

A Dignified Judge’s (Re)Presentation of Self

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Goffman (1959) posits that individuals are performers, maintaining a “front” depending on social contexts they navigate. Highly institutionalized roles, such as that of a judge, involve a front pre-established by law or social expectations. The role of a judge as prepared by the law entails the performance of dignity. Goffman believes that this front is collectively represented and takes on a factual existence. Employing Moscovici’s (1961) social representations theory and Abric’s (2005) hierarchical evocation method, we explore the representation of a judge’s dignity among practicing lawyers. This study delves into the performative aspect of the role of a judge as a character in a performance of a trial. Our findings highlight a dramatic persona of a dignified judge, characterized by specific appearance and manner, and setting used to objectify the judge’s dignity.⁴

Keywords: social representations; performance; performativity; Goffman; dignity of a judge

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INTRODUCTION

Legal systems establish behavioural and character requirements for judges, emphasising independence and impartiality, diligence, and justice. The law requires the judge to perform their tasks conscientiously and to refrain from anything, inside the courtroom and out, that would infringe the dignity of the judicial role or endanger the trust in independent, impartial, and just judicial decision-making.⁵ These requirements are built around the same core values as the internationally recognized Bangalore principles of judicial conduct (Judicial Integrity Group, 2010). Written laws, however, fall short should we seek an exact definition of what this dignity is, making it a vague legal concept and leaving its interpretation open for the legal practice.⁶ The vagueness of this legal concept thus allows for contextual shaping and construction and reconstruction in the individual contexts of their use (Jónsson, 2009; Keefe, 2000). This means that individual views of the concept's users as well as the folk images and shared ideas related to the concept in a given community may result in its modulation.

To comprehensively understand the concept of the *dignity of a judge* (hereinafter *DOJ*), a doctrinal approach is insufficient; we need to explore the folk ideas about what a DOJ entails. Literature links the DOJ to the public image of a judge (Domitrovich, 2018), connecting it to the trustworthiness of the judiciary (Lasser, 1995; Mizrahi et al., 2021). DOJ seems to be closely linked not only to the judges themselves but also to the public, as if a dignified judge was a role with a pre-established “front” enacted for the public as an audience. This idea closely echoes the work of Goffman (1959) who suggests that everyone performs their everyday roles. He posits that some of these roles, especially the institutionalized ones, such as a judge, are “collectively represented” facts (Goffman, 1959, p. 27).

We aim to investigate the representation of the DOJ employing the social representations approach (hereinafter as SRA; e.g., Abric, 1993; Abric, 2005; Moscovici, 1961; Wachelke, 2012). First, we contextualize legal proceedings within the interdisciplinary literature of law and performance studies, including Goffman's theory on performances in everyday life. Second, we set out the dignified judge as a role to be performed. As such, it has a front that needs to be expressed to an audience, and that the audience must be, in turn, impressed by it. This front is then collectively represented in the community. Third, we justify the use of the

⁵This research has been carried out within Czech legal environment. Unless specified otherwise, the references to the specific requirements a judge needs to fulfil used here are based on Czech law. See provisions §80/1 and §80/2 of the Czech regulation No. 6/2002 Sb. On Courts And Judges Act.

⁶The issue of vagueness in law has been analyzed and discussed in detail within the legal doctrinal setting see e.g. Christie (1964), Assgeirson (2020), Lanius (2019, 2021), Soames (2011), Edincott (2003) or Shapiro (2006).

social representations approach as an ideal tool to investigate the “collectively represented” front of a social role. Within these contexts we outline the study's methods, present results, and discuss them in the context of Goffman's notion of front. Additionally, we explore potential differences in the representation of DOJ between judges and non-judges, who serve as the audience/observers of their performance. The present study is set up as exploratory and further research is underway.

PERFORMATIVE NATURE OF “DIGNITY OF A JUDGE”

Drawing metaphorical as well as methodological links between trials and performances with all that it entails has a long-standing tradition (e.g., Bentham, 1843; Huizinga, 1980, p. 76, 82; Sohoudé, 2010; Weisberg, 2009). This perspective has gained popularity over the last decades (Ramshaw, 2010; Read, 2015; Rogers, 2008; Sarat et al., 2018). Trials and theatre seem to have similar structures: they are both *forms of conflict resolution through aesthetic and ritual means*, fulfilling similar functions of means for social catharsis (Peters, 2008, p. 180-181). Trials are re-enactments of a conflict with iconic props and costumes, set in stages, and performing a spectacle (Peters, 2008, p. 180-181).

Said perspective is shared with a vast body of literature that concurrently sees trials as ritualistic performances that are meant to constitute new realities through words and scripted performances (Allen, 2008; Amankulor, 1989; Schechner, 1976; Smejkalová, 2017; Turner, 1977). The performance of a trial is a formalized and heavily scripted activity. The form and the script stem from both written and unwritten legal rules, codes of ethics as well as social custom, constituting a body of ritual that sustains and produces justice (Zoetl, 2016, p. 410), and through “magical acts” creates the social world (Allen, 2008; Bourdieu, 1987; Bourdieu, 1992; Hägerström, 1931, p. 82; O'Neill 2001).

Performing in a performance of justice implies knowing one's role and presenting as such. Goffman (1959) provides a complex account of such a presentation, even though he does not build his theory specifically about law or trials. For Goffman, any social role is defined as the enactment of rights and duties attached to a given status. He (Goffman 1959, p. 2; Ichheiser, 1949, p. 6-7) argues that any behavior in the presence of an audience (*expression*) is necessarily determined by a response from the audience; the success of this expression is determined by the acceptance of such expression by the audience which may in turn be influenced, *impressed*. This acceptance usually depends on whether the expectations of the audience are fulfilled.

In any performance, we expect the performer to maintain a (social) front, which is Goffman's (1959, p. 22) way of labelling the *expressive equipment of a standard kind*

intentionally or unwittingly employed by the individual during his performance. “Front” in Goffman’s (1959, p. 13) sense is *that part of the individual’s performance which regularly functions in a general and fixed fashion to define the situation for those who observe the performance.* The front is built as a puzzle of how and like whom we look and how we behave.

This expressive equipment has its scenic part (*setting*) and personal part (*personal front* – appearance and manner; Goffman, 1959, p. 23-24). A personal front includes other items of expressive equipment, ones that Goffman (1959, p. 24) believes *most intimately identify [...] the performer himself.* Personal front may include age, racialized characteristics, size and looks, clothing, insignia of office as well as posture, speech patterns, facial expressions, or gestures. Appearance would, therefore, include those elements that convey the performer’s social status; manner refers to those elements that tell us how the performer will act (Goffman, 1959, p. 24).

In any case, we expect coherence between the following elements: the setting and the personal front, the appearance and manner (Goffman, 1959, p. 24-25). Being a judge includes all these elements. Furthermore, this applies both inside and outside the courtroom for the performed character is not tied to a specific location but rather to a scene (Goffman, 1959, p. 253). Even though trials as formalized performances require the setting of a courtroom as a backdrop against which the judge’s performance takes place, the law-imposed front of a judge, albeit abstract, does not seem to disappear when the judge leaves the courtroom; some legal systems even require judges to uphold the ideals of integrity or propriety even in their personal lives.⁷

Each new judge faces a complicated task: they need to learn an already established role, well-known by the audience with high expectations, while knowing the role is construed on some un-realistic and unauthentic assumptions of the said audience and at the same time knowing that convincing the audience of the authenticity of the performance is crucial for general well-being of society. This is in line with Goffman’s (1959, p. 27) idea that actors assuming established social roles with a front already set need to both perform their tasks and maintain the role’s front. Furthermore, the idea that people’s impression of one’s qualities is influenced by the manner the person conducts themselves is uncontroversial in social psychology (e.g., Black & Davidai, 2020; Blunden & Brodsky, 2021).

Goffman (1959, p. 27) explains that this is happening because social fronts create stereotypical expectations that become institutionalized. These then become “collective

⁷ See for example provision §80 of the Czech Act on Courts and Judges.

representations”– social facts of their own that obtain substance separate from the required tasks. Despite the term used (albeit in quotation marks), Goffman’s concept is further from Durkheim’s understanding of collective representations (Durkheim, 1912/1995, p. 12; Durkheim, 1957) and surprisingly close to Moscovici’s explanation of social representations. To understand the DOJ as an institutionalized social front that has become an independent social fact, exploring its social representation seems in place.

THE SOCIAL REPRESENTATIONS APPROACH AS A TOOL TO EXPLORE THE “COLLECTIVE REPRESENTATION” OF THE FRONT

Social representations are collective constructions of social objects in the community and by the community (Moscovici, 1963, p. 251). They allow understanding and communication within the community (Moscovici, 2001, p. 31). For the judge’s dignity to be able to perform any function within the group of persons or community, it must be represented.

Representing something in this sense means that the originally unfamiliar idea, object, or phenomenon has been made familiar and can play a role for the community. Social representations make the unfamiliar familiar via two social processes: *anchoring*, that is bringing the phenomena within our sphere of understanding, often by comparing to something we already know, and *objectification*, that is linking it to objects we can see or touch (Moscovici, 2001, p. 42). We might, for example, expect that DOJ might be anchored to concepts the community is more familiar with, and consequently linked to symbols. Even though social representations were originally envisaged by Moscovici to study unfamiliar and threatening phenomena,⁸ this approach has since been established to study concepts in general, even those not necessarily new and unfamiliar (e.g. De Paola et al., 2020; Moscovici, 2001, p. 18-77; Moscovici and Duveen, 1984). It has been used to explore law-related concepts as well (Berti et al., 2013). It has also been used in the study of professional practice (Chaib et al., 2011), yet to study legal practice and legal phenomena, the specifics of legal conceptualization need to be taken into account (Bhatia, 1983; Bhatia et al., 2008; Cao, 2007; Mellinkoff, 1963; Smith, 1991; Tobia, 2020). It has been used to explore law-related concepts as well (Berti et al., 2013). It has been further utilized in exploring vague legal concepts specifically (Barreiro, 2021, Levin-Rozalis, 2007, Smejkalová et al. 2022) proving its usefulness in not only supplementing their doctrinal legal analysis but uncovering further elements of their meaning.

⁸ His original study involved the social representation of psychoanalysis in the 1960s (Moscovici, 1961).

Given the explanation provided above, we believe that the idea of social representation seems to respond to what Goffman calls the collectively represented *front*. Based on Goffman's (1959) account, any discussion about a dignified judge's performance is twofold: a dignified judge performs, and their performance is perceived by the audience. The dignified judge's front must be both maintained by the actor as well as it needs to be recognized by the audience.

The front of a dignified judge is put up before an audience that is varied when it comes to legal training and experience. Piaser and Bataille (2011) explain that professional representation is a subset of social representation. Members of a profession may be seen as participants of a group that has specific perspectives on understanding that is cultivated by specific training and education. It follows from studies performed on specialized groups, such as sportspersons (Boucharine, 2002; Doise, 1992 both as cited in Piaser and Bataille, 2011) or teacher students (Chaib and Chaib, 2011, p. 123-133), that professional representations *constitute already complete sets of knowledge, attitudes, opinions, values, etc.* (Jodelet, 1984; Piaser and Bataille, 2011, p. 46). Furthermore, the members of these groups are then capable of drawing from various meaning systems and communicative practices depending on the context in which they act (e.g., Caillaud et al. 2021 Renedo & Jovchelovitch 2007, Jovchelovitch 2008).

Legal professionals may be considered a social group in its own right, connected by education and training, formed to understand the law in a specific way. They formulate legal rules, interpret them as legal counsels, interpret and apply them as judges, or analyze and create their theoretical understanding as legal scholars. Hence, we are interested in persons with legal education and their representation of DOJ. In the present research, we are interested in the legal community's representation of DOJ, including its core and periphery (Abric 1993).⁹ We further seek to understand whether the legal community sees DOJ in performative terms and to explore the differences between judges who are expected to be dignified and the non-judges who would be in the position of the audience. Since this is the first study of its kind and there are no clear theoretical expectations to be empirically falsified, the present study is strictly exploratory and data-driven (see Fife & Rodgers, 2021; Lakens, 2022).

⁹ The structural approach may seem familiar to lawyers and legal scholars because the idea that legal concepts have cores and peripheries is widely used in theory thanks to Hart (1994, p. 126-127; see e.g. Bix, 1991; Schauer, 2013).

METHOD

To explore the front of a dignified judge, the hierarchical evocations method was used as it allows participants to produce their associations to a given word or expression (i.e., “dignity of a judge” in the present study) and rank them according to their perceived importance (Abric, 2005). According to Abric, this method is suited to reveal the content and the structure of a social representation.

Sample

A sample of 359 Czech-speaking adults completed the online survey. The recruitment strategy relied on various online channels (e.g., direct emails, Facebook, and law-related magazines) and targeted participants with legal education. After we stopped data collection, we separated people who reported being law school graduates from the rest. All of the following analyses and interpretations are made on this sub-sample. The final sub-sample (N = 304) consisted of various legal professionals¹⁰ (i.e., law clerks: 20%, attorneys: 19%, attorney trainees: 13%, judges: 12%, public administration workers: 11%, legal scholars: 10%, corporate lawyers: 6%, other: 10%). Their mean age was 33.35 years (SD = 8.10) and 58% of them were women.

Data Collection

Data was collected between March and July 2021 through an online survey using Qualtrics software. Prior to the data collection, we conducted a small pilot study to clarify instructions and ensure they are comprehensible to the target population. After providing informed consent, the participants were prompted to provide five word associations to the term “dignity of a judge” (see Appendix). In the next step, they were asked to rank these associations according to their own perceived importance in relation to “dignity of a judge” (see Appendix). They could also elaborate further in the following form. The questionnaire concluded with a set of demographic questions and a debriefing stating the purpose of the study. The median time to finish the survey was 3.35 minutes.

¹⁰ Note on terminology:

- *public administration worker* is a lawyer performing legal duties for the public administration, e.g., a Department of Education or a municipality.
- *law clerk* is a lawyer working for a judge, drafting opinions, and assisting with other judicial duties.
- *other* included NGO lawyers, notaries, etc.

Data Analyses

Data management, analyses, and data visualizations were performed in R (v. 4.1.2, R Core Team, 2021). We used the following packages: *dplyr* (Wickham et al., 2021), *readxl* (Wickham and Bryan, 2019), *reshape2* (Wickham, 2007), *ggplot2* (Wickham, 2016), and *ggthemes* (Arnold, 2021).

The study used a mixed-method approach (i.e., a mixture of qualitative and quantitative approaches). We conducted a qualitative phase to create themes based on participants' responses, then we quantified these responses using the objectivist approach. To uphold the standards of both approaches we consider both our positionality and reliability of the emergent themes below.

The first part of our analysis consisted of two epistemologically distinct steps. First, we clustered the responses into themes created via a thematic analysis (Braun and Clarke, 2006). Through an ongoing engagement with the participants' responses to the association prompt (N = 1,774) three evaluators conducted the analysis. Two of these were legal scholars, the third was a psychologist with legal education. Each evaluator provided their initial themes via the processes of reflexive TA. Through a discussion of disagreements, the principal author then turned these into higher-level themes. These were then discussed by the group of evaluators to extract the preliminary set of main themes and their detailed descriptions.

Second, we assessed the inter-rater reliability of the themes (based on the procedure and the already existing R script by Zapf et al. (2016)). We used two inter-rater agreement measures – total agreement denotes the ratio of responses all of the raters rated the same (i.e., unanimously), while Fleiss κ indicates inter-rater reliability (i.e., signal-to-noise ratio in ratings) with 0 meaning agreement expected by chance and 1 meaning perfect agreement. The former is necessary due to the high number of categories and raters given that total agreement tends to decrease in these cases due to random error.

We used inter-rater reliability to assess the relationship between responses and themes. Three independent coders (PhD-level law students) were asked to assign all participants' responses to the main themes based on their descriptions created by the authors. The total inter-rater agreement in the first assessment was 48.5 % with Fleiss $\kappa = .56$ with bootstrapped (N = 1000) confidence interval $_{95\%}CI$ [.54 ; .58] indicating medium agreement. A (second) discussion of disagreements in the group of the four evaluators was used to further revise the set of themes and their descriptions. For instance, the *vznešenost* [eng: nobility] theme was

changed to *noblesa* [eng: nobility]¹¹ and the *educated* theme's description explicitly included *experience*.

Following the revision, we again assessed the inter-rater agreement using the same three coders who assigned participants' responses to the themes. The total inter-rater agreement of the final assessment was 59 % with Fleiss $\kappa = .64$ [.62 ; .66] indicating medium-to-high agreement.

Assessing the centrality of themes

For each theme, its frequency and mean rank were computed. On the participant level, frequency represents the number of responses falling under a certain theme provided by the participant. Similar responses (e.g., robe, clothes, gavel) yielded multiple occurrences of a theme for a given participant (e.g., 3x *Costume*) because these reflect the weight the participant assigned to the theme. Accordingly, the (total) frequency interpreted below is a sum of participant-level frequencies of each theme. The custom-made R function used for mean rank computation is available in the OSF repository (<https://osf.io/3zsak>).

Even though the frequency and rank of a theme do not directly measure centrality, frequent and highly ranked themes are more likely to belong to the core of the representation, and frequent themes with a lower ranking are more likely to point to the representation's periphery. (Abrie, 2005).

Given the exploratory nature of this paper, we set the cut-offs empirically (e.g., Wachelke and Wolter, 2011). Specifically, we visually assess the prototypical analysis grid and demarcate between the themes that suggest centrality and the rest. In other words, for themes to be deemed candidates for the nucleus, they need to clearly deviate from the rest in both frequency and rank.

RESULTS

Below, we report the overall findings of this research. As our research questions concern the performativity linked to the concept of DOJ, we focus predominantly on these aspects.

¹¹ Although the translations of these two Czech words used to label these two themes into English is the same, in Czech, they have different connotations.

Qualitative Part: Constructed Themes

I. Attributes of a dignified judge

The first six themes were created as clusters of characteristics and attributes required from a judge to uphold the dignity of their role.

Impartiality: DOJ is a matter of *impartiality* and *independence*. A dignified judge is impartial and upholds the independence of the judiciary. Responses coded as *Impartiality* were independence and impartiality.

Education: DOJ is a matter of *education*, *expertise*, and *experience*. A dignified judge is *smart* and *wise*, has all the education, *training*, and experience necessary to fulfil all the demands of their position. They have all the necessary *intelligence* and related prerequisites for the performance of their duties. Apart from education, responses coded as *Education* included words such as *training*, *knowledgeability*, and *expertise*.

Humanity: This category is related to the dignified judge's behavior towards the parties to the case and the quality of such behavior. DOJ is a matter of *respectful behavior towards others*, one that is *open*, *tolerant*, and *understanding*. A dignified judge thus resembles a *kind* parent. Responses coded as *Humanity* also included e.g., *openness*, *tolerance*, or *generosity*.

Professional authority: DOJ is a matter of *professionalism* and *authority*. A dignified judge performs their duties *exemplarily* and *persuasively*. They are a *trustworthy authority*, resembling a respected leader with all the traits and qualities they need to have. This theme further includes the implications of being such a leader. We have included responses such as *professionalism*, *authority*, or *readiness*.

Asceticism: DOJ is a matter of *decency* and *measured behavior*. A dignified judge has a number of personal traits and qualities that speak of their *decent life* and inner *integrity*. It would seem that they resemble an ideal of a *moderate*, *humble*, and *thoughtful* monk. They are *minimal and restricted in expression*, appearing rather *matter-of-factly*. They are *strict* on themselves as well as on others and *condemn excesses*. They present themselves very *formally*, but they act in line with their *conscience and honor*. This theme was constructed around responses such as *moderate*, *humility*, *decency*, *formality*, or *detachment*.

Nobility: DOJ may be seen on the outside as an air of *nobility* and *elegance*. It is not about their clothing or surroundings. It is about cultivated and noble behavior. Responses coded as *Nobility* included *grandeur* or *nobleness*.

II. Performance-related themes

The following two themes are closely related: they both reflect a performance-like or theatre-like nature of a dignified judge. We have coded them separately, as b) consists of a very specific type of participants' associations. They did not specify any characteristics or qualities as in all the above themes but simply referred to the fact that a judge "behaves" or "performs".

Costume, props, and setting ("Costume"): DOJ is a matter of costume, various props, and a proper setting, may it be a stage (place) or time. A dignified judge is a character in a theatre performance and as such they may be described by references to their appearance, looks or insignia of office. Responses coded in this theme included words such as *robes, gavel, state insignia, courtroom, furniture, etc.*

Recognition of performative aspect ("Performativity"): This theme emerged from the respondents' responses reflecting – often without any further specification – that to be a dignified judge requires some kind of behavior, public presence or performance that helps create the image of their role in the eyes of the public. This theme covers expressions reflecting performativity and acting. It is not about *how* the dignified judge behaves or *should* behave but that they *do* behave. This theme is constructed around responses such as *behaviour, performance, or manner.*

We believe that these two themes may be considered together. A dignified judge as a character on a stage would be but a statue without an actual performance of their role. A person in robes, seated in a central position in a courtroom is expected to perform, to act on behalf of the state in dispute resolution. Therefore, we merged these themes together in the following analyses (denoted as "*CostPerf*").

III. Residual themes

The last four themes may be seen as residual, as our participants' responses also contained references to a general idea of "respect" and "values". Their answers have also contained references to negative situations.

Values: Some of the respondent's associations referred to morality, religion, and other extra-legal normative systems and their values. This theme also covered simple references to "values" without any further specifications (i.e., simple use of the word "*values*").

Respect: In Czech, the language of the research, the word “*respect*” used without any further specification may indicate that the dignified judge should be respectable and respected as well as respectful. As it was not possible to discern between those meanings, we have coded these answers separately from others assorted under this theme.

Self-evident: A very small number of participants have also suggested that DOJ is something *innate* or *self-evident*.

Negative associations: Our respondents’ associations were not always positive. Various images of disrespectful behavior, bias, or substance abuse appeared among the analyzed answers.

Quantitative Part: The core and periphery of the “dignity of a judge”

The resulting theme ranks and frequencies are presented in Table 1 below. Only themes with more than 10 occurrences are shown.

Table 1

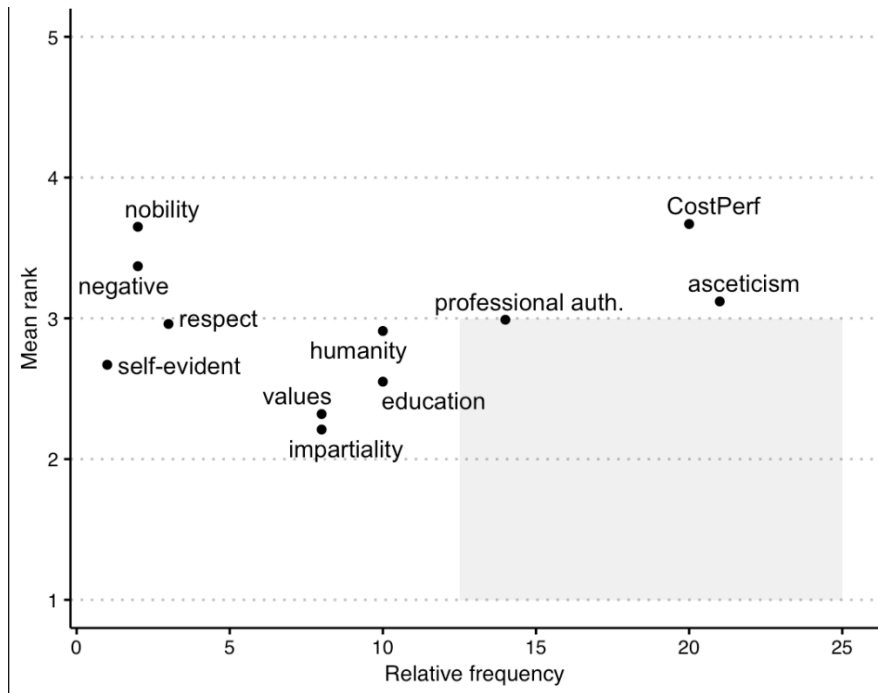
Mean ranks and relative frequencies of themes.

Theme	Rank	N	Proportion
Costume	4.11	148	.10
Nobility	3.65	34	.02
Negative	3.37	35	.02
Performativity	3.19	139	.10
Asceticism	3.12	306	.21
Professional authority	2.99	209	.14
Respect	2.96	45	.03
Humanity	2.91	151	.10
Self-evident	2.67	12	.01
Education	2.55	145	.10
Values	2.32	115	.08
Impartiality	2.21	123	.08

Figure 1 presents the relationship between ranks and frequencies. Themes inside the shaded area are the most frequent and most important. The grey zone in Figure 1 (as well as Figures 2 and 3) represents the cut-offs suggesting likely candidates for central elements. Figures 1-3 employ a cut-off of mean rank < 3 and frequency > 12.5 %.

Figure 1

Relationship between mean rank and relative frequency of themes – overall results



In Table 2 we present a prototypical table (Abric, 2005) constructed according to the same cut-offs as Figure 1.

Table 2

Prototypical table

1st quadrant Professional authority	1st periphery Asceticism CostPerf
Contrast zone Self-evident Respect Values Impartiality Education Humanity	2nd periphery Nobility Negative

Table 3 shows the first ten most frequent associations provided by participants as first answers (see Lheureux et al. 2008), along with the corresponding themes. Notably, “robes”,

i.e., *Costume, props, and setting* (or *CostPerf* after merging) theme response, was the most frequent.

Table 3
First responses – Frequency of individual responses

First association	Frequency	Theme
Robes	43	CostPerf
Seriousness	16	Asceticism
Independence	10	Impartiality
Decency	8	Asceticism
Authority	6	Professional Authority
Ethics	6	Values
Impartiality	6	Impartiality
Respect	6	Respect
Professionalism	5	Professionalism

Since we are interested in exploring the differences in representing DOJ among judges as opposed to other types of legal professions, the following Table 4 presents the mean ranks and frequencies for the subset of judges as opposed to the rest of the sample (non-judges). Figures 2 and 3 plot these results.

Table 4
Mean ranks and relative frequencies of themes

Theme	Non-judges only			Judges-only		
	Rank	N	Proportion	Rank	N	Proportion
Nobility	3.74	31	.02	-	-	-
CostPerf	3.66	261	.20	3.77	26	.18
Negative	3.37	35	.03	-	-	-
Asceticism	3.12	256	.20	3.10	50	.30
Professional authority	3.00	178	.14	2.90	31	.19
Humanity	2.90	131	.10	3.00	20	.12
Respect	2.84	37	.03	3.50	8	.05
Self-evident	2.67	12	.01	-	-	-
Education	2.56	131	.10	2.43	14	.08
Values	2.33	107	.08	2.25	8	.05
Impartiality	2.23	115	.09	2.00	8	.05

Figure 2

Relationship between mean rank and relative frequency of themes, including CostPerf (judges only)

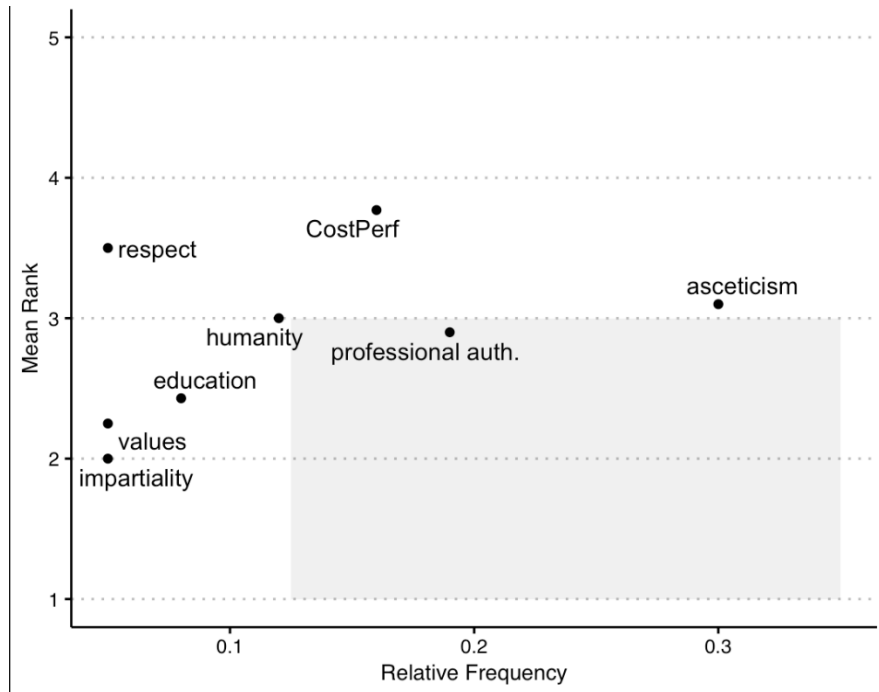
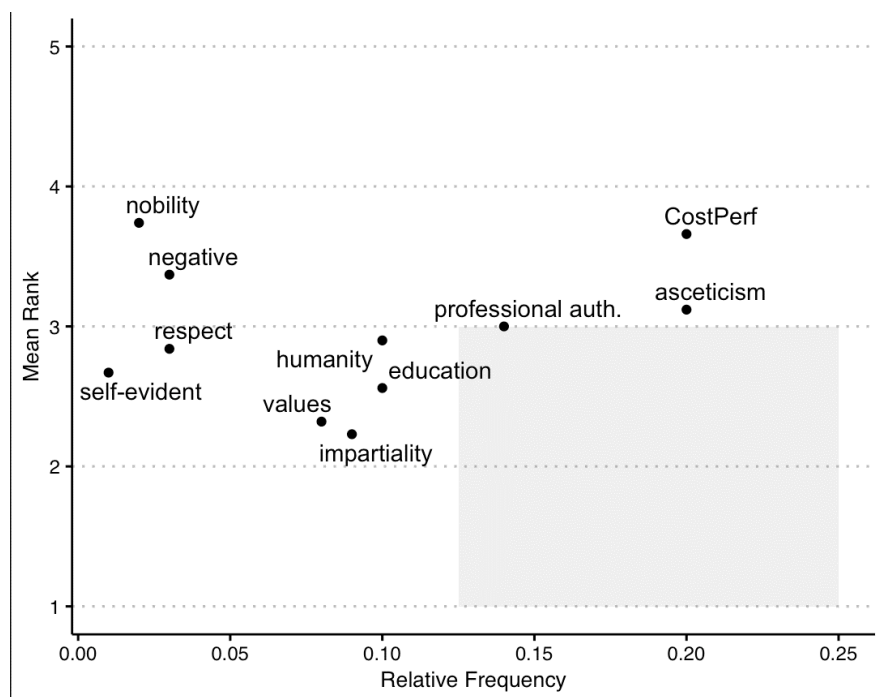


Figure 3

Relationship between mean rank and relative frequency of themes, incl. CostPerf (non-judges only)



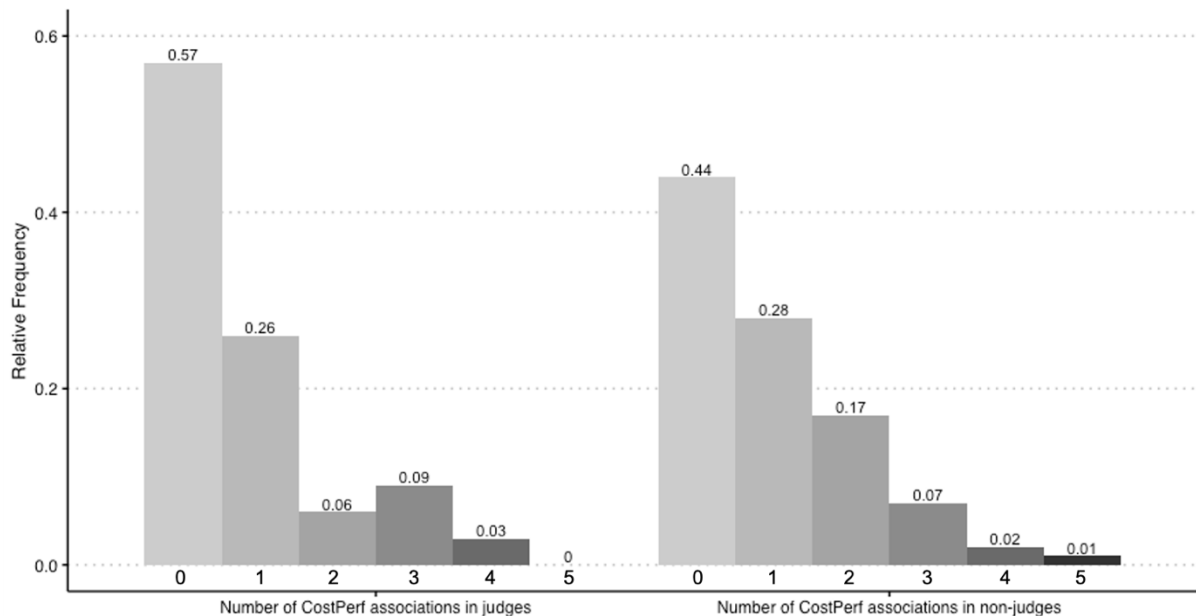
Following the overall results, the most likely candidates for the central elements of the judges' representation of DOJ are *Asceticism* and *Professional Authority* themes (Figure 2). These two themes are likely central to the subset of non-judges, too (Figure 3). The differences (e.g., in *Humanity*) need to be interpreted carefully due to the small size of the judges' sample ($N = 35$). Strictly speaking, with the cut-off set at Mean Rank = 3 and Relative Frequency = .125, only *Professional authority* would make the First quadrant of the Prototypical table and would be a likely candidate for the core of the social representation but following our previous reasoning, we decided to consider both *Professional authority* and *Asceticism* two likely nucleal elements.

Other analyses

Finally, we further investigated the *CostPerf* theme. Approximately 53% of participants ($N = 164$) mentioned at least one word or phrase covered by these joint themes. When it comes to the differences between the judges and non-judges, there is no significant difference in the proportion of those mentioning at least one performative theme ($\chi^2(1) = 1.49, p = .22$). The mean count of *Costume* or *Performativity* responses per participant was, however, higher in non-judges ($W = 66830, p < .001$) with them giving, on average, almost one more such association than judges ($d = 1.00, \Delta M = 0.83$). For 31 participants (approx. 10%), *CostPerf* covered most of their responses. 27 of those 31 were non-judges (10% of all non-judges), 4 were judges (11% of all judges). The proportion of participants who represented the DOJ through the joint *CostPerf* theme in most of their associations was practically the same. See Figure 4 for details.

Figure 4

Distribution of the number of CostPerf responses per participant for judges and non-judges



DISCUSSION: SOCIAL REPRESENTATION OF THE DIGNITY OF A JUDGE (RE)PRESENTED

This paper examines the collective representation of DOJ among Czech lawyers as its social representation using a mixed methods approach. We focused on the performative aspect of judicial dignity, applying the paradigms of Goffman (1956) and Abric (2005). We also examined how the representation of DOJ differs between judges and non-judges.

First, we address the likely central and peripheral elements of this representation and discuss their placement within Goffman's *front*. Second, we focus on the themes solely framing the representation as a performance. We suggest that our participants objectify an abstract quality of dignity into a dramatic persona of a dignified judge. Throughout, we address the differences between the judges' and non-judge's answers to reflect on the differences in perceptions between the performers and their audience.

Representation of the dignity of a judge as a front

Our exploratory study suggests that the most likely candidate for central elements of the social representation of the DOJ among Czech lawyers is *Professional Authority*, as this is the only

theme that would make the First quadrant of the prototypical table (Table 2). The spatial distribution of the themes shows that the strict cut-offs Abric (2005) uses do not capture the continuous element of the themes' position within the representation of the DOJ. Therefore, while taking into account the distribution of the themes across the prototypical table, we choose not to categorize the themes but, instead, focus on their position on the continuum (Figures 1–3). Analyzing the position of the themes, *Asceticism* makes for a likely candidate for the nucleus given its high frequency and importance. Even though it only borders the grey zone, we consider its position outside the area within the margin of sampling error. On the other hand, *Nobility*, *Respect* or *Negative* were clearly associated with the periphery. Themes *Humanity*, *Education*, and *Performativity* stood in the middle, half-way between the center and the periphery, while *Costume* was frequent but unimportant, indicating it being a peripheral theme.

Placing these themes within the standard prototypical table would make *Asceticism* an element of the first periphery. However, given the three-cluster structure of the other themes' locations, we choose to conclude that (1) *Asceticism* likely belongs to the nucleus along with *Professional Authority*, (2) *Nobility*, *Respect*, *Negative*, and *Self-Evident* are most likely in the second periphery, and (3) *Humanity*, *Education*, *Performativity*, and *Costume* are split between the contrast zone and the first periphery. However, these conclusions are tentative given the sampling error in both ranks and frequencies of the themes.

Lheureux et al. (2008) showed that when asked to pinpoint an element of a social representation, individuals tend to refer to central elements first. Accordingly, the possible centrality of *Asceticism*, *Costume*, *props and setting* and *Performativity* is further supported by the frequency of the corresponding responses in participants' first associations (see Table 3).

As evident from our results, the non-central elements point towards certain graduality: *Education*, *Humanity*, and *CostPerf* are clearly more important than the rest. The outskirts of the periphery (*Negative Associations*, *Nobility*, *Respect*, and *Self-Evident*) suggest highly individual associations that may influence the representation in specific situations, as further discussed below.

Goffman (1959) understands front as a complex of setting and personal front, consisting of appearance and manner. In the periphery (or, in Abric's terms "second periphery"), the *Costume*, *props and setting* theme clearly situates the dignified judge in a specific *setting*, linking it to the role they are expected to perform: lead the proceedings and decide legal disputes. The theme *Professional authority* seems to tie dignity to the role of the judiciary. Dignity implies an authority worth following, expected to carry out their duties with professionalism to maintain the image of the trustworthy and legitimate judiciary. It has been

claimed that in continental legal systems, such as the Czech one, the legitimacy of the judiciary is built “on the input” – these systems create trustworthy judiciaries not through the outstanding personalities of the judges and their persuasive decisions, but through the legitimacy of the institution as a whole (Lasser, 2003; Loth, 2007; Smejkalová, 2021). Thus, performing judicial dignity requires putting the institution first, blending into the background with the help of robes, and staying measured and calm to represent an impersonal authority.

The high frequency of *Asceticism* responses as well as the high frequency of *Asceticism* as the first chosen association (Table 3) seem to further suggest that dignity is represented in terms that remain relevant even after the judge leaves the courtroom: integrity or avoidance of excesses reflect the fact that upholding a judge’s dignity implies showing certain qualities regardless of whether they are currently conducting legal proceedings.

The expressive dimension of the *appearance* plays out, too, in the peripheral theme of *Costume, Props and Setting*, via references to judges’ robes, wigs,¹² certain types of appearance, insignia of office as well as to décor and symbols used in the courtroom. They represent what Peters (2008, p. 180-181) says about trials being dispute resolutions through aesthetic means. In the imitative part of the performance of the trial, the relationships between the dignified judge and other performers are established aesthetically (Kreinath, 2009, p. 229-246). They may also be understood as corresponding to visual elements of the ritualistic performance of justice (see Allen, 2008).

Again, expressions of appearance, such as a decent way of clothing, age, or markers of the performer’s social status (Goffman, 1959, p. 24) extend beyond the courtroom into the other parts of their public and personal life.

The *manner* of a dignified judge is naturally a more complex matter and is represented predominantly by the central themes of *Asceticism* and *Professional Authority*. The decency, thoughtfulness, and expectation of detachedness as well as measured behavior corresponds to the detached formality performed in specialist settings (Goffman, 1959, p. 10). Detachment and formality may be something that leads the audience (e.g., the parties to the trial) to believe in the integrity and competence of the dignified judge. Both the performer and the audience partake in the performance of the DOJ (Goffman, 1959, p. 105).

Our results imply that the manner and appearance of a dignified judge also reflect the simple fact that a dignified judge is still a judge. The *Education, Impartiality* and *Humanity*

¹² The wig appeared among our participants’ responses even though the judges in Czech legal setting do not use it.

themes grow out of the legal requirements for the performance of the role of a judge. The fact that they do not seem to belong among the central elements of the representation of judicial dignity suggests that we represent a *judge* before we represent their *dignity*.

We also identified several elements that build up the interface allowing the core to be used in individual contexts and circumstances (Abric, 2005). We believe that the peripheral themes – from *Nobility*, references to non-specific *Respect* or stressing out that dignity is possibly so *Self-evident* that it does not need further comments to outright *Negative associations* – need to be understood in relation to the central core themes. Furthermore, since changes in the periphery allow the variance in the use of the social representation without collapsing it (Guimelli 1993: 85-86), they may also indicate a possible direction of evolution of the representation. While the themes *Nobility* or *Self-evident* manifest as niche categories that do not influence the central core, the *Values* theme is clearly set to allow even significant evolution of the representation. This theme refers to extra-legal systems (e.g., morals) or nondescript allusions to “values”.

Interestingly, the *Negative associations* seem to show that the dignified judge is not represented only in positive terms. This does not mean that it would imply that a dignified judge is represented as a drunkard or a disrespectful person. We believe these references show that the social representation of a dignified judge takes shape also in situations where dignity is lacking altogether.

The Role of Performative Themes: The Dramatic Persona of a Dignified Judge

As evident from the above, it is fruitful to discuss the representation of front with regard to its performative dimension. This part shall, therefore, focus on the possible centrality of the two performative themes (*CostPerf*, see above) interpreted together. It is clear from the overall frequency of the *CostPerf* themes that they have a place in our participants’ answers. However, our analyses showed that the performative themes do not belong to the central elements of the representation following Abric’s (2005) definition. Indeed, participants rank them as the least important. On the other hand, they occur frequently (i.e., in 53% of all respondents for the joined *CostPerf* theme), especially in the non-judges population.

Our results also show that there is no significant difference between the popularity of the performative dimension of the representation between the judges and non-judges (Figure 5). Both seem to recognize judicial dignity as a role to be performed: the performer as well as the audience are aware of the performance. However, the mean frequency of *CostPerf* responses

was much higher in non-judges. We believe that the difference in the centrality of the *CostPerf* theme shows that non-judges see the dignified judge from the outside, whereas the judges describe their dignified selves. The prominence of these two themes when it comes to frequency alone is therefore a matter of the position of the audience as someone who observes the performance. While the performer focuses on the motivations and other qualities of their role, the audience is aware that the performance takes place.

We asked specifically for the associations related to the “dignity of a judge”, but our participants often referred to various characteristics and attributes of a person, both visual and behavioural. Their answers suggest that there must always be a person who is obliged to uphold a dignity of a judge, or “be dignified”. Only a person can “act”, “behave” or “perform”, as expressed through the *Performativity* theme. Such answers imply the recognition of the performance from the audience.

It follows from what Peters (2008, p. 180-181) writes about the theatricality of trials, judges, prosecutors, and legal counsels, are trained to “shed their own identities and ‘represent’ others”. Judging from the role of the judiciary in a democratic state based on the rule of law, a judge would then ‘represent’ justice, its independence and impartiality. The ways to perform this role are then dependent on additional rules provided by the law or ensue from the codes of judicial conduct/ethics.

This seems to suggest that as an actor would, the performer of the judicial dignity perceives their role through the intrinsic qualities of a dignified persona (e.g., *Asceticism*) rather than the simple fact that they perform (Krasner, 2012). In contrast, the audience, who observes the performance might be more susceptible to the fact that someone is performing, hence the references to “performance” or “acting”.

The constructed themes suggest DOJ is not a matter of outward characteristics, but intrinsic qualities and attributes of the person expected to be the dignified judge. It seems that for the audience to be impressed by the judge’s performance properly, the expression must correspond to the actual personality of the performer as Goffman (1959, p. 18) suggests and as supported by the state of the art in social psychology (e.g., Black & Davidai, 2020; Blunden & Brodsky, 2021).

From the social representations’ perspective, the themes discussed above help to anchor the vague idea of DOJ to more familiar characteristics and qualities. DOJ is then objectified by means of a person that can be described as “being dignified”. Those qualities described above, may it be asceticism, kindness, humility, professionalism, or authority must be carried out – and

performed – by a performer. Consequently, the DOJ is materialized in the dramatic persona of a judge who is dignified.

Limitations and future directions

Our study has several limitations that need to be addressed. First, further research needs to commit itself to including more judges as participants. Ensuring their cooperation is notoriously difficult and we managed to persuade 34 of them which is less than 1 % of all Czech judges.

Also, while we provide an important first step in the empirical study of the social representation of the DOJ, its findings are expected to be adequately stable in time and context. This means that they need to survive replication and cross-validation to be considered valid. This includes utilizing other ways of investigating the social representation contents, such as mapping negative (what DOJ is not) as well as positive associations.

Ultimately, we believe following studies should focus on moving the research on this topic to the confirmatory paradigm (see Fife & Rodgers, 2021; Lakens, 2022) by attempting to establish theoretical predictions to be tested. One of the testable predictions stemming from our study is the clustering of the themes into those highly likely to be nuclear and those highly likely to be peripheral. An interesting way to test this might be the application of informative hypothesis testing (Kuiper et al., 2011; Kuiper et al., 2021) which allows to prespecify the order of themes and obtaining the likelihood of this order being true in the population given newly obtained data. As evident from the discussion above, one tentative conclusion that needs to be tested is the centrality of *Asceticism*.

CONCLUSION

As a vague legal concept, DOJ takes shape in individual instances of its use, typically in disciplinary proceedings. We have explored the social representation of the DOJ within the legal community. Even though our results refer to the legal community based in the Czech legal environment, the ethics of judicial behavior and the dignity of the judicial role are recognized across jurisdictions. Our research shows that the front as understood by Goffman (1959) plays a significant role in the legal community's representation of DOJ. Although not an unquestionable part of the central core of the representation, the performative elements, may it be simple recognition of the necessity to perform or act in order to be a dignified judge, or more specific references to judicial robes, courtroom or insignia of office were represented

frequently among our participants' answers. This is not to say that complex characteristics and qualities a dignified judge must possess, in and out of the courtroom, would not be important. On the contrary, the central core of the representation of the DOJ in the legal community is occupied by images of detached involvement (*Asceticism, Professional Authority*), as Goffman expected in service occupations, closely followed by those stressing education and preparedness as well as kindness and respect towards other actors (*Education, Humanity*) in the performance of the trial.

Our research shows that an empirical approach to the analysis of vague legal concepts may help uncover meanings and shared understandings otherwise unavailable in traditional doctrinal analysis. DOJ is such a vague legal concept yet one with immense consequences in law: breaching the dignity of the judicial profession may result in the judge being found guilty of a disciplinary offence. The results of our exploratory research bring insight into the representational content of this concept and in turn enable the foreseeability of judicial decision-making in these disciplinary cases. Moreover, the ambiguous position of the performative themes suggests that they might play a part in the trustworthiness of the judiciary. To uphold the performance of dignity, that is to successfully uphold the front, one must fulfil the demands of the collectively represented front. The audience is in turn required to accept and respect the performance and perhaps, as Derrida (2002) suggested, they may even need to live the spectacle of law to believe in its legitimacy.

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AUTHOR CONTRIBUTIONS

Terezie Smejkalová designed the study and wrote the text of the article. Petr Palíšek wrote Methods and Results and conducted the formal analysis. Terezie Smejkalová, Petr Palíšek and Markéta Štěpáníková performed the analysis and construction of themes. Terezie Smejkalová and Petr Palíšek wrote the Discussion. Markéta Štěpáníková contributed to writing the theoretical sections.

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APPENDIX

Questionnaire

All instructions and information were provided in Czech.

Page 1

Introduction of the research, and consent

“Vážené právničky, vážení právníci,

vítáme Vás u našeho výzkumu, který se zabývá možnostmi využití některých neprávních metod v analýze právních konceptů a který probíhá v rámci projektu Využití metod sociální reprezentace v analýze právních konceptů (GA20-10171S) financovaného Grantovou agenturou ČR.

Vaše účast je pro nás cenná a velmi si jí vážíme.

To, co Vás na následujících stránkách čeká, není klasický dotazník, ale několik krátkých úkolů, které se vztahují k jednomu z právních konceptů, kterými se zabýváme. Tyto úkoly v žádném případě neověřují Vaše znalosti a neexistují na ně správné, nebo špatné odpovědi. Poté následuje několik doplňujících otázek, převážně demografického charakteru.

Vyplnění celého dotazníku by Vám nemělo zabrat více než 10 minut.

Všechny informace a data, která nám prostřednictvím tohoto dotazníku poskytnete, jsou striktně anonymní a neumožňují dohledat konkrétního respondenta. Data v této zcela anonymní formě však pro výzkumné účely mohou být poskytnuta třetí straně (např. v rámci recenzního řízení). Program má zakázáno evidovat polohové a obdobné údaje. Odpovídání na každou z položek je zcela dobrovolné a vyplňování lze kdykoliv ukončit bez jakéhokoliv postihu.

Pokud byste měli k našemu výzkumu jakékoli dotazy, můžete se na nás obrátit na adrese socialni.reprezentace@law.muni.cz

Děkujeme.

Souhlasím a přeji si pokračovat.

Nesouhlasím.

[Translation: Dear lawyers, thank you for participating in our research focusing on the use of the social representations approach in the analysis of legal concepts that is being conducted as a part of project Využití metod sociální reprezentace v analýze právních konceptů [Methods of social representation in the analysis of legal concepts] (GA10-10171S), funded by Czech Grant Agency.

Your participation is extremely valuable to us and we appreciate it.

The following pages contain not typical questionnaire-like questions but a series of short tasks that are related to one of the concepts that we investigate. These tasks are not meant to examine your knowledge and there are no correct and incorrect answers. At the end of the questionnaire, we will also ask a couple of demographic questions.

This questionnaire should not take more than 10 minutes of your time.

All the information and data submitted via this questionnaire are strictly anonymous and do not allow to connect your answers to your person. The anonymized data may be accessed by a third party (e.g. in case of review). The Qualtrics software does not collect any information related to your location etc. You may stop answering the questionnaire at any point.

Should you have any questions regarding our research, please contact us at socialni.reprezentace@law.muni.cz. Thank you.

I agree and wish to continue.

I disagree.

Page 2

Instructions: “Napište, prosím, 5 slov nebo krátkých frází, které Vás napadnou, když se řekne „důstojnost soudce“. Slovem "soudce" zde vždy rozumíme soudce i soudkyně. Není nutné nad tím příliš přemýšlet, můžete psát všechno, co Vás napadne.” [Translation: Please write 5 words or short phrases that occur to you when we say “dignity of a judge”. By the word „judge“, we mean both gender variants (male and female judge). You do not need to think it through, write anything that crosses your mind.]

Page 3

The page provided the participants with the words or short phrases they wrote on page 2 and allowed them to drag them around.

Instructions: “Nyní, prosím, seřaďte Vámi napsaná slova a krátké fráze podle toho, jak jsou podle Vás důležitá. Řazení provedete přetažením řádků.” [Translation: Now, please sort your words and short phrases according to their importance to you. Sorting is done by dragging the lines around.]

Page 4

This page provided a space to write in and displayed the words and short phrases the participant chose, including their order.

Instruction: “Nyní, prosím, prostřednictvím krátkého textu vysvětlíte, proč jste vybral/a právě tato slova a proč jste je takto seřadil/a. Pokud svou volbu odůvodňovat nechcete, klidně přejděte na další stránku.”[Translation: If you wish to, please, provide an explanation for your choices on the previous pages, including their order. Should you wish to, you may skip this step and continue to the next page.]

Page 5

This page allowed the choice of one given answer.

Instruction: “Myslíte, že se Vaše představa toho, co to je „důstojnost soudce“, shoduje s představami ostatních?”

Určitě ne

Spíše ne

Spíše ano

Určitě ano“

[Translation: Do you think your idea of the dignity of a judge concurs with the ideas of others?

Definitely not

Likely not

Likely yes

Definitely yes]

Page 6

Demographic and other information about the participant

“Děkujeme za splnění úkolů. Nyní prosíme o vyplnění několika doplňkových údajů. Kteroukoliv položku je možné přeskočit.

Jaká je Vaše právnická profese?

Jakému oboru se v právu převážně věnujete?

Věnoval/a jste se dříve kromě výše uvedeného také jiné (třeba neprávnické) profesi?

Na jaké právnické fakultě jste vystudoval/a?

Studoval/a jste kromě práva také jiný obor?

Zabýval/a jste se někdy problematikou „důstojnosti soudce“?

Zabýval/a jste se někdy problematikou „důstojnosti soudce“?

Jakého jste pohlaví?“

[Translation: Thank you for fulfilling the tasks on the previous pages. Please, give us some additional information about yourself. You may skip this page.

Your legal profession

What area of law do you focus on?

Have you ever worked in another area of law, or a non-legal profession altogether? If yes, which one?

Which law faculty did you study at?

Have you ever studied anything else apart from law?

Have you ever focused on the subject of the dignity of a judge?

How old are you?

What is your gender?

Page 7

Zde Vám nabízíme proctor pro vyjádření Vašich případných připomének k výzkumu nebo dojmů z něj. [Translation: You may leave your comments for our research here.]

Page 8

This page contained a general thank you, asking to share our research further. The participants could have left an email, should they wish to be contacted with the results of our research. This information was collected independently from the rest of the data.