

KELSON AND THE THEORY OF REVOLUTIONS: A Look at the Legality of Military Administrations in Nigeria.

By Aminu Adamu Bello[^]

1.0 Introduction

On the 15th of January 1966, a group of young military officers attempted to overthrow the government of the Federal Republic of Nigeria. They succeeded in killing several high ranking political office holders and politicians, including the Premiers of the Northern and Western Regions of the country. By the next day, it was not known whether the then Prime Minister, Alhaji Abubakar Tafawa Balewa was dead or alive.¹ Nonetheless, the then Acting President, Nwafor Orizu purportedly invited and handed-over the administration of the country to the armed forces under the leadership of the General Officer Commanding the Army, Major-General J.T.U. Aguiyi Ironsi.

Between 1966 and 1979, four (4) serving generals directed the affairs of the Nigerian nation. This fourteen-year period was that of complete military rule. The second period of military rule was 1983 to 1999; allowance is not intended for the period of the Shonekan Interim National Government (ING), which was an imposition of the then military administration,² and so, the sixteen years from 1983 to 1999, with its three Army Generals, will be treated as the same single, continuous period of military rule. Although the Interim National Government was headed by a civilian, the executive arm was not elected by popular vote in a general election. The then military President had to step aside to allow ING and an elected National

[^] LL.M. candidate, University of Abuja

¹ Lakanmi v. Attorney General (Western State of Nigeria) (1971) 1 U.I.L.R. 201

² The Shonekan Administration was supposed to hold the forte while elections were arranged and conducted for a return to civilian rule in Nigeria.

Assembly with elected State administrations³ already in place to remain in office. It is humbly submitted that since no fundamental changes occurred in the structure of the ING or indeed the nature of its assumption of executive authority, a justification to remove it from the main stream of a military dispensation will only result in a dry inconsequential excursion. The three months it was in office was therefore part and parcel of the military government that put it in place: a position on the legality of the ING will therefore reflect in any position taken on the legality of the administration that brought it into being.

This paper will precede upon the presumption that all the military administrations within each period (1966-1979 and 1983-199) exhibit similar characteristics as to lend themselves to the same constitutional and legal analysis.

1.1 Definition of terms

The Black's Law Dictionary gives two definitions for legality⁴ 1) "strict adherence to law, prescription, or doctrine; the quality of being legal" 2) "The principle that a person may not be prosecuted under a criminal law that has not been previously published"

In defining 'military', the Blacks Law Dictionary gives the following definitions⁵: 1) (n) "the armed forces" 2) (adj.) "of or relating the armed forces; of or relating to war", administration⁶ is defined as 1) "The management or performance of the executive duties of a government, institution, or business" 2) "In public law, the practical management and direction of the executive department and its agencies".

³ State Houses of Assembly and Governors were actually elected and in place during the Shonekan-led administration.

⁴ Blacks Law Dictionary, Bryan Garner (Editor-in-Chief), Thompson West, Eight edition, p.914

⁵ Ibid, p.1013

⁶ Ibid, p. 1013

Here, we need to distinguish government from administration and put forward the definition for ‘government’ as opposed to ‘administration’. Government, according to the Blacks Law Dictionary means “the structure of principals and rules determining how a state or organization is regulated: the sovereign power in a nation or state: an organization through which a body of people exercise political authority; the machinery by which sovereign power is expressed”.⁷ A ‘military government’ is defined, within the context of international law, as “the control of all or most public functions within a country, or the assumption and exercise of governmental functions, by military forces or individual members of those forces; government exercised by a military commander under the direction of the executive or sovereign, either externally during a foreign war or internally during a civil war.”⁸ It is enough at this point to assume that a picture has been created of the scope of our analysis in determining the legality of the various military administrations in Nigeria.

This paper will look at the things that purport to make the management or performance of the executive duties of the Nigerian government by the armed forces legal or illegal. This it will do from two perspectives: First, the paper will look at the law prior to the first military incursion into the political arena with a view to determining if there was anything that made it legal or illegal for the military to take over the executive powers of the government of Nigeria. Secondly, and especially once the legality of the military action of 1966 is determined, the question will be asked: what gives the action of the military in government (administration) the force of law to make it acceptable and binding on its citizens and the international community? The implication of this approach is to answer the question: Is there anything in fact or in law that says the military should not, and

⁷ Ibid p.715

⁸ Ibid, p.1013

indeed could not, take over the executive powers of the government and consequently, administer the country called Nigeria? An answer to this question should give us an overview of the legality of the various military administrations in Nigeria.

2.0 15th January 1966

There is a large body of literature recording the events of 15th January 1966, the day there was a purported revolution changing the face of the government (executive powers) of the Federal Republic of Nigeria. For the purpose of legal analysis, it is only the record of the events of that day available on judicial records that will be relied upon. In this respect, the Supreme Court's record in the Lakanmi case⁹ provides significant reference material. It is to be noted that this case reached the Supreme Court and was eventually determined four years after the first military take over of the executive powers of the government of the federation in 1966. The case was an appeal challenging the authority of the military government to act within the powers it gave itself by Decree and in the states, Edict,¹⁰ which the courts below had ruled was not ultra vires the powers of the military government. The ruling in the Lakanmi case holds judicial authority¹¹ for any meaningful discussion of military administrations in Nigeria.

The Supreme Court decision under reference records the event of the day of the coup as follows:

⁹ Supra

¹⁰ In this particular case, the offending statute was an Edict (No. 15 of 1967) of the Western State and an order made pursuant to its section 13(1) which ordered the 'plaintiffs or their agents and other persons not to dispose of any of the properties of the plaintiffs until the Military Governor of the Western State shall otherwise direct.'

¹¹ Defined in Blacks Law Dictionary, 6th ed., Centennial ed., (1891-1991) p. 849 as "the authority exercised by the department of government which is charged with the declaration of what law is and its construction. The authority vested in courts and judges as distinguished from the executive and legislative powers ..."

“On 15th January 1966, the Nigerian Armed Forces took over control of the Federal and Regional Governments. On Sunday, January 16th, an abortive attempt was made by the surviving Cabinet Ministers¹² to resuscitate the Cabinet by demanding the appointment of an acting Prime Minister in accordance with section 92 of the Republican Constitution.”¹³

The above summation indicates two separate days: the 15th January 1966 when the attempt to take over government was staged and 16th January 1966 when surviving cabinet members failed to have an acting Prime Minister appointed. The twenty four hours between 15th and 16th January 1966 was therefore a period which must be accounted for within the prevailing law and it is submitted that that law was the 1963 Republican Constitution.

Under the 1963 Republican Constitution, the Executive Powers of the Federation was vested in the President¹⁴ which authority extends “to the execution and maintenance of this Constitution and to all matters with respect to which Parliament has for the time being power to make laws.”¹⁵ The President appointed a Prime Minister¹⁶ from among members of the House of Representatives. He also appointed Ministers, on the advice of the Prime Minister.¹⁷ Sections 87(6) and (7)¹⁸ made provisions that ensured that ministers of the government were also either Senators or Members of the House of Representatives. It is therefore to be noted that the system of government in operation under the 1963 Republican Constitution was Parliamentary. This system placed a lot of responsibility on the

¹² This is a reference to the surviving Cabinet members of the Balewa administration elected on the provisions of the 1963 Republican Constitution.

¹³ See Abiola Ojo’s ‘Constitutional Law and Military Rule in Nigeria’, Evans Brothers, Ibadan, 1987, p.84

¹⁴ See section 84(1), 1963 Constitution of the Federal Republic of Nigeria

¹⁵ Ibid, section 85

¹⁶ Ibid, section 87(1)

¹⁷ Ibid, section 87(4)

¹⁸ 1963 Constitution of the Federal Republic of Nigeria

Parliament and instituted a system of Collective Responsibility in the Council of Ministers.¹⁹ Section 90(1) provided that:

“The Council of Ministers shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Council and for all things done by or under the authority of any Minister of the Government of the Federation in the execution of his office.”

In the absence of the President, the Constitution²⁰ provided that the Senate President shall act as President. Specifically, section 39(b)²¹ said where “the president is absent from Nigeria or is, in the opinion of the Prime Minister, unable to perform the functions of his office by reason of illness;” the functions of that office shall ... be performed by the President of the Senate.

On the fateful day of 15th January 1966, the then President Nnamdi Azikiwe,²² was not in the country and Nwafor Orizu, then Senate President, was the acting President. It was later to be observed that the fate of the then Prime Minister, Alhaji Abubakar Tafawa Balewa was unknown.²³ It is upon these circumstances that a meeting was held between surviving Federal Ministers and the leadership of the Armed Forces where executive power of the Federal Government was purportedly handed over to Major-General Aguiyi Ironsi, the next day, 16th January 1966.

The action of the Acting President on the 16th January 1966 had no basis in law. He had no power to do as he did since “... the existence or non-existence of a power or

¹⁹ Ibid, sections 89(1) and 90(1)

²⁰ Ibid, section 39

²¹ ibid

²²Appointed by name at section 157(1) in the 1963 Constitution, Federal Republic of Nigeria

²³ Adewale Ademoyega, *Why We Struck, The Story of the First Nigerian Coup*, Evans Brothers Limited, Ibadan, 1981, p.90

duty is a matter of law and not of fact and so must be determined by references to some enactment or other law”.²⁴ The 1963 Republican Constitution made sufficient provisions to take care of the declaration of emergencies in the event of occurrences like the failed attempt to change the government of the federation by Major Kaduna Nzeogwu²⁵ and his comrades.

At section 70(3), the said 1963 Constitution explained that period of emergency meant any period during which:

- (1) The Federation is at war
- (2) There is in force a resolution passed by each House of Parliament declaring that a state of emergency exists; or
- (3) There is in force a resolution of each House of Parliament supported by the vote of not less than two-thirds of all the members of the House declaring that democratic institutions in Nigeria are threatened by subversion.

The circumstances of 15th January 1966 provided sufficient justification for the government to take action based on section 70(3) (b) & (c). Each House of Parliament could have acknowledged that an emergency existed and so resolved because, there was indeed a manifest threat of subversion of democratic institutions in the action of the military officers who killed leading politicians and “abducted the Prime Minister, Alhaji Abubakar and one of his Ministers, to an unknown destination”.²⁶

²⁴ Olisa Chukwura, ‘Independence of the Judiciary’, NBA Conference, Abuja, 21-25 August 2000, cited in *Principles and Mechanisms of Building a Peoples’ Constitution: Pointers for Nigeria*, in Constitutional Essays in Honour of Bola Ige, M.M. Gidado et al (eds.), Chenglo Limited, 2004, p.117

²⁵ Reportedly the mastermind behind the abortive 15th January 1966 Military coup. He was said to be responsible for killing the Premier of Northern Region, Sir Ahmadu Bello and taking control of the government of that region. He was to later surrender to Major General Aguiyi Ironsi: cf see Adewale Ademoyega, supra.

²⁶ Adewale, supra, p.80

Section 79(1) of the 1963 Republican Constitution²⁷ empowered Parliament to make laws during emergencies.

“Parliament may at any time make such laws for Nigeria or any part thereof with respect to matters not included in the Legislative List as may appear to Parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government during any period of emergency.”

Section 43 of the 1963 Constitution provided that: “without prejudice to the provisions of section 47²⁸ and 88²⁹ of this Constitution, the House of Representatives shall consist of three hundred and twelve members”. Only one-sixth of this number was expected to constitute a quorum³⁰ for the purpose of the business of the House of Representatives. There was no indication that an attempt was made to have the Parliament resolve that there was an emergency in the aftermath of the events of 15th January 1966, which declaration would have sustained the emergency for up to twelve months,³¹ in the first instance. This period was enough to “secure peace, order and good government during any period of emergency” as envisaged by section 70(1) of the 1963 Constitution.

When the acting President and surviving members of the Abubakar Tafawa Balewa’s cabinet met on the 16th January 1966, the acting President, Nwafor Orizu was also the acting Commander-in-Chief of the Armed Forces. Section 165(6) (b)³² provided that “any reference in this constitution to the functions of the President includes a reference to his functions as the Commander-in-Chief of the Armed

²⁷ Federal Republic of Nigeria

²⁸ Providing for the appointment of a Speaker from outside the membership of the House of Representatives, as an addition to the in the House

²⁹ Provided for appointment of an Attorney General from outside the House of Representative and how he must become a member thus increasing the number of members in the House

³⁰ See section 58, 1963 Constitution, Federal Republic of Nigeria

³¹ Ibid, section 70(4)

³² ibid

Forces of the Federation.” The acting President did not so act. He purportedly read the following:

“I have tonight been advised by the Council of Ministers that they had come to the unanimous decision voluntarily to hand over the administration of the country to the Armed Forces of the Republic with immediate effect. All Ministers are assured of their personal safety by the new administration. I will now call upon the General Officer Commanding, Major General Aguiyi-Ironsi, to make a statement to the nation on the policy of the new administration.”

“It is my fervent hope that the new administration will ensure the peace and stability of the Federal Republic of Nigeria and that all citizens will give their full co-operation”³³

The Major-General was reported to have replied as follows:

“The Government of the Federation of Nigeria having ceased to function, the Nigerian Armed Forces have been invited to form an interim government for the purpose of maintaining law and order and of maintaining essential services.”

“This invitation has been accepted and I, Major-General J.T.U. Aguiyi-Ironsi, the General Officer Commanding the Nigerian Army, have been formally invested with the authority as head of the Federal Military Government, and Supreme Commander of the Nigerian Armed Forces ...”

“The Federal Military Government hereby decrees:

The suspension of the provisions of the Constitution of the Federation relating to the office of President, the establishment of Parliament, and of the office of Prime Minister.

The suspension of the provisions of the Constitutions of the Regions relating to the establishment of the offices of Regional Governors, Regional Premiers and executive Councils and Regional Legislatures ...”³⁴

³³ Government Notice No. 147 dated Jan. 26th, 1966, reproduced in Abiola Ojo, *supra*, p.92

³⁴ Government Notice No. 148 dated Jan. 26th, 1966, reproduced in Abiola Ojo, *supra*, p.92

This ritual completed the handing over of power to the Armed Forces, contrary to several provisions of the 1963 Constitution.³⁵ This blatant failure to act according to the law reflected the attitude of Nigerian politicians who “seem content with the flexibility of political or practical solutions rather than rigid declarations of law.”³⁶

In his analysis of the position taken by the Supreme Court³⁷ on the purported handing over of government to the Armed Forces, the learned author, Abiola Ojo³⁸ observed as follows:

“In the absence of the Prime Minister or of a duly appointed acting Prime Minister, there was no one competent, under the Constitution, to convene a valid meeting of the Cabinet. There was no Prime Minister at that meeting and no acting Prime Minister was appointed. Again, although the Ministers remained in office as Ministers, the gathering addressed by the Major-General on that Sunday night was not a Cabinet as recognized by the Nigerian Republican Constitution. To argue otherwise would suggest that any group of Ministers could collect themselves together, without a Prime Minister or an acting one to hand over the Government of the nation to anyone.”

The learned author asserts, quoting Dr. T.O. Elias’s own conclusion on the issue,³⁹ that

“In law, what took place was a routine, though polite consultation”

The conclusion is therefore inevitable that only a properly constituted Cabinet of Ministers can commit the country or take the appropriate action within any prevailing circumstance, including on advisement consequent upon a Parliamentary

³⁵ The 1963 Constitution provided enough safeguards to handle emergencies such as the attempted coup presented, but nothing on the records show that anything was done to use those safeguards by the civilians then in power. See section 70(3), 1966 Republican Constitution

³⁶ Deji Adekunle, ‘A New or Amended Constitution? What is the best way forward?’ In Constitutional Essays in Honour of Bola Ige, supra, p.41

³⁷ In the Lakanmi case, supra

³⁸ Constitutional Law and Military Rule in Nigeria, Evans Brothers, Ibadan, 1987, p.93

³⁹ Ibid, p. 93

resolution. That the Ministers of the Federal Republic, through the acting President, handed over the administration of the country to the Armed Forces is a dereliction of duty and could have been issue for judicial determination had it gone to court. It did not. The military accepted to take the reins of government and thereupon entered the political arena in Nigeria. It is to this extent that the present writer holds the opinion that the events of 15th January 1966 did not amount to a revolution properly so defined, but a breach of the constitutional provisions then subsisting, that is the 1963 Republican Constitution.

16th January 1966

A day after the attempted military coup, the Armed Forces of the Federal Republic assumed the reigns of government of the Federal Republic of Nigeria. It has been submitted, *supra*, that the handing over was illegal, the acceptance of the military notwithstanding. However, following the enactment of the Constitutional (Suspension and Modification) Decree No. 1 of 1966, another dimension was introduced into the scheme of things. This decree “was the first expression of a military Constitution in the constitutional history of Nigeria”⁴⁰ and because in “contrast with the former civilian Constitution,⁴¹ it had characteristics which stood out in sharp contrast to its predecessors,” we are compelled to acknowledge the revolutionary change of government only at the point of its promulgation.

“A revolution in law is said to mean the overthrow of an existing government by those previously subject to it.”⁴²

Also, and specifically because of the circumstances of a revolution, “the law” (within the revolutionary situation) “is not to be sought for in the books but in the

⁴⁰ Ibid, p.41

⁴¹ 1963 Republican Constitution, Federal Republic of Nigeria

⁴² Chris U. Anyanwu, ‘Limitations of the Colonial Foundation of State’, *Constitutional Essays in Honour of Bola Ige*, M.M. Gidado (eds.), 2004, p.73

events that surround us”⁴³ which is why the leaders of the revolution create new laws that give their stay in power the necessary legality. The “position in the event of a revolution has been adequately safeguarded by the replacement of a former Groundnorm with a new one that commands a minimum of effectiveness.”⁴⁴ The effectuation of constitutional change on 16th January 1966 following the promulgation of Decree No. 1 of 1966 introduced a totally new order not contemplated by the 1966 Republican Constitution of the Federal Republic of Nigeria.

3.0 The Military Administrations up to 1979

The first change of government after the January 1966 military take-over was in July of the same year. That change of government was against the subsisting military laws and government. Indeed, it was by its nature a revolution. It introduced its own legitimizing decree, even though substantially similar with the Constitutional (Suspension and Modification) Decree No.1 of 1966. All authority therefore devolved from the decree.⁴⁵

By 1975, a new military government took power in a bloodless coup, replacing the 1966 decrees with its own. It promulgated the Constitution (Basic Provisions) Decree No. 32 of 1975 from whence all authority for government actions and activities derive legality.

Although each of the changes in military leadership, (Irons to Gowon; Gowon to Murtala and the unfortunate abortive coup of Dimka that brought Obasanjo) were not contemplated by the laws then in force in the country, they nonetheless

⁴³ Abiola Ojo, *supra*, p.105

⁴⁴ John Ademola Yakubu, Who Gives the Law? Determining the Jurisprudential Question, Sam Bookman, 2000, p.39

⁴⁵ Abiola Ojo

effected enough changes in the polity to be called revolutions per se. If the perpetrators had failed, those who led the uprisings would have been treated as traitors, just as those incriminated in the Dimka coup of 1976 were. The coups that succeeded changed the legal order and were recognized as such because individuals behave in conformity with the new legal order.⁴⁶

The military administration under Obasanjo⁴⁷ crafted a new Constitution which came into effect, along with an elected civilian administration, on the 1st of October 1979.

The 1979 Constitution of the Federal Republic of Nigeria introduced a curious provision akin to the ouster clauses in some of the decrees subsisting during the military administrations in the country. Section 6(6) (d) stated that the judicial powers vested in the courts⁴⁸ “shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.” This same constitution, embodying this provision evidently giving cover to the acts of the various military administrations since 1966, was thrown out via a military coup on the 31st of December 1983.

4.0 The Military Administrations up to 1999

Two military administrations held power between 31st December 1983 and 1993 when then Military President General Ibrahim Badamosi Babangida stepped aside and instituted an Interim National Government under the leadership of a Head of

⁴⁶ State v. Dosso (?)

⁴⁷ 1976 - 1979

⁴⁸ Listed at section 6(5), 1979 Constitution

Government. General Mohammadu Buhari, who took power in 1983, maintained that his administration was an offshoot of the 1975-79 Military administration of Murtala and Obasanjo.⁴⁹ This administration aborted the 1979 Constitution under which the Shehu Shagari elected civilian administration came into office for a second term (it had been in office 1st October 1979-30th September 1983).⁵⁰

The Constitution (Suspension and Modification) Decree No. 1 of 1984 provided as follows:

The provisions of the Constitution of the Federal Republic of Nigeria 1979 mentioned in the First Schedule to this Act are hereby suspended.

Subject to this and any other Decree, made after the commencement of this Act, the provisions of the said Constitution which are not suspended by subsection (1) of this section shall have effect subject to the modifications specified in the second schedule to this Act.

It is by virtue of the above two provisions of the Decree that all actions of the Buhari administration acquired legitimacy.

In 1985, a member of the highest ruling body under the Buhari administration, the Supreme Military Council, General Ibrahim Babangida became the first military President of Nigeria. The change of government was termed a palace coup and per adventure, attempted to moderate some positions taken by the Buhari government. Nonetheless, because there is no established system of changing leadership within an otherwise unconstitutional usurpation of executive functions of the government of the country, this change must be acknowledged as an internal revolution; one that acquired its own legitimacy by virtue of the rules it introduced. Babangida registered two political parties and conducted several seemingly popular elections

⁴⁹ See Abiola Ojo, *supra*, p.30

⁵⁰ Its second term began on the 1st of October 1983.

culminating in the Presidential election of June 12th 1992 which he subsequently annulled. This annulment and the tension that attended political activities in the country prepared the ground for what came to be known as the Interim National Government under the leadership of Chief Earnest Shonekan.

4.1 The Interim National Government

The Shonekan Interim National Government was a creation of the Babangida administration. Its legality derives from the fact that the military administration decreed it into being and obedience was due in compliance with revolutionary tendencies that themselves gave the Babangida administration the power to make laws. “A law once validly brought into being, in accordance with criteria of validity *then in force*, remains valid until *either* it expires according to its own terms *or* terms implied at its creation or it is repealed in accordance with conditions of repeal in force at the time of its repeal.”⁵¹ The Interim National Government lasted for only three months. A high ranking member of the Interim National Government, General Sani Abacha replaced Chief Earnest Shonekan as head of the Executive arm of the federal government in Nigeria. There were no pretensions to any form of civilities in the nature of the administration which Sani Abacha headed. He ruled like the military and by default, must be termed as a continuation of the 1983 coup that ousted the elected government of Alhaji Shehu Shagari. In the like manner we must say, the Abdulsalami Abubakar administration was the concluding period to that inglorious period of military rule, notwithstanding that it handed over power to a democratically elected government on the 29th of April 1999.

5. Conclusion

⁵¹ J.M. Finns, ‘Revolutions and Continuity in Law’ in A.W.B. Simpson (ed.), Oxford, Essays in Jurisprudence (second edition) (Oxford), 1973, p.63, reproduced in Eligedo, Jurisprudence, p.383

It has been observed that “many lawyers assume that the Nigerian legal system is the set of legal rules which derive validity from the constitution in force at any given time”⁵² and this has forced recourse to determining the source of all legal rules that give validity to governmental action. This is probably why the late Bola Ige,⁵³ in a forward to a collection of constitutional essays observed:

“It has been our lot as a nation to have at various times, thrust upon us, constitutions promulgated by the fiat of military junta. Does this remove the toga of legality from such constitutions? To what extent can a constitution enacted by undemocratic forces be a valid framework for regulating democratic governance? Here again we return to the Kelsenian dilemma – which is the grundnorm? The constitution itself or the norm that commands obedience to the document?”⁵⁴

This legal luminary, though identifying some forces as undemocratic forces, nonetheless acknowledged the ability of such undemocratic forces to make law. His reference to a grundnorm becomes instructive in determining the legality of military administrations in Nigeria. Incidentally, it is because “lawyers have believed that Kelson’s theory of the change of the basic norm was the key to unlock the mystery of the validity of pre-and post-revolutionary laws”⁵⁵ that we venture in that direction.

“The 1960 constitution must be held to have created the first Grundnorm by virtue of the fact that it was handed down to us by the British Government which had been in effective control of government of the country for a century or so. Next, the constitution of 1963 derived its validity as the new Grundnorm by reason of the fact that the bodies which had power to alter

⁵² J.M. Eligedo, *Jurisprudence*, Spectrum Books, Ibadan, 1994, p.373-374

⁵³ He was Attorney General and Minister of Justice during the period 1999 till he was murdered by unknown persons

⁵⁴ In a Forward to ‘Constitutional Essays in Honour of Bola Ige’, M.M. Gidado et al (ed.), Chenglo Limited, Enugu, 2004, p.vi

⁵⁵ Lloyd & Freeman, *Lloyd’s Introduction to Jurisprudence*, 5th ed., London, 1985, p.334

the Grundnorm did so through the processes laid down in the 1960 constitution for doing so.”⁵⁶

Subsequently, with the incursion of the military into politics and executive authority, lawyers and politicians alike began to question the legality of such administrations. While the legal status of revolutions is safeguarded by “the replacement of a former Grundnorm with a new one that commands a minimum of effectiveness”,⁵⁷ there is no basis in restricting revolutions to periods of civilian (democratic or monarchical) dispensations⁵⁸ alone.

“The criminal quality of an act cannot be discerned by intuition nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences? Morality and criminality are far from co-extensive; nor is the sphere of morality necessarily part of a more extensive field covered by morality – unless the moral code necessarily disapproves all acts prohibited by the state, in which case, the argument moves in a circle.”⁵⁹

In Nigeria, no law precludes the military from staging a revolution. The closest a constitution came to creating a constitutional safeguard against forcible take over of government is in the 1979 constitution, where it said:

“The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof except in accordance with the provisions of this Constitution.”⁶⁰

Some historians and political scientists⁶¹ have argued that Africans are used to having physically strong and powerful men as leaders. We do not defer. The law

⁵⁶ Akinola Aguda, *The Judicial Process and the Third Republic*, F & A Publishers Ltd., p.94 cited in *Who Gives the Law*, supra. P.29

⁵⁷ John Ademola Yakubu, supra, p.39

⁵⁸ As in France (1) and America (1776)

⁵⁹ See *Proprietary Articles Trade Association & Ors. V. Attorney General of Canada & Ors.* Per Lord Atkins, (1931) A.C. 310 at p. 324 cited in John Ademola Yakubu, supra., p.25

⁶⁰ See section 1 (2)

⁶¹ Notably Professor Ali Mazrui. See his novel, *The Trial of Christopher Akigbo*, a novel of ideas. Also, Ajayi Crowther's *The Story of Nigeria*.

may persuade, it is yet to proscribe the involvement of military in the administration of the country which they individually and collectively call their own. Just like the civil population (politicians among them), the armed forces also desire peace, order and good government.

It is our humble submission that all successful military coups that brought in military administrations in Nigeria were legal. They succeeded as revolutions and devised the rules by which they governed, and so discharged their “national roles as the promoters and protectors of our national interests.”⁶² It is our humble submission that “the very many legal rules in force in any given society form one legal system basically by virtue of the fact that they are the legal rules of *one* given society, whether this society is Nigeria, the USA, the overall international community or the Roman Catholic Church.”⁶³

⁶² See address of then Brigadier Sani Abacha on the occasion of the 1983 military coup, in Abiola Ojo, *supra*, p. 28

⁶³ J.M. Eligedo, *supra*, p.386.