

Tinatin Khidasheli

9. Federalism and Consociationalism. Prospects for Georgian State Reform

Introduction

In order to accommodate group rights in ethnically divided societies, alternatives to majority rule and to the concentration of power in the centre have to be envisaged. The recognition and respect of legitimate claims is a precondition for the settlement of ethno-cultural diversities. Such attempts to integrate various national communities should not jeopardise the stability of the state. In this paper I will address this problem by looking into federalism and consociationalism as alternatives to simple majority rule. The usefulness of federalism and consociationalism will be evaluated in the light of the Georgian context.

Several European countries have experienced a spectacular rise in consciousness among national groups concerning their cultural and linguistic distinctiveness and individuality. Centralised unitary states found themselves forced to adapt their constitutional system according to this new trend. Belgium and Spain are typical examples of the slow but all-embracing transformation of unitary states into federal structures. The core of these reforms is the institutionalisation of cultural diversity.

Political models based on the experience of developed democratic countries cannot be implemented in Georgia without taking into account its cultural heritage and traditions of statehood. The willingness of public opinion and the ability of political elites to contribute to a process of accommodation of differences are extremely important in this respect. The lack of a strong civil society, of traditions of tolerance and of the rule of law are serious impediments to the implementation of any democratic model. A nationalist ideology based on a doctrine of blood and soil would make any accommodation of differences almost impossible. Political choices should be based on criteria of efficiency and on the principle “that political form is better that best applies”¹. Despite the enormous difficulties involved in pacifying ethnic conflicts, these need to be addressed. Timing is an important factor in this process: “If the differentiation is not recognised in

time, a grouping, a cultural community, a region, will refuse to identify with the values, the culture, the language of the dominant group, thus challenging the legitimacy of the state”².

The Constitution of Plural Societies

Multi-national states have greater difficulties in reaching democratic outcomes than ethnically homogeneous ones. Pronounced cultural diversity entails the presence of diverging and often incompatible interests. Processing different identity-based interests into widely accepted political decisions is a particularly cumbersome exercise.

An ethnic understanding of nationhood implies that nations consist of ethnic groups. Membership of the nation is accorded on the basis of ascriptive criteria such as common descent, language and religion. In societies where such an understanding prevails, all relations and attitudes are seen as primordially determined. It is assumed that “the people are born into particular cultural identities and that their deepest commitments and most strongly held values are determined by the inherited identities”³. Therefore ethnic cleavages are seen as more “objective” than the interests of different social groups, classes or parties, despite the fact that they are cultural products of particular societies. Cultural diversity does not only refer to national or linguistic differences; it also relates to the “distinctive sets of attitudes, opinions and values that persist for a relatively long period of time in the field of a country and give individuals in a particular sub-culture a sense of identity that distinguishes them from individuals in other sub-cultures”⁴. In this respect the size of the cultural community is not so important as its strength and distinctiveness, since “the stronger and more distinctive a sub-culture, the more its members identify and interact with one another, and the less they identify and interact with non-members”⁵. All relations in political, cultural, family and economic life are connected to the members of the same group.

Cultural diversity may lead to instability, when ethnic groups start to believe in their exclusiveness, in their being oppressed or threatened by other groups, or when a dominating majority starts to consider them as “potential traitors” to the nation⁶. It is sometimes possible to reduce tension through negotiation, but differences may also turn into a violent conflict.

The claims of ethnic minorities to have their differences acknowledged and respected challenges the principle of majority rule. I will deal in particular with two types of conflict regulation that are used in non-majoritarian forms of democracy: federalism and consociationalism, as distinctive but in some cases interrelated forms of political organisation. Each system has its own rules, but these may also be combined in order to achieve political stability.

According to the consociational concept, all significant decisions require agreement and consensus among the leaders of the different sub-groups. The aim of this system is to prevent cleavages from leading to explosive conflicts, disintegration and split. According to Arend Lijphart's definition it is "government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy"⁷.

Federalism, like democracy, freedom and liberty, is a disputed value concept having no universally accepted meaning. For constitutional lawyers, the federal principle is a vertical division of power, "the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinated and independent"⁸. Wheare stresses the fact that formal institutional requirements are basic to federations. A constitutional delimitation of powers, bicameral legislation, independent elections for both levels of government and a multi-party system are the institutional building-blocks of federations. Federalism is defined as a legal manifestation of balanced relations between the powers of the central government and the autonomy of the constituent units. Such a system of government can be distinguished from a simple application of majority rule based on central decision-making by the existence of two distinct legal systems, "that of central government and that of sub-national units, each having its own system of organs and laws"⁹. Those two "tiers" have independent legitimacy and a constitutionally guaranteed place in the overall system, as well as their own set of institutions, powers and responsibilities. Their autonomous rights are fixed and legally determined in constitutions and other enactments. Federalism is a "special form of segmental autonomy,... not only the granting autonomy to the constituent parts of the state, which is its most important feature, but also the over-representation of the smaller subdivisions in the federal chamber."¹⁰

According to Carl Friedrich, the process of federalism is "the organisational counterpart of communal development or the organised co-operation of groups". He also argues that the whole process of federalisation is strongly linked with "territorially diversified values, interests and beliefs overarched by joint values and beliefs".¹¹

The basic differences between federal and consociational systems can be defined as follows:

- (1) Federal systems are dependent upon dispersed, generally territorially organised, majorities, whereas consociational systems are dependent upon concurrent majorities, which generally do not have a territorial character.
- (2) Federalism is a more rigid system than consociationalism: "Federalism involves both structure and process of government, while consociationalism involves the processes only."¹²
- (3) Federalism embraces different levels of governments through legal and political mechanisms and is based on structural relations between the Centre and

the federated units. Consociational regimes tend to be organised around different cleavages. Those cleavages may be religious, ethnic, linguistic or cultural in nature.

The second distinction concerns the “flexibility” and “rigidity” of both systems. It is argued that federalism is a matter of legal structure, establishing a clear-cut framework of governmental organisation. Changes in a federal system require constitutional amendments which call for the participation of the central political structures and the federated units. Consociationalism, on the contrary, is not always fixed by constitutional rules or any other rigid forms of legislation. It may also be based on unwritten and informal arrangements and rules, which makes the system more flexible in response to cultural and social changes.

It should be stressed that rigidity of the legal system itself is the best safeguard for the integrity of the state and the protection of minorities. The means and aims are legally defined and fixed. The laws are meant to be the result of negotiations and based on a consensus among different interest groups. Such freely chosen rules are usually thought to have some independent moral value.¹³ Federalism gives constitutional guarantees to the consensus reached and imposes responsibilities on the parties. A consociational system, insofar as its rules are not constitutionally enshrined, is more flexible, and may be abused by the governing elite. The flexibility of the system may be harmful in countries without a rich legal culture and where social relations, political interests and moral values are undergoing radical change.

It is often argued that both systems are very costly, in the economic sense of the word. Segmented autonomy and proportional representation of all groups in governmental structures both require a multiplicity of administrative offices. In the short run this may be an handicap, but in the long run the political elites may learn to work with these political resources with moderation and at less cost.

In some cases consociationalism is a transitional political arrangement towards federalism¹⁴. Belgium became a relatively successful federation after having practised consociational arrangements for diversities for a long time.

How Plural Democratic Societies Work

The accommodation of ethnic and regional diversities in Georgia according to a federal framework, which best addresses the needs of the different segments of the society, requires the participation of all political and social forces and a guarantee that all interests will be taken into consideration. All partners in the process have to be treated as equal and must enjoy a similar degree of security. Formal rules to accommodate conflicting interests have to be agreed by all par-

ties on the basis of consensus and not by simple majority vote, where minority interests are not taken into consideration.

The first step in the design of consociational or federal arrangements is to define the main political actors and the principles on which their relations will be based. The different segments of society (national communities, regions, etc.) should be regarded as equal partners in the political process. The central government should be considered as a governing body created on the basis of a contract in order to regulate various issues of common concern. According to my view of a grand coalition, the participants would each have a right to veto any proposed legislation or policy. This means that countries facing long-lasting and severe conflicts and with a totalitarian tradition have to go beyond the state models created during their struggle for independence, and to think in more consensual terms when building a state based on the rule of law. I believe that a maximum degree of stability may be reached by grand coalitions based on agreements such as the allocation of top governmental offices — like the presidency or the offices of Prime Minister or Speaker of the Assembly — to specific groups. Different countries use different forms: a grand coalition cabinet in a parliamentary democracy, a grand coalition council or committee with important advisory functions, a grand coalition of a President and other top office holders in a presidential system and so on.

The principle of power-sharing might be introduced both at the level of top governmental offices and at all levels of the state. In Switzerland this principle applies both to the seven-member Federal Council and to all important institutions. Even the Swiss army selects its seven three-star generals on the base of that principle. The Swiss federal postal service is headed by three directors sharing the position according to their linguistic affiliations.

As regards the Georgian constitutional system, it should be stressed that a “grand coalition” principle contradicts a presidential system of government, where power is concentrated in the hands of one person and which does not leave much room for segmental representation. In that respect a parliamentary system may be more efficient in allowing the various segments to express their interests. A system may also be envisaged where each “segment” has guaranteed shares of representation by way of “reserved seats”, i.e. seats for which only the members of the particular groups are allowed to present candidates at the elections. The “segments” may also acquire a proportional share in civil service appointments. These rights are implemented through a balanced bicameral system and through minority representation in the second chamber.

The concept of a bicameral system has been embodied in the Constitution of Georgia, but the norms regulating the activity of the chambers have not yet been prescribed and regulated. I personally would not agree with the American model, where both chambers of parliament have to take decisions on all issues. All the

issues requiring decision by both chambers of the central government should be governed by special legislation. It may also be useful to have joint decision procedures concerning the federal government and the federated units.

Minorities should enjoy a 'minority veto power', which protects national communities by allowing them to block any attempts to eliminate or reduce their autonomy. Only such a veto can give each segment the complex qualities of political protection. It provides all sub-groups with "the power of protecting itself and places the rights and safety of each where only they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful or effective resistance to the natural tendency of each to come into conflict with the others".¹⁵

For instance, the Belgian constitutional reform of 1970 has introduced a minority veto power over any bill affecting the cultural autonomy of the linguistic groups. Every law, with the exception of budgetary and special laws, may be subjected to a special procedure, referred to as the "alarm bell procedure". Three-quarters of the members of a linguistic group in either the Chamber or the Senate may pass a motion declaring that a bill or proposal threatens to cause serious damage to the relations between the communities. In such a case the legislative procedure is suspended. The cabinet, in which linguistic groups are equally represented, also exercises a kind of political arbitration.

Each "segment" is given a high degree of autonomy in running its internal affairs, especially concerning education, religion and culture. Cultural autonomy for religious and linguistic groups has taken three main forms in power-sharing democracies:

- a) a federal arrangement in which the linguistic boundaries coincide with sub-state boundaries, thus providing a high degree of linguistic autonomy, as in Spain, Belgium or Canada;
- b) the right of religious or linguistic communities to establish and administer their own autonomous schools, fully supported by public funds, as for instance in Belgium and the Netherlands;
- c) a different Civil Law for each of the segments, regarding marriage, divorce, custody and adoption of children.

Direct democracy through referenda is majoritarian in character. It can be argued that the possibility for a minority to initiate a nation-wide referendum or a referendum on a smaller scale may be a positive factor. Of course, this does not mean that such referenda would lead to a decision in favour of minority claims. However, the right to initiate, or participate in, a referendum does give a minority a voice, and there is more chance that its problem will become public and be heard. It might also be regarded as a preventive measure warning public opinion and the political establishment of the possible difficulties and potential controversies which need to be addressed.

Federalism and Consociationalism. Perspectives for Georgian State Reform

All the partners have to agree on some fundamental principles for the arrangements for the state concerned. These should include the following basic objectives:

- to ensure the national security of the common state, which implies the necessity for a unified army, secure protection of the state frontiers and a national security system protecting the country from foreign military threats and war;
- democratic governance at all levels of power and in all institutions of the state;
- uniform guarantees for the protection of human rights and freedoms, independent of the goodwill of particular regional governments and protected by the entire state. All the citizens and residents of Georgia should enjoy the same rights of political and economic participation;
- strong mechanisms for economic growth and prosperity and for co-operative economic relations in the country, including a national currency and an adequate banking, financial and taxation system;

The implementation of consociational and federal arrangements is possible if political elites have the will to guarantee the agreements and if the population is ready to support them. At least two further conditions have to be met as prerequisites for successful state building along these lines.

A. Far-reaching economic reform, to ensure an equal distribution of economic resources to the constituents of the state. A co-operative form of federalism needs economic resources in order to ensure effective implementation of the rights and competences conferred by the constitution or special laws. Such an economic reform must be built on full recognition of property rights and on the principle of free competition.

B. Regional or federal arrangements have to be built on a culture of self-government. Local government gives the local population an understanding of the basic principles of good governance. Without the active participation of the citizens, any type of arrangement or allocation of competences is a blank sheet of paper, with no vital force in public life.

Notes

- ¹ Giovanni Sartori, 'Neither Presidentialism nor Parliamentarism', in: Juan Linz and Arturo Valenzuela (eds.), *The Failure of Presidential Democracy: Comparative Perspectives*, Baltimore, The John Hopkins University Press, 1994, p.3.
- ² Frank Delmartino, 'Belgium: A Regional State or Federal State in the Making?', in Michael Durgess (ed.), *Federalism and Federation in Western Europe*, London, Croom Helm, 1986, p. 38.
- ³ Adam Przeworski, *Sustainable Democracy*, Cambridge, Cambridge University Press, 1995, p. 20.

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- ⁴ Robert A. Dahl (ed.), *Political Opposition in Western Democracies*, New Haven/ Conn., Yale University Press, 1966, p. 371.
- ⁵ Robert Dahl, A., *Democracy and Its Critics*, New Haven and London, Yale University Press, 1989, p.255.
- ⁶ Ghia Nodia, 'Nationalism and Democracy', in Larry Diamond and Marc F. Plattner (eds.), *Nationalism, Ethnic Conflict and Democracy*, Baltimore, The John Hopkins University Press, 1994, p. 8.
- ⁷ Arend Lijphart, 'Consociational Democracy', in *World Politics*, 21, 1969, p.208.
- ⁸ K.C. Wheare, *Federal government*, Oxford, Oxford University Press, 1963, p. 10.
- ⁹ André Alen and Rusen Ergec, *Federal Belgium After the Fourth State Reform of 1993*, Belgian Ministry of Foreign Affairs, External Trade and Development Cooperation, 1994, p.24.
- ¹⁰ Arend Lijphart, *Democracy in Plural Societies: A Comparative Explorations*, New Haven and London, Yale University Press, 1977, p.42.
- ¹¹ Quoted in Ursula K. Hicks, *Federalism: Failure and Success, A comparative study*, New York: Oxford University Press, 1978, p. 20-21.
- ¹² Daniel Elazar, *Exploring Federalism*, Tuscaloosa and London, The University of Alabama Press, 1991, p.21.
- ¹³ Nodia, op. cit., p. 6.
- ¹⁴ Daniel J. Elazar, op. cit., p. 50.
- ¹⁵ John C. Calhoun, *A Disquisition on Government*, ed. by C. Gordon Post, New York, Liberal Arts Press, 1953, p.28.