



Coup d'état and Civilian Support: Analysis in the Light of the 2016 Turkish Coup d'état Attempt

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Abstract

Coup d'état is an unwanted truth of politics. Highly undesirable, but yet they still exist! Courts have even legalized them in many instances by applying Kelsen's theory of revolutionary legality. Being inherently faulty, such application of Kelsen's theory has failed to consider the opinion and the role of civilians in coups. Such is a paradox, as it is highly debatable if there could be any revolutions without civilians. But in the wake of 2016 Turkish coup attempt, which was heavily resisted by the civil population, there is a valid ground to question the status of a coup as a revolution in the absence of widespread citizen participation. Thus the court's existing attitude towards the questions regarding the validity of a coup regime begs to be reconsidered in the light of recent incidents of civil participation in coups. The article also considers the tacit support of civilians towards a coup and traces the situation which may allow the courts to tolerate an "unconstitutional deviation" to salvage the constitutional values. The article dwells into the existing judgments by various courts around the world regarding the validity of coups and compares them with the reality as portrayed through the Turkish coup attempt of 2016 and other recent incidents of coup and protests that involved participation of the civil population.

Keywords: *Revolution; Coup d'état; Civilians, Theory of Revolutionary legality, Tacit support.*

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Introduction

2016 Turkish coup attempt made headlines for multiple reasons. The coup attempt has contributed to various contemporary discussions ranging from post-coup mass arrest and purges to emergency. One of the essential features of this failed coup attempt was the civil resistance that played a vital role in its failure. Although the inability to neutralize premier Recep Erdogan and his loyalists and the disorganization among the ranks of the coup plotters are cited as the main reason behind the Coup's failure, people's role in dismantling the Coup cannot be underestimated. Erdoğan, who was on holiday and outside Istanbul during the first hours of the Coup, flew into Istanbul and made a televised speech from the airport and also from the Facetime app, calling the people to take to the streets. Text messages were sent and prayer calls were repeatedly made from mosques across the country, calling for the Turkish citizens to resist the coup attempt. The Coup was dismantled as crowds gathered in major squares of Istanbul and Ankara and opposed the Coup.¹ Such is an unprecedented occurrence as citizen participation in the coups is almost unheard either in support or in opposition. Due to civilians' silence, courts have often ignored their role in questions related to a coup government's legality. But in the wake of the failed Turkish Coup, civilians' role deserves reconsideration in the courts. As such, we must look into the judgments that have been delivered by courts in assessing a coup's validity and evaluate how much they correspond with reality.

Coupe as a Revolution

Historically, Coups have often been devised as a common but controversial method of changing governments. From Napoleon Bonaparte's Coup of 18-19 Brumaire to 2021 coup of Myanmar, Coup d'état has stood the test of time. A coup d'état can be defined as a seizure of governmental power by violence and that violence is to be applied in surgical precision, which distinguishes it from other forms of power seizure.² It is usually

1 David Dolan & Gulsen Solaker, "Turkey rounds up plot suspects after thwarting coup against Erdogan" (Reuters, 16 July, 2016) <<https://www.reuters.com/article/us-turkey-security-prime-minister-idUSKCN0ZV2HK>> accessed 29 March 2021.

2 A. D. Harvey, "The pre-history of the coup d'état" [1994] 6(2) Terrorism and Political Violence 235.

carried out by the armed forces or any other armed group, who are not constitutionally designated with any executive power, either on their own or in a plot with politicians, civil servants, religious leaders etc. It may take place with or without the aid or instigation of foreign powers. On the other hand, revolutions are forced change of the political system brought about by extra-legal action of the subordinate masses.³ Although Coup might mirror a revolution through the fact that they both involve change in the political system through mechanisms not apprehended by the constitution, the agent of such change is different and contrasting. Besides, while revolution is mostly targeted to remedy the prevailing injustice and inequality in the society, coups are usually directed towards grabbing power. The source of a coup government's power is usually the use of force and terror rather than popular support.⁴ As a result, coup governments are rarely better functioning than the civilian ones⁵ and constitutionality of such events has always been challenged. Courts often faced with such questions, couldn't just refrain from such controversies like the civil population. Over the years, Kelsen's theory of revolutionary legality was invoked by courts across various countries to answer questions relating to a government's legality and constitutionality that came to power through a successful coup.

Hans Kelsen, one of the most influential jurists and legal philosophers of all time, famous for his Pure Theory of Law, introduced the '*theory of revolutionary legality*' in his book "General Theory of Law and State." According to Kelsen, a successful revolution not only changes the constitution but in fact, the whole legal order and as a result, all norms of the old order are deprived of their validity.⁶ Kelsen included coup under the scope of a revolution.⁷ Thus, according to him, in the wake of a coup d'état, it will be presumed that old order has ceased to be valid

³ David Beetham, *The Legitimation of Power* (Palgrave Macmillan 2003) 213.

⁴ Adam Roberts, 'Civil Resistance to Military Coups' [1975] 12(1) *Journal of Peace Research* 19.

⁵ *Ibid.*

⁶ Hans Kelsen, *General Theory of Law & State* (Transaction Publishers 2005) 117-118.

⁷ *Ibid.*, 117.

as the political reality no longer corresponds to it.⁸ Courts have resorted to Kelsen's theory either directly or in a tailored version of doctrines of state necessity, efficacy, public policy etc. The idea that a successful coup can bestow validity was for the very first time explored by the Supreme Court of Pakistan in the *State v. Dosso* case. In the following case, tasked with assessing the legality of Iskander Mirza's abrogation of the constitution and declaration of Martial Law, the court was of the opinion that the efficacy of a coup d'état is the basis of its validity.⁹ The Court held that the coup d'état, being a successful one satisfied the test of efficacy and was thus, "*a basic law creating fact.*"¹⁰ According to Muhammad Munir C.J., if the persons assuming power through the revolution can successfully require the people to conform to the new regime, then the revolution itself becomes a law creating fact.¹¹ But there was no mention as to how such conformity is to be determined. The Court went as far as to refer Kelsen's theory as "*one of the basic doctrines of legal positivism, on which the whole science of modern jurisprudence rests.*"¹² In reality, the *Dosso* case's story tells more about the Pakistani Supreme Court's attempt to legalize the Coup than the efficacy of the theory in evaluating a revolution's reality. It is often overlooked that the principal author of *Dosso* was involved in drafting the very martial law order which was contested in the *Dosso* case.¹³ But however, starting from *Dosso*, success became a big determinant in holding a coup as legal. In *Madzimbamuto v. Lardner-Burke*, the court of Rhodesia (present day Zimbabwe), established again, that success alone is the determining factor.¹⁴ The determination of such success required that coup plotters have successfully taken over the government machinery and that civil population in large, are not expressly opposing them.

⁸ *Ibid*, 118.

⁹ 1958 P.L.D. S. CL 538-539 (Pakistan).

¹⁰ *Ibid*, 540.

¹¹ *Ibid*.

¹² *Ibid*.

¹³ *Asma Jilani v. Government of Punjab* 1972 P.L.D. S. Ct. 246-247 (Pakistan).

¹⁴ *Madzimbamuto v. Lardner-Burke* [1968] 2 S. Afr. L.R. 318 (Rhodesia App. Div.).

However, the Court of Appeals of Grenada in determining the validity and legitimacy of a revolution framed four conditions, namely:¹⁵

- (a) The revolution will be considered as successful, if the Government is firmly established administratively, there being no other rival one;
- (b) Its rule is effective, if it can be observed that the people by and large are behaving in conformity with and obeying its mandates;
- (c) Such conformity and obedience are due to popular acceptance and support and is not mere tacit submission to coercion or fear of force; and
- (d) The regime is not oppressive and undemocratic.

In reality, the coups have hardly been able to adhere to these conditions. The most elusive criteria to meet have always been the acceptance of the revolution by the civil population through popular support and acceptance. Because most of the time, the approval of a government formed by Coup comes from fear. Military or other armed groups, equipped with gun power, which easily brought down a government, had no problems establishing their legitimacy in the courts, on the back of Kelsen's theory.

As Kelsen's theory didn't concern itself whether the revolution was brought forward by the civil population or anyone holding government positions,¹⁶ participation and acceptance by the civil population was never an issue. The legitimacy is bestowed, if the individual, whose behaviour was regulated by the old order, behaves in accordance with the new order.¹⁷ No consideration is clearly given to the fact whether such compliance with the new order is out of respect and acceptance of the ideology or out of fear and compulsion. As coups usually come from the ranks of unelected officials, who are no longer accountable to any machinery and thus, have no problems in violating the citizens'

¹⁵ *Mitchell v. Director of Public Prosecutions*, 1985 L.R.C. Const. 71-72 (Grenada High Ct).

¹⁶ Kelsen (n6) 117.

¹⁷ Kelsen (n6) 118.

constitutional approved rights, the reason behind the acquiescence of civil population deserved careful thought. Such loopholes in the theory of Kelsen have been exploited in the courts around the world. Irrespective of the flawed interpretation, Kelsen's theory has firmly established itself as a precedent. As observed by the High Court of Lesotho,

*"[t]o deny Professor Kelsen's theory of the successful revolution is simply to turn one's back on the course of history."*¹⁸

Though courts, in some cases, have turned their backs on Kelsen's theory, it still holds a strong authority in the discussion related to the legitimacy and constitutionality of a government established by Coup due to its invocation in the courts.

Coups and Civilians

Though addressing coups as revolution provides the implication that it was initiated by the people, rather than "*few plotters*,"¹⁹ such is usually never the case. Although revolutions have always originated from "*small networks of agitators rather than by the masses*,"²⁰ their legitimacy depends on the reflection of the ideologies or grievances of the majority and also the support of the people. Civil population has largely remained neglected in discourse relating to Coups.²¹ Civil population, being the majority and the portion that is most affected by the changes in legal order, deserves more attention. With the active participation of the civil population in Turkey's foiled coup attempt, the question arises as to what will be the criteria of assessing the legitimacy of a revolution in the coming days.

While, coups and revolution may be out rightly considered unconstitutional in technical terms, such stance may not relate to the

¹⁸ *Mokotso v. King Moshoeshe II*, 1989 L.R.C. Const. 124 (Lesotho).

¹⁹ Edward Luttwak, *Coup d'état: A practical handbook* (The Penguin Press 1969) 9.

²⁰ See Yuval Noah Hariri, Long Live Revolution in '*Homo Deus: A Brief History of Tomorrow*' (Harper Collins Publishers, 2015).

²¹ Drew Holland Kinney, 'Civilian Actors in the Turkish Military Drama of July 2016' [2016] (10) Eastern Mediterranean Policy Note 11.

political reality of the times we live in. Coups and revolution have not lost their relevancy a bit in the current times. Even in the midst of the Covid-19 pandemic, coups have been taking place.²² With the rise of autocratic and despotic rulers around the world, coup and other forms of armed revolution may be a common occurrence. And, with autocrats amassing more powers and solidifying their positions through constitutional changes, uprooting them through constitutionally approved methods may become harder. Due to increasing interaction with the world, there is a growing bias towards the democratic way of governance, and greater awareness of civil and political rights. Thus, active participation and opposition of coups by civilians will not be rare. As evident from the Arab Spring and the failed Turkish coup, civil participation in the protests has been facilitated due to social media's rise. The flow of information during the initial stage of Coup can make or break any coup attempts. Coup plotters acting in defiance of public opinion is likely to be defeated by civilian resistance.²³

In the *Asma Jilani v. Government of Punjab*, which famously overruled *Dosso*,²⁴ the court was of the opinion that even successful revolutions do not acquire any valid authority to rule or annul the previous *grundnorm* until they have themselves become a legal order by habitual obedience by the citizens of the country, i.e., legal validity of a revolution stems from the effectiveness it acquires by habitual submission of the citizens.²⁵

Incidents of civil disobedience towards coup attempt, similar to the Turkish experience, although is rare, is not unheard of. Charles de Gaulle similarly reversed a coup attempt in 1961 against a group of officers, who were against the Algérie Française policy, with the help of civil population.²⁶

²² Military Coups have taken place in Mali and Myanmar in August 2020 and February 2020 respectively.

²³ Samuel E. Finer, *The Man on Horseback: The Role of the Military in Politics* (Pall Mall Press London, 1962) 98.

²⁴ *Asma Jilani v. Government of Punjab* (n13) 162-183.

²⁵ *Ibid*, 183.

²⁶ Drew Holland Kinney (n21) 7.

Irrespective of these incidents, civil participation in opposing a Coup attempt is scarce. And this lack of participation does not necessarily imply support towards the coup or opposition towards the ousted government.

Lack of civilian participation is stemmed from the fear of retribution from the coup plotters who are usually armed. Imposition of physical immobility, i.e. curfew, interruption of essential services and communication, closing public facilities etc. are also heavily deployed as means to ward off civil resistance towards coup.²⁷ Disinterest towards the country's political affairs is also a contributing factor in such inaction by the civil population. Again, most of the times coups are politically neutral,²⁸ as a result of which it is not possible for civilians to support or oppose the plotters on the basis of any ideological stand point. A coup shares a common feature with revolutions that both result in change of a political system through extra-legal action or overthrow.²⁹ The reason for failure of a regime, that may necessitate a revolution, is the failure of the regime to acknowledge people as the ultimate source of authority.³⁰ Thus, such a failed regime cannot be replaced by another regime that defies the people's authority or subdues it.

Role of the Courts

*"History will impeach us should we fail to address this question in conduciveness with desire of the people..."*³¹

The classification of coup as a revolution is *ab initio* flawed. Military and armed forces, who are unelected machinery of the state, should not get to decide the fate of people and elected governments, no matter how autocratic the regimes become. A revolution is always based upon a particular ideology or political agenda.

²⁷ Edward Luttwak (n19) 173.

²⁸ Ibid, 12.

²⁹ David Beetham (n3) 213.

³⁰ David Beetham (n3) 214-215.

³¹ *Siddique Ahmed v. Bangladesh*, Writ Petition No. 696 of 2010, p 134.

Armed forces being the servant of the state should always be independent of ideologies, as their function is to protect and preserve the sovereignty and integrity of the state and its constitution. Basing on necessity and on the backs of Kelsen's Theory, courts have with time and again, allowed military and armed forces to form a "valid" government, by bypassing the participation of civil population. In the wake of failed Turkish coup attempt, it has become imperative to integrate the issue of participation of the civil population in a revolution. It is understandable that Hans Kelsen, who proposed the Pure Theory of Law, integrated coups into revolution in order to judge the legal consequences flowing from such events. Since Kelsen's concept of state requires existence of a legal order,³² his understanding of revolution and inclusion of coups under it, is an attempt to cover up any legal vacuum. Kelsen, himself was of the opinion that jurisprudence cannot be a source of law.³³ But in reality, his theory of revolutionary legality has become a normative principle of adjudication. Application of Kelsen's theory in courts around the world showcases how theory is separated from reality.

In the wake of the 2016 Turkish Coup failure, the role of civil population is needed to be re-evaluated by the courts. As active participation of civil population in Turkish coup indicates their strong opposition towards the regime change, non-participation should not be prima facie considered as sign of approval. The Court of Appeals of Grenada's standard of assessing the validity of a revolution, as stated in the case of *Mitchell v. Director of Public Prosecutions* is more suited for the current political reality. According to the court, courts are to accord legitimacy to a revolutionary regime, after being satisfied that '*the regime had the people behind it and with it.*'³⁴ The approval may be given *ab initio* or subsequently and might be expressed or tacit.³⁵

³² Kelsen (n6) 218-221, 368-369.

³³ *Ibid*, xiv, 163.

³⁴ *Mitchell v. Director of Public Prosecutions* (n15) 72.

³⁵ *Ibid*.

A necessity or success-oriented approach, which does not account the popular acceptance, to determine the validity of a revolution is an anti-people strategy. The theory of Kelsen has been a friend for military juntas for long. It has haunted the constitutional norms and values that requires the participation of people in a country's decision-making. Civil opposition as seen in the Turkish coup attempt may not be seen in coup attempts in other parts of the world. This unprecedented event can also be interpreted by the courts to bestow validity to a coup regime citing in absence of opposition from civil population as a sign of acceptance. As a new legal order cannot function without the consent or acceptance of the people, such should be constructed strictly.

While it can also be argued that courts are often helpless during coups, as seen from the example of Nigeria, when the Nigerian Supreme Court opposed martial law in its judgment, the military government made the decision ineffective through a martial law decree.³⁶ It is indeed true that the courts are often powerless against regimes that have occupied power through unconstitutional means. Decisions of the courts are often invalidated through martial law decrees; the judges are often thrown out of their office and in some extreme cases, jailed, tortured and given punishment in coup backed kangaroo courts. Even in the most non-confrontational circumstances, the coup government may decide not to implement the decisions of the court, which goes against them and their vested interests. Irrespective of that, an unconstitutional coup government wrongs the constitution and citizens of the present generation and the future generations.³⁷ And acquiescence cannot be used as an excuse to cover up unconstitutional mechanisms to grab power.³⁸ In the occasion of a coup, the courts must rise up as a custodian of the constitution and even if their efforts end in futility, they are obligated to uphold the constitutional norms. According to Yaqub Ali J in the *Asma Jilani v. Government of Punjab*, a coup government can only

³⁶ See *Lakanmi v. Attorney-General*, 1971 U.Ife L.R. (Nigeria).

³⁷ M Jashim Ali Chowdhury, *An Introduction to The Constitutional Law of Bangladesh* (2nd Edition, Sun Shine Books, 2014) 126.

³⁸ *Ibid.*

acquire legitimacy within the national legal order, if the courts recognize such government as de jure.³⁹ To coup regimes, being equated with the words 'law' and 'legality' is considered as an honour, since it may impact the legacy of their regime.⁴⁰ Thus, it is incumbent upon the courts to interpret the constitution in the most approved and original form as possible. It's not for the courts to legitimize a coup government.⁴¹ Judges often choose the path of saving the institutional values, which are capable of being saved, as deserting the judiciary into the hands of puppet judges appointed by the unconstitutional regime, will not help the administration of justice in any way.⁴² But even such actions, in reality, are quite low. Ignoring controversies through declaring a question of validity of coup regime as a political question is also not a viable option, as upholding constitution and its norms and values can never amount to a mere political question.

Deconstructing Tacit Support and Tolerating “Unconstitutional Deviation”

Interpreting the support of civilians is indeed tricky, especially when there have been no activities in favour or against the Coup. The notion that people have consented to a regime in power if they are not protesting against it, is inadequate for legitimacy.⁴³ But again, in case of absence of any express support or opposition, there are no indicators for a court to scrutinize a revolution.

The court of Cyprus has put forward two tests for the legalizing of a coup d'état;

- (i) Popular acceptance of the changes and the legal values invoked by such regime, even if it is a tacit one and
- (ii) Legalization of the Coup government through the recognition of its actions by the next lawful government.⁴⁴

³⁹ *Asma Jilani v. Government of Punjab* (n13) 220.

⁴⁰ Alf Ross, *On Law and Justice* (University of California Press 1959) 31.

⁴¹ *Quinn v. Robinson* 783 F.2d 776 (9th Cir. 1986).

⁴² Justice Mustafa Kamal, *Bangladesh Constitution Trends and Issues* (University of Dhaka, 1994) 58.

⁴³ *Ibid*, 91.

⁴⁴ *Liasi v. Attorney General*, 1975 C.L.R. 573 passim (Cyprus).

But identifying tacit support is not at all simple. Whether civilians are silent due to fear of retribution or due to tacit support, are hardly decipherable. There are arguments that legitimacy of a pre-coup civil government is critically important in determining the legitimacy of a post-coup military regime.⁴⁵ It can thus, be contended that active opposition of a pre-coup government may lead to a conclusion that a subsequent coup is tacitly supported by the public if there is no opposition towards that Coup. While such an argument makes sense, it opens a broad scope for unconstitutional power-grabbing. Military or any armed element of the state or society can utilize a simple incident of public discontent towards the government or any of its policy to overthrow such government, challenging its legitimacy and thus, legitimizing a coup. Public discontent towards a government or any specific policy is a very common occurrence. Even widespread protest against a government's policy and actions cannot be translated into public desire to overthrow the government unconstitutionally. As long as a government can be replaced through a general election, the governmental actions are within the purview of the constitution and it is willing to abide by constitutional norms, without manipulating its fabric, it does not need to be overthrown through a revolutionary process. Use of constitutional power by the regime to unjustly strengthen and solidify its hold on the power and manipulating the democratic process of election for e.g. through disenfranchising any portion of the population that traditionally disapproves of the ideology of the ruling party, may at its extremity, be a valid circumstance for revolution. A regime that is *ab initio* illegitimate can surely warrant an overthrow through revolutionary method. Such '*right to revolution*' is validated by Locke's doctrine of personal consent that dictates that no one is personally obligated to support or comply with any political power unless he has personally consented to its authority over him.⁴⁶ Still the mechanism of identifying the concept of tacit support remains elusive.

⁴⁵ Paul Brooker, *Non-Democratic Regimes: Theory, Government And Politics* (Palgrave Macmillan 2000) 73.

⁴⁶ See, in general, John Locke, *Second Treatise of Government* (Jonathan Bennett 2017).

Tacit consent as a political notion is not a new one. Socrates, in *Crito*, argued that living in Athens as a citizen, tacitly indicates that the individual is satisfied by its laws and is obligated to abide by it and to any punishment that he may incur due to its violation.⁴⁷ Grotius,⁴⁸ Pufendorf⁴⁹ have all argued about establishment of tacit consent to legal relations. In similar line, comes Locke's doctrine of personal consent. On the basis of Locke, even abiding by the laws and orders of the coup regime, will imply tacit support towards the regime. But such argumentation does not consider the element of fear. Interpreting tacit support through conduct is indeed tricky and leaves ample opportunity of misinterpretation. It has been a common practice of coup governments to solidify their position through elections. Such elections are mostly coercive in nature, a sham to showcase its legitimacy to the international community. In such circumstances, it is best for the court to uphold the original constitutional values.

While decay of the state's legal and political mechanism may invite the necessity to make "*unconstitutional deviation*," such deviation should only be made when the regime in power itself has deviated from the constitutional path. Therefore, any coup that claims to be necessitated due to the illegitimacy and unconstitutionality of the regime overthrown must make way for constitutional path. Such coup party must abstain from placing itself in state power and take measures to return to the original constitutional process. If such is done, the subsequent legal government can confer legality to such coup on the basis of "*tacit support*" of the public, who has consented to the original constitutional setup. This concept of "*tacit support*" coincides with the '*principle of implied mandate*,' put forth by Lord Pearce in the *Madzimbamuto* case.⁵⁰

⁴⁷ Plato, *Crito* (translated by Benjamin Jowett) (1871) 52d.

⁴⁸ See Hugo Grotius, *The Rights of War and Peace*, translated by A.C. Campbell (New York: M. Walter Dunne, 1901).

⁴⁹ See Samuel Pufendorf, *The Law of Nature and nations*, translated by C.H. and W.A. Oldfather (Oxford: The Clarendon Press, 1934).

⁵⁰ [1968] 3 All E.R. 561.

According to him, the acts of such government (coup government) may have a binding force, as the people, king or senate – to ‘*whom the sovereignty actually belongs,*’ would prefer that such actions have the force of law temporarily, in order to avoid confusion.⁵¹ This mechanism places its trust on the original constitutional values, before it has been tainted by ‘anti-people’ regime.

Though such coup may sound theoretical, there have been few instances of such coup. The Zimbabwean Coup of 2017, which was welcomed by both the opposition and civil activists, was followed by a swift handover of power to the elected representatives; The Egyptian Coup of 2011, which received popular support from the civilians, may also fall under this mould. Such coup must handover the reigns to a constitutionally approved government, following the constitutional mechanism, which was actually approved by the people. Such coup governments should not be inclined towards any political ambition and there should be no involvement of the persons involved in such coups in the upcoming political process. Such ‘unconstitutional deviation’ might be approved as a revolution. The Supreme Court of Pakistan observed in *M.K. Achakzai v. Pakistan*, that bona fide acts done in public interest by an illegal authority, should be assumed to be done by a de jure authority in order to avoid confusion and instability.⁵² Although, Kelsen’s theory also aims to give validity to coup regimes in order to avoid instability and to fill the legal void, there should be a clear distinction between a regime that grabs power for their own interest and that which assumes power temporarily for the greater public interests. Conferring legality to a coup regime and its acts, even for the sake of stability and filling the legal vacuum is a fraud upon the constitution and the people. Upholding rule of law and safeguarding human rights during the period of transition from ‘unconstitutional deviation’ to constitutional path may also be a determinant in evaluating the coup government’s status.

⁵¹ Ibid.

⁵² PLD 1997 SC 426 (517).

Conclusion

No matter whoever starts a revolution, it will never be a revolution in the truest sense, unless it has support from the civilians. A constitution can only be changed in a non-constitution mandated way if a revolution embraces the people from all walks of life and not just an arm-bearing section of society; revolts against the established legal order. Since the political sovereignty belongs to the people, only they have the right to override a constitution. Every other way, is a fraud towards the state and betrayal of its people and every moral and legal principle upon which the state is founded. The Turkish failed coup attempt has showed the courts that coup without civil participation is not a revolution. The incidence should compel the courts to accommodate unconstitutional deviation only through the evidence of popular support and acceptance, and not just by silence. Failed Coup attempts are usually punished as an act of treason. But the judgment of the Special Court in Pakistan that sentenced Pervez Musharraf capital punishment for high treason due to implementing emergency rule and suspending the constitution in 2007,⁵³ illustrates that even 'Kelsen-approved' successful coups can be labelled as treason, if not backed by popular support. Even the theory of Kelsen and its long-lasting legacy cannot validate such fraud upon the people and its constitution. Courts should not bestow legality on such fraud on theoretical basis, neglecting the realities of the society. The supremacy of the constitution can only be nullified by the voice of the people, not through machine guns.

⁵³ The death sentence was later annulled by the Lahore High Court. According to the High Court, the formation of the special tribunal that handed down the sentence was unconstitutional and illegal.