

The Role of Jurisprudence in Activating the Rules of Justice as a Source of Civil Law

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Abstract

This article examines the concept of justice and its application within the Iraqi legal system, conducting a comparative analysis of other legal frameworks. The study utilizes doctrinal legal research to explore this issue based on primary and secondary sources, albeit with case laws of the Iraqi courts serving to occupy the research samples from which we have been inspired to ascertain the image of justice rules in the Iraqi milieu and the degree of commitment in assimilating the epistemology of justice in comparative legal systems. The judiciary can make laws more realistic and living; its conclusions require a high level of diligence, logic, and fact-based induction to create solutions based on the rules of justice in the realm of judicial jurisprudence, which operates within the current legal regime. Ultimately, this study offers crucial lessons regarding the evolving role of justice in the cardiopulmonary system across diverse legal traditions, highlighting the indispensable nature of judicial jurisprudence in upholding the principles of equality and justice.

Keywords: Jurisprudence, Activating the rules of justice, Judicial precedents, Iraqi civil law.

Introduction

Justice is one of the most critical ideas shaping the world, closely intertwined with human rights.¹ The degree to which a legal system upholds principles of justice has become a key benchmark for measuring its progress and development.² Civilised legal frameworks incorporate the most significant provisions safeguarding these fundamental rights.³ Justice is historically rooted in human rights, as the two

¹ Christian Reus-Smit and Ayşe Zarakol, "Polymorphic Justice and the Crisis of International Order," *International Affairs* 99, no. 1 (January 9, 2023): 1–22, <https://doi.org/10.1093/ia/iiaac232>.

² Paul Atagamen Aidonojie et al., "International Legal Framework in Curtailing Hazardous Covid-19 Medical Waste: Issues and Challenges," *Decova Law Journal* 1, no. 1 (2025): 1–17, <https://ejournal.pustakaparawali.com/index.php/dlj>.

³ Muwaffiq Jufri et al., "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and The State in Madura," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 21, no. 2 (2024): 221–46, <https://doi.org/10.21154/justicia.v21i2.9283>.

are inextricably linked - justice forms the intellectual foundation for all rights, uniting with religious and moral values that align with human nature.⁴ Justice manifests under various names, such as fairness in divine legislation,⁵ and principles of natural law in man-made laws, which Islamic jurists have expressed as "rectitude and reprehensibility" in their theological schools.⁶

Despite the paramount importance of justice, its definition within legal jurisprudence is not uniform, varying based on the perspective from which it is viewed.⁷ This has led to significant differences in the role and application of justice rules across legal systems.⁸ In the Anglo-Saxon common law tradition, the rules of justice play a more prominent role, with judges drawing upon these principles to address legislative gaps and evolve the law.⁹ In contrast, the Latin civil law system, to which the Iraqi legal framework belongs, places a greater emphasis on the written code, and judges have historically faced more challenges in directly applying the rules of justice.¹⁰

These divergent interpretations of justice have profoundly impacted the understanding and application of the rules of justice within the Iraqi judicial system. The limited scope for judges to rely on the rules of justice to shape the law has resulted in a more rigid and formalistic approach, potentially compromising the

⁴ Muwaffiq Jufri et al., "State Power Limitations on Religion for the Fulfillment of the Constitutional Rights of Indigenous Religion Believers in Indonesia," *Journal of Indonesian Constitutional Law* 1, no. 3 (2024): 194–220, <https://doi.org/https://doi.org/10.71239/jicl.v1i3.23>.

⁵ Bambang Sumantri, Ane Nor Cahya Ilmiah, and Salfanil Farizi, "Fulfillment of the Constitutional Rights for Persons with Intellectual Disabilities in General Elections," *Journal of Indonesian Constitutional Law* 1, no. 3 (December 16, 2024): 176–93, <https://doi.org/10.71239/jicl.v1i3.28>.

⁶ Mukhlis et al., "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 237, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.72156>.

⁷ Abd Wachid Habibullah et al., "Actualization of Public Service Principles by the Ombudsman of the Republic of Indonesia," *Journal of Indonesian Constitutional Law* 1, no. 2 (October 2024): 126–39, <https://doi.org/10.71239/jicl.v1i2.30>.

⁸ Moh. Soleh et al., "Handling and Recovery of Religious Conflict Victims by Local Governments in Indonesia; A Study of Sunni-Shi'a Conflict in Sampang and Pasuruan," *Trunojoyo Law Review* 6, no. 2 (2024): 159–88, <https://doi.org/https://doi.org/10.21107/tlr.v6i2.26254>.

⁹ Sugiarto Sugiarto et al., "Comparative Analysis of Business Judgment Rules in Civil Law and Common Law Systems," *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (November 29, 2024): 151–64, <https://doi.org/10.59059/mandub.v2i4.1753>.

¹⁰ Afga Samudera Erlangga and Ellyne Dwi Poespasari, "Comparison of Civil Law and Common Law Legal Systems in the Application of Jurisprudence," *Journal of Law, Politic and Humanities* 4, no. 6 (September 23, 2024): 2229–35, <https://doi.org/10.38035/jlph.v4i6.649>.

realization of fairness and equity. This issue is particularly urgent given Iraq's ongoing efforts to modernize its legal system and align it with international human rights standards.

Without a robust framework for the practical application of the rules of justice,¹¹ the Iraqi legal system risks becoming disconnected from the evolving social and economic realities, undermining its ability to protect the rights and interests of the people.¹² This research aims to address this critical issue by conducting a comparative analysis of the concept of the rules of justice in the Iraqi legal framework and other legal systems, providing a comprehensive definition, analysing their philosophical foundations, and exploring the challenges faced by judges in their application.¹³

This research fills a gap that other researchers have not previously addressed in the Iraqi civil law system. Most researchers only discuss actual cases based on the civil justice system in Iraq. Such as research on the commercial legal justice system conducted by Raghad Fawzi Abed (2021).¹⁴ Research on Tribal Justice and State Law in Iraq by Ali Hussein Manhal (2023).¹⁵ Research on the implementation of marriage law by the judicial system in Iraq and several comparative countries was conducted by Mohinder Watson (2021).¹⁶ There is also research that leads to philosophical studies, such as that undertaken by Hamad Kareem Hamad (2024), entitled 'The Philosophy of Contract between Theory and Practice.' This research focuses on the philosophy of law in contract practice, particularly in the context of resolving

¹¹ Souad Ezzerouali, "Expanding the Authority of Muhtasib to Protect Consumers: A Comparison between Moroccan Law and Islamic Qanun of Aceh," *Trunojoyo Law Review* 7, no. 2 (2025): 161–91, <https://doi.org/10.21107/tlr.v7i2.29151>.

¹² Vera Mironova and Sam Whitt, "Due Process and Accountability Under Transitional Justice: Evidence from Mosul, Iraq," *Journal of Conflict Resolution* 66, no. 9 (October 21, 2022): 1650–75, <https://doi.org/10.1177/00220027221093401>.

¹³ Mara R Revkin and Kristen Kao, "No Peace Without Punishment? Reintegrating Islamic State 'Collaborators' in Iraq," *The American Journal of Comparative Law* 71, no. 4 (December 31, 2023): 989–1032, <https://doi.org/10.1093/ajcl/avae009>.

¹⁴ Raghad Fawzi Abed, "Terms of Reference of The Iraqi Commercial Court," *Akkad Journal Of Law And Public Policy* 1, no. 1 (December 24, 2021): 16–23, <https://doi.org/10.55202/ajlpp.v1i1.63>.

¹⁵ Ali Hussein Manhal, "Moral Clauses in Contracts: An Iraqi Law Perspective," *Revista de Gestão Social e Ambiental* 17, no. 4 (June 23, 2023): e03448, <https://doi.org/10.24857/rgsa.v17n4-004>.

¹⁶ Mohinder Watson, "Temporary and Child Marriages: Historical Perspectives and Contemporary Issues in Iran, Iraq, and Afghanistan," in *Temporary and Child Marriages in Iran and Afghanistan* (Singapore: Springer Singapore, 2021), 1–29, https://doi.org/10.1007/978-981-33-4469-3_1.

disputes within judicial institutions.¹⁷ Some of the previous studies mentioned above do not share the same focus and theme as the research conducted by the researchers, so this research is essential to be published to address the research gap that previous researchers did not discuss in the civil justice system in Iraq. Thus, the novelty of this research lies in its effort to reconstruct legal sources in pursuit of justice within the civil justice system in Iraq.

Methods

The inductive analytical approach will be adopted by evaluating primary and secondary data sources, drawn from previous research and studies, given the mixed nature of the research, which combines theoretical and practical aspects, and its inclusion of judicial applications across various legal systems. We will benefit from the experience of judicial rulings in countries with the Anglo-Saxon system, while stating the researcher's opinion whenever necessary.

Discussion

The Concept of the Rules of Justice and Their Relationship to Judicial Jurisprudence

Before delving into the technical definition of justice, it is necessary to establish a fundamental concept. Since ancient times, humanity has yearned for sublime ideas, whose mental existence precedes and is more evident than their objective existence. "Justice has been one of the main topics of scientific research by sociologists, economists, and philosophers in Western and Eastern European countries,¹⁸ On this basis, legislators sought to include the term justice in their laws. They considered it a source of legal rule, and the motivation for this was the feeling that "justice must be achieved in all social institutions so that society is strong and stable.

¹⁷ Hamad Kareem Hamad, "The Philosophy of Contract between Theory and Practice," *Pakistan Journal of Humanities and Social Sciences* 12, no. 2 (May 17, 2024), <https://doi.org/10.52131/pjhss.2024.v12i2.2175>.

¹⁸ Ingrid Brunk and Monica Hakimi, "The Prohibition of Annexations and The Foundations of Modern International Law," *American Journal of International Law*, 2024, <https://doi.org/10.1017/ajil.2024.26>.

The Iraqi legislator gave the same name in his civil law (rules of justice), while the Egyptian legislator used to call it (natural law and rules of justice). In contrast, the Lebanese legislator called it (general principles and fairness).¹⁹ It was stated in the explanatory memorandum to the Iraqi Civil Law that justice is one of the things that sound minds understand. It was also noted in connection with this concept in the last sentence of the second paragraph of Article 1 of the Iraqi Civil Law No. 40 of 1951, "The rules of justice are among the sources of law, and when discussing. The extent of the concept of this source. The committee stated that the rules of justice as a source of law, when it is intended to be applied by judges, is only under the supervision of the Court of Cassation, and the Court of Cassation may unify the rules of justice over time so that the concept of this source is concentrated."²⁰ It is clear from the above that the origin of the concept of the rules of justice for the Iraqi legislator who established the civil law, it is an undefined concept, as evidenced by the fact that he established it as a source with the hope that its rules would be concentrated and unified with the succession of rulings and the passage of time.²¹

One of the jurists in Iraq said, "Perhaps what is meant by the rules of justice is a balance between the interests of the two parties, as the ruling should be without inclination toward one of them. This definition presents the criterion of balancing the interests of the two parties without favouring one party over the other, but it does not explain the method of this balancing or its mechanisms."²²

Many other terms have also been defined as justice. Some described it as "a set of legal rules existing alongside the provisions of civil law and based on explicit

¹⁹ J. Z. Bennett et al., "In the Wake of Miller and Montgomery: A National View of People Sentenced to Juvenile Life without Parole," *Journal of Criminal Justice* 93 (July 1, 2024), <https://doi.org/10.1016/j.jcrimjus.2024.102199>.

²⁰ M. Hazrati and R.J. Heffron, "Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels," *Energy Research & Social Science* 78 (August 2021): 102115, <https://doi.org/10.1016/j.erss.2021.102115>.

²¹ V. I. Ignatov et al., "The System of Disposal of Equipment in the Agro-Industrial Complex and Issues of the Legislative Framework," *Sel'skhozjajstvennaja Tehnika: Obsluzhivanie i Remont (Agricultural Machinery: Service and Repair)*, no. 10 (October 1, 2021): 56–67, <https://doi.org/10.33920/sel-10-2110-08>.

²² Jaafar Naser Abdulridha, Salwan Jaber Hashim, and Evgeny Batirovich Sultanov, "Legal Basis for the Interaction between Local with State Authorities," *Cuestiones Políticas* 38, no. Especial II (December 8, 2020): 131–40, <https://doi.org/10.46398/cuestpol.382e.09>.

foundations derived from the inspiration of reason and natural law, and this definition is taken to mean that it assumes (the existence of explicit foundations), but it He did not name these foundations for us. Then the source of these foundations, which is by definition (revelation of reason and natural law), also needs to be defined and agreed upon in its concept and essence. Is it meant by the usual (ordinary) standard of reason? Like we have in law or otherwise? Justice is “the latent, binding force that calls on the mind to develop satisfactory solutions. This definition lacks control over the content of this latent force and lacks evidence of the assumption that this force is equal among those charged with applying the law to the conflicting parties.”²³

The broad scope of justice, the flexibility of its concept, and the conflict of opinions in it, made justice a broad and non-specific concept. Perhaps this was the reason that led legislators, including the Iraqi legislator, to narrow the space for referring to the rules of justice by placing it in fourth place after legislation, custom, and the principles of Islamic law. These sources are rules of justice with a defined concept and clear boundaries.²⁴

It is worth noting what one of the leading legal scholars in Iraq said when he defined the rules of justice, in which he said: The rules of justice are rules that emanate from high ideals that target the good of humanity, and fill souls with a sense of fairness, with the fair solutions they suggest.²⁵ The importance of these rules lies in that they It guides the legislator to issue the necessary legislation to address the various situations that affect people’s lives and transactions meaning that its

²³ Jaafar Naser Abdulridha, Salwan Jaber Hashim, and Evgeny Batirovich Sultanov, “Constitutional Foundations and Legal Restrictions on Mass Media Freedom in the Republic of Iraq,” *International Journal of Criminology and Sociology* 9 (2020), <https://doi.org/10.6000/1929-4409.2020.09.90>; Jaafar Naser Abdulridha, Salwan Jaber Hashim, and Evgeny Batirovich Sultanov, “Constitutional Foundations and Legal Restrictions on Mass Media Freedom in the Republic of Iraq,” *International Journal of Criminology and Sociology* 9 (April 5, 2022): 889–94, <https://doi.org/10.6000/1929-4409.2020.09.90>.

²⁴ Tarika Daftary-Kapur et al., “A First Look at the Reentry Experiences of Juvenile Lifers Released in Philadelphia,” *Psychology, Public Policy, and Law* 28, no. 3 (August 2022): 400–413, <https://doi.org/10.1037/law0000344>.

²⁵ Ilan Wurman, “The Original Presidency: A Conception of Administrative Control,” *Journal of Legal Analysis* 16, no. 1 (January 1, 2024): 26–63, <https://doi.org/10.1093/jla/laae002>.

importance and the arena of their practical legal existence are limited to the written legal text and not to it being an independent source of the legal rule.²⁶

For all of the above, the rules of justice can be defined as: (a higher goal and a pattern of virtuous morals to be guided when developing the legal text that leads to fair solutions, which serve as guiding principles that guide the legislator to issue the necessary legislation to address the various situations that affect people's lives and their transactions).

1) Characteristics of the rules of justice

In the definition of the rules of justice, we conclude that: "It is defined as social rules that change, they do not lead to a fixed and decisive solution, and the effects are manifested in the reduction of the severity of the rules, as well as the rules of the mixed and scattered, and the mixed and ambiguous, and the rules are not unified, so it is impossible to identify them, to change²⁷. The limits change with the circumstances, and it is difficult to understand the rules. These rules are binding on the parties, accompanied by a literary punishment, which is represented by the burden of society when disagreements arise. I conclude that this description is a collection of characteristics that belong to the rules of justice, even if some of those characteristics are found in others²⁸ It is because of the natural association between concepts, and despite that, some characteristics or features distinguish them from others, and these characteristics can be summarised as follows:

The descriptions are derived from the rules, whether they are principles and principles or otherwise, as for the (social) universes, because the field of existence and virtual space is the human society, they are covered by the legal texts regulating social behavior, but in the external manifestation, since the address of the law is generally directed to the individuals as they live in Complex, and not a personal address, as it has no respect for any possession related to the human interest in God,

²⁶ Angela J Davis, "Reimagining Prosecution: A Growing Progressive Movement," 2019, <http://perma.cc/X6H8-RKM3>].

²⁷ G. K. Hadfield and B. R. Weingast, "What Is Law? A Coordination Model of the Characteristics of Legal Order," *Journal of Legal Analysis* 4, no. 2 (December 1, 2012): 471–514, <https://doi.org/10.1093/jla/las008>.

²⁸ William M. Landes and Richard A. Posner, "Rational Judicial Behavior: A Statistical Study," *Journal of Legal Analysis* 1, no. 2 (July 1, 2009): 775–831, <https://doi.org/10.1093/jla/1.2.775>.

and this is the main difference between the *Shar'i* text and the legal text, the latter does not include worship, which is related to the commands of God, the Blessed and Exalted, but is limited to personal transactions and financial transactions, such as the contract of sale, the marriage contract, the inheritance and the like²⁹

Since the law, as a social phenomenon, is only valid for the external manifestation of the behavior of the society, the rules of justice should not be taken into account, whether it is hidden in the soul from the intentions, good or evil, as well as the feelings and emotions, regardless of their tendencies, unless they are behind those intentions and the inner nature of the behavior. External things, such as theft and murder, in such cases, the rules of justice apply to them, and they do not apply to the intentions and causes of pleasures, but they apply to them if they are taken as an external manifestation.³⁰ It causes suffering and maybe even divine punishment, whether against external works or not. Because the texts of the rules of justice have the goal of regulating social behavior, it cannot exist without the existence of society and regardless of its shape and size, whether it is a village, a city, or a state, the existence of society is the emanation of relationships between individuals, and the need for regulation so that the law can fulfill this task. On the assumption that a person lives alone, because there is no need for laws and texts, the absence of relationships calls for organisation. Therefore, it was said: (There is no law without the community, nor the community without the law, as there is no need for the law in the absence of the community, and there is no lack of it in the existence of the community) this suggestion derives from the idea of justice, to achieve convergence and reconciliation between two truths that cannot be easily reconciled: the freedom of the individual and the interest of society.

Cicero, the Roman philosopher influenced by the ideas of Plato and Aristotle, said: "There is in this world a law that is correct and consistent with justice, fixed

²⁹ Ruzian Markom, "The Role of Law and Shariah Governance in Islamic Finance Towards Social Justice in Diversity Diponegoro Law Review," vol. 03, 2018, http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/Concept%20Paper_C.

³⁰ Kiffer G. Card and Kirk J. Hepburn, "Is Neoliberalism Killing Us? A Cross Sectional Study of the Impact of Neoliberal Beliefs on Health and Social Wellbeing in the Midst of the COVID-19 Pandemic," *International Journal of Social Determinants of Health and Health Services* 53, no. 3 (July 22, 2023): 363–73, <https://doi.org/10.1177/00207314221134040>.

and eternal, calling for us to follow what it commands and forbidding us from committing what it forbids. This law is revealed by man with his sound mind and enlightened conscience, and it is a true law that is by nature, eternal and eternal.” He calls people to follow the good he commands and forbids them from committing evil.³¹

In Cicero's words, there are explicit references to an ideal that aims for the good of humanity and the good of society, as it dictates to the judge in his efforts to make decisions and judgments, guided in this by what he called a sound mind and an enlightened conscience. These are only high ideals, and the function of the mind and conscience is only to reveal. These ideals serve as guidelines for the judge to rule by them, thereby achieving justice and fairness.

Two qualities that go hand in hand with generality and abstractness, and because they are so closely linked in the minds of jurists that they may be seen as one thing, in reality, they are not that. Therefore, we will discuss each in a separate paragraph. Generality: What is meant by generality is that the rules of justice were not established for one act or one subject in particular, and it does not detract from their generality that their application be limited to a specific time or place to face exceptional circumstances, or emergency facts that necessitated the implementation of the rules of justice.

Experience in the legal text: What is meant by experience is that the discourse in the rules of justice is directed to individuals with their characteristics and not to themselves. Experience completes the description of universality for justice, given that it does not take the time to apply it to a single case or cases, but rather to confront infinite instances, and it applies whenever the conditions for its application are met. And there is no specific fact in particular on all the facts in which these conditions are met. As a result, all of this is supposed to lead to the stability of transactions and the stability of the legal foundations for individuals’ dealings. This calls for the judge to seek the utmost precision, clarity, and caution in deciding his

³¹ Ramizah Wan Muhammad and Khairunnasriah Abdul Salam, “Islamic Law Department,” *Journal of Law and Judicial System*, vol. 1, 2018.

rulings by the rules of justice, especially in systems that apply the principle of judicial precedent. It is associated with an element of obligation because there is a penalty for violating it.

Since they are rules that regulate social behavior, then they must contain the idea of ligation, that idea inherent in any legal authority, through the presence of a material penalty imposed on those who violate them, because if the obligation element is absent, the discourse turns into advice or guidance, as the system cannot To be established in a society (regardless of the source of this system) except by forcing individuals to comply with the provisions of the law and obey the ruling of the judiciary. Indeed, the imposition of punishment is one of the most significant factors that distinguishes legal rules from other social rules, such as those of religion, morals, and courtesy.³²

Based on the above, violating the rules of justice entails an actual and immediate penalty imposed by the competent authority. As long as the legislator has recognised these rules as an official source of law, there is no escape from considering them binding and imposing a material penalty for violating them, as is the case when violating an established legal rule in any written legislative text.

The philosophical origin of the rules of justice according to Western philosophers

The concept of justice has garnered the attention of philosophers in general and philosophers of law in particular. It was an arena for deep dialogues and discussions between philosophical trends, whether ideal or positivist, and this continued until the modern era, The first to enter this arena were the Greeks who succeeded in exporting their philosophy of justice (especially the theory of natural law) to legal systems from Roman law up to contemporary legal systems.³³

³² Ahmad Syukran Baharuddin, "Expanding Horizons In Syariah And Law Scholarship," *Malaysian Journal of Syariah and Law* 11, no. 1 (May 27, 2023): i-iv, <https://doi.org/10.33102/mjssl.vol11no1.444>.

³³ Nazura Abdul Manap and Omar Aljuboori, "Legal Protections For Victims Of Cyber Blackmail In The Republic Of Iraq, The United States, And Malaysia," *Malaysian Journal of Syariah and Law* 12, no. 2 (August 31, 2024): 334-49, <https://doi.org/10.33102/mjssl.vol12no2.657>.

Although philosophers disagreed on a unified definition of justice due to the breadth of its aspects and scope, they tried to reach a unified concept for it, even in terms of content. Pythagoras defined it as “replacing like with like and it seems that this definition relates to a type of reciprocal justice because the apparent He meant that the dealer takes in proportion to what he gave, and we see that this meaning can include the concept of justice, whether reciprocal or distributive, and it is close to the common saying of giving everyone who has a right his due, because the rules of justice only appear when the written legal rule for resolving the dispute is lost.

The philosopher Socrates defined it as “the ideal rules that a person understands with his mind and are obligatory to respect. This definition is considered for its generality, as its phrases apply to a broader concept of justice and encompass moral and religious principles. It is correct for this definition to describe the sources of justice, and it may be said that the last phrase in The definition (...and it is obligatory to respect) suggests the presence of an element of obligation and this does not include the rules of morality, and this is incorrect because they are obligatory to respect if they relate to financial or moral rights because the law protects these rights regardless of their source, whether they are ethical, religious, or pure rules of justice ³⁴

As for Plato, he defined justice as: “Each person’s concern for what concerns him is justice itself Although this definition is general, what is distinctive about it is that it mentions one of the most important elements of achieving justice, which is (each person’s concern for what concerns him). This is in the spirit of establishing the cause as the cause. It is correct to say that the definition is directed to the concept of justice according to the understanding of the school's ideal philosophy owners. Therefore, Plato presented justice in his book (The Republic) as “a kind of abstraction that the ideas of philosophers cannot reach. Likewise, this justice cannot be achieved except by a government.” Ideal, and whoever manages its affairs and

³⁴ Christopher Etheridge, “Jeremiah Newman; Foundations of Justice: A Historicocritical Study in Thomism,” *The Incarnate Word* 9, no. 2 (2022): 176–78, <https://doi.org/10.5840/tiw20229217>.

manages it is the perfect human being, the philosopher.³⁵” It appears from Plato’s words in his book “The Republic that he believes in the idea of supreme justice, which he spoke of as a legal form legislated by nature, and that positive law is one of its consequences and is nothing but a shadow of it.

Despite its high idealism, Plato's philosophy of justice maintains it as a lofty goal that urges the human conscience to strive towards perfection, even if it is at a minimal level. And at the forefront of those concerned with this are the judges when they look at the issues raised in their courts for which they cannot find a solution in the texts of the legislated laws, because The latter are rigid texts designed to deal with typical cases, as the legislator cannot demand that his legislation take into account all the minute differences in the facts. If he did that, the text of any law would be a collection of volumes. It may require thousands of pages, let alone legislation that is the focus of society’s life and is often involved in People's dealings, such as civil law.

Aristotle’s concept, justice means: “respect for laws and equality” and when following Aristotle’s writings about justice in addition to his definition of it, it seems that he sees it in natural law, and he also believes that laws issued by the legislative authority should be based on natural law, and it may come to mind that, the mind equates natural law with positive law, and this is incorrect because it also believes that natural law is rational law and is absolute justice or justice in itself. Therefore, he said, “We differentiate between justice in itself and justice within society. In other words, we differentiate between absolute natural law.” And the relative positive law.³⁶

According to the chronological sequence, we arrive at Grosius’s definition of justice, as he defined it as: “the rules recommended by sound reason and according to which we necessarily judge whether the action is unjust or just due to its agreement with reason . ” and this definition is general and needs clarification in

³⁵ Merrick Anderson, *Just Prospering? Plato and the Sophistic Debate about Justice* (British Academy; London, 2024), <https://doi.org/10.5871/bacad/9780197267660.001.0001>.

³⁶ Wang Shu, “Aristotle’s Inner Logic of Justice: Based on the Nicomachus Ethics,” *Transactions on Social Science, Education and Humanities Research* 9 (July 8, 2024): 131–39, <https://doi.org/10.62051/cj0fh925>.

terms of the lack of clarity about the nature of the rules. What is recommended by the sound mind, and is it specific to philosophers and people of common sense? Is it a type of transcendent wisdom? Or can the mind of an ordinary person reach these rules if he contemplates and uses his taste and innate inclination for justice?³⁷

After all that has been mentioned, the rules of justice can be defined philosophically as a set of high ideals through which a person with a sound mind and a sound conscience can distinguish between good and bad words and actions, thereby seeking what is good and abstaining from what is bad. What distinguishes this definition is that it combines between the theoretical meaning of the rules of justice and their practical application, this results in the judge feeling psychological satisfaction that he ruled according to these rules and gave everyone his right, basing his sense of achieving justice on the soundness of his mind and the alertness of his conscience, to achieve the right and prevent injustice.

1) The philosophical origin of the rules of justice in Islamic law

The first thing to note is that the rules of justice in Islamic Sharia are not independent as a source of legal rulings. Instead, the basic idea prevailing in the Islamic judiciary is that it is based on wisdom and justice. From the perspective of this Sharia, justice is the centre around which rulings revolve, and the establishment of an integrated society is based on... The basis of justice is the teleological cause of Islamic legislation. In addition, justice is one of the intrinsic attributes of the Divine Being. Therefore, thinking about justice and fairness in doctrinal issues in Islamic theology is linked.³⁸

Islamic jurists have defined the rules of justice or rational rules with several definitions, but we limit ourselves to what most theologians and jurists of justice have defined them as: "the independence of the mind in perceiving good and evil

³⁷ Ade Arga Wahyudi, Marlian Arif Nasution, and Paisal Rahmat, "The Concept of Justice in the Perspective of Greece Philosophy and Its Relevance to the Development of Modern Political Law," *Journal of Law, Politic and Humanities* 2, no. 3 (May 28, 2022): 124–32, <https://doi.org/10.38035/jlph.v2i3.94>.

³⁸ Alexey V. Muratov, "Social Justice in the Philosophy of Islam," *Izvestiya of Saratov University. Philosophy. Psychology. Pedagogy* 23, no. 3 (September 22, 2023): 272–76, <https://doi.org/10.18500/1819-7671-2023-23-3-272-276>.

before the law's command and prohibition³⁹ and what is noted about this definition is its generality and brevity, as it does not clarify what is meant. With the mind, is it the personal mind that differs from one person to another, or is it the collective mind, and is it the theoretical mind or the practical mind of the Islamic judge? He also did not explain the methods and mechanisms of the work of this mind in arriving at perception. This is evident in the study of mental ugliness and improvement, the basic idea of which is based on two principles:

The essence of goodness and badness in actions: - Actions are either good in themselves or bad in themselves in the eyes of reason, regardless of the ruling of Sharia, and from this angle, Islamic theology agreed with the philosophical proposal that sought to look at Principles of justice through rational awareness, away from any theological or metaphysical ide.⁴⁰ The universal human mind can judge actions regardless of the actor from whom the action occurred. The mind judges the spectacle of an unjust act, irrespective of the personality or characteristics of the person who initiated this act. It also judges the goodness of a just act, which is one of the results of the principle of the subjectivity of ugliness and goodness.

It is undeniable that there is disagreement among Muslim theologians regarding the subject of the intrinsic nature of mental improvement and ugliness, and their division into two groups (*Adliyyah* and *Ash'ari*), specifically on the issue of the mind's ability to perceive goodness and ugliness, and whether they are intrinsic or not. It has become clear that actions have two qualities in themselves. Either the action is good or it is bad. The Islamic judge can do good and avoid evil, regardless of any divine or man-made legislation, while acknowledging the correlation between rational and legal rulings. This correlation is a well-known rule that states

³⁹ Khudzaifah DIMYATI et al., "Developing Islamic Legal Philosophy-Based Assurance of Justice," *WISDOM* 24, no. 4 (December 25, 2022): 193–203, <https://doi.org/10.24234/wisdom.v24i4.808>.

⁴⁰ Sumarta Sumarta, Burhandin Burhanudin, and Tenda Budiyo, "Maqasid Al-Syariah Mendorong Keadilan Dan Keseimbangan Dalam Hukum Islam," *Khulasah : Islamic Studies Journal* 6, no. 1 (June 20, 2024): 16–31, <https://doi.org/10.55656/kisj.v6i1.120>.

that whatever the mind rules is ruled by. The Sharia indicates that this attachment is complete and absolute⁴¹

It is the evidence whose significance is based on realistic relationships and associations that are proven by intuitive reason or by the mediation of proof, that is, it includes investigations of established rational associations between rulings or between them and their related things, such as searching for the necessity of a thing due to the necessity of its precedence or searching for the necessity of requiring the sanctity of a thing due to its necessity⁴². Against it, and the necessity of the prohibition against corruption, and other rational and fundamental issues in which the investigation is in the form of the established relationship between two rulings or between the verdict and its related or subject, by which the jurist infers to prove or deny another ruling or to determine the subject of the ruling or its related, and the angel is The significance in all of these researches is rational and demonstrative.

In conclusion, justice in the science of theology or in the Islamic faith is considered a foundation upon which rulings in Islamic jurisprudence are based. This means that the rules of justice are among the foundations of *ijtihad*, and that when the diligent scholar derives a legal ruling, he must present it to the rules of justice, which is what is agreed upon among many jurists,⁴³ which was intended to achieve the interest in the judgment from knowledge of the rule of justice. Some jurists have pointed out that if jurisprudence had been built on the rule of justice and transcended the news mentality, we would have been able to codify a social philosophy, and we would not have fallen into the contradictions and inconsistencies that we fall into today

⁴¹ Muhammad Nasir and Marudin Marudin, "Islamic Perspective on the Basic Concepts of Ethics," *The International Journal of Education Management and Sociology* 1, no. 1 (October 18, 2022): 35–39, <https://doi.org/10.58818/ijems.v1i1.5>.

⁴² Sahin Husain, Nasir Purkon Ayoub, and Mukhammadolim Hassmann, "Legal Pluralism in Contemporary Societies: Dynamics of Interaction between Islamic Law and Secular Civil Law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (April 30, 2024): 1–17, <https://doi.org/10.35335/cfb3wk76>.

⁴³ Samy A. Ayoub, "A Theory of a State? How Civil Law Ended Legal Pluralism in Modern Egypt," *Journal of Law and Religion* 37, no. 1 (January 7, 2022): 133–52, <https://doi.org/10.1017/jlr.2021.79>.

2) The impact of the rules of justice in addressing the legislative vacuum

The term emptiness is not new in the jurisprudence of law and has two opinions. Those who say that the law is incapable use it to indicate its incompleteness, while those who believe in its perfection present the term emptiness as the broader space that includes all the permissible things not covered by written texts. Thus, the role of judicial jurisprudence is to find the ruling for the facts that the legislation lacks.⁴⁴

Text governed by Several definitions have been given regarding the legislative vacuum, including: "The vacuum in the law or the silence of the law is the absence of a ruling in it that addresses the dispute presented before the judge, and the failure of the legal text to include detailed or partial provisions that are needed."⁴⁵ Most Swiss commentators believe that a vacuum "occurs whenever it is necessary to go beyond the legislator's intent". At the same time, German jurisprudence has another opinion, which says that a vacuum exists when the ruler, searching for justice and truth, is forced to rely too far on the literal meaning of the text of the law.⁴⁶

We see that the legislative vacuum is a natural consequence of the incompleteness of human laws, as their authors cannot claim perfection, and nothing perfect can come from it. Imperfection dominates both humans and what comes from them, meaning that the existence of the vacuum area is not an intentional act by anyone. The legislator, or a deliberate abandonment of a permissible area subject to judicial jurisprudence, as evidenced by the fact that it is well-known that the legislator stipulates a discretionary authority for the judge whenever the need arises for that, and this authority is nothing but a limitation of the judge's options between two limits or many limits between which the judge chooses, and this is not within the concept of The void area in which the judge's role

⁴⁴ Ahmad Syukran Baharuddin, "Interdisciplinary Insights Into Syariah And Legal Discourse: Navigating Critical Dimensions, Contemporary Challenges, And Global Impact," *Malaysian Journal of Syariah and Law* 11, no. 2 (December 31, 2023): v-x, <https://doi.org/10.33102/mjssl.vol11no2.706>.

⁴⁵ Charlotte Mol, "Not 'The Norm': Families, Individuals and Human Rights," *Utrecht Law Review* 20, no. 2 (October 8, 2024): 1-5, <https://doi.org/10.36633/ulr.1130>.

⁴⁶ Iris Reinders and Joost Huijer, "The Legal Representation of Parents and Children During Placement Procedures in the Light of Article 8 ECHR," *Utrecht Law Review* 20, no. 2 (October 8, 2024): 40-53, <https://doi.org/10.36633/ulr.938>.

is active in analysis, reasoning, and deduction, which are terms that fall within the idea of diligence leading to a just ruling.

Filling the legal vacuum judicially through the rules of justice

After defining what might be called the term legislative vacuum in its precise technical sense (from the researcher's point of view), and based on the above, the concept of vacuum in the law about the Latin legal system is limited to what does not contain a legislative text, that is, the absence of a written law from a text that regulates or governs. The incident in dispute is presented before the court. At this point, the judge's role begins in activating the backup (unwritten) sources of law, such as custom and the rules of justice, perhaps the most prominent of which is the latter, despite its generality and breadth.

However, activating the rules of justice as a source of law within this system is not straightforward. Although these rules are general principles dictated by the universal mind and depend on the human conscience, there is no dispute that the principles of the universal mind are generally unified and the directives of the human conscience are identical for all people, but this is all within a certain scope. theoretical, and the difficulty arises in the practical side, because it puts the judge in the circle of exhaustion, especially since the civil law is devoid of finding a control for the rules of justice. To apply them, the judge needs high legal skill and sufficient time to devise a just and equitable solution.⁴⁷

There is no escape for the judge to be good at reasoning and improve deduction to arrive at a fair ruling after understanding the facts and knowing the right party. These abilities and capabilities are not available to all judges. A judge may issue a specific ruling by the rules of justice, and if the matter is presented to another judge, he will rule in a manner opposite to the first. According to the rules of justice themselves, this is not because these rules contradict each other, but rather because of the difference in the ability to understand and analyse between the

⁴⁷ Gleider I Hernández, "The Essential Judicial Function and the International Legal System," in *The International Court of Justice and the Judicial Function* (Oxford University Press, 2014), 240–80, <https://doi.org/10.1093/acprof:oso/9780199646630.003.0008>.

judges themselves, and perhaps this is the reason for the Supreme Courts' oversight of the decisions and rulings issued by the judge based on the rules of justice, because it is unreasonable to leave the application of the rules of justice to the judge, depending on his whims and personal control.⁴⁸

What makes the matter more difficult is that the judge, according to the Latin legal systems, resorts to applying the rules of justice only rarely, due to the almost complete reliance on the legislative text, because according to this system, it is not permissible for the judge to adhere to the rules of justice and fairness and skip the applicable legal texts, because those rules may be decided to use it in cases where the legal text failed to regulate it because sacrificing favourable legislation for the sake of justice leads to disrupting the system of equality on which society is based.

This rare application of the rules of justice reduces the culture of understanding these rules. It limits the habit of applying them continuously. We emerge from this with the conclusion that the space for judicial jurisprudence in legal systems based on the Latin system is a limited space, and closed to what is not contained in a legislative text. Our evidence for this is the scarcity of judicial decisions based on the rules of justice in the Iraqi and Egyptian judiciaries.⁴⁹

As for the French Court of Cassation, it believes that the discretion to adopt the principles of justice is left to the discretionary authority of the judge, and does not allow this matter to be discussed before it, even though it constantly calls on the French legislator to amend legal texts that are not consistent with the wisdom of legislation, and are not compatible with realistic justice. Still, this court recognises that fairness is not a source of law, and that it is unacceptable to increase a worker's wages for working on a holiday, in the name of fairness, without prior agreement.⁵⁰

⁴⁸ Meliyani Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia," *Iblam Law Review* 3, no. 1 (January 30, 2023): 99–110, <https://doi.org/10.52249/ilr.v3i1.119>.

⁴⁹ John Hagan, Gabrielle Ferrales, and Guillermina Jasso, "How Law Rules: Terror, Torture and the Normative Judgments of Iraqi Judges," *SSRN Electronic Journal*, 2006, <https://doi.org/10.2139/ssrn.910925>.

⁵⁰ A. A. Solovyev, "Judicial Ethics in Judicial Communication: The Experience of the French Republic," *Courier of Kutafin Moscow State Law University (MSAL)*, no. 10 (January 13, 2024): 120–26, <https://doi.org/10.17803/2311-5998.2023.110.10.120-126>.

As for the Anglo-Saxon legal system, examining the rules of justice from an applied perspective differs significantly from the Roman system. In the English legal system (for example), the principle of judicial precedent is one of the most critical judicial foundations. Indeed, it is Britain's most crucial official source of law, and the summary of judicial precedent. In it, it is “that the rule upon which a ruling issued by one of the higher courts (such as the House of Lords),⁵¹ is based, whose decisions are binding on all courts before cases similar to that in which a ruling or jurisprudence was issued, and the decisions of the courts of appeal are also binding on all lower courts.⁵²

It was said that the reason why judicial precedents were taken into consideration in the Anglo-Saxon system was “the nature of the thinking philosophy of the Anglo-Saxon peoples, because these peoples prefer in their way of thinking to rely on applied practical experiences.⁵³ We believe in adopting the principle of justice in the English judiciary and giving the courts free rein. The highest level of application of the rules of justice, even at the expense of general Sharia, is the reason for adhering to the principle of judicial precedent. It has inevitably led, through experience, to the development of the level of judicial jurisprudence in reasoning, deduction, and extrapolation, enabling the construction of legal rulings based on the principles of justice, the spirit of justice, and fairness.

1) Judicial applications of the rules of justice in the Latin judiciary

The research will examine Iraqi and Egyptian civil laws as examples of laws based on the Latin system, and we will discuss them in succession in the following two paragraphs. We explained at the beginning of the research that the Iraqi legislator referred the judge to the rules of justice when there was no solution to the incident in dispute, neither in the written civil law nor in the unwritten (custom and

⁵¹ Emine Zendeli, “The Principle Of Justice In Magna Carta Libertatum And Its Influence On The Law In General,” *SEEU Review* 11, no. 1 (December 1, 2015): 59–68, <https://doi.org/10.1515/seeur-2015-0009>.

⁵² Adrian Grounds and Nicola Padfield, “An English Perspective,” in *Safeguarding the Quality of Forensic Assessment in Sentencing* (Routledge, 2022), 34–62, <https://doi.org/10.4324/9781351266482-3>.

⁵³ Felix Lieberman, ed., *Die Gesetze Der Angelsachsen* (Cambridge University Press, 2015), <https://doi.org/10.1017/CBO9781316225103>.

principles of Islamic law, and in the application of that, this judiciary ruled according to those rules (even if they Applications are few and even rare, including what was ruled by the Iraqi Court of Cassation, which included the following: “The plaintiff’s failure to offer the car that was sold through public auction to the penultimate bidder (the negligent one) does not exempt the negligent bidder from the obligation to pay compensation as a result of his neglect of paying the difference between the two bids.” That is, between the price on which the bid was awarded and the price that was granted by the bidder who accepted it in the application of the rules of justice and taking into account the error to which the seller contributed and the judge was guided to this solution through his diligence, taking into account the moral and social values that govern society in the absence of a legal solution in the body of civil law⁵⁴

In another decision of the Iraqi Court of Cassation, it relied on the principles of justice. It upheld the Court of Appeal's decision, which ruled that each party should bear the fees of its lawyer, as there was no winner or loser in the case. After all, justice requires that the two parties return to the state they were in before the contract, and the law does not regulate the entitlement to attorney's fees in such a case where there is no winner or loser.⁵⁵

Although the Egyptian legislator granted the judge the right to exercise his judgment, this was not explicit to the degree that allowed him to create legal rules, because his discretion is limited to the area of the legal vacuum, to find a solution to the incident before him, and this is clear from the text of the second paragraph of Article The first is from the Egyptian Civil Code. The Egyptian judiciary was not devoid of decisions and rulings that had no solution in written legislation, so it worked hard to solve them according to the rules of justice.⁵⁶

⁵⁴ Zakia Afrin, “Post-Conflict Justice in Iraq,” *Annual Survey of International & Comparative Law*, vol. 14, 2008.

⁵⁵ Michael A. Newton, “The Iraqi High Criminal Court: Controversy and Contributions,” *International Review of the Red Cross* 88, no. 862 (June 6, 2006): 399–425, <https://doi.org/10.1017/S1816383106000592>.

⁵⁶ Arlette David, “Law, Pharaonic Egypt,” in *The Encyclopedia of Ancient History* (Wiley, 2012), <https://doi.org/10.1002/9781444338386.wbeah15239>.

Among those decisions is what was stated in a decision of the Egyptian Court of Cassation, which said: "If the case ends in conciliation, and since the Code of Procedures neglected to regulate the end of the case in mediation between the adversaries, this is considered a legislative deficiency that the judge must complete by resorting to the sources stipulated in Article The first is from the civil law, including the rules of justice, and therefore the just solution in the event of a settlement is resolved in which the court must rule that the dispute ends ⁵⁷

This also includes the decision of the Egyptian Court of Cassation, which stated: "The party whose action caused a violation of the arbitration agreement - even if the other party in turn was wrong - cannot undo what was done by him in application of the rule (whoever seeks to undo what was done by him, then he seeks to undo what was done by him. It is rejected, and since no legislative text specifies this rule, it is possible to rely on Article (2/1) of the Civil Code, especially the principles of natural law and the rules of justice.⁵⁸

Although the legislator allowed the judge, in the event of a legal vacuum, to fill in the deficiency and fill the void, it did not leave the door open for the judge to exert judgment according to his personal opinion and self-belief. Instead, he gave him objective control so that the diligence in these cases would be objective and private. In the case pending before the judiciary, and limited to its parties only, in addition to that, one of the most important reasons for the reluctance of judges to resort to the rules of justice is that the texts of laws with a Latin tendency (including the Iraqi and Egyptian civil laws) include texts that prohibit diligence in contrast to the text, so their adaptation is limited to the facts, Presented within the limits of the written text, to avoid overturning their rulings and decisions.

2) Judicial applications of the rules of justice in the Anglo-Saxon judiciary

The most current example of the Anglo-Saxon system is the English law. This law was surrounded by restrictions of formality that were an obstacle to its

⁵⁷ Linda T Darling, "Medieval Egyptian Society and the Concept of the Circle of Justice (MSR X.2, 2006)," n.d., <https://doi.org/10.6082/M1G44ND9>.

⁵⁸ Udo Pesch, "Institutions of Justice and Intuitions of Fairness: Contesting Goods, Rules and Inequalities," *Critical Review of International Social and Political Philosophy*, April 9, 2021, 1–14, <https://doi.org/10.1080/13698230.2021.1913887>.

development. This restriction was not broken except through the rules of justice, so this law exceeded those restrictions in the beginning by using legal tricks or legal assumptions, except that the latter could not find solutions to the problems that obstructed the development of common law. Under the pressure of necessity and need, the second source of English law developed is the rules of justice, "Equity". The English courts adopted a set of rules suggested by the free human conscience, until those rules became a roadmap for the English judiciary and were applied on a large scale in the disputes presented to it, and this continues to this day. We notice this clearly in the decisions that were issued and are being issued, perhaps the most prominent of which are.

In this case, the seller informed the buyer that the farm subject to the contract was sufficient to graze two thousand heads of livestock, but the seller had not used it. The buyer then filed a lawsuit claiming fraud in the sales contract after it became apparent that the farm was insufficient to graze the aforementioned number. In the livestock contract, the court ruled in its ruling issued in 1927 that what was contained in the seller's statements was not fraud because it was merely an opinion and an honest expression about the farm's capacity, and not information about its actual capacity, while the same court ruled in a similar case of fraud because the defendant was Company: Smith, which was sued by Reese Company because of an opinion submitted by the first company regarding the promotion of profit expectations resulting from the investment of coal mines, and the court considered that the calculation of the probabilities - which was stated in the defendant company's statements about the expected profit - was fraudulent⁵⁹, and this is the difference between the two rulings with What appears to be a superficial similarity between them is that it was based on the rules of justice, although in English common law both cases are considered fraud, and by arbitrating the rules of justice and fairness, the court distinguished between the action or opinion of someone who

⁵⁹ П.А. Луценко, "Comparative Analysis of Criminal Pretrial Procedures in Anglo- Saxon and Continental Legal Systems," *Penitentiary Science*, no. 1(61) (March 31, 2023): 62-71, <https://doi.org/10.46741/2686-9764.2023.61.1.007>.

has no experience, and the action of a party that is supposed to have sufficient expertise to give an opinion. technician responsibly.

In it, the two contracting parties included a clause in the contract stipulating that the enforcement of the charterparty depends on the provisions of the American Carriage of Goods by Sea Act of 1936, and it became clear after referring to the aforementioned law that it cannot be applied to this type of contract, and so the Council was The Lords, which is the court before which the case is brought, have three options: either invalidate the entire agreement, invalidate the clause regarding reference to American law, or reject Article Five of the chosen (American) law, which stipulates that the law cannot be applied to this type of contract, and to achieve justice. The House of Lords took the last option and ruled to reject Article Five of the American law chosen by both parties to the contract ⁶⁰ and it is understood from this decision that the requirements of justice necessitated deviating from a legal text previously agreed upon by both parties, and among those requirements is the ship owner's obligation under a contract to exercise due diligence Necessary, and one of the implicit requirements for that care is the provision of a navigable ship.

The facts are summed up in the conclusion of a lease contract between a landlord and a tenant, and the contract lacked formality requirements, so the court ruled that the contract was invalid because it was not complete with the required formality. However, the tenant, since he possessed the property and paid the required rent, which led to the emergence of a periodic lease, the landlord served notice to terminate the periodic tenancy. He succeeded in winning the case before the courts of common law. However, the tenant claimed his right to equitable rent (lease equitable), which is required by the rules of justice, which recognise the existence of a rent agreement (agreement for a lease). He arose on the ruins of the invalid lease (void lease), so he was granted this right, and that he should enjoy the same legal protection that he enjoys based on the legal lease ruling", and thus the

⁶⁰ Emilija Gjorgievska and Dijana Gjorgieva, "General Characteristics of the Anglo-American Legal System with a Special Focus on Civil Procedure," *International Scientific Journal Sui Generis* 2, no. 1 (2023): 65–84, <https://doi.org/10.55843/sg2321065gj>.

requirements of the rules of justice and fairness have taken precedence over general law or (Public Law).⁶¹

From all of the above and many other pieces of evidence, it is clear that the concept of rules of justice and fairness is widespread in many of the decisions and rulings of judges according to the Anglo-Saxon system, and that the rules of justice have greatly influenced the creation of legal systems within the framework of Anglo-Saxon law. One of the most important of these systems is what is known as the "Trust" system. "which was common in Anglo-American law, and it means "for a person to confine an asset and dispose of its proceeds to a party that he determines, and this is done by transferring the intended property to a person called a "Trustee" in certain circumstances that requires justice to manage it for the benefit of another person, who is Beneficiary "or another specific purpose, (We note that this system is very close to some provisions of the endowment system known in Islamic law).

The application of the rules of justice in England applies in vast fields of transactions and rights related to civil law, such as land law, trust, fraud, accidents, granting effect to intention, guardianship, guardianship, and some solutions complementary to common law, such as real implementation, warnings, money law, the problem of timing in contracts, the transfer of money, the transfer of right, and rights. Married women, their obligations, claims and rights.

This vast area of the rules of justice in common law in England and the express discretion of the judge in the English legal system, through the system of judicial precedents, has enhanced his abilities in reasoning, deduction, and logical induction, and made that arena the most valid field to demonstrate the concept of judicial jurisprudence based on a scientific blend of theory and the application.

Conclusion

After concluding this article, it's necessary to encourage judges to exercise diligence in their rulings by the rules of justice. This should coincide with developing

⁶¹ Emilija Gjorgievska and Dijana Gjorgieva, "General Characteristics of the Anglo-American Legal System with a Special Focus on Civil Procedure," *International Scientific Journal Sui Generis* 2, no. 1 (2023): 65–84, <https://doi.org/10.55843/SG2321065gj>.

their deduction, reasoning, and logical induction capabilities. To achieve this goal, the science of Islamic jurisprudence (which includes disciplined standards in reasoning and deduction) can be used to ensure the issuance of rulings based on rules. Justice is needed to control uncontrolled departures from the legislative text. Moreover, all of this is accompanied by two things: emphasising the justification for rulings issued based on the rules of justice, and strengthening the oversight of the supreme courts over court rulings that include judicial jurisprudence based on the rules of justice, to ensure that they do not deviate from achieving the lofty goals of justice. Thus, we propose to expand the scope of academic research into the principles of justice in the field of jurisprudence and consider it as one of the sources of legal knowledge in countries with a Latin system, such as Iraq, Egypt, and France. As we recommended, Iraqi legislators should amend the second paragraph of Article 1 of the Civil Code, making the rules of justice a source of legal rule, both in the written legislative text and in a manner that ensures the expansion of the judge's authority in jurisprudence through these rules.

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