



Article

Rethinking the Practice of Separation of Powers in Nigeria: Between Historical Assumptions and Institutional Realities

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Abstract

This article develops a theoretical framework for understanding the persistent distortions in the practice of separation of powers in Nigeria. Although the 1999 Constitution formally adopts the classical doctrine of separation of powers, its practical operation remains inconsistent and unstable. Existing scholarship often attributes this dysfunction to institutional weakness, corruption, or executive overreach. The article argues that three historically embedded assumptions offer a more coherent analytical lens: the authoritarian legacy assumption, the colonial administrative continuity assumption, and the judicial sanctification assumption. First, prolonged military rule normalized executive centralization and fostered a political culture that equates strong authority with effective governance, thereby weakening institutional autonomy. Second, the colonial administrative system emphasized bureaucratic command over balanced representation, leaving a legacy of centralized governance that continues to influence institutional behaviour. Third, the widespread perception of the judiciary as the ultimate sanctuary of justice has encouraged the over-judicialization of political disputes, overburdening the courts beyond their institutional capacity. Drawing on constitutional analysis, historical interpretation, and postcolonial state theory, the study examines how these deep-rooted assumptions shape inter-branch relations. Rather than claiming definitive causation, the article proposes an interpretive framework for understanding Nigeria's constitutional practice. It concludes that meaningful reform requires engaging these underlying structural predispositions alongside formal institutional redesign.

Keywords: Separation of powers, postcolonial state, executive dominance, Nigeria, constitutionalism, judicial review.

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Introduction

The doctrine of separation of powers remains one of the foundational principles of modern constitutionalism. From Montesquieu's classical formulation in *The Spirit of the Laws*, the division of governmental authority into legislative, executive, and judicial branches has been regarded as a structural safeguard against tyranny and a mechanism for preserving political liberty (Montesquieu, 1748/1989). In this sense, separation of powers is not merely an administrative arrangement but a normative commitment to restrained governance. This is because liberal constitutional theory assumes that institutional differentiation, combined with checks and balances, generates equilibrium within the state and prevents the concentration of power.

The Nigeria's constitutional framework formally embraces this doctrine. The 1999 Constitution explicitly structures government along these lines. Legislative powers are vested in the National Assembly (Section 4), executive powers in the President (Section 5), and judicial powers in the courts (Section 6) (CFRN, 1999). On paper, the institutional architecture mirrors classical liberal constitutionalism, yet in practice, the operation of separation of powers in Nigeria has been inconsistent, conflict-ridden, and often subordinated to executive dominance. Inter-branch tensions, judicial intervention in overtly political disputes, legislative vulnerability, and recurrent constitutional crises suggest that the doctrine functions unevenly within the Nigerian political system. Available literature focuses primarily on constitutional ambiguities, patrimonial politics, executive overreach, and institutional weakness as explanations for this dysfunction (Adegbite, Oduniyi, & Farinde, 2019; Nwakwocha & Nwogu, 2024). Also, scholars like Nwabueze (1983) have long noted this structural centralization embedded in Nigeria's presidential system. Political scientists like Claude Ake (1996) have consistently maintained that the African postcolonial state is predisposed toward power concentration rather than dispersion.

Rather than advancing a definitive causal claim, the article develops a theoretically grounded interpretive framework. It suggests that Nigeria's constitutional practice can be better understood through three historically embedded assumptions: the Authoritarian Legacy Assumption, the Colonial Administrative Continuity Assumption, and the Judicial Sanctification Assumption. These assumptions are not treated as empirically proven causes but as analytical constructs that illuminate recurring patterns in institutional interaction. The central question guiding this study is: To what extent can historically embedded assumptions provide an interpretive framework for understanding the practice of separation of powers in Nigeria?

The article will proceed in ten sections. After situating the argument within classical and postcolonial theory, it develops each assumption in turn and demonstrates how their interaction distorts constitutional equilibrium. The conclusion argues that meaningful reform must engage both structural capacity and political culture, not merely constitutional text.

Theoretical and Conceptual Framework

Classical Theory of Separation of Powers

Modern constitutional systems, including presidential democracies such as the United States and Nigeria, evolved this doctrine into a more flexible model of checks and balances. For Montesquieu (1748/1989), liberty depends on preventing the accumulation of legislative, executive, and judicial power in the same hands. He observed that “there is no liberty if the judiciary power be not separated from the legislative and executive” (Book XI, Chapter 6). The American constitutional system later operationalized this idea through checks and balances rather than rigid compartmentalization.

Modern constitutional scholarship recognizes that absolute separation is impracticable; what matters is functional balance (Vile, 1998). Thus, separation of powers must be assessed empirically by examining whether institutions effectively constrain one another.

The Postcolonial State and Structural Centralization

The Postcolonial theorists are of the opinion that African states inherited centralized administrative systems designed for colonial control rather than democratic balance. An accomplished scholar like Mahmood Mamdani (1996) summarizes the colonial state as bifurcated and authoritarian in structure. Equally, Peter Ekeh (1975) goes further to demonstrate how colonialism created dual publics thereby weakening civic institutional accountability.

The postcolonial African state is predisposed structurally toward executive dominance when the state power became the basic avenue for resource distribution (Ake, 1996). Separation of powers operates in a structurally centralized political economy within this framework. This is why the Nigeria’s political trajectory perpetuated these tendencies through prolonged military rule. As a result, the military governance carefully consolidated power in executive councils, suspended legislative autonomy, and subordinated judicial authority. The result of this tradition was not just an episodic authoritarianism but the normalization of executive centrality as a governing logic.

These theoretical insights suggest that in Nigeria, separation of powers cannot be measured in isolation from the structural inheritance of the colonial masters. This insight opens the analytical space for evaluating how historical trajectories shape constitutional practice.

Analytical Operationalization of the Three Assumptions

In this article, the concept “assumptions” is not seen as explicit doctrines but it is conceived as a historically sedimented predisposition that shape institutional behavior. These assumptions functions at the level of political culture, elite expectations, and administrative logic. They are not easily codified but yet they influence how actors interpret constitutional roles and respond to inter-branch conflict. These three assumptions are of relevance to this analysis:

- a. The Authoritarian Legacy Assumption is the belief that is often implicit that requires effective governance and centralized executive dominance.
- b. The Colonial Administrative Continuity Assumption is the persistence of bureaucratic and command-oriented institutional logic inherited from colonial governance.
- c. The Judicial Sanctification Assumption is the widespread conviction that courts make up the ultimate guarantor of political justice that leads to the juridification of political disputes.

It is instructive to note that these assumptions work as structural filters through which constitutional powers are understood, enacted, and contested in Nigeria. They necessarily aid in explaining why formal institutional separation does not necessarily produce balanced governance. Rather, constitutional practice is mediated by inherited political logics that conditions expectations of authority, compliance, and legitimacy.

The Authoritarian Legacy Assumption

Nigeria’s political history is marked by prolonged periods of military rule (1966–1979, 1983–1999) and interspersed with brief episodes of civilian governance. The history of military rule in Nigeria centralized authority, suspended constitutional rule, and minimized the roles of legislatures and independent judiciaries (Okeke, 2025). Under successive military administrations, authority became synonymous with command and constitutional checks were suspended under decrees. As it is the norm with the military, the civil liberties and institutional autonomy were subordinated to efficiency, order, and control.

Although civilian rule resumed again in 1999 but the political culture did not fully transformed toward balanced governance. Instead, executive dominance assumed normalized as a political expectation.

Scholars argue that executive dominance still continued both in budgetary control, policy initiation, and appointment powers (Adegbite et al., 2019). Here, the executive most often advances policy agenda that the legislature reacts to rather than initiating its own articulated legislative platform. Although the Constitution allows legislative authority to the National Assembly but the executive still exert control over policy formulation and public funds. It is not a hidden secret that a public fund tremendously shapes legislative activity. Even where constitutional text envisages shared authority, these dynamic privileges executive leadership in governance processes.

Party leadership structures overlap with executive authority, and party cohesion often depends on executive patronage. This is why political parties in Nigeria are seen as heavily presidentialized. As a result, legislators align with the governing party and quickly subordinate institutional autonomy to political loyalty, thereby constraining legislative independence.

The Authoritarian Legacy Assumption flaunts this persistence and the implicit belief that the effective governance requires centralized executive authority. It is this assumption that shapes political expectations, party dynamics, and institutional behavior. The fusion of presidential power with party leadership further entrenches executive dominance. When political elites and civil servants assume centralized authority as normal, separation of powers becomes a nominal doctrine rather than a practical reality (Nnajofofor & Nnajofofor, 2025).

We conclude this section in tandem with Nwabueze (1983) to opine that presidentialism in Nigeria combines constitutional centralization with political patronage structures by creating asymmetrical inter-branch relations. As a result, strong executive control is treated as normal and the authoritarian legacy assumption conditions institutional expectations.

The Colonial Administrative Continuity Assumption

Long before military rule, Nigeria's institutional make up was formed under British colonial rule. The colonial state was fundamentally administrative rather than representative. It prioritized control, taxation, order, and extraction. Representative structures existed largely as consultative councils with limited power, while executive authority remained supreme. Also the administrative tradition produced a state architecture in which centralized authority preceded representative accountability. This scenario forced Mamdani (1996) to submit that the postcolonial states retained colonial command structures under new leadership. Consequently, institutional culture favors administrative efficiency over deliberative balance. Therein in this system, we can aver that the bureaucratic apparatus was hierarchical and centralized.

As a result of this centrality, indirect rule was encouraged and implemented through traditional authorities, this act later on entrenched hierarchical command structures. Instead of fostering participatory governance, colonial administration strengthened bureaucratic hierarchies and reinforced centralized decision-making. Hence, the legislative council's influences were noticeably marginal because of the disproportionate administrative capacity which the executive officials wielded.

At independence, Nigeria inherited constitutional forms of governance but not the institutional culture and administrative practices that support balanced separation of powers. Therefore, the bureaucracy remained centralized and the executive ministries continued to dominate policy formulation and implementation. As a result of the prevalent executive dominance, legislative development naturally lagged behind.

The continuity manifests in Nigeria's federal system especially in fiscal centralization and concentrates revenue at the center, leaving sub-national units (states) dependent on federal allocations. This undermines not only vertical separation of powers but also horizontal balance at the federal level. The executive's control over resources gives it disproportionate leverage over other branches and levels of government, reinforcing centralized decision-making. These administrative routines, policy implementation mechanisms, and fiscal structures manifest patterns founded during colonial rule, rather than on our current independent institutional evolution.

The colonial administrative continuity assumption originates in bureaucratic design unlike the authoritarian legacy assumption which is derived from military command structures. The colonial administrative continuity assumption is more subtle and influential because it does not rely primarily on overt executive coercion; rather it works through institutional habit, administrative routine and structural capacity.

The implications for separation of powers are significant. Liberal constitutionalism presupposes institutions that evolve within a culture of representative deliberation. Yet where legislative authority historically emerged within a subordinate administrative framework, the equilibrium envisioned by classical theory may be structurally disadvantaged from the outset. Even without explicit executive overreach, the administrative state may overshadow legislative initiative simply by virtue of inherited capacity and institutional momentum.

Thus, separation of powers in Nigeria must be understood not only as a constitutional arrangement but as an institutional overlay upon a state whose original design privileged centralized administration. The doctrine operates within an architecture not originally built to sustain its equilibrium.

Recognizing this continuity clarifies an important analytical point. This point testifies that the executive dominance in Nigeria is not merely the residue of military rule but rather, it is embedded within the deeper administrative DNA of the state itself.

The Judicial Sanctification Assumption

The judicial role is integral to liberal constitutionalism. This is because the judiciary occupies an elevated status within Nigeria's constitutional framework. The Nigerian Constitution vests the power of judicial review in the courts, empowering them to interpret the Constitution, adjudicate disputes between branches of government, and invalidate unconstitutional acts (CFRN, 1999).

In practice, however, the judiciary has become the focal point for resolving a wide range of political disputes. Electoral challenges, inter-party conflicts, institutional boundary disputes, and executive-legislature clashes increasingly culminate in judicial review (Esu, 2020). However, political actors increasingly treat the judiciary as the ultimate arbiter of disputes that ought to be resolved through institutional negotiation.

This widespread belief makes up the judicial sanctification assumption which stipulates that the collective expectation that courts are the final sanctuary for political and constitutional conflicts. While judicial review is a legitimate constitutional mechanism, its relevance in Nigeria has resulted in an unintended consequence.

First, the migration of political conflict into the courtroom differ institutional negotiation from political arenas to legal adjudication. Instead of legislative bargaining or executive legislative compromise, disputes are often resolved through legal argumentation and judicial pronouncements. This juridification can weaken the political capacity of other branches to negotiate and resolve disputes internally.

Second, reliance on courts places far reaching pressure on judicial institutions. Here, courts are expected not only to interpret law but to resolve an in-depth political question with wide-ranging legitimacy implications. Judicial decisions, while legally grounded, are sometimes perceived as politically consequential, exposing courts to accusations of partisanship or overreach.

Third, judicial sanctification can create unrealistic expectations about the capacity of courts to correct systemic imbalances. Courts cannot, on their own, engineer broad institutional reform. Their decisions operate within existing structural constraints, and enforcement depends on executive compliance.

While courts are indispensable to constitutional governance, over-reliance risks overburdening judicial capacity and politicizing adjudication. As Vile (1998) suggests, separation of powers requires institutional equilibrium, not judicial substitution for political resolution. As such, the Judicial Sanctification Assumption elevates courts symbolically, sometimes beyond their structural capacity.

Distorted Constitutional Equilibrium

The preceding sections have examined three distinct yet interconnected structural assumptions shaping the practice of separation of powers in Nigeria: the Authoritarian Legacy Assumption, the Colonial Administrative Continuity Assumption, and the Judicial Sanctification Assumption. Considered individually, each explains a dimension of institutional imbalance. Considered together, they reveal a deeper pattern, a distorted constitutional equilibrium.

In Montesquieu's classical model there is presupposition that power, when distributed among autonomous institutions, would moderate itself through reciprocal constraint. This equilibrium when correctly envisioned was dynamic and balanced but no branch permanently subordinated, none symbolically overburdened, each operating within a shared normative commitment to institutional autonomy. However, in Nigeria, the background conditions necessary for such equilibrium are historically unsettled.

The authoritarian legacy assumption normalizes executive centrality. It cultivates an expectation that is both among political elites and within administrative culture that effective governance flows from concentration rather than dispersion of authority. This predisposition surreptitiously shifts the gravitational center of the constitutional order toward the executive branch, even in the absence of overt constitutional violation.

The colonial administrative continuity assumption re-solidifies this shift at the structural level. By preserving centralized bureaucratic architecture and command-oriented administrative routines, it embeds executive dominance within institutional capacity itself. Legislative development, historically subordinated within colonial governance, emerges in the postcolonial period without equivalent structural consolidation. Thus, the imbalance is not merely political but infrastructural.

Lastly, the Judicial Sanctification Assumption then functions as a compensatory mechanism. As executive centrality persists and legislative autonomy remains uneven, constitutional contestation migrates toward the judiciary. The courts become the primary arena for resolving disputes that, in more evenly balanced systems, might be managed through institutional negotiation. Judicial authority expands symbolically, not necessarily by design, but by structural necessity.

The interaction of these assumptions produces a cyclical dynamic. The executive dominance generates political conflict; weak legislative entrenchment limits internal resolution; over-reliance on courts elevates judicial centrality; judicial intervention, in turn, resolves particular disputes without fundamentally altering the underlying structural asymmetry. The constitutional system oscillates between moments of assertive executive action and episodes of judicial correction, rather than sustaining stable inter-branch equilibrium.

This pattern does not show the absence of separation of powers. It rather suggests that the doctrine operates within a historically conditioned environment that recalibrates its equilibrium. The branches remain constitutionally distinct, yet their functional weight is uneven. The equilibrium envisioned by liberal constitutionalism becomes episodic and reactive rather than systemic and preventive.

The distortion is subtle but consequential. When executive authority is culturally normalized, legislative assertion becomes exceptional rather than routine. When administrative capacity is concentrated in the executive, institutional parity becomes structurally difficult. When courts are elevated as ultimate arbiters of political legitimacy, constitutional governance becomes increasingly juridified. The result is a constitutional order that formally reflects separation of powers but substantively exhibits asymmetrical balance.

Recognizing this distorted equilibrium reframes the debate on Nigeria's democratic consolidation. The challenge is not merely to prevent executive overreach or strengthen judicial independence in isolation. It is to confront the historical assumptions that collectively shape institutional expectations and behavior. Without addressing these embedded predispositions, constitutional reform risks adjusting formal mechanisms while leaving structural asymmetry intact.

Thus, the problem of separation of powers in Nigeria is neither purely legal nor purely political. It is historical-structural. The doctrine was constitutionally adopted within a state whose institutional DNA was not originally configured for dispersed authority. Understanding this interaction is essential for any meaningful reconfiguration of Nigeria's constitutional practice.

Comparative Perspective

Similar patterns of formal separation of powers alongside persistent executive dominance and judicial intervention have been observed in other postcolonial presidential systems, such as Ghana and Kenya. In these contexts, constitutional frameworks formally adopt the doctrine, yet executive dominance remains a defining feature of political practice.

However, the Nigerian case presents a particularly layered interaction of military legacy, colonial administrative continuity, and judicial reliance. As noted by Charles M. Fombad (2016) in his comparative analysis of separation of powers in African constitutionalism, these dynamics reflect deeper postcolonial continuities that shape inter-branch relations across the continent. This makes Nigeria a useful site for theoretical reflection and comparative inquiry, while also suggesting that the interpretive framework proposed here may have broader applicability across postcolonial contexts.

Reconfiguring Separation of Powers: Structural and Normative Pathways

If the dysfunction in Nigeria's separation of powers is deeply rooted in historically sedimented assumptions, then reform cannot be confined just to procedural adjustments. Constitutional amendment alone is insufficient where structural predispositions and political culture continuously recalibrate institutional balance. What we required is a dual reconfiguration, structural and normative which is aimed at restoring constitutional equilibrium.

Addressing the Authoritarian Legacy: Normalizing Institutional Autonomy

The Authoritarian Legacy Assumption as we have discussed thrives where executive dominance is culturally equated with effectiveness. Reconfiguration therefore requires strengthening institutional autonomy as a routine expectation rather than an exceptional assertion.

First, legislative capacity must be consolidated beyond formal powers. Independent budgetary research offices, strengthened committee systems, and institutionalized oversight mechanisms can reduce reactive dependence on executive initiative. This is of importance because where the legislature possesses technical and analytical autonomy, checks and balances become operational rather than symbolic.

Second, internal party democracy is crucial. In systems where party leadership overlaps structurally with executive authority, legislative independence is weakened at its foundation. Reforming party governance

procedures particularly candidate selection and leadership accountability can indirectly rebalance inter-branch relations by insulating legislative actors from executive patronage structures.

Third, constitutional culture must be reoriented to treat executive restraint as a sign of strength rather than weakness. This shift is normative rather than purely legal, requiring civic education, elite norm transformation, and sustained public discourse emphasizing institutional balance as a democratic virtue.

Revisiting Colonial Administrative Continuity: Institutional Redistribution of Capacity

The Colonial Administrative Continuity Assumption showcases structural centralization contained in bureaucratic architecture. Reform must therefore redistribute institutional capacity rather than merely redistribute authority on paper.

Fiscal federalism is at the centre of this reconfiguration. Where financial resources remain heavily centralized, administrative leverage continues to reinforce executive dominance. Greater fiscal autonomy at sub-national levels, combined with transparent revenue allocation mechanisms, would enhance vertical separation of powers and reduce concentration at the federal center.

Additionally, legislative institutionalization requires long-term investment in research services, policy drafting expertise, and administrative independence from executive ministries. A legislature structurally equipped for independent policy generation disrupts the inherited bureaucratic asymmetry.

Administrative reform must also promote transparency and accountability within executive agencies. Decentralized decision-making processes and strengthened oversight institutions can mitigate command-style administrative habits inherited from colonial governance.

Recalibrating Judicial Sanctification: Restoring Political Responsibility

The Judicial Sanctification Assumption presents a more delicate challenge. Courts must remain independent and empowered to review constitutional violations. However, reducing the over-judicialization of politics requires strengthening non-judicial avenues of conflict resolution.

Electoral and legislative dispute mechanisms should be structured to encourage negotiated political settlements before litigation. Strengthening mediation frameworks within political parties and parliamentary procedures can reduce reflexive recourse to judicial arbitration.

Simultaneously, judicial independence must be fortified institutionally through transparent appointment processes, financial autonomy, and protection from executive interference to ensure that when courts do intervene, they do so from a position of structural integrity rather than political vulnerability.

Crucially, public discourse must temper the expectation that courts alone can rescue democratic governance. Separation of powers presupposes distributed responsibility. When citizens and elites internalize this principle, political actors are more likely to resolve conflicts within their institutional domains rather than externalizing them to judicial forums.

Toward Restored Constitutional Equilibrium

These reforms are interconnected. Strengthening legislative autonomy reduces over-reliance on courts. Redistributing administrative capacity mitigates executive centrality. Recalibrating judicial expectations preserves judicial legitimacy. Together, they address the structural asymmetry produced by authoritarian and colonial inheritances.

Reconfiguration, therefore, is not revolutionary but evolutionary. It seeks to align Nigeria's constitutional practice with the equilibrium envisioned in its constitutional design. The objective is not to weaken the executive, elevate the legislature artificially, or politicize the judiciary. It is to restore balance by confronting the assumptions that have historically tilted the constitutional order.

Limitations of the Study

This study is primarily theoretical and interpretive. It does not provide systematic empirical testing of the proposed framework. The assumptions identified here are intended as analytical constructs rather than empirically verified causal mechanisms. Future research may extend this framework through comparative analysis, case studies, or quantitative institutional data to evaluate its explanatory scope and limitations.

Conclusion

This article has argued that the challenges confronting the practice of separation of powers in Nigeria cannot be adequately explained by reference to institutional weakness, corruption, or episodic executive overreach alone. While such factors are undeniably present, they operate within a deeper historical framework shaped by enduring structural assumptions. The Authoritarian Legacy Assumption, the

Colonial Administrative Continuity Assumption, and the Judicial Sanctification Assumption together constitute a historically sedimented environment within which constitutional institutions function.

By reframing separation of powers as a historically conditioned practice rather than a purely constitutional design, the analysis shifts attention from formal provisions to structural predispositions. Nigeria's 1999 Constitution clearly delineates legislative, executive, and judicial powers in accordance with liberal constitutional principles. Yet constitutional text operates within a state whose political culture was shaped by centralized military command, whose administrative architecture emerged from colonial bureaucratic control, and whose democratic contestations increasingly migrate to the judiciary as the ultimate site of legitimacy.

The result is not the absence of separation of powers but its distortion. Institutional differentiation exists; checks and balances are invoked; courts intervene; legislatures occasionally assert themselves. However, equilibrium remains uneven. Executive centrality persists as a normalized expectation, legislative autonomy remains structurally constrained, and judicial authority is symbolically elevated beyond its intended stabilizing function. Separation of powers thus oscillates between moments of crisis correction and periods of asymmetrical dominance rather than functioning as a sustained constitutional equilibrium.

The broader implication extends beyond Nigeria. Postcolonial constitutional systems often adopt liberal institutional frameworks without fully confronting the historical architectures within which those frameworks must operate. Where centralized command structures and administrative hierarchies predate constitutional democratization, formal institutional design alone cannot secure balance. Constitutionalism requires not only textual adoption but structural realignment and normative transformation.

For Nigeria, democratic consolidation depends on confronting these inherited assumptions directly. Restoring constitutional equilibrium demands institutional strengthening, redistribution of administrative capacity, recalibration of judicial expectations, and the cultivation of a political culture that values restraint as much as authority. Separation of powers, in this sense, is not a static arrangement but an evolving practice that must be consciously sustained.

Ultimately, the durability of Nigeria's constitutional democracy will depend on whether its political order can move beyond the gravitational pull of centralized authority toward a genuinely balanced distribution of power. The task is not merely to preserve the doctrine of separation of powers in text, but to reconstruct the historical conditions necessary for its meaningful operation.

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