How Should Power Be Balanced Among the Branches of Government?
Document Based Question

Grade Level: 10-12

Subject: U.S. History, U.S. Government

Time Required: One 60-minute class period

Historical Thinking Skills: Primary Source Analysis, Compare and Contrast

Objective: Students will be able to analyze primary sources to evaluate how government power was intended to be balanced among the branches of government.

Lesson Plan:

Part 1: Bell Ringer (5-10 minutes)
Ask students: *Should the branches of government be equal to each other? Should one have more power than the other(s)? Why or why not?*

Part 2: Setting the Stage (15 minutes)

- Read background on the student handout aloud as a class
    - Student handout: Branches of Government – DBQ (Attached)

Part 3: Primary Source Analysis Activity (30 minutes)
Documents Included in this Document Based Question:

- *Federalist No. 49* (1788) – James Madison
- *Federalist No. 70* (1788) – Alexander Hamilton
- *Federalist No. 78* (1788) – Alexander Hamilton
- Abraham Lincoln's Speech on the Dred Scott Decision (1857)

Break students up into groups and assign each group *one* of the excerpts. Groups should be prepared to share:

- Key ideas and takeaways from your source - use the analysis questions to guide your summary

- Most significant quote or phrase
- Connection to separation of powers and/or checks and balances from your source
- How does your document help us answer the question: **How should power be balanced among the branches of government?**

Groups should fill in the chart in the student handout as groups share about their assigned document.

Part 4: Discussion and Reflection (15 minutes)
As a class, discuss some, or all, of the questions below:

- What is the most important argument from *Federalist 51* about balancing power?
- In what sense do the Federalist essays excerpted in the DBQ describe the branches of government as co-equal?
- How does *Federalist 70* justify a strong executive, and how does that fit into the balance of power?
- What concerns does Lincoln raise about judicial power in his Dred Scott speech? How does that compare to the argument in *Federalist 78*?
- Which branch of government do you think has the most power today, and why?

Part 5: Assessment
Ask students to write a response to the prompt: **How should power be balanced among the branches of government?**

- Students should use at least one primary source in their response.

Name _____

How Should Power Be Balanced Among the Branches of Government?

Background:
When the Founding Fathers wrote the U.S. Constitution in 1787, they were concerned about creating a government that was strong enough to function effectively but not so powerful that it could become tyrannical. Drawing from Enlightenment ideas, particularly those of the French philosopher Montesquieu, they established a system of separation of powers to divide government authority among three branches: the legislative (Congress), executive (President), and judicial (Supreme Court and federal courts). Each branch was given distinct powers and responsibilities to prevent any one group or individual from gaining too much control.

To ensure this system worked, the Founders also designed checks and balances, a structure that allows each branch to limit the powers of the others. Despite this careful system, debates over the balance of power have persisted throughout American history. Some have argued for a strong and energetic executive, while others have worried about too much presidential authority. Some believe the judiciary should have the power to check both the executive and legislative branches, while others worry that courts have become too powerful.

These debates continue today, as Americans question the role of each branch in shaping laws, policies, and rights. Through analyzing these documents, you will explore the question:

How should power be balanced among the branches of government?

Documents Included in this Document Based Question:

A) *Federalist No. 49* (1788) – James Madison
B) *Federalist No. 70* (1788) – Alexander Hamilton
C) *Federalist No. 78* (1788) – Alexander Hamilton
D) Abraham Lincoln's Speech on the Dred Scott Decision (1857)

"How should power be balanced among the branches of government?" – Graphic Organizer

Source	Summary/Key Points	Impactful Quote	Connection to DBQ
Federalist No. 49			
Federalist No. 70			
Federalist No. 78			
Lincoln's Speech on the Dred Scott Decision			

DOCUMENT A

***Federalist No. 49* (1788) Excerpts**

James Madison

One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked. His proposition is, "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT, a convention shall be called for the purpose. As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others....(Q1)

But the greatest objection of all is, that the decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government.

We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments. But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy, and their administration is always liable to be discolored and rendered unpopular. The members of the legislative department, on the other hand, are numberous. They are distributed and dwell among the people at large. Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people. (Q2)

With these advantages, it can hardly be supposed that the adverse party would have an equal chance for a favorable issue. But the legislative party would not only be able to plead their cause most successfully with the people. They would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who actually were, or who expected to be, members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them. It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to

admit of no specious coloring. A strong party among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. (Q3)

In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government. We found in the last paper, that mere declarations in the written constitution are not sufficient to restrain the several departments within their legal rights. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision for that purpose. How far the provisions of a different nature contained in the plan above quoted might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision. (Q4)

Analysis Questions:

1) How does Madison's criticism of the proposal for a convention to address constitutional overreaches by branches reflect his understanding of the balance of power between the branches of government?
2) According to Madison, why would the executive and judicial branch be at a disadvantage if a convention could be called by the people regarding their branches' actions?
    a. Similarly, how is the legislature at an advantage?
3) How would using the constitutional convention in this way jeopardize separation of powers?
4) Why does Madison argue that this would cause people to rely on passion, not reason, to determine when violations occurred? Describe the argument.

DOCUMENT B

***Federalist No. 70* (1788) Excerpts**

Alexander Hamilton

THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. (Q1)

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. (Q2)

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers. (Q3)

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests... (Q4)

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From

either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition, vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality... (Q5)

Analysis Questions:

1) What benefits does a strong executive provide to a representative democracy?
2) What issues arise with a weak executive?
3) According to Hamilton, what is necessary to make an effective executive?
4) According to Hamilton, what qualities are necessary to keep a republic safe?
5) What are the advantages of a unitary over a plural executive?

DOCUMENT C

***Federalist No. 78* (1788) Excerpts**

Alexander Hamilton

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws. (Q1)

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. (Q2)

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security. (Q3)

Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. (Q4)

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their

constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. (Q5)

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental. (Q6)

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty. That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws. (Q7)

Analysis Questions:

1) What qualification is required of judges to hold office? Why is this important in a republic?
2) According to Hamilton, why is the judiciary the least dangerous branch of government?
3) What is the greatest contributor to the independence of the judiciary?
4) According to Hamilton, what is the role of the judiciary?
5) Why can't the legislature act as constitutional judges? What happens when the law conflicts with the Constitution?
6) According to Hamilton, is the judiciary superior to the other branches? Why or why not?
7) Why are lifetime appointments necessary to maintain separation of powers?

DOCUMENT D

Speech on the Dred Scott Decision (1857) Excerpts

Abraham Lincoln

FELLOW CITIZENS:—I am here to-night, partly by the invitation of some of you, and partly by my own inclination. Two weeks ago Judge Douglas spoke here on the several subjects of Kansas, the Dred Scott decision, and Utah. I listened to the speech at the time, and have read the report of it since. It was intended to controvert opinions which I think just, and to assail (politically, not personally,) those men who, in common with me, entertain those opinions. For this reason I wished then, and still wish, to make some answer to it, which I now take the opportunity of doing... (Q1)

... Judicial decisions have two uses—first, to absolutely determine the case decided, and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called "precedents" and "authorities."

We believe, as much as Judge Douglas, (perhaps more) in obedience to, and respect for the judicial department of government. We think its decisions on Constitutional questions, when fully settled, should control, not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution. (Q2)

But we think the Dred Scott decision is erroneous. We know the court that made it, has often over-ruled its own decisions, and we shall do what we can to have it to over-rule this. We offer no resistance to it.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent. (Q3)

But when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country—But Judge Douglas considers this view awful. Hear him:

"The courts are the tribunals prescribed by the Constitution and created by the authority of the people to determine, expound and enforce the law. Hence, whoever resists the final decision of the highest judicial tribunal, aims a deadly blow to our whole Republican system of government—a blow, which if successful would place all our rights and liberties at the mercy of passion, anarchy and violence. I repeat, therefore, that if resistance to the decisions of the Supreme Court of the United States, in a matter like the points decided in the Dred Scott case, clearly within their jurisdiction as defined by the Constitution, shall be forced upon the country as a political issue, it will become a distinct and naked issue between the friends and the enemies of the Constitution—the friends and the enemies of the supremacy of the laws." (Q4)

Why this same Supreme court once decided a national bank to be constitutional; but Gen. Jackson, as President of the United States, disregarded the decision, and vetoed a bill for a re-charter, partly on constitutional ground, declaring that each public functionary must support the Constitution, "as he understands it."

But hear Gen. Jackson further— "If the opinion of the Supreme court covered the whole ground of this act, it ought not to control the co-ordinate authorities of this Government. The Congress, the executive and the court, must each for itself be guided by its own opinion of the Constitution. Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others." (Q5)

Again and again have I heard Judge Douglas denounce that bank decision, and applaud Gen. Jackson for disregarding it. It would be interesting for him to look over his recent speech, and see how exactly his fierce philippics against us for resisting Supreme Court decisions, fall upon his own head. It will call to his mind a long and fierce political war in this country, upon an issue which, in his own language, and, of course, in his own changeless estimation, was "a distinct and naked issue between the friends and the enemies of the Constitution," and in which war he fought in the ranks of the enemies of the Constitution. (Q6)

Analysis Questions:

1) What is the purpose of Lincoln's speech?
2) According to Lincoln, what function does the judicial branch have?
3) What issue does Lincoln take with the Dred Scott decision?
4) According to Judge Douglas, what happens as a result of people not respecting a judicial decision?
5) Using the General Jackson quote, would it be acceptable for Lincoln to resist the Court's decision in the Dred Scott case? Why or why not?
6) How does this contradiction challenge Judge Douglas' argument about the importance of respecting Supreme Court decisions?