

## The Importance of the Rule of Law in Governance

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### Abstract

The purpose of this paper is to critically analyze the theory of governance and the role of law. The paper attempts to provide a constructive understanding of the rule of law and governance clearly. This study is composed of three main parts; the first part examines the literature on the concept of governance and its solid theoretical foundations. The second part reviews rule of law and the role of government in the process of governance. Third part intends to broaden the understanding of how governance is affected by rule of law especially in the developing world. The last part of this study deals with the conclusions and findings.

The theoretical relevance of this paper contributes to a better understanding of *specific components and factors that interlink governance and rule of law together in the public institutions. The main thesis of this study is, to what extent governance is affected by the rule of law?*

**Keywords: governance, rule of law, government, public institutions**

### 1. LITERATURE REVIEW ON GOVERNANCE

To start with the concept of governance, there is a need first to shed a light on the concept of governance and then to move on to discussing administrative law in detail. In his article Ackerman (2017) on what does governance mean? Ackerman mentions that “governance is an ambiguous term that often substitutes for something else. From this perspective, governance turns to replace

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government, as Luhmann states that “the central government no longer supreme.” (1982, p.vx).<sup>4</sup> what Luhmann spots out is a very critical issue especially in the Middle Eastern countries in which most central governments try to have supreme power over public institution, people, economy, and the market.

In limiting the power of state, Hirst advocates that “governance is thus good provided that the state limits the scope of its action to what it has the capacity to accomplish.”(2000, p. 15).<sup>5</sup>

Moreover, governance is intertwined with administration and government in most written works in the literature.” In the literature on governance, it appears that governance and government are used interchangeably and there has been confusion between the two terms and their definitions. According to Jon Pierre (2000) governance refers to sustaining co-ordination and coherence among a wide variety of actors with different aims and objectives including political actors, institutions, corporate interests, and transnational organizations. (p.4).<sup>6</sup>

Rhodes (1996) states that “the systematic use of governance is broader than government, covering the distribution of both internal and external political and economic power.” There is now an on-going controversial debate in using governance in the literature. In his discussion, Stoker (1998) reveals that governance “is to challenge constitutional/ formal understandings of systems of government.” While for Graham (2003) “governance is not synonymous with government.”

Indeed, the confusion on the interlink between government and governance is very critical issue, and the gap in the literature is “governance where” in which political context?

Most importantly, Finer contends that “a state consists of a number of cells each belonging to a greater cell, until at the apex we have the council of the greatest magnates, who form a sort of holding company of these interior cells, consisting themselves as the greatest cell of all, one which is coterminous with the state itself. This type of polity form is known as cellular.” (1999, p. 49). According to Zeb (2009) governance is not a new concept; it is as old as human civilization. Moreover, Zeb mentions that governance is derived from the Greek word ‘kybernan’ and ‘kybernetes’. It means to steer and to pilot, or be at the helm of things. Besides, Zeb describes “governance as the process of decision-making and the process by which decisions are implemented or not implemented.” (2009, p.11). The concept of governance as the steering was

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<sup>4</sup> Luhmann, N. (1982). *The Differentiation of Society*. New York, Columbia University Press.

<sup>5</sup> Paul, Hirst. (2000), *Democracy and governance*, in Jon, P. (2000). (ed.). *Introduction: understanding governance*, Oxford, Oxford University Press.

<sup>6</sup> Jon, Pierre. (2000). (ed.). *Introduction: understanding governance*, Oxford, Oxford University Press.

brought to the German-language as ‘steuerung’ during the 1970s and 80s to mean control and then it was used as a synonym for governance.” (Mayntz, 1993, p. 11). Faur (2012) in the Oxford Handbook of Governance highlights on the historical growth of governance, from the 1950s to 1979 as a slow process, while Faur refers to Oliver Williamson’s Transaction Costs Economics: Governance of Contractual Relations (1979) as the radical evolution of governance and as the most cited papers on the topic of governance in the period of 1971-1980.

According to Kooiman (1993) governance “is an interactive social-political process, which means setting the tone; creating the social-political conditions for the development of the new models of interactive governing in terms of co-management, co-steering, and co-guiding.” (p. 3). Concerning the role of government in governance, it is suggested that in the process of governance the role of government is highly considered, as the state capacity is overstated in governance. As states have authority not possessed by any other actors, to choose governance rules, and how to structure governance arrangements depends on the mechanism deployed to govern. (Bell & Hindmoor, 2009, p. 13). In linking governance to government Bell and Hindmoor explain that there is a transition from government to governance, this is seen as an empirical trend to characterize policy-making in liberal democracies in the late 20<sup>th</sup> and early 21<sup>st</sup> century. In their contribution, Bell and Hindmoor (2009) consider “society as a center for governance; they argue that there is a shift from government to governance, which happens with the involvement of a wider range of actors with the governing process. Nevertheless, the role of government contested as being capable of implementing and imposing decisions upon social actors in the form of laws, taxes, and regulations.” In the light of his definition Fukuyama (2013) defines governance “as a government’s ability to make and enforce rules, and to deliver services, regardless of whether that government is democratic or not.” Accordingly, Faur (2012) states that “governance is crucial for the quality of the life of citizens, and for the success of states in their national and international roles.” (p. 26). Moreover, Stoker (1998) in analyzing government and governance “concludes governance refers to the development of governing styles in which boundaries between and within public and private sectors has become blurred.” Adding, Rhodes (1996) mentions that “governance signifies a change in the meaning of government, referring to a new process of governing, or a changed condition of ordered rule: or the new method by which society is governed.” In this context, ‘new method’ may differ from one country to another. Because, if we compare developed countries to developing countries in governance systems then there are many discrepancies. The

governance perspective is partially or fully about government, thus governance in practice depicts the government in the overall picture.

Considering, Bevir (2010) taking the British case into account, argues that according to the Westminster Model, the British political system was characterized by parliamentary sovereignty, strong cabinet government and accountability through elections.” (p. 124). If we see the case of Britain as a unitary state with only one center of power, this might be the same for many states. Nevertheless, what differentiates governance in Britain compared to another state, for instance Iraq, is the quality of governance. In a broader sense, most states have a government in power, a parliament, a constitution and sovereignty. What distinguishes them from each other is the quality of their governments and their public well-being, which qualifies the degree of their governance as good government or bad government. In this sense, governments have remarkable similarities, but only differ in the governance process. In this regard, the debate on governance is contextual, because it deals with how governments govern in real life. In this view, a government approach in governance depicts a government’s responsibility towards its citizens. Governance is vertical or horizontal depending on the country; in most developing countries the top-down-governance model is followed by the state. Indeed, state incentive is highly crucial in governance approach. This is more explored by Kooiman (1993) in his argument on “governability as a balancing process, which is not static; is moreover, a constant process of coming to grip with the tension between governing needs on the one hand and governing capacities on the other hand.” (p. 2). More importantly, Fasenfest (2011) explains governance in brief as “the activity of governing.” In addition, he adds that governance is a set of decisions and processes made to reflect social expectations through the management or leadership of the government.” In line with this view, Kooiman (1993) argues, “by governing we mean all those activities of social, political and administrative actors that can be seen as purposeful efforts to guide, steer, control or manage sectors of society.” (p. 2). In addition, “the patterns of governance and the modes of social-political governance are the outcomes of the public and private interactions.” (Kooiman, 1993, p. 5). In keeping this brief, before going deep into the details of this chapter, it is essential to acquire a common understanding of the link among government, governance and good governance. The process is seen as a shift from government to governance and currently to good governance. In real terms in most developing countries, still the government is the engine of steering, thus, governance and good governance depend largely, on the government. In the broader sense, who

provides governance is the key concern. If we take the case of developing countries, especially the Middle East, the states provide public service and therefore, public service is where governance is viewed. This is where citizens observe the capacity and responsibility of the government. In this context, in many countries, where governance is not well defined, the governments, citizens and civil society organizations rush to define and work on good governance, without thinking of governance. In circumstances where the government is the major actor in the governance process, and the governance process is poor, moving to good governance will not deliver any benefit. In the Middle East, public administration is the central part of the government. It is therefore, worthwhile to take any country from the Middle East as an example to see the government's capacity and responsibility in the public sector in order to evaluate the governance process fully. According to Kooiman (1993) "there is a need for another conceptualization of new ways of governing. More traditional policy models or arrangements seem to be either too government-oriented or too limited in scope." Similar to this background, Kaufmann (1991) avers that "the garbage-can model of decision-making assumes those problems, solutions, and decision-makers and other choices are independent of each other and are only linked together as they flow through the system by their simultaneity." (p. 531). A well-stated question by Fassenfest (2010) fits this context well; "does a government exist that represents all of its citizens? For getting a proper answer to this question then, the context of the country is very crucial, it depends on the state that this question is extracted." Another question worth to be quoted here is, how can governance operate without government? (Rosenau & Czempiel, 1992, p. 2). In their view, Rosenau and Czempiel (1992) contend "in the absence of central authorities the situation is addressed as governance without government. In which governance encompasses governmental and nongovernmental actors who intersubjectively concur that cooperation on behalf of their shared interests justifies the acceptance of principles, norms, rules and procedures that differentiate and give coherence to their regime." (p. 8). To be concerned, "this is an international dimension of governance; in a society of states, governments fashion norms, rules of the game, institutions and procedures that produce certain collective outcomes, such as order, stability, and the preservation of the state's system." (Rosenau, & Czempiel, 1992, p. 31). From this view if a state has failed in governance in its own territory, then how possibly can this state contribute to global governance, as in the case of Iraq? Mayntz (1993) in his analysis on the causes of governing failures, states, "governing typically involves not just singular actions, but is a process in which often several

actors may participate.” (p. 11). Notably, Bell and Hindmoor (2009) describe governance from “a state-centric perspective and argue that government arrangements are largely created and orchestrated by the state to help govern society. Furthermore, governing can generally be defined as shaping, regulating or attempting to control human behavior in order to achieve collective ends.” (p. 2). In fact, the spectrum of a possible position that government and state play in governance is highly controversial, since there are two debates on governance as Bell and Hindmoor (2009) refer to them as “state-centric governance and society-centric governance. In both cases directly or indirectly there is influence of government on governance.” (pp. 3-4). A conclusion could be drawn here, as government and society are both active actors in the governance process, in which all together shape a comprehensive coherent system of governance; taking into consideration that Bell and Hindmoor (2009) categorize five modes of governance viz., hierarchy, persuasion, markets, community engagement, and associative governance. At this point, the modes are addressed briefly to give a general overview of governance based on the scholarly viewpoint. To begin with, governance via hierarchy or top-down governance occurs when government or agencies of the state act authoritatively to bring an outcome. Governance via Persuasion is achieved through inculcating modes of self-discipline or compliance in target subjects. The role of government is in persuading people to change their behaviors; behavioral changes expected through laws, taxes or regulation. Via markets, “the obvious change in the way in which governments govern is the growing commercialization of government and the use of markets and contracts in the governance process. Moreover, governments across the world have contracted out services to private firms and encouraged the development of public private partnerships. Governance via community engagement; in the 1990s community engagement became a favored strategy for local and central governments seeking to enhance their democratic credentials and legitimacy. A clear example of community engagement is the system of Participatory Budgeting developed in Porto Alegre, Brazil, in the late 1980s and now practiced in around 300 cities across the world. Finally, governance via associations, where the state works with firms, private associations and interest groups to develop and implement policy.” (pp. 16-17). Quite in line with this, Dunsire (1993) depicts the modes of governance “as the helmsman on a ship, who corrects any discrepancy between his set course and the ship’s actual heading by turning his helm.” (p. 25).

To evaluate governance via Dunsire’s point of view, “governance has to be hierarchical, systems-within-systems: the whole is only steerable if it is able to harness the government being maintained

level-by-level, function by function, attribute by attribute, throughout the complex”. Another crucial reference from Dunsire concerning government is “government could never govern if the people in their organizations, their families, and their groups of all kinds, were not self-governing.” (1993, p. 26). It is important to note the contributions of Mayntz in relation to ‘the limits of governing’ by referring to politics in governance; he points out that “political guidance manifested itself in the 1960s in a growing orientation of political decision-makers towards planning and the use of planning techniques.” (1993, p. 12). From this perspective, the governing process in many developing countries is crippled by political control, which cripples the planning and implementation process that eventually ends up with failure in governance. As Mayntz emphasizes “regulatory policies fail because they cannot be implemented, as the executive authorities are unable to enforce the norms” thus, ‘implementation becomes the main problem’. Another concern is even if the rules are being complied with the original problem is not solved and different sets of problems occur with all kinds of unwanted side-effects appearing with the implementation process.” (1993, p. 13). In its most general form, what Mayntz addresses is the ‘implementation deficit.’ In the context of emphasizing on governance as a dynamic, complex and diversified process of interaction, Kooiman offers an explanation that these qualities are essential in the social-political governance not only as a central consideration but also as the essence of effective governance. (1993, p. 41). Ultimately, Kooiman concludes by splitting governability “into two terms, the needs and the capacities, in the dynamic of the relations between the needs and capacities.” (1993, p. 46). It could be said that failure of governance in developing world ends up in ways, lack of government capacities, and the amount of the needs, more needs than the government capacities can match.

This could mean that one side steering, which is almost paralyzed by the extent of the needs. It seems important that the World Bank’s report (1994) has identified “three distinct aspects of governance as follows: first, the form of political regime. Second, the process by which authority is exercised in the management of a country’s economic and social resources for development. Thirdly, the capacities of governments to design, formulate, and implement policies and discharge functions. The first category is out of the Bank’s mandate, thus, the main focus of the World Bank is mainly on the second and third aspects.” (p. 14). In addition, Kjar (2004) notes that “governance theory is occupied with institutional change and it involves human agency. It thus introduces an element of change, which often lacks in institutionalism. (p. 11). Furthermore, Plumptre and

Graham (1999) define “the zones of governance as collective action, which is about more strategic aspects of steering, the larger decisions about both directions and roles. And, governance is not only where to go, but also about who should be involved in deciding, and in what capacity.” The debate about governance is well asserted in the contribution of Kaufmann et al. (2000) as “the traditions and institutions that determine how authority is exercised in a particular country. By considering the following: first, the process by which governments are selected, held accountable, monitored, and replaced; second, the capacity of governments to manage resources efficiently and formulate, implement, and enforce sound policies and regulations; and third, the respect of citizens and the state for the institutions that govern economic and social interactions among them.” Accordingly, Chhotray and Stoker (2009) outline that “governance seeks to understand the way we construct collective decision-making.” Furthermore, Governance theory is about the practice of collective decision-making.”

In brief “governance is about managing rules of the game in order to enhance the legitimacy of the public realm.” (Kjar, 2004, p. 15). In addressing the logic of governance in the United States, Hill and Lynn (2009) noted that “governance is constructed to provide a conceptual order to the complex system of checks and balances that characterize the rule of law based public administration and management.”(p. 116). To summarize, despite the differences and repeated similarities in the given definitions, which are used for governance in different disciplines in social science, political science and economics, there is no clear-cut single and unified definition for governance that can embed the necessary characteristics and norms of governance adequately. Therefore, the available literature fulfills the need for the definition of governance in different perspectives.

## **2. Rule of Law**

Bannister et al. (2015) define Rule of Law as “the rule by law not by men.” (p.15). The World Justice Project addresses the rule of law within the following universal principles:

- The government and its officials and agents as well as individuals and private entities are accountable under the law.
- The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.



- The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.”<sup>7</sup>

Rule of law as a contested concept has its own importance in the governance of any state on the general level or at specific level. The strength of the institutional landscape is dependent on the three branches of power including, the Executive, Legislative, Judiciary powers in any country. In some countries where the rule of law is strong, the three powers are separated, while in countries which are known as failed states or states in civil war, the three main branches of power are misused. In their view Marks and Cooper (1988) point out “despite the principle of separation of powers, each of the three branches of government overlap to some extent.” (p. 57). Another concern at stake regarding separation of powers tends to fall into two categories, “either the usurpation of power by one branch of government by another or attempt by one branch to delegate its power to another. In more detailed analysis, there are six potential categories of attempted usurpation and invalid delegation. Such as the legislature could attempt to usurp executive and judicial power or delegate its power to those two branches. While, the executive could attempt to usurp legislative or judicial power or delegate its power to those branches, lastly, the judicial could attempt to usurp executive and legislative power or delegate its power to those two branches.” (Marks & Cooper, 1988, p. 172). More specifically, Johnson (1990) draws attention to Aristotle’s concept of a true division between “true constitutions and non-constitutions, states in which men rule and not laws are sometimes considered non-constitutions.” (p. 74). In this term, the sovereignty of law is considered in the context of any state either being ruled by men or by law. From Johnson’s point of view “non-law-governed states are fundamentally unjust, and therefore they are rank-ordered below all others.” (1990, p. 75). There is an academic debate in progress about the importance of check and balance parallel with accountability. Adding, Cane (2016) tackles power-distribution which is linked to the mode of controlling power. The case Cane mentions is about the balance of power between the executive and the legislature by dividing legislative power between Congress and the President in the USA.” In fact, a strong rule of law

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<sup>7</sup> See: <http://worldjusticeproject.org/what-rule-law>

needs a strong legal base, as “the framework of a system of government is a constitution. As constitution performs two main functions: positively, it establishes and maintains a system of public power, and negatively it regulates and control public power, including administrative power, by imposing on it boundaries and limits.” (Cane, 2016, p. 4). Some institutions are designed to set rules and regulations for natural resource governance in petro-states.

In regard to developing resource rich countries, rule of law in certain cases is not applicable or misused due to personal or political party interests. For example, in the case of petroleum countries, some institutions provide formal compliance mechanisms with the very low motivation of volunteers and peer pressure commitment. The battle for controlling oil revenues and state-stewardship is strengthened in petroleum-rich developing countries due to the lack of rule of law. The legal architecture of the oil sector similar to other sectors is highly fundamental for the governance of the sector. In the absence of the rule of law the ‘Social Contract’ is fragile in rentier states, at this point, according to the ‘social contract’ “man surrendered some of unbridle freedoms in exchange of the protection of himself and his property. This conveys that people have vested the totality of power to govern in the state, in this case the only restriction is the federal constitution.” (Marks& Cooper, 1988, p. 2). In the case of developing countries, the constitution has less power on the government, a constitution is only a written document, because the constitution and parliament cannot impose limitations and restrictions on the government. In the case of a rentier state, the state has power thus, the government exercise power according to the governmental wishes not the public interest. While according to the constitutional provision the state is restricted by constitutional limitations which restrict the state to exercise power inconsistent to the constitution.” (Marks &Cooper, 1988, p. 3). A focus on the rule of law stresses the importance of the legal landscape in a country’s governance system.

### **3. The Effect of Rule of Law in Governance of a State**

This section addresses the recent hints on governance as a controversial issue in the state affairs, in which steering all institutions and structures are coupled with governance. In other words, the role of government in steering and practicing rule of law will be analyzed accordingly. In fact, some basic issues in state affair are followed by complexity and ambiguity, and governance is one

concern in this regard. The most critical part of governance comes from practicing rule of law in a state effectively. David M Beatty, in the *Ultimate Rule of Law*,

To be mentioned, rule of law and governance mechanisms together limit the power of certain politicians and institutions in any country. According to the World Bank Governance Project data, rule of law is linked to voice, legality, accountability and judicial strength, yet the index shows different data for each country, which indicates that each country follows and practices the rule of law and governance mechanism differently, and according to the context of their country and region.

The conduct of rule of law depends on the government and the ability of conduct of the principles of law. The practice of law in most Middle Eastern and African countries it is misused and crippled by the rulers, politicians and political parties.

Taking into account the Iraqi case regarding the independence of courts that needs institutionalization, and for this it takes year for putting it in place. The governance system that can support a state of rule of law, can be supported by securing and assuring a strong and independent judicial system which is free from political interference.

Considering the Worldwide Governance Indicators (WGI) project which covers over 200 countries and territories over the 1996-2017, for the main dimensions of governance WGI covers the following:

- Voice and Accountability
- Political Stability and Absence of Violence
- Government Effectiveness
- Regulatory Quality
- Rule of Law
- Control of Corruption

Apparently, the quality of governance depends on the seven indicators of WGI, in which for each country it is different, for the purpose of this each country has its score based on the data which appears in the WGI index. Here in this study the indicator of rule of law is taken to shown the rule of law concerning Iraq as a developing failed state.

**Figure.1**

Indicator	Country	Year	Number of Sources	Governance		
				Score (-2.5 to +2.5)	Percentile Rank (0 to 100)	Standard Error
<b>Voice and Accountability</b>	Iraq	2007	9	-1.13	15.87	0.14
		2017	10	-1.05	20.69	0.13
<b>Regulatory Quality</b>	Iraq	2007	4	-1.32	7.28	0.24
		2017	7	-1.20	9.62	0.20
<b>Rule of Law</b>	Iraq	2007	6	-1.84	0.48	0.21
		2017	10	-1.64	4.33	0.17

**Worldwide Governance Indicators-Iraq** source:worldbank.org/governance

The figure indicates a negative view in which voice and accountability in 10 years slightly improved which means in the governance system in Iraq there is governmental focus on voice and accountability. Yet for regulatory quality in 2007 it was 4 scores and in 2017 become 7 scores, which means little improvement in this regard. While the rule of law which is the essence of governance it changed from 6 score to 10 score, which shows improvement. Yet, this index data is not very hopeful and positive if we compare it to other countries because Iraq in terms of natural resources is a very rich resource country, which could have a better performance if the rule of law has worked effectively.

Recently, rule of law is addressing in the scope of good governance, in which transparency, uprooting corruption and accountability is practiced through the public institutions in most countries. Even though in the developing countries public institutions lack strengths and capacities for practicing their power and authority which contributes to good governance scope. In the World Justice Project, the rule of law is known as a framework for laws and institutions in which **there are four universal principles including:**

- 1- Accountability: The government as well as private actors are accountable under the law
- 2-Just Laws: he laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons, contract and property rights, and certain core human rights.
- 3-Open Government: in which laws are enacted, administered, and enforced are accessible, fair, and efficient.
- 4- accessible & impartial dispute resolution

Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve<sup>8</sup>

In discussing the Rule of Law Index, few crucial factors are considered as follows: the first is the constraints on government powers, the first factor of the WJP rule of law Index measure the degree of commitment to law by those who govern. In other words, this means the government institutions, agencies, and officials are all bounded by law. This is a situation where power abused is restricted and government applies accountability measure and implements check and balances to follow the governance process. In most cases, the effectiveness of the institutional checks on government power is practiced by the legislatures, the judiciary and independent auditing, which are all necessary components for better rule of law in governance.

**From this indicator few sub-factors are highlighted as:**

- 1.1 Government powers are effectively limited by the legislature
- 1.2 Government powers are effectively limited by the judiciary
- 1.3 Government powers are effectively limited by independent auditing and review
- 1.4 Government officials are sanctioned for misconduct
- 1.5 Government powers are subject to non-governmental checks
- 1.6 Transition of power is subject to the law

Insofar, rule of law, and governance has their fundamental roots in the constitution which is the main legal principle of government for practicing governance in the institutions. This conveys that enshrining the principles of law in constitution is essential, typically in time of regime change such as the case of Iraq in 2005 and the enforcement of new constitution by the federal government after the collapse of the Ba’ath Regime. In Frohnen view “Constitution serves as the type of rule of law to preserve that requires all political action, legislations be confined and brought under law

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<sup>8</sup> See more at: <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports>.

to preserve the rule of law in a republic.”<sup>9</sup> From this view, constitution limits and prepares a framework which is well established and prepared for governance in which ideological, political and religious norms cannot affect it. Through the strength of constitution, a state power can be limited and citizens as well as can be bounded to rules and laws in a community.

The aim of instituting the notion is rule of law or rule by law is controversial and ambiguous in certain situations. Referring to scholars from ancient Greek to the modern times, each and every scholar has his/her own contributions regarding the rule of law. Adding, Thomas Hobbes is among the few very influential scholars who calls for “common rules for all men, and declaring them publiquely, by which every man may know what may be called his, what another.” (Hobbes 1647).

#### **4. Findings**

Findings regarding this paper are as follows: first, governance system in each country is framed in accordance to the context of the state and the region. Furthermore, governance has specific challenges and constraints in every single state, thus we cannot compare a success story of governance of one country to another one, which means there is no one size policy in governance terms that can suit all countries alike. And this is mostly due to differences in governance mechanism and the rule of law principles, as governance is coupled with the strength of rule of law, hence the factors that affect the rule of law have great influence on the governance conduct.

From the literature, it can be mentioned that the mechanisms of governance matters in the success or failure of a state, as it has been pointed out by Patrick Chabal in *State and Governance* where Chabal defines “the role of the state as “enabler or manager.”<sup>10</sup>

#### **5. Concluding Remarks**

In order to draw a coherent set of conclusions, from the above most discussed issues, which are raised in this paper. In the recent governance practices that has been proposed and discussed, the notion of rule of law still firmly exists in the same sense that Aristotle had addressed which is in line with the modern governance principles of being ruled by best laws not men. Drawing a realistic conclusion from this study is the problem which is linked to power separation in which

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<sup>9</sup> BP, Frohnen, *is constitutionalism liberal?* 2011) 33, *Campbell Law Review* 533.

<sup>10</sup> Chabal, Patrick. (2007). *State and governance, the limits of decentralization*, King’s College London and the Institute for Advanced Study, Princeton.

many developing countries suffer from it, thus following Montesquieu's power separation is highly recommended as separation of judicial power from executive and legislative authorities help in better performance in government institutions.

Reaffirming certain key factors that affect the rule of law and governance is crucial because challenges for one country regarding rule of law and governance is different compare it to another one, and this has been observed based on data from the Rule of Law Index. Crucially, there is a missing point in the literature that has not been identified well, as governance depends on the country's context and capacity of practicing rule of law and governance, and there are no certain set of policies and rule that fit all countries alike. Thus, this study recommends, governance and rule of law to be adopted accordingly not copy pasted. The mentioned above conclusions are not intended to demonstrate the status of governance and rule of law in all developing countries alike, but to highlight the process of governing and rule of law in certain situations.

It is important to note, that many challenge of governance comes from lack of full commitment of state officials and institutions with the principles and norms of the rule of law on the one hand and governance on the other hand. The fear of failure in governance lies in the heart of poor performance in rule of law, which spawns' challenges to democracy, development, and security.

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