

SEPARATION OF POWERS AND CHECKS AND BALANCES IN CONSTITUTIONAL GOVERNANCE: COMPARATIVE LESSONS FROM NIGERIA, THE UNITED KINGDOM, AND THE UNITED STATES

Donald Igbinosa Eboigbe*

Abstract

The doctrine of separation of powers plays a vital role in constitutional democracy by allocating specific governmental responsibilities across three distinct arms: the executive, the legislature, the judiciary. Embedding this concept into the legal system helps prevent the concentration of authority within a single official or body, curbing executive abuse and fostering effective governance. Although simple in definition, the doctrine does not function as an absolute or water tight division of power in practice. This study presents a comparative analysis of how separation of power operates across three distinct Constitutional environments. Nigeria and the United State (both operating under a written Constitution) and the United Kingdom (operating under an unwritten Constitution) placing attention on the relationship between the executive, legislative and judiciary. The paper finds that separation of power allows each branch of government to perform its primary or core functions, however, recommends a stringent check on this to preserve the age long doctrine and constitutional democracy. The article also emphasizes that effective separation of power does not only depend on Constitutional provision but also on strong institution and accountability.

* Igbinedion University, Okada, B.Sc. Industrial Mathematics (UNIBEN), MBA (UNIBEN), Masters in Public Administration (UNIBEN), Masters in Economics (UNIBEN), LLB (BIU), PhD. Comparative Politics (IUO). Email: donald.eboigbe@iuokada.edu.ng, donald.eboigbe@gmail.com,

1. INTRODUCTION

The separation of powers stands as one of the most enduring principles of constitutional democracy, designed to prevent the concentration of governmental authority and protect individual liberty against arbitrary rule.¹ This doctrine, classically articulated by Montesquieu in *The Spirit of the Laws* (1748), posits that legislative, executive, and judicial functions should be exercised by separate institutions with distinct personnel and independent sources of legitimacy.² Complementing this structural division is the system of checks and balances, whereby each branch possesses specific powers to restrain the others, ensuring that no single institution can dominate the constitutional order.³

While the theoretical foundations of separation of powers are widely accepted, their institutional expression varies dramatically across different constitutional systems.⁴ This article comparatively examines the relationship between the executive, legislature, and judiciary in three jurisdictions: Nigeria and the United States, which operate presidential systems with formal separation of powers, and the United Kingdom, which maintains a parliamentary system characterized by fusion of executive and legislative functions.⁵ By analyzing these contrasting models, this article evaluates how each jurisdiction

¹ A O Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 45–48.

² Montesquieu, *The Spirit of the Laws* (Anne M Cohler, Basia C Miller & Harold S Stone eds, Cambridge University Press 1989) 154–156.

³ K C Wheare, *Modern Constitutions* (Oxford University Press 1951) 30–35.

⁴ Congress.gov, ‘Separation of Powers and Checks and Balances’, *Constitution Annotated* (Library of Congress) <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026.

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6; United States Constitution, arts I–III; Congress.gov, ‘Separation of Powers and Checks and Balances’, *Constitution Annotated* (Library of Congress) <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026.

balances institutional independence with accountability, and assesses contemporary challenges threatening the integrity of constitutional governance in all three systems.⁶

The central argument advanced here is that while presidential and parliamentary systems adopt fundamentally different approaches to organizing governmental power, both face similar pressures in maintaining genuine institutional independence and effective accountability. The analysis reveals that constitutional text and formal structures, though important, are insufficient without enforceable constraints on executive discretion, adequate resources for institutional autonomy, and sustained political culture respecting constitutional boundaries.

2. SEPARATION OF POWERS AND CHECKS AND BALANCES

The separation of powers serves multiple constitutional purposes. Functionally, it differentiates types of state power legislation, adjudication, and execution requiring these operations to be conceptually and institutionally distinct.⁷ This differentiation promotes specialization, efficiency, and clarity in governmental functions. Politically, it prevents tyranny by ensuring that no single person or institution controls all levers of state power. As James Madison observed in *Federalist No. 47*, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of

⁶ Congress.gov, 'Separation of Powers and Checks and Balances', *Constitution Annotated* (Library of Congress) <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026.

⁷ US Library of Congress, 'Separation of Powers Under the Constitution', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/intro-7-2/ALDE_00000031/> accessed 26 August 2026; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6.

one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.⁸

However, pure separation is neither possible nor desirable. Complete institutional isolation would produce governmental paralysis, with each branch unable to coordinate with the others. Consequently, modern constitutional systems incorporate checks and balances mechanisms by which each branch can restrain the others while maintaining its own autonomy. These checks ensure that one branch, in executing its function, does not act without the consent of the others or overstep its constitutional boundaries.⁹

The American constitutional framework exemplifies this approach. The Constitution divides the government into three branches with specific powers: Congress exercises legislative power to create laws; the President exercises executive power to enforce those laws; and the judiciary exercises judicial review over the actions of the other two branches. Yet these powers are not hermetically sealed. The President can veto legislation, but Congress can override the veto with a two-thirds majority. The Senate must confirm presidential appointments and ratify treaties. The judiciary can declare laws and executive acts unconstitutional, but Congress controls judicial budgets and can impeach judges. This intricate system of shared powers creates what

⁸ James Madison, 'Federalist No 47: The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts', in *The Federalist Papers* (1788) <<https://guides.loc.gov/federalist-papers/text-41-50>> accessed 26 August 2026.

⁹ US Library of Congress, 'Separation of Powers and Checks and Balances', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6.

scholars describe as "separated institutions sharing power," ensuring both independence and interdependence.¹⁰

By contrast, the United Kingdom operates under a fundamentally different model. Rather than strict separation, the UK features what Walter Bagehot famously described as a "close union" or "nearly complete fusion of the two" branches executive and legislature.¹¹ Cabinet ministers, including the Prime Minister, are simultaneously members of the executive and members of Parliament, drawn directly from the legislature and accountable to it.¹² This fusion of powers is balanced not by formal separation but by strong checks and balances including parliamentary questions, select committee scrutiny, and the ultimate power to remove a government through a vote of no confidence combined with an independent judiciary.¹³

Nigeria's 1999 Constitution, heavily influenced by the American model, adopts a presidential system with formal separation of powers

¹⁰ US Library of Congress, 'Separation of Powers and Checks and Balances', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026.

¹¹ Walter Bagehot, 'The Cabinet', in *The English Constitution* (1894) <[https://en.wikisource.org/wiki/The_English_Constitution_\(Bagehot,_1894\)/The_Cabinet](https://en.wikisource.org/wiki/The_English_Constitution_(Bagehot,_1894)/The_Cabinet)> accessed 26 August 2026.

¹² Cabinet Office, *Ministerial Code* (2025) paras 1.3–1.4 <<https://www.gov.uk/government/publications/ministerial-code>> accessed 26 August 2026; House of Lords Constitution Committee, *The Accountability of Civil Servants*, 6th Report of Session 2012–13, HL Paper 61, para 18 <<https://publications.parliament.uk/pa/ld201213/ldselect/ldconst/61/6105.htm>> accessed 26 August 2026.

¹³ House of Lords Constitution Committee, *The Process of Constitutional Change*, 15th Report of Session 2010–12, HL Paper 177, paras 2.25–2.29 <<https://publications.parliament.uk/>> accessed 26 August 2026; Cabinet Office, *Ministerial Code* (2025) paras 1.3–1.4 <<https://www.gov.uk/government/publications/ministerial-code>> accessed 26 August 2026; Institute for Government, 'Ministerial Accountability' (29 June 2026) <<https://www.instituteforgovernment.org.uk/explainer/ministerial-accountability>> accessed 26 August 2026.

among three branches. Section 4 vests legislative powers in the National Assembly (comprising the Senate and House of Representatives); section 5 vests executive powers in the President; and section 6 vests judicial powers in courts established for the Federation.¹⁴ The Constitution grants the legislature power to make laws, the executive power to execute, and the judiciary power to interpret laws, with checks and balances to guide relationships between the three branches.¹⁵ However, as with all constitutional systems, the formal structure operates within political and institutional contexts that shape its practical functioning.¹⁶

a. Presidential Systems: Nigeria and the United States

i. Constitutional Architecture

Both Nigeria and the United States operate presidential systems characterized by separation of powers between the legislature, executive, and judiciary. In both systems, the President serves as head of state and head of government, elected independently of the legislature and not dependent on legislative confidence to remain in office. This creates what political scientists' term "dual democratic legitimacy" both the President and the legislature derive their authority directly from the electorate, potentially producing divided government when different parties control different branches.¹⁷

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6, 88–89, 143, 292 and 318.

¹⁶ Uwadineke C Kalu, 'Separation of Powers in Nigeria: An Anatomy of Power Convergences and Divergences' (2018) 9(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 116 <https://fctemis.org/notes/8681_government.pdf> accessed 26 August 2026.

¹⁷ Juan J Linz, 'The Perils of Presidentialism' (1990) 1(1) *Journal of Democracy* 51, 63–66 <https://kellogg.nd.edu/sites/default/files/old_files/documents/200_0.pdf> accessed 26 August 2026.

In the United States, this separation is reinforced by distinct electoral bases and fixed terms. The President serves a four-year term, members of the House of Representatives serve two-year terms, and Senators serve six-year terms, with elections ensuring that no single electoral wave can simultaneously transform all branches. Personnel separation is strict: no member of Congress can simultaneously serve in the executive branch, and federal judges enjoy life tenure during good behavior, insulating them from political pressure.¹⁸

Nigeria's 1999 Constitution similarly establishes separation of powers as a salient premise of its presidential system. The President is elected for a four-year term and may serve a maximum of two terms.¹⁹ The National Assembly comprises the Senate (109 members, four-year terms) and the House of Representatives (360 members, four-year terms).²⁰ Judicial powers are vested in courts established for the Federation and the states, with the Supreme Court at the apex. Section 6 provides institutional basis for adjudicating constitutional disputes, empowering courts to exercise judicial review over legislative and executive acts.²¹

ii. Checks and Balances in Practice

The American system of checks and balances is elaborate and well-established. The President can veto legislation, but Congress can override with two-thirds majority in both chambers. The Senate must

¹⁸ United States Constitution, arts I–III; US Library of Congress, ‘Term of the President’, *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artII-S1-C1-9/ALDE_00013597/> accessed 26 August 2026.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 135(2) and 137(1)(b).

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 48, 49 and 64.

²¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 6(1), 6(2), 6(6)(b), 232 and 233.

confirm presidential nominations for executive officers and judges, and ratify treaties by two-thirds vote.²² Congress controls the budget and can impeach and remove the President, while the judiciary can declare both legislative and executive acts unconstitutional.²³ Bicameralism reduces legislative predominance, while the presidential veto gives the President a means of defending priorities and preventing congressional overreach.²⁴

Nigeria's Constitution similarly provides for checks and balances. The legislature can override a presidential veto with two-thirds majority in both chambers. The Senate must confirm presidential appointments to key positions, including ministers, ambassadors, and judicial officers. The National Assembly controls appropriations and can impeach the President for gross misconduct.²⁵ The judiciary can invalidate legislation and executive acts inconsistent with the Constitution under section 1(3), which renders any law void to the extent of its inconsistency with the Constitution.²⁶

However, the practical operation of these checks differs significantly between the two systems. In the United States, checks and balances have evolved through over two centuries of constitutional practice,

²² Juan J Linz, 'The Perils of Presidentialism' (1990) 1(1) *Journal of Democracy* 51, 63–66 < https://kellogg.nd.edu/sites/default/files/old_files/documents/200_0.pdf > accessed 26 August 2026.

²³ United States Constitution, arts I–III; US Library of Congress, 'Term of the President', *Constitution* Annotated <https://constitution.congress.gov/browse/essay/artII-S1-C1-9/ALDE_00013597/> accessed 26 August 2026.

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 135(2) and 137(1)(b).

²⁵ *Ibid.* ss 48, 49 and 64.

²⁶ *Ibid.* ss 6(1), 6(2), 6(6)(b), 232 and 233.

judicial interpretation, and political accommodation.²⁷ While partisan polarization has produced gridlock and institutional conflict, the basic framework remains stable and widely accepted. By contrast, Nigeria's presidential system operates within a political culture shaped by decades of military rule (1966–1999), during which democratic principles and separation of powers were suspended.²⁸ This legacy has produced legislative-executive conflicts and challenges to institutional independence that continue to affect constitutional governance.

iii. Legislative-Executive Relations

In the United States, legislative-executive relations are characterized by both cooperation and conflict. The President proposes legislation and sets policy priorities, but Congress must enact laws and appropriate funds.²⁹ When government is divided, negotiation and compromise become necessary, sometimes producing gridlock but also preventing hasty or extreme measures.³⁰

Nigeria's legislature and executive interact in a manner intended to prevent abuse of powers, but the relationship has been marked by frequent conflict. The Constitution grants the legislature power to make laws while the executive executes and the judiciary interprets,

²⁷ US Library of Congress, 'Separation of Powers Under the Constitution', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/intro-7-2/ALDE_00000031/> accessed 26 August 2026.

²⁸ Etim O Frank and Wilfred I Ukpere, 'The Impact of Military Rule on Democracy in Nigeria' (2012) 33(3) *Journal of Social Sciences* 285–292 <https://www.researchgate.net/publication/261672856_The_Impact_of_Military_Rule_on_Democracy_in_Nigeria> accessed 26 August 2026.

²⁹ United States Constitution, art I, s 8, cls 1 and 18; art II, s 3; US Library of Congress, 'Separation of Powers and Checks and Balances', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artI-S1-3-1/ALDE_00013290/> accessed 26 August 2026.

³⁰ John H Aldrich, Brittany N Perry and David W Rohde, 'Divided Government and Significant Legislation' (2014) <<https://share.google/nDIVvL5uphK2Fs8fd>> accessed 26 August 2026.

but in practice these boundaries are often contested.³¹ Causes of legislative-executive conflicts include disputes over budgetary allocations, confirmation of appointments, oversight investigations, and policy priorities. These conflicts, while sometimes reflecting healthy democratic contestation, have also impeded good governance and produced institutional instability.³²

This accountability is operationalized through several mechanisms. Ministers face parliamentary questions, including the well-known Prime Minister's Questions. Select committees scrutinize the work and spending of government departments. Parliament can remove a government through a vote of no confidence. The government cannot raise or spend money without Parliament's approval. These mechanisms ensure that despite the fusion of executive and legislature, the government remains subject to parliamentary scrutiny and control.³³

However, the executive's dominance over Parliament is often pronounced, particularly when the government commands a strong majority. Party discipline is strong in the UK, and MPs typically vote along party lines. This means that government bills are often passed with the support of the majority party, and the executive maintains control over the legislative agenda. The government controls the parliamentary timetable through the Leader of the House, enabling it to prioritize key policies and determine which proposals receive

³¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4–6.

³² Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 81, 88–89, 147(2) and 171

³³ Institute for Government, 'Ministerial Accountability' (29 June 2026) <<https://www.instituteforgovernment.org.uk/explainer/ministerial-accountability>> accessed 26 August 2026; House of Commons Library, *The Supply and Appropriation Process* (UK Parliament) <<https://commonslibrary.parliament.uk/>> accessed 26 August 2026.

parliamentary time. This executive dominance has led some scholars to describe the UK system as one of "executive dominance over Parliament" rather than genuine legislative supremacy.

iv. Judicial Role and Constitutional Constraints

Despite parliamentary sovereignty, the UK judiciary exercises significant constitutional functions. Courts cannot strike down Acts of Parliament, but they can review executive and administrative action for legality, rationality, and procedural propriety.³⁴ Through statutory interpretation, particularly under section 3 of the Human Rights Act 1998, courts strive to read legislation compatibly with Convention rights where possible.³⁵ Where compatibility is not possible, courts can issue declarations of incompatibility under section 4, though these do not invalidate legislation and Parliament decides whether and how to respond.³⁶

Courts also enforce common-law constitutional principles, including the rule of law, legality, and procedural fairness. In recent years, select committees have become the principal mechanism by which the House discharges its responsibilities for detailed scrutiny of government policy and actions.³⁷ This scrutiny work has become the most widely

³⁴ Institute for Government, 'Judicial Review' (1 June 2023) <<https://www.instituteforgovernment.org.uk/explainer/judicial-review>> accessed 26 August 2026; Council of Civil Service Unions v Minister for the Civil Service 1985 AC 374, 410.

³⁵ Human Rights Act 1998, s 3 <<https://www.legislation.gov.uk/ukpga/1998/42/section/3>> accessed 26 August 2026; Ghaidan v Godin-Mendoza 2004 UKHL 30, 2004 2 AC 557.

³⁶ Human Rights Act 1998, s 4 <<https://www.legislation.gov.uk/ukpga/1998/42/section/4>> accessed 26 August 2026; Human Rights Act 1998, s 4(6).

³⁷ House of Commons, 'Introduction to Select Committees in the House of Commons', *Erskine May* <<https://erskinemay.parliament.uk/section/5880/introduction-to-select-committees-in-the-house-of-commons>> accessed 26 August 2026.

recognized and public means by which Parliament holds government ministers and their departments to account.³⁸

b. Contemporary Challenges to Institutional Independence and Accountability

Despite their different constitutional architectures, all three jurisdictions face contemporary challenges to institutional independence and accountability. These challenges threaten the integrity of separation of powers and the effectiveness of checks and balances, undermining constitutional governance and the rule of law.³⁹

i. Nigeria: Executive Interference and Judicial Vulnerability

Nigeria's judiciary is constitutionally independent but institutionally vulnerable. The central failure is not the absence of laws or funding, but the lack of enforceable constraints on executive discretion over

³⁸ House of Commons Liaison Committee, *The Work of the House of Commons: Select Committees* (UK Parliament) <<https://committees.parliament.uk/committee/158/liaison-committee/>> accessed 26 August 2026; House of Commons, 'Introduction to Select Committees in the House of Commons', *Erskine May* <<https://erskinemay.parliament.uk/section/5880/introduction-to-select-committees-in-the-house-of-commons>> accessed 26 August 2026.

³⁹ Democracy, Governance and Human Rights (DGRU) Journal, "Judicial independence and judicial accountability are twin pillars of a functioning constitutional order," 2026, <https://law.uct.ac.za/sites/default/files/media/documents/law_uct_ac_za/2353/2026-dgru-journal-web.pdf> accessed 27 August 2026.

judicial appointments, discipline, and the release of statutory funds.⁴⁰ If this gap persists, judicial reform will remain cosmetic.⁴¹

The biggest threat to the independence of judges and the judiciary in Nigeria is the ease with which a judge can be removed on the prompting of the Executive. Executive interference is an emerging threat confronting the judiciary, particularly in the areas of appointments, funding, and discipline of judicial officers. Politicians and the executive influence court decisions, circumvent the appointment, elevation or removal of heads of courts, interfere with budgetary allocations from the Consolidated Revenue Fund to the judiciary, and appoint persons of questionable characters or with ties to politicians.⁴²

Court orders have consistently been disobeyed in Nigeria, leading to widespread misuse and violation of human rights and an absence of faith in the independence of the judiciary. If this abnormality is not checked, Nigeria may descend into anarchy. Factors impeding enforcement of court orders include absence of independence of the

⁴⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 153, 158, 231, 271, 292 and 162; UN Special Rapporteur on the Independence of Judges and Lawyers, 'Review of Judicial Independence in Nigeria' (submission) <<https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/cfis/contemporary-challenges-democracy/subm-sr-independence-judges-cso-nulai.pdf>> accessed 26 August 2026.

⁴¹ 'Judicial Independence in Nigeria: Institutional Constraints, Reform Pathways and Democratic Consequences' (Athena Centre, 16 December 2025) <<https://athenacentre.org/publication/judicial-independence-in-nigeria-institutional-constraints-reform-pathways-and-democratic-consequences>> accessed 26 August 2026.

⁴² Bruce Ackerman, 'The New Separation of Powers' (2000) 113(3) *Harvard Law Review* 633, 635–639 <https://www.palermo.edu/derecho/eventos/pdf/Ackerman_The_New_Separation_of_Powers_HLR.pdf> accessed 26 August 2026.

judiciary, immunity provisions, absence of strong enforcement mechanisms, corruption, and partisan politics.⁴³

Fiscal allocations to the judiciary, despite growth, remain far-fetched, leading to delayed disbursements and continuing constraints on institutional autonomy. While the 2024 Appropriation increased the judiciary's statutory transfer to ₦342 billion, these reforms did not fully shield fund releases from executive influence.⁴⁴ The enforcement gap not merely resource scarcity sustains executive leverage over the judiciary. Existing legal provisions lack automatic consequences when breached, allowing discretionary delays in fund releases and appointments to persist without institutional penalty.⁴⁵

ii. United Kingdom: Executive Dominance and Constitutional Tensions

The UK faces different but equally significant challenges. Executive dominance over Parliament has intensified in recent years, with governments using their majorities to control the legislative agenda, limit parliamentary scrutiny, and resist accountability. During the Covid-19 pandemic, the government was accused of ducking scrutiny from Parliament, sidelining MPs and undermining parliamentary oversight.⁴⁶

⁴³ Executive Disobedience to Court Orders and Anarchy in Nigeria (2023) Nigerian Bar Association Journal <<https://www.ajol.info/index.php/nba/article/view/254189>> accessed 26 August 2026.

⁴⁴ Federal Ministry of Finance, “President Tinubu Signs 2024 Budget of Renewed Hope, Directs MDAs To Provide Monthly Performance Reports,” 1 January 2024, <<https://finance.gov.ng/president-tinubu-signs-2024-budget-of-renewed-hope-directs-mdas-to-provide-monthly-performance-reports/>> accessed 27 August 2026.

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 162(9); State House, ‘President Tinubu Signs 2024 Appropriation Act’ (1 January 2024) <<https://statehouse.gov.ng/president-tinubu-signs-2024-of-renewed-hope-directs-mdas-to-provide-monthly-performance-reports/>> accessed 26 August 2026.

⁴⁶ House of Commons Public Administration and Constitutional Affairs Committee, *The Government’s Response to Coronavirus: The Impact of the COVID-19*

Brexit exposed tensions between parliamentary sovereignty, executive prerogative, and judicial authority.⁴⁷ The Supreme Court's decisions in *Miller I* (2017) and *Miller II* (2019) affirmed that the government could not trigger Article 50 or prorogue Parliament without parliamentary authorization, reinforcing parliamentary sovereignty against executive overreach.⁴⁸ However, these decisions also provoked political backlash, with some government ministers and commentators criticizing judicial interference in political questions.⁴⁹

The government's proposed reforms to judicial review and the Human Rights Act have raised concerns about erosion of judicial independence and rights protection.⁵⁰ While the UK's uncoded constitutional framework has proven resilient, it depends heavily on

Pandemic on Government and Parliament <<https://committees.parliament.uk/publications/6212/documents/69015/default/>> accessed 26 August 2026; Institute for Government, *Parliamentary Monitor 2021* (2021) <<https://www.instituteforgovernment.org.uk/publication/parliamentary-monitor-2021>> accessed 26 August 2026.

⁴⁷ (Miller) v Secretary of State for Exiting the European Union 2017 UKSC 5; House of Commons Library, *Brexit and Parliament: The Miller Case* <<https://commonslibrary.parliament.uk/>> accessed 26 August 2026.

⁴⁸ R (Miller) v Prime Minister; Cherry v Advocate General for Scotland 2019 UKSC 41 <<https://supremecourt.uk/cases/uksc-2019-0192>> accessed 26 August 2026

⁴⁹ House of Lords Constitution Committee, *The Legislative Process: The Passage of Legislation* <<https://committees.parliament.uk/committee/172/constitution-committee/>> accessed 26 August 2026; House of Lords Constitution Committee, *The Parliamentary Scrutiny of Executive Power* (UK Parliament) <<https://publications.parliament.uk/>> accessed 26 August 2026; Joint Committee on Human Rights, *The Government's Independent Human Rights Act Review* <<https://committees.parliament.uk/publications/6592/documents/71259/default/>> accessed 26 August 2026.

⁵⁰ Independent Human Rights Act Review, *Report* (2021) <<https://assets.publishing.service.gov.uk/media/61b8531c8fa8f5037778c3ae/ihrar-final-report.pdf>> accessed 26 August 2026; Independent Review of Administrative Law, *Report* (2021) <<https://assets.publishing.service.gov.uk/media/6053383dd3bf7f0454647fc4/IRAL-report.pdf>> accessed 26 August 2026.

political culture and convention rather than enforceable legal rules.⁵¹ Where political norms break down, constitutional constraints may prove insufficient.

iii. United States: Polarization and Institutional tension

The United States faces challenges rooted in extreme partisan polarization and institutional tension. While the formal separation of powers remains intact, political polarization has produced gridlock, government shutdowns, and norm-breaking behavior that strains constitutional structures. The impeachment of President Trump twice (2019 and 2021) reflected deep partisan divisions and raised questions about the effectiveness of checks and balances when parties prioritize partisan loyalty over constitutional accountability.⁵²

Attacks on judicial independence have intensified, with political leaders criticizing judges and courts as "enemies of the people" or "obstructionists." While judicial tenure protections remain strong, political pressure on the judiciary and efforts to politicize judicial appointments threaten long-term institutional legitimacy.⁵³

The expansion of executive power through emergency declarations, executive orders, and administrative rulemaking has shifted the constitutional balance toward the presidency. While some executive

⁵¹ Cabinet Office, *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (1st edn, 2011) <<https://www.gov.uk/government/publications/cabinet-manual>> accessed 26 August 2026.

⁵² Executive Disobedience to Court Orders and Anarchy in Nigeria (2023) *Nigerian Bar Association Journal* <<https://www.ajol.info/index.php/nba/article/view/254189>> accessed 26 August 2026.

⁵³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 162(9); State House, 'President Tinubu Signs 2024 Appropriation Act' (1 January 2024) <<https://statehouse.gov.ng/president-tinubu-signs-2024-of-renewed-hope-directs-mdas-to-provide-monthly-performance-reports/>> accessed 26 August 2026.

action is necessary for effective governance, excessive reliance on unilateral executive power undermines the legislative role and weakens checks and balances.⁵⁴

3. COMMON CHALLENGES ACROSS JURISDICTIONS

Despite their different constitutional structures, all three jurisdictions face common challenges:

a. Executive Aggrandizement: Executives in all three systems have expanded their power relative to legislatures and judiciaries, through control of legislative agendas, emergency powers, and resistance to oversight.⁵⁵

b. Judicial vulnerability: Judiciaries face political pressure, funding constraints, and threats to independence, whether through executive interference (Nigeria), political criticism (US), or reform proposals (UK).⁵⁶

⁵⁴ House of Commons Public Administration and Constitutional Affairs Committee, *The Government's Response to Coronavirus: The Impact of the COVID-19 Pandemic on Government and Parliament* <<https://committees.parliament.uk/publications/6212/documents/69015/default/>> accessed 26 August 2026; Institute for Government, *Parliamentary Monitor 2021* (2021) <<https://www.instituteforgovernment.org.uk/publication/parliamentary-monitor-2021>> accessed 26 August 2026.

⁵⁵ R (Miller) v Secretary of State for Exiting the European Union 2017 UKSC 5; House of Commons Library, *Brexit and Parliament: The Miller Case* <<https://commonslibrary.parliament.uk/>> accessed 26 August 2026.

⁵⁶ House of Lords Constitution Committee, *The Legislative Process: The Passage of Legislation* <<https://committees.parliament.uk/committee/172/constitution-committee/>> accessed 26 August 2026; House of Lords Constitution Committee, *The Parliamentary Scrutiny of Executive Power* (UK Parliament) <<https://publications.parliament.uk/>> accessed 26 August 2026.

c. Partisan Polarization: Political parties increasingly prioritize partisan advantage over constitutional norms, undermining cooperation and compromise necessary for effective governance.⁵⁷

d. Enforcement gaps: Constitutional provisions and court orders lack effective enforcement mechanisms, allowing executive non-compliance to persist without consequences.⁵⁸

e. Public awareness and civic culture: Weak public understanding of constitutional rights and institutional roles undermines accountability and enables constitutional erosion.⁵⁹

f. Comparative Lessons and Reform

The comparative analysis yields several lessons for strengthening separation of powers and checks and balances:

First, constitutional text is necessary but insufficient. All three jurisdictions have constitutional or legal frameworks establishing separation of powers, but practical functioning depends on enforceable constraints, adequate resources, and political culture. Nigeria's

⁵⁷ Independent Human Rights Act Review, *Report* (2021) <<https://assets.publishing.service.gov.uk/media/61b8531c8fa8f5037778c3ae/ihrar-final-report.pdf>> accessed 26 August 2026; Independent Review of Administrative Law, *Report* (2021) <<https://assets.publishing.service.gov.uk/media/6053383dd3bf7f0454647fc4/IRAL-report.pdf>> accessed 26 August 2026.

⁵⁸ Cabinet Office, *The Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government* (1st edn, 2011) <<https://www.gov.uk/government/publications/cabinet-manual>> accessed 26 August 2026.

⁵⁹ Congressional Research Service, *Impeachment and the Constitution*, R46013 (6 December 2023) <<https://www.congress.gov/crs-product/R46013>> accessed 26 August 2026; US Library of Congress, 'President Donald Trump and Impeachable Offenses', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artII-S4-4-9/ALDE_00000035/> accessed 26 August 2026.

experience demonstrates that formal constitutional independence means little without automatic funding releases, transparent appointment procedures, and sanctions for executive non-compliance.⁶⁰

Second, institutional design matters. Presidential systems with formal separation risk gridlock and conflict when branches are controlled by different parties, but also provide stronger checks against executive overreach. Parliamentary systems with fusion of powers enable more efficient governance but risk executive dominance unless balanced by strong parliamentary scrutiny and independent judiciary. Each model has trade-offs that must be managed through complementary institutions and norms.⁶¹

Third, judicial independence requires multiple safeguards. Security of tenure, adequate funding, transparent appointment and discipline procedures, and political culture respecting judicial authority are all necessary. Where any of these elements is weak, judicial independence is vulnerable.⁶²

Fourth, legislative capacity must be strengthened. Effective separation of powers requires legislatures capable of meaningful

⁶⁰ US Library of Congress, 'The Judicial Power and the Constitution', *Constitution Annotated* <<https://constitution.congress.gov/constitution/article-3/>> accessed 26 August 2026.

⁶¹ *Youngstown Sheet & Tube Co v Sawyer*, 343 US 579 (1952); United States Constitution, art II, s 1 and s 3; US Library of Congress, 'Overview of Article II, Executive Branch', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artII-1/ALDE_00000243/> accessed 26 August 2026.

⁶² David Landau and Rosalind Dixon, 'Executive Aggrandizement in Established Democracies: A Crisis of Liberal Constitutionalism' <<https://ora.ox.ac.uk/objects/uuid:c5b888a8-96f1-460c-969f-9e5cd6bfdded/files/sc821gm32h>> accessed 26 August 2026.

oversight, not merely rubber-stamping executive proposals. This requires adequate resources, committee expertise, access to information, and political will to exercise oversight even when the legislature is controlled by the President's or Prime Minister's party.⁶³

Fifth, civic education and public awareness are essential. Constitutional governance depends not only on institutional design but on citizen understanding of constitutional rights and institutional roles. Where citizens are unaware of their rights or the proper functions of different branches, accountability is weakened and executive overreach is more likely to go unchallenged.⁶⁴

4. RECOMMENDATIONS

Drawing from this comparative analysis, the following recommendations are proposed:

a. For Nigeria:

1. Institutionalize enforceable constraints on executive discretion:

Establish transparent, time-bound appointment rules; create a Judiciary Fund with automatic releases; and codify disciplinary procedures backed by legal sanctions for non-compliance.⁶⁵

⁶³ UN Special Rapporteur on the Independence of Judges and Lawyers, 'Review of Judicial Independence in Nigeria' <<https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/cfis/contemporary-challenges-democracy/subm-sr-independence-judges-cso-nulai.pdf>> accessed 26 August 2026.

⁶⁴ AC Ogbuene, 'Civic Education and Public Accountability in Nigeria' (2025) 19(3) *Journal of Policy and Development Studies* 180 <<https://www.ajol.info/index.php/jpds/article/download/309956/291477>> accessed 26 August 2026.

⁶⁵ House of Commons, 'Select Committees' (UK Parliament) <<https://www.parliament.uk/about/how/committees/select/>> accessed 26 August 2026; House of Commons, 'Government Responses to Reports', *Erskine May* <<https://erskinemay.parliament.uk/section/6146/government-responses-to-reports>>

2. Strengthen enforcement mechanisms:

Legislative and executive compliance with court orders should be institutionalized through clearer statutory frameworks and consequences for disregard of judicial decisions.⁶⁶

3. Enhance public constitutional literacy:

Sustained civic education programmes should promote awareness of constitutional rights and the role of separation of powers in protecting them.⁶⁷

b. For the United Kingdom:

1. Clarify the constitutional status of judicial review:

Statutory codification or authoritative constitutional convention should articulate the relationship between parliamentary sovereignty and judicial review to reduce uncertainty.

2. Strengthen parliamentary scrutiny:

Enhanced select committee powers, more systematic government responses to committee reports, and protection of parliamentary time for scrutiny would improve accountability within the parliamentary sovereignty framework.⁶⁸

accessed 26 August 2026; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 88–89.

⁶⁶ AC Ogbuene, ‘Civic Education and Public Accountability in Nigeria’ (2025) 19(3) *Journal of Policy and Development Studies* 180 <<https://www.ajol.info/index.php/jpds/article/download/309956/291477>> accessed 26 August 2026.

⁶⁷ ‘Judicial Independence in Nigeria: Institutional Constraints, Reform Pathways and Democratic Consequences’ (Athena Centre, 16 December 2025) <<https://athenacentre.org/publication/judicial-independence-in-nigeria-institutional-constraints-reform-pathways-and-democratic-consequences>> accessed 26 August 2026;

⁶⁸ House of Commons Liaison Committee, ‘The Effectiveness and Influence of the Select Committee System: Government Response’

3. Preserve common-law constitutional principles:

Courts should continue developing principles such as the rule of law, legality, and procedural fairness as complementary safeguards alongside statutory human rights protection.

c. For the United States:

1. Restore norms of institutional respect:

Political leaders across parties should reaffirm commitment to constitutional norms, including respect for judicial independence, legislative prerogatives, and peaceful transfer of power.⁶⁹

2. Strengthen legislative capacity:

Congress should reclaim its constitutional role through enhanced oversight, reduced reliance on continuing resolutions, and bipartisan cooperation on essential governance functions.⁷⁰

3. Protect judicial independence:

4. Safeguards against politicization of judicial appointments and protection of judicial tenure and funding are essential to maintain judicial legitimacy. constitution.⁷¹

<<https://publications.parliament.uk/pa/cm5801/cmselect/cmliaisn/428/42802.htm>> accessed 26 August 2026; House of Commons, ‘Select Committees’ (UK Parliament) <<https://www.parliament.uk/about/how/committees/select/>> accessed 26 August 2026.

⁶⁹ Bolch Judicial Institute, Duke Law School, ‘Understanding the Separation of Powers’ (3 February 2026) <<https://judicialstudies.duke.edu/2025/12/understanding-separation-of-powers/>> accessed 26 August 2026

⁷⁰ Molly E Reynolds, ‘Improving Congressional Capacity to Address Problems and Oversee the Executive Branch’ (Brookings Institution, 28 December 2021) <<https://www.brookings.edu/articles/improving-congressional-capacity-to-address-problems-and-oversee-the-executive-branch/>> accessed 26 August 2026; Congressional Research Service, *Congressional Oversight Manual*, RL30240 <<https://www.congress.gov/crs-product/RL30240>> accessed 26 August 2026.

5. CONCLUSION

This comparative examination demonstrates that separation of powers and checks and balances serve essential functions in constitutional governance across different institutional models. Whether in presidential systems with formal separation (Nigeria and the United States) or parliamentary systems with fusion of executive and legislature (United Kingdom), the underlying principle remains constant: governmental power must be divided, checked, and balanced to prevent tyranny and protect liberty.

However, the analysis also reveals that constitutional structures alone cannot guarantee effective separation of powers. Formal provisions must be complemented by enforceable constraints on executive discretion, adequate resources for institutional autonomy, transparent appointment and discipline procedures, and sustained political culture respecting constitutional boundaries. Where these supporting conditions are weak, even robust constitutional text may prove insufficient to maintain meaningful constraints on governmental power.

The contemporary challenges facing all three jurisdictions executive aggrandizement, judicial vulnerability, partisan polarization, enforcement gaps, and weak civic culture demonstrate that constitutional governance is not self-executing. It requires sustained commitment from all branches of government and the citizenry to

⁷¹ US Library of Congress, 'Overview of Federal Judiciary Protections', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artIII-S1-10-1/ALDE_00013554/> accessed 26 August 2026; US Library of Congress, 'Overview of Appointments Clause', *Constitution Annotated* <https://constitution.congress.gov/browse/essay/artII-S2-C2-3-1/ALDE_00013092/> accessed 26 August 2026.

maintain institutional independence, exercise accountability, and respect constitutional limits.

The central lesson is that separation of powers and checks and balances are not merely formal constitutional arrangements but living practices that must be continually renewed through political will, institutional reform, and civic engagement. Constitutional government is not reduced to a merely formal commitment but depends on the active participation of all constitutional actors in maintaining balance between institutional independence and accountability.