

On the Inevitability of Divided Government

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I. Introduction

- A. There are positive and normative approaches to thinking about divided government.
- B. The two approaches are sometimes joined to create rationale and justification for particular architectures and procedures of governance (Buchanan and Tullock 1962).
- C. Government institutions may be designed or modified with their normative properties as main objectives. It is arguable, for example, that the modern assignment of legislative, executive, and judicial authority owes much to the normative theory of the separation of powers worked out in the seventeenth and eighteenth centuries.*

* See Vile (1967) for an excellent intellectual history of normative theories of divided authority from the sixteenth century through the post-World War II period.

D. In this paper, I suggest that divided government is inevitable, although not a separation of powers.

- This is partly because it is not functionally possible for a single individual to enact and enforce a complex body of law over a large territory in which a large number of individuals live.
- It is also because the advantages of shifting authority away from a unified government are so great that no sensible person or small group would hold on to all authority.
- Constitutional gains to exchange will exist from time to time, and those gains will induce shifts in the assignment of authority that tend to favor divided over unitary distributions of authority.
- Constitutional exchange tends to favor shared over pure divisions of authority.

E. The first half of the paper discusses why constitutional gains to trade exist and why this implies that authority over public policy tends to be divided. It also provides a brief analysis of how “political property rights” are initially assigned.

F. The second half of the paper uses data on contemporary constitutions to determine if the main predictions of the first half are consistent with the observed division of authority of contemporary governments.

- The ultimate question about government, as it turns out, is not whether it should be divided or not but how it will be divided and whether some divisions of authority advance general interests better than others.

II. Divided Government, the Market for Power, and Constitutional Reform

A. There are **several possible definitions** of divided government.

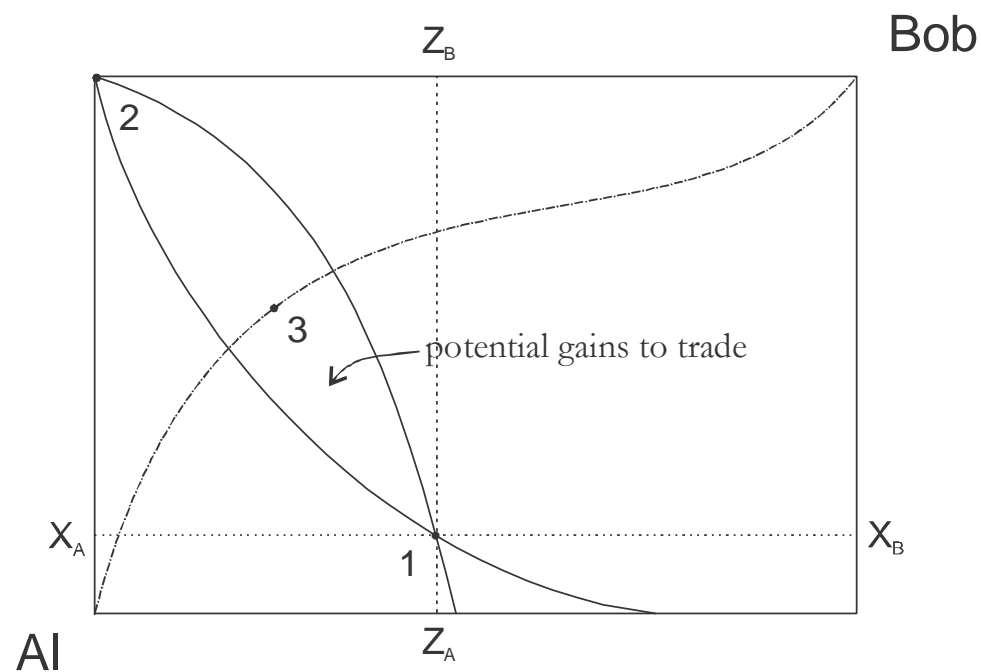
- Perhaps the most general is that a government **may be said to be divided if more than one person has influence over policy decisions.**
- In relatively large organizations, there **may be several more or less independent groups of persons that share policy making authority.**
- For example, adopting policies may require unanimous recommendations among the various “organs of government,” who may themselves rely upon majority rule. In such cases the individual “branches” of government each have veto power, although no single member of the branches necessarily has veto power.
- Such governments may be said to have a “**architectural division of authority**” for making policy decisions insofar as more or less specific authorities are assigned to several groups of person, who jointly make decisions.
- In other cases, authority may be divided by granting particular parts of government complete authority over particular policy areas or sub-categories of policy, as with the ability to declare war, adopt taxes, or determine the regulations under which others operate.

B. In a divided government, “the government” is *a process* for choosing and implementing policy. It is not a unique decision maker or, in large organizations, a single decision-making body.

III. A Digression: On the Exchange of Authority

- A. When most economists teach their students about gains to trade in an intermediate microeconomics or advanced principles of economics class, they often sketch an Edgeworth box on “the board” similar to that of figure 1.
- Edgeworth’s clever geometry shows why potential gains from trade may exist and that they may be realized in a variety of ways using conventional indifference curves for two persons.

Figure 1: Trading Authority over X and Y



A. For the present essay, it is important to note that **what is traded is not actually goods, but authority** over goods.

- If Alice simply took goods from Bob and gave him some of her own, this would not be an exchange unless Bob agreed to shift his authority over his goods to Alice.
- If he did not, he could veto such transfers, even if such a transfer made him better off, and both civil law and the courts would support his veto even in such cases.
- Trade occurs only when all parties consent to a particular shift authority over goods from themselves to other persons.

B. Without a voluntary transfer of authority, trade does not takes place, although theft may.

- Trade itself is a process in which all parties share agenda and veto power.

C. What the points inside an Edgeworth box characterize is **distributions of authority over a predetermined quantity of two goods**.

- This implies that the usual way of labeling the diagram is a bit misleading. The horizontal and vertical axes are normally said to represent quantities of goods (and/or services).
- What is actually characterized is the *distribution of authority* over existing goods and services in the economy of interest (e.g., the distribution of ownership or property rights).

IV. Trading Authority to Make Policy

A. Seen in this light, it should now be obvious that every market exchange is an exchange of authority (control) over real goods and services.

- It should also be clear that the process of exchange is one in which both participants can affect the outcome.
- The trading relationship is an example of a very simple and often temporary “organization” with a divided government.
- Each trader has veto and agenda setting power, and each can therefore affect the outcome.
- Indeed, the act of exchange may be said to require the existence of a “divided government,” although this is not true for acts of taking or theft.

B. One might ask what the above analysis of exchange has to do with the topic of this conference, namely divided governance as applied to politics?

- First, organizations—even temporary organizations such as those involving two traders—very often exhibit divided authority.
- Second, authority per se is very often transferable.
- Third, transfers of authority can be voluntarily undertaken, whenever a subset of such transfers can make the parties involved better off.

C. Together **these three imply the fourth, there can be and are markets for power (authority).**

- Power may grow out of the barrel of a gun, as claimed by Mao Zedong, but once possessed, gains to trade occasionally exist and can be realized through entirely voluntary shifts of authority from one person or center of authority to another.
- Indeed, essentially all retail, wholesale, and futures markets are settings in which authority over goods is traded among participants.

D. The use of Edgeworth boxes to analyze markets for political authority “simply” requires reinterpreting the axes.*

- The horizontal axis might, for example, be reinterpreted as the degree of budget authority over education and the vertical axis as the degree of budget authority over highway construction. Insofar as the indifference curves capture essential aspects of the goals of each decisionmaker—now pivotal government policymakers—the logic of the Edgeworth box is unaffected.
- There **may be gains to trade in policymaking authority** between Alice and Bob, just as there were gains to trade in authority over goods in the standard Edgeworth box.

E. Note that such gains to trade do not require an initial “mixed state” in which all authority is initially shared by officeholders or policymaking bodies. (See endowment 2 in the box.)

* Congleton (2011a: chs. 5–6) provides a more technical development over bargaining over veto and agenda control in a setting of exogenous shocks. That more mathematical analysis should be consulted by persons who are skeptical of the Edgeworth box representation of constitutional exchange. That analysis shows how changes in circumstances may change policies and interests in bargaining over policy-making authority.

F. Such constitutional exchanges are common in all organizations with standing governments, and the results tend to be divided governments.

- Markets for control over firms are familiar to economists. An owner's influence over a corporation's future policy decisions (products, production process, distribution network, and employee compensation schemes) increases as he, she, or they purchase additional shares in a company from other shareholders.
- When there are large numbers of shareholders, even a modest increase in shares can significantly increase one's influence over policies.
- Similarly, it bears noting that entrepreneurs often decide to "go public," which involves shifting authority from the original owner(s) to others in return for capital or other goods and services. Such trades of authority resemble those that begin at the endowment labeled 2 in figure 1.

G. Only along the contract curve are the preexisting divisions of authority stable.

- However, contract curves may shift because of changes in ideological, technological, health, and other policy-relevant circumstances, officeholders will have reasons to shift authority about in pursuit of the new gains from trade.

H. This may be regarded as a problem for constitutional designers, insofar as they wish to develop stable rules for adopting public policies.

- A government that initially had a complete separation of powers, would be unlikely to retain such a sharp division in the long run, because gains to constitutional exchange would emerge.
- With such problems in mind, constitutional designers may adopt formal amendment procedures that allow some kinds of constitutional exchanges to take place more easily than others.
- They may also adopt a constitutional court to reduce possibilities for informal shifts of authority.

I. That gains to trade exist away from the contract curve is less problematic for positive than normative constitutional theory, because in the process of realizing those gains has clear implications.

- Constitutional exchange tends to benefit the parties with sufficient authority to modify standing core procedures, and tends to produce stable outcomes as assignments of authority reach the relevant contract curve.
- Once reached, the result is a temporarily stable distribution of authority.

V. On the Initial Assignment of Authority and Architecture of Governance

A. We now turn to the **initial assignment** of authority, which has to this point been outside to the analysis.

- Again the analysis is positive, although the initial assignment may reflect the constitutional norms of those creating new organizations or subjecting them to major reforms.

B. When a new organization is created, policymaking authority is created out of **thin air**.

- All formal organizations have a beginning, at which point the procedures for policy-making authority are created by the organization's formateur(s).
- The organization's government is characterized by its initial distribution of authority among policy makers: procedures for policy making, rules for replacing or adding members to the governance team, and, at least implicitly, how shifts of authority take place within the organization.

C. **This is not to say** that each organization's architecture and assignment of authority is also created out of thin air.

- Most organizations draw their governments from well-known, well-functioning templates familiar to their formateur(s).
- These include more or less conventional architectures and divisions of authority, as between a CEO and his board of directors, a king and his council of advisors, a prime minister and parliament, president and congress, or a pope and his council of cardinals.

D. The **templates available reflect the past successes** (and implicitly failures) of many generations of previous formeteurs and their organizations.

- Only organizations that survive and flourish are likely to attract the attention of new formeteurs. Insofar as some templates for governance advance formeteur interests better than others, it is these templates that form the menu of alternative governments that new formeteurs choose from.
- Evolution tends to favor effective organizations over ineffective ones.
- Although the original governmental design is unlikely to be permanent for reasons discussed above, the original constitutional design has significant effects on the distribution of authority that emerges from intra-organizational bargaining through its specification of the architecture of government, the initial allocation of authority, and the formal amendment process.
- (The Coase theorem does not apply to constitutional bargaining.)

E. Among the **most common architectures** for sharing authority in large formal organizations are ones drawn from the **king-and-council template**, a general governance structure in which a “king” (chief executive, president, prime minister, etc.) shares policy-making authority with a “council” (junta, board of directors, parliament, congress, etc.).

- Authority can be divided in a large number of ways, and both kings and councils can be selected in a number of ways, creating a continuum of both authority and government types.
- Other configurations are also possible, but this is an amazingly common structure.

- In large organizations and composite ones, authority can also be delegated to “lower” levels of government, which themselves may have divided king-and-council structures.
- Conversely, in cases in which several organizations band together to form a larger one, new “higher levels” of government may be created, and these are also likely to be divided and based on the king-and-council template, as in the present-day European Union.

F. The king-and-council template for divided governance can be used by a variety of formateurs to advance a variety of objectives.

- The template solves a variety of practical informational, incentive, and successional problems (Congleton 2001, 2011a).
- It also is easily adjusted at the margin which allows it to fine-tuned to cope with new circumstances.

G. The **same template can be used to advance both dictatorial and democratic goals**, although the manner of selecting officeholders and the division of authority among them differ in normatively relevant ways.

- For example, a king-and-council-based government whose members are chosen through competitive elections are likely to have interests that are better aligned with those of the average citizen than ones whose members obtain positions of authority through executive appointment or family bloodlines.
- Elections tend to “force” rivals for office to pay attention to citizen-voters in a manner that executive appointment and heredity do not.
- Thus, constitutions drafted to advance general interests (or reformed to advance such interests) tend toward election-based parliamentary systems, rather than royal systems with appointed parliaments.

- In contrast, when a government is formed by a dictator or junta following a military coup, the use of appointed positions in parliament provides a useful method for realizing many of the benefits of a king-and-council system, while aligning the interests of at least a subset of members of parliament with that of the dictator or junta.
- The executive (dictator or junta) may wish to further align those interests by retaining authority to remove disagreeable “legislators” from their parliaments.

H. In both cases, subsequent bargaining can lead to shifts favoring either parliament or the executive according to the external shocks experienced, the amendment process, and the initial design.*

- If the Edgeworth box is a plausible representation of opportunities for Constitutional exchange, the **mid-range of authority assignments are more likely to be observed**, particularly in long standing organizations, than the extremes of complete parliamentary or royal (executive) dominance.

* Congleton (2011a) provides a good deal of evidence that Western democracy emerged from such bargaining.

VI. Beyond the King and Council

A. Value Added by a Written Constitution

- In ordinary exchange, it is usually known who has authority over what and the extent to which authority can or cannot be transferred.
- This is often a matter of custom and routine rather than formal deeds and contracts.
- However, there is value added by written contracts and formal deeds: they reduce conflict and risks and thereby, increase property values
- A similar argument holds for written constitutions: by characterizing constitutional architecture, procedures for selecting high office holders, and their general authorities, they reduce intra-organizational conflict, make political outcomes more predictable, and there by tend to enhance prosperity.
- Since the latter is of interest to both Dictators and Democrats, written constitutions will tend to be adopted by both strong-men and community-based systems of government.

B. Controlling the State through Judicial Review

- Civil law courts (which lack constitutional review powers) tend to have similar advantages for both dictators and democracies.
- By increasing certainty in contracts and property, economic growth is more rapid, which tends to increase resident welfare and tax revenues in the long run.

- A similar role potentially exists for court systems that enforce political property rights and contracts, e.g., constitutional courts.
- A constitutional court can increase certainty by enforcing constitutional assignments of authority and restrictions on both shifts of authority and the domain of governance.
- A well-constructed court assures that policy makers abide by constitutional procedures and constraints.
- This tends to reduce intragovernmental conflict and other risks by clarifying the distribution of authority among officeholders, procedures for selecting officeholders, and the subsequent policy-making process, insofar as clear violations are routinely overturned through constitutional review.

C. Decentralization:

- Some degree of decentralization is necessary, because it is physically impossible for a single ruler or parliamentary system to police all laws or implement all policies throughout a large territory.
- Again the goals of the formateurs and the circumstances of a state's founding will influence the initial distribution of authority.
- For example, a rent-extracting authoritarian central state will delegate authority to regional governments only in areas in which doing so is likely to increase the rents that can be extracted. Such governments are not indifferent to their citizens welfare (Congleton and Lee 2009), but are only concerned with rules that directly or indirectly increase the extent to which tax and other revenues can be extracted from its citizenry.
- Contrariwise, the delegation of authority to a central government by preexisting local or state governments will be limited to areas in which there are clear advantages from centralization.

- **As in other areas of constitutional design, it is possible that normative theories may influence the initial distribution of authority between central and regional governments.**
- **However, the assignment of authority between central and local governments is not static. Bargaining in most federal systems is nearly continual and authority shifts among levels of government at the margin essentially every year.**

VII. Some Empirical Evidence on the Nature of Divided Government

A. The [above discussion implies](#) that how the authority to make rules is organized reflects

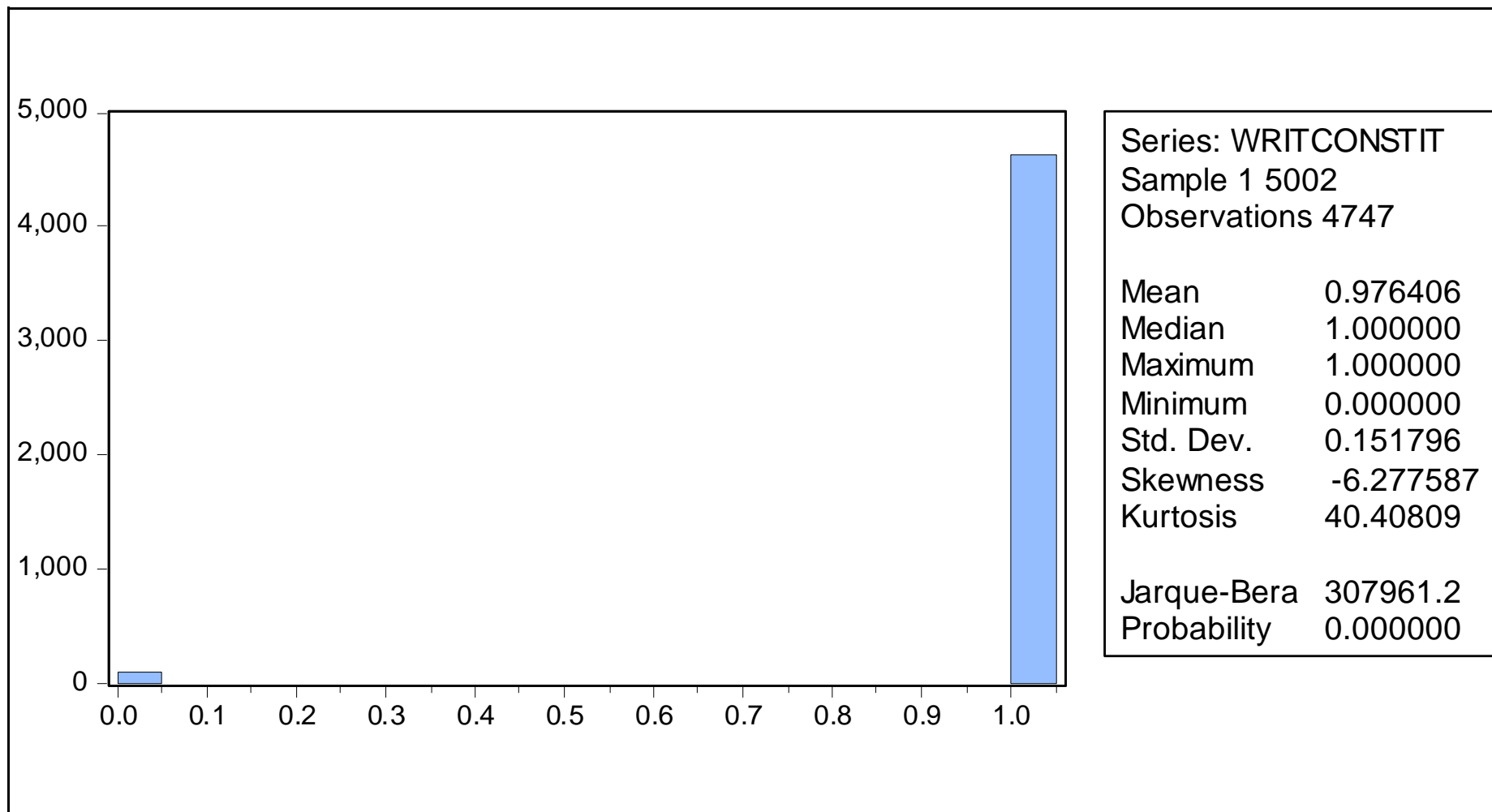
- (1) the goals of those forming the government,
- (2) the available templates when a government is first formed, and
- (3) subsequent bargaining that takes place after a government is created.

B. As a consequence,

- (1) most constitutions will be written to reduce political uncertainties and reduce intra-organizational conflict,
- (2) essentially all governments will be divided,
- (3) a structure based on the king-and-council template will often be used,
- (4) in such cases, policymaking authority is normally shared between the executive and parliament,
- (5) decentralization will be present in most cases,
- and (6) constitutional courts will often be created to bind government to constitutional procedures and restrictions—especially in cases in which a government emerges from a formal constitutional convention or is reformed in light of electoral pressures.

- C. Binghamton University's Institutions and Elections Project (IAEP) produced a data set that allows the above predictions to be checked.
- Their project digitized constitutional documents and other data from about 150 countries (all those with populations greater than 500,000) for a 34-year period (1972 to 2005).
 - The IAEP data base includes binary (yes/no) tabulations of whether a country has a formal written constitution or not, its main architectural features, and many aspects of its policy-making process. These can be used to characterize the structure of governance and distribution of authority within that architecture.
 - The data are not complete, and digitizing institutional data is a nontrivial task, so the results tend to be coarse.
 - Thus, the fine-grained bargaining that generates a nation's institutions cannot be directly examined with the IAEP dataset. Its various constitutional measures tend to be bimodal rather than continuous.
 - Nonetheless, the **main implications** of the above theory of constitutional design, reform, and evolution **can be assessed**.
- D. The frequency distributions of answer-classifications to several features of contemporary constitutions are sufficient to shed some light on several of the main implications of the above analysis.

Figure 2: Frequency Distribution of Written Constitutions (country-years)



King-and-council. Every country in the IAEP dataset has a chief executive (president, prime minister, or dictator), so there are no separate observations on that characteristic. The dataset does include a variable that measures whether a country has a legislature (parliament), given that it has a chief executive.

Figure 3: Frequency Distribution of Legislatures (country-years)

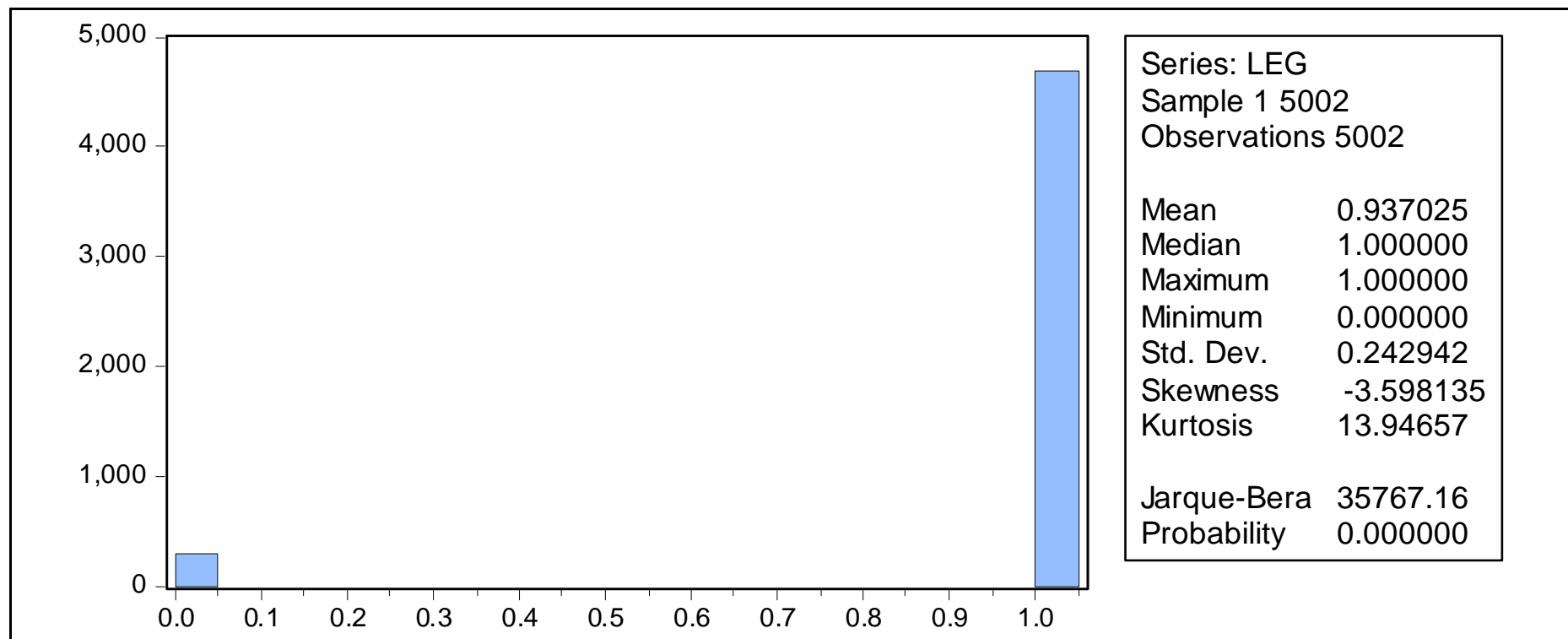
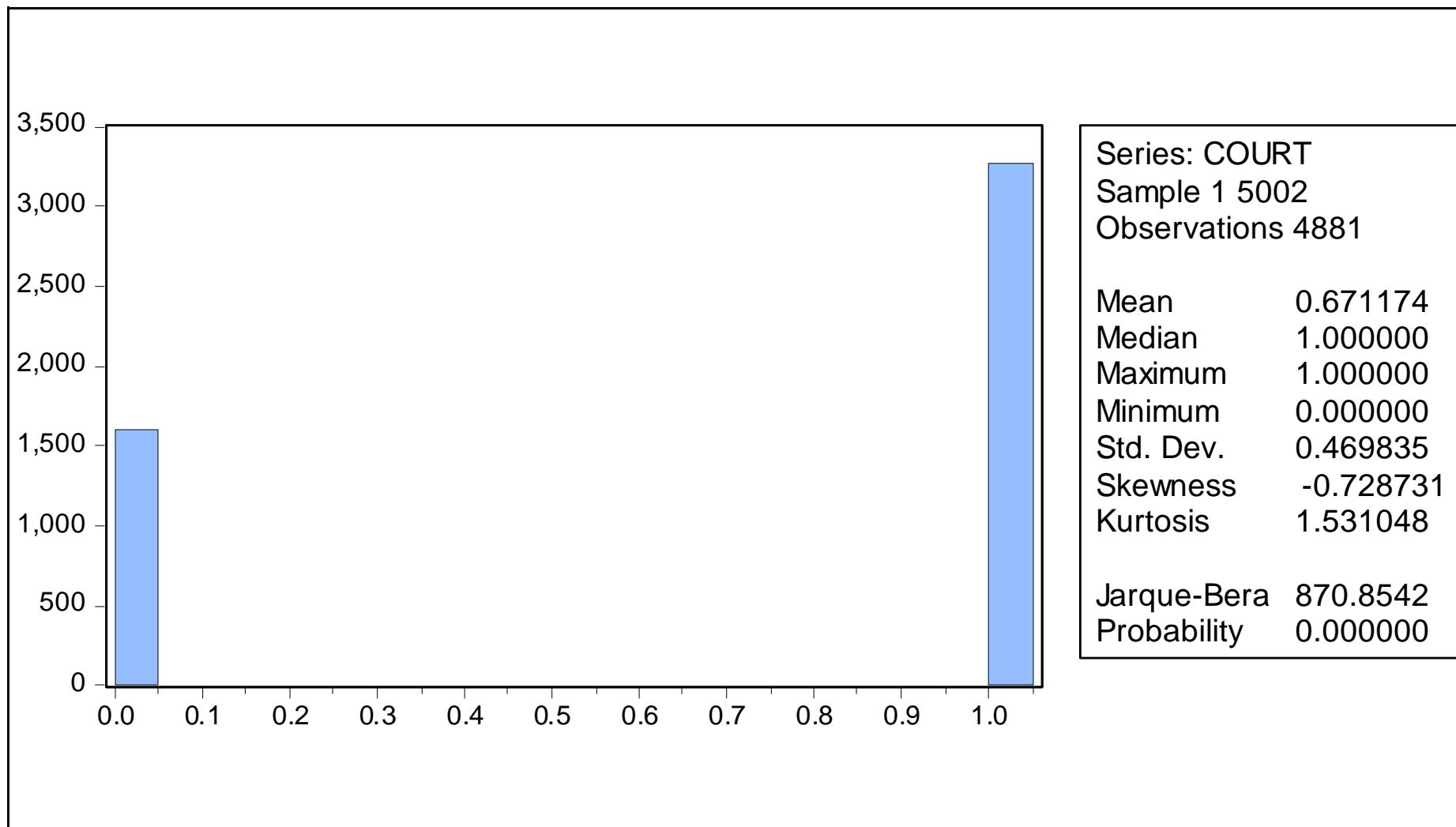
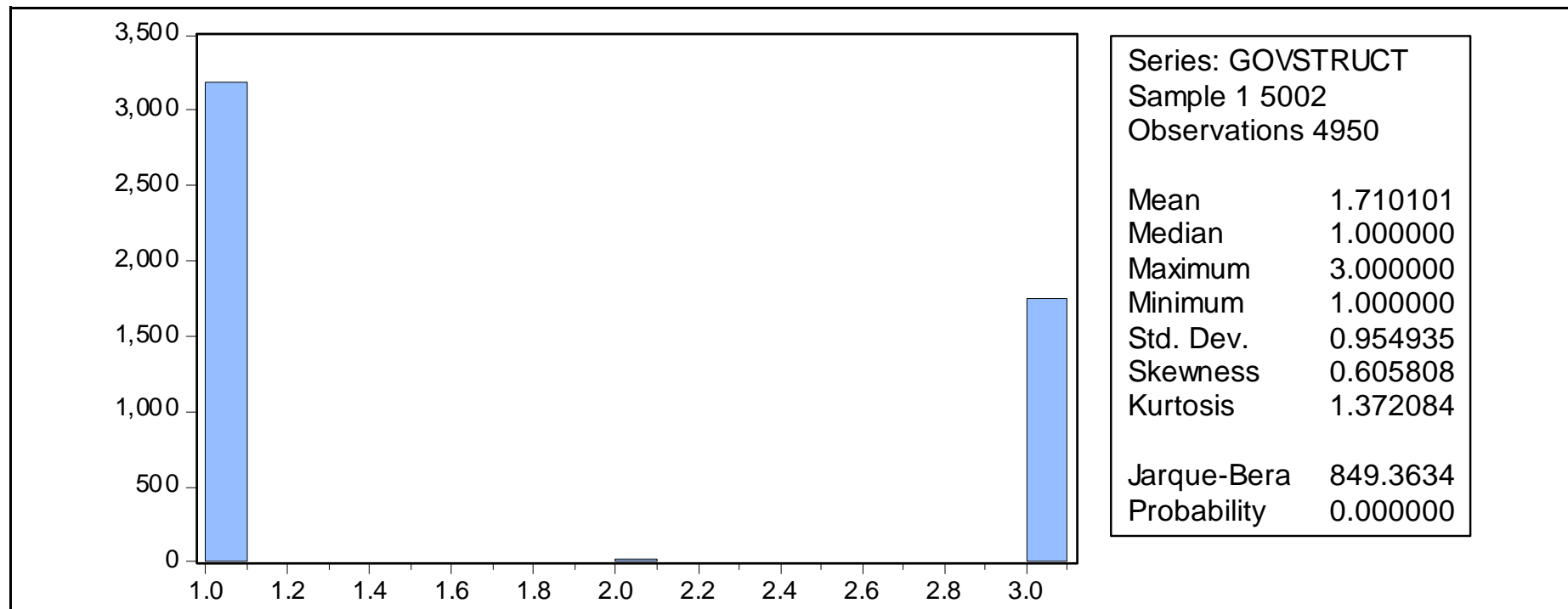


Figure 4: Frequency of Constitutional Courts



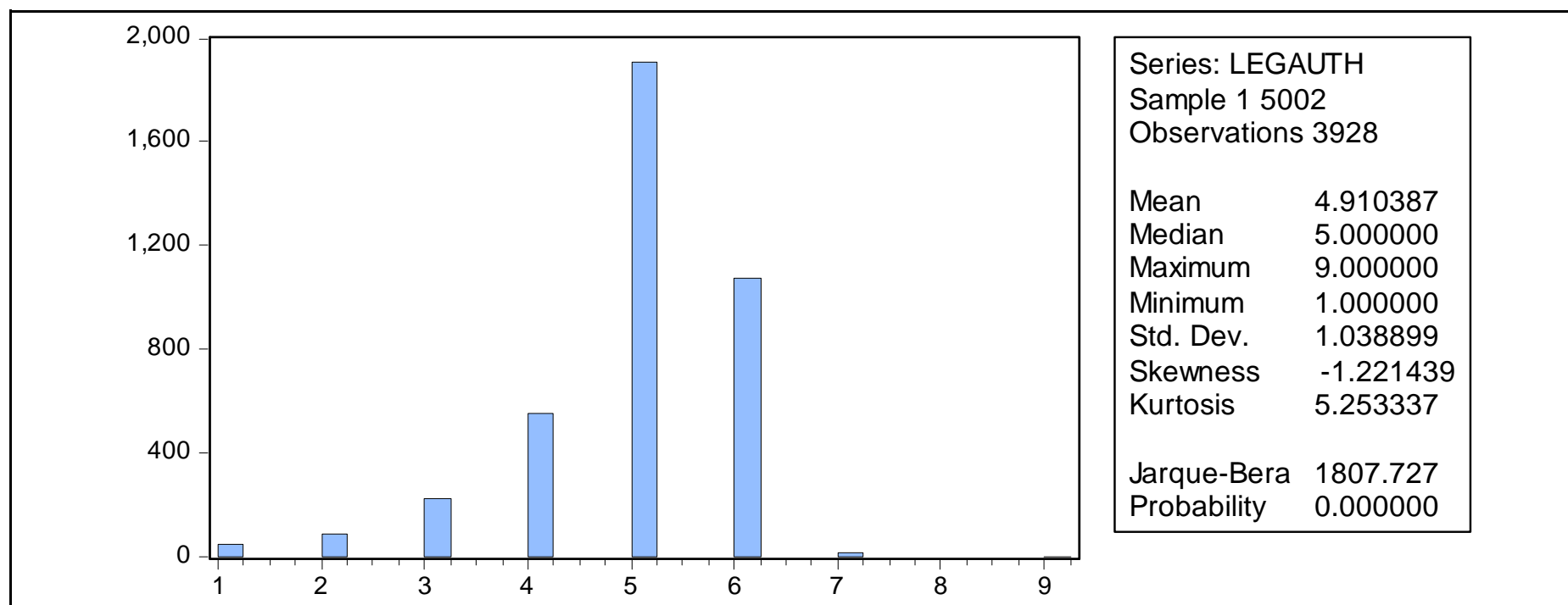
Federalism. Federalism in its constitutional sense normally requires explicit mention of subnational governments (provinces, states, lander, etc.) and often includes a federal chamber in the parliament. This constitutional definition is more restrictive than the one that economists use when analyzing decentralization (fiscal federalism), which focuses on the autonomy of state and local governments at taxation, expenditures, and regulation, rather than constitutional architecture (Ahmad and Brosio, 2008).

Figure 5: Frequency of Unitary and Federal Systems



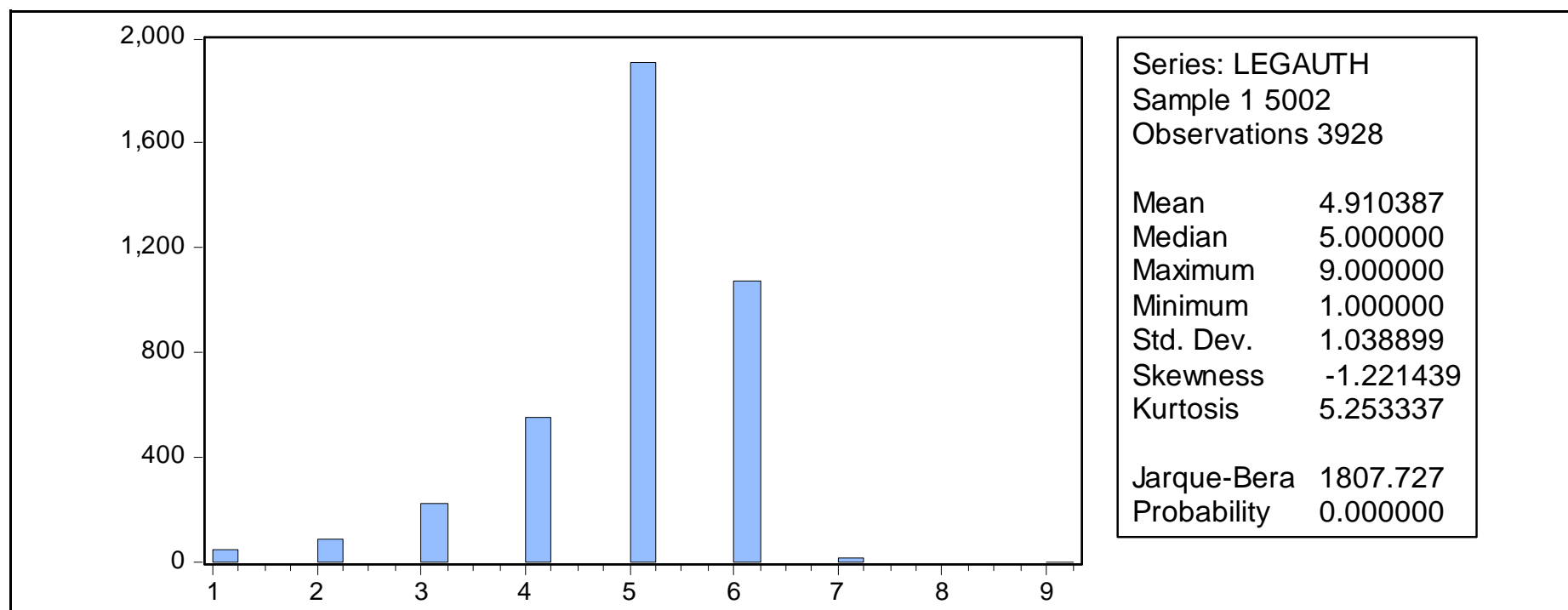
Division of Authority. That most governments have written constitutions, use the king-and-council template and have constitutional courts is consistent with the above analysis. However, more central to this paper is the division of authority. Indices of legislative and executive authority were computed as follows: Legislative authority is the sum of *leg* (is there a legislature?), *execbudget* (can the legislature veto an executive budget proposal?), *legveto* (can the legislature veto legislative proposals?), *removeexec* (can the legislature remove the executive from office?), and *legcham* (number of legislative chambers). Figure 6 shows that legislative authority varies widely but most legislatures have significant authority. The mode of this distribution is 5, rather than 1.

Figure 6: Frequency Distribution of Legislative Authority



An **index of executive authority** is constructed in a similar way. It is the sum of *execveto* (can the executive veto laws passed by the legislature?), *exectax* (can the executive enact a tax without consulting the legislature?), *removeleg* (can the executive remove legislators?), *upexec* (can the executive appoint members of the upper chamber?), *ratexec* (does the executive have veto authority over constitutional amendments?), *execforce* (can the executive dispatch the military without consulting the legislature?), and *propexec* (does the executive have constitutional authority to propose legislation?). Figure 8 depicts the results, which show that most chief executives have significant but not all-inclusive authority over public policy: the mode is again 5, rather than 9.

Table 8: Frequency Distribution of Executive Authority



E. More on the Division of Government Authority, Some OLS Estimates

- If the distribution of authority reflects constitutional exchange, there should be a negative relationship between executive and legislative authority, but not a one-to-one relationship. This predicted relationship can be explored by regressing executive authority against legislative authority.

Table 1: Executive Authority Index Estimates as Functions of Legislative Authority and other Constitutional Variables (1972–2005)

Constant	4.02 (36.64)***	3.92 (33.96)***	5.88 (25.75)***	5.427 (24.52)***	5.56 (25.15)***
Written Constitution			-2.06 (-9.87)***	2.041 (-10.20)***	-2.12 (-10.64)***
Legislative Authority	-0.102 (-4.722)***	-0.088 (-3.96)***	-0.073 (-3.31)***	-0.056 (-2.62)**	-0.009 (-0.40)
Dictator		0.145 (2.48)**	0.179 (3.09)***	0.039 (0.69)	0.038 (0.69)
Amendments, Proposed by Executive				0.677 (16.90)***	0.706 (17.60)***
Amendments Proposed by Legislature					-0.358 (-6.27)***
Number of Observations	5,002	5,002	5,002	5,002	5,002
R-Square	0.006	0.008	0.04	0.11	0.11
F-Statistic	22.306***	14.254***	42.289***	105.75***	93.33***

** Significant at the 0.01 significance level, ***significant at the 0.001 significance level. All data taken or calculated from the IAEP database of country institutions.

- The coefficient estimates are stable across estimates and the regressions all have a statistically significant fit (at the 0.001 level).
- All the coefficients have the predicted signs and most are statistically different from zero at very high levels of significance.
- As predicted, the results indicate that executive authority falls somewhat as legislative authority increases but less than one-for-one, indicating that power is often shared rather than fully assigned to the executive or parliament. The market for power is not a zero-sum game.
- The results also suggest that written constitutions tend to reduce executive authority, other things being equal.
- Executive amendment authority under what the IAEP team **codes as dictatorship** (an observational, rather than constitutional variable) tends to increase formal executive authority.
- Consistent with the constitutional exchange hypothesis, the amendment process plays a significant role in determining executive authority.
- When the legislature has veto power over amendments, the executive tends to be weaker, other things being equal.
- When the executive has veto power over amendments, the executive tends to be more powerful, other things being equal. Constitutional bargaining matters.

VIII. Summary and Conclusions

- A. In a constitutional government, the constitution (whether a single document or several) describes how policies are made, how policymakers are selected, and how they participate in the rulemaking process (agenda control, veto power, jurisdiction, etc.).**
- Most modern nations have written constitutions, because a formal characterization of rule-making procedures has essentially the same advantages as a written legal code: it can increase certainty, improve coordination, and reduce unproductive conflict.
 - Written constitutions also tends to encourage economic development somewhat by reducing policy uncertainty somewhat, which also has advantages for dictators and democrats.
- B. The government specified in those written documents is often based on the king-and-council template, augmented by constitutional courts.**
- The initial distribution of authority within that template varies with the founders of the government of interest, with coercive and contract-based governments having quite different divisions of authority.
 - In the long run, the initial distribution of authority changes as exogenous political, cultural, and economic shocks produce gains from constitutional trade among the persons elected to high office.
 - This favors relatively evenly divided authority within the king and council template.
- C. The empirical evidence developed in the second half of this paper is consistent with this constitutional exchange and survivorship perspective.**