

Uncaptive Minds



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Constitutions, Electoral Choices
& Their Consequences

The Case of Georgia

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Theme 2

Constitutions, Electoral Choices & Their Consequences

Adventures of a Constitution: The Case of Georgia

by **Ivlian Haindrava**

This analysis is supposed to cover a 25-year period, from the late 1980s to the present time. However, the first “five-year plan” for the South Caucasus (1989-1994) provides little for researchers to study in the realm of constitutionalism, or in choosing models of government (presidential, parliamentary, or “mixed”), or in determining election systems, much less other “abstract issues.” What was going on in Georgia and Azerbaijan at that time (Armenia is a slightly different story in this context) can be better analyzed by sociologists, psychologists, and even psychiatrists rather than political analysts. This was a time of ethno-political conflicts, rampant paramilitary activity, riots, coup d’états, economic collapse and hyperinflation, constitutional and legislative disarray, and social and mental chaos caused by a total disruption of the population’s usual way of life.

It would be wrong, however, to ignore one significant aspect of this time. The Communists were removed from power peacefully, through elections, amid mass anti-Soviet demonstrations. In all three South Caucasus countries, the Communists were succeeded by leaders of dissident movements: Zviad Gamsakhurdia in Georgia,

Abulfaz Elchibey in Azerbaijan, and Levon Ter-Petrosyan in Armenia. Even so, the elections were preceded by bloodshed and violence—there were brutal crackdowns carried out by the Red Army on peaceful anti-Communist demonstrators in Tbilisi on April 9, 1989 and also in Baku in January 1990, as well as earlier ethnically colored violent conflicts in Sumgayit in Azerbaijan (1988) and Sukhumi and Tskhinvali in Georgia (1989). There was even more bloodshed in the early 1990s as the conflicts in Nagorno-Karabakh, Abkhazia, and South Ossetia escalated. But this is separate topic. Here, I focus mostly on the adventures of the Georgian constitution.

In October 1990, the first multi-party elections in the USSR (which it still was at the time) toppled the Communist government in Georgia and brought to power the electoral bloc Round Table–Free Georgia, led by Zviad Gamsakhurdia. In the following days, Gamsakhurdia was elected chairman of the Supreme Soviet, or Supreme Council, in accordance with the provisions of the constitution of the Georgian Socialist Soviet Republic (GSSR). A referendum on independence was held on March 31 the next year. Based on the overwhelming result in favor, Georgia declared independence ten days later on April 9, 1991. The country, however, continued to use the GSSR constitution, since there was no alternative. At virtually every session of the Supreme Council, the constitution was revised and amended, and then almost every amendment was revised and recast again. With nearly all paragraphs of the constitution repeatedly altered, the first post-independent Georgian constitution was rather awkward reading.

In May 1991, on the basis of this amended constitution, Gamsakhurdia won presidential elections by 87 percent of the vote, and thus became the first president of independent Georgia. But in the winter of 1991–92, around the time that the Belavezha Accords were signed dealing the death blow to the Soviet Union, Gamsakhurdia was overthrown and ousted from the country. A Military Council (MC) took over. The two strongmen who joined their forces against the first president—one was in charge of the National Guard, a quasi-regular army, while the other commanded para-military units—had mentalities and behavior that were incompatible with constitutional norms. So they decided to reinstate the constitution of the short-lived Georgian Democratic Republic, a state that existed only three years (1918–21) before being conquered and annexed by Bolshevik Russia. The argument for using it was that it provided for a parliamentary system of government without the office of president. In practice, the document had never been fully implemented: it was adopted on February 21, 1921 just a few days before Tbilisi fell to the Red Army troops on February 25. This constitution, although it was highly democratic, could not meet the challenges and realities of the post-Soviet or post-coup Georgia. But for the two leaders of the Military Council, it suited their play book perfectly.

In March 1992, the Military Council was replaced by the so-called State Council, a quasi-parliament, whose members were *selected* (not elected) by its chairman, Eduard Shevardnadze, the last foreign minister of the Soviet Union who by that time had returned to Georgia from Moscow. The basis for the members' selection could be understood by no one but Shevardnadze. The State Council, however, soon passed a law on parliamentary elections establishing a "soft" preferential system that ensured broad representation.¹ Parliamentary elections were conducted in the autumn of 1992. Although they were held in the midst of hostilities in Abkhazia and South Ossetia, the elections created a legitimate legislative authority for the country. In an election held simultaneously with the parliamentary polls, Shevardnadze was elected "Chairman of Parliament–Head of State" (the official title of his post). It was maybe the first and the only time in history that a parliamentary speaker was chosen by a direct national vote and not by the members of parliament.

One of the first actions of the "short" Georgian parliament of 1992-95 was the Law on State Power, a basic law that laid the foundation for governance.² The law awarded the chairman of parliament far-reaching powers as head of state, putting him in charge of the executive as well as the legislative branches. Still, the presence of the above-mentioned paramilitary units remained a serious problem for Shevardnadze until he was finally able to get rid of them by sending the former Military Council strongmen, one after another, to jail.

A State Constitution Commission (SCC) was established in 1993 to draft a new constitution and the draft was presented for parliamentary debate in 1995.³ Without going into lengthy detail about how the SCC drafted and discussed the document, it should be noted that the "tug of war" between advocates of a presidential model on the one hand and a parliamentary system on the other ended with the victory of the former. The new constitution was passed by parliament on August 25, 1995. To give

¹ Since 1990, Georgian parliaments have been elected according to the so-called "mixed" majoritarian-proportional system, which combines voting by party list and direct elections by district. But the number of parliamentary seats and the formula to allocate parliamentary seats between majoritarian and party-list members, as well as their basic election principles (how many seats are allocated according to single-mandate or multi-mandate constituencies), have frequently changed. Since 2008, the parliament has had 150 members, with the present allocation between majoritarian and party-list members being 73-77. — Author's Note.

² It was dubbed "short" by analogy with the English Parliament of 1640, since it had an unusually short tenure by modern parliamentary standards of just 3 years (although its English analogy lived only three weeks). — Author's Note.

³ This author was a member of the SCC. — Author's Note.

the story a spicy twist, as Shevardnadze was getting into a car to go to the ceremony to inaugurate the new constitution, a car bomb was detonated nearby in an apparent attempt to assassinate the head of state. But the unsuccessful attempt was hardly motivated by frustration with constitutional provisions or the constitutional model in general.

It is noteworthy that Georgia's neighbors also adopted new constitutions at about the same time—Armenia on July 5, 1995 and Azerbaijan on November 12, 1995, both by means of national referendum—and the timing was hardly a mere coincidence. During the entire period of the “first five-year development plan,” Western leaders preferred to stand aside and watch from the sidelines, with bewilderment and even fear, as these turbulent processes unfolded in the South Caucasus. They gave Russia a free hand to sort out its relationship with its former vassals. But, it seems, the West finally realized that nothing good was coming of all the regional wrangling and contention and that “sitting on the fence” indefinitely was a wrong tactic, especially since these countries were in dire need of Western assistance. Indeed, one can only imagine what would have happened to Georgia in these terrible times but for Western humanitarian aid. So the West decided that it could and should set some conditions. The first was that the lawlessness had to stop and governing processes should be brought into a legal, meaningful constitutional framework.

All three countries opted for the presidential model of government and in all three countries charismatic leaders retained their presidential posts: Eduard Shevardnadze in Georgia, Heydar Aliyev in Azerbaijan, who had replaced Elchibey during a military coup d'état, and Levon Ter-Petrosyan in Armenia. But Armenia was still a different case. Unlike Shevardnadze and Aliyev, who were both experienced communist party functionaries and had served as members of the Soviet Politburo, Ter-Petrosyan was a dissident. After new constitutions came into effect in these countries, Ter-Petrosyan suffered a different fate than his counterparts.

Shevardnadze and Aliyev tightened their grips on power, albeit not without difficulty, and imposed a hard authoritarian rule in their countries. In Georgia, based on the new constitution, Shevardnadze was elected president with 73 percent of the vote in direct but non-competitive elections held in November 1995. Following his takeover of power from Elchibey in Azerbaijan, Aliyev had quickly staged new presidential elections in 1993 (according to official sources, he won 98 percent of the vote). Meanwhile, Ter-Petrosyan, Armenia's president during its successful military campaign in Nagorno-Karabakh, was re-elected in 1996 in an election considered by many to be a real contest (although some observers alleged that the process was far from fair). In February 1998, however, Ter-Petrosyan was forced to step down under pressure by certain forces who objected

to his proposed compromise on the Nagorno-Karabakh conflict. He was succeeded by Robert Kocharyan, a former middle-level Komsomol functionary, in interim presidential elections. Armenia's problems did not end, however. On October 27, 1999, the country was shocked when a group of gunmen broke into the National Assembly during a plenary session and shot dead, point-blank, Prime Minister Vazgen Sarkisyan, parliamentary speaker Karen Demirchyan (Kocharyan's principal opponent in the presidential elections), two vice speakers, one minister, and three MPs. A number of people were wounded.

The year 2003 was the next milestone for the South Caucasus. Robert Kocharyan, who had consolidated his power after the "parliament shooting," was re-elected as president of Armenia in the second round. In Azerbaijan, Aliyev the First handed over power as planned to his son Ilham, Aliyev the Second, although the transition was marked by significant vote fraud.⁴ In Georgia, surprisingly, a new president, Mikhail Saakashvili, took office as a result of parliamentary elections and the protest movement that followed them.

This article does not intend to give a detailed account of the Georgian Rose Revolution of 2003, nor explain the political technology behind the father-to-son handover of power in Azerbaijan—these themes have been already researched and analyzed many times by various authors. By 2003, however, it became obvious that the three South Caucasus countries were moving in different directions. Armenia fell into political and economic stagnation, halted any democratization, and became increasingly dependent on Russia.⁵ Azerbaijan, flooded with cash from growing oil revenues, hardened further its authoritarian policies domestically while in foreign policy it sought balance between Russia and the West, without getting too close to either. Georgia, meanwhile, entered a new phase, shrewdly described by some as "authoritarian modernization," with a foreign policy aimed at Georgia's integration into Euro-Atlantic structures.

⁴ Ilham Aliyev officially assumed power through presidential elections held on October 3, 2003 after which police used force against demonstrations in favor of opposition candidate Isa Gambar to protest the staged outcome. An international election monitoring team of the Institute for Democracy in Eastern Europe chronicled massive vote fraud and manipulation (see the IDEE Observer Mission's "Votum Separatum from the OSCE/ODHIR Preliminary Report About the Presidential Elections of October 15, 2003 in the Republic of Azerbaijan," which may be found at www.idee.org/azerbaijanelections.html). — Editor's Note.

⁵ In the 2008 presidential elections, Kocharyan could not stand again after two consecutive terms and was succeeded by another functionary, Serzh Sarkisyan. His main contender, ex-president Ter-Petrosyan, charged that the vote was rigged and called for protests. Nine people died in clashes with police. — Author's Note.

Mikhail Saakashvili's first step after being elected president in snap presidential elections in January 2004—with 96 percent of the vote—was to rewrite the constitution, especially its power-related clauses. The changes transformed Georgia from a “classic” presidential republic (at least on paper) into a super-presidential system, whereby the president assumed absolute power. The parliament's role was limited to rubber-stamping decisions of the government (headed by the president). The judiciary, whose legacy of endemic corruption from the Shevardnadze and Soviet periods was significantly reduced, nevertheless became more dependent on (and responsive to) the government. Both foreign and domestic analysts agreed that the system of checks and balances, although ensured on paper by the 1995 constitution, was effectively dismantled.

The usual justification for concentrating absolute power in the president's hands was the need for rapid and radical reforms—something everyone agreed the country needed. But it is hard to understand why Saakashvili, enjoying initially huge approval ratings at home and abroad, decided to blatantly ignore democratic principles, cripple the constitution, and use heavy-handed policies against his own people—all to satisfy short-term political needs.⁶ Those who think that this assessment is exaggerated or incorrect should look at annual reports of Freedom House, which show that Georgia's democracy index improved 0.01 points in 2003-2012. In other words, in the area of democratization, the country was stuck for almost a decade. In fact, there were *declines* in the summary scores in governance, the judiciary, and independence of media but these were masked in the overall scores by progress cited in the fight against corruption resulting from radical administrative reforms (including of the police) and adoption of a robust fiscal policy during Saakashvili's first-term. Tax revenues started flowing into the national treasury instead of, as previously, the pockets of bureaucrats. There were similar successes in the fight against organized and small crime. Large-scale infrastructure projects made a noticeable positive impact on the country. But successes and failures of the Rose Revolution are analyzed in other studies.

With the events of 2007-08, Georgia evolved from a period of “authoritarian modernization” into a period simply of “authoritarianism.” The government used brutal force against peaceful protesters and raided an independent TV company in November 2007;⁷ openly rigged early presidential elections in January 2008 to ensure a second-term victory for Saakashvili in the first round; and engineered the political dominance of

⁶ In all, 30 revisions were made to the constitution during Saakashvili's nine-year rule, compared to 3 amendments in the period of 1995–2003. — Author's Note.

⁷ The European Parliament responded to these events with a rather strongly worded statement, dated November 29, 2007. — Author's Note.

Saakashvili's National Movement for a subsequent four years through parliamentary elections in May 2008 that offered little hope for fair competition. On top of these events, the August 2008 Russian-Georgian war ended with disastrous consequences for Georgia.

The government switched to self-preservation mode and was determined to do whatever it took to remain in control. Its reformist zeal and creativity faded away. A large-scale campaign of repression was undertaken against political opponents, while high-level corruption became widespread, proving once again the old adage that "power corrupts, and absolute power corrupts absolutely."

Georgia, however, gradually approached the next round of elections. Parliamentary elections were scheduled for the autumn of 2012 and presidential elections for the next year, which would mark the end of Saakashvili's second and last presidential term. Wary of the potential damage to his image in the West (his image at home had long been tarnished), the Georgian president did not dare to follow in the footsteps of his Azerbaijani counterpart by removing the two-term limit on presidential terms in the constitution (Ilham Aliyev did this in a staged referendum in March 2009). Instead, Saakashvili began preparing a backup plan—a second "landing strip" in the post of prime minister—by again adapting the constitution to his needs. So, in October 2010, the parliament passed constitutional amendments that curbed presidential powers and expanded the powers of prime minister, but only to come into effect immediately after the October 2013 presidential elections, with the expectation that Saakashvili and the National Movement would remain in power.

Of course, government authorities announced that this constitutional change was a fundamental step paving the way for the transition from a presidential to a parliamentary system. In reality, however, it led to a huge (for a small country like Georgia) controversy. Saakashvili's team did not bother to clearly define the proposed system changes in the constitution. Simply, Saakashvili would continue to call the shots as usual with little, if any, regard for the constitution, so they did not care how the new power-sharing arrangement between the parliament, president and government would read on paper. They also increased (again through constitutional amendments) the requirement for approval of any future constitutional changes from two-thirds to three-fourths of parliament as a precautionary measure against potential future shifts in the balance of political forces in parliament as a result of the October 2012 parliamentary elections.

Everybody knows the rest of the story. Saakashvili's party lost the October 2012 elections to the Georgia Dream coalition by a large margin (about 20 percentage points) and had to give up control of the parliament and

government. Saakashvili remained president for yet another year in a transitional period known as “cohabitation,” during which the president still had vast powers but found himself in opposition to the parliamentary majority and the governing cabinet chaired by the prime minister, voted upon by parliament. It was a Georgian-style cohabitation, which means that it was full of conflicts and tensions. However, the country managed to make it through this period peacefully and, as expected, the candidate of the ruling Georgia Dream coalition, Giorgi Margvelashvili, was elected the new president of Georgia in October 2013.

With the end of months of antagonism and nerve-wracking conflicts during the period of cohabitation, it seemed the country would have the opportunity to sigh with relief and state institutions would be able, at last, to work in an efficient and coordinated manner. But in reality there was nothing of the kind. The new version of the constitution, which came into force immediately after the presidential elections, substantially reduced presidential powers but not sufficiently enough to correspond to that of “classic” parliamentary models (such as Germany or Israel). This led the Venice Commission to assess the new Georgian system as a “mixed model.”⁸ Being elected by a direct popular vote, the president has the highest level of legitimacy, adding more political and moral weight to his position on a par with the parliament.

Moreover, after the presidential elections, Bidzina Ivanishvili, the main architect of the change of government in Georgia as leader of the Georgia Dream, voluntarily resigned from the position of prime minister, handing over his post to a young political newbie, Irakli Gharibashvili, whose popularity was based entirely on the support given him by Ivanishvili. On a personal level, the new prime minister was no more respected than the new president, another nominee of Ivanishvili. Soon afterwards, relations deteriorated between President Margvelashvili and Ivanishvili, who continued to influence the country’s politics despite formally quitting the political arena. The government, as a result, began trying to infringe on the president’s remaining legal powers.

Notwithstanding subjective factors such as personal relations and political competition, the attempts to curb presidential authority have been largely the result of the shortcomings of the new constitution inherited from Saakashvili’s regime. There was no clear division of competences and responsibilities between the president and prime-minister in a number of spheres, leaving room for arbitrary interpretations. The constitution provides a rather vague description of the available channels of

⁸ See the opinion of the Venice Commission on Georgia’s draft constitutional changes issued on July 31, 2010 ([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)062-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)062-e)) — Author’s Note.

communication among the president, parliament, and prime-minister, and Georgia lacks respected traditions or unwritten rules to guide such matters. Worse still, there is actually no chance of correcting these constitutional flaws, since the parliamentary majority does not have enough votes for approval by three-fourths, the new requirement, while the minority, Saakashvili's party, is determined to sabotage any attempt to "fix" the constitution in the hope that infighting and discords within the ruling coalition will play into its hands in order to regain power.

So, while the parliament did set up a commission to draft necessary amendments to the constitution, it is unlikely to achieve any changes given the position of the minority party not to give its support and, in any case, given the lack of consensus within the ruling coalition on the necessity for the country's final transition to a classic parliamentary model. And there is no way to change the constitution in Georgia other than by parliamentary approval, there being no provision for referenda on constitutional matters. It remains to be seen how, if at all, this vicious circle will be broken, even as regular, sometimes even curious, conflicts between the president and prime minister do damage to the country's image.⁹

Apart from these negative aspects of the transition, however, there are also positive aspects. For the first time in its recent history, Georgia has accomplished a peaceful transition of power through parliamentary and presidential elections. (Municipal elections in June 2014 also received positive assessments.) The country managed to pass through the cohabitation period without serious damage. A coalition of political parties came to power and although it is dominated by one political group, nevertheless it is a new and useful experience for all the coalition members. The country has a viable opposition: the parliamentary minority is not just vocal, it has a decisive voice in all matters that require parliamentary approval by a super majority of votes. Georgia has taken a big step away from authoritarianism. While the process is not yet irreversible and authoritarian practices continue even today, the myth of a "strongman ruler" is gradually losing hold as more and more people realize that the country is better off relying on properly functioning state institutions, a system of checks-and-balances, and the rule of law, rather than on the benevolent attitude of a charismatic leader. Mass media have become independent as never before.

All these changes are reflected in annual reports of Freedom House, which now rate Georgia as a "semi-consolidated democracy" (a democracy after all!), while Armenia is ranked a "semi-consolidated authoritarian

⁹ For more detailed discussion of this issue, see, for instance, "The President and the Prime Minister" by Lincoln Mitchell, September 23, 2014 (<http://lincoln-mitchell.com/georgia-analysis/2014/9/22/the-president-and-the-prime-minister>). — Author's Note.

regime” and Azerbaijan is considered a fully “consolidated authoritarian regime.” Georgia has signed an Association Agreement with the EU and even became a special partner of NATO. These new associations may bring more dangers than security guarantees in the present-day situation, but this is a theme to be discussed separately.

Conclusions

Every country has its own unique history and experience. It would be wrong in theory and unfeasible in practice to replicate the Georgian case in another country. But some lessons can and should be learned: there are both mistakes to avoid and some successes that can serve as examples for other countries. The ongoing adventures of the Georgian constitution (as well as the situation in Armenia and Azerbaijan) allow drawing out some conclusions:

1. In the South Caucasus, the political will of the dominant rulers still prevails over constitutions, although with varying degree in different countries.

2. Personal relationships among leaders often substitute for institutional rules. Key decisions are still made outside the legal framework and this tendency seems likely to continue for some time to come.

3. Political parties remain weak. Parties with an established system of values, which do not change according to shifts in the political environment, are a rare occurrence. As a result, the political system in general is still rather fragile and unstable.

4. Due to insufficient knowledge and experience of democracy, it may take decades to convince the people that it is better—and safer—to live by the rule of law than by arbitrary decisions of a charismatic leader.

5. Attitudes of Western partners towards post-Soviet states are incoherent, biased, and lax. The oft-stated and reasonable principles of “more for more” (more assistance for more progress in reforms) and of “supporting the people, not their leaders” are used selectively.

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