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Global Perspectives on Freedom of Association: Comparative & Interdisciplinary Interfaces of Associational Life and Freedom

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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

Comparative and Interdisciplinary Interfaces of Associational Life and Freedom

Associational Life and Freedom: Insights from Philosophy and Law is an edited volume focusing on the lived and legal reality of what it is to participate in associations, whether they be sports clubs, charities, trade unions or political parties, or indeed student, cultural, minority or religious associations. Although freedom of association is a fundamental human right protected in legal systems around the world, to date, scholarly inquiry into what it protects and why it offers that protection has not kept pace with that explicating other rights. Its most compelling feature is that freedom of association protects individuals in their sociality, in collaborative context of their relationships with others, the nuances of which make the work of judicially interpreting its nature and scope quite complex. This collection, the first interdisciplinary effort to illuminate the complexities of associational life and freedom, is an output of a Laureate project funded by Research Ireland entitled "Societās: Exploring the Value of Freedom of Association" IRCLA/2022/3860, led by Professor Maria Cahill as Principal Investigator at the School of Law, University College Cork, Ireland and running from 2022 until 2026. The project has two principal dimensions: first, it investigates how the right to freedom of association is enshrined, interpreted and vindicated in the diverse cultural and political contexts of jurisdictions around the world, and second, it considers how this right might be more fully understood and protected, including by reference to interdisciplinary perspectives. The former entails an extensive comparative study, expanding beyond the scope of this present work,[1] involving dozens of scholars from different jurisdictions, some of whom are writing the first piece of legal scholarship on how this particular right is protected in their

[1] *See* "Global Perspectives on Freedom of Association" (2025) (12) 1 & 2 *European Journal of Comparative Law and Governance*, a double special issue emanating from the Societās project, edited by Maria Cahill, Dwight Newman and Seán Ó Conaill, and featuring twenty articles examining the right to freedom of association in 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.

jurisdiction. The latter entails cross-disciplinary conversation with scholars, mostly philosophers, whose research on the social dimension of the human experience helps to inspire greater sensitivity to the contours and the importance of the right within law. To promote the cross- and inter-disciplinary aims of the project, Dr Giulia Lasagni (a philosopher with expertise in the field of social ontology) was appointed as Senior Postdoctoral Researcher on the Societās project team.

The comparative and the interdisciplinary dimensions of the Societās are brought together in this collection. Part I, "The Law of Associational Freedom", comprises ten chapters, seven of which examine how freedom of association is protected in Chile, Germany, Indonesia, Kenya, Slovenia, Türkiye and the United Kingdom, while the remaining three consider associational freedom in the light of associational experience, associational schism and judicial review of associative agreements. Part II, "Philosophical Perspectives on Associational Freedom", comprises six chapters, the first of which is written by Giulia Lasagni and introduces social ontology (and in particular the concept of collective intentionality), before contextualising the remainder of the chapters and the ways in which they illuminate associational experience from a philosophical perspective. Meanwhile, this introduction proceeds as follows: in Part I, there is a reflection on the principled importance of freedom of association; in Part II, there follows an overview of the landscape of doctrinal protection of the right, which also presents and introduces the legal chapters in this volume, and; in Part III, attention is drawn to two pressure points that can arise in the effort to interpret and vindicate freedom of association in the detail, which pressure points can usefully be engaged from an interdisciplinary perspective. The philosophy chapters in this volume emerged from a webinar and a two-day workshop on the theme of "Exploring Associational Life: From Social Ontology to Law and Back Again" which took place at the School of Law at University College Cork on 25-26th April 2024, organised by Dr. Lasagni and Professor Cahill and also received some supported from a National University of Ireland grant. The legal chapters in this volume were prepared for an online workshop on the theme of "Comparative Insights on Freedom of Association", which took place on 30th January 2025. Thanks to the generous funding for the Societās project provided by Research Ireland, it has been possible to spark the valuable comparative and interdisciplinary conversations that have led to the reflections that follow in the pages of this collection.

I. The Importance of Associational Life

When a particular dimension of the human experience is identified and protected as a human right, we must start with the assumption that something important is in play. Freedom of association protects the right to form and to join and to internally organise groups that are oriented towards a particular goal or purpose, and by corollary the rights to leave and refuse to join particular associations. Although members of an association are working together in pursuit of the same goals, associational interaction is different to the kinds of collegial relationships we have at work, since the latter are generally contractual and paid while the former are generally voluntary and unpaid. Although members of an association may be inspired by civic-minded purposes to create change and have an impact for good in local or wider communities, associational involvement is not the same as ordinary civic interaction since citizenship does not necessitate the level of interpersonal engagement and practical effort that associational involvement involves. And although members of an association may be or become friends and family members, associational relationships are not coextensive with familial or romantic relationships or friendships because associational relationships are developed in the common pursuit of identified purposes rather than for their own sake. In other words, associations are not only about the goal to be pursued, and they are not only about the relationships between the members: the relationships exist because of the orientation towards a shared goal and the goal can be pursued only because of the voluntary commitment and collaboration of the members. In short, it is the hybridity of associations as spaces of *interpersonal connection* in the *voluntary pursuit of identified purposes* that is particular to them and special about them.

Recognising and enshrining a right to freedom of association affirms that there is something about this hybridity that is important to the human experience. Perhaps we intuitively know that from our own life experience. It might be clear to us that involvement in a sports club or a student society or a charity has had a decisive impact for good in our lives, whether by allowing us to participate in something bigger than ourselves or by offering us a lived example of what sustainable cooperation looks like, all the while shaping us to be the people that we are. More often than not, though, we take the legacy of associational involvement in our lives for granted. Perhaps it is not fully clear to us, then, why freedom of association deserves recognition as a human right. Although it has been recognised in most jurisdictions of the world and over the course of many decades as a fundamental right, it may still seem necessary to reflect on why it matters. Within legal contexts, there are two major

justifications offered for the right to freedom of association: that freedom of association protects individual liberty and that it safeguards democracy. A more tentatively expressed position is that freedom of association is important because it supports self-development and promotes personal flourishing. Each of these is considered below.

The first justification for freedom of association is that it protects the right of people to live their lives as they decide.[2] Within this broadly liberal vision, freedom of association sits alongside freedom of conscience and the right to privacy, emphasising the importance of allowing individuals to live their lives as they choose. While freedom of conscience and privacy safeguard the rights of individuals to pursue their own goals and to live their lives as they please alone and within the inner sanctuary of personal and family relationships, freedom of association contemplates that the individual will also want to join together with others in the pursuit of certain goals and purposes that are shared. Freedom of association thus protects that broader collective aspect of doing things together, which might be represented by membership of a sports club or a student society or a residents' association or a charity. On this view, the importance of the right is grounded in the freedom that it protects, and therefore all kinds of associations deserve protection in principle and none of them is especially privileged. Understood in this way, freedom of association sits in partnership with freedom of expression and freedom of assembly, the former protecting the right of people to cooperate in *doing* something, while the latter protect the rights of people in *expressing* something. Freedom of association can also partner with freedom of religion, protecting the associational aspects of that right. Freedom of association is supportive of these other rights, but it is also a fundamental right on its own terms. On this liberal view, freedom of association is the right that provides for the living out of people's different ideas of the good life, and is therefore the fundamental principle – arguably the *only* fundamental principle[3] – of a free society which safeguards against a monolithic state-centred polity. A liberal justification of freedom of association makes sense of the right to form and the right to join associations as being consequent on the importance of people being free to live their lives as they see fit. It justifies the right to leave and to refuse to join associations, perhaps even as an "inalienable" right,[4] in defence of the same freedom. Moreover, it justifies the right of associations to be self-organising and free

[2] See, for example, the work of Chandran Kukathas and William Galston which advocate robust protection for freedom of association as a protection of liberty: Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford University Press, 2003); William Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge University Press, 2002).
[3] Kukathas, *The Liberal Archipelago*, *op cit.*, at 4, 5.
[4] *Ibid.*, at 3.

from unwarranted outside interference on the basis that associations are allowed to pursue independent (non-criminal) purposes rather than being required to align with state goals. In some sense, the liberal vision of freedom of association presents itself as a right antecedent to law: it almost goes without saying, although it is expressly enshrined in constitutions and human rights treaties, that persons should be allowed to live their lives as they see fit, including by collaborating and cooperating with others when purposes or circumstances favour consolidation.

The second justification for freedom of association proposed by courts and commentators is that it protects the right of people to participate in the wider project of self-government for the sake of a vibrant participatory democracy.[5] Within this broadly republican vision, freedom of association sits alongside the right to vote, the right to stand for political office, the principle of representation and the principle of freedom to participate in public affairs. In some jurisdictions, in fact, freedom of association is expressly protected as a political right[6] (rather than a human right) and in other jurisdictions it is interpreted in that way.[7] The central argument is that associations support a vibrant democracy by relativising the place of the extant political majority, allowing alternative and minority perspectives to be galvanised through collaboration and cooperation, thus promoting a healthy pattern of democracy over time. Alexis de Tocqueville famously made this point when he argued that associations provide opportunities for individuals to "learn the art of uniting with those like them" to defend their freedom and goals, and thus "to weaken the moral empire of the majority".[8] Understood as a political right and/or within a republican vision, associations that are especially facilitative of political engagement can take on a deeper significance than they would under a broadly liberal vision: political parties and trade unions could be seen as exemplar associations because they are most closely connected with the political sphere and most readily vivify the importance of freedom of association as a civil and political right. Non-governmental associations and minority associations can also make a claim to be higher status associations, on this view, given that they seek to participate in decision-making and/or influence policy and/or raise

[5] *See*, Alexis de Tocqueville, *Democracy in America* (Harvey C. Mansfield & Debra Winthrop, eds., University of Chicago Press, 2000). This view finds legal expression in the work of the European Court of Human Rights and the United Nations. *See* Maria Cahill, "Freedom of Association at the ECHR: A Right in Service of Democracy" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 124; Maria Cahill & Ruairí McIntyre, "Freedom of Association under the Treaties of the United Nations" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 342.

[6] *See*, for example, Kelali Kiros Negesse, "The Purpose and Potential of Freedom of Association in Ethiopia" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 244.

[7] Vanessa Barbé, "Freedom of Association in France: A Freedom in Danger" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 322; Shaoming Zhu, "Freedom of Association in Contemporary China" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 92.

[8] Tocqueville, *Democracy in America*, *op cit.*, at 489, 185.

consciousness in respect of specific issues and concerns. Freedom of association still sits alongside freedom of expression and freedom of assembly within this vision, because all three create space for political engagement: freedom of expression protects the right to present a message and freedom of assembly protects the right to congregate in the articulation of that message, while freedom of association protects the more sustained and stable but still voluntary form of collective action in pursuit of chosen goals. The importance of freedom of association as a civil and political right arguably deserves more emphasis at this particular moment in history, especially in places where there is increasing multiculturalism and/or where there are weakened democracies and diminished public institutions, with a consequent need to foster sites of sustainable cooperation and encourage patterns of mutual understanding among and between existing majorities and (new) minorities.

Beyond these two major justifications of freedom of association that stress its importance in terms of freedom and democracy, a third option might emphasise the importance of freedom of association in terms of its capacity to support self-development and promote human flourishing.[9] At a very human level, associations offer us opportunities to pursue something that we are interested in, creating bonds and developing character under the protective cover of that shared passion. That is not to say that associational involvement is always easy or that it only leaves a positive legacy in our lives. But in a context where social connectedness is a recognised predictor of health outcomes,[10] where "social prescribing" is becoming increasingly important within health care contexts,[11] and where some parts of the world are experiencing "an epidemic of loneliness",[12] perhaps it is this justification for freedom of association that will become the most significant in the years to come. To fully understand the connection between associational freedom and human flourishing would require further interdisciplinary research and conversation with expert colleagues from fields of psychology,

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[9] *See*, for example, Matteo Monti, "Freedom of Association in Italy: Genesis, Evolution and Limits of Protections of Associations in the Italian Legal System" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 39; Miluska Orbegoso Silva, "Freedom of Association in Peru" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 288. See also, Nancy Rosenblum, *Membership and Morals: the Personal Uses of Pluralism in America* (Princeton University Press, 2000).

[10] Report of the WHO Commission on Social Connection, *From Loneliness to Social Connection: Charting a Path to Healthier Societies* 30 June 2025 Available at: From loneliness to social connection: charting a path to healthier societies – Report of the WHO Commission on Social Connection, last visited 28th August 2025.

[11] Daniel Morse, Sahil Sandhu, Kate Mulligan, Stephanie Tierney, Marie Polley, Bogdan Chiva Giurca, et al., "Global Developments in Social Prescribing" (2022) 7(5) *British Medical Journal of Global Health* Available at: https://doi.org/10.1136/bmjgh-2022-008524, last visited 28th August 2025.

[12] *See*, for example, Daniel Surkalim, Mengyun Luo, Robert Eres, Klaus Gebel, Joseph van Buskirk, Adrian Bauman, Ding Ding, "The Prevalence of Loneliness across 113 Countries: Systematic Review and Meta-Analysis" (2022) *British Medical Journal* 9th February 2022 doi: 10.1136/bmj-2021-067068; US Department of Health and Human Services, *Our Epidemic of Loneliness and Isolation: The US Surgeon General's Advisory on the Healing Effects of Social Connection and Community* Washington, DC 2023, Available at: https:// pubmed.ncbi.nlm.nih.gov/37792968/, last visited 28th August 2025.

sociology and public health. To start to intuit what might be at stake here we would do well to build patterns of reflection and conversation on our own experiences of associational involvement and the legacy that they have left in our lives.

That freedom of association is protected as a human right signifies that there is something fundamentally important about associational life, even if it has been undermined in some parts of the world and forgotten in others. It seems to me that all three of these justifications for freedom of association – emphasising its importance by reference to freedom, to democracy and to flourishing – deserve to be taken seriously, deeply considered and further researched. In support of that larger purpose, the legal chapters in this volume tell the story of how freedom of association is currently regulated and interpreted in specific jurisdictions, both against the backdrop of their particular political, legal, social and cultural histories and in the context of current challenges. Even when we agree *that* freedom of association is important, and even if we were to reach consensus on *why* freedom of association is important, there is still a lot of work to be done in figuring out *how* it should be vindicated.

II. The Landscape of Legal Protection

Although law may – and should – be idealistic, especially when it comes to protecting human rights, it does not have the luxury of remaining abstract. It must stipulate something specific, recognise that those stipulations will create concrete effects in people's lives, bear with the fact that legitimate challenges may arise, be attentive to the ways they are adjudicated, and find a new practical solution whenever it is established that the current stipulation is out of alignment with the normative ideal as it is currently understood. In functioning legal systems, law actually courts its own self-correction, creating opportunities for its deficiencies to come to the surface. It is neither only pure ideal nor merely gritty reality: it is ideal worked through in the context of gritty reality.

Constitutions and international treaties enshrine freedom of association as a fundamental human right, and the legal reality of the scope of that right is given through legislative and regulatory frameworks that stipulate what it means in practical terms. A regulatory rule may stipulate, for example, that "to be recognised as an association, it is necessary to satisfy criteria A and B and C and to fulfil obligations X and Y and Z", thereby defining associations as a matter of law. Any stipulation offers a kind of certainty, which by

itself is helpful, insofar as it offers a degree of stability and predictability: we know how to become legally recognised as an association now, even if we privately think that C is too restrictive and Z is too onerous. However, within functioning legal systems, as Neil MacCormick neatly expresses it, the certainty that it offers is only "defeasible certainty": it can be defeated by a better argument.[13] We can publicly argue that C is too restrictive and Z is too onerous and therefore, at least in principle, we can participate in helping law to arrive at a new certainty. That new certainty is also a new defeasible certainty, capable of being defeated by better arguments still to come. The dual orientation of law towards normativity and towards lived reality creates the central animating tension within our discipline. Resolution of that tension is the mark of its success. The dogged, determined, iterative effort to resolve that tension over time is the evidence of its nobility. To more fully understand why associations are important and how they function is not only an interesting intellectual endeavour, therefore, but a weighty obligation undertaken in service of that iterative effort to achieve a more fully just vindication of the right.

This animating tension is neither created nor resolved in the abstract. The original stipulation is made in the context of a particular legal system, informed by specific historical, political, cultural and social contexts that shape understandings of what the right means and why it is important in that specific place and time. Any challenges that need to be made to the justice of what is being stipulated have to be argued in particular courts by reference to particular laws before particular judges who have been educated and appointed within those same contexts. At one end of the spectrum, those contexts can be surprisingly open and conducive to the generation of better and better defeasible certainties. At the other end of the spectrum, those contexts can become so corrupted and totalising that they have a stranglehold on the legal system, stymieing the process of self-correction in practice if not also in principle. Cross-disciplinary perspectives can serve as lamps to our feet, offering contributions to evidence and argument that can serve as illumination at whichever point along the spectrum we find ourselves. Comparative perspectives on the nature and scope of a right is another valuable resource both where there is a systemic openness and where there is systemic shutdown, not only in creating understanding about its nature and scope but also in spotlighting dark corners and offering non-hypothetical examples of alternative approaches.

[13] Neil MacCormick, *Rhetoric and the Rule of Law: A Theory of Legal Reasoning* (Oxford University Press, 2005), 28.

There are seven jurisdictional chapters in this collection, which examine how the right to freedom of association is protected in Chile, Germany, Indonesia, Kenya, Slovenia, Türkiye and the United Kingdom. The range of these jurisdictions offers perspective from the global north and the global south, from common law and civil law systems, from jurisdictions with a long-standing tradition of rights protection and jurisdictions with a recently-renewed commitment to constitutional rights and democracy, from jurisdictions with a constitutional commitment to secularity and jurisdictions with a constitutional commitment to an established religion, and from jurisdictions with relatively low rates of government corruption and jurisdictions with comparatively higher rates of corruption or abuse of power. The contributors themselves are also a motely crew, including professors who are leading figures in their discipline, mid-career academics consolidating their place in the academy and early career researchers building their profile and expertise. In some cases, the authors can rely on and respond to some existing scholarship on the right to freedom of association in their jurisdiction, but in most cases the contributor has been ploughing a new field, piecing together how the right to freedom of association is articulated and interpreted through consideration of the legislative frameworks, administrative implementation and judicial decisions that exist in their jurisdiction. The global research network of freedom of association scholars created by the Societās project, and within it this list of contributors, is inclusive and committed to giving a voice to scholars at different stages of their careers, from diverse jurisdictions and from varying cultural, religious and ethnic backgrounds. To maximise opportunities for informed cross-fertilisation, contributors were requested to write their chapters from their position as jurisdictional experts in conversation with a global network of freedom of association scholars, meaning that their chapters are both doctrinally rich and comparatively aware.

Julian Rivers' chapter, "**Freedom of Association and the Law in the United Kingdom**", opens the collection with a rich insight into how freedom of association was and is protected under the common law as a civil liberty constituted by the absence of legal restraints. Even though that common law position has since been supplemented by the Human Rights Act 1998 and at least to some extent supplanted by increasing regulatory intervention, it still carries an important affirmation of the vision for freedom of association as a liberty that is ultimately antecedent to law. From a jurisdiction without a formal written constitution, we turn next to one which has been preoccupied with constitutional reform. Sebastian Soto's chapter, "**Freedom of Association in Chile**" explains how attraction to freedom of association and ebbed and flowed in Chilean political history with the 1980 Constitution affirming in

particular the right to associate "without prior permission", the right not to be forced to belong to an association, and the right of intermediate groups to "adequate autonomy to fulfil their own specific purposes". The meaning and extent of associational autonomy, as well as its relationship to the principle of subsidiarity and institutional conscientious objection, have been the subject of recent debate and dispute. Although the United Kingdom is a common law jurisdiction and Chile is a civil law jurisdiction Chapters 1 and 2 both seem to affirm the importance of the broadly liberal vision for freedom of association as the right of people to live their lives without undue interference from the state.

By contrast, the following Chapters 3 and 4 exploring the nature of freedom of association in Slovenia and Germany seem to put the emphasis on the value of freedom of association from a democratic perspective. Katarina Vatovec's chapter "**Unfolding Pluralism: Freedom of Association in Slovenia's Constitutional Democracy**" offers a picture of how, against a particular historical background, freedom of association can be interpreted in a way that emphasises its vital role in sustaining a multi-party political system and avoiding a slide towards totalitarianism. This chapter also points out that freedom of association is implicated, even when it is not expressly invoked, in constitutional challenges brought against Covid-19 measures restricting movement or gatherings and through litigation seeking to expand the *locus standi* of NGOs in the context of environmental litigation. Meanwhile, in "**Freedom of Association in Germany**", Leannán Martan O'Grady reflects on the historical restoration of freedom of association under the 1949 Constitution and its purpose in guarding against totalitarianism by enabling a free, pluralistic and democratic state. In the light of recent restrictions and prohibitions on associations as well as ongoing challenges, the complex inter-relationship between associational freedom and a healthy democracy is usefully illuminated.

While these two jurisdictions stress the democratic importance of freedom of association and its capacity to support the structures of the state, there is a risk that such a vision can become corrupted. Sometimes, associations are not only facilitated to participate in the functioning of the state, but financially incentivised or even legally required to align their goals and values with those of the state. In Chapter 5, "**Freedom of Association in Türkiye**"**,** Fatih Öztürk notes that excessive oversight and bureaucracy, such as a recent amendment requiring that membership admissions and resignations be reported in writing to the local authority indirectly restrict freedom of association. Although the Constitutional Court has upheld the right to freedom of association in significant cases, still the lived reality of that freedom is compromised in Türkiye both by excessive administrative burdens and the related failure to

fully protect freedom of expression. Meanwhile, in Chapter 6, "**Freedom of Association and its Restrictions in Indonesia**", Inna Junaenah reflects on the fact that although freedom of association is constitutionally protected, its practical regulation is governed by the provisions of the Civil Society Organisations Act 2013, as amended in 2017. This legislative framework encourages associations to align themselves with the primary purposes of the state and provides that associations which have fallen out of obedience can be restricted and even banned by executive action with no judicial oversight. Although this may increase the level of proximity and apparent influence that civil society associations have vis-à-vis the state, it comes at the cost of their independence, the democratic credibility of the state and the very freedom that freedom of association purports to protect. On a more positive note, in Chapter 7, "**Freedom of Association in Kenya: Constitutional Foundations, Judicial Reasoning and Democratic Tensions"**, Njoki Mboce outlines how the 2010 Constitution of Kenya has rehabilitated not only the right to freedom of association but also political rights that depend on the right to freedom of association. This constitutional protection is realised also through the 2011 Political Parties Act which reinforces the democratic credibility of political parties and secures the multi-party system. While there is still more work to be done, legislative and judicial developments seem promising.

Each of these jurisdictional chapters tells the story of a nation's effort to vindicate freedom of association not only in the abstract provisions of a constitution, but in the gritty detail of particular circumstances and particular associations. We might be tempted to rush to judgment: to conclude, for example, that the democratic importance of freedom of association outweighs the importance of freedom of association in protecting liberty or promoting flourishing, or vice versa. A more measured approach might simply be to be attentive to the differences, to allow comparative reflection to offer perspective between jurisdictions and to seek to understand the tensions that are in play and the compromises that have been made against the background pull both of competing visions on the importance of the right and of different priorities in terms of its practical vindication. How can the importance of the right be more compellingly presented in situations where the right seems not to be taken seriously? How can the harmful effects of excessive regulation be more fully explained in situations where such regulation is commonplace? There is no jurisdiction that would not profit from serious reflection on those questions. Each jurisdiction faces some pressure points, and even though the particularity of those pressure points may vary, there are certain common features, too, as we shall see in the next section.

Following the jurisdictional chapters, we have two chapters reflecting in a more focused way on what happens, from a legal perspective, when there are internal disputes within associations and on the possible terms of engagement when courts are dealing with a legal challenge taken by a member (or a former member or putative member) to an association's own constitution or internal rules. At one extreme, obviously, a court could decline to decide the matter at all, considering that it does not have jurisdiction to interpret, let alone determine, the internal rules of the association. At the other extreme, a court could decide that it has the authority to resolve the dispute by finally interpreting the rules, even if that interpretation is not in line with how the association understands and interprets its own rules. In Chapter 8, "**Judicial Review of Associative Agreements: Insights from a Civil Law Perspective**", José Juan Anzures Gurría provides a helpful overview of how courts in civil law countries engage with these kinds of disputes. Anzures Gurría draws attention to the space between the two extremes, reflecting on the legitimacy of judicial review in light of considerations such as the type of association involved, its position vis-à-vis the state, its dominance in the field, its own democratic pedigree and the nature of the internal agreement. In Chapter 9, Nicholas McMurry examines more advanced cases of associational breakdown. "**Schisms and Internal Disputes within Religious Associations under the European Court of Human Rights**" focuses on "deep division" within associations, particularly religious associations and therefore involving the right to freedom of religion, too. The Court in these cases is sometimes called upon to determine the level or nature of associational breakdown: whether it should be characterised as dissent or whether it has reached the point of schism. Moreover, it may need to determine examine the practical implications of associational breakdown in disputes about access to and control of property held by the association.

Although law is most often trying to pick up the pieces when something has gone wrong, and courtrooms are the hospitals of relational breakdown of various kinds, we conclude the legal part of this volume with a palette cleanser which helps to return our focus to a reflection on the reasons why associational life is important from a human perspective. Chapter 10, written by Erin Jackson, entitled "**Portraits of Association Participation: Exploring Personal Narratives**", reflects on first-person accounts of the importance of associational involvement, based on a set of interviews conducted as part of a pilot study under the auspices of the Societās project. Jackson reflects on the participants' own narratives, revealing themes of connection, purpose, friendship and fulfilment, as participants reflect on their motivations

for associational involvement, the positive aspects of associational experience, the frustrations and challenges of associational life, and the legacy it leaves or has left in their lives.

Before going further, I would like to pay tribute to these lawyers, for their independence of thought, for their magnanimity and moral courage in identifying problematic aspects of how law regulates associations in their jurisdictions and for the lively spirit of collaboration that has pervaded their engagement with the Societās project and this collection. I am also grateful to Aoife Nazneen Kharsi for language and editorial support in the preparation of final drafts.

III. Freedom of Association at the Pressure Points

Amidst all the variation in context and legal rules around the world, there are two major pressure points that create legal disputes invoking freedom of association. The first of these relates to legislative and regulatory frameworks: the specificity of the conditions and restrictions that are imposed on the freedom to form and run an association. There are many jurisdictions that explicitly protect the right to form and participate in unincorporated associations, meaning that the state does not have a right to regulate every form of associational involvement.[14] There are other jurisdictions in which legislation lays down a regulatory framework in respect of specific types of associations e.g. political parties or trade unions or other categories of associations.[15] Some such regulation can be helpful in establishing legal clarity for associations and setting expectations for internal governance and finance arrangements. But it can certainly go too far.[16] The first pressure point is a kind of external pressure on associations, created by regulation of associational autonomy which can stymie the freedom and vitality of associational life. Even when the principle of associational autonomy is officially protected, and regardless of whether regulators intend or do not intend to violate

[14] Certain jurisdictions specifically recognise the right to associate 'in the wild', as it were, prior to any interaction with and in the absence of any formal recognition by the state. *See*, Matteo Monti, "Freedom of Association in Italy: Genesis, Evolution and Limits of Protections of Associations in the Italian Legal System" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 39, at 43; Riku Neuvonen, "Freedom of Association Doctrine in Finland" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 226, at 227; Miluska Orbegoso Silva, "Freedom of Association in Peru" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 288, at 292.

[15] *See*, José Juan Anzures Gurría, "Freedom of Association in Mexico" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 177, at 179; Femi Amao, "Freedom of Association in Nigeria: A Cacophony of Constellations" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 304, at 309.

[16] *See*, Vanessa Barbé, "Freedom of Association in France: A Freedom in Danger" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 322; Shaoming Zhu, "Freedom of Association in Contemporary China" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 92; Eman Muhammad Rashwan, "The Constitutional Framework and Legislative Regulation of the Right to Freedom of Association in Egypt after 2013" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 58; Kelali Kiros Negesse, "The Purpose and Potential of Freedom of Association in Ethiopia" (2025) 12 (1&2) *European Journal of Comparative Law and Governance* 244.

freedom of association, they can be insufficiently attentive to its delicacy in a way that has a chilling effect on associational life and freedom.

The second pressure point relates to internal pressure on associations which emerges from internal or quasi-internal conflict, when the views and entitlements of certain members are out of step with the official position taken by the association. This could happen when an existing member's wishes, say, to assume a leadership position or not to be removed from leadership or not to be expelled from the association, are out of line with the internal rules of the association. It could also happen when an aspiring member wishes to join the association even though they do not meet the membership criteria. One person's right to join a particular association, for example, might come into conflict with existing members' right to define the association as they choose. This pressure point arises because the individual dimension of freedom of association – the right to join and to continue to be a member of an association – has come into tension with the collective dimension of freedom of association – the right of the members to define and internally regulate the association as they choose. On one hand, the associational rights of the individuals concerned need to be respected. On the other, associational rights include the right of the association to be able to define itself on its own terms and create the sense of identity, coherence and authority needed for it to perdure. Even when everybody is acting in good faith, these kinds of disputes also create internal pressure points that have a chilling effect on associational life and freedom.

Much of the time, these pressure points will be dealt with without making their way into a court. External pressure from regulations may be resolved in the sense that the relevant associations find ways to meet regulatory obligations or else fade out of existence for lack of capacity and/or willingness to do so. Internal disputes may become resolved either in the sense that collaboration and shared purpose is renewed over time or else in the sense that disaffected members leave to form new associations under different conditions. When these kinds of disputes arrive to court, though, and when we resolve them there, we are not only addressing the specific circumstances and the particular effects that the pressure points have on the lives of the disputants, we are also fine-tuning what freedom of association means and why it matters to us.

A Societās webinar held on 3rd November 2023 entitled "First Conversation between Law and Social Ontology on Freedom of Association" sought to bring philosophers working in the field of social ontology into dialogue with freedom of association scholars through a

shared focus on these pressure points. A further two-day workshop, "Exploring Associational Life: From Social Ontology to Law and Back Again", hosted at the School of Law at University College Cork on 25-26th April 2024 explored these conversations in greater depth, as philosophers not only shared their presentations, which were interspersed with snapshots of jurisdictional reports graciously provided by my colleagues from the School of Law, Professor Femi Amao, Dr Nicholas McMurry, Dr Sahara Nankan, Dr Seán Ó Conaill, Dr Shaoming Zhu and Mr Ruairí McIntyre, but they also participated in two moot court exercises focussed on the pressure points. To facilitate engagement with the pressure points, I developed and presented moot court scenarios that could act as proxies for the disputes that happen at the pressure points. There were three reasons for this. The first was that it offered an opportunity to facilitate philosophers engaging directly with the issues raised by the relevant caselaw without requiring them to immerse themselves in lengthy judicial decisions. The second was that it offered an entry point into the conversation which would not unnecessarily target specific jurisdictions or cultural contexts. And the third reason was that it provided a mechanism by which philosophers could begin to find a space for themselves inside law's animating tension between the normative ideal and the gritty detailed reality, rather than remaining outside of that tension in a more abstract, detached consideration of the issues. This creative approach to workshop design seemed to work well, thanks to the enthusiasm with which all participants took to the process, and it certainly made for a memorable and enjoyable experience.

The two moot scenarios that animated our interdisciplinary dialogue at the Societās workshop and provided a point of reference not only for the philosophical chapters presented in Part II of this collection but also for José Juan Anzures Gurría's chapter on judicial review of associative agreements in Part I are provided for reference in the pages immediately following this Introduction. These moot scenarios are adaptations of real events. The first scenario of the Cairde ar son Cairdre Soup Kitchen is based on a newspaper report from 17th February 2024 detailing the experience of Glenda Harrington, founder of Friends helping Friends (in the Irish language translated as "Cairde ar son Cairdre") an outdoor soup kitchen which offered food to 300 people per week in an economically deprived area of Dublin and was facing scrutiny from the Charities Regulator and pressure to become legally registered.[17] The second scenario is conceptually based on a dispute that played out over time in the Irish courts, eventually making it way to the Irish Supreme Court, on the question of whether women

[17] "Founder of Dublin soup run feeding the homeless says she has 'no intention' of becoming a registered charity" Irish Independent, 17th February 2024, available at: Founder of Dublin soup run feeding the homeless says she has 'no intention' of becoming a registered charity | Irish Independent (last accessed 22nd August 2025).

should be admitted as members to a particular golf club.[18] The idea of moot scenarios, of course, is that they should be designed so that there are good arguments to be made on both sides and it is arguable that either side should win. By using these calibrated mooting scenarios as a starting point for reflection and dialogue on the tension between normative ideal and gritty reality, we hope that we can both provide and inspire further reflection within, between and beyond the disciplines of philosophy and law on the scope and importance of associational life and freedom.

Still, cross-disciplinary and interdisciplinary research entails considerable challenges. There is the obvious linguistic barrier to overcome, since we describe similar or adjacent concepts in different ways. This is redolent of a deeper disparity: we are attentive to different elements within those concepts and find them to be worthy of inquiry for different reasons. More deeply still, we engage in scholarly inquiry using fundamentally different methodologies; in each case deploying a methodology that has become so deeply instilled in us that it has become the air that we breathe, difficult to do without. These disciplinary differences surfaced during the workshop and remain to a greater or lesser extent in the various philosophical chapters presented in this collection. At the linguistic level, there can be a tendency to see marriage or personal relationships as a proxy for associational involvement in a way that might at first sight seem strange to lawyers because those rights are not typically seen as analogous for each other. Conversely, the idea that the individual and collective dimension of freedom of association could be in conflict may seem strange to a social ontologist when considered abstractly. In terms of scholarly focus, there may be a preference among social ontologists to describe associational life and clarify its terms while remaining conscientiously neutral on the question of whether associations are a good thing, a position that may be difficult to align with law's normative endorsement of associational freedom. And in terms of methodology, of course, philosophy is generally committed to achieving valuable clarity in the relatively more abstract expression of the nature of the material under consideration rather than to participating in an iterative process of reconciling a tension between ideal and reality. All of this means that the effort it takes for philosophers to genuinely engage in cross-disciplinary and interdisciplinary research on associational freedom in a spirit of humility and service to another discipline is very significant. In the chapters of this collection, they have engaged concepts from their own discipline in the effort to offer a perspective on the moot scenarios that were

[18] *Equality Authority v. Portmarnock Golf Club and Others and Cuddy & Keane v. Equality Authority and Others* [2009] IESC 73.

examined at the workshop. In doing so, they have reached beyond their comfort zones and sought to make a contribution in an arena in which they would not necessarily choose to find themselves and in which they do not necessarily feel at home. I hope that they have found it to be an intellectually interesting and worthwhile experience. I want to pay tribute to them also for their disciplinary humility, their creativity and their intellectual courage in stepping into a new space as conversation partners for legal scholars and lawyers engaged in the deliberative iterative process of understanding more deeply and explaining more fully, amidst the gritty reality of our lived experiences, why and how freedom of association deserves protection as a fundamental human right.

Maria Cahill

22 August 2025

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.

Moot Scenario 2: Róisín's Golfing Ambitions

The Kilmartin Golf Club was created more than forty years ago by a group of local businessmen as a way of building connections and networking informally. Over the decades, many good things have happened on the course: ideas have been brainstormed, friendships have been made and strengthened, disputes have been avoided or resolved, all of which also coincides with the fact that the local economy has continued to thrive and remain vibrant despite various pressures of economic crises, rising costs of living and globalisation.

Women are not welcome as members of the club. Even though this is not a formal rule, it is club convention that somebody could only become a member having been nominated by an existing member, and no women have been nominated.

Róisín is a very accomplished amateur golfer as well as the owner of a local restaurant. She golfs four mornings a week in the Kilgallen Golf Club, which is based in the same town, half a mile from the Kilmartin Club, and which has an open membership policy.

Róisín would be very keen to build her connections in and contribute more to the local community. She believes that she could do this more effectively if she were allowed to become a member of the Kilmartin Golf Club.

Is it a violation of her right to freedom of association not to be able to participate in the Kilmartin Golf Club?

Does the Kilmartin Golf Club have a right to determine its own membership policy, even if that membership policy effectively discriminates against women?

If a new golf club, the Kilbrigid Golf Club were established by and for local businesswomen, which operated a nomination-based membership policy that effectively excluded men, would that violate the right to freedom of association of men in the local area?

If the Kilbrigid Golf Club adopted a formal women-only membership policy, would that violate the right to freedom of association of men in the local area?

If the Kilgallen Golf Club were to change its membership policy so as to exclude businessowners, on the grounds that they want the club to be a social space that is open to everyone rather than a spillover chamber of commerce, would that violate Róisín's right to freedom of association?