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GOOD GOVERNANCE: THE TWO MEANINGS OF "RULE OF LAW"

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ABSTRACT

Rule of law principles offer mechanisms that restrain behaviour in politics. One may distinguish between rule of law in a narrow sense – RULE OF LAW I – and in a broad sense – RULE OF LAW II. Some countries practice only rule of law I, whereas other countries harbour both mechanisms. Rule of Law II is tapped by voice and accountability, whereas Rule of Law I is tapped by legality and judicial autonomy in the World Bank Governance Project data. The paper shows how rule of law I and rule of law II occur in different ways in the world today.

INTRODUCTION

In continental political theory, rule of law tends to be equated with the German conception of a *Rechtsstaat* in its classical interpretation by Kant Reiss, 2005). It signifies government under the laws, i.e. legality, *lex superior* and judicial autonomy (rule of law I). In Anglo-Saxon political thought, however, rule of law takes on a wider meaning, encompassing in addition also non-judicial institutions such as political representation, separation of powers and accountability (rule of law II).

In general, the occurrence of rule of law II is a sufficient condition for the existence of rule of law I. But rule of law I – legality and judicial independence - is only a necessary condition for rule of law II – constitutionalism as voice and accountability.

RULE OF LAW I: Legality and Judicial Independence

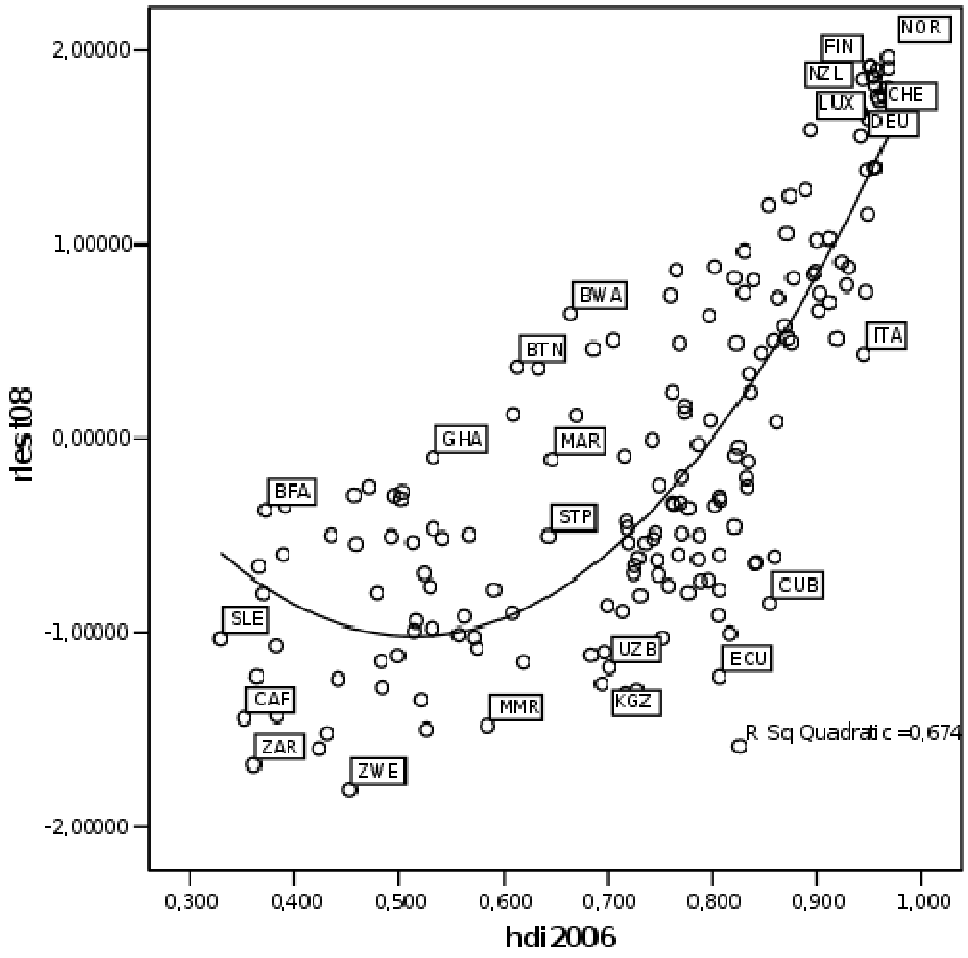
According to the narrow conception of rule of law, it is merely the principle of legality that matters. Government is in accordance with rule of law when it is conducted by means of law, enforced by independent courts. The law does not need to contain all the institutional paraphernalia of the democratic regime like separation of powers and

a bill of rights. The legal order may simply express the authority of the state to engage in legislation, as expounded by legal positivists like e.g. Kelsen (2009) in his *pure* theory of law. The *basic norm* implies legislation that in turn entails regulations that implies instructions and commands. However, whatever the nature of the legal order may be, the principle of legality restricts governments and forces it to accept the verdicts of autonomous judges.

Countries that lack the narrow conception of rule of law tend to have judges who adjudicate on the basis of short-term political considerations, twisting the letter of the law to please the rulers. Thus, law does not restrain the political agents of the country, employing the principal-agent perspective upon politics (Besley, 2006).

Figure 1 shows the occurrence of rule of law I, as measured in the Governance project, among countries grouped according to their level of socio-economic development.

Figure 1. Rule Of Law I and Human Development Index 2008



Sources: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: RLEST 2008; UNDP (2008: HDI 2006.

In Figure 1, one observes a connection between socio-economic development and judicial autonomy. Poor and medium affluent countries are not characterized by judicial independence. Yet, besides socio-economic development many other factors impinge upon the institutionalisation of judicial independence like inherited legal system, religion and the party system.

When judges are not independent they change their verdicts in accordance with the political climate of the country. Whatever protection the constitution or the law offers in writing for citizens or foreigners visiting a country becomes negotiable when a case is handled by the police. Even if a country does not possess a real constitution with protection of a set of inalienable rights, it still makes a huge difference whether the courts constitute an independent arm of government. Thus, also in countries with semi-democracy or with dictatorship, matters become much worse when judges cannot enforce whatever restrictions are laid down in law upon the political elite.

The independence of courts is a heavily institutionalised aspect of a mechanism that takes years to put in place. Judges are paid by the state by means of taxation, but the formula of

"He who pays the piper calls the tune"

does not hold. In order to secure judicial independence from politics and the rulers an elaborate system of appeal has to be erected, meaning that the behaviour of lower court judges will be checked by higher court judges. The standard institutional solution is the three partite division of the legal system with a supreme court at the apex. However, countries may have more than one hierarchy of courts making the judicial system complex.

An independent judiciary secures a fair trial under the laws. From the point of view of politics this is important in order to avoid that accusations for any kind of wrongdoing is used for political purposes. When there is autonomous legal machinery in a country, then also politicians or rulers may be held accountable for their actions or non-actions – under the law. This is of vital importance for restricting corrupt practices of various kinds.

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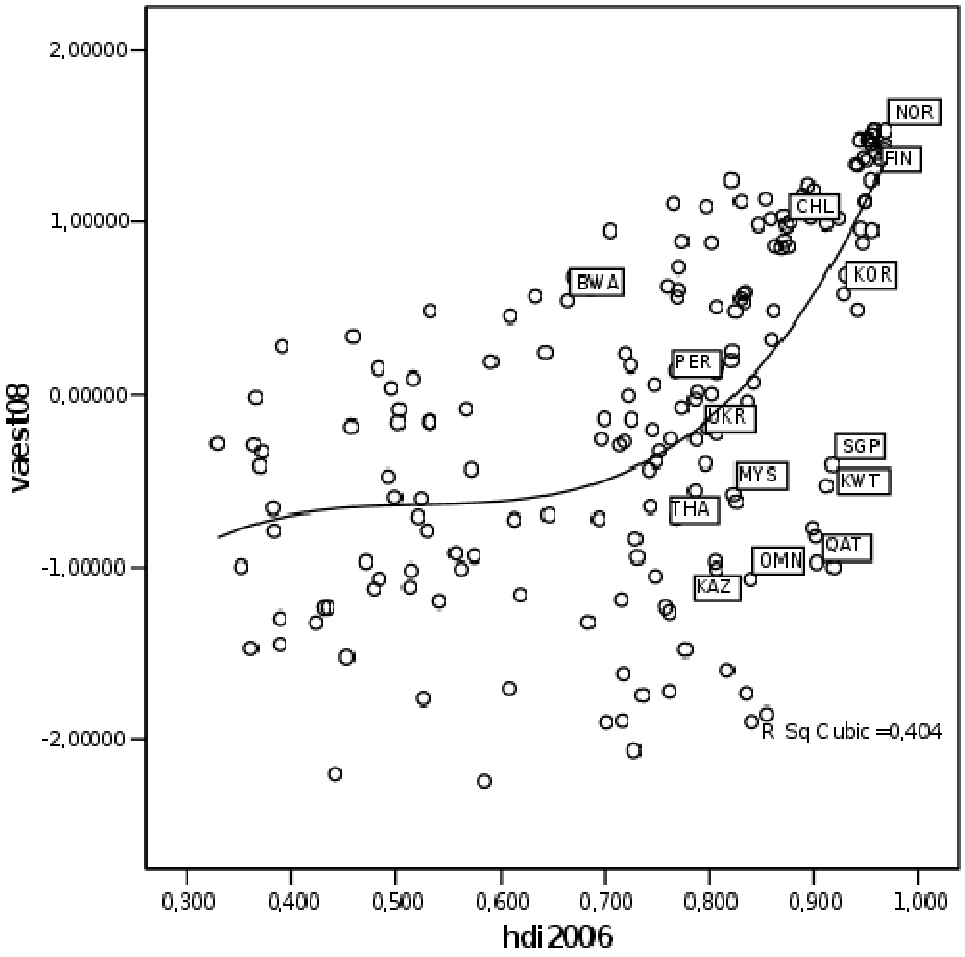
RULE OF LAW II: Constitutional Democracy

Legality and judicial independence are not enough to secure rule of law in the broad sense of the term. Broad rule of law involves much more than government under the laws, as it calls for *inter alia*: separation of powers, elections, representation and decentralisation of some sort.

In the WB governance project the broad conception of rule of law is measured by means of the indicator ”voice and accountability”. Since rule of law II regimes are invariably rule of law I regimes, but not the other way around, countries that score high on voice (of the principal) and accountability (of the agents) can be designated as constitutional states. Figure 2 shows their spread around the world.

Figure 2. Rule of Law II regimes and human development index



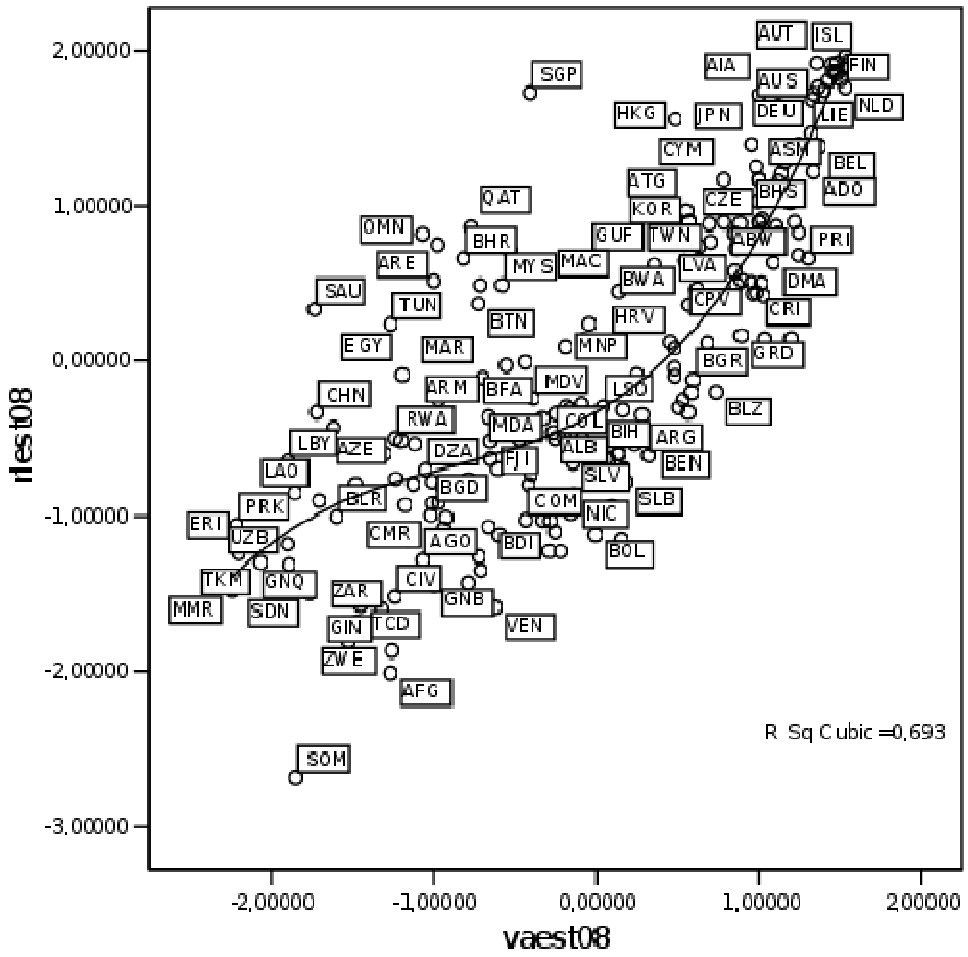
Sources: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: vaest08; UNDP (2008): HDI 2006.

Figure 2 indicates a positive relationship between socio-economic development and the constitutional state, albeit not as strong as in the classical studies on democracy and affluence (Diamond, 1999). There is a set of countries that deviate from this pattern. On the one hand, a number of countries have reached a high level of socio-economic development without institutionalising the mechanisms of the constitutional state: the Gulf monarchies and the Asian tigers. On the other hand, a set of countries with the constitutional state are to be found at a low level of socio-economic development, mainly India, Botswana and Mauritius. In some Latin American countries there is a medium level of socio-economic development and a medium degree of rule of law institutionalisatoion.

This association between affluence on the one hand and democracy on the other hand has been much researched and various explanations have been adduced about what is cause and what is effect. Here, we note that there are quite a few countries that have reached a rather high level of human development due to economic advances in GDP but they have not established a full rule of law regime, comprising of both rule of law I and rule of law II.

Finally, one may enquire into the empirical association between rule of law I and rule of law II. It holds generally that countries that institutionalise the constitutional state also respect judicial independence, but the converse does not hold. Some countries only honour one form of rule of law, namely legality. Numerous countries have neither rule of law I nor rule of law II. Figure 3 shows the occurrence of both rule of law I and rule of law II.

Figure 3. Rule of Law I (rlest08) and Rule of Law II (vaest08)



Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: vaest08, rlest08.

Some 50 per cent of the world cherish rule of law in the strong or thick meaning – rule of law II. Its spread is linked with the level of human development, which is a function of economic output to a considerable extent.

However, as shown in the analysis above countries that implement rule of law II also establish rule of law I. It is the opposite that does not hold, meaning that several countries honour rule of law I but not rule of law II. In countries where neither rule of law I nor rule of law II exist, political agents face almost no restrictions upon what they may wish to do.

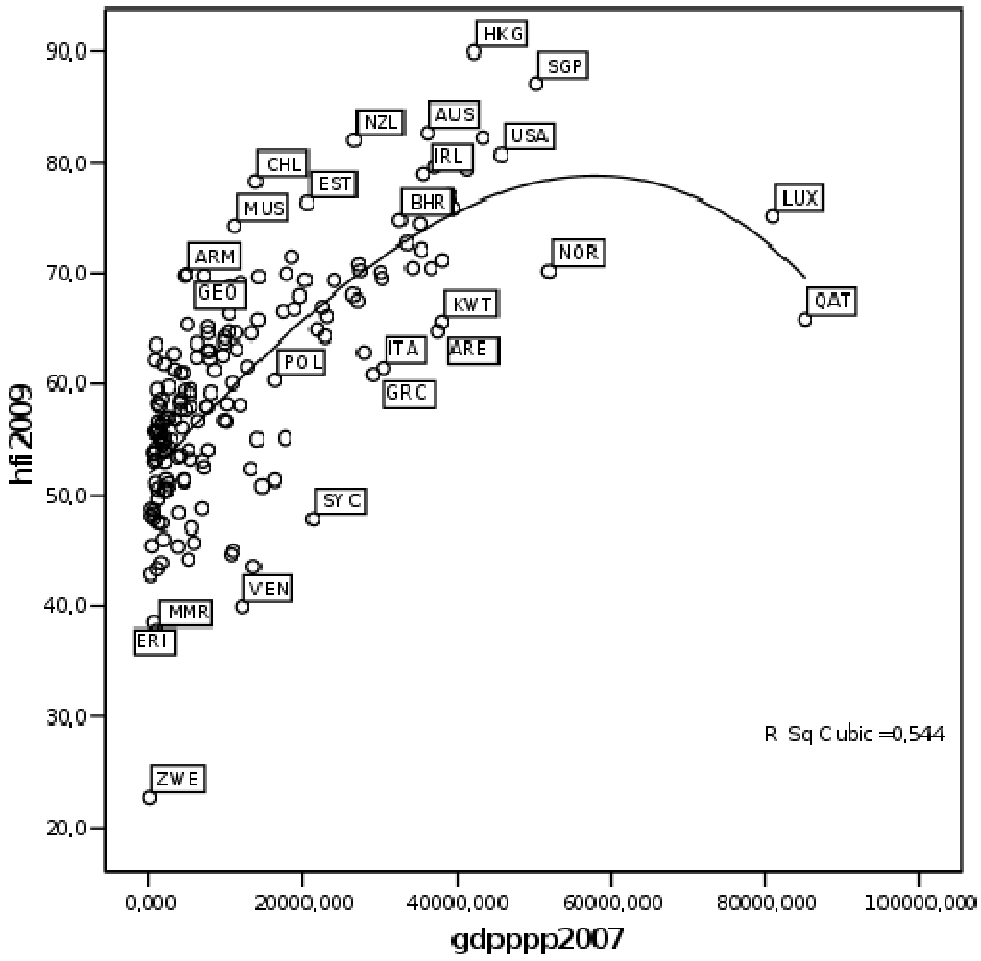
RULE OF LAW AND THE MARKET ECONOMY

The set of economic rules is one thing and real economic output another. Neo-institutionalist or new institutionalist economists claim that the economic regime has a long lasting impact upon the level of economic development, as measured by GDP. They do not deny the inflation as well as the business cycle with regard to aggregate output. But besides macroeconomic policy-making, getting the economic rules correct is considered a major determinant of output or affluence.

In the literature on economic systems there are indices, such as e.g. the annual surveys Economic Freedom of the World (EFW) and Index of Economic Freedom (IEF) that attempt to measure the degree of economic freedom in the world's nations. The EFW index was developed by the Fraser Institute (Gwantney and Lawson, 2008), but one should point out that these indices have been criticized. They may not measure all aspects of economic freedom from the micro standpoint, but they do differentiate between economic regimes on the macro level. We will also employ the operationalization of the concept of a market economy, suggested in the recent literature on economic freedom (Miller and Holmes, 2009). This indicator on the institutionalisation of the institutions of capitalism today bypasses any simplistic notion of capitalism as merely economic greed and it gives a few indices that are helpful in empirical enquiry.

Figure 4 displays the global variation in per capita affluence, linking it to the variation in economic institutions, according to one of the indices employed.

Figure 4. Affluence and economic freedom



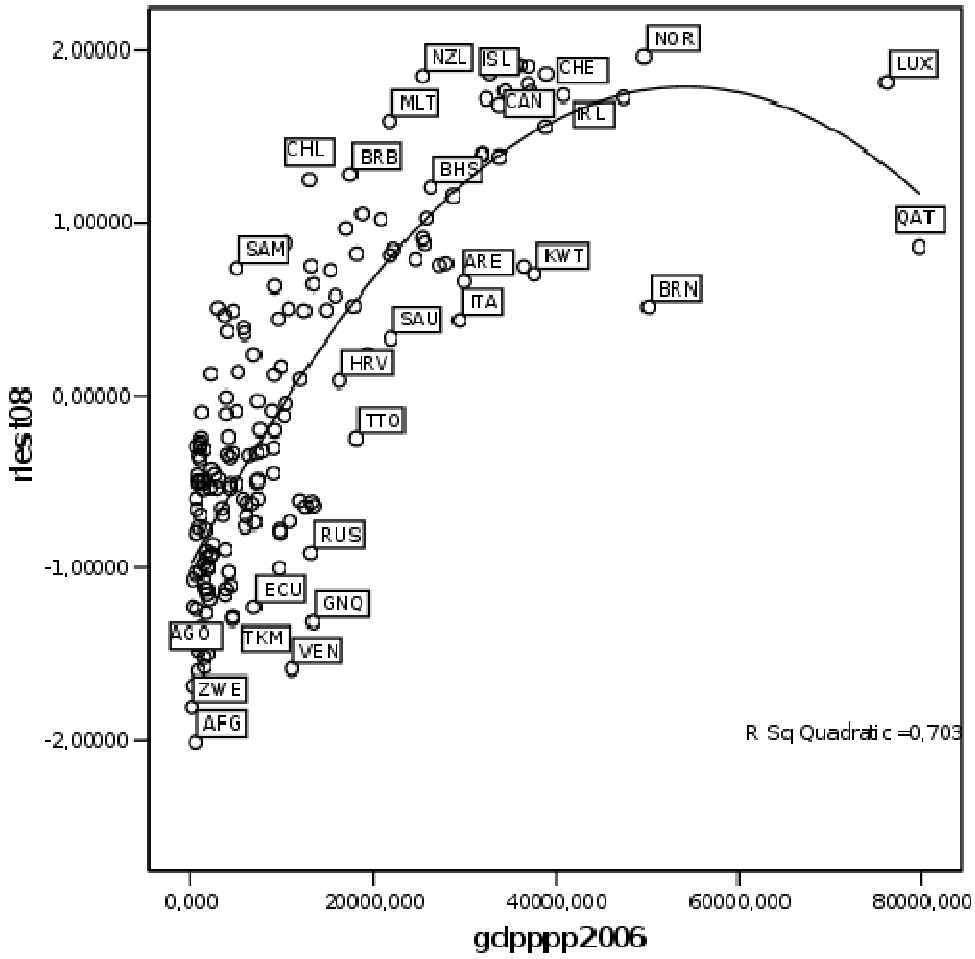
Source: IMF (2009) World Economic Outlook Database: gdpppp2007; Miller and Holmes, 2009: hfi2009.

One sees in Figure 4 that economic freedom, as guaranteed by the economic institutions of a country, is clearly associated with economic affluence. Countries with a large GDP per capita tend to have a high level of economic freedom. The institutions of the market economy constitute a necessary condition for country affluence. Yet, it is hardly a necessary one. How, then is this relationship to be interpreted?

There are two questions involved in clarifying this association between the market economy and economic output. First, one would like to theorize what is the common core of these two entities, economic output on the one hand and economic freedom through institutions on the other hand? Second, one may speculate about what is cause and what is effect in this clear association?

Figure 5 suggests that it is rule of law I that is strongly associated with affluence.

Figure 5. Rule of Law I and Affluence



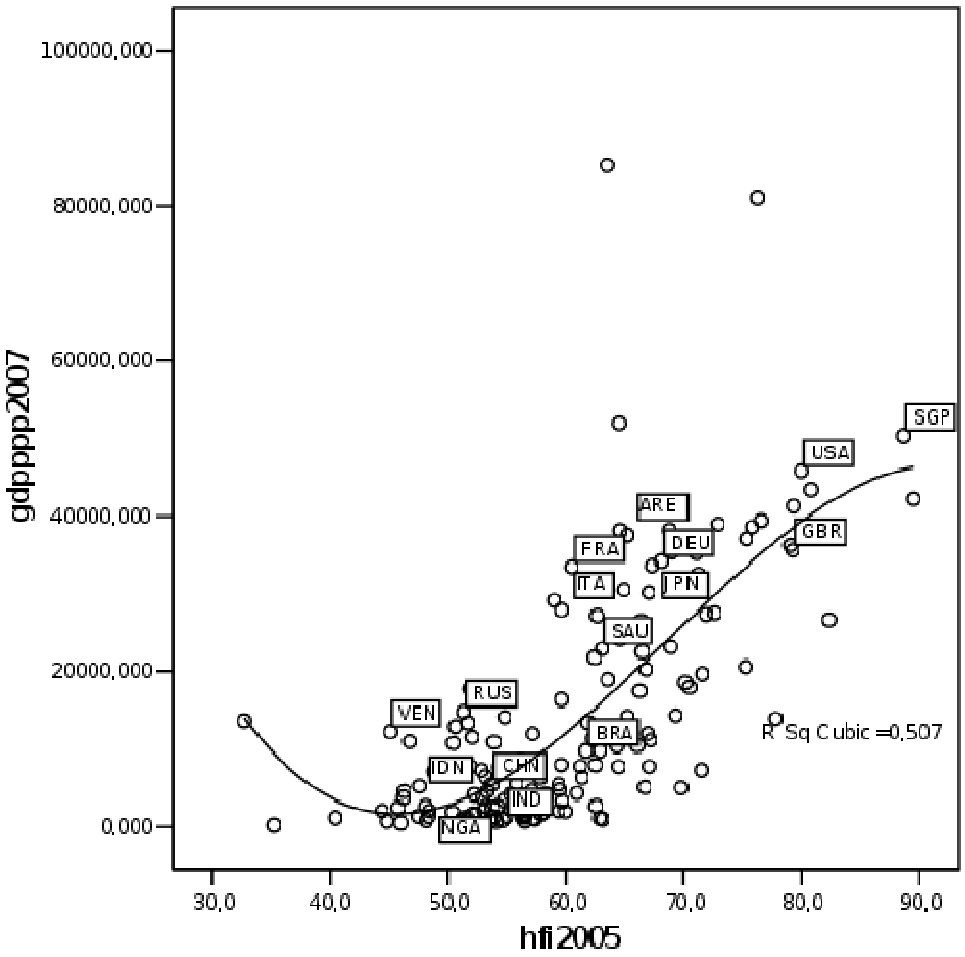
Source: IMF (2009) World Economic Outlook Database: gdpppp2006; Governance Matters 2009. Worldwide Governance Indicators 1996-2008: rlest08.

The market economy can only achieve optimal resource allocations if property rights are comprehensive as well as truly enforced. This occurs under rule of law I, where independent judicial systems operate. Moreover, efficiency in resource allocation is only feasible where transaction costs are minimised. The institutions with rule of law I make their contribution to that by enhancing predictability of legal judgements and neutrality with courts.

The association between rule of law I and affluence in Figure 4 is a very strong one, validating the basic tenet in neo-institutional economics that forms a core belief in *Law and Economics*: the size of the market is only limited by the range and scope of the legal order.

Rule of law I accounts for the connection between economic institutions and economic development. But is economic freedom the cause or the effect of affluence? Figure 6 suggests the first interpretation.

Figure 6. Economic Freedom and Affluence

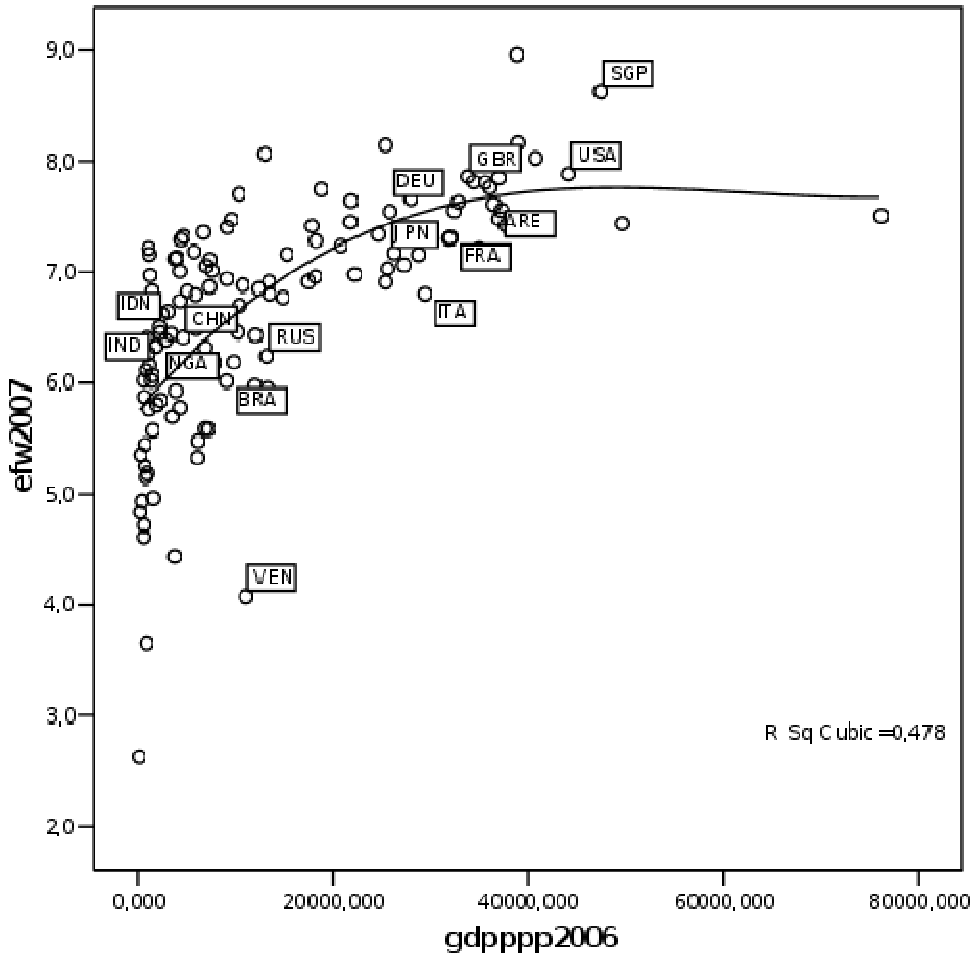


Source: Miller and Holmes, 2009: hfi2005; IMF (2009) World Economic Outlook Database: gdpppp2007.

Economic freedom tends to make affluence possible, as most countries with little economic freedom have low or medium GDP per capita. As economic freedom is increased in an economy, so its affluence tends to rise. Singapore is the superb example of the combination of economic freedom and affluence, whereas Qatar deviates from the relationship in Figure 5.

One could argue for the opposite interpretation, especially with regard to the economic miracle in East and South-East Asia. After a successful period of state intervention, these tiger economies have endorsed more or less the institutions of the market economy. Figure 7 depicts a relationship between affluence and economic freedom.

Figure 7. Affluence and Economic Freedom



Source: IMF (2009) World Economic Outlook Database: gdpppp2006; Gwartney & Lawson 2008: efw2007.

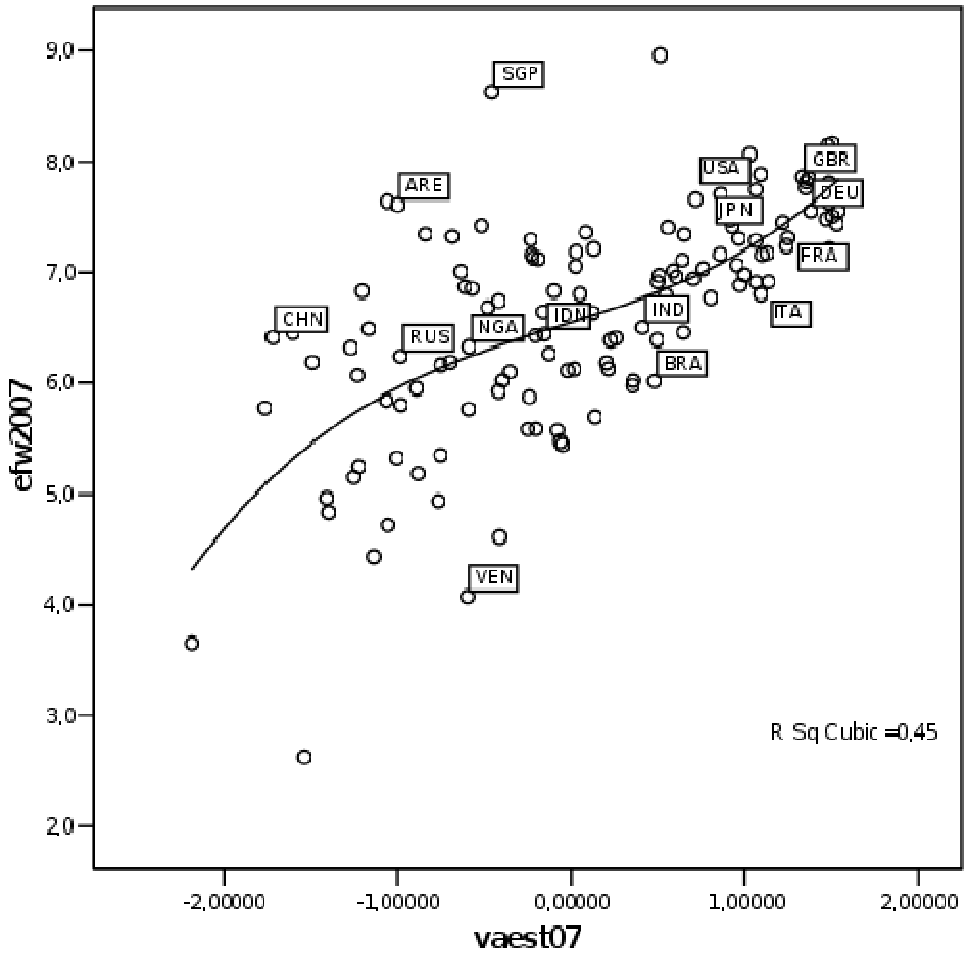
Figure 7 confirms that it is impossible for a country to reach a high level of economic development without economic freedom, as institutionalised in the rules of the market economy. However, it also shows that economic freedom is a necessary but not sufficient condition for affluence.

POLITICAL FREEDOM AND ECONOMIC FREEDOM

M. Friedman argued over a long career for his basic idea that capitalism and democracy are closely related. The argument hinges upon an intimate connection between economic and political freedom (Friedman, 2002, 2008). However, the

empirical evidence does not vindicate this argument – see Figure 8. The empirical analysis has also shown that a set of countries deviates from this interaction, managing to reach both affluence and state firmness without institutionalising rule of law II. Figure 7 confirms that economic freedom and political freedom are not as closely related as Friedman claimed.

Figure 8. Political Freedom (Rule of Law II) and Economic Freedom



Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: vaest07; Miller and Holmes, 2009: efw2007.

In several countries economic freedom tends to be higher than political freedom like for instance China. The association between the market economy and democracy is weaker than the connection between judicial independence and economic freedom. This confirms the relevance of distinguishing clearly between the two conceptions of

rule of law, rule of law I and rule of law II. It is rule of law I that explains the link between economic institutions and economic development.

RULE OF LAW, THE CONSTITUTIONAL STATE AND DEMOCRACY

A constitutional state affords two kinds of mechanisms that enhance stability in political decision-making, one creating so-called immunities or rights that cannot be changed and the other introducing inertia in the decision-making processes. Immunities and so-called veto players would reduce the consequences of cycling, strategic voting and logrolling. The critical question in relation to the constitutional state is not whether immunities and veto players per se are acceptable, but how much of these two entities are recommendable?

Given the extent to which a state entrenches immunities and veto players, one may distinguish between thin constitutionalism verses thick constitutionalism. In a strong constitutional state there would be many immunities, surrounding in particular private property. In addition, there would be a constitution institutionalized as a Lex Superior, which would be difficult to change and which would be protected by strong judicial review either by a supreme court or a special constitutional court. Would not such a strong constitutional state set up too many barriers for political decision-making?

In a thin constitutional state, there would be less of immunities and not much of constitutional inertia in combination with only weak judicial review. Such a weak constitutional state would safeguard the classical negative liberties by designating them freedom of thought, religion and association with the possible exception of private property, which would only be regulated by ordinary statute law. There would be constitutional inertia, but not in the form of qualified majority rules and the legal control of public administration would be important but judicial review would not take the form of a power of a court to invalidate legislation.

The problem with a thick constitutional state is that it may bolster the *status quo* to such an extent that democracy is hurt. These mechanisms that thick constitutionalism involve - immunities, qualified majorities, judicial review - all come into conflict with desirable properties identified above in relation to the making of social decisions: neutrality, anonymity and monotonicity or positive responsiveness. Ultimately, strong

constitutionalism runs into conflict with the egalitarian stand in the concept of democracy, viz, that any alternative should be relevant for social decision, that each and every person should have the same say.

A thick constitutional state may enhance political stability but be difficult to bring into agreement with the notion of populist democracy (Tsebelis, 2002). There would simply be too many immunities and too much of inertia for democracy to be able to allow the people to rule. However, it is difficult to see how a thin constitutional state could present a threat to democratic institutions. On the contrary, the institutions of a thin constitutional state could complement the institutions of a democratic state by making social decisions more stable.

A constitutional state may be erected by means of a minimum set of institutions or a maximum set. In the minimum set up there would have to be institutions that safeguard the following: (1) legality; (2) representation; (3) separation of powers; (4) control of the use of public competencies and the possibility of remedies. It is difficult to understand that such a minimum set of institutions would threaten democracy. When there is a maximum set of institutions in a constitutional state involving numerous checks and balances, then there is a potential collision no doubt.

INSTITUTIONS AND RULE OF LAW I AND II

One of the key issues in neo-institutionalist research is the comparison between two basic executive models: parliamentarism with the Premier and presidentialism with the President. Which executive model is to be preferred or performs the best?

Examining data on the advantages or disadvantages of alternative structuring of the executive, one is confronted by the problematic of the presidential regime. It comes in several forms: pure presidentialism, mixed presidentialism and formal presidentialism. In the empirical enquiry below, pure and mixed presidentialism is displayed against rule of law I and rule of law II, with the following scoring: 0 = parliamentarism, 1 = mixed presidentialism, and 2 = pure presidentialism. Formal presidentialism as in some of the parliamentary regimes or as in the Communist dictatorships will not be included in this enquiry.

Table 1 shows how rule of law I and II occurs within countries with different executives.

Table 1. Forms of Executive and Rule of Law I and II

		RULE OF LAW	
The Executive		I	II
Parliamentary	Mean	0,812	0,803
	N	57	57
	Std. Deviation	0,856	0,698
Semi-presidential	Mean	0,290	0,468
	N	11	11
	Std. Deviation	0,542	0,607
Presidential	Mean	-0,354	0,080
	N	56	56
	Std. Deviation	0,682	0,578
Total	Mean	0,239	0,447
	N	124	124
	Std. Deviation	0,937	0,722
	Sig	0,000	0,000
	Eta	0,596	0,480
	Etasq	0,356	0,230

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Lundell & Karvonen (2008); institutional data refers to year 2000.

The finding in Table 1 is that both types of rule of law are better promoted by a parliamentary than a presidential regime. Pure presidentialism tends to have worse outcomes than either semi-presidentialism or parliamentarism (Mainwaring and Shugart 1997; Elgie and Moestrup, 2008) although one may point out that pure presidentialism has often been the written constitution of countries with a weak civic culture and economy (Cheibub, 2006).

A presidential regime can be identified in more than one way. In Table 2, another classification is employed, bypassing the semi-presidential regimes that combine presidentialism with parliamentarism.

Table 2. Presidentialism and Rule of Law I and II

RULE OF LAW

The Executive		I	II
Presidential	Mean	-0,513	-0,518
	N	98	98
	Std. Deviation	0,806	0,788
assembly-elected president	Mean	-0,651	-0,444
	N	17	17
	Std. Deviation	1,084	0,693
Parliamentary	Mean	0,695	0,683
	N	58	58
	Std. Deviation	0,770	0,983
Total	Mean	-0,122	-0,108
	N	173	173
	Std. Deviation	1,006	1,017
	Sig	0,000	0,000
	Eta	0,580	0,555
	etasq	0,336	0,308

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Keefer (2008).

Also in this somewhat different classification of executives, one receives the finding that pure and strong presidentialism tends to be a negative for rule of law I or II.

Election Techniques

I would be inclined to argue that multipartism is better than twopartism from the standpoint of principal-agent theory, but it is not easy to prove. In general, having several agents working in the interests of the principal is a conclusion from this theory. However, in a two-party system changes in government tend to be more clear-cut and effective than in a multi-party system. The danger with a two-party system is that it develops into a one-party system in disguise. And the main disadvantage of the multipartism is the risk of complete fragmentation of the electorate with more than 10 parties getting seats in the national assembly, creating problems to form a stable government.

The distinction between twopartism and multipartism is closely connected with electoral institutions, although not in a perfect manner. The effective number of parties is lower with majoritarian election formulas (e.g. plurality, run-offs and alternative vote) than with PR schemes (e.g. D'Hondt, St Lague, STV). How election methods relate to rule of law can be studied empirically by looking at the outcomes of the main types of election formulas (Table 3).

Table 3. Election systems and rule of Law I and II

		RULE OF LAW	
Election system		I	II
no plurality	Mean	0,402	0,212
	N	51	51
	Std. Deviation	0,870	1,059
plurality	Mean	-0,172	-0,165
	N	104	104
	Std. Deviation	0,929	0,950
Total	Mean	0,017	-0,041
	N	155	155
	Std. Deviation	0,947	1,000
	Sig	0	0,027
	Eta	0,286	0,178
	Etasq	0,082	0,032

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Keefer (2008).

The finding in Table 3 supports the thesis that multipartism is to be preferred ahead of twopartism, but the difference in outcomes is not large. Let us look at another classification of election systems in Table 4.

Table 4. Election formulas and Rule of Law I and II

	Rule of Law	
Election formulas	I	II

no pr	Mean	-0,281	-0,238
	N	59	59
	Std. Deviation	0,921	0,958
Pr	Mean	0,280	0,107
	N	90	90
	Std. Deviation	0,863	1,020
Total	Mean	0,058	-0,030
	N	149	149
	Std. Deviation	0,925	1,007
	Sig	00	,041
	Eta	0,298	0,168
	Etasq	0,089	0,028

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Keefer (2008).

Also the finding in this Table 4 indicates that PR-institutions perform slightly better than majoritarian ones. It seems that the excellent performance of the institutions of the Washington model is more of an American exception than the general rule. Presidentialism and a majoritarian election formula tend to be negatively related to both kinds of rule of law (I and II). How, then, about a federal dispensation for government?

State Format

Federalism in a narrow sense is an institutional theory about the structure of any state, democratic or authoritarian. Thus, India and Switzerland are federal but so are the United Arab Emirates and Pakistan. Federalism in a broad meaning is an institutional theory about constitutional democracy, claiming that the federal dispensation works better than a unitary for all constitutional democracies. It is easy to mix up federalism I with federalism II above. Here we only deal with federalism I. Does a mere federal dispensation enhances the probability of rule of law?

In a federal state format the provinces would ideally constitute states with a constitutional framework, they are represented in a federal chamber in the capital and they engage in legislation supervised nationally by a constitutional court or Supreme

Court. Why would such a dispensation promote rule of law better than the more simple unitary state format?

Table 5 presents a few pieces of empirical evidence about the impact of a federal dispensation. As a federal state is to be counted countries that employ the word ”federal” somehow in constitutional documents. Thus, Spain or the Republic of South Africa as federal cases should not be classified as federal, which though often occurs.

Table 5. Federalism and Rule of Law I and II

		RULE OF LAW	
States		I	II
non-federal	Mean	-0,045	-0,042
	N	185	186
	Std. Deviation	1,001	0,978
federal	Mean	0,344	0,327
	N	24	24
	Std. Deviation	0,942	1,129
Total	Mean	0,000	0,000
	N	209	210
	Std. Deviation	1	1
	Sig	0,073	0,089
	Eta	0,124	0,118
	etasq	0,015	0,014

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Lane & Ersson (2005).

Federalism scores better than unitary states on both judicial independence (rule of law I) and democratic constitutionalism (rule of law II). But they also show that this is mainly due to the low number of federal state and the high number of unitary states. Empirically, federalism has only a weak relationship to judicial independence or constitutional democracy – see the eta scores in Table 5. This comes as no surprise as several unitary countries are deeply committed to the autonomy of judges. The next piece of evidence concerning federalism and rule of law shows the lack of a strong

relationship between this state format and constitutionalism. Again, this was to be expected, given that federalism is defined narrowly as a mere state format that is just a self-designation by the country in question (Kavalski, and Zolkos, 2008).

Legal Review

The legal system in some countries offer the ordinary courts or a special constitutional court the privilege of testing the constitutionality of the laws of the legislative assembly or the acts of the executive. This form of political judicialisation – judicial review - is to be found in all countries that emulated the American constitutional tradition (supreme court) as well as in European or Asian countries that adopted the Kelsen model of a constitutional guardian (constitutional court). Although legal review when exercised properly tends to result in spectacular decisions with great political relevance, one may still ask whether legal review matters generally speaking.

Table 6 relates legal review to judicial independence and indicates how the occurrence of legal review interacts with the constitutional state.

Table 6. Legal Review and Rule of Law I and II

		RULE OF LAW	
LEGAL REVIEW		I	II
Constitutional court	Mean	0,107	0,335
	N	45	45
	Std. Deviation	0,852	0,711
Constitutional council	Mean	-0,208	-0,198
	N	6	6
	Std. Deviation	0,847	0,808
Supreme court	Mean	0,309	0,544
	N	72	72
	Std. Deviation	0,938	0,650
Other	Mean	0,384	0,193
	N	7	7
	Std. Deviation	1,258	1,096
No judicial review	Mean	0,909	0,546
	N	4	4
	Std. Deviation	0,992	1,068
Total	Mean	0,240	0,422
	N	134	134
	Std. Deviation	0,929	0,727

	sig	0,293	0,095
	eta	0,193	0,243
	etasq	0,037	0,059

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Lundell & Karvonen (2008.

The explanation of the meagre performance of legal review according to Table 5.6 is that it is not always practiced as intended. Countries may endorse judicial review in its written constitution but fail miserably to employ it in the real constitution. Table 7 confirms that legal review is neither a necessary nor sufficient condition for rule of law.

Table 7 Judicial review and rule of law I and II

Judicial Review		Rule of Law
no judicial review	Mean	0,711
	N	13
	Std. Deviation	0,995
weak judicial review	Mean	0,364
	N	44
	Std. Deviation	0,948
considerable judicial review	Mean	0,160
	N	38
	Std. Deviation	0,993
Total	Mean	0,330
	N	95
	Std. Deviation	0,979
	sig	0,207
	eta	0,184
	etasq	0,034

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Lundell & Karvonen (2008)

Again, the lack of any clear association between legal review and rule of law I or rule of law II respectively is not difficult to explain. On the one hand, also several countries

that have institutionalised a profound respect for judicial independence and the constitutional state reject the relevance of legal review. This is most explicit in countries adhering to the Westminster legacy, in which judges apply the law but do not make it. On the other hand, some countries that adhere to legal review in their constitutional documents have a shaky record in achieving the institutionalisation of either judicial independence or the constitutional state in general. Thin constitutionalism may actually perform better than strong constitutionalism, especially when combined with the Ombudsman institution.

THE OMBUDSMAN OFFICE

In thin constitutionalism, there is less emphasis upon veto players like for instance the Supreme Court or the Constitutional Court. Instead, thin constitutionalism attempts to combine political flexibility with judicial independence and constitutionalism. Typical of thin constitutionalism is the strong position of the Ombudsman, as the legal guarantor of the national assembly. Table 8 shows some findings that confirm that the operations of an Ombudsman are likely to support rule of law in its two meanings as judicial integrity (rule of law I) and constitutional democracy (rule of law II).

Table 8 Ombudsman and rule of law I and II

Ombudsman Office		Rule of Law I	Rule of Law II
no institutionalization	Mean	-0,556	-0,728
	N	67	67
	Std. Deviation	0,879	0,874
late institutionalization	Mean	-0,226	-0,038
	N	54	54
	Std. Deviation	0,830	0,783
early institutionalization	Mean	1,001	0,979
	N	29	29
	Std. Deviation	0,957	0,549
Total	Mean	-0,136	-0,150
	N	150	150
	Std. Deviation	1,045	1,008
	sig.	0,000	0,000
	eta	0,553	0,630
	etasq	0,305	0,397

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008; Lane & Ersson (2000).

CONCLUSION

A state that implements thin constitutionalism would have little difficulties in accommodating democratic institutions. Actually, thin constitutionalism would complement democracy by bringing to it more of stability in social decisions. Thick constitutionalism (Tsebelis, 2002) with its veto players – president, two symmetrical chambers, legal review and federalism - may run into conflict with democracy. There could be too many immunities and too much of inertia for social decisions to simply reflect the preferences of the citizens, according to the requirements of anonymity, neutrality and positive responsiveness with collective decisions in relation to citizen preferences.

A set of thin constitutionalist institutions promotes rule of law, both I and II, as well as a set of thick constitutionalist institutions. It is enough with parliamentarism, PR, unitarism and an Ombudsman for a country to have a good chance to succeed in introducing and maintaining constitutional democracy.

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