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SRI LANKA'S CRISIS: CONTRACTARIAN ALTERNATIVES

Jayadeva Uyangoda

I belong to a generation which has been described by some scholars as 'the children of Bandaranaike.' In a historical sense, my generation has many parents. The universal adult franchise of 1931, the Left movement, the welfare state, and the processes symbolized by the year 1956 are the most important of these 'parents.' When we take into account the fact that the generational conflict has characterized an important dimension of Sri Lanka's political crisis, it is perhaps not difficult for us to understand that certain key ideas and objectives of Mr. Bandaranaike's political enterprise are viewed with suspicion by subsequent generations. The focus, however, of my talk is not on the generational conflict of which I have been an active participant. Rather, my efforts this evening are directed at highlighting some salient features of Mr. Bandaranaike's intellectual legacy so that a contribution can be made towards the efforts being made to find a political solution to Sri Lanka's ethnic conflict—a conflict that has engulfed all living generations of this country.

We are aware of the fact that Mr. Bandaranaike's place in the history of ethnic relations in the post-colonial Sri Lanka is a controversial theme. The nature of that controversy is too well known to mention here. His appeal to the Sinhalese-Buddhist society, and the translation of some aspects of that appeal into public policy have had a lasting impact on the course of Sri Lanka's economic, political, social and ideological relations. The interpretation and evaluation of this change can even today lead to sharp differences of opinion. In politics, meanwhile, it is an accepted practice to bring back to life those who have pre-deceased us. In Sri Lanka's political and ideological debates today, three prominent personalities have been subjected to the fate of being resurrected; they are Anagarika Dharmapala, Martin Wickramasinghe and S. W. R. D. Bandaranaike. My exercise this evening may also be seen as one of appropriating the late Mr. Bandaranaike. I hold the view that when we are in a profound crisis escape from which has become so elusive, we need positive intellectual myths in order to feel optimistic and not to allow ourselves to degenerate into the status of cynics and nihilists.

The life of Mr. Bandaranaike, whose intellectual biography is yet to be written, provides raw material to construct a positive intellectual mythology, relevant to the needs of a way out from the present crisis.

Bandaranaike and Sharing of Power

The concept 'Federalism' has been one of the keenly contested notions in Sri Lanka's political debates. Mr. Bandaranaike was convinced, as far back as the 1920s, that Sri Lanka needed a federal set up. Incidentally, the political demand for a federal system came to be formulated in the Tamil society much later, in the early fifties. *The Morning Leader*, a Colombo newspaper, of July 17, 1926 reported Bandaranaike's federalist speeches as follows:

The minorities looked with mistrust at one another. It was wrong to think that the differences were not fundamental. A hundred years ago, there were no such differences. They did not appear because the Englishmen sat on the heads of the Tamils, the low-country Sinhalese, and the Kandyan Sinhalese. The moment they began to speak of taking the government into their hands, then the differences that were lying dormant smoldered forth.

If they consider past history, they would see that these communities, the Tamils, the low-country Sinhalese and the Kandyan Sinhalese have lived for over 1,000 years and have not shown any tendency to merge. They preserved their customs, their language and their religion. He would be a very rash man who would pin his faith on the gradual disappearance of these differences.

In a federal government each Federal unit had complete powers over themselves. Yet they united and had one or two assemblies to discuss matters affecting the whole country. That was the form of government in the U. S. A. All self-governing dominions like Canada, Australia, and South Africa had the same system. Switzerland afforded a better system for Ceylon. It was a small country, but three races lived there, the French, the Germans and the Italians. Yet, Switzerland was a country where the Federal form of Government was very successful.

In Ceylon, each province should have complete autonomy. There should be one or two assemblies to deal with special revenues of the land. A thousand and one objections could be raised against



this system, but when objections are dissipated, some form of Federal Government would be the only solution.

My second citation is the document which has entered Sri Lanka's political lore as the Bandaranaike-Chelvanayakam Pact. Although Mr. Bandaranaike himself had to retract from the Pact, when challenged by certain forces that Mr. Bandaranaike had lost control of, this document can be seen, in retrospect, as the first serious attempt to democratically re-define post-colonial Sri Lanka's ethnic relations. It was also the first occasion that the legitimacy of Tamil nationalist demands were about to be recognized by the Sri Lankan state. The following are the main points of the Bandaranaike-Chelvanayakam pact.

- i. The creation of a system of 'Regional Councils'; the Northern province was to form one regional area while the Eastern province was to be divided into two or more regional areas; provisions were to be made to enable two or more regions to amalgamate beyond provincial limits.
- ii. Direct election for the Regional Councils.
- iii. Regional Councils were to have powers over subjects including agriculture, co-operatives, land and land development, colonisation, education, health, industries and fisheries, housing and social services, electricity, water schemes and roads.
- iv. Regional Councils were to have powers to select allottees for land alienation and also to select personnel to be employed in colonisation schemes.

I would now like to interpret these two attempts made by Mr. Bandaranaike, in terms of contemporary political science categories. Mr. Bandaranaike envisaged a consociational solution to the ethnic conflict. The term 'consociationalism', as you are aware, has come to Sri Lanka's political discussion only recently. However, the essence of 'consociationalism' has been there for quite some time. Let me now define the term.

Arendt Lijphart, a Dutch political philosopher, began to use the term 'consociational democracy' in the early seventies, to propose a set of steps appropriate for societies which were ethnically divided and facing problems concerning democracy. As Lijphart accurately observed, the central problem of democracy in ethnically divided societies was the phenomenon of majoritarian democracy. Particularly in societies which had parliamentary governments of the Westminster model, majoritarian democracy had meant the rule of ethnic majorities. Lijphart also noted that the ethnic majoritarian democracy had tended to exclude ethnic minorities from the political process. To manage the conflicts that have arisen out of the contradictions of the majoritarian democracy, Lijphart suggested a four point formula on which the governments could be re-arranged. They are:

- i. The creation of a grand ethnic coalition of all ethnic groups. This meant to facilitate coalitions not among political parties, but among ethnic groups with the aim of managing ethnic conflicts.
- ii. Powers and the offices of the government should be proportionately shared and distributed among ethnic groups.
- iii. Each ethnic group in the coalition should have the power to veto public policy, in order to safeguard its own ethnic interests.
- iv. The guarantee of ethnic autonomy in a system of federalism or devolution.

Lijphart's original idea of consociational democracy has been later revised and expanded by a number of political scientists who were keen to develop conflict resolution models. Eric Nordlinger, for example, provides five conditions for a model of ethnic conflict resolution:

- i. The presence of a stable ethnic coalition.
- ii. Proportional representation in the government for each ethnic group.
- iii. 'Mutual veto' available to each ethnic group in the coalition so that it could vote against unfavorable government policy.
- iv. Agreement among coalition partners that the government would not directly participate in public debates on controversial matters, in order to 'de-politicize' such controversies.
- v. Commitment of the majority community to a policy of working towards the benefit of minority ethnic groups through compromise and concessions on particular issues or on a package of issues.

Conflict Management Goals

To understand the consociational approach in its conceptual totality, we need to move towards the margins of political theory. As I have already mentioned, Lijphart and Nordlinger formulated their consociational schemes from the perspectives of 'Conflict Management.' The conflict management approach—which emerged as a branch of social science in the seventies—is premised on a very important assumption. It is exceedingly difficult, according to conflict management-ists, to resolve conflicts in deeply divided societies where conflicts are often seen as intractable. Should enlightened or pragmatic leaders wait for all favorable conditions to emerge for the final resolution of conflicts? The conflict management perspective answers this question in the negative. It argues for the management of the conflict, instead of waiting for the unrealistic final solution.



This premise of conflict management is further buttressed by another set of assumptions. Let me summarize four of them:

- i. It is appropriate and meaningful for ethnically divided societies to accept and live with, instead of ignoring, the fact that ethnic divisions are a social reality. Ethnic cleavages are an inescapable reality and therefore it is only prudent to design the system of government and public policy to deal with that reality.
- ii. The task of conflict management should start from the top, with leaders of ethnic groups. Understanding and accommodation among leaders provides the best starting point for a movement towards ethnic unity. It is much easier and even pragmatic for leaders, than for the followers, to accommodate.
- iii. It is wrong to suggest that democracy is unworkable in societies with ethnic cleavages.
- iv. Building political institutions is crucial for both democracy and conflict management. Federalism and proportional representation are meant to promote political institution building.

'Consociationalism' in Sri Lanka

It is now possible for us to view Mr. Bandaranaike's federalist proposals of 1926 and the provisions of the Bandaranaike-Chelvanayakam pact of 1958 from a new and contemporary perspective. Mr. Bandaranaike was the proto-consociationalist, if I may use the term in its most positive and secular sense. When he proposed federalism in 1926, Sri Lanka's ethnic question was at a rather preliminary phase. Yet, Mr. Bandaranaike was perceptive enough to realize that mutual ethnic mistrust was on the way to become a major political question. The theoretical essence, meanwhile, of a federalist solution is to account for, to accommodate, and to come to grips with deeply felt ethnic cleavages, rather than wishing them away. It intends to share and distribute political power among ethnic groups on the strength of the fact of ethnic divisions. Mr. Bandaranaike's federalist speeches of 1926 were perhaps interventions of mere intellectual nature. It was not all that difficult for a person schooled in the liberal political philosophy to quickly see in those days the merits of the federal model. Yet, Mr. Bandaranaike was still an exception; he prophesied the desiderata of events, and a framework for accommodation, for Sri Lanka's ethnic relations.

The provisions of the Pact of 1958 too had intentions that can easily be called consociational. The agreement posited regional councils as the mode of power-sharing among ethnic groups; it promised to Tamils a limited degree of veto power in the sphere of public policy. However, the

Bandaranaike-Chelvanayakam Pact lacked a crucial premise of a consociationalist project proper: it was not a pact of or for 'a Grand Ethnic Coalition'; it was confined to Mr. Bandaranaike of the Sinhalese society and a section of the Tamil leadership. As Professor A. J. Wilson has recently commented, although there have been numerous political coalitions among ethnic leaders in post-independence Sri Lanka (for example in 1948, 1965 and 1977), they can hardly be called—nor did they mean to be—Grand Ethnic Coalitions of the consociational type. The majority Sinhalese society has not so far made a meaningful consociational offer to ethnic minorities.

Sri Lanka's recurrent difficulties in arriving at a consociational-type arrangement are amply represented in the Parliamentary Select Committee too. Paradoxically though, these difficulties have become so insurmountable for the Moonesinghe Committee which began its search for a solution at a juncture most conducive for a consociational-type intervention. Indeed, the Moonesinghe Committee had in the political backdrop all necessary ingredients for a consociational enterprise. Provincial Councils were in place as constitutionally accepted bodies for devolution; the electoral system had proportionality principle, although it needed democratic reforms; the notion of ethnic proportionality in political office found a general acceptance in society. The issue that taxed most of the energies of the Committee was the question of the unit of devolution. Even this seemingly minor issue could find a highly magnified presence in the negotiations, due, I think, to a crucial reason. There was no political space in the country for a 'Grand Ethnic Coalition.' Sri Lanka's ethnic leaders were not yet ready for a consociational ethnic coalition.

With these difficulties in the backdrop, I would not advocate political pessimism. I want to argue in my talk today for a moral pact that would provide the normative framework for a consociational democratic alternative. At this point, permit me to examine the case for a consociational alternative, from the perspectives of political theory.

From Maximalism to Rational Choice

There exist a variety of prospective 'solutions' to Sri Lanka's ethnic conflict and all of them can be divided into two main categories:

- i. Solutions emanating from 'maximalist' considerations, and
 - ii. Solutions suggested from a 'rational choice' perspective.
- i. **The Maximalist Approach:** This is the dominant model of solutions in both Sinhalese and Tamil societies. Maximalist solutions are many. Extreme nationalists of all ethnic formations think



and act in terms of maximalist totalities. Arguments for a total military victory over Tamil separatists as a pre-condition for peace are of maximalist nature as is the LTTE's claim that the Tamil people have no option but establishing a separate state. The LTTE's military campaign for separation is a maximalist strategy. Similarly the position now being ardently advocated that "there is no ethnic question in the North-east, but only a terrorist menace" smacks outright maximalism. "No merger-No solution", and "No merger at any cost" are also maximalist formulations.

In the maximalist mind, there is little or no room for negotiation and reconciliation of conflicts; even when negotiations are initiated, they are merely designs to continue to conduct the war by other means. The paradox, and of course the tragedy as well, of maximalism is that one's enemy is one's foremost ally in reinforcing and protracting the conflict. As many examples of maximalist ethnic projects in the contemporary world testify, maximalism ensures mutual annihilation of communities that are pitted against each other.

- ii. **The Rational Choice Approach:** All those who seek a negotiated political settlement to the conflict based on a reform package may be included in this category. Negotiated settlements mean the working out of a solution which falls far short of any maximalist solution. It envisages compromise among ethnic leaders and communities and a commitment to redress ethnic grievances that have led to the conflict. The basic moral premise in the rational choice approach is that the protraction of the conflict runs counter to the vital interests of all communities in the conflict. Working out of a system in which violence is reduced, political institutions and processes restored and reformed, and conflict controlled or reconciled is the goal of the rational choice approach to conflicts.

It is my considered view that in Sri Lanka we have general conditions to create space for a rational-choice alternative to the ethnic conflict. This space exists irrespective of the fact that the centre stage of the political debate is occupied by ethnic maximalists. The main obstacle, however, to a rationally choiced political alternative is the inability and unwillingness of Sinhalese political leaders to arrive at a consensus among themselves on a reform package that can generate confidence among the minorities. A recurrent lesson of Sri Lanka's past experience—and this includes Mr. Bandaranaike's own attempt of 1958—is that for any consociational alternative to work, a reform consensus among Sinhalese political

leaders is both a necessity and a pre-requisite. A reform consensus should precede all the other details regarding constitutional provisions, electoral arrangements and sharing of government office.

Consociationalism Critiqued

So far I have defended the consociationalist approach. I wish now to point out, in the form of a critique, some of its limitations. Before doing that, I would like to explain why I continue to defend consociationalism. Firstly, almost all proposals towards a political solution to the ethnic question have had a consociationalist character. Secondly, I am not a maximalist; I reject all maximalist notions concerning the desired outcome of this conflict, because even assuming that one party wins this war, it would not guarantee social and political justice to any ethnic community. The choice, I believe, will continue to be a rational and political one.

Donald Horowitz, in his book *Ethnic Groups in Conflict* (1985) has developed a sympathetic critique of the consociationalist model and I agree with his main line of criticism. Horowitz in particular questions the democratic viability of the "Grand Ethnic Coalition." He writes:

In democratic conditions, *grand* coalitions are unlikely, because of the dynamics of intraethnic competition. The very act of forming a multiethnic coalition generates intraethnic competition—flanking—if it does not already exist; what is more, the Asian or African regime which declares that it has a grand coalition probably has, not a consociational democracy, but an ethnically exclusive dictatorship (pp. 575-76).

We should not dismiss Horowitz's warning because of its West-centric bias. The 'Grand Ethnic Coalition' can easily be a grand authoritarian alliance. Seemingly consociationalist authoritarianism can come in a variety of forms. Malaysia is a case in point. Malaysia has an ethnic coalition as the ruling alliance; it also has a semi-federalist governmental structure. Yet, the ruling alliance or the bloc cannot be described as democratic. There, consociationalism has taken the form of corporatism. The primary characteristic of the Malaysian corporatism is the premise that only the ruling alliance has a legitimate claim to rule the country. My concern here is not about the practicalities of the grand ethnic alliance as proposed by consociationalists, but its inherently authoritarian potential. Let us, just for the sake of argument, assume that Sri Lanka managed to produce an ethnic coalition in 1989-90, on the basis of an understanding between the then government and the LTTE leadership. That alliance could have brought in representatives of the Muslim community as well. And politically, it could have based its claims on devolution,



sharing of power and other consociational attributes. Despite all that, that coalition could well have been an authoritarian political alliance.

The point, then, is that conflict resolution and democracy are so closely intertwined that if we miss one we miss the other too.

My second point emanates from the considerations of political philosophy. Consociationalism is essentially a utilitarian enterprise; it premises that the political institutions can and should be manipulated for the maximum benefit of the largest possible number. This is a dangerous premise, both politically and philosophically. The consociational alliance and the sharing of power among leaders of ethnic communities are pragmatic enterprises, which may often lack lasting moral bases required for and by the polity. They are also devoid of explicit moral and normative links between the ethnic leaders and the society. The consociational approach, as it has so far been conceptualized, does not say why the minority leaders should trust the majority leaders.

My criticism does not mean that we should totally abandon consociationalist alternatives. Rather, my point is that we must place it on something else, on a new social contract which provides to ethnic communities the moral and normative bases for re-union.

A New Social Contract

The notion that the authority and legitimacy of the state are defined in an original social contract has found many expressions in Eastern as well as Western political thought. Contract as the basis of the state came to the center of European political thought in the seventeenth century. John Locke presented the most democratic representation of the contractarian theory of social and political association while Emmanuel Kant argued for normative and ethical dimensions of the contract. The essence of the Lockean contractarianism is the limited government organized on the representative principle; and the Lockean contract posits the government as a trusteeship arrangement among equal citizens.

The classical contractarian theory, particularly the one formulated by Locke and Kant, has received a new impetus in recent years with some new interpretations. Professor John Rawls of Harvard University, the leading contractarian philosopher of this century, initiated the

new discussion on justice-based contract with his seminal work, *A Theory of Justice*, published in 1971. Modern contractarian formulations are addressed to people who are deeply persuaded on the point that there are standards of justice for judging institutional arrangements in a polity. The contractarians are also egalitarians for whom an acceptable theory of justice must reveal a sense in which all individuals and communities owe equal consideration. Imagining society as the product of a social contract is the principal philosophical technique for putting rights-based equality to work in the evaluation of basic social and political institutions. The framework of my own contractarian ideas are posited in this tradition.

Let us briefly consider what it should mean by a social contract in today's context. The classical theory said that men and women formed the state after arriving at an agreement among themselves. The conditions of the pre-state society were so chaotic and disorderly that men and women as rational and equal beings decided to end that state of non-state. The 'contract' in this theory is a conceptual imagination, a metaphor to signify the moral bases of the state.

The modern appropriation of the contractual notion of the state is located in liberal reformist politics. We do not live in a pre-statal state of nature; yet we know that moral authority of the state has so collapsed that many political asso-

ciations—the states—are facing disintegration. There seems to be a fundamental failure of the state in multi-ethnic societies, whether it is in the former Yugoslavia or in Sri Lanka. In societies that have internal rebellions and separatist movements, there are sections which do not accept the moral authority of the state. They refuse political obligation to the state and in fact project dis-obligation as the legitimate response to the state. The willingness to dis-associate from the state by communities is, paradoxically, one of the major problems of the modern state. And, those dis-associationists often happen to be ethnic minorities.

It is in this context that we talk about political reforms and conflict management. To my mind, any political reform project would have two essential components. Firstly, it should aim at restoring, repairing and creating democratic political institutions, Secondly, it should restore the moral foundations of the polity. Reforming the

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state, in this sense, is more than mere conflict management and social engineering. The consociationalist model, as it has been understood so far, is primarily a social engineering exercise. That is why I want to argue for a reform project that transcends the limits of consociationalist social engineering. I wish to see conflict management/resolution projects placed on firm contractarian foundations.

In the contractarian imagination, the state is a political association the membership of which is obtained by all individuals—we may add, by all ethnic groups too—as moral equals and equally valuable agents. The state should be an association which is both fair and just so that each individual and ethnic group is to have an equal right to the most extensive basic liberty compatible with a similar liberty of others. Using John Rawls' notion of the General Conception of Justice, we may argue that "all social values in the polity—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally, unless an unequal distribution of any or all of these values is to every one's advantage."

Ethnic Fairness and Justice

Borrowing from the above ideas of John Rawls, I will now explicate two reasons for ethnic fairness and justice to constitute the moral bases of a new social contract.

Firstly, it is important for any society to formulate a set of moral and normative standards against which the institutions and processes, that are created for conflict resolution, can be evaluated and their performance appraised. For instance, what would be the normative basis of the Grand Ethnic Coalition as proposed by consociationalists? Such pragmatist considerations as the saving of public expenditure annually spent on the conflict and the political stability necessary to attract foreign investment, although they are good enough reasons for people to make a rational choice, are not by themselves capable of being characteristics of a conciliatory polity. For ethnic peace, the polity needs normative principles and the two notions I have proposed—ethnic fairness and justice—are meant to provide a moral purpose to the polity.

The second reason is linked to the political appeal of the claims to fairness and justice. As we know, cessionist

movements always claim legitimacy to their politics on the arguments of fairness and justice. They project themselves as champions of wronged communities. The moral argument of any cessionist minority group is that leaving the existing political association with the majority ensures justice and fairness to the community. The majority community, I wish to re-iterate this point, has a responsibility to present to cessionist minorities a strong moral argument for re-association with the state. The task of persuading minorities to change their mind from political dis-association to re-association is indeed a moral one.

My main argument in this regard is that any consociational solution needs to be located in a contractarian polity; For that objective, deeply divided societies need to search for normative principles that would enable the minority communities to join the political association as absolute equals. Ethnic fairness and justice can very well provide the normative framework for the terms of an egalitarian ethnic/social contract.

I would at this point like to define briefly what I mean by my formulation, ethnic fairness and justice. In order to manage and resolve Sri Lanka's ethnic conflict, it is essential that the

terms of association with the Sri Lankan state are re-defined for the ethnic minorities. It means that all ethnic groups in the polity are moral equals and equally valued. When the ethnic groups join the association of the state through this contract, they do not consider their ethnic identity; to be equal and equally valued they disregard whether they are Sinhalese, Tamils or Muslims. The communities enter the contract with the privilege of ignorance of their ethnic identity. To use John Rawls' philosophical language with some modification, they become participants to the contract behind a veil of ethnic ignorance. Thus, the privilege of ignorance enables them to choose the principles of ethnic justice/injustice while being in a position to define 'fairness' untainted by ethnic interests or prejudices. And this stage of ignoring ethnic identities to enter into the contract for political association is analogous to the 'State of Nature' in the classical contract theory and to the 'Original Position' in Rawls' theory of justice.

The second task of the contract is to define 'ethnic justice', from the position of fairness as described above. In ethnically divided societies, the notion of justice is often understood and interpreted in exclusivist ethnic terms.

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Ethnicized notions of justice makes the political and public policy processes extremely volatile and exceedingly contentious. The task then is to arrive at norms and standards of justice by which (I use the Rawlsian language)

- (i) each ethnic group is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all,
- (ii) social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity, and
- (iii) all social goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.

In this perspective of ethnic justice, the insistence is that just institutions and practices could be the object of a unanimous agreement among effected communities. In a grand ethnic coalition of this kind, each contractor is represented as having a veto over any institutional configuration of society unresponsive to its vital interests. This approach to group justice will help us to de-ethnicize the notion of social and political justice.

My plea is that at this stage of the contract, ethnic groups need to formulate just institutions by ignoring their ethnic identities and perhaps by locating each group in the ethnic identity of another. For example, a Sinhalese agent to the contract may think as a Tamil or a Muslim, a Tamil agent as a Sinhalese or a Muslim, and a Muslim agent as a Tamil or a Sinhalese. If this capacity to claim for oneself the ethnicity of another is achieved by all ethnic groups in their search for just political institutions, I am sure that new and hitherto unknown possibilities for justice and reconciliation can emerge. Once ethnic justice

is defined and just institutions identified, ethnic groups can go back to their respective identities.

As I said earlier, a social contract is not a document that all individuals and groups put their signatures to. It is a liberal philosophical metaphor of imagining society as a political association of equals. The contractarian approach to politics and society strengthens the moral, ethical and normative bases of conflict management and resolution efforts. I hope I have been able in my presentation to highlight the following three conclusions:

- i. The present process for constitutional reforms and conflict resolution should be transformed into a process of bargaining for and negotiating a new social contract.
- ii. The Constitution should be a charter of ethnic fairness and justice.
- iii. Sharing and devolution of power, institutions of government, electoral process and public policy—the ultimate standard of measuring their validity and performance should the contract be arrived at by all ethnic groups acting as equals.

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All too will bear in mind this sacred principle that though the will of the majority is to prevail in all cases, that will to be rightful must be reasonable.

Thomas Jefferson