

LIBERAL CONSTITUTIONALISM AND GEORGIAN DEMOCRACY

A project of the Partnership for Social Initiative and the Institute of World Affairs

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I. VISION

A. Statement of Need

The past decade saw the transformation of the twentieth century’s prime ideological rival to liberal democracy – the Soviet Union. In the wake of the collapse of the Soviet empire, an urgent need for a new form of social and political organization arose. A first wave of efforts to install democratic rule and free market economies swept into the post-Soviet vacuum. Indeed, experimentation with new systems of governance in some Soviet republics had already begun in the late 1980s, and was one of the precursors of the Soviet collapse.

Having shed the Soviet yoke, the former Soviet Republics became nascent independent entities in desperate need of new constitutional forms. These newly democratizing states not only did not have sufficient time to consider the best forms of government for their societies, but did not have the technical expertise necessary for such dramatic transformations.

The Republic of Georgia was characteristic in suffering through all the birth pains of liberalization and society building. An ancient Caucasian nation, with old liberal traditions, its aspiration for independence had been crushed by the Soviet regime, most recently in April of 1989. The rush to democratic rule in Georgia did not permit for a thoughtful and well

considered process to design a new fundamental law, a Constitution tailored to Georgian needs. Rather, the exigencies of the moment produced a patchwork document, made up of elements drawn from the West, most specifically the United States, France and Germany.

Although the current Georgian Constitution served its purpose in providing for the beginnings of a stable democratic regime, its major shortcomings have become apparent and have given rise to a great deal of public discourse. The outcry for constitutional revision has swamped all strata of the Georgian society engaged in things political. The Chairman of the Labor Party of Georgia, Shalva Natelashvili, has called for a change in the Constitution that would in effect transform the current presidential system to a parliamentary one, creating a Cabinet of Ministers and drastically reducing the powers of the President. Dr. Valerian Haindrava, one of the framers of the current Constitution and a prominent leader of the Republican Party of Georgia, has called for the creation of a second Parliamentary Chamber to function like the Upper House of the U.S. Senate. In addition, his proposal argues that Georgia should follow the Spanish federal model. Other political leaders have advanced yet other proposals for revising the Georgian Constitution.

The current Constitution was designed to establish a government based on Western democratic principles. Unfortunately, Georgia has not been able to achieve, as yet, such lofty aspirations. Technically, a liberal Constitution governs Georgia. However, not only is this Constitution excessively long and often convoluted, but it fails to outline the functions of a liberal government in various critical areas. It does not clearly articulate the scope of governmental powers; it does not offer the proper protection of civil (individual) liberties; and it does not establish the necessary separation of powers between different national branches, or between national and local governments.

Owing to these deficiencies, the political climate in Georgia has once again become tumultuous and constitutional revision is all but inevitable. Many are concerned that the absence of the true understanding of the liberal principles and the functions of the democratic government will once again produce an unworkable system. If revisions to the Constitution are not examined judiciously and with an expert eye, they are likely to once again result in an essentially moribund document. If Georgia is to develop a truly functioning Constitution, then there must be concrete guidelines established that can help the country's political reformers. These guidelines must account for:

- Ø the shortcomings of the current Georgian Constitution;
- Ø the fundamental principles of liberal constitutionalism;
- Ø the political traditions of Georgia;
- Ø the particular needs of the Georgian population.

Please refer to "Letters of Support" for letters from prominent Georgian politicians, NGO representatives, and scholars in support of the arguments made above. The Hon. Niko Lekishvili, Majority Leader of the Georgian Parliament and former Head of the State Chancellery, argues that "an examination of document [the Constitution], its basis, its positives and negatives is a necessary task." Mr. Merab Abeishvili, Minister of Transport and Communication of Georgia, writes that it is "now time to review [the Constitution] to examine the way it has worked, to propose changes, and to discuss its future." The Hon. Zaza Sikharulidze, former member of the Georgian Parliament and of the State Constitution Commission, writes on behalf of the Congress of Georgian NGOs that "the project supports and helps major needs of the Georgian mental transformation to a modern western-oriented mentality and contributes to the public promotion and awareness of American ideas on the regional level." Finally, Mr. Niko Mlikadze, Director of the Strategic Research Center, writes that "the proposed project touches extremely important political issues faced by modern Georgian society."

B. Goals and Objectives

This proposal outlines a framework for a liberal political regime in Georgia, tailored to accommodate traditional Georgian values and the political desires of the present-day Georgian population. To achieve this, the project will:

- 1) Produce a set of recommendations designed to guide revision of the Georgian Constitution, drawing on findings from four points of inquiry:
 - i) Analysis of how and why the current Georgian Constitution has failed to establish a liberal democratic regime.
 - ii) Study of the limits of governmental powers in the United States and the mechanisms for protecting individual rights enshrined in the US Constitution.
 - iii) Examination of historical records concerning liberal political traditions in Georgia, as well as the country's experience with totalitarian rule and rebellion.
 - iv) A survey of popular preferences regarding constitutional forms for Georgia.
- 2) Present the findings and recommendations in a conference format to Georgian government officials, political leaders, non-governmental organization representatives, and members of international organizations.
- 3) Publish the aforementioned findings and constitutional recommendations in the form of a monograph to be distributed to Georgian political leaders and the population at large.
- 4) Conduct a series of six seminars for Georgian government officials, political leaders, and non-governmental organization representatives, about the project's findings and recommendations, the shortcomings of the current constitution, the fundamental principles of liberalism, and the best means to go about amending the current Georgian Constitution.

C. Narrative Description of the Proposal

1. Guidelines for Constitutional Revision

To produce a set of guidelines for revising the Georgian Constitution, it is necessary to complete four separate studies. The first study concerns the shortcomings of the current Georgian Constitution. The second study concerns the limits of governmental power and the mechanisms for protecting individual liberties in the American system. The third study focuses on the history of Georgian liberalism. The fourth study concerns the current political climate in Georgia. These inquiries will be incorporated into a set of guidelines designed for use by policymakers to rework the Georgian Constitution.

i) Shortcomings of the Current Constitution

The problems of the current Georgian Constitution begin with the methods used to write it in 1995. The alternative constitutional forms that were discussed by the framers then were not based on theoretical frameworks, but only on the practical examples of constitutional governance in different countries. While understanding constitutionalism in action is very important, it is impossible to understand specific elements of different constitutional forms without understanding the theories behind these elements. However, the theories behind these different elements were never considered by the authors of the Georgian Constitution. During the Parliamentary debates over the new Constitution, some Parliamentarians proposed a draft which copied the American fundamental law. Others proposed drafts copying the French and the German models. Some Parliamentarians favored the Georgian Constitution which governed

the country for the short period when Georgia was independent early in the 20th century, following the collapse of the Russian Empire. All of these drafts were simply carbon copies of the documents on which they were based, rather than models created specifically for Georgia and its people.

When it came time to compromise between the competing drafts that were being discussed, the members of Parliament were ready to simply combine different constitutional proposals into one. While compromise is a necessary element of governance, it is unwise to mix different forms of government with each other, especially when different forms conflict with each other. In other words, taking a few elements from one constitutional model and other elements from another and then mixing them together into one may not simply work. Elements taken from a given document make sense in the context of everything else that is in that Constitution. These specific elements may make no sense without the other components. In addition, it is important to remember that specific elements of particular Constitutions are tailored to specific nations. Thus, copying constitutional forms from one country into a governing document of another, without inquiring into each country's character, is not wise. The framers of the Georgian Constitution, meanwhile, made both of these mistakes simultaneously.

In addition to representing this mix of different, not necessarily compatible, Western Constitutions, the Georgian fundamental law also details too many specifics for a Constitution. Thus, it is very long and convoluted. Many of the things that should be written in form of parliamentary legislation are included in the Constitution. For example, the Constitution describes in detail the procedures for the parliamentary sessions.

Among other structural defects, the Georgian Constitution fails to provide for a Court system that can play the primary role in protecting personal liberties. In Georgia today, the judicial power is too dispersed, between the Supreme Court and the Constitutional Court, thus limiting the jurisdiction of each upper-level bench. In addition, it is not clear that the Constitutional Court has the full power to review actions by the other branches and rule on the constitutionality of these actions. Thus, it is not clear whether the Constitutional Court is empowered to protect individual liberties to the full extent necessary in democratic government.

Last, but not least, the fact that the Georgian people were never consulted about what kind of government they wanted is also of great importance. Because of this fact, the vast majority of the public today does not have an allegiance to the regime, nor does it wish to support the government. This is arguably the greatest problem facing Georgia today, since without grassroots citizen activism by people who believe in their government and wish to make it work better, a liberal democracy will not be able to develop and survive in Georgia.

These are but few of the shortcomings of the current Georgian Constitution. A careful, theoretical study of the Constitution that would meet the standards of the Western political science community has, to our knowledge, never been done. Therefore, the first task in determining how to change the document which virtually everyone agrees needs some changes is to fully understand its nature and its shortcomings. Only with such an understanding can one consider making recommendations for revisions. However, these recommendations must be based on sound theoretical knowledge of liberalism and on the Georgian values and needs.

Please refer to "Letters of Support" for letters from three prominent Georgian political leaders which discuss the shortcomings of the Constitution. The Hon. Irina Sarishvili-Chanturia, Chairman of the National-Democratic Party of Georgia and former Deputy Prime Minister of Georgia who was a member of the Georgian Parliament at the time of the ratification of the current Constitution, writes that "the lack of truly liberal political institutions and the separation between the fundamental law and the people has resulted in rampant corruption on all levels of government and the impoverishment of the Georgian people." The Hon. David Berdzenishvili, Chairman of the Republican Party of Georgia and former member of the Georgian Parliament, writes that the present Constitution "prevents the development of a vibrant civil society."

Mr. Vladimir Kakhadze, Chairman of the Tbilisi City Council, presents the local government's perspective on federalism and argues that "because it is not clear what roles of the government fall into the local sphere of control and what falls into the national sphere, it is often impossible to know when our [local government's] actions are legitimate and when they are illegitimate."

"Letters of Support" also includes two letters concerning the shortcomings of the current Constitution from leaders of two prominent NGOs: Ms. Marika Darchia, writing on behalf of the Taxpayers Union of Georgia and Mr. Irakly Kirtava writing on behalf of the Federation of South Caucasus Business and Professional Associations. In addition, a letter from Mr. Badri Japaridze, the Vice President of TBC Bank, one of the largest private banks in Georgia, discusses the difficulties the present constitutional arrangement presents to the development of free business and market economics.

ii) The American Example: Modern Liberal Constitutionalism

Today's Western democracies are all "liberal" nations, based on certain principles of political philosophy which were derived by Western political thinkers in the 16-18th centuries. These principles were first put to practical use, however, by the American Founders, who themselves contributed to the development of these ideas. America, remarked the philosopher Allan Bloom, is a regime that merits philosophic consideration because "its founding documents were philosophic and derived from great philosophers."¹ For this reason, an examination of the American political experiment can show not only the practical ways in which a democracy can be built, but can also provide the theoretical framework necessary for liberalism. Thus, by studying of the American regime's mechanisms for protection of individual rights and for the limitation of governmental powers, we can find out the ways in which other nations can achieve similar ends.

Liberalism: Rights Based Government

Liberalism is based on the notion that people are born into absolute freedom, which leads them to a state of war with each other. In order to exit the state of war and establish peace, people come together into a political community and form a government, to which they give up some of their rights and thus entrust in it certain powers (they keep all those rights which they do not give to the government). In return, the government is charged with three main tasks: protecting the citizens from foreign threats, protecting the citizens from each other, and protecting the citizens from the government itself. The project concerns the latter two tasks entrusted by people in their government: the protection of the citizens from each other and the protection of the citizens from the government. The inquiry also addresses the question of how best to accomplish these tasks, according to the liberal thinkers, and the means for implementing these tasks in the future Georgian Constitution.

Many liberal thinkers have outlined the means by which the government that the citizens create can best protect the citizens from each other and from itself. First, the government must recognize certain pillars of individual liberty, which it can never touch or take away. Examples of these include the right to own and to dispose of private property, the right to free speech, conscience, and religion, the right to privacy and autonomy, the right to equal treatment under the law, and the right to due process under the law. In many Constitutions, a Bill of Rights makes explicit such rights as well as others, particularly substantive rights which vary from nation to nation, culture to culture, state to state. In liberal political structures, such as Germany and the United States, not only is the government prohibited from violating these rights, but independent Courts are charged with protecting them from intrusions, by the government and citizens.

However, simply listing citizens' rights and claiming that the government will protect them is not enough. Indeed, for the independent Courts to exist, for example, the governmental structure

¹ Bloom, Allan, ed., *Confronting the Constitution*, Washington, D.C., The AEI Press, 1990; 6.

itself must be arranged in such a manner as to ensure for judicial independence. In other words, the governmental structure must help ensure that the state does not infringe upon civil liberties. To accomplish this, the first task is to properly enumerate the powers of the government. The next task is to place certain checks on the government. Two forms of checks on tyranny have been exemplified in Western Constitutions: separation of powers and federalism.

Separation of Powers and Federalism

The notion of separation of powers refers to the division of a government's political powers amongst coordinate branches, all of which have specific ends, *and* specific powers they can use to reach these ends. The division of this power does not follow the same model in all liberal governments, though most have an independent judiciary. In America, there are three branches: the legislative, the executive, and the judiciary. According to the American notion of separation of powers, the executive powers are different from the legislative and the judicial powers, and the same is true of the other two branches. In addition, each of the branches has some power(s) by which it can control the other branches, to ensure that all three branches stay within their constitutional powers and not violate the rights of the citizens.

The notion of federalism also describes a form of separation of powers. However, instead of referring to the division of power between different branches of one government, federalism describes the division of power among different governments, what we may call the central and the local governments. Federalism, as we understand the term today, is purely an invention of the American Founders. Indeed, that is the reason Supreme Court Justice Anthony Kennedy has called federalism the American Founders' only *unique* contribution to political science.²

According to the late Martin Diamond, a renowned scholar of the American regime, prior to the American Founding, in practical terms, the term 'federal' referred to a league or compact. It was understood as a "relationship of 'bodies politic,' linked, as the etymology of the word tells us, by obligation or faith; its operating principles derived from its contractual nature and its dependence on good faith."³ In other words, this understanding of a federal state equated it with a confederacy. Therefore, even under the Articles of Confederation, when the American union was very different from the form it achieved in the Constitution, it was still a federal nation. By contrast to federalism, there existed the notion of a "unitary or a national government," where "the central body has all the sovereign power, with the localities entirely dependent largely upon the will of the nation."⁴

The American regime, meanwhile, created something in between these two forms of government. It created a "system [that] combines states which confederally retain sovereignty within a certain sphere, with a central body that nationally possesses sovereignty within another sphere."⁵ This is the understanding of federalism that we have today. It only came to be called "federalism" because the term was popular with American voters at the time of ratification, and the Founders wanted to call their creation by that title (to ensure the adoption of the Constitution) even though on numerous occasions in *The Federalist Papers*, James Madison and Alexander Hamilton took pains to differentiate the American arrangement from both the old style federation and the old style national government. Examples of this include such statements as: "the proposed Constitution is neither federal nor national, but a composition of both."⁶

² See concurring opinion by Justice Anthony Kennedy (joined by Justice Sandra Day O'Connor), in *United States v. Lopez*, 514 U.S. 249 (1995).

³ Diamond, Martin, "The Federalist's View of Federalism," in George Bensen, ed., a collection of essays on federalism, with no specific title, published by the Institute for the Study of Federalism, Claremont, CA., Claremont Men's College, 1961; 38. Hereafter, Diamond.

⁴ Diamond, 22-23.

⁵ Diamond, 23.

⁶ Madison, James, *The Federalist Papers* (authored with Alexander Hamilton and John Jay), ed. by Clinton Rossiter, New York, A Mentor Book, 1961; No. 39.

Please refer to “Letters of Support” for a letter from the Hon. Gia Jorjoliani, Ph.D., former member of the Georgian Parliament and of the State Constitution Commission of Georgia which drafted the current Constitution, for an expert perspective on why an understanding of liberal constitutionalism is essential for a successful revision of the Georgian Constitution.

iii) Seeds of “Liberalism” in Georgian Political Traditions

Principles similar to the ideas of liberalism that developed in Europe during the Enlightenment period also developed in Georgia, about four centuries earlier, starting with the reign King David IV “The Builder,” in the early 11th century, through the reign of his great-granddaughter, Queen Tamar, in the early 13th century. Georgia lost its independence to the Mongols in the years immediately following Tamar’s reign. Thereafter, Georgia struggled to maintain its freedom in most of the centuries that followed until it was annexed by Russia in the 18th century. However, many of the traditional national norms that gave birth to the development of Georgian liberalism were still present in the country, and seemed to show themselves through the Georgian peoples’ uncanny desire for freedom and liberty. Understanding the rise of Georgian liberalism and the factors that led to its growth is an integral part of understanding how best to organize a liberal political order in Georgia today. Even though Georgia is not the same country it was centuries ago, many fundamentals have remained the same in its culture.

During the reign of King David IV, the first centralized and fully united Georgian state arose.⁷ According to Professor Vakhtang Abashmadze, the rise of the state coincided with the rise of the Georgian Renaissance, which lasted for about two hundred years. This Renaissance expressed itself not only in literary and cultural works, such as the great Georgian epic *The Knight in the Panther’s Skin*, but also in the political arrangement of the Georgian State. Abashmadze makes this argument because the state was organized around “natural law theory,” which led the sovereign to respect and to protect certain rights of citizens and to place limitations on the powers of the King. In addition, the nation, though ruled through the central authority of the King, also had local administrative units, at the courts of the local nobles, which played an integral role in the running of the country, making the nation a federal state.

What Abashmadze calls “natural law theory” the Georgian language was also known as the “Rights Based Justice.” Following this theory, during the Georgian Renaissance, the Georgian government recognized the equality of all religions, granted equal citizenship to all people, regardless of ethnic background, and moved away from viewing the monarchy from the perspective of rule through divine rights. In a Royal Order, King Demitre (son of David IV), for example, introduced two very powerful rules concerning the treatment of the Muslims. First, the King ordered the defense of the Muslims’ right to freely practice their religion and to freely pray without being intruded upon by the practitioners of other religions. Second, he granted them special economic treatment, by reducing the taxes of Muslim merchants to three Dinary a year, while the Georgians had to pay five Dinary. The Muslim historian Al Farik was amazed by these laws on his first trip to Georgia, and encountered them again on a second trip, some 33 years later.

This is also the period in which political equality between the sexes was commonplace in many sectors of the Georgian society. In the above mentioned epic, *The Knight in the Panther’s Skin*, which most Georgians knew (and still know) by heart, the author, Shota Rustaveli, declares that ‘the child of a lion is a lion, no matter if it is a male or a female,’ referring to the ascendance to the throne of Queen Tamar. Though a woman, in the Georgian language she is called “King Tamar” – the same title that was reserved for the male monarchs. Tamar ruled a country whose empire stretched into India and Egypt and which saw some dramatic political changes.

⁷ Abashmadze, Vakhtang, *Study of the Division of the Georgian Power and its Criticism*, Tbilisi, 1972, and, “Twelfth Century Questions of Georgian History,” in *Feudal Political History of Georgia*, Tbilisi, 1968. Though Professor Abashmadze studied this period extensively, his work was heavily influenced by the Communist censors, preventing the full airing of ideas.

While the monarchy ensured protection of certain individual liberties, such as equality of religion, during Tamar's reign, the actual powers of the monarchy were also limited. In the late 12th century, the Parliament, called "Darbazi" in Georgian, which consisted of nobles *and* prominent lay members of the Georgian society, began to demand, and started to gain, more powers. According to K. Salia's *History of the Georgian Nation*, Minister of Finance, Kurtlu-Arslan, proposed a "programme to limit the absolute power of the monarchy, to divide power between the legislative, the executive, and the judiciary" and to endow the "'Darbazi' with legislative powers and leave only executive powers in the hands of the monarch."⁸ This proposal was never fully accepted by the Queen, but some of its elements did reach the light of day. For example, the powers of the "Darbazi" increased dramatically and the Queen no longer made any appointments or important governmental decisions without consulting it. Indeed, royal proclamations stated that the "decision was taken by the Queen 'jointly and in agreement with the didebuls' [Darbazi]."⁹ In addition, a court system was developed, with the first Courts of Justice located on the local level at each Aznauri or Tavadi (the titles for Georgian nobles). Disputes from these tribunals could be appealed to a Supreme Court, which was stationed at the Royal Court. Also during Queen Tamar's reign, capital punishment was abolished in Georgia.

While we know the facts about this period, no study has carefully considered the reasons for these political changes. What led the Georgian leaders to bring about truly monumental protections of citizens, such as those that were observed by Al Farik? In addition, what led Georgia to develop a Parliament, and to a degree, limit the royal powers centuries before in the Magna Carta? Were these changes influenced by some philosophic ideas or were they purely the result of the citizens' mores and the natural circumstances of the country? A very important part of the Liberal Constitutionalism and Georgian Democracy project is to understand the factors that led to these dramatic political changes and to gain a better understanding of the political liberalism that arose in Georgia during this period. Since such studies have never been done before, they will not only be valuable as part of the project, but also in their own right.

These political traditions were not allowed to develop further because soon after Tamar's death, in the mid-13th century, Georgia was invaded and conquered by the Mongols. For the next five centuries, the Georgian people would constantly battle invaders. Thus, the political development of the country began to stagnate. Even during these trying times, though, the political norms of the Georgian population must not have drastically changed. This is evidenced by two facts: first, royal authority, even when Georgia was free of invaders, never increased beyond what it had been under Queen Tamar, and indeed decreased vis-a-vis the power of the people. In addition, the population's desire to be "free" never disappeared in the country as a whole. Only when faced with destruction did the country decide to accept certain limited protections from Russia. In the end, Russia did not uphold its part of the deal and invaded Georgia.

Georgia regained its independence after the Russian Tsar abdicated his throne in 1917. However, four years later, the Georgian people faced a very unique invader – Communist Russia. Georgia's absorption into the Soviet Union was not voluntary. During the Communist rule, the Georgians strongly defended their religion and their culture. At times, they rebelled. One such rebellion took place in the mid-1950s, after Stalin's death. Georgians also rebelled in 1978, when the Soviet Politburo, under Chairman Brezhnev's leadership, proposed that Russian become the one official language of the entire Union and serve as the language in which all students would be educated in all schools. The Georgians went to the streets, an unheard off phenomenon at the height of the Communist rule, and demanded that Soviet leaders change their mind; the Politburo did. Finally, on April 9, 1989, Soviet troops attacked and crushed Georgian students who were protesting for Georgian independence. This action led to many political changes in

⁸ Salia, K., *History of the Georgian Nation*, Paris: Prix de l'Academie Francaise, 1980, second edition 1983.

⁹ Ibid.

Georgia, resulting in Georgia becoming the first Soviet Republic to hold free, multi-party elections and the second to declare independence, after Lithuania.

No matter what kind of a regime is built in Georgia today, it is crucial to understand these political traditions and the influence they may have on the Georgian people today, a people obsessed with their history. Very little, if any, work on this subject has been done by Georgian historians. Therefore, this component of the project is as unique as it is important.

Please refer to “Letters of Support” for a letter from the Hon. Marika Lordkipanidze, Ph.D., and Dr. Giulli Alasania for an expert perspective on this component of the project.

iv) Georgian Political Culture

In order to formulate proposals for a new Georgian political arrangement, it is also necessary to understand the wants and the desires of the Georgian people. It is necessary to study the Georgian peoples’ views concerning government, the role they wish to see the government play in their lives, the levels of control they would like to exercise over different spheres of government, and the powers they are willing to delegate to the sovereign in order to establish civil peace. To do this, it is necessary to conduct surveys of the Georgian people to help understand the Georgian political culture and the beliefs of the country’s citizenry. This will help achieve two things. First, identify the forms of liberalism that may be best suited for Georgia. Second, identify elements of liberal citizenship that may be lacking in Georgian population, which must be cultivated by the government and the civil society in order to ensure for a successful transition to truly democratic rule.

For further details on the surveys and how they will be conducted, please see below, “II. Program Methodology and Activities” and “Letters of Support,” letter from Dr. Gia Tsuladze and Dr. George Nizharadze.

v. Summary

The results of these four studies will be drawn together, as part of the project’s main task of designing a set of guidelines for the revision of the Georgian Constitution. The project staff will build these guidelines on an understanding of liberalism that will be achieved by an inquiry into the American regime *and* the three studies that deal with Georgia. The historical inquiry will provide the overall framework for the guidelines. Meanwhile, an understanding of the shortcomings of the current Constitution will show not only what needs to be revised, but will also help ensure that similar mistakes are avoided during the revision process. Meanwhile, by having access to a study dealing with the present day political wants of the Georgian people, the project staff will be able to formulate revisions which will be acceptable to the Georgian people. This will dramatically increase the probability that the people at large will support the guidelines and will be happy to see them implemented. At the same time, this will help make the guidelines truly democratic.

2. Constitutional Conference

Once the project’s main task is complete, the project will enter its next phase – presenting the recommendations to the Georgian public and policy makers. This will first happen through a conference, where the different components of the project will be presented, discussed and analyzed. The conference will be attended by all the scholars participating in the project, along with the leaders of different Georgian political parties, NGO’s, the academic community, and different international organizations active in the country. The conference will help Georgian leaders understand the guidelines and start a discussion, in influential circles of the Georgian society, of the recommendations outlined by the study.

3. Publication of Recommendations

The publication of the results of the project – the scholarly inquiries and the set of guidelines for constitutional revision – will be the focus of third phase of the project. This is necessary to ensure that more people than those attending the conference have the opportunity to fully understand the recommendations, and to ensure that the recommendations maintain a prominent place in Georgian society and political discussions after the project is finished. The book will be published in two languages, English and Georgian, and it will be distributed for free to the members of the Georgian parliament and other political leaders. In addition, it will be sold in bookstores around the country for a fee merely covering the costs of publication.

4. Seminars

In order to ensure that many members of the Georgian political elite understand and acts upon the recommendations, the project's final phase will be to conduct a series of six seminars for Georgian government officials, political leaders, and NGO representatives. This fourth phase of the project will take place concurrently with the third phase. These day-long seminars, with attendance numbering 15-20 people at each session, will focus half of the allotted time on formal instruction by the project personnel on such issues as liberal constitutionalism, the shortcomings of the current Georgian Constitution, Georgian political culture, etc. In the afternoon, meanwhile, the project personnel will moderate a discussion of the recommendations amongst the participants.

As is evident from the numerous letters of support accompanying the project, there is a great deal of interest in Georgian political circles in a public policy study that focuses on outlining amendments to the Georgian Constitution. The goal of these seminars is to help a number of Georgian politicians, particularly those who are interested in reforming the political system, gain an in depth understanding of the failings of the current constitutions and the recommendations of the project. These informal, small settings will be helpful in generating discussion amongst the participants about the best means to put the public policy recommendations to work in amending the Georgian Constitution.

II. PROGRAM METHODOLOGY AND ACTIVITIES

A. Methods of Research

The work on the project will be done by four working groups. For further information about the individuals mentioned below, please see refer to “IV. Institutional Capacity” and “Resumes and CV's of Selected Personnel.”

Working Group I

The first working group will consist of the Dr. Gia Jorjoliani, Dr. Hrach Gregorian, Mr. Irakly Areshidze and Mr. Toby Dougherty. Their work will be supervised by an American scholar who specialized in transition from totalitarian to democratic rule. Members of other Working Groups will be consulted in its work as it becomes necessary. In addition, other scholars and professionals may participate in the work of the Working Group at various times. This is the only Working Group that will work the entirety of the project.

This Working Group will first identify and analyze the problems with the current Georgian Constitution. It will outline the results of its research in writing.

In addition, this Working Group will be charged with the main task of the project: to design the set of guidelines for the revamped Georgian Constitution. To do this, it will bring together the work done by the other three Working Groups (see below) and merge them together to design guidelines for the revision of the Georgian Constitution.

The guidelines produced by the group, along with its paper on the current Georgian Constitution, will be presented at a conference and published. The Working Group will be in charge of the entire publication process.

Working Group will also be in charge of choosing and conducting the participants of the six seminars.

Working Group II

Working Group II will consist of Dr. Murray Dry and Dr. Michael Zuckert who will serve as consultants to the project. Their assistance is necessary since such expertise is not available on a large scale in the Georgian political science community.

Dr. Zuckert will be charged with investigating and considering the issues of federalism and the separation of powers in liberal political philosophy and in practice. He will consider the treatment of the subject in Locke's *Second Treatise on Government*, Montesquieu's *Spirit of the Laws*, and Madison/Hamilton/Jay's *The Federalist Papers*, along with the Constitution of the United States and the treatment of this issue by the US Courts in relevant cases, starting with *Marbury v. Madison* (1812) and ending with *United States v. Williams* (2000).

Dr. Dry will be charged with investigating and considering the issue of individual rights in liberal political philosophy and in American Constitutional Law. He will identify the theoretical basis for a liberal government's protection of rights enjoyed by citizens, such as freedom of press and religion, separation of church and state, the right to consult an attorney, the right against self-incrimination, etc. He will consult writings of political philosophy such as Plato's *Apology of Socrates*, Milton's *Aeropoeitica*, Spinoza's *The Religious-Political Treatise*, Locke's *Letter on Toleration*, Mill's *On Liberty*, Madison/Hamilton/Jay's *The Federalist Papers*, Madison's Letter on the Alien-Sedition Acts, among others, along with the US Constitution and relevant US Court cases.

Each of two consultants will produce a concise, 40-50 page monographs. These will be used by the Working Group I in its work and will be published as part of the project book.

In addition, the scholars will work with members of Working Group I in writing a concise theoretical analysis to answer the question: "What is liberal government?"

Working Group III

Working Group III will consist of two Georgian historians, Dr. Marika Lordkipanidze and Dr. Giuli Alasania.

Dr. Lordkipanidze will investigate the traditions of the separation of powers and federalism in Georgian history. Dr. Alasania will investigate the traditions of individual rights protection in Georgian history. Very little study of these relevant periods from this perspective has taken place in the 20th century, or earlier. Facts about the period certainly exist. But there has been little research done on why these changes took place: were they driven by certain unique developments of political thought, by 'political' reasons; or, by the demands of the people? Only two scholars of Georgian history, Dr. Vakhtang Abashmadze and Dr. M. Meskhi, have made a serious contribution to the study of the limitation of the Georgian government's powers and its federalism. Unfortunately, both are deceased and left no serious students to continue their work. Therefore, our scholars, in their research, will engulf themselves with primary documents from Georgian history, including the *Kartlis Tskhovreba* ("Life of Kartli"), an extensive book completed in the 17th century. The goal of their research is to gain an understanding of Georgian traditions concerning limited government and individual rights, and how these have shaped the Georgian political landscape.

Dr. Abashmadze's and Dr. Meskhi's writings will serve as their starting point. These include, "Division of Power" in *Essays in Georgian History*, Vol. 3; *Study of the Division of the Georgian Power and its Criticism*, Tbilisi, 1972; "Twelfth Century Questions of Georgian History," in *Feudal Political History of Georgia*, Tbilisi, 1968, all by Dr. Abashadze. In addition, historical studies that will be of assistance include: Ivane Djavakhvili, *History of the Georgian Nation*, 5 volumes, Tbilisi, 1965; Ivane Djavakhvili, *History of Georgian Law*, Kutaisi, 1919 and 1928; S. Meskhia, *Georgian Political Structure in the 11-13th Centuries*, Tbilisi, 1968.

Both Drs. Lordkipanidze and Alasania will be asked to write concise, 40-50 page monographs on their subjects to be used by Working Group I and to be published as part of the projects final book.

Jointly, Drs. Lordkipanidze and Alasania will also write a paper outlining the important political events which took place in Georgia during the 20th century, when the country was a part of the totalitarian Soviet regime. They will outline the numerous rebellions which took place in Georgia during the 70 year Soviet rule. Afterwards, working with Working Group I, they will analyze what can these rebellions tell us about the Georgian people's understanding and regard for freedom and liberty, and how can these notions of freedom be best used to help establish in Georgian a just democratic government.

Working Group IV

Working Group IV will consist of Dr. Gia Tsuladze, Dr. George Nizharadze, and Mr. Gocha Goshadze. The group, through its research, will offer an explanation of the Georgian people's understanding of government. The aim of the study will be to identify what the Georgian people expect from their government, and why they hold these expectations. More theoretically, the study will aim to identify the kind of government, in terms of the political arrangement, the Georgian people would like ideally to see in the country.

In its work, the group will design three sociological opinion surveys. The first survey will be a wide ranging, representative, sociological study of the overall Georgian population. It will be conducted through phone interviews of Georgia's public of voting age. The second survey will focus on interviewing representative focus groups, members of which will be selected in a manner to give us the best sampling of the Georgian population. The third survey will be a wide-ranging study of Georgian experts, including historians, political scientists, psychologists, and sociologists, whose ideas about the issues related to the project. The results of these three studies, once analyzed in relationship to the points of inquiry of the project, will provide an excellent understanding of the following issues: first, the Georgians overall views of government's role in the life of the society; second, their views about the powers that should be vested in the regime; third, issues and peculiarities that must be taken into account when designing a new set of constitutional forms in order to ensure that the Georgian people are willing to accept the new regime, and are able to believe in it. Thus, we will gain a keen understanding of the Georgian political culture, of the Georgian people's values and mores, and of their political understanding.

The working group will prepare a 40-50 page monograph detailing and analyzing the results of its work. This monograph will be a part of the project final book and will be used by Working Group I in its work.

B. Components of the Project

1) *Shortcomings of the Current Georgian Constitution* (Working Group I)

- a. Inquiry into the theoretical and practical foundations of the Constitution.
- b. Study of the Constitution's structure.
- c. Consideration of the advantages and defects of the document, and of the problems with governance that have arisen.

- d. Investigation of the causes for the political problems facing the country – are they solely based in the constitutional framework or also caused by other factors?
- 2) **Liberal Constitutionalism** (Working Group II)
 - a. Study of Individual Liberties Protection in American Constitutionalism.
 - b. Study of Governmental Powers in American Constitutionalism.
 - c. Analysis: Written description of the liberal model (Working Groups I and II).
- 3) **History of Georgia** (Working Group III)
 - a. Individual Rights in Georgian History.
 - b. Historic Federal Structure and Governmental Powers of the Georgian State.
 - c. Analysis of totalitarianism and values of freedom during Communism (Working Groups I and III)
- 4) **Georgian Political Culture** (Working Group IV)
 - a. Preparation of a sociological study concerning the current Georgian citizens' views on government.
 - b. Collection of information concerning the Georgian people's understanding of role of government, and the expectations they place upon it.
 - c. Identification of the similarities and differences between the Georgian political culture and that of Western democracies.
- 5) **Guidelines for Reworking of the Constitution** (Working Group I)
 - a. Analysis and outline of a political arrangement based on the research results from components 1, 2, 3, 4.
- 6) **Conference** (All Working Groups)
 - a. Presentation of the project's results and recommendation in conference.
- 7) **Publication** (Working Group I).
- 8) **Seminars** (Working Group I).

C. Time Line of the Project

Twelve months will be necessary to complete these eight components of the project.

TASK	MONTH											
	1	2	3	4	5	6	7	8	9	10	11	12
Component 1		ü	ü	ü	ü							
Component 2	ü	ü	ü									
Component 3	ü	ü	ü									
Component 4	ü	ü	ü	ü								
Component 5						ü	ü	ü				
Component 6									ü			
Component 7										ü	ü	ü
Component 8										ü	ü	ü

III. INSTITUTIONAL CAPACITY

A. Partnership for Social Initiative

1. Mission of the Organization

PSI...Defining Ideas for the Georgian Democracy

Partnership for Social Initiative (PSI) was founded in Tbilisi, Republic of Georgia, in January 2000 as an independent, nonpartisan, research and educational organization dedicated to the study and advancement of public policy. Through its research, conferences, publications, and

seminars, PSI advocates public policy based on the principles of freedom and representative democracy--just government, rule of law, individual liberty and responsibility, pursuit of happiness, private enterprise and the values of virtue, honor and dignity. PSI's fundamental goal is to help develop and advance democratic institutions and values in Georgia.

PSI research takes place in five centers:

- Ø *Illia Chavchavadze Center for the Study of Constitutionalism*
- Ø *Center for the Study of Political Mores and Community Development*
- Ø *Center for the Study of Social Welfare*
- Ø *Center for the Study of Free Markets, Competition, and Private Enterprise*
- Ø *Center for the Study of International Affairs and Foreign Policy*

PSI is also actively involved with the Georgian Collegiate Consortium (GCC), an initiative dedicating to advancing reforms in Georgian higher education and developing a liberal arts curriculum in a Georgian university. GCC was founded jointly by PSI, the Caucasus Institute for Peace, Democracy and Development (CIPDD) and the Institute for the Study of Western Thought at Chavchavadze University.

Illia Chavchavadze Center for the Study of Constitutionalism: PSI's activities in this area focus on establishing in Georgia the political framework necessary for the development of a modern democracy. PSI aims to outline and to implement a constitutional arrangement for Georgia which fits the modern, Western model, yet which also suites Georgia's unique history and traditions. PSI focuses its inquiries on the questions of governmental powers, governmental structure, and protection of individual rights. Its research also focuses on ways to free the governmental institutions from the claws of corruption.

Center for the Study of Free Markets, Competition and Private Enterprise: PSI's activities in this area focus on encouraging the development of private businesses and enterprises, free from the overly intrusive governmental regulations. The organization believes that a healthy business environment and an expanding market-oriented economy contribute to strengthening Georgian democracy. PSI's research strives to provide policy makers and business executives with practical solutions to emerging market-economy policy issues.

Center for the Study of Social Welfare: PSI's activities in this area focus on helping establish of values crucial for the sustainable development of social welfare through private activity and community action.

Center for the Study of Political Mores and Community Development: PSI's activities in this area focus on encouraging individuals, families, communities, churches and other organizations in developing and supporting a civil society that can play an integral role for the developing of individual liberty and democracy in Georgia. While encouraging freedom and liberty, PSI recognize that this is impossible to achieve without a drastic shift in the Georgian society's way of thinking, the rekindling of the Georgian love of freedom, and the alignment of the liberal principles with the traditional Georgian values and mores.

Center for the Study of International Affairs and Foreign Policy: PSI's activities in this area focus on supporting and fostering continued development of Georgia's close relationship with the United States, the EU, other democratic and free nations, NATO, the UN, and other international organization.

2. Members and Visiting Fellows

Fellows

Devi Khechinashvili, Ph.D., President

Gia Areshidze, Ph.D.
Irakly Areshidze, B.A., Ph.D. in progress
Valeri Chkadua, Ph.D.
Tina Danelia, M.D.
Tobias Dougherty, B.A.
Gocha Goashadze, M.S.
David Gzirishvili, M.D.
Archil Melikadze, Ph.D.
Nick Melitauri, M.I.A., Ph.D.
George Nizharadze, Ph.D.
Tamar Tsagareishvili, M.A.
Gia Tsuladze, Ph.D.

Visiting Senior Fellows

Hon. Marika Lordkipanidze, Ph.D.
Giuli Alasania, Ph.D.
Hon. Gia Jorjoliani, Ph.D.

B. Institute of World Affairs

1. Mission

The Institute of World Affairs (IWA) was founded in 1924 as a non-profit, non-partisan, tax-exempt organization devoted to international understanding and the peaceful resolution of conflict. In support of its mission, the Institute provides training programs designed to enhance professional skills in conflict resolution and infrastructure development. The Institute conducts independent evaluations and designs systems to help improve the management of international conflict. Additionally, the Institute offers education and outreach programs on current issues in international affairs.

For nearly 75 years people from all parts of the world have benefited from Institute training and education efforts. Many of these individuals have joined to form a membership organization known as IWA Associates which is dedicated to promoting the Institute and its mission. The Institute operates offices in Washington and New York, as well as the Twin Lakes Conference Center in the Berkshire Hills in Salisbury, Connecticut.

2. Board of Directors and Board of Advisors

Board of Directors

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Chairman, Kunstadter Foundation, New York, NY

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Amb. James O.C. Jonah

Ambassador of Sierra Leone to the United Nations

Dr. John Foster Leich

ElderHostel Coordinator, Institute of World Affairs

Amb. Samuel W. Lewis

Washington Institute for Near East Policy

Mr. Peter Bird Martin

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Dr. Dennison I. Rusinow, Pittsburgh, PA

Mr. Frank Sussler, Farmington, CT

Dr. Nils H. Wessell, New London, CT

Dr. Albert S. Zaichik, St. Petersburg, Russia

C. PSI and IWA Personnel

Please refer to "Resumes and CV's of Selected Personnel" for additional information about the individuals below.

1. Administrative Staff:

Dr. Hrach Gregorian will be Co-Director of the Project from the American side. He is President of the Institute of World Affairs. He will lead project administration and budget control, facilitate the Constitutional Conference in Tbilisi, and lead the outreach to the government and NGO officials. In addition, Dr. Gregorian will be member of Working Group I. In this role, he will serve as an integral member of the research team, focusing his work on outlining the actual guidelines for constitutional revision.

Dr. Gia Areshidze will be Co-Director of the Project and will be in charge of the project administration in Georgia. He is a Founding Member and Director of Fundraising at PSI, Vice President of the Association of Banks of Georgia, and Chairman of the Trade Union of Banks and Insurance Company Employees of Georgia. He also serves as board member of the State Pension Fund and member of three-partisan Commission of Employees, Government and Trade Unions. Over the last four years, he has led and participated in numerous NGO development projects funded by international organizations. Dr. Areshidze is the author of two books and many scientific articles and holds a Ph.D. in high-energy nuclear physics.

2. Research Staff:

Dr. Hrach Gregorian (see above).

Hon. Gia Jorjoliani, Ph.D., a leading Georgian political scientist and former member of the Georgian Parliament, was one of the original MP's who drafted the present Georgian Constitution. He is a visiting fellow at the Partnership for Social Initiative, Chairman of the

Scientific Board at the Center for Social Studies in Tbilisi, Georgia, and Research Professor at the Institute of Oriental Studies, Georgian Academy of Science, in Tbilisi.

Irakly Areshidze is a graduate, *cum laude* of Middlebury College in Middlebury, VT, USA, where he wrote his Senior Honors Thesis on Federalism, Commerce Clause and the American Constitution. He is Non-Resident Senior Fellow at the Partnership for Social Initiative and Director of PSI's Center for the Study of Constitutionalism. He is also Research Fellow at the Institute of World Affairs. Mr. Areshidze serves as the senior political writer for *Profile*, a bi-monthly English-language journal published in Tbilisi.

Toby Dougherty is a graduate, *magna cum laude*, of Middlebury College, Middlebury, VT, USA. He is currently Director of Research and Strategy for U.S. Senator Jim Jefford's (Vermont) re-election campaign. He wrote his Senior Honors Thesis on the Civil War Amendments to the US Constitution and the meaning of the Due Process Clause.

Hon. Marika Lordkipanidze, Ph.D., is Professor of the Georgian History at the Tbilisi State University and Member of the Academy of Sciences of Georgia. Member of the Georgian Parliament when the current Constitution was ratified, Dr. Lordkipanidze is regarded as one of Georgia's most prominent thinkers. She has published more than 100 scientific articles and studies (in Georgian, English, French and Russian), including *Essays on Georgian History* (1996, in English) and *History of Georgia in the XI-XII Centuries* (1987, in English).

Dr. Giuli Alasania is Head of Department of Source Studies, Institute of History and Ethnography of the Georgian Academy of Sciences. She also is Professor of History at Georgian Technical University and Tbilisi State University. She has published six books and 90 articles on Georgian history, including *History of Georgia* (1980) and *Theoretical Problems of Source Studies* (1989).

Dr. Gia Tsuladze is Leading Expert, Center for Social Studies and Leading Researcher, Institute of Demography and Sociological Research, Georgian Academy of Science. Over the years, he has directed over 20 surveys with nation-wide sample on different social issues. Has published more than 70 scientific works in demography and sociology, among which 6 are monographs.

Dr. George Nizharadze is Head of Psychology of Culture Laboratory at D. Uznadze Institute of Psychology in Tbilisi, Georgia. His research focuses on the Social-Psychological Properties of Georgian Culture, particularly in the transitional period. He has published over 30 articles in scholarly journals and books.

Gocha Goshadze is Head of the Laboratory on Transpersonal Psychology at the Institute of Psychology, Georgian Academy of Sciences. He is the founder and former President of Inform Services Ltd., a public opinion research firm in Tbilisi. His publications have been published in numerous Georgian and international journals.

D. Consultant Resources

We have requested the assistance of three American scholars, who will contribute intellectual knowledge that is not available in the Georgian political science community.

Dr. Murray Dry holds the Charles A. Dana Chair at Middlebury College where he has been teaching political philosophy, American Founding, and Constitutional Law for over 30 years. A nationally recognized scholar of the American Founding, he has authored of numerous scholarly works on questions dealing with individual freedoms in political philosophy and American Constitutional Law. He is currently completing a book on the meaning of the First Amendment Freedoms of religion and speech.

Dr. Michael Zuckert is Nancy Reeves Drew Professor of Government and International Relations at University of Notre Dame where he teaches courses in Constitutional Law, political

philosophy and American politics. He is one of the nation's most prominent students of the American Government. He has authored numerous articles and books on American Government including *Natural Rights and the New Republicanism* and *The Natural Rights Republic*. He is currently completing *A System Without a Precedent*, a book on the American Founding.

Scholar on transition. We are currently in the process of engaging such a person. Possibilities include Professor Charles Fairbanks of the School for Advanced International Studies at Johns Hopkins University; Dr. Andrew Kutchins or Dr. Marina Ottaway of the Carnegie Endowment for International Peace.