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UNDERSTANDING OF AMERICAN CONSTITUTIONALISM AND FUNDAMENTAL RIGHTS, A HISTORICAL RETROSPECT AND THE VALUES ESTABLISHED BY THE 1921 CONSTITUTION OF GEORGIA

ABSTRACT

On the eve of the 20th century the Constitution of Georgia became one of the most progressive legal documents in the region. It did not only establish the tripartite separation of political power among the governmental branches, but it also fully expressed the fundamental values and rights shared by the then contemporary western community.

The concept of a written constitution, along with the fundamental rights rooted in the natural law philosophy, triggered the rise of an entirely new perspective for the in-depth definition of constitutionalism. Unsurprisingly, the Georgian Constitution of 1921 reflected these values in its text and became the basis for its modern successor.

In this light, it is worth remembering the roots of the American fundamental values that made their way into the first written constitution in the world – the Constitution of the United States of America.

I. DECLARATION OF INDEPENDENCE OF GEORGIA

'The present condition of the Georgian people necessarily requires Georgia to create its own independent political organization in order to resist the oppression by its enemies and to lay a solid foundation for its independent development. Accordingly, the National Council of Georgia, elected by the National Assembly of Georgia on the 22nd of November 1917, declares that:

From now on, the Georgian people shall hold sovereign rights and Georgia shall be a sovereign, independent State.'[1]

This excerpt from the declaration of independence, proclaimed on May 26, 1918 by the National Council of Georgia, declared the independence of Georgia, thus establishing a

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[1] Act of Independence of Georgia declared on May 26, 1918, available at: <https://matsne.gov.ge/ka/document/view/4801451?publication=0> (15.6.2021).

new mode of statehood and the political structure for the country, that had experienced numerous centuries of political existence.

Shortly afterwards, in 1921, the National Council of Georgia adopted the fundamental document for the country, the Constitution of Republic of Georgia. The 1921 Constitution can indeed be perceived as one of the most advanced political documents in its contemporary world, acknowledging the fundamental human rights and guaranteeing the establishment of a political system that would ensure the protection of the most valuable rights.

Several scholars have rightly commented that the 1921 Constitution of Georgia shared and embraced the best practices of its contemporary examples, particularly mentioning the US Constitution.

Similarly, to the 1921 Constitution of Republic of Georgia, the US Constitution was also adopted shortly after the declaration of independence of USA. Both declarations put great emphasis on the fundamental human rights that were ultimately incorporated in the respective Constitutions of USA and Georgia.

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness."[2]

At the beginning USA had, similarly to the Republic of Georgia, not one, but two great founding documents: the Declaration of Independence and the Constitution. The first one declared the countries' freedom and independence and the second one established their constitutional orders.

Both declarations served a number of purposes, but some of them are particularly important, such as the justification of resistance to despotic authorities and the idea of fundamental rights and equality. The concept of equal and unalienable rights and the notion of popular consent and limited government are generally affiliated with the declarations that emphasized that 'as first principles dictated by nature and discernible by all possessed reason, they needed no demonstrative proof; they constituted obvious points of departure, axioms from which to proceed or moral imperatives deriving from the essential nature of man, upon which to act'.[3]

[2] United States Declaration of Independence, July 4, 1776, available at: <https://www.loc.gov/exhibits/jefferson/jeffdec.html> (accessed 1.7.2021).

[3] *Wood G.,* The Creation of the American Republic 1776-1787, 1969, p. 163.

II. 'SELF-EVIDENT' TRUTHS…

As, *Thomas Jefferson* wrote about the US declaration, 'its objective was to place before mankind the common sense of the subject, in terms so plain and firm as to command assent, and to justify ourselves in the independent stand we were compelled to take'.[4] The American independence was defended on the grounds of undeniable 'self-evident' truths applicable to all men. As applicable to all people, the New England settlers embraced plain philosophical principles and made them comprehensible to every single member of their communities.

In both countries, in USA as well as in Georgia, shared values were manifested into recognized idioms that enabled people to unite and fight for their independence. Yet, united by the shared values, the people had to establish a strong state with the durable political structure deeply linked with its constituents.

III. SOCIAL CONTRACT…

The first settlers, who sailed to America, had an honest desire to set the 'City upon a hill', the model city approved 'by a mutual consent'[5] of morally alike townsfolk. Georgians too, wished to establish a model state in the South Caucasus, well perceived, respected by the Western community and admired by its neighboring countries too.

Both nations believed, that legitimate political power originates and remains subject of the consent of the governed. The US declaration's justification for separation was the echo of a widely accepted social contract theory, similar to that employed by *John Locke* in his Second Treatise. 'The basic theory of the social contract was that power initially belonged to the people by innate, natural right.'[6]

Furthermore, individuals living without government in the state of nature enjoyed equal liberty and natural rights. And, too, 'they could dispose of this power, as they liked. To form a state, they would contract among themselves to join together in union. Then they would delegate certain powers but reserve all other authority to the people'.[7] As one of the greatest Americans, *Abraham Lincoln* said in his first major speech, while debating with *Steven Douglas* in a Senate campaign in Illinois, 'no man is good enough to govern another man without their consent, this is leading principle of American republicanism'.[8]

[4] *Jefferson T.* [*Peterson M. D.* ed.], Writings, 1984, p. 1501.
[5] A model of Christian Charity, Winthrop Papers, 1931, pp. 293, 295.
[6] *Collier C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 2007, p. 137.
[7] *Collier C., Lincoln J. C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 1987, p. 63.
[8] *Linconl A.,* The Collected Works of Abraham Lincoln, Volume II, 2008, p. 266.

The concept of popular sovereignty was widely embraced by the founding fathers of the Republic of Georgia in 1921 (hereinafter referred as Georgian Founding Fathers). Influential works of political philosophers and practical examples of their contemporary world inspired the idea of the parliamentary republic. Influenced by the social contract theory, Georgian politicians of that time, attempted to retain control of the people over the political process as much as it was possible.

The understandings of social compact theory varied and its relevance had changed substantially over the several years by the beginning of the 20th century. Political philosophers of that period drew a line between the social contract (which is closer to a compact about general principles) as an agreement among citizens on the fundamental issues related to the state building on one hand, and an agreement (which is closer to a fully drafted contract) between government and citizens on the other. A compact (social contract) could not be considered a bargain among people. It was more contemplation of cultural values, attitudes to justice and common destine, therefore lacked elements that usually characterized ordinary contract. And it also defined political power, methods of delegation of power, and the proportions of the distribution of power and sought the achievement of higher goals, such as uniting people into one whole, body of politics.

On the other hand, a contract between rulers and ruled, between representatives and constituents, could be viewed through the traditional contract aspects, that include mutual bargain and put emphasis on the protection and allegiance. Nevertheless, there is no second contract between the rulers and the ruled. The Lockean idea of trust would suffice to show peculiarity of fiduciary relationships between the people (original source of the power) and the rulers (agent of the people). People (as a principle) trust rulers (as an agent) to manage their affairs and strictly follow the terms of the implied agency. The community entrusts the government with certain functions when entering the civil society. And if the government does not follow the policy according to people's interests, then the community can withdraw its obedience to the government. The right of unilateral withdrawal from this agency differs from the relationship that the parties have in a bilateral contract. In an ordinary contract case, the breaching party does not easily give up, therefore a conflict arises, which leads to a long legal dispute between the parties.

John Locke stated very clearly that in case of a conflict only particular causes could trigger a right to change the government and 'prudence, indeed', [would] 'dictate that Governments long established should not be changed for light and transient causes'.[9] In political affairs, in contrary to the general agreements, categories of violations are far different to trigger moral right of revocation of the trusted power. The moral right of

[9] United States Declaration of Independence, July 4, 1776, available at: <https://www.loc.gov/exhibits/jefferson/jeffdec.html> (accessed 1.7.2021).

resistance is justified 'whenever any form of government becomes destructive' of the proper end of securing rights, then 'it is the right of the people to alter or abolish it, and institute new government'.[10]

IV. 'STATE OF PERFECT FREEDOM…'

The US declaration endorses the creation of a government form that is based on equality. This equality arises out of Lockean state of nature, where each individual is in a 'state of perfect freedom'.[11] The US Founding fathers stressed the moral equality of all men in the possession of a common human nature and an ability to discern the principal dictates of universal moral law. As *Thomas Jefferson* explained it, there is a common capacity in men to discern 'the principles of right and wrong'.[12]

Based on these, the US declaration opens venue for equal possession of rights, elimination of artificial distinction between individuals, equal treatment under law, equal right to the fruits of one's labor, and equal right to participate in the determination of the form of government and in the formulation of its laws.

Equality, derived from the fundamental desire of each individual for self-preservation, is reflected in the formation of the American political society, where each member of the society agrees 'to the great principle of self-preservation; to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed.'[13]

V. 'UNALIENABLE RIGHTS…'

Possessed by individuals in the state of nature, natural rights or unalienable rights cannot legitimately be renounced or suppressed in the formation and governance of political society. The founding fathers of both countries, Georgia and USA, did everything to secure power for the people. Original postulates of natural law were condensed and safely handed to their genuine patron – the civil society.

Molded by tradition, customs and unwritten rules, natural law attained its commonsensical mode of operation. Unalienable natural rights, as 'the substance of the law of nature as applied to man,'[14] proclaimed by *John Locke* and later modified by *Thomas Jefferson* in the Declaration of Independence – 'Life, Liberty and Pursuit of happiness', became the

[10] *Wood G.*, The Creation of the American Republic 1776-1787, 1969, p. 270.
[11] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para.8.
[12] *Wood G.*, The Creation of the American Republic 1776-1787, 1969, p. 163.
[13] *Madison J.*, The Federalist Papers, No: 43, 1788, p. 287.
[14] *Beitzinger A. J.*, A History of American Political Thought, 1972, p. 164.

very heart of the American society. And Georgians too, with some moderations, made the Lockean triad – life, liberty and property – the very cornerstone of the Constitution of 1921.

Simply speaking, natural rights originally belonged to men in the prehistoric (a condition before the state was established) 'state of nature'. Therefore, nobody could take them away, including the government established by people themselves. According to *John Locke*, humans were 'by nature free, equal and independent'. And natural law also required that 'no one ought to harm another in his life, health, liberty or possessions'.

American intellectual circles, as well as Georgians in the beginning of the 20th century, were ready to embrace the viability of undisputable rights of individuals. Perceived as immanent in the very structure of reality itself, exercising these rights transgressed all obstructive boundaries on the political landscape and acquired its natural place beyond vague civil regulations.

The US declaration and its theoretical keystone authoritatively set forth to an American faith or civil theology for Georgia, at the center of which the equal belief and the inviolable, individual rights reside. The US Declaration of Independence influenced reforms and developments all over the world. Although *Thomas Jefferson* himself minimized the Declaration's contribution to the political philosophy and described it merely as 'an appeal to the tribunal of the world', the succeeding American generations legitimately amplified its significance and 'turned to devise the institutional forms within which this freedom was to be assured'.[15]

VI. A WRITTEN CONSTITUTION

'In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.'[16]

Thomas Jefferson

The idea of a written constitution rightly belongs to the Americans. The Georgian founding fathers understood the importance of a written constitution well and luckily treated it far beyond that simple meaning. They did not only know that a written constitution would ensure the principles of democratic governance, the rule of law and the protection of fundamental human rights, but they also recognized that such a constitution would unify the nation.

[15] *Wood G.,* The Creation of the American Republic 1776-1787, 1969, p. 168.
[16] *Jefferson T.,* The Works of Thomas Jefferson: Correspondence 1793-1798, Volume VIII, p. 475.

It needs to be pointed out, that most Americans also precisely knew what their constitution stood for. 'Nothing was more common when any debate arouses on the principle of a bill, or on the extent of any species of authority, than for the members to take the printed Constitution out of their pocket, and read the chapter with which such matter in debate was connected,'[17] wrote *Thomas Paine* commenting on the constitution. 'It was as he had predicted in 1776: in America the law had become king.'[18]

Certainly, the 18th century was the time, as *John Adams* stated, '[W]hen the greatest lawgivers of antiquity would have wished to live'.[19] In that period New England became the epicenter of novel state building concepts. The espousal of various theoretical and practical elements acquired their unique shape in the new world. 'The idolatry of a constitution that *Thomas Paine* expressed so nicely in 1791 was the product of complicated series of changes in American thinking about politics that took place in Revolutionary years, no one of which was isolated.'[20] English constitutionalism, expressed in the common law tradition, attained inimitable connotation in American constitutionalism along with the natural law concept of unalienable human rights rooted in Roman law.

Furthermore, as referred above, the social contract theory elevated people to a higher level than any political power in civil society. Based on these preconditions, American constitutionalism unfolded in its exceptional mode, which 'stresses individual rights, consent of governed, the rule of law equally applied, institutional forms, separation of powers, checks and balances upon passions and interests and the conception of written constitution as 'higher law' to be interpreted ultimately not by natural or common reason but by those versed in the artificial reason of the law'.[21]

In a state of nature, according to *John Locke*, people already had property and other natural rights, which they reserved entering civil society. Thus, when people instituted government, these rights were not subject to any revision or abridgement. When entering civil society and delegating power to their communities, individuals were, according to *John Locke*, not 'so foolish, that they take care to avoid what mischiefs may be done them by pole-cats, or foxes; but are content, nay, think it safety, to be devoured by lions.'[22] Hence, each person surrendered the right to enforce the law of nature to the whole community, provided that any instituted authority preserves the fundamental law of nature – to preserve peace - and by doing so people retained their liberty which will not disrupt the achievement of this goal.

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[17] *Paine T.* [*Foner E.* ed.], Rights of Man, and Common Sense, Writings of Paine, 1995, p. 29.
[18] *Wood G.*, The Creation of the American Republic 1776-1787, 1969, p. 259.
[19] *Adams J.* [*Peek G.* ed.], Thoughts on Government, The Political Writings of John Adams, 1954, p. 92.
[20] *Wood G.*, The Creation of the American Republic 1776-1787, 1969, p. 259.
[21] *Beitzinger A. J.*, A History of American Political Thought, 1972, p. 3.
[22] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 93.

'The love of Power is so alluring…

that few have ever been able to resist its bewitching influence."[23]

Address at the New Hampshire Convention (1781)

There are several concepts about specific configurations of arranging political power, but a balance between individual liberties and peacemaking power in any given society is a paramount aim. Georgian founding fathers favored the parliamentary republic system, which differed from the political model of governance chosen by the Americans. Nevertheless, the Georgian Founding fathers managed to give their constituents enough power to control the delegated political power.

Reaching a perfect equilibrium between these ends rests largely on unbroken reciprocity and smooth cohabitation of individual rights and national goals. Thus, the algorithm of balancing two sets of interests inevitably entails dedication of both people and their representatives. Representation, accountability, impartiality, distribution of power, transparency – form a multilayered filter stabilizing immediate reflection of passions of various power holders on the political scale.

'When the legislative and executive powers are united in the same person,

or in the same body of magistrates, there can be no liberty.' [24]

Baron de Montesquieu

Although the three-fold power of government had been advanced by *Baron de Montesquieu*, 'it was Americans, however, in 1776 and more emphatically in the subsequent decade who were able to elevate this doctrine of the separation of three powers into what *James Madison* called in 1792 'first principle of free government''.[25] According to this principle, power has to be divided into three parts: legislative, executive and judiciary.

The Georgian constitution of 1921 shared these values and divided political power among the legislative, executive and judiciary branches. Most notably, the Georgian judiciary branch was granted the right of constitutional review, thus it resembled the US constitution in that regard.

Furthermore, each branch, according to the US constitution, was independent, had a separate function, and was barred from interfering with the functions of other branches. Moreover, the cooperation and competition between the power holders prevents a single branch of the government from accumulating excessive political power.

[23] *Bouton N.* (ed.), New Hampshire State Papers, Volume IX, 1867, p. 846.
[24] *Montesquieu B.* [*Newmann F.* ed.], Spirit of the Laws, Book XI, pp. 151-152.
[25] *Wood G.*, The Creation of the American Republic 1776-1787, 1969, p. 152.

'To resist encroachments of others',
'Ambition must be made to counteract ambition."[26]
James Madison

While the system of separation sets the legislative, executive and judiciary branches aside, the system of checks and balances keeps them interrelated. The separation of powers, as delineated by *James Madison* in the Federalist Papers, would be mere dissociation if not interconnected by the system of check and balances. 'Powers of government should be divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by others.'[27]

To put it simply, according to this principle, each branch acts as a restraint on the power of the others and at no time all power rest with a single branch of the government. For example, the president can either sign the legislation of the Congress, making it law or Veto it. The Congress, through the Senate, has the power of advice and consent on presidential appointments and can therefore reject an appointee. The courts, having the sole power to interpret the constitution, can uphold or overturn acts of legislature or rule on actions by the president.

'Where-ever law ends, tyranny begins.'[28]
John Locke

The Rule of Law is a steam engine for the American constitutional scenery. It plays an alleviating role between the power holders and maintains 'a government of laws, not of men'.[29] On the one hand it delineates powers and limits discretion of governmental authorities and on the other hand it safeguards individuals from encroachments of the state privileges. The Rule of Law principle is fairly associated with equal treatment aspiring to minimize arbitrariness while dealing with human rights in USA. It requires that all citizens were affected alike and to the same degree. 'Equal liberty and equal privileges are the happy effect of a free government.'[30] It facilitates free interaction of citizens and enhances the ability of every individual, family or group to maximize preservation, to secure individual rights and pursue happiness. Its clearness, fairness and transparence amplify reliability for its citizens on the state authorities and facilitate steady functioning of the governmental bodies.

[26] *Madison J.,* The Federalist Papers, No: 51, 1788.
[27] *Portsmouth N.-H.* Gazette, March 15, 1783; *Jefferson T.* [*Peden W.* ed.], Notes on the State of Virginia, 1996, p. 120.
[28] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 202.
[29] *Adams J.* [*Adams C. F.* ed.], The Works of John Adams, Volume 4, 1851, p. 106.
[30] *Wood G.,* The Creation of the American Republic 1776-1787, 1969, p. 401.

'So, enthralled have Americans become with their idea of a constitution as a written superior law set above the entire government against which all other law is to be measured that it is difficult to appreciate a contrary conception.'[31]

Georgian constitutionalism, as an example taken from the US constitutionalism, rests on genuinely shared values and hopes of its citizens. It is a true embodiment of the unity of civil spirit, strength and authority. Furthermore, amalgamated around common values, the Georgian founding fathers instituted a system that has its roots in both the people and the authoritative document, the Constitution of 1921, which as a result of the quest for independence would have become 'a political bible', as it has for Americans[32].

VII. NATURAL RIGHTS

'Freedom is the fence to my preservation.'[33]

John Locke

'The concept of natural rights was familiar to most Americans who took an interest in politics, and was taken as a self-evident truth by the men who led the Americans into the Revolution.'[34] The New England settlers made a decisive break with the past by pioneering a novel concept of natural rights that was inherently incompatible with the established tradition of classical natural law postulates. The US founding fathers upheld views of individuals as autonomous (rational) beings, and sidetracked from the old natural law notions on individuals as inherently sociable by nature. Furthermore, natural law discerned by the reason became the only path for individuals to obtain freedom. Moreover, all rights of individuals had to be sought being rooted in this retrospective.

New ideas about natural law and natural rights proved admirably suited for export, especially to the American colonies 'gathering settlers in the late seventeenth century'.[35] Pinpointing the age of *Thomas Hobbes* and *John Locke* in the 18th century, America as the era 'given currency'[36] to the natural rights was common. But the famous modifications to the natural right theories legitimately belong to the American intellectual leaders – the American founding fathers. Despite the varieties in terminology used to stress a distinction between alienable or unalienable, natural or acquired, natural or civil, one common ground for rights remained unchangeable in the new world: Natural rights

[31] *Wood G.,* The Creation of the American Republic 1776-1787, 1969, p. 260.
[32] *Paine T.* [*Foner E.* ed.], Rights of Man, and Common Sense, Writings of Paine, 1995, p. 29.
[33] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, paras. 16-17.
[34] *Collier C., Lincoln J. C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 1987, p. 333.
[35] *Collier C., Lincoln J. C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 1987, p. 333.
[36] *Collier C., Lincoln J. C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 1987, p. 333.

were those that could be derived from the natural liberty that individuals enjoyed in the state of nature.

Before these modifications took place, *Thomas Hobbes* sought a need to insert a fundamental distinction between 'a law of nature, *lex naturalis,'* which 'is a percept or general rule, found out by reason, by which a man is forbidden to do that, which is destructive of his life,' and 'the right of nature, *jus natural,*' and which 'is the liberty each man hath, to use his power, as he will himself, for the preservation of his own nature'.[37] Furthermore, the Lockean liberal interpretation of individuals' freedom even in the civil society gave a decisive mark to the US founding fathers to further build rational frame for rational individuals.

New generations of Americans strongly believed, as did *John Locke*, that 'reason…is that law'[38] of nature and man had a right to do that which was necessary to deal with the conditions of the state of nature – to support and protect his existence including 'the pursuit of happiness' as *Thomas Jefferson* substituted famous Lockean triad.

Although, the famous phrase 'the pursuit of happiness' never made its way into the Georgian constitution of 1921, it still sets the guarantees articulated by *John Locke*: life, liberty and property. All these fundamental rights were properly inserted into the Georgian constitution and the Georgia's founding fathers knew that by enjoying these rights, Georgians would become stronger in their quest for independence and in pursuing happiness.

'Life, liberty, and property.'[39]

John Locke

The Georgian constitution of 1921 guaranteed the rights to life, liberty and property, which had long been valued by then contemporary political philosophers and being incorporated into the constitutions of several progressive states. As for USA, these fundamental values became popular thanks to the works of *John Locke*, later recognized as the father of American political philosophy.

The right to life was considered to be a fundamental right for *John Locke*. Furthermore, all other rights were regarded as subordinate and 'necessary to and closely joined with a man's preservation'.[40] 'Natural reason…tells us that men…have a right to their preservation, and subsequently to meat and drink and such other things, as nature

[37] *Hobbes T.* [*Oakeshott M.* ed.], Leviathan, 1946), p. 84.
[38] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 6.
[39] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 87.
[40] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 23.

affords for their subsistence.'[41] Moreover the law of nature - reason, is a set of rules, that was not primary aimed to limit, but rather intended to stimulate the interest of preservation and the rights of humanity. Thus, the inevitable interest of every individual in self-preservation attained a body upon, which all other rights were to build on. Any set of rights, rules or laws, has to facilitate self-preservation and open venue to that end with any means that will not be destructive to others.

The preservation of property, which for *John Locke* includes 'life, liberty and estate', is extended in the concept of natural rights and cannot be weakened. 'Man, being born, as has been proved, with a title of perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power… to preserve his property, that is his life, liberty and estate, against the injuries and attempts of other men.'[42] The Founding fathers, comprehended property, similarly to *John Locke*, in its broadest sense, thus opening venue for various individual rights, among which the freedom of mind, conscience, religion and self-government were considered as the most fundamental rights. At the Virginia General Assembly of October 1785 *James Madison* argued in support of *Thomas Jefferson* that 'the equal right of every citizen to the free exercise of religion according to the dictates of conscience' is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature'.[43]

'My property rights in my knife allow me to leave it
where I will, but not in your chest."[44]
Robert Nozick

The freedom of each individual should be compatible with the freedom of others. Based on *Thomas Jefferson's* notion of 'rightful liberty' as 'unobstructed action according to our will within limits drawn around us by the equal rights of others', individual rights include rights involving motion, freedom of movement, migration, communication, commerce, work, and the enjoyment of its fruits. Furthermore, individuals should remain unobstructed in making their own maps of life at any given time. Although the state has to abstain from any unreasonable interaction and respect those most important rights of individuals, there are certain limits deduced from the abovementioned. Natural law serves as a fence to such limitations. The 'end of law is not to abolish or restrain, but to preserve and enlarge freedom'.[45]

[41] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 25.
[42] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 87.
[43] *Madison J.,* A Memorial and Remonstrance, reprinted in Meyers, Mind of the Founder, 1785, p. 9.
[44] *Nozick R.,* Anarchy, State and Utopia, 1974, p. 171.
[45] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 57.

John Locke asserted that 'every man has a property in his own person', namely 'this body has any right to but himself'. This meant that each person was a self-owner and the having of a the right of self-preservation was most compatible with the right of self-ownership. Self-ownership conveyed the idea of human autonomy. Because a man belongs to himself and is not subject to anyone else, except when he consents to it; he is naturally free, endowed with 'a liberty of acting according to his own will'. And because he owns himself and his actions, he can lawfully acquire property by his own labor.[46]

John Locke also stated that the Earth was common to all men. Besides, individuals could get hold of the items from the common property by contributing with their own labor - they could cultivate the land, plow it or take on other activities, provided that: a) there would be enough goods left for others to use (the conditions for other people should not worsen in the case, when every individual starts realizing their own right) and b) the distribution of quantity would stay within the limits of self-preservation. Aside from that, the format for the utilisation of property changed substantially and gained limitless capacity within scope of monetary denomination. Therefore, people were able to exchange items for money and accumulate as much wealth as they could. The liberal balance complied perfectly with individual property, self-preservation and preservation of mankind in this Lockean system.[47]

The Declaration of Independence of USA is the finest document of major political significance, through which natural rights persisted in the contemporary world. Natural rights, as perceived by Americans, are 'not abstractions, reasoning words on paper, but something' they 'deeply' and 'passionately' believe in.[48] They have proven to be the strongest fortress of American freedom. The right to life, liberty and the pursuit of happiness are gladly enjoyed by Americans and these rights are heartily passed on to the rest of the world as well.

VIII. CONCLUSION

On the eve of the 20th century, the Georgian constitution became one of the most novel documents in the South Caucasus. It did not only establish the tripartite separation of the political power, but it also fully embraced the fundamental values and rights shared by the then contemporary western community. Most notably, the Georgian constitution reflected many features of the US constitution, namely, the right to life, liberty and property. Moreover, the Georgian constitution of 1921 went even further and provided equal voting rights for men and women.

[46] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 21.
[47] *Locke J.* [*McPherson C.B.* ed.], The Second Treatise of Government, 1980, para. 21.
[48] *Collier C., Lincoln J. C.,* Decision in Philadelphia, The Constitutional Convention of 1787, 1987, p. 334.

By adopting a written constitution, along with the incorporation of fundamental rights and the concept of the separation of powers, the Georgian Constitution of 1921 established a new era of constitutionalism for Georgia, which is remarkably crucial for the statehood and the future development of democratic institutions. The Georgian Constitution of 1921 has legitimately become a great foundation for its modern successor – the Constitution of Georgia of 1995.