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Federalism beyond government: thinking outside the (institutional) box through commons governance

by

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Abstract

Institutional pluralism, the traditional focus of federal studies, is increasingly complemented by forms of governance that challenge constitutional (and federal) theory by unveiling the complexity of policymaking beyond the traditional representative channels. Constitutional scholarship is today faced with the challenge of incorporating into its general theory the contribution that comes not only from institutional pluralism but also from governance models: such a theorization, in fact, is yet to be developed by existing scholarship. This lack makes the analysis of such practices mainly descriptive, with this preventing a deeper understanding of societal pluralism as well as the development of classifications and normative proposals. This essay aims indeed to engage with this need for theoretical recognition by taking on Palermo's suggestion that federal theory and practice may be one of the best suited, if not the best, tools to build a unitary theoretical account on societal pluralism and governance. To do so, the essay focuses on a particular form of governance that is emerging and consolidating, especially in Europe: the commons. The work proposes a federal reading of the commons and attempts to prove its usefulness in providing a theoretical framework capable of classifying them and fostering their development.

Keywords

federalism, commons, institutional pluralism, societal pluralism, constitutional theory



1. Introduction

Institutional pluralism, the traditional focus of federal studies, is nowadays increasingly complemented by forms of societal pluralism, i.e. the plurality of individual or associated citizens that, in various ways, contribute to the construction of democratic contexts. This emergence of what can also be referred to as governance challenges constitutional (and federal) theory by unveiling the complexity of policymaking and democratic participation beyond the traditional representative channels.

Constitutional scholarship is today faced with the challenge of incorporating into its general theory the contribution that comes from societal pluralism and governance models. It seems critical that legal scholars consider those phenomena and add their specific perspective to those of other disciplines. The public law scholars' standpoint provides a crucial insight into the analysis of governance models, since it focuses on their relationships with the structures of representative government and decision-making as provided for by the constitutional framework (Ferrarese 2010; Ferrarese 2014: 35-56). The systematization of governance within public law (and federal) theory can arguably offer a fruitful explanatory standpoint as well as advance evolutionary proposals to address its possible further regulation (Dani and Palermo 2003: 785-794). For instance, it can do so by analyzing its relationships with the content of constitutional principles, complementing traditional approaches that heavily rely on the constitutional distribution of powers among state and substate institutions to explain the dynamics of public activity, and providing solutions for the design of governance procedures to ensure their transparency and legitimacy.

As observed by some, 'existing scholarship has not yet developed a consistent theoretical framework' or a comprehensive theory 'to classify and explain this phenomenon' (Palermo 2015: 503-504). This lack makes the analysis of such practices mainly descriptive, with this limiting a deep understanding of societal pluralism as well as the development of classifications and normative proposals (Palermo 2015: 504).

It is the aim of this essay to engage with this need for theoretical systematization by exploring the relationships between federalism and governance. To do so, the essay focuses on a particular governance phenomenon that is emerging and consolidating, especially in Europe, namely the commons. Such a focus is justified by the increasing relevance of these



forms of governance in several legal systems, driven by their democratic and ecological functions. The present work proposes a federal reading of the commons and attempts to prove its usefulness in providing a theoretical framework capable of explaining them and fostering their development in federal systems. Based on the idea that also (commons) governance may be systematized using a federal standpoint, the article focuses on how and by virtue of which principles and designs federal systems can integrate these forms of governance in their constitutional systems, and how some of them are already doing this. This perspective suggests that the commons and their governance, more broadly understood, represent an opportunity for federalism – both as a theory and a set of principles – to prevent depletion.

Based on this, the essay thus aims to answer the following research question: in which sense and to what extent federal theory and practice may be enriched by commons governance, and, consequently, how can federalism better acknowledge and accommodate this form of societal pluralism?

Before addressing the core issues of this study, a note concerning federalism-related terms seems needed. This essay uses the expressions of federal theory, federal thought, or federal studies to indicate the literature on federalism developed by constitutional and political science scholars. When referring to federal practice, the aim is to focus on the practical (legal and political) tools derived from federal theory that have been concretely applied in different (multi-tiered) legal systems and how they have been applied (for instance, subsidiarity and its applications, supremacy clauses, conflict resolution models, etc.) or to the dynamics of these systems (for instance, centralization/decentralization, subnational experimentation, emergence and consolidation of IGR bodies, role of courts, etc.). The expressions “federal and multi-tiered systems” and “multi-tiered systems” are mainly used to refer to states that are characterized by a (generally constitutionally defined) vertical division of powers. In line with the most recent theoretical developments in federal studies, this wording thus considers federalism as an organizational (constitutional) principle that has had several manifestations beyond the traditional federal state.



2. From (institutional) government to (societal) governance

The governmental and territorial diffusion of power is usually referred to as “government”. Government refers to the formal institutions, structures, and processes through which decisions are made, and authority is exercised. Its primary actors are States’ institutions with their elected officials, and it has a vertical nature that captures the usual hierarchical distribution of power. In this sense one can talk of “institutional government”. On the other hand, “governance” refers to something much broader than that: rather than an institutional diffusion of power, a societal one.

As a concept originated and circulating among political scientists since the ‘80s, the idea of governance was used to analyze the contribution of non-state actors, such as civil society organizations, regarding the management of activities like the delivery of public services (Mette Kjaer 2004: 1-15). It is broader than the concept of government as it entails capturing a wider perspective on the public arena (Héritier 2002: 2-3) that encompasses both vertical and horizontal dimensions. At the core of governance are decision-making processes. These are determined not only by vertically organized public authorities, but also by horizontal networks of non-state actors whose interactions offer a variety of information and knowledge that contribute to solving complex problems (Kooiman 1993: 4). In a nutshell, governance consists of ‘the production of authoritative decisions which are not produced by a single hierarchical structure, such as a democratically elected legislative assembly and government, but instead arise from the interaction of a plethora of public and private, collective and individual actors’ (Christiansen and Piattoni: 2003: 6).

The regional context of the European Union (EU) is of particular interest when trying to understand what the idea of governance means in practice, since the supranational legal order of the EU constitutes a truly distinctive order where governance found its legitimization. This governance dimension is relevant also in the framework of the construction of what goes under the name of ‘transnational law’ (Tuori 2014: 11:58) where legal phenomena do not properly fit into the dichotomy of state law and international law but instead transcends the limits of states’ categorizations. In this sense, as a sub-category of transnational law, the supranational law of the EU is being constructed as a ‘network of overlapping networks’ (Ladeur 2009: 1357-65) where also critical private interests (Shore



2011: 287-303)^I as well as forms of technocratic elitism (Shore 2011: 297, 302) entered the public arena in parallel to parliaments and traditional channels of representative institutions.

Such a governance perspective in the EU inspired the specific term multilevel governance (MLG) used among scholars, EU officials, and politicians. Emerging from a study (Marks 1992: 191-224) on the renewed European structural policy in the 1990s, MLG soon dominated governance-related debates among European integration scholars seeking alternatives to traditional state-centric government (Marks et al 1996: 341-78; Hooghe and Marks 2001). The term later gained full institutional recognition thanks to the EU Commission and the Committee of the Regions (CoR), which released two documents on that (European Commission 2001; Committee of the Regions 2009). MLG, specifically, captures the multi-tiered structure of EU governance, emphasizing the interconnectedness of various state and public and private non-state actors (Kohler-Koch and Rittberger 2006: 42), operating across different territorial levels (supranational, national, regional, and local) within a non-hierarchical framework (Kohler-Koch and Rittberger 2006: 42). According to the theory of MLG, policy-making and decision-making power thus goes beyond states' governmental authorities (Snyder 1993) and includes the regulatory work of actors that produce non-legally binding acts (usually referred to as 'soft-law', Snyder 1993). Concretely, among such actors one can find: EU institutions; national governments and parliaments; regional and local authorities, and the Committee of the regions (CoR) as the representative of their interests; NGOs, trade unions, businesses, think tanks, and the European Economic and Social Committee (EESC) representing such groups in consultation processes; transnational networks or agencies.

It is interesting to observe that, within the context of the EU, governance is framed as a channel of participation – where participation should be regarded as an additional channel of democratic legitimation in parallel to representation (Palermo 2022: 49-72). The principle of representation is instead traditionally related to a government perspective, where democratic legitimation is strictly limited to representative institutions.

Despite its contested federal nature (Ryan 2020: 495-496; Martinico 2008: 859–883), the EU thus constitutes an interesting multilevel system of both government and governance where both representative and participatory democracy schemes are recognized and constitutionally entrenched in its Treaties: one can find reference to that, in particular, in the



Treaty on European Union (TEU) at Title II ‘Provisions on democratic principles’ (Articles 9-12).

Even though the governance dimension has been integrated into the EU’s legal framework, there are still shortcomings related to the use of MLG as a theory to describe the *sui generis* institutional organization of the EU. The most relevant one is the overlooked role of citizens and civil society organizations. In fact, despite the EU MLG framework, it is hard for ordinary citizens to participate in decision-making processes and have a concrete impact on final decisions and policies. Usually, governance in the EU gives greater weight to the contribution of other public or private actors compared to individual or associated citizens. Consequently, citizens’ initiatives based on what could be defined as a ‘civic autonomy’ (or ‘autonomia civile’, Benvenuti 1994: 60-64, 80) – i.e. their contribution through grass-roots concrete activities aimed at benefitting the general societal interest together with public authorities – enjoy a very limited theoretical and legal recognition. Contrarily, it has been maintained that also individuals should be considered as governance actors (van Zeben 2017: 123) even if their contribution is so far limited. Therefore, when it comes to the concrete involvement of citizens, MLG theory does not provide much help.

Interestingly, MLG resonates with another governance theory, which is polycentricity. They are both theories developed by political scientists, and both share a governance perspective: the first one developed within the European context, to describe the special form of government of the EU, while the second one in the context of North America, to analyze government in metropolitan areas (Ostrom 1961: 831-42). Polycentricity was also originally used as a concept aimed at integrating and innovating the classic theorizations of American federalism: rather than focusing on political and administrative decentralization, it proposed a governance perspective on power distribution that includes a focus on citizens’ participation. More precisely, polycentricity (or polycentric governance) was used as a framework to describe the existence of ‘many centres of decision-making which are formally independent of each other’ (Ostrom 1961: 831) characterized by ‘a complex combination of multiple levels and diverse types of organizations drawn from the public, private, and voluntary sectors that have overlapping realms of responsibility and functional capacities’ (McGinnis and Ostrom 2011: 15). From the (governance) normative perspective of polycentricity, a widespread distribution of decision-making powers can provide for higher citizen participation, especially at the local level. The added value of the theory of



polycentricity is thus its focus on horizontal relationships between diverse actors. Conversely, federal studies are traditionally more concerned with vertical relationships among governmental (national and subnational) levels, in this way failing in recognizing citizens' contribution by overlooking that in its theorization. In line with that, it has also been argued that 'as compared to federalism, polycentricity allows for an additional dimension of crosscutting, overlapping 'issue-specific' jurisdictions and envisages an explicit role for non-governmental bodies, such as private and community-based organizations' (van Zebe 2019: 32).

All in all, while fundamental to extend the observation beyond institutions and towards the role of non-governmental actors and suggest how states could function if organized in line with polycentric principles, polycentricity does not seem to provide answers as to how to reconnect governance with government from a constitutional standpoint. For instance, how and to which extent do polycentric principles affect the existing structures of government and current division of powers? How are conflicts among these many centers solved? Which constitutional principles may justify and legitimate their presence and support by the state? According to which constitutional frameworks can governance be integrated or coordinated within a multi-tiered system and acquire (state) legal relevance? In other words, what is missing in the mere application of polycentric theory to explain governance and societal pluralism is its capacity to connect with the constitutional context – its structure, principles, and practices. The complex configuration of (overlapping and sometimes conflicting) powers resulting from governance could, in fact, be described not only according to theoretical explanations (that is what polycentricity and MLG do), but also by constitutional and legal organizational arguments (that is what federalism aims to do with both its theoretical conceptualization and practical tools).

3. The commons as a paradigmatic case of societal governance

At the intersection between government and governance, the commons constitute a paradigmatic case of both shared and self-governance, in which federalism can play a key role by providing the institutional and constitutional framework within which they can be accommodated and further supported. As an introduction, in the absence of a single,



authoritative definition, for the mere purpose of this paper the commons may be understood as sites and spaces – some would say goods or resources – of civic autonomy, whose governance may at times be shared between societal and state actors and at other times take the form of self-governance by those societal actors who take the initiative. Such a governance can be collaborative or conflictual, and it extends beyond the traditional public–private dualism.

As a form of self-governance, the commons can be seen as sites of civic autonomy carried out by a community without the necessary support of public authorities. As a form of shared governance, they can be seen as sites of civic autonomy carried out by citizens through institutionalised forms of collaboration with public authorities, which allow citizens to be involved in decision-making processes as well as in concrete actions aimed at sharing the governance of certain commons. Such civic initiatives related to the commons can be seen as a new form of participation – a ‘civic participation through the commons’ (Salati 2023; Salati 2026). This is occurring first and foremost at the local level in cities and towns of different sizes but is not unknown to other levels of government. As emergent forms of civic participation based on individuals and communities’ autonomy, the commons constitute an interesting phenomenon that challenges the role of federalism as an organizational (constitutional) principle and federal studies in their systematization effort and encourages them to develop further.

Having achieved a solid affirmation in political sciences (Ostrom 1990), the commons constitute an emerging societal phenomenon of primary importance as, over the latest decades, individuals and associated groups have started numerous commons-oriented grass-roots initiatives in several cities and towns (in both urban as well as rural contexts) not only in Europe, but in the whole world. Individuals and associated groups usually conceive the commons as a starting point for rethinking the relationship between the state (as composed of diverse public autonomies) and society (as composed of diverse civic autonomies, Benvenuti 1994: 60-64, 80) according to some participatory and more horizontal rules (Ciaffi 2019: 162-72), and more generally as a critique to existing legal and constitutional structures (Blokker 2014; Rodotà 2013). While it is possible to talk generally about ‘commons’, it should be acknowledged that many are labels attributed to that: from natural commons to urban commons, cultural commons, digital commons, global commons. Some concrete examples of commons are land, water reserves, parks and green areas, public squares and streets,



schools, libraries (as tangible goods and resources), as well as, for example, culture or education (as intangible goods), or data (as digital commons). The value of commons has often been recognized as intergenerational in so far as their governance affects not only present generations but also future ones. As mentioned above, they also challenge traditional public-private dualism, because their governance lies at the boundaries between traditional market-state divisions.

The commons are of key importance for democracy because they are concrete instruments for citizens to exercise their participatory rights and their civic autonomy, as well as their constitutional duties of solidarity. In this sense, they have also been associated with democratic innovations (DIs) in so far as they propose ‘an innovative institutional arrangement, including a set of participatory rules and a community of people’ (Hasenbaum 2021: 6-7).

In parallel to concrete activism, the commons so far have been studied by many disciplines, spanning from political sciences to economics, philosophy, urban studies, history, sociology, environmental studies. Much more limited, however, has been the contribution of constitutional and public law scholarship (Salati 2026 for the EU regional context), including federal studies. However, theorization seems needed, and the reason lies in the capacity of the commons to strengthen local governance and contribute to foster the democratic legitimacy of elected representative governments by opening decision-making processes. Given this emerging role of the commons, further constitutional theorization would create more favorable conditions for them to have a bigger impact by suggesting how to integrate their governance into states’ legal orders. Such integration would enable them to receive various forms of support, primarily economic, bureaucratic, and sustainability related.

For instance, looking at several commons-oriented initiatives in the European context – and especially at initiatives in selected cities such as Barcelona, Ghent, Grenoble, Amsterdam, as well as single initiatives spread across the EU and mapped by previous research – what emerge are some recurring limitations that hinder their development (Salati 2026). First, a limited legal recognition. This can be observed at the supranational EU level, as well as at the national level of EU member states. Second, also as a consequence of that, recurring conflicts between citizens and public authorities on commons-related matters, essentially because of bureaucratic obstacles or lack of political will. Third, a widespread project-based thinking that does not foster a structural systemic approach to the phenomenon. Fourth, the



very limited economic sustainability of commons initiatives because of a generalized difficulty in having access to funding schemes. These critical factors, among others, highlight a common aspiration of commons-oriented initiatives: institutionalization and recognition by public authorities – a need that remains unmet.

Interestingly, one similarity among commons-oriented initiatives around Europe is their inner relationship with democratic participation. Participation, in fact, emerges as the key primary reference point for commons-related initiatives that go beyond traditional forms of participation – by legal scholars usually referred to as belonging to participatory and deliberative democracy. In other words, the commons as a form of democratic participation can be seen as an additional type of democratic innovations (Elstub and Escobar 2019), such as mini-publics, participatory budgeting (PB), referenda and citizens' initiatives, and collaborative governance. In this sense, the commons and their diffused governance constitute a form of democratic participation which may find a constitutional anchorage in the principle of subsidiarity. Lastly, another similarity emerging from a comparative overview of other European experiences on commons governance is the recurrent reference by such experiences, initiatives or projects to the Italian case as the one to look at for its pioneering capacity to provide for an institutional framework at multiple levels of government – so far missing in other countries around Europe. The recognized role and impact of the Italian model in comparative perspective explains the focus of this paper on it.

4. The governance of the commons and the subsidiarity principle: The case of Italy

The governance of the commons has received institutional recognition especially through the operationalization of the principle of subsidiarity in the context of the Italian legal order. Subsidiarity, in fact, as an organizational principle dealing with the distribution of power, has already been used as a constitutional basis that contributes to the valorization by institutional means of the governance of the commons in essentially two ways: (1) through the recognition of the key role of local authorities, in addition to national and subnational ones, within multi-tiered systems; and (2) through its horizontal (social) dimension, which has traditionally and predominantly been forgotten (Salati 2023) almost everywhere except



for some legal orders, such as – above all – the Italian one, which is worth mentioning for its pioneering contribution. The case of Italy, in fact, constitutes to date the only case of multi-level institutionalization through a constitutional, legislative, and regulatory framework, of a model of shared governance of the commons between societal actors and institutional ones. This institutionalization has been taking place thanks to the contribution of different levels of government: from the local level (municipalities and metropolitan cities) to the subnational (regions) and national level (central government). The constitutional principle of subsidiarity, in this regard, constitutes the key constitutional anchor for the “shared administration” model of commons governance, and is what allowed Italy to develop the most advanced legal framework for governing the commons.

In a nutshell, in the Italian legal context, the principle of subsidiarity at Article 118 (4) of the Italian constitution foresees a mandatory support by public authorities (from the national level to regions, provinces, metropolitan cities, municipalities) in favor of those individuals or associated citizens that autonomously decide to take initiatives to fulfil the general interest. On the basis of this constitutional provision, throughout the last decades it has been possible to develop an organizational model named “shared administration” that after its first theorization in 1997 (Arena 1997: 29-65) it was firstly adopted and implemented in the city of Bologna in 2014 and has later spread to more than other 330 local authorities.^{II} Such a model provides a constitutional and legal framework for commons governance. The legal framework of shared administration at the local level – based on the principle of horizontal subsidiarity – consists of a municipal regulation on the commons and its related innovative legal tool of the so-called collaboration pact. That is a co-designed agreement between citizens and public authorities that defines their forms of cooperation and, in particular, the participation of the citizens in the management and care of specific commons (Salati 2023). Today, there are thousands of such collaboration pacts across Italy, with hundreds of thousands of citizens collaborating with public authorities in commons governance initiatives.^{III} Subsidiarity, in this case, provided a sound constitutional reference point which – thanks to its horizontal (or social) dimension – allowed for an institutionalization of the governance of the commons, which is concretely occurring through a collaboration between public authorities (as public autonomies) and citizens (as civic autonomies). In addition to the constitutional significance of its horizontal dimension, subsidiarity has been contributing to institutionalizing the governance of the commons by strengthening the role of local



authorities as frontline actors in democracy. In this way, subsidiarity is also contributing to the development of an emerging ‘law of cities’ (Auby 2013: 305) through forms of ‘informal public law’ such as the collaboration pacts (Gigliani 2017: 291-309) directly derived from this principle, which reflects the political renaissance of cities as major levels of government (and governance) beyond traditional administrative activities. In line with its origins (*subsidium*),^{IV} subsidiarity dictates that higher-level units should provide support to lower-level ones only when they are unable to manage independently. The contribution of subsidiarity is relevant to this essay as it provides a solid constitutional anchorage for the development of grass-roots forms of societal pluralism through commons-based initiatives. Additionally, and even more importantly, subsidiarity is of key importance from a federal perspective, as it is strictly connected to federal theory and practice.

Notably, subsidiarity has also been underlying the development of other forms of commons governance in Italy. It is the case with the so-called “collective domains” (*domini collettivi*), i.e. traditional commons characterized by the existence of local communities that manage natural commons and other common assets (such as stalls, dairies, but also schools in some cases; Grossi 1981; Forte and Cupo 2024: 711-733). These have several organizational forms and denominations and are present in various parts of the peninsula.^V In 2017, a national bill was adopted to provide a general regulatory framework for these commons. Interestingly, the law recognizes (thus, does not constitute), the collective domains as primary and complex legal systems, subject only to the Constitution, endowed with self-regulation and self-management powers. While not explicitly mentioned in the bill, the principle of horizontal subsidiarity provided an evident constitutional basis for the enactment of this law, as the latter basically acknowledges the contribution of self-organized local communities in the management of goods (also) in the public interest. The other constitutional principles explicitly mentioned in the bill confirm this approach: among them, Article 43 Constitution may resonate with the contents of subsidiarity, Article 9 underscores the environmental function of the collective domains, and Article 2 implies the acknowledgment that these commons represent a channel to express one’s personality and fulfil social solidarity duties. The national bill has been implemented in some Italian regions, among which Aosta Valley stands out as it has established an explicit link between commons and subsidiarity through its regional legislation.^{VI}



These cases of legal recognition of the governance of the commons through the application of the principle of subsidiarity could provide some inspiration for federal and multi-tiered systems, essentially for two main reasons. The first one is that the traditional federal approach to subsidiarity can be enriched by this understanding and its ability to address not only the vertical government dimension (and therefore institutional pluralism), but also a horizontal governance one (therefore, societal pluralism) (Arban 2025: 1-9). As the constitutional basis for commons governance in the Italian context, subsidiarity, in fact, showed both its vertical and horizontal dimensions, which are both part of its inherent content (Salati 2026; Salati 2023). Secondly, federal theory and practice can benefit from this reading of subsidiarity as it provides a constitutional basis for the emerging role of cities and other local authorities in multi-level systems, and in this way overcome its general blindness beyond its traditional two-tier approach looking only at the two national and subnational levels.^{VII} Subsidiarity indeed proved to be a principle that puts proximity to citizens at its core – even though many times this core idea has remained on paper and, instead, had a rather centralizing interpretation (this is the example of the EU, as it has been claimed by Nicolaïdis and van Zeben 2019: 86-88).

5. Reimagining federalism through (commons) governance

The current scholarship on federalism is today not able to offer explanations and possible regulatory solutions to these existing governance systems that widely inform public action and policymaking within (and beyond) federal systems. In other terms, nowadays federal theory lacks recognition of forms of pluralism that go beyond the institutional dimension.

Similarly to any other concept related to constitutionalism, federalism has been so strongly tied to a specific human experience – the modern (nation and then multination) state – that it has been considered as coeval to it and almost meaningless without it. This has led to the prominence of what one may refer to as “feder(ation)alism” in federal studies (Alessi 2025: 235-236). The term feder(ation)alism aims to highlight the elision between federalism and federation (used here as an overarching term for federal and multi-tiered systems) as a form of government that most literature in this area appears to take as a given.



The term emphasizes the implicit connection that political and constitutional theory establishes between the concept of federalism and its state-related manifestations.

More specifically, a feder(ation)alist approach has two main implications. The first is the widespread framing of federalism in terms of a form of government. i.e. a specific model of state organization based on the institutionalization of two (or more) orders of full-fledged polities (for instance, Popelier 2021: 50).^{VIII} The second implication of feder(ation)alism is that federalism has constantly been described as a form of territorial government. Indeed, a great number of contemporary studies take the territorial dimension of federalism as a postulate (Popelier 2021; Tierney 2022; for further references, Alessi 2025).

5.1. Theoretical foundations

This consolidated approach in federal theory makes it unable to take into account the actual functioning of public action and policymaking, with special regard to the participation of societal actors (and non-territorial forms of organization) in governance systems. However, while governance may be seen as a challenge to federal theory, it also has the potential of enriching it by stimulating its renovation. The emergence of governance may indeed be seen as an opportunity to revise federal theory to adapt it to contemporary times. Governance indeed urges federal thought to renovate and take into account the existence of non-governmental actors and their role in public decision-making and service provision within multi-tiered systems. This section aims to demonstrate that federalism already contains the seed for its renovation in its centuries-long theoretical development.

Numerous accounts indeed endorse a view according to which federalism has a larger scope and application than its institutional manifestation. According to this approach, federalism is here intended as a manifold organizational principle common to a multiplicity of phenomena that share some essential features (Lépine 2015: 37). This notion helps recognize the plasticity of what has been called the ‘federal phenomenon’ (Lépine 2012), i.e. the concrete manifestations of the basic notion that have adapted to different human epochs and systems of thought. Similarly to every social and legal phenomenon, federalism has followed the evolution of human organization and human thought, re-adjusting itself to changing circumstances while maintaining an unchanged and essential core content. Such a basic notion synthetically refers to all those models that imply the expression of a certain degree of (variously institutionalized) pluralism and autonomy and stay irreducible to its



annihilation. Within recent federal scholarship,^{IX} this reading of federalism has first been evoked – to some extent by some modern authors such as Friedrich, Davis and Elazar and then specified by a few contemporary accounts. In addition, it must be noticed that a broad conception of federalism, a notion that reconnects and reunites various forms of power dispersion, has also fruitfully been used within polycentric theory.^X

A) The pioneers of the analytical perspective – It is possible to identify some “pioneers” of this perspective, namely, C.J. Friedrich, R.S. Davis, and D.J. Elazar. These authors have, to a greater or lesser extent,^{XI} suggested the existence of a multifaceted federal phenomenon beyond its strict form-of-government dimension.

In particular, Friedrich considered federalism as an analytical tool whose potential is far from being limited to an institutional dimension. Although in several writings he emphasized the link between federalism and constitutionalism as a form of democratic government, in his most known work the concept seems to have a broader scope.^{XII} The author indeed recognized the correlation between federalism and a large number of practices and arrangements. For instance, he explicitly referred to ‘states and other associations’ or communities while describing the federalizing process, or the investigation of ‘nongovernmental federated entities’ as part of the current ‘extension of the range of vision’ related to federalism (Friedrich 1968: 17). Furthermore, he defined American federalism as ‘a novel, unprecedented concept of federalism’ (Friedrich 1968: 177-183), thus acknowledging the possibility of using this term to describe other models as well as recognizing the historical roots of federalism in several premodern experiences. The described framing acknowledges the broad scope of federalism and its possible application to explain and understand several phenomena of diffusion of powers. This is something Friedrich had also contended elsewhere when addressing non-territorial forms of federal organization (Friedrich 1962: 517).^{XIII}

Davis’s contribution illustrated that federalism as a multifaceted notion describing a far-reaching universe of legal-constitutional practices, among which the modern form of government is but one example (Davis 1978: 214-217). And, while affirming that federalism can despite the be defined in numerous ways, a strong argument for the practical analytical usefulness of the concept is made.^{XIV}

As concerns Elazar, in his extensive work^{XV} he recognized that federal phenomena (arrangements, relations, or partnerships) occur regardless of the presence of a full-fledged



federal political system (Elazar 1996); he developed a broad notion of federalism (the self-rule and shared rule formula, Elazar 1987: 12) that potentially applies to a vast range of experiences; he proposed a general and adaptable description of federalism through the matrix model, which was described as ‘almost indefinitely expandable both in scope and in character of the relationship’ (Elazar 1987: 229); he provided some interesting analytical tools, such as the concept of federal arrangement to describe relationships between entities that reproduce a federal logic (Elazar 1987: 44).

B) Contemporary contributions to the analytical reading of federalism – Besides these insights from classic federal theory, some contemporary authors have contributed to a renewal of federal studies in the sense proposed in this work.

Lépine illustrated that federalism corresponds to a synthetic idea capable of framing the federal phenomenon (Lépine 2012), which ‘encompasses federal institutional organizations in different times and places as well as federal thoughts about the diffusion of powers’ (Lépine 2015, 34). Thus, the author addressed federalism as an analytical rather than a purely normative or institutional concept, i.e. as a tool to explain manifold forms of diffusion of powers.^{xvi} As a result, on the one hand, an inner content of federalism was acknowledged, but not recognized as a prescriptive doctrine coinciding with a contingent ideology; on the other, the federal phenomenon was not reduced to a specific institutional manifestation, highlighting its trans-historical dimension and its continuous evolution (Lépine 2012; Lépine 2015).

In his writing ‘Kaleidoscopic Federalism’, Macdonald extended the scope and explanatory function of federalism far beyond a traditional perspective and suggested that its underlying logic affects people’s lives in several dimensions, going as far as conceiving of it as a metaphor for the process of self-construction of everyone’s identity (Macdonald 2005). Most importantly, the author maintained that: federalism (within and beyond the state) essentially embeds a logic of distribution of powers which follows various patterns and is related to the presence of different kinds of (not only territorial) fault lines; federalism is an idea whose analytical potential – i.e. its capability of providing tools to explain and understand phenomena of diffusion of powers – is not limited to its form-of-government expression; the content of this idea relates to the concept of interaction and flexible balance between different layers of authority (Macdonald 2005). Based on this, Macdonald affirmed that each source of law or authority within the state (legislature, executive, jurisdiction,



administration, etc.) may be seen as a ‘distinct site of federalism’ (Macdonald 2005: 270). Lastly, he maintained that these sites of federalism are *loci* where different sources of authority encounter and interact in a way that does not necessarily result in the reproduction of the territorial distribution of legislative power. In other words, the idea that federalism implies a specific pattern of division of powers was relativized; while feder(ation)alism literature have conceived the organization of every kind of public or quasi-public authority through this unitary territorial pattern, a historical perspective allowed the author to argue that this has not always been the case (Macdonald 2005: 267-273).^{xvii}

Further insights can be drawn from Gerken’s article ‘Federalism All the Way Down’ (Gerken 2010). After having argued that the main dimensions of federalism may be framed through the concepts of “voice” and “exit”,^{xviii} the author maintained that the former is increasingly critical in contemporary times. Given the complexity of tasks that states are meant to perform, the overlap and interconnectedness among layers of government have become indeed an ordinary condition of the exercise of power (Carrozza 2019). As a consequence, voice, or shared rule, meaning several types of joint or coordinated regulation, is playing a progressively more central role in public decision-making processes.^{xix}

Part of this complex system of coordinated regulation are, according to the author, numerous ‘functionally defined jurisdictions’ within the federal constitutional setting (see also Halberstam 2012), which are described as federal layers where numerous forms of (tighter or looser, temporary or stable) aggregation take place (Gerken 2010: 7).^{xx} She defined these bodies as ‘institutional arrangements [...] where minorities rule without sovereignty’ (Gerken 2010: 8) – i.e. without expressing a form of exclusive political autonomy based on the model of sovereignty. This “recasting” of federalism implies drawing ‘attention to the institutions neglected by federalists and their localists counterparts’ (Gerken 2010: 8). Examples of such arrangements were identified with ‘many institutions that constitute states and cities – juries, zoning commissions, local school boards, locally elected prosecutors’ offices, state administrative agencies, and the like [...]’ (Gerken 2010: 8-28). Importantly, the reason why they are framed as part of the federal organization, was stated in the following terms: ‘Just as we cast states as sites of political integration because they allow national minorities to rule, so too can we cast cities and juries and school committees as sites of racial and political integration because they allow racial minorities and dissenters to rule’ (Gerken 2010: 9). The inclusion of these bodies in a federal framework is not meant to ‘deny that



there are differences between these governance sites, any more than the existence of federalism theory is meant to deny that states themselves are variegated. The question is simply whether the differences between these institutions are so stark that they preclude discussion of their similarities. Here, at least, we have evidence that the differences are not so stark [...]’ (Gerken 2010: 29).

In her view, these ‘parts of federalism where sovereignty is not to be had’ (Gerken 2010: 9) are ‘sites of decentralization’ (Gerken 2010: 21) which express a form of voice in federal terms. Accordingly, they are described as bodies where several groups, while not being endowed with sovereign autonomy powers, nonetheless have a means of expressing their views and, consequently, can considerably affect the functioning of public decision-making in the (federal) political system.

An integrated reading of this literature illustrates that there is room for considering models of governance that do not correspond to full-fledged federal arrangements as part of a complex federal setting as further forms of diffusion of powers.

5.2. Further arguments beyond theory

In addition to the considerable literature that supports this use of federalism, the main purpose for proposing it is its practical value, as it provides a useful common framework for understanding different practices of diffusion of powers (Lépine 2012). Indeed, the theoretical considerations above do not aim to provide an ontological account on what true federalism is. It instead considers that there is a commonality among numerous and manifold experiences of diffusion of power, and that this basic commonality can be subsumed under the idea of federalism. In turn, this pragmatically opens the door to analyze, explain, and study all those phenomena through a federal lens. Thus, this is not pure speculation to find the federal nature of some phenomena. Instead, it brings about new opportunities for understanding governance while at the same time renovating federal thought itself, by integrating the former into a broader federal phenomenon.

This approach allows for exploring the analytical potential of federalism, i.e. the possibility to use federalism to explain and understand phenomena of power distribution that complement federal and multi-tiered systems’ institutional structures.^{XXI} The reason underlying this extension of a federal perspective is that, as it has been suggested, federalism is arguably ‘the best-suited instrument to serve as a basis for developing governance theories



and practices that meet the requirements of contemporary democratic pluralism' (Palermo 2015: 506-507) as it is the oldest and most tested tool for dividing and diffusing power. If this holds true, then federalism may act as a 'conceptual and institutional matrix for contextualizing, proceduralizing, and regulating new forms of participatory decision-making' (Palermo 2015: 506-507) occurring in multi-tiered systems. In other words, the theory and practice developed studying federal systems – which can be seen as vanilla models of pluralism management (Ryan 2020) – has the potential to be used to analyze the functioning, possibly explain the dynamics and foresee the development of these (and possibly other) governance systems in federal and multi-tiered structures, which are already nested but hardly acknowledged from a constitutional standpoint. Considering them as forms of decentralization of powers that complement institutional arrangements within a complex federal setting, allows the observer to reflect on these models as resonating with federal arrangements and their dynamics and benefit from federal theory and practice explaining them. Studying governance models in federal and multi-tiered systems according to the proposed approach can give fruitful insights to fields where they are emerging and spreading, such as the one which this essay deals with. This is also the reason why federalism may be preferred to the other concurrent governance theories described above – MLG and polycentricity – beyond the fact that the focus of this work is on federal/multi-tiered settings. The potential of federalism not only to explain, but – as a centuries-old applied organizational principle – to provide concrete designs and solutions for further inclusion of governance within the organization of a (federal/multi-tiered) constitutional system is indeed unmatched. The other theories analyzed above have been fundamental to better understand the functioning of complex governance systems from a political science standpoint but lack a constitutional perspective. In other words, it seems far more effective to broaden federalism than to supersede it or drastically renew it by means of other theories that lack its comprehensive, unifying, and systematic scope. If those theories urge one to open up her perspectives on how decision- and policymaking work in practice, it is within and through federalism – and its numerous principles and practices – that this complexity can be brought to a coherent system in line with the existing constitutional order.

Notably, this approach to federalism seems beneficial to federal theory as it reinvigorates it by strengthening its explanatory function. Such a perspective renovates and gives federal theory a new lease of life in times of increasing complexity. In an era of interconnection and



changing power structures,^{xxii} a federal theory castled in its traditional (but not original) focus on state and governmental territorial structures can turn obsolete and risk heading to exhaustion. For federal theory to keep and exploit its explicatory function, this change of perspective seems necessary (Palermo 2015). In other words, while federalism as an organizational principle for the diffusion of powers has developed a large repository of tools and practices, keeping an exclusive focus on institutional manifestations can end up being misleading or limiting when the concrete exercise of public functions is at stake. The challenge seems thus that of extending the “wisdom” or “repository” of federalism to better understand, inspire and thereby possibly better integrate new and very relevant – albeit less institutionalized – forms of diffusion of powers (Palermo 2025: IX). Endorsing this perspective frees federal thought from orthodoxy and from its supposed (but not completely proven) necessary premise, i.e. the focus on the vertical division of territorial government.

6. Federalism and the commons: Bases for a dialogue

Before proposing in which way federal theory and practice can be helpful to better systematize the commons in a federal multi-tiered governance system, it seems necessary to justify why a federal framing is appropriate in relation to the commons. In other terms, for what reason can the commons be analyzed from a federal perspective?

From the analysis in the previous sections, several elements seem to point in this direction. Indeed, these experiences of *societal governance through the commons* may be considered as *governance forms of autonomy*^{xxiii} with the following features: 1) they are arrangements that enjoy various degree of institutionalization or independence from public authorities’ intervention; 2) they autonomously take decisions about their activities; 3) they have control over the management and administration of the goods under their responsibility in the interest of the collectivity; 4) they are involved in shared decision-making processes concerning the assets they manage; 5) they are able to express their voice in policymaking through their action, sometimes also in opposition or contestation to public authorities.^{xxiv} While not corresponding to full-fledged autonomous layers of government, the commons as governance forms of autonomy thus display features that recall those of autonomous/federal arrangements. They show several elements that resonate with autonomy arrangements, while



having various levels of institutionalization that result in self-governance arrangements or shared governance collaborations with public authorities.

Beyond their connection to the notions of self-rule and shared rule, the fact that they have been recognized as concrete manifestations of the principle of subsidiarity in some constitutional settings establishes another strong theoretical link to federalism. While developed within the wider tradition of constitutionalism (Barber 2018), subsidiarity has become a key principle of federalism too (Hueglin 2021), and its horizontal dimension echoes the ancient conceptualizations of federalism as a principle of societal organization (Hueglin 1999; Hueglin 2013; Althusius 1614).

Self-rule, shared rule, participation, and subsidiarity: these are the theoretical bases to establish a dialogue between federalism and the commons. If the commons are expression of these basic elements and principles of federalism, it follows that their systematization within – and through – federal theory can meaningfully contribute to their development as increasingly significant forms of democratic governance.

7. Theorizing federalism and the commons: The commons as sites of federalism?

Based on the considerations above, this section attempts to offer a first operationalization of the theoretical perspective suggested above to create the conditions for recognizing and better accommodating the commons as governance forms of autonomy within federal and multi-tiered systems. As mentioned before, this federal perspective is instrumental in applying to them what one may refer to as the “federal wisdom”, i.e. the repository of principles, techniques, and trends that federal theory and practice have developed over the centuries. This leads to consider federal systems as vanilla examples of pluralism at work; consequently, their dynamics – and the theories that have been developed in their regard – are supposed to offer valuable insights for governance systems (Ryan 2020; Topidi 2025).^{xxv} As seen, the ultimate justification for this theoretical proposal lies in the usefulness of a federal perspective in explaining this phenomenon as well as its position and role within the federal and multi-tiered systems. The rest of the section illustrates some initial implications



of framing the commons through a federal lens, which may contribute to building a research agenda for a new “federalism-and-the-commons” field of study.

First, a federal framing may entail considering the commons as *loci* of federalism that express forms of self-governance “where sovereignty is not to be had”, with this implying that they may be seen as forms of subnational/local layers of decentralization in a complex governance setting. Echoing Gerken, the commons can be seen as forms of self-rule that act – whether through a collaboration with local authorities or autonomously as forms of self-governance – as (further) potential counter-powers to the central government and central legislation by their action. In this sense, this could inspire scholars to shift their attention to the political role of the commons as sites of societal pluralism where individual or associated citizens express political positions and claim rights through their activity. Furthermore, this would also lead the scholarship to study and assess how democratic the commons themselves are.

Second, in many federal systems, the commons intended as federal sites of governance may benefit from stronger constitutional entrenchment and recognition due to the possibility to connect them to constitutional principles, such as subsidiarity, which is usually recognized in federal systems.^{XXVI} The connection to subsidiarity, implying considering the commons as an expression of this principle, may justify stricter interactions between public authorities and the commons and more consolidated state support for them following to shared governance schemes.^{XXVII}

Third, a federal approach to the commons would involve examining the relationship between the commons and public authorities as one between different layers of federal governance. Federal theory and practice have illustrated the centrality of negotiation as a founding element as well as working instrument for the successful operation and evolution of composite state structures such as federal systems, especially (but not exclusively) with regard to the definition of competence areas of the different levels of government (Ryan 2011: 102-127; Topidi 2025: 190). Consequently, drawing from federal studies, one may presume that the concept of negotiation and its operation could take a central role in the evolution of the commons and the definition of their attributions. And, if these principles are not implemented, one would expect an increase in jurisdictional conflict as a tool to define respective competences and areas of activity as well as to obtain some forms of legal recognition for the commons.^{XXVIII} As observed by Gerken, while broadening of the analysis



to further layers of governance theoretically brings more complexity, the very same rules and principles that apply to the relationships between the federal and the subnational governments can be of use to ‘decide who should decide’ (Gerken 2010:29-30). Thus, an analysis of the operation of federal systems and their trends, such as the move towards coordination rather than separation of powers – which reached its peak during the recent coronavirus crisis – may offer useful insights.

Fourth, federal theory and practice may be helpful in providing instruments to manage the variety of commons governance models while keeping a unified perspective. The commons are indeed marked by a great deal of differentiation of structures, activities, and (financial and organizational) needs. As federal studies have progressively taken into account the evolution of federal structures and acknowledged a trend towards increasing asymmetry,^{xxix} they may be of help in that they provide structured models to regulate the increasing differentiation of legal arrangements while maintaining the unity of the state. Consequently, they might help understand all the concrete issues that are at stake when dealing with the creation of differentiated solutions for differentiated claims. Among them, of utmost importance are the financial aspects related to the management of asymmetric arrangements.

Fifth, as the commons – similarly to governmental subnational entities – interact to different extent with different public entities, federal theory and the functioning of federal systems may provide a significant contribution to promoting solutions for the improvement of the complex decision-making processes that involve the commons and to analyzing their functionality. As it is evident in federal systems, traditional decision-making processes relying on representative institutions are increasingly complemented by the contribution of various types of administrative, private or hybrid bodies. Therefore, a federal perspective could inspire the inclusion of the commons as legitimate actors in intergovernmental relations at various levels. In addition, given that federal theory has traditionally revolved around institutional analysis and intergovernmental cooperation, the rules and mechanisms that have been developed in and for federal systems, aimed at fostering coordination among various authorities, may contribute to identifying dynamics and designing solutions to better include the commons. In this sense, complex “federal-like” settings such as the European Union may provide several solutions for the regulation of public and private actors’ involvement in policymaking, especially from a procedural point of view.^{xxx}



Sixth, federal theory and practice could help regulate situations of conflict between the commons and the other actors involved in governance systems. Conflicts on overlapping competences would benefit from federal principles, such as the principle of subsidiarity, which is inscribed in several (European) multi-tiered systems. Besides subsidiarity, other possible federal conflict resolution schemes may be important sources of inspiration on how to manage overlapping authority. This is the case with jurisdictional redundancy: as observed by Topidi, the basic tenet of this scheme used in federal and multi-tiered systems ‘is that when two legal authorities claim competence or jurisdiction over a specific actor, one of them will refrain from asserting such jurisdiction in the understanding that the other will take action’ (Topidi 2025: 191).^{xxxI} Furthermore, also the rules and principles that federal systems have developed to ensure enforcement of constitutional principles and statutory regulations by other layers of government may be of help in case commons reveal incapable of serving their public purposes. These rules and principles include the definition of the substitutive powers of the national government, which can then be used as a model for the public authorities that interact with the commons.

8. Conclusion

This essay has offered a two-fold contribution. On the one hand, it has proposed to renew federal studies by suggesting the need to broaden the focus beyond the traditional institutional governmental perspective to also embrace forms of societal governance. On the other, it has advanced a new conceptualization of the commons, through the elaboration of a federal theoretical framing for this phenomenon that until now has been essentially studied by other social sciences but not from a constitutional angle. In other words, this essay has used federalism to look at the phenomenon of the commons and has also offered an invitation to federal scholars to move beyond traditional federal approaches in order to be able to address emerging governance phenomena (such as the commons), which are already benefitting from constitutional (federal) principles (such as subsidiarity), and strengthen their impact.

In the end, this article has shown that the current complex reality of commons governance, and governance writ large, challenge federal theory and at the same time



stimulate its evolution. To seize this opportunity and avoid exhaustion, federal studies should at the same time look back to the ancient origins of federalism (Althusius 1614; Hueglin 1999) as a principle of societal governance and move forward, towards something new and different from its most consolidated institutional and governmental version. In this way, it could be possible to unleash federal theory's new and unexplored analytical potential. The challenge coming from the governance of the commons is thus an opportunity to help reimagine federal theory and practice to better accommodate societal pluralism together with institutional pluralism.

Federalism has long been conceived as strictly interconnected to the state: separating them may be hard but is necessary to renew federalism and make it ready for the challenges ahead. Hopefully, this essay might pave the way to a new “federalism-and-the-commons” research strand aiming to further study the commons and other societal governance arrangements from a federal standpoint.

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^I The author points out that it should not be seen as a coincidence the fact that the EU's governance concept evolved alongside the IMF and World Bank's "good governance" approach (288).

^{II} For the updated list of local authorities having adopted the same prototype regulation of shared administration for dealing with the commons see <https://www.labsus.org/i-regolamenti-per-lamministrazione-condivisa-dei-beni-comuni/>.

^{III} See all data collected by the research collective and online journal *Labsus-Laboratorio per la sussidiarietà* at <https://www.labsus.org/> (in particular, see the annual reports published there).

^{IV} In Latin, this referred to the military reinforcements meant to provide support during a battle (the so called *subsidiariae cohorts*).

^V For more information on this, see Italian Center for the Study of Collective Property, established by the University of Trento <https://www.usicivici.unitn.it/> and the Demanio Civico Association <https://www.demaniocivico.it/>.

^{VI} Regional law n. 19/2022, art. 1, par. 3: “The actions of public authorities in relation to the collective domains of the Aosta Valley are carried out in accordance with the principle of subsidiarity referred to in Article 118, paragraph 4, of the Constitution, promoting the independent initiative of citizens organized in the collective forms indicated by this law and refraining from interfering with their actions except in cases of serious and proven inaction or malfunction”; on this, see Louvin Roberto and Alessi Nicolò P., 2021, ‘A New Lease of Life for the Aosta Valley’s Consorzio’, in *Journal of Alpine Research | Revue de géographie alpine*, 109 (1): 1-12.

^{VII} Only recently federal scholars started to question this two-tier approach. As a starting point see Palermo Francesco – Kössler Karl, 2017, *Comparative Federalism: Constitutional Arrangements and Case Law*, Hart Publishing, Oxford-Portland, 281-315. More recently, see Arban Erika (ed.), 2022, *Cities in Federal Constitutional Theory*, Oxford University Press, Oxford. For earlier considerations, see Steytler, Nico, 2009, ‘Comparative Conclusions’, in Nico Steytler (ed.), *Local Government and Metropolitan Regions in Federal Systems*, McGill-Queen’s University Press, Montréal, 393-436.

^{VIII} Naturally, federal theory has anyhow had a notable evolution, and today federal studies do not focus solely



on “traditional” federal states, but increasingly deal with the many existing forms of vertical (and territorial) division of powers and analyze them as part of a broad federal phenomenon; on this, Popelier Patricia, 2021, *Dynamic Federalism: A New Theory for Cohesion and Regional Autonomy*, Routledge, London-New York; Palermo – Kössler, *Comparative Federalism*, 281-315.

^{IX} All these authors are, to different extents, indebted to the early modern theory of federalism by Johannes Althusius: see Hueglin, Thomas O., 1999, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism*, Wilfrid Laurier University Press, Waterloo.

^X On this, see the previous sections.

^{XI} It is necessary to clarify that the aim is not to suggest that their research only boils down to such contents; their investigations are also characterized by many other elements that are different from the position of the present work; this section only suggests that their studies have also given decisive insights into the specific perspective endorsed here.

^{XII} The only part of Friedrich Carl J., 1968, *Trends of Federalism in Theory and Practice*, London, Pall Mall Press, that directly addresses the relationships between federalism and constitutionalism is in the chapter ‘Federalism and Opposition’ (58–69), and esp. at 59, where the author set out six arguments supporting the hypothesis that federalism encourages the realization of constitutional democracy; this, however, does not entail that federalism was only seen as a form of constitutional democracy, although, in the article Friedrich Carl J., 1962, ‘Federal Constitutional Theory and Emergent Proposals’, in Macmahon Arthur (ed.), *Federalism: Mature and Emergent*, Russell&Russell, New York, 510-533 – quoted numerous times by Burgess Michael, 2006, *Comparative Federalism: Theory and Practice*, Routledge, London-New York, to support the thesis of an ontological connection among federalism as a form of government, liberal democracy and constitutionalism – Friedrich specifically referred to ‘true federalism’ as ‘the federalizing process under constitutionalism’; on the ambiguity of Friedrich’s thought, see La Pergola Antonio, 1987, ‘L’empirismo nello studio dei sistemi federali: a proposito di una teoria di Carl Friedrich’, in La Pergola Antonio (ed.), *Tecniche costituzionali e problemi delle autonomie garantite: riflessioni comparatistiche sul federalismo e regionalism*, CEDAM, Padua, 137-138.

^{XIII} ‘Federalism, as a species of constitutionalism, is oriented toward the specific value of the freedom and security of federally recognized communities. Historically these have been territorially defined communities but this aspect is not necessarily implied in the concept. The now forgotten yet highly imaginative idea of the Austrian socialists Otto Bauer, Herrnitt, and Karl Renner for a solution of the nationality problems of the Austrian empire by organizing it in terms of corporative national bodies without defined boundaries but with defined cultural loyalties [...] is indicative of the broad possibilities of federalism, as was indeed recognized by Althusius, and underlies the practice of many federated associations’.

^{XIV} Contrary to what seems generally attributed to Davis, by quoting two famous (decontextualized) sentences; see Davis, Rufus, 1978, *The Federal Principle: A Journey Through Time in Quest of a Meaning*, University of California Press, Berkeley-Los Angeles-London, 213-214: ‘In this condition [the difficulty to find a common understanding of federalism and to link it with a specific meaning], it is tempting to fantasy the possibility of retiring the “federal” concept from active duty [...]. Yet this is the purest fantasy. [...] We cannot stem the momentum of two thousand years of usage, nor can we sensibly deny that the longevity of the concept is some testimony to its continuing need, expressive, symbolic, or instrumental. For concepts live, wither, or die as needs must; and over great stretches of time different societies have satisfied their different needs for preferred relations with others through the mutual commitment of *foedus* – a concept that by repeated encounters with different experiences has become interwoven not with one thing, but many things’.

^{XV} On the various interpretations of federalism in Elazar’s thought, see Alessi Nicolò P., 2025, *A Global Law of Diversity: Evolving Models and Concepts*, Routledge, London-New York, 244-249: it has been observed that Elazar introduced innovative notions and a broad conception of federalism, but at the same time most of his attention was attracted by a specific and “authentic” archetype, which was tied to modern democratic republicanism numerous times in his seminal book.

^{XVI} *Contra*, starting from similar premises, Gaudreault-DesBiens Jean-F. – Gélinas Fabien, 2005, ‘Opening New Perspectives on Federalism’, in Gaudreault-DesBiens Jean-F. – Gélinas Fabien (eds.), *Le fédéralisme dans tous ses états: governance, identité et méthodologie – The States and Moods of Federalism: Governance, Identity and Methodology*, Éditions Yvon Blais-Bruylant, Cowansville-Bruxelles, 51-96, have alluded to the existence (or the need to study the existence) of a set of ethical values of federalism; a reasoning further expanded by Gaudreault-DesBiens Jean-F., 2017, ‘Towards a Deontic Axiomatic Theory of Federal Adjudication’, in Lev Amnon (ed.), *The Federal Idea*, Hart Publishing, Oxford-Portland, 75-103.

^{XVII} For instance, he observed that the provision of many public services and functions by non-governmental institutions at different points in Canadian history did not follow provincial or other political fault lines, at the same time including structures and processes which reproduced a federal model of territorial organization; the



same goes for the actual functioning of public judicial, executive, and administrative institutions in federal states, which do not always follow the same rationale as the legislature but nonetheless adhere to federal principles.

^{xviii} Which may be seen as a different way to address the concepts of shared rule and self-rule; voice, in fact, refers to the possibility of influencing the federal decision-making process, while exit was defined by Gerken Heather K., 2010, 'Federalism All the Way Down', in *Harvard Law Review*, 124 (1): 7, as 'the chance to make policy in accord with their own preferences, separate and apart from the center'.

^{xix} On the central theoretical and practical relevance of coordination in federal systems, and for further references, see Hueglin, Thomas O. – Mueller, Sean, 2025, 'A Reply to Fenna and Schnabel's (2024) "What is Federalism?"', in *Publius: The Journal of Federalism*, 55 (2): 1-10.

^{xx} Described as 'the many parts of "Our Federalism" where sovereignty is not to be had'; these forms of aggregation are referred to as minorities, a term that seems to be used in quite a general way to describe any form of non-majority form of allegiance; in fact, at 8, she proposed to recast 'federalism as minority rule without sovereignty'.

^{xxi} This point of view takes inspiration from Lépine's article, which underscores the intimate connections between multilevel governance and federalism; however, it extends its analysis to governance systems in general and proposes that federalism is the most promising way to frame governance, and not the way round, which is the idea brought forward by this author.

^{xxii} On the evolution of human life towards an increasingly complex economic and social setting (at least in some parts of the world), mostly owing to the information revolution, see Ortino Sergio, 2010, *La struttura delle rivoluzioni economiche*, Cacucci, Bari.

^{xxiii} A term already used by Alessi, *A Global Law*, 144-164, to frame forms of autonomy that do not correspond to full-fledged autonomous arrangements. Similarly, see F. Benvenuti for the conceptualization of "civic autonomy" in Benvenuti Feliciano, 1994, *Il Nuovo Cittadino. Tra Libertà Garantita e Libertà Attiva*, Marsilio, Venice.

^{xxiv} These elements that prove the existence of an autonomous arrangement are drawn from Malloy Tove H., 2021, 'A New Research Agenda for Theorizing Non-Territorial Autonomy?', in Malloy Tove H. – Salat Levente (eds.), *Non-Territorial Autonomy and Decentralization: Ethno-Cultural Diversity Governance*, Routledge, London-New York, 12-13.

^{xxv} Ryan illustrated that federalism provides a model of working pluralism whose features can be useful references to manage legal pluralist settings; differently from the perspective endorsed here, the author analyzed to which extent a dynamic model of federalism can contribute to the inclusion of a significant degree of legal pluralism within a legal system and to the incorporation of the normative proposal stemming from legal pluralist theory; similar considerations have been made by Topidi.

^{xxvi} Beyond the literature mentioned above, see also Hueglin Thomas O., 2021, 'Federalism as a Yardstick for Democracy', in Sonnicksen Jared – Benz Arthur (eds.), *Federal Democracies at Work: Varieties of Complex Government*, University of Toronto Press, Toronto, 23-36, at 32-33.

^{xxvii} For an application of this, see Sarker Ashotoush, 2013, 'The Role of State-Reinforced Self-Governance in Averting the Tragedy of the Irrigation Commons in Japan', in *Public Administration*, 91 (3): 727-743.

^{xxviii} On the possible further increase in jurisdiction conflict, the possible greater role of the judiciary, and the parallel trends in federal systems, see Aroney Nicholas – Kincaid John (eds.), 2017, *Courts in Federal Countries: Federalists or Unitarists?*, University of Toronto Press, Toronto; Delaney Erin F., 2022, 'The Federal Case for Judicial Review', in *Oxford Journal of Legal Studies*, 42(3): 733-757.

^{xxix} On the increasing differentiation in federal organization, see Palermo – Kössler, *Comparative Federalism*, 34-66; on asymmetry as a feature of multi-tiered systems, and especially the European Union and multinational systems, see Keating Micheal, 1999, 'Asymmetrical Government: Multinational States in an Integrating Europe', in *Publius: The Journal of Federalism*, 29 (1): 71-86.

^{xxx} The area of climate policy may be of particular interest; on this, see Alberton Mariachiara, 2023, 'Climate Governance and Federalism in the European Union', in Fenna Alan – Jodoin Sébastien – Setzer Joana (eds.), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis*, Cambridge University Press, Cambridge, 128-149.

^{xxxi} Notably, these solutions echo the considerations coming from the theory of societal constitutionalism, which postulates the existence of constitutional pluralism, i.e. the idea that societal constitutional systems (civil constitutions) exist beyond the political system of the state and they are not eliminated by the latter, rather they coexist with it without being embedded in it; for instance, economics, money, science, technology, and universities are seen as societal systems developing their own normativity and constitutionality; following this perspective, and to favor coordination between the state system and these societal constitutional orders this



theory suggests the development of a “Law of Inter-systemic Collisions” to define the respective areas of competence of each constitutional order and at the same time preserve their existence and functionality; on this, and for further references, see Golia Angelo Jr. – Teubner Gunther, 2021, ‘Societal Constitutionalism (Theory of)’, *MPIL Research Paper Series*, 8: 1-4.

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