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Global Perspectives on Freedom of Association: Introduction

Maria Cahill, Dwight Newman, Seán Ó Conaill

Societās Exploring the Value of Freedom of Association

IRISH RESEARCH COUNCIL An Chomhairle um Thaighde in Éirinn

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Global Perspectives on Freedom of Association Collection

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Introduction to Global Perspectives on Freedom of Association

Maria Cahill, Dwight Newman & Seán Ó Conaill

Introduction

"In democratic countries, the science of association is the mother science; the progress of all the others depends on the progress of that one. … In order that [people] remain civilised or become so, the art of associating must be developed and perfected among them..."[1]

The promise of freedom of association has not yet been realised, at least in part because we have not explored the science of this fundamental right. This collection hopes to change that by showcasing how the right to freedom of association is protected by legal systems and courts around the world. The right to freedom of association is one of the fundamental human rights recognised by bills of rights in constitutions and international treaties. It protects individuals in their associational life, as members of trade unions and political parties, students' societies and residents' associations, sports clubs and charitable associations, cultural and religious associations. It sits alongside rights such as freedom of expression, freedom of thought and conscience, freedom of religion and (often in the same provision as) freedom of assembly, without being coterminous with any of those rights. Legal articulations of the right to freedom of association broadly focus on there being *several people* who have *voluntarily* joined together in a *stable* way to *pursue a particular set of purposes*. The right to freedom of association is addressed to the individual, but it cannot be exercised alone and concerns the individual as a social being. It contains, first of all, the right to form and the right to join an association, but it may also be interpreted to include a right of individuals not to associate where they wish to leave or refuse to join a particular association as well as the right of the association *qua* association to govern its own affairs. Thus, the content and scope of the right is complex, and it draws the courts into a nexus of relationships involving individual, association and state.

This double special issue of the European Journal of Comparative Law and Governance features a collection of papers outlining how the right to freedom of association is protected in twenty-

[1] Alexis de Tocqueville, *Democracy in America* (Harvey C. Mansfield & Debra Winthrop, eds., University of Chicago Press, 2000), 492.

one jurisdictions around the world: Australia, Canada, China, Egypt, Ethiopia, Finland, France, Ireland, Italy, Japan, Mexico, Nigeria, Peru, Poland, South Africa, Spain, the United States, as well as international human rights systems such as the Council of Europe, the Inter-American System of Human Rights and the United Nations. Contributors outline the nature and scope of the right to freedom of association in their jurisdiction as it has been articulated in constitutional and/or legislative and/or international treaty provisions, consider the right in its historical and political context and also reflect on its underlying philosophical commitments and the rationales given for its protection. This research is a vital first step in understanding how the right to freedom of association is vindicated in legal systems and courts around the world. Aside from being valuable on its own terms, relevant for legal practitioners or judges seeking to grasp how this right is interpreted and applied comparatively, and helpful as a foundation that will allow legal scholars to engage more deeply in contextualised doctrinal, comparative and theoretical analysis about the nature, scope and purpose of this fundamental right.

This collection is one output of a larger four-year project led by Professor Maria Cahill. "Societās: Exploring the Value of Freedom of Association" is funded as an Irish Research Council Laureate project and based at the School of Law at University College Cork. The project has two broad purposes: it aims to create a global network of legal experts on freedom of association building a bank of doctrinal research informed by comparative and international perspectives, and it also aims to reflect on the nature and purpose of the right to freedom of association from an interdisciplinary perspective, using research on social ontology and group agency as well as research on empathy and alternative theories of selfhood to delve more deeply into questions of who and what this right protects as well as why they are worthy of protection.

This editorial proceeds as follows: Part I gives an overview of the specific scholarly context in which the collection came to fruition; Part II gives an overview of the challenges and complexities of scholarship in this area, which further contextualizes the unique value of this collection; and Part III introduces each article in the context of the overall collection.

I. Context of the Collection

This collection emanates from a set of workshops that took place in 2023. The first was a webinar entitled "Mapping the Legal Landscape of Freedom of Association" which took place on 31st March 2023, across eighteen time zones. It explored the basics of how the right to freedom of association is articulated, its historical context within the legal system, the types of associations it protects, and the broad content of the right. Featured presentations included those by experts from Australia, Canada, China, Ethiopia, France, Finland, India, Italy, Japan, Kenya, Mexico, Poland, South Africa, Spain, and the United States, as well as the European Court of Human Rights, Inter-American System of Human Rights and the United Nations.

This was followed by an in-person conference which took place on 27th and 28th June 2023, hosted at University College Cork and supported by Irish Research Council. Entitled "Comparative Perspectives on the Purpose and Potential of Freedom of Association", the event brought this emerging global network of freedom of association scholars together from nineteen different jurisdictions in what appears to have been the first ever conference on how freedom of association is protected in comparative perspective. The conference included presentations by experts on freedom of association in Australia, Canada, China, Ethiopia, Finland, France, India, Ireland, Italy, Japan, Kenya, Mexico, Poland, Spain, South Africa, and the United States, along with the European Convention on Human Rights, the Inter-American System of Human Rights and the United Nations. Participants reflected on the kinds of disputes that arise in respect of freedom of association, the wide variety of approaches to interpreting and justifying the right, as well as the insights to be gained by considering alternative approaches and comparative perspectives.

The network of lawyers created through these encounters then expanded further to include experts on Egypt, Nigeria, and Peru – whose contributions are featured in this collection – and it is still expanding. The contributors to this collection are particularly impressive individuals and the collection is enriched by the variety of their cultural and ethnic backgrounds. Aside from its jurisdictional reach, and the inclusion of scholars from the global south as well as from the global north (which is important for doctrinal reasons, as will be explained below), this network is also inclusive of scholars at different stages of their careers: it includes distinguished professors of international standing, mid-career scholars rising in prestige, early career academics building their profile and even some postgraduate students embarking on the early stages of their academic careers.

Scholars from this network continue to engage with the work of the project. Some of them contributed to a webinar with philosophers which was hosted by the project on 3rd November 2023. Others presented at an in-person workshop with philosophers which took place on 25th and 26th April 2024 entitled "Exploring Associational Life: From Social Ontology to Law and Back Again". These events introduced philosophers to the comparative work produced by the international network allowing them to use this cutting-edge legal material to test and refine their theories of group agency, social ontology and collective intentionality. Moreover, members of the network have also presented their research at a panel entitled "Associations, Pluralism, and the Resilience of Democracy" at the International Society of Public Law (ICON-S) conference which took place in Madrid in July 2024.

In order to establish focus and promote the coherence in our conversations, particularly at the initial stages of the development of this network, each contributor was asked to consider a single set of questions. These standard questions helped to establish the common features that hold true across jurisdictions, and also to quickly make apparent the unique features of each jurisdiction, with the result that some questions are more relevant for some jurisdictions than for others: in particular, some jurisdictions have limited or almost no caselaw on freedom of association while others have a regular supply. The list of prompting questions can be grouped in three broad categories as follows:

- *Questions about Nature, Scope and Content*: how is the right to freedom of association articulated in constitutional and/or legislative and/or international treaty provisions and/or through the common law in this jurisdiction? Are specific types of associations given particular protection, e.g., trade unions or political parties? What is included in the content of the right? Does it include a positive right to associate (a right to form and to join) and a negative right to disassociate (a right to leave and to refuse to join)? Is it interpreted as a protection both for the individual and for the association itself? Is this content detailed in legislation and/or in caselaw?
- *Questions about History and Context*: What is the history of the right to freedom of association within this jurisdiction, e.g., philosophical/historical roots, drafting history, evolving political context, evolution of legal interpretation over time? How does the legal system understand the relationship between freedom of association and other rights, e.g., freedom of expression, freedom of assembly, freedom of religion, freedom of conscience, the principles of equality and non-discrimination? How is the current understanding of this right shaped by context and history?
- *Questions about Purpose:* When they are interpreting and vindicating the right to freedom of association, what do the superior courts articulate as the principal rationale for protecting freedom of association? Are they mostly concerned with protecting freedom of association for the sake of individuals or for the sake of the association or for the sake of the state, or democracy or pluralism? How has the purpose of the right to freedom of association been understood in academic scholarship in this jurisdiction?

II. Challenges of Scholarship in this Field

Every field of law is complex for different reasons. At the same time, the intuitive power of human rights law in a legal system is that the significance of each right resonates at a general level and its content and purpose are, to a certain extent, broadly accessible and readily understood. The case could be made that freedom of association is an outlier here for not being a right that ordinary people – and even sometimes lawyers and law scholars – intuitively grasp and value. For a start, it is often confused with freedom of assembly. Although they are sometimes protected in the same provision of a constitution or treaty, freedom of assembly protects individuals who have gathered in a particular moment for a particular reason (possibly exercising their right to protest) without requiring them to be bonded together in a more lasting way, while freedom of association contemplates a more stable grouping in pursuit of defined purposes through cooperation over time. There can be overlap, of course, because members of associations can organise and attend rallies and protests, but many of the key questions that arise in disputes invoking the right to freedom of association – questions about the right to join and to leave and to refuse to join an association, questions about the regulatory and oversight

and financial management regimes set in place by the state, and questions about the membership policy and internal rules of an association and their application – do not arise in the context of the right to peaceful assembly and tell the story of a kind of cooperation that seems to be quite different to the kind of cooperation best protected by that right.

At the same time, a certain confusion about '*who* exactly the right to freedom of association protects', '*how* that protection is offered', and '*why* that protection is given' is understandable and justifiable, because the answers have not always been fully articulated by this field. There is some existing scholarship on the right to freedom of association (although not nearly as much as has been devoted to the explication of other fundamental rights) but that scholarship has tended to be focused on a single jurisdiction[2] (and sometimes a single outlier jurisdiction like the United States which conceives of freedom of association in atypical ways[3]) or rather on theoretical defences of freedom of association that are not especially connected to doctrinal complexities.[4] Moreover, although those questions may seem like easy questions, they belie their own complexities, for reasons discussed below. The overriding purpose of this network of scholars and this collection of articles is to seek to move towards a position of greater clarity about the terms of the right to freedom of association, with the hope of also promoting over time a deeper resonance and intuitive understanding of its value. Before we offer an overview of the insights provided by the various articles in this collection and the value that each brings to the table in terms of unpacking the nature and scope and purpose of freedom of association, we want to take a moment to outline the particular challenges faced by scholarship in this field, and the complexities that

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[2] E.g., José Juan Anzures Gurría, *La Protección Constitucional de las Asociaciones: sobre la dimensión colectiva del derecho de asociación, Centro de Estudios Políticos y Constitucionales* (Madrid 2014); Jean-Claude Bardout, *Les libertés d'association: histoire étonnante de la loi de 1901* (Les Editions Juris Service 1991); Ángel José Gómez Montoro, *Asociación, Constitución, Ley: sobre el contenido constitucional del derecho de asociación* (Centro de Estudios Políticos y Constitucionales, Madrid 2004); Brian Langille, "The Freedom of Association Mess: How We Got into It and How We Can Get out of It" (2009) 54(1) McGill Law Journal 177; Marie-Luce Pavia, *La liberté d'association est-elle un droit constitutionnel et fondamental?* (LPA, 2001); Stu Woolman, "On the Fragility Of Associational Life: A Constitutive Liberal's Response to Patrick Lenta" (2009) 25(2) South African Journal on Human Rights 280-305; Stu Woolman & Johan de Waal, "Freedom of Association: The Right to Be We" in David van Wyk, John Dugard, Bertus de Villiers, and Dennis Davis (eds), *Rights and Constitutionalism: The New South African Legal Order* (Clarendon Press, 1994) 338-86.

[3] E.g., Larry Alexander, "What is freedom of association, and what is its denial?" (2008) 25(2) Social Philosophy and Policy 1; Kimberley Brownlee, "Freedom of Association: It's Not What You Think" (2015) 35(2) Oxford Journal of Legal Studies 267–282; Dale Carpenter, "Expressive Association and Anti-Discrimination Law After Dale: A Tripartite Approach" (2001) 85 Minnesota Law Review 1515-1590; Thomas Emerson, "Freedom of Association and Freedom of Expression" (1964) 74(1) The Yale Law Journal 1- 35; Amy Gutmann (ed), *Freedom of Association* (Princeton University Press 1998); John Inazu, "The Unsettling Well-Settled Law of Freedom of Association" (2010) 43(1) Connecticut Law Review 149-208; Seana Shiffrin, "What Is Really Wrong With Compelled Association?" (2005) 99 *Northwestern University Law Review* 839-88.

[4] E.g., Adam Chilton & Mila Versteeg, *How Constitutional Rights Matter* (Oxford University Press, 2020); Paul Hirst, *Associative Democracy: new forms of economic and social governance* (University of Massachusetts Press, 1994); Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford University Press, 2003); Victor Muñiz-Fraticelli, *The Structure of Pluralism: On the Authority of Associations* (Oxford University Press, 2014); Nancy Rosenblum, *Membership and Morals: the Personal Uses of Pluralism in American Life* (Princeton University Press, 2000).

are created by the variety of jurisdictions, the variety of associations, and the internal variety within the right itself in terms of its objects and aims.

The Complexities of Jurisdictional Variety

The story of associational involvement within a particular society is always particular to the people who live in that space. Are they hyper-individualistic or do they form connections? Do they have a culture of gathering together with people outside of their family and friend circles to pursue goals they hold in common? Do they assume responsibility for each other and for their community? Are they neighbourly? Are they charitable? Do they have enough time outside of work or commuting or the practical pressures of life to invest in third spaces? Do they trust each other enough to make that cooperation real and deep? Can they find enough common ground with other members to sustain collaboration over time? Do they value associations as spaces within which to achieve goals, as sites of personal development and as contexts of belonging, cooperation and friendship? Is the society relatively homogeneous, stable and listless, or is it heterogeneous, dynamic and creative? The story of associational involvement within a particular society is also particular to the kind of state apparatus that exists in that space. Does the state actively promote the growth of civil society associations, or does it actively or effectively discourage them through prohibition or over-regulation? Does the state seek to hold civil society associations very close to itself, ensuring that associations are deeply embedded in the state apparatus, or does it promote flourishing of independent voluntary forms of social organization? Does the state assume so much responsibility for the general welfare that there is little need for private initiative, or is the state so overburdened or so incompetent that there is a great need for social enterprises?

We understand the right to freedom of association as having the status of a universal moral right, but it is always articulated, interpreted and applied in the specific context of "the geometry of human relations" within a particular society.[5] The ecology of our civil society is partly conditioned by the way in which we understand and theorise the right to freedom of association, but the way in which we understand and theorise the right to freedom of association is also partly conditioned by the ecology of our civil society.[6] This point is made manifest in a myriad of small ways in all of the contributions to this collection. Here, two of the most notable are considered.

First, while in most jurisdictions, the right to freedom of association is protected as a *human* right or a *personal* right, in some jurisdictions it is expressly protected as a *political* right rather than a

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[5] Michael Edwards, "Introduction: Civil Society and the Geometry of Human Relations" in Michael Edwards (ed.) *The Oxford Handbook of Civil Society* (Oxford University Press, 2011), 3.

[6] E.g., Theda Skocpal, "Civil Society in the United States" in Michael Edwards (ed.) *The Oxford Handbook of Civil Society* (Oxford University Press, 2011), 109; Marc Jorjé Howard, "Civil Society in Post-Communist Europe" in Michael Edwards (ed.) *The Oxford Handbook of Civil Society* (Oxford University Press, 2011), 134; Eberhard Kienle, "Civil Society in the Middle East" in Michael Edwards (ed.) *The Oxford Handbook of Civil Society* (Oxford University Press, 2011), 146; Jude Howell, "Civil Society in China" in Michael Edwards (ed.) *The Oxford Handbook of Civil Society* (Oxford University Press, 2011), 159.

human right. The (constitutional) bills of rights in Ethiopia, New Zealand, Poland, Portugal, and Senegal, for examples all protect freedom of association as a political right. This distinction can also be present in other jurisdictions in less formal ways when national authorities interpret and apply the right as a political right (e.g. France, China), and in jurisdictions where the rationale for protecting freedom of association is largely focused on the value that it offers to a healthy democracy (e.g. ECHR). Second, for historical reasons, some jurisdictions do not or did not expressly protect the right to freedom of association in their constitutional documents at all. At the time of the French and American revolutions at the turn of the eighteenth century, and the adoption of their respective human rights documents, the focus was so firmly on securing the place of the individual and prioritising the relationship between the individual and the state that neither the 1789 *Déclaration des droits de l'Homme et du citoyen* nor the 1791 Bill of Rights contained a right to freedom of association. Both the *Conseil constitutionnel* and the US Supreme Court have much more recently discovered the right to freedom of association within the framework of rights that are protected by their respective constitutions (cf. articles on France and the US in this collection.) In common law jurisdictions, where there is/was no written bill of rights, the right to freedom of association was often quite well protected incidentally and incrementally by the common law tradition but without a systemic articulation of its terms. Thus, although these jurisdictions might in other areas of law be looked upon as "leading jurisdictions", they do not have the decades of caselaw and solid doctrinal development interpreting a constitutional right to freedom of association that would allow them to be considered leading jurisdictions in respect of this particular right. The nature, scope and purpose of freedom of association tends to be more developed in civil law jurisdictions, jurisdictions with previous experience of totalitarian regimes, and jurisdictions with a keen awareness of the challenges of pluralism, such as Italy, Mexico, Spain and South Africa. As a general rule, jurisdictions in the global south seem to have a greater sensitivity to the need to protect the right to freedom of association than jurisdictions in the global north.

The complexity of the jurisdictional variety offers a picture of the right to freedom of association as deeply connected to the kind of vision that we have for the kind of society that we want. All of that is to say that freedom of association can be understood in different ways in different places not only because of philosophical confusion about the abstract nature of the right, but also because of cultural, sociological, and anthropological differences about the way in which that right is understood and valued.

The Complexities of Associational Variety

Aside from the variety and complexity created by different visions of what civil society associations are and do across different jurisdictions around the world, it is also true that associations themselves are very variegated and complex in their kinds and purposes and organisation. A wide variety of associations may exist within the same legal system, all of which invoke the protection of this right:

from those that are large and highly formal in structure to those that are smaller and very informal; from those that are tightly connected with identity (e.g., religious, minority or cultural associations) to those that are more loosely connected with identity (e.g., sports clubs or charities); from those that are more closely connected to the state (e.g., political parties or trade unions) to those that pursue a localist purpose within a tight-knit community (e.g., residents' associations or tidy towns committees); from those that pursue economic purposes (e.g., commercial enterprises or cooperatives) to those that pursue altruistic purposes (e.g. social enterprises or charities); from those that occupy a dominant or even monopolistic role in their particular sector (e.g., a trade union a national or international sports body) to those that exist alongside dozens or hundreds of other similar associations (e.g., NGOs or students' societies); from those which are internally democratic to those that are internally hierarchical; and from those whose purposes and values are broadly in line with those of the majority and the state to those whose purposes and values are for the moment out of step with those of the majority and/or the state. This level of variety in terms of types of associations gives rise to a deal of complexity in interpreting the terms of the right. Moreover, the variety of types of associations means that the substantive areas of law involved stretch across a wide spectrum from labour law to sports law to charity law to corporate law, to name but a few. Much of the litigation in relation to freedom of association arises in relation to trade unions and political parties (presumably because they have the financial resources and access to knowledge to pursue litigation strategies) but that does not mean that they are archetypical associations or that this right should be interpreted only with those types of associations in mind.

It is also true that that associations can be very different also in terms of the value that they create: at one end of the spectrum, there are some very wonderful associations pursuing laudable aims by laudable means and at the other end there are some very problematic associations pursuing nefarious purposes by nefarious means. Most associations are somewhere in the middle: sometimes they succeed or create value and sometimes they fail or create disvalue; sometimes they cohere around a well-defined goal and sometimes they get lost in trying to pursue an inchoate purpose; sometimes their members experience belonging and have a life-affirming experience and sometimes their members feel unengaged or undervalued or even damaged by the experience. In general, of course, law is not there to regulate the quality of the relational experience (no more than law is there to regulate the quality of the experience in our relationships with family, colleagues and friends) but rather to support the freedom to get involved and to disengage. And it goes without saying that while at times the state can be a good barometer of which associations are pursuing laudable purposes and which are pursuing nefarious purposes, that is not something to take for granted. The state is not always the hero of the story, the association is not always the hero of the story, and the individual is not always the hero of the story.

The Complexities of Internal Variety

Inside the right to freedom of association, there is also variety and complexity. The right to freedom of association is often interpreted to have both a *positive* dimension (the right to form or to join an association) and a *negative* dimension (the right to leave and to refuse to join an association). Moreover, it is often considered to have both an *individual* dimension (the right of members, prospective members, putative members to exercise the positive and negative dimensions of the right) and a collective or institutional or *corporate* dimension (the right of the association itself to establish itself and govern its own affairs, as well as the right of the association to form, join or leave other associations). In some jurisdictions, legal registration of the association is sometimes necessary to avail of the full protection of the right and/or fiscal and other benefits that may flow from its formal legal existence, while in other jurisdictions the right inheres in unregistered as well as registered associations, albeit possibly to a lighter degree. As noted above, freedom of association is regarded both for its value to the individual, as a right that protects the personhood of the individual to lead their own life in their own way, and for its value to the state, as a right that signals, scaffolds and enables a strong democracy, particularly in the context of social pluralism. Thus, the right may protect the individual or the association, in its positive or its negative dimensions, for the sake of the individual or the state, in any permutation of these variables.

A further complication is introduced by the way in which disputes arise. Broadly speaking, there are three kinds of disputes that arise before the courts and require them to engage with the scope and purpose of freedom of association. The first are *association v. state conflicts* because they involve disputes between the association and the state on issues such as registration, dissolution, bureaucratic regulation, inspections, or entitlement to privileges consequent on existence as an association. This is the simplest type of dispute as a matter of doctrine, because the second and third kinds of disputes involve invoking freedom of association against itself. The second type of disputes are *individual v. association conflicts* because they involve disputes between an existing or putative member and the association itself on issues such as the internal regulation of the association, internal disciplinary action, the membership policy and its application, the rules for appointment to senior positions and their application. The third are *association v. association conflicts* which arise following fracture of an association and involve questions around recognition of the new entities by the state, division of assets and property rights post-schism, as well as registration, dissolution and privilege entitlement issues.

These various elements of the right and the complicated ways in which they interact with each other and the complexity of how disputes may call on courts to articulate their intricacies all compound on the complexity of jurisdictional variety and associational variety to yield a sophisticated set of challenges that sit in front of the law student, the lawyer, the judge and the scholar who is interested in understanding this area of law.

III. Doctrinal Work as the Solution

To address the jurisdictional complexities, associational complexities and internal complexities that bear on the right to freedom of association, we need to start with solid doctrinal work, laying out what is currently happening on the ground in legal systems and courts around the world. Solid doctrinal research on a particular jurisdiction written within a national context for a national audience does a vital job of articulating the shape of legal regulation in a particular area, giving thoughtful expression to its nuances and idiosyncrasies, and providing space for reflection on its strengths and weaknesses. This kind of work is not always the most glamourous, but it is always vitally important. Solid doctrinal research on a particular jurisdiction written within a national context but informed by international perspectives and written for a national as well as an international audience fulfils an extra purpose of allowing the foreigner to see into a national legal system with a privileged point of access, guided by a local expert who can explain its nuances and idiosyncrasies so that they are made available to the foreigner. By asking local experts to join an international network of scholars on freedom of association, we have sought to position them so that they can produce doctrinal research in respect of their own jurisdiction in a way that is sensitive to international and comparative context.

The different jurisdictions presented in the articles that follow present a multicoloured picture of the right to freedom of association, and there are many aspects that are worthy of attention and reflection. Here, we feature the particular ways in which the various contributions offer some insight on the three broad sets of questions that contributors were asked to consider. It goes without saying that each paper addresses much more than we can highlight here, and our presentation of them now is meant to encourage the reader to explore further.

Some jurisdictions showcase detailed doctrinal development on all aspects of freedom of association. The article on *Mexico* displays lengthy judicial engagement and detailed doctrine for many different types of associations (interestingly, including indigenous peoples, thus diverging from the jurisprudence of the Inter-American Court of Human Rights) as well as extensive philosophical discussion on the rationales for freedom of association, with significant attention to collective exercise of the freedom, to democratic purposes, and to pluralism. The article on *Spain* discusses a rich judicial dialogue with the jurisprudence of the European Court of Human Rights and a substantial fleshing out of both positive and negative dimensions of freedom of association. The article on *Italy* also shows a very detailed doctrinal development of different branches of freedom of association, along with an interesting distinctive tendency to offer legal support to certain forms of compulsory association, while also illustrating some distinctive restrictions on freedom of association in light of national historical experiences (specifically allowing for particular restrictions on paramilitary and fascist groups). The article on *South Africa* engages with historical apartheid imposition of various associations and disassociations, the role of associations in overcoming apartheid, and a very internationally engaged

jurisprudence that demonstrates the development of a rich interplay of rationales involving collective interests, group rights, and individual aspects of freedom of association.

Some jurisdictions interpret freedom of association with a particular focus on the nature of the association in question and sometimes a tendency to privilege trade unions. The article on *Egypt* manifests that focus within that national jurisdiction, including in some interesting legal engagement limiting claims related to political association. The article on *Canada* delves at length into a complex history of freedom of association developing in changing ways over time with a focus in the union context but with a wide range of rationales for freedom of association expressed that have the potential to see the courts move beyond the union focus in the years ahead, a potential already expressed in some *dicta*. *Finland* also offers an illustration of specifically differentiated regulation of different types of association (religious, political, and so on), including with highly distinctive regulation of compulsory membership in student unions. The *United States* is an outlier of its own, despite its historical Tocquevillian flourishing of association, since in the absence of an enumerated constitutional protection for freedom of association there is judicial development which came to be much more narrowly focused solely within the frame of expressive association.

The distinctive influence of national historical experiences runs through several jurisdictions in naturally different ways. The article on *Poland* highlights a detailed legislative framework with relatively little role for the judiciary in developing rules on freedom of association, and it also discusses a significant controversy in recent years of whether there could be a ban on the Polish Communist Party in light of its associations with a historical regime. The article on *Ethiopia* discusses a freedom of association jurisprudence developed with a significant forefronting of group rights conceptions and with significant security issues giving rise to contextually different approaches. The article on *Japan* shows complex layerings of different constitutional orders over time as well as contextually different debates on restricting freedom of association for matters related to violent religious communities (in light of experience with Aum) or criminal organizations (in light of experience with the yakuza). The article on *Nigeria* shows a jurisdiction whose jurisprudence encompasses not only matters present in other jurisdictions, like union rights, but also significant caselaw on interactions between freedom of association and various customary law concepts and one that is meaningfully engaged with the jurisprudence of the African Charter on Human and Peoples' Rights.

Contrasting philosophical underpinnings play an interesting role across different jurisdictions as well. In contrast to some of the jurisdictions that are very open to group rights, the article on *France* discusses national philosophical approaches that have been resistant to ideas of collective rights and, indeed, to a sphere of civil society between individuals and the State, with much of the caselaw discussion now focused on contexts in which the State may dissolve associations based on various justifications. The article on *China* shows a distinctive development of freedom of association as a political right especially in the context of organisations serving those values considered mainstream. The article on *Ireland* discusses caselaw that shows nascent signs of attention both to individual aspects

of freedom of association and to collective considerations associated with Catholic social teaching. The article on *Peru* discusses a legal system focusing especially on freedom of association as connected to human dignity. The article on *Australia* explains the context in which freedom of association is protected there, which distinctively do not involve any written constitutional text, but rather common law and statutory traditions in which association is primarily conceptualized as a background liberty.

Sitting outside the national legal context, international treaties can be interpreted so as to correct some of the deficiencies or excesses of national systems, particularly in the context of disputes involving associations and the state, and they often do offer a different perspective. The article studying the *United Nations* and the approach under the International Covenant on Civil and Political Rights (ICCPR) shows the Human Rights Committee's reticent jurisprudence, with limited development of the rationales for freedom of association and an embrace of the individual and the collective or corporate aspects of the right, and the positive dimension (the right to form associations) but not the negative dimension (the right to dissociate). The article on the *Inter-American Court of Human Rights* (IACHR) shows yet another approach at the international level, with a Court focused mainly on trade unions and syndical contexts. The article on the *European Court of Human Rights* (ECHR), in terms of scope, shows an adoption of the positive and the negative, the individual and the corporate dimensions of freedom of association, but it also uncovers a line of caselaw that relies heavily on the democratic rationale for freedom of association rather than the wider range of rationales evidenced in other jurisdictions.

Concluding Words

While here we can only touch upon some of the interesting features of this rich set of papers, even these highlights exemplify both the range of some important themes running across jurisdictions, the presence of contextually different dimensions within variegated jurisdictions, and some of the work ahead for jurists in understanding freedom of association historically, contextually, comparatively, internationally, and theoretically. It is an important time for freedom of association, as this right has been coming under increasing pressure in many jurisdictions around the world, whether through increasing (over-)regulation of charities or the proliferation of anti-terrorism laws that target associations in particular, whether through social tensions made manifest in membership policies or the regulation of social interaction that many countries experienced during the Covid pandemic. All of this means that we need solid doctrinal research on which to ground legal education, discussion and litigation. This bank of doctrinal research, we hope, offers something for the student who seeks to understand this uniquely complex and nuanced fundamental human right, something for the lawyer or the judge who is working to unravel the complexities of this right in one jurisdiction with a sensitivity to how it is interpreted elsewhere, and something for the scholar who will use this doctrinal research as a platform designed to inspire further academic conversation and research in this important field.

The Laureate grant of the Irish Research Council for the Societās project made possible the development of this important global network and the conversations, insights and outputs it has produced: without that, none of this would have happened. This particular collection in a double special issue of the European Journal of Comparative Law and Governance has been expertly and graciously shepherded by Adam McCann (Co-editor of the Journal), for whose wisdom and efficiency the editors are very grateful. The network of scholars whose work is collected here is ground-breaking for its very existence as well as for its capacity to unlock critical insights on the nature of this fundamental human right and the ways in which its protection can be enhanced around the world, especially in areas where associations are under threat, with consequent impoverishment of pluralism and democracy.