



Federalist-based Policy Documents in Support of Republic of South Sudan MoFedA Blueprint for New Constitution

Date: July 24, 2023

Prepared for:

Hon. Minister Losuba Wongo Upele
Minister
Ministry of Federal Affairs (MoFedA)
Republic of South Sudan
Juba, South Sudan

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A. Introduction

My name is Kyle Thaller and I am a third year Westover Honors College Fellow at the University of Lynchburg studying Political Science. I am currently serving as a Constitution Intern for the Ministry of Federal Affairs of South Sudan. As part of my duties as an intern, I am writing a series of policy briefs on Federalist governments and theories from around the world and how they can be used in the new Constitution of South Sudan. The policy briefs contained in this document package explain the various facets of political power sharing in Federalism, Administrative Federalism, judicial structure in federalism, Fiscal Federalism, tax policy and resource management within a federalism-based structure. Each policy brief then makes a recommendation on how Federalist policies being used in other countries can (or cannot) be implemented in South Sudan to create a unified and peaceful future for the country. There is also a presentation on the development of American Federalism and historical anecdotes on American Federalism that can be used as references and talking points in speeches, presentations, and general political discourse. My hope is for this policy package's material, knowledge, and contents to be used to help create a new Federalism-based constitution for a more unified and peaceful future for South Sudan.

A.1. Introduction: Internship Schedule



**REPUBLIC OF SOUTH SUDAN
MINISTRY OF FEDERAL AFFAIRS**

INTERNSHIP AGENDA FOR KYLE THALLER

POLICY BRIEFS FOR SOUTH SUDAN ON FEDERAL MODEL

DAY/DATE	HOURS	DELIVERABLES	REMARKS
Monday, June 26, 2023	8 hours	Power sharing: Administrative power sharing in federalism	
Tuesday, June 27, 2023	8 hours	American Federalism: historical perspective	
Thursday, June 29, 2023	8 hours	Review of policy brief administrative power sharing with National expert	
Friday, June 30, 2023	8 hours	Review of power point, American Federalism: historical perspective with National Expert	
Saturday, July 1, 2023	8 hours	Power sharing: Political power sharing in federalism	
Monday, July 3, 2023	8 hours	Review of policy brief political power sharing with National expert	
Wednesday, July 5, 2023	8 hours	Judiciary structure in Federalism	
Thursday, July 6, 2023	8 hours	Review of policy brief Judiciary structure in Federalism with National expert	
Friday, July 7, 2023	8 hours	Presentation of 2 policy briefs power sharing and judiciary structure to Hon. Minister	
Saturday, July 8, 2023	8 hours	Fiscal federalism (Resource Allocation) IRS/NRA compared	
Monday, July 10, 2023	8 hours	Write up on fiscal policy brief-structure of Revenue authority/commission	
Tuesday, July 11, 2023	8 hours	Write up on fiscal policy brief-Taxation	
Wednesday, July 12, 2023	8 hours	Write up on fiscal policy brief-Resource allocation & formula	
Thursday, July 13, 2023	8 hours	Write up on fiscal policy brief-borrowing and federal grants	

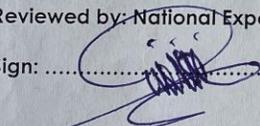
South Sudan - Juba



**REPUBLIC OF SOUTH SUDAN
MINISTRY OF FEDERAL AFFAIRS**

Friday, July 14, 2023	8 hours	Presentation on fiscal policy brief	
Saturday, July 15, 2023	8 hours	Natural Resource Management in Federalism (Land, Water & Minerals).	
Monday, July 17, 2023	8 hours	Write-up on policy brief Land management	
Tuesday, July 18, 2023	8 hours	Write-up on policy brief Water management	
Wednesday, July 19, 2023	8 hours	Write-up on policy brief minerals management	
Thursday, July 20, 2023	8 hours	Review of policy brief Natural resources management with National expert	
Friday, July 21, 2023	8 hours	Presentation of Policy Recommendations to the Hon. Minister	
4 Week-end contact Hours (Sundays) @ 20 hours	80 hours	Working remotely at home on 4 Sundays	
TOTAL CONTACT HOURS	240	Contact hours	

Reviewed by: National Expert, Partnership Coordinator

Sign: 

Date: 06/06/2023

Approved by: Hon. Minister of Federal Affairs, Republic of South Sudan

Sign: 

Date: 21/07/2023

B. Policy Brief #1; Administrative Power Sharing in Federalism

Administrative Power Sharing in Federalism

Administrative Power sharing in Federalism is a federal model in which the executives and administrators of a government have a large role in policy making and implementation. To this end, in “Administrative Federalism”, as many political scientists call it, the central governments create policy, but said policy is carried out and implemented by the state and local governments only if the state and local governments approve those projects and policy proposals. As a result, both the national and lower governments share power, with the national having the power to create a policy, but the lower levels of governments having the power to implement it only if they approve it on the national level.

Germany

- Administrative power sharing in Federalism has most frequently been exercised in Germany where the Länder (state governments) have a large degree of autonomy from the central government due to their autonomous power of implementing policy, but only the policies that they approve. Hence, the central government must craft a common policy according to both the needs of the nation and the states since each state must agree with whatever policies that are developed by the central government.
- This is to such a point that Germany is a highly decentralized state with most administrative powers residing within the states.
- The autonomy is primarily vested in their ability to co-author legislation in the Bundestag and to implement laws of their choice giving them the same legitimacy.
- The German style of Administrative Federalism has three main features:
 1. Executive character of the Bundesrat.

2. Principle of Administrative Connectivity.
3. Vertical separation of powers along functions, not policies, which requires enhanced cooperation of government and bureaucracies across all three levels of government.

Key Terms

1. The *Lander* are the states of Germany.
2. The *Bundesrat* (upper house) is the federal body comprised of the representatives of the *Lander*.
3. The *Bundestag* (lower house) are the directly elected representatives of the German people.

Core facets of Administrative Federalism

- Administrative power in Germany is divided vertically between the states and the central government.
- Division of labor between the federal government and the states overlaps on a variety of functions but is organized in a policy specific fashion.
- For example, the federal level controls the majority of the legislative functions, but the states control the executive functions of implementing that legislation.
- Despite the Federal level controlling legislation, the Federal level still heavily relies on state administrations to execute and implement the legislation as the states are needed to co-author any legislation in the *Bundesrat* (upper house). This means that if a state does not like a specific aspect of legislation, then they can change it while it's still being drafted in the legislature because of the power and leverage they have over the federal level.

- Admittedly, there are a few tasks that are left solely to federal administration's such as the military, intelligence services, foreign affairs, and border control.
- There are some legislative tasks that the states can administer on their own through their individual administrations such as culture, police, and education.

Fiscal Policy in German Administrative Power Sharing

- Financial management in the German style of administrative power sharing follows what is known among academics as *administrative connectivity*.
- This term means that the government unit responsible for executing a task is also responsible for financing it so as to ensure responsible financial management.
- Germany practices this by local authorities being given a disproportionate amount of responsibility for their respective executive tasks. Concurrently, the local governments have the smallest allocation of financial resources, making it easy for the federal government to justify transferring funds by means of tax sharing, fiscal equalization, and grant systems.
- The challenge is how much the fiscal transfer from the federal to states and local governments should be which has two trends.
 1. Taxes are levied collectively amongst both local districts and the Lander and distributed through a complex nested process that involves all political actors so as to empower each administrative and political unit to finance their public tasks.
 2. Due to increasing amounts of payments being spent by the local governments on welfare state payments, the federal government adopts larger payments of these shares by transferring these payments to the states so as to take some of stress of those payments off of the local authorities and distribute it to the states.

- Despite the cooperative nature of this Federalist-based financial system there are still a number of problems such as with the second method of financial distribution (e.g., social welfare and other payments; see #2 in paragraph above) as the Lander do not want to make those extra payments on behalf of the local districts.

Intergovernmental Relations in Administrative Power Sharing

- Due to the exclusive nature of power in Germany with the federal, state, and local governments all having specific powers assigned to them it is necessary for increased government cooperation to be had amongst all levels.
- This cooperation is institutionalized in two primary areas:
 - Bundestrat and Bundestag sessions
 - Ministerial conferences
- In Bundesrat sessions the states are able to propose and implement their own policies and have a voice in the national government
- This requires much intergovernmental cooperation due to each piece of legislation that is passed by the Bundestag (lower house) must have the approval of the Bundestrat (upper house). On top of this, each state government must be willing to implement the law that is passed.
- Ministerial conferences, in turn are ways for the states to ensure that their country's foreign and military policy reflects the will of the citizenry. To this end, many of these conferences have state politicians and members of the local district governments present so that the national ministers can report on what their foreign policy, military policy etc. plans are.

United States' Dual Federalism

- In contrast to the German style of Administrative Federalism, United States Federalism is more separate in terms of intergovernmental relations between the national and state governments
- United States Federalism is often called Dual Federalism as the national and state governments have completely separate powers and authority, unlike Administrative Federalism in Germany where many powers between the national and state government overlap
- If a law is passed on the federal level then the federal government has to administer it. By the same token, if a law is passed on the state level then the states must administer the law. Furthermore, some states can implement laws that are contrary to federal law. Examples include the use of cannabis and the treatment of illegal immigrants, although these instances may someday be challenged and face resolution by the Supreme Court.
- Laws that are fall under Federal Jurisdiction include:
 - Immigration law
 - Bankruptcy law
 - Social Security and Supplemental Security Income (SSI) laws
 - Federal anti-discrimination and civil rights laws that protect against racial, age, gender, and disability discrimination
 - Patent and copyright laws
 - Federal criminal laws such as laws against tax fraud and the counterfeiting of money

- Laws that Fall Under State Jurisdiction include:
 - Criminal matters
 - Divorce and family matters
 - Welfare, public assistance, or Medicaid matters
 - Wills, inheritances, and estates
 - Real estate and other property
 - Business contracts
 - Personal injuries such as from a car accident or medical malpractice
 - Workers' compensation for injuries at work

- However, in the U.S., federal law takes precedence over state law meaning that if a state does not support a federal law, they still have to implement it. As mentioned, there are exceptions to this such as illegal immigration and marijuana use. This is in contrast to Germany where a state can actually change an aspect of a law while it is in the federal legislature due to their presence in the Bundesrat.

- The last note to make on the differences between American Dual Federalism and the German form of Administrative Federalism is that while U.S. states can legislate and create their own laws, German states cannot, but they do have the power as previously mentioned to co-author national legislation that will affect their state constituencies. This essentially makes all laws that are legislated and implemented federal, since they are drafted and passed on the federal level with state approval in the Bundesrat. Exceptions include a few laws concerning culture and education that are administered by individual state governments by having state-to-state governmental meetings to coordinate national education and cultural policy.

Policy Recommendation for South Sudan

My recommendation for South Sudan is based upon the following summary of advantages and disadvantages.

German Administrative Federalism Model; Advantages

1. More effective at creating a unified set of laws for the whole country due to all law essentially being Federal law.
2. German states are given an opinion in the creation of these unified federal laws through their presence in the Bundesrat (upper legislative house) and can co-author legislation to their constituents needs.
3. Most states are only given administrative powers rather than law-making powers thereby creating a more unified federal state.
4. States act as essentially a check on the federal government through their presence in the national legislature and law-making process.
5. Encourages state-to-state cooperation at the federal level to co-author national legislation that is to their benefit while also holding private state-to-state conferences to set education and cultural policy for all states without the presence of the federal government.
6. Encourages more intergovernmental cooperation by ensuring that the federal governments co-authors laws with the states' approval and that the states administer those laws.

German Administrative Federalism Model; Disadvantages

1. Gives more power to the central government by essentially making all laws federal laws rather than having states create separate state laws within their own legislatures.

2. Citizenry could be confused on how the federal and state governments work due to the various overlapping powers, leading to a decreased civil society.

American Dual Federalism Model; Advantages

1. Creates more state autonomy through each state having its own legislature and essentially its own miniature government.
2. Allows for states to object to some federal laws through the creation of their own counter-laws such as with the cannabis laws in the United States where nationally, cannabis is illegal, but in many states is considered legal.

American Dual Federalism Model; Disadvantages

1. Citizens could develop excessive pride in their own states, rather than in the country. This could encourage conflict such as occurred with the U.S. Civil War, which was started over states' rights against the national government.
2. Could create conflict over federal versus state laws and which should be followed, and even if states should even be allowed to create their own counter-laws to federal laws (e.g., Cannabis laws) as it encourages conflict between the federal and state governments.
3. Individual rights of citizens could be threatened as each state could create laws that are detrimental to a certain group of citizens in that state and the federal government would have to intervene to protect them and sometimes would not be able to do so due to that law not being under federal jurisdiction but state jurisdiction.

Policy Recommendation for South Sudan

Based on this pros and cons list, my recommendation for the Republic of South Sudan would be for the creation and implementation of a style of Federalism based on Germany's Administrative Federalism model. If implemented, it would still vest numerous powers within the federal

government as currently exists, while at the same time giving the states of South Sudan a say in national decision making and legislation. It would also create more unity in South Sudan between the states and the federal government by encouraging intergovernmental cooperation between the states and the federal government. America's "Dual Federalism" model does have many positives, but it is more for a federal country whose states came together to create a stronger federal government as it did during the country's founding. South Sudan is still a young country and not as established as America. Furthermore, South Sudan's federal government is trying to devolve power back to the states rather than trying to strengthen the federal government. It is for this reason that Administrative Federalism is appropriate for South Sudan as it has been used by numerous other federal countries that have devolved powers to the states from the national government. Administrative Federalism would also create a stronger national identity for South Sudan by having all laws created on the federal level while at the same time allowing states an opinion in the creation of that law. This, in turn, will appease the various ethnic groups of South Sudan who might otherwise feel that the federal government is impeding their personal rights. Overall, Administrative Federalism would encourage the creation of a more devolved federal state where the central government still has power, but the states can co-author national decisions that affect the whole country including their states.

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C. Policy Brief #2; Political Power Sharing in Federalism

Overview

- Political Power sharing in Federalism consists of dividing power between the various actors of government, such as political parties and leadership, through evenly distributing the number of political offices in a way that satisfies all political actors.
- This facet of Federalism is a common practice in many ethnically and geopolitically diverse nations across the world, especially in Africa which has on average the most diverse continental population on Earth
- Political scientists have argued for two primary theories on political power sharing that develop in states along numerous ethnic, regional, and political lines
 1. Consociationalism: A theory of political power sharing among Federalist countries with large divides in ethnicity, religion, and geography but none of which are large enough to constitute a majority. Despite not having a majority, these states are still stable due to consolation of these different groups by the elites to ensure fair and equal representation of all political actors. Rules and decision making are structured in a way that ensures proportional representation of all groups are ensured. In this way the rights of the minorities of represented and protected. The primary goal of this power sharing model is survival of the sovereign state while also avoiding conflict, which is why all groups are given representation to ensure that the groups do not resort to violence to have their voices heard. Consociationalism has been very popular in post-conflict states such as the DRC, Burundi, and Rwanda. However, it has received some criticism in public policy and academia for fostering ethnic and political extremism due to

creating political parties that are dominated by their respective ethnic group.

Because the government is represented and described as being inclusive of all ethnic groups, each of the parties formed will inevitably be dominated by a majority of that particular ethnic group.

2. Centripetalism: A theory of political power sharing along ethnic and regional lines that aims to depoliticalize ethnicity by encouraging and reinforcing the political center, thereby creating multi-ethnic political offices where ethnicity is not a commonality but is instead where the government is dominated by common policy and ideology. As a result, the country's leadership will share power based on being a citizen of the nation rather than upon ethnicity. This style of power sharing has been more frequently used as a long-term solution as compared to Consociationalism due to many post-conflict states not being able to use this style of power sharing because of years of previous conflict with other ethnicities. To this end, states that have been at relative peace and stability for many years enact this power sharing style after having initially used the Consociationalism model as they can now look past those centuries-old enmities and unite over a common sense of nationalism and vision for the future. A prime example of the Centripetalism model is Nigeria, who after years of enacting the Consociationalism model in the aftermath of the Nigerian Civil War shifted over to the Centripetalism model in an effort to create a shared national identity among the political elites.

Burundi's Consociationalism Power Sharing Model; Overview and History

- Burundi is one of the smallest countries in Africa and also one of the poorest. However, despite this, Burundi is arguably the most successful case of Consociationalism since although its economy or military may not be the largest in Africa, its government and state is relatively stable.
- Burundi's history of conflict is primarily rooted in its ethnic division between the Hutu's majority at roughly 84% of the population, and the Tutsi minority at roughly 16% of the population. This conflict can be traced back to colonial times when Belgium, who used Burundi as a colony for its natural resources, installed the Tutsi as the local ruling class as part of the collective European colonial policy of "Diviser pour Régner" (e.g., Divide to rule) where many colonial powers installed an ethnic minority as local enforcers and a proxy for the colonial administrators' policies. Throughout this period many massacres were initiated by the Tutsis against the Hutus as a means of maintaining power.

Concurrently, the Hutu's initiated rebellions to gain power despite the Hutu's and Tutsi's sharing the same language culture and traditions. This made the conflict between the two groups rooted not just in ethnic rivalry, but a constant push and pull for political power and office. The Burundian Civil War erupted in 1993 as a result of these ethnic divisions and rivalries and lasted until 2005, resulting in thousands of casualties, both military and civilian. After the Arusha Accords were signed, armed groups became official political parties, which signifying the end of the civil war.

Structure and System of Consociationalism; Power Sharing in Burundi

- Power sharing within the Consociationalism model is based upon four pillars:
 1. **Grand Coalition:** All political leaders within a state are included within the political process and share power to some degree through political office or some other agency. Burundi passes this qualification by allowing 60% of political ministerial offices to be occupied by the Hutu majority and 40% to be occupied by the Tutsi minority. Any political party, no matter the ethnic group or affiliation, is given a proportional number of ministerial offices within the government as long as they gained at least a 5% of the votes in a parliamentary election. The 2005 election resulted in 20 ministers representing six political parties and two ministers without political affiliation.
 2. **Segmental Autonomy:** Defined as different political actors' right to self-rule and autonomy over their own education, culture, and traditions. Segmental autonomy is most prevalent in countries with different geo-political regions. This is not present in Burundi due to the country being so small and as a result, all political segments (Hutu's and Tutsis) live in one region. Despite this, Burundi still uses a model of Consociationalism in its government due to possessing the other three pillars of Consociationalism.
 3. **Proportionality:** This is the representation of each political segments in political office directly according to their population. This facet of proportionality also has an additional aspect in that when all groups are minorities, and because ethnic proportionality ends up being the same as political proportionality, the proportion of seats occupied in the government is identical to each group's respective

proportional population. When a majority group exists, overrepresentation for the minority (minority receives more representation than their proportion in the whole population) replaces proportionality. Burundi is of the latter scenario due to the National Assembly requiring 60% Hutu, 40% Tutsi, and 30% female. To achieve this quota, the Constitution stipulates that when choosing candidates, the parties must take into consideration ethnicity as a factor, thereby ensuring representation of all ethnic and political groups. Specifically, for every three candidates, at least one should belong to a different ethnic group than the other two, and one out of every four candidates needs to be female.

4. **Minority Veto:** This pillar is seen as a last resort for the protection of the rights of minorities within the Consociationalism system of power sharing should the representation of minorities through proportional voting and the grand coalition of mixed ethnic leadership fail. In Burundi, this policy was meant for the Tutsis, and so the General Assembly requires 2/3 of the chamber's approval for any matter. Since the Tutsis are allocated 40% of all positions, this ensures that any laws that are detrimental to the well-being of the Tutsi minority will not be passed.

Consociationalism in Burundi; Conclusion

Burundi still remains one of the poorest countries in the world at a poverty headcount of 74%, but nonetheless has used the Consociationalism model of power sharing to move past its ethnically violent past to create a stable and free-standing democracy that many other African states can respect.

Centripetalism in Nigeria; History

- Nigeria's model of power sharing is based on Centripetalism, which as mentioned before is a power sharing model that aims to forge multi-ethnic and multi-segmented inter-governmental political parties and institutions. This can be compared to Consociationalism, which just aims for inclusion of all ethnic groups regardless of whether the political parties are ethnically driven and polarized.
- Nigeria in the aftermath of independence (1960-1966) used a Consociationalism model, but this model fostered ethnic rivalries by dividing up the various regions and states of Nigeria by ethnicity. This then made the political parties of Nigeria very polarized and exasperated the ethnic rivalries to a massive extent, which in turn contributed to the Nigerian Civil War.
- The Nigeria Civil War taught the nation about the dangers of creating a political system that although inclusive of all ethnic groups, just gave a different environment for those rivalries to take place in the political arena as compared to in the bush. The new government sought to use the Centripetalism model as a means of moving past those ethnic rivalries and forging ethnic cooperation by encouraging and facilitating the creation of multiethnic political parties and political offices, thereby eroding away those centuries-old grudges and hatred.

Centripetalism Structure in Nigeria

- To facilitate this new Centripetalism model of power sharing the new government divided the four regions of Nigeria into 19 states, thereby spreading out the three dominant ethnic groups (Hausa-Fulani, Yoruba, or the Igbo) among all 19 states and forcing ethnic cohesion among all groups. In addition, the army delegatized the

authorization of ethnically driven political parties, which forced every state, even if they were a majority of one ethnic groups, to work together with smaller groups.

- Despite the newly centripetal institutions that had been established, there was still no balance of power between the ethnic majority groups and ethnic minority groups. To remedy this, the Nigerian government imposed the Federal Character Principle.
- Nigeria, being one of the most well-known federated republics in the world and especially in Africa, passed this law as a means of creating a federalized state that would merge all ethnicities into numerous political parties, thereby strengthening the political center and creating a national identity.
- The Federal Character Principle allows members of different ethnic groups and religions to participate in federal elections and in Parliament and was able to create a broader sense of national identity by fostering political coalitions from each state that have multiple ethnicities. This resulted in making party and policy lines being drawn not by ethnicity, but instead based upon state and political affiliation, thereby creating a stronger sense of national identity.

Policy Recommendation for South Sudan

My policy recommendation will be based upon an evaluation of advantages and disadvantages.

Consociationalism Advantages

1. Suited for states that are in a post-conflict era as it is more concerned with survival of the state rather than long term political unity, even if that means there will be ethnically driven political parties that could encourage political/ethnic extremism. This strength could also be viewed as a weakness depending on one's perspective.

2. All ethnic groups are represented due to consolation of political elites to create a system of proportional representation for all ethnic groups to be represented in the government.

Consociationalism Disadvantages

1. The creation of a proportional system inevitably and ironically means that all political parties will be ethnically driven as each ethnic will ally with their own ethnic group in the political arena for a common goal. This is directly counter to the initial basis and rationale for employing a Consociationalism model.
2. Fosters ethnic extremism as a result of Disadvantage #1, which could lead the country back into a civil war.
3. Suited more for small states in Africa with a limited number of ethnicities as those states' respective ethnicities will be more likely to create alliances across the political/ethnic aisle due to there being limited political options for other allies. Hence, bipartisanship is needed in order to pass any legislation. This can be seen in Rwanda with their Hutu's and Tutsi's who had no choice but to work together due to lack of better options.
4. Political elites hold all the power when creating this system, and while the Consociationalism model is meant to create a more inclusive system, its origin within political elites means that it will inevitably be driven by extremism and tribalism.

Centripetalism Advantages

1. Aim of Centripetalism is to be "In direct opposition to Consociationalist recommendations, Centripetalists maintain that the best way to manage democracy in divided societies is not to replicate existing ethnic divisions in the legislature and other representative organs, but rather to depoliticize ethnicity by putting in place institutional

incentives for cross-ethnic voting to encourage a degree of accommodation between rival groups” (Boggards).

2. Creates a national identity through purposeful geopolitical structuring of states so as to encourage multiethnic political parties that will allow citizens to look past one’s ethnic affiliation and see that all citizens are also one nation.
3. Better for states with larger numbers of ethnicities due to its encouragement of multiethnic political parties thereby giving representation without the negative aspect of ethnically driven political parties

Centripetalism Disadvantages

1. Emphasis on the creation of multiethnic cooperation could lead to tension between different groups due to ethnic pride. Subsequent refusal to adopt new principles of nationalism could lead to violence.

Policy Recommendation for South Sudan

The Republic of South Sudan is the world’s newest federated republic, with a diverse ethnic population who have a long history of conflict and political turmoil, and as such needs a political power sharing model that is unique to South Sudan’s background and needs. It is for this reason that I recommend that South Sudan use a mixed model of Consociationalism and Centripetalism combining the best aspects of both models of political power sharing. Many federal states have done so very successfully, such as Ireland, Malaysia, Fiji, and Lebanon.

South Sudan’s current model of political power sharing has many aspects of Consociationalism such as how the elites of South Sudan (politicians, businessmen etc.) were the main negotiators and drafters for all of the Peace Agreements and the subsequent government structures that were inclusive of all ethnic groups. However, an aspect of Centripetalism that might be worth

including as part of a new Federalist government is the assurance of multiethnic political parties such as the creation of South Sudan's own "Federal Character Principle" by, perhaps, rotating cabinet positions every presidential term to include a cabinet minister of a different ethnicity thereby being open to various political ideologies and a diversity of ethnicities so as to strengthen a national identity. The creation of geo-political sub-division which foster multiethnic cooperation so as to create a more moderate ethnic and political ideology should also be considered. Either way, South Sudan should strive to incorporate further aspects of Centripetalism into its new constitutional structure.

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D. Policy Brief #3; Judicial Structure in Federalism

Overview

- Federalism is the sharing of power between all three levels of government to create collective success for the state. However, what determines what powers go to which branch or person and what protects each level of government from imposing unjust laws on one another or their constituents? The answer to this question is twofold: The Constitution and the Judiciary.
- The Constitution of a state outlines the laws and powers of a government while also stating the rights of the citizenry.
- The Judiciary is the government body that both interprets the Constitution and protects it from those who wish to unjustly change it so as to increase their own powers and self-interests.
- The role of the judiciary can be best summed by Vice President Charles Evans Hughes:
 - “We are under a Constitution, but the Constitution is what the judges say, and the judiciary is the safeguard of our property and our liberty and our property under the Constitution.”

Judicial Structure Variations

- There are three primary concerns of Federalist republics when establishing a judiciary structure:
 1. Should Judicial power be separate among the various levels of government with each having its own jurisdiction and powers (federal, state, local)?
 2. Should Judicial power be divided among the three levels of government?
 3. Should the judiciary structural powers be shared among all three levels of courts?

- Federal Governments have created three judicial structures to answer each of these questions:
 1. Dual Court Systems: A system of judicial structure in which each court has hierarchy, and judicial power is divided between each court. So, if each state has its own problem then it would want its own court rather than the national court or local court to rule on the issue. The same logic applies for issues of national importance as well as local issues. If there is an interstate issue that arises then it will be assigned to a joint union court comprised of all states.
 2. Shared or Integrated Court Systems: Judicial power is shared in a way that leaves lower courts in charge of the states and regions while national courts are controlled by the union, meaning that this legal structure requires a decision on what specific legal issues will be assigned to each court. This is in comparison to dual court systems which is more legislatively driven in that legislation passed by the states will be decided by state courts and national legislation will be decided by national courts.
 3. Single Court Hierarchy: All judicial power and decision making is made by one court, typically the national court, regardless of the issue, parties involved, or region/state of origin.

Dual Court Structure: The Case of America

- America’s judicial system is of a Dual Court structure meaning that each court within America has its own hierarchy that cannot be intruded upon by other courts.
- The Supreme Court and the lower federal courts’ powers are vested within Article III of the U.S. Constitution which stipulates “The Judicial Power of the United States, shall be

vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”

- The lower courts are as follows
 - 13 U.S. Court of Appeals
 - 94 District Courts
 - U.S. Court of Claims
 - U.S. Court of International Trade
 - Other Courts (Tax, FISA for national security, Military courts, etc.)
- Cases concerning federal law start with the U.S. District Court and the Court of Claims and can then be appealed to the U.S. Court of Appeals, which can in turn be appealed to the U.S. Supreme Court.
- State Supreme Court cases are vested within the U.S. Constitution along with laws passed by state representatives.
- The Supreme Court of each state is the highest court within the state jurisdiction and is followed by a series of lower courts:
 - Circuit courts
 - District Courts
- States also have courts that deal with specific issues pertaining to citizens
 - Probate Court: Wills and estates
 - Juvenile Court: for minors (below age 18) who have committed crimes
 - Family court: Adoption, divorce, and settlement
- Parties dissatisfied with the lower courts can appeal their cases up to the State Supreme Court.

- Federal Courts handle the following cases:
 - Cases involving the constitutionality of a law
 - Cases concerning the laws and treaties of the U.S.
 - Cases on appointing ambassadors and public ministers
 - Disputes between two or more states
 - Admiralty (involving oceanic trade) law
 - Bankruptcy
 - Habeas corpus issues
- State courts handle the following types of cases:
 - Criminal cases (murder, theft etc.)
 - Probate cases such as wills and estates
 - Contract and Tort cases
 - Family and Juvenile cases

Shared/Integrated Court System: The Case of Canada

- A Shared/Integrated Court system is both simpler as well as more complicated than the American Dual court system style of judicial structure.
- More simplified: Judicial structure is very uniform; the courts are organized based on states and regions rather than on specific issues.
- Each province in Canada is allowed to establish its own courts, but the judges of those states are paid by the federal government.
- Each province has its own lower courts while the highest court in the land is the Canadian Supreme Court.

- The Canadian Supreme Court hears appeals from all lower courts in each of the states and makes decisions based on all cases heard from those courts, regardless of the subject matter (e.g., laws, taxes, or some other matter).
- However, when it comes to cases concerning the Constitution, the Supreme Court always decides on those cases. The lower courts do not even address this subject.
- There is no distinction between federal jurisdiction and state jurisdiction with many cases from both the federal courts and lower courts hearing cases that combine the two jurisdictions, which is why it's called a shared/integrated court structure.
- This is more simple than Dual Court System in that specific cases are not assigned to specific courts, thereby making court hearings more uniform. However, the Canadian Dual Court System is also more complicated because its dumping all the cases into both the lower courts and the federal courts without separating the cases accordingly.

Single Court Hierarchy: The Case of South Africa

- In South Africa, the judicial structure is formed entirely around the federal government with all the lower courts, middle courts and upper courts falling under the jurisdiction of the federal government.
- The Courts of South Africa are as follows:
 - Constitutional Court
 - Supreme Court of Appeal
 - High Courts, including any High Court of Appeal that may be established by an Act of Parliament to hear appeals from High Courts
 - Magistrates' Courts

- Other court(s) established or recognized by an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts
- While each of these courts may seem like they're on a state-by-state basis, they are not. Instead, all of these courts fall under federal jurisdiction which means that if an individual is dissatisfied with a Magistrate Court's decision, they can appeal all the way up to the Supreme court of Appeals even if that issue is on something non-constitution or non-criminal, such as taxes or a family issue.
- The Supreme Court of Appeals is on equal standing as the Constitutional Court. While the Constitutional Court is the supreme voice on all matter concerning the Constitution, the Supreme Court of Appeals has the final say on all other matters involving civil and criminal cases.

Policy Recommendation for South Sudan

The current judicial structure of South Sudan is one of a Dual Court judicial structure with both statutory laws and customary laws. Statutory laws are followed by the formal courts and customary laws (akin to Case Law in the United States) are followed by their respective ethnic groups not because of a legal mandate, but because that's what the ethnic group is culturally motivated to do. The relationship between these laws is unclear, but statutory laws are closely linked to the executive branch while at the same time many of the lower courts at the county and local levels are administered by the local government oftentimes misinterpreting statutory law for customary law due to the local courts being more chaotic, underfunded, and less-than adequately trained. There are numerous problems with the South Sudan judicial structure that I could write about, but for the sake of time and keeping these Policy Briefs short, the following recommendations are provided:

1. South Sudan should maintain its current dual court structure as I believe it suits the various ethnic backgrounds of the citizenry and, as such, this variety of citizenry have drastically different needs that must be met by various court levels whereby each of these courts are required to have a solid understanding of those unique cultural/ethnic problems.
2. I also recommend a number of reforms to the current national court structure with the reasoning behind each recommendation. First, the Supreme Court of South Sudan must be entirely independent of the Executive Branch so as to be impartial in all interpretations of the Constitution. To this end, I recommend that the appointment of Supreme Court Justices follow the model created by Canada, Germany, Portugal and many other in which Justices are appointed by a 2/3 majority in the National Legislature based on a list election of properly vetted, trained, and qualified candidates. In this way, all the candidates that are truly worthy of the court because of their background and experience are assessed by multiple leaders in the Legislature rather than just one person in the form of the President as the U.S. currently does. Recent recommendations by our President have been disappointing as well as embarrassing to the President since the nominee, upon being questioned, was found to be grossly unqualified. This suggested reform ensures the court has not been influenced by the President (e.g., Executive Branch) and as such will be far more impartial to the interpretation of the Constitution to all three branches of the government.
3. Next, I recommend that South Sudan adopt the principles of Judicial Review. Judicial Review is widely practiced in all federal states having a Supreme Court whereby the Supreme Court reserves the right to strike down any national law, state law, and/or

executive action it deems contrary to the Constitution. An addition of this judicial power to the new Federalist-based Constitution of South Sudan would create a tremendous amount of trust for the people of South Sudan since they would observe the central government voluntarily ceding power it currently possesses. This would also enhance the country's credibility and respect from foreign governments towards the leaders of South Sudan for the same reason. Relinquishing some executive power to the judicial branch is for the collective good of South Sudan.

4. Last, but not least, many judges and lawyers of courts in South Sudan were trained under the Sudan's Sharia-based legal system, which was spoken and written in Arabic. The official language of South Sudan is English. In order to make a more uniform legal structure and profession, future lawyers must be trained in English and in the British/American legal system so as to make it easier for the citizens that they are representing to understand them while also using the most modern and efficient legal system in the world. Of course, the clear problem with this recommendation is that many of the older citizens of South Sudan do not speak English. Hence, there would be a transitional phase where both languages would be necessary. Regardless, the practice of Sharia-based law should cease immediately.
5. The current law structure of South Sudan is formed around Statutory Law which are laws passed by the government, and Customary Law, which is formed by the local tribal councils and municipalities. These two legal forms are both used in South Sudan and often intersect with one another creating a very confusing and disorganized legal structure with many lawyers and citizens unsure of which law to follow. I do not know how to reform this aspect of the judicial structure in South Sudan and as such do not

even know how to make a recommendation as I am merely an undergraduate intern and not a legal professional. All I am doing here is bring dialogue and discourse to this problem in order to make it more widely known so that, if desired by MoFedA, a more experienced professional in the legal field can make a more thorough recommendation.

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E. Policy Brief #4: Fiscal Federalism; Overview

Fiscal Federalism is an aspect of economic/public policy within federalism that is concerned with the distribution of revenue among all political actors within a Federalist system, these actors being the federal government, state governments and local governments.

- A core theme of fiscal federalism is the decentralization and devolving of central taxing and spending power to the states so as to create a shared economy amongst all levels of government in a federalist state.
- Fiscal Federalism is an efficient means for balancing economic policy with public policy in a federalized state. A key aspect of this balance is the taxation system as regulated by a national tax authority. This is not to say that the national tax authority necessarily receives more revenue than the states, but rather that a national authority needs to facilitate and orchestrate the entire tax policy.

The various key theories, practices and history of Fiscal Federalism will be explained in the following policy briefs.

E.1. Policy Brief #5: Academic Description of Fiscal Federalism

Theories of Fiscal Federalism:

- There are three dominant theories of Fiscal Federalism that are practiced in Federalist states throughout the world:
 1. Fiscal Asymmetry with Fiscal Imbalance: Vertical Fiscal Imbalance (VFI). This describes an inappropriate allocation of revenue powers and spending responsibilities. VFI is remedied by the reallocation of revenue-raising powers to different levels of the national, state, and local governments.
 2. Fiscal Asymmetry Without Fiscal Imbalance but with a Fiscal Gap: Vertical Fiscal Gap (VFG). VFG describes a desirable revenue-expenditure asymmetry, but with a fiscal gap needing to be closed. VFG can be remedied by re-calibration of federal transfers.
 3. Fiscal Asymmetry Without Fiscal Imbalance and Without Fiscal Gap: Vertical Fiscal Difference (VFD). VFD describes a state of fiscal asymmetry where there is neither an imbalance nor a gap, and thus needs no remedial measure.

The VFI-VFG-VFD offers a nice framework to understand and debate issues surrounding Fiscal Federalism.

Policy Recommendation for South Sudan

My recommendation for the Republic of South Sudan concerning Fiscal Federalism is to identify the problem(s) truly and accurately with Fiscal Federalism in South Sudan, and to do so without influence from politics, corruption, external actors, NGOs, and/or foreign states having any type of ulterior motivation. Under South Sudan's current system, the federal government controls all of the revenues and assets of the states meaning that there are essentially and effectively no state

governments (at all) as nearly 100% of the wealth is concentrated and controlled by and within the federal government. This means that South Sudan has Fiscal Asymmetry with Fiscal Imbalance, with that imbalance being within the federal government as they control all revenues produced by the states. Furthermore, this means that the spending powers and revenue allocation powers currently controlled by the federal government must be devolved back to the states accordingly if Fiscal Federalism is ever to be achieved.

I am only an undergraduate political science student. My specialties are in politics, philosophy history, leadership, and public policy; not fiscal policy and finance. As such, I am merely identifying the problem to promote dialogue and discussion in order for a more experienced professional well versed in finance and fiscal policy to remedy the issue.

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E.2. Policy Brief #6: Comparison between IRS and NRA

Overview of U.S. Tax Policy in Fiscal Federalism

- One of the greatest and most influential U.S. Supreme Court Justices was Oliver Wendell Holmes Jr., who once said, “taxes are the price we as citizens pay for a civilized society”. This assessment is true for all federal states such as the U.S. where the Federalist policy concerning federal taxes is always vested within the federal tax authority. Similarly, state taxes and local taxes (e.g., cities like New York City in New York and counties like Prince William County in Virginia) have complete and total authority over their own taxes. These non-federal entities could theoretically tax individuals and businesses at an even higher rate than the federal government. However, if they did, the people and businesses in these geographies would simply and voluntarily move to another location with lower taxes.
- Although the tax authority in a federal government may be centralist by nature, it is in actuality a reflection of the citizenry as it is the citizenry who pays the taxes. Nearly all of the government benefits such as social programs, infrastructure, and education come from these taxes.
- The Internal Revenue Service (IRS) is the federal tax authority for the U.S. government and is responsible for the implementation and management of federal tax policy.
- The National Revenue Authority (NRA) is the federal tax authority for the Republic of South Sudan which, when compared to the IRS has many similarities as well as differences.
- Below contains a series of comparisons between the structure and tax policies of the IRS/NRA

Taxes for Individuals (Personal Income) in the IRS and NRA

South Sudan

Personal Income Tax	Percentage
Monthly income SSP 0- 2,000	0%
Monthly income SSP 2001- 5,000	5%
Monthly income SSP 5,001– 10,000	10%
Monthly income SSP 10,001- 15,000	15%
Monthly income SSP 15,001 & above	20%

United States Taxable Individual Income According to the IRS

Tax Rate	Income Ranges (Single)	
10.00%	\$0.00	\$9,950.00
12.00%	\$9,950.00	\$40,525.00
22.00%	\$40,525.00	\$86,375.00
24.00%	\$86,375.00	\$164,925.00
32.00%	\$164,925.00	\$209,425.00
35.00%	\$209,425.00	\$523,600.00
37.00%	\$523,600.00	

Assessment:

- Both the United States and South Sudan allow citizens to complete their own tax returns and pay accordingly. This contrasts with some other countries around the world where the government computes your taxes, but gives its citizens the right to argue with these

results if they desire. This prevents one from underreporting income and not paying what is due to the federal government.

2. The penalties for underestimated taxes are severe with the NRA as compared to the IRS. For example, a penalty of 200% of the taxes owed is assessed by the NRA for anybody who underestimated their income by a factor of two or greater.
3. What is remarkable about the NRA and is, perhaps the most significant difference in the two organizations is the breakdown of taxes received by tax bracket. Specifically, in the U.S. taxes are paid by nearly everybody, with only the lowest one or two percent paying no taxes at all. By comparison, in South Sudan the total taxes paid by the lower 98% of people is almost negligible because the lower 98% of people earn so little.
 - a. This situation causes us to wonder if the NRA should even bother taxing on an income basis, at all. Some of these people that are very poor may be wealthy in other ways (cattle, land, etc.). However, most are poor in all ways. Hence, South Sudan is embarking upon a program to collect tax revenue that will clearly cost the government hundreds (or thousands or even greater) times more than the amount of taxes actually collected for the lower 98% of the population.
 - b. By contrast, the U.S. makes money from everyone who they collect taxes for no better reason than it is a wealthier country.

Business Taxes in South Sudan According to the NRA

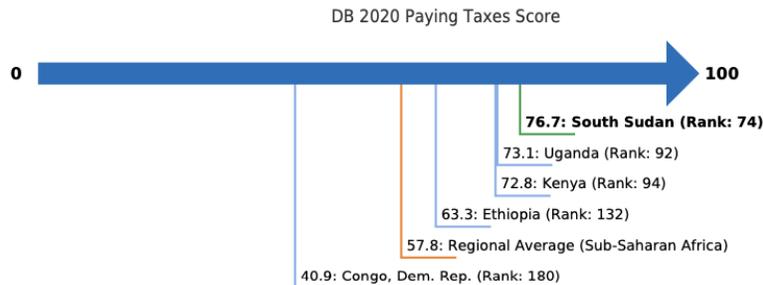
Paying Taxes - South Sudan

Indicator	South Sudan	Sub-Saharan Africa	OECD high income	Best Regulatory Performance
Payments (number per year)	37	36.6	10.3	3 (2 Economies)
Time (hours per year)	210	280.6	158.8	49 (3 Economies)
Total tax and contribution rate (% of profit)	31.4	47.3	39.9	26.1 (33 Economies)
Postfiling index (0-100)	95.9	54.7	86.7	None in 2018/19

Figure - Paying Taxes in South Sudan - Score



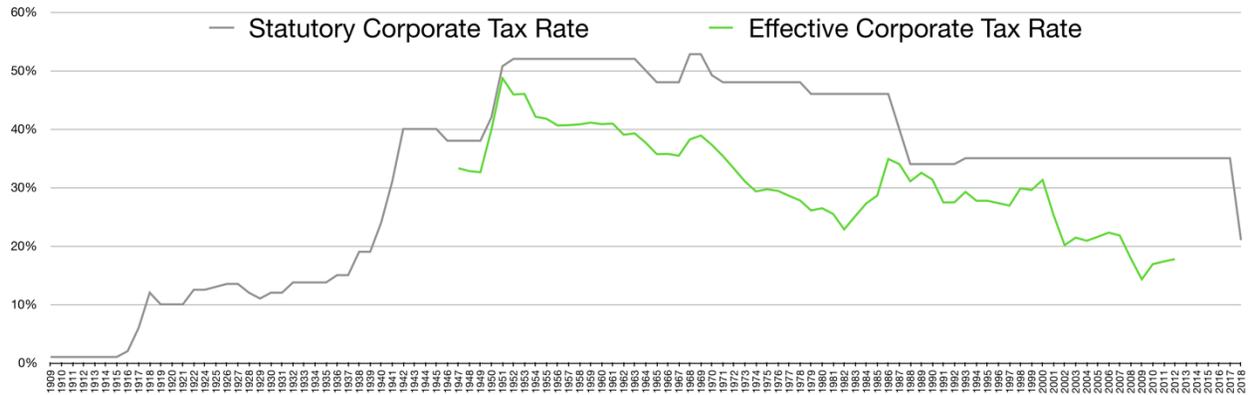
Figure - Paying Taxes in South Sudan and comparator economies - Ranking and Score



Note: The ranking of economies on the ease of paying taxes is determined by sorting their scores for paying taxes. These scores are the simple average of the scores for each of the component indicators, with a threshold and a nonlinear transformation applied to one of the component indicators, the total tax and contribution rate. The threshold is defined as the total tax and contribution rate at the 15th percentile of the overall distribution for all years included in the analysis up to and including Doing Business 2015, which is 26.1%. All economies with a total tax and contribution rate below this threshold receive the same score as the economy at the threshold.

Business Tax Rate as Computed by the IRS

U.S. Corporate Tax Rate



Personal Evaluation

This policy brief was both interesting as well as difficult to complete. On the one hand, I learned more about Fiscal Federalism and tax policy as performed by the IRS/NRA than I had ever learned before. On the other hand, I did not know much about either organization from the onset. As a result, this Policy Brief contains reliable information, but is not very effective explaining past policies and suggesting new policies for South Sudan since my area of expertise is with politics, constitutionalism, and political federalism as compared to fiscal policy. I apologize if this is not sufficient for the Ministry to use, but I tried my best given the allotted time and the resources I possessed.

Policy Recommendation for South Sudan

This recommendation is included with Policy Brief #8.

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E.3. Policy Brief #7: Structure of NRA

Overview

- The National Revenue Authority (NRA) is the revenue service of South Sudan and is responsible for the regulation of taxes, commerce, and implementation of such policies.

Main mission and values

- Vision: To be a modern tax administration in mobilizing non-oil revenue to achieve a tax-to-GDP ratio of 6% by 2027.
- Mission: To leverage on digital transformation and highly motivated staff to mobilize non-oil revenue for national development.

Core functions

- To evaluate, collect and account for all revenue or tax due to the government at the least possible cost to the public in agreement with the laws and specified provisions of the written laws of South Sudan.
- To counsel on matters relating to the administration of, and collection of revenue under the written laws or the specified provisions of the written laws of South Sudan.

Leadership

- Commissioner General: Dr. Patrick K. Mugoya (Kyle: Check to see if this is correct)
- Deputy Commissioner General: Africano Mande Gedima

Structure of NRA

- The NRA is an agency that, like many other government agencies in South Sudan, is intended to serve the people of South Sudan by ensuring that all taxes are paid in full so as to use those taxes for public works projects and social programs that can benefit the people.

- In order to accomplish this, the structure of the NRA is organized much akin to a pyramid with the Commissioner General at the top. He is appointed by and serves at the pleasure of the President.
- The next level down is the Deputy Commissioner General who also serves and at the pleasure of the President
- There are also various department heads of the NRA, each having their own specialized tasks and each also appointed by the President. These include:
 - Commissioner for Domestic Tax Revenue Division
 - Commissioner for Corporate Services
 - Commissioner for Customs Division
 - Commissioner for Internal Affairs
 - Commissioner for Internal Audit

How the NRA Utilizes its Structure to implement tax Policy

- The NRA is tasked with using the above-described structure to implement tax policy on individuals, businesses, and trade so as to use those funds for the benefit of all.
- It is not clear how much tax revenue is collected nor is it clear how much it costs South Sudan to support the NRA organization. It is widely suspected that the NRA tax structure is not effective since it costs so much to collect negligible amounts of tax revenue from predominantly impoverished citizens.

NRA Policy on Businesses

- The chart below shows one example of the NRA’s policy on getting credit in South Sudan along with the legal rights of South Sudan citizens and businesses concerning collateral measures concerning the repayment of a loan.

Getting Credit - South Sudan

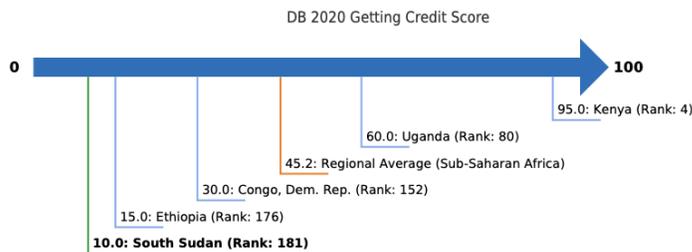
Indicator	South Sudan	Sub-Saharan Africa	OECD high income	Best Regulatory Performance
Strength of legal rights index (0-12)	2	5.1	6.1	12 (5 Economies)
Depth of credit information index (0-8)	0	3.9	6.8	8 (53 Economies)
Credit registry coverage (% of adults)	0.0	8.3	24.4	100.0 (2 Economies)
Credit bureau coverage (% of adults)	0.0	11.0	66.7	100.0 (14 Economies)

Figure - Getting Credit in South Sudan - Score



Score - Getting Credit

Figure - Getting Credit in South Sudan and comparator economies - Ranking and Score



Note: The ranking of economies on the ease of getting credit is determined by sorting their scores for getting credit. These scores are the sum of the scores for the strength of legal rights index and the depth of credit information index.

- The NRA also uses its structure to implement tax policy with businesses in South Sudan. The chart below shows the various taxes that businesses must pay not just to the government, but to all financial actors that are invested within the business. These include expenditures include rent, licenses or other fees that come from owning a property. Failure to make these payments can result in legal consequences from the NRA.

Details - Paying Taxes in South Sudan							
Tax or mandatory contribution	Payments (number)	Notes on Payments	Time (hours)	Statutory tax rate	Tax base	Total tax and contribution rate (% of profit)	Notes on TTCR
Employer paid - Social Security Contributions	12.0		78.0	17%	gross salaries	19.18	
Business Profit Tax	5.0		54.0	20%	taxable income	9.16	
State Retail Trading License	1.0			SSP 4000	fixed fee	1.53	
State Development Tax	1.0			SSP1200		0.46	
Interest Tax	1.0			10%	interest income	0.26	withheld
Company License	1.0			SSP580		0.22	
South Sudan Chamber of Commerce	1.0			SSP700		0.21	
Stamp Duty on insurance contracts	1.0			8.5% as of July 1, 2014	insurance contract	0.18	
State tax clearance certificate	0.0	jointly		SSP300		0.11	
State tax identity card	1.0			SSP100		0.04	
Sales Tax	12.0		78.0	15%	gross sales	0.00	withheld
Employee paid - social security contributions	0.0	Withheld		8%	gross salaries	0.00	not included
Fuel Tax	1.0			15% for state fuel tax and 0.5% for national fuel tax		0.00	small amount
Totals	37		210			31.4	

Personal Evaluation

This policy brief was both interesting and difficult to complete. On the one hand, I learned more about the structure of the NRA than I had ever learned before. The NRA is clearly an integral part of implanting tax policy in South Sudan. On the other hand, I did not know much about this topic to start off with, and so this policy brief, while having reliable information is not as

effective at explaining past policies and suggesting new policies for South Sudan. My areas of expertise are politics, constitutionalism, and political federalism as compared to fiscal policy. I apologize in advance if this is not sufficient for the Ministry to use, but I tried my best given the allotted time and the resources I possessed.

Policy Recommendation for South Sudan

This policy brief recommendation is under policy brief #8 due to its similarity to the subject of Taxation.

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E.4. Policy Brief #8: Taxation

Overview

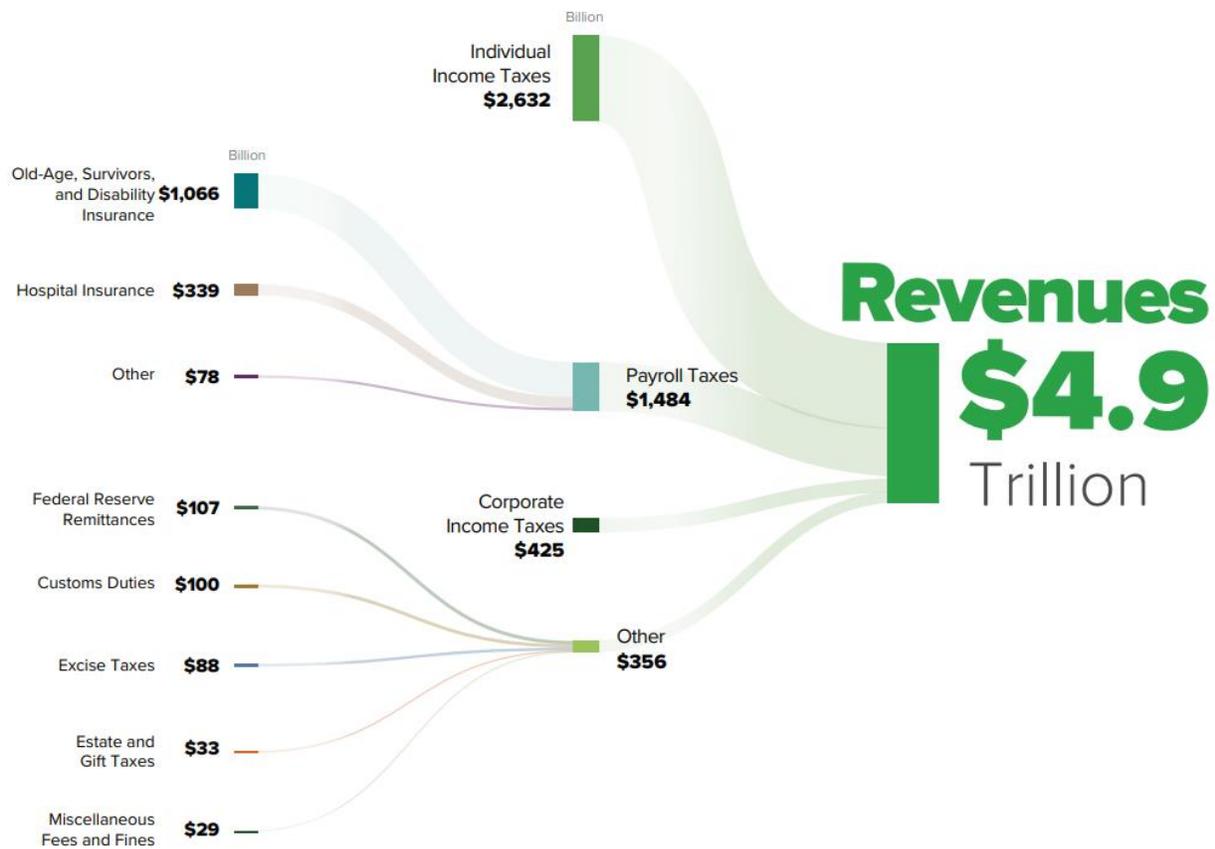
- The key to any working federative republic is the ability for a government to tax, and for that government's citizenry to pay those taxes in turn.
- South Sudan is no different, and for South Sudan to grow as a democracy and republic effective tax policy must be implemented in a way that is fair to all parties involved.
- Taxes are implemented in a variety of ways among federal states across the world. The most successful of these states being the United States, France, and Germany whose various models, methods and efficacy will be analyzed below.

Taxation in the United States of America

- Taxation in the United States reflects its Federalist system and values of its government and citizenry in that the federal, state, and local governments all have their own tax rates and jurisdictions.
- The federal government's main power concerning taxation is Congress's constitutional mandate that "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."
- To this end, Congress requires a yearly federal income tax on all individual citizen salaries, small businesses, massive corporations, estates, and trusts accounting for nearly 25% of America's GDP.
- Both the federal government and state governments exercise this tax due to the need for a tax that is not just for everyday citizens, but also on corporations and other entities that can stimulate public works programs through these taxation payments.

- However, the rules and rates of income tax varies between the federal and state governments:
 - The federal government seeks to create a more progressive society that protects low-income individuals by creating a progressive income tax in which lower income warrants a lower tax percentage (e.g., rate), and a higher the income warrants a higher tax rate.
 - However, some countries are more politically conservative, and their state taxes are not progressive but are instead a flat tax for all, no matter a citizen’s socio-economic or financial background.
- Other federal taxes include Social Security and Medicare. Medicare’s annual payments allow a citizen who is elderly or disabled to receive healthcare free of charge as many are unable to otherwise afford healthcare in the United States. The current Medicare tax rate in the U.S. is 2.9% and is split between an employee and employer.
- Social Security is another federal tax that pays for retirement of every citizen past the age of 65 for healthcare, survivorship, and other benefits.
- In addition to federal taxes, state taxes are just as crucial, paying for such public benefits as roads, education, and public maintenance.
- State taxes include a sales taxes on goods and services as well as registration fees (e.g., taxes) for car registration and licensing.
- Local taxes are less influential than federal and state taxes, but are still nonetheless important with taxes on licenses and payroll often paying for the local police force sewage maintenance. Local taxes also often include property tax for real estate as well as an additional tax for cars.

- The graph below illustrates the total tax revenue flow in the U.S.

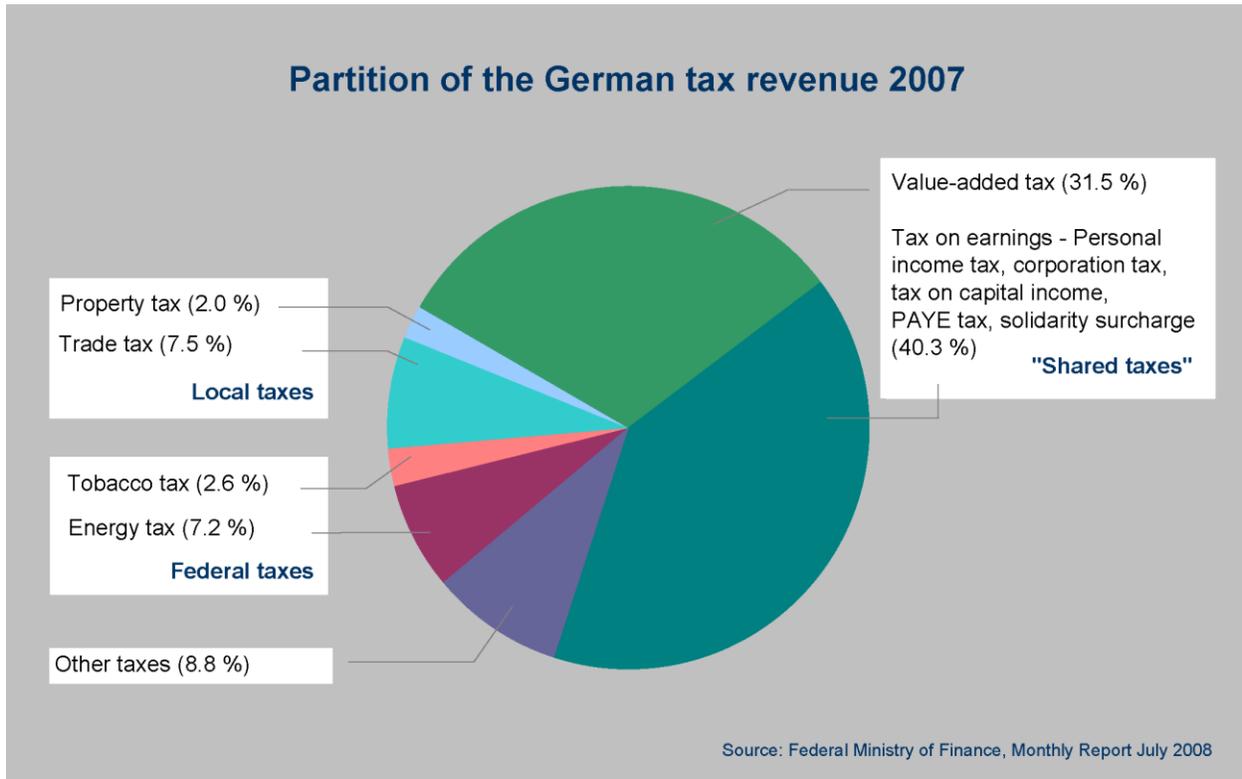


Germany

- Germany’s tax system is very effective among all Federalist states, and second only to the United States. It operates much like the United States by implementing tax policy on the federal, state, and local levels.
- The legal basis for taxation in Germany, just like the U.S., is vested within the German Constitution.
- Overall tax policy is decided on a joint basis by both the federal and state government due to the fact that all policy is implemented by the states. This means the federal government must reach a compromise with the states before implementing tax policy.

- Despite the necessity for states and the federal government to work jointly, over 95% of taxes are imposed at the federal level; the other 5% is made up of excise and other minor taxes by the states as well as by sales taxes by local municipalities.
- German Federal taxes include
 - Income tax
 - Customs tax
 - Social Security tax
 - Corporation tax
 - Property taxes
- German state taxes include
 - Inheritance tax
 - Real property transfer tax
 - Taxes on beer and gambling
 - Fire protection tax
- German Local taxes include
 - Real property tax
 - Taxes on other beverages, dogs, and inns.

Figure Below: German Tax Allocation



Policy Recommendation for South Sudan

This recommendation combines the findings from Fiscal Federalism Policy Briefs #6 - #8 as a result to these three topics being similar and/or overlapping. The recommendations will be as follows: a) Taxation Policy, b) NRA Structure, and c) IRS/NRA comparison. This may be slightly out of order, but it makes more sense to order the recommendations in this manner due to the content of each recommendation.

Taxation policy

Current taxation policy in South Sudan is organized very similar to the United States whereby all citizens have to pay taxes, both rich and poor. In all likelihood, and NGO funded by the United States Government helped design the country's current tax policy. However, if one looks

at the graph on American tax revenues, they are far larger than South Sudan's at over 4.9 trillion dollars. America's economy is far larger and more affluent than South Sudan, meaning that the citizens are also far more well off economically on average. South Sudan by comparison has most of its citizenry living below the poverty line with barely any income to afford for food. So, the big question is: Why South Sudan is using a tax system that is for a far more developed country when South Sudan's citizens are, on average, impoverished and among the poorest people in the world? I do not know the answer to this question, but am quite confident that the current tax policy is neither optimal nor appropriate.

An alternative tax system for South Sudan that would benefit the entire country would be to tax only larger businesses as well as only those people within the top 10% of income earners in the whole country. This would take the stress off of those citizens who cannot pay their taxes due to being impoverished. Regardless, any taxes paid by the vast majority of South Sudan's citizens are negligible since it likely costs far more to collect these taxes than what is actually collected. The current tax policy is a costly and inefficient process, and net-net generates little to no revenue. This new policy would garner positive revenues and pay for projects by taxing those who have the most wealth in the country rather than just hoarding it to themselves and use it for the public good.

However, one enormous problem about the current as well as the proposed tax system is how to enforce it? One aspect of the American tax system that has this covered are the IRS's Criminal Investigation Agents. These IRS Agents main job is to perform tax audits on income, companies, and other organizations. Their most important job, however, is to make arrests on citizens or companies who fail to file or pay their taxes. These individuals are under the jurisdiction of the IRS' own court known as the United States Tax Court. Individuals who are arrested by the IRS

are *guilty until proven innocent* of not paying taxes. This is counter to the remainder of the United States' legal system where a person is *innocent until proven guilty*. If an individual is tried by the U.S. Tax Court and fails to prove their innocence, they can be assessed large fines and sent to prison.

I recommend that the President Salva Kiir of South Sudan create a law enforcement agency for the NRA similar to the IRS Tax Courts. The director of this agency need not be a person of financial background, but simply a leader who is capable of making tough decisions and enforcing the tax laws of South Sudan while also being trusted by the President to enforce these tax regulations. The agency head should, of course have some understanding of financial matters, but the main objective of their office is tax law enforcement rather than tax management. The law enforcement officials of this new agency should have some prior law enforcement background and understanding of financial matters as they will be the ones who do the tax audits and arrests if needed. An NRA court should also be established along with NRA lawyers to serve as prosecutors so as to create a separate and independent court that will be free of influence from outside actors. This all sounds intimidating, but we have to keep in mind that virtually nobody in South Sudan pays their proper taxes. Billions of dollars of oil revenue are paid to a variety of people each year, and none of these people are paying their taxes. If they were, the NRA would have tax revenue of hundreds of millions of dollars. They don't.

Lastly, in order for this new branch of the NRA to have legitimacy when enforcing the tax regulations on the top 10% of earners in South Sudan there must be precedent. This precedent, I believe should be President Salva Kiir paying his own taxes on what he owes from all his assets in government and the private sector. He is one of the top 1% of earners in South Sudan and by showcasing himself as the first person to pay taxes he will induce the other top 1% earners in

South Sudan to know that he is serious and that he expects everybody to pay their taxes, regardless of who how rich or influential any one citizen is. As a result, if a wealthy top 10% earner does not pay their taxes or under reports their taxes, then they are disobeying the will of the President because why should the President pay taxes and not that individual? This means that NRA Agents will have legitimacy and full legal jurisdiction when arresting tax evaders, trying them in an NRA Tax Court, and if need be, imprisoning them.

Overall, a taxation system such as the one suggested above would create less stress on the impoverished low-income earners of South Sudan (90% of population) while at the same time ensuring that the high-income earners within the top 10% will pay their dues through the creation of this new NRA law enforcement agency modeled after the IRS Agents in the United States.

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E.5. Policy Brief #9: Resource Allocation & Formula in Federalism

Overview

- Resource Allocation is one of the most complex topics within federalism due to the fact that it is very hard to define.
 - Resource Allocation could mean the allocation of natural resources in a way that is fair to both the federal government and the states while at the same time considering the resources that will be invested into extracting those natural resources from the Earth.
 - Resource allocation by the same token could mean the balance of resources between the states and federal governments in the form of revenue, goods, services, military supplies, and many other types of resources.
- To discuss this complex issue, this Policy Brief will mainly be discussing natural resource control concerning such resources as minerals, oil, gas, and land. I will only be discussing this aspect of resource control as it is the most effective means of explaining resource control in a cohesive model.

Resource Allocation in Nigeria; Background

- Nigeria is a federated state that at the time of independence was divided into three regions, each having its own corresponding ethnicity:
 1. North-Hausa Fulani
 2. West-Yoruba
 3. East-Ibo
- At the time, all the oil producing states were in the hands of the minority ethnic groups while the non-oil producing states were in the hands of the majority ethnic groups. This

situation continues to this day. However, it is the majority ethnic groups who control and work within the government and thereby control all the machinery and wealth needed to extract the oil and other resources. These same people decide where the revenue from this oil is allocated, further perpetuating the age-old tension between federal and state government in Nigeria.

- The resource allocation issue in Nigeria also “...has a very great potential for conflicts, especially between rich and poor regions or state in Nigeria. In fact, it was ethnic conflict which largely explains the origin of centralization of fiscal powers in Nigeria today” (Egugbo 187)
- This makes Resource Allocation one of the most important aspects within the Nigerian Federal model of government.

Resource Allocation in Nigeria; Problems

- The main issue of resource allocation in Nigeria and the creation of a fair and equitable formula to share those resources is that all the regions where the oil is located are controlled by the ethnic minorities and as such would be biased in creating an effectively equitable revenue sharing formula.
- It was for this reason that the Nigerian government began the Systematic Reduction of the Principle of Derivation (Derivation Principle), which states that if natural resources in any state are exploited and yield revenue, then a certain percentage of that revenue should be given back to that State while the rest will accrue to the Federation’s account to the benefit of other states in the region. This has been occurring since the 1970’s as a method of revenue sharing.

- The overall agitation and conflict for revenue control in Nigeria was borne out of a deep-seated mistrust of the minority ethnic groups by the majority ethnic groups (who controlled the government) with accusations of marginalization, cheating and deprivation by the majority, who have dominated the central government ever since Nigeria's independence.
- Originally, in the 1990's Nigeria was able to ensure equitable distribution of all fiscal resources/revenue through the Federation Account in the Nigerian Constitution where all accounts' revenues for the federal government are paid. This section of the Constitution also enacts the Principles of Allocation, which include population density, equality of states, internal revenue generation, landmass, and terrain. The provision is, however, subject to an overriding proviso, which states in part: "provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the federation account directly from any natural resources" (Egugbo 191).
- However, despite the 1999 constitution which was supposed to commence on the 29th of May 1999, close to about one year in office of President Olusegun Obasanjo, the Principle of Derivation was pegged at one percent leaving an outstanding balance of twelve percent each month to the detriment of the recipient states. "Therefore, apart from the reduction in the derivation principle in sharing revenue in Nigeria, the delay in the implementation of the 13 percent provided for the 1999 Constitution as amended instigated the Governors of South-South to agitate for resource controllably stipulating at least 13% derivation principle of the revenue of the federal government from the allocation of resources" (Egugbo 191).

- The table below shows that the Principle of Deprivation in Nigeria has radically changed from its initial equal revenue sharing allocation of 50% (1960 – 1970) to as low 1.5% (1984 - 1992) to its current level of 13% (although only 1% of revenues are actually being shared).

Table 1: Changes in the Derivation Component of Revenue Allocation

Period	Share of Derivation (%)
1960-1970	50
1970-1975	45
1975-1980	20
1980-1983	2
1984-1992	1.5
1992-2000	3
2000 till date	13

Source: Compiled from Jega 2007, pp. 203-245, Mbanefoh & Egwaikhide, 1999, pp. 213-231

Policy Recommendation for South Sudan

My policy recommendation for South Sudan intends to prevent a reoccurrence of Nigeria’s poor outcome with respect to Resource Allocation. The following key suggestions are provided for consideration.

1. Ensure that the current government is based on a political power sharing agreement that gives all ethnic groups an equal say, even the minorities. Nigeria did not have a stable power sharing system at the time of their Resource Allocation formula being crafted due to the majority ethnic groups having most voting power within the federal government taking control of resources that were located within the minority ethnic groups’ lands.
2. Upon ensuring the government’s power sharing agreement is fair and equitable between all states, the new government must devolve some powers concerning the extraction of resources to the states so as to allow the states to extract their own resources.

3. Lastly, once those powers have been devolved and all political actors have agreed to these new terms, a resource allocation formula can then be crafted in a way that uses Derivation so as to give states the autonomy to extract their own natural resources before giving a portion of those revenues back to the federal government.

My recommendation for this resource allocation formula is based on Canada's resource allocation model. This model consists of each Canadian province being in charge of resource extraction in each of their own respective provinces while also keeping all (100%) of the revenues from that extraction. Meanwhile, the federal government is in charge of the international trade of those minerals to other countries and receives revenues from that trade by imposing export tariffs and fees. Although this raises the final price, it ensures that both federal and state governments play a critical role in the resource's exportation. Neither party can operate without affecting the other. In this way, the states make revenues based on the extraction of their own resources while the federal government makes revenues through the international trade of those resources.

I believe South Sudan could greatly benefit from this system as it would give states more autonomy and be independently self-sufficient through resource revenue. At the same time, this would allow the federal government to still receive large amounts of revenue from international trade tariffs and export fees.

Personal Evaluation

This policy brief was very enjoyable and interesting as I gained insights into the resource and allocation formula of Nigeria and how dysfunctional it is, despite the country's best efforts to make it work. Using that, I was able to make policy recommendations on what to do, but even more importantly, on what not to do when South Sudan is setting up its own resource allocation

formula. Although I recommend that South Sudan follow Canada’s resource allocation formula, the final and best decision on this topic is up for debate. Here, I have provided my best policy recommendation based on the information that I gathered and on my limited experience on this topic.

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E.6. Policy Brief #10: Borrowing and Federal Grants & Federalism

Overview

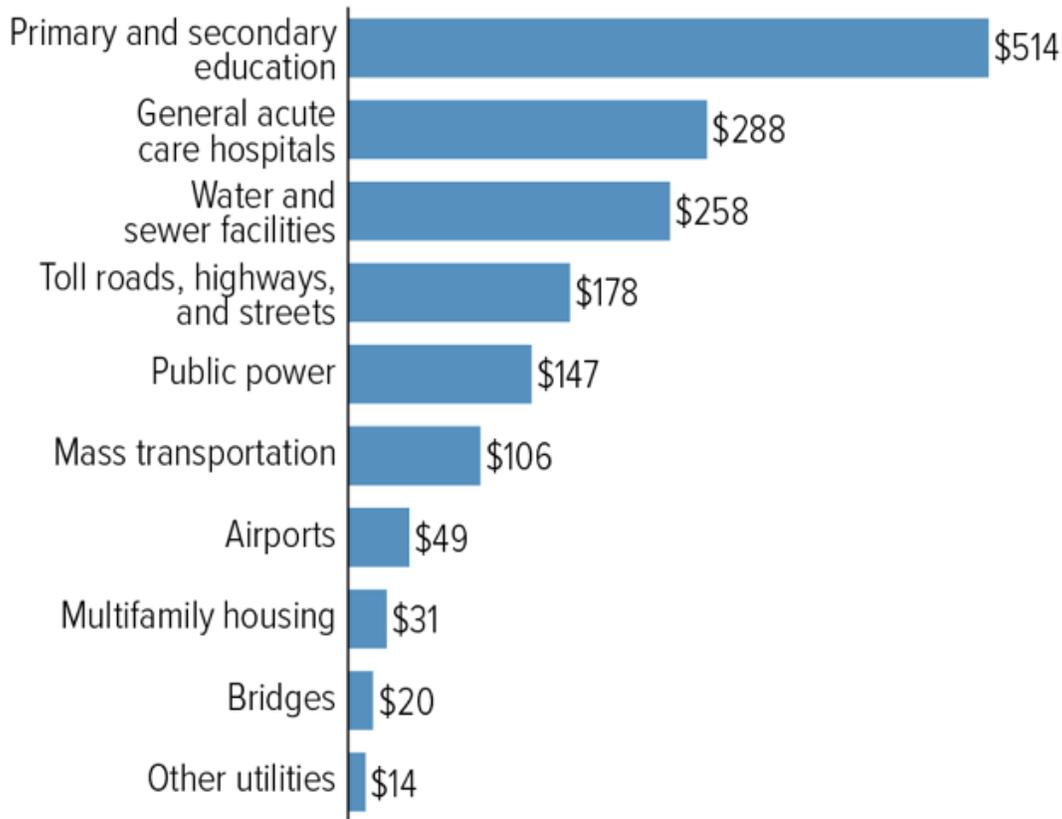
- The use of borrowing and federal grants among state and local governments in federalism is a frequent method of governance used by the central government to foster a positive relationship with the state and local governments.
- Borrowing consists of the issuance or guarantee of bonds from the federal government to the state and local governments to help pay for such projects as infrastructure (roads, bridges, etc.) schools, and hospitals. These public structures will, as while public buildings be used for decades. However, they have large up-front costs, and so borrowing allows those costs to be spread out in a more cost-effective way than taxes would ever allow. Borrowing also allows project to be done much sooner, as compared to waiting years or decades for the economies to have grown sufficiently large to pay for these projects directly.
- Federal Grants operate on a similar principle as borrowing in that they are a form of aid given by the federal government to help pay for public projects. However, unlike borrowing, federal grants are given out without and expectation of being paid back due to these grants being used for such public works as housing, healthcare, education, and clean water. These types of projects to not have as large upfront costs like infrastructure, and as such do not need to be spread out over many years to stimulate capital gains to pay for that infrastructure. Instead, these federal grants can be used to help aid these projects, many of which are for low-income citizens who, without these grants would not otherwise benefit from these central-government programs.

State and Local Borrowing System in the United States

- The purchase of federal bonds by state and local governments is essentially a long-term debt incurred by the state and local governments to pay for capital expenditures. This includes the construction of roads, hospitals, libraries, schools, and bridges.

State and Localities Borrow to Build Schools, Roads, and Other Infrastructure

Bonds issued for ten largest infrastructure purposes, 2003-2012
(figures in billions)



Source: National Association of Counties report of Thompson Reuters data

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

- As shown by the graph above, the state and locality borrowing rate in the U.S. reflects the infrastructure being made. For example, the graph above shows that 514 billion dollars

was borrowed over the course of 9 years between 2003 and 2012 to pay for primary and secondary education in the U.S., which means that school building is the largest sector of bond issuing/borrowing in the United States.

Positive Effect of the Borrowing System on U.S. States

- State and Localities' Current Debt Payments are Low
 - Interest payments on debt are at an all-time low since the census began in 1977 at just a 3.1% average of current spending in 2015. Interest payments made up less than 5% of total state spending in every state except Rhode Island.
- Interest rates are low, which means borrowing is inexpensive
 - “To keep the recession from worsening and to promote an economic recovery, the Federal Reserve kept the federal funds rate — the short-term interest rate that banks charge to borrow from each other — close to zero from late 2008 to late 2015. This, in turn, reduced the interest rates charged for other types of loans, including bonds purchased from state and local governments. Now that the Federal Reserve is raising interest rates, this opportunity may diminish soon but the Congressional Budget Office projects that interest rates nevertheless will remain below historical levels” (Center on Budget and Policy Priorities).
- New infrastructure projects boost the economy by creating construction jobs while the infrastructure is being built, which in turn leads to an increase and spending and a corresponding influx of even more jobs in those regions.

Risks and Safeguards of Borrowing:

- The only risk in creating a borrowing system that uses bonds issued by the federal government to help pay for infrastructure is that a state could borrow so much in the form

of federally issued bonds that it crowds out that state's budget, preventing any spending on other projects because the long-term debt is long term, which means those payments are also long term. This makes it almost impossible to balance the budget since the state is operating on nearly all borrow funds.

- This occurred in the 1960's when President Johnson first issued these bonds as part of his Great Society Program, but the states did not understand how they worked yet and as a result became severely indebted to the federal government. Johnson subsequently used this debt as leverage to force each state's Representatives in Congress to pass his legislation and for the state governments to implement Johnson's policies even if they did not want to. This was part of a new government model that he called Creative Federalism, or the creation of policies that were skewed/slanted to increase the federal government's power.
- There are several methods states use to prevent this Creative Federalism. They include:
 - Setting a cap on the amount of bonds that can be bought by the state government in any year.
 - Setting a cap on total debt as a share of the state's economy, or a cap on annual interest payments as a share of state revenues.
 - Alternatively, some states have no such limits and can spend as much as they want to, depending on the administration.
 - On the other side of the coin, a few states are outright prohibited from issuing general obligation debt. It all depends on each state's party line on federal borrowing with many Republican States despising it due to their views supporting

state autonomy and many Democratic States supporting it due to being more centralist in political leanings.

- States and localities also regularly perform a formal debt affordability analysis and make this information public.

Federal Grants

- Federal Grants, much like borrowing, are designed to help the states finance projects and public works that the state cannot do by themselves.
- They are a massive part of state economies. For example, in 2019 the federal government distributed about \$721 billion (about 16 percent of its budget) to states and localities, providing about one-quarter of these governments' total revenues.
- This is shown by the graph below which illustrates how much each state was given in Federal Grants in 2017.
- However, unlike borrowing/bonds, federal grants do not have to be paid back and are designed to serve as a boost to the local economy due to the massive influx of wealth that results from them.
- Federal grants are given out as a means to:
 1. Devolve or share responsibility for a given service or function because state and local governments have better information on how to fund that service.
 2. The federal government may offer states and localities incentives to undertake additional spending benefiting neighboring jurisdictions or the country as a whole.
 3. Strengthens intergovernmental cooperation between the state and federal government.

Federal Grants to States, State Fiscal Year 2017 [↗](#)

State	Federal Grant (Millions)	Share of State Spending
Alabama	\$9,911	37.9%
Alaska	\$3,830	38.0%
Arizona	\$14,924	36.0%
Arkansas	\$7,697	31.4%
California	\$96,195	35.6%
Colorado	\$9,121	26.9%
Connecticut	\$6,153	19.9%
Delaware	\$2,171	20.3%
Florida	\$26,777	32.5%
Georgia	\$13,677	27.8%
Hawaii	\$2,571	17.5%
Idaho	\$3,004	34.1%
Illinois	\$16,387	24.4%
Indiana	\$12,580	39.2%
Iowa	\$6,664	28.8%
Kansas	\$3,834	24.0%
Kentucky	\$12,353	36.6%
Louisiana	\$12,255	38.2%
Maine	\$2,603	31.5%
Maryland	\$12,876	31.1%
Massachusetts	\$11,490	18.5%
Michigan	\$22,874	41.9%
Minnesota	\$10,868	27.6%
Mississippi	\$9,195	41.1%
Missouri	\$8,186	32.0%
Montana	\$2,810	40.4%
Nebraska	\$3,030	25.5%
Nevada	\$4,476	32.8%
New Hampshire	\$2,221	37.1%
New Jersey	\$16,143	26.7%
New Mexico	\$7,635	41.4%
New York	\$52,985	33.7%
North Carolina	\$13,274	28.4%
North Dakota	\$1,886	26.1%
Ohio	\$12,528	18.3%
Oklahoma	\$7,144	30.7%
Oregon	\$10,189	25.5%
Pennsylvania	\$29,406	36.4%
Rhode Island	\$3,185	34.2%
South Carolina	\$8,184	33.3%
South Dakota	\$1,419	33.6%
Tennessee	\$13,420	39.8%
Texas	\$46,870	37.1%

Three Types of Federal Grants

1. **Categorical Grants:** Given out to states to fund a specific purpose. For example, providing nutrition under the Special Supplemental Nutrition Program for Women, Infants, and Children, also known as WIC. Other grants are even more narrow, such as support for a specific road or bridge.
2. **Block Grants:** Given out for a more general use in programs undertaken by the state. For example, assisting needy families and promoting work under the Temporary Assistance for Needy Families (TANF) program, or building a set of office buildings for the state government.
3. **Formula Grants:** Formula grants allocate federal dollars to states based on formulas set in law and are used for such things as the number of highway lane-miles, school-aged children, or low-income families. A great example of this is the federal-state Medicaid program, which provides subsidized health insurance to low-income households.

Mandatory vs. Discretionary Grants

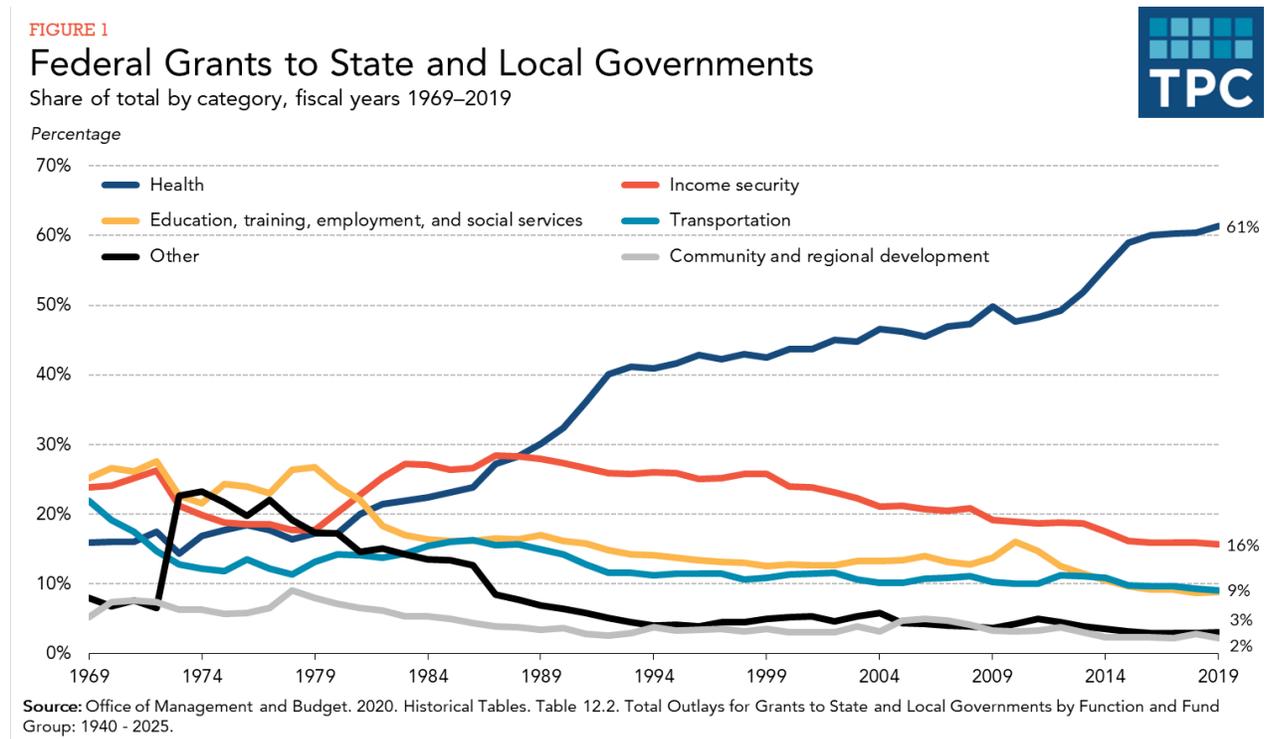
- Mandatory Grants are grants that are required by the federal government to give out to states due to their importance being stipulated within the federal budget to support low-income families in the U.S.
 - Mandatory grants to state and local governments totaled \$474 billion in federal fiscal year 2017.
 - \$391 billion, or 83 percent was for Medicaid and the Children's Health Insurance Program (CHIP).
 - An additional \$83 billion funded numerous other programs for families and children.

- Discretionary Grants are set each fiscal year by Congress and can be increased, limited, or outright rejected every year if Congress does not want to give them out to the states.
 - Discretionary grants to state and local governments totaled an estimated \$201 billion in federal fiscal year 2017.
 - The largest of these grants was for transportation (highways, roads, airports etc.).
 - Other programs were for low-income families, the elderly, the disabled and the fostering of community development.

Impact of Grants on State Economy and Government

- The impact of these federal grants on U.S. states is largely positive with many state and localities substituting federal grants for some of their own spending allowing the financial stress to be taken off of their own limited budgets.
- One political scientist found that \$1.00 of unrestricted federal aid stimulated \$0.36 in state and local spending, \$0.28 in lower state and local taxes, and \$0.36 in higher fund balances or saving.
- These expenses and trends can be shown in the following graph below

Use of Federal Grants by State and Local governments in the United States



Policy Recommendation for South Sudan

I suggest that South Sudan follow the United States’ model of borrowing and for administering federal grants. As seen by the information above, the American style of borrowing and federal grants is arguably the most comprehensive and efficient model in the world and has many qualities which would benefit South Sudan. I have listed below some aspects of the American model of borrowing and federal grants which could be incorporated within the new Blueprint to Federalism for the MoFedA.

1. The first step to creating an effective borrowing and federal grants system is the creation of a Federal reserve where all the funds and bonds that will be given/purchased by the

states can be managed. This Federal Reserve will also need a director and numerous staff members and employees who can manage the various federal grants and bonds that are issued to the states so as to create a more cohesive and efficient federal grant and borrowing system. These executives and employees must all be 100% trustworthy and not become involved with corruption since as soon as one person becomes corrupt, everybody else follows suit.

2. Borrowing and bonds cannot be issued to the states before federal grants. This is because that the states will essentially have no way of paying back those bonds that are issued and will become even worse off economically than they are now. The only way that a state can borrow funds is by being deemed capable and worthy of paying the funds back.

Currently, none of the states are considered financially capable and responsible of doing so. The South Sudan government could serve as a Guarantor for the states, but the South Sudan government is not currently believed capable or responsible of paying back debt, either. Hence, the only way to get funds from the central government to each state government is through a grant.

3. Instead, to start off with, one Categorical Grant should be given to each state with a fixed public works goal to be used for that grant. As mentioned above, Categorical Grants are typically used for specific public works projects that have a specific amount and timeframe needed to be completed, such as a bridge or a road.
4. Each state will be given this one Categorical Grant to start off with. It does not matter whether this grant is used to build a new bridge or road. What does matter is that when the federal Categorical Grant is given, a contract should be signed between the governor/minister or whoever is representing the state government along with the Federal

Reserve Director stating that the public works project, let's say a bridge that the categorical grant is funding must be completed in a set amount of time such as 1-2 years. If it is completed within those two years, then additional grants will be provided and the states will also be given a chance to purchase bonds (assuming that the federal government can, itself, borrow money to re-loan to its states) so as to continue to stimulate the economy through those public works projects.

5. However, if the bridge has not been completed within the pre-agreed timeframe, then those additional categorical, block and formula grants that would have been provided to the state will be cut off.
 6. In this way, the state will not be tempted to slow down the process of building that bridge in favor of using the categorical grants funding for their own personal ends since to do so would be preclude getting additional funding later on.
- I believe that if this policy proposal is implemented, then federal grants can stimulate and fund state governments and economies to be self-sufficient rather than relying entirely on the government to build roads and other public works projects for them.
 - In addition, the initial “carrot and stick” method will dissuade states from just taking the funding from the federal government and using it for their own corrupt interests as there will be a promise of additional funding if the grant is used to complete the public works project in the allotted timeframe.
 - Lastly, once the initial grant is given with successful execution, and subsequently more federal grants are given out after the first categorical grant proves fruitful, the economy will be stimulated from job creation for those public works projects. Once this occurs, states can

then begin their own borrowing scheme to purchase federal bonds and/or borrow against their own assets as they will be able to pay them back rather than just going further into debt.

- All of this could be made moot if the state official just takes the initial Categorical Grant and uses it for their own ends. If so, then a reevaluation on the South Sudan federal grant and borrowing system will need to be made. However, it is fortunate that the total loss is limited to only the initial project-based grant, and not as big a loss as it would be if a massive amount of grant funding had been given in the form of a Block Grant.

Personal Evaluation:

This policy brief was very enjoyable and interesting as I gained insights into the borrowing and federal grant system of the United States which arguably is the most effective in the world. I hope that the policy recommendation that I gave for South Sudan will benefit the states of South Sudan in stimulating their economies and creating an effective Federal Reserve system for the Republic of South Sudan.

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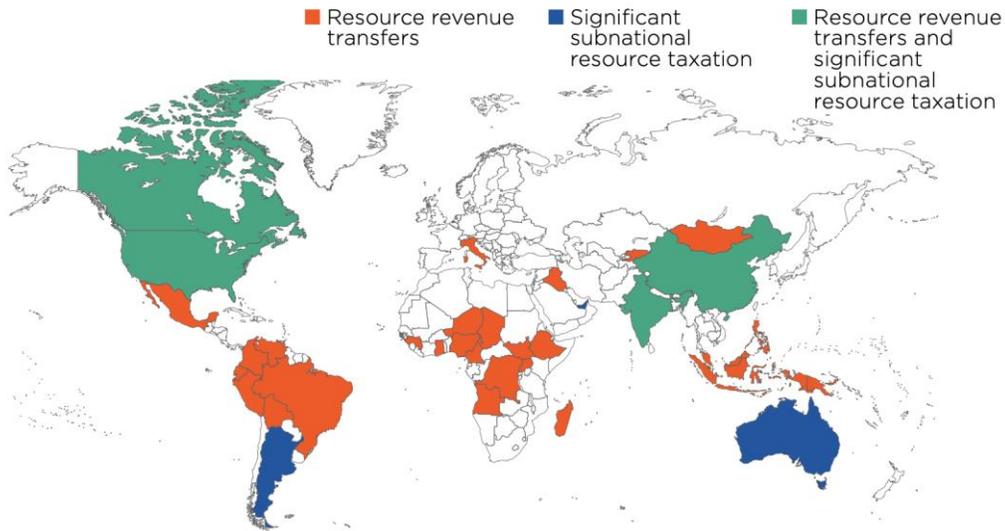
F. Policy Brief #11: Natural Resource Management & Federalism; Overview

- The principle of natural resource management in federalism is the even distribution of revenues from the harnessing of natural resources in the various regions of a Federalist country between the state governments and the federal governments.
- All federal countries use this principle of fiscal federalism as natural resource revenue is one of the biggest sources of revenue in any country, federalized or not.
- There are three main government models of revenue sharing from natural resource management.
 1. **Resource Revenue Transfer:** Resources are extracted by the federal government and a portion of revenue is transferred back to the states. (e.g. Brazil, Cameroon, Chad, Ghana, Indonesia, Nigeria, Iraq and Italy).
 2. **Significant Sub-National Resource Taxation:** Resource revenues are distributed among the federal government back to the states via an *indicator-based* formula based on objective indicators such as population, poverty level, geographic characteristics (e.g., how remote the state is geographically) and revenue generation. This is done regardless of the location of where the natural resource was found (e.g., Ecuador, Mongolia, Mexico, and Uganda).
 3. **Resource Revenue Transfers and Significant Subnational Resource Taxation:** This method is a combination of the first two resource sharing methods with subnational government directly collecting taxes from oil, natural gas, and other natural resource companies within the resource sector. A portion of these tax revenues then goes to the federal government, but the actual collection is done by

the state governments. (e.g., United States, China, India, Canada, and United Arab Emirates).

Natural Resource Management Systems of the World

Countries with Natural Resource Revenue Sharing (Confirmed Cases)



- However, some federalized countries vary in how they distribute the revenues of those natural resources, with some concentrating most natural resource management within the federal government and then distributing the revenues back to the states after they have been sold in a resource revenue transferring model. This model is used most prevalently in Nigeria.
- Others concentrate all-natural resource management horizontally within the state governments and then distribute it back to the federal government. This is the model used by Canada and the United States.
- This policy brief will analyze and compare the natural resource management models in Nigeria and Canada before recommending as to which model would be best for South Sudan.

Nigeria's Natural Resource Management Model

- Nigeria is a country rich in natural resources that include oil, natural gas, tin and over 34 million hectares of arable land.
- Nigeria's manages the revenues gained from this massive number of natural resources using a centralized model with most revenue sharing going to the federal government rather than the Nigerian states.
- It was not initially designed to be this way as in the aftermath of Nigerian independence, the military government of General Yakubu Gowon created a 12-state structure that was aimed to foster economic cooperation between all states so as to stimulate the overall national economy. This meant that any resources found in a specific state would be controlled by the state government and not by the federal government.
- This worked for the resource rich states such as the Rivers and Eastern states but did not work for the states that did not have an abundance of resources. Making matters worse, the states with resources refused to equitably distribute the revenue among the entire country.
- This led the federal government to seize control of all natural resources, both within the states' lands as well as offshore. The offshore resources were contested as many coastal states also wanted those natural resources.
- The Nigerian government accomplished this through the Land Use Decree of 1976 which amended the Constitution to give all resources found within Nigerian borders to the federal government and all revenues of those resources to the federal government. This is why oil now makes up 95% of Nigeria's export earnings and 80% of federal revenue.

- The arguments and struggle to control oil and other natural resources is best summarized in the passage below by a Nigerian Political scientist (Dickson 9):

...Oil is an object of the struggles between classes, factions of classes acting either through State structures or ethnic identity groups. Since oil is power, and power is oil in the context of Nigeria's political economy, the struggle for oil power becomes a primary object of politics, and the inequitable distribution of oil highlights existing inequalities, competing claims, grievances, and even conflicts, which conspire to threaten the Federal foundations of the Nigerian State.

- The main reason for the lack of even distribution of natural resources among the states Nigeria is because a lopsidedness in the practice of Federalism when it comes to natural resource management.
- A federalized country should allow the constituent states to harness their own natural resources and gain revenue from them before subsequently paying a percentage of those revenues to the federal government, much like what Canada does with its own very successful natural resource management.

Canada's Natural Resource Management Model

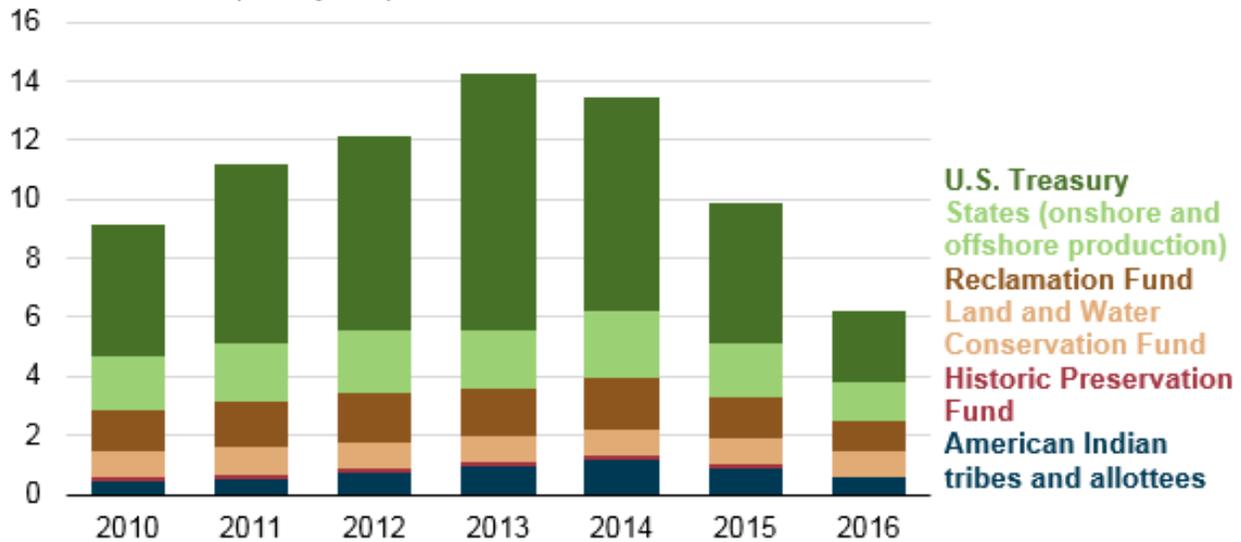
- Canada and the United States follow the mixed method of natural resource management in the Resource Revenue Transfers and Significant Sub-National Resource Taxation model.
- There is a significant degree of decentralization in Canada concerning the ownership of land and the harnessing of natural resources in those lands. Each of Canada's Provinces is able to control its own natural resource policy and management while at the same time controlling the revenues. However, the trade of those natural resources such as oil, platinum, uranium, and titanium is facilitated, monitored, and taxed by the federal

government allowing both the states and federal government to gain revenue from Canada's natural resources.

United States' Natural Resource Management Model

- The United States is similar to Canada in that each of the states is given a degree of autonomy over their natural resource management policy, but also different in that the state governments are not the ones who do the extraction of the natural resources.
- Instead, the states regulate the leasing of land by private individuals to the major oil, gas, and mineral companies by requiring a drilling or mining permit and at the same time requiring a legal presence when the lease is being completed.
- Also, unlike many countries, all resource extraction is done by private companies in the U.S. (over 90% of onshore drilling/mining is done by private companies, while the remaining 10% is leased by the federal government to the companies) and as such whenever land is sought after by these private companies they must approach private individuals who own the land and request a lease, or just purchase the land from the owner.
- States then regulate the extraction of these natural resources while at the same time taxing the natural resource companies who are doing the natural resource extraction.
- After the tax audits on each of the companies are completed, 55% of the tax revenue is allotted to the federal government while 45% of the tax revenue from natural resources goes to the states.

Disbursement of revenue from energy production activities on federal land
billions of dollars (fiscal years)



Strengths and Weaknesses; United States versus Canada

- Both Canada and the United states have their strengths and weaknesses when it comes to natural resource management.
- In Canada, it can be argued that the provinces have far too much control over natural resource policy leaving very little for the federal government to allocate via federal programs besides the trade revenues they gain from the natural resources being shipped abroad.
- For the U.S., it can be argued that the states should have much more than the currently allocated 55% of the tax revenue given to them from the natural resource tax while the federal government should have much less than the currently allocated 45%.

Policy Recommendation for South Sudan

My policy recommendation on the management of natural resources in South Sudan is very similar to my recommendation in policy brief #9 concerning resource allocation and formula which is to devolve most natural resource management to the states, much like what Canada’s

does through its federal provinces. This model consists of the states controlling the extraction and revenue control of natural resources in their own respective state. Meanwhile, the federal government would control the international trade of those resources and receive the revenue from that international trade. Nothing could ever be traded or sold without permission of the federal government.

However, South Sudan's current economic situation relegates the states being essentially incapable of extracting their own natural resources due to how expensive it is to build and maintain a gold mine or oil field. It is for this reason that I suggest that South Sudan continue to use its current natural resource management system of Resource Revenue Transfers while gradually devolving those resource extraction powers back to the state governments over the course of the next 20 years. At the same time, this will stimulate the states' economies through using the revenue transfers that go back to the states from the resources that were extracted from those areas to build state run mines and oil fields for the states so the states can begin to manage their own resources when they are ready. It is very important here to avoid the mistakes made by Nigeria where they initially promised their states 50% revenue sharing and then, over time reduced this revenue share to only 1%.

Personal Evaluation:

This policy brief was very enjoyable and interesting as I gained insights into the overall natural resource management systems around the world as well as the specific systems used by Nigeria, Canada, and the U.S. I feel that my policy recommendation could use a little more originality and creativity in terms of an innovative solution, but I am very inexperienced in the field of natural resource management and so my hope is that this Policy Brief and my recommendation will at least give readers a new perspective on how to create a better overall policy for natural

resources management in South Sudan. Most importantly, this Policy Brief can help South Sudan prevent the errors that other countries have made.

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F.1. Policy Brief #12: Land Management & Federalism

Overview

- Land management in Federalism is a crucial aspect of natural resources management within federalism as whoever controls the land also controls whatever resources are within those lands.
- Land management is also important to Federalism due to its direct connection to the agricultural sector which is needed to provide food for a Federalized state.
- Land management within federal states can vary on which level of government controls the jurisdiction of lands.
- The U.S. style of Federalism leaves most land use control within the local and state governmental jurisdictions, with the federal government still having considerable influence, but just through indirect means rather than more traditional methods.
- However, other Federalist states such as Mexico retains most control of land use in the hands of the national government.
- This policy brief will compare and contrast the United States' and Mexican styles of land management in Federalism.

United States Model of Land Management

- Local Jurisdiction
 - Local governments have considerable control of land use within their jurisdictions.
 - Local governments use this land for construction of infrastructure such as roads, schools, hospitals, and bridges.

- Local zoning allows the separation of residential, commercial, industrial, and other land uses into different geographical districts often recommending what buildings can be constructed within those areas.
 - Local governments also enact state land use zoning regulations to regulate private companies purchase of land.
 - Land-use regulations include subdivision and building codes, nuisance and noise ordinances, urban growth boundaries, and other types of development controls
 - Local governments are also required in 15 states to pass Local Zoning Ordinances and a Comprehensive Plan on zoning regulations and land use for the next year.
- **State Jurisdiction**
 - States have the power to directly regulate land use in their jurisdiction but have largely delegated this duty to the local municipalities.
 - Instead, states operate and influence local municipality through more indirect, but far more influential methods such as:
 - State constitutions determine the delegation of land-use powers to the local governments.
 - Framework legislation that defines the tools that local governments can use for land use planning and control.
 - Local governments can finance themselves. By having financing provisions, states can prevent local governments from using specific fiscal instruments that would otherwise allow them to finance urban redevelopment projects and therefore limit local control over land use.

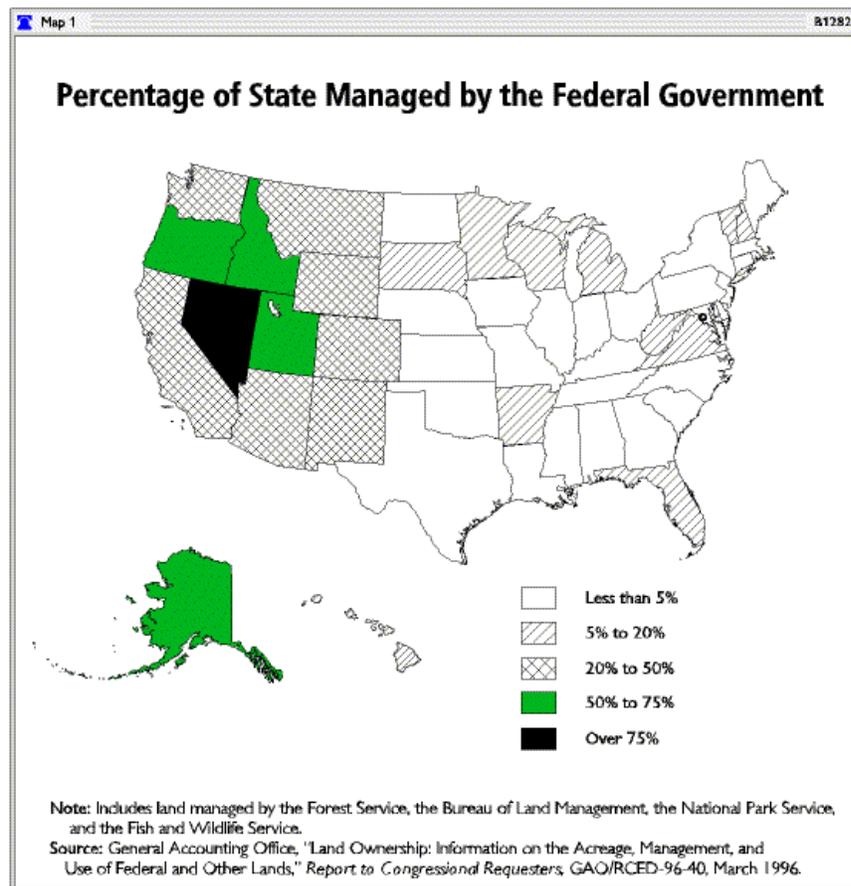
- Judicial review for land permits and administrative hearings on land use permits
- States may also own land themselves:
 - ◆ New York (37%); Alaska (29%); New Jersey (16%); Florida (14%); and Pennsylvania (13%)

- **Federal Jurisdiction**

- The Federal Government in the United States despite not having as much direct influence on land use as the local and state governments do still wields considerable influence in the following ways:

- Enacted environmental legislation that influences land-use decision making.
- Owns large parts of the land especially in western states. The five states with the largest share of federal land are: Nevada (85%); Utah (65%); Alaska (61%); Idaho (61%); and Oregon (53%)
- Owns and may decommission military lands for private development in important urban areas
- Signed treaties that influence or govern land use on Native American tribal land
- Constructs and funds federal roads
- Provides fiscal incentives to state and local governments for specific projects
- it provides tax incentives to individuals, for example to encourage single-family homeownership through tax deductions on mortgage interests

- Provides limited housing support to low-income individuals
- The United States system of land management is unique in that most land management is delegated to the states/localities that own the land. As shown in the graph below, the federal government has considerably less influence than other Federalized countries and controls only 29% of America’s land. This is still a lot, but not as much as it would be if America had Mexico’s style of land management.



Mexico’s Model of Land Management within Federalism

- Mexico is one of the largest Federalist countries in the world with three levels of government starting with the national government, 32 state governments, and 2,547 municipality governments.

- Mexico’s Federalist model concerning land management differs greatly from the United States in that where the U.S. has most land-use power delegated to the states and local governments while Mexico has the majority of that power vested within the federal government.
- The Constitution stipulates that all land and water use belongs to the nation and as such falls under the provision of the federal government whose responsibility is to craft legislation to operationalize that principle.
- The government also effects land use through its various agencies who carry out the legislative framework that the Mexican parliament passes concerning land use.
 - Secretariat of Agriculture, Territory and Urban Development (SEDATU)
 - National Institute of Housing Promotion (INFONAVIT),
 - National Water Commission (CONAGUA)
 - Others
- Mexico differs greatly from other Federalist countries concerning land management in that almost 100% of land use power is vested within the Federal government. Many countries do let the Federal government have some degree of influence on land management policy, but even the U.S. whose federal government has been drastically expanding over the past 30 years does not have the degree of influence that Mexico’s Federal government has.
- State responsibilities concerning land management focus primarily upon economic development and simply ensuring that whatever policies the federal government passes are implemented, regardless of whether they support them or not.

- Local governments do have more influence than the state governments in Mexico in the following ways:
 - Local government can decide on land use as long as they take other Constitutional provisions and guidelines of higher levels of government into account.
 - They have several instruments at their disposal and can develop land-use plans that control land-use changes and decide whether or not to issue building permits. However, these permits exclude mining and water extraction activities, which are regulated by the national government.
 - Municipalities are also responsible for land administration within their jurisdiction and can set property taxes while being responsible for the provision of public services and infrastructure.

Policy Recommendation for South Sudan

- The current land management model of South Sudan is much like the U.S.'s with significant portions of land being owned by the federal government, community land being owned by a community such as an ethnic group (e.g., Native Americans), and private land being owned by private individuals such as farmers or herdsman.
- However, one key aspect of land management that has been a source of violence among ethnic groups for decades in South Sudan is cattle grazing. Cattle in South Sudan are viewed as essentially a form of currency and a sign of prestige among the various ethnic groups. This leads the cattle to almost never being slaughtered and even when they are, they are slaughtered very sparsely. This has led to massive amounts of cattle populating South Sudan.

- The massive cattle population inevitably leads to cattle migrations as the tribes and families who own the cattle search for water or better grazing, whereupon they often go on another cattle person's land or destroy crops that were being farmed. This, then leads to violence between the cattle herders and farmers.
- To solve this land management issue involving cattle, I propose the creation of a series of *Cattle Banks* for South Sudan. Each Cattle Bank branch would be similar to a 1,000-acre conventional cattle ranch, but with a few additional items.
 - Land for grazing
 - Constant access to water
 - Slaughterhouse
 - Other manufacturing for leather goods, etc.
 - Access to roads
 - Refrigeration/freezer facility
 - Independent power
- These Cattle Banks would house the vast majority of the cattle for tribes within vicinity of the bank and all the cattle from all tribes treated the same, be they from Dinka, Nuer, Shilluk, etc.
- The people at the Cattle Banks would also not be government workers nor would they be all from the same tribe.
- The Cattle Bank would have a name and brand similar to cell phones and be run by a private outside company or NGO contracted by the government to handle this problem while being non-biased towards any one ethnicity in South Sudan. Therefore, people will

not have anger or compelling reason to steal the cattle from the Cattle Bank and will trust the Bank to feed and take care of their cattle as well as other tribes' cattle.

- The Bank would also have “deposits” where the tribes would drop off the cattle at the bank and the bank would then enter the quantity into the account books. The bank will also have “withdrawals” where when the owner needs the cattle for bride wealth or a religious ceremony, the owner could come back use them and drop them back off.
- Only the most impressive and important cattle for breeding will be kept and used to strengthen the Bank's herd while the rest will be slaughtered and used for meat, leather, and other by products.
- This concept solves the cattle overpopulation problem in South Sudan and thereby prevents tribes from destroying farmers' crops and/or trespassing onto another tribe's lands. Financial profits on a fractional basis go to each tribe or family that deposited cattle; the more cattle that have been dropped off, the more that person/tribe receives in money.
- Although this section does not deal with taxes, it is very easy to imagine how the government can tax certain elements of this concept, which provides additional revenue to the central and state governments, too.
- Because this concept is so overarching and would benefit the entire country, start-up funding from both countries, NGOs, and private entities should be possible. To the best of my knowledge, this idea has never been tried before, so we don't really know that it will not work.
- The Cattle Bank concept was originally created four years ago as a High School student when I was doing research for the U.S. State Department. I presented this idea to the

Minister of Federal Affairs, Hon. Minister Losuba Wongo and to the First Vice President, H.E. Dr. Riek Machar in Juba on October 2, 2020. Both were supportive of the concept at the time.

- I have attached the full presentation of the Cattle Bank concept in section F.1.1. This concept might warrant additional study.

Personal Evaluation:

- This policy brief was very enjoyable and interesting as I gained insights into the overall land management systems around the world while also the specific systems used by Mexico and the U.S.. I feel that my research and policy recommendations made from that research are very solid and can benefit South Sudan if implemented.

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F.1.1. Potential Land Management Solution; Cattle Bank Presentation

The Cattle Bank concept was created four years when I was a High School student doing research for the U.S. State Department. I presented this idea to the Minister of Federal Affairs, Hon. Minister Losuba Wongo and to the First Vice President, H.E. Dr. Riek Machar in Juba on October 2, 2020. Both were supportive of the concept at the time. I have not updated it for this Policy Brief package but have simply included it without revision.

Agriculture in South Sudan: Source of Conflict as well as Basis for Peace



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November 30, 2019

For

Legacy International & Global Youth Village



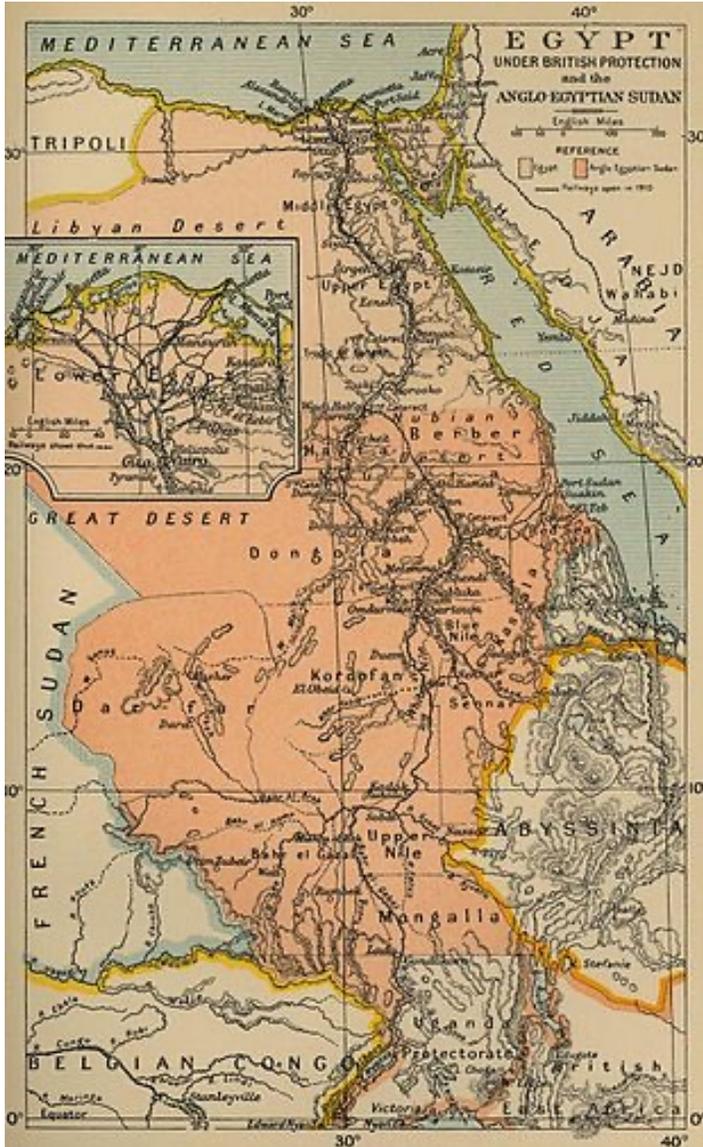
General Background: Republic of South Sudan



Retrieved from https://en.wikipedia.org/wiki/Coat_of_arms_of_South_Sudan

- Location: Central Africa: South of Sudan, North of Uganda, west of Ethiopia and east of the Central African Republic.
- Population: 12.58 million
- Size: 239,285 square miles: Roughly the size of all the south eastern United States
- Government: Democracy
- President: Salva Kiir Mayardit

Background: History



- Ancient times: Part of the Kush Empire of Egypt; after the Empire's fall became a collection of tribes and kingdoms
- Modern times: Ottoman invaded South Sudan in 17th century and made it a colony
- Ottoman's extracted over 2 million blacks from the country as slaves over the course of 200 years (1820-1898)
- Eventually became part of Anglo-Egyptian Sudan (map to left) after it was seized with Egypt and Sudan by Great Britain (1899-1955)
- Anglo-Egyptian Sudan was dissolved in 1955 and became two separate countries: Sudan (South Sudan and Sudan currently) and Egypt.
- First Sudanese civil war broke out from 1955-1972
- Peace agreement occurred from 1972-1983

Background: History (continued)



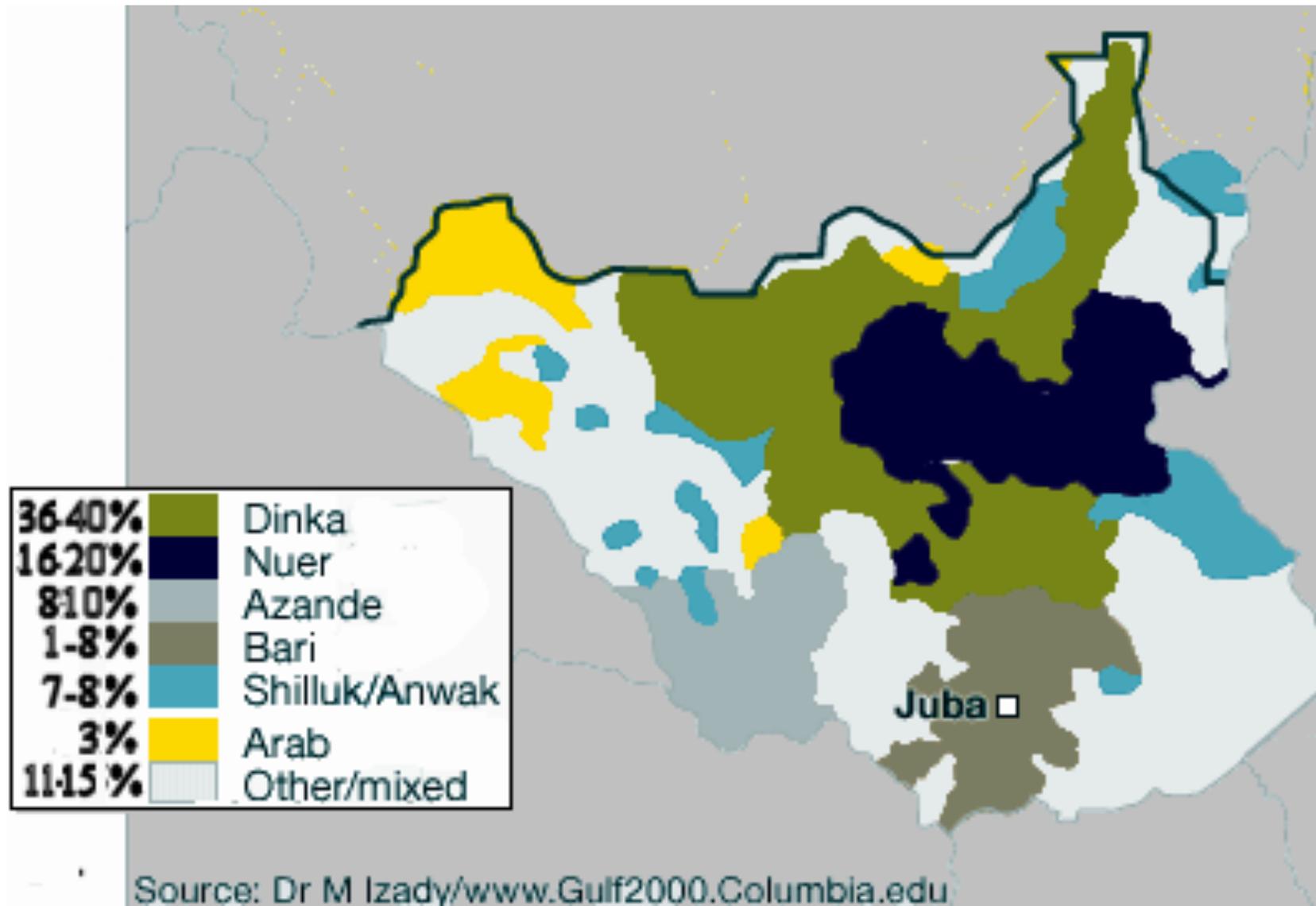
Retrieved from <https://www.jww.org/conflict-areas/sudan/north-south-conflict/>

- Second Civil war: From 1983-2005
 - Resulted in semi-autonomy for south Sudan
- Transition government lasted from 2005-2011 when south Sudan gained full independence
- Conflict resumed in 2013 with President Kiir accusing his VP, Riek Machar of attempting to overthrow the government
- Machar fled to lead the Sudanese Peoples Liberation Army - In Opposition (SPLA IO) and war was ignited for the next few years
- In August 2018, after five years of brutal civil war a power sharing agreement was made between Machar and Kiir that would end the war with shared government eff. 11-12-2019.
- Deadline occurred and passed without new gov't established. New deadline is +100 days

Background: Tribes/Ethnicities

- 60 tribes and 80 linguistic partitions
- Largest groups are:
 - Dinka (38.8%)- Upper Nile and Bahr El Ghazal states; tradition of pastoralism and subsistence farming to survive
 - President Kiir is Dinka
 - Nuer (27.6%)- Upper Nile state; long-standing conflicts with Dinka over land and cattle disputes for grazing and water
 - Former VP Machar is Nuer
 - Azande (6%)- Central Equatoria and Western Bahr Al-Ghazal states
 - Shilluk (3%)- Lives along the banks of the White Nile river in Upper Nile state; ruled by a monarchy (with a King) but acts akin to a state government

Background: Tribes (map)



Retrieved from
<https://www.globalsecurity.org/military/world/war/south-sudan-tribes.htm>

Background: Tribes/Ethnicities

Rank	Ethnic Group	Share of Population in South Sudan
1	Dinka	36%
2	Nuer	16%
3	Azande	6%
4	Bari	4%
5	Shilluk	3%
6	Toposa	2%
7	Otuho	2%
8	Luo	1%
9	Moru	1%
10	Murle	1%
	Other Ethnic Groups	28%

Background: Economics



- Overall GDP is 2.904 billion USD (2016). This is roughly \$237.44 per person, or among the lowest in the entire world
- Natural Resources- Timber, Zinc, Copper, Gold, Silver, Chromium, Mica, Tungsten, Iron and Petroleum
- The Natural Resources of South Sudan allow it to have the potential of becoming one of the most powerful countries in Africa if it can resolve its internal conflicts
- Oil - Prior to independence, South Sudan produced 85% of oil from combined territories of Sudan and SS. 100% of this oil is transported to Sudan via pipeline. There, 50% of this oil is refined and stays in Sudan and another 40% goes to outside countries (almost entirely China).
- 80% of the entire GDP is from oil
- 70% (or more) of the entire budget is for military; very difficult to obtain accurate values

Background: Agriculture

- Heavily reliant on agriculture due to thousands of years of tradition
- Almost all of South Sudan is fertile and is one of the most fertile countries in the world
- Crops produced are cotton, groundnuts (peanuts), sorghum, millet, wheat, gum Arabic, sugarcane, cassava (tapioca), mangos, papaya, bananas, sweet potatoes, and sesame
- Only a small handful of crops produced are exported as most of them are used for sustenance by local tribes

Background: Agriculture (Farming and Pastoralism)

- **Farming** - Raising crops
- **Pastoralist** - Raising cows without a fixed or centralized location (herds move as needed for natural grazing)
- 79% of population lives in rural areas living a pastoralist lifestyle or farming and fishing; rest of the population lives in five or six towns/cities
- Vast majority of crops used for sustenance, and not profit
- Primarily Nilotic cattle; several tribal sub-types are Murle, Taposa, Mongalla, & Anwak
- No “ranches” whatsoever in South Sudan; millions of cattle are maintained in herds by their owners and keepers on a family, community or tribal basis
- Estimated 11.7 million cattle (cows only-goats and sheep excluded)
- No cattle processing plants in entire country other than local slaughter houses in a few “cities”
- No processing of cattle parts (leather, etc.) in entire country
- No frozen food or canning factories in entire country

Background: Pastoralism



Source: Kyle Thaller -- South Sudan trip - August 2019

Causes of Conflict: Land Claims

- Cattle grazing changes with seasons, and people move to different lands depending on season
- The better the land, the more food there is for cattle
 - This causes different tribes to cross other tribal lands
- Consequently, tribal conflict erupts over land in order to feed their cattle
- Tribes steal cattle from each other by making raids
- Raids were previously less bloody, but due to the rise of conventional weapons, tribal wars over cattle sometimes result in whole villages being slaughtered

Cattle Raiding

Retrieved from
<https://www.aljazeera.com/indepth/features/2016/12/kenya-cattle-raids-deadlier-161212152024718.html>



Causes of Conflict: Wealth from Cattle

- Cattle is used as a form of currency in South Sudan; in rural areas it is considered the only form of currency in South Sudan
- Cattle are used as a sign of prestige, wealth and status
 - The more cattle a person has, the more respected and wealthy that person is
 - Cattle are used as a source of bride wealth, in order to marry the man has to have a certain number of cattle to give to the brides family as a dowry
- Many children do not go to school because of tribal/family responsibilities to watch the cattle
- Since independence political and military elites have used resources gained during the war to acquire massive herds of cattle, therefore, increasing their own prestige, status and wealth.
 - The herds, in turn are used to cultivate networks of supporters by paying bride wealth for their soldiers by giving them cattle to pay the bride wealth and allowing them to marry. This secures their allegiance in case of conflict
- Cattle are also used as a tool of war. Cattle are used as an incentive to fight, so soldiers can increase their own status, prestige, pay bride wealth and get married by stealing the cattle

Wealth from Cattle

Retrieved from
<http://www.ipsnews.net/2014/05/south-sudans-livestock-outnumbering-people-ruining-environment/>



Causes of Conflict: Years upon Years of Violence caused by Cattle versus Farming

- Cattle are rarely killed, due to being seen as a sign of prestige and status
 - Meat is eaten from time to time
 - Blood from cattle is often mixed with milk for sustenance
- The more cattle a person has, the greater his respected and reverence
- This consequently makes cattle over-populate
- As a result of over-population, cattle are often moved onto someone else's land not to cause conflict on purpose, but just to keep the cattle alive
- This, in turn causes conflict and tribal wars
- Due to cattle being so revered, South Sudan imports meat from Uganda to feed the country. Amazing, but true!
- **As of now, cattle nearly outnumber the population of South Sudan and something has to be done about this problem or hunger, war, economic poverty and inter-tribal conflict/war will get worse**

Cattle are Revered as a Tradition in South Sudan



To left from
<https://correspondent.afp.com/beauty-within-chaos>

Conclusions

- Culture has not really changed much over past several hundred years for vast majority of people in South Sudan
- Fights and conflicts now include guns and explosives primarily because they are available. In years past, people only had spears, sticks and rocks.
- Cattle is used as status and monetary equivalent, with little to no incentive to change
- Vast majority of people don't really care about federalist or central government pride. Instead, they are focused on their families, communities and tribal needs
- Individual people don't own land, nor does the government. The tribes own the land. This is major source of conflict between tribes and central gov't.
- Climate changes, be they permanent or temporary have made the situation worse for pastoralists because there are so many cattle, and the continual need for water and grazing these millions of large animals

Cattle in South Sudan

Source: Kyle Thaller -- South Sudan trip - August 2019



Potential Solution: Cattle Bank

- Cattle Bank - Series of “banks” throughout the country. Each *Cattle Bank Branch* would be similar to a 1,000-acre conventional cattle ranch, but with a few additional items.
 - Land for grazing
 - Constant access to water
 - Slaughter house
 - Other manufacturing for leather goods, etc.
 - Access to roads
 - Refrigeration/freezer facility
 - Independent power
- These banks would house the vast majority of the cattle for tribes within vicinity of the bank
 - All cattle from all tribes treated the same, be they from Dinka, Nuer, Shilluk, etc.
- The people at the banks would not be government workers nor would they be all from the same tribe.
 - The Bank would have a name and brand similar to cell phones. All people respect these independent brands, as they have nothing to do with the government or with a particular tribe
 - Therefore, people will not have anger or compelling reason to steal the cattle from the Bank, and will trust the Bank to feed and take care of their cattle as well as other tribes’ cattle

Cattle Bank; Solution (continued)



Retrieved from
<https://www.african ceremonies.com/Collections/Dinka/38>

Cattle Bank; Solution (continued)

- Deposits: The tribes would drop off the cattle at the bank. The bank would then enter the quantity into the account books.
- Withdrawals: When the owner needs the cattle for bride wealth or a religious ceremony, the owner could come back use them and drop them back off.
- So, where do all of the extra cattle go?
 - Not all cattle would be housed in this bank
 - The most impressive and important cattle for breeding will be kept and used to strengthen the Bank's herd
 - The rest will be slaughtered and used for meat, leather, and other by products.
 - Financial profits on a fractional basis go to each tribe or family that deposited cattle; the more cattle that have been dropped off, the more that person/tribe receives in money.

Cattle slaughter house (Uganda); Part of Cattle Solution



Retrieved from
<http://www.fao.org/emergencies/fao-in-action/stories/stories-detail/en/c/279307/>

Overall Benefits of Cattle Bank

- This solution allows the South Sudanese tribesmen to keep their most revered cattle as a sign of prestige, and to maintain their cultural heritage.
- Solution also allows millions of cattle to be removed from landscape
 - Provides money to tribe
 - No need to have children watch the herd
 - Jobs (normal ranch jobs, slaughter house, transportation, etc.) are created
 - No need to roam onto a farmer's land for grazing or water
 - Herd and breed is strengthened by the Cattle Bank keeping only the best beasts
- Major source of conflict is removed
- South Sudan also now more self sufficient
- South Sudan has greater GDP and more trained workers

Benefit of Cattle Bank; Peace . . . and Education



Retrieved from
<https://www.globalpartnership.org/country/south-sudan>

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F.2. Policy Brief #13: Water Management in Federalism

Overview:

- The American writer Mark Twain once stated, “Whiskey is for drinking and water is for fighting over” (Huffman 669). This quote is now more pertinent than ever in the management of water in federal countries.
- As Twain noted, the control of water has throughout history been a source of power and conflict for political and military groups. The human body can last for only about three days without water, which is why it has always been a source of power and control for governments.
- This is also true in many, but not all federalized states where, following the principle of Federalism, the control of water is shared among all three levels of government. For some Federal countries the control of water is vested within the Federal government while for others the states or local governments have greater influence.
- This policy brief will analyze the management and distribution of water within the Federalized states of Nigeria, India, and the United States before making a policy recommendation as to what water management method would be best for the Republic of South Sudan.

Nigeria’s Water Management Model

- According to numerous academic surveys, 67% of the total Nigeria population had access to at least basic water supplies with 80% of the urban population having access and 54% of the rural population also having access. In other words, although most citizens in Nigeria have access to clean water, huge numbers of Nigeria citizens living in rural areas do not.

- Despite this, compared to other countries in Africa, Nigeria is doing quite well. This success can be attributed to their water management system being modeled after their Federal form of government.
- The three levels of government share responsibility for the management, delivery, and sanitation of clean water in Nigeria with the breakdown of responsibilities as follows:
 - **Federal Government**
 - The Federal Ministry of Water Resources is the Nigerian government's primary agency for the management of water.
 - There are 12 River Basin Development Authorities that manage the distribution strategy of water within the various states of Nigeria while also coordinating all irrigation, sanitation and developing water resources. These River Basin Authorities also collect water data for the federal government so as to create more effective strategies for water management.
 - These Authorities are essentially sub-divisions of the Ministry that each handle a different region/state in Nigeria for the management of water within those states while also cooperating with the state and local governments of Nigeria for water distribution and allocation.
 - **State Government**
 - The Federal government is responsible for the overall management and supply of water within the country of Nigeria. However, it is the individual states of Nigeria that are responsible for implementing that management strategy. They do so by supplying all the urban areas with

water that is both clean and potable by purifying it in state water treatment plants that are managed by State Water Agencies (SWA).

- State governments are also responsible for ensuring that the water is also supplied to the local governments of Nigeria so the local entities can then distribute it to the rural population of Nigeria as these people are outside of the urban areas that constitute the state's water jurisdiction.

- **Local Governments**

- States could distribute the water to the local government's constituents, but that would require additional funding, which is why it is easier to simply supply the water to the local governments and allow them to distribute the water to their constituents after the water has been deemed potable by the SWA's.

- **Community Water Management in Nigeria concerning Water Management**

- Due to the inefficiency of some local governments to allocate water to rural areas, these communities have formed their own water management organizations called Water and Sanitation Committees (WASCOS) which operate and maintain their own water treatment facilities.
- The WASCOS are supplied and funded by such organization as the African Development Bank and World Bank.

India's Water Management Model

- India is a unique country in terms of Federal countries as their Federalist model is based on a sort of Quasi Federalism, meaning that their government is both Federalist but also non-Federalist. They are Federalist in that the various levels of government share power.

However, they are non-Federalist in that there are only two levels of government; the national government and the state governments.

- The central government has far more power than the states, and as a result water management in India falls under the Quasi Federal national government.
- Water is a stated subject in the Constitution and is considered a matter of national importance and as such most powers regarding the regulation of water rests within the purview of the national government.
- However, the state governments are not powerless concerning water. State powers in India concerning water include the development and utilization of water.
- In addition, Schedule 7 of the National Constitution distinguishes between the *use* (irrigation, canals, water storage, etc.) of water within a state and *regulating* interstate water management giving the central government powers for creating mechanisms and laws to regulate interstate waters such as rivers and dams while giving states the power and authority concerning the end-use of water.
- This means that any interstate issue arising over the management of water such as who gets more/less water will be resolved by the central government.
- States retain autonomy concerning the use (e.g., utilization and distribution) of water such as matters of supply, irrigation, canals, water storage and waterpower.
- Overall, while the use of water does fall within the jurisdiction of the states, the regulation and management of water lies within the central government's jurisdiction, often hampering the development and management of water in Indian Federalism.

- It is this “hampering” that has caused much of India to lack potable water with 6% (91 million people) of the population lacking access to clean water and 54% (746 million people) lacking access to safely managed household sanitation facilities.

United States Water Management Model

- The U.S. water management model is firmly rooted in giving most water management powers to the states with the federal government generally having only a regulatory role in water management.
 - **Federal**
 - Environmental Protection Agency (EPA) is the federal agency in charge of reviewing all of the states’ natural resource management. Its job is to ensure that all resources, water oil minerals and land are being used in a way that is beneficial to both the environment and the civilians living in that environment.
 - EPA ensures that water being supplied by the state is both sanitary and well managed, and if it is not then the EPA has the right to shut down that water treatment plant and install a new water manager.
 - EPA does this through monthly inspections on all the state water treatment plants in American through each of their field office in all 50 states.
 - **State**
 - Compared to other countries such as India and Nigeria, the U.S. has the most devolved system concerning water treatment in that the states legislate, manage, and regulate all their own water supply and sanitation activities.

- The only factor that has to be considered by the states concerning the federal government is the proper sanitation and potability of their water.
 - States have had this autonomy concerning water management as Congress agreed through legislation during the 1950's that who better to determine the water needs of a state's constituents than the states themselves.
- **Local**
 - The local government's main role in water management is to ensure that all water supplied by their respective state is distributed and allocated equally and fairly while also notifying the state government if the water quality is corrupted by some disease or virus, or there is malfunction so that way the problem can be remedied by the state water treatment plants.

Policy Recommendation for South Sudan

- My policy recommendations concerning water management in South Sudan are modeled after the water management styles used by India and the United States as both countries devolve nearly all powers to the states.
- South Sudan's current system involves most water management power being vested within the central government. This seems to be working temporarily but will not last as a long-term solution.
- We must keep in mind that only a small fraction of South Sudan's population is provided water by a central treatment plant. The vast majority of the country's citizens obtain their water from either a river or from a bore hole.
- One aspect of water management from the Indian model that could be beneficial to South Sudan would for all water use to be devolved to the states. This means that states would

be in charge of the local distribution/allocation of the water along with the irrigation, canals, water storage and waterpower. The challenge with devolving too much power rests with the Nile River and its huge political importance to other countries, such as Egypt.

- All interstate water management along with the water purification would be the responsibility of the federal government through the passage of water legislation in the national legislature and through Executive Orders by the President.
- An aspect of the American model of water management that could benefit South Sudan is the empowering of local governments to manage their own water distribution and allocation. This would be better suited for a federalized state such as South Sudan due to the fact that the local governments know the water needs of their constituents far better than the central government does.
- South Sudan lacks private investment in the creation of water treatment plants. There have been some private investors and NGO's who have built water treatment plants in previous years, but not nearly as much as there should be. Private investment could be crucial in creating a better water management system for South Sudan.

Personal Evaluation:

This policy brief was very enjoyable and interesting as I gained insights into the overall water management systems around the world as well as the specific systems used by Nigeria, India, and the United States. I feel that my research is very solid and that many aspects of my policy recommendations can benefit South Sudan if implemented.

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F.3. Policy Brief #14: Minerals Management in Federalism

Overview

- Mineral management in Federalism is the sharing of production and revenues that originate from the mining of precious minerals such as silver, diamonds, gold, lithium, etc. along with the extraction of valuable fuel sources such as oil and gas.
- The control of these minerals has always been a subject of conflict in federalized states due to the issue of whether the federal, state, or local governments should have authority on who gets control over the revenues from those resources.
- Many federations have various laws within their Constitutions concerning the management of minerals and oil/gas. Most older federations such as the U.S. and Australia do not even mention the management of minerals or oil/gas within their Constitutions because it was a less pressing issue at the time of those constitutions being drafted. Others, such as Bolivia have over 40 clauses within their Constitution specifying that the central government has complete ownership of all mineral/gas/oil rights.
- This policy brief will explain the various facets of mineral management in the Federalist countries of India and Nigeria, both their positive aspects and negative aspects, before making a policy recommendation on what model South Sudan should use.

Nigerian Mineral Management

- Nigeria's model of Mineral Management is explicitly stated in their Constitution where minerals and oil/gas are "the property of the Nigerian people" (Tribune Online) and that the revenues from those resources should have derivation of profits, meaning the revenues are distributed both to the national governments and the states.

- However, over many years since the Nigerian Constitution was written, the derivation amount of mineral revenues that has been given back to the states has significantly decreased as shown by the table below.

Table 1: Changes in the Derivation Component of Revenue Allocation

Period	Share of Derivation (%)
1960-1970	50
1970-1975	45
1975-1980	20
1980-1983	2
1984-1992	1.5
1992-2000	3
2000 till date	13

Source: Compiled from Jega 2007, pp. 203-245, Mbanefoh & Egwaikhide, 1999, pp. 213-231

- This is due to the Nigerian government slowly gaining more and more control of the minerals and their revenues through amending the Constitutional provision on how much derivation must be implemented throughout all states and their revenues. This means that the Constitution was never violated, but simply amended according to what the current power base wanted.
- These Constitutional Amendments, however, have been tremendously unpopular as many Nigerian states want a greater share in the revenue from their own respective minerals and oil/gas. Their current share ranges from zero to negligible.
- As a result, many criminal gangs have been formed in Nigeria who are attacking mining and oil installations to gain control of the resources.
- In response, the federal government formed a Niger Delta Development Commission to stop these gangs and restore order. These efforts have not been successful due to lack of political commitment by the states, in part because they know that things will just go

back to the way they were before with the federal government getting more of a revenue share than the states do from the mineral resources.

- Overall, the Nigerian model of Mineral Management is very chaotic and ineffective because of a lack of devolution of powers and responsibilities to the states, which are critically needed to have an effective federal state.

Indian Model of Mineral Management

- India has over 90 minerals, including major fuel sources such as coal and oil, metals such as iron and copper, and industrial resources such as limestone.
- India uses a Federalist model of management to evenly distribute the revenues from these resources in an equitable way between the states and central government.
- In India, the Federated states have ownership rights of all onshore minerals found within their respective state, which is in contrast to Nigeria where mineral rights go exclusively to the federal government.
- The Mines and Mineral Development and Regulation (MMDR) Act confers the right to allow exploitation of minerals by way of granting licenses and leases to the state governments.
- However, while all onshore minerals are the exclusive rights of the states, all offshore minerals/oil/gas belong to the central government.
- In addition, states also have the powers for receiving royalties for the minerals along with a few other payments. However, they cannot unilaterally determine the rates of the royalty payments.
- Lastly, states have the power to tax the minerals that are located and extracted from their state by private companies.

- This does not mean that the central government of India is powerless concerning mineral management. The central government has jurisdiction over the regulation and policy on mineral management, which effects all of the states.
- Overall, while states own the mineral resources located within their territory, the central government has jurisdiction over the regulation of mines and mineral development.
- In addition, states are empowered to legislate on regulation and development of mines and mineral development but are subjected to the powers of the central government under List 1 of the Constitution. As a result, states control the ownership of minerals in India, but it is the central government who controls the legislation that governs overall mineral managerial policy in the country.
- The graph below illustrates the various powers of mineral management in the state governments and the central government of India.

Box 1: Sharing of Legislative Powers over Mineral Resources		
	State	Centre
Regulation of mines and mineral development	✓*	✓
Safety in mines		✓
Minor minerals	✓	
Tax on land	✓	
Tax on mineral rights	✓*	
Tax on production		✓
Tax on sale	✓	
Fees on respective subjects	✓	✓
*Subject to law made by Parliament, that is, the MMDR.		

Policy Recommendation for South Sudan

- My policy recommendation concerning the mineral management policy of South Sudan is very similar to my water management policy recommendation. In both instances, there is currently far too much power vested within the South Sudan central government. These powers should be devolved to the states in a similar model used by the Indian government.
 - India's government allows the states to regulate the development of mines alongside the central government, the safety in mines, tax on land, and tax on mineral rights along with many other powers.
 - This would benefit the state governments in South Sudan through stimulating their economies and giving them control of resources that are located within their own state, thereby giving the states more trust and confidence with the central government.
- Another policy from Nigeria's model of Mineral Management that would benefit South Sudan is the Principle of Derivation in which revenues from minerals would be distributed evenly between the central and state governments. However, unlike Nigeria, South Sudan should not slowly narrow the revenue derivation amount to the states back to the central government, as this would encourage conflict.
- Currently, almost all (or perhaps 100%?) of revenues from minerals in South Sudan goes to the central government. I recommend an initial Derivation Rate of 30%. This means that the central government would receive 70% of revenues from minerals found in states and 30% be given back to the respective state on the condition that the 30% be used to fund state-run mining and oil program so as to stimulate the state economy. The state

would not be allowed to use these Derivation Rate funds for other budget issues, and certainly not for payroll of key employees.

- This solution would allow some mineral revenues to be given back to the states, rather than just essentially zero going back to the states, which is the current policy in South Sudan while at the same time encouraging those state government to create their own mining and resource extraction programs.
- Then, once this first derivation amount proves successful in stimulating the state economies to be self-reliant in extracting their own mineral resources, additional percentages and mineral management powers can be devolved back to the states.
- This will not happen overnight, but over the course of many years. However, starting small will eventually lead to something far larger and greater than one could possibly imagine. I believe this is true for the Mineral Management Policy of South Sudan should my recommendation be considered when writing the new Constitution.

Personal Evaluation:

This policy brief was very enjoyable and interesting as I gained insights into the overall mineral management systems around the world while also the specific systems used by Nigeria and India. I feel that my research and policy recommendation made from that research is very solid and can benefit South Sudan if implemented.

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G. Development of Federalism in the U.S. (Powerpoint)

The following presentation was developed in response to MoFedA requesting additional background on the origin of Federalism in the United States.

An Analysis on the Development of Federalism in the United States

By Kyle Thaller

Constitution Intern: Ministry of Federal Affairs

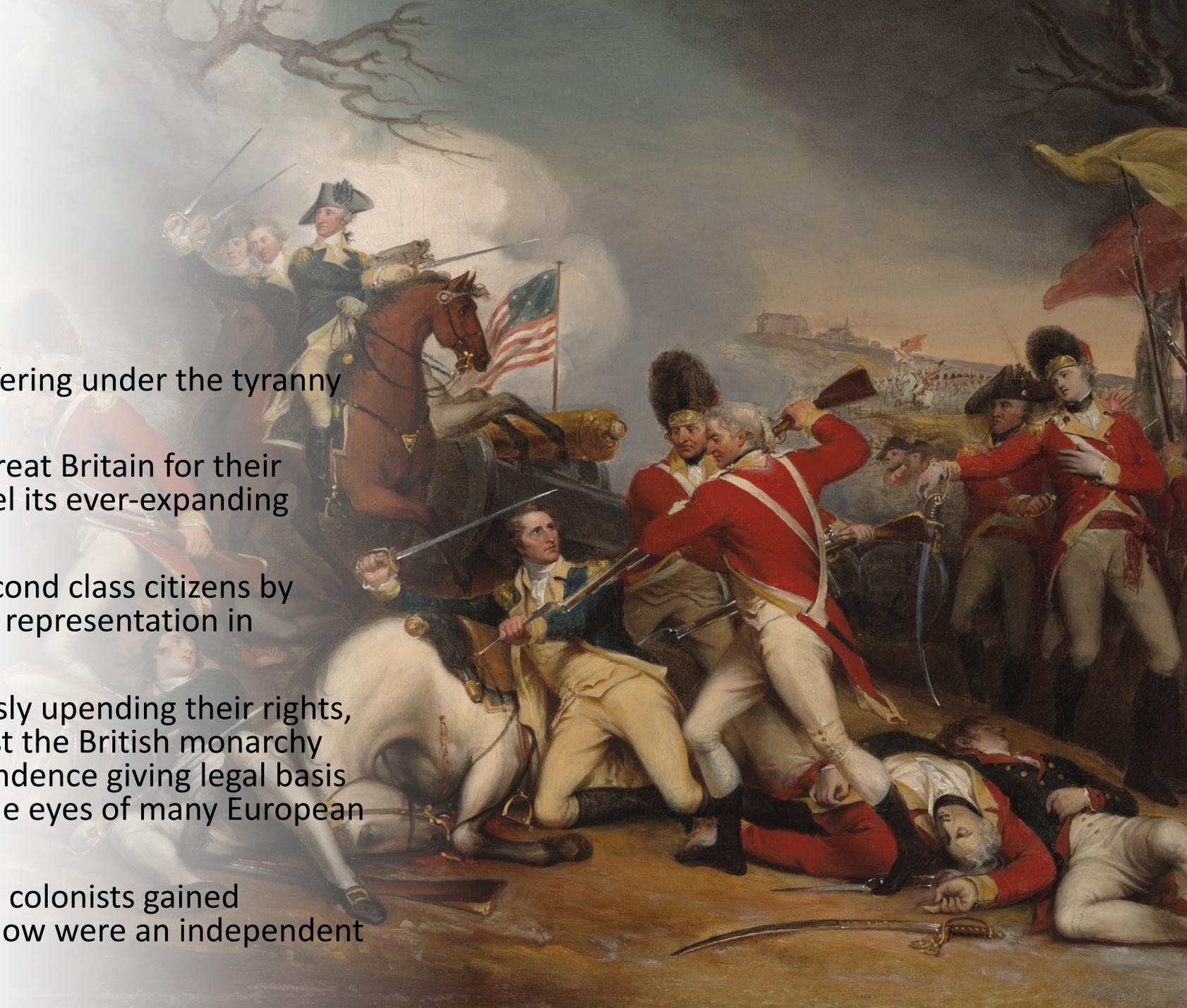


Purpose and Contents

- This presentation will analyze the development of federalism in the United States
- This presentation was created under the auspices of the Ministry of Federal Affairs
- The hope for this presentation is that it will be beneficial to the Ministry in their endeavor to create a federalist form of government in South Sudan through learning from America's similar struggle for federalism back when it too was a young nation
- A further analysis of American Federalism in the United States will be made in a public policy brief called "Anecdotes on American Federalism" which will relate to how much of the development of Federalism in the US along with other aspects of American political power can be related to modern day South Sudan
- This additional document will be presented following the PowerPoint

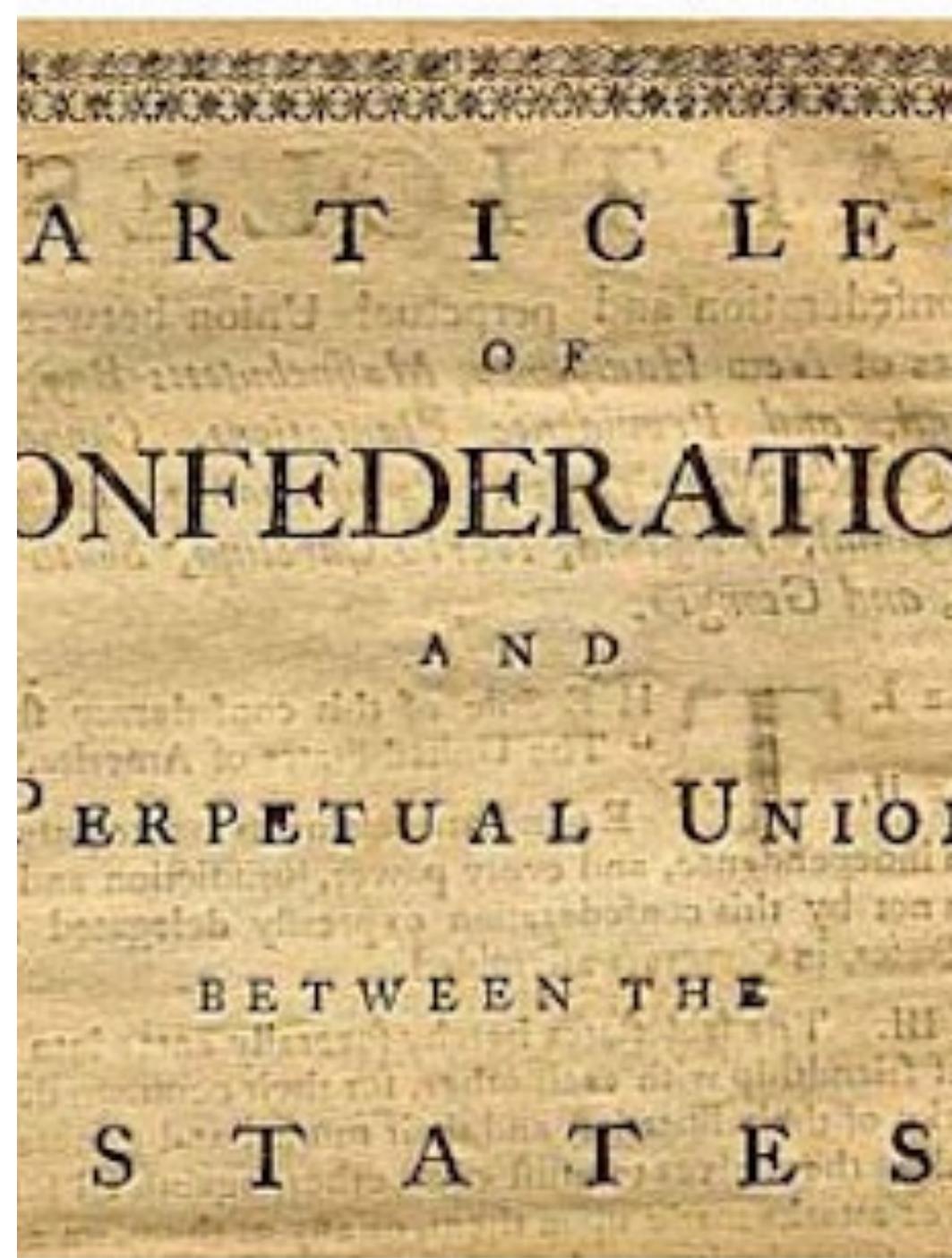
A Nation born out of conflict and strife

- The U.S was founded after years of suffering under the tyranny of Great Britain's monarchy
- The American colonies were used by Great Britain for their natural resources and manpower to fuel its ever-expanding empire
- Colonists, however, were treated as second class citizens by having no freedom of speech, press, or representation in parliament.
- Consequently, after years of continuously upending their rights, the colonies united and rebelled against the British monarchy after signing the Declaration of Independence giving legal basis and legitimacy for their revolution in the eyes of many European countries such as France
- After seven years of brutal fighting, the colonists gained independence from Great Britain and now were an independent nation



Articles of Confederation: the first American Government

- After gaining independence, the newly formed United States of America ratified the Articles of Confederation in 1781
- Originally drafted in 1777, by the Continental Congress at the height of the revolution, as a means of creating an effective means of distributing paychecks to American colonial troops during the war, it would now serve as the new American governmental structure
- As a result of Great Britain having so much central governmental power being a monarchy, the founding fathers wanted to create a government that would be a democracy styled after the ancient democracies of Greek and Rome, but without the chance of becoming dictatorships/monarchies such as Great Britain
- This resulted in the Articles of Confederation, a series of legal documents that created a "league of states" among the 13 colonies, now states, of America



Articles of Confederation Structure

- The structure of the Articles of Confederation was created to prevent a dictatorship or monarchy from ever forming.
- To this end, almost all economic and political power was vested within the states
- These powers included:
 - The power to tax
 - The power to create currency (all 13 states had 14 different types of currency)
 - The power to raise troops (each state had its own militia)
 - Power to make laws
 - Power to execute those laws
 - Power to regulate commerce
- Only powers that were vested in the national government were mostly in foreign affairs such as the ability to make treaties, declare war and maintain an army (Armies however were loyal to states so this power was essentially a farse)

Articles of Confederation Problems

1. Too much power vested to the states which created chaos and disorder amongst them due to a lack of unity
 - An example of this is the currency problem; when an American citizen wanted to go to another state and buy something they had to exchange a different currency despite being in the same country
2. Lack of federal structure led to inability to pass any national laws or regulations which led to further disorder and disunity
3. International community refused to do almost any dealings with the states as they did not know which state would be trustworthy for business because of all having essentially separate governments
4. The list goes on and on, but the main problem of the Articles was that there was no balance or transition of powers between the state governments and national governments with almost all power being vested in the states and none within the federal government

The Solution of Federalism

- As a result of the weak national government, several rebellions broke out within the US from 1783-1786, the most prominent of which was Shay's Rebellion (picture to right) led by debt ridden revolutionary war veterans who did not get their severance pay due to the inability to regulate commerce by the national government to create revenue
- In response to this civil unrest, a group known as the Federalists emerged who advocated for a strong central government to bring about order and security in the states
- The founding Federalists, James Madison and Alexander Hamilton, began having conferences to gather support for their new government form



The Solution of Federalism

Mt. Vernon in modern day; George Washington's home and venue of the Mt. Vernon Conference

- The first of these conferences was led by James Madison and George Washington called the Mt. Vernon Conference in which a group of states consisting of Virginia, Delaware and Maryland wrote the Tidewater Agreement which was a commerce treaty between these states in which all three states would have the same form of currency and shipping routes to create a more centralized economy
- Out of this conference Madison recruited many of his Federalist comrades after they saw how well the Tidewater Agreement was working.
- One of these comrades was George Washington who originally agreed to hold the conference in his home at Mt. Vernon as a favor to James Madison, his good friend and colleague, but by the conference's end he realized that federalism was truly the solution to the problems facing American government at the time and joined the Federalist faction

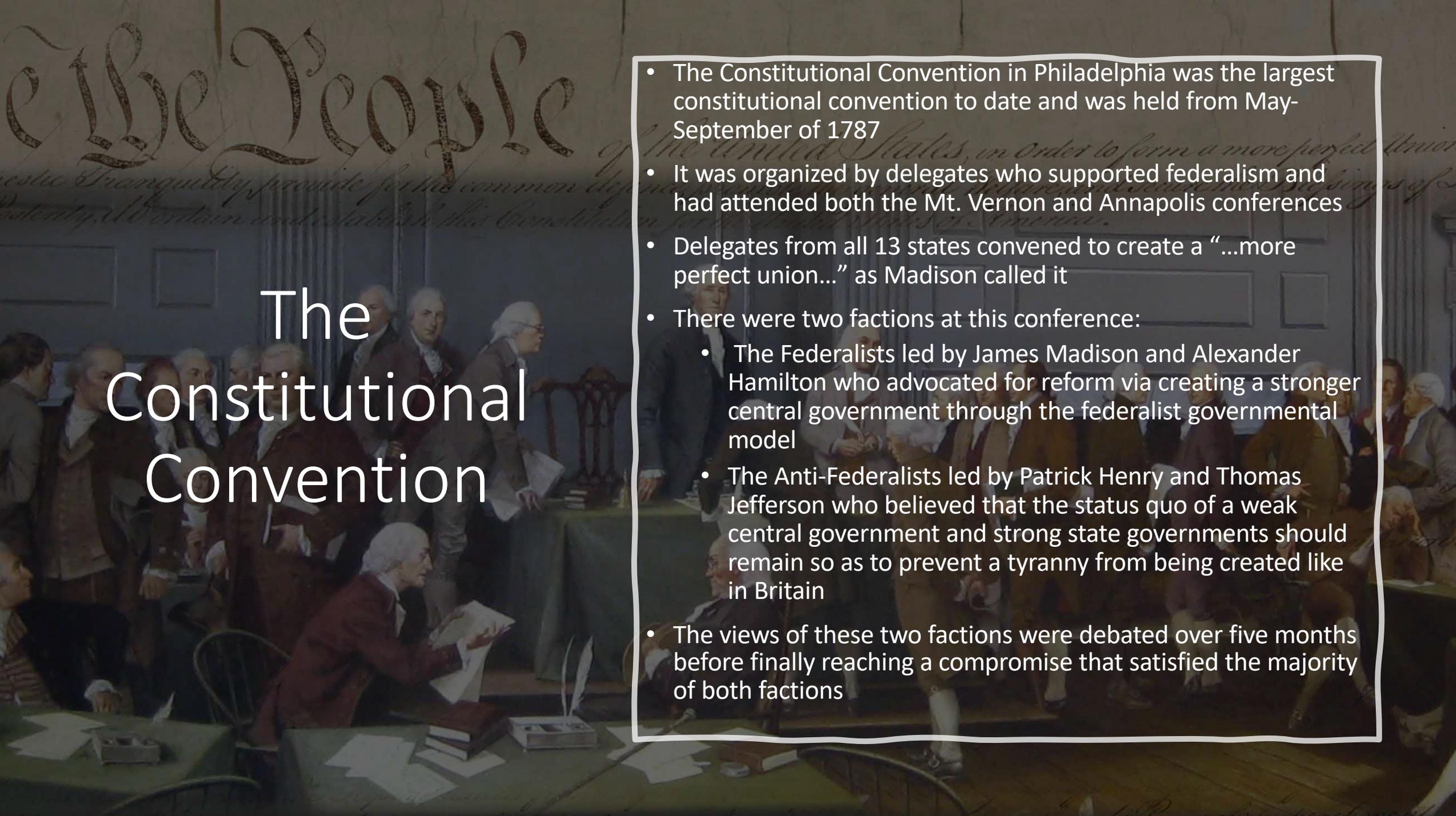


The Federalist Conferences

- Despite the Mt. Vernon Conference's success, there was much more to be done in order to gather support for the Federalist form of government before it could be proposed on a national scale
- Alexander Hamilton, co-founder of the Federalist faction, organized a second conference the following year in 1786 called the Annapolis Convention, this time with delegates not just from Virginia and Maryland, but from his home state of New York in the north along with others from Massachusetts, Connecticut, New Jersey and Pennsylvania.
- It was here that the first strategies for creating a Federalist form of government were outlined by Madison, Hamilton, Washington and the other Federalists
- They did this by first pointing out the numerous flaws in the Articles and then discussing ways how to improve these flaws and remedy them
- It was then decided that they would present their findings at a massive convention in Philadelphia the following years where all the states could be present and vote on creating a new government
- Note: George Washington never officially joined the Federalist party, he remained a political independent, but he still was instrumental in offering advice and guidance to the Federalists in their early rise to prominence and his views/policies during his presidency were more federalist leaning than anti-Federalist.



From Left to Right: James Madison, Alexander Hamilton, Rufus King, John Jay, Fisher Aimes and Charles Cotesworth Pinckney



The Constitutional Convention

- The Constitutional Convention in Philadelphia was the largest constitutional convention to date and was held from May-September of 1787
- It was organized by delegates who supported federalism and had attended both the Mt. Vernon and Annapolis conferences
- Delegates from all 13 states convened to create a “...more perfect union...” as Madison called it
- There were two factions at this conference:
 - The Federalists led by James Madison and Alexander Hamilton who advocated for reform via creating a stronger central government through the federalist governmental model
 - The Anti-Federalists led by Patrick Henry and Thomas Jefferson who believed that the status quo of a weak central government and strong state governments should remain so as to prevent a tyranny from being created like in Britain
- The views of these two factions were debated over five months before finally reaching a compromise that satisfied the majority of both factions

A New Government

- This new federalist government would consist of three co-equal branches
 - The executive branch led by the president who would set policy and implement it
 - The legislative branch divided between the two houses of Congress; The House of Representatives (lower house) and the Senate (upper house)
 - The judicial branch in the form of the Supreme Court
- No one branch would have power over the other in a process known as the “balance of powers”
- The central government would also have new powers of levying taxes, controlling commerce between states and foreign nations and a strong national military
- Through this new government, the needs of a strong national government were met by creating a strong executive and upper legislative chamber in the form of the U.S. Senate that would make decisions concerning the nation
- The needs of the states meanwhile would be represented through the directly elected U.S. House of Representatives and at the same time states still had a degree of autonomy in being allowed to decide policy on education, welfare and other areas on their own
- Lastly, the threat of a dictator or monarch arising was placated through the creation of an Impeachment process that could remove the President from office should their actions be deemed not in the interest of the nation



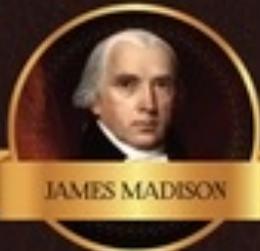
THE FEDERALIST PAPERS



ALEXANDER HAMILTON



JOHN JAY



JAMES MADISON

Campaigning for the New Constitution

- Despite the delegates at the Constitutional Convention drafting a new Constitutional framework in September of 1787 with the majority voting to approve it there was still the matter of ratification
- The ratification was a process by which each individual state in the U.S. had to approve the Constitution rather than just one delegate such as at the convention
- To campaign for each state approving this new framework James Madison, John Jay and Alexander Hamilton, all founding members of the Federalist party, wrote a series of 85 publications known as the *Federalist Papers between 1787 and 1788* outlining the philosophical underpinnings of a Federalist form of government with a strong central government and why that would benefit the nation

Opposing a New Constitution

- The anti-federalists, or the Federal Republicans as they preferred to be called, led by Thomas Jefferson and Patrick Henry, also wrote their own papers arguing for a Federalist government with a weak central government and strong central government
- In the end, the citizens of the United States saw more value in a Federalist government with a strong central government due to the Articles of Confederation having created so much chaos in the previous and years and subsequently all 13 states ratified the new Constitution and Federalism became the new form of American government in the United States



From Left to Right: Thomas Jefferson, Patrick Henry, Elbridge Gerry, George Mason, Richard Henry Lee, and Roger Sherman

Dual Federalism Period (1789-1865)

- The passing of the Constitution ushered an era known as the Dual Federalism period from 1789-1865
- It is named after the form of Federalism that dominated this period in which both the states and federal government acted independently of each other and were equal partners in terms of governance
- There existed little collaboration between the state and federal governments which created much tension between the states and federal governments
- Modern political scientists call this the “Layer Cake” Model of Federalism which went out of style in the U.S. over the course of the 20th century
- Currently, the U.S. uses the “Marble Cake” model of Federalism which is far more effective
- This evolution of American Federalism occurred after much strife which will be conveyed in the following slides

Layer cake vs Marble cake models of Federalism



Nullification Clause; A Catalyst for War



Battle of Bull Run; First Civil war engagement Manassas, Virginia; 1861

- The Nullification Clause passed by the Supreme Court further exasperated this tension between states and the Union by allowing states to strike down any law they deem unconstitutional and not in the interests of the state
- This tension between the states and national government created two opposing views
 1. The nation centered view which espoused that the Constitution was reflective of the nation and as such any law passed by the federal government in accordance with the Constitution was reflective of that will and should be upheld by the states
 2. The state centered view saw the United States as a league of states and that while the union was a nation, not all the nations needs were one need, but a multitude of needs depending on the state, and as such laws that were not in accordance with that need could be refused by the state
- These two views eventually ignited during the civil war whose conclusion would learn from the mistakes of Dual Federalism by giving increased authority to the federal government

Dual Federalism Period (1865-1905)

- This second period of Dual Federalism occurred in the aftermath of the civil war when many Americans learned the price of violent extremism on political issues
- Learning from those mistakes, this period was marked with increased centralization of political power within the national government
- President Theodore Roosevelt (pictured to right) was the primary actor in this period of nationalization
- Roosevelt's New Nationalism Initiative was a program he established which saw many laws and policies passed that increased the powers of the national government
- Roosevelt believed that a government where states would have more power than the national government
 - “...makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. The New Nationalism regards the executive power as the steward of the public welfare.”



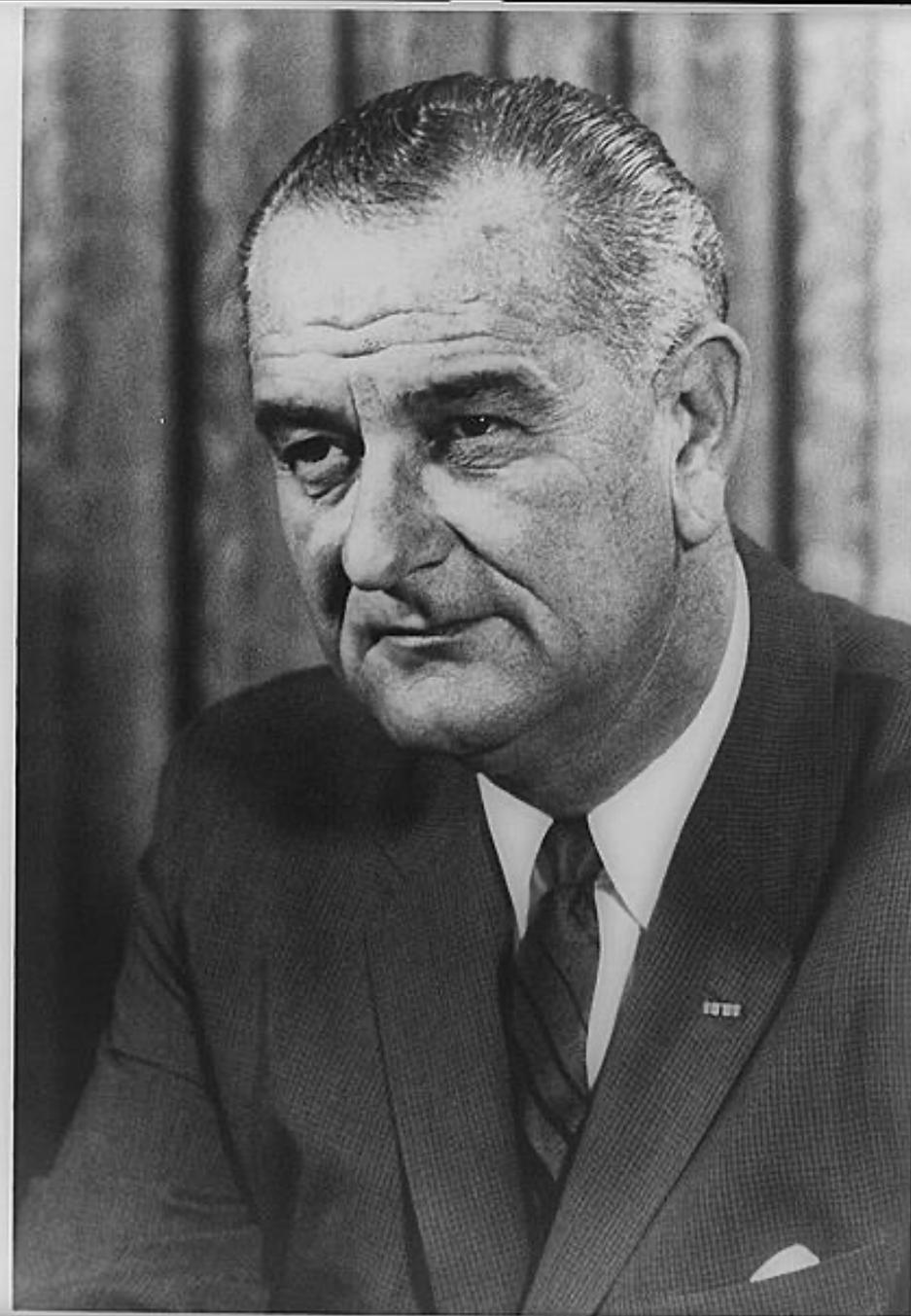


Cooperative Federalism Period (1901-1960)

- Cooperative Federalism was the government model that emerged out of Dual Federalism's new nationalist slant
- Populists such as Senator Huey Long espoused that the federal government had been gaining too much influence over the past 50 years
- To placate these concerns, President Franklin Roosevelt (Pictured to left signing New Deal into law) began passing policies in which both the national and state powers would be interchangeable and be forced to rely on each other rather than be at odds with one another as Dual Federalism encouraged
- While it did encourage nation and state cooperation, it actually made the states reliant upon the federal government for funds during the Depression thereby increasing federal powers
- Many New Deal policies such as the federal income tax and social welfare program encouraged this type of Federalism which dominated the United States by the end of WW2

Creative Federalism (1960-1968)

- Creative Federalism built on the work of Cooperative Federalism in that it drastically increased national governmental powers much like FDR's New Deal
- It increased the powers of the federal government through President Lyndon B. Johnson's (LBJ; pictured right) Great Society Program which aimed to eradicate poverty in the United States
- LBJ believed that the quickest way to eradicate poverty was through executive national government action and as such used the expansion of the grant in aid system with the states and increased use of government regulations to force the states to comply with his anti—poverty programs even if they did not support them through states becoming over reliant on federal funding to stimulate their economies and thereby coercing the states to vote with Johnson's policies to continue to receive that funding.
- This period only lasted during Johnson's presidency as due to his unpopularity from the Vietnam war no one wanted to continue his style of Creative Federalism which gained its name from him creating policies that would force the states to rely on federal aid much like with FDR's New Deal



New Federalism (1970-present)



”

**Lord Acton said
power corrupts.
Surely then, if this
is true, the more
power we give the
government the
more corrupt it
will become.**

Ronald Reagan



- New Federalism is the current trend of Federalist models that dominate American political debate
- Due to the unpopularity of President Johnson’s style of federalism President Nixon sought to redefine the status quo of central governmental power being prioritized over state powers in Federalist thought for the past 100 years by decentralizing powers back to the states
- Nixon did this through a series of six revenue sharing programs in which the goal was to shift funds, responsibility and authority back to the local and state governments to manage the inter-governmental grant system
- Although some of these initiatives were not successful, Nixon reignited the debate on the role of inter-governmental relations in Federalism
- Many future presidents would also try to devolve power back to the states such as Ronald Reagan who at his 1981 inaugural address stated “the federal government did not create the states, the states created the federal government”
- Bill Clinton also devolved powers back to the states through his Reinventing Government Initiative which redefined many of the inter-governmental powers between the national and state governments in a way that benefited the states

The Future of Federalism in the United States

- The United States was the first successful federal model of government in the world and should be looked up to as an example for future federalist states to follow
- However, there were many trials and tribulations that occurred to not only create federalism in the U.S., but also to maintain it which evolved over the years into numerous variations of the first federalist model that the founders crafted in the Constitution
- To this day, the federalist debate persists on whether the states or national government should have more power with the current mode of thought being devolution of powers from the national to state governments
- Although America has its problems on how to implement federalism, the lessons of America's path to its current model of federalism can still be useful to other nations to avoid those same mistakes
- Winston Churchill once stated, "Democracy is the worst form of government, except all those other forms that have been tried" and the same can be said of American Federalism

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H. Anecdotes on American Federalism

The following anecdotes were developed to provide ideas, quotations, and colorful remarks for MoFedA speeches and documents. In general, these anecdotes clearly illustrate that the United States cannot claim to have adopted Federalism quickly and without significant challenges. Instead, the United States took years (or decades) to achieve such success. However, our own government does not always make this clear to other governments, and so this section provides some useful facts, figures, and anecdotes that hopefully provide optimism and confidence for the leadership of South Sudan as they strive to endorse and implement Federalism.

Discussion

1. The United States Articles of Confederation had numerous problems over our country's early years.
 - a. Each state had its own currency.
 - b. Citizens from other states had to get travel passes just to enter adjacent states.
 - c. International trade was nearly impossible because of each state was acting essentially as a foreign government.
 - d. The war debt from the Revolutionary War could not be paid off to France for their aid during the war due to the lack of a unified economy.
2. American leadership realized the need for a strong national government, and many were humble enough to admit that they were wrong and needed a change in politics.
3. George Washington, the founding father of the U.S. knew that he and our Founding Fathers were wrong and became one of the most fierce advocates for a stronger central government. Some even suggested he should be king due to how charismatic and beloved he was by the American people. Even King George III, Washington's nemesis and

counterpart during the American Revolution remarked that if he chose to not accept the offer of becoming the absolute monarch of America, then he would be “the greatest man in the world”. However, that is exactly what Washington did, he was humble enough to know that a return to a monarchy would not benefit the American people and rejected the offer of a crown, and instead accepted the offer of being a democratically elected president of a newly formed Republic.

4. American Federalism as it is now known took many debates and conferences to be formed out of the turmoil that began the entire process; The Articles of Confederation.
 - a. The Mount Vernon Conference (1785)
 - b. The Annapolis Convention (1786)
 - c. The Constitutional Convention in Philadelphia (1787)
 - d. The Virginia Ratifying Convention (1788)
 - e. 13 Separate individual state conventions ratifying the Constitution (1787-1788)
5. In the early years of the American Republic, voting was extremely disenfranchised. This was due to voting eligibility being restricted to men who were U.S. citizens that had property. The property requirement ranged from state to state, but it typically ranged from as little as 25 acres (Virginia) to as many as 50 acres (Georgia). This essentially limited voting in the United States to approximately 6% of the population which consisted of rich white landowners. It would not be until 1828 when this property requirement was removed and all male U.S. citizens could vote, but even then it was still only limited to white males.
 - a. African American males were granted the right to vote in 1869 with the passage of the 15th amendment. However, despite this, many U.S. states in the South who

opposed African American voting rights placed restrictions on the vote which limited an African Americans ability to vote. These included literacy tests and other forms of restriction that allowed states to impose on voters so as to limit their ability to vote. These were not breaking the amendment, and as such were perfectly legal to impose upon citizens.

- b. These literacy tests and voting examinations were not just imposed on African Americans, but also on immigrants from Germany, Ireland, Italy, and other ethnic groups that were deemed to be not worthy of the U.S. by the American power base at the time which was made up of white protestants of Anglo-Saxon ancestry.
- c. It would not be until the passage of the 1965 Civil Rights Act that these literacy tests and other Jim Crow discrimination laws would be removed.
- d. Women also would not be granted their enfranchisement until the 20th century with the passage of the 19th amendment which gave voting rights to women in 1919. Luckily, no literacy tests were required by the states to vote and as such almost all women (barring African America, Irish, Italian women who still had to take literacy tests) could vote with no impediments.
- e. This history shows that although the U.S. Constitution says, “All men are created equal” and the Bill of Rights stipulates that all U.S. citizens can votes, that does not mean it was true for everyone. It still has meaning in principle, that all people deserve those rights of free speech, voting and free press, but that did not mean that it was necessarily true in practice due to various prejudices and biases that were the social norms at the time.

6. There were numerous phases of Federalism such as the Dual Federalism phase (1787-1901), the Cooperative Federalism phase (1901-1960), the Creative Federalism phase (1960-1980), and the New Federalism phases (1980-present). It took many years to form the current democracy and republic that is known today as the United States. This did not occur overnight, but was formed with patience, discourse, and perseverance.
7. The Anti-Federalist papers written by Thomas Jefferson and Patrick Henry to advocate for states right and were in opposition to the Federalist papers, which advocated for a strong central government.
 - a. Although these papers proved to be fruitless in the preservation of the articles of confederation they still laid the foundation for many great political ideals concerning states' rights that continue to be politically relevant to this day.
8. Supreme Court Justices are appointed for life, however, much like the president, they can be impeached. The first and only Supreme Court Justice to ever be impeached was Samuel Chase. In 1805 Chase was charged with eight articles of impeachment by Congress for being biased towards a Federalist view rather than being neutral. Granted, the President at the time was Thomas Jefferson, who despised the Federalist party for their nationalistic views of central government and wanted to rid the court of all Justices who had that view. Here, there are examples of unfair bias from everybody.
9. An example of IRS power is the fall of the infamous and ruthless Italian American Gangster Al Capone. Al Capone was among the most ruthless and bloodthirsty American crime bosses of all time responsible for numerous crimes that include corruption, murder, racketeering and kidnapping. Despite the federal and state governments trying to arrest him for years he always evaded prosecution. However eventually got him arrested was

tax evasion. Capone had failed to pay his taxes for 10 years and as such was given a 15-year prison sentence for tax evasion. He was never convicted for any other crime.

10. There are two primary views of presidential power that emerged during the early years of the American Republic that are still relevant to this day. These views were developed by Alexander Hamilton and James Madison as a result of President Washington's Proclamation of Neutrality to not be involved in the French Revolutionary wars. Many believed that Washington's proclamation was outside his presidential authority, such as Madison, while others believed it was perfectly within his constitutional authority as President, such as Hamilton. To argue these points Hamilton published his views defending Washington's Proclamation under the pen name Pacificus, while Madison published his views attacking Washington under the pen name Helvidius. Hence, the name of the debates being Pacificus/Helvidius which occurred from 1793-1794.

a. Hamilton's view of the Presidency stated that the president was a *servant of the*

people and not that of Congress. As such, he was allowed to take any action that

was not explicitly prohibited in the Constitution even if that action was under

Congress's authority. He believed that *executive energy* as he called it, was

necessary for effective decision making as Congress would be too slow to make

these decisions if the president sought permission for those actions first, and that

this delay would be detrimental to the American people.

b. Madison's view of the presidency believed that *presidential delegation* should be

prioritized over *executive energy*. This means that the President should serve more

as a presiding officer of the entire government, encouraging debate and legislation

in Congress over pieces of legislation that the president proposes rather than

ramming the legislation as fast as possible and using Executive Orders to get the presidential agenda passed. In contrast, Madison believed that the President should only make decisions that are explicitly granted to the President within the Constitution, leaving the rest of the decision making in government to Congress, and to not interpret the lines of the Constitution very broadly as Hamilton was doing.

- c. In recent years, presidential power has formed what many political scientists call the *Imperial Presidency* due to how much executive power has increased in the presidency since our country's founding due to each president gradually expanding the powers of the president. If the founders were to see the United States presidency as it is now, even Hamilton would be horrified by how much executive power the president wields.
 - d. Many politicians and academics are calling for the Madisonian view of the presidency to be reexamined and for the president to prioritize delegation over energy due to how much power the presidency has accumulated over the course of American history, and as a result those powers should be devolved back to Congress.
11. President Franklin Delano Roosevelt appointed Hugo Black to the United States Supreme Court as an Associate Supreme Court Justice. Black was a Ku Klux Klan member who participated in numerous lynchings of African Americans during the 1910's and '1920's and was also fiercely anti-Catholic passing numerous bills as a U.S. Senator which were prejudiced against Catholics prior to his appointment as a Supreme Court Justice. FDR also ironically appointed a very prominent catholic as a member of his

cabinet as Ambassador to the United Kingdom, Joseph Patrick Kennedy Sr.. Ambassador Joe Kennedy was the father of President John F. Kennedy and was known for being a supporter of fascism and fiercely anti-Semitic. Many historians now believe that Kennedy was appointed to assess the strength of Hitler as a potential ally of the United States in Europe, and that FDR would have joined Hitler were it evident that Germany would win the war.

12. These examples are provided not to denigrate the good things that FDR and others accomplished but instead to remind the reader that nothing is ever as it seems when written by a historian wanting to bend or avoid the unpleasantness of history. The background of Federalism in the United States is no different. I hope that the people and leaders of South Sudan may use these lessons of American history, both the good and the bad, to improve their perspectives and endeavors to become a federalist-based democracy.

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