WHY DO FEDERAL STUDIES MATTER AND WHAT DOES MATTER?¹

by Francesco Palermo

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¹ A different version of this text has been published in 50 Shades of Federalism, see http://50shadesoffederalism.com/

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Publisher: Forum of Federations
(Rupak Chattopadhyay and Philip Gonzalez)
Editorial team: Jean-Philippe Gauvin, Johanna Schnabel, Walkiria Zambrycki Dutra

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In present times, federal studies are more topical than ever. This holds true, however, only if they focus on the key problems of contemporary societies they can help to address. Why then are federal studies so important and what should they be focusing on in order to be relevant?

The number of countries embracing federalism is growing (Hueglin and Fenna, 2015: 3), especially in non-Western areas (Breen, 2018) and renewed attention is paid in literature to the many facets of federalism. The increasing importance of federalism has to do with the fact that its complex machinery can provide potential solutions to some societal challenges. For this reason, in recent times, a shift in focus is taking place in federal studies. The two main issues that kept scholars busy for the past decades – conceptualization and definition of federalism and institutional aspects – are decreasing in their significance. Scholars are finally accepting that there is no universal agreement on what federalism means (Gamper, 2005), nor is there agreement on how to classify federal countries (Watts, 2008). Nor can there be one. Federalism is an essential component of theory and practice of states and power structures, but the federal principle is indeed much older than the modern and even the pre-modern state (Burgess, 2006). In fact, federalism is at the heart of one of the most pressing challenges in the history of mankind: how to order public life and how to limit, organize and regulate power in a way that guarantees freedom and efficiency, unity and plurality, autonomy and coordination. But precisely for this reason, it can be seen in different ways, under different disciplinary angles, taking different features into account and producing very different outcomes.

At the same time, other and more topical aspects of federalism have been addressed more consistently, all having to do with providing responses to the challenges of contemporary societies. These challenges are different in nature and vary from country to country, but they all have to do with the management of complexity. Societies are faced with a growing number of challenges deriving from complexity, and federalism is the closest instrument to deal with them (Palermo and Kössler, 2017: 448).

To be helpful in dealing with the management of complexity, however, federalism can no longer be seen as a pure institutional interplay, but has to include the understanding of how federalism works (or may work) in practice, what its added value could be and how it could be developed. Institutional facets are just one aspect of the contribution that federalism can provide: they are the historically most developed aspect and are thus fit to serve as a matrix for developing new instruments, but alone are no longer sufficient to make federalism relevant in the twenty-first century.

Against this background, four are the areas in which federal studies could probably contribute the most in order to provide answers to contemporary challenges, and which seem to be attracting growing scholarly attention.
The first one is a more careful study of *policies*, including how they are managed on the basis of legal norms and how they are interpreted by courts. The analysis of relevant policy fields, both related to the constitutional division of powers and to the political processes, can illustrate the trends and suggest solutions for the governance of complex and transversal areas involving a plurality of actors. These include environment, education, financial relations (Valdesalici and Palermo 2018), immigration, security (Leuprecht, Kölling and Hataley, 2019) and many others, forcing involved actors to develop effective forms and procedures for cooperation. In other words: making federal studies fit to provide responses to contemporary challenges of an ever more complex forms of governance of ever more complex phenomena in ever more complex societies.

The second main challenge is that of *participation*. This has been an essential element of federalism from the inception. However, traditional institutional forms of (territorial) participation are no longer sufficient to establish a workable system, as shown by the ongoing crisis of second chambers in federal and regional systems (Gamper, 2018). Not only are rules on participation essentially procedural, determining who can participate, how, under which conditions, exercising what rights, and – not least – what are the consequences of inclusion in or exclusion from the process (for example, whether those excluded have the right to challenge the decision in a court or not). In present times, the pressure towards more democratic and participatory decision-making makes it necessary to look beyond merely institutional participation and to include (and regulate) also forms of societal participation (Palermo and Alber, 2015). The ways non-institutional stakeholders can be included in decision-making processes can more easily be designed by digging into the federal toolkit.

The third aspect has to do with the growing demand of managing *ethno-cultural pluralism* within societies. Recent developments seem to indicate that all countries that are decentralizing do so primarily in order to respond only to ethno-cultural challenges (Choudhry, 2008; Broschek, 2013: 101). This seems confirmed by developments in countries such as Ethiopia, South Sudan, Kenya, Nepal, Myanmar, possibly the Philippines or Sri Lanka, and by adaptations in several other countries, also in Europe, where ethno-cultural issues are shaping federal dynamics much more than other elements and certainly more than in the past. If that is the case, one could argue that in present times federalism is seen, rightly or wrongly, at least at political level, as an instrument to accommodate minority claims in first place. If so, greater attention should be paid to rule of law instruments that balance the idea of exclusive control of a territory by a titular group (Kössler, 2015).

Finally, but not least, the regulation of *local government* can no longer remain alien to the studies of federalism (Steytler, 2009). Contemporary societies are marked by fast urbanization and very often cities are far more relevant than intermediate levels of government in demographical, economical and political terms (Kincaid and
Chattopadhyay, 2008). While federal systems were traditionally construed based on dualism between national and subnational levels of government, to properly address institutional pluralism makes it now impossible to ignore the local dimension of federal governance.

It is encouraging that growing attention is been paid by scholars to these aspects of federalism.
References


