

The Structural Conundrum of Nigerian Federalism in The Context of Constitutional Prebendalism: A Jurisprudential Inquisition

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Abstract

The unabated agitation for a viable, and functional federal system of government, or what is referred to as true federalism in the Nigerian constitutional lexicon; after the return to civil rule in 1999 is indicative of the fact that the existing practice of federalism in Nigeria, is basically not working. Thereto, the protracted, and obvious collage of issues in Nigerian federal constitution; without gainsaying, has provided traction for the said continual agitation for a true federal system that will reflect the general yearnings and aspirations of the ethnic nationalities. Nigeria, is a federation purportedly operating a federal constitution, but in practice works as a unitary state; a metamorphosis of the centralizing tendencies occasioned by long years of military rule. However, there seems to be a conference of scholarly opinions especially in the southern part of the country, and of recent; in some states in middle belt region that the operation of federalism in Nigeria, does not conform to the fundamental principle of federalism. Conversely, aside medley of structural issues, Nigerian federalism is patrimonial, or better put, prebendal in nature, content and character, hence its conundrum. Put differently, Nigerian federalism is a text book definition of 'feeding bottle federalism', as evident in section 162 of the 1999 Constitution that does not contain any provision for saving for the rainy days. This article adopted a doctrinal research method to extrapolate the prebendal nature of Nigerian federalism. It is against this background that the research contends that without a holistic constitutional amendment via a referendum, and putting in place distributive, integrationist, accomodationist and above all; structural mechanisms, federalism in Nigeria, albeit nation building and national integration will remain a mirage.

Keywords: Federalism, True Federalism, Constitution, Patrimonialism, and Prebendalism

1. Introduction

Human, and hence scholarly, concern with politics focuses on three general themes: the pursuit of political justice to achieve political order; the search for understanding of empirical reality of political power and its exercise, and the creation of an appropriate civic environment through civil society and civil community capable of integrating the first two themes to produce the political life.¹

Thus, by way of corollary; political scientists have uncovered or identified certain architectonic principles, seminal ideas, and plain political truths that capture the reality of political life or some significant segment of it, and relate that reality to larger principles of justice and political order and to practical yet normative civic purpose.² However, it is important to point out that, since its beginning, political science has identified three basic ways in which politics come into existence, viz: conquest (force, in the words of federalist No.1), organic development (for the federalist accident), and lastly covenant (choice). These questions of origins are not abstract; the mode of founding of a polity does much to determine the framework for its subsequent political life.³

From the perspective of scholarly adumbration, conquest, can be understood to include not only its most direct manifestation of a conqueror gaining control of a land of a people, but also such subsidiary ways as revolutionary conquest of an existing State, a coup d'état, or even an entrepreneur conquering a market and organizing his control through corporate means.⁴ Again, conquest tends to produce hierarchically organized regimes ruled in an authoritarian manner: power pyramids with the conqueror on the top, his agents in the middle, and the people underneath the governing structure. And the original expression of this form of polity was the pharaonic State of ancient Egypt.⁵

On the other hand, organic evolution involves the development of political life from its beginnings in families, tribes, and villages to larger politics in such a way that institutions, constitutional

¹ Elazor, D.J, 'Exploring Federalism', (University of Alabama Press Tuscaloosa, Alabama, 1991), p23

² Ibid

³ Ibid, p25

⁴ Ibid, p26

⁵ Ibid, Similarly, Nigeria federalism which was formed by aggregation is another example of politics by conquest.

relationships, and power alignments emerge in response to the interaction between past precedent and changing circumstances, with a minimum of deliberate constitutional choice.⁶ The end result tends to be a polity with a single center of power organized in one of several ways. For example, the classic Greek political thought emphasized the organic evolution of the polity and rejected any other means of polity building as deficient or improper.⁷

Finally, covenantal founding emphasis the debated coming together of humans as equals to establish bodies politic in such a way that all reaffirm their fundamental equality, and retain their basic rights.⁸ Even the Hobbesian state in which power was vested in a single sovereign maintains this fundamental characteristic, although, in practice, it could not coexist with the system of rule that Hobbes requires.⁹ So, it is pertinent to point out that, politics whose origins are covenantal, reflect the constitutional choice and broad-based participation in constitutional design. Put differently, politics founded by covenant are essentially federal in character, in the original meaning of the term, whether or not they are federal in structure.¹⁰

2. The Origin of the Federal Idea

Since the Bible is one of the oldest books in the world, by way of conference of scholarly opinions many philosophers, theologians, and political theorists in the Western world have inexorably agreed that the federal idea has its roots in the Bible.¹¹ Indeed, the first usage of the term was for theological purpose, to define the partnership between man and God described in the bible, which, in turn gave form to the idea of covenantal (or federal) relationship between individuals and families leading to the formation of a body politics and between bodies politic leading to the creation of compound politics. The political applications of the theological usage gave rise

⁶ Ibid, p27

⁷ Ibid, for another historical insight on federalism, see also Lepine, F, 'A Journey through the History of Federalism' <<https://www.cairn.info>> accessed on the 5th of August, 2023

⁸ Ibid, p28. Note also that American federalism which is by disaggregation is a text book definition of politics that came into existence vide covenantal founding

⁹ Ibid

¹⁰ Ibid, p29. See also Follesday, A, 'Federalism', (Stanford Encyclopedia of Philosophy) First published Sun Jan 5, 2003; substantive revision Wed Nov 2, 2022. <<https://www.plato.stanford.edu>> accessed on the 8th of March, 2023:

¹¹ Ibid, p30

to the transformation of the term “Federal” into an explicitly political concept.¹²

By way of textual analysis, the term “Federal” is derived from the latin foedus, which, like the Hebrew term brit, means covenant.¹³ In essence, a federal arrangement is one of partnership, established and regulated by a covenant, whose internal relationships reflect the special kind of sharing that must prevail among the partners, based on a mutual recognition of the integrity of each partner and the attempt to foster a special unity among them.¹⁴ Significantly, Shalom, the Hebrew term for peace, is a cognate of brit, having to do with the creation of covenantal wholeness that is true peace.¹⁵ Since federalism is increasingly resurfacing as a political force because it serves well the principle that there are no simple majorities or minorities but that all majorities are compound of congeries of groups, and the corollary principle of minority rights, which not only protects the possibility for minorities to preserve themselves but forces majorities to be compound rather than artificially simple;¹⁶ it becomes desirable, indeed necessary to look at the problem with studying federalism.

3. The Problem with Studying Federalism

The study of federalism construed in its broadest sense is fraught with myriad of problems that are reflected in both theory and practice. That said, notwithstanding the fact that the term “Federal” has both an empirical and a theoretical resonance, part of the problem with studying federalism is that, it is a microcosm of the problem with studying political science itself.¹⁷ This is because of the fact that, federalism deals simultaneously with fundamental social diversity, individual and collective identities, are highly charged emotional questions for many people, which later involve the routine pursuit of economic profit and security and reflect for the most part calculated and dispassionate self-interest.¹⁸

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid (n33)

¹⁷ Micheal Burgess, 'Comparative Federalism: Theory and Practice', (Published by Routledge, 270 Medison Ave, New York, 2005), p14

¹⁸ Ibid

However, the moral basis for federalism derives from certain inherent virtues, such as respect, tolerance, dignity and mutual recognition, which lead to a particular form of human association, namely, the federal state or federation.¹⁹ On the other hand, the amoral foundation suggests that no such qualities here in federalism at all, and that it is nothing more than a particular constitutional and/or political technique for achieving certain overarching goals such as territorial expansion or economic benefits and security.²⁰ In the same vein, another reason, why federalism has been problematic to scholars is that, it is multifaceted by its very nature; albeit, it is constitutional, political, social, economic, cultural, legal, philosophical and above all, ideological.²¹ Put differently, it spans the whole gamut of human existence.

4. Nigeria: What Manner of Federalism?

Before delving into answers to the above poser, it is scholarly necessary that an attempt be made in the first place to define federalism, as espoused by some authors. K.C. Wheare, who is widely touted as the father of federalism, defined federalism as a constitutional arrangement which divides law making powers and functions of the state between two levels of government which are coordinate.²² Watts, On his part, defines federalism as a philosophy, doctrine and arguably an ideology that favors a distinct territorial pattern of government, one that combines the centralization of some powers and the decentralization of others.²³ In another development, C.J Fredrich,²⁴ defined federalism thus:

Federalism is a process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies and making joint decision on joint problems and conversely also the process by which

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Wheare, K.C, 'Federal Government: London', (1963). Published by Oxford University Press, p23

²³ Watts, R.L, 'Federalism, Federal Political Systems, and Federations', Annual Review of Political Science, 1 (1998), 117-37.

²⁴ Fredrich, C, (1996), Federalism and Opposition in Government, Vol.1, adopted from Dare, L.O, (1979), Perspectives on Federalism in Akinyen, A.B, et al (ed) reading on Federalism: Lagos, Nigerian Institute of International Affairs (NIIL),

a unitary political community become differentiated into a federally organized whole, ie as a process of federalism.

Conversely, unlike American federalism that in the first place, started with disaggregation, Nigerian federalism, started with aggregation pursuant to Sir Frederick Lugard, who vide an imperial fiat in 1914, amalgamated the Northern and Southern provinces in Nigeria together²⁵. Consequently, sequel to the 1946 Richard Constitution, Lyttleton Constitution of 1954, Nigerian federalism, metamorphosed into federalism by aggregation²⁶. Regrettably, since the inception of the presidential Constitution of 1979, and concomitantly, the 1999 Constitution, Nigerian federalism has dovetailed into federalism by disaggregation.²⁷ However, with respect to the said 1914 amalgamation, it was the imperialist annexation that grafted the various groups of peoples or nationalities with diverse cultures, traditions, customs, outlooks, religions, and ideas into what is today known as Nigeria²⁸. Emphatically, and by way logical construct, it was after the said merger that the constitutional history of Nigeria began, and not before. So, it is important to point out that, notwithstanding Sir Frederick Lugard imperial fiat, and as can be gleaned from Richard Constitution of 1946, and Lyttleton Constitution of 1954, and above all, the independence Constitution of 1960, the founding fathers of Nigerian federalism, unanimously agreed that Nigeria, should be a federal State.

Since then, suffice it to point out that Nigeria, has experimented with more Constitutions than most countries of the world. For example, the Clifford Constitution of 1922, the Richard Constitution of 1946, the Macpherson Constitution of 1951, the Lyttleton Constitution of 1954, the Presidential Constitution of 1979, the Babangida Constitution of 1989, the unreleased Abacha

²⁵ Eric Teniola, 'The British & Mistake of 1914'.PremiumTimes, July 3, 2021 <<https://www.premiumtimesng.com>> accessed on 11th August, 2023

²⁶ Odumusu, I.O., The Nigeiran Constitution: History and Development, (London Sweet & Maxwell 1963), pp43-63

²⁷ Guy Ike Ikokuwu, 'Nigeria Unitary Federalism'. The Guardian 12th October, 2016 <guardian.na/optionnigeria> accessed on the 24th of January, 2023

²⁸ Olaniyakun, W, Nigeria: What manner of Federalism? In the Voice of Law and Social Change: Speeches and Thoughts of Wole Olanipekun, (SAN), Published by Josadeen Nigeria Ltd, 2022, plc

Constitution of 1995, and above all, the Abubakar Constitution of 1999.²⁹

Importantly, apart from the 1954 Lyttleton Constitution, which for all intents and purposes, was actually federal in nature, character and content, and the 1979 Constitution which is a mixed grill of federalism and unitarism,³⁰ what Nigeria, by way of synchronization, has had till date, especially as it relates to the 1999 Constitution, which is a metamorphosis of 1979 Constitution, 1984 draft Constitution, 1989 draft Constitution, and the 1995 draft unreleased Abacha Constitution has been hydra-headed unitary Constitution that is prebendal in nature, character and content.³¹ For example, contrary to federalist theory of secession as profoundly argued by Wayne Norman, section 2(1) of the 1999 Constitution (as amended) provides that Nigeria is one indivisible and indissoluble sovereign state to be known by the name the Federal Republic of Nigeria.

In the words of Wole Olanipekun, albeit the said provision, one point curiously stands out, to wit: it was the military over lords who were the precursors or authors of the said 1999 Constitution that decreed Nigeria as a federation, and not that the federating units came together as independent government.³²

Ideally, like American federalism, it is the federating units or their representatives that should have come together to create or form the central government and not the other way round.³³

So, it is right to assert that, Nigeria's political history, aside being chequered in nature, has been politically tumultuous. It would be recalled that, the people of Nigeria, did not at any time consciously or unconsciously agree among themselves that they wanted to come together as a country or nation.³⁴ More reason why 'The Patriots' asserted in their letter to former President Goodluck Jonathan, authored by Professor Ben Nwabueze, (SAN) on their behalf, by way

²⁹ Ibid

³⁰ Ibid

³¹ See section 162(1) – (10) and Second Schedule, Part 1 & 2 of the Exclusive and Concurrent: Items. See also the case of Attorney – General of Federation v Attorney – General of Abia State & 35 Ors (2002) SC (Part 1) (No2) (2002) 6 NWLR (part 764) 542

³² Olanipekun, W.(n25)

³³ Ibid

³⁴ See the full text of the Letter from the Patriots to Former President Goodluck Jonathan, January 18th, 2014 authored by Prof. Ben Nwabueze, (SAN) for and on behalf of the Patriot <<https://thenigerianvoice.com>> accessed on the 7th January, 2023. See also Eric Teniola. The 1999 Corrigenda, Premium Times of 7th November, 2013 <<https://www.premiumtimes.ng.com/option>>accessed on the 5th of January, 2023.

of paraphrase posited that the 1999 Constitution which is a metamorphosis of 1979 Constitution, 1984 draft Constitution, 1989 draft Constitution, and above all, 1995 draft Constitution is obviously suffering from legitimacy conundrum because of the fact that it was not subjected to referendum.³⁵

Suffice it to state that while most Constitutions of other countries like Egypt, Zimbabwe, Canada, inclusive of our next door neighbor Niger, went through a referendum before being adopted, the 1999 Constitution did not go through such.³⁶

Regrettably, it was even reported that as of December 1998, when Local Government elections, February 13, 1999 Governorship elections, February 20, 1999 National Assembly's election, and February 27, 1999 Presidential election were held in that order; the country has no Constitution.³⁷ This is because Justice Niki Tobi, submitted his committee's report on April, 22 1999, and the Armed forces ruling council ratified that report on May 3, 1999, while General Abubakar promulgated it to a Constitution on May 5, 1999 vide decree 24, hence President Olusegun Obasanjo was sworn-in on May 29, 1999.³⁸

5. The 1999 Constitution and its Myriad of Problems.

Notwithstanding the repeated clamour, and the associated raging debate with respect to the desiderata of amending the Constitution of the Federal Republic of Nigeria, 1999 (as amended) since the return to civil rule, which by way of corollary, has quite naturally generated fervent interest among the ethnic nationalities in Nigeria.

It is instructive to point out that, despite the humongous amount of money budgeted by the 9th Senate vis-à-vis constitutional amendment, in the region of five hundred million naira (500 million), under the headship of Deputy Senate President Ovie Omo Agege, the 9th Senate will soon wind up without any significant progress made

³⁵ Ben Nwabueze, (n34)

³⁶ Eric Teniola, (n31)

³⁷ Ibid

³⁸ Ibid

in the said constitutional amendment.³⁹ However, since 2003, every Assembly, altruistically or selfishly, has attempted constitutional amendment, and thereto, the sum of one billion naira has been budgeted for the process each legislative year since its commencement in 2003,⁴⁰ which by way of inference; has become an annual legislative jamboree, or better put, a white elephant project.

Again, the protracted clamour for the desiderata of amending the 1999 Constitution, is obviously associated with the fact that, same is bedeviled with jambalaya of problems. For example, *the indigeneship versus settler's conundrum*, has remained for many decades the principal source of intractable inter/intra-communal violence in Nigeria.⁴¹ However, aside the concept of citizenship that is well defined, especially in sections 25 to 29 of the Constitution, the 1999 Constitution did not define who is an indigene or a settler.

Again, the Sharia Legal system introduced by some States in the Northern parts of Nigeria, has resurrected the age-long controversy over the extent of the applicability or otherwise of Islamic law and question the delicate compromise achieved at the 1979 constituent assembly.⁴² Though, section 10 1999 Constitution prohibits the government of the federation or of a state from adopting any religion as state religion. Unfortunately, the provision leaves a trove of unanswered philosophical questions such as: what it means by to adopt a religion as state religion? and whether a state may validly adopt a legal system based on religious code without necessarily infringing the provision?⁴³ Importantly, the power conferred on the President and State Governors under section 315(2) & (4) of CFRN, 1999 to modify existing law to bring them into conformity with the Constitution, threatens the doctrine of separation of powers which is a cardinal principle in constitutional democracy.⁴⁴ The 1999 Constitution, also seems to have made inadequate provisions for the functionary of who bears ultimate responsibility

³⁹ Sunday Isuwa, as 9th Senate celebrates last Independence without Constitutional Amendment, LEADERSHIP<<https://leadership.ng/as-9th-senate-celebrates-last-independence-without-constitution-amendment>> accessed on the 26th of January, 2023.

⁴⁰ Ibid

⁴¹ Nwagwu, E.J, 'Indigenes and Settlers Conflict in Nigeria: A Negation to National Integration and Nation building', in Mediterranean Journal of Social Sciences, 2011, published by MCSER publishing, Rome-Hary, p218.

⁴² Suleiman Nchi & Victor Kwon, The 1999 Constitution: The Many Things Wrong with it, The Nigeria Lawyer Monthly, Vol. 1, No 1, October, 2002, p3

⁴³ Ibid

⁴⁴ Ibid p5

for the security of the respective states in the federation because of the inelegant way the provision of sections 214(1), 214(2), and 215(2) of the 1999 Constitution were crafted.⁴⁵

In a related development, despite the recently executive order signed by President Mohammadu Buhari, in May 2020 that outrightly grant financial autonomy to the judiciary, legislature as well as the local government councils,⁴⁶ which has abrogated section 162(6) of the 1999 Constitution: if same is juxtaposed with sections 7(1), 3(6), 9(2), 172(3) and the Second Column of part 1 of first schedule to the Constitution appears inchoate. And thereto, same have foisted on the federation account the burden of financing the Local Government Councils even when the basic power to create them is vested in the State governments,⁴⁷ thereby giving traction to the prebandal nature of Nigerian federalism. The blanket immunity granted to the president, vice president, state governors and their deputies from legal process during their periods of office (except suits in their official capacity) in section 308 of the 1999 Constitution, notwithstanding the logical reasoning behind same, which is to enable them perform their duties fearlessly and seamlessly,⁴⁸ is apposite. However, the said blanket immunity clause, aside making mockery of successive governments anti-corruption crusade, leaves a lot to be desired vis-a-vis the practice of constitutional democracy, rule of law, accountability, as well as infrastructural development.

Finally, since there has been impassionate interest on the size and distribution of the Federation Account, there is likely to be controversy in the meaning of section 162(1) – (10), and second schedule, part 1 of the exclusive list, of the 1999 Constitution, which to all intents espouses prebendalism.

Again, not until the Federal High Court case in the celebrated case of *Attorney General of Rivers State v Federal Inland Revenue Service*,⁴⁹ that disrupted the over the years taxing powers of the

⁴⁵ Ibid p6

⁴⁶ Ayo Oyoze Baje, President Buhari and Local Government Autonomy, The Guardian of 23rd July, 2021 < <https://www.guardian.ng>> accessed on the 26th of January, 2023

⁴⁷ Suleiman Nchi & Victor Kwon, (n,39)

⁴⁸ Ibid

⁴⁹ Odinkonigbo, J.J, Attorney General of Rivers State v Federal Inland Revenue Service: Which level of Government in Nigeria Has the Power to impose or collect value added tax? Published by the Gravitas Review of Business & Property Law, Vol. 13 No. 1 (March, 2022), p9

federal government vide Federal Inland Revenue Service, albeit the collection of value added tax, there have always been rumbustious debates over the taxing powers of different levels of government because of its prebendal nature, hence the need to do an intellectual conceptual mapping on the subject matter of prebendalism.

6. The Prebendal Nature of Nigeria Federalism

In one of his profound literatures titled crisis of governance in Nigeria, the egg head and cerebral Prof. Ben Nwabueze, (SAN)⁵⁰, opined that the complexity of the organism called the State transplanted to Nigeria, nay the rest of Africa by European colonialism as the framework, for governance, which has invariably occasioned crisis of governance in Nigeria, (as in the rest of Africa) is one of our major albatross⁵¹.

That said, and for the purposes of being specific, albeit Nigerian federalism, notwithstanding the express provision of section 14(2)(a) of the 1999 Constitution that espouses popular sovereignty, the prebendal nature of the 1999 Constitution vis-à-vis the power given to the National Assembly under section 162(3) to prescribe the terms and manner of sharing the common pool is constitutionally tyrannical to say the least.

Put differently, and by way of textual analysis of the said section, the power given to the Federal Government under section 162(3) of the Constitution, to prescribe the terms and manner of distribution of funds in the Federation Account among the Federal, State and Local Government is a somewhat over-bearing power in a Federal System.⁵² This is because the words “terms and manner,” enable the National Assembly to determine by law the percentages of the money to go to each level of government. Meaning that, the effect of the power given to the Federal Government by section 162(3) is to place its hands the control of 90 percent of the total revenue sources of the federating States,⁵³ which logically appears to

⁵⁰ Ben Nwabueze, *Crisis of Government in Nigeria*, published by John Archers (publishers) Ltd, Dugbe, Ibadan, (2018), p4

⁵¹ Ibid, p346

⁵² Ibid

⁵³ Ibid

be the intendment of the second schedule, part 1 of the exclusive items.

Pursuant to this power, the National Assembly can reduce the State governments to the position of almost complete dependence on, or subordination to, the federal government, by making the allocation in terms that will allow the States only a very small share of the revenue, so small as to have any meaningful bearing on their financial needs as determined by the functions assigned to them by the Constitution.⁵⁴ To buttress its absurd nature, on collection of, say 5 percent, to the State and Local Governments, though it may be against the spirit of the provision, will be in accordance with its letters, and therefore, a constitutionally valid exercise of the National Assembly's unqualified discretion to prescribe the proportion or percentage to go to the State and Local Government.⁵⁵

7. What Is Prebendalism?

Etymologically, prebendalism is derived from a middle French word 'prebende' or latin word *prebenda*, meaning a payment fixed to certain ecclesiastical positions, or an ecclesiastical position which carries such prebend, in the catholic church mainly canon.⁵⁶ It was first used in the catholic doctrine as the right of member of chapter to share in the revenues of a cathedral.⁵⁷ In another development, Max Weber, used the term to describe India and China, in the early middle ages in his books, titled 'The Religion of China'⁵⁸ and 'The Religion of India'⁵⁹, viz:

The accidental seigneur, like the oriental Indian, developed through the disintegration of the central authority of the patrimonial State power, the disintegration of the Carolingian Empire in the occident, the disintegration of the Caliphs and the Maharadja or Great Moguls in

⁵⁴ Ibid

⁵⁵ The Origin of Presendalism <<https://en.w.wiktionary.org/wiki/prebend>> accessed on the 29th January, 2023

⁵⁶ The Catholic Encyclopedia <<https://www.new.advent.org/cathen>> accessed on the 27th January, 2023

⁵⁷ Max Weber, *The Religion of China. Confucianism and Taosim* (Free press 1951).

⁵⁸ Max Weber, *The Religion of India: The Sociology of Hinduism and Buddhism* (Free Press, 1958) pp70-71 as quoted by Immanuel Wallerstein in *The Modern World system/ Capitalist Agriculture and the Origins of the European World – Economy in The Sixteenth century* (University of California Press, 2011)

⁵⁹ Richard Joseph, *Prebendalism and Dysfunctionality in Nigeria*, Published by Africaplus, 2013 <<https://efrica.plus.wordpress.com/2013/07/26/prebendalism-and-dysfunctionality-in-nigeria>> access on the 29th January 2023

India. In the Carolingian Empire, however, the new stratum developed on the basis of a rural substance economy. Through oath-bound vassalage patterned after the war following, the stratum of lords was joined to the king and interposed itself between the freeman and the king. Feudal relations were also to be found in India, but they were not decisive for the formation either of a nobility or lordism. In India, as in orient generally, a characteristic seignior developed rather out of tax farming and the military and tax prebends of a far more bureaucratic state. The oriental seignior therefore remained in essence, a 'prebends' and did not become a 'fief', not feudalization, but prebendalization of patrimonial state occurred. The comparable, through undeveloped, accidental parallel is not the medieval fief but the purchase of offices and prebends during the papal seicento or during the days of the French Noblesse de Robe.

In Nigeria context, and by way of magnum opus, Richard Joseph,⁶⁰ in his book titled *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic*, espoused same as a theory, wherein states offices are regarded as prebends that can be appropriated by offices holders, who use them to generate material benefits for themselves and their constituents and kin groups. As a result of that kind of patron-client or identity politics, Nigeria has regularly been one of the lowest-ranked nations in political transparency by Transparency International in its corruption perception index⁶¹.

It is important to point out that, more than three decades that the concept of prebendal politics was coined, and popularized by

⁶⁰ John Akinfehinwa, I will move Nigeria from Consumption to Production Nation Peter Obi, Daily Post Nigeria, 13th December, 2022 <<https://daily.post.ng>> accessed on the 29th of January, 2023

⁶¹ Kunle Sanni, 'Again, Nigeria drops in latest corruption ranking by Transparency International', Premium Times, 25th January, 2022, <www.premiumtimesng.com> accessed on the 12th of August, 2023.

Richard Joseph, occasioned by the constitutional nature of Nigerian Prebendalism, as evident in section 162(1)-(10) of CFRN. 1999. the present practice of same has become legendary.

Irked by the aforesaid aberration and misnomer, the presidential candidate of Labour Party, (aka) Papa, Mama and Pikin, Mr. Peter Gregory Obi, in the 2023 election in his manifesto mantra, has vigorously and repeatedly stated that he is going to move the nation's political economy from that of *consumption to production*.⁶² However, it is important to make a distinction between prebendalism and patrimonialism; the latter, which is a political system where an individual rule by dint of personal prestige and power; ordinary folla are treated as extensions of the "big man's" household, with no rights or privileges other than those bestowed by the ruler. Authority is entirely personalized, shaped by the ruler's preferences rather than any codified system of laws. The ruler ensures the political stability of the regime and political survival by providing a zone of security in an uncertain environment and by selectively distributing favours and material benefits to loyal followers who are not citizens of the polity so much as the ruler's clients.⁶³

Richard Joseph, in the former stated that in Nigerian politics, the term prebendalism refers to patterns of political behavior which reflect as their justifying principle that the office of the existing state may be competed for and then utilized for the benefit of office-holders as well as that of their reference or support groups to a significant extent the 'state' in a such a context is perceived as congeries of office susceptible to individual cum communal appropriation. The statutory purposes of such offices become a matter of secondary concern, however, much that purpose might have been codified in law or other regulation or even periodically cited during competition to fill them⁶⁴. This by way of logically construct, the more reason why elections in Nigeria, is always seen as a war situation where a declared winner takes it all. Conversely, by way of synchronization, albeit Richard Joseph, profound

⁶² Richard Joseph, (n56)

⁶³ Ibid

⁶⁴ Ibid

disquisition on prebendalism and dysfunctionality in Nigerian federalism, the below points are instructive, viz:

- a. The concept of prebendalism in Nigeria, reflects shared expectations about the appropriation of state offices, and the use of revenues accruing to them, as Oluwafemi, rightly stated: many Nigerians may not know the term but they know the practices and attitudes to which it refers.⁶⁵
- b. To understand prebendalism, it is necessary to grasp what is a prebend. The dividing line is when the office holder is able to appropriate the office, that is, convert it into his or her piece of state. In contemporary Nigeria, and other peripheral capitalist countries, there is a short time horizon in which resources accruing to the office can be diverted for personal and related uses, or for the capital accumulation which it facilitates.⁶⁶
- c. Prebendalism is not necessarily Nigerian. Rather, it is entrenched and pervasive in Nigeria, and woven into what Ken Post and Michael Vickers had earlier described as a “conglomerate society,” i.e a nation composed of cultural sections defined by ethnicity, language, religion and cultural practices.⁶⁷
- d. A key consideration is what happen to the state itself. A patrimonial order, under the authority of a king, feudal lord, or chieftain can be a stable one. A prebendalized system, however is inherently unstable.⁶⁸

8. Conclusion

As can be inductively gleaned from this disquisition, it is logically unassailable to submit that Nigeria’s federalism, especially as it relates to section 162 of 1999 Constitution is prebendal in character, content, and form. This is even more of a logical construct; if constitutional recourse will be given to Second Schedule Part 1 & 2 of the exclusive and concurrent items, and more importantly; the way and manner elections are conducted and won in Nigeria, that is akin to a war situation where declared winner takes it all.

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

However, it is important to point out that, the theory of prebendalism, which inexorably has permeated the whole gamut of our human existence has become legendary since its coinage in Nigerian context by Richard Joseph.

Thus, by way of paraphrase, in the profound words of Richard Joseph, the theory of prebendalism has shown that the ethnic nationalities of Nigeria's federal society are the mitochondria for the organization, mobilization, and legitimization of prebendalism, and concomitantly, ethno-clientelism networks of patronage, corruption, and rent seeking. Conversely. It has been contended in some quarters that, the novel federal character paradigm which without gainsaying is accommodationist and integrationist in outlook, regrettably, has become the gateway for the effective transformation and consolidation of prebendalism in Nigerian federalism. So, since plethora of literatures on comparative federalism have suggested that federalism is Janus-faced and a double-edged sword, as obtainable in most divided societies, it is suggested that the 1999 Constitution which is the stratum for federalism and prebendalism in Nigeria, requires a holistic overhaul with a view to providing transparency and good governance to the Nigerian populace. This is important, as there is fervent debate in some quarters that the practice of democracy in Africa, has become transactional, hence has failed to provide the needed economic growth and development, as well as addressing the security and welfare of the people.