



The Arab Center for the Development of the Rule of Law and Integrity ACRLI

Study on The Rule of Law

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Introduction

The attempt we are taking through these pages is not as easy. What we are trying to plunge in is similar to a very profound sea. It is the utmost of issues and the utmost of purposes in light of the clearest and most developed concept of democracy and the modern state. This talk emanates from the term "rule of law" in terms of definition, history, perspective, different images, horizons and ramifications tightly linked to the origin... Then come explanation and analysis which are difficult in order to pave the way for enough answers, as they will lead to more questions and to the first lines of endless roads.

We don't think that old and medieval societies were distant from this issue that occupied always the humans' minds, i.e. how to behave, manage their affairs, and organize their relations in the context of the society that embraces them. This society eventually is a political society governed by a certain law. We shall always bear in mind the different levels of awareness vis-à-vis the topic that varied with time and place, as well as the philosophies and doctrines, people and institutions, and the legal families.

Hence, the "law" which in the end is nothing but a group or a mass of commanding behavioral rules, owing its existence to different sources that start with the sacrificial, pass through the philosophical and ethical, depending on times and places on the realistic and experimental, and reach the positivist at the end of the day. Different names were attributed to it and rotated in its orbit, such as: Divine Law, Natural Law or Positive Law, or Legitimacy, Legal System, Constitutional State, State of Law, or...Rule of law. Undoubtedly, the last denomination has a special impact, not in terms of achieving the purpose of this study only, but because it might be the noblest, deepest and most transparent formula in the journey of law throughout history.

We saw it was possible to include in this study an introduction, two main sections and a conclusion.

The **first section**, related to defining the context of the phrase, linking some complementary terms, explaining deduced texts and terms, includes the three following parts:

First part: rule of law in different images and concepts (pinpointing the phrase in numerous texts: Arab, Islamic and international, horizons and comprehensiveness, different perspectives...)

Second part: sub-terms emanating from the phrase "rule of law" or related to it (definition, opinions and legal status...)

Third part: explanation of texts and terms proved in the previous two parts.

The **second section**, which is analytical in most of its paragraphs and related to crystallizing the concept of rule of law, simplifying its meaning and depicting how it is breached in practice, includes three parts:

First part: towards the crystallization of the Rule of Law concept (brief historical overview, sources of this concept, between the State of Law and Rule of Law).

Second part: Meaning of Rule of Law (from the perspectives of means, purposes and guarantees)

Third part: Violation of the rule of law, confrontation of this violation (examples of constitutional judiciary decisions, administrative judiciary, financial judiciary and juridical judiciary).

Even if the first section, with its first two parts, seemed to be have an assembling character, this was deliberate so that the explanation and analysis are preceded by what depicts the reality in this field, and so that the study would be beneficial on the level of the essence of proved texts. It is worth noting that we extended the circle of selected texts, and we proved what is not written in Arabic by including the original text, and then we translated its meaning to our language, so that it easily understood by the Arab reader. Moreover, we personally defined two terms: transparency and accountability, hoping that we would contribute, even slightly, in pinpointing some terms of special implications in the topic.

Section 1

Defining the context of the phrase, linking some complementary terms, and explaining the deduced texts and terms

Part 1: rule of law in different images and concepts (pinpointing the phrase in numerous texts: Arab, Islamic and international, horizons and comprehensiveness, different perspectives...)

1- Definition of Law and Right

First Definition

The "law" is a group of rules of conduct that govern relations between human beings in a certain society, whether highly or poorly organized.

"Rights" are the privileges acknowledged by the law- or the positive law- for an individual or group of individuals.¹

Second Definition

The law, in its general sense, is a group of binding rules regulating the people's conduct and relations in a society that has an authority which imposes those rules that shall guarantee the legitimate interests of individuals or achieve public good in society."²

2- Principle of Legitimacy in Islam

"...**The Islamic Law also reinforced the principle of "legitimacy"**, obliging the State and its leaders to comply with Sharia' provisions. It did not impose the citizens' obedience to the State in a manner that contradicts with those provisions. Pursuant to *Al-Hadith al-Sharif*: Hearing and obedience are a right if a wrongdoing is not commanded. If a wrongdoing is commanded, then there shall be no hearing and obedience. "No obedience to any creature in doing wrong to the Creator" (*Sahih al-Bukhari explaining al-aini, s 14, p 221. Sahih Muslim, s6, p.15, and al-Jame' al-Saghir by al-Syouti, s2, No.9903*).³

3- Rule of Law and Rule of Sharia' in Islam

"The principle of the rule of law does not differ in meaning from the principle of the lawful state, which the modern state is keen on adopting as a feature of its essential ones...

The principle of the rule of law seems to be similar to the principle of rule of Sharia' in Islam, when Islamic societies were subject to its provisions from all

¹ Francois Terre, General Introduction to Law, Dalloz, 2000, no.3, p.3

² Albert Farhat, Introduction to Legal Sciences, Beirut 1987, p.19.

³ Sobhi al-Mahmasani, Human Right Elements, Dar al-Ilm lil-Malayeen, Beirut 1979, p.94

aspects of life, where no act performed by an individual, whether he as a ruler or a commoner, was considered as valid unless it complied with Sharia'."4

4- Several denominations for one name: Rule of Law

Expressions related to the rule of law could be replaced by other ones, such as the sovereignty of law, or the supremacy of law or the reign of law. This last expression is not an incomplete attempt to translate an expression rich in meaning that was used by the British to refer to the basis of their political and legal system: the Rule of Law. The Rule of Law principle is based on the Constitutional Law which could be defined as follows:

The Constitutional Law is a group of legal rules that determine the methodology of the composition, work, competencies and power of the higher apparatuses in the State: the rulers and the ruled. The purpose behind these rules in liberal political regimes, particularly democratic liberal political regimes, is to guarantee the rule of law over rulers (Parliament, Government, Head of State, the Judiciary) and even over the majority of the people, and thus, guarantee freedom: reign of law.⁵

5- Supremacy of Law and Sovereignty of General Will

In the revolutionary concept, the State of Law falls half-way between the natural law and the positive law. Thus, it is based on the idea of the supremacy of law, and on originally on the idea of the sovereignty of the general will.

It seems that this first formula of the State of Law crosscuts with what Carré de Malberg calls "Legitimate State", the Rule of Law State.

"The State in which every act carried out by its administrative authority should be linked to a certain law and should guarantee the enforcement of this law."⁶

6- Significant characteristics of the "Rule of Law" Concept:

« The rule of law is fundamental to the western democratic order. Aristotle said more than two thousand years ago, « The rule of law is better than that of any individual ». Lord Chief Justice Coke quoting Bracton said in the 1610 Proclamation:

« The King himself ought not to be subject to man, but subject to God and the law, because the law makes him King ».

The rule of law in its modern sense owes a great deal to the late Professor A V Dicey. Professor Dicey's writings about the rule of law are of enduring significance.

The essential characteristics of the rule of law are as follows:

- i. The sovereignty of law, which means that all persons (individuals and government) are subject to law.
- ii. A concept of justice which highlights equal treatment between people, based on standards and the importance of procedures.
- iii. Restrictions on the exercise of discretionary power.
- iv. The doctrine of judicial precedents.
- v. The common law methodology.
- vi. Legislation should be prospective and not retrospective.
- vii. An independent judiciary.

⁴ Edmond Rabbat, Mediator in the Constitutional Law, Part 1, State and its Regulations, Beirut 1968, p.188 and 189.

⁵ Jacques Cadart, Political Institutions and Constitutional Law, Economica, 1990, p.15-16

⁶ Marie-Joelle Redar, De l'Etat légal à l'Etat de droit, University Press of Aix-Marseille, p.13.

- viii. The exercise by Parliament of the legislative power and restrictions on exercise of legislative power by the executive.
- ix. An underlying moral basis for all law ».⁷

7- **AV Dicey and Rule of Law**

Albert Venn Dicey's Lectures on the rule of law were first published in 1885. His doctrine of the rule of law consists of 3 core ideas.

First, the rule of law implies that the law is the most supreme and contradicts with the arbitrary power. Unless a person's act violates the laws established before the ordinary courts, he or she shall be sanctioned. Dicey also pointed out that governments should not have wide discretionary powers, and hence, these powers should at least be limited to some extent.

Second, Dicey believes everyone should be equal before the law, regardless of who you are. Whether you are a civil servant or a peasant, you will be taken to the court and will be subject to the same law if you have breached the law.

Third, Dicey believes that the provisions of a constitution are not the source of law. On the other hand, he thinks that every individual in a society should enjoy the rights and freedoms that enable him to do what he wants.

Everybody whose rights have been infringed can resort to courts, and the Common Law would guarantee the remedy. Dicey believed that the Common Law protected individuals to a greater extent than a written constitution. And that is the consequence of the rights of individual which forms the source of law».⁸

8- **Rule of Law in an Undemocratic State**

«The concept of "rule of law" per se says nothing of the conformity of laws themselves with right and justice, but it simply refers to how the current system upholds the law. Consequently, a very undemocratic state or one that does not respect human rights can exist with or without the "rule of law" principle. Many see that this situation applies to several modern dictatorships. Nevertheless, the «rule of law» principle is considered a pre-requisite for democracy. Based on this, this principle has served as a common basis for human rights discussion between countries such as the People's Republic of China and the West ».⁹

9- **Rule of Law in UNDP**

"Rule of Law entails equal protection of human rights of individual and groups, as well as equal punishment pursuant to the law. It reigns over governments and ensures that citizens are treated equally and are subject to the law rather than to the whims of the powerful. The law has to protect vulnerable groups from exploitation and arbitrary decisions".¹⁰

⁷ Mark Cooray, The rule of Law, The Australian achievement:
http: www.ourcivilization.com/cooray/btof/chap180.htm

⁸ Jason Leung, the Rule of Law and its Relevance to The HKSAR:
www.jasononline.com/law/ruleoflaw.htm

⁹ From Wikepedia, the free encyclopedia: <http://en.wikipedia.org/wiki/Ruleoflaw>.

¹⁰ Rule of Law (UNPD-Pogar): <http://www.undp-pogar.org/themes/ruleoflaw.asp>

Part 2: sub-terms emanating from the phrase "rule of law" or related to it (definition, opinions and legal status...)

1- The State of Law

"The State of Law is a situation resulting from a society's submission to a legal system that excludes anarchy and private justice.

More accurately, it is a denomination that deserves alone a legal system in which the law is respected to guarantee the rights of those subject to it, and face the arbitrary in particular."¹¹

2- Principle of Legitimacy

"Legitimacy is a quality that marks what conforms to the legislation. Yet, in the context of this definition, we have to depict the term "legislation" in its broader sense, which is the "Law". Legitimacy, thus, is conformity with the law, and it is a synonym of the legal regularity."¹²

3- Legal System and Hierarchy of Rules

"The legal system is an organized group of legal rules and regulations governing a certain society. It includes rules from the Common Law and other rules from the Private Law. Not all of these rules are on the same level, and they do not enjoy the same value... It is said then that legal rules or regulations are hierarchal."¹³

4- Democracy

"Democracy's objectives can be summed up as follows:

- Going back to the fundamental and essential principles that should be practiced to achieve the hopes and aspirations of the people to a decent life.
- Being subject to the rule of law, where officials in a state should bear their responsibilities directly before their peoples, in terms of implementing the objectives they announced and subjecting their actions to the people's monitoring...
- Ensuring equal opportunities to take part in voting
- Spreading the principles of equality and justice, and underlining the rights and obligations of an individual and the state..."¹⁴

5- Separation of Powers

a- From the Lebanese Constitution

"The regime is based on the principle of separation of powers, their equilibrium and cooperation."¹⁵

b- From Montesquieu

"So that nobody abuses power, naturally, every power should curb any other power."¹⁶

¹¹ G. Cornu – dir : Vocabulaire juridique, PUF 1987, p. 325.

¹² Georges Vedel et Pierre Delvolvé, Droit administratif , Tome I , PUF, 12^{ème} édition 1992 , p. 444

¹³ Philippe Ardant , Institutions politiques et Droit constitutionnel , 11^{ème} édition , L.G.D.J. , 1999, n° 66, p.97.

¹⁴ Shaker al-Azzawi- Democracy, a political program or a new lifestyle?

<http://www.demoislam.com/modules.php?name=News&file=article&sid=238>.

¹⁵ Introduction of the Constitution- paragraph (e)

c- From Massachusetts Constitution- by John Adams

«In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men ».¹⁷

6- Discretionary Power and Arbitrary Power

"The traditional expression of "discretionary power" is widely used in the doctrinal language. It is also present in the jurisprudential terminology.

However, it is not the best that has ever reached us. As much as it is described as such, it is closer to being an arbitrary power."¹⁸

7- Independence of Judiciary and Independence of Judge

The concepts of the independence of the judiciary and the judge's independence are complementary and inherent to protect the principle of legitimacy and to spread justice through realizing the wish of litigants in ensuring the adequate environment for a just lawsuit.

This independence cannot be achieved, except in the light of laws that promote the judiciary and secures it disparity from the legislative and the executive powers, in the context of cooperation between these powers...

It has become more and more consolidates in developed political societies that the judiciary's independence marks the society's belonging to democracy and to the State of Law..."¹⁹

8- Just Lawsuit

- a- "The concept of a just lawsuit has passed from the Anglo-American terminology to international texts, such as the Universal Declaration of Human Rights (Article 6), European Convention for the Safeguard of Human Rights (Article 6-1). However, the French Law- without using the expression- has implemented the principles that lies within it and which constitutes, to a certain extent, the natural law of the procedures."²⁰
- b- "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."²¹
- c- "Protecting the right to a just lawsuit is the dawn of a new era..."²²

9- Achievement of Justice

First Opinion

¹⁶ Montesquieu , L'Esprit des Lois , livre XI , Chapitre VI.

¹⁷ Massachusetts Constitution , Part The First , art XXX (1780).

¹⁸ René Chapus , Droit Administratif Général , Tome 1, Montchrestien , 13^{ème} édition , 1999 , n° 1248 , p.1010 .

¹⁹ Excerpt from "Basic Rules for Judiciary's Moralities" in Lebanon, drafted by an independent judicial committee, appointed by the Justice Ministry. It was adopted by each of the Higher Judiciary Council and the Shura Council Bureau on 11/1/2005.

²⁰ Jean Carbonnier , Droit Civil , Introduction , 26^{ème} édition refondue , PUF 1999, n° 188 , p. 362.

²¹ Article 6/1 of the Convention on Human Rights and Fundamental Freedoms, Rome, 4-11-1950.

²² Fabienne Quilleré-Majzoub , La Défense du droit à un procès équitable , Bruylant , Bruxelles 1990, p.285 .

"Legal rules are necessarily and exclusively aimed at achieving justice that we conceive, in any case, as an idea, the idea of the "just". In fact, the law does not find its own content, except via the concept of the "just".²³

Second Opinion

"The law is aimed at establishing a just order. But, we can wonder if the idea of justice necessitates the existence of a law, or as the doubtful say, if the existence of justice is attributed to the respect of the existing law."²⁴

10 – Spreading Equity

"Equity is the implementation of justice, particularly in the cases that are not provided for in legislative texts or that do not exactly fall within the legal rules.

The essence of this concept is moral. As Aristotle puts it, its domain is the "unwritten just".²⁵

11- Morality of Law

"If Law is not based on morality, what can it be based on?"²⁶

12- Human Rights

a- General

"The human being was and is still the axis of all rights. However, among them is a category that is significant and dangerous, rendering it fundamental for an ideal life, a scale for civilization and an objective for every social progress. This category was denoted as human rights due to its tight link to a human's dignity and core of his personality and to confirm their noble and humane nature.

The moderate and the extremists, from every land and generation, agreed on appreciating their significance and their content... Hence, teachings of religions, theories of philosophers and requests of reformists were tailored according to human rights, and in one word, they have become the anthem of the entire humanity."²⁷

b- In Islam

"In fact, Islam stressed on the human being (in society and as an individual). In the Islamic concept, the individual is the first fundamental reality in a human society. That human individual enjoys, by nature and before the existence of the State and its powers, natural rights and freedoms that are almost sacred. The State and the political authority were established only to protect those rights and promote those freedoms. It is forbidden, including the State, to tamper with those rights and freedoms or underestimate them, as if it did that, it would be violating the main reason behind its existence and **deviating from its legitimacy**."²⁸

c-Pursuant to the concept of State of Law

²³ F. GénY , Science et technique en droit privé positif , T.1 , n°16 ; Tiré de : Théorie générale du droit , Jean-Louis Bergel , Dalloz 1985 , n° 24, p. 30 .

²⁴ Georges Ripert- Article (Droit) – Encyclopédie Dalloz – Droit civil, II , n° 5 .

²⁵ François Gorphe – Article (Equité), Encyclopédie Dalloz , Droit civil , II, n° 2 .

²⁶ Mark Cooray , The Rule of Law , The Australian achievement, Ib .

²⁷ Sobhi Mahmasani, Pillars of Human Rights in Islamic Sharia' and Modern Laws, Dar al-Ilm lil-Malayeen, Beirut, First edition, 1979, p.307

²⁸ Salah Kazem al-Adidi in the Philosophy of Democracy.

<http://www.demoislam.com/modules.php?News&file=article&sid=169>.

Acknowledgement of individual rights and freedoms remain meaningless unless accompanied by adjustments that enable their practice. In fact, guaranteeing these rights and freedoms, even if with different levels of efficiency, is indispensable for any State that claims to be the State of Law.²⁹

13- Equality

a- "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."³⁰

b- Judges have to adopt a proper conduct that enables them to treat everybody equally and in conformity with the law. They even have to run the instances entrusted to them with the same spirit.³¹

14- Transparency

It could be defined as follows:

Conduct adopted by any person working in the public (or private) domain. He does not hide other than what he shows. Neither does he fake up hidden positions to justify his actions, nor does he fear to unveil truths and monitor the law. He also opens the doors to assessment before the public.

15- Accountability

It could be defined as follows:

The monitoring authorities and competent institutions in a certain legal society of every person working in the public (private) domain, and observing to what extent he abides by the prerequisites of his task and the obligations imposed by the law, so that when he violates them, he is sued and trialed in order to restore balance to the relations that link the individual to his peers and to society.

Part 3: Explanation of proved texts and terms

Clarifying what was mentioned in Part 1 that includes 9 titles, we highlight the following:

Under the first title, and through the French definition of law, there was a distinction between the law, as a group of binding rules of conduct, and rights that natural or legal persons enjoy in light of the group of laws that regulate a society. We could run into such definition in many doctrinal publications involved in introduction to law, as is the case in the definition extracted from "Introduction to legal sciences".

The second title linked between "Sharia" and "legitimacy". The Islamic Sharia' obliged Muslims to respect legitimacy and obey rulers if they are not doing any wrong to the Creator's will.

²⁹ International Association for High Administrative Jurisdictions (AIHJA), 7th Congress, Dakar (April 25-29, 2001), Brief Report on: Protection of rights and freedoms of an individual by the administrative judge, p.1

³⁰ Article 7 of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10/12/1948

³¹ Principes de Déontologie Judiciaire, Conseil canadien de la magistrature, Egalité://www.cjc.ccm.gc.ca.

As for the third title, it moved the principle of the sovereignty of law-rule of law-closer to the principle of the sovereignty of Sharia' in Islam. This indicated that the Islamic law had its pioneer own conception in this regard.

The fourth title compared between a series of terms of similar or close implications that are respectively: power of law, sovereignty of law, supremacy of law and reign of law, knowing that the last term is the closest to the Rule of Law expression, which is a consequence of the political and legal heritage in England. Under this very title, a definition of the Constitutional Law was included, which conforms to the far implication of the term "rule of law."

The fifth title differentiated between the legitimate state, in the classical concept, and the legal state, in the revolutionary concept. The latter derives some of its elements from the natural law, but it relies on the people's will to promote the idea of the rule of law.

The sixth title depicts the prominent characteristics in the Rule of Law concept and an explicit introduction to the topic launched by English intellects. In the mentioned characteristics, two non-legislative sources of the Law's sources were underlined: the Common Law and the judicial or legal precedents. They are the two sources that provided the Rule of Law concept with the most consolidating and expressing elements of the success of the legal system adopted in the Anglo-Saxon legal family. It is also worth-noting that there are basic principles that asserted themselves in this regard, such as the restrictions on the exercise of discretionary power, the principle of non-retrospective laws, the principle of equality and others.

The seventh title summarizes Dicey Theory in the rule of law. They rotate around three main axes: No for arbitrary discretionary power and Yes for Equality. The importance does not lie in a written constitution as much as in a "Common Law" that was raised slowly in the successive stages through history and protected the individuals' freedoms that have become an integral part of its sources.

In the eighth title, even if the Rule of Law principle is not familiar in a dictatorship country, even if governed by a coherent legal system, it is considered at least as a transitional phase and a base for discussion to pave the way for democracy that reinforces the rule of law, in its aspired sense.

In the ninth and last title that encompasses a definition of the rule of law according to UNDP, there is an overlook, not to the principles of equality and human rights and the eventuality of submission to the law only, but to the necessity of protecting vulnerable groups- among which are minorities as we guess- from exploitation.

Clarifying the content of Part 2 that included 15 sub-titles or complementary titles that are closely related to the Rule of Law, we highlight the following:

- 1- The objective of the State of Law is to spread general justice and confront chaos and arbitrary actions. Thus, it is a concept close to the Rule of Law concept.

- 2- Legitimacy does not derive its existence from legislation only, but it goes beyond it to a broader context, which is the legal regularity that is aimed, at the end of the day, at promoting a universal legal hierarchy.
- 3- Legal Regularity is based on the hierarchy of rules that start with the top and ends with the base, in a context of coherence and integration that guarantees the respect of law on all levels, subsidiaries and regulations based on it.
- 4- Democracy carries within the original elements of the Rule of Law theory.
- 5- The principle of the separation of powers, in its different constitutional and intellectual samples (such as: Lebanese Law, Montesquieu, the Constitution of a US State...), is the first guarantor that promotes the rule of law.
- 6- The justified discretionary power turns in many cases into an arbitrary power if it deviated from its practical purpose and went beyond the set limits. Then, it becomes an obstacle that hinders the implementation of the law in an adequate manner and leads to its violation.
- 7- The independence of the judge, as an individual, and the independence of the judiciary, as a power, are two indispensable conditions for the sovereignty of the law and people's reassurance vis-à-vis its track from the practical perspective.
- 8- There is no transparent rule of law where there is no just lawsuit. That lawsuit was crystallized by the Anglo-American legal intellect and stipulated by international instruments.
- 9- There is no essential value of the law if it is separated from the idea of justice that is not necessarily linked to the existence of a positive law since it might go beyond it with the dimensions that are not restricted to literal implementation of the text.
- 10- Equity is the moral aspect of justice. This aspect should be offered by the ruler or the judge to a person who deserves it, without being stipulated in the existing legislations.
- 11- In light of the law's relation to justice and equity, a moral basis that justifies its existence is unavoidable.
- 12- In the Islamic Sharia' and in all the legal systems, human rights are the best of what a society, aspiring to hold tight to the rule of law and to establish the State of Law, guarantees.
- 13- Equality before the law and the judiciary is a fundamental rule, the violation of which destabilizes the treated concept.
- 14- Transparency, with the purity, bravery, clean hands and good inner feelings it reflects, is a prerequisite to build confidence between the official and people.
- 15- Finally, whoever is not subject to the law, the State of Law, the Rule of Law, in all their dimensions, exposes himself to accountability, which will not be a model and a lesson only, but it will restore equilibrium to the destabilized individual relations and social interests.

In any case, it was possible that we add to the below-mentioned terms a group of other terms that rotate around the same topic, such as: **constancy of the law, the constitutional government, good governance, presumption of evidence**, and others...but, we will only mention them since the context does not tolerate more sectioning and elaboration.

Section 2

Crystallization of the Rule of Law concept, Simplification of its meaning, and Depiction of its breach in practice

First part: towards the crystallization of the Rule of Law concept (brief historical overview, sources of this concept, between the State of Law and Rule of Law).

1- Brief historical overview:

At the beginning of this historical overview, we would like to indicate that it tackles the concepts of the State of Law and the Rule of Law simultaneously, as it is difficult to separate between both concepts when tracking their history via the track of law itself.

The first sparkles of this issue dates back to old civilizations and far eras. The Law of Hamurabi (around late 20th century BC), for instance, was strict in punishing judges who violate their mission through negligence and bribery. Solon's legislation (6th century BC) added a touch of democracy to political work in Greece. Despite its primitiveness, the Roman Law of 12 Plates (around 450 BC) reinforced the separation of religion from civil matters and protected fundamental rights of citizens.³² Christianity made the Roman State be influenced by its noble principles in term of the individual's dignity, right of possession and humane punishment³³. Moreover, the regime built on springs of Islamic Sharia' was based on *shura* (consultation), justice and free choice³⁴. In England, the Magna Carta was issued in 1215 that guaranteed the citizens' personal freedom, stressing the necessity to ensure honest justice. It was followed by the English Bill of Rights to safeguard the citizens' rights facing the power of the King and to promote the Parliament's role. We cannot forget the impact of the French Declaration of Human and Citizen Rights, issued in 1789, on the political, intellectual and legal change in Europe and the entire world, especially in terms of principles of equality, freedom and natural human rights. The American Bill of Rights was promulgated in 1791, dealing, among other things, the citizen's rights in a penal lawsuit³⁵. Around 1800, German philosophers (Kant, Humboldt, Fichte...) crystallized the idea of the State of Law that resists the State/Police³⁶. In this context, it is worth mentioning the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights adopted by the UN General Assembly on 16/12/1966, Helsinki Declaration (1975), Johannesburg principles for the Role of Law and Sustainable Development (World Judges Seminar, held on August 18-20, 2002, as well as other instruments and pacts signed by international regional groups in Latin America, Africa and the Arab World, in addition to principles that guided matters of governance, concepts of democracy and human rights in the former bloc of socialist states.

³² Regarding these three legislations, review: Ghaleb Ghanem, *Laws and Regulations Throughout History*, Dar al-Manshourat al-Hoqouqiyah (Legal Publications Publishing House)- Sader Printing House, Beirut 1997, p.56, 107 and 174.

³³ Mustafa al-Awji, *Human Rights in Penal Lawsuit (with Introduction on Human Rights)*, Nawfal Establishment, Beirut 1989, p.31.

³⁴ Sobhi Saleh, *Islamic Regulations*, Dar al-Ilm lil-Malayeen, Beirut, 4th Edition 1978, p.474.

³⁵ Review regarding all of these: al-Awji, *ibid*, p.44 and what follows.

³⁶ *Dictionnaire historique de la Suisse*, Berne (Naissance du principe de l'Etat de droit: <http://www.dhs.ch/externe/protect/textes/f/F10376-1-895.html>)

We see in the above-mentioned and in what we could not mention here, a basis for the rule of law concept and a contribution to crystallize it.

2- Sources of this concept:

As we hinted in the introduction, legal rules did not emanate in the same way in all societies. If we go back to the quotes we proved in Section 1 of the paper, we will see that the Rule of Law concept is linked to one of these sources: sacred religious message, the natural law, moralities, accumulation of experience and the positive law. An example on the link to the sacred religious message is what was mentioned in the first two texts listed with Section1-Part 1 (Mahmasani, Rabbat) that: "No obedience to any creature in doing wrong to the Creator", and that any work that does not abide by the Sharia' provisions is invalid.

Regarding the natural law, we notice that the talk about the legal state in the revolutionary concept (Marie-Joelle Redar)³⁷ placed it at a middle point between the natural law and the positive law. Moreover, J.Carbonnier believed that the French Law implemented the Positive Procedure Law, making it to the just lawsuit.

As for the moral source, Mark Cooray raised the following question: "If the law is not based on morals, what shall it be based on?" Francois Gorphe pointed out that the essence of equity and justice is moral.

With respect to the accumulation of experience, we have to go back to the English heritage that calls for holding tight o the Common Law and Judicial Precedents (Cooray) and to the fact that individual rights are at the origin of law and not vice versa (Dicey).

It is note-worthy that many texts and terminologies see the Positive Law as the main origin of the Rule of Law concept (review in this regard: Cornu- State of Law, Vedel et Delvolve- principle of legitimacy, and Ardant- legal system and the principle of the hierarchy of rules).

All of these situations and others did not resolve the following issue: is there justice because the law exists? Or should the law exist and develop, motivated by the concern of achieving justice? i.e. Has the law preceded the idea of justice or vice versa? (Review what G. Ripert wrote in this regard on the term of justice). The raised question is strictly related to the core of the research. Through this question, another one could be raised: Is justice prevalent where legal systems exist, regardless of its philosophical dimension, and no matter what its structure, orientations and practices are? Some of the following might be one face of a reply.

3- Between the State of Law and the Rule of Law

In an elaborate study by Dimitry Kochenov on the new concept of the Rule of Law³⁸, he uses inside the European Union expressions that might be close or far to the expression of "rule of law": Etat de Droit and Recht Sstaat and others. Thus, there had to be a unified understanding of the "rule of law" expression on the level of the European Union. Since its treaties did not indicate the meaning or the trend that

³⁷ It is enough in this analytical section to mention the names without the complete references since they are detailed in Section 1.

³⁸ NEW " Definition of Democracy and the Rule of Law : Analysis of the detailed meaning of the first Copenhagen political criterion based on the documents issued by the institutions: [http://www.portedeurope.org/conferenze/doc conf 2004/Kochenov paper.doc](http://www.portedeurope.org/conferenze/doc%20conf%202004/Kochenov%20paper.doc).

should be adopted, there had to be a heading towards jurisprudence. Lord Macenzie Stuart³⁹ described the rule of law in the laws of the European Community as follows: "Those using the ruling of groups are, in turn, subject to the restrictions of the law. Hence the ruled people enjoy rights safeguarded by the law."

In the same study, it was mentioned that the rule of law has been a major pillar in the European Community law when it was established, even if not stipulated explicitly by treaties. The European Justice Community considered that "European Economic Community Treaty, even if held under the form of an international agreement, constitutes the main charter for a community based on the rule of law." (Opinion No.91/1 dates 14/12/1991).

We resorted to this perception to indicate that there is a different starting point for each of the concepts of the rule of law and the State of Law, particularly in terms of the origin. The former is radically linked to the terminology of legitimacy, legal system and the principle of the hierarchy of rules; whereas, the second is linked to the accumulation of practical experiences. However, both concepts intersect at many points, the most significant of which is the democratic garment that is worn or aspired by the modern state. The State of Law in the modern state does not become straight except by holding tight to the responsibility of rulers, independence of the judiciary and citizens' rights⁴⁰. More than that, we can say that what was called the State of Law in the context of the European Community- except for England definitely- carried within a content that enabled it to meet with the Rule of Law concept, according to the English terminology. From this perspective, one cannot speak of the Rule of Law in an undemocratic state and in a country that does not respect human rights, but one can still speak of the State of Law. Hence, western countries believe that human rights discussion with China is possible since the State of Law consolidated there might pave the way for democracy⁴¹.

Finally, if it were right to consider every state as the State of Law, is it true to consider every State of Law as a society where the Rule of Law prevails, even if it had a dictatorship trend? Undoubtedly, the answer to this question is available in some paragraphs of this paper. Doubtlessly, what gathers the State of Law and the Rule of Law concepts are those characteristics of a democratic state, underlining- in the opinion of legal intellects⁴²- the constitutional character of this state so that it becomes a "constitutional state" or the "State of the Rule of Law", not contented by the deceiving democratic appearance if democracy does not extend to the core.

Second part: Meaning of Rule of Law (from the perspectives of means, purposes and guarantees)

We commence this part by defining the a rule-of-law term proposed by Tanzanian judge Mwalusanya when deciding on a lawsuit in 1988⁴³.

³⁹ See: Lord Mackenzie Stuart, *European Communities and the Rule of Law*, London, Stevens and Sons, 1977, p.3.

⁴⁰ See: <http://www.aix-mrs.iufm.fr/formations/filieres/ecjs/productionaixprem/etatdroit.html>

⁴¹ Review what was mentioned in Part 1 of the paper on "Rule of Law in an undemocratic country". From Wikipedia, the free encyclopedia.

⁴² Greg Russel: <http://www.vob.org/arabic/lessons/lesson6.htm>.

⁴³ <http://www.leat.or.tz/publications/wildlife.corridors/rule.of.law.php>

"The Rule of Law means more than behavior that is carried out pursuant to the law. It also means the justice of the government, and it should extend to the necessity to examine the idol. Moreover, it should not give the government exaggerated powers. The Rule of Law means that the government should be subject to the law and not vice versa."

The last paragraph of the definition is absolutely clear. It brings to the mind a saying by Aristotle who said: "The Rule of Law is better than the rule of any individual." If the law ruled, then the government would be subject to it. If the individual ruled, he would rule according to his caprices and liberate himself from the rule of law.

We would like not to look into the topic from this overall perspective only to try to understand the aspired meaning- through what we proved in the first section of the paper from three angles: angle of the means, aims and guarantees. We might back the paper, when necessary, with other than the proved texts herein.

1- Perspective of Means:

The first means of the involved one is the prevalence of democracy (as a regime and general culture). The Rule of Law cannot develop except in light of democracy that means, in one of its aspects, the rule of law, and in another one, ensuring equal chances to participate in voting (Shaker al-Azzawi). If we reviewed the whole text of the Rule of Law principles, as set by the European Commission for Security and Cooperation (CSCE)⁴⁴, we would see that conducting free and democratic elections is a prerequisite for the prevalence of the rule of law.

The second means is reaching the separation of powers that includes the constitutional theoretical aspect, particularly the practical aspect, i.e. practices. We chose three brief texts that express the principle of separation of power: from the introduction of the Lebanese Constitution, Montesquieu, and the Constitution of Massachusetts. The separation of powers is not aimed at rendering every power an opposite of the other, but to establishing necessary balance among them, followed by cooperation.

As for the third means, it is the prevention of arbitrary performance in any power. If arbitrary performance tampers with each of the three powers, it particularly involves the executive power that misbehaves whenever it exaggerated in resorting to discretionary performance, to an extent that reaches the degree of arbitrary performance (Dicey, Cooray and Chapus).

The fourth means implies the choice of an adequate methodology to promote the legal rule, crystallize it and promote the chances of its growth (methodology of the Common Law and judicial precedents in the Anglo-Saxon school (Cooray), and the methodology of legislation in the Roman-German school (Vedel and Delvolve).

As for the fifth means that should be enhanced so that democracy be fruitful and the concept of the rule of law be straight is combating corruption. The European Community called for adopting anti-corruption measures in different domains, especially in Customs, municipalities, health services, police and fiscal departments and courts⁴⁵.

⁴⁴ See: Jason Leung: The Rule of Law and its Relevance to The HKSAR:

<http://www.jasononline.com/law/ruleoflaw.htm>

⁴⁵ See: C.S.C.E. – Jason Leung, Ib.

Among the means as well is the principle of the constancy of law⁴⁶ and its non-retrospective nature (Cooray), as well as the clear definition of the public prosecution powers⁴⁷.

2- Perspective of Aims

No country can consider itself as the State of Law and thus claim that the rule of law is the greater mark of its existence unless it directed its interest to achieve three-dimensional aim, where human rights fall at its center, and it surrounded by freedom on one side and equality on the other (see the example on these concepts in Section 1, especially: al-Azzawi, al-Mahmasani, AIHJA- Senegal Conference, and Universal Declaration of Human Rights). It is worth-mentioning that Jacques Cadart almost united the objective of "guaranteeing freedom" and the "Rule of Law" concept. It is also noteworthy that the French tradition sets the Universal Declaration of Human Rights at a level higher than that of all law, on top of which is the Constitution⁴⁸.

Among the aims as well is the protection of right via the just lawsuit, as this protection is indeed the dawn of a new era (Fabienne Quilleré-Majzoub) and because everyone is entitled to a fair and public hearing... (European Convention for Human Rights and Fundamental Freedoms).

It has become among the constants that the protection of minorities and the protection of the most vulnerable group in a legal society are the brightest images under the rule of law. The opposite will be, i.e. the image would be dark, if the law was aimed at protecting the strongest categories, on top of which are rulers. In this regard, UNDP-POGAR stressed the necessity to protect vulnerable groups from exploitation and arbitrary performance. In addition, the issue of minorities (their protection and acknowledgement of their special rights...) is among the most significant matters facing the State of Law and the rule of law, and even more: the New World Order.

It is agreed that legal rules are aimed at the end of the day to achieve justice and the concept of "law" would not be significant if separated from the idea of "just" (F. Geny). The idea of justice is not complete and does not reach its noblest degrees unless accompanied by the idea of equity, which is in fact an implementation of justice (F. Gorphe).

3- Perspective of Guarantees

In the rule related to the independence of the judiciary and the independence of the judge (basic rules for judiciary moralities- Lebanon): "independence of the judiciary and independence of the judge are complementary and inherent concepts to protect the principle of legitimacy and to spread justice." In other words, this means that they are inherent to establish the State of Law (Legitimacy) and to unleash the rule of law (justice). In the same regard, Russel believed that the integrity of courts is a prerequisite of "constitutionality" or the rule of law⁴⁹. The CSCE considered that the independence and neutrality of judges promoted the belonging to the concept of the modern perspective of the rule of law⁵⁰. The independence of the judiciary (power and individuals) constitutes then a necessary guarantee to enhance the rule of law.

⁴⁶ Mark Cooray , The Rule of Law, Ib

⁴⁷ C.S.C.E – Jason Leung, Ib

⁴⁸ Concept de l'Etat de Droit , Ib. (Concept of State of Law)

⁴⁹ Greg Russel, Ib

⁵⁰ See: C.S.C.E. - Jason Leung, Ib

Among the guarantees indirectly deduced, based on the sayings that were mentioned, is outweighing the mentality of an institution over the individualistic mentality, i.e. choice of the rule of institutions and not the rule of individuals.

Such guarantees include: transparency and accountability. We do not see a necessity to re-discuss them after trying to identify them and explain them in Section 1 of the paper.

Moreover, among these guarantees is the presumption of innocence that was reinforced by some instruments, such as the rule of law principles, as set by the CSCE⁵¹.

It is worth-noting that to a certain extent, it is correct to link the principle of the law's morality to the means since it paves the way for its good implementation. What would be better is to link it to the guarantees since the law built on a moral dimension might curb the deviation from its ultimate aim when it comes to implementation.

Part 3: Violation of the rule of law, confrontation of this violation

Where do we stand amidst all that we have discussed? What is the standpoint of the neutral observer who is saturated with the culture of democracy and who is a follower of how to respect human rights and aware of the Rule of Law concept? What is his standpoint vis-à-vis what is going on our legal arena: in some Arab countries, and in Lebanon in particular? Does he find the absolute answer in the hierarchal legal system that affects the political society, object of observation? Is he contented with that only? What if he was among those driven by their doubts and among those whose attachment to ideals push him to turn right and left, horizontally and vertically, to follow up on the compliance with the implementation of the rule of law, and thus to highlight the violation of this concept? Who violated the rule of law? Is it the law itself, or the administration or the judiciary? To set it more clearly: is violation committed by the legislative, executive or judicial power, each according to its own mode of violation? What if violation became a de facto? How will it be confronted? And what is the role of the judiciary (constitutional, administrative, financial and judicial...) in confrontation?

In front of these questions and before the reality that is full with many aspects of violation of the rule of law in many fields, among which are the financial, economic, health and customs, and in the domain of investigation and trial, as well as different types of elections, in addition to the levels of the judiciary, track of the lawsuit, people's rights and freedoms, and even on the level of law itself... Before all of that, we had to come out with a choice that controls the topic and highlights some phenomena of violation and how to confront them judicially. In the remaining part of the paper, we would start from some judicial decisions to reach a double reality: how the rule of law was violated on one hand and how violation was confronted on the other hand. We preferred to take the Lebanese reality as a sample, especially that the democratic parliamentary regime in Lebanon enables the ideal/reality approach.

The selection of decisions will be respectively: constitutional judiciary, administrative judiciary, financial judiciary and the juridical judiciary.

1- Constitutional Judiciary

⁵¹ C.S.C.E. - Jason Leung, Ib.

- 1- On 11/7/1996, Law No.530 was promulgated, amending some provisions of the parliamentary electoral law. As a result, a few MPs forwarded a revision aimed at annulling the new Article 2 of this law as it discriminated between electoral constituencies. It stipulated the following:

"Electoral constituencies are composed as follows:

- Constituency of Beirut governorate
- Constituency of South Lebanon and Nabatieh governorates.
- Constituency of North Lebanon governorate
- One electoral constituency in each caza of Mount-Lebanon governorate."

In its decision No. 4/96 on 7/8/1996⁵², the Constitutional Council annulled Article 2 that was requested to be annulled, considering that the challenged law adopted different standards in dividing electoral constituencies (one governorate, more than one governorate at a time, and each caza alone in one of the governorates). This contradicts the principle of equality, as not every vote of the voters has the same voting value, in addition to lack of equilibrium in political representation.

The following justification was mentioned in the law:

"As the law has adopted in new Article 2 different standards in defining electoral constituencies, causing disparities among them and discriminating the treatment between citizens, voters or candidates in rights and obligations, without the existence of an exception that could be necessitated or justified by urgent circumstances, rendering this law contradictory to the principle of equality stipulated by Article 7 of the Constitution and confirmed by its introduction."

We would like to note this decision was criticized by some jurisprudents⁵³, as it guided the legislative power to the possibility of violating the principle of equality, provided that it be mentioned that this was done as an exception of general rules and due to circumstantial reasons relevant to the higher interest." The result was the promulgation of Law No.587 on 12/8/1996 that included "serious constitutional infringements and violations."

- 2- On 24/7/1997, Law No.654 was promulgated, extending the term of municipal councils and committees acting as municipal councils.

Some MPs challenged this law, so it was annulled by the Constitutional Council by virtue of its decision No. 1/97 on 12/9/1997⁵⁴ as the extension hindered a constitutional principle, i.e. principle of the periodicity of elections, banning thus the voter from exercising the right to vote, which contradicts Article 7 of the Constitution, and hindering the local communities' right to manager their own affairs freely, in implementation of the democratic concept, stipulated by the Constitution's introduction."

- 3- On 27/10/1999, Law No.140 (Phone-Tapping Law) was promulgated. Some MPs challenged some of its articles, among which is Article 15 that forbids the interception of phone calls of presidents, ministers, and MPs, whether this interception is in accordance with a judicial decision or an administrative decision.

⁵² Constitutional Council: 1994-1997 decisions, p.94

⁵³ Review: Constitutional Council in Lebanon, Khalil Hindi and Antoine Nashef, Modern Book Institution, Tripoli 1998, article by Youssef Saadallah Khoury, entitled: Lebanese Constitutional Council...where to? p.119.

⁵⁴ Constitutional Council, 1997-2000 Decisions, p.375

The Constitutional Council annulled, via its decision No.2/99 on 24/11/1999⁵⁵, article 15 of the challenged law for violating the principle of equality among citizens.

The decision included:

"As distinguishing the Speaker, the Prime Minister, MPs and Ministers from the remaining citizens regarding the Phone Tapping Law conducted on a judicial decision that is not justified by a public interest necessitating this distinguishing or by a constitutional text enabling it."

2- Administrative Judiciary

- 1- On 16/1/1996, the Interior Minister issued a notice that was published in the official gazette on 18/1/1996, binding associations to certain regulatory procedures, or else the notice will be withdrawn from every association that does not respect the content of this notice.

On 18/3/1996, the Association for the Defense of Rights and Freedoms Facing the State filed an annulment request before the Shura Council, demanding the invalidation of the challenged notice as it violates the International Covenant on Civil and Political Rights, the Constitution, Associations Law and the principle of the hierarchy of legitimacy sources.

On 18/11/2003, the Shura Council⁵⁶ (First Chamber) issued a decision to annul the challenged notice since it violates a fundamental freedom, which is the freedom to associate. The decision included:

"Since the freedom of association is among the fundamental freedoms that the Lebanese Constitution guaranteed and set within the circle of law in Article 12, and thus, no restrictions shall be imposed on their establishment; they shall not be dissolved except with a legal texts; and they shall not be subjected to any prior intervention by the administration or by the judiciary in terms of the validity of their composition...

And since the administration's authority in withdrawing the notice from licensed association is restricted by certain procedures and measures and is limited to proof of the association's deviation from the aims it was established for and from its legitimate objectives,

Since the challenged notice is based on new reasons that are not mentioned in the associations law to withdraw the notice, especially in terms of holding elections at the association and announcing the results, which only concern the individual rights and public freedoms guaranteed by the Constitution and positive laws in force..."

- 2- Lieutenant Colonel Hammam Asaad approached the State- Ministry of Defense to request the partial annulment of decree No.11853 dated 29/12/1997, due to his non-promotion to the rank of a Colonel just like his colleagues. On 10/4/2003, the Shura Council (Fifth Chamber) issued decision No.426⁵⁷ that responded to the applicant's request, considering that discretionary power cannot be an excuse to practice arbitrary or dominative power.

The decision included:

⁵⁵ Constitutional Council, 1997-2000 Decisions, p.410.

⁵⁶ Unpublished

⁵⁷ Unpublished

"Since the administration banned the applicant from promotion for consecutive years without submitting a reason that justifies that or that justifies his exclusion alone among his colleagues who share with him the same legal status, which is considered more as an arbitrary power than a discretionary power."

- 3- On 19/2/1999, Engineer Saad Khaled, former Urban Planning director-general, submitted a revision requesting the annulment of decree No.70 dated on 13/1/1999 which exempted him from his job and set him at the disposal of the Prime Minister.

On 23/10/2001, the Shura Council (Fifth Chamber) issued decision No.66⁵⁸ that responded to the applicant's request since the measure taken against him is apparently administrative, but it hides masked punishment before which he could not practice the right of defense.

The decision included:

"Since the challenged decree is an administrative measure that carries within a masked disciplinary sanction, then the procedures, rules and guarantees related to disciplinary measures should be implemented, particularly the right of defense."

- 4- On 23/1/1997, the Information Minister issued Decision No.20/97 that states the imposition of prior censorship on news bulletins and live and indirect political material and programs that are set for satellite broadcast.

Lebanese Broadcasting Corporation International SAL challenged this decision. The Shura Council (First Chamber) issued decision No.438 dated 19/4/2001⁵⁹ that provided for the annulment of the Information Minister's decision since it violates the principle of freedom of opinion, which the freedom of media is a face of.

The decision included:

"Since the principle is the freedom of opinion, and every restriction to practice this freedom should be done by virtue of a legislative text that entitles it..."

3- Financial Judiciary

A case was laid before the Court of Audit regarding to what extent the minister (Public Works Minister) is entitled to take part in a commercial company. It issued on 10/7/1995 decision No.1995⁶⁰ which considered the minister as a civil servant in everything that does not conflict with his constitutional quality, which prevents him from benefiting from the transactions carried out by public administration. The Court of Audit did not approve of the proposed project for this reason.

4- Juridical Judiciary

- Upon a phone-call incoming from the News Ministry (Ministry of Information), "Majdalyoun" play was forbidden from showing via the Internal Security Force since it did not obtain a prior authorization that allows the play's showing.

⁵⁸ Unpublished

⁵⁹ Administrative Judiciary Magazine, Issue #16, Vol.2, p.619.

⁶⁰ Financial Judiciary Magazine, Issue #2, p.104.

On 5/5/1971, Beirut First Instance Court- Third Chamber issued decision No.258⁶¹ that considered what the administration did as an infringement since it affected one of the individual freedoms and violated the law blatantly.

The decision included:

"As the freedom to act political plays fall under the freedom of opinion, and thus under the public freedoms guaranteed by virtue of the Lebanese Constitution..."

At the end of this part, we notice that the selected decisions simultaneously indicated the violation of the rule of law and how the judiciary confronted this violation.

We also notice that it confronted different topics, such as elections, illegal privileges given to some categories in society, freedoms, establishment of associations, civil servants' rights, and transparency when conducting public transactions, and others. These decisions reinforced principles that reflect concepts of democracy, the State of Law and the Rule of Law, among which are: Principle of equality, Principle of Elections Periodicity, freedom of association, opinion and information, rejection of administration's arbitrary power, right of defense, principle of transparency and others.

We do not have the space to prove more aspects of violation and more decisions that confronted it.

In any case, we do not fear to say that the judiciary- the judiciary as well- might have violated the rule of law in other decisions.

⁶¹ Court records

Conclusion

Is this everything that could be said about the "Rule of Law"? Can an article carry between its lines the aspects of an issue that comes on top of the issues that is confronted directly or indirectly in this era, during which talk about democracy, the State of Law, justice, reform, anti-corruption, transparency, accountability, good governance and human rights? Is there an order- world order- nowadays that claims to monopolize this trend and monitor the entire humanity to see if political societies that differ in their structures, beliefs and practices come close or get far from the concept of the Rule of Law? What is the extent of subjectivity and objectivity, as well as the extent of accidental circumstantiality and consolidated constants in this concept? Can we separate it from its historical roots and consider it as the newly-born of the modern state only? Is it right to ignore mature experiences and pioneer eras carried by the Arab and Islamic heritage, an example of which is the pledge written by Imam Ali to "Ashteralinkhaie" and himself regarding Egypt⁶², in which he said: "Good fellows are known through what Allah (God) does to them via his worshippers". He also said that a ruler should be fair to God and people from himself, and the best pleasure for rulers is the reign of justice across the country and the emergence of the people's love." And a ruler should not give himself more than he gives people due to equality of rights: "Beware to take hold of what people equally share." Can all of this be ignored? To what extent will the same concept outdo other concepts that prioritize the interest of a society over the interest of an individual, and the necessities of the regime over the necessities of freedom? What is our share in Lebanon and the Arab World, and what is the share of all the countries that do not adopt in their constitutions, laws and general heritage the method of Western liberal countries regarding the mechanism of the rule of law? More than that: do those western liberal countries that call for the implementation of the rule of law and for good governance abide by what they call for, and by all of what they call for at least?

We raised some questions throughout the paper, and here we are ending with other questions that are pouring like rain. We conclude by saying that what we did is merely an attempt even if it moved the topic to the spot light.

⁶² Book of "Nahj al-Balagha" (Method of Rhetoric), publications of A'ala Establishment for Printing, Beirut, p.82.