p. 9.

<sup>14</sup> The just judge establishes justice by his fairness, even in the presence of a defective legal text, whereas the unjust judge bends the legal text, even if it appears upright.

<sup>15</sup> The just judge serves as a tool for protecting the state's authority in enforcing judgments, for justice is an essence before it is a form.

of authority, it is no less a sibling to liberty. The sacredness of this profession stems from the conscience, anchored in an oath that elevates the status of law and allows the quality of legal texts to resonate with the reassurance of the human soul. The skilled judge regards adherence to the judiciary not merely as a duty but also as a frontline commitment to advancing a righteous path towards the kind of justice society longs for. Through noble effort and profound sincerity, the application of law becomes an optimal and empathetic solution that touches on litigants' hearts and signals that the reform of society inevitably begins with a firm and fair system of justice. The quality of this noble profession demands more than legal knowledge from the judge. It requires deep familiarity with the customs and traditions of the society in which justice is delivered. The judge must broaden their thinking to encompass sociology, history, jurisprudence, interpretation, and other disciplines such as linguistics, philosophy, genealogy, translation, intuition, analogy, digital reasoning, and mental arithmetic—all in the pursuit of fortifying the scales of understanding, leaving no room for doubt or illusion. There are sometimes when a judge, gifted with proper discernment, perceives an entirely different dimension of justice—a justice revealed not in what is said but in what is concealed behind subtle tone, indifference, or careless demeanour. One may distinguish between a judge in form and a judge in substance.

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