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Global Perspectives on Freedom of Association: Recognising Associations

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Societās — Exploring the Value of Freedom of Association

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Recognising Associations: A Social Ontology Perspective

Valeria Martino[1]

I. Introduction

In this chapter, I adopt the perspective of social ontology, specifically its ontological posture – the philosophical inquiry into the nature of things and the cataloguing of what exists[2] – and apply it to the central subject of this book: associations. This approach prompts us to ask what qualifies as an association and whether its existence should necessarily depend on formal recognition. In the following pages, I will elaborate on the distinction between formally recognised and informal associations, drawing on the analysis of groups in social ontology and their possible intersections with social kinds,[3] exploring various paths to shed light on the issue. Indeed, the question "What is an association?" invites a nuanced exploration of both formal and informal groupings of individuals. The tension between the two is clearly shown by one of the scenarios, described in the introduction of this edited book.[4]

To summarise it briefly, it concerns Gráinne, who has been running an informal outdoor soup kitchen, *Cairde ar son Cairde*, for over a decade with the help of volunteers. The initiative, which provides food and essential supplies to those in need, operates without formal registration, financial records, or a governing structure. *Cairde ar son Cairde* contravenes the Charities Act in the jurisdiction in which it is alleged to operate because it does not keep proper accounts and is not registered as a charity. Despite multiple warnings, Gráinne refuses to register as a charity, valuing the informal, community-driven nature of the group. The Charities Regulator deems the operation unlawful, leading to potential prosecution and defends its actions on the grounds that all charities must be subject to the same legal standards, so that members

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[2] Sometimes philosophers distinguish between metaphysics and ontology. According to Achille Varzi, for instance, ontology concerns the classification and organisation of entities, asking *what exists*, while metaphysics addresses broader questions about the nature and fundamental structure of reality. Achille Varzi, 'On Doing Ontology without Metaphysics' (2011) 25 *Philosophical Perspectives* 407.

[3] I will use 'social kind' broadly to refer to all categories related to social entities – specifically, those kinds that designate things recognised as existing in the social realm.

[4] Maria Cahill, "Comparative and Interdisciplinary Interfaces of Associational Life and Freedom" in Maria Cahill & Giulia Lasagni (eds.) *Associational Life and Freedom* (Hart Publishing, 2025); see also Appendix 1 below.

of the public can be assured that charities are operating with financial integrity as they pursue their charitable purposes. Gráinne challenges the actions of the Charities Regulator for being a disproportionate violation of her right to freedom of association.

This case examines the tension between freedom of association – understood as the right of individuals to form, join and leave groups, and decide their rules – and the competing needs of protecting informal associations, on the one hand, and ensuring shared standards and regulated services, on the other. This tension reflects a classic struggle in political philosophy: the balance between freedom and security. These two principles often appear to be in conflict, and one of the fundamental goals of politics is to navigate and reconcile this opposition.[5]

With the aim of offering insight into this topic, this chapter will introduce elements from key debates in social ontology. Hopefully, this will provide legal scholars with valuable philosophical perspectives on the concept of group while also demonstrating to philosophers how social ontology can be applied to concrete legal issues. The chapter is organised as follows. Part I will introduce key discussions on social groups within social ontology, with a particular focus on the distinction between formal and informal groups. Part II will present the debate between realist and antirealist perspectives. Part III will apply these debates to the case of marriage to illuminate the philosophical distinctions at play. Reflecting on marriage helps highlight a potential discrepancy between philosophical classifications and the legal frameworks needed to safeguard distinct – and sometimes conflicting – rights. Finally, Part IV will draw conclusions by considering the potential of applying the previously discussed elements to the legal understanding of associations and related freedoms.

II. Social Ontology Discusses Social Groups

Social ontology, in its ontological posture, has extensively explored the conceptualisation of groups and their consequent categorisation. In the literature, a wide variety of groups have been considered and discussed, ranging from informal gatherings, such as a couple of friends deciding to take a walk[6] or to paint the house together,[7] to more structured entities like chess clubs, orchestras, nations, and corporations.[8] However, associations as a distinct category have

[5] Just to mention a famous case, consider Thomas Hobbes, *Leviathan* (Oxford, Oxford University Press, 2014), in which the need to limit individual freedom in order to obtain social security and avoid chaos is explicitly stated.
[6] Margaret Gilbert, 'Walking Together. A Paradigmatic Social Phenomenon' (1990) 15 *Midwest Studies in Philosophy* 1.
[7] Michael Bratman, 'Shared Intention' (1993) 104 *Ethics* 97.
[8] See, for instance, John R. Searle, *The Construction of Social Reality* (New York, Free Press, 1995); Christian List and Philip Pettit, *Group Agency. The possibility, Design, and Status of Corporate Agents* (Oxford, Oxford University Press, 2011).

not been thoroughly analysed. In the legal field as well, there is no universal definition of 'association': distinct approaches definitions can be found across different jurisdictions, or even within the same jurisdiction depending on the type of association.[9] At first glance, this appears to support the idea that identifying instances of associations is merely an empirical matter. It has been argued, seemingly, that because group categorisation is largely shaped by cultural factors, it is primarily a task for the social sciences rather than for ontology or philosophy more broadly.[10] Nevertheless, there are important theoretical considerations that warrant philosophical analysis, which can help clarify common features or reveal how we use (or wish to use) the term 'association' in various contexts.

The categorisation of groups has been a central concern of so-called 'standard social ontology,'[11] that focussed on defining coordinated actions and, as a consequence, groups of people as subjects of those same actions, through the concepts of reflexivity, collective intentionality, and performativity.[12] To briefly illustrate the concepts, "reflexivity" refers to the phenomenon where beliefs shape reality, often through so-called "self-fulfilling prophecies". Robert Merton illustrates this phenomenon for example by considering the case of 20th-century Black workers in the U.S., labelled "scabs" because they were excluded from unions. Their exclusion forced them to avoid strikes, reinforcing the label and justifying further exclusion.[13] In this sense, labelling some categories of people can directly influence their behaviour, ultimately causing the predictions to come true. "Collective intentionality" is a central concept in social ontology and refers to the shared mental states, intentions, or beliefs that enable individuals to act together as a group.[14] It underlies social phenomena, allowing people to coordinate actions, establish institutions, and create shared meanings. John Searle, one of the founding figures of social ontology, argued that collective intentionality is fundamental to the existence of institutional facts, as opposed to brute facts. This means that collective intentionality – the capacity of people to think as a "we" rather than as many "I"s – is what

[9] The legal chapters of this book illustrate a useful range of cases.
[10] So, for instance, Katherine Ritchie, 'Social Structures and the Ontology of Social Groups' (2020) 100 *Philosophy and Phenomenological Research* 402; John Horden and Dan López De Sa, 'Groups as Pluralities' (2021) 198 *Synthese* 10237.
[11] Francesco Guala, 'The Philosophy of Social Science. Metaphysical and Empirical' (2007) 2 *Philosophy Compass* 954.
[12] Åsa Burman, *Nonideal Social Ontology. The Power View* (Oxford, Oxford University Press, 2023). For a survey on the idea that groups can be agents, *cf* Deborah Tollefsen, *Groups as Agents* (Cambridge, Polity Press, 2015).
[13] Robert K. Merton, *Social Theory and Social Structure* (Glencoe, Free Press, 1957).
[14] Its centrality is clearly shown, for instance, by its synonymity with "social ontology" itself, as explicitly done by Margaret Gilbert. The quotation goes: 'In the realm of contemporary philosophical social theory, sometimes referred to as *social ontology*, or, again, *collective intentionality* […]'. Margaret Gilbert, 'A Real Unity of Them All' (2009) 92 *The Monist* 268, 269.

allows a paper sheet (a brute or natural fact) to be a dollar bill (an institution).[15] Finally, "performativity" means that language does not merely describe reality but actively shape and create it. As elaborated by John Searle on the basis of John Austin's work, we create social objects by the formula 'X counts as Y in C'.[16] The classic example is "I now pronounce you husband and wife", which does not merely describe a married couple but actually creates one – provided it is spoken by the appropriate authority in the right context.

According to standard theories in social ontology, namely those based on the three concepts just explained, there is a meaningful distinction between different types of groups based in particular on collective intentionality. Specifically, only some collections of individuals attain the status of proper social groups, while others remain mere aggregations or categories of people. This distinction depends, at least in part, on the presence and use of collective intentionality.[17] The philosopher who has explored this distinction most extensively is Margaret Gilbert. In her work, she differentiates between "plural subjects" and "populations". Plural subjects function as cohesive units, making joint commitments and acting as a single body, whereas populations are simply groups of people who share certain characteristics, such as eye colour, a common name, or a specific location in time and space, without any deeper social bond or shared purpose.[18] Another possible distinction is made by Katherine Ritchie who deals with two types of groups, named "Type 1" and "Type 2": the former are groups with collective intentionality; the latter are racial, gender, ethnic, and sexual orientation groups. They share common features and are difficult for an individual to voluntarily join or leave; moreover, membership does not require collective intentionality among the members.[19] Associations can be understood as plural subjects rather than mere populations, following Gilbert's distinction, insofar as they involve a form of agreement regarding their objectives, as well as the rules for joining and leaving. In this sense, the requirements of plural subjecthood are relevant such as the need for the individuals involved to have common knowledge that they are all part of the

[15] For the sake of completeness, collective intentionality is not the only necessary condition for deriving institutional facts from brute facts. Searle also introduced the distinction between regulative and constitutive rules, as well as the concept of assignment of function. *cf* Searle, *The Construction of Social Reality*, C 1.
[16] Searle, *The Construction of Social Reality*, 28.
[17] I explored this distinction in Valeria Martino, 'Attaching Value to Membership. A Criterion?' (2023) 82 *Rivista di Estetica* 79 and Valeria Martino, 'Redesigning Social Groups. Understanding the Young-Elder Divide' (2024) 27 *Phenomenology and Mind* 1.
[18] *cf* Margaret Gilbert, *Joint Commitment. How We Make the Social World* (Oxford, Oxford University Press, 2013) 59.
[19] Katherine Ritchie, 'The Metaphysics of Social Groups' (2015) 10 *Philosophical Studies* 310, 315. Ritchie considers the view that "Type 2" groups require collective intentionality in virtue of being social kinds but also presents an alternative perspective in which collective intentionality is not indispensable. In distinguishing the two types, she explicitly states that collective intentionality is not required in the latter case.

same group and are committed to acting as such. Moreover, it entails a social bond[20] rather than a legal one and can therefore only partially explain the case we started with.[21]

This standard distinction in social ontology is helpful in distinguishing between different kinds of groups and thus provides a framework for thinking of associations as one of them. However, since associations themselves can be of different kinds, depending for example on whether they are formal or informal, some further specification is needed. Indeed, groups based on collective intentionality and characterised by plural subjecthood can be of either type. A useful reference in this direction is Kirk Ludwig's work, in which he maintains this contraposition, with the aim of discussing group's identity and its dependence on the groups' structure.[22] The distinction is examined in the context of the persistence of groups over time when their members change – a classic metaphysical problem, also known as the paradox of the Supreme Court.[23] In informal groups, a change in membership results in the formation of a new group, whereas institutional groups, such as football teams, retain their identity despite member changes. Crowds occupy an intermediate position: although they lack predefined roles like informal groups, they can change members without becoming a new group.

Again, this distinction alone does not seem sufficient to differentiate between formal and informal associations, as these characteristics can also apply to associations that are not legally registered. However, it remains a valuable distinction because it provides a way to approach the formal/informal divide and highlights the need to refine our theoretical considerations further. Thus, they only partially contribute to our understanding of freedom of association and, in particular, of the kinds of groups that it protects. However, the characteristics that define a social group in social ontology – namely collective intentionality, common knowledge, a social bond – can help identify key features of associations in contrast to other kinds of groupings, while also highlighting potential challenges in directly applying social ontology categorisations to legal distinctions. Let us now turn to the perspectives offered by the

[20] Gilbert is very clear about the social nature of the relationship among individuals in a plural subject. It is not even a moral bond, though she explains how one can rebuke others when they change their minds and leave the plural subject without justifying their actions or seeking agreement from others. *cf* Margaret Gilbert, 'Modelling Collective Belief' (1987) 73 *Synthese* 185, 192.

[21] However, Gilbert tried to explain more formal groupings too by using the same distinction. Margaret Gilbert, *A Theory of Political Obligation. Membership, Commitment, and the Bonds of Society* (Oxford, Oxford University Press, 2006).

[22] Kirk Ludwig, *From Plural to Institutional Agency. Collective Action II* (Oxford, Oxford University Press, 2017) 160ff.

[23] Richard Sharvy, 'Why a Class Can't Change Its Members' (1968) 2 *Noûs* 303; Gabriel Uzquiano, 'The Supreme Court and the Supreme Court Justices. A Metaphysical Puzzle' (2004) 38 *Noûs* 135. Sharvy highlighted the problem that a class can never change its members, whereas entities we typically consider as classes – such as the Supreme Court – must, by definition, be able to change their members, as they do in practice.

debate on realism and antirealism, which will provide key elements to enrich our discussion and move forward in a fruitful direction.

III. Antirealist and Realist Perspectives

The distinction between antirealist and realist perspectives in social ontology is a crucial point for our analysis. According to the former, social entities exist because of our mental attitudes towards them, whereas the latter posits that such entities possess some form of independence from us. Applying this debate to the concept of groups allows us to delve deeper into the analysis of associations qua groups and sets the stage for illuminating the case of marriage discussed in the next section.

Firstly, the debate has been applied to discussions of social objects and social kinds. Social objects are usually understood as what is part of the social realm and, as such, are contraposed to natural objects. For instance, John Searle, as we saw referring to the elements of standard social ontology, states that natural objects can exist independently of human knowledge (mountains or molecules exist even though no human being knows about them) whereas social objects (a dollar bill, a party, a war) require human knowledge.[24]

Social kinds are categories used in the social sciences to explain and make sense of social phenomena.[25] Instances of social kinds are woman, money, intellectual property, citizen. Indeed, they refer to categories or types of things that exist because of human social practices, conventions, and institutions. Some common social kinds analysed in philosophy are exactly money, social roles, but also race and gender. They are not just abstract classifications; when applied to human beings, they also represent traits that individuals share, which can lead to the formation of social groups or at least classes of people who are perceived as belonging together because of those traits.[26] Although almost everyone in social ontology agrees that social kinds are mind-dependent,[27] philosophical approaches can be distinguished according to whether they are antirealist or realist. Many versions of the two positions exist as well as very distinct

[24] Searle, *The Construction of Social Reality*, 9ff.
[25] A definition of social kinds, also in contrast with natural kinds, can be found here: Alexander Bird and Emma Tobin, 'Natural Kinds', in Edward N. Zalta and Uri Nodelman (eds), *The Stanford Encyclopedia of Philosophy* (Spring 2024 Edition) <https://plato.stanford.edu/archives/spr2024/entries/natural-kinds/> accessed 26 July 2025.
[26] Scholarly discussions on social kinds are usually separate from those on social groups. Researchers often focus either on how to define and understand social groups or on the epistemology or political implications of social kinds. However, it is possible to combine them to enrich our discussion.
[27] Some examples can be found in Margaret Gilbert, *On Social Facts* (London, Routledge, 1989); Ian Hacking, *The Social Construction of What?* (Cambridge MA, Harvard University Press, 1999); Muhammad Ali Khalidi, 'Interactive Kinds' (2010) 61 *British Journal for the Philosophy of Science* 335; Raimo Tuomela, *The Philosophy of Sociality. The Shared Point of View* (Oxford, Oxford University Press, 2007).

meanings of realism and its opposite. We will focus only on a few that are exemplary and useful for our analysis.

Briefly, according to a widely accepted view, antirealism holds that the existence of certain social entities depends on human conceptual schemes, practices, and collective acceptance.[28] As a consequence, they are not real as far as ontological realism entails that things exist independently of human beings and their dispositions towards things. According to this view, social kinds do not exist independently of our beliefs and language but are brought into being through our recognition and use of them. Antirealism aligns with constructivism, and as such is a very popular position in social ontology. For instance, Amie Thomasson's constructivism builds on her broader artifactualist approach to metaphysics.[29] She argues that many social and institutional entities are dependent on human practices, conceptual schemes, and collective recognition and that these collective attitudes are constitutive of social kinds. From her standpoint, social entities are not independent realities, but practices sustained by conceptual and linguistic commitments.[30] Antirealism is also related to infallibilism, namely the theory according to which, because social kinds are our product, we cannot be wrong about them.[31] However, scholars usually set some limitations to infallibilism, arguing that it applies only to some social kinds but not all. In this context, we can refer to "opaque phenomena", namely those that are not immediately evident to human beings, even though they depend on them (at least in the sense that they do not exist in nature independently of human society).[32] A classic example of this phenomenon is racism: a society or an individual can exhibit racist behaviour without acknowledging it. Another example is a recession, which occurs independently of any single individual's beliefs about economic systems or trends. "Opaque" thus refers to the fact that these phenomena are not evident to the people involved.

Accordingly, Ali Khalidi classifies social kinds into three categories based on their dependence on collective acceptance, naming them first, second, and third kind of social kinds.[33] The first kind of social kinds does not depend on our representations, either at the type

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[28] See, for instance, Amie Thomasson, 'Foundations for a Social Ontology' (2003) 18-19 *ProtoSociology* 269 and 'Realism and Human Kinds' (2003) 67 *Philosophy and Phenomenological Research* 580.

[29] *cf* Amie Thomasson, *Ordinary Objects* (Oxford, Oxford University Press, 2007) and *Ontology Made Easy* (Oxford, Oxford University Press, 2015).

[30] About social groups she emphasises the normative component of their creation and persistence. The function that a group performs is in turn recognisable through the internal and external rules that regulate it. Amie Thomasson, 'The Ontology of Social Groups' (2019) 196 *Synthese* 4829.

[31] Francesco Guala, 'Infallibilism and Human Kinds' (2010) 40 *Philosophy of the Social Sciences* 244.

[32] Thomasson, 'Realism and Human Kinds'.

[33] Muhammad Ali Khalidi 'Three Kinds of Social Kinds' (2015) 90 *Philosophy and Phenomenological Research* 90. The distinction between the second and the third kinds had already been emphasised by Searle. According to the latter, in fact, the formula that produces institutional facts can work either for a category of social facts or for the single fact, depending on the customs we have in our cultures. In particular, the point is exemplified through

(general category) or token (specific instance) level.[34] Opaque phenomena are part of this kind. The second kind of social kinds depends on our representations at the type level but not at the token level (eg war, money). In other words, while the concept itself is socially constructed, specific instances exist independently of our recognition and dispositions towards them. Finally, the third kind of social kinds depends on our representations at both the type and token levels (eg prime minister, permanent resident). Their existence and identity rely entirely on collective recognition and institutional frameworks.

Applied to associations, a generic antirealist account would suggest that an association exists only when individuals intentionally conceive of themselves as part of it. Its existence is therefore contingent on shared intentions and beliefs, meaning that without collective recognition and commitment, the association would not exist as a distinct entity. From an antirealist perspective, an association does not have an independent ontological status apart from the practices and shared understandings of its members. It exists only because people recognise it as such and act accordingly. Without this collective intentionality, the association ceases to exist as a meaningful entity. In relation to the example discussed at the beginning, the antirealist view would imply that the Soup kitchen association exists because it is recognised by people.

In contrast, the realist perspective in social ontology holds that certain social entities exist independently of collective intentionality, meaning that their existence is not solely dependent on shared beliefs or recognition. Instead, these entities are seen as grounded in external structures, functions, or institutional frameworks. Within this broader realist framework, I will focus on two specific accounts – those of Maurizio Ferraris and Francesco Guala – to illustrate different ways in which social entities, including associations, can be understood as objectively existing.

Maurizio Ferraris develops a realist account of social ontology grounded in his theory of documentality, which emphasises the role of written records in the existence of social objects.[35] He classifies objects into three categories: natural objects, which exist in time and

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the different way we conceive of a single dollar bill and a cocktail party. In the former case, the rule for the constitution of institutional facts applies to the type, while in the latter to the token. Indeed, any piece of paper that satisfies the conditions to be a dollar bill is a dollar bill, regardless of the use we make of it. In contrast, in the case of the cocktail party, collective intentionality applies to the specific event: if the participants do not believe that what they are taking part in is a cocktail party, then that is not a cocktail party. *cf* Searle, *The Construction of Social Reality*, 31ff.

[34] For the sake of clarity, "type" refers to a general category, such as the species "cat", while its corresponding token is an individual instance, like Sylvester the cat. Again "book" is the type, the copy of *Light in August* on my shelf is a token.

[35] Maurizio Ferraris, *Documentality. Why It is Necessary to Leave Traces* (New York, Suny Press, 2013).

space independently of human intervention (for example, mountains, planets); ideal objects, which exist independently of the physical world but depend on human thought (for example, mathematical entities); and social objects, which exist in time and space but depend on human intervention, at least for their inception (for example, laws, money, contracts). Once they come into existence, however, they no longer require human intervention to persist, much like artifacts.

The key distinction between natural and social objects lies in their ontological dependence – while natural objects exist regardless of human beliefs, social objects are brought into being through documents, rules, and institutions that establish their existence. However, this does not imply an antirealist position – quite the opposite. The fundamental principle governing social objects is 'Object = Inscribed Act', meaning that it is precisely the trace left by documentation, with its objective epistemological value, that gives social objects their meaning.[36] As a result, Ferraris adapts Jacques Derrida's well-known adage 'there is nothing outside the text' into 'nothing social exists outside the text', shifting from a constructivist (or postmodern) perspective to a realist one.[37]

Applying this to associations, Ferraris could argue that an association exists when it is formally registered, meaning its existence is tied to documentation and legal recognition. This formalist perspective aligns with legal definitions, where an association is not merely a group of individuals acting together but a recognised entity with rights, obligations, and institutional standing. Under this view, informal groups or gatherings lack ontological status as associations unless they are officially documented, reinforcing the idea that social reality is shaped by formal records rather than collective intention.

What we can add here, however, is that Ferraris advocates for a very broad concept of document, leveraging the notion of trace. For instance, he argues that even a verbally made promise can count as a social object if we consider the mnestic trace (the memory of the promise) as the necessary document to record the act as a social one.[38] From this perspective, what truly matters is the distinction between what is private – occurring solely in an individual's mind – and what is public, meaning it is shared by more than one person to varying degrees of institutionalisation. These different forms of public recognition are then classified within an

[36] Ferraris, *Documentality*, 120ff.
[37] To better grasp his analysis, see Maurizio Ferraris, 'Collective intentionality or documentality?' (2015) 41 *Philosophy and Social Criticism* 423; Maurizio Ferraris and Giuliano Torrengo, 'Documentality: A Theory of Social Reality' (2014) 57 *Rivista di Estetica* 11.
[38] Ferraris, *Documentality*, 142.

ontology of social objects, based on how these objects are created and the type of document that supports them – whether strong or weak, for example.[39]

Francesco Guala develops a functionalist approach to social ontology, which focuses on the roles and behaviours of social entities rather than their formal definitions or institutional recognition.[40] His account is influenced by the rules-in-equilibrium framework, which draws from game theory and economics to explain the persistence of social institutions. According to this view, social entities exist insofar as they fulfil a function involving stable expectations and interactions within a system. Rather than being defined solely by legal recognition or collective intentionality, social entities persist because individuals behave in ways that reinforce their existence, responding to incentives and constraints within a given social structure. This framework can also account for ineffective rules, namely norms that are legally at work but not followed by anyone.[41]

Applying this kind of account to associations, we could argue that an association exists as long as it functions as one, regardless of whether it is formally recognised. A group of individuals who regularly meet, coordinate activities, and achieve shared goals may count as an association in practice, even if it lacks legal status. This perspective contrasts with Ferraris' documentality-based account by suggesting that associations are not defined by registration or official recognition, but by the roles they play and the stability of their social interactions. Within this functionalist framework, an informal collective can be considered an association provided that it operates with a certain degree of structure and continuity, albeit without any legal documentation.

The key difference between Ferraris' and Guala's accounts, thus, lies in how they define the existence and persistence of social entities. Ferraris' documentality-based approach argues that social objects come into being through written records and institutional recognition. For

[39] For the sake of clarity, "weak document" indicates something that is not produced with the intention of creating a document but can be used as such at a later time. For example, a murderer does not leave a trace for the purpose of creating a document, but the police, trying to identify them, can use their traces (fingerprints, ie a weak document) as evidence (and therefore as a strong document). The strong document, indeed, has very clear and precise rules. Although these rules may be different in relation to the case (if it is a testament or a degree certificate) and in relation to the culture in which the document is produced (in temporally and spatially terms), they have one thing in common: they are codified by the society. To get married, we have to sign an act done in a particular way, have witnesses, and do a whole series of acts identified by the law of the community. However, this does not imply that these rules are subjective: even if they are not natural, but dependent on the subjects, once they are put down in words, they become objectively valid. To change them we will need to proceed by following other social and legal rules. Ferraris, *Documentality*, 267-8.

[40] Francesco Guala, *Understanding Institutions. The Science and Philosophy of Living Together* (Princeton, Princeton University Press, 2016).

[41] Guala's example is the law in France that prohibited women from wearing trousers, which remained technically valid until it was repealed in 2010. Guala, *Understanding Institutions*, 41ff.

Ferraris, the act of documentation itself would grant an association ontological status, meaning that without formal registration, a group does not technically exist as an association. This view aligns with a legalistic and institutional perspective, where social reality is shaped by objective, external records rather than informal practices or intentions. Although, as we have already mentioned, "document" can be understood in a very broad sense, the standard case is based on the written component.

In contrast, Guala's functionalist approach would define associations not by their formal registration but by their function and persistence within a system of interactions. According to Guala, a group that regularly coordinates activities and has a shared purpose qualifies as an association, even without legal recognition. His account is grounded in a rules-in-equilibrium framework, which emphasises stability, expectations, and behaviours rather than formal documentation. These contrasting views reflect a broader debate in social ontology between some forms of realism[42] and functionalism.

IV. The Case of Marriage: Recognition vs. Reality

One useful case for investigating the nature of associations is the institution of marriage. Indeed, marriage, like association, presents a case where legal recognition and social reality do not always align. There are instances where individuals consider themselves married despite lacking formal recognition by the state. Historically, this has been the case for same-sex couples, polygamous unions, and other non-traditional relationships that have sought legal recognition. Moreover, some individuals who are legally eligible to marry choose not to, often to avoid the legal consequences that come with marriage. Similarly, some associations opt not to register because they lack the seriousness or commitment required to seek legal recognition. In this way, both associations and marriages can reflect comparable dynamics. The underlying issue is that social ontology and jurisprudence may categorise social entities differently, leading to potential conflicts in recognition and protection.

In Chapter 14 of *Understanding Institutions*, Francesco Guala explores whether one can simultaneously be a realist and a reformist regarding social institutions. He argues that institutions can be modified without fundamentally changing their nature, balancing externalist realism – where the meaning of institutional terms is determined by the world – with the need

[42] Consider that Ferraris is among the founders of so-called "New Realism". *cf* Maurizio Ferraris, *Manifesto of New Realism* (New York, Suny Press, 2014).

for institutional evolution to fit normative goals.[43] Instead, he suggests that institutions should be analysed as types and tokens: a token institution (for example, marriage in a specific culture and time) is an instance of a broader institutional type. Using marriage as a case study, Guala highlights how past social arrangements do not necessarily dictate the institution's essential nature. He applies insights from scientifically-informed ontology, arguing that determining what marriage (or any institution) is requires examining the coordination problems it solves rather than simply generalising from historical cases. While courts and lawmakers shape institutions, they do not define their ontological nature qua social kinds. Indeed, this constitutes social scientists' goal. In this sense, he supports a descriptive, scientific approach to institutional reform, separating what an institution is from what it ought to be in legal and political debates. Therefore, rather than being inherently heterosexual or bound to a specific legal framework, marriage is a flexible institution that can take multiple forms while still serving similar coordination functions.

According to Maurizio Ferraris, marriage is both a promise and a social object, meaning it exists within the framework of his documentality theory. As a social object, marriage depends on written records, legal recognition, and institutional structures that formalise and sustain its existence. In a specific context, it does not depend on our intentions or volitions but rather on performing specific actions, following established procedures, and signing written documents. At the same time, Ferraris views marriage as a promise – a commitment between individuals that carries social and legal obligations. However, unlike informal promises, marriage as a documented social object gains permanence and enforceability through institutional backing. In this sense, Ferraris' view contrasts with functional or historical definitions, emphasising instead the role of legal formalisation in constituting marriage as a social act.

We could say that the case of associations, particularly in relation to freedom of association, raises the opposite concern. While some individuals may seek formal recognition for their associations, others may wish to operate without formal registration. This could be due to legal restrictions, political concerns, or personal preferences. The challenge, then, is ensuring that unregistered groups pursuing common interests are not compelled to formalise in ways that

[43] Guala critiques Sally Haslanger's "ameliorative" approach, which challenges traditional views on normative rather than descriptive grounds. Haslanger's ameliorative approach is a method in philosophy, particularly in social ontology and feminist theory, that seeks to redefine concepts based on their practical and political usefulness rather than merely their common usage or underlying essence. Haslanger argues that instead of asking 'What do our concepts mean?' (conceptual analysis) or 'What is their underlying nature?' (metaphysical inquiry), we should ask 'What should our concepts do?'. This means redefining terms in a way that helps achieve social justice and addresses systemic inequalities. *cf* Sally Haslanger, *Resisting Reality. Social Construction and Social Critique* (Oxford, Oxford University Press, 2012).

might undermine their autonomy or expose them to regulatory burdens, as highlighted in the Soup kitchen scenario.

The tension between descriptive and normative social ontology becomes evident when considering how legal systems define and regulate associations. A descriptive approach seeks to categorise associations based on observable social patterns, while a normative approach considers what the law ought to recognise and protect. This distinction is crucial for ensuring that legal frameworks do not inadvertently exclude certain groups or impose unnecessary restrictions on informal associations.

For instance, if a legal system adheres strictly to a formalist view, it may fail to protect informal associations that function as cohesive units but lack official recognition. Conversely, a rigid functionalist approach might force legal recognition upon groups that do not wish to be categorised as formal associations. A balanced approach must acknowledge both perspectives, ensuring that legal definitions align with social realities while safeguarding individual and collective rights.

V. Concluding Remarks

The question of what constitutes an association is not merely a theoretical concern but has significant legal and social implications. By examining a definition of group, antirealist and realist perspectives, and the institution of marriage, this chapter has highlighted the complexities of recognition in social ontology. The key challenge lies in ensuring that legal categorisations are flexible enough to accommodate diverse forms of association while protecting fundamental rights. The interplay between social ontology and jurisprudence must be navigated carefully to reconcile philosophical categorisations with the practical needs of governance and social organisation.

This chapter aimed at introducing scholars working on freedom of association to key elements of social ontology. To do so, it first examined the categorisation of social groups in standard social ontology, addressing theoretical distinctions such as aggregates vs collectives and formal vs informal groups. While these distinctions alone do not fully explain the nature of formal and informal associations, the concept of collective intentionality proves useful in understanding how people come together and how shared goals and rules contribute to the formation of social groups, associations included.

Secondly, the discussion moved to the realism and antirealism of social kinds, raising questions about whether social objects can be grounded solely in collective intentionality. This

led to a consideration of different levels of social reality, precisely because our collective dispositions can refer to distinct levels – either the type or the token level. This distinction allows us to ask whether associations should be understood more like dollar bills or cocktail parties, following Searle's examples – namely, whether they depend on collective behaviour as a category or as individual associations – and what, instead, depends on the legal definition of associations.

To further develop this analysis, we applied two realist perspectives to the case of marriage, using it as a concrete example to contrast a positive realist[44] account with a functionalist one. This approach helped clarify the theoretical advantages of both positions in explaining historical institutions. Hopefully, the philosophical distinctions explored in this chapter may provide legal theorists working on freedom of association with useful insights and conceptual tools for refining their definitions and approaches.

[44] The reference is to Maurizio Ferraris, *Positive Realism* (London, Zer0 Books, 2015).

Appendix 1: Moot Scenario 1 "Cairde ar son Cairdre" Soup Kitchen

Together with a few friends, Gráinne has been running an outdoor soup kitchen called Cairde ar son Cairdre (*phonetically: car-ja air son car-ja*) in her local area for more than ten years. She receives leftover food from local grocery shops and a local butcher's shop has an account that allows people to donate money indirectly. Whenever possible, they also provide sleeping bags, underwear, socks, toiletries and period products.

Gráinne founded the group and has always been involved at the helm of the initiative. Three of her neighbours and friends, Aisling, Bláithín, and Clodagh initially volunteered alongside her, but Aisling of these has since moved to another city and Bláithín has stepped back from Cairde to care for her three small children. Clodagh still helps out every week and is the head chef of the group. Deirdre and Eithne have joined the organisation in the last five years and are very dedicated to its work. Deirdre takes the lead on getting in food supplies and helps Gráinne with serving and hosting, while Eithne sources the personal provisions and discreetly makes them available to clients when needed.

Cairde ar son Cairde is not a registered charity. It does not have a bank account or a bookkeeper. It does not have a formal organisational structure or a constitution. None of the volunteers has formal training in finance, and they don't want to have to use their small funds to pay for a bookkeeper. In any case, Gráinne has always to keep a more informal feel to the organisation. The volunteers are all good friends, and she wants her guests to feel like they are being invited to a dinner with people they know, rather than receiving an impersonal hand-out from people who don't care. When provoked to say something, all of the group are very critical of the failures of local and national government to address problems of homelessness and cycles of deprivation, but most of the time they just focus on what they can do to help.

Cairde ar son Cairde is in violation of the Charities Acts, for not having proper accounts and for not registering as a charity. The Charities Regulator has made several attempts to encourage Gráinne to register, but she is determined not to. The Charities Regulator then approached the butcher and told him that what he is doing is illegal. Eventually, Gráinne may be prosecuted for failure to comply with the Charities Acts.

The Charities Regulator defends its actions on the grounds that all charities must be subject to the same legal standards, so that members of the public can be assured that charities are operating with financial integrity as they pursue their charitable purposes. Gráinne challenges the actions of the Charities Regulator for being a disproportionate violation of her right to freedom of association. The Supreme Court of Bureaucratlandia finds in favour of the Regulator.

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