Horizontal Checks and Balances in Federal Nigeria and Canada: Legislative Oversight, Executive Authority and Judicial Control

The horizontal separation of powers is often described in terms of institutional division, but its practical significance lies in the mechanisms through which institutions constrain one another. This article examines legislative oversight, executive authority and judicial control in federal Nigeria and Canada. It argues that the effectiveness of horizontal separation depends less on the formal independence of the branches than on the availability and enforceability of institutional counterweights. Nigeria relies principally on formal separation between a directly elected President and a separately elected National Assembly. Canada relies principally on responsible government, supplemented by an increasingly independent Senate, officers of Parliament and the courts. Both systems are weakened when political majorities align across institutions. Drawing on recent episodes, including Nigeria's Executive Order 10 litigation and the Canadian Federal Court of Appeal's 2026 ruling on the Emergencies Act, the article proposes a counterweight model built on four elements: capacity, independence, transparency and enforceability.

Keywords: *checks and balances; separation of powers; Nigeria; Canada; legislative oversight*

Introduction

A constitution may distribute governmental authority among several institutions without ensuring that those institutions will in fact constrain one another. The existence of a legislature does not mean that the executive is effectively supervised. The existence of courts does not mean that constitutional violations will be remedied. And the existence of separate branches does not prevent political concentration where a single party or leader controls them all. The practical question for the study of the separation of powers is therefore what makes institutional separation effective.

This article approaches that question through the concept of *constitutional counterweights*. A counterweight exists when one institution has sufficient legal authority and practical capacity to constrain another institution's exercise of public power, and the incentive to use it. The concept draws on Guillermo O'Donnell's notion of 'horizontal accountability', which he defined as the existence of state agencies that are legally empowered, and factually willing and able, to take actions against unlawful acts by other agencies of the state.[1] O'Donnell's emphasis on willingness and ability, as well as legal empowerment, is the starting point for the analysis that follows.

[1]G O'Donnell, 'Horizontal Accountability in New Democracies' (1998) 9(3) Journal of Democracy 112, 117.

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Nigeria and Canada offer a valuable comparison. Both are federations with British constitutional antecedents and common law legal systems. Nigeria's presidential system separates executive and legislative authority clearly: the President and the members of the National Assembly are elected separately, for fixed terms, and neither can dismiss the other except through impeachment.[2] Canada's parliamentary system deliberately connects the executive to Parliament through responsible government: ministers sit in Parliament, and the government holds office only so long as it retains the confidence of the House of Commons. The two systems therefore rely on different mechanisms to prevent governmental excess. Comparing them shows which counterweights are effective under which conditions, and which weaknesses they share.

Section II sets out the move from a theory of separation to a theory of counterweights. Sections III and IV examine the principal counterweights in Nigeria and Canada respectively. Section V considers the problem of political alignment across institutions, which affects both systems. Section VI considers federalism as an additional source of constraint. Section VII sets out and applies the counterweight model, and section VIII concludes.

From Separation to Counterweights

The traditional separation of powers model asks whether power has been divided among institutions. A checks-and-balances model asks whether the division is operational. These are different questions. Suppose a legislature has the power to investigate the executive but lacks the staff, information or political independence to exercise it. Formal oversight exists, but effective oversight does not. Similarly, a court may possess constitutional jurisdiction but lack access to the information necessary to scrutinise an executive decision, or face an executive willing to ignore its orders. Formal judicial review exists, but effective review may not.

James Madison saw the problem clearly. The 'great security against a gradual concentration of the several powers in the same department', he wrote, 'consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others'.[3] Madison relied on the 'personal motives' of officeholders, the ambition of each branch to defend its own prerogatives, to supply the incentive. Modern scholarship has shown that this reliance was misplaced where political parties organise officeholders across branches. Daryl Levinson and Richard Pildes demonstrated that the degree of conflict between the American President and Congress depends far more on whether the same party controls both than on the formal separation of the institutions.[4] The insight applies with even greater force

[2]Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), ss 4–5, 64 and 135.
[3]*The Federalist No 51* (James Madison).
[4]DJ Levinson and RH Pildes, 'Separation of Parties, Not Powers' (2006) 119 Harvard Law Review 2311.

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to parliamentary systems, where the executive's survival depends on the support of a legislative majority.

This article therefore identifies four components of an effective counterweight.

Capacity: whether the institution can practically exercise its constitutional powers. A formal power of oversight is of little value without resources, information and expertise.

Independence: whether the institution can act without inappropriate control by the institution it is meant to check, whether through appointments, finances or party discipline.

Transparency: whether citizens, courts and other institutions can see how public power is being exercised. Transparency is both a precondition of the other counterweights and a counterweight in its own right, because public exposure imposes political costs.

Enforceability: whether the institution's constitutional decisions or findings produce meaningful legal or political consequences.

These four dimensions allow comparative analysis without assuming that presidential and parliamentary systems must operate identically. A presidential legislature and a parliamentary opposition perform different roles, but both can be assessed by asking whether they have the capacity, independence, information and means of enforcement necessary to constrain the executive.

Nigeria: Counterweights in a Presidential System

Legislative Oversight

The National Assembly's constitutional importance extends well beyond law-making. The Constitution confers on each House the power to investigate the conduct of any person, authority, ministry or government department charged with executing or administering laws that the Assembly enacted, or with disbursing or administering money that it appropriated.[5] The purpose of the power is to enable the Assembly to make laws, correct defects in existing laws and 'expose corruption, inefficiency or waste' in their execution.[6] For these purposes the Houses may summon any person to give evidence and compel the production of documents.[7] Standing committees of each House mirror the ministries and agencies of the federal executive, and the committee system is the principal vehicle of oversight.

The courts have confined the investigative power to its constitutional purposes. In *Tony Momoh v Senate*, the High Court held that the Senate could not summon a newspaper editor to answer for a publication critical of legislators, because the inquiry was not directed at a purpose within the Constitution.[8] That

[5] CFRN (n 2) s 88(1).
[6] ibid s 88(2).
[7] ibid s 89.
[8] *Tony Momoh v Senate of the National Assembly* (1981) 1 NCLR 105 (HC).

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limitation protects individuals, but it also signals that the investigative power is a structured counterweight rather than a general power of inquisition.

The effectiveness of legislative oversight in Nigeria has varied considerably. The Assembly's capacity has grown since 1999. The National Institute for Legislative and Democratic Studies provides research and training, and committee staffing has expanded.[9] But oversight has often been undermined by allegations that committees use investigations to extract benefits from the agencies they supervise, and by the executive's willingness to disregard summonses. The capacity component of the counterweight has improved more than the independence and enforceability components.

Budgetary Control

Control over public expenditure is the most important structural means by which a legislature can influence executive priorities. In Nigeria, no money may be withdrawn from the Consolidated Revenue Fund except under an Act of the National Assembly,[10] and the President must present annual estimates for enactment as an Appropriation Act.[11] The Assembly may amend the estimates, and the President must either assent or veto the result.

In practice, the budget has been a site of persistent institutional rivalry. Appropriation bills were routinely passed months into the financial year until 2019, when the Assembly and the executive restored a January-to-December budget cycle. Disputes over the Assembly's insertion of constituency projects, and over allegations of 'padding' in the 2016 budget, revealed both the Assembly's power to reshape the executive's proposals and the weakness of its own internal accountability. Conversely, the executive's control over the release of appropriated funds has allowed it to under-implement budgets with relative impunity, which blunts the enforceability of legislative appropriations. Budgetary control in Nigeria is therefore a real counterweight, but one whose effectiveness is reduced by opacity on both sides.

Confirmation and Removal

The Senate's power to confirm presidential appointments gives it a direct check on the composition of the executive and the judiciary.[12] The power has been used assertively when the Senate leadership was politically independent of the President. Between 2015 and 2019, under Senate President Bukola Saraki, who had been elected to the post against the wishes of his party's leadership, the Senate twice declined to confirm the President's nominee as chairman of the Economic and Financial Crimes Commission. The President's response, however, was to retain the nominee in an acting capacity for several more years. A formally effective check was neutralised by the executive's control of

[9]National Institute for Legislative and Democratic Studies Act 2011.

[10]CFRN (n 2) s 80(2)–(4).

[11]ibid s 81.

[12]CFRN (n 2) ss 147(2) and 231.

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appointments in an acting capacity, which illustrates the importance of the enforceability component.

The impeachment power is the ultimate legislative counterweight, but it has never been used against a Nigerian President.[13] A more significant legislative check on presidential ambition was the Senate's rejection in May 2006 of a package of constitutional amendments that would have allowed President Obasanjo to seek a third term. The episode demonstrated that a legislature in which the President's party holds a majority can still act as a counterweight where its members have independent political bases and where the issue concerns the constitutional order itself.

Judicial Control

Judicial power is the legal, as distinct from the political, dimension of checks and balances. The courts do not decide whether an executive policy is wise. Their function is to determine whether public institutions have acted within the law. Judicial review is therefore not an intrusion into executive administration but a mechanism for preserving the constitutional distribution of authority.

The Nigerian Supreme Court's original jurisdiction gives it a direct role in inter-institutional disputes. Under the Constitution and the Supreme Court (Additional Original Jurisdiction) Act 2002, the Court may hear disputes between the Federation and the states, and between the National Assembly and the President, among others.[14] The most significant recent exercise of this jurisdiction concerned Executive Order 10 of 2020, by which President Buhari sought to secure the financial autonomy of state legislatures and judiciaries. In February 2022 the Court held, by six to one, that the order was unconstitutional because the President had purported to legislate and to direct the distribution of state revenues without constitutional authority.[15] The decision confirmed that the courts will enforce the boundary between executive and legislative power even when the executive pursues a constitutionally desirable objective.

Judicial control is only as effective as judicial independence. The suspension of Chief Justice Walter Onnoghen in January 2019, on the basis of an ex parte order of the Code of Conduct Tribunal and without the two-thirds Senate address that the Constitution requires,[16] demonstrated the vulnerability of the judiciary to executive pressure. Onnoghen was convicted by the Tribunal in April 2019; the Court of Appeal set aside the conviction in 2024. The courts have also deferred to the executive in politically charged cases. In December 2025, by six to one, the Supreme Court declined to grant relief against the President's proclamation of a state of emergency in Rivers State, under which the elected Governor, Deputy Governor and House of Assembly were suspended for six

[13] ibid s 143.

[14] CFRN (n 2) s 232; Supreme Court (Additional Original Jurisdiction) Act 2002, s 1.

[15] *Attorney-General of Abia State v Attorney-General of the Federation* (Supreme Court of Nigeria, SC/CV/655/2020, 11 February 2022).

[16] CFRN (n 2) s 292(1)(a)(i).

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months.[17] The emergency had been approved by the National Assembly by voice vote, despite the Constitution's requirement of a two-thirds majority of all members of each House,[18] and thus both the legislative and the judicial counterweights to an expansive use of executive emergency power proved weak.

Canada: Counterweights in a Parliamentary System

Responsible Government and Confidence

Because the Canadian executive is drawn from Parliament, the legislature and the executive are not separated in the Nigerian sense. The primary political check is responsible government: the executive holds office only so long as it retains the confidence of the elected House of Commons. This creates a form of horizontal accountability based on confidence rather than separation. In Nigeria, the President can survive a hostile legislature for a full term; in Canada, a government that loses the confidence of the House must resign or seek a dissolution.

The confidence convention is a powerful counterweight in minority Parliaments. Canada has had minority governments for much of the past two decades: from 2004 to 2011, and from 2019 until April 2026, when the Liberal government of Mark Carney secured a majority through a series of floor crossings and three by-election victories. Minority governments must negotiate with opposition parties to pass budgets and legislation, and they face a constant risk of defeat. In March 2011 the House of Commons adopted a motion finding the government of Stephen Harper in contempt of Parliament for failing to provide cost estimates for its legislation, and the government fell. It was the first time a Canadian government had been found in contempt of Parliament.

In majority Parliaments, however, the confidence convention operates mainly as a background constraint. A government with a disciplined majority controls the House's timetable and committees and can generally secure the passage of its legislation and estimates. This is the central limitation of responsible government as a counterweight: its effectiveness depends on the arithmetic of the House.

Information and the Privileges of Parliament

Transparency is a precondition of effective parliamentary scrutiny, and the House of Commons has repeatedly asserted its right to compel the production of government documents. In April 2010 Speaker Peter Milliken ruled that the

[17] *Attorney General of Adamawa State v Attorney General of the Federation* (Supreme Court of Nigeria, SC/CV/329/2025, 15 December 2025); U Chioma, 'Supreme Court Strikes Out 11 States' Suit Challenging Tinubu's Rivers Emergency Rule' (*TheNigeriaLawyer*, 15 December 2025) <https://thenigerialawyer.com/supreme-court-strikes-out-11-states-suit-challenging-tinubus-rivers-emergency-rule-justice-idris-delivers-lead-judgment-in-split-decision/> accessed 16 October 2026.

[18] CFRN (n 2) s 305(6)(b).

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House's power to order the production of documents relating to the treatment of detainees transferred by Canadian forces in Afghanistan was not subject to the government's claims of national security, and directed the parties to agree arrangements for the documents' examination.[19] In 2021 the government applied to the Federal Court to prevent disclosure of documents concerning the dismissal of two scientists from the National Microbiology Laboratory in Winnipeg, which the House had ordered and the Speaker had sought to enforce. The application lapsed when Parliament was dissolved. And in the autumn of 2024 the House's business was paralysed for weeks by a question of privilege arising from the government's incomplete compliance with an order to produce documents relating to Sustainable Development Technology Canada.

These episodes show that the privileges of Parliament can operate as a transparency counterweight even in a fused system, but also that their enforcement depends on political conditions. The House's privileges are beyond judicial review, although the courts determine whether a claimed privilege exists.[20] Enforcement therefore rests on the House itself. A determined majority government can resist, and the most effective assertions of the House's right to information have taken place in minority Parliaments.

Money, Estimates and Officers of Parliament

The Constitution requires that money bills originate in the House of Commons and be accompanied by the recommendation of the Crown.[21] The royal recommendation gives the executive a monopoly on the initiation of spending, which strengthens the executive's control over finances but also concentrates accountability for them. Parliament's scrutiny of the estimates has long been criticised as perfunctory. The creation of independent officers of Parliament has partly addressed the capacity gap. The Auditor General reports to Parliament on the government's financial management. The Parliamentary Budget Officer, created by the Federal Accountability Act in 2006 and made an independent officer of Parliament in 2017, provides independent costing and analysis of the government's fiscal plans.[22] These officers supplement Parliament's capacity without depending on the government's majority for their information.

The Senate

The Senate provides a second legislative chamber through which all federal legislation must pass. For most of its history it was regarded as a partisan body that rarely obstructed the elected House. Since 2016, appointments have been made on the recommendation of an Independent Advisory Board for Senate

[19]House of Commons, *Debates*, 40th Parl, 3rd Sess (27 April 2010) (Speaker's Ruling).
[20]*Canada (House of Commons) v Vaid* 2005 SCC 30, [2005] 1 SCR 667.
[21]Constitution Act 1867 (UK), 30 & 31 Vict, c 3, ss 53–54.
[22]Parliament of Canada Act, RSC 1985, c P-1, ss 79.01–79.3.

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Appointments, and most senators now sit in non-partisan groups rather than party caucuses. The reformed Senate has amended government legislation more frequently than its predecessors, while generally deferring to the House on matters central to the government's electoral mandate.

The constitutional position of the Senate is itself protected. In the *Senate Reform Reference*, the Supreme Court held that Parliament could not unilaterally introduce consultative elections for senators, impose fixed terms or abolish the Senate, because those changes would alter the Senate's fundamental nature and role and therefore required the consent of the provinces under the general or unanimous amending procedures.[23] The Senate's role as a counterweight to the House and the executive is therefore entrenched against unilateral federal change. This illustrates a broader point: some checks on government operate not through ordinary institutional rivalry but through constitutional entrenchment.

Delegated and Emergency Powers

Much executive power in Canada, as in other modern states, is exercised under delegated legislation. The Supreme Court has upheld broad delegations of law-making power to the executive, including 'Henry VIII' clauses that allow regulations to amend a statute, provided Parliament retains the power to revoke the delegation.[24] The principal counterweight to delegated power is the Standing Joint Committee for the Scrutiny of Regulations and judicial review of regulations for consistency with their enabling statutes.

Emergency powers test the counterweights most severely. The Emergencies Act requires that a declaration of a public order emergency be laid before both Houses of Parliament within seven sitting days and confirmed by a motion in each House. It also requires a public inquiry into the circumstances of the declaration after it ends.[25] When the federal government invoked the Act for the first time in February 2022 in response to the occupation of central Ottawa and border blockades, the House of Commons confirmed the declaration, but the government revoked it before the Senate voted. The Public Order Emergency Commission concluded that the government had met the statutory threshold.[26] The courts disagreed. In January 2024 the Federal Court held that the invocation was unreasonable and that regulations made under it infringed the Charter.[27] In January 2026 the Federal Court of Appeal upheld that judgment, holding that the government lacked reasonable grounds to believe that a national emergency within the meaning of the Act existed. It further held that the regulations infringed the freedom of expression and the protection against unreasonable search and seizure.[28]

[23] *Reference re Senate Reform* 2014 SCC 32, [2014] 1 SCR 704.
[24] *References re Greenhouse Gas Pollution Pricing Act* 2021 SCC 11, [2021] 1 SCR 175.
[25] Emergencies Act, RSC 1985, c 22 (4th Supp), ss 58–63.
[26] Public Order Emergency Commission, *Report of the Public Inquiry into the 2022 Public Order Emergency* (2023) vol 1.
[27] *Canadian Frontline Nurses v Canada (Attorney General)* 2024 FC 42.
[28] *Canada (Attorney General) v Canadian Civil Liberties Association* 2026 FCA 6.

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The episode illustrates the layered structure of Canadian counterweights. The parliamentary check operated weakly, because the government's position in the House secured confirmation. The inquiry check produced a qualified endorsement. The judicial check, operating after the fact, found the invocation unlawful. The enforceability of that finding lay principally in its effect on future governments, because the emergency had long since ended.

Judicial Review as the Final Counterweight

Canadian constitutionalism gives the courts a central role in maintaining the boundaries of public power. The Constitution is the supreme law,[29] and the Supreme Court has identified constitutionalism and the rule of law as fundamental organising principles.[30] The exercise of public power must have a source in law,[31] and administrative decisions are reviewable for reasonableness and, on certain questions, correctness.[32] Prerogative powers are reviewable for compliance with the Charter.[33] The advice of the Prime Minister to prorogue Parliament has also been held justiciable, although the Federal Court upheld the prorogation of January 2025 as lawful.[34]

The courts have also protected their own independence as a structural counterweight. They have constitutionalised the financial security of judges,[35] and they have held that the eligibility criteria and composition of the Supreme Court cannot be altered by Parliament acting alone.[36] In the latter case, the Court declared ineligible a judge whom the Prime Minister had appointed to the Court, a striking assertion of judicial control over an executive appointment.

The judicial counterweight is nonetheless qualified by section 33 of the Charter, which permits Parliament or a provincial legislature to override certain Charter rights for renewable five-year periods.[37] Parliament has never invoked it, but its increasing use by provincial legislatures, including pre-emptively, has made the relationship between legislative and judicial authority one of the most contested questions in Canadian constitutional law.

Political Alignment across Institutions

A central weakness of both systems is the possibility of institutional alignment. In Nigeria, the President's party may control both Houses of the National Assembly, and party leaders may secure the election of loyal presiding

[29]Constitution Act 1982, being Schedule B to the Canada Act 1982 (UK), c 11, s 52(1).
[30]*Reference re Secession of Quebec* [1998] 2 SCR 217 [70]–[78].
[31]*Roncarelli v Duplessis* [1959] SCR 121, 140.
[32]*Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, [2019] 4 SCR 653.
[33]*Canada (Prime Minister) v Khadr* 2010 SCC 3, [2010] 1 SCR 44.
[34]*MacKinnon v Canada (Attorney General)* 2025 FC 422.
[35]*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3.
[36]*Reference re Supreme Court Act, ss 5 and 6* 2014 SCC 21, [2014] 1 SCR 433.
[37]Constitution Act 1982 (n 29) s 33.

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officers. In Canada, a governing party with a majority in the House of Commons controls the legislative agenda and the committees. In either situation, the formal distinction between executive and legislative authority produces less practical checking than the constitutional text suggests.

The two systems differ, however, in how alignment operates. In Nigeria, alignment is contingent. Members of the National Assembly are elected separately from the President, many have independent political bases in their states, and their careers do not depend on the President's survival. Alignment can therefore break down, as it did when the Senate elected Saraki against the wishes of his party in 2015, or when the Senate rejected the third-term amendments in 2006. In Canada, alignment is structural. The government exists because it commands a majority, and members of the governing caucus have strong incentives, reinforced by party discipline and the leader's power to approve candidates, to support it. Responsible government thus makes alignment more stable but also more transparent: the government's majority is the source of its authority, and the opposition is institutionalised as the government's critic.

Nigeria's formal separation therefore offers a latent counterweight that can be activated when political conditions change, but that is often dormant. Canada's fusion offers a continuous but weaker counterweight in the form of the opposition, which can expose but rarely defeat a majority government. Neither system can depend on institutional separation alone. Counterweights require institutional incentives and capacities. A legislature must have reason and means to scrutinise government; courts must be independent; oversight bodies must possess sufficient autonomy; and the public must have access to information.

Federalism as an Additional Counterweight

Although this article focuses on horizontal separation, federalism provides an additional source of constraint. In Canada, federalism distributes constitutional authority between Parliament and the provincial legislatures, and the Supreme Court has described federalism as a fundamental organising principle of the Constitution.[38] Provincial governments regularly challenge federal action in the courts, and the reference procedure allows them to obtain authoritative rulings on the limits of federal power.[39] A federal executive with a secure majority in the House of Commons can still be constrained by provinces with their own democratic mandates.

Nigeria similarly divides authority between the Federation and the states, and state governments have been among the most frequent litigants against the federal executive in the Supreme Court's original jurisdiction. The Executive Order 10 litigation was brought by the states. So was the 2024 litigation in which the Federation succeeded in establishing that allocations to local governments must be paid directly to elected councils rather than through state-controlled

[38] *Secession Reference* (n 30) [55]–[60].

[39] eg *References re Greenhouse Gas Pollution Pricing Act* (n 24); *Reference re Impact Assessment Act* 2023 SCC 23.

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accounts.[40] The Rivers State emergency of 2025, by contrast, showed that the federal executive's horizontal dominance can be turned against the vertical division of powers, suspending elected state institutions with the acquiescence of the National Assembly and, ultimately, the courts.

Vertical federalism can therefore reinforce horizontal separation, but it can also be overridden by it. The strongest constitutional protection arises when both axes, horizontal and vertical, provide meaningful constraints. Strong legislative–executive separation can coexist with excessive centralisation between federal and state governments, and strong federalism can coexist with weak internal accountability within each order of government.

The Counterweight Model Applied

The four elements of the counterweight model allow the principal checks in each system to be compared directly.

Capacity. Nigeria's National Assembly has formidable formal powers of appropriation, investigation and confirmation, and its research capacity has improved, but its oversight has been hampered by opacity in its own operations and in budget implementation. Canada's House of Commons has fewer formal powers against a majority government, but its capacity has been supplemented by independent officers of Parliament, notably the Auditor General and the Parliamentary Budget Officer.

Independence. The Nigerian legislature's independence from the executive is formally greater, because its members are separately elected, but in practice it has depended on the President's control of the governing party and the presiding officers. The Nigerian judiciary's independence has been formally strengthened by constitutional alterations on financial autonomy, but it remains vulnerable, as the Onnoghen affair showed. In Canada, judicial independence is robustly protected, while the independence of the House from the executive is structurally limited by responsible government and partly compensated by the reformed Senate.

Transparency. Both systems face difficulties. In Nigeria, budget implementation and legislative expenditure have been notably opaque. In Canada, the House's power to compel documents has been repeatedly contested by governments, and its effective exercise has depended on minority Parliaments.

Enforceability. The Nigerian Supreme Court's original jurisdiction provides a direct route for resolving disputes between the political branches, and its decision on Executive Order 10 shows that the route can be effective. Its deference in the Rivers emergency shows its limits. Canadian courts have enforced constitutional limits on executive action, including in the Emergencies Act litigation, but their judgments often operate after the fact, and the conventions of responsible government remain largely unenforceable in the courts.

[40] *Attorney-General of the Federation v Attorney-General of Abia State* (Supreme Court of Nigeria, SC/CV/343/2024, 11 July 2024).

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Table 1. *Horizontal Counterweights in Nigeria and Canada*

Counterweight	Nigeria	Canada
Executive–legislative relationship	Formal separation; separate elections and fixed terms	Fusion; executive responsible to the House of Commons
Primary political check	Separately elected legislature; confirmation and impeachment	Confidence convention; institutionalised opposition
Budgetary control	Appropriation Act; legislative amendment of estimates	Royal recommendation; estimates; Parliamentary Budget Officer
Information	Investigative powers (ss 88–89)	Parliamentary privilege to compel documents; officers of Parliament
Second chamber	Senate with confirmation powers	Appointed Senate, independent since 2016; entrenched by the *Senate Reform Reference*
Judicial review	Constitutional, fundamental rights and administrative	Constitutional, Charter and administrative; subject to section 33
Inter-branch disputes	Supreme Court original jurisdiction	Litigation and references
Characteristic weakness	Dormant checks when the President controls the party	Weak checks under majority government

Source: Author.

The comparison shows that both systems combine political and legal forms of accountability, but distribute them differently. Nigeria places more weight on formal political checks that are often dormant, and on courts whose independence has been tested. Canada places more weight on continuous but weaker political checks, supplemented by robust courts and independent officers.

Conclusion

The classical theory of the separation of powers remains valuable but requires adaptation. Modern government cannot operate through isolated institutions. Expertise, administration and policy require cooperation, and the regulatory state has generated agencies and officers whose functions do not fit neatly into legislative, executive or judicial categories. The constitutional problem is not cooperation itself, but cooperation that eliminates meaningful accountability.

The concept of constitutional counterweights accommodates this reality. It asks whether public power remains distributed, reviewable and contestable even when governmental functions overlap. The comparison of Nigeria and Canada suggests three conclusions. First, formal separation is neither necessary nor sufficient for effective checking: Canada's fused system has maintained more

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consistent accountability than Nigeria's separated one, largely because of its judicial independence and its institutionalised opposition. Second, both systems are vulnerable to political alignment, but in different ways. Nigeria's checks become dormant when the President controls the governing party, while Canada's checks weaken when the government holds a stable majority. Third, the most effective counterweights in both systems are those with independent capacity, access to information and enforceable consequences, such as the Supreme Court's original jurisdiction in Nigeria and the independent officers of Parliament and the courts in Canada.

The purpose of horizontal separation is therefore not separation for its own sake. It is the prevention of uncontrolled public power. A constitutional institution should possess sufficient capacity, independence, transparency and enforceability to perform its checking function, and constitutional design should be evaluated by whether it secures those conditions when political majorities align across institutions.

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