On the dogma of "Sovereignty of the People"[1]

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There are, to be sure, many naive and therefore dangerous political dogmas in circulation in our times and some of these have been given a great deal of currency in the course of the last election campaign in Pakistan. But of these the most pernicious one is the one relating to the uncritical assumption made by our half-educated politicians about what is called the "Sovereignty of the People". It is being said everywhere that the **people are sovereign** and they can do whatever they like and simply by putting a cross-mark on the ballot paper, they can give a *mandate* which cannot be avoided at any cost by the elected representative. It is believed that the people, that is to say the body of adult voters, is sovereign. It is said the voters can decide *finally* questions touching and concerning even the basic principles and foundational matters relating to the life of the State regardless of what is intrinsically right and reasonable.

One may well ask of those who talk so glibly about the people being sovereign in the sense described above, to tell us who, if the people are to be treated as sovreign, are to be treated as "subjects" in relation to the exercise of their sovereign authority?

"Sovereignty" is a term which is incomprehensible without a clear conception of its correlate, namely, its corresponding subject. After all, "sovreign" and "subject" are relative terms. Just as you cannot understand what the term "husband" means without correlating it to the concept of "wife" so you cannot intelligibly talk of the "sovereignty of the people" without correlating it with its corresponding subject. The "People" cannot at one and the same time be "sovereign" and "subject".

It is not the present day people, understood as being coterminous with the historical community reflected in the adult voter, who is the sovereign. When we talk of the People being sovereign, even within the frame-work of a secular society, the term does not refer merely to the present day living representatives of that species but is wide enough to cover not only their fore-runners who, as pioneers of the nation-state made a commitment to some specific national ideal, but also the future generations of the community still to be born. It is the people in this larger sense, understood as a sort of juristic corporate personality which is the sovereign. And if that be so then our forefathers and our children, although they cannot conceivably vote in the elections, are entitled to maintain the claim which would be a sort of limit on the decision-making leader of today's adult voter that the state, as originally conceived, should not be trifled with but it should endure. The "People" is that stream of individual, connected generations of changing persons that Burke was talking about when he invoked the partnership not only between those who are living "but also with those who are dead and those who are to be born". The People are a Corporation, an entity that is to say, which lives on, while individuals come into it and go out of it.

To be concrete, as applied to the state of Pakistan, those who gave up their lives for Pakistan and laboured for its emergence, worked for its solidarity and its glory are an ever present element of that ever-increasing community of mankind called "The People" that is currently tenanting the landscape of Pakistan. It is this vast body of men and women and not merely the present-day adult voters who are entitled to lay the claim that Pakistan should continue in the image in which it was conceived by those who were responsible for the establishment of the State of Pakistan. This is also true about the claim of the future of the race, of the ages that are as yet unborn, and they too are entitled to have a say on the essential question affecting the life of the State.

Lest this should appear an extreme view, I would like to point to the expression "We, the people of United States" with which the Preamble of the Constitution of the United States begins. It may be recalled that on September 17, 1787, about 40 members signed the draft constitution of the U.S.A. on which they had been working since May 25 for 116 days. In Article 7 of their text, they stipulated that if and when conventions in the nine states had ratified it, then for those nine states "The People" of the United States would have ordained and established the Constitution. In this context, a majority of delegates elected to nine states' conventions were deemed to be entitled to act as "The People" of the United States.

In any case, the real concern, here, is not so much the disenfranchisement of the citizens as to hope that both liberty and democracy can be preserved before one destroys the other. And if this is to be done then we must adopt the habit of thinking as plainly about sovereign people as they do about the politician they elect. It will not do to think purely of the politicians and to talk with bated breath about the voters. No more than the kings before them, should the people be hedged with divinity. Like all princes and rulers, like all sovereigns, they are ill-served by flattery and adulation and they are betrayed by the servile hypocracy which tells them that what is true and what is false, what is right and what is wrong, can be determined by their votes. . . . The people have acquired power which they are incapable of exercising and the government they elect has lost powers which they must recover if they are to govern. What then are the true boundaries of people's power? The answer cannot be simple but for a rough beginning let us say that the people are able to give and to withold their consent to being governed—their consent for the government asked of them and as done in the conduct of their affairs. They can elect the government, they can remove it. They might approve or disapprove its performances, but they *cannot administer the government*".[3]

The People, rightly understood, cannot be identified with prevailing pluralities who vote in order to serve their pleasure and their securities, and if we do that where and what is the Nation and whose business and duty is it to defend the public interest? Without the invisible and transcendant community to bind them, why should they care for posterity? Why should posterity care about them and about their promises? Yet without these engagements to the future they could not live and work, without these engagements the fabric of society is unravelled and shredded.

All that is stated above is a consequence of the view of popular sovereignty which obtains in the writings of publicists who think in secular terms. Of course, in Pakistan, we are all agreed ever since the day the *Objective Resolution* was moved and passed by the First Constituent Assembly that "Sovereignty over the entire universe belongs to Almighty Allah alone and the authority to be exercised by the people of Pakistan *within the limits prescribed by Him* is sacred trust". Therefore the concept of popular sovereignty, as it is understood in secular society, does not so much as arise for consideration. Such is the character of our State that the people of Pakistan are not *sui juris* but can act only as the delegates of the Almighty who alone is Sovereign and the authority they exercise is of necessity to be within the limits prescribed by Him. As there is no such thing as the *concept* of *limited sovereignty* known to jurisprudence, in our State the people are not and cannot be "sovereign". They cannot, by a simple majority vote in the popularly elected assemblies be able to undo, for example, the principles upon which the State of Pakistan is founded or do anything directly or indirectly to injure the solidarity of the nation or destroy the integrity of the State.

Regardless of these limitations upon the electoral competence of the people, we have become somewhat used to all kinds of time-worn shibboleths and meaningless slogans. We talk about the mandate of the people which the leaders are supposed to receive even on constitutional questions on the eve of the elections that are held in the country from time to time. It is then said that this mandate is binding and however atrocious and dangerous the implications of the mandate be, it is to be carried out in the name of the People, simply because they are supposed to be sovereign. This is how a false concept of popular sovereignty can destroy a nation. The process by which the degeneration can set in is well known. The "competition in the electoral market works like Gresham's Law; the soft money driving the hard money out of circulation. The competitive odds are heavily against those who, like Burke with his electors of Bristol, promise to be *true to their own best reason and judgement*. The odds are all in favour of a candidate who offers himself as the agent, the delegate, the spokesman, the errand boy, of the blocs of voters.

Even in secular societies, the elected members sitting in Parliaments are not to be treated as *delegates* of the constituencies that have voted for them. They are to be regarded as *representatives* and as such are free to travel outside the scope of the alleged mandate they may have received from the people even on socio-economic issues. A leader even in a democracy must lead and not *follow slavishly the opinion of those he is called upon to represent;* for to blindly follow their opinion

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regardless of its merit would convert the democratic process into something which, for want of a better term, may be called a *mobocracy*.

When the history of our own time is written the way we, as a nation, have misconducted ourselves politically would come in for a sharp criticism at the hands of posterity. Any one who has pondered over the political problem of Pakistan would be struck by the air of extreme irresponsibility with which men, who ought to know better, have been conducting the operations of Government. The fate of political society is sought to be decided by the electoral vote and although we show lip-loyalty to the sovereignty of God and claim that the authority to be exercised by the People of Pakistan within the limits prescribed by Him is a sacred trust, the fact remains that neither has the voter been educated to understand what all this means, nor, again, is the politician much concerned about its implications. Indeed, the politician in Pakistan never ceases to be a person engaged in an election campaign; even *after* the election, his speeches and utterances are so politically manoeuvred that he is all the time busy evoking the popular applauses although, in a Shakespearean aside, often enough, he acknowledges that what he does in the process is something at which, in the long run, would be detrimental to the interest of the State.

A close study of the grammar of religious politics throughout the course of human history would highlight the fact that unless the *will* of the wielder of power in the State is made subservient to the sovereignty of some supra-human order, of what Confucius called, *the mandate of Heaven*, all kinds of complications set in.

We, in Pakistan, ought to realise that western democracies conduct election campaigns simply for the purpose of finding out what sort of socio-economic programme is acceptable to the people and this exercise is confined within the constitutional limits. To that extent party-politics are not half so dangerous as they can become if they are allowed to be conducted without any such constitutional limitations in mind. The extension of the franchise in the history of western democracies took place only after the constitutional limits on the powers of parliaments in the name of the Right of the Individual had taken place. It is not possible, therefore, to subscribe to the political philosophy which says that we give a blank cheque to the politician to promise anything he likes to the voter under the sky and even beyond. The politics of bluff cannot be practised if election campaigns are confined within the conventional constitutional limitations.

I submit that within the framework of our own polity where sovereignty lies with the Lord of the Creation and the authority to be exercised by the people is circumscribed by the limits imposed upon them, such a blank cheque cannot be issued. But all that, I concede, lies in the realm of the pure *theory of our politics; in actual practice*, all the time we are teaching the ideals of secular politics —as crudely understood by us—with results that are now posing a threat to the survival of our State.

Jean Bodin, who has been considered as father of the modern theory of sovereignty, said that the king cannot possess a supra-mundane sovereignty which has nothing above itself. God was above the king and the supreme power of the king over his subjects was itself subservient to "the law of God and Nature", to the requirements of the "moral order". Similarly, whenever Jean Bodin says that the sovereign prince is the image of God, this phrase must be understood in its full force as meaning that the sovereign transcends his political society just as God transcends the sovereign. Either sovereignty means nothing or it means supreme power, *separate* and *transcendant*. In this sense of the term sovereignty, the people can never be sovereign; it would be nonsensical to conceive of the people as governing themselves *separately* from themselves and *above* themselves. All one could say is that they have a natural right to full autonomy, that is, to a comparative independence and power with regard to any part of the whole itself which is composed of them and in order to bring this whole itself into existence and activity.

The idea of sovereignty as propagated by religious philosophers like Jean Bodin underwent a metamorphosis at the hands of Hobbes, Locke and Rousseau. It would be too long to state the precise variations on the theme of sovereignty offered by them; suffice it to say that it was Rousseau whose writings became the foundation of the urge behind the French Revolution, and the historians have seen in his writings a notion of sovereignty which was to be destructive of democracy since it pave the way to totalitarianism. Says Jacques Maritain "Instead of getting clear of the *separate* and *transcendant* power of the absolute kings he carried, on the contrary, that spurious power of the absolute kings to the point of an unheard of absolute in order to make a present of it to the people. The transferring to the people of this mythical and inalienable right of the kings to transcedental supreme power resulted in making the elected representatives of the people mere instruments deprived of any power to govern; whereas in truth they are, in the words of Jacques Maritain "possessed—vicariously, and by participation, really—of this right with responsibility involved, since having been put in charge, within the fixed limits by the people exercising their right to full limits by the people exercising their rights to full autonomy, they have been, to the same extent vested with authority, by virtue of that very choice of the people, and, first and foremost, by virtue of the order through which God maintains nature and societies and through which alone men can be made bound to in conscience to obey other men".

Did not Rousseau say that the State has a right of life and death over its citizens? When the Prince says to him: it is expedient for the state that you should die, he must die, since it is only on this condition that he has safely lived up to that time and since his life is no longer nature's boon only but a conditional gift of the state. Could protagonists of totalitarianism go any further? Rousseau's state was "but the Hobbesian Leviathan crowned with the General Will instead of the crown of those whom the Jacobian vocabulary called "*les roi et les tyrans*". There was to be no *mandate of Heaven* limiting the authority of the state—which in effect was the authority of the people. And if in such a state the people are sovereign, God cannot be sovereign—instead of people exercising power within the limits of Divine Law —or within the limits of natural law as conceived in secular democratic societies—they are ascribed the omnipotence and omniscience of God with the result that their representatives instead of governing the affairs of the state in the light of reason and conscience cannot afford to take their eyes away from the mirror of their constituencies. And what is the consequence? A repeated failure to govern is bound to lead to counter-revolutionary measures for the establishment of a strong government. The most notable of the varients of totalitarianism in the recent history of mankind are—communism, fascism, national socialism, etc. etc.

We, in Pakistan, have no need to follow that long and arduous path of criticism to which the 'concept of the sovereignty of the people' has been subjected, for, with us the irreducible minimum requirement of an Islamic state is to acknowledge the Sovererignty of God over and above that of man and to treat all power to be exercised by Him as being limited and as being a *trust* reposed in Him. Without this limitation on the authority of human institutions of power you cannot have an Islamic polity. If the authority of the people is limited and is to be exercised as a trust, they become accountable to some supra-human norms—to the mandate of Heaven in the Confucian phraseology, to the law of God in the language if Islamic ideology.

Of course the theological class of politicians, the so-called *Ulema* in Pakistan do not understand either theology or politics and although they have been parrot-wise referring to these fundamentals of a Muslim polity to which I have made a reference, they themselves have no clear understanding of what they are talking about. The younger generation of men and women who are educated in the mysteries of western politics can only be expected to know what they are taught by their professors most of whom—honourable exception apart, do not know what they are talking about. In the meanwhile, an ideological state of Pakistan was believed to have been launched into existence in 1947 and after 23 years of its career in history we are left wondering what has happened and what has gone wrong: if only political power in Pakistan had been used by the politicians in His Holy Name, within the limits of the Divine Law and above all as constituting a *trust* and not as their *personal property*, the history of the country would have been different.

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1 An address to the University of Peshawar, Pakistan.

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3 Walter Lippmann: *The Public Philosophy* (1955)