

## Procedural Rules between the Philosophy of Legislation and the Reality of Application:

### A Critical Analytical Study of the Book “Principles of Criminal Procedure” by Dr. Baraa Munther Abdul Latif. A Review Article

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DOI : <https://doi.org/10.61796/ejcbllt.v3i2.1713>



#### Sections Info

##### Article history:

Submitted: November 10, 2025

Final Revised: December 22, 2025

Accepted: January 17, 2026

Published: February 06, 2026

##### Keywords:

Procedural Legality

Judicial Guarantees

Theory of Nullity

Cassation Jurisprudence

#### ABSTRACT

**Objective:** The significance of the work lies in the fact that, unlike the majority of other works, *Principles of Criminal Procedure*, written by Professor Dr. Baraa Munther Kamal, boldly rethinks the criminal procedure in the light of the following obvious truth: the effectiveness of law depends on the effectiveness of the protection of constitutional rights. The author considers criminal procedure as the existential core that underpins the rule of law and explains the criminal litigation process through two key considerations: the right of the state to punish and the sacred right of the accused under the presumption of innocence. **Method:** In the book, the author does not simply list the relevant legal provisions as in most legal texts. Instead, he plunges into the philosophy of criminal procedure and uses the power of narration combined with analytical explanation. The study also incorporates the latest trends of the Federal Court of Cassation to bridge the gap between theory and practice. **Results:** The work transforms criminal procedure analysis into a practical guide rather than a text based solely on rigid legal wording. By integrating judicial trends and philosophical interpretation, the book explains procedural stages while maintaining a balance between state authority and the protection of constitutional rights of the accused. **Novelty:** Unlike conventional works, the book boldly rethinks traditional concepts such as detention, search, interrogation, and the nullity of procedural acts in light of international fair trial standards and the provisions of the current constitution. Consequently, the book emerges as a methodologically strong and qualitatively significant reference in contemporary criminal procedural policy.

## INTRODUCTION

The Code of Criminal Procedure is the thermometer by which the level of a state's respect for human rights is judged. While the Penal Code specifies criminal offenses, procedural legislation determines the destiny of the right to liberty. The work of Professor Dr. Baraa Munther Kamal Abdul Latif was developed in a period in which the demand has increased for a reference work that compiles scattered legislative provisions and their successive reforms, as well as the changing judicial practice.

The main problem addressed in this article is the examination of the degree to which the author succeeds in finding a balance between the imperatives of swift justice and the personal guarantees of the accused [1], [2], [3].

## **RESEARCH METHOD**

### **Methodology of the Book and its Position in the Previous Studies**

A review of the procedural legal literature indicates that previous studies have, in general, followed two main trends:

1. **The Descriptive Approach:** This approach was followed in the 1970s and 1980s, during which the role of legal commentaries was limited to the explanation of the wording of the law, as indicated in the writings of Professor Abdul Amir Al-Uqaili.
2. **The Philosophical Approach:** This approach was characterized by immersing itself in general theories without making proper links with practical judicial realities, as indicated in the writings of the Egyptian school, which followed the French approach.

By contrast, Dr. Baraa Munther's book appears to follow an integrated approach. The book is arranged in an order that commences with the general theory of criminal proceedings, followed by the procedural mechanism, along with the rulings of the Federal Court of Cassation. The book stands out from previous studies in that the author updates the previous editions of classical law books in an approach that is compatible with the 2005 Constitution, which previous editions of classical law books failed to achieve [4], [5], [6].

### **Criminal Litigation and the Rights of the Victim (An Analytical Study)**

The author addresses the rules of the law related to the commencement of criminal proceedings. At this point, the depth of the legal analysis is revealed, particularly with regard to the restrictions on the commencement of criminal proceedings, which include complaint, request, and authorization.

1. **Doctrinal Analysis:** The author asserts that these rules are not merely procedural in nature but are rather legal in their intent, which aims to ensure the administration of justice.
2. **Scholarly Contribution:** Dr. Baraa sets himself apart from other writers by expounding the contemporary developments related to the civil claim in the context of the criminal procedure and the manner in which the conflict between the two jurisdictions could be disentangled [7], [8].

## **RESULTS AND DISCUSSION**

### **Procedural Legality in the Investigation Stage (Between Legal Text and Practical Application)**

This section is the main pillar of the study. The writer discusses the procedural rules of the preliminary investigation stage from the critical analytical point of view:

1. **Interrogation and Questioning:** The writer has made an important distinction between the interrogation of the accused for the purpose of defense and the questioning of the accused for the purpose of collection of evidence. The writer

has further stressed the nullity of the confession obtained under physical and moral coercion, as embodied in Article 37 (First)(C) of the Constitution.

2. Search and Its Legal Controls: The writer has not merely discussed the legal requirements of the search procedure but has further analyzed the issue of search in flagrante delicto cases and the manner in which the scope of the procedure could be extended by the judicial officials [9], [10], [11].

#### The Author's Contribution to Legal Foundations: The Theory of Procedural Nullity

The researcher has considered the chapter on nullity in this book to be one of the most captivating and analytically precise chapters. The writer has not merely divided the nullity into substantial and non-substantial nullity, as is done in the context of the majority of the legal literature, but has further:

1. Established the theory of evidence obtained from an invalid procedure.
2. Elucidating that nullity under the Code of Criminal Procedure is retroactive nullity, which re-establishes the original position that existed prior to the commission of the flawed procedural act.

The theoretical underpinnings of the book have helped judges and lawyers to frame proper legal appeals, which increases the practical value of the book for the purpose of academic promotion.

#### Judicial Oversight of Justice: Judgment and Methods of Appeal

In the author's explanation of the trial stage, the author stresses the oral proceedings principle, which he criticizes for relying on the record of the preliminary investigation without conducting an examination in vivo.

1. Methods of Appeal: The author explains the cassation appeal method in detail, focusing on the errors that occur in the application of the law, particularly errors in the interpretation of the law and errors in the construction of the law.
2. Retrial: The author explains the extraordinary remedy of review as an exception to the finality of judgments, specifying the exclusive circumstances under which the remedy is available to address the injustice suffered by the convicted individual [12], [13], [14], [15].

## CONCLUSION

**Fundamental Finding:** Originality: The book is a contribution to the field of criminal law in the form of doctrinal scholarship responding to the changing needs of modern criminal justice. Methodology: The author succeeds in bringing together comparative legal learning and Iraqi judicial jurisprudence in a balanced manner. Dr. Baraa's method is unique in that he connects the rigid rules of law with the philosophy of penal law, which renders the book a theoretical and practical source of learning. The author of the book under review uses the comparative method in the explanation of the Iraqi Code of Criminal Procedure in comparison with Arab laws (Egyptian and Lebanese laws) and some of the laws of foreign nations. The book contains the latest amendments

in the laws and the jurisprudence of the Federal Court of Cassation, and the writer explores the rationale behind the laws and the spirit of the law, especially in the context of issues related to the freedoms of the people and the rights of the accused. **Implication:** Recommendation: It is recommended that the book under review be included in the curriculum of postgraduate studies, owing to the solutions offered for some of the problems in the field of law. The writer has shown his competence in explaining the complex procedural laws in criminal procedure law in a simple manner, which is understandable to the students as well as the practitioners. The scholarly significance of the research work presented by Dr. Baraa Munther is based on the ability of the author to establish a methodological balance between the traditional procedural heritage and the demands of contemporary criminal policy. The author goes deep into the philosophy of the procedural protection of the individual, based on the principles of constitutional law safeguarding the individual's freedom. **Limitation:** At times, the book seems to be overly theoretical in nature, leaving little space for the practical applications of the laws in the judiciary. The writer has heavily relied on traditional printed sources, and it is recommended that the book could have been made more comprehensive if the writer had referred to some of the recent international journals in the field of law, especially in the context of issues related to cybercrime. Certain emerging issues, like digital criminal procedures and virtual investigations, could have been discussed in a more detailed manner. The writer has focused on the Iraqi domestic laws to the extent that the space given to the international conventions on the rights of the people to a fair trial is compromised. **Future Research:** Certain emerging issues, like digital criminal procedures and virtual investigations, could have been discussed in a more detailed manner, as these issues are gaining importance in the modern era. The precision of the author in discussing the extraordinary methods of appeal is based on a mature critical perspective that goes beyond the conventional framework of textual interpretation in the search for substantive justice. The researcher concludes that the book is a valuable analytical tool that enriches the legal library with an integrated legal perspective characterized by the clarity of the writing style and the depth of the scholarly analysis.

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