The Fair Value of the Freedom of Association

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The Fair Value of the Freedom of Association

A Liberal Political Theory of Associative Citizenship

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Picking one's company is part of living as one likes; living as one likes (provided one does not injure the vital claims of others) is what being free means.

George Kateb, *The Value of Freedom of Association*, 1998, p. 36

It normally suffices that for each person there is some association (one or more) to which he belongs and within which the activities that are rational for him are publicly affirmed by others. In this way we acquire a sense that what we do in everyday life is worthwhile.

John Rawls, *Theory of Justice*, 2005, p. 441.

For people segregated from the arenas where we are normally recruited into associations, and who are without resources for creating associations of their own, the moral use of pluralism is impossible. If so, the formation of associations is at least as important as their preservation.

Nancy Rosenblum, *Membership and Morals*, 1998, p. 21.

Introduction

This thesis focusses on the fundamental need that we have, as persons, to interact with each other, and is motivated by the belief that political liberalism has never taken the implication of the equality of opportunity for the freedom of association seriously.

Its central claim is that the freedom of association serves a multiplicity of fundamental interests such as deliberation, expression, conscience, self-determinacy, personal liberty, and excellence, as well as mutual respect, self-respect, conviviality, and the mere pleasure of being in the company of others. I will highlight the associative interest in self-respect, an interest that gives a moral content to the pleasure of being in the company of others, but which has been overlooked in the main philosophical and legal justifications of the freedom of association[1]. We see this forgotten associative interest when we develop a sense of self-worth in voluntarily pursuing activities with others that are rational for us to pursue[2].

I illustrate the theoretical and practical significance of this associative interest in self-respect while presenting the hypothetical example of Martina, on which I rely throughout my dissertation, as a paradigmatic example of a social association. Martina has just moved into a flat in a recently constructed residential area on the outskirts of a major urban centre. She has small children and wants to organise a neighbourhood association around her building complex, which is relatively far from the school and the main social, commercial, and leisure activities in the area. No such association exists. Martina does not defend any particular claim with respect to administrative or public affairs. However, she has always been committed to the development of a form of communal life, which her residential area currently lacks. The only activity she has in mind for the future is to organise a party with

[1] My conception of self-respect recognises the importance of the pleasures of being with other people, and I see conviviality as a concept related to self-respect. My conception of self-respect is inspired by the Aristotelian principle and its companion effect, which asserts that the mutual appreciation comes in doing things with others, 'the extent to which others confirm and take pleasure in what we do' (Rawls, 2005a, p.440). Self-respect, however, has a moral depth that conviviality does not share. In the course of my argumentation I will show the interrelation between the concept of self-respect and the duty of mutual respect.

[2] Self-respect has two aspects: a person's sense of his own value and confidence in his ability (Rawls, 2005a, p.440). These two dimensions of self-respect refer to a 'phenomenological' component or how the individual sees himself, and a 'social' component or how people generally view one another in society (Wall, 2006, p. 257).

her neighbours. Martina's association will have no message to express, no economic or political function to discharge, and, with the notable exception of relational goods produced by members' interactions, will not have the capacity to significantly influence the distribution of primary goods. The association holds definite importance for Martina for several reasons. First, it will allow her to exercise social agency over her direct environment. Within the association, Martina hopes to carry out a plan that she could not carry out alone, not only because she would not have the resources, but because of the intrinsically collective dimension of her project. Without her associates, all value and meaning of her associative mission would be lost. This plan is important for Martina insofar as she has always organised her life rationally around this collective dimension and her associative initiative is consistent with what she has always manifested in her professional choices and way of living. Second, the association will allow Martina to join people with the same desires, needs, and, perhaps, vision. Within the association, Martina can carry out activities that are rational for her to undertake, that is, develop a form of collective life through social activities. This association in the making is merely oriented towards conviviality between neighbours and the pleasure of sharing moments of exchange and encounters, but Martina and the joining members consider these activities rational and important. Sharing them reassures Martina of the value of her conception of the good life and gives her the confidence to pursue it, although it may not be shared by her family, friends, or colleagues. The success of her project and the rationality shared with others will increase her confidence and lead her to develop this conception further. This is the fundamental associative interest we have in self-respect, which is an integral part of the nature, justification, and scope of the freedom of association.

This thesis asserts that this associative interest in self-respect has been rendered philosophically and legally invisible by the category of *non-political association*, which generously includes families, trade unions, and economic, social, and religious associations. This general category of non-political association has paradoxically created a theoretical gap between the collective and personal interests we have in association. As a result, the literature is polarised between a focus on *collective* associations as organisations that are essential for liberal democracy, for example, through expression, conscience, civic formation, interest representation, and civil resistance, and a focus on the moral significance of *personal* relationships like love, friendship, and companionship, appreciated as

constitutive of natural duties and as a central means for happiness, well-being, and/or self-fulfilment[3]. This is the negative claim of the thesis.

I argue that American constitutionalism is the dominant source of legal justification for the freedom of association that ignores this fundamental interest in self-respect. According to US jurisprudence, associations deserve to be protected if they are based on a face-to-face relationship or are linked with 'a fundamental element of personal liberty', or because the freedom of association is an indispensable 'means of preserving other individual liberties', namely the freedom of speech and expression (*Roberts v. United States Jaycees*, 1984, p. 618). The Supreme Court thinks of intimate association in terms of 'smallness, a high degree of selectivity in decisions to begin and maintain affiliation, and seclusion from others' (*Roberts v. United States Jaycees*, 1984, pp. 618-619). 'Expressive associations' is thus the only available constitutional category for non-intimate associations, and they deserve protection because they 'take the rights proffered by the First Amendment and amplify them' by placing the lonely voice in a collective and making it stronger and more audible (Bezanson et al., 2013, p. 29). The dominant legal doctrine of expressive association thus conceives of the freedom of (non-intimate) association as an individual right deriving its value from the freedom of expression and adopts a narrow focus on expressive associations and the right to refuse to associate. This legal category of expressive association has been taken up in an uncritical manner by political philosophers who argue in favour of treating religious and non-religious associations equally, reasserting the idea of a general category of non-political associations regulated by a universal metric of expression/consciousness (Cordelli, 2017; Laborde, 2017), but which, de facto excludes some associations that are not necessarily devoted to some message or belief. Consequently, this exclusive focus leads liberal authors to reduce associative interests to a mixed, but narrow interest in conscience and expression that arbitrarily favours some associative interests by implicitly devaluing all non-religious and non-expressive interests in the association. This is what happens in Martina's case. Suppose now her association has been successfully created and is capable of bringing together some 30 people who have agreed to pursue the creation and development of cultural and social activities in the neighbourhood. It has no message to express and no esoteric belief to practice or spread. Martina's

[3] Note, however, that, with respect to well-being, some authors have recently supported the position that personal relationships are to be considered relational resources that matter for distributive liberal justice and may justify positive obligations (Cordelli, 2015).

association is busy with practical matters like cultural and social activities by and for the people of the neighbourhood, with no further foundational claims or ideas and taking no public position like the need to report the municipality for not adequately developing cultural and social facilities. This association, neither expressive nor intimate, is important to Martina for the abovementioned reasons.

Political liberalism, through its commitment to justificatory neutrality and the attention it pays to the social bases of self-respect, should be a privileged philosophical perspective from which to reflect upon, justify, and protect Martina's associative interest[4]. If this is not so, it is precisely because the associative interest we have in self-respect is lost in the generic category of non-political association. For political liberalism, the all-encompassing category of non-political associations includes families, national communities, churches, and economic associations (Rawls, 2005a, 2005b). This set of very different associations is consistently viewed by political liberalism as lying outside the direct scope of the principles of justice, and the various associations can therefore adopt rules according to their particular objectives (Rawls, 2005a, 2005b)[5]. Nonetheless, these various associations are voluntary to different degrees and have different aims, functions, and dominant modes of relation, do not have the same relationship with both moral powers, and cannot be regulated by the same unique principle of justice. This is why in *Political Liberalism* Rawls ended with a limited justification of the freedom of association as an institutional condition for conscience that excludes most of these non-political associations. Moreover, Rawls did not rely on self-respect for the narrow purpose of justifying the status of the freedom of association. For the same reason, Rawls did not treat of the normative importance of non-political associations for self-respect in relation with the social bases of self-respect, which has been done only rarely by commentators (Cordelli, 2015; Schemmel,

[4] Rawls used a hypothetical original situation to define a concept of justice that does not draw its conceptual resources from a particular vision of the good life and that can be seen as justified in the eyes of individuals sharing fundamental disagreements. The central idea is that the principles of justice will be the object of an original agreement in an adequate initial situation(Rawls, 2005a; Maréchal, 2003). According to Rawls, two principles of justice are the rational results of this deliberation under the veil of ignorance, as an 'adequate minimal conception of justice under conditions of great uncertainties' Rawls, 2005a, p. 206) .

[5] Only political associations are excluded from this Rawlsian concept, as they are components of the basic political freedoms that are subjected to the exceptional requirement of fair value (Rawls, 2005a, 2005b). All other associations are defined in opposition to the basic structure of society and principles of justice. Non-political associations like religious, economic, and family associations may adopt internal principles that are specific to their raison d'être and the pursuit of their objectives.

2019). This has far-reaching normative implications, especially regarding the justification of the fair value of political liberties as the social bases of self-respect.

To recognise the value of Martina's association and, more generally, the value of the various interests at stake in different philosophical justifications of the freedom of association, we must disaggregate the category of association into several sub-categories, and break down the general right to associate into several more specific ones (Brownlee & Jenkins, 2019). To highlight and understand Martina's associative interest in self-respect, this thesis focusses on the paradigmatic category of social association and on the right to form social associations as a paradigmatic illustration of the associative interest we have in self-respect[6]. I define 'social association' as a formally organised association with a purpose and rules, based on non-intimate personal connections, that one may quit at no excessive cost, and that has neither any particular economic or political function nor any claim to authority.

Aside from Martina's neighbourhood association, sport clubs, self-help groups, and artistic and scientific associations are all examples of this basic type of association. I use this omitted category to show how associations serve a distinctive interest in self-respect that US constitutionalism ignores and that political liberalism overlooks, and to illustrate how we can circumvent this lapse. I provide many examples of social associations to support this intuition in order to inquire into the place of the freedom of association within political liberalism through both hypothetical and practical cases, and in particular to examine the relationship between social associations and the social bases of self-respect. This omitted category allows me to inquire into the associative interest in self-respect without neglecting the possibility of coexistent associative interests and more complex associations with additional political and economic functions. My argument will not concern the just organisation of the family whatsoever, nor the extension of the freedom of conscience to religious organisations, regulations for political parties, the importance of unions and firms for their distributive power, or the role of associations for democratic representation and deliberation. In contrast, despite or in addition to such particular functions, my project aims to identify this vague something that some deem 'the intrinsic value' of the freedom of

[6] In Part I, I use the concept of 'right' (to form social associations) to evoke the structure of moral right. Beginning in Part II, I replace the use of the concept of right with that of 'liberty' (to form social associations), which makes more sense for a discussion of the place of freedom of association within a coherent scheme of liberties ensured by the state and its main socioeconomic institutions. Then, in Part III, I return to the concept of 'right' (to form associations) to feed my discussion of the legal right to associate and the duties it entails.

association (Kateb 1998, 39; see also Simmel, 1949, p. 255)[7] or 'the personal uses of pluralism' (Rosenblum, 1998b, p. 8) – ideas that I find insufficient to establish the specific value that associations have for our need to interact with others. All non-political associations yield this fundamental individual contribution, despite being obscured sometimes – and often rightly so – by complex political, economic, and/or reproductive functions. With a critical understanding of Rawls' concept of self-respect in hand, I examine the normative implications that flow from such contributions to the status of the freedom of association within political justice.

By combining developments in democratic theory regarding the specification of different types of association (Warren, 2001) with classical works on political justice (Rawls, 2005a, 2005b), the freedom of association (Gutmann, 1998; Laborde, 2017), and the social bases of self-respect (Krishnamurthy, 2012; Schemmel, 2019), I intend to make three major contributions regarding the philosophical justification, normative status, and legal scope of the freedom of association. Philosophically, I highlight the large room that exists between collective and intimate relations where there are no *public* or *private* benefits, but rather *mutual* benefits (Golubovic, 2013), which is occupied by social associations such as that in Martina's case. In this intermediate zone between the personal (i.e. the relationships we develop for their own stake) and the public (i.e. those we form to defend a common interest), individuals find mutual support for particular conceptions of the good life and resources to develop a form of self-confidence that is necessary to pursue their plans. In doing so, I show that we can provide an adequate philosophical account of what secondary association is and why it is valuable based on the central individual value of self-respect, without supposing that it always has an intimate, collective, esoteric, or democratic complex function that is constitutive of its value. In simple terms, I argue that individuals have a basic and fundamental interest in associations, as they enable individuals to lead lives that they

[7] For Kateb (1998), individuals can have many reasons to commit to an association: opportunities, conviviality, and self-realisation, among others (Kateb, 1998, p. 39). He contended thus: 'Just as government's recognition of right is no mere advantage, so rights are no mere instruments, for those who are recognized as having them (…) a fundamental right is still not primarily an instrument; it is inextricably joined to one's being a full person or having a true self, and personhood and selfhood are not instrumental' (Kateb, 1998, p. 53). Simmel (1949, p. 255) highlights that the associative process has a value in itself, 'a feeling of the worth of association as such'. Whatever the special interest that gives its distinction to a particular association, the interactions give rise to something that is easily distinguishable for those special interests, for 'above and beyond their special content, all these associations are accompanied by a feeling for, by a satisfaction in, the very fact that one is associated with others and that the solitariness of the individual of individual is resolved into togetherness, a union with others' (Simmel, 1949, pp. 254–255).

collectively affirm as reasonable and valuable and to develop a sense of value and confidence in their abilities. This interest has never been fully appreciated by political liberalism, and this theoretical reappreciation of the associative interest in self-respect has far-reaching normative implications for political justice. This is the positive claim of the dissertation.

Theoretically, I show that a plausible and attractive understanding of the relationship between the primary good of self-respect and association is implicit in a political conception of the person and is sometimes explicit in Rawls' view of political justice (Rawls, 2005a; Cordelli, 2015). This relationship is only hidden by the all-encompassing category of non-political associations, on which Rawls was keen, and by the endless debate over the place of the family (Edenberg, 2018; Okin, 2008)[8], the church (Laborde, 2017; Leiter, 2014), and firms (Platz, 2014; Tomasi, 2012) within the ambit of political justice. Adopting a critical understanding of Rawls' self-respect and relying on my definition of social associations, I emphasise the special importance of the liberty to form social associations for the *social bases of standard self-respect*, which refers to the institutional conditions to access the personal circumstances of self-respect that allows citizens to see their endeavours, deeds, and achievements appraised by like-minded citizens (McKinnon, 2000). The right to form social associations gives concrete realization to the idea that citizens should enjoy at least one community of interest where their conceptions of the good are shared and valued. Thus understood, even where the opportunity to form social associations is not effectively taken, this arrangement is a public affirmation of the equal worth of all conceptions of the good carried by citizens and their equal capacity to achieve it. I think that this is the way we need to understand Rawls' statement that 'there should be for each person at least one community of shared interests to which he belongs and where he funds his endeavours confirmed by his associate' (Rawls, 2005a, pp. 441–442).

Rawls argued that without self-respect, nothing may seem worth doing, and associations are a privileged place where individuals may develop their sense of self-worth. My central argument only treats this relationship through the category of social association, and adds to these classical Rawlsian assumptions the idea that the liberty to form social associations is the only right to associate which generates (standard) self-respect on which we can act through social institutions. Accordingly, I argue for a reasonable extension of the fair value of political liberties to the liberty to form social associations. My central normative

[8]. Susan Okin (2008) famously argued that the family as an association is beyond the scope of the basic structure of society ruled by the principles of justice while nonetheless being necessary for the realisation of the same principles.

claim is that the equal worth of political liberties and the liberty to form social associations together ensure that no citizen will be relegated over time to an inferior public status, and that they will all have at least one place where they can acquire and develop their value. Defining the fair value of the liberty to form social associations as the conditions that are obtained when people with similar abilities and ambitions have the same chances of success to form social associations, I present it as an assurance mechanism for citizens to enjoy at least a community of interest where they can pursue their conception of the good and develop a sense of value and self-confidence necessary for it.

Regarding the scope of the freedom of association, I support the central claim that the fundamental associative interest in self-respect requires both equal negative protections of various legitimate associative interests and positive measures to ensure the effectiveness of the liberty to form social associations. By virtue of the fact that each citizen should have equal moral capacities for the two moral powers, the capacity to form social associations should be ensured through a specific social arrangement. A specific range of material and social conditions must be ensured by the basic structure of society. The state has the duty to secure the social possibility to develop the citizens' sense of their own worth in social association. This includes – or so I argue – subsidising the start-up phase of social associations, providing adequate public infrastructure for generic associative activities and proactively helping citizens that do not have the resources to exercise their legal right to form social associations.

It is true that the freedom of association is understood as a negative liberty generating a duty for the state to not prevent people from associating, and rarely has a positive duty to fulfil the effective exercise of the right to associate (Brownlee, 2015; Cordelli, 2015). Nonetheless, the focus on expressive associations and the right to refuse to associate reduces the duties generated by associations to a (non-absolute) negative duty of non-interference on the part of the state and third parties. Expanding the scope of interests protected by the freedom of association, as I do with the associative interest in self-respect, has the effect of expanding the duties that they may engender. As Cordelli explained (2015, p.104), 'one of the reasons that ground freedom of association as a basic liberty, i.e. its importance as bases of self-respect, is the same reason that warrants moving beyond the language of negative liberty'. Beyond the ethical issues linked to legal derogations to exclude members from certain social groups or to assert legal exemptions, the establishment of a social association is not a natural act without any consequence whatsoever, but rather a social and institutional act that requires many background conditions.

Martina would simply like to meet her neighbours occasionally, and she is going to need to deploy temporal, social, cultural, legal, and institutional resources to form a group and presumably constitute a formal association. To carry out her project, she will have to find time between her family and professional life. She will also have to find people who are interested in her project and identify compatible schedules with them in order to implement it. She will certainly have to have access to dedicated space in a building for organisational purposes, at least in case of rain and for storage. She may also have to request things from the public authorities on a regular basis, such as tables, benches, and sorting carts. If Martina wants to organise an event for the entire neighbourhood in the central courtyard, she will have to ask the public authorities for permission to use the public domain, pay administrative fees and even taxes, and may, one day, even have to open a bank account and track accountability. If she is going to offer food and drinks on behalf of the association, she will have to comply with the legislation in force and pay taxes. She may have to defend herself in court when the parents of a little girl who injures herself at the neighbourhood picnic sue her as the organiser of the event. These burdens may be eased if Martina creates a recognised legal entity to enter collective contracts. However, to do so, she will need cultural and institutional resources. For instance, if Martina resides, say, in Chicago, she will have to follow Illinois' incorporation process to create a legal association, which is similar to that required to create a company. The administration, preferring tranquillity to animation and fun, can try to ban this association or refuse to allocate space to it and favour other associations with quieter activities, such as a group of retired people looking for a place to play cards. Public authorities can do the same and fail to recognise Martina's association or impose administrative obligations as binding conditions. The association may also be forced to adopt a specific form of organisation, requiring it to renounce certain aims or activities. Martina may also be prevented from creating an association entirely or freely, because of the lack of resources at her disposal (and at the disposal of other members) or by direct or indirect impediments placed by a third party – even before the question on the exclusion of individuals from the selected social groups can arise, or before the association can put forward any public position or request for legal exemptions.

Access to temporal, social, cultural, legal, and institutional resources to create an association is a public ethical issue, as is the exclusion of certain social groups from so-called private associations once they are formed. Thus, to the extent that the freedom of association is understood as a complex bundle of rights, including positive ones, serving a plurality of interests, including that in standard self-respect and its social bases, the duty of non-interference by the state – whatever its boundaries – is not sufficient. The equal

consideration of the associative interest that citizens have in self-respect requires the state to actively assist with one's creation of an association in some specified manner (Cordelli, 2015) and justifies additional social resources to obtain adequate social conditions to form social associations. The freedom of association should then be understood as a positive freedom, and liberals cannot provide a persuasive rejoinder to egalitarian worries about the freedom of association if they ignore the fundamental associative interest in self-respect, its relation to the right to form an association, and the resources and abilities that are required to make it effective. Martina has not only a pro tanto claim right to participate in exclusive memberships – to choose whom she accepts and rejects as a member – she also has a prior and pro tanto claim right to form an association without registration, access infrastructure and places, be connected to networks and like-minded people, and receive advice and information on formal procedures and organisational structures.

As a transitional arrangement focused on laws and social policies[9], I propose a two-headed institutional device to lower the level of resources required by law, while providing individual support to those who still do not have the remaining resources to exercise their legal right to form social associations. On the one hand, I argue for a legal arrangement that reduces the resources required by law to form social associations in recognising corporate personality as soon as members have expressed the wish to constitute it (the principle of corporate creation). I argue that such a principle is the best way to support, by law, the equal opportunity to obtain the personal circumstances of self-respect because it is the best way to reduce social and cultural barriers to incorporation, and that any other option would increase the burden of collective action. On the other hand, I also support the idea of a public social service based on the bottom-up methodology of community organising and acting as an all-purpose good in order to complement the lack of particular resources required to form social associations (the idea of public community organising)[10]. I especially defend the view that

[9] I understand non-ideal theory in the restricted sense of 'transitional' theory (Valentini, 2012), as an attempt to propose institutional improvement based on existing social reality. I show that my argument offers concrete guidelines for getting as close as possible to this ideal of equal freedom to form social associations.

[10] All-purpose means are 'resources useful for pursuing conceptions of the good in general' (Platz, 2017, p.49). In the Rawlsian framework, these all-purpose means include basic liberties, opportunities, wealth, and income, and the social bases of self-respect. As Platz (2017, p. 50) explained, 'some of these resources (the basic liberties and the resources required to exercise them) are of interest to economic justice because they enable citizens to participate as free and equal in the system of social cooperation. Other resources are of interest to ensure the ongoing fairness of the distribution of opportunities to pursue one's goals, benefits, and burdens of cooperation'.

the central methodological requirement of community organising, making the local interests prevail, is well suited to a liberal political perspective that has for core principles the equal consideration of different conceptions of the good life and the fair opportunity to exercise a defined set of liberties. I explore the idea that such a public social service can be conceived as a generic entanglement between different conceptions of the good, which is committed to making available all-purpose means necessary to pursue any collective conception of the good life, in a manner equally available to all, and specifically targeting those who have no resources to exercise their legal right to form social associations.

My argument therefore has far-reaching implications for the way in which we conceive of the legal justification and scope of the protection of the freedom of association, for how we conceive of the legal personality of an association and justify its acquisition, and for our understanding of the role and functioning of public services in relation to civil society. The result is that the social bases of standard self-respect are a reason to ground a state's duty to ensure the easiest access possible to legal personality and to equalise, as far as possible, the social conditions necessary to exercise the right to form social associations through information, facilities, public infrastructure, conditional allowance and assistance. The unprecedented key represented by the category of social associations will therefore shed light on the fundamental values of the freedom of association for self-respect, and the role it should play in the Constitution, legislation, and public policies.

This thesis tackles the freedom of association under very different levels of theoretical abstraction, moving from the philosophical justification of the equal worth of the right to form social associations to an engagement with legal doctrines and remedial social policies. I do so in light of very different contexts. My arguments are supported by US Supreme Court decisions that feed almost all the literature on the topic. I also draw support from the EU and Swiss contexts, which complement the US one, by referring to the decisions of the European Court of Human Rights (ECHR) and the Swiss Federal Tribunal, and to Swiss civil law. In evaluating the US case in contrast with the EU/Swiss ones, I hope to reinforce the philosophical inquiry and take a critical distance from national constitutional traditions. This will allow me to offer a thoughtful comparison of the US and EU's conceptualisation and protection of associational freedom, and my insistence on self-respect will help me capture a wide range of associations that seem to be excluded from theories that instrumentalise associational freedom as group expression, the value of intimacy, and democracy. I also explore how these legal doctrines conceive of and protect the legal personality of social associations and regulate its acquisition. Efforts are made to address

competing legal accounts of the freedom of association, but my aim is not to resolve legal disputes. I also draw on previous empirical studies conducted in the Swiss canton of Geneva to illustrate the application of the methodology of community organising in social policies and the difficulties they may encounter in its application to public administration. However, my work does not have the slightest empirical claim. While I use legal theory and juridical decisions and draw on previous empirical studies, my argument is philosophical. My normative argument rests on theoretical premises connected to my theoretical framework, on a search for coherence, and on the argument I develop based on this. My project is a part of a quest for reflective equilibrium through a continuous search for coherence (Rawls, 2005a)[11], and the paradigmatic category of social associations can help me deal with the Rawlsian view and its implications for the freedom of association[12]. Hence, my weapons are theoretical, analytical, and logical.

With this in mind, in Part I, I examine the philosophical literature on the freedom of association in light of the need to distinguish among different types of rights and associations (Section 1.1). I develop an account of an equal freedom of association in right and value, and construct the category of *social associations* (Section 1.2) as a critical case for our forgotten associative interests. I then put forward the right to create an association in the complex bundle of rights that constitute the freedom of association (Section 1.3). I engage with Brownlee's account of the tension between the positive and negative dimensions of the freedom of association (Brownlee, 2015; 2016; Brownlee & Jenkins, 2019) and formulate a conceptual specification of a coherent and substantial right to form social associations.

In Part II, I interpret social associations as having political value and deploy this paradigmatic category to emphasise the importance of the freedom of association within a classical Rawlsian perspective. Drawing from Rawls, I highlight how social associations have a fundamental value for political justice that cannot be reduced to an institutional condition for the freedom of conscience (Section 2.1). I show that social associations allow

[11] Reflective equilibrium is a state of balance or coherence among a set of beliefs arrived at through deliberative mutual adjustment among general principles and particular judgments. Although perfect reflective equilibrium is unattainable, we can use reflective equilibrium to get closer to it and increase the justifiability of our beliefs.

[12] My meta-ethical postulate relies on the idea that a belief cannot be justified without a coherent set of beliefs (Sosa, 2005). This is why I stick to a classical version of political liberalism, as it is already tempered by 50 years of assiduous critique, and its moral implications have been constantly questioned and related to one another. This is also why I stick to concrete examples of social associations. My premises come from a classical Rawlsian perspective and imply a political conception of the person, with fundamental interests in the capability to pursue their conception of the good life and to develop a sense and political conception of justice.

citizens to collectively explore non-political values like excellence, to strengthen their sense of self-worth and conception of the good, and to develop a generalised sense of reciprocity and attachment to social institutions. I argue that, of the many contributions of the freedom of social association to social justice that I identify, self-respect is incontestably the most important and most relevant, as it explains the relationship between the freedom of social association and both moral powers and does so by reasons that are available to the parties in the original position[13].

Through a critical complexification of Rawls' concept of self-respect inspired by the literature (Darwall, 1977; Schemmel, 2019)[14], I show that - because they are defined as voluntary and are based on regular personal interactions – social associations constitute the paradigmatic category of association that allows members to develop self-respect through mutual appraisal, and – because they are organised and social – they represent the rare type of associative relationships on which feature of institutions may rely to ensure the social bases of standard self-respect. I then examine the conditions for securing self-respect, paying special attention to the different temporal sequences that compose the bundle of rights to associate, highlighting for each of them the corresponding circumstances under which individuals maintain, protect or develop self-respect (Section 2.2). I show that the different rights in the bundle of freedom of social association require different degrees of support and quite different understandings of equality of opportunity. I support the view that citizens should enjoy an equal worth of their liberty to form social associations, in addition to the substantive ability to leave associations and a fair equal opportunity to join and refuse to associate. Underlining the special relationship that binds the social bases of self-respect with the right to form social associations and the expressive effect of the worth of such liberty for how citizens consider themselves, I argue for a reasonable extension of the special treatment of political liberties (Section 2.3). This addition to the proviso of fair the fair value of the

[13] The original position is a device of representation in which the representatives of equal and free citizens would have to decide principles that rule 'the basic structure of the society', the essential economic and political institutions of a closed society (Rawls, 2005a, p. 93). They have to choose an adequate way of distributing primary and social goods that are useful no matter what the rational life plan may be and have to do so with the minimum rational information that the device of representation allows, without knowing the social position of the citizens they represent, their sexes, races, or ethnicities, and their determinate conception of the good.

[14] I associate the distinction between standard self-respect (recognition) and standing self-respect (appraisal) with the distinction between self-respect as a primary good and the social bases of self-respect as a social primary good subject to fair distribution.

political liberties[15]. would ensure citizens' social bases of self-respect not only as a public status, but also as the potentiality to advance their view of the good life and achieve it in practice (Schemmel, 2019; Wall, 2006). The extension justifies the proviso as social bases of standard and standing self-respect, in direct relation with the two moral powers. I explain why such an associative interest in standard self-respect is a sufficient reason to hold that the state is under the duties to subsidise and help to form social associations.

In Part III, I explore transitional arrangements that come as close as possible to the idea of the fair consideration of the associative interest in standard self-respect, which requires both equal negative protections of various legitimate associative interests and positive measures to ensure the effectiveness of the right to form social associations. I examine the laws and policies currently in place and rendered unjustified by my argument, and the policies that are morally required in light of the fundamental importance of the associative interest in standard self-respect. I move to the implications of considering this associative interest as an integral part of the legal justification of the freedom of association (Section 3.1). I show how American constitutionalism presently dominates the philosophical debate while denigrating the plurality of associative interests (Section 3.1.1). I criticise the doctrine of expressive associations for its exclusive attention to a narrow associative interest in expression and its unilateral focus on the right to refuse to associate. I criticise Laborde's *Liberalism's Religion* for claiming to address the unequal consideration of interests between different non-political associations by treating religious and non-religious associations equally through a universal associative interest in coherence, while effectively proposing a mixed but narrow interest in expression and conscience that excludes most social associations by ignoring the interest in self-respect they serve. I turn to the European doctrine of contractual association, which I criticise for its instrumental vision of the freedom of association based on the narrow contributions of democratically organised associations to liberal democracy or public interest (3.1.2). The EU doctrine recognises the positive dimension of freedom of association and emphasises the relationship between the legal right to form associations and easy access to legal personality, but remains very oriented towards the democratic and functional value of associations and fails to defend the acquisition of legal personality as a matter of right. While I claim that the forgotten associative interest in

[15] While the idea of the fair value of political liberties is already present in the early formulation of *A Theory of Justice* (Rawls, 2005a), 'the proviso' of the fair value of political liberties is used by Rawls lately in *Justice as Fairness: A Restatement* (Rawls, 2001, p. 149). I refer here to the term 'proviso', not only in the sense of the qualification attached to the special treatment of the political liberties, but also as being a condition of the agreement between the parties in the original position.

self-respect must be equally considered, I do not investigate the implications this has for the determination of the fair scope of the state's interference, but I show that my argument has direct consequences for the right to form social associations and the acquisition of legal personality by social associations, justified as a matter of right and not concession or privilege (3.2). I show that the concrete existence of the legal right to form social associations is conditioned by the ways in which associations are recognised as legal entities. I contend that legal personality is necessary for social associates to order their ends and to define rules, to formulate, conceive and achieve a shared determinate conception of the good. I stress that the claim to form a corporate social association is made by members in furtherance of their joint associative interest in standard self-respect, which does not depend on prior authorisation from the state but only requires a formal decision-making structure that is indispensable for collective responsibility, without which any conception of legal personality would be impossible (French, 1984; Preda, 2012a). Based on this, I defend the *principle of corporate creation* according to which the legal personality of a social association should be recognised as soon as its members have formally expressed the desire to be organised in corporate form.

Finally, I examine how the state can fulfil its positive obligations towards overcoming challenges confronting disadvantaged persons through social policies. I explore the contours of a state's duty to provide subsidy, infrastructure and assistance for the creation of social associations and consider a whole range of constraints on this intervention to avoid the risks of paternalism and a state's unfair interference I especially emphasise that, in fulfilling its duty to help to form social associations, the state should ensure that individuals are equally able to access such services and infrastructure, that they are free to leave or not to join them, that certain associative beliefs are not favoured over others, and that it does not impose its own views and interests in the course of the intervention. I contend that the duty to help to form social associations, associated with this set of restrictive conditions, requires a very different way of conceiving the relationship between state and civil society. I put forward an interpretation of the contested concept of community organising as a means for public institutions to provide, in a non-paternalistic manner, every citizen the effective opportunity to develop a sense of his/her own worth (Section 3.3)[16]. Through the Swiss context and an account of the social sector in Geneva, claiming community organising between 2002 and 2017, I offer a descriptive account of a public service that refers to

[16] I understand here paternalism as the temptation to guide citizens towards what is believed to be their own good. I discuss this notion in Section 2.3.2.

community organising to qualify its practice. I point out the opportunities that this bottom-up mode of working presents in order to equalise the social conditions to form social associations and the challenges that such a mode of working raises for public administrations. In so doing, I hope to contribute to the public justification of the methodology of community organising as a necessary means for public institutions to tend to equalise the value of the liberty to form social associations. Thus, I present and support an orthodox view of community organising, a way of working carried out by the public administration which is strongly rooted in a liberal-egalitarian ideal of equal opportunity of the freedom of association, and take an unusual view of community organising, grounded as a means to fulfil the positive obligations of the state around the associative interest in standard self-respect, and justified by a Rawlsian conception of the political person.

In short, I highlight the diversity in the types of association and the plurality of interests and rights related to the freedom of association. I then underline the relationship between the liberty to form social associations and the social bases of standard self-respect, and argue that, by virtue of this relationship, it is necessary for political justice – with respect to the justification of the proviso of the fair value of political liberties – to ensure the equal worth of the right to form social associations. Finally, I criticise US and UE laws for unequally considering the associative interest in self-respect and for not ensuring a substantial right to form social associations, and I suggest a different approach to the acquisition of legal personality for social associations and a distinct framework of interaction to regulate the relationships between state's services and social associations.

While the theoretical basis of my argument is an orthodox Rawlsian framework, the argument I develop – through the lens of the freedom of association – allows me to bridge two streams of literature. One the one hand, the closest relative of the argument I propose has is Rosenblum's pluralist argument on the individual, plural, and implicit contributions of associations (1998), but I go beyond her definitively descriptive argument against congruence between associations and the liberal state in order to defend the right of all to access to this plural contribution. Such liberal-egalitarian approaches to the freedom of association have been suggested by various liberal authors like Fleischacker (1998) and Tamir (1998), but without relying on a complete justification and without proposing specific social arrangements. In pluralist and liberal-egalitarian thought, praising the value of the freedom of association is never associated with a concrete social arrangement that can ensure the access to such value for all. On the other hand, my argument is also related to a new generation of arguments in moral and political philosophy, stressing the value of personal

relationships and on the rights and duties they entail. A growing number of philosophers have argued that we have a fundamental interest in relational resources (social connections and resources, personal relationships, and care, according to the authors)[17] and that this fundamental interest is sufficiently weighty to grant certain positive social rights (Brake, 2017; Cordelli, 2015). Brownlee (2016) argued that 'minimal opportunities for decent social interactions are necessary to respect the right against social deprivation. More in line with my argument, some political philosophers have argued that these relational resources have an important role to play in distributive justice and should be regulated through an additional principle of justice (Brake, 2017; Cordelli, 2015). Cordelli (2015) considered certain relational resources social primary goods that must be regulated by a new principle of fair equality of relational resources, and stressed the importance of the freedom of association for the social bases of self-respect and the capacity to revise our ends and the development of a sense of justice. She argued that certain relational resources like trust or emotional support, are primary goods that are 'generally necessary for the development and exercise of (at least one of) the two moral powers'; and 'valuable across a variety of conceptions of the good, without their value being grounded in any such a conception' (Cordelli, 2015, p. 94). Certainly her argument resonates strongly with mine.

Nevertheless, including personal relationship goods, which are not theoretically correlated to the index of income and wealth, among the social primary goods can raise an indexing problem (Brake, 2017; Cordelli, 2015), making it difficult to establish who are the worst off[18], and the 'different ways of distributing personal relationship goods can inevitably reflect some individuals conception of the good and lead to social division' (Gheaus, 2018, p. 15). In contrast, I dwell on the explicit relationship, in political liberalism, between non-political associations and the primary good of self-respect and propose to examine the unexplored normative implications that flow from this relationship for the freedom of association and the justification of the fair value of political liberties as social bases of self-respect. Thus, while Cordelli focused on specific relational resources that she considered social primary goods requiring an additional principle of justice, I critically explore the relational basis of self-respect and the meaning of the social bases of self-respect in relation

[17] Cordelli (2015, p. 90) rightly defined relational resources as 'distinctively through and available within relationship', or that are themselves constitutive of 'ongoing and coordinated interactions, repeated with a certain degree of regularity, coordinated by formal and informal norms'.

[18] Rawls thought of the worst off group as comprising 'those who have the lowest index of primary goods, when their prospects are viewed over a complete life' (Rawls, 1982, p. 164).

with the social conditions of the formation of voluntary, organised, secondary, and social associative relationships.

Closer to my argument, Schemmel (2019) stressed the role of 'self-help associations' for the social bases of self-respect, but mobilised this contribution in the limited purpose of arguing against the justification of the fair value of political liberties as social bases of self-respect. In contrast, I underline the complementary justification of political liberties and the freedom of association, to provide an enlarged but grounded proviso of fair value. I seek to draw out a coherent connection between the contribution of the freedom of association to self-respect and the justification of the fair value of political liberties as social bases of standing self-respect. My theoretical focus – on standard self-respect as a primary good, on the social bases of standard self-respect as a social primary good, and on social associations as a specific type of associative relationship that fosters mutual appraisal between members and that can be supported through specific institutional arrangements – resolves many theoretical difficulties faced thus far by scholars who have attempted to place relational goods on the agenda of liberal political justice. At the same time, my argument also provides a realistic alternative to the hollow desires of liberal-egalitarian and pluralist authors, recognising the fundamental value of associations for self-respect while being unable to conceive of the need to ensure equal access to such fundamental value.

I therefore enquire into the foundations of political liberalism and its implications for the freedom of association, and investigate the crossroads between distributive and relational justice[19]. I hope this study will raise renewed interest in the freedom of association and the social conditions of its exercise under any other theory that considers individuals free and equal citizens, regardless of their particular interpretation of the concepts of freedom and equality and the particular form of subjectivity they assign to the individual (Anderson & Honneth, 2005; Honneth, 1996; Pettit, 1999)[20].

[19] Relational justice refers to 'the normative attitude' of social and political institutions as expressed in their treatment of persons (Schemmel, 2011, p. 136), whereas distributive justice is about 'how we should distribute the burdens and benefits of social cooperation taking place among citizens' (Platz, 2017, p. 51).

[20] The concept of self-respect will certainly find a different echo in most theories of recognition, which will focus even more on the social and non-statutory character of what they would call self-esteem. While I take a critical perspective on the Rawlsian concept of self-respect, notably for dissociating personal and political circumstances of self-respect, my conception is Rawlsian and individual. I adopt the Rawlsian lexicon, however, with the idea of exploring the relational dimension of moral capacities and building bridges between the distributive and relational dimensions of justice.

While the concept of citizenship appears in the subtitle of the thesis, you will find no word about it in the text because the term is understood as a status derived from the legal relationship between the state and the individual. Citizenship encompasses all individual rights and duties formalised by law. I support an 'associative citizenship' to the extent that I defend an individual active claim right against the state to the basic resources necessary to form social associations. While I argue for the moral and legal recognition of this right, I do not need to use the concept of citizenship to do so . However, this thesis aims to provide a liberal justification for a kind of associative citizenship, which is understood as an individual claim right to the basic resources necessary to form social associations.

PART 1. Equality, Freedom, and Associations

I examine the literature to distinguish different types of rights and associations. I make sense of the complexity that obfuscates philosophical thinking on the freedom of association and its relationship with the primary good of self-respect (Section 1.1), by referring precisely to one kind of associative relationship (Section 1.2), specified through social associations, and one kind of right (Section 1.3), namely the right to form social associations.

1.1 Freedom of Association as Equal Freedom

The freedom of association is seen as a standard liberal right, enshrined in international law (Golubovic, 2013), usually defined in opposition to group-differentiated rights (Barry, 2002; Kukathas, 2007), or the corporative autonomy that is sometimes granted to religious groups (Cordelli, 2017; Laborde, 2017).

The historical roots of this freedom can be found in the notion of *societas* in Roman law (Jolowicz & Nicholas, 1972) and the idea that individuals have fundamental interests in the freedom of association has been strongly supported in liberal philosophy. The liberal attempts to justify this right, philosophically speaking, dates back to John Locke and his *Letter Concerning Toleration* (Locke, [1689] 1991), where he stated that it is impossible and undesirable to apply coercion in the civil and religious domains[21]. Other significant contributors include Mill who wrote that the 'freedom of combination' is justified as part of the principle of freedom that is the best way to maximise the happiness of the largest number (Mill, [1859] 2003)[22]. It also includes Rawls, who supplied a neutral justification for

[21] Locke considered political authority incapable of imposing a particular shape of faith and worship on its subjects. These attempts tend to perturb the social order and strengthen the convictions of the oppressed. A church is 'not a department of government'; it is a voluntary association within civil society, and like all associations, has its own ends that are distinct from social contract and coercion (Locke, [1689] 2014, p. 16).

[22] In *On Liberty*, Mill ([1859] 2012, p.13) argued: ' (…) Principle which requires the freedom of the tastes and the activities, the freedom to trace the plan of our life following our character, to act as we please and risk all the consequences which will result from it, and it without it to be prevented by our fellow men as long as we do not damage them, even if they found our insane, perverse or bad conduct. Lastly, it is from this freedom appropriate to every individual that results, in the same limits, the freedom of association between individuals: the freedom to unite in any purpose, provided that it is harmless for others, provided that the partners are major and provided that there was in their recruitment neither forced nor deceit'.

egalitarian liberalism, which considered the basic freedom of association as an 'institutional condition to freedom of conscience' protected by the first principle of justice (Rawls, 2005b, p. 296). Locke, Mill, and Rawls highlighted how important the freedom of association is to social order (Locke, [1689] 1991), the freedom of taste and conscience (Mill, [1859] 2012) and the realisation of various rational life plans (Rawls, 2005a). These philosophers lived in different times and places and theorised different conceptions of liberalism (Audard, 2009), but all gave the freedom of association an important place in their theories concerning a fair society. It is therefore generally admitted by modern political thought that the freedom of association has moral value and must be protected from interference by the state and other individuals. Many constitutions and human rights documents give the freedom of association a place within their text. The freedoms of peaceful assembly and association are each considered a 'basic human right and enshrined in a number of international instruments designed to ensure their protection' (Golubovic, 2013, p. 758)[23].

Nevertheless, this widely accepted idea creates an appearance of a consensus that covers up numerous persistent disagreements. The classical literature on the freedom of association is scarce, and often ambiguous and contradictory. Locke limited the toleration of religious conscience to worship and excluded Roman Catholics and atheists from it (Locke, [1689] 1991). Mill called for the nationalisation of charitable endowments and was sceptical of the ability of religious and educational associations to hold funds intergenerationally (Levy, 2015; Powell and Steinberg 2006; Mill, [1859] 2012; 1967)[24]. In his foundational text *A Theory of Justice*, Rawls did not mention the freedom of association within the basic liberties protected by the first principle of justice (Rawls, 2005a)[25]. Only later, in his justification of the priority of basic liberties in *Political Liberalism* (Rawls, 2005b) did Rawls included the freedom of association within the list of basic liberties without explaining his previous omission as he did for many other concepts, and without explicitly mentioning this change, as he had in the introduction regarding the most important

[23] The freedom of association is encompassed in the protections identified in the *Declaration of the Rights of Man* (1948), the *European Convention for Human Rights* (1953), and *the International Covenant on Civil and Political Rights* (1976).

[24] In *On Liberty*, Mill ([1859] 2012, p. 13) 'attacked the inviolability of most public Trust, promoted increased state scrutiny of all foundations and sanctioned eventual state intervention to alter founders' bequests for better practical effect. Mill urged that landed properties of all charitable endowments in mortmain be rapidly brought to market' (Powell & Steinberg, 2006, p. 27).

[25] In *A Theory of Justice*, Rawls (2005a) identified the freedom of assembly as one of the basic liberties, which many thinkers have treated as synonymous with the freedom of association (until it was fully appreciated that not all associations engage in public assembly).

alterations. While many international documents and national constitutions assert the freedom of association as a fundamental right, it is absent from the Constitution of the United States of America. Therefore, if freedom is a standard liberal right, then it is a standard liberal right that is absent from the list of fundamental liberties presented by Rawls in *Theory of Justice* (2005a), and from the Constitution of the United States of America.

The freedom of association is a complex and understudied liberty. Contemporary philosophers and legal theorists have said very little on the moral value and scope of the freedom of association. Few philosophical works on the freedom of association have emerged in response to the growing influence of liberal multiculturalist theories (Kymlicka, 1996) and the unending discussion of the treatment of cultural and religious groups (Barry, 2002; Kukathas, 2007; Laborde, 2013). However, these works have contributed more to the critical assessment of the concept of groups' rights than to the examination of the value of the freedom of association itself. Freedom of association is taken as the liberal counterpart of the dialectic between group rights and individual rights, but the authors in question have only examined the adequate conditions to exit an association and have not engaged with the positive dimension of the liberal freedom of association (Barry, 2002; Kukathas, 2007). As we will become clear, however, the positive account of the value and corporate protection of the freedom of association that I will develop in this dissertation is based on a quite standard account on the structure and justification of moral and legal rights, assuming a classical Hohfeldian approach (Hohfeld, 1917) and a contested but conventional Razian account of normative justification through individual interests (Raz, 1984; 1986)[26].

Except for a few libertarian (Kukathas, 2007) and pluralist (Bevir, 2012; Levy, 2015; Muñiz Fraticelli, 2014) thinkers, a contemporaneous philosophical investigation of this topic remains tied to the legal and constitutional contexts of the United States and the constitutional doctrine of expressive associations (Cordelli, 2017; Gutmann, 1998; Laborde, 2017). Most intellectual works on the topic of freedom of association date from the 1990s,

[26] In Hohfeldian language, a right is the relationship that confers a 'normative advantage' (claim, privileges, powers, and immunity) on a subject. A duty, as a normative disadvantage (no claim, duty, liability, and disability), is an obligation owed by one party to another (Hohfeld, 1917). Claim, privilege, non-claim and duty form the first-order conception of the Hohfelds' system. They are normative advantages/disadvantages regarding the rule of conduct. Although less important for our purposes, we should note that standing above these first-order conceptions are a set of second-order conceptions, 'which concern the legal or moral ability and disability to affect changes in first-order normative relation' (Rodin, 2002, p. 20). In Joseph Raz's version of the interest theory, a right is morally justified if there is an individual interest that is sufficiently strong to ground duties in others: 'X has a right if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty' (Raz, 1986, p. 166).

with a small resurgence in the 2000s, in connection with important US Supreme Court decisions on the freedom of association. In this scanty literature, there are many fundamental disagreements on both the fundamental interests secured by the freedom of association, and the content and subject of this freedom. While some have traced the normative force of the freedom of association back to the freedom of expression (Bezanson et al., 2013; Gutmann, 1998), others are willing to relate it to an institutional condition for the freedom of conscience (Kukathas, 2007; Mill, [1859] 2012; Rawls, 2005b) or the freedom of thought (Shiffrin, 2005). While some have focused on the right to exclude others from an association (Kukathas, 2007) or to exit one (Cordelli, 2017; White, 1997), others have viewed these rights as consequences of the fundamental freedom to form associations in the first place (Brownlee, 2015; Lomasky, 2008; Rosenblum, 1998b). Finally, while some have attempted to define a universal right of association that includes all non-political associations (Cordelli, 2017; Laborde, 2017; Rawls, 2005a), others highlight the importance of considering particular types of association and the rights concerned before discussing the value of the freedom of association (Brownlee & Jenkins, 2019). In short, if there is a general agreement on the fact that the freedom of association serves higher moral interests, scholars still disagree on the identification of these fundamental interests and hardly capture this freedom as a comprehensive and coherent right. These gaps have far-reaching implications for the types of associations that are considered and their individual scopes of protection/promotion. This lack of investigation is in sharp contrast to the intellectual efforts invested in justifying the value and to determine the implications of other fundamental personal liberties like the freedoms of expression (Brettschneider, 2010; Alexander and Horton, 1983) and religion (Cohen and Laborde, 2016; Koppelman, 2018), and the right to privacy (Lever, 2013). The stakes of such disagreements are increasing as the special putative status of religious associations is growingly criticised as unjustified, whereas less work has been done to formulate a coherent standard liberal right to the freedom of association that can include both religious and non-religious groups, one which in fact does not presently exist (Cordelli, 2017; Laborde, 2017).

The reason of such disagreements lies in the complex structure of the freedom of association (Kordana & Tabachnick, 2008). First, the freedom is complex. It is arguably made up of several potentially conflicting rights – see the analogous case of property rights and the diverse and possibly contradictory claims they establish (Fried, 2004)[27]. The right to

[27] Fried (2004) argued that the principle of ownership is a patchwork of mutual claims and duties and that property is then inseparable from a conflict of property. It is largely recognised that the right to

associate not only implies a right to refuse to associate, without which it would not make sense (White, 1997), it also presupposes the rights to belong to an association and to create one (Brownlee, 2015; Brownlee & Jenkins, 2019). Second, the subject of the freedom is complex. Typically, it includes primary, secondary, and tertiary associations and their various natures and functions. The general concept of non-political associations, employed in political philosophy by Rawls (Rawls, 2005a, 2005b) and other notable contemporary contributors (Cordelli, 2017; Laborde, 2017), includes families, national communities, religious, economic, and social associations. Despite being non-political in the Rawlsian sense, all these associations differ in nature and function and are voluntary to different degrees. They have different distributive effects on primary goods and different constraints on their conditions for access, participation, and exit. They should not be judged based on the same rationale, just as, for example, has been widely recognised for different forms of expression (Fish, 1994; Alexander & Horton, 1983)[28]. From a Rawlsian perspective, in particular, the freedom of association transcends the classic distinction between personal and economic liberties (Kordana & Tabachnick, 2008). The full-fledged freedom of association concerns the basic non-economic liberties that are included in the first principle of justice, while economic associations and firms are excluded by it and regulated (or not) by the second principle of justice (Kordana & Tabachnick, 2008; Platz, 2014; Tomasi, 2012). Thus, like property rights or the freedom of expression, there is no single freedom of association, but rather many freedoms of association. Consequently, it is impossible to evaluate this freedom properly if the kind of association and specific rights at play have not been identified clearly (Brownlee & Jenkins, 2019).

1.1.1 Equal Freedom of Association

The starting assumptions regarding the complex structure of the freedom of association, which are associated with the fact that the freedom of association serves multiple fundamental individual interests, are simple and largely admitted (see for instance Bezanson et al., 2013; Gutmann, 1998; Warren, 2001). The freedom of association is best thought of as a bundle of different rights rather than a right to a particular thing. The literature tends,

ownership includes at least i) a right of control over the use of property, ii) a right to transfer the rights, and iii) the full immunity for the exercise of these rights (Vallentyne, 1999).

[28] Alexander & Horton (1983) argued that we cannot understandably distinguish free speech from other concepts. Individuals can use various means and media to express themselves (speaking, writing, singing, acting, etc.) and there are different kinds of speech that deserve different kinds of protection (Alexander & Horton, 1983).

however, to fixate on one or two of the entitlements of the freedom of association in that bundle, particularly the rights to exit and exclude, and one or two central interests, particularly the interests in conscience and expression. This obscures important rights to form and join an association, with the unfortunate consequence of considering the different interests that we have in association unequally; and among these is our fundamental relational interest in self-respect.

Yet, from a liberal political perspective, the equal consideration of interests between different conceptions of the good forms the basis of political justice. It requires us to treat different reasonable conceptions of the good life with equal consideration and notes that some fundamental interests should not prevail over others. The freedom of association is equal for all if all citizens have the same claim to state assistance and protection against State interference, regardless of their associative activities. That is not to say that these associative claims are *ceteris paribus* equal, but that the *reasons* that justify interference and non-assistance should be considered equally and regulated by the same rules and methods. Thus, as far as the freedom of association is an equal freedom for all it raises issues of distributive justice related to the allocation of associative resources among citizens (for analogous discussion on freedom of expression see Girard, 2016). Then, if the freedom of association is best thought of as a bundle of different rights and as including a wide range of associations, the risk is to consider different interests unequally and to favour some over others without reasonable cause. This was an issue at stake when the US Supreme Court held that the interests we have in expressive and intimate associations are intrinsically more fundamental than those we have in non-expressive and non-intimate associations. It was also an issue at stake in Laborde's attempt to treat religious and non-religious groups equally, which implicitly denigrated the interest we have in non-expressive and non-religious associations. When different kinds of associations do not have the same protections against interference and the same guarantees of assistance because their associative actions do not fit into the same categories of (expressive) association or are not relevant to the same right (to refuse to associate), it may indirectly affect the distribution of opportunities that citizens have to collectively exercise their right to associate.

Even if the freedom of association is formally equal for all, in a way that it does not appear to be in American constitutionalism, there may be substantial inequalities in the value that this formal right has for particular individuals. These substantial inequalities can be fair. All citizens have an equal claim to assistance/non-interference, but legitimate differences in material and symbolic conditions among them can make it easier for some than for others to

associate. For example, if Martina and Chandran have different fundamental associative interests that are equally considered, and Chandran is better off than Martina, then he will certainly have a greater ability to engage in his associative activities than would Martina. To be substantially equal, that is, for the worth of the freedom of association to be equal for Martina and Chandran, their ability to pursue their associative activity should be equal. Admittedly, no liberal-egalitarian would support the idea that the worth of the freedom of association should be the same for everyone. The worth depends on each individual's ability to advance their ends, which, in turn, depends on the distribution of opportunities to associate. In addition to individual talents and motivations, there are many social and legal conditions distinct from the freedom of association which can influence individuals' abilities to advance their ends (Girard, 2016). The idea that a strict equalisation of all social pre-conditions is necessary to make the worth of the freedom of association equal for all is thus unfair. Nevertheless, conversely, when there are vast inequalities in wealth, power, social status, and/or relational goods and some individuals do not have the real opportunity to associate and achieve their associative activities, then the freedom of association is only formal and does not really exist. The right focal point between the formal and substantial equality of a liberty depends on its relationship with the principles of justice and, more fundamentally, the two moral powers. This dissertation argues that the equilibrium point between formal and substantial equality is the equal worth of the liberty to form social associations, and that it is essential to the social bases of self-respect.

Many authors have pointed to other specific associative interests, such as deliberation (Fung & Wright, 2001; Habermas, 1996), expression (Gutmann 1998; Laborde 2017), conscience (Kukathas, 2007; Mill, [1859] 2012; White, 1998), self-determinacy (Wellman, 2008), personal liberty (Gutmann, 1998), and excellence (Kramer, 2017a, 2017b). Rawls considered the freedom of association an institutional condition for the freedom of conscience, itself having an evident relationship with the first moral power to form, revise, and rationally pursue one's conception of the good (Rawls, 2005b, p. 33). The multiple interests we have in associations coexist. If they should sometimes be weighed against both each other and other concurrent moral values, they are certainly not mutually exclusive. Martina has an associative interest to explore the collective beliefs or express a public message, and simultaneously has a more basic associative interest in affirming activities that are valued by like-minded associates. As a result, no unique fundamental principle can regulate the right to all non-political associations. That is, the different types of associations and rights do not share the same relationship with the interests in expression, conscience, self-respect, self-determinacy, personal liberty and excellence. Finding a single principle to

regulate the claims of all associations is unrealistic. Attempts to specify such a principle always result in the exclusion of a large number of associative interests. If we value non-political associations because they promote the freedom of expression, for instance, we no longer have grounds for protecting the various kinds of associations and rights that have no connection with this value.

The misleading temptation would be to rely – as many have – on a general category of non-political associations that tends to obscure the variety of nature and functions of different associations and rights, thus reducing a plurality of interests to an exclusive interest or a set of dominant ones. This is why I argue that recognising the value of various interests at stake in different philosophical justifications of the freedom of association should result in the disaggregation of 'association' into several categories, and the breakdown of a general right to associate into several more specific rights (Brownlee & Jenkins, 2019).

Thus, I propose to bring to the foreground the basic category of social association and the prior right to form social associations as a paradigmatic illustration of the associative interest we have in self-respect. Social associations and the right to create an association have been ignored in the main philosophical debates for the very same reason that the associative interest in self-respect has been ignored: they are strangers to the expression of the individual message to refuse to associate or the claim to corporate autonomy of organised religions. These ideas on social associations and the right to form social associations are nowhere to be found in the constitutional theories of expressive associations and the right to exclude others, or in theories of the freedom of conscience or on the organisational autonomy of religious associations. These topics are ignored in current theories of justice and almost all schools of political liberalism, where they are usually merged into a generic (and somewhat fuzzy) concept of non-political association (Rawls, 2005a, 2005b) that prevents us from saying anything meaningful on the nature, value, and scope of the freedom of association. The liberty to form social associations is nonetheless philosophically central to our relational interest in self-respect.

I describe social associations as organised, voluntary, secondary, and social. They are voluntary because they are based on free membership and their members have the freedom to leave without excessive cost. They are organised because they are explicitly based on common rules and goals. They are secondary, because they relate to personal connections between non-intimate members and are not based on intimate or depersonalised relationships. They are social because they are based on purely associative relations by means solely of communication, social interactions and on members' compliance with a

normative order; and they are independent by nature from affective, bureaucratic, and/or market mechanisms (Warren, 2001). It does not mean that commitments in social associations do not involve emotions (Alexander & Sherwin, 2003), sentiments, desires, or affective ties, however members rely on the influence of norms more than on that of affective relations for the cohesion of their associations. Social associations neither claim any form of primacy (Walzer, 1967) nor any authority that is alternative to that of the state (Muñiz-Fraticelli, 2014)[29]. Social associations constitute the very idea of association, both in its conceptual definition and in mirroring our daily experiences of it. Conceptually, associative relations comprise the core concept of association (Warren, 2001) because they are based on persuasion and member's' compliance with a normative order, rather than state coercion or a market mechanism. Common-sense meanings of 'association' are rarely concerned with one's spouse or with our identification with our workplace or national communities. In contrast, associations are often mentioned in connection with sporting clubs, neighbourhood associations, or parent-teacher associations. Complex associations, like unions and NGOs, are rarely commonly considered associations. Even though social associations have been utterly absent from philosophical reflections, they can easily be found at the core of our conception of associations and our daily experiences.

Social associations are of little interest in the classical liberal approach. Factions that threaten the democratic process (Hamilton et al., [1788] 2003; Rousseau, [1762] 2012), exclusion and discrimination, collective constraints, intolerant associations (Barry, 2002; Kymlicka, 1996; Locke, [1689] 1991; Okin, 2008), and compelled membership (Shiffrin, 2005; White, 1998) are its favourite issues, closely related to fundamental political and philosophical questions in relation to important debates on democracy, multiculturalism, and the exclusion of cultural and social minorities. However, this is certainly not all there is to say about the value of the freedom of association for liberalism. Social associations are of little interest to this narrow approach; however, I will argue that they are of fundamental importance for citizens to be able to collaborate as free and equal actors in a fair system of cooperation over time[30]. In the next sections, I define the borders of the category of social

[29] As we shall see in Section 1.2.2, by 'primacy', I refer to Walzer's (1967) account of the duty to disobey as arising out of a conflict between obligations imposed by the state and associative obligations originating in secondary associations claiming primacy. Walzer emphasises the relational dimension of commitments and conscience to explain how associative obligations in these associations may legitimately come into conflict with the obligations to obey the state. Examples of associations claiming primacy include organised religions, sects, unions, and revolutionary organisations (Delmas, 2015).

[30] The premises underlying the model of representation is that citizens are free, equal, rational, and reasonable. Justice as fairness rests on a political conception of the person as free and equal, which

association, and then point to its fundamental political value, its contribution to the social bases of self-respect, and the positive obligations it generates. While the next few pages will focus on social associations, the next subsection aims to provide a clear definition of this categorisation.

1.1.2 Defining Associations

The category of *collective associations*, which means 'those kinds of attachments we choose for specific purposes, to further a cause' (Warren, 2001, p. 39), seems a more accurate target for political philosophy[31]. However, the concept continues to include a long list of very different associations. Referring to the primary function of these different collective associations, Brownlee and Jenkins (2019) included intentional communities, associations of producers, and national, state, recreational, expressive, and educational associations within the scope of collective associations. With respect to the phase of the exercise of the liberty, to the common purpose they pursue, their level of personal relation, and the nature of the activities and the interactions they develop with the economic and political spheres, collective associations may have widely varying implications for social justice. We need to delve more deeply into the distinctions among the different types of associations and secondary associations. I propose certain analytical clarifications of a central identified type of association that I consider particularly relevant to social justice. In addition to a constant concern for the requirements of justice for the family and intimate associations (Okin, 1994; 2005; Brownlee, 2015; Brownlee & Jenkins, 2019), political philosophers have mostly been interested in expressive, religious, economic, commercial, and political associations (Cohen & Rogers, 1992; Davis, 2000; Laborde, 2017). Social associations, a category that fits with our everyday life experiments around association and our intuitive ideas of associations as being voluntary, secondary, and beyond the sphere of influence of power and money, are critical in revealing the fundamental associative interests we have in self-respect. Yet, whether the concept of social association is evoked is never clearly specified in theoretical (Lomasky, 2002; Ripken, 2019; Shiffrin, 2005) and empirical

characterises how citizens are to think of themselves. In this sense, citizens have two moral powers: the capacities for a conception of the good, to pursue and revise their own view of the good life, and a sense of justice, and to abide by fair terms of cooperation. Rawls assumed that citizens have a higher-order interest in developing and exercising these powers.

[31] By opposition the category of *non-collective associations* has be understood as referring to the kinds of attachment we choose for their intrinsic qualities, in relation with the personal qualities of the people with whom we associate (e.g. intimate associations as a group of friends, or a family) and not in order to achieve a particular collective purpose that goes beyond the individual qualities of the participants.

studies (Baber et al., 2017; Kwak et al., 2004). On the theoretical side, the term is often confused with 'intermediate associations' (Cox, 1997, p. 409)[32], or worse, taken as a synonym of contractual political society (Cohen, 2003, p. 348). Shiffrin adopts a conception of social associations that is very close to mine, but she only defines it by default, through the opposition to the concept of 'expressive associations' (Shiffrin, 2005, p. 866). On the empirical side, if there is an increasing interest of social capital studies in the category of social association, the term is, however, not clearly defined conceptually and varies from one author to another: while Barber et al. (2017) give social clubs as an example of social associations, Kwak et al. (2004) include religious attendance, public attendance, and informal socialising in the concept of social association.

Most political philosophers believe that the principle of the freedom of association should be 'purpose-protecting' and must protect 'the ability of association members to pursue the primary purposes of their association' (White, 1997, p. 374). Thus, social associations can be used to classify associations pursuing a social purpose. Nonetheless, defining associations through their purpose is difficult and perilous. The distinction between economic and religious associations, for instance, has been criticised as a reductive view both of the marketplace and of religion (Laborde, 2017). Laborde, highlighting the lack of substance in the criticism of the *Hobby Lobby* decision, contended that 'people engage in the market economy for a variety of purposes – including the pursuit of values (ethical investments, corporate social responsibility), trading in religious goods (kosher or halal butchers, Bible sellers), and the provision of faith-based services such health care' (2017, p. 182). She stressed that 'many religious associations do not seek simply to engage in standardly religious activities such as praying, preaching, teaching, or otherwise participating in the rituals of the faith' (Laborde, 2017, p. 182). In espousing this view, Laborde joined Cordelli (2017, p. 586), who contended that 'business firms often have, beyond the purpose of maximising profit, a social mission that reflects some specific conception of the good' and claimed that, as a consequence, 'the "mission-centred" approach tends to take associations as monolithic wholes'. Furthermore, from a functionalist perspective, it is possible to object with Warren that such a focus conveys the 'reductionist view' that associations are good only if they have laudable 'goods and goals', while the 'functions of associations may differ from the motives and purposes of members' (Warren,

[32] In his account of corporate personality, Ripken quickly refers to 'social association' as being all a 'collection of individuals that are created to enhance the lives, voices, and powers of individual members, such as church, clubs, political parties' (Ripken, 2019, p. 31).

2001, pp. 37–38). This is why many authors do not undertake to classify different kinds of collective associations. Most of the time, their considerations of the polysemy of the concept are limited to a general notice of the fact that 'associations are of many different types' (Gutmann, 1998, p. 3), that reasons to protect the association 'might apply only to some forms of association and not to others' (De Marneffe, 1998, p. 145), and that 'the tendency to promote civic virtue will vary according to the aims and internal decision-making process of groups' (Bell, 1998, p. 240). Few robust typologies of secondary associations are available in the literature. The moral postulate according to which the freedom of association is a derivate right of the freedom of expression influences most of them (see for instance Bezanson et al., 2013). We need a complex typology that identifies certain central features of associations to dissociate their different types, and that makes sense of different associational purposes pertaining to different central domains while also acknowledging the interrelations that exist among them.

Even though social justice theorists have paid little attention to secondary associations and have focussed on general conceptions, for at least a decade some theorists of democracy have taken this issue seriously and have tried to dismantle the general categorisations in order to assess particular democratic impacts of different associations. This tradition goes back to Tocqueville's ([1835] 2002) *Democracy in America*, where he described associations as schools of democracy and stressed the role of *certain* economic and political associations in the institutional and social life of American democracy[33]. In the course of addressing the issues raised by his pioneering work, an abundant and growing literature on the political dimension of associations emerged. Many studies have indicated that associations contribute towards strengthening the capacity of resistance to the government (Diamond, 1999; Ignatieff, 1995), have important formative effects on the virtues and civic skills of individuals (Putnam, 2001; Verba et al., 1995; Warren, 2001)[34],

[33] Tocqueville ([1835] 2002) is famous for seeing associations as 'schools of democracy'. Nevertheless, Tocqueville only dealt with private firms and political associations. He was particularly dedicated to the latter, as they were the most prominent and powerful voluntary associations in the United States at the time. He defined them as auxiliary branches of legislative power with three main functions: i) to formulate a political doctrine, ii) to establish local branches throughout the country to enlarge the influence of that political doctrine, and iii) to hold national assemblies for likeminded people to assess the power of their doctrine and positively impress the public sphere (Kateb, [1969] 2007; Tocqueville, [1835] 2002). Tocqueville did not embrace an unequivocal use of the term 'association', sometimes even bypassing this strict definition to include those political associations that put pressure on the government for regarding its public policies (Lively, 1963).

[34] The pioneering works of Robert Putnam have shown that associations of all types help strengthen the principle of 'generalized reciprocity' at the base of social and political cooperation (Putnam, 2001; Putnam et al., 1994).

contribute towards increasing the quality and equality of the representation of interests (Berry, 1999; Ignatieff, 1995), and provide important inputs to public deliberations (Cohen, 1999; Cohen & Arato, 1994; Habermas, 1991). Most of these authors have underlined that some associations are better suited than others to advancing specific democratic contributions, and that 'these contributions are not all mutually consonant with one another' (Warren, 2001, p. 206)[35]. The optimal configuration pertains to the equilibrium between different contributions of different types of associations, and depends on the specific 'political context' and the 'democratic ideal' that we adopt (Fung, 2003, p. 538).

In the rich literature on the democratic functions of associations, we may find very fine-grained attempts to systematise different kinds of associations. Warren's works on this are exemplary, referring to the classical functionalist works of Talcott Parson ([1951] 2013) and G.D.H Cole (1920). If my argument runs counter to the constant obsession to identify and improve the social and political functions of associations that nourish functionalist works (Cole, 1920; Parsons, [1951] 2013; Warren, 2001; Cohen & Rogers, 1992; Hirst, 2013), I take these works – some dated, it is true – to provide the best available typology of different types of association and the conceptual tools to identify social associations as a specific type of associative relationship and organisation. In this functionalist perspective, social associations will be defined by default as associations that have no direct functions in the political or economic spheres, and rest on purely associational relations based on the pursuit of influence within civil society. This functionalist-inspired perspective will be completed with special attention to the functions that the association has historically occupied heretofore (Muñiz-Fraticelli, 2014), while also pointing out various interactions and purposes that can be assigned to different levels of the same organisation (Levy, 2015). The next section examines this mixed proposal. Bearing all these precautions in mind, I define different types of associations in consideration of their main functions and their dominant institutional fields, as well as taking into account their historical trajectories and their internal complexity. My research has not identified any parallel effort in the literature on social justice. All major works in the literature have presupposed the existence of a

[35] Mark Warren underlined three dimensions relative to the contributions of associations to democracy (Warren, 2001, p. 73) : the effects on individual development (sense of efficiency, political information, political skills, and civic and critical virtues), important effects on the public sphere (facilitation of public communication, representation of differences), and institutional effects on democratic institutions (equalisation of representation, strengthening of resistance, democratic legitimisation, alternative governance, and social coordination).

general category of non-political associations, and thus come across as poorly informed on the newest advancements in the theories of democracy.

1.2 Associations as Relations

Almost all our activities imply persistent connections with people:

> We have foundational associative experiences within our families; formative years of schooling with peers and teachers; workplace links with bosses, employees, and colleagues with whom we share at least corridors, carpet, and resources; and connections with like-minded companions, such as fellow hobbyists, devotees, friends, or union members (Brownlee & Jenkins, 2019, p. 1).

If we define *association* through such a general category of associational relations, as 'persistent connections with other people' (Brownlee & Jenkins, 2019), nothing substantial can be said about the nature, value, and scope of the freedom of association. These various associations are voluntary to different degrees, and have different aims and functions and very different dominant modes of relation. They are likely to have different impacts on concurrent moral values; for instance, some are important in securing power, income, and positions, whereas others are not at all determinants of socioeconomic opportunities.

Thus, this thesis relies on conceptualisations created by theories of democracy in order to identify the categories of different kinds of secondary associations. It then focusses on social associations. These associations play no tangible role for democracy or distributive justice, and are therefore of little interest to democratic theorists. This does not mean, however, that they have no value for justice as fairness. The main idea of this thesis is that social associations have fundamental value for self-respect and political justice independently of such functions for democracy.

1.2.1 On the Category of Social Associations

As Voluntary Organisation

Social associations are primarily voluntary and organised. The requirement of a formal structure, whether legally recognised or not, is the basis for a rational organisation that makes it possible to pursue common goals. Whether or not Martina's association aims 'at practising a sport, solving a problem of the neighbourhood, defending an economic interest or campaigning for the environmental protection, the groups are established around

a specific and common objective' (Warren, 2001, p. 39). To be achieved, these diverse collective purposes require rules and minimal decision-making systems (Cole, 1920). I rely on GDH Cole's definition of an association:

> Any group of persons pursuing a common purpose or aggregation of purposes by a course of cooperative action extending beyond a single act, and, for this purpose, agreeing together upon a certain methods and procedures and laying down, in however rudimentary a form, rules of common action. At least two things are fundamentally necessary to any association: a common purpose and, to a certain extent, rules of common action (Cole, 1920, p. 37).

This functionalist definition of association is probably too heavily centred on the organisational dimension of collective associations, and is certainly too restrictive with respect to the entire range of persistent connections that are included in the general idea of associations (Brownlee & Jenkins, 2019). Cole's definition excludes many forms of human associations that are not formally organised, like parent-young child relationships, relationships among colleagues, and spontaneous protests. It relates exclusively to associations that are understood as formal organisations with a formal purpose and rules. Nevertheless, this account of association is necessary and sufficient to specify individual rights that are related to associations as organisations that are free to adopt purposes and rules and to specify associations as rational agents that are able to order ends (Rawls, 2005a, p. 212). This is what makes the very concept of association specific and this is also why the ECHR stresses that an association 'has to be distinguishable from a mere gathering of individuals for the sake of socialising' and requires 'some degree of continuity and institutional elements which clearly distinguish it from public assembly' (OSCE, 2015, p. 39). As associations as organisations are a result of explicit decisions (Young, 1992), we can distinguish them from other close concepts. Associations are thus distinguished from social groups like racial, ethnic, class, and gender groups, which, although socially produced, are not a result of distinctive interests and explicit decisions (Mitnick, 2018; Young, 1992). If Martina is a poor black working woman, she will share similar affinities, lifestyles, and experiences with other members of this social group (that make them more likely to associate with each other), but their constitution as a social group is the result of an ongoing social process of the division of labour and identity differentiation and not that of an explicit decision (Young, 1992). In Mitnick's terms (2018, p. 91), 'one becomes a member of an association specifically because one has interest, of whatever sort, in that association. But one need not have any distinctive interest to be a member of an ethnic, gender, or other social

groups'. Social associations are also distinct from social movements, such as the *Gilet Jaunes* or the *Friday for Future movements*, which emerge in 'a process of interaction between a group of individuals that share common views and the elites and authorities' (Tarrow, 1994, p. 4). Martina's association implies a formal membership and does not defend any particular claim. The municipality itself may not even know that such an association exists. Social associations are also distinct from the notion of community, which is understood as 'a self-contained group of complete human beings', as monastic communities that, contrary to associations, do not exist 'merely for the furtherance of some specific and partial purpose' (Cole, 1920, p. 26)[36] . A community or a social group can be organised in an association. However, that only means that a part of this community or social group has decided to be formally organised around a particular interest and specific objectives. Associations, including community-based ones and those emerging from social movements, are voluntary and formally organised. They pursue specific purposes and have definite organisational structures.

The idea of a formal organisation pursuing a particular purpose goes hand-in-hand with the concept of voluntary association itself, as 'the voluntary nature of associational relations is essential to defining their distinctive quality as a means of social organisation' (Warren, 2001, p. 52). This is why this idea of association is a key figure of modernity, as an organisation replacing involuntary and hierarchical communities with voluntary and horizontal relations (Tocqueville, [1835] 2002; Warren, 2001). Associations, in this sense, are communities of choice (Hirst 2013); they constitute a means that is voluntarily chosen to arrive at a particular purpose (Warren, 2001, p. 52). This characteristic grounds the concept of non-political association, as voluntary membership characterises associations as not being part of the basic structure of society; to the extent that associations are completely voluntary, the possibilities to abridgement of individual rights are very narrow (Pennock & Chapman, 2007).

The voluntary feature of membership within a particular association depends on what free choice is. If there is little to no freedom of choice, then there is no voluntary membership in the association. Yet, for some, free choice of membership is mere fiction because individuals are inserted into numerous involuntary communities that determine their choices and preferences (Walzer, 1998). Social, moral, political, and cultural determinations substantially limit the possibility of free choice, Walzer (1998) argued, and 'complex

[36] I will adopt a specific liberal conception of community in Section 3.3.2.

constraints' seriously restrict the voluntary nature of associations[37]. However, beyond the sociological question of determining whether an individual's choice is free of any constraints, the important question for this study is: Under what criteria can we determine that a choice is free enough to be considered thus? This issue is particularly relevant to the right to leave an association. Walzer's (1998) comments on involuntary communities that determine choices and preferences underline the diverse social constraints that burden an association, and it is not contestable that we are social creatures and that our social context shapes our choices of membership. Once accepted, it remains a question of when a choice is 'free enough' to be considered a free choice (Olsaretti, 1998). For that, I choose to adopt a standard liberal understanding of voluntariness, following Laborde's (2017, p. 174) definition: a group is voluntary 'in the sense that members must be able to leave the group at no excessive cost (so that we can presume they consent to its formal authority structures, even if not democratic)'. The definition fits Rawls' minimalist account of voluntary membership; the condition of no excessive cost, however vague, contrasts with the formal possibility to exit, as supported by Kukathas (2007) as a necessary and sufficient condition for a secondary association to be voluntary. The effective possibility of exiting from an association is a necessary condition for the formally organised association to be voluntary[38]. Hence, a political community – organised with formal rules – is not a social association, as membership in a polity is not voluntary in this sense.

As Secondary Associations

Social associations are also secondary in that they are based on non-intimate personal connections (Everingham, 2018). If associations are voluntarily organised around a specific objective and are regulated by organisational rules, associations would be nothing without people who comprise them. These individuals are connected by interactions and attachments that vary from one association to another. If Martina is a passive member of the national association of Greenpeace, she will not develop the same relations with other members as she would if, for instance, she participates actively in her local neighbourhood association.

[37] Walzer highlighted the effects of socialization inside and outside the home, the social and political skills that make association possible, the unchosen political community where we live and the moral constraints on exit, in order to argue that it is impossible for individuals to freely choose particular associations (Walzer, 1998, p. 64).

[38] It is not a sufficient condition because the voluntariness of the associative membership also depends on the other rights to associate. For instance, if an individual is forced to join an association, we can be sceptical about calling this association voluntary just because members have the effective possibility of exiting without excessive cost.

The literature identifies three kinds of associations based on the degree of relationships that exist among their members (Cohen & Rogers, 1992; Gutmann, 1998; Putnam et al., 1994; Warren, 2001). Primary associations rely on the existence of persistence and comprehensive intimate relationships with others (Brownlee, 2016), secondary associations refer to personal connections between non-intimate associates, and tertiary associations refer to symbolic mediations among distant members (Warren, 2001).

These *degrees* of relations among members have to be differentiated through an examination of the *quality* of these relations. Primary, secondary, and tertiary associations have to be distinguished from primary, secondary, and tertiary 'networks', which are a measure of the interests of the members in each other's lives (Hardcastle et al., 2011, p. 294)[39]. As long as we spend more time with our relations with our colleagues and co-workers than we do with our family members, colleagues can be a form of primary association (Murthy, 2017), but it is not for that reason that we will pay greater attention to each other's lives (even if we probably should). What matters for primary, secondary, and tertiary associations is not the interest in each other's life that we have, but the ways in which we interact with each other. Thus, primary associations constitute 'intimate associations' that are created with the intimacy between relatives or friends, take place among family members, friends, and acquaintances, and 'can exist for their own sake, and they are distinguished by their interactions, persistence and comprehensiveness' (Brownlee, 2015, p. 269)[40]. In contrast, secondary associations are not pervasive and comprehensive, but are based on personal connections and repeated interactions that create close social attachments among members (Everingham, 2018; Putnam, 2001; Putnam et al., 1994; Warren 2001). Tertiary associations offer neither comprehensive and pervasive affiliations, nor regular personal connections, but only symbolic forms of identification (Everingham, 2018). They require the 'bare minimum to be part of the group', which means that members can identify with the group without active participation (Everingham, 2018, p. 293). They are organised on a large scale and imply a mediation among members that is not based on personal connections, but on common ideas and issues shared by the members (Everingham, 2018). Most professional associations and interest groups are tertiary associations, in that members

[39] As a self-help group of alcoholics is a secondary association based on a tertiary network to the extent that despite regular personal connections growing through face-to-face interactions, there is no need for these individuals to build bonds in order to participate in such groups (Hardcastle et al., 2011).

[40] Other distinguishing features of intimate associations are derived from such characteristics, 'smallness, selectivity, and seclusion' (Brownlee, 2015, p. 270)

are relatively 'anonymous to one another and have little in common beyond the specific purpose they are pursuing' (Warren, 2001, p. 39).

Some authors use 'intermediate association' as a generic term to address 'the wide range of non-familial organisations intermediate between individuals or firms and the institutions of the state and formal electoral system' (Cohen & Rogers, 1992)[41]. Similarly, 'collective association' is used as 'a catchword for a smorgasbord of associations, from chess clubs, to trade unions, churches and businesses, which are usually not dyadic, and which have a primary function other than associating as such' (Brownlee & Jenkins, 2019, p. 3). These general categories do not distinguish between secondary and tertiary associations even though their modes of relation are very different. This means, for instance, that membership in Greenpeace, involving the payment of an annual fee, falls in the same category of secondary associations as does membership in a local neighbourhood association involving regular personal connections, regardless of the interactions that take place among members. In the context of my argument, associative interactions are valued for the individual mutual appreciation they enable and, if face-to-face interaction is not necessary, interpersonal connection is necessary for such recognition[42]. Distinguishing between secondary and tertiary associations allows one to not only differentiate among the different types of associations according to their collective dominant mode of relation, but also to distinguish among the different of types of membership within the same association. When defined thus, a neighbourhood association can be a secondary association for someone who is actively involved in all its activities, and a tertiary one for someone who pays a membership fee but does not attend any meetings. Hence, social associations are voluntary and formally organised and are based on interpersonal connections, clearly distinct both from intimate relationships, as is the family, and distant and depersonalised memberships – as are publics (Dewey & Rogers, 2012; Warren, 2001).

[41] 'Secondary association' is also used in a broader sense. For analytical clarity, I use 'secondary' to refer to personal connections and repeated interactions that create social attachments among members; and 'tertiary' to refer to mediation among distant members (Warren, 2001, p. 39).

[42] Personal connections may take place, for instance, through an online community as long as it respects the previous conditions related to the voluntary organisation and the possibility to exit at no excessive cost.

As Social Associations

Associations are social. Several secondary voluntary associations are formally organised around specific objectives and are based on regular personal connections, for example, local parties, neighbourhood associations, sections of unions, sports clubs, small NGOs, and parishes. Social associations specifically include secondary associations that do not have a mediating function with the state or market, as opposed to political associations and trade unions.

I understand the idea of mediating function through Parsons' idea of operative organisations, having distinct modes of operation, but being active in various institutional fields. Parsons' types of operative organisations follow the process of differentiation that prevails in modern societies, each with distinctive modes of operation and normative criteria, namely the bureaucracy, market, and associational relations (Parsons, [1951] 1971)[43]. These three general means of organising societies refer to both three different media (power, money, and influence) and three different institutional domains (state, economy, and civil society). Media refers to the 'way to bring about desired decisions on the part of other social units' (Parsons, [1951] 2013, p. 14). While the bureaucracy and the market are primarily structured by the media of power and money, respectively, the domain of associations refers 'to organisation whose force is derived primarily from associational relation – that is relation based on normative influence' (Warren, 2001, p. 54). According to Parsons, this influence emerging from associational relations aims at bringing about desired decisions 'without directly offering them a valued quid pro quo as an inducement or threatening them with deleterious consequences' (Parsons, [1951] 2013, p. 14). As a result, it 'must operate through persuasion' and 'its object must be convinced that to decide as the influencer suggests is to act in the interest of a collective system with which both are solidary' (Parsons, [1951] 2013, p. 14). Unlike money or power, influence requires social and cultural resources that are determinant and constitutive of any associational relation (Warren, 2001, p. 109). The institutional domains refer to domains constituted by different dominant modes of relation. In this sense, associations take place in the institutional domain where the dominant mode of relation is based on persuasion and voluntary adherence to standards (Warren, 2001).

[43] In theorising his *Social Action Theory and Structural Functionalism*, Talcott Parsons ([1951] 1971) examined the three types of 'operative organizations' that characterise the process of differentiation in modern societies, each with distinctive modes of operation and normative criteria. His central idea is that all domains follow the same fundamental structure as the well-known economic domain, structured by money in the market economy.

With this functional conceptualisation, Warren defined civil society in a relational and non-spatial manner, as 'the social domain of organisation for which the voluntary and associative relation is dominant' (2001, p. 57). Associations, as operative organisations, contrast with bureaucratic organisations, which act in the institutional domain of the state and use power; or with the operative organisation that is the market, which acts in the institutional domain of the economy and uses money as a lever (Parsons, [1951] 2013, p. 22).

Reducing associations to their main institutional domains, however, is equal to reducing them to their main purpose. It can then be rightly argued that the reduction of the functions of associations to their central objectives alone would ignore the unintended effects of such associations (Warren, 2001) and negate the coexistence of a plurality of objectives and means (Laborde, 2017). For instance, many sports clubs have a market aspect to them, with respect to the salaries of employees and trainers. Some have a kind of monopoly over a sport, like the Royal Golf Club. In Parsons' account, however, each institutional domain has its own dominant mode of organisation, but several modes can live within an institution (Warren, 2001). Consequently, associations exist not only in the institutional field of civil society where they are dominant, but also in the market and state. Political parties, for instance, are voluntary associations based on associative relationships, but nonetheless aim at using power to influence the bureaucratic state. Parsons' functional definition of associational relations enables us to report a plurality of modes of action in a single institutional field. With this idea, Warren explains, there is no sealing surface among the state, market, and associations: '

> The fact that associational relations can take up residence, as it were, within institutions that are not themselves associations provides linkages between the spheres of civil society, state, and economy. (…) Thus, some kinds of associations reply purely on the influence of norms for their cohesion: Churches and recreational soccer clubs, for example. Other kinds of associations – advocacy groups, for example – are oriented towards influencing the state (Warren, 2001, pp. 55–56).

Thus, I understand *mediation* as the fact, for an associational relation, to take up residence within institution that is not itself association. From this perspective, the social dimension of social associations is defined by their exclusive associative mode of relation that does not extend beyond the institutional domain of civil society. Without relying neither on reward/punishment nor on affective ties, social associations use persuasion to bring about desired outcomes. They rely on norms that emerge from the members' interactions (e.g. trust)

and/or from their common adhesion to a normative order[44]. In this sense, social associations are secondary ones that are voluntarily organised, that rely purely on associative relationships for their cohesion and that have, by definition, no economic or political functions. This is the case for Martina's association.

However, according to Warren, most associations have blurred these theoretical boundaries. Most of them have a mixed mode of relation and mediate between these diverse institutional fields: 'Unions, for example, seek to leverage markets to gain wage concessions; engage in social investing with pension funds (thus mixing political and economic activities); seek political influence through lobbying and campaign activities; sometimes serve as social clubs; and so on' (Warren, 2001, p. 110). Warren contended that only a few associations 'exhibit the purely voluntary and consensual qualities of associational relations' (Warren, 2001, p. 54). Being defined by their institutional domain and their own dominant modes of relation, associations can be more or less social. Hence, a neighbourhood association serving as a funding pool for the election campaigns of some candidates should not be considered a social association. This is why I focus on associations that have i) a unique associational mode of relation and ii) that do not extend their activities beyond the institutional domain of civil society. Such pure social associations exist. Neighbourhood associations, social clubs, self-help groups, and sport clubs are examples of pure social associations. It is not that pure social associations do not exist, but rather that democratic theorists, mostly interested in deliberation (Habermas, 1996) and coordination (Cohen & Rogers, 1992), have never paid attention to them. For their own reasons, democratic theorists have largely been interested in unions, professional associations, political parties, and all other organisations that potentially reduce the transaction costs and enhance trust among members. As Warren (2001, p. 58) acknowledged, 'for problems of democracy, the associational kinds that mediate between "pure" association, states, and markets are often the most interesting'. From the liberal political point of view that I adopt in my demonstration, however, pure social associations are of great interest.

These criteria are cumulative. To be a social association, an association needs to be purely social in the functionalist sense, and voluntarily organised and based on interpersonal connections. The relations of couples within a family, for instance, can in general be understood as a purely associative relation (if there are no relations of independence and

[44] We will see, however, in Section 1.2.2 that associations may have different approaches based on the norms on which they rely, and may hold different conceptions of the scope of their influence.

authority that interfere in these relations), but certainly not a secondary one. As a social domain, Warren contended, civil society excludes intimate associations like the family, in which attachments are not social or civil but 'private', and 'operate below the threshold of common collective action' (2001, p. 57). Such a definition also excludes associations based on distant relations, as publics are. Associated with the requirement of formal organisation and the different levels of relation that may exist among members, this functional definition of association provides us a clear concept of social association that is dissociated from social groups, social movements, and publics, and is distinguished from primary and tertiary and political and economic associations.

Figure 1. Civil Society and Social Associations

Means of social coordination / Closeness of social relations	Legal coercion	Influence and norms			Money
Distant	State	Political Society	Publics	Economic Society	Market
Intermediate	State associations, religious associations claiming primacy	Political parties, national community	**Civil society, pure associative relationships,** social associations	Unions, professional associations	Firms
Intimate	(Citizens)		Families, groups of friends.		(Consumers)

Social associations can be defined as secondary associations based on interpersonal connections that are neither intimate nor distant, and which rely exclusively on the influence of norms for their cohesion, with no direct dialogue with the political or economic spheres.

1.2.2 The Limits of the Functionalist Approach

This functionalist account is well designed to set a working definition that clarifies the distinctions among different types of associations, not only according to their purpose, but also according to the nature of their relations, constitutive media, and dominant institutional field. It helps us identify social associations and draw an original, clear, but subtle line among different types of secondary associations based on the fundamental functions they serve, while taking into account the porosity of the mode of relations and the diversity of institutional domains. Nonetheless, this perspective does not consider the claim to final authority that some secondary associations relying on norms may hold, or have held in the past, either directly, or indirectly, through their umbrella associations. Associations may have different approaches based on the norms on which they rely, and may hold different conceptions of the scope of their influence.

In light of Warren's (2001) definition, a Catholic parish, as far it is a voluntary, secondary, and organised association, based on associative relations and replying purely under the influence of norms for its cohesion, should be considered a social association on par with a soccer club. Yet, a Catholic parish is not a social association for at least two fundamental interrelated reasons. The first is that a Catholic parish is a *'complex association'* with respect to the Catholic Church, to which it belongs (Levy, 2015, p. 268). The concept applies when an umbrella organisation contains other sub-associations with their own modes of relation, institutional fields, and purposes, functions, and messages (Levy, 2015). A complex association may imply a tension between the specific values purposed by the umbrella association and the purpose of other associations within it. A university, for instance, can have among its missions the goal of promoting gender equality, while containing within it a student association that realises its own specific purposes through a policy membership that excludes women[45]. It is a priori legitimate for the university to not grant the status of student associations to associations that exclude women, while

[45] The last judgment of the Swiss Federal Court on the freedom of association pertained to the acceptance of a discriminatory association in a public institution (ATF (2014) 140 I 201). The University of Lausanne expressed its decision in 2007 to refuse the status of student association to Zofingue based on the fact that this association excluded women from its full membership arrangement. Zofingue made an appeal to the Cantonal Court of Vaud (BGE (2014) 140 I 201), which annulled the decision of the commission on the basis that the University was not authorised to refuse the recognition of the association because of its limited membership. The Federal Court confirmed this in its final analysis. The judgment emphasises that the question was not to know whether gender equality should prevail over the freedom of association, but rather to know if the University of Lausanne, as a public institution assuming a task of the state and for that reason bounded by fundamental rights, is entitled to refuse student association status to an association on this ground.

contrariwise it is also legitimate for this association to pursue its own purpose with its own policies within the university (Levy, 2015). From this perspective, a parish is the lowest ecclesiastical subdivision of the Catholic Church, that is, a religious association, which is institutionally organised with a constitutive authority over the parish. It is not because the parish is incorporated into the formal association that it reflects the principle of authority and the ecclesiastical and canonical legal tradition in which the parish is rooted (Muñiz-Fraticelli, 2017). As expressed by Muñiz-Fraticelli, the legal form of parishes as a religious association is a representation of the legal system that misfits its internal organisational principles, and 'the nature and structure of a church is not constituted by its secular legal form' (2017, p. 139). The Catholic Church is clearly not a social association because it is a high-level overarching entity that regulates various associations that comprise its community.

The second reason is that the complex association at stake, the Catholic Church, is an organised religion claiming partial primacy. By 'primacy', I refer to Walzer's account of the duty to disobey as arising out of a conflict between obligations imposed by the state and associative obligations originating out of secondary associations claiming primacy. Walzer emphasised the relational dimension of commitments and conscience to explain how associative obligations in these associations may legitimately come in conflict with the obligations to obey the state. According to my definition, organised religions, sects, unions, and revolutionary organisations are not social associations because they make a claim to final authority that passes beyond the non-coercive function of social associations (Delmas, 2015). The Catholic parish belongs to the Catholic Church, which has an established authority and hierarchy and a historical claim to authority and primacy in the institutional domain of the state (Muñiz-Fraticelli, 2017). Therefore, a Catholic parish is not a social association is in the way that a recreational soccer club is. It is part of an organised religious association that asserts its corporate independence from secular authority and that claims the primacy of its associative obligations on the duty to obey the state.

This counter-example points to the temporal limits of Warren's (2001) diagrammatic interpretation. This functionalist account certainly offers a good picture of the functions of an association at a particular time. However, it omits the proper history and collective identity of the organisation. In functionalist terms, it ignores the historical dimension related to the precedent functions that the association has occupied (or the function-s that it would occupy). Yet, an association not only can adopt different modes of action in a single institutional field, but can also be active in different institutional domains over time. This

succession of different functions constitutes a kind of identity for the association. That is, an association can move at time T1 from one sphere to another, and this journey will presumably have a historical impact on its actions at T2, T3, or T11. We have to consider the identity effects that could have emerged from such an itinerary. This is particularly so with institutionalised religions, as the Catholic Church enjoyed an authority over its members under ancient constitutionalism, independently of temporal authority (Muñiz-Fraticelli, 2017). A parish that relies on associative relations is possibly active exclusively in the institutional domain of civil society, but it is part of an umbrella association that has a historical claim to primacy and coercion. We can imagine, in contrast, a social association that is independently organised around an esoteric belief, but that does not claim any form of primacy and/or attachment to an external authority. This is the case, for example, of an association part of the Church of the Flying Spaghetti Monster, asserting its atheist beliefs by claiming absurd religious exemptions without relying on a particular structure of authority. Duties may originate in the membership of social associations but should not conflict with the duty to obey the state.

Here, we see that the functionalist perspective is a poor account of what a particular association is, with its particular claims and history, different levels of organisation, and dissent (Levy, 2015; Muñiz-Fraticelli, 2014).

Warren's (2001) functionalist account is well designed to set a working definition that makes clear distinctions among different types of associations, not only according to their purpose, but also according to the nature of their relationships, constitutive media, and dominant institutional fields. It helps us identify social associations and draw an original, clear, but subtle line among different types of secondary associations on the fundamental functions they serve, while taking into account the porosity of the modes of relation and the diversity in the institutional domains. This perspective however does not consider the claim to final authority that some secondary associations relying on norms may hold, or may have held in the past, directly or indirectly through their umbrella associations. If Warren is right to underline the plurality of the modes of action and the porosity of institutional fields, this plurality is also present within norms of a different nature, and across time and along organisational spaces. In view of these comments on the fundamental differences between a parish and recreational soccer clubs[46], I add to previous conditions that a social association

[46] A recreational soccer club can be inserted within a complex association such as a football federation. However, no single entity claims final authority over the state.

should not claim a form of partial primacy (Walzer, 1967) and should not depend on external authority. Pure social associations are thus independent secondary associations with no claim to primacy.

The conceptual, functional, and contextual complexity of this developing definition will be greatly reduced by the focus of my argument on the right to form social associations. The creation of an association relates, by definition, to individual relationships that are neither intimate and do not need to be created, nor distant and, by definition, already spread. The creation of an association is by definition a kind of interpersonal connection between individuals[47]. Furthermore, at the very time of its creation, an association has not yet deployed its operational means and rests by definition exclusively on the associational relations and normative influence between members.

1.3 Associations as Rights

Fundamental rights have long been recognised as a complex bundle of rights. The right to property (Fried, 2004; Vallentyne, 1999), and the right to freedom of speech (Alexander & Horton, 1983), for instance, have been considered to include numerous rights that can conflict with one other. We generally assume that the freedom of speech includes the rights to seek, receive, and impart information and ideas of all kinds. In the same way, the right to ownership includes at least the right i) of control over the use of property, ii) to transfer the rights, and iii) to full immunity for the exercise of these rights (Vallentyne, 1999).

We can reasonably suppose that the freedom of association is not a monolithic right, but comprises multiple normative advantages/disadvantages. Nonetheless, the freedom of association has never been the focus of such a systematic reflection and the complexity of the content of the right has been ignored in political philosophy. Debates have centred on the negative dimension of the freedom of association, and the rights to refuse to associate and exit; with the exception of some recent works on the scope of the freedom of intimate association (Brownlee, 2015; 2016; Lomasky, 2008; Brownlee & Jenkins, 2019) and the role of relational resources in distributive justice (Blake, 2001; Brake, 2017; Cordelli, 2015).

[47] Take for example the well-known association Greenpeace, which can count on about three million members across the world. It began in October 1969 in Vancouver, when 14 ecologist and pacifist militants decided to found a movement called ‘Don’t make a wave committee’ to oppose US nuclear testing.

1.3.1 On the Negative Dimension of the Freedom of Association

The dominant trend in the contemporary literature is to focus on the right to not associate because the moral evaluation of the freedom of association is mainly discussed in connection with cases ruled upon by the US Supreme Court concerning discrimination in membership (Gutmann, 1998; Pennock & Chapman, 2007; Rosenblum, 1998b).

As we will see in Section 3.1.1, in the *Jaycees* decision (1984), the philosophical discussion concerns whether an umbrella student association that is active in market training and networking (and thus a non-social association according to my definition) should have the right to exclude women from active membership. In the *Dale* decision (2001), the moral interrogation concerned whether a large youth organisation, the Boy Scouts of America (for which the classification as a social association needs to be discussed) should be entitled to exclude gay people from leadership positions. In both cases, the central question is to determine whether the exclusion is legitimate and whether the compelled inclusion of the excluded groups (women and gay people) would impair the expression of the association. Then comes the consideration of the impact of the exclusion on non-members, which is mainly related to the principles of equal opportunity and equal respect (Gutmann, 1998). In a similar vein, recent philosophical arguments against the special treatment of religious associations take the right to refuse to associate as the central metric of equal treatment between religious and non-religious groups (Laborde, 2017).

The secondary trend in the literature is to focus on the right to exit an association, especially as part of the liberal criticism against multicultural theories and differentiated group rights. The special preservation of certain groups and practices, though differentiated group rights, has been defended in light of equal access to societal culture among national minorities and majority cultures (Kymlicka, 1996). Some liberal thinkers have argued in this respect that these group rights, at least the polyethnic ones, unnecessarily exceed the universal freedom of association and cause unequal treatment (Barry, 2002; Kukathas, 2007). The right to exit, they argue, is sufficient. Nevertheless, as expressed by Norton, the right to exit 'is one of the few uncontested rights in any debate about the legitimate role of the state in the affair of groups. Thus, the real questions are what is required for an exit to be meaningful and whether the presence of an exit is not just necessary but sufficient to justify deferring to group authority' (Norton, 2016, p. 61). Kukathas (2007), for instance, argued against granting cultural groups special protections and rights, which would go beyond the role of the state to secure civility and undermine the universal freedom of association. He contended that the individual right of the freedom of association – especially the formal freedom to exit an association (that is the

possibility to exit 'without coercion') – should be the unique and central pillar of liberalism, according to its commitment to the freedom of conscience and the core idea that the state is an association like any other. Others have responded to this argument by emphasising that groups may practice internal discrimination, abuse vulnerable members (Levy, 2015; Okin, 2008) and not themselves value the freedom of association, including the right to exit. Brian Barry, who also considered Kymlicka's (1996) polytechnic group rights unfair and unnecessary, contended that there is no real freedom to exit unless the state is prepared to alleviate the costs of exit, 'costs that the state both can and should do something about' (2002, p. 150). He argued that the state should protect its citizens from the most basic offences against their person and be prepared to intervene to ensure a genuine capacity to exit (Barry, 2002, p. 150). According to Barry, the state has 'a positive duty to equalise the opportunity to exit' (2002, p. 64). Pushing the egalitarian argument of the fair conditions of exit to its ultimate implications, Cordelli (2017) argued that the difficulty to exit some organised religious associations justifies the right to democracy within these associations.

The rights to refuse to associate and to exit are two sides of the same coin, as they are both part of the right to not associate. Both relate to the principle of free membership, according to which no one is compelled to associate with unwanted members. The first pertains to the internal component (exclusive membership), and the second to the external component (exit membership). The scopes of the rights not to associate and to exit, part of the principle of voluntary membership, pertain to only one principle among those that constitute the full range of application of the freedom of association. If discussions on exit and exclusion are important, particularly in a multicultural context, and especially in the US historical context of slavery and racial discrimination, I argue that this exclusive reading creates a blind spot around many other important moral issues related to the freedom of association. Determining whether an association may retain or exclude members and, if so, under what conditions, are important ethical questions. However, they are certainly not the only ones. There can be many other state limitations on the freedom of association that are not relevant to the right not to associate. However, the right to exclude monopolises the entire discussion on the justifiable limits to the freedom of association. Overall, with few exceptions (Brownlee, 2015; Cordelli, 2015; Lomasky, 2008; Brownlee & Jenkins, 2019), political philosophers seem more interested in the right not to associate than with that to associate.

This assertion on the narrow focus of the literature on the negative dimension of the freedom of association has to be relativised by the fact that some liberal political philosophers have been interested in the principle of organisational autonomy. It was the explicit concern of

Rosenblum (1998) and Barry (2002) when they criticised the congruence thesis according to which 'associations should share the same liberal characteristics as the State because they are privileged places to cultivate moral and political dispositions necessary to liberalism' (Rosenblum, 1998b, p. 37).

If each of the previous exposed works adopted a narrow focus, taken together, they may have highlighted some of the many forms of human interactions, including the freedom of association. In *The Stanford Encyclopaedia of Philosophy*, Brownlee and Jenkins (2019) appreciated the complexity of the content of the right of freedom of association and referred to the right to organisational autonomy, the right to exclude and to exit as the standard liberal view of the freedom of association.

This triptych is incomplete and omits some important human interactions without which such rights would be meaningless. In my view, the greatest absence is the right to create an association as distinct from the right to join one. The right to create an association is an integral part of the right to the freedom of association. We can join an existing association, enter a pre-existing membership that suits our beliefs and wishes, and, eventually, contribute towards altering the substance of its membership, but at the beginning of any association, there is an act of establishment. As Brownlee (2015, p. 379) noted, the positive protection of access is necessarily prior to whatever negative options we may have; and the right to exclude, exit, and belong *presuppose* that we already belong to an association (Brownlee & Jenkins, 2019). Denying the right to create an association while assuming the right to refuse to associate, to exit, or of organisational autonomy, would be as meaningless as supporting a right to expression that would include the right to receive and impart information but not to seek it. Yet, until recently, only the proponents of associative democracy and a few pluralists (Cohen & Rogers, 1992; Rosenblum, 1998b) have noticed the normative importance of the right to create an association.[48]

There are good reasons to think that, if the right to create an association has been ignored so far, it is because of the constitutive tension between the claim rights to associate and refuse

[48] The first underline the fact that group power tends to reflect inequalities in the conditions that are favourable to group formation and that 'the poor, those whose size and/or dispersion produces high organisational costs and those sharing aims whose expression is less easy to negotiate or compromise' are less organised and underrepresented (Cohen & Rogers, 1992, p. 422). The second assert that the claim to exit associations and the fact that 'the formation of associations is at least as important as their preservation' (Rosenblum, 1998b, p. 21).

to associate, between our needs for social connections and associative control (Brownlee, 2015; Lomasky, 2008), a tension for which liberals, with concerns for individual autonomy and rights, have always implicitly tipped the balance on the side of associative control. The central idea beyond this quick liberal resolution of the tension, against which my argument is based, is that if citizens cannot be forced to associate, then there can be no positive right to associate (Hirsch, 2011; White, 1997). Thus, as long as the freedom of association also includes the right to refuse to associate, and while we still need to spend time together to be associated, we cannot be forced to be associated with those who would like to associate with us (Gheaus, 2018). Let me further explain this position with the help of Brownlee and Jenkins (2019), to then expose in Section 1.3.2 the impact of my focus on social association on such an argument.

Brownlee and Jenkins (2019) described 'the right to exit, to exclude and to organisational autonomy' as the standard liberal view of the freedom of association, and stressed that this framework does not guarantee any access to the goods of associational life itself. Mobilising the Hohfeldian apparatus, Brownlee and Jenkins meant that if someone has the liberty/privilege to exclude, as the liberal view supports it, then it presupposes that others have a non-claim to associate (Hohfeld, 1917). To illustrate this argument to which I do not subscribe, if Martina has permission (liberty/privilege) to refuse to associate, it logically means that anybody else has no right (non-claim) to associate with her, or prevent her from exiting the association. If Martina has the right to refuse to associate, or the privilege to associate or abstain from associating, it implies indeed that others have a non-claim to associate, and that the associative interest of others cannot impose a duty on Martina. Undeniably, in the Hohfeldian apparatus, the rights to associate (to create, join, and participate) and to refuse to associate (to exit and exclude) cannot coexist simultaneously in the same normative relationship. As several liberal political philosophers have argued that the right to refuse to associate and exclude was a logical correlate of a meaningful freedom of association (Hirsch, 2011; Laborde, 2017; Lomasky, 2008; White, 1997), it appears that there is no substance for the right to create an association.

This standard liberal view has been recently questioned by moral and political philosophers who stress the positive dimension of the freedom of association (Brownlee, 2015, 2016; Cordelli, 2015). They argue that we have a fundamental interest in social connections and that this fundamental interest is sufficiently weighty to grant certain positive social rights (Brownlee, 2015; 2016) and justify a positive duty to provide real opportunities for association (Cordelli, 2015). All these arguments, however, presuppose a necessary trade-off between the positive and negative dimensions of the right to associate. Just like Brownlee (2016, p. 68) who argued that 'despite worry about illiberality, there are strong reasons to distribute social

resources'. According to this view, if there is a substantial positive right to associate, it comes at the cost of a substantial claim right to refuse to associate.

In my view, the nature of what Brownlee (2016) calls *the sociability dilemma* changes based on the type of associative relations at stake and the relational goods that such relationships sustain. The particular position of each author vis-à-vis the trade-off depends ultimately on the particular relationships that they target and the good they identify. Having a positive right to marriage-like legal frameworks (Brake, 2011; 2019; Chambers, 2017), a caring relationships for the elderly (Brake, 2017), decent social connections (Brownlee, 2016), or interpersonal relationships (Cordelli, 2015) imply very different constraints on the right to refuse to associate. For instance, Brake (2017, p. 141) thought that making caring relationships and their goods available to all 'is relatively low cost and does not interfere with implementing the existing principles'. Then, if it is right that there is a logical tension between the claims to associate and refuse to associate, the intensity of the tension and moral dilemma that it raises must be understood in light of these particular relationships and generalisation must be avoided.

1.3.2 The Right to Form Social Associations

Beyond the logical relations that connect the claim rights to associate and refuse to associate, the question is what the claim pertains to.

Positive uses of social resources create what Brownlee (2016) called an 'each-we' dilemma when everyone in a group puts pressure on the same social resources. In Brownlee's (2016, p. 66) terms, the limited social resource is human company, for Martina, which is scarce because of Martina's preferences for particular relations and her 'decision to see the available resources as limited'. Yet, for Martina, human company is certainly a relational resource, but is a particular relational resource that relates to an intimate connection with a particular person, and for which scarcity is created by individual preferences.

In my argument, in contrast, the relational resource refers to interpersonal relations that are valued for the sense of one's own worth that such relations sustain. For Chandran, for instance, who does not have the right to associate with her, Martina is only one particular form of interpersonal relations among several others. Chandran's fundamental associative interest is not to associate with Martina as such, but with someone and to be able to affirm activities that are rational for him and shared by others. Thus understood, the associative relationships that form the target of my argumentation are very close to what Aristotle called advantage-friendships in that each party 'sees in the other qualities that are useful for attaining a particular end' (DeLue, 1980, p. 338); as distinct from character-friendships based on 'properties that

belong to the friend essentially' (Cooper, 1980, p. 640)[49]. Chandran's preference for Martina, if it exists, is not relevant. His need of interpersonal connections and mutual appreciation is meaningful. This is the fundamental difference between the freedoms of intimate and social association, which refer to very different types of resources. Yet, interpersonal connections are not a competitive resource and self-respect is 'neither non-divisible, nor unavoidably scarce' (Cordelli, 2015, p. 71). As Cordelli explained, self-respect has to be understood like public goods 'insofar as the consumption of these goods by one of the parties within a particular relationship does not generally reduce the consumption of the same good by the other parties within that same relationship' (2015, p. 90). Interpersonal connections are non-competitive vis-à-vis self-respect: the more people associate, the more opportunity there will be to associate. In contrast, a relationship with Martina is scarce and competitive: it is limited by her preferences; she can choose to associate or not, and can choose with whom to associate. My argument, then, refers to a type of relational resource that differs from intimate associations in nature.

Political liberalism, as a political philosophy, has different fundamental reasons for its interest in personal relations compared to moral philosophy. While the ethic of sociability concerns itself with the moral duty we owe each other, political liberalism is concerned with social justice and the conditions of fair cooperation between free and equal citizens. From this perspective, self-respect is understood as a basic primary good, as an all-purpose good that is necessary to pursue any conception of the good, and, through its social bases, as a social primary good subject to distributive justice. Political liberalism is not concerned with particular persons or groups, but with equal consideration of different reasonable conception of the good and political representation of fundamental interests. The dilemma is very different when seen in this political light: whom we associate with appears less important than what we associate for; the popularity of a person is less important than the activities, mission, and ideas of the association. This is the core substance of the concept of sociability following the idea that it is 'not an interaction of complete personality but partial interactions based on symbolic and equal personality, departed from reality' (Simmel, 1949, p. 255)[50]. In social associations, we can

[49] Aristotle (2001) identified three types of friendship: pleasure, advantage, and character friendships. Cooper (1980, pp. 636-640) suggested that these types fall into two categories: pleasure/advantage friendships, based on 'a sharing of benefits', and character friendships, based on 'properties that belong to the friend essentially'. This distinction makes sense, as Aristotle (2001, pp. 25-28) thought that people 'help each other by throwing their peculiar gifts into the common stock' and that 'both utility and pleasure seem to be found in this kind of friendship'

[50] Simmel (1949, p. 255) explained, 'where real interests, co-operating or clashing, determine the social form, they provide themselves that the individual shall not present his peculiarities and individuality with too much abandon and aggressiveness'. In sociability, 'whatever the personality has of objective importance, of features which have their orientation toward something outside the circle, must not

associate and develop self-respect regardless of the particularities of the people with whom we share these ideas and undertake associative activities. There is no logical impossibility to ensure both substantive rights to form social association and to refuse to associate. Consequently, we have to complete the classic triptych, constituted by the rights organisational autonomy), which I would prefer to specify as the right to participate[51], to exclude, and to exit (Brownlee & Jenkins, 2019) with the right to form social associations.

I think that analytical clarity requires thinking of the different claims related to the freedom of association in terms of *temporal sequences*, themselves comprising different normative advantages/disadvantages. The different rights to associate and not associate cannot take place simultaneously in the same Hohfeldian relationship, and the positive acts of forming associations are considered 'a precondition' for other rights. This precondition means that the right to create an association has been exercised before other rights. In this perspective, I support the view that it is possible to decompose the right of association into three logical and relevant temporal sequences: start-up, exercise, and termination phases, each comprising many normative advantages/disadvantages. In the *start-up phase*, when people decide to unite their efforts in common activities in the association, individuals are free to not associate with others, to adopt a common objective, set up their own rules of governance, and determine the conduct of their association for themselves[52]. Members are (also) free to exit without excessive cost and non-members are free to join an existing association without suffering wrongful discrimination. In the *exercise phase*, when the association undertakes actions to achieve its objectives, associates should be free to welcome new members and reject others, to freely redefine their objectives and rules of governance, and to take necessary collective action and apply for the public domain and subsidies. At any time, members are free to exit their association without excessive cost. Finally, in the termination phase, members should be free to give up their

interfere. Riches and social position, learning and fame, exceptional capacities and merits of the individual have no role in sociability' (Simmel, 1949, p. 256).

[51] It is puzzling to see 'liberty' and 'principle' coexisting within a set of rights. It is not clear why the liberty to exit and to not associate and the principle of organisational autonomy should be treated on par. Exclusion and exit refer to liberties as normative advantages that compose the right to not associate, while organisational autonomy seems to refer to the central range of application of the freedom of association. I think that analytical clarity requires substituting 'organisational autonomy' for the 'right to participate' when referring to the contend of the moral right to associate. In the course of my argumentation, I will use the verb "leaving" (as stoping short participating) interchangeably with "exiting" (as going out), and "forming" (as giving shape) interchangeably with creating" (as puting into existence).

[52] The list is not exhaustive. My argument aims at supporting a claim right to meaningful options to create an association, as Barry (2002) did for the right to meaningful options to exit, a claim that is absent in this rather long list.

collective purpose and rules or modify them deeply, as they are free to individually dissociate at no excessive cost from the association, and from its purposes and rules. These different temporal interactions produce different claims/duties and generate various permissions/non-claims to third parties. The same claim may be present in different temporal sequences. For instance, in the claim t*o refuse to associate*, an individual has the right not to associate with new members in the exercise phase (the favourite case of the US Supreme Court), but also in the start-up and termination phases[53]. As a result, denying the positive acts of forming associations is also a denial for the claim to not associate during this prior temporal sequence.

This complex structure of the freedom of association explains the ambiguous place it occupies in the debate on the nature of rights. Among the rights that constitute the complex bundle of the right to associate, some are joint rights, such as the right to form an association, which requires right-holders to synchronously exercise their individual rights for a benefit that must be enjoyed together (Preda, 2012b), whereas others are purely individual rights, such as the right to exit an association. Still others are corporate individual rights, such as the right to refuse to associate when it takes the form of an individual authorisation to express a predetermined collective message (List & Pettit, 2013). Similarly, some of these rights are universal, such as the right to create an association that we have as human beings, while others are group-differentiated rights, as far as they are the source of differentiated rights between members and non-members of the association (Jones, 2009). A right to freely contract a membership in a sports club, for instance, provides facilities and services for which non-members have no legitimate access (Jones, 2009)[54].

Finally, these rights can be exercised simultaneously as well as at different times and places. Martina has the individual right not to be discriminated against in the local meeting in which she participates because of her membership in a particular association, whereas she may express, through her membership of this same association and at the very same time, the collective refusal to associate with a particular social group (that is, we can imagine, the reason

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[53] From a legal point of view, in the creation phase, the case for the liberty to refuse to associate with unwanted members is stronger, and considered far less problematic (Besson, 2001). For instance, Swiss law treats the constitution and exercise of the freedom of association differently and draws a distinction between a phase of constitution, for which the freedom of association is limited 'by the law and the good current customs in Switzerland at this moment', and a phase of exercise where the freedom of association is not only restricted by law and the current customs but also 'by the statutes of the association and what has been settled in the phase of constitution' (Besson, 2001, p. 50).

[54] Thus understood, group-differentiated rights are 'entirely unexceptional', and not problematic for political liberalism as long as they do not affect equal citizenship and political rights (Jones, 2009, p. 39).

for some participants in the local meeting to prevent Martina from expressing herself). We can imagine that Martina has previously exercised her joint right to form this association with like-minded associates; and that she will, in the future, exercise her individual right to exit this association. The freedom of association is a complex right that comprises different temporal sequences and claims, including the positive acts of forming associations.

While the rights to refuse to associate and exit an association are what have attracted philosophical attention through the discussion of legitimate exclusions from expressive memberships and the critics of multiculturalist group-differentiated rights, the right to create remains largely unexplored. Now that the concept of social association and the right to create one have been explicated within the complex object of the freedom of association, let me deploy this paradigmatic category to emphasise the importance of the freedom of association within political liberalism and examine its value

PART 2. On the Value of Social Association

The everlasting and somewhat implicit idea that the freedom of association includes all non-political associations in the same way has deep roots in political philosophy. From a Rawlsian perspective in particular, social associations form a part of the generic category of non-political associations, including families, national communities, and economic associations (Rawls, 2005a, 2005b)[55].

In this part, I deploy the category of social association and focus on the liberty to form social associations to re-examine the relationship between the freedom of association and the two moral powers. I aim to clarify the normative implications of the relationship between non-political associations and self-respect for the normative status of the freedom of association. Theoretically, the category of social association will allow me to examine the whole range of contributions of non-political associations to political justice in a systematic manner, versus their disorderly treatment by Rawls. To illustrate, he used the term 'freedom of association' only 21 times across all his books (Rawls, 2001, 2005a, 2005b), while using the word 'association(s)' 342 times[56]. This shows that if the idea of 'association' is extensively used by Rawls, the place and role of the 'freedom of association' for political justice, its relationship with the two moral powers, is almost not discussed at all. 'Association' appeared mainly when Rawls wanted to underline the relationship and the fundamental differences between involuntary political society and voluntary associations, and to explain why these spheres should be regulated by different principles of justice. Normatively, my insistence on the liberty to form social associations and the social bases of self-respect will allow me to single out a relevant relationship – voluntary, organised, secondary, and social – that allows social institutions to unconditionally support them as source appraisal-respect.

Thus, in Section 2.1, I highlight how social associations have a fundamental value for political justice that cannot be reduced to an institutional condition for the freedom of

[55] As noted in previous section, by 'social associations', I mean ones formally organised with a purpose and rules, based on non-intimate personal connections, that one may quit at no excessive cost, and that does not have any particular economic or political function, nor any claim to authority.

[56] Rawls used the word 'community' 129 times and 'association(s)' 342 times (403 in counting variations of the term as association(s) of men (3) and of citizen (7), free association (7) and industrial association (1), scientific association (13), private (8) and voluntary association (10)). I thank Julien Jaquet (UNIGE) for the quantitative analysis.

conscience[57]. Based on the category of social association, I am going to re-elaborate a Rawlsian argument by insisting on the fact that social associations allow citizens to collectively explore non-political values like excellence, to strengthen their sense of worth and conception of the good, and to develop a generalised sense of reciprocity and attachment to social institutions. From these many contributions of the freedom of social association to social justice that I have identified, self-respect is incontestably the most important and most relevant, as it explains the relationship between the freedom of social association and both moral powers based on reasons that are available to the parties in the original position. I finally complete this enhancement of the relationship between self-respect and social associations, which can certainly be generalised to all non-political associations, with a critical complexification of Rawls' concept of self-respect. I show that – because they are defined as voluntary and are based on regular personal interactions – social associations constitute the paradigmatic category of associations that allow members to develop standard self-respect through mutual appraisal, and – because they are organised and social – they represent the rare type of associative relationships on which feature of institutions may rely to ensure the social bases of standard self-respect.

In Section 2.2, I examine the conditions of securing standard self-respect, paying special attention to the different temporal sequences that compose the bundle of rights to associate, highlighting for each of them the corresponding circumstances under which individuals maintain, protect, or develop standard self-respect. I show that the different rights in the bundle of freedom of social association require different degrees of support and different understandings of equality of opportunity, and I support the view that citizens should have, in addition of the actual ability to leave and the fair equality of opportunity to join and refuse to associate, an equal value of their liberty to form social associations. I explain why providing an all-purpose means to create a social association does not require an interest in having others equally fulfil their conception of the good, but an interest in treating them justly.

In Section 2.3, based on this relationship and its normative implications, I support a reasonable extension of the proviso of fair value to the freedom to form social associations[58]. I present the

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[57] When Rawls introduced the freedom of association as a basic liberty in *Political Liberalism*, it was like an institutional condition for the freedom of conscience, having itself an evident relationship with the first moral power to form, revise, and rationally pursue a conception of the good. He wrote, 'Here we should observe that freedom of association is required to give effect to liberty of conscience; for unless we are at liberty to associate with other like-minded citizens, the exercise of freedom of conscience is denied. These two basic liberties go in tandem' (Rawls, 2005b, p. 313).

[58] The proviso of the fair value of political liberties implies that political liberties are a subset of basic liberties for which citizens who are similarly endowed and motivated should have similar opportunities to hold office, influence elections, and so on, regardless of their social position.

equal worth of the liberty to form social associations as an assurance mechanism for citizens to enjoy at least a community of interest where they can pursue their conception of the good and develop a sense of self-worth and self-confidence necessary for it, and argue that both the equal worth of the political liberties and the freedom to create a social association are essential for the adequate development of the moral capacities of citizens. They ensure that no citizen will be relegated to an inferior public status over time and that they all have at least one place where they can acquire and develop a sense of their value. Together, and together only, I argue that they publicly express the social bases of self-respect that are essential for the Rawlsian fair terms of social collaboration and – this a truism – for political justice. Defining the fair value of the freedom of association as the conditions that emerge when people with similar abilities and ambitions have the same chances of success to form social associations, I explore the contours and implications of such a right for the state and its administration.

2.1 The Political Value of Social Association

From a Rawlsian perspective, social associations form a part of the generic category of non-political associations, which includes families, national communities, and economic and religious associations (Rawls, 2005a, 2005b). The very different associations constituting this set are consistent in that they all lie outside the direct scope of the principles of justice and can therefore adopt rules according to their particular objectives. To explain why these spheres should be regulated by different principles of justice, Rawls wrote:

> Once we realize a certain structure of institutions, we are at liberty to determine and pursue our good within the limit which its arrangement allow (…) this sequence does not aim at the complete specification of conduct. Rather the idea is to approximative the boundaries, however vague, within which individuals and associations are at liberty to advance their aims and deliberative rationality has free play (Rawls, 2005a, p. 566).[59]

[59] At the beginning of Political Liberalism, Rawls noted two major differences between association and political society: 'The first is that we have assumed that a democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for all the main purposes of human life. It is closed, as I have said, in that the entry into it is only by birth and exit from it is only by death. (…) Thus, we are not seen as joining society at the age of reason, as we might join an association. (…). A second basic difference between a well-ordered democratic society and an association is that such society has no final ends and aims in the way persons or associations do. (…) In contrast, a democratic society with its political conception does not see itself as an association at al. It is not entitled, as associations within society generally are, to offer different terms to its members (in this case those born into it), depending on the worth of their potential

All non-political associations may adopt internal principles that are specific to their *raison d'être* and objectives. However, these spheres of freedom are defined by the principles of justice that may apply indirectly to them (Baehr, 1996; Lloyd, 1995)[60]. Only political associations are excluded from this Rawlsian concept of non-political association, as they are components of the basic political liberties that are subject to the exceptional requirement of fair value[61]. All other associations are defined in opposition to the basic structure of society and principles of justice as a black mirror of political justice.

The problem, however, is that such a general category is untenable. These various associations are voluntary to different degrees, with different aims, functions, and dominant modes of relation. They do not have the same relationship with the two moral powers, and cannot be regulated by the same unique principle. The tension particularly manifests in the opposition between this all-encompassing category and the justification of the freedom of association as a basic liberty that is strictly conceived as an institutional condition for the freedom of conscience. While the category of non-political association includes, among others, national communities and economic associations, *Political Liberalism* provides us with a limited justification of the freedom of association as an institutional condition for conscience that excludes most of these non-political associations. As a result, there is an apparent gap between Rawls' inclusive concept of association and the basic status of the freedom of association. This theoretical leap is abrupt and remains ambiguous regarding the kinds of non-political associations that can fall under this category. The only certainty is that non-political associations in general, and economic associations in particular, cannot qualify as institutional conditions for conscience. Otherwise, the principles of justice would lose all substance and the

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contribution to society as a whole, or to the ends of those already members of it. When doing this is permissible in the case of association, it is because in their prospective or continuing members are already guaranteed the status of free and equal citizens, and the institutions of background justice in society assure that other alternatives are open to them' (Rawls, 2005b, pp. 41–42).

[60] Rawls (2005a, pp. 261-262) explained: 'If many if not most cases these principles give unreasonable directives. To illustrate: for churches and universities different principles are plainly more suitable. Their members usually affirm certain shared aims and purposes as essential guideline to the most appropriate form of organisation. The most we can say is this: because churches and universities are associations within the basic structure, they must adjust to the requirements that this structure imposes in order to establish background justice. Thus, churches and universities may be restricted in various ways, for example, by what is necessary to maintain basic equal liberties (including liberty of conscience) and fair equality of opportunity. (…) it seems natural to suppose that the distinctive character and autonomy of the various elements of society require that, within some sphere, they act from their own principle designed to fit their peculiar nature'.

[61] Despite the few variations in Rawls' specifications of the proviso, it is possible to define it as a 'fair opportunity to take part in and to influence the political process' (Rawls, 2005a, p. 225).

entire body of justice as fairness would be questioned. The few theorists who have taken an interest in the status of the freedom of association in justice as fairness have been challenged by this theoretical leap and the resulting duality, leading some of them to question the basic status of the freedom of association because of the lack of a single regulative principle for different associations (De Marneffe, 1998). Others, however, have referred to a 'complex' sort of freedom at the intersection between personal and economic liberties, part of which are subject to the first principle of justice and the rest to the second (Kordana & Tabachnick, 2008).

Based on the ambiguities Rawls leaves concerning the precise scope of the freedom of association and perimeters of the basic structure of society[62], many authors have attempted to extend the scope of the principles of justice to private law (Blanc & Al-Amoudi, 2013) so as to include specific forms of associations in the basic structure of society. They have attempted to show, with varying degrees of success, that the following categories ought to be included: families (Baehr, 1996; McClain, 2004; Okin, 1994; 2008), non-profit associations (Fischer, 1997), organisations (Herzog, 2018), businesses (McMahon, 2017; O'Neill, 2008), large corporations (Norman, 2015), unions (White, 1998), and workplaces (Landemore & Ferreras, 2016)[63]. From a Rawlsian perspective (and yet beyond Rawls' words), these different associations have different relations to the two moral powers and must thus be treated accordingly with due regard for the principles of political justice. In this respect, some are basic liberties whereas others are not. Nevertheless, comments and discussions concerning the non-political freedom of association have always focussed on limited cases within the concept, mainly on family and economic relations. The main approach is to identify a borderline case – for example, a sexist family (Edenberg, 2018; Okin, 1994), a union that pursues a good life conception (White, 1998), a non-profit association with deliberative functions (Fischer, 1997) – and examine its impact on justice as fairness. My approach – complementary and opposite

[62] The basic structure of society can be defined as the location of justice – the main social and economic institutions that distribute the benefits and burdens of social life.

[63] The most successful criticism came from Susan Okin. Although she welcomed A Theory of Justice and proposed to amend it for feminism, she argued against Rawls' stand that reinforced the division between the political and non-political spheres, making gender equality more intractable (Edenberg, 2018; Okin, 1994). A sexist comprehensive doctrine, Okin contended, may undermine children's capacities to acquire the political virtues required of future citizens. She argued that 'it is difficult to see how one could both hold and practice (in one's personal, familial, women and associational life) the belief that are naturally inferior, without it seriously affecting one's capacity to relate (politically) to such people as citizens "free and equal" with oneself' (Okin, 1994, p. 29). Therefore, Okin argued, a sexist comprehensive doctrine may undermine the overlapping consensus in reinforcing incongruence between political and non-political values and the blind spot on gender justice undermines Rawls' account of a stable society.

opposed to this – tries to identify a neglected category of association, namely the social association. Unlike a family, trade union, or association with political or economic functions, there is no doubt that social associations are not part of the basic structure of society and are therefore not directly subject to the principles of justice. As voluntary, secondary associations without the function of mediation with the state or market, they capture the heart of Rawls' idea of non-political associations. They must, therefore, be free to organise themselves voluntarily according to their objectives and interests, independently of the principles of justice. Social associations are not the only ones to be included in the basic freedom of association. Some economic associations or families may prove to be associations that ought to be subject to the first or second principle of justice, while other examples in the same categories may not. It is not my purpose to discuss all these complex cases to establish a coherent conception of this full-fledged freedom. Nevertheless, social associations have the merit by their very definition and nature of being unquestionably excluded from the basic structure of society and direct application of the principles of justice. As Rawls often reiterated, this does not mean that their members' individual rights are not protected by the same principles. Thus, the rights of the members of social associations are indisputably and reciprocally part of the basic freedom of association, subject to the first principle of justice[64].

Henceforth, I refer exclusively to this idea of social association when assessing the role of the freedom of association – which we can now call the freedom of social association – with respect to political liberalism and the two moral powers. The idea of social association does not play a justificatory function at the heart of Rawls' theory. In the original position, the parties do not need the idea of social association to adopt the freedom of association as a basic liberty.

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[64] In 'The Idea of Public Reason Revisited', Rawls (2005b, pp. 468–469) stated: 'The principles of political justice are to apply directly to this structure, but are not to apply directly to the internal life of the many associations within it, the family among them. Thus, some may think that if those principles do not apply directly to the internal life of families, they cannot ensure equal justice for wives along with their husbands. Much the same question arises in regard to all association, whether they be churches or universities, professional or scientific associations, business firms or labour unions. The family is not peculiar in this respect. To illustrate: it is clear that liberal principles of political justice do not require ecclesiastical governance to be democratic. Bishops and cardinals need not be elected; nor need the benefits attached to a church's hierarchy of offices satisfy a specified distributive principle, certainly not the difference principle. This shows how the principles of political justice do not apply to the internal life of a church, nor is it desirable, or consistent with liberty of conscience or freedom of association, that they should. On the other hand, the principles of political justice do impose certain essential constraints that bear on ecclesiastical governance. Churches cannot practice effective intolerance, since, as principles of justice require, public law does not recognize heresy and apostasy as crimes, and members of the church are always at liberty to leave their faith. Thus, although the principles of justice do not apply directly to the internal life of churches, they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject'.

My theoretical expedient allows me to view the individual rights at the heart of the associative relation as more clearly included in the basic freedom of association – a relation that is devoid of any ambiguity on the association's voluntary nature, any implication in terms of economic and political opportunities, and any complication that arguably gets in the way of a liberal paradigm on the freedom of association. For the universal principle of non-political association and the discussion of its case limits, I highlight the core of the value of associative relations. The value of the freedom of social association is the value of the freedom of association itself, yet without the complications that any particular example generates. Beyond the debates on the voluntary or involuntary nature of the family, the right to exclude by expressive associations, and the redistributive functions of trade unions, the associative relation holds something significant, and yet is poorly considered. The main loss in this messy discussion of different types of associations is the simple value that associations have for individuals' self-respect and ability to pursue their conception of a good life.

2.1.1 Associations and the Two Moral Powers

For Rawls, the freedom of association has an indirect connection (through conscience) to the first moral power (and not the second). This is a valid yet weak foundation for basic liberty, which was omitted in *A Theory of Justice* (Rawls, 2005a). In Section 2.1.1, I challenge those claims, and argue that the freedom of social association has a direct connection with both moral powers. I apply the *Moral Powers Test* to the freedom of social association to examine the status of basic liberty through its contribution to the two moral powers and their corresponding fundamental interests (Brennan, 2020; Rawls, 2005a)[65]. I organise my argument following Rawls' classical argumentative strategy (Section 2.1.1). For both moral powers, I first treat the contribution of the freedom of social association within the restricted framework of the original position, and then in a well-ordered society. I then complete this enhancement of the relationship between self-respect and social associations with a critical complexification of Rawls' concept of self-respect (Section 2.1.2).

[65] The Moral Powers Test qualifies a statement as a basic liberty if and only if it bears the right relationship with our two moral powers, a capacity to form a sense of the good life and for the sense of justice. According to Rawls, liberties are basic either because they have an evident link with the two moral powers (freedom of conscience), a procedural role for the stability of justice (political liberties), or are considered institutional conditions for the first two. The freedom of association is considered to belong to the third: 'Sometimes the reason for this priority is evident from the explanation of why a liberty is basic, as in the case of freedom of conscience. In other cases, the priority derives from the procedural role of certain liberties and their fundamental place in regulating the basic structure as a whole, as in the case of equal political liberties' (Rawls, 2005b, p. 335).

Figure 2. The Moral Powers Test

MORAL POWERS / LEVEL OF ABSTRACTION	Original Position Strict restrictions on rationality	Well-ordered Society When citizens are moved by reasons of justice
First Moral Power The capacity for a sense of justice and to abide by fair terms of cooperation	?	?
Second Moral Power The capacity to pursue and revise one's view of the good life	Institutional condition for the freedom of conscience	?

The Capacity for a Conception of the Good

The contribution of the freedom of social association to the capacity for the good is uncontested in Rawls' writings. The freedoms of conscience and social association 'are to secure the full and informed and effective application of citizen's powers of deliberative reason to their forming, revising, and rationally pursuing a conception of the good over a complete life' (Rawls, 2005b, p. 335). This is because the freedom of social association is considered an institutional condition for the freedom of conscience. Thus understood, the 'liberty to associate with other like-minded citizens' is justified within the basic liberties as a condition 'required to give effect to liberty of conscience' (Rawls, 2005b, p. 335). Such a characterisation implies that the value of the freedom of social association is derived from the freedom of conscience and that its scope depends on the specification of the conscience that prevails. Influential liberal authors (Laborde, 2017; White, 1997) have argued in this respect for a restricted understanding of conscience when applied to the freedom of association, supporting the fact that the range of applications where the freedom of association is necessary for the exploration or propagation

of a specific conception of the good should not be 'exaggerated' (White, 1998) and be narrowly related to the members' 'identity and integrity' (Laborde, 2017, p. 174)[66].

Rawls highlighted at least two contributions of the social associations in *A Theory of Justice* that exceeded the instrumental interpretation of the freedom of association as a condition for the freedom of conscience. First, social associations serve as a means to pursue non-political values with like-minded people[67]. *A Theory of Justice* mentioned associations extensively, and suggested that they engage in the pursuit of excellence in art, culture, and science. However, artistic, cultural, and/or scientific associations are the foremost examples – from a Rawlsian perspective – of places to strive for excellence that are not constrained in their internal organisation by the principles of justice (Rawls, 2005a). They lack direct relations with the right to the freedom of conscience. They are likely to be part of some rational plans for life, but are not touched by the great questions on the meaning of life that are not central to their members' 'identity and integrity' (Laborde, 2017, p. 174). In the case of art and culture, Rawls explained that perfectionism is not a political principle; and that this is why citizens must pursue the values of excellence and human perfection through the principle of free association (Rawls, 2005a) [68].

I take Rawls' examples of social associations in the pursuit of excellence because he uses them abundantly. However, such reasoning is obviously valid for any conception of the good that is understood as a rational life plan. Underlying the priority of rights, in contrast to classical moral doctrines, Rawls stressed that parties are moral persons with an equal right to choose

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[66] In a somewhat confusing way, White (1998, p. 334) called expressive associations for which 'the primary associative purpose is necessarily tied up to the exploration or propagation of a specific conception of the good', or to 'controversial ideology of the good society', and in which 'members are united by sharing a distinctive set of religious or ideological belief'. White contended that we should not exaggerate the range of application of this model, for which religious expressive associations are a prime example. Laborde (2017, p. 174), as we shall see in Section 3.1.1, suggested that only associations that individuals join to pursue a conception of the good that is central to their 'identity and integrity' have an interest in maintaining their 'own collective integrity'.

[67] Rawls (2005, pp. 328-329) is clear that there is no room in justice as fairness for the value of excellence and the notion of human perfection: 'While justice as fairness allows that in a well-ordered society the values of excellence are recognized, the human perfections are to be pursued within the limits of the principle of free association. Persons join together to further their cultural and artistic interests in the same way that they form religious communities. They do not use the coercive apparatus of the state to win for themselves a greater liberty or larger distributive share on the grounds that their activities are of more intrinsic value. Perfectionism is denied as a political principle'.

[68] In contrast, perfectionist authors like Stemplowska (2018) and Kramer (Kramer, 2017a) argued that Rawls overlooked the relationship between self-respect and excellence, supporting the notion that self-respect can be promoted by the state in investing in the excellence of society. In particular, 'warranted individual self-respect can be bolstered by one's society's achieving excellence, including through the exceptional artistic, sporting and other achievements of some of its individual members' (Stemplowska, 2018, p. 81). This is not my line of argument, for reasons that will become obvious.

their modes of life and therefore their delegates would likely not acknowledge a final aim. In *Goodness as Rationality*, Rawls explained that the conception of the good life includes 'the things that are commonly thought of as human goods' if they turn out 'to be the ends and activities that have a major place in rational life plan' (Rawls, 2005a, p. 432). Rawls took the example of someone whose only pleasure is to count blades of grass:

Thus imagine someone whose only pleasure is to count blades of grass in various geometrically shaped areas such as park squares and well-trimmed lawns. He is otherwise intelligent and actually possesses unusual skills, since he manages to survive by solving difficult mathematical problems for a fee. The definition of the good forces us to admit that the good for this man is indeed counting blades of grass, or more accurately, his good is determined by a plan that gives an especially prominent place to this activity (Rawls, 2005a, p. 432).

Is counting blades of grass an act of conscience? Is it central to the participants' identity and integrity? Is it part of a comprehensive doctrine? Obviously not. Rawls' conception of the good as rationality extends far beyond this. Why then is the freedom of association only viewed as an institutional condition for conscience? Many rational life plans are not related to conscience but require the institutional condition to associate with fellow citizens. What would happen, for instance, if counting blades of grass required a complex organisational strategy, implying at least one person on each side of the geometrically shaped areas? Does it mean that this rational life plan would be less worthy than an individual one? It is hard to understand why the protection of *collective* conceptions of the good life would be worthy if and only the conceptions are related to conscience.

Political liberalism draws heavily on comprehensive doctrines and, more recently, on cultural conceptions of the good life; but, everyday goods also give value or meaning to one's life and can constitute valuable conceptions of the good (de Vries, 2020; Martin, 2017)[69]. In a

[69] For instance, Martin (2017, p. 145) argued that 'everyday goods' also give value or meaning to one's life: 'It is plain how comprehensive doctrines perform such a function; indeed, one could say it is the primary purpose of comprehensive doctrines to do so. But everyday goods too provide meaning and value. Though their scope over one's life is by definition less expensive than comprehensive doctrines, the arts and so on that fulfil one's time are sources of meaning and value. We can imagine looking back on our lives and evaluating not only how we lived according to our moral, religious or philosophical doctrine, but also our everyday ideas and activities, such as the art we enjoyed or created, the careers we pursued and so on. The value and meaning provided by such everyday goods may well be socially constructed, but how they come to hold value and meaning is not a concern here anymore than, say, the theological or historical origins of Judaism for it to function as a good. The point is that everyday goods do provide value and meaning for people, and they can do so independently of comprehensive doctrines'. This suggests that 'the notion of a 'conception of the good' is broader than just lofty doctrines about morality, religion or philosophy; it also encompasses "mundane" or 'everyday' goods like those concerning the arts, sport, hobbies, relationships, careers and so on'.

classical manner, a conception of the good refers to a 'comprehensive doctrine', such as moral, religious, and philosophical belief systems (Klosko & Wall, 2003; Rawls, 2005a, 2005b). However, as Martin (2017, p. 141) pointed out, there is a wide consensus to define a conception of the good more generally as what gives value or meaning to one's life, beyond moral, religious, and philosophical belief systems. It is largely accepted as a standard 'by which we can evaluate the quality and direction of our own lives, defining what counts as a setback or enjoyment in our lives' (Martin 2017, p. 141)[70]. Especially, owing to Rawls' conception of goodness as rationality, there must be a substantial freedom of social association that extends beyond his institutional condition for conscience. Under political liberalism, any association pursuing a collective non-political aim with a prominent place in members' individual plans – even if not substantial or spiritual – deserves consideration and protection.

Second, Rawls underscored the contribution of social associations to self-respect. In *Goodness as Rationality*, he explained why self-respect is 'perhaps the most important primary good' (Rawls, 2005a, p. 440). He contended that self-respect has two fundamental aspects: one's sense of self-worth and the confidence in their ability (Wall, 2006; Rawls, 2005a). Following Rawls, we can assume that social associations contribute to both these aspects. Associations provide a place for the individual 'within which the activities that are rational for him are publicly affirmed by others' and where he can develop associative ties that 'reduce the likelihood of failure and to provide support against the sense of self-doubt when mishaps occur' (Rawls, 2005a, pp. 441-42). Rawls explained what Stark (2012) calls the personal circumstances of self-respect with the fact that human activities follow the Aristotelian principle of specialisation[71], and the corresponding effect influences 'the extent to which others

[70] Through a broad theoretical spectrum, from perfectionists (Raz, 1986) to various liberal neutralists (Dworkin, 1985; Waldron, 1989; Rawls, 2005a), authors have agreed to widen the interests in a conception of the good beyond moral, religious and philosophical belief systems. Waldron, for instance, defined a conception of the good as 'taste, aims and ideas' (Waldron, 1989, p. 76) and argued that '[a]ny attempt to say what is important or unimportant in a human life counts as a conception of the good; it does not matter particularly what the source of that view may be' (Waldron, 1989, p. 79). As Martin (2017) highlighted with Chan (2000), the academic debate on liberal neutrality often refers to sport and art as common examples and most liberal neutralists and their critics use the term of conception of the good interchangeably with a broad range of terms such as 'the good life', 'way of life', 'convictions', 'cultural values' and 'ideas'.

[71] The Aristotelian principle is one of human motivation that Rawls endorsed without any justification, which stated that 'other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity' (Rawls, 2005a, p. 374). The Aristotelian principle also has a companion effect: 'As we witness the exercise of well-trained abilities by others, these displays are enjoyed by us and arouse a desire that we should be able to do the same things ourselves' (Rawls, 2005a, pp. 375–376). For a discussion of the principle see Wall (2014).

confirm and take pleasure in what we do'(Rawls 2005a, p. 440)[72]. Social associations foster members' sense of self-worth, but also its validation by others 'who are likewise esteemed' and enhance confidence in their own abilities (Rawls 2005a, p. 440)[73]. In Cordelli's (2015, p. 86) words, 'membership within an association may generate the self-confidence that comes with having our projects recognised by other who share a similar conception of the good'.

Thus, excellence and self-respect are independent of the institutional role that the freedom of social association plays concerning the freedom of conscience, to value social associations by virtue of their capacity to form, pursue, and revise one's conception of the good life. The freedom of social association contributes towards the pursuit of various non-political goods, as it does for excellence. In doing so, individuals develop a sense of self-worth confirmed by others, which is necessary for the pursuit of any rational life plan. Consequently, the freedom of social association contributes directly to the capacity for the good from the point of view of the original position, under strict restrictions on the rationale, and not as an institutional condition for conscience alone.

At the level of a well-ordered society, Rawls conceived of social associations as a source of the definite good – a concrete and effective means to pursue non-political aims that fit individuals' particular aspirations and talents. To a rational agent capable of ordering ends, social associations are an essential means to pursue a particular conception of the good. They may 'simplify decision by offering definite ideals and forms of life' (Rawls 2005a, p. 212). There are various forms of associations in a well-ordered society that can fit the aspirations and talents of individuals and citizens to find 'at least a particular community where a sense of self-

[72] The application of the Aristotelian Principle, Rawls wrote, 'is always relative to the individual and therefore to his natural assets and particular situation. It normally suffices that for each person there is some association (one or more) to which he belongs and within which the activities that are rational for him are publicly affirmed by others. In this way we acquire a sense that what we do in everyday life is worthwhile' (Rawls, 2005a, p. 441).

[73] Rawls added: 'Moreover, associative ties strengthen the second aspects of self-esteem, since they tend to reduce the likelihood of failure and to provide support against the sense of self-doubt when mishaps occur. To be sure, men have varying capacities and abilities, and what seems interesting and challenging to some will not seem so to others. Yet in a well-ordered society anyway, there are a variety of communities and associations, and the members of each have their own ideals appropriately matched to their aspirations and talents (…) What counts is that the internal life of these associations is suitably adjusted to the abilities and wants of those belonging to them, and provides a secure basis for the sense of worth of their members. (….) Thus what is necessary is that there should be for each person at least one community of shared interests to which he belongs and where he finds his endeavours confirmed by his associate' (Rawls, 2005a, pp. 441-442).

worth can flourish'(Rawls, 2005a, pp. 441–442) [74]. If this is not the case, individuals are exposed to a feeling of shame and diminution of the self (Rawls, 2005a, pp. 328–329)[75]. Whatever, in a well-ordered society, social associations seeking excellence and advancing the arts, sciences, and culture have no claim to social resources, which must 'be won as a fair return for services rendered, or from such voluntary contributions as citizens wish to make' (Rawls, 2005a, pp. 328–329).[76]

The Capacity for a Sense of Justice

One implication of Rawls' theoretical frame is that, from the original position, the parties cannot invoke an effective sense of justice as part of a person's determinate conception of the good. As Rawls (2005b, p. 316) explained, 'citizens are moved by reasons of justice as such, but the parties as rational autonomous representants are not'. However, the sense of justice can make sense, in the original position, through the necessity of a just and stable scheme of cooperation by allowing the pursuit of a definite but unknown conception of the good[77].

In this perspective, the contribution of self-respect to the capacity for one's conception of the good is also important in considering the relationship between self-respect and the

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[74] For Rawls (2005a, p. 537), 'the many associations of varying sizes and aims, being adjusted to one other by the public conception of justice, simplify decision by offering definite ideals and forms of life that have been developed and tested by innumerable individuals, sometime for generations'.

[75] Rawls (2005a, p. 444) wrote: '(…) those with no musical abilities do not strive to be musicians and feel no shame for this lack. Indeed it is not a lack at all, not at least if satisfying associations can be formed by doing other things. Thus we should say that given our plan of life, we tend to be ashamed of those defects in our person and failure in our actions that indicate a loss or absence of the excellences essential to our carrying out our more important associative aims'

[76] Rawls (2005a, p. 331) explained '(…) publics funds for art and sciences may be provided through the exchange branch. In this instance there are no restrictions on the reason citizen may have for imposing upon themselves the requisite taxes. They may assess the merits of these public goods on perfectionist principles, since the coercive machinery of government is used in this case only to overcome the problems of isolation and assurance, and no one is taxed without his consent'.

[77] Rawls (2005a, p. 315) writes: 'They are restricted to reasons founded on regarding it solely as a means to a person's good. To be sure, we assume (as the parties do) that citizens have the capacity for a sense of justice, but this assumption is purely formal. It only means that whatever principles the parties represent will be able to develop, as citizens in society, the corresponding sense of justice to the degree to which the parties' deliberations, informed by common sense knowledge and the theory of human nature, show to be possible and practicable. This assumption is consistent with parties' rational autonomy and the stipulation that no antecedent notions or principles of justice are to guide (much less constraint) the parties' reasoning as to which alternative to select. In view of this assumption, the parties know that their agreement is not vain and that citizens in society will act upon the principles agreed (…) but (…) the parties can do so only because they believe that acting from such principles will serve as effective means to determinate conception of the good of the person they represent. These persons as citizens are moved by reasons of justice as such, but the parties as rational autonomous representant are not'.

capacity for a sense of justice. Feminist critics who are interested in the concept of non-political association in the family's role have for long underlined that, for Rawls, 'associations underwrite a stable political order and foster the basic good of self-respect' (McClain, 2004, p. 1570). It is implicit but incontestable that under a correct reading of justice as fairness, the freedom of social association has special importance for the sense of justice through its fundamental contribution to self-respect.

According to Rawls, without self-respect, 'nothing may seem worth doing or if some things have value for us, we lack the will to strive for them. All desire and activity become empty and vain, and we sink into apathy and cynicism' (Rawls, 2005a, p. 31). This relationship between the sense of justice and self-respect explains why, according to Rawls, a secure sense of self-respect 'presupposes the development and exercise of both moral powers and, therefore an effective sense of justice' (Rawls, 2005a, p. 318). Thus, to have the capacity to act upon shared principles, citizens must have a place where others publicly affirm their rational activities, which allows them to advance their determinate conception of the good. The freedom of social association, through its importance for self-respect, contributes to the 'self-confidence to be a fully cooperating member of society capable of pursuing a worthwhile conception of the good' (Rawls, 2005a, p. 318). Reciprocally, the lack of social associations generating self-respect not only affects our capacity for our conception of the good, but also undermines our capacity for a sense of justice, the 'self-regarding part' of self-respect (Schemmel, 2019, p. 635). To put it slightly differently, if the freedom of social association is important for self-respect, and self-respect is essential for the adequate development and full and informed exercise of the two moral powers (Krishnamurthy, 2013), then the freedom of social association is crucial for the two moral powers. Social associations serve the capacity for a sense of justice from the original position under strict restrictions on the rationale, through considerations related to self-respect, which mediates the relationship between the freedom of social association and the capacity for both moral powers. As such, excluding some citizens from the possibility of belonging to a social association a priori expresses an unequal evaluation of their two moral powers.

Social associations also contribute to the stability of a well-ordered society regarding the *acquisition* and *maintenance* of a sense of justice (Edenberg, 2018) through the morality of association by reducing the visibility of men's prospects and, eventually, rooting the overlapping consensus within comprehensive doctrines, respectively. In *A Theory of Justice*, the effective sense of justice takes form through the moralities of the authority, association, and principles, which reflect the stages of morality that allow individuals to develop their

sensibilities in line with 'rules, others, mutual trust, and sense of generalised reciprocity' (Rawls, 2005a, p. 470). These stages of moral development foster political virtues that are necessary to abide by fair terms of cooperation and arouse natural feelings to conform. They explain how citizens acquire a sense of justice. Here, Rawls clearly suggested – the only time in his writings – that the virtues of cooperation are developed to varying degrees according to the different types of association at stake. He underlined that there are more or less complex forms of morality of association according 'to the context of the aims and purpose of the association to which the role or position in question belongs' and affirmed that the morality of association 'covers a wide range of cases depending on the association in question' (Rawls, 2005a, p. 471). However, he only stated that these variations are 'presumably explained' by the type of association (Rawls, 2005a, p. 471), and never considered the different relations between different associations and the sense of justice. The inclusiveness of the concept of non-political associations makes it hard to determine the contributions of these associations for the acquisition of a sense of justice. Nonetheless, the morality of association, like other stages of moral development, is a matter of degree. While the simplest forms are closely tied to the morality of authority and familial structure, the more complex ones are very close to the morality of principles. Even if we single out the family – a part of the morality of authority – there is little doubt that different types of association make different contributions to cooperation and are, thus, located at different positions in the continuum of the morality of association. Rawls contended that the first step comprises learning that others have different tasks to fulfil based on their place in the cooperative scheme. Associations allow the individual to learn how to see things from others' perspective; the associate 'knows that others have different things to do depending upon their place in the cooperative scheme' (Rawls, 2005a, p. 468). At this first stage of the morality of the association, the associates should understand the multiplicity of roles and perspectives. Associations do not need to be voluntary to fulfil this function, and there is no doubt that the school, or even a patriarchal family, can fulfil this first step (Rawls, 2005a).

Based on this greater multiplicity of perspectives and roles, individuals develop attachments with their fellow associates. As the individual sees 'his associates with evident intention live up to their duties and obligations, he develops friendly feelings towards them, together with a feeling of trust and confidence' (Rawls, 2005a, p. 470). In this context, the individual develops the intention to 'live up his duties and obligations' and a 'feeling of reciprocity' arises between individuals (Rawls, 2005a, p. 470). This intention clearly refers to what has been identified later by social capital theorists as 'the norm of reciprocity' – the mutual obligations fostered by networks. It categorically refers to the norm of 'specific reciprocity',

the idea that 'I will do this for you if you do that for me' (Putnam, 2001, pp. 20–21). Here, involuntary associations, such as the parent-child relationship in families and the school, to take Rawls' former examples, are no longer the benchmark. Rawls offered friendship as a counterexample, an intimate relationship that is voluntary unlike the parent-child relationship. Friendship requires a further step in the development of a feeling of mutual reciprocity, namely those norms and ethical empathy that are only possible in voluntary associations. As Warren explained, 'Because associational relations tend towards voluntariness, they must also rely to a greater extent upon the force of norms' (Warren, 2001, p. 52). Finally, Rawls highlighted that, in the last stage of the morality of association, the conduct of others in doing their part is taken to be 'at the advantage of each' and the attachment to 'our fellow associate' expands to include the 'social arrangement generally' (Rawls, 2005a, p. 470). At this stage, all members 'benefit and know that they benefit from its activities, the conduct of others in doing their part is taken to be to the advantage of each' (Rawls, 2005a, p. 471). This refers to what the literature on social capital calls the norm of generalised reciprocity (Putnam, 2001). As the ultimate degree of norms arising out of networks, generalised reciprocity implies that 'I'll do this for you without expecting anything specific back from you, in the confident expectation that someone else will do something for me down the road' (Putnam, 2001, pp. 20–21). It appears obvious, then, that not all voluntary associations have the potential to foster this ultimate norm arising out of the morality of association – the highest form of the virtue of cooperation. Friendship, based on specific reciprocity, is no longer the benchmark. Ethical empathy is no more sufficient, and regular interpersonal relationships should rely on the force of norms. More complex forms of the morality of association, where generalised reciprocity can arise, are - by definition – best served by social associations that are voluntary and predominantly social and that rely, for this reason exclusively on norms such, as trust and reciprocity, to regulate the interactions among their members. Yet, I have defined social associations as voluntarily organised associations based on interpersonal connections and associative ties, relying dominantly on the influence of norms between members. They have the potential to contribute to a sense of generalised reciprocity in a in a way that other voluntary associations like interest groups, and commercial and intimate associations, cannot (Wall, 2006). Consequently, the cooperative virtues that characterise the morality of association, justice and fairness, fidelity and trust, and integrity and impartiality, are not equally developed in all types of associations.

Finally, there are two additional contributions of social associations to the maintenance of a well-ordered society. First, to maintain social justice stably, 'excusable general envy' should not arise (Rawls, 2005a, p. 537) and the variability of men's prospects, as allowed by the principles of justice, should not be too visible. Rawls thought that a plurality of associations

would contribute to this by reducing the visibility of those prospects, thus lowering envy among them (Rawls, 2005a). This led him to speak of associations as 'non-comparing groups' (Rawls, 2005a, p. 537)[78]. Second, the deep theoretical turn Rawls proposed in *Political Liberalism* has had some impact on views of what social associations can do for the maintenance of political justice in a well-ordered society[79]. Discussions and justifications that take place within social associations are not part of public reason, which applies to associations alone when they engage in political advocacy in public forum (Rawls, 2005b)[80]. Nonetheless, providing that incompatible yet reasonable comprehensive doctrines may coexist over time in a stable and just society of free and equal citizens, social associations that provide a definite conception of the good from generation to generation allow individuals to acquire their own conception of the good via their comprehensive doctrine; in a just and stable society, they are places in which consensus is rooted (Rawls, 2005b, p. 432)[81]. This argument is obviously not valid for all social

[78] Rawls (2005a, p. 337) explained, 'For we tend to compare our circumstances with others in the same or in a similar group as ourselves, or in positions that we regard as relevant to our aspirations. The various associations in society tend to divide it into so many noncomparing groups, the discrepancies between these divisions not attracting the kind of attention which unsettles the lives of those less well placed. And this ignoring of differences in wealth and circumstance is made easier by the fact that when citizens do meet one another, as they must in public affair at least, the principles of equal justice are acknowledged'.

[79] *A Theory of Justice* aimed to 'generalize and carry to a higher order of abstraction the traditional doctrine of the social contract' and to provide an alternative moral doctrine to utilitarianism. All rationally autonomous party would agree to the two principles of justice. But in doing so, *A Theory of Justice* turns out to be a comprehensive doctrine ignoring the 'pluralism of incompatible yet reasonable comprehensive doctrines' (Rawls, 2005b, p. xlii). This is why *Political Liberalism* distinguished between comprehensive doctrines and political conceptions and attempted to provide 'a conception limited to the political domain', a freestanding conception that is not presented as derived from any comprehensive doctrine (Rawls, 2005b, p. xlii). If incompatible yet reasonable comprehensive doctrines may coexist over time in a stable and just society of free and equal citizens, there should be an 'overlapping consensus' between them on a liberal political conception that all these non-liberal doctrines might be able to endorse (Rawls, 2005b, p. xlv).

[80] Public reason plays a special role in *Political Liberalism*. As an ideal related to how citizens are 'to conduct their public political discussions of constitutional essentials and matters of basic justice', public reason requires that these discussions express 'political value that others as free and equal also might reasonably be expected to endorse' (Rawls, 2005b, p. xliv). Nonetheless, Rawls noted that 'not all reasons are public reasons, as there are the non-public reasons of churches and universities and other associations in civil society. (….) This way of reasoning is public with respect to their members, but non-public with respect to political society and to citizens generally. Non-public reasons comprise the many reasons of civil society and belong to what I have called the "background culture", in contrast with the public political culture. These reasons are social, and certainly not private' (Rawls, 2005b, p. 220).

[81] Rawls (2005b, pp. 389–390) wrote, 'Consider the political sociology of a reasonable overlapping consensus: since there are far less doctrines than citizens, the latter may be grouped according to the doctrine they hold. More important than the simplification allowed by numerical fact is that citizen are members of various associations into which they usually, though not always, acquire comprehensive doctrine. The doctrines that different associations hold and propagate – as examples, think of religious associations of all kinds – play a basic social role in making public justification possible. This is how

associations, but only to those that offer a determinate conception of the good across generations. From this perspective, organised religion with a reasonable comprehensive doctrine is certainly the most appropriate place.

The Moral Powers Test

Rawls contended that the freedom of social association is a basic liberty by virtue of being an institutional condition for the freedom of conscience, holding a special but indirect relationship with the capacity to pursue and revise our conception of the good life. This statement, however, is not coherent with the entire theoretical structure of justice as fairness; and in Rawls' writings, the definition of one's conception of the good exceeded conscience and included 'ends and activities that have a major place in rational life plan' (Rawls, 2005a, p. 432). This statement, moreover, overlooked the fundamental relationship between social associations and self-respect, a necessary condition for people's development and application of the two moral powers. It is also not coherent in various passages where Rawls directly or indirectly pointed to associations in the explanation of how citizens acquire and are moved by reasons of justice. Thus, the freedom of association far exceeds the institutionalised sphere of protection for the freedom of conscience. The following table summarises the role and contribution of social associations to the political conception of justice.

citizens may acquire their comprehensive doctrines. Moreover, these doctrines have their own life and history apart from their current members and endure from one generation to the next. The consensus of these doctrines is importantly rooted in the character of various associations and this is a basic fact about the political sociology of democratic regime - crucial in providing a deep and enduring basis for social unity'

Figure 3. The Contributions of Social Associations to Political Justice

MORAL POWERS / LEVEL OF ABSTRACTION	Original Position Strict restrictions on rationality	Well-ordered Society When citizens are moved by reasons of justice
First Moral Power The capacity for a sense of justice and to abide by fair terms of cooperation	The capacity to act upon shared principles (advancing a determinate conception of the good; self-respect)	Seeing from others' perspective, developing specific and generalised reciprocity Creating non-comparing groups and reducing visibility of men's prospects Rooting the overlapping consensus within comprehensive doctrines
Second Moral Power The capacity to pursue and revise one's view of the good life	Institutional condition for the freedom of conscience Pursuit of excellence and other non-political goods	Providing definite conceptions of the good Sustaining the exchange branch and various networks for excellence

It may be argued, however, that the criteria of the tests of the two moral powers to establish what counts as adequately developing the moral powers and fully exercising them are vague. Brennan pointed out that Rawls only mentioned a few trivial cases and failed to show that all basic liberties pass the test and all non-basic ones do not (Brennan, 2020; Flanigan, 2018). He highlighted that Rawls only gave partial examples of people struggling to develop their two moral powers in relation to very specific basic liberties, but did not prove that all basic liberties on the list are necessary for everyone or most people. Depending on whether the test requires that a basic liberty be necessary for all, most, or only some individuals, different liberties may qualify as basic (Brennan, 2020)[82]. Therefore, Brennan argued that one may easily extend the list of basic liberties, as some people cannot adequately develop and exercise their moral powers without economic rights (Tomasi, 2012)[83]. He contended that the test is

[82] Brennan (2020) highlighted that Rawls only gave few examples where certain people would have difficulty developing their two moral powers without certain very specific liberties.

[83] Tomasi (2012) argued in *Market Fairness* that political justice best provides support of self-respect by treating a broader set of economic liberties as basic, recognising that citizens express their moral power through market activity. He defended a hybrid theory of liberal governance, the market-

contingent on empirical issues concerning developmental psychology, and noted that most people in countries that fall short of these liberal standards nevertheless adequately develop their moral powers. Brennan, however, referred to a version of the test that I think is fair to describe as out of range, applied outside any theoretical context, and left exclusively to the empirical domain. However, Rawls thought of it within a system of representation that set conditions for reasonableness and rationality. This is particularly true of the sense of justice, which can only make sense through the need for a just and stable scheme of cooperation to pursue a conception of the good and the fundamental importance of the two moral powers for self- respect (Rawls, 2005a). Therefore, a basic liberty not only 'bears the right relationship to our moral powers' by referring to an ideal of moral and political personhood, but also does so in a device of representation that models and constrains this conceptualisation. Thus, apart from a specific conception of the political person, its appreciation by representative parties of citizens whose conceptions of the good life and social characteristics are unknown also determines the status of a basic liberty.

Some contributions of social associations to the two moral powers are relevant and accessible to the parties in the original position, while others are not. This is the case for self-respect, in direct relation with both moral powers, but not of the morality of association. The effective development of a sense of justice through the process of learning, cooperation, and reciprocity within associations depends on psychological and empirical assumptions and is thus uncertain and inaccessible in the original position. The contribution of social associations to an effective sense of justice depends on the definite conceptions of the good life that citizens effectively hold, types of associations in which citizens effectively participate (or not), specific positions they occupy, and actual contexts in which they are set (Fung, 2003; Rosenblum, 1998b). Some social associations certainly foster bonds of trust and feelings of reciprocity among their members. However, it is possible that many others, in particular contexts, foster a sense of exclusion towards non-members and their related sense of marginalisation (Leonard, 2004; Pillai et al., 2017). From this perspective, among the many contributions of the freedom of social association to social justice that I have identified, self-respect is incontestably the most important and relevant. All citizens can develop a sense of self-worth in social associations irrespective of their particular conception of the good, specific organisation of their social

democratic regime, that relies most exclusively on market competition to achieve fairness, based on a robust conception of justice as fairness.

association and its purpose, and specific context and position in which they evolve (Rosenblum, 1998b).

2.1.2 Social Associations and the Social Bases of Self-respect

The Rawlsian account of the value of social associations allows me to affirm that, beyond the many direct contributions of social associations to the capacity to form and revise a conception of the good and to a sense of justice, there is a fundamental associative interest in self-respect that is related to both moral powers and constitutive of the fair cooperation between free and equal citizens. At this point, nevertheless, several doubts can reasonably arise both on my claim on the special normative status of the freedom of association and on the analytical relevance I give to the category of social association.

I expect people familiar with Rawls to object that the fact that the freedom of association has an evident connection with self-respect is widely acknowledged (Cordelli, 2015; Eyal, 2005; Hasan, 2015; Scanlon, 2003). As Rawls made it clear that self-respect is a necessary condition for the secure exercise of the capacity to form and pursue a conception of the good, and that to sustain self-respect individuals need at least one or more associations, it can be argued further that it is misleading to claim that Rawls understood the freedom of association merely as an institutional condition for the freedom of conscience. Moreover, it can be argued, in defence of the idea of an all-encompassing category of non-political association that, in justice as fairness, all types of associations may retain self-respect. All non-political associations, from intimate to tertiary ones and from social to economic ones, are based on interactions between individuals through which they can develop self-worth. It is thus fair to say that the interactions with fellow associates in social associations are no more essential for self-respect than are those with family members, colleagues, and religious compatriots. Thus, Rawls explicitly recognised the contribution of all types of non-political associations to the self-respect of members; and the associative interest in standard self-respect that I put forward would only be a formalisation of such an idea. The only merits of the category of social association would be to offer a paradigmatic category of non-political associations that lie beyond the fundamental controversies surrounding the voluntary feature of particular associations and their specific influence on the socioeconomic opportunities for non-members. This is already a significant theoretical contribution that contrasts with the great profusion of literature on marginal cases of non-political associations that can be directly subjected to the principles of justice. This clarification would, however, change nothing in the fact that all types of non-political associations are equally important for self-respect, which is perhaps the very

ground for the concept of non-political associations in Rawls' writing, as well as the target of my theoretical argument.

Nonetheless, if Rawls makes clear that to retain self-respect individuals need at least one or more associations, he never called to reasons grounded in self-respect for the narrow purpose of justifying the status of the freedom of association. The (contested) basic statute of basic liberty, as explicitly justified in Rawls' terms, is only uncontestably valid for associations that are specified as institutional conditions for the freedom of conscience and thus includes a very small part of many types of associations and rights that fall under the category of non-political associations. This is the normative cost of adopting an all-encompassing category of non-political associations while defining the freedom of conscience narrowly as the foundation for the basic status of the freedom of association. This is the reason why some authors have questioned the basic status of the freedom of non-political association (De Marneffe, 1998; Kordana & Tabachnick, 2008), while others have followed a narrow justification for the freedom of association as an institutional condition for the conscience (White, 1998, Laborde, 2017). More important for my argument, no link is established between this 'evident' connection between freedom of association and self-respect and the fundamental issue of the social bases of self-respect. and this connection is never put in relation with the various ways in which different associations may generate or retain self-respect. As a result, the relationship between self-respect and (various types of) non-political associations is not entirely appreciated by political liberalism for its normative implications for the social bases of self-respect (Cordelli, 2015; Schemmel, 2011, 2019).

I will argue now that a complexification of the notion of self-respect - associated with my plural understanding of associative relationships and rights – urges us to moderate the claim that all types of non-political associations contribute equally to the self-respect of their members.

A Critical Concept of Self-respect

To have a fine-grained account of the relationship between the types of associations and self-respect, we first need a fine-grained account of the concept of self-respect itself. This is why I engage with a critical account of Rawls' self-respect. Thus far, I have uncritically referred to Rawls' classical concept of self-respect as one's sense of self-worth and the confidence in

their ability (Rawls, 2005a)[84]. In an uncontroversial way, self-respect can be defined as a 'secure conviction of one's own worth', a disposition that guides 'agents in their actions by assuring them of their own worth, and of their capacity to be the authors of their own actions' (Schemmel, 2019, p. 628). However, it has long been argued that the notion of self-respect used by Rawls is 'equivocal' (Zink, 2011), oscillating between self-respect – classically understood as recognising one's equal standing as a citizen (Stark, 2012) – and self-esteem (Darwall, 1977), self-appraisal (Doppelt, 1981), standard self-respect (Schemmel, 2019), and self-confidence (Eyal, 2005)[85]. If there is a consensus on a general definition of self-respect as a secure conviction of one's worth, the central question then remains which 'aspect of the person' has to be considered of equal worth (Darwall, 1977, p. 37).

Based on this, I argue that the relational basis of standard self-respect, based on mutual appreciation, is likely to depend on the type of relationship – for example, its voluntariness, the degree of the relationship among members and the regularity of their interactions. To make the specific case for social associations, I show that the category holds a special relationship with standard self-respect as the mutual appraisal resulting from relationships between subjects which is best served by voluntary and regular interpersonal relationships that can be left at a reasonable cost. As the category of social association implies a formal membership based on non-economic and non-political standards, it equals with the only type of associative relationship that social institutions can support in engaging social resources as a generic source of mutual appraisal without any influence on the rights of others. Thus, all types of non-political associations may generate self-respect, but they are not equally important for, what I call, *the social bases of standard self-respect*.

The concept brings together two well-known dimensions of self-respect that are rarely placed in relation to each other. The first refers to the different sources of respect, allowing me to distinguish between standard (recognition-respect) and standing (appraisal-self-respect). The second evokes the possibility and legitimacy of public institutions intervening into these sources through the distribution of social resources, thus differentiating self-respect as a

[84] The idea of self-respect was first formulated by Kant ([1795] 1959, p. 428) to mean 'treating persons as ends in themselves and never simply as means'. Doppelt argued on this grounds that the concept has to be understood as 'consideration of one or another aspect of a person as equal' (Doppelt, 2009, p. 138).

[85] The stridence of the critics of self-respect is proportional to the justificatory role that Rawls attached to it. Rawls appealed to self-respect to justify many important features of justice and the lexical priority of liberty (Stark, 2012). From this perspective, self-respect has been criticized as not being a 'sufficiently compelling interest' (Zink, 2011, p. 331), or, alternatively, as grounding absolute economic equality (Eyal, 2005).

primary good from the social bases of self-respect as a social primary good. I aim to highlight various sources of respect that can nurture one's sense of self-worth to show that the scope of opportunities available to institutions to ensure the social bases of self-respect is wider than that assumed in the literature. I suggest that we must consider the social bases of standard self-respect and the role of the fair value of the liberty to form social associations in this respect very seriously.

It has been rightly argued for decades that Rawlsian self-respect refers ambiguously to two fundamentally different sources of self-respect. Most authors have investigated the normative notion of equal respect and have specified the distinction, which was first introduced by Darwall (1977), between 'recognition-respect' and 'appraisal-respect' (Carter, 2011; Galeotti, 2010; Liveriero, 2019). As Liveriero (2019, p. 93) explained, the first is 'attributed by virtue of the recognition of others as persons', is a priori and unconditional, 'ascribed by default, being independent from the evaluation of actions, deliberative processes and characters of any particular individual', while the second is posteriori, conditional 'on actual conducts and comes in degrees', and 'expresses the positive consideration of the deeds, achievements, character of a person'. The names given to these two types of self-respect vary[86]. I refer to Schemmel (2019), who distinguished between standing and standard self-respect. According to him, the first is 'a matter of convictions about one's moral status and the equal basic rights and duties flowing from it' (Schemmel, 2019, p. 631), the second is the second is 'a matter of convictions about the value of one's projects, standards, and abilities' (Schemmel, 2019, p. 632). This Darwall-inspired criticism (1977) of the Rawlsian concept of self-respect is well founded and my argument will lean on this central distinction. Section 2.3 will show how such a simple distinction is problematic for Rawls' central justification of the fair value of political liberties (Cass, 2021; Wall, 2006).

Once we accept these conceptual clarifications, the central question remains (Darwall, 1977, p. 37): Which 'aspect of the person' has to be considered of equal worth? The clarifications allow one to dissociate one's sense of worth which is a 'matter of convictions about one's moral status' from one's sense of worth which is 'a matter of convictions about the value of one's projects' (Schemmel, 2019, pp. 631–632)[87]. But why can we not make further

[86] To give a few examples: appraisal-respect v. recognition respect (Liveriero, 2019); standard v. standing self-respect (Schemmel, 2019), meritocratic self-respect v. recognition respect (McKinnon, 2000).

[87] In this account, the relation between association and self-respect can take two forms. Firstly, any individual members of association accepts the standards employed by the group which define 'the success at the activities around which the group is organized'. Second, this membership provides 'with

distinctions on different types of self-respect based on the various types of status and/or standard that may generate a sense of worth? In my view, the risk is to substitute a single concept of self-respect with a binary one. If the Darwall-inspired criticism of the Rawlsian concept of self-respect is founded, we can push further the variety of sources and forms of self-respect considered. On the one hand, various types of statuses that are equally shared with others may contribute to various degrees and with relative degrees of success towards making citizens experience a sense of their status (McKinnon, 2000). Individuals can share an (un)equal sense of status as humans, persons, citizens, associates, or members of a social group[88]. For instance, Middleton (2006), considering human recognition as distinct from status recognition, identified three types of self-respect, namely human and status recognition, and appraisal. On the other hand, appraisal may come in a variety forms and may be covered by many types of interactions, with different degrees of success, and through the fulfilment of unequally demanding standards. There are probably as many sources of standing self-respect as there are statuses, and as many sources of standard self-respect as there are sources of appraisal.

It is puzzling to see how, in the literature, standard self-respect is often reduced to excellence (Kramer, 2017b, 2017b), achievements (McKinnon, 2000), and risks (Tomasi, 2012)[89], while it may also comprise the appraisal of particular characters, attitudes, skills, conceptions, endeavours, and so on. These conceptions of self-respect adopt for common ontology the idea that the full exercise and development of moral capacities are reserved for talented individuals, individuals who are excellent in their field, are risk takers, and achieve success; and only they would be able to develop a sense of self-worth necessary for the full development and exercise of their two moral powers. Neither political liberalism nor I adopt this ontology. My conception of standard self-respect is inspired by the Aristotelian principle

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conditions for experiencing a sense of their status, in virtue of the mutual recognition between members, given their common adherence to group standards'(McKinnon, 2000, p. 497).

[88] While I do not engage the statutory dimension of self-respect in my argument, it is important to note that social associations, defined by their organisational structures from which a formal membership derives, offers a stable membership and provides 'conditions for experiencing a sense of their status, in virtue of the mutual recognition between members, given their common adherence to group standards' (McKinnon, 2000, p. 497)

[89] Excellence (Kramer, 2017b), achievements (McKinnon, 2000), and risk-taking (Tomasi, 2012) are seen as central to the development of self-respect according to different authors. McKinnon (2000, p. 498), for instance, called standard self-respect 'meritocratic self-respect' and specified that it 'provides opportunity for self-respect for group members, by giving access to self-respect supporting achievement'. This is, in my view, a very demanding understanding of self-respect that reduces appraisal to achievement; a conception centred on excellence, which can allow only gifted individuals to enjoy adequate conditions to develop standard self-respect and exercise their two moral powers. Similarly, Tomasi (2012) asserted that the experience of economic risk is a precondition for self-respect.

and its companion effect, which only asserts that the mutual appreciation comes in doing things with others, 'the extent to which others confirm and take pleasure in what we do' (Rawls, 2005a, p. 440). In justice as fairness, social associations provide mutual support for particular conceptions of the good life and resources to develop a form of self-confidence necessary for it. Thus, in the conception adopted here, the mere fact of having one's vision of the world and one's conception of the good sanctioned by like-minded associates, to feel one's ends and endeavours respected, and to live up to one's own principles through standards and practices that are considered rational by other members can provide mutual support and resources to develop a form of self-confidence.

Rawls' conception of self-respect cannot be subsumed under (status and) achievements, while he specified that, to maintain the conviction that our ends are worth advancing, we must feel that 'our ends and endeavours are respected' (Rawls, 2005a, p. 442). Yet, endeavours – in the classical sense of the term – must be understood here as the action of attempting to achieve a goal and the end as the final goal pursued. Neither of them can be understood as a synonym for 'achievements', understood as the fact of having done something successfully. As a result, there is a salient gap between standing self-respect understood as the positive consideration of our achievements and our endeavours. The standards chosen by associates to guide mutual appraisal in their association depend on the purpose that is voluntarily chosen by associates; and they can vary in nature, relating not only to achievements and deeds, but also to such aspects as characters, skills, endeavours, efforts, conceptions, doctrines, and so on that are valued and shared by associates[90]. Even if Martina's events and meetings for the neighbourhood do not succeed, and even if she is not fully appreciated for her active role in the association, she can gain confidence and be reassured of her conception of the good by the simple fact of sharing it. By participating in a definite social association, members accept 'the standards employed by the group which define success at the activities around which the group is organized' (McKinnon, 2000, p. 495) but excellence is only one standard among many. Social associations may contribute to the sense of value of their members without providing them with the appraisement of particular achievements or risk-taking, by the mere fact of sharing a similar conception of the good, through the respect originating among people pursuing and trying to achieve a similar conception of good together.

[90] For instance, intimate associations are based on the appreciation of characters in a manner that is similar to how organized religious associations are based on the appreciation of doctrines.

The second dimension of self-respect evokes the possibility and legitimacy of public institutions to intervene into these sources through the distribution of social resources. Self-respect refers simultaneously to a 'phenomenological' component, that is, how the individual sees himself, and a 'social' component, that is, how people view one another in society (Wall, 2006, p. 257). Martina's self-respect depends both on how she sees herself and how people view one another in society. There is no doubt that public institutions are unable to ensure a secure sense of the phenomenological dimension of Martina's self-respect, which depends to 'some degree upon her doing things for herself' (McKinnon, 2000, p. 494). As McKinnon explained, 'the most we can do, from a political point of view, is to ensure social conditions supportive of persons' self-respect' (McKinnon, 2000, p. 494). Public institutions have an influence on how people view one another in society and condition their attitudes towards each other and the social environment where their status and mutual appraisal are shaped (Liveriero, 2019).

This fundamental and well-known distinction between self-respect as a primary good and social bases of self-respect as a social primary good is rarely placed in relation with the distinction among different types of self-respect that the literature has nurtured for decades. The social bases of self-respect are mostly associated with standing self-respect, in that the status of equal citizens is the only means for public institutions to provide the social conditions for a persons' sense of their worth. While there is an agreement that both standard and standing self-respect are necessary for 'agents to properly see their accomplishments acknowledged and for establishing a relational-sensitive awareness of agents' own value', most authors have maintained that 'recognition-respect has a priority over esteem-respect when dealing with the social bases of self-respect' (Liveriero, 2019, p. 93)[91]. This assertion is anchored in the idea that 'the mutual relationships among citizens' strongly echo the relationship 'among citizens and political institutions' (Liveriero, 2019, p. 93). This everlasting and somewhat implicit idea has deep roots in political philosophy, and was firmly asserted in *Political Liberalism*, in which the mutual relationships among citizens are translated by the principles of public reason and mutual respect, whereas the relationship among citizens takes form through the public realisation of the principles of justice.[92].

[91] In my terms, 'appraisal-respect' or 'standard self-respect'.

[92] The central issue is the extent to which the equal public status is undermined by particular private affiliations and expressions. Individuals share equal public statuses that constitute an ideal of citizenship assuring self-respect beyond their particular private affiliations, but when private affiliations are harmful to the public status of others, discussions and relationships taking place in public forums and the social

This idea that recognition-respect has a priority when dealing with the social bases of self-respect has received only a few good criticisms by Cordelli (2015) and Schemmel (2019), both of whom stressed the importance of the freedom of association for the social bases of self-respect. This criticism is grounded. The social bases of self-respect encompass features of institutions that are needed 'to enable people to have the confidence that they and their position in society are respected' and to enable people to have the confidence that 'their conception of the good is worth pursuing and achievable by themselves' (Freeman, 1996, p. 12).

There is no doubt that our subjective identity is shaped by the social environment, which can affect an agent's ability to perceive their worth, in particular, if the public identity or attitude of others stigmatises our identities (Liveriero, 2019). Our character, deeds, achievements, and endeavours are judged by others. The relationship between political institutions and citizens constitutes a macro social environment in which citizens' 'identity is shaped' and which frames 'their attitude towards each other', which can influence citizens' sense of their worth (Liveriero, 2019, p. 93). Nevertheless, there is also a narrower social environment in which individuals can develop their sense of self-worth at the micro level in their voluntary associations. This environment should also be a concern for the social bases of self-respect. From a liberal political perspective, the most fundamental source of respect is uncontestably the status of free and equal citizen, and this is the very sense of the social bases of standing self-respect; it requires us 'to recognise the status of free and equal agent of any member of the constituency, independently from her personal achievements, characters flaws or rational abilities' (Liveriero, 2019, p. 93). However, it does not mean that the social conditions to obtain basic mutual appreciation are not part of the social bases of self-respect, and that providing equal opportunities for citizens to see their character, conceptions, and endeavours appreciated by like-minded associates is not an essential requirement for political justice.

A solid concept of self-respect therefore requires one to consider both the distinction between self-respect as a primary good and the social bases of self-respect as a social primary good, and their respective relationship with standing and standard self-respect, themselves disaggregated into a plurality of statutory and non-statutory sources of esteem. Thus, if social bases of self-respect have to be understood as features of institutions that are necessary to enable people to have the confidence they need to exercise their two moral powers, then, we should not only be concerned with the social bases of standing self-respect and the recognition of

world can affect the perception of the identity of citizens, according to their belonging to definite social groups, and this unfair social disadvantage can alter their ability to perceive their worth.

individuals as a person or citizen (recognition-respect), but also with the social bases of standard self-respect (appraisal-respect), not reduced to excellence and achievements (Liveriero, 2019; Quong, 2006), but expanded to having our endeavours recognised and our conception of the good shared by others. The full social bases of self-respect, thus defined as the features of institutions that give citizens the confidence of their status and worth, is a primary social good that must be ensured by the basic structure of society.

FIGURE 4. The Social Bases of Standard Self-Respect

Nature of good/Type of self-respect	**Standard self-respect** (appraisal-respect)	**Standing self-respect** (recognition-respect)
Self-respect as a primary good	Experiencing a sense of one's value and the value of one's conception of the good by virtue of mutual appraisal	Experiencing a sense of one's equal status
The social bases of self-respect as a primary social good	Securing equal opportunity for the sense of one's value and developing a valued conception of the good through mutual appraisal.	Securing a sense of equal status through the public recognition and affirmation of citizens as free and equal

As a result, *the social bases of standard self-respect* refer to the idea of equal opportunity to 'the personal circumstances of self-respect' (Stark, 2012, p. 246) that allow citizens to see their endeavours, deeds, and achievements as recognised by like-minded citizens. In light of this, my argument points to the non-statutory features of the social bases of self-respect and emphasises the opportunity to develop mutual appraisal in social associations. These personal circumstances, I argue, constitute the social bases of standard self-respect that are features of institutions, which are required to enable people to have the confidence that 'their conception of the good is worth pursuing and achievable by themselves' (Freeman, 1996, p. 12).

This specification will allow me to show that not all non-political associations refer to equally accessible and harmless standards and are not all equally able to generate mutual

appraisal between members. Whereas Rawls and political liberals treat non-political associations as a unified category in relation to a unitary conception of self-respect and focus on equal citizenship and political liberties as the locus of the social bases of self-respect, I show that social associations have a special importance for the personal and relational basis of self-respect and its social bases.

Social Associations and the Social Bases of Standard Self-respect

With self-respect understood as believing that one's conception of the good to have value, Rawls' broad category of non-political association makes sense. All types of associations, whether intimate or distant or for a social or economic purpose, may generate self-respect as a secure conviction of one's own worth[93]. Nevertheless, non-political associations are based on very different types of standards, relationships, and memberships, and have different relations with standard and standing self-respect. For instance, we can easily imagine that an informal association, like a group of friends, would be less able to foster members' sense of status than an association with formal membership and rights and duties attached to it. Similarly, we can imagine that distant membership in a professional association based on the mere payment of dues and attendance at annual meetings, would be less likely to produce mutual appraisal among members than membership in secondary associations, where members know each other, maintain regular interpersonal links, and can appreciate the contribution of each to the common purpose.

Yet, as a paradigmatic category, I defined social associations as based on organised, voluntary, and interpersonal relationships and relying exclusively on the influence of norms for their cohesion in Part I. Social associations, thus defined, have a very special relationship with standard self-respect because the mutual appraisal resulting from relationships between subjects is best served by i) voluntariness that can be left at a reasonable cost which is based ii) on regular interpersonal relationships, and iii) a variety of non-economic and non-political standards, sanctioning not only achievements and deeds, but also ends and shared endeavours. The category of social association first refers to associations that are voluntary, in that their individual *members can leave at no excessive cost*. This voluntary feature of social associations ensures that the standards employed within particular associations are adequate and suit the members' needs and that the members fully accept these standards (McKinnon, 2000). Martina

[93] The category of non-political associations is so wide that there are limited cases to this basic assertion, too. Consider, for example, people who find themselves as members of organized religions that treat them as having less worth because of their gender identity or sexual orientation.

may live in a family or have a job that may be harmful to her sense of worth without any meaningful alternative to exit. However, she may be less likely in her free time to voluntarily and freely participate in a social association that may have such negative effects on her sense of her worth. Second, social associations, as secondary associations, are also defined as being *based on regular interpersonal relationships* that serve as the very precondition for any substantial mutual appraisal among individuals. Martina can be a passive member of Greenpeace without being personally involved in interpersonal relationships and this distant membership can certainly contribute to her normative identity (and sense of status), but is less likely to generate mutual appraisal between Martina and other members[94]. Third, because they are *based on purely associative relations* whose means solely rely on communication, social interactions, and member compliance with a normative order for their cohesion, voluntary associations are well-placed to foster trust and reciprocity. Moreover, associates in social associations may adopt various standards based on achievements and deeds and on mere endeavours, ideals, and beliefs that are mutually recognised as valuable, which constitute alternatives to more competitive standards based on power or money, as in electoral wins or profits. As Shiffrin accurately explained (2005, p. 879), 'the milieu of voluntary associations does not operate on as competitive basis as businesses and related commercial associations, the barriers to creating alternatives are not as high'. Social associations provide 'opportunities for creating rival sources of recognition and social connection on a voluntary and fully authentic basis' (Shiffrin, 2005, p. 879). A social association seeking normative influence may adopt demanding and competitive standards, as does a scientific association in pursuit of excellence, but the range of possible criteria and standards is uncontestably far wider for a social association than for a corporation seeking profits and adopting highly selective standards based on competitive market qualities.

If we admit that Rawls is explicit on the relationship between all non-political associations and standard self-respect, this contribution does not play any role in the social bases of self-respect and the features of institutions that are necessary to guarantee it. Rawls and most other commentators (Krishnamurthy, 2013; Queralt & González-Ricoy, 2021) have narrowly considered the social bases of standing self-respect through the public status of citizenship and the equal worth of political liberties and priority of liberty. I contend that we should also pay special attention to the social bases of standard self-respect that are necessary to afford people the confidence that 'their conception of the good is worth pursuing and

[94] There are distant tertiary associations that have developed a system of distant appraisal. This is the case, for instance, of a scientific association based on a peer-review process.

achievable by themselves' (Freeman, 1996, p. 12). The category of social association occupies a special place in this regard, both because it is harmless for the distribution of socioeconomic and political opportunities to non-members and because it depends on legal and social conditions ion which institutions may effectively and legitimately intervene. First, social associations rely purely on the influence of norms for their cohesion. The only primary good affected by social associations is self-respect itself, which is a good that is not reduced for some by the use of others. In contrast, assuring Martina an effective and roughly equal opportunity to access a job or an elected position would have an influence on the distribution of social primary goods, such as income and wealth or political influence, and would not go without consequences on the liberties and (worth of the) rights of others. Second, social associations depend on specific legal and social conditions into which institutions may intervene. They are formally organised through formal rules and memberships in a manner that makes them dependent on legal and institutional arrangements, and are based on intermediate relationships that operate at the 'common collective action' (Warren, 2001, p. 57). They rely on structural and background conditions that make such collective action possible. To be effective, their formal creation requires recognition by state institutions that should not add to the burden of collective action that is already born by aspirational associates.

I claim that social associations – because they can be left at a reasonable cost, are based on voluntary and regular interpersonal interactions, are harmless to the rights of others, and depend on legal and social conditions – have a relational configuration that allows them to generate mutual appraisal in such a way that it allows public institutions to take them as a central focus of the social bases of standard self-respect. Social associations constitute a paradigm category of associations that allows their members to develop mutual appraisal. As they are organised and social, they represent a rare type of associative relationships for which social conditions of possibility can be influenced by features of institutions. Not all non-political associations are based on regular interpersonal relationships that can generate mutual appraisal (e.g. membership in a distant NGO). Not all non-political associations can be left at a reasonable cost (e.g. quitting a job or severing filial bonds). Not all non-political associations rely on pure associational relationships and undemanding standards based on the influence of norms (e.g. for-profit corporations). Not all non-political associations are formal enough and organised to see their social conditions of exercise supported by liberal institutions (e.g. friendship). While many associative and non-associative activities can increase the self-worth of individuals, such as having a high-status job or owning fancy clothes, I contend that the social conditions for social associations alone can be equalised as a feature of institutions that provides citizens opportunities for mutual appraisal and the confidence of their worth.

This is the very ground of my preliminary claim according to which different types of non-political associations require different protections and restrictions, as well as a different understanding of a fair share of resources to take up an opportunity. We understand that social associations give a concrete shape to the idea of a community of interest where conceptions of the good are shared and valued, and hold a very special relationship with the social bases of standard self-respect.

In the next section, I will continue the complexification initiated with the plurality of types of associations with a complex bundle of rights that are constitutive of the freedom of social association to show that the liberty to *form social associations* has a generative function for standard self-respect, essential for giving everyone at least one community of interests, and that contrasts with the exclusively protective function for self-respect of the rights to participate, refuse to associate, and exit social associations.

2.2 The Equal Right to Form Social Associations

Now that the category of social association and its nature and importance for the social bases of standard self-respect are clear, the central question that remains is what an equal right to social association is a right to do, what duties it imposes on the state and other people, and how substantive is that right? In short, what does an equal right to social association amount to?

The place of liberty within political justice and related claims to social resources depend on their role for a citizen's two moral powers and the extent to which they enable them to fulfil their two high-order interests. I have shown that the freedom of social association relates to the two fundamental cases presented by Rawls[95], and that the category of social association was of special significance for the social bases of standard self-respect and the adequate development of the moral capacities of citizens. Freedom of association is not a mere institutional condition for the freedom of conscience. If the relationship between self-respect and association is explicit in Rawls' work, the normative implications of this relationship are not fully understood both for the justification of the freedom of social association as a basic liberty and the exploration of the meaning of the social bases of self-respect. Therefore, I suggest that the place of the

[95] The two fundamental cases are derived from applying the two higher order moral powers to liberties (Rawls, 2005b).

freedom of social association in justice as fairness has been undervalued and must consequently be reassessed.

However, as there are many social and legal conditions distinct from freedom of social association that can influence individuals' ability to advance their associative ends, a strict equalization of all of them would be at odds with the idea that some inequalities in social primary goods may be justified. The second principle of justice legitimates differences in material and symbolic conditions between citizens and any requirement of equality beyond this fair share of means would be irrational. In the case of freedom of social association in particular, ensuring the equal worth of all associative activities would direct more resources to more demanding associative interests and would 'wrongly assume an interest in having others equally fulfil their conception of the good' (Brighouse, 1997, p. 174). So what should a liberal state do? Do we have reason to think that something more is required for social associations?

Following Queralt and González-Ricoy (2021), I propose to examine the conditions and duties that securing standard self-respect entails. The *conditions* refer to 'the circumstances under which individuals have reasons to acquire and securely sustain, other things being equal, a self-respecting attitude' (Queralt & González-Ricoy, 2021, p. 12). I emphasise in particular in Section 2.1.2 the relation between social associations and the personal circumstances of self-respect that allow citizens to see their endeavours, deeds, and achievements appraised by like-minded citizens. The *duties* refer to the obligations to do something, or to abstain from doing something, that the right to obtain such personal circumstances for self-respect entail for the state and other people[96]. In examining these conditions and duties, I will pay special attention to the different rights that compose the bundle of rights to associate, highlighting for each right the corresponding circumstances and – for the most relevant – the duties it entails. As we know, to recognise the value of the associative interest in standard self-respect, we must break down the general right to associate into several more specific rights (Brownlee & Jenkins, 2019). I have assumed thus far that the category of social association highlights the relationship between the idea of non-political association and (standard) self-respect, but the different rights that compose the complex bundle of rights constituting the freedom of social association bear a different relation with the associative interest in self-respect and, in particular, with the social bases of self-respect. I will show now that the different rights that make up freedom of social association require a different level of support and a quite different understanding of equality

[96] In Section 2.3.2, I will examine in particular the nature and contours of a state duty to subsidise and help to form social associations.

of opportunity. In this perspective, I defend the view that citizens should have an equal worth of their liberty to form social associations, in addition to the substantive ability to leave associations and a fair equal opportunity to join and refuse to associate.

With this in mind, I examine in Section 2.2.1 the conditions of securing standard self-respect, paying special attention to the different temporal sequences that compose the bundle of rights to associate, highlighting for each of them the corresponding circumstances under which individuals maintain, protect, or develop standard self-respect[97], I then examine which understanding of equal opportunity is better suited to each of these particular circumstances, and I show that each citizen is entitled to the equal value of the liberty to form social associations in virtue of his/her status of free and equal citizens entitled to develop his/her moral powers. In Section 2.2.2, I strengthen this argument in explaining how the allocation of the worth of the liberty to form social associations as an 'expressive effect' (Queralt & González-Ricoy, 2021, p. 24) that bears on the status of free and equal citizens. I finally show, in Sections 2.3.1 and 2.3.2, that the equal liberty to form social associations refers to a narrow range of social conditions that can be equal for all and that its equal worth is grounded in our interest in treating other justly.

2.2.1 A Fair Share of Resources to Take up an Opportunity

In justice as fairness, there may subsist substantial inequalities in the value that the formal rights to form, join and exit associations have for particular individuals. The fair share of the resources defined by the second principle of justice, required to exercise their formal liberties and opportunities, does not ensure the equal worth of freedom of social association. With the difference principle, all citizens have an equal claim to assistance/non-interference, but legitimate differences in material and symbolic conditions among them can make it easier for some than for others to form, join, or leave social associations[98]. The substantive abilities of citizens to associate are not equal. According to justice as fairness, however, the inequalities

[97] In Part I, I argued that these different rights reflected three logical and relevant temporal sequences: start-up, exercise, and termination phases.

[98] Recall that the second principle of justice - in its most recent version - is defined by Rawls as follows: 'Social and economic inequalities are to satisfy two conditions: a/ They are to be attached to offices and positions open to all under conditions of fair equality of opportunity; b / They are to be to the greatest benefit of the least-advantaged members of society' (Rawls, 2005b, 291). The first condition, the fair equality of opportunity, implies that the positions must not be opened only in a formal sense but that each individual should have a fair chance to reach them (Rawls, 2005b, 291). The second condition, the difference principle, implies that inequalities are acceptable only if these are to the advantage of the most disadvantaged (Rawls, 2005b, p. 291).

permitted by the difference principle should be compensated for the principle of fair equality of opportunity and the fair value proviso in order to ensure that citizens have an equal opportunity to advance their good and exercise their two moral powers' (Rawls, 2005b, p. 325). This is fundamental to my argument on self-respect and the liberty to form social associations.

Equal opportunity is a political ideal that can take many forms. *Formal equality of opportunity* is a principle that regulates opportunity for office and position, and which requires that 'social positions, such as jobs, be formally open and meritocratically allocated' (Lindblom, 2018, p. 237). The principle of *fair equality of opportunity* requires, in addition, that 'each individual is to have a fair chance to attain these positions' (Lindblom, 2018, p. 237). Thus, under the principle of fair equality of opportunity, the basic structure of society should ensure that 'citizens at the same level of talent and willingness should have equal opportunity' to obtain these positions (Lindblom, 2018, p. 237)[99].

The proviso of *fair value of liberty* follows a 'structure analogous' (Layman 2015, 416)[100], but implies a more demanding understanding of equality of opportunity, which is believed to regulate the opportunity to 'take part in' and to 'influence the political process' (Rawls, 2005b, p. 225), but which my argument intends to apply to the opportunity to form social associations[101]. In its classical understanding, the proviso requires a worth of political liberties that 'must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decision' (Rawls, 2005b, p. 225). While basic liberties are compatible with inequalities related to the usefulness of liberties, political liberties require equal value[102]. Thus, 'some inequalities that otherwise would be justified by the difference principle are unjust regarding the fair value

[99] Note that the principle of fair equality of opportunity has been sharply criticized for its unjustified lexical priority over the difference principle (Alexander, 1985) and for not providing the guarantee that individuals' ambitions are not influenced unfairly by socialisation (Anerson, 1999).

[100] The fair value protection is structurally identical to the fair equality of opportunity norm included within the second principle (Layman, 2015, p. 416).

[101] Some interpretations of the principle of fair equality of opportunity are very close from to the proviso of fair value, as for instance Freeman, who captures the situation of fair equality of opportunity as thus: 'being in a position to develop one's capacities and talents, whatever they may be, is needed to maintain one's status and self-respect as a free and equal citizen capable of social cooperation over a complete life.' (Freeman, 1996, p. 95). Similarly, one may take more or less generous interpretations of the proviso of fair value, for instance as requiring equal worth, approximately equal worth, or a sufficiently equal worth.

[102] I use the terms 'value' and 'worth' interchangeably to refer to the usefulness of some liberty – provided that 'value' is here taken as a descriptive concept (a quantitative rather than an axiological issue).

of the political liberties' (Wall, 2006, p. 249). This is so because Rawls considered the fair value a natural focal point between formal and substantial equality. He claimed that the fair value of political liberties alone must be guaranteed, as equalising the worth of non-political liberties – among them, the freedom of association – would be either irrational, or superfluous, or socially divisive[103].

In short, in justice as fairness, there may subsist substantial inequalities in the value that the formal rights to freedom of social association has for particular individuals, and if something more than the fair share of means ensured by the difference principle is required, it has to be grounded either in the principle of fair equality of opportunity, or in the proviso of fair value of liberty, as it is conveyed by the proviso of the fair value of political liberties.

The different temporal sequences that compose the complex bundle of rights constituting freedom of social association themselves bear different relations with the personal circumstances of self-respect and, consequently, with the social bases of standard self-respect. The different rights to associate refer to different circumstances under which citizens maintain, preserve, or develop standard self-respect, and I contend as such that they demand different protections and restrictions and a different understanding of a fair share of resources to take up an opportunity. At the heart of my argument is the idea that the liberty to form social associations occupies a special importance for the circumstances under which citizens develop standard self-respect and that as such it deserves a strong egalitarian understanding of equal opportunity, equivalent to the requirements that Rawls thought necessary to ensure equality in the political liberties.

The Substantive Ability to Leave, the Fair Opportunity to Join

The right to leave maintains an uncontested protective function for the self-respect of members who cannot develop a sense of their own worth and/or status in the association anymore, or whose sense of worth and/or status are affected negatively by it (McKinnon, 2000)[104]. In both cases, member-s should have the option to leave an association that is

[103] Throughout all his writings, Rawls insists and argues that it must be done 'by including in the first principle of justice the guarantee that the political liberties, and only those liberties, are secured by what I have called their fair value' (2005b, p. 327).

[104] According to McKinnon (2000), there are two cases in which associations cannot play a positive role in supporting a member's self-respect: when the association's *standards* do not meet the needs of the members anymore and when the association's membership undermines *the sense of status* of member-s.

damaging his/her sense of worth (at no excessive cost). Once the condition of exit is ensured, association is generally considered voluntary and a priori favourable to a positive sense of self-worth.

This protective function is reinforced by the fact that the act of leaving is a decision that can be taken unilaterally, without direct consequences for the opportunity to associate of others. If it happens that Martina does not value the activities of the group, then her success, failure, lack of commitment, and/or misconceptions according to group standards will be irrelevant to her self-respect (McKinnon, 2000). Likely, she will not take long to leave the association and perhaps join another. The fact that Martina leaves her neighbourhood association, moreover, does not prevent the rest of the members from continuing their associative activities and does not undermine the circumstances under which they currently find mutual appreciation. This is why the right to exit is one of the less contested dimensions of the relationship between the freedom of association and standard self-respect. If there are deep disagreements in the literature on what is required for one to be effectively able to leave particular associations (Barry, 2002; Cordelli, 2017; Rouméas, 2020)[105] the capacity to leave is consensually appreciated as a condition to ensure that membership rules will not affect the member's self-respect negatively. In this perspective, the essential protective function of the right to leave requires a demanding normative standard.

The ability to leave social associations has to be understood as a precondition of my argument, a condition inserted in my definition of social association as kind of voluntary intermediate relationship that can be left without excessive costs, and generally considered as constitutive of voluntary membership[106]. The standard regulating the possibility of leaving such relationships cannot be understood in terms of opportunity, because it is insufficient to ensure that citizens *have equal chances* of success to leave their associations at no excessive cost. This standard can neither be understood in terms of equal value, because what is required is not equal worth of the liberty to exit but a worth of that liberty that is sufficient for members to be able to leave without excessive costs. My definition thus requires that citizens actually be equally

[105] Some liberal authors have defended the right to exit as requiring equal resources to take up the opportunity (Barry, 2002; Cordelli, 2017; Rouméas, 2020). For example, Barry (2002, p. 150) supported the idea that the state must be 'prepared to intervene to ensure a genuine capacity of exit'. It is following this line of thought, for instance, that Cordelli (2017) tried to establish that there is a prima facie case for the right to democracy within large and hierarchical churches that are not easily escapable.

[106] Recall that, according to my definition, a group is voluntary 'in the sense that members must be able to leave the group at no excessive cost (so that we can presume they consent to its formal authority structures, even if not democratic)' (Laborde, 2017, p. 174).

successful in leaving their associations at no excessive cost. Thus understood, the essential protective function of the right to leave requires an actual equal ability, that is, an equality of outcome. Such substantive ability to exit, however, cannot ensure that each citizen would have equal opportunity to enjoy a place in which to develop a sense of self-worth. The right to leave is exercised by people already belonging to associations and, without a correlating liberty to form and join social associations, it does not afford a guarantee to each citizen of an equal opportunity to enjoy a place in which to develop a sense of their own worth. It may happen for instance that individuals may not find any associations with appropriate standards that would accept them, or that individuals leaving their association may 'be forced to search for the less demanding groups, providing them with lesser opportunities for standard self-respect' (McKinnon, 2000, p. 499).

The question takes a very different turn when we consider the right to join, and its correlated right to refuse to associate. According to McKinnon (2000), liberal arguments tend to justify maximum freedom of association 'as providing opportunity for self-respect for all', but the exclusion from membership of some people by others 'prima facie damages opportunity for self-respect for the excluded' (McKinnon, 2000, p. 491). This thus constitutes what McKinnon called a dilemma, to the extent that these exclusionary rules are necessary to allow included members to live according to their own rationales and to make possible the *raison d'être* of the association (McKinnon, 2000). If we imagine for instance that to ensure Martina's opportunity for self-respect, the state compels a particular social association to include her as a member even if she lacks essential qualities to be so recognised, then such a decision will inevitably jeopardise the opportunity for self-respect of those who are already members of the association and who do not want to accept Martina as one. This is why if the state forces the association to admit Martina as a full member in order to increase her opportunity for self-respect, the association members could legitimately also invoke similar considerations of self-respect to maintain an exclusive membership that is meaningful to them. Exclusion rules are at the very same time an 'opportunity for self-respect for members and a denial of opportunity for self-respect for non-members' (McKinnon, 2000, p. 494).

I disagree with McKinnon's argument that under ideal conditions such a dilemma between members and non-members would not arise, as citizens would be committed to mutual respect and share an equal public status in parallel to private membership. On the one hand, she contended, the exclusion of group members from a social category does not damage their self-respect, because by virtue of mutual respect they would be grounded in qualities that are necessary for the group's purpose and would not be harmful to the public status of those who

are excluded. On the other hand, she contended that individuals share an equal public status by virtue of equal citizenship, which constitutes an ideal of citizenship assuring self-respect beyond one's private affiliations (McKinnon, 2000). This statement, however, assumes two implicit assumptions. The first is, under ideal conditions, there exists a strong relation between equal citizenship, ensuring equal recognition-respect, and one's sense of one's value. As it will become clear in the next section, however, we should not overestimate the capacity of the status of free and equal citizen to affect self-respect, understood as citizens' sense of their own value and the value of their conception of the good. The second assumption she assumes is that, in ideal conditions, excluded individuals or leaving members will always have other meaningful available alternative to develop standard self-respect, and that – in Martina's case – 'there will exist other groups which she can approach and which will provide her with access to the right sort of achievement' (McKinnon, 2000, p. 498). However, McKinnon herself acknowledges that 'the cost to individuals excluded from making use of the opportunities is far greater than the cost to the excluders, because the excluded are forced to search out the less demanding groups providing them with opportunity for meritocratic self-respect' (2000, p. 499). Nevertheless, she only concedes the fact that 'it is very difficult for the excluded to gain access to the appropriate groups', and that 'it does not mean that they lack the formal opportunity to do so' (McKinnon, 2000, p. 499). Yet, if we reject the idea that equal citizenship can compensate for such a lack of opportunity for self-respect in the private sphere, it becomes a fundamental matter for political justice to provide citizens with an equal opportunity for standard self-respect. If Martina is rejected by all local associations, the fact of sharing an equal public status with fellow citizens would not compensate for her lack of opportunity to develop a sense of her own value. Thus, her lack of opportunity to develop a community of interest due to exclusion from membership or to the inadequacy of the standards offered by existing associations is indeed a risk of damaging her equal opportunity for standard self-respect. Even under ideal conditions, we may not uncritically assume that the status of free and equal citizen automatically affects citizens' sense of their own value, nor that excluded and leaving members could so easily find other valuable alternative to develop standard self-respect.

There are therefore good reasons to think that the protective function of the right to refuse to associate must be balanced against considerations of the rights of others to join social associations and their claim to access standard self-respect. Reciprocally, the right to join social associations must be put in relation with the right of members to define their own rules and to access standard self-respect. A balance must be found. I thus argue that the principle of fair equality of opportunity is suitable for the right to join social associations, avoiding wrongful discrimination and ensuring fair competition. As Rawls defined fair equality of opportunity as

conditions that obtain when people with similar abilities and ambitions have the same chances of success, the fair equality of opportunity to join social associations implies that Martina, regardless of her social position, should have the same chances of success to join social associations as people with similar abilities and ambitions[107]. This standard is appropriate for the right to join and refuse to associate, and may limit discrimination bearing on equal standing, but it is neither appropriate for the right to leave social associations, which should be understood as the substantive ability to leave, nor for the liberty to form social associations, for reasons that I will expound.

Through these descriptions of the circumstances under which individuals maintain and protect their sense of their worth in social associations, we understand that the rights to refuse to associate and to leave implicitly suggest the existence of the alternative for leaving or excluded members to easily search for and find another association or to form a new one. The right to join social associations is limited for the reasons discussed, and little has been said until now about the fair opportunity to form social associations.

The Generative Function of the Liberty to Form Social Association

In Part I, I argued that it is possible to decompose the right of association into three logical and relevant temporal sequences: the start-up, exercise, and termination phases. I contend now that only the start-up phase relates to circumstances in which individuals secure an additional opportunity to see their appraisal, deeds, and endeavours appraised by like-minded associates.

In the start-up phase, when people decide to unite their efforts in common activities in the association, individuals have the opportunity to adopt new standards for appraisal. This contrasts with the termination phase, where members should be free to individually or collectively give up their associative purpose, and where freedom of social association (the liberty to leave and to refuse to associate) is limited to its protective function for the standard self-respect of members. By creating a social association, a person creates a new membership based on particular standards that are shared by like-minded associates to appraise achievements, deeds, and endeavours. The claims to refuse to associate and leave have no such fundamental function for generating standard self-respect. In excluding particular individuals and/or social groups from membership, or in leaving an association, we express disagreement and refusal, avoid harm, or end a boring activity or dodge someone, while in forming an

[107] The right to join social associations is not the right to join a particular existing association but rather a generic right to join existing association without being wrongfully discriminated. I will develop further the relation between social associations and anti-discriminatory norms in the Section 3.1.2.

association, we share a common purpose and elaborate a shared rationale, join our efforts in the pursuit of the same ends, and seek recognition for our efforts to achieve it. The first concerns the preservation of the members' self-respect in sustaining or ending a particular interaction, the second the generation of self-respect through a new, voluntary, and regular interaction allowing mutual appreciation. Thus, the liberty to form social associations relates to the start-up sequence, which are the only circumstances that may generate – as opposed to protect – standard self-respect. Furthermore, in the start-up phase, the additional opportunity for standard self-respect does not weigh on the opportunity to associate of others. The establishment of social associations requires the active participation of like-minded associates, but it does not depend on a particular permission of already constituted groups and does not require them to change their common standards. This contrasts with the exercise phase, when the association undertakes actions to achieve its objectives and where the opportunities for the standard self-respect of members (liberty to refuse to associate) are in balance with the opportunities of non-members (liberty to join).

The generative function of the start-up phase not only contrasts with the protective function of the termination phase and the exercise phase, it is also complementary to them. By securing the existence of welcoming alternative associations for leaving or excluded members, the liberty to form social associations appears to be a necessary complement to the right to leave and to refuse to associate. Shiffrin was right to suggest that an extensive liberty to exclude may be attenuated by the liberty to form because 'the excluded have the option to generate associations of their own and to create their own sites of culture and mutual recognition and trust' (2005, p. 879).

The liberty to form social associations, in short, relates to the start-up phase of social associations, which is generative of standard self-respect and does not weigh on the opportunity to associate of others, in a way that is complementary with the (meaningful) rights to join and to refuse to associate. The liberty to form social associations has thus a special relationship with standard self-respect and, through its generative function, offers a concrete realization of the idea that individuals should have the opportunity to find a community of interest in which their conception of the good is shared and valued. For these reasons, I support the view that citizens should have an equal worth of their liberty to form social associations.

2.2.2 The Equal Worth of the Liberty to Form Social Associations

The worth of a liberty refers to its usefulness for the individual. This is the effective use that an individual can make of his/her liberty if he/she decides to exercise it. From the

perspective of justice as fairness, equal value is a standard that requires that legitimate differences in material and symbolic conditions among citizens not make it easier for some than for others to use their liberty. Rawls contended, however, that the value of political liberties need be only 'approximately' or 'sufficiently equal' (2005a, p. 225)[108]. In particular, the basic structure of society should ensure that citizens at the same level of talent and willingness have equal opportunity to associate, and thus, 'citizens at different levels could have unequal sets of opportunity' (Lindblom, 2018, p. 237). The proviso does not imply that all 'inequalities due to the distribution initial natural assets are unjust' (Loi, 2012, p. 59). The worth of the liberty of people less talented or less motivated (or, in the case of freedom of social association, simply unfriendly and unpopular) can be expected to be less independently of economic issues. Thus understood, one can thought of the proviso of fair value as aiming at coming as close as possible to the equal value of the liberty to which it applies and, in the frame of justice as fairness, it means that the worth of the liberty should not be affected by the distribution of economic or social resources. Thus, in my account, the usefulness of the liberty to form social associations should be equal for all citizens regardless of their economic or social resources. Then, if Martina and Chandran have equal worth in their liberty to form social associations, and Chandran is better off than Martina, all things being equal (talents, inclinations, motivations), then they should have an equal ability to form social associations[109].

The justification I offer for such a demanding understanding of equal opportunity to form social associations is twofold. On the one hand, I contend that this standard applies in a limited way to a very narrow range of social conditions necessary to form social associations that are common to all conceptions of the good and, on the other hand, I show that this standard is justified by the fundamental role of the right to form social associations for self-respect and by its expressive effect on how people consider themselves and their fellow citizens[110]. So, I argue

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[108] In *Justice as Fairness A Restatement*, however, Rawls (2001, p. 46) contends that 'Citizens enjoy that value in a fair way to the extent that persons with roughly equal talents and dispositions have a roughly equal chance of holding office, making a difference in elections and referenda, and so forth, regardless of their economic or social resources.

[109] We note, however, that liberties are never purely formal in Rawls, and the egalitarian distributive implications of the principles of justice have to be taken as a whole (Lindblom 2018). While the difference principle regulates 'the inequality that could result from differences in (natural) talents', the principle of fair equality of opportunity 'constrains the kind of inequalities that the difference principle would allow' and 'the opportunities needed to achieve equal standing as a citizen are to be distributed equally' (Lindblom, 2018, p. 237). In addition, the proviso of fair value thus requires 'rough equality' in the sense citizens' chances to use specific liberties are 'similar enough' that the value of their liberty is not undermined by legitimate inequalities in income and wealth.

[110] Such an argument can be specified as 'expressive' to the extent that it is concerned with the message that public institutions express to citizens holding different conceptions of the good – that their

that it is only particular rights in the freedom of association bundle that are subject to such a strict egalitarian interpretation and that these rights are fundamental to self-respect. As a result, this strict demand of equality is consistent with all reasonable conceptions of the good, rather than reflecting sectarian ideas about the special importance of equality as opposed to freedom, or the like.

A Narrow Range of Liberties, Rights and Social conditions

My negative justification for adopting the demanding standard of equal worth emphasises the limitation of the scope of my argument, and first of all, that the proviso of fair value has to be understood in terms of opportunity and not resources (Hunt, 2015). Rawls (2005b) was clear that the proviso of the fair value of the political liberties has to be understood in terms of opportunity and repeatedly insisted that it applies to institutions and not individuals. Similarly, and uncontestably, the fair value of the liberty to form social associations provides a roughly equal opportunity, through institutions and a set of conditions, but does not guarantee to each citizen equal resources to take up the opportunity.

Furthermore, the idea that a liberty 'covers quantitatively different liberties' is at the heart of my argument, and the proviso of fair value can apply to some liberties and not others (Hunt, 2015, p. 134)[111]. Freedom of social association is better thought of as a complex bundle of rights and my argument targets a very precise claim right, namely *the right to create an association,* by virtue of its contribution to the social bases of standard self-respect, as necessary to provide to each citizen a fair opportunity to form his/her own community of interests. Accordingly, the usefulness of all other basic liberties can still vary according to the difference in income and wealth authorised by the difference principle[112]. Finally, my argument is limited to *social associations* - as defined in 1.2.1 and for reasons expounded in 2.1.2 - and thus excludes businesses, political parties and religious organisations, and supports the equalisation of a very

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reasonable conceptions of the good are as worthy of respect as any other (Queralt & González-Ricoy, 2021).

[111] On the fair value of the political liberties, for instance, Rawls pointed to few fundamental political liberties, underlining that citizens should have equal access 'to the use of a public facility designed to serve a definite political purpose' (Rawls, 2001, p. 150). Thus understood, the fair value of the political liberties presupposes the guarantee of basic liberties, the necessary information and knowledge to defend our interest and 'a fair chance to add alternative proposals to the political agenda' (Rawls, 2005b, p. 225), with special attention paid to the scope of political speech.

[112] This restricted extension contrasts, for instance, with Brighouse's (1997) structure of special distribution of political power, according to which rough equality can be required for many basic liberties protecting a primary good that follows a particular distribution.

specific set of social conditions related to the creation of social associations. These conditions are thus narrowly limited to the sequence of creation of social associations and do not guarantee the success of the activity, nor do they give the right to operating subsidies granted by the state.

These conditions are related to the sequence of creation and should be considered material and social background conditions that are useful for all conceptions of the good[113]. To organise socialising activities, Martina needs temporal resources that she shares with like-minded people, adequate social connections with people who themselves have adequate resources to associate, some individual financial assets that she pools with her associates, access to infrastructure to meet with others, a recognition of the capacity of her association to enter into legal relations in the name of the associates having jointly exercised their rights, and minimal knowledge and skills that are pooled in the group. These are all-purpose means that are essential for the advancement of any (collective) conceptions of the good. They are needed by all citizens, no matter what their definite conception of the good. They do not vary according to the conception of the good at stake, rather, they are 'entangled' with all of them (Martin, 2017, p. 158). To start the pursuit of any collective purpose, whatever the final end pursued by associates and the particular content of the associative activities, individuals will need to find associates with a common interest and shared time and communicate with them, and they will have to rent a place, meet, organize activities, and obtain legal personality to act in a collective name. To participate in community events, sing songs together, or play a sport, people need social connections with neighbours, fellow singers and teammates, shared time and place to arrange meetings, rehearsals and matches, basic knowledge and social skills to rule a formal association. Without such resources, the right to form social associations is purely formal, without any possibility for individuals to affect the social world or maintain the continuity of their actions. Natural differences in talents and capacities, the various conceptions of the good life held by citizens and their particular associative tastes, do not influence this basic need for obtaining the social conditions underlying mutual appraisal. As long as the requirement of equal worth relates to the opportunity to form social associations, it does not require an interest in having others equally fulfil their conception of the good, but an interest in treating them justly.

[113] These all-purpose means to associate are primary goods, in that all-purpose material and social means are necessary for the exercise and development of the moral powers and to pursue a wide variety of conceptions of the good. They are not social primary goods because they are relational goods that escape the currency of justice and cannot not be adequately quantified and measured.

This finding would doubtless be very different if the proviso of fair value was to apply to the other rights to associate. Ensuring the equal worth of all associative activities would affect more resources for more demanding associative interests, and would 'wrongly assume an interest in having others equally fulfil their conception of the good' (Brighouse, 1997, p. 174). It would enable the practice of any associative activity as much as any other according to what the members of each association feel is appropriate (Brighouse, 1997) and, as the material and social conditions to achieve a definite associative interest can be more or less demanding, we can reasonably expect that it would result in deep social divisions in the necessary fair distribution of resources in order for one to participate in an association (Gheaus, 2018). The fair value of the right to exit an association, especially, would require investing very different amounts of resources based on the particular set of constraints and costs of exiting particular associations (see Barry, 2002; Cordelli, 2017; Rouméas, 2020)[114].

An Effect on How People Consider Themselves and their Fellow Citizens

My positive justification held that this demanding standard, which applies to a narrow range of social conditions necessary to form social associations, is justified by the fundamental role of the right to form social associations for the social bases of self-respect and its expressive effect on how people consider themselves (Queralt & González-Ricoy, 2021).

We know that the start-up phase provides citizens additional opportunities to develop the circumstances under which they can develop mutual appreciation and the sense of their value. The ability to leave social associations and the fair opportunity to join and refuse to associate cannot provide citizens the circumstances under which they may develop a new opportunity to see their achievements, deeds, endeavours, or qualities appraised. The liberty to form social associations, and only this liberty, relates to the start-up phase of social associations, which is generative of standard self-respect in a way that does not limit others' opportunities to associate. Thus, considering the classical Rawlsian idea – explored in Section 2.1.1 - that citizens develop a sense of self-worth in voluntarily pursuing activities with others in social associations, and the idea – defended in section 2.1.2 - that the full social bases of self-respect require both ensuring the equal public status of the citizens and establishing an equal value for their different

[114] Some liberal authors have defended the right to exit as requiring equal resources to take up the opportunity. For example, Barry (Barry, 2002, p. 150) supported the idea that the state must be 'prepared to intervene to ensure a genuine capacity of exit'. It is with this line of thought, for instance, that Cordelli (2017) tried to establish the idea that there is a prima facie case for the right to democracy within large and hierarchical churches that are not easily escapable.

conceptions of the good life, it results that we should pay special attention to the value of the liberty to form social associations.

I argued that standard self-respect should not be reduced to excellence and achievements (Liveriero, 2019; Quong, 2006) but expanded to having our endeavours recognised and our conception of the good shared by others. Thus to treat citizens justly, institutions should ensure the minimal circumstances under which citizens can find mutual appraisal in having their endeavours recognised and their conception of the good shared by others. The most brilliant, capable, intelligent, motivated, and accomplished individuals certainly have a greater opportunity to find mutual appraisal and valued standards in the pursuit of excellence, but they should not have greater opportunity to try to carry out their conception of the good life and to see their endeavours recognised and their conception of the good shared by others. Each citizen has the right to a rough equal opportunity of being appraised, if not for their achievements, then for their conduct, values, endeavours, or personal qualities. The social bases of standard self-respect cannot be accessible only to those who are the most talented for the very same reason that standard self-respect cannot be reduced to excellence. The social bases of self-respect, necessary for the two moral powers, is a minimal threshold under which political persons are neither free nor equal.

My argument suggests that the worth of the liberty to form social associations, unlike the worth of other liberties, cannot be allocated by the difference principle and the principle of fair equality of opportunity. As the main lever of institutions on the social bases of standard self-respect, the worth of the freedom to form social associations cannot be based on the difference principle that maximises the minimum outcome in terms of social primary goods. Likewise, it cannot be governed by meritocratic principles of distribution aiming at preventing wrongful discrimination in the competition for office. The principle that regulates the 'circumstances under which individuals acquire and sustain self-respect' (Queralt & González-Ricoy, 2021, p. 12) should reflect the moral premise of the status of free and equal citizen. It should ensure each citizen access to such circumstances and it should do so on an egalitarian and non-meritocratic basis. This requires, or so I argue, a demanding understanding of the equal opportunity to form social associations as equal worth.

The core of my positive justification rests on the expressive effect of the allocation of the worth of the liberty to form social associations on how people consider themselves. The central point of the argument relies on the idea, central in justice as fairness, that how institutions treat us affects 'how we think others value us' and thus self-respect' (Rawls, 2009, p. 447). I contend that, in ensuring the equal worth of the liberty to form social associations, institutions express

the idea that each reasonable conception of the good is as worthy as any other and establish equal value for the different reasonable conceptions of the good life held by citizens. Through such a social arrangement, institutions assert that citizens have the actual ability to pursue and achieve their conception of the good and reassures them of their worth and of their ability to pursue, revise and achieve it by themselves. This is the very sense in which we should understand the triptych relation between the liberty to form social associations, self-respect, and the first moral powers.

Thus understood, the liberty to form social associations is closely related to the respect that everyone deserves 'as a moral being, as someone with a sense of justice and a conception of the good' (Rawls, 2005a, p. 337). As Brighouse (1997, p. 174) explained, we do not have 'an interest in having others equally fulfilling their conception of the good, so that allocate more resources to them, merely because their conception is more expansive, undermines both the social bases of self-respect and our confidence in the impartiality of the state'. Nevertheless, individuals do have a compelling moral interest in all citizens having a roughly equal opportunity to the basic social conditions necessary to try to carry out their conception of the good life. More extensively, they have a compelling moral interest in all citizens having the opportunity to seek the circumstances under which they can find mutual appreciation in having their endeavours being recognised and their conception of the good being shared by others, whatever they might be. In this sense, the equal worth of the right to form social associations and the social resources it mobilizes find a moral basis in the duty of mutual respect, especially in the duty to respect others' conception of the good. In virtue of this natural duty - that the parties in the original position endorse (Rawls, 2005a, pp. 178–179) - citizens have an interest in seeing each other's finding their own community of interest. Thus, while it has recently been supported that the duty to credit others as being entitled to political justification was constitutive of the justification of the fair value of the political liberties as social bases of standing self-respect (Queralt & González-Ricoy, 2021), I stress the duty to respect others' conception of the good as a justification for the equal value of the right to form social associations, which, I contend, establishes equal value for the different reasonable conceptions of the good life held by citizens and reinforces citizens' moral capacities. This social arrangement 'allows for and encourage the diverse internal life of associations in which individuals realise their more particular aims' and fortifies citizens' confidence that institutions make room for the pursuit of private conceptions of the good (Rawls, 2005a, p. 264)[115].

[115] In turn, Rawls (2005a, p. 264) wrote, 'the public realization of justice is a value for community' because participation of communities in the more comprehensive good of political justice 'can greatly

This implies that this social arrangement may allow Martina to effectively obtain the personal circumstances of standard self-respect, and if Martina cannot find in existing associations a membership that is suited to her personal standards, and she feels the need to develop a sense of appraisal beyond her work and family life, then she should have easy access to the minimal resources that are necessary to do so. Nevertheless, even though Martina does not effectively seize the opportunity to form social associations, if she does not belong to any association and does not feel the need to belong to anyone, or if she is already a member of an association that allows her to develop a sense of self-worth, she will benefit from the arrangement as a feature of institutions that can enable her to have the confidence that her conception of the good is as worthy as that of others and that it can be pursued and achieved under any circumstance and, importantly, that she will be able at any time to revise her conception of the good, leave her association, and join or form new ones. This arrangement reassures Martina that she will be able to pursue her conception of the good by herself, irrespective of the social circumstances and future change in her preferences. It reassures her of her status of moral agent, with not only a capacity to pursue and achieve a conception of the good, but also with a capacity to revise it. It also fortifies Martina' confidence that institutions afford her the room for the pursuit of her private conception of the good and reinforces her in her capacity to respect others as moral beings, themselves having other conceptions of the good that deserve respect and a fair share of resources to try to realise them. Then, even if Martina does not need an association to cultivate a sense of self-worth in it, or if she already belongs to one, the social arrangement of the fair value of the liberty to form social associations has a fundamental value for her.

My argument shows that the worth of the liberty to form social associations, unlike the worth of other liberties, is fundamental to political justice. Martina should have the same opportunity to form social associations than any other citizen, irrespective of her economic and social resources. This will certainly not be enough to account for all of her moral needs, and Martina may still lack a sense of her own value, she may finish her life with an unachieved and unsuccessful conception of the good, but it is the best that institutions can do to ensure that she will always have the opportunity to set up places where she can try to affirm her conception of the good life and find the confidence to achieve it, and so publicly affirm and express that her

enlarge and sustain each person's determinate good' limited to smaller associations (Rawls, 2005a, p. 320)..

reasonable conception of the good is as valuable as any other. In so doing, I contend, the social arrangement expresses a message that has a moral value in itself.

FIGURE 5: The Circumstances of Standard Self-Respect

Different types of liberty / Different circumstances of self-respect	Liberty to Form	Liberty to participate	Liberty to join and not to Associate	Liberty to Leave
Circumstances of standard self-respect	**Generation of standard self-respect:** new opportunity for the appraisal of endeavours, achievements, and deeds.	**Protection of standard self-respect** against external standards and rules undermining mutual appraisal.	**Protection of standard self-respect** against the compelled inclusion of unwanted members affecting rules and standards.	**Protection of standard self-respect** against harmful membership or inadequate qualities/standards
The social bases of standard self-Respect	**Priority of liberty, Roughly equal opportunity of experiencing a sense of one's value** Duty to help (legal and social conditions to form social associations)	**Priority of liberty** Duty of non-interference	**Principle of Fair Equality of Opportunity** Duty of non-interference (under FEO condition) .	**Priority of liberty, Actual ability to leave** Duty to enable exit without excessive costs

In the next section, we will see that this justification of the equal worth of the liberty to form social associations, as having an expressive effect on the capacity of citizens to value their conception of the good and their capacity to achieve it, applies with added strength when we consider the justification of political liberties as social bases of standing self-respect.

2.3 The Enlarged Proviso of the Fair Value

In this Section, I explore the normative implications of the relationship between the liberty to form social associations and the social bases of standard self-respect for the best available justification of the fair value of the political liberties.

I want to point out that the objection that Rawls already recognised the importance of the freedom of social association for political justice merely bypasses the fact that not all basic

liberties have an equivalent status[116]; especially, political liberties are granted special treatment because of the proviso on the fair value of political liberties (Rawls, 2005a; 2005b)[117]. Yet, if the relationship between self-respect and association is explicit in Rawls' work, the normative implications of this relationship are not fully understood for either the justification of the freedom of association as a basic liberty or the exploration of the meaning of the social bases of self-respect. This applies with added force when we consider the plurality of the concepts of self-respect, rights, and association. To reinforce my argument about the expressive effect of the equal value of the liberty to form social associations, I now re-examine the normative status of the freedom of social association (and its different rights) within the ambit of justice, by treating its justification in parallel with one of the provisos of the fair value of political liberties as the social bases of self-respect (Krishnamurthy 2013; 2012; Queralt & González-Ricoy, 2021)[118]. Considering that the liberty to form social associations is of special significance for the social bases of standard self-respect, I argue for a special treatment of both political liberties and the liberty to form social associations.

As the justification of the fair value of the political liberties is poorly developed and highly contested (Wall, 2006), I show in Section 2.3.1 that the relationship between the social bases of social respect and political equality is certainly the most promising track to justify it (Krishnamurthy, 2012; 2013; Queralt & González-Ricoy, 2021). However, this argument cannot explain why only the fair value of political liberties is able to secure these social bases (Schemmel, 2019; Wall, 2006). I argue that, to be justified, the argument on the relationship between the social bases of self-respect and fair value of political liberties must be extended to the right to form social associations. I present the equal worth of the liberty to form social associations as an assurance mechanism for citizens to enjoy at least one community of interest where they can pursue their conception of the good and develop a sense of self-worth and the self-confidence necessary for it. Against Schemmel (2019), I support it as an extension of the proviso of fair value, and as a necessary complementary justification of the fair value of political liberties. Together, I contend, they ensure that no citizen will be relegated over time to

[116] Rawls grants a statute of basic liberty to freedom of association, included in the first principle of justice and its priority; and only fundamental liberties must be accorded such priority.

[117] Political liberties are justified as a subset of the basic liberties for which citizens who are similarly endowed and motivated should have similar opportunities to hold office, influence elections, and so on, regardless of how rich or poor they are.

[118] The discussions taking place on the justification of the fair value of political liberties parallels that on the justification of the priority of liberty. In both cases, the two moral powers and self-respect are intended to justify the lexical priority of the basic liberties and special treatment of political liberties within it (Cass, 2021).

an inferior public status and that each will have at least one place in which to acquire and develop a sense of value, and that both are essential conditions for the adequate development of the moral capacities of citizens. In Section 6.3, I explain why a complementary social arrangement is rationally required to ensure the extended proviso of fair value, and I defend the view that, as regards freedom of social association, the state has the duties to subsidise and assist the formation of social associations.

2.3.1 The Special Treatment of Political Liberties

Rawls argued that parties would adopt the proviso of the fair value of political liberties in the original position as a complementary principle of two principles of justice, a compensating one that he however considered a fundamental element of justice (2005a). This is so because 'for unless the fair value of these liberties is approximately preserved, just background institutions are unlikely to be either established or maintained' (Rawls, 2005b, p. 328). His main argument boils down to the idea that the preservation of fair legislation over time requires equal opportunities to influence the collective decisions and obtain a position of authority because it ensures that political power is not hoarded by few well-off individuals, developing towards a form of monopoly over the political process (Rawls, 2005b)[119]. Economic inequalities convert into unequal worth of political influence and require additional regulatory and distributive arrangements (Queralt & González-Ricoy, 2021). According to Rawls, this is why the proviso of fair value would 'fit with our convictions' (Rawls, 2001, p. 327) and why the parties in the original position would select the principles of justice that include the fair value of political liberty[120]. Nevertheless, it is necessary to explain why the equal worth of political liberties is essential to maintain just background institutions, and why 'the fair value

[119] In *A Theory of Justice*, Rawls (2005a, p. 225) underlined that the political process it 'at best-regulated rivalry" because of the fact that political power is especially vulnerable to economic inequalities and 'rapid.ly accumulates' and that 'these inequalities will enable those better situated to exercise larger influence over the development of legislation. In due time they are likely to acquire a preponderant weight in settling social questions, at least in regard to those matters upon which they normally agree, which is to say in regard to those things that support their favoured circumstances. (…) Compensating steps must, then, be taken to preserve the fair value for all of the equal political liberties' (Rawls, 2005a, p. 225)

[120] Equal political right and universal suffrage cannot alone avoid the accumulation of political power: 'Inequalities in the economic and social system may soon undermine whatever political equality might be have existed under fortunate historical conditions. Universal suffrage is an insufficient counterpoise; for when parties and elections are financed not by public funds but by private contributions, the political forum is so constrained by the wishes of the dominant interest that the basic measures needed to establish just constitutional rule are seldom properly presented (…). By way of summing up the account of the principle of participation, we can say that a just constitution sets up a form of fair rivalry for political office and authority' (Rawls, 2005a, p. 226).

of the political liberties is to be understood differently from the fair value of the other liberties' (Brighouse, 1997, p. 158). Rawls' argument is highly contested as instrumental (Schemmel, 2019; Wall, 2006), institutional (Orr & Johnson, 2018), or dependent on empirical circumstances and thus incapable of grounding the fair value of political liberties as a fundamental element of political justice (Brighouse, 1997; Wall, 2006). According to Rawls (Rawls, 2005b), these institutional arrangements are justified as a means to preserve and maintain just background institutions. According to his critics, compliance mechanisms cannot justify the proviso as a fundamental element of political justice (Orr & Johnson, 2018).

I take for granted, following Wall (2006), that further developments of the argument, based on the structure of the distribution of political influence (Brighouse, 1997)[121], and on the connection between political liberties and the capacity for a conception of the good and for a sense of justice do not provide a full justification of the fair value of political liberties. The justification of equal political liberties by the capacity for the good is explicitly denied by Rawls, for obvious reasons related to the equal consideration of different reasonable conceptions of the good[122]. Regarding the capacity for a sense of justice, the mere recognition of equal value of political liberties does not ensure that people will effectively exercise their political rights and develop an effective sense of justice (Krishnamurthy, 2012, 2013; Wall, 2006). Such argument, moreover, wrongly assumes that political relations are essential to the development of a sense of justice in a way that other familiar, economic, and/or social kinds of relations are not (Wall, 2006) and such a view is hardly defensible from the perspective of the morality of associations (Rawls, 2005a). Social, non-political life, affords numerous possibilities to develop a sense of justice (Rosenblum, 1998b; Wall, 2006). Finally, if Brighouse's (1997) argument seems to explain Rawls's insistence on the accumulation of the political power, the problem, however, is that the argument in itself is incompatible with the

[121] Brighouse (1997) proposes an argument based on the special pattern of distribution of political power. Political influence, a primary good according to Brighouse, is not based on the logic of wealth and income that is the proxy for Rawls; it has the tendency to be hoarded rapidly and hence generate deep and long-standing inequalities, different in nature from those that characterize wealth and income. Especially, political influence is competitive 'not only statically, but over time as well' (Brighouse, 1997, p. 162). With such a structure of distribution, either political influence is roughly equal, or it is deeply unequal, and "applying maximin reasoning to the distribution of political influence will require equality' (Brighouse, 1997, p. 162).

[122] Rawls (2005a, p. 299) wrote that, in large modern societies, 'political liberties are thought to have a lesser place in most person's conceptions of the good'. This is why equal political liberties are not justified within the basic liberties by their contribution to the capacity for the good, but as an 'institutional means' to secure other basic liberties (Rawls 2005a, p. 299). This is obviously true for their fair value, which cannot be not justified by the special relationship of political liberties with the capacity for the good, but rather for their instrumental role in regulating other basic liberties.

central premise of justice as fairness, based on wealth and income as an adequate proxy to access all the social primary goods. To admit that political influence is a primary good that follows a different distributional structure than wealth and income creates a fundamental indexing problem for justice as fairness.

In the context of Rawlsian thought, we should expect that the fair value of political liberties is justified with reference to their contribution to the development and full exercise of the two moral powers (Brownlee & Jenkins, 2019; Wall, 2006). From this perspective, the relationship between the social bases of social respect and political equality is certainly the most promising track (Krishnamurthy, 2012; 2013; Queralt & González-Ricoy, 2021), but again, this argument cannot explain why only the fair value of political liberties is able to secure these social bases (Schemmel, 2019; Wall, 2006). In the next subsection I argue that, to be justified, the argument regarding the relationship between the social bases of self-respect and fair value of political liberties must be extended to the liberty to form social associations as a mechanism to ensure that citizens enjoy at least a community of interest where they can pursue their conception of the good and develop a sense of self-worth and the self-confidence necessary for it.

2.3.2 The Proviso as Social Bases of Self-Respect

Some scholars indeed see equal political liberties and their fair value as particularly important social bases of self-respect (Krishnamurthy, 2012; 2013; Queralt & González-Ricoy, 2021). One of the most promising attempts in this perspective came from Krishnamurthy (2012; 2013), who developed an original argument that linked the public inferiority resulting from political inequalities with the undermining of the capacities for moral powers. According to her argument, without the proviso of fair value, 'political inequality would express to the underenfranchised that their political institutions do not regard their interests as worthy of equal advancement, and their sense of justice as not deserving an equal (Schemmel, 2019, p. 628). Krishnamurthy explained:

> Imagine a society where the poor have the right to vote, but are less able to make effective use of their right to vote, say, because the wealthy are able to make greater contributions to political campaigns and, in turn, are more able to influence legislation. If the poor have less of an opportunity to influence political outcomes than the rich, the suggestion is, their self-respect would be undermined (Krishnamurthy, 2013, p. 184).

This is so because, as 'there exist other arrangements, as public financing of political campaigns, that are feasible and more conductive to the equal advancement of interests'

(Krishnamurthy, 2013, p. 185), the public acceptance of this particular arrangement would be understood as a lack of respect for the interest of some in the development of their two moral powers. Therefore, in accepting the unequal worth of political liberties and its potential outcomes, social institutions will suggest that the two moral powers are less important for some citizens who are included within the political process with less influence, making these citizens effectively less motivated to pursue and exercise their two moral powers. In the idea that 'not valuing one's conception of the good can hinder one's pursuit of one's end' (Stark, 2012, p. 239), the unequal worth of political liberties will make these citizens feel that their ends are of little value and make them less motivated to develop and exercise their two moral powers. This is why Krishnamurthy argued that social institutions respect people's equal worth only when equal political rights and the fair value of political liberties prevent the establishment of people's positions in public life as inferior. The proviso of fair value, then, is the expression of the status of free and equal citizens, the symbolic basis and material condition for just cooperation over time that ensures the 'social bases' that give citizens a sense of self-worth and confidence to carry out their plans better than other arrangements do. Thus, Krishnamurthy (2013, p. 187) contended, 'even if it did not work to secure our (material) interests, ensuring equal political liberty and its fair value is of importance'.

Krishnamurthy's argument on the social bases of self-respect allows us to adopt a 'more process-oriented' (2013, p. 186) approach to justify the special treatment of political liberties with respect to the two moral powers. Here, we understand that the proviso is justified not because it maximises an outcome, preserving fair legislation over time, limiting the accumulation of political power, or fostering a sense of justice, but because excluding some citizens a priori from equal influence in political decision-making expresses an unequal valuation of their two moral powers. From this perspective, the public expression of the priority of liberty and fair value of political liberties has to be understood as an affirmation of the equal status of citizens (Krishnamurthy, 2013; Wall, 2006). The central idea, here as in my argument, is that the proviso of fair value enables institutions to express their equal consideration of different conceptions of the good, and citizens to treat each other as equally deserving respect in spite of any disagreement on what makes for a good life. Variation of this argument has been developed recently by Queralt and González-Ricoy through the idea that the proviso of the fair value of political liberties also allows institutions to express to citizens that they have 'equal authorities' in the sense that they are 'fully able to give and receive reasons' (2021, p. 8)[123].

[123] Queralt and González-Ricoy argued that Krishnamurthy's view, which they generally agree with, 'misses an important dimension of the expressive value of political liberties: that how their value is

A major objection can be raised against this interesting line of argument, whatever particular form it takes, when applied to the justification of the special treatment of political liberties. As Wall (2006) rightly argued, the argument does not explain why this public affirmation of equal status cannot be accomplished equally well in other ways. Yet, if there were another way to publicly affirm the equal consideration of different conceptions of the good, the proviso would not plausibly be a fundamental element of justice and, as a consequence, a 'fully just society could abandon the fair value guarantee so long it expressed the equal status of citizens in some other way' (Wall, 2006, p. 259). I agree with Schemmel and this objection gains full strength when we consider the fact that a citizen's public status alone cannot guarantee their standard self-respect and the value they place on their conception of the good life (Schemmel, 2019).

As we know, it has long been highlighted that the notion of self-respect used by Rawls – as a secure conviction of one's own worth – is 'equivocal' regarding which aspect of the person' has to be considered of equal worth (Darwall, 1977; Zink, 2011)[124]. The central problem is that the political circumstances of self-respect, seeing each other as moral equals having equal public status, has very different implications from self-respect understood as 'believing that one's conception of the good has value' (Stark, 2012, p. 246), that is, the personal circumstances of self-respect. The political circumstances of self-respect cannot be understood as promoting self-respect when taken to imply believing that one's conception of the good has value. As Stark mentioned, 'one need not to recognise one's equal civil status on order to pursue one's ends' (2012, p. 240). Krishnamurthy did not distinguish between these two equivocal acceptations in his argumentation, as he contended that being an equal member in the system of social cooperation (standing self-respect) is considered to be grounded in the capacity to develop and exercise the capacity for the two moral powers and hold a conception of the good that is worthy (standard self-respect). Yet, undermining standing self-respect does not per se

distributed publicly signals the extent to which individuals credit each other, in the shared space of justifying reasons that a political community entails, with being able to give and receive reason as members of equal standing. Thus, when the state allows that the value of political liberties be unevenly allocated, such that similarly able and motivated citizens cannot influence political decisions as much as wealthier ones, it does not just express that their conceptions of the good are not as worthy of respect, as Krishnamurthy claims. It also expresses that they are not equal authorities, fully able to give and receive reasons, in the shared space of justification that a political community involves' (Queralt & González-Ricoy, 2021, p. 8).

[124] Recall that self-respect ambiguously refers to standing and standard self-respect, confusing it as 'a matter of convictions about one's moral status and the equal basic rights and duties flowing from it' and 'a matter of convictions about the value of one's projects, standards, and abilities to which one's identify, providing appropriate conduct and a desire to act in accordance with it' (Schemmel, 2019, pp. 631–632).

threaten standard self-respect, which is by definition 'robust under adversity', a 'deeply personal affair' which cannot be assumed destroyable just because one's public status is attacked (Schemmel, 2019, p. 628). Ensuring Martina's public status as a citizen and the fair value of political liberties does not provide her with the bases for developing any self-respect with regard to her conception of the good life. Her political status may have no effect on her sense of self-worth. Perhaps Martina does not vote or value politics in general. She is happy to know that the wealthiest citizens will never have the opportunity to exercise tyranny in the future by hijacking the political process, but this has little to do with her sense of self-worth and ability to exercise her moral power fully to lead a good life[125].

If Krishnamurthy was right to highlight that self-respect is an essential condition for the development of the two moral powers, it does not convincingly explain why the fair value of political liberty is essential for self-respect, in a way that other arrangements are not (Wall, 2006). While the argument allows us to formulate a contention that is compatible with the idea of opportunity, it cannot explain why the fair value of political liberties is the only or best way to secure it. Queralt and González-Ricoy's (2021) argument certainly reinforces Krishnamurthy (2013) position. It roots the relationship between the fair value of political liberty and the social bases of self-respect not only in the institutional expression that 'all reasonable conceptions of the good are worthy of respect', but also in the institutional expression that all citizens 'are fully able to give and receive reasons' (2020, p. 4). Nevertheless, the relationship between the fair value of the political liberties and the 'duty to credit others as being entitled to political justification', as strong as it may be, does not compensate for the weakness of the connection between the fair value of the political liberties and the 'duty to respect other's conception of the good' (Queralt & González-Ricoy, 2021, p. 4). Citizens need the means to develop self-respect while acting in ways that they think are worthwhile. The issue here is getting to lead a life you think is valuable while enjoying respect in striving to live that life, and the fair value of the political liberties is not a sufficient condition for that.

In a nutshell, what is needed is an argument which: (i) is valid in the original position (or not straightforwardly instrumental according to Wall) and that can qualify the proviso as a fundamental element of justice, (ii) makes sense of the optional nature of the proviso, and (iii) explains what political liberties do for the social bases of self-respect and for our higher-order interests that other basic liberties do not. I think that a classical Rawlsian perspective can easily

[125] For this reason, some authors have advocated more demanding approaches to self-respect, leading to very egalitarian versions of justice as equity (Eyal, 2005; Zink, 2011).

fulfil (i) and (ii). A wide range of expressive arguments based on the general idea that public institutions must – through specific arrangements – firmly express the treatment of citizens as equal bearers of the two moral powers is promising in this respect (Cass, 2021; Krishnamurthy, 2012; 2013; Queralt & González-Ricoy, 2021)[126]. However, I do not think it is possible to justify the special attention paid to the political dimension of cooperation such that it would yield an argument which would support (iii). We meet serious problems, and for good reason, when we try to limit the public recognition of equal consideration to the strictly political dimension, for the simple reason that it is not the opportunity to participate democratically that matters fundamentally for social cooperation in justice as fairness, but rather the moral capacity of citizens to develop and exercise their moral powers. It is possible to construct a different and better justification of the proviso of the fair value of political liberties based on the social bases of standard and standing self-respect once we extend this justification to the freedom of social association. Giving up (iii) appears to be the solution. I call this the complementary approach, and this justification I term the shared special importance of political liberties.

The Complementary Approach of the Proviso

My claim is that the fair value of political liberties and the liberty to form social associations are both necessary to ensure the social bases of standard and standing self-respect. This is an unprecedented position in the literature, which therefore deserves to be situated in relation to it, and in particular with respect to Krishnamurthy (2012; 2013) and Schemmel's (2019) arguments.

I agree with Schemmel (2019) that presupposing that standard self-respect will be hindered by political inequality is a hazardous assumption. Undermining standing self-respect does not per se threaten standard self-respect, which instils by definition robust under adversity (Schemmel, 2019). Self-respect can develop in various contexts: at home, in the workplace, and in associations; and threats to self-respect can come from elsewhere than from public institutions (Wall, 2006). No social arrangement is able to ensure that every citizen will enjoy standard self-respect. As Rosenblum argued twenty years ago, 'the consequence of insisting that public standing is a necessary condition to self-respect is to assume a positive public obligation to ensure self-respect, which is neither possible nor desirable' and this is why 'there

[126] This is the case for Krishnamurthy's (2012; 2013) argument on the social bases of self-respect and of Queralt and González- Ricoy's (2021, p. 8) argument of citizens as being 'equal authorities fully able to give and receive reasons for public justification', as well as of Cass's (2021) defence of the relational nature of political liberties and its importance for social equality.

are good reasons not to overstate the capacity of law and public institutions to instil or to secure self-respect' (Rosenblum, 1998b, pp. 91–92). Social arrangements can and must, Schemmel (2019, p. 668) stated, ensure 'the motivational and epistemic resources to arrive at, and retain, correct convictions of their own worth'. The issue concerning the social bases of self-respect is then, according to Schemmel (2019, p. 639), to identify the 'resources that are needed to withstand the typical threats' to self-respect. As a remedy, he emphasises self-help associations as counter-resources against the disorienting and repressive power of other groups, and/or the state. He wrote:

> Accordingly, the aim of providing resources for robust standing self-respect is to counteract such power, and to give individuals the means to resist it. Equal freedom of speech, information, and association are crucial such resources. They must include real, effective opportunities to make use of them, both in terms of economic means, and in terms of ensuring the existence of a lively sphere of initiatives and associations. Within these, people can come together in the pursuit of social and political activities, which develop and corroborate convictions of self-worth. Of particular importance are effective opportunities to form protest and self-help associations that serve as counter-resources against disorienting and repressive power of other groups, and/or the state (Schemmel, 2019, p. 638).

Schemmel's argument is quite interesting in advancing the role of non-political liberties in standard self-respect and insisting on the non-statuary features of the social bases of self-respect. Nonetheless, my argument differs from it in two respects. First, in my argument, individuals may well need social associations under ideal conditions of justice as a positive source of self-respect. Repressive power is not the only threat to self-respect, and individuals may simply lack the opportunity for standard self-respect because they cannot find adequate circumstances to develop it. Associations are places where citizens see activities that are rational for them being respected and publicly affirmed by others, and where they can develop their sense of self-worth and confidence in their ability; and individuals need some place 'where their values and opinions are affirmed, their contributions acknowledged' (Rosenblum, 1998b, p. 97). From this perspective, I argue that the equal worth of the liberty to form social associations constitutes an expression of equal respect (Liveriero, 2019), which is not affirmed through a public status – as in the case for equal citizenship – but through a fundamental right to access the personal circumstances of standard self-respect through social associations.

Second, I agree with the crux of Krishnamurthy's argument: the public acceptance of political inequalities is an attack on citizens' sense of self-worth. My contention rests on a

nuanced view of the relationship between standard and standing self-respect: they are neither mechanically related nor unrelated to each other. It would be inappropriate to deduce from the disconnection between standing and standard self-respect that the equal status that derives from equal political rights has no impact at all on standard self-respect. A threat to standing self-respect does not automatically threaten standard self-respect, which is robust under adversity, but the public acceptance of political inequalities affecting the capacity for the moral powers may be experienced by those concerned as a successful attack on the sense of their value, on their legitimate authority in a public forum (Queralt & González-Ricoy, 2021), and on the relational equality between citizens (Cass, 2021). It may also suggest that the wealthy 'have reasons not to consider the view of the less affluent citizens' (Queralt & González-Ricoy, 2021, p. 11). Public inequalities do not automatically undermine standard self-respect. However, they can hamper its development in the first place and may affect the capacity of some citizens to secure a sense of their own value, making them less able to develop their two moral powers. Fair social arrangements cannot ensure the sense of a citizen's own worth, but it seems reasonable to assume that they must prevent institutions from directly threatening the public standing of some of them. In this respect, the fair value of political liberties is a necessary but not sufficient condition for the social bases of self-respect. It guarantees that citizens will not be relegated to an inferior status by political inequalities, and expresses the idea that conceptions of the good are equally valuable and citizens equally able to give and receive reasons, but does not ensure that every citizen has the full social bases of self-respect. Preventing social arrangements from threatening citizens' standing self-respect is necessary but insufficient to ensure the minimal sense of self-worth that is necessary for citizens to exercise their two moral powers.

Thus, I agree with Schemmel that the basic structure of society should offer places where individuals can develop a sense of self-worth. Nonetheless, while he argued against the view that links the fair value of political liberties with standard self-respect, stressing the freedom of association as the locus of resistance where standard self-respect is deployed alongside or against one's public status (Schemmel, 2019), I argue for their complementarity. The social bases of self-respect, as I have defined in Section 2.1.2, requires both that individuals have the 'consciousness of self-worth and the value of their philosophy of life and that they ask for an institutional recognition of the individuals as morally equal beings' (Rawls, 2001, p. 319).

At the highest level of abstraction, my argument shows that the fair value of political liberties and the freedom to form social associations are necessary to secure the full expression of their status as free and equal citizens in i) ensuring the equal public status of the citizens, and

ii) establishing an equal value for their different conceptions of the good life. While the fair value of political liberties is a public expression of the status of equal citizens (standing self-respect), that of the liberty to form social associations is a public expression of the equal worth of the various conceptions of the good of citizens (standard self-respect). Whereas the first ensures that nobody will be relegated to an inferior public status, the second ensures that there is at least one alternative place for each to develop and share particular conceptions of the good with others. Together, they suggest that the two moral powers of each citizen are as important and valuable as any other, giving all citizens the opportunity to develop a sense of self-worth and the confidence to carry out their plans. In this sense, I argue that the social and political circumstances of self-respect can be reconciled and that we can conclude with Stark (2012, p. 239) that a generic Rawlsian idea of self-respect as 'the belief that activities that make up one's contribution matter' makes sense[127].

The extension of the proviso of fair value to the freedom of social association takes us to the heart of Rawls' theory, where citizens are equal because they have equal capacities to achieve their two moral powers. It aims at ensuring that all citizens are 'empowered to cooperate' (Platz, 2017, p. 51) and have roughly equal access to those means to exercise their basic liberties that are essential for establishing the social bases of standing and standard self-respect – the equal opportunity to bring a political proposal and to form social associations. Social cooperation, which is understood as the 'idea of a society as a fair system of social cooperation over time from one generation to the next' (Rawls, 2001, p. 5), includes both the political domain under the governance of the principles of justice and the social domain, which is characterised by free association, where individuals are free to pursue their particular good collectively in a manner that is suited to their particular aim. Both domains are needed and are constitutive of a society of full and equal members over a complete life, and accepting that some citizens may be excluded from the full capacity to participate in the political and/or social domain(s) would express an unequal evaluation of their two moral powers. Accepting the possibility of excluding a number of citizens, formally (unequal political liberty) and informally (unequal worth of political liberty), from the process of political decision-making and the effective possibility to lead their own particular collective conception of the good life (unequal

[127] Stark argued that 'Rawls did not support self-respect generally, but rather supported a specific kind to counter the effects of the market on lower class citizens' sense of worth (2012, p. 238). She defended an intermediate acceptance of self-respect as 'the belief that activities that make up one's contribution matter' (Stark, 2012, p. 239), which is compatible with both the social and the political circumstances of self-respect. Stark argued that Rawls relied on an unambiguous notion of self-respect as a secure belief that one's contribution to one's scheme of social cooperation matters.

worth of their liberty to form social associations) would express a clear and public unequal evaluation of their two moral powers. It is just as important for citizens to be certain not to end up with an inferior public status as a result of longstanding political inequalities (the political domain) as it is for them to secure the social possibility to develop their sense of their own worth in free association (the social domain).

In contrast to the institutionalist frame of the justification of the fair value outlined by Rawls – this justification rests on the fundamental positive *raison d'être* of the proviso of fair value for political justice, without 'referring to institutional mechanisms aimed at ensuring compliance' (Orr & Johnson, 2018, p. 18). The core of my justification relies on the expressive effect of the equal worth of few specific liberties on the capacity of citizens to value their conception of the good and their capacity to achieve it. In my account, it is not the (descriptive) reasons why the worth of certain liberties tend to be unequal that we should consider, but the (normative) reasons why it is the standard of equal worth that is required to regulate them. In my view, thus, the special treatment of the value of political liberties is not the result of their competitive characteristics[128].

According to the self-respect argument that is reformulated, in addition to the public expression of the priority of the principle of equal liberty – the equal worth of the opportunity to express political speech and to be elected to a public position – the equal worth of liberty to form social associations completes the affirmation of the status of citizens as equal and full members of the system of social cooperation that is essential for establishing the social bases of standing and standard self-respect.

A Limited and Rational Extension of the Proviso

Recall, however, that it could be argued, at least in Rawls' opinion, that a wider guarantee of the equal worth of political liberties would be 'either irrational, or superfluous, or socially divisive' (2001, p. 151). The extension would be irrational if it implies an egalitarian distribution that exceeds the second principle of justice and requires that income and wealth be distributed strictly equally; superfluous, if it amounts to nothing more than what is required by the difference principle and the principle of fair equality of opportunity; and divisive, if it

[128] In this respect, the liberty to form social associations is not competitive in the way political liberties are. Even if the liberty to form social associations relies on relational resources and depends on what the others do of their liberties, one person's liberty does not come at the expense of the liberties of others.

requires the satisfaction of particular interests among citizens, and income and wealth to be distributed according to the content of certain associative interests (Rawls, 2001).

The question then arises of the legitimate contours and substance of this right. Is it right to support Martina with public resources if she is a rich widow who would like to form a bridge club? If she has been denied access to two sports clubs in her neighbourhood and wants to form a third? How can this support be justified in the eyes of Carol, who is a solo runner, or Jack, who is fulfilled through the success of his business? These intuitive questions are fuelled by the unconventional scope of my Rawlsian argument, which ultimately holds that there are political reasons to substantially support the personal freedom of social association in its start-up phase. These intuitive questions are based on the very serious risk, for justice as fairness, directing more social resources to more demanding associative interests and to 'wrongly assume an interest in having others equally fulfil their conception of the good' (Brighouse, 1997, p. 174). We know indeed that Rawls seriously thought that the extension of the fair value proviso will aggravate competition for resources needed for fair value and lead to deep controversies (Rawls, 2001). He used the example of religious freedom:

> Some persons may count among their religious duties going on pilgrimages, or building magnificent cathedrals or temple. To guarantee the equal worth of religious liberty would mean, then, that society is to devote social resources to these citizens rather than to others whose understanding of their religious duties calls for far fewer material requirements. The latter's religious need, as it were, are less. It seems clear that trying to maintain the equal worth (thus understood) of all basic liberties will surely lead to deep religious controversy, if not civil strife (Rawls, 2001, p. 151)[129].

It can be argued from this perspective that the resources necessary to associate would lead to more resources being directed towards more demanding associative interests and that it would wrongly assume an interest in having others equally fulfil their conception of the good. For instance, an associative interest in training computing technology would lead to more social resources being directed to ensuring the equal worth of the liberty to form social associations

[129] Examining this, however, Brighouse rightly pointed out that civil strife is not the issue, because 'the aim of avoiding civil strife emanating from religious controversy is one consideration in the design of institutions' (Brighouse, 1997, p. 173), the problem relates more fundamentally to the higher-order moral interests that are at the base of political justice: 'Granting others equal opportunity and a fair share of resources with which to pursue their conception contributes to our interest in treating them justly (…) But our highest and higher-order moral interests do not include an interest in having others equally fulfilling their conception of the good, so that allocate more resources to them, merely because their conception is more expansive, undermines both the social bases of self-respect and our confidence in the impartiality of the state' (Brighouse, 1997, p. 174).

than the social resources required to form a choral group, or any less demanding associative interests.

By contrast, I argued that the equal value of liberty to form social associations, which requires rough equality of opportunity irrespective of economic and social resources, relates to a very narrow range of social conditions to form social associations that are equally available and useful to all conceptions of the good. The justification I have provided is grounded in the fundamental importance of the value of this liberty for the social bases of standard self-respect. It requires equal opportunity for a limited range of liberties and rights, which themselves rely on a very narrow range of social conditions that are common for all conceptions of the good and that they can be provided equally to all citizens. In this perspective, the classical objection of expansive taste, as tastes requiring to take more community resources (Dworkin, 1981; Keller, 2002)[130], does not hold in the context of the narrow range of social conditions that I identify as necessary to form social associations. The social conditions for the formation of social associations do not depend on particular associations' tastes, but are material and social 'background conditions' useful for all conceptions of the good for individuals to actually attempt to enjoy the circumstances under which mutual appreciation arises (Platz, 2017, p. 50)[131].

Citizens may have expensive tastes and wish to form a yacht club, they may have a bad temper and have been turned away from all other associations, they may have a taste for selfishness and little tolerance for others, and they may have chosen to live a remote mountain village; they nonetheless have the right to the equal worth of their liberty to form social associations. Imagine, for instance, that there are two football clubs in the small town where Martina lives with adequate infrastructure provided by the local authorities; then support for the establishment of Martina's association for the creation of a football club is unlikely to

[130] Opera (Rushton, 2019), wine appreciation or a computing technology course (Keller, 2002, p. 529), and pre-phylloxera claret and plovers' eggs (Wolff, 2008, p. 20) are all examples of expansive tastes presented in the literature. Dworkin argued that we should reject the notion that welfare is the currency of egalitarian justice, as it would lead to compensating individuals for expensive tastes they have deliberately cultivated (Dworkin, 1981; Holtug, 2015). This argument is usually ruled out by the idea that, in political justice, tastes are chosen and cultivated and do not constitute unfair social disadvantages requiring compensation.

[131] According to Platz (2017, p. 50), the notion of all-purpose means can be disaggregated into three ways in which resources are related to the social cooperation governed by the principles of justice: 'First, as basic rights and liberties necessary for citizens to develop and exercise the moral powers engaged in social cooperation. Second, as the material (and temporal) background conditions for citizens to actually enjoy these rights and liberties to the sufficient degree. Third, as the inputs and outputs (burdens and benefits) of the productive and distributive processes of social cooperation'.

succeed, and rightly so. This does not change the fact that Martina should be able to benefit from the basic social conditions to form the association that promotes what she believes is right for people (e.g. claiming to defend the popular dimension of a football club, or simply founding her own club). She has the right, according to the institutional implications of my argument, which I will further develop, to a modest and unique monetary allowance, to free time that she can share with the like-minded, and to places where she and her associates can meet and organise events. The specific social purpose, its usefulness for a given context, and the estimated chances of success of the associative undertaking do not matter. It is not up to the state, its services, or its courts to define which associative interests, purposes, and activities are legitimate or relevant. Similarly, what happens to the association in a later time does not matter. If the social association suddenly takes an expressive turn, and put forward a message in the public space (e.g. that specific social groups are not fit for football), then it will be fair to subject its expression to public reason and its public messages to the test of the message-oriented approach. If the association decides to seek public support, then it will have to agree to submit to the conditions of its backers (e.g. to operate democratically, to be accountable). This does not change the fact that Martina must initially benefit from the basic social conditions to form the association that promotes what she believes is right. This support is justified in the eyes of Carol, who is a solo runner, because she knows that their conception of the good is as worthy as Martina's and because she is conscious that she may revise her conception of the good and she could also benefit from such support in the future if she is led to pursue a collective conception of the good life. As long as the opportunity to form social associations is equal for all citizens, providing an all-purpose means to form social associations does not require an interest in having others equally fulfil their conception of the good, but rather an interest in treating them justly.

While directly including relational resources among the primary social goods through an additional principle of justice would result in a kind of irrationality, raising the indexing problem (Brake, 2017; Cordelli, 2015), and would, among additional implications, be socially divisive in making it 'difficult to establish who are the worst off' (Gheaus, 2018, p. 14), my argument, in contrast, supports that we should start from the well-established social bases of self-respect. The primary goods (self-respect) and the principle of distribution (the social bases of self-respect) that I identify are not new. Standard self-respect counts as a relational resource insofar as it results from relationships between subjects, and Cordelli was right to underline the 'meaningful, but non-intimate associative ties [that] figure themselves as primary good' (2015, p. 97). My explanation of the social bases of standard self-respect accounts for the need of citizens to interact with each other in associations without introducing a new principle of justice

for relational resources (Brake, 2017; Cordelli, 2015). Brake is right to underline that, if Rawls 'makes no special provisions' for the distribution of the social bases of self-respect', he assumed that such social arrangement would not create 'complex problems of interpersonal comparison because their support is relatively low cost and does not interfere with implementing the existing principles' (2017, pp. 140-141). As it is not relational resources or personal relations *per se*, but resources that are necessary for the capacity to form social associations, we can decide on a particular set of institutions, choose 'particular ways of distributing certain relationship goods, and balance the distribution of this relational good against that of another' (Gheaus, 2018, p. 8).

People vary in the weight they give to various personal relationships and relational goods (Gheaus, 2018), but do not vary in the fundamental interest they have in the social bases of standard self-respect and the unconditional possibility of developing a sense of their own worth by their own. In light of recent attempts to integrate a new relational principle of justice within justice as fairness in order, to expand our understanding of the basic structure of society (Brake, 2017; Cordelli, 2015), my argument appears to be a very rational Rawlsian defence of the relational aspect of self-respect and the importance of its social bases. This defence, I contend, avoids the pitfalls of irrationality and social division on which Rawls warned us with respect to any extension of the proviso of fair value. In the course of the next section, I will make obvious that the extension is ultimately not superfluous by showing that the equal worth of the liberty to form social associations requires a specific additional institutional arrangement, as a matter of fundamental justice, to complement the fair share of means allowed by the difference principle.

2.3.3 On the State's Duties to Form Social Associations

The liberty to form social associations would have no substance without a correlating duty, that is without a normative disadvantage owed by another party[132]. If citizens are entitled to the social possibility to develop their sense of their own worth in social associations, some other persons or the state should be under the duty to secure such possibility. In this ultimate development of Part II, I explain why the associative interest in standard self-respect is a

[132] Recall that, in Hohfeldian language, a duty is a normative disadvantage (no claim, duty, liability, and disability), an obligation owed by one party to another (Hohfeld, 1917). In Joseph Raz's version of the interest theory, this normative disadvantage is justified if the 'aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty' (Raz, 1986, p. 166).

sufficient reason for holding the state to be under the duties to subsidise and help to form social associations, and I examine the contours of such duties.

The first objection that can be raised regarding the very possibility of the equal value of the liberty to form social associations refers to the alleged logical impossibility of ensuring the liberty to form social associations without compelling other citizens to associate, that is, without infringing on the rights to refuse to associate of others. I already argued in this respect in Section 1.3.2 that Chandran's fundamental associative interest was not to associate with Martina (freedom of intimate association), but to be able to affirm activities that are rational for him and shared by others (freedom of social association). I stressed that the only primary good at stake in this case is standard self-respect, a participatory public good produced by interactions and appraisals between associates (see Cordelli, 2015; Ceva & Zuolo, 2016; Goemans, 2018; Morauta, 2002; Reaume, 1988). Still, the objection can be continued here in assuming that certain activities, ideas, or conceptions can be socially isolated, excluded from existing associations and rejected by those who may form new ones with them. To return to the same example: if Chandran would like to form a social association that would count blades of grass, it is likely that he will find it difficult to find like-minded associates. If we cannot guarantee Chandran people to associate with, Martina or anybody else, then – the objection continues – we cannot claim to ensure the fair value of the liberty to form social associations to Chandran or anybody else. The core of my answer provided in Section 3.2, however, still holds: standard self-respect is a participatory public good produced by interactions comprising mutual appraisal between associates; it does not depend on particular associative relationships (Martina) or activities (counting blades of grass), but more generally on the sense of one's contribution regarding definite and shared standards. Thus understood, the second version of the logical objection only substitutes 'relationship' with 'activity' in an attempt to push back as far as possible the counter-objection that remains: it is not the achievement of particular associative relationships, interests, or activities that matter, but the capacity to share activities that are rational for others to share, to find mutual support and resources to develop a form of self-confidence. In Chandran's case, it means that it is not the activity of counting blades of grass per se that matters, but rather that the appraisal of Chandran's contribution by others and his own sense of contribution that can take very different forms and refer to the different facets of Chandran's personality and personal interests. If Chandran really wants to associate, does not want to focus his associative undertaking on other dimensions of his social life (e.g. as neighbours), and persists in his particular associative interest in counting blades of grass, then we can imagine that Chandran still has the opportunity to establish his own association (even if it is one 'of people having weird tastes'), or if Chandran enjoys a place in which to develop

his activities around counting blades of grass and where he can meet people with different associative interests, he might meet Luke, who likes to count birds at crossroads, a person who values a similar type of activity for which it is hard to find associates and, importantly, who has similar skills for counting elements in urban spaces. Chandran and Luke may thus help each other and contribute to the success of their respective purposes with their respective and mutually appraised (mathematical) skills.

This central premise being clear, a roughly equal opportunity to form social associations is an institutional requirement and implies the equalisation of a specific set of social conditions. As part of the social bases of self-respect, this set of conditions must be ensured by the basic structure of society. Given that no one has a duty to associate or to help others to associate, the state has the duty to secure the social possibility for all citizens to develop their sense of their own worth in social associations. This does not mean that resources to associate must be equal, but that a specific range of social conditions to take up the opportunity to form social associations should be ensured. To this end, I contend that a specific social arrangement, complementary to the principles of justice, is required.

A Necessary Complementary Social Arrangement

It is so because, in ideal conditions, where citizens enjoy a fair share of resources to exercise their basic freedoms and where positions and offices are open to all on the basis of the principle of the fair equality of opportunity, rough equal opportunity (to add an alternative proposal to the political agenda, to form social associations) does not obtain without the proviso of fair value specified by Rawls and the institutional arrangement it requires.

There are two reasons independent of each other that explain that the proviso of fair value requires specific institutional arrangements. First, and simply, the fair share of resources defined by the second principle of justice, which is required to exercise their formal liberties and opportunities, does not ensure the equal worth of the basic liberties. The inequalities permitted by the difference principle and the principle of fair equality of opportunity should be compensated under the fair value proviso to secure additional ‘means required for persons to advance their good’ (Rawls, 2005b, p. 325). From this perspective, both the fair value of political liberties and the liberty to form social associations should be understood as compensating principles, providing citizens with roughly equal opportunities to participate in political and social life. Second, and more importantly, the worths of political liberties and the liberty to form social associations depend not only on motivations, inclinations, abilities, talents, and on the fair distribution of social primary goods indexed to income and wealth, but

also on the availability of relational resources that are necessary in order to participate socially and politically. Yet, under justice as fairness, all social primary goods that are correlated to wealth and income and regulated by the second principle of justice and relational resources – as trust, shared time, or more basically social connections – escape this metric of distributive justice (Cordelli, 2015; Platz, 2017; Rose, 2016).

It is certain that, in some way, all liberties rely on relational resources, but the freedom of association, unlike other personal freedoms, is intersubjective (Brownlee, 2016; Rose, 2016) as it can be only exercised with others[133]. As Brownlee (2016, p. 66) explained: 'We can practice our religion alone even though religion is a cultural enterprise. And we can express ourselves alone even though typically we aim to use expression to communicate. But we cannot associate alone'. Hence, while some forms of communication or organisation may be engaged non-synchronously, 'the central exercise of freedom of association must be done synchronously' (Rose, 2016, p. 261). This is particularly true for the right to form social associations, which is, as we know, a joint right that requires right-holders to exercise their individual rights synchronously (Preda, 2012b). I cannot simply create a social association alone, neither physically, nor legally. Standard self-respect itself must be considered a relational good originating from the mutual appraisal resulting from relationships between subjects, and the social bases of standard self-respect as features of the institutions required to afford people the relational basis − i.e. shared free time, social connections, trust, information − necessary to obtain the curcumstances for mutual appraisal and to develop the confidence that their conception of the good is worth pursuing and achievable by themselves, all of which fall outside the central metric of distributive justice. Citizens have a fair share of resources as defined by the second principle of justice, and symbolic room free from coercion and governmental interference where they can pursue their conception of the good beyond the principles of justice; but without relational resources, this is an empty room. The literature on collective action has long pointed to the difficulty encountered by individuals with a common interest in acting to achieve it (Svendsen & Svendsen, 2009). Olson's logic of collective action (2009) 'provides an explanation for why people do not participate, but fares much worse in explaining why people do participate' (Klandermans, 2004, p. 268). Whereas the first generation of theories of

[133] It is not clear to which extent the worth of political liberties depends on relational resources more than other social primary goods. It is not my purpose to present a detailed account of the empirical determinants of the usefulness of political liberties. There is, nonetheless, something true in Brighouse's argument (1997): the structure of distribution of political power does not strictly follow the distribution of income and wealth; and it is very likely that relational resources, particularly those understood in terms of social capital, play an important role in the value of political liberties.

collective action highlighted that an individual is always better off in the short run by choosing not to cooperate with another, the second generation has pointed to different social motivations of individuals and the pre-existing networks in which collective action problems are embedded (Ostrom, 1998)[134]. This relational aspect of the freedom of social association, which plays an essential role in enabling to access personal circumstances of self-respect, escapes the metric of distributive justice. This disconnection actually explains why 'the risk of diminishing standard self-respect' is not a prerogative for the worst off, but is 'equally distributed throughout the population' (Stark, 2012, p. 258).

Thus, the institutional adjustments required by the equal worth of the liberty to form relate mostly to relational resources that are not correlated with the fair distribution of social primary goods. However, it would doubtless be a mistake – from a liberal political point of view at least − for that reason to abandon income and wealth as the currency of justice (Dworkin, 1981; Wolff, 2008). My point is far simpler: as relational resources cannot be distributed fairly, specific complementary institutional arrangements must ensure the social bases of standard self-respect by virtue of the fact that each should be assured a minimal exercise of the two moral powers. This is the very sense in which we should understand my use of the term 'proviso', as an additional condition necessary for the parties' agreement on the principles of justice in the original position.

I believe that the content of such a social arrangement should be inspired by the one that Rawls outlines for the fair value of the political liberties[135]. To paraphrase Rawls' statement, we can say that the fair value of the liberty to form social associations requires 'rough equal

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[134] It is now established in the social sciences that these social connections and norms, developed through non-political endeavours, are necessary for collective action and important for drawing people into civic and political life (see for instance Kwak et al., 2004; Lake & Huckfeldt, 1998; Verba et al., 1995; McCarthy and Zald, 1977; Coleman, 1988; Klandermans, 2004). The simple fact of 'being asked to' is considered an important situational variable of participation (Smith, 1994; Bijker et al., 2019) and, according to the logic of weak ties, the more an individual is connected to a wider range of people, the more 'the input of requests for participation increases and this ultimately leads to more activity' (Teorell, 2003).

[135] Rawls (2005b, p. 328) outlines a social arrangement for the fair value of the political liberties that includes 'rough equal access to the use of a public facility and infrastructures designed to serve a definite political purpose', 'the guarantee of the basic liberties, the necessary information and knowledge to defend their interest', and 'a fair chance to add alternative proposals to the political agenda' (Rawls, 2001, p. 150). To ensure the fair value of the political liberties, Rawls contended that property and wealth must be kept 'widely distributed', and that 'free public discussion' must be encouraged and public reason must prevail; political parties must be 'made independent from private economic interest', and 'party funds need to be solicited from the more advantaged social and economic interests' (Rawls, 2005a, p. 226). In either case, Rawls contended, 'society must bear at least a large part of the cost of organising and carrying out the political process and must regulate the conduct of elections' (Rawls, 2005b, p. 328).

access to the use of a public facility and infrastructures' designed to serve a definite *social associative purpose*, and 'presupposes the guarantee of the basic liberties, the necessary information and knowledge to defend their interest' (2001, p. 150), a fair chance *to form social associatons*. The institutional adjustments, however, are not as expensive to provide as they are for political liberties; few material resources are required to form social associations, and public funding does less good here than in the case of political competition, which depends on relational resources, but also largely on material means for communication and advertising[136]. Moreover, as I argued that the justification of the fair value of political liberties and the equal worth of the liberty to form social associations complement and reinforce each other, the broad redistributive implications of the former are likely to provide a sufficient material basis for the latter. Nevertheless, the core of my argument is based on the expressive effect of the equal value of the liberty to form social associations. In this respect, the allocation of material means to start a social association can in itself play a role in the expression of the equal value of the conceptions of the good held by free and equal citizens. One could thus imagine a limited, individual, and modest financial allowance for the creation of any social associations, along the lines of public funding for election campaigns in relation to the fair value of the political liberties. Such allowance would not be seen as a kind of public subsidy for the pursuit of private ends, but as legitimate additional share of means, fully justified by the common conditions shared by citizens around their moral need to be able to revise their conception of the good and to be sure that they are always in a position to find a community of interest where to develop it. While the subsidy for the creation of social associations is legitimate, it is certainly not a sufficient arrangement since the conditions for forming social associations are social before material. Financial allowances can, for instance, compensate the worst off for their lack of access to collective infrastructures by giving them the means to rent a place to meet, but social connections, networks, and knowledge cannot be compensated in this way. In my view, it is therefore necessary to combine this financial allowance with a large provision of public infrastructures designed to facilitate collective action, with specific measures to ease the

[136] It is not clear the extent to which the worth of political liberties depends on relational resources more than other liberties do. It is not my purpose to present a detailed account of the empirical determinants of the usefulness of political liberties. There is, nonetheless, something true in Brighouse's (1997) argument: the structure of distribution of political power does not strictly follow the distribution of income and wealth; and it is very likely that relational resources, particularly those understood in terms of social capital, play an important role in the growth and the process of accumulation of political power. As the globally prevalent issue of campaign contributions shows, there is little doubt that the worth of political liberties is also strongly affected by the distribution of social primary goods indexed to income and wealth (see for instance Bonica et al., 2013) in a way that the worth of freedom of social association is not.

formation of social associations and with the provision of a non-paternalistic assistance to individuals wishing to form a social association but lacking the resources necessary to actually create it. Thus, the consideration of the associative interest in standard self-respect requires the state to intervene to guarantee specific legal, social, and material conditions for citizens to have a substantive opportunity to establish their own social association.

The Duty to Provide Infrastructure and to Help to Form Social Associations

Thus, beyond the formal equal consideration of associative interests, the part that the state can play in reducing inequalities affecting the social conditions to form social associations can take three distinct forms: as a provider of financial allowance conditioned on the creation of social association, of infrastructures essential to the formation of social associations, and of services assisting citizens in the formation of their social associations. For the reasons given, I will focus next on the contours of the duties of the state to provide infrastructure and to help citizens to organise themselves in social associations. I will especially stress that the state should provide assistance to perspective participants, dispensing facilities advice, and aiding connections by allowing individuals to meet, to organise themselve, and to deploy their associative activites without imposing its own views and interests.

Regarding the state's duty to provide infrastructures faciliting to formation of social associations, Fleischacker (1998, p. 291) rightly argued that it is possible and desirable for the liberal state to support 'insignificant, particle communities, in which moral capacities can develop in the interaction with others'. These insignificant communities, Fleischacker (1998) contended, are based on weak ties and are easy to exit. They are characterised by their low-level ends, in that they 'enable us to pursue other ends – ends incorporated into the high-level ends we set as our explicit, and important purpose'[137]. Fleischacker identified the 'square' and 'pub' as examples of such insignificant communities with low-level ends (Fleischacker, 1998, p. 293). He asserts that the promotion of insignificant communities is desirable for political liberalism, and that 'a liberal government may provide the space in which communities can form, reflect on themselves, and develop' through communal structures with no high-level purpose, if it takes care not to favour certain beliefs over others and 'to leave every individual ample room to exit the community that claims her, to shape the communities she chooses to

[137] Fleischacker (1998, pp. 290–297) opposed low-level ends to high-level purposes that is purposes 'that dominate the participant's activities'.

join, and, if she desires, to avoid a community altogether' (Fleischacker, 1998, pp. 290–297). Fleischacker wrote:

> Liberal governments can support moral communities without paying any attention to their ultimate purposes. There is no intrinsic conflict between supporting a community and refraining from telling people how, overall, they ought to live. A liberalism that aids insignificant communities, that supports community via the low-level activities that, bringing people casually together, can achieve the associational bonds it needs without so much as appearing to promote one set of ultimate human ends over another. (Fleischacker, 1998, p. 303).

In this regard, he imagined *Social Houses* as 'imaginary political institutions' that would provide such weak ties (Fleischacker, 1998, p. 297). If. These social houses would provide the space in which communities can form, reflect on themselves, and develop in respect of the priority of the right over the good: 'They may resemble churches more than anything else, in the array of educational and communal activities they carry out, but unlike churches, they are explicitly designed not to pursue any single conception of the good' (Fleischacker, 1998, p. 297). If Social Houses are imaginary political institutions, this idea echoes many similar communal structures existing in our liberal democracies[138], and my argument provides both a justification for their reinforcement and a guideline for their reforms. I argue that, as a matter of liberal political philosophy, the state should foster such infrastructure because doing so effects certain constitutive conditions of the social bases of standard self-respect.

Regarding the state's duty to assist its citizens to organise themselves into social associations, a number of authors of various sensibilities, but all seeing the negative dimension of the freedom of association as a limit to state interference, agree on the general and simple assertion that the liberal state must enable individuals to create their social environments and participate in associational life (Tamir, 1998)[139]. They converge on the idea of subtle state intervention aimed at supporting low-level communities by providing space for the formation

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[138] Thus, for instance, the case of the *Maisons de quartier* in Switzerland, which are designed to provide spaces for reception and educational leisure, proximity services, and the proposal of social, educational, and cultural actions. This is also the case, as we shall see in Section 9, of the *Espaces de Quartier* of the City of Geneva.

[139] This are notably Sam Fleischacker (1998) and Yaël Tamir (1998). This is also the case of pluralists like Rosenblum, who stressed shifting involvements and 'the experience of pluralism by men and women personally and individually', and argued that it is both possible and necessary to 'identify government responsibility for the background conditions that make the moral uses of pluralism possible'(1998b, p. 17).

of insignificant communities (Fleischacker, 1998), and they call for a liberal state taking on the responsibility to make the moral uses of pluralism possible (Rosenblum, 1998b), assuming a role as a repository of various experiments of voluntary associations that enables each individual to benefit from these experiments (Mill, [1859] 2012)[140]. Nonetheless, this general idea has very blurred contours. Even though many liberals of various sensibilities agree on the importance of non-political associations for self-respect and second Tamir's (1998) desire to enable individuals to create their social environment and participate in associational life, little has been done to determine how the liberal state can act actually and fairly on the background conditions of civil society. We may think that liberals who value secondary associations for their 'liberty-constituting' effects have good reasons to be simply satisfied with the sole praise of the intrinsic value of associational life. The risk indeed is *paternalism*, and the temptation to guide citizens (often the less advantaged) toward what is believed to be their own good[141]. Any proposal supporting a form of state intervention in the sphere of civil society should be apprehended with suspicions of inefficiency, unfair interference, and paternalism by any liberal theory worth the name[142]. My philosophical argument, however, encourages these authors to do more than simply praise the value of associational life in order to guarantee this value to all citizens. The fundamental interest in standard self-respect requires strong positive measures to

[140] Mill, strongly opposed to unjust governmental interferences, made an interesting assertion on the role of the state in supporting non-governmental actions, acting on the background conditions of civil society without interfering with it or adding to the power of the state ([1859] 2012). When Mill explained in *On Liberty* ([1859] 2012) that there are additional reasons to object to government interference beyond the principles of liberty and harm, he wrote: 'Government operations tend to be everywhere alike. With individuals and voluntary associations, on the contrary, there are varied experiments, and endless diversity of experience. What the State can usefully do, is to make itself a central depository, and active circulator and diffuser, of the experience resulting from many trials. Its business is to enable each experimentalist to benefit by the experiments of others; instead of tolerating no experiments but its own' (Mill, [1859] 2012, p. 93).

[141] *Legal paternalism* justifies state coercion to 'protect individuals from self-inflicted harm', or to 'guide them', whether they like it or not, towards their 'own good' (Feinberg, 1971, p. 105) in appealing to reasons referring to the welfare, good, happiness, needs, interests, or values of the person (Dworkin, 1972). *Paternalism* however does not always involve coercion, and a policy may be called paternalist if it is 'selected with influencing the choice of affected parties in a way that will make those parties better offs (Thaler & Sunstein, 2003, p. 175). Absent legal coercion, the state can take action, through incentive to influence citizens in their definition and appreciation of their own good, here with respect to their associative interests.

[142] This suspicion is nurtured by theoretical works, in the spirit of associative democracy, which focusses on the contributions of an organised network of associations to the democratic liberal ideal. From the liberal political perspective I have defended, I believe that these authors are ready to sacrifice the basic status of the freedom of association for the stake of the fair value of political liberties (Cohen & Rogers, 1992) and that they consider 'secondary associations' and their internal organisation and membership rules a means to improve political representation, democratic accountability, and the management of political, religious, and/or cultural pluralism (Bader & Hirst, 2012; Cohen & Rogers, 1992; Hirst, 2013; Young, 1992).

act on the background conditions that make the formation of social associations possible. Providing communal structures, organisational advice, and relational support is a fundamental matter of political justice, founded in the fair cooperation between free and equal citizens.

I support the idea that we must not be afraid to assume that some specialized services of the state can provide citizens with guidance, connect them to like-minded associates and existing networks, help them discover that they have the shared interests that might make associating a good idea and that they might actually have the personal qualities that make for a successful association and to live experiences that strengthen their capacity to collaborate around common norms. The state should, however, at the same time make sure that individuals are free to leave and not to join, that certain associative beliefs and interest are not favoured over others, and that the state and its agents do not impose their own views and interests in the course of the intervention. It should thus adopt a non-paternalistic approach and must follow the imperative to consider social associations as an end in themselves, rather than a mere means to realize political objectives (e.g. social activation, employment, deliberation, or democratisation).

Such institutional conditions can only be theoretically stated, but their implementation mostly depends on practical considerations. Yet, to ensure that these all-purpose means are effectively available to all and provided in a non-paternalistic way, there are good reasons to think that the agent ensuring the resources to create an association must be a public service. As Martin argued (2017, p. 158), 'generic entanglement can map on to what we consider to be public services, and it is a necessary condition of them being public that they be available for any conception of the good'. In my view, a public service aimed at equalising the social conditions to form social associations would join what liberal neutralists have called a 'generic entanglement': the idea that 'the state provides goods and services that figure in, or are "entangled" with, all conceptions of the good' (2017, p. 158). 'No special form of assistance or hindrance is being extended to or imposed on some conceptions of the good but not others' (Martin, 2017, p. 158). Overall, we can imagine a public service assisting the formation of social associations by providing an allowance, infrastructure, facilities, and advice; facilitating connections with the existing network and contacts with like-minded individuals; and adopting a specific approach that allows it to fulfil such functions while respecting the liberties and interests of those it helps to organise. The intuition that I will develop in Part III is that there is no better way for the liberal state, under non-ideal conditions and in compliance with the constraints stated, to be 'an active circulator and diffuser' and 'to enable each experimentalist' to benefit by the experiments of others (Mill, [1859] 2012, p. 93) than public community

organising in providing ‘an organisational and technical support for collective support for collective action’ (Sa Baretto et al., 2015, p. 2). Further, there is no better means for communal structures and community centres to promote Fleischacker’s low-level ends and develop an idea similar to Social House.

Whatever the specific social arrangement, however, which must be adapted to particular contexts, the state must, under ideal conditions, provide Martina with a fair share of means for her basic liberties and a fair equality of opportunity for her career and position, and with a roughly equal opportunity to add alternative proposals to the political agenda, to obtain political positions, and to form social associations. Martina may still lack a sense of her own value, but it is the best that institutions can do to ensure that she will always have the opportunity to set up places where she can try to affirm her conception of the good life and find the confidence to achieve it, and so publicly affirm and express that her reasonable conception of the good is as valuable as any other.

PART 3. A Fair Chance to Associate

My reasoning has so far been anchored in ideal conditions of justice, in which citizens are willing to comply with the principles of justice and in which cooperation takes place under favourable social conditions. But we do not live in an ideal world, and our societies are far from being fully just. We live in a world of scarce resources and imperfect compliance, where inequalities are often to the benefit of the most advantaged, where some people lack basic necessities, and where the injustices of domination and oppression that mark our social relations exceed in nature those that the principles of justice intended to regulate. How does my argument fare under these conditions?

It is likely to be no easier to realise the fair value of freedom to form social associations in the institutions of liberal democracies than it is to achieve the fair value of political liberties, which Rawls himself admits has never been approached in the real world (Rawls, 2005b). I will however show that my argument offers concrete guidelines for getting as close as possible to this ideal of equal worth of the liberty to form social associations.

Thus, this last part of the dissertation explores the implications of my argument in non-ideal conditions. The distinction between ideal and non-ideal theory has multiple meanings, and I understand here the latter in the restricted sense of *transitional theory*, as an attempt to propose institutional improvements based on existing social reality (Valentini, 2012). Thus, I do not claim to account for the injustices we encounter in our non-ideal world and the perspective of the oppressed; my focus is institutional, and my aim is to explore transitional arrangements in order to come as close as possible to the equal value of the liberty to form social associations.

In the spirit of my demonstration, my focus will not be on the protective function of freedom of social associations for self-respect (Schemmel, 2019) as regards potential threats to self-respect, as subordination, marginalisation and exclusion (Anderson & Honneth, 2005). My argument puts forward the liberty to form social associations as generating the circumstances in which individuals see their achievements, deeds, endeavours, and conceptions appraised, and supports its equal worth as a feature of the institutions required by the social bases of self-respect to afford citizens the confidence that their conception of the good is worthy and that they can pursue and achieve it by their own. From this perspective, I am interested in the legal, institutional and administrative barriers and facilities that hinder or facilitate such circumstances. I investigate the extent to which the laws and policies that are currently in place

are rendered unjustified by my argument, and identify what the laws and policies are morally required to do. To this end, I especially stress the law as having a role in the allocation of the worth of liberty to form social associations. As Rosenblum & Post explain, 'associations proliferate and assume their structures in part in response to law, to the various provisions of corporate, tax, tort, or constitutional law that create the framework within which associations define their purpose and carry out their activities' (2002, p. 8). This framework, as we shall see, tends to favour specific associative interests and to account for only certain constitutional issues related to freedom of association, most of which are foreign to the category of social associations, the associative interest in standard self-respect, and the right to form social associations.

I take legal doctrines as a starting point, because they define, through a series of legal decisions taken in a particular context, what an association is and why it is valuable in our daily life. My aim is to show that legal categories can both obscure and expand our philosophical reflection on freedom of association. They obscure it when they are taken as a starting point of the philosophical enquiry; they expand it when they are put in perspective and compared, and their arguments are critically assessed in the light of clear analytical categories and a philosophical account of the moral interests at stake. In the context of my argument, I aim at an appreciation of legal doctrines in light of the reaffirmed importance of the associative interest in standard self-respect and the revived significance of the right to form social associations. I argue that we can distinguish two prominent legal doctrines, the US doctrine of expressive association and the EU doctrine of contractual association. While Rawls contended that 'liberty of conscience and freedom of association and the political rights of freedom of speech, voting and running for office are characterized in more or less the same manner in all free regimes' (2005b, pp. 337–338), I add nuance to this statement by showing that the freedom of association is deeply divided between the US and EU doctrines, which embody two very different characterisations of the freedom of association in free regimes (Sigurdsson, 2013). While I underline that these are two fundamentally different characterisations of the freedom of association, I also aim to demonstrate that both are misleading. I will especially show that the US legal framework, which conveys a reductive view of freedom of association, has deeply influenced the philosophical debate on the equal consideration of different associative interests and has dampened debate on the corporate dimension of freedom of association. I will also, however, show that we can emancipate ourselves from such a framework of thought and that the UE doctrine offers interesting, but imperfect, leads in this respect.

I show in Section 3.1 that the interest in standard self-respect has never been considered part of the justification and scope of the freedom of association by most of the relevant prominent legal doctrines. I highlight that US constitutionalism does not provide any protection to non-intimate, non-expressive, and non-religious associative interests, and I show that the EU doctrine gives explicit legal protection, independent of the freedom of conscience and expression, to the constitutional right to the freedom of association, which is however reserved for democratically organised associations. As a result, I contend that under these doctrines the associative interest in standard self-respect is not considered equally. A social association like Martina's, which fosters mutual respect among its members without any expressive or democratic function, does not deserve protection against state interference or assistance by virtue of the fact that it does not fit the same categories of expressive and democratic associations. There is no doubt that this affects the distribution of opportunities for citizens to exercise their right to associate. While social associations are not central to conscience, expression, or democracy and do not raise issues of exemption, discrimination, and democratic equality, the relational value that they have for their members requires constitutional protection. This is especially the case of the right to form social associations, the concrete existence of which is conditioned by the ways in which social associations are recognised as legal entities in particular legal systems.

In Section 3.2 I show that, in fact and law, the liberty to form social associations remains merely formal and, in particular, that the acquisition of legal personality for social associations remains conditioned by administrative constraints demanding resources. I argue that legal capacity is necessary for people wishing to associate to define common rules, order their ends, interact with the social world, and 'give shape' to their associative activities (Rawls, 2005a, p. 236). Access to such legal capacities constitutes in this sense an enabling condition to secure the circumstances to obtain standard self-respect. I highlight that the EU doctrine recognises that 'the right to perform joint actions is of no practical use without the possibility of creating a legal entity to pursue the goals of the organisation' (OSCE, 2015, pp. 92–93), but it only claims such a right and fails to effectively assert it independently of any state's authorisation. I argue in favour of treating the principle of corporate creation, which recognises corporate personality as soon as members have expressed the will to establish it, as a legal arrangement reducing the resources required by law to form social associations.

In Section 3.3, I inquire into the positive measures that the state should take to overcome challenges confronting disadvantaged persons. I explore the idea of a social service based on a bottom-up methodology, providing all-purpose means to form social associations and

intervening when the worth of the liberty to form social associations is at stake. I will use the social services of Geneva to illustrate how a methodology inspired by community organising practices that focusses on citizens and their associative interest in self-respect precludes paternalism and promotes the social conditions to form social associations in ways consistent with liberal values. I then show, however, that it requires a very different conception of the relationship between state and civil society.

Thus, if legal doctrines are the starting point of my reasoning under non-ideal conditions, they are not the end point, as I also show that my philosophical argument justifies taking public measures aiming at redressing the inequalities that undermine the equal opportunity to form social associations and that it has concrete implications for the organisation of the state and the design of its social policies. What I will call *public community organising* is a citizen-focussed model of community organising conveying the idea of a public service that is committed to making available certain all-purpose means necessary to form social associations, intervening to complement the lack of resources in relevant situations, and targeting members of groups that do not have the resources to exercise their legal right (de Vries, 2020).

With this legal and administrative focus in mind, my forthcoming development faithfully reflects the structure of my argument presented in Part II, starting with the legal consideration of the association interest in standard self-respect, continuing with the conditions of existence of the legal right to form social associations, and concluding by examining the contours and implication of the duty to help to form social associations for the state and its administration.

3.1 Self-Respect and the Failing of Constitutionalism

My argument supports a conception of the freedom of association that includes the legal right to associate in ways that help maintain standard self-respect by supporting organisations that make manifest that there are others who share one's outlook and values. I show that the interpretation of this right in both US and EU constitutional law unjustifiably limits their recognition of the right to either expressive and intimate (US) or democratic (EU) associations. I show that, while the two legal systems have their own ways of defining the scope of associative activities that should be protected from interference or receive some form of assistance, no one recognises a fundamental interest in standard self-respect that is distinct from the intimate, collective, esoteric, or democratic interest we may have in associations.

In opposition, my argument – which does not address how the various ways in which non-political associations support self-respect can justify the degree of non-interference that

ought to be afforded to non-political associations in a liberal democratic society - emphasises that self-respect is an important associative interest that transcends expression and democracy. Thus, I criticise current US and EU law on associational freedom on two grounds: first, because such protections instrumentalise associational freedom with respect to other freedoms and interests, and second, because both bodies of law overlook the role that associations play in supporting self-respect and the positive measures that should be taken to ensure an effective liberty to form social associations.

American constitutionalism is the dominant source of the legal justification of the freedom of association that ignores this fundamental interest in self-respect. As we shall see in Section 3.1.1, expressive associations are the only available constitutional category for non-intimate associations (*Roberts v. United States Jaycees*, 1984)[143], which deserve protection because they 'take the rights proffered by the First Amendment and amplify them' (Bezanson et al., 2013, p. 29). Moreover, I show that political philosophers arguing for treating religious and non-religious associations equally in the US context reduce associative interests to a mixed, but narrow set of interests in conscience and expression, thereby devaluing all interests in association that are not related to the expression of a doctrine. The European doctrine, in contrast, provides a constitutional protection of the freedom of association that is independent of any other fundamental right, in particular of conscience, expression, and assembly. Its contractual interpretation of this right, which can be traced back to the Roman Republic where the right to form an association was protected by the Twelve Tables, recognises the specific rights and duties of associations, and presents it as a necessary condition to enjoy other human rights. Nonetheless, I show in Section 3.1.2, that the doctrine rests on an instrumental understanding of the freedom of association that values associations for their contributions to democracy and public interest, and stipulates an internal democratic organisation as a requirement for their protection. Yet, a democratic aim can be pursued without a democratic organisation and realised independently of a particular organisation and purpose and, from a liberal political perspective, the essential contribution of associations to self-respect cannot be reduced to democratic contributions.

[143] According to US jurisprudence, associations deserve to be protected if they are based on a face-to-face relationship or are linked with 'a fundamental element of personal liberty', or because they are an indispensable 'means of preserving other individual liberties', namely freedom of speech and expression. The Supreme Court thinks of intimate association in terms of 'smallness, a high degree of selectivity in decisions to begin and maintain affiliation, and seclusion from others' (*Roberts v. United States Jaycees*, 1984, pp. 618-619).

3.1.1 The Failure of the US Doctrine of Expressive Association

The US doctrine forces us to be clearer about the relationship of the freedom of association with other freedoms, specifically the freedoms of expression and conscience. As we shall see, while freedom of association is obviously closely related to both and the connections between these liberties are not tight, efforts to reduce freedom of association to liberties of expression fail adequately to protect important forms of association and neglect important constitutional issues related to the associative interest in standard self-respect and the right to form social associations.

The Special Protection of Intimate and Expressive Associations

While the First Amendment to the US Constitution remains silent on the freedom of association (at least as something distinct from the freedom of assembly), American jurisprudence constitutionally recognised the freedom of association in 1958 (*National Association for the Advancement of Coloured People v. Alabama*). The Supreme Court held that the action of the State of Alabama to obtain the names of the NAACP's membership, would interfere with the freedom of association of its members (Hirsch, 2011). The Court justified this sentence by the fact that 'immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment' (*National Association for the Advancement of Coloured People v. Alabama,* 1958). It held that the freedom to associate with organisations dedicated to the 'advancement of beliefs and ideas' is an inseparable part of the Due Process Clause of the Fourteenth Amendment.

Since *Roberts v. United States Jaycees* (1984), which settled a constitutional theory of the freedom of association, the protection of the freedom of association was specifically derived by jurisprudence from the First (free speech) and Fifth (intimate association) Amendments (Soifer, 1995)[144]. According to the legal doctrine, associations deserve to be protected if they are based on a face-to-face relationship or are linked with 'a fundamental element of personal

[144] These Amendments have been ruled by the Supreme Court to apply to the states through the Fourteenth Amendment (due process clause) of the US Constitution (Soifer, 1995; Kateb, 1998). Certain provisions of the Constitution have been judged as applying to the states (through a process called "incorporation") by the Supreme Court in a number of decisions, but that is a matter of interpretation beyond the direct statement of the 14th Amendment itself, which concerns the federal government and says very little about state governments (apart from a requirement that they have a republican form of government).

liberty', or because the freedom of association is an indispensable 'means of preserving other individual liberties', namely freedom of speech and expression (*Roberts v. the United States Jaycees*, 1984, p. 618). According to the Supreme Court, an association is protected differently if it can be classified under the constitutional category of 'intimate association' such as a familial relationship, defined by their smallness and a high degree of selectivity and seclusion from others, or under the category of 'expressive association', such as NAACP, because they amplify the lonely voices and place them in a collective, making them stronger and more audible (Bezanson et al., 2013).

The Supreme Court delivered a historic judgement in *Roberts v. United States Jaycees* (1984). The Supreme Court held that it was constitutionally permissible for Minnesota to require Jaycees, as a public accommodation, to admit women[145]. The other important historic decision was *Boy Scouts of America v. Dale* (2000). The Supreme Court held that the First Amendment allowed the Boy Scouts of America to exclude an openly gay scoutmaster[146], despite a state law in New Jersey that forbade such discrimination. The difference in the treatment of these two non-intimate associations was based on their relative links to the freedom of expression and the understanding of the notion of public accommodation. US jurisprudence indeed requires an identification of the nature and main objective of an association to determine the level of protection that is provided to it based on: 1) the intimate or expressive character of the association, 2) the degree of relation between the activity in cause and the main expressive objective, and 3) a balance of interests between the motives for the intervention (e.g. public interest) and the interest of the association in the absence of intervention (Besson, 2001). As for the degree of relationship between the activity in cause and the main expressive objective (2), the legal doctrine states that the message has to be related to membership criteria. All those admitted to membership must share the group's beliefs and aims and the pursuit of the belief must be collective in that it must employ the group in the pursuit of the beliefs or actions held in common (Bezanson et al., 2013). Thus, an expressive association under the First Amendment is an organised group aimed at a common enterprise comprising expression 'by and for the group' and related to the membership criteria (Bezanson et al., 2013, p. 34). As for the balance of interests between the motives for the intervention and interest of the association in the

[145] According to national bylaws, active membership in the Jaycees in the United States was limited to males. Contrary to the bylaws, two local chapters of the Jaycees in Minnesota admitted women as full members. When the national organisation revoked the chapters' licences, the local chapters filed a discrimination claim under an anti-discrimination law in Minnesota.

[146] The scoutmaster had attended a seminar on the health needs of lesbian and gay teenagers and was interviewed on this topic by a local newspaper.

absence of intervention (3), legal doctrines have tried to develop a theoretical model to establish consistent criteria for objective justification and proportional interference[147]. The state's interest must have a legal basis: it should be justified by public interest or the protection of a fundamental right. Where the state's interest exceeds that of the associated individuals, the measure adopted must still respect the principle of proportionality, meaning that the state must adopt the least restrictive measures that are appropriate to achieve its purpose (Besson, 2001). Thus, the difference in the treatment of these two non-intimate associations was based on their relative links with the freedom of expression and the notion of public accommodation. According to this, the more an association expresses a substantive message that is constitutive of its membership (as the exclusion of gay people from the Boy Scouts of America was considered), the less its activities are a determinant of equal opportunity (as the job coaching and network provided by Jaycees was not considered), and the more the association will be constitutionally protected.

The main disagreement on the degree of relation between the activity in cause and the expressive objective has to do with how the court determines the message of the association and the extent to which a regulation seriously burdens it. Following the doctrine of expressive association, this appreciation depends on whether or not the regulation interferes with the message promulgated by the association. This test, derived from *Jaycees*, launched the dispute between the majority and dissent in *Dale* on how strong the Boy Scouts' opposition to homosexuality had to be to be taken as a clear critical message of homosexuality (Koppelman & Wolff, 2009; Shiffrin, 2005). We can distinguish between – what I call – a restrictive and an extensive criticism of this test. Proponents of the restrictive criticism argue for a more limited understanding of the 'message' than that applied in *Dale*'s decision in order to prohibit private discriminatory actions (Koppelman & Wolff, 2009), whereas proponents of the extensive criticism denounce the message-oriented approach as applied in *Jaycees*, as an unjustifiable restriction of the freedom of expression (Shiffrin, 2005). From this perspective, Shiffrin developed a powerful argument that the test 'assumes individuals come to associations with previously formed messages and it assumes that associations seek an audience outside themselves to whom these shared messages are directed', whereas in associations 'individuals influence each other's thoughts and ideas' and 'the focus of voluntary associations may well be internal and its message, if any, not defined prior to members' interactions' (2005, p. 848). The

[147] This review brings into conflict the state's interest to assure the protection of human dignity and the equal economic and social opportunities with the interest of the expressive associations (Besson, 2001).

doctrine of expressive association, she contended, ignores the process by which anyone adopts, forms or revises one's views in association.

In my view, this argument paves the way for a wider criticism of the expressive doctrine that emphasises the shortcomings of both the test of the message-based approach and of the supposed moral interest in the freedom of association grounded in the freedom of speech and expression, and of the category of intimate and expressive associations that conceptualises it. Thus, it can be argued, drawing from Kateb (1998), that the expressive doctrine not only misconceives the link between idea formation and expression, but also takes a very restrictive understanding of the moral value of the freedom of association itself. The doctrine of expressive association 'not only ignores the process by which anyone adopts or forms or revises one's views in association, it also accords a merely instrumental value to freedom of association, to the end of expression' (Kateb, 1998, p. 36). It ignores the fact that associations 'house relationships and experiences that are essential and that have their own worth' (Kateb, 1998, p. 38). This is particularly true for the associative interest in self-respect that I have presented as a fundamental component of political justice. Let us return to our example of Martina and her neighbourhood association. Suppose her association has been successfully created and is now capable of bringing together some 30 people who have agreed to 'pursue the creation and development of cultural and social activities in the neighbourhood'. It has no message to express. Martina's association is busy with practical matters like cultural and social activities by and for the people of the neighbourhood, with no foundational claims or ideas and no public position, such as reporting the municipality for insufficiently developing cultural and social facilities. The municipality itself may never meet the association in question. The group would probably never expel its members. It would never exert such dependency or pressure to make it difficult or impossible for any member to leave. The association welcomes all residents, regardless of gender, skin colour, and sexual orientation, provided that they are residents in the relevant area. One may even imagine that Martina would like to extend the possibility of joining her association to people from the greater region in the future, perhaps to increase its range and possibilities. An association of this kind – which, very plausibly, we have all met or attended in our daily lives – does not engage with hard forms of the freedom of expression. Thus, our example, though basic, falls short of the doctrine of expressive association and is excluded from the main discussions of the freedom of association. The doctrine omits the plurality of associative interests that citizens may have and ignores the value that associations have for self-respect. In case of Martina's neighbourhood association in particular, there is no prior expression of associative interactions among members and no direct relation between the

practices of the group and an external or internal message (Bezanson et al., 2013). Martina's socialising activities can hardly be classified as a form of expression.

If freedom of expression cannot be the unique source of justification of the freedom of association, the same goes for the freedom of assembly, which is not, as many would like to believe, a viable alternative for a universal principle of association. The idea of the freedom of association as normatively grounded in the individual right of expression has received only a few good criticisms by some American legal theorists (Inazu, 2012; Sigurdsson, 2013; Soifer, 1995). For instance, Inazu (2012, p. 3) rightly explained that since the decision in Roberts, the right of expressive association 'elides the connections between a group's practice and its message', and would fail, for instance, to encompass a gay social club whose members engage in no verbal or written expression directed outside their gathering. In light of the incapacity of the doctrine of expressive association, and to make sense of the relationship and experience housed in non-expressive and non-intimate associations, he attempted to revive an independent right of peaceful assembly to protect group autonomy (Inazu, 2012). He rightly highlighted how the freedom of assembly, and legal decisions related to it have been at the heart of some of the most important social movements in American history[148]. A revived independent right of assembly – he thought – would offer correct protection to group autonomy instead of a 'not well-settled law of freedom of association' (Inazu, 2012, p. 2). Nonetheless, in my view, it hard to see how the freedom to assemble peacefully can be secured unless a correlative freedom to engage in -group effort towards those ends were guaranteed. This is probably why Inazu ended by positing a very wide definition of the right to peacefully assemble, which eventually entirely subsumes the freedom of association for the unique purpose of gathering. Thus, Inazu contended that this extended right of assembly should guard 'against restrictions imposed prior to an act of assembly – it protects a group's autonomy, composition and existence' (Inazu, 2012, p. 151). Inazu widened the circle of protected association, but reproduced the mistake his intellectual adversary had made: some associations cannot be reduced to expression or assembly, or both.

[148] He outlined how this right was misconstrued at the end of the nineteenth century (*United States v. Cruikshank*, 1875), wherein it was restricted to the purpose of petitioning for the redress of grievances.

The Very Special Protection of Religious Associations

If the freedom of association were to draw its normative strength from the freedom of expression, then the doctrine of expressive association would leave all non-expressive associations constitutionally unprotected. Nevertheless, the predicate 'all' types of secondary associations meets at least one notable exception, as the US Constitution, through the freedom of conscience, protects religious associations far better than expressive ones. Religious associations as those that 'are organized largely around religious doctrine and are formed with the primary purpose of manifesting religious belief, following religious doctrine or otherwise helping to make the option of a religious way possible' (Norton, 2016, p. 9). Religion can be practised without an association; however, 'individuals often need to be members of religious organisations for their religious way of life to be possible' (Norton, 2016, p. 19)[149].

While the US Constitution has recognised the freedom of association since 1958, the freedom of religion has always enjoyed a privileged status through the non-establishment clause ('Congress shall make no law respecting an establishment of religion') and the free exercise clause ('Congress shall make no law prohibiting the free exercise thereof'). The privileged status of the freedom of religion in the US Constitution has important implications for membership in religious associations, in the weighting of compelling state interests (see *Wisconsin v. Yoder,* 1972), and exemptions from anti-discrimination laws. The US Supreme Court has recognised, for religious groups, *ministerial exemptions* that exempt religious associations from anti-discrimination laws in hiring employees for positions that are religious in nature (see *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission,* 2012).

Two categories of arguments are used to justify this special treatment: the first is an epistemic argument on the nature of religious beliefs and underlines the comprehensive, transcendental, and esoteric nature of religious beliefs that justify differential treatment through the epistemic inaccessibility of doctrinal commandments that emerge from it (Greenawalt, 1998)[150]. In contrast, 'expressive association are less all-embracing in their purposes than

[149] It is admitted, then, that religious autonomy is 'the freedom asserted by religious communities as groups', that is by the group 'to its own religious exercise, separate and distinct from the rights and interests of their members' (Ahdar & Leigh, 2013, p. 4).

[150] This is 'the dangerous business of drawing a distinction between matters that are essential to a religious practice and those which are not' (Cordelli, 2017, p. 587). This is why, Laborde explained (2017, p. 191), courts have decided that 'the inquiry on property dispute within the church and the decision on which faction had least departed from the basic doctrine of the church' are barred by the religious clauses. This is also why, Greenawalt (1998, p. 118) contended that 'even for secular officials to judge whether purported reasons suffice to sustain practices of discrimination presents a real danger

religious groups are, and the domain of their objectives is more comfortably assessed by public officers' (Greenawalt, 1998, p. 120). The second relates to the contextual relationship between state and religion and stresses that the historical ties between church and state have been divisive and have threatened both church and state, and focusses on the legal support for special treatment in the US provided in the religion clause (Greenawalt, 1998). Martina's association does not share the epistemic and contextual characteristics that are used to justify the special treatment of religious associations. The freedom of conscience, like the freedom of expression or assembly, is not adequate to provide legal protection for Martina's associational purpose and activities and recognise its value for individual members.

Nonetheless, the epistemic argument and the justificatory relationship between the special treatment of religious groups and special nature of state-religion relations are increasingly being questioned (Cohen & Laborde, 2016; Dworkin, 2013;Laborde, 2017; Leiter, 2014; Schwartzman, 2012). From this perspective, the numerous recent attempts in political theory to tackle 'the putatively special status of religion' (Cordelli, 2017, p. 585) have produced new reflections on the freedom of association and the relationship between religious and expressive associations. This philosophical debate is moulded by the American constitutional context and thus, it has been recommended in recent philosophical works, that one should treat religious and non-religious associations equally through a hybrid form of interest of expression or conscience in order to account for all associations (Cordelli, 2017).

In *Liberalism's Religion*, Laborde agreed with liberal-egalitarians 'that whatever exemption rights religious associations should have they are derived from the liberal value of freedom of association' (2017, pp. 160-161)[151]. Religious groups should not gain distinct status or wider protection over other groups; every group should be regulated through the standard right of the freedom of association (Cohen & Laborde, 2016). According to her, 'disaggregating

to religious liberty and separation of church and state. Choices of members and officers lie too close to the core of internal practice of churches to permit intervention'.

[151] Laborde argued elsewhere for an 'anti-theocratic' principle that makes it impermissible for the state to appeal to religious ends in political justification (justificatory dimension) and to constitutively associate itself with religious institutions (institutional dimension). Beyond these requirements of the minimal 'anti-theocratic' principle, the argument is that the state should not treat religions differently for the purposes of non-establishment. According to its justificatory dimension, minimalist secularism is compatible with a wide range of religious arguments, if they are not 'comprehensive' and 'esoteric' (Cohen & Laborde, 2016, p. 428). According to its institutional dimension, minimalist secularism allows various state-religious connections and religion should not be considered special for the sake of free exercise (Cohen & Laborde, 2016, p. 429).

associational interests into coherence interests and competence interests allows us to explain why religious associations are special, but not uniquely so' (Laborde, 2017, p. 182).

First, she suggested that only groups that are voluntary and identificatory have an interest in maintaining their 'own collective integrity' (Laborde, 2017, p. 174). She defined voluntariness 'in the sense that members must be able to leave the group at no excessive cost (so that we can presume they consent to its formal authority structures, even if not democratic)', while identificatory associations were 'groups that individuals join to pursue a conception of the good that is central to their identity and integrity' (Laborde, 2017, p. 174). Second, based on this central idea of collective integrity, Laborde proposed to 'disaggregate the values it protects' in order to 'justify some of the collective rights claimed by religious groups' (Laborde, 2017, p. 174). Laborde sees as values protected by collective integrity 'coherence interests' and 'competence interests'. The first refer to the associations' 'ability to live by their standards, purposes, and commitments', while the second refers to their 'ability to interpret their own standards, purposes, and commitments' (Laborde, 2017, p. 175). Competence interests are necessary to have minimum associational integrity, and a voluntary and identificatory association must have a 'special expertise' in the interpretation and application of 'the standards professed by the association' (Laborde, 2017, pp. 190–191)[152]. These interests play however no central role in my argument on social associations having no claim to exemption, or primacy. The same cannot be said for the coherence interests, which are stronger when they relate to i) the core doctrine of what a good life is, and ii) a publicly affirmed message reflected 'in the purpose, structure, membership, and ethos of the association' (Laborde, 2017, p. 175).

Laborde claimed that her proposal does not discriminate among different kinds and forms of associations. This is true in that all associations have a right of 'incorporated conscience', or what Laborde called coherence interests, but they have it under strict conditions of identity and coherence. These conditions require i) individuals to identify with projects and commitments that are at the core of the association's integrity (condition of identity), and ii) associations to exhibit coherence among their purpose, structure, membership, and public (condition of coherence). Together, these conditions exclude many associations and other fundamental interests we may have in associations.

[152] At the intersection of the free exercise clause and non-establishment, competence interests articulate 'a crucial sense in which the state must avoid entanglement' with religion (Laborde, 2017, p. 191). According to Laborde, courts should exercise deference and not take a position on the theological rationale (Laborde, 2017, p. 192). This does not mean that full immunity must be granted, and the sincerity of the asserted reason should be examined.

First, if all associations are by definition voluntary and based on personal connections, only few are effective in pursuing identity and integrity. Laborde contrasted this category of identificatory associations with other 'mere organisations' where 'the dominant mode of relationship is detached – distant, instrumental, and impersonal' (Laborde, 2017, p. 184). In doing so, she omitted the many associations that are not distant, instrumental, or impersonal, and that are not dedicated to the pursuit of the valued conception of the good in the strict sense. I argued in Section 2.1.1 that, because of Rawls' conception of goodness as rationality, there must exist a substantial freedom of social association that extends beyond Rawls' institutional condition to conscience (Rawls, 2005a). Any association pursuing a collective non-political aim that is given a prominent place in members' individual plan, even if not substantial or spiritual, deserves consideration and protection. If Laborde accepted the view that the freedom of conscience is not specific to religious groups, she uncontestably supported a restrictive understanding of a conception of the good when applied to the freedom of association. In contrast, an increasing number of scholars have argued for expanding the definition of a conception of the good with respect to political liberalism. Martin (2017), for instance, argued that 'everyday goods' also gives value or meaning to one's life and can constitute valuable conceptions of the good (Martin, 2017, p. 145).

Second, the condition of 'tight' coherence, which requires associations to exhibit coherence among their purpose, structure, membership, and public, follows the stricter version of the message-based approach of the doctrine of expressive association and meets the very same type of objections. Laborde (2017, p. 187) acknowledged the proximity of the two theories and contended that 'the expressive theory of freedom of association has to be seen as a version of the coherence-based approach'. Her proposal for equal treatment succeeds only to the extent that religious associations are intrinsically expressive in the narrow sense of the term. There is a standard in almost all institutionalised religions, a reference used to judge the coherence between the messages expressed and the action challenged, the structure of association, and its membership. Even if there are various and contradictory interpretations of the constitutive holy texts – such as the Bible, the Qur'an, the Torah, the Vedas, and the Dhammapada – they all convey clear written messages. If religious beliefs require unpermitted discrimination, they certainly figure in one form or another of these texts, or at least in the general message expressed by the church. Religious associations – at least those that rely on written doctrines – are perfect candidates for a principle based on the coherence of expression. They have stronger interests in coherence, because they are likely to be more coherently expressive than an association which

does not follow a doctrine and in which ideas are discussed and experimented[153]. We can say that Laborde's argument reduces the doctrine of expressive association to an expression of doctrines.

Laborde's proposal is well suited to treat expressive religious and non-religious associations and their discriminatory norms on equal ground, in a kind of freedom of expressive religion, but it is not adequate to serve as the foundation of the 'liberal value of freedom of association' (Laborde, 2017, p. 187). If this argument is laudable in finding a universal principle of association, applied promiscuously to the particular decisions of various associations in relation to the general rationale of expression/conscience (Cordelli, 2017; Laborde, 2017), it omits many associations, that do not have any link to expression and conscience. Returning to the example of Martina's association, it has in fact no belief to practice or support. It is busy with practical matters, that is, hosting cultural and social activities by and for the people of the neighbourhood. It is not bound by any deep-seated belief of its members, religious or otherwise, and nothing particular states their identity or integrity.

Owing to its constitutional origin, the right to the freedom of association in the US is an implicit corollary to other rights, rather than a right in itself. The freedom of association is consequently an individual right of the members of an association to associate with others, and is closely related to the freedom of speech and expression, rather than an independent right of an association. This legal category of expressive association is taken up in a very uncritical manner by political philosophers arguing in favour of treating religious and non-religious associations equally. This exclusive focus leads liberal authors to reduce associative interests to a mixed but narrow interest in conscience and expression that arbitrarily favours some associative interests by implicitly devaluing all non-religious and non-expressive interests in association, among them the fundamental associative interest we have in self-respect. As a result, US constitutionalism suggests that any association that is not related to intimacy, expression, assembly, or conscience is not worthy of philosophical or legal attention. I have deconstructed these ideas by indicating that regardless of their messages, beliefs, and particular purposes, associations have a relational value for their members. The equal consideration of associative interests implies that all associative interests – in conscience, expression, self-determination, and self-respect – should be treated with equal consideration and some should not prevail over others. This is not to say that these associative claims are ceteris paribus equal,

[153] Religious associations presumably have stronger interests in competence because the court cannot make decisions concerning theological conflicts.

but that the reasons that justify state interference and assistance should be equally applied and regulated by the same rules and methods.

3.1.2 The Shortcomings of the EU Doctrine

EU law considers the freedom of association a fundamental right with an independent status, which protects the rights of the association and its members at the same time. This is promising for the recognition and protection of the relational value that emerges, through mutual appraisal, from members' interactions alone. The EU case offers a more appropriate frame for the relationship of freedom of association to other freedoms, but it forces us in turn to be clearer about the modalities of the recognition of the capacity for legal relations of associations, their justifications, and their relationship to freedom of association and the right to form social associations. As we will see, the EU doctrine fails adequately to protect the recognition of the legal personality of social associations as matter of right, independent of any state authorisation, and in so doing makes it harder to obtain the circumstances under which individuals can develop a sense of self-worth, thereby threatening the social bases of standard self-respect.

The idea of the freedom of association as a fundamental right has deep roots in European tradition. It is widely accepted that the recognition of the freedom of association dates back to Roman law and the notion of *societas* that was protected in the Twelve Tables as an association involving a kind of private contract between at least two people e (Jolowicz & Nicholas, 1972; Sigurdsson, 2013). Centuries later, the freedom of association found room in the Belgian Constitution in 1846, with a constitutional provision that 'was primarily meant to protect the association itself, its purpose and activities, rather than the individual right of its members' (Sigurdsson, 2013, p. 8). Since 1953, Article 11 of the ECHR explicitly mentions the right to form associations and the rights of these associations to be exempt from governmental interference (Sigurdsson, 2013). Most signatory states of the ECHR afford a written constitutional right to the freedom of association, but the national regulation of this liberty is also dependent on civil law because associations are considered a kind of private company, an organisation arising out of a free contract between individuals, in line with Roman tradition[154]. This is an important point of difference with the American context because under this view, associations are above all legal entities recognised by law. This excludes the possibility that a

[154] In Switzerland, which is a signatory to the ECHR, the federal state provides an independent right of the freedom of association that is strongly protected in the Swiss Federal Constitution, which explicitly mentions the right to create, belong to, and not associate (Swiss Constitution, Art. 23).

free and unorganised relationship falls *a posteriori* under the constitutional protection of association (*Association Rhino and other c. Suisse*, 2011), in contrast to US constitutional jurisprudence and its categories of expressive or intimate associations.

The freedom of association is understood as the right of individuals to either gather and form an association or join an existing one 'in order to pursue common goals for mutual or public benefit, which otherwise they could not achieve as individuals' (Golubovic, 2013, p. 758). The Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) claim that the right to the freedom of association 'has been recognised as capable of being enjoyed individually or by the association itself in the performance of activities and in pursuit of the common interests of its founders and members' (2015, p. 17)[155]. This collective dimension is considered the most important aspect of the definition of association in accordance with the idea 'that persons are able to act collectively in pursuit of common interests' (OSCE, 2015, p. 30). In this spirit, the doctrine recognises the right to associate with the members of the association and with the association itself, which can enjoy some fundamental rights, including the freedom of expression. This does not mean that an association can say 'yes' to something that most or all of its members reject, but that its members can claim a collective protection for a common expression accepted by most or all of its members. This means that the freedom of association may be necessary 'to enjoy the other human rights' guaranteed by the ECHR, and its protection may well involve the protection of property, the right to privacy, and freedom of expression (OSCE, 2015, p. 18). Thus, the independent status of the freedom of association deeply affects the relationship between this liberty and other fundamental liberties. Though the expression constitutes the individual justification for the freedom of association in the context of the doctrine of expressive association, this is a right that associations themselves ought themselves to enjoy according to European law. Here, the freedom of association 'must also be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights to freedom of expression and opinion, whether practised collectively or individually' (OSCE, 2015, p. 17)[156]. The doctrine however, requires a strict congruence

[155]The Council of Europe and the OSCE, through the Office for Democratic Institutions and Human Rights (IDIHR), and the Venice Commission developed a common comprehensive body of standards for the freedom of association (OSCE, 2015). I take the EHCR's decisions, I take them as constitutive of what I call the EU doctrine of contractual association.

[156] As we shall see it in section 3.1.2, the ECHR the positive obligations of the signatory states, which 'primarily includes an obligation of a state to allow an association to be granted legal entity status and to afford necessary legal protection during its life cycle', but also 'taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups' (OSCE, 2015, p. 93). As we shall see in Section 3.1.2, the ECHR recognises on the positive obligations of the signatory states, which 'primarily includes an obligation of a state to allow an association to be granted legal entity status

between the laws of the state and the internal organisation of associations, which is not required from my perspective.

The Monopole of Democratically Organised Associations

While Article 11 of the Convention explicitly refers to 'trade unions', the ECHR holds that this liberty must be intended as pertaining 'to any kind of grouping deemed an association' (Golubovic, 2013, p. 761), and that this right must be valid for anyone on the territory, including children and foreigners. Article 11 qualifies associations through their formal organisation, free adhesion, and common goals (Golubovic, 2013, p. 763). Thus, the ECHR covers all kinds of associations, including religious groups, political parties, trade unions, and organisations for the defence of human rights and rights of minorities, NGOs, youth associations, environmental groups, and neighbourhood associations (OSCE 2015)[157]. Martina's association fits - as of now - with these legal definitions.

Other more substantial criteria emerge, however, from ECHR jurisprudence: associations must have members (hence, foundations are excluded), operate as non-profits,[158] and be self-governed, independent, and – most importantly – democratically organised (OSCE 2015). Regarding the later point, the European law considers - in a way consistent with the Universal Declaration of Human Rights - the freedom of association a political right and justifies the importance of protecting it by emphasising on democracy. It values associations because they 'play an important and positive role in achieving goals that are in the public interest' and are often active in 'addressing and resolving challenges and issues that are important to society' (OSCE, 2015, p. 16). Yet, if it is well-accepted that the freedom of association is a fundamental political liberty, by virtue of the fact that 'political interests can only be questioned jointly with others' (Nowak, 2005, p. 759), this does not prevent this freedom from also being a civil right.

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and to afford necessary legal protection during its life cycle' (OSCE, 2015, p. 22), but also the obligation of 'taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups' (OSCE, 2015, p. 18).

[157] Owing to this broad conceptual definition of associations, the ECHR has ruled in the last decades on trade unions, political parties, medical associations, and motorist and hunting clubs. If we look again at slightly lower levels of jurisdiction, it is interesting to see that interest groups and business, non-governmental, and sport organisations, religious communities, recreational groups, and political parties in Switzerland are counted under the legal regime of a civil association. Organisations as diverse as FIFA, the International Comity of the Red Cross, the Basel Football Club, the Swiss Federation of Jewish Communities, the Islamic Centre of Geneva and the Swiss People's Party are all non-profit associations governed by Article 60 et seq. of the Swiss Civil Code. They are all considered private companies that do not cycle profit back into the organisation (Perrin & Chappuis, 2008).

[158] 'Non-profits' imply associations that are recognized by (tax) law as cycling back profits within the organisation.

The European doctrine never highlights this purely civil dimension or the value of associations that are not 'crucial to the functioning of a democracy' or 'an essential prerequisite for other fundamental freedoms' (OSCE, 2015, p. 16)[159]. The condition of democracy in the organisation that is necessary to qualify under Article 11 of the ECHR posits an unfair congruence between the norms of the liberal democratic state and the internal organisation of social associations (Barry, 2002; Rosenblum, 1998a, 1998b). This is especially so if we take this democratic norm to mean that majority voting is necessary, or that the social associations would need to serve a public interest in order to be protected legitimately, but any limit on collective decision-making procedures must be questioned[160]. If the members of an association always have the freedom to exit at a reasonable cost (Laborde, 2017), then they have freely given their consent to the goals and norms established by their association, thus including the organisational principle according to which collective decisions are formed (Rawls, 2005a). The essential contribution of associations to self-respect is achieved independently of their organisation and purpose.

The requirement of democratic organisation of associations in the European doctrine can clearly be linked to the *congruence thesis*, which Rosenblum (1998b, pp. 36–41) has identified as a set of theories that conceives of associations 'as critical formative contexts for shaping liberal democratic dispositions' and which posits that it is 'imperative that the internal life of organisations mirror liberal democratic principles and practices'. Rosenblum rightly criticised this thesis as being inattentive to associative dynamic and its particular effects on the individual. In particular, the congruence thesis does not consider that illiberal associations can usefully contain certain vices, nor does it take into account that dispositions created in one association do not automatically transfer to public sphere (Rosenblum, 1998b). In Rosenblum's view, the

[159] This tendency to favour the collective, democratic, and/or public aspect of associations can be found in the number of political associations (political parties) that were judged by the Court, around 15, and often linked to interdictions pronounced by public authorities. See *Refah Partisi and others v. Turkey* (2003) and *United Communist Party of Turkey* and *others v. Turkey* (1998).

[160] In Switzerland, Article 63 of the Swiss Civil Code ensures the 'organisational autonomy' of associations while Article 64 et seq. defines substantial limits on collective decision-making procedures (Perrin & Chappuis, 2008). If an association possesses the 'faculty to form its will freely' and the members can choose the modalities of expression of their will, the jurisprudence clarifies that the right to every member to form this will should not be undermined (Riemer 1990, Art.70 CC n.56, p. 246). If the equality of votes is not necessary, it is necessary 'at least that the vote of every member should contribute (directly or indirectly) to the formation of the social will' (Riemer 1990, Art.70 CC n.56, p. 246). A right of veto against the decisions of the General Assembly, attributed to founder members, is not compatible with the necessary autonomy of the association (Perrin & Chappuis, 2008). We can easily imagine how the requirement of democratic congruence, even in this minimal form, can limit Martina's choices around how to structure her own group; notably, to withhold veto rights for its founders, to cancel the right to vote for inactive members.

conditions for the acquisition of moral dispositions vary from individual to individual and from context to context, and moral pluralism is indeterminate:

> 'No single formative context is determinative of moral disposition. One experience of association can compensate for the deprivations and degradations of another. And except for cruel and violent settings, almost any association has the potential for being either constructive or destructive of moral dispositions in an individual case. It follows that if some associations inhibit democratic virtues, not all illiberal settings do (Rosenblum, 1998b, p. 16)[161].

Rosenblum proposes the 'personal use of pluralism' as a guide for the relationship between liberal democracy and associational life, which is an idea that my argument on social associations endorses and refines. In particular, my argument regarding self-respect asserts that social associations have a relational value for their members that does not depend on the adoption of liberal principles and on the internal democratic organisation, and that Martina's association can adopt a set of principles and an internal organisation that best fit its purpose. From this perspective, both arguments state that the varied contributions of different types of associations cannot be reduced to their democratic organisation. Rosenblum shows that associations that are not democratically organised can contribute to democratic functioning in various and sometimes counterintuitive ways. She thus seconds Warren's claim that associations that do not have a stated democratic purpose can perform democratic functions that 'differ from the motives and purposes of members' (Warren, 2001, pp. 37-38), but in her view, even associations having undemocratic objectives (e.g. Nazi associations) may fulfil important individual and democratic functions (e.g. channelling violence). My argument, in this perspective, is compatible with Rosenblum's general idea of moral pluralism, while it is far more specific. My argument says nothing about the congruence thesis with respect to non-social associations, and no more about the value of illiberal associations for the democratic functioning. It is likely that congruence may be necessary in the context of those associations with important economic and/or political functions – for example, think of the internal organisation of political parties (primary elections, gender quotas) or of trade unions (equality of voting, mandatory participation) – and this sounds undoubtedly very unreasonable in the

[161] In a study at the crossroads of political theory and socio-anthropology, Rosenblum (1998) supports an extensive view of the moral dispositions necessary for liberalism and argues that these would be generated in an indeterminate and varied way by different types of association. She focusses her analysis on associational dynamics rather than on formal goals, structures, or categories and demonstrates how moral benefits can be unintended, unexpected, and counterintuitive.

case of social associations like that of Martina. My argument simply asserts that social associations have a value that is to be found elsewhere than in democratic functioning, namely the very value that social associations have for the individual's sense of worth. Thus, we cannot reduce the democratic contribution of associations to their explicit democratic organisation, neither we can shrink the value of social associations to their (absence of) implicit or explicit democratic contribution. In this sense, European jurisprudence requires a strict congruence between the laws of the state and the internal organisation of social associations which is not necessary from a liberal political perspective. It rests on a holistic and functionalist view of the value of associations that, again, obscures the fundamental associative interest in standard self-respect. Associations like Martina's serve the interests of its members, and this is a pivotal difference between notions of 'public benefit' and 'mutual benefit' (Golubovic, 2013, p. 758).

Constitutionalism tends to value associations for their collective function and supposed contribution to wider society. While the US doctrine tends to value the individual expressive function of associations, the EU doctrine emphasises on the contribution of democratically organised associations to liberal democracy. Thus, 'collective' associations are valued either because they express the views of an aggregation of individuals or because they are a means to serve the public interest, experiment with liberal principles, and contribute to public debate. Collective associations are thus for constitutionalism the second division of public forum and liberal democracy. In contrast, my argument asserts that we should value collective associations and protect them constitutionally, not only for their democratic contributions (which we cannot reduce to their democratic organisation) or their expressive function (which we cannot reduce to the coherence of their message), but also for the basic relational value they have for their members. We should give up the idea that associations that express a consistent message or exhibit internal democratic organisation alone require constitutional protection or assistance.

Anti-Discrimitatory Norms and the Weight of Self-Respect

My argument shows that the interpretation of the freedom of association in both the US and EU constitutional law unjustifiably limits their recognition of the right to either expressive and intimate (US) or democratic (EU) associations. By comparison, however, and despite its orientation towards the democratic value of associations, the EU doctrine appears to be a promising alternative for the constitutional protection of the freedom of association that does not derive its value from other fundamental rights and which applies to associations, provided that they satisfy certain structural requirements, and which generates positive obligations to assure the effectiveness of the right (which I examine in Section 3.3).

It may be objected that, in insisting that the US right is understood purely negatively as a right against governmental interference, while I present the EU right as a positive one to an adequate legal environment and resources, I do not engage with arguments on how this aspect of each shapes the right conceptions at issue. In the US, this right allows some associations to avoid provisions of anti-discrimination law, and it may seem unclear whether the EU doctrine or my argument would allow the same in the case of Martina's neighbourhood association. One may contend that the doctrines of expressive association and ministerial exemption are constitutional theories and principles that deal with major constitutional issues, and for this reason focus on the right to refuse to associate and the associative interests in expression and conscience.

Discrimination based on race, sex, or religion that may arise from 'private' association must be examined according to their justification and proportionality. Nonetheless, the necessary limitations of the scope of the right to not associate should not obscure the positive dimension of the freedom of association and the constitutional issues it raises. I will show in Section 3.2 that the EU doctrine of contractual association (partially) recognises the positive dimension of the freedom of association, but it is no less concerned for that reason with the limitation of the freedom of association for purpose of non-discrimination. As for the law of Switzerland, which is a signatory to the ECHR, the jurisprudence has determined that discrimination in membership can be justified if it is required to achieve a constitutive purpose of the association, if such purpose is legitimate, and if there is a logical relationship between this refusal and the legitimate purpose of the association (Besson, 2001)[162]. As in the US doctrine, the freedom of association is not absolute and the resolution of the conflict between the freedom of association and equality must be based on a balance of interests. Further, the intimate character of an association, the personal closeness among the members, and the

[162]According to Besson (2001), this weighting will generally bring into conflict the state's interest to assure the protection of human dignity and economic and social opportunities with the interest of intimate or expressive associations. The state's interest must have a legal basis, and should be justified by public interest or the protection of a fundamental right (Besson, 2001). In cases where the state's interests exceed those of the associated individuals, the measure adopted must still respect the principle of proportionality, meaning that the state must adopt the least restrictive measures appropriate to achieve its purpose. The legitimacy of the purpose is a necessary but not a sufficient condition, as there must be an objective nexus between the discrimination and the purpose of the association (Besson, 2001). We shall accept, for example, that a men's choir club may admit only men for artistic reasons, but not only men of a determined race. According to Besson (2001), this weighting will generally bring into conflict the state's interest to assure the protection of human dignity and economic and social opportunities with the interest of intimate or expressive associations. An association may limit its membership to the people holding certain qualities, but it 'should not contain anything illicit, against the customs or dangerous for the State in its purpose and its activities' (Besson, 2001, p. 50).

expressive character of its message, and never the individual interest in standard self-respect, constitute the dominant justifications of discrimination/anti-discrimination. They constitute ex-post justifications of exceptions to the principle of equal treatment that are relevant to human dignity or economic opportunities, and these criteria are used to weigh the interest of the freedom of association against other individual interests and may justify the difference in treatment in equal situations (Besson, 2001). With respect to the fair scope of state interference in the freedom of association, the only significant difference between Swiss and US jurisprudence is that the former has not yet developed a theoretical model to establish consistent criteria for the requirements of objective justification and proportional interference (Besson, 2001).

For this narrow purpose, I only claim that standard self-respect is an interest as valuable and as limited as any other, which must count in the balance, with expression, conscience, and democracy, and with competing moral considerations. My argument supports the equal consideration of various associative interests against an exclusive focus on the expressive and democratic associative interests. The associative interest in standard self-respect on which I put the emphasis does not provide a reason, all other things considered, to exempt associations from generally applicable law. I have never claimed that the interest in standard self-respect is a fundamental ground to justify exemption from the generally applicable law. Various organisations that must be regulated by law in political liberalism have the potential to support self-respect. For example, the paid workplace is a central site for social activity in which people can come together to support each other in the pursuit of common ends, and yet, it is largely uncontroversial within liberal-egalitarian scholarship that employment should be regulated by anti-discrimination law (Estlund, 2003). It is not because non-political associations serve the associative interest in self-respect that they deserve for that reason, all things being considered, exemption from general applicable law. This associative interest does not exempt social associations from the state's scrutiny and interferences in the name of competitive moral values and the legitimacy of the purpose of social associations must be, as for any other associations, morally and legally questioned. On these relevant moral issues, my argument only endorses the courts' continued instance to subtly balance (various) interests in the freedom of association and competing moral interests (including those related to the associative interests of non-members). Standard self-respect is only one more pro tanto reason to value non-political associations and it should be considered – with the interests in intimacy, expression, assembly, conscience, and democracy – as introducing 'the option of decoupling goods from membership' when the freedom of association must be weighed against competing moral goods (Papcke, 2018, p. 366). Thus, my argument does not address how the various ways in which non-political

associations support self-respect can justify the degree of non-interference that ought to be afforded to non-political associations in a liberal democratic society. I offer no suggestion to determine the fair scope of the state's interference for the freedom of association and no mechanism to regulate its relationship with anti-discriminatory norms.

The category of social association that I have singled out is defined in such a way as to avoid engaging with such issues, in order to clear the path for examining the positive value of association for standard self-respect and its social bases. Martina's association, as a social association[163], has no influence on the distribution of social primary goods with the notable exception of self-respect itself, which is non-competitive and can be made available to all (Cordelli, 2015). If we imagine that Martina's association would like to exclude a specific social group from its membership, let us say all men, then a test of proportionality similar to the test of the message-oriented approach could be employed, with a more complete account of the positive value of association on both sides. From this perspective, I do not claim that it would be wrong to subject Martina's association to anti-discrimination regulations. However, if Martina's association has a legitimate purpose (e.g. a purpose that is not harmful to the social identities of others), if it does not affect the socioeconomic opportunities of non-members (e.g. it does not affect the social position of people in the neighbourhood) and does not have a kind of monopoly over certain important local resources (does not own or control the only collective infrastructure to meet in the neighbourhood), if the exclusion of men is grounded as a legitimate purpose of the association (e.g. the association emphasises, for instance, on the relationship between informal socialisation and sexual harassment) and the decision to reject this social group is proportionate to the achievement of this purpose (e.g. it does not affect the socioeconomic opportunities of men of the neighbourhood who have adequate social conditions to develop their self-respect through their own associations), then it is likely that the exclusion of men from Martina's association would be morally and legally legitimate.

I stressed above that Martina's association would welcome everyone in the neighbourhood and beyond. It is so because the moral issue I am highlighting through the case is elsewhere. Martina's association is particularly valuable heuristically for examining the positive value of the freedom of association for standard self-respect precisely because it does not raise important moral issues on discrimination. The question of whether standard self-respect counts among the reasons to exempt non-political associations from anti-discriminatory

[163] Social associations neither claim primacy (Walzer, 1967) nor authority alternative to that of the state (Muñiz-Fraticelli, 2014) and do not have any direct functions for the political or economic spheres. They rest on pure associational relations in pursuit of influence within civil society.

norms and if yes, to what extent, largely exceeds the scope of my argument. The category of social association is thought to highlight that the right to form social associations raises important moral issues even before the question on the exclusion of individuals from select social groups can arise, or before the association can put forward any public position or request for legal exemptions[164].These issues are situated in a different temporal sequence than the issues related to the right not to associate, and its well-founded (but not well-established) limitations grounded on anti-discriminatory norms. In any case, a critical examination of these two prevailing legal accounts of freedom of association suggests that, for social associations and the associative interest in self-respect, constitutional theories miss the point.

The constitutional and legal issues related to social associations are elsewhere, in a place hidden by moral concerns for exclusion and discrimination, in the social and legal conditions to be actually able to form social associations in a given legal context. I contend that this implies in particular the need to pay special attention to the constitutional and legal provisions that frame the conditions of existence of the right to form social association.

3.2 For a Corporate Right to Form Social Associations

The relational value that social associations have for their members requires constitutional protection. This is especially true of the right to form social associations, the concrete existence of which is conditioned by the ways in which social associations are recognised as legal entities in particular legal systems.

A legal person can be defined as the 'subject of rights and duties' (Ripken, 2019, p. 21; see also Smith, 1928, p. 283). If we agree to give legal personality to social associations, it would mean that we recognise that these associations participate as persons in legal relations (Preda, 2015; Ripken, 2019). This recognition determines 'the ability to enter into contracts, to sue and to be sued, to own property in the corporate name, and to claim many fundamental rights' (Ripken, 2019, p. 21).

From this perspective, the category of social association allows me to illustrate how the establishment of a simple form of formal associations requires several demanding social

[164] Swiss law treats the constitution and the exercise of the freedom of association very differently (Besson, 2001). While exercising the right to refuse to associate, one must comply with the severe constraints just mentioned. In the constitution, the freedom of association involves the right to refuse to associate with a third party without having to give the reasons and, according to jurisprudence, 'nobody has the right to belong to an association' (Perrin & Chappuis, 2008; Besson, 2001).

conditions that vary according to different national legal traditions but that always weigh on the circumstances to obtain standard self-respect. If no collective legal capacity is required to renounce associative membership, the liberty to form social associations cannot be reduced to individual permission. People wishing to associate need to order their ends and to define common rules in order to 'give shape' to their associative activities (Rawls 2005a, p. 236). To conceive, formulate, and achieve a shared determinate conception of the good, they need a set of rights and duties that organises the relationship between associates within the association, and between them and other legal personalities. As such, the circumstances under which individuals can find mutual appraisal in social associations largely depend on the modality of recognition by institutions of the set of rights and duties that frame such interactions. Taking again the US and EU doctrines as a point of counter-reference, I propose a liberal-egalitarian defence of the principle of corporate creation, recognising corporate personality of social associations as soon as members have expressed the will to establish it, at the sole condition that members have expressed the wish to be organised corporately and that they have agreed on a collective decision structure.

My argument supports legal personality for social associations as a matter of right by making two distinct claims. The first relates to the importance of legal personality for social associations, namely the importance of recognising social associations as 'subject of rights and duties' (Ripken, 2019, p. 21), and the second refers to the spontaneous acquisition of this legal personality as a matter of individual right, and not of privilege or concession (Muñiz-Fraticelli, 2014). I present the legal personality of social associations as an all-purpose means necessary for individuals to consistently formulate, express, or pursue collective conceptions of the good and interact with other agents that populate the social world. It allows political persons to organise their internal and external interactions in a way that suits their shared standards of appraisal. This legal personality should be acquired as a matter of right, as soon as an individual expresses the will to be corporately organised by virtue of an associative individual right that is jointly exercised, independent of any state authorisation, and because not adding to the burden of collective action is the least that the law can do for the social bases of standard self-respect.

In the Section 3.2.1, I first explore the space left by the US and the EU doctrines for a corporate right to form social associations and its acquisition as a matter of right, showing that the first reduces the freedom of social association to an individual authorisation and that the second fails to assert the acquisition of legal personality as a matter of right. In particular, I stress that, while the EU doctrine recognises 'an obligation of a state to allow an association to

be granted legal entity status' and that 'the right to perform joint actions is of no practical use without the possibility of creating a legal entity to pursue the goals of the organisation' (OSCE, 2015, pp. 92–93), it only claims such a right and fails to effectively assert it independently of any state's authorisation. In fact and law, the right to legal personality for social associations remains conditioned by authorisation and administrative constraints demanding resources. The dominant trend, in short, is to reduce the legal right to the freedom of association to a non-absolute duty of non-interference, and when positive state obligations are recognised, they remain abstract, conditioned to the resources, and valid only for democratically organised associations. Then, in the Section 3.2.2, I show that my argument offers reasons to defend the legal principle of corporate creation on an individual and pragmatic basis, claiming that the legal personality of social associations should be recognised as soon as their members formally express the will to be corporately organised.

3.2.1 Associations and Legal Personality

Expressive Associations and Individual Authorizations

The US legal system has no unified theory of legal corporate personality; over the years, jurisprudence has not followed a consistent pattern (Ripken, 2019). Corporate constitutional rights are extensively protected in some contexts, as in the case of organised religious associations, and not in others (see Section 3.1.1). Soifer, who defended a claim for an independent constitutional right of the freedom of association in *The Law and the Company We Keep* (1995), famously claimed that the strong individual bias of the US legal system, based on pervasive notions of individual accountability, is unable to 'differentiat[e] groups by their greatly varied forms and functions' (1995, p. 33) and ignores the 'multiple relationship, the complex institutional arrangements, the web of parties involved directly in the actual context of the dispute' (1995, p. 5)[165].

In the case of the freedom of association, the Supreme Court 'refers to corporation a simply a collection of individuals whose individual constitutional rights should continue to be protected when choose to come together and act in corporate form' (Ripken, 2019, p. 129). The

[165] According to Soifer, the dominant assertion of judges, legislators, and lawyers is that 'the rights of single individuals must remain the essential units of all legal discourse' (Soifer, 1995, p. 31), with the consequence that 'the concepts to describe and distinguish among such groups remain virtually beyond the ken of legal discourse' (Soifer, 1995, p. 3). As a result, US law reduces the complexity of group affiliation and membership to a mere abstraction and omits important distinctions between groups:; 'a scrim of the individual ideal hides the mess (…) Silence surrounds all their group affiliation and commitments' (Soifer, 1995, p. 5).

rationale is that the freedom of (non-religious) association enjoys no more protections and restrictions than that which is afforded to individuals and that all rights that are alienable individually may be alienated for social associations as well (Emerson, 1964; Levy, 2015; Sigurdsson, 2013; Soifer, 1995)[166]. In this context, the freedom of association is merely understood as 'the right to do in common what we have the right to do individually' (Levy, 2015, p. 54).

The doctrine of expressive association reduces the freedom of (non-religious) association to an individual claim right to refuse to associate. The 'message' of the expressive association makes a connection between the collective decision procedure and the individual (Bezanson et al., 2013), but the doctrine of expressive association assumes that this message existed before the group and that the collective structure plays no part in its formulation. It does not seem an exaggeration to assert that the doctrine of expressive association follows a narrow conception of collective agency as authorisation, 'no matter what form a group agent take, it exists just because individuals might authorise one person or group to speak for them only on relevant questions' (List & Pettit, 2013, p. 7). The right to expressive association is exercised through individual permission, that is, agreement as to whether or not to authorise one group to speak for themselves on relevant questions (always related, in the US context, to the exclusion of a social group from membership). Group agents are merely considered an amplification of the individual voice by the group, and 'rather than speaking of group or corporate agent, we might as well speak of a corporately empowered individual' (List & Pettit, 2013, p. 8)[167].

That the negative dimension of the freedom of association is blind to the rights and duties of associations is not surprising. Corporate rights are not a necessary condition for one to leave an association (e.g. renouncing membership), to authorise a group to speak for oneself (e.g. excluding women), or to claim individual legal exemptions (e.g. dispensation of education). Even if Martina and her associates would not be recognised as having any capacity for legal relations of their own accord, Martina would have the individual right to renounce membership

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[166] Thomas Emerson, who was one of the leading US legal scholars of the First Amendment of the twentieth century, argued that an association should enjoy no more protections and restrictions than what is afforded to individuals, all rights that are alienable individually may be alienated for associations, and associations should be treated like individual persons (Emerson, 1964; Sigurdsson, 2013). This led him to consider that 'a meaningful constitutional limitation on government power based upon a generalized notion of the right to form or join an association' is impossible (Emerson, 1964, p. 6).

[167] Pettit and List would qualify such an account as 'eliminativist' as it 'denies the reality or significance of group agents', or at least as a 'redundant' form of realism to the extent that it makes 'group's agency reducible to individual' (2013, p. 4).

and exit her social association, as she would have the individual right to authorise or not authorise the association to speak for her on relevant questions. Nonetheless, the positive dimension of the freedom of association, to which the liberty to form social associations belongs, cannot be reduced to individual permission (Levy, 2012; Muñiz-Fraticelli, 2014; Ripken, 2019). As is well-established for religious associations (even in the US legal system), beyond an individual's permission to refuse to associate and exit an association, the positive dimension of the freedom of association requires uncontestably substantial corporate rights (Inazu, 2012; Sigurdsson, 2013; Soifer, 1995).

The moral justification of the freedom of association on which I lean and which I intend to reinforce is individualistic, but social associations, as organisations, are collective. Individuals who come together and act in corporate form create new rights and duties, and their protection and obligations sometimes differ from those of their individual members (Sigurdsson, 2013). The right to form an association is a joint individual right that requires right-holders to synchronously exercise their individual rights and to perform their action to create the association together, and that allows them to enjoy its creation together (Preda, 2012b)[168]. Corporate rights, as for example the right to partake contracts in the name of the association, are not reducible to individual rights because they can be exercised as such only to the extent that the individuals are associated together formally. This does not mean that the rights of duties of associations can justify an infringement of individual rights (e.g. in the name of collective or group rights), but only that the joint right to associate must protect and oblige all people who take part in the joint action, and that these shared rights and duties – exercised and enjoyed together – require a corporate form. To not recognise this distinction between the existence of corporate rights and their primacy over individual rights is to fail 'to distinguish between liberal commitment to individualist moral justification or individualist ontology and conclusions about social organisations' (Levy, 2015, p. 54).

Associative relationships – in the wide sense of the term – do not need to have a legal personality to have value. Not all good things are preserved when they are formalised, and it would seem regrettable in several ways to require all associative relations to be formalised and even more so to be legally recognised. Such a requirement would certainly alter informal social mechanisms and vernacular connections that take place in various associative relationships. In the case of Martina, we can easily imagine that she may sustain morally significant

[168] Emerson, who argued that the freedom of association is nothing more than the right to do in common what we have the right to do individually, acknowledged that 'the creation of an association cannot be reduced to its individual dimension' (1964, p. 4).

interpersonal relations with her neighbours without the legal protection of legal personality and the collective rights and duties it entails. She may well have moral duties towards the people with whom she has these significant interpersonal relations, depending on various constraints, including 'consent, the type of association, and its burdensomeness' (Brownlee, 2015, p. 272). Nevertheless, legal personality is a necessary condition for any collective organisation intended to act in and interact with the social world. Without such legal personality and capacity for legal relations, it is impossible for any organisation or association to engage in concrete action in the social world that is distinct from the actions of its members (Muñiz-Fraticelli, 2014). Legal personality – as a recognition of the subject of rights and duties – allows associates to impose common rules, act and contract in collective name, and collectively claim fundamental rights (Levy, 2012; Muñiz-Fraticelli, 2014; Ripken, 2019). As Levy noted, all 'these are problems for insiders and outsiders alike, not coherently resolvable without recognising the associations as legal entities – in our sense, without recognising their personality' (Levy, 2015, p. 246). The fundamental associative interest in standard self-respect calls for a conception of corporate rights as something more than an individual authorisation. Citizens joining together for concrete action towards a long-term purpose must agree on decision-making procedures, sue members and non-members if necessary, pool their resources, own common funds and manage contributions, open a bank account and eventually apply for subsidies, rent a place to meet, and realise associative activities. For this, they need the rights and duties provided by legal personality, which also gives concrete existence to decisions taken by associates, the decision-making system they have adopted, and the internal rules and standards they have chosen to follow. Thus, the recognition of the capacity to enter into legal relations is necessary for citizens to give shape to their mutually appraised activities and develop a sense of self-worth. The US doctrine of expressive association, in obscuring the right to form association and in reducing freedom of association to an individual authorisation to express a predetermined collective message, renders more difficult to obtain such circumstances.

The UE doctrine and the Alienable Right to Legal Personality

In spite or because of its democratic bias, the EU case offers a more appropriate frame for the relationship of freedom of association to other freedoms than the US one and, as we shall see, a better account of the corporate dimension of the right to form social associations. The doctrine forces us to be clearer about the modalities of recognition of the capacity for legal relations of associations, their justifications and their relationship to freedom of association and the right to form social associations.

The European doctrine recognises the importance of the liberty to form social associations and the positive obligations it generates. The courts have emphasised that states should create a favourable legal environment for associations and stressed the importance of the right to form an association and on the positive obligations of signatory states to allow an association to be granted legal status and simplify regulatory requirements.

The European doctrine and jurisprudence hold that the right to form an association 'is enjoyed by natural and legal persons and groups of persons' (OSCE, 2015, p. 131). To ensure this right, the doctrine requires that legislation must be designed 'with the purpose of enabling the establishment of associations and enabling them to pursue their objectives', and must recognise a presumption of the lawfulness of the establishment of associations (OSCE, 2015, p. 18). The ECHR fully recognises the link between the right to form an association and the recognition of legal personality [169], and the OSCE underlines the importance of legal personality for the pursuit of the objective of the association and the rights and duties it entails, 'including the capacity to enter into contracts and to litigate and be litigated against' (OSCE, 2015, p. 31; see for instance *Ouranio Toxo and Others v. Greece,* 2005). The doctrine emphasises the state's positive obligations to provide an adequate legal environment, which implies 'simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, [and] facilitating access to resources' (OSCE, 2015, p. 39; see for instance *Sidiropoulos and Others v. Greece,* 1998; see also *Gorzelik and Others v. Poland,* 2004).

Nonetheless, this insistence on the right to legal personality does not mean that associations must have a legal personality to be legally protected (OSCE, 2015, p. 39). The doctrine declares that it 'is not a prerequisite for the establishment of an association' and that 'the decision whether or not to seek legal personality should be at the discretion of the association' (OSCE, 2015, pp. 36–37). The law ought not to force associations to assume legal personality, though it should allow them to do so:

> Legislation should not require associations to go through formal registration processes. Rather, associations should be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered. Associations should not be banned merely because they do not have legal personality. Where an association wishes to register to acquire legal personality, procedures for

[169] In many major decisions, the ECHR has held that the right to perform joint actions was of no practical use without the opportunity to create a legal entity to pursue the goals of the organisation. See for instance *Sidiropoulos and Others v. Greece* (1998) and *Gorzelik and Others v. Poland* (2004).

doing so should not be burdensome, but should be simple and swift to facilitate the process' (OSCE, 2015, p. 30).

The doctrine justifies this position, which is shared by the UN, by emphasising that 'this principle is particularly important, since those persons or groups who may face legal, practical, social, religious or cultural barriers to formally establishing an association should still be free to form or join informal associations and to carry out activities' (OSCE, 2015, p. 30)[170]. In light of this, Golubovic contended that 'a distinction needs to be drawn between the right of an association to seek legal entity status and the duty of an association to apply for legal entity status' (2013, p. 761). Thus, associations are free either to demand or refuse the status of legal personality and in the latter eventuality, waive their corporative rights.

The OSCE's reasoning, however, in line with the ECHR's decisions and concordance with recommendations of the UN and Human Rights Council, sounds absurd. It is difficult to understand the exact content of the proposition. What is the content of legal personality if not this protective legal framework to assert one's rights? Waiving corporative rights does not really help disadvantaged people assert their legal associative rights. While the EHCR and OSCE speak of legal personality as a right and proclaim that acquiring legal rights and duties is necessary for the pursuit of any associative purpose, they assume that this legal umbrella is not necessary for those who do not have the resources to acquire it. This means that the right to legal personality is considered alienable, in that it can be 'waived, conveyed, delegated and voided' (Brown, 1955, p. 192). If the intention is laudable, it is obviously not the traditional way in which courts have sought to protect fundamental rights[171]. The structure of the argument, if any, is as follows:

- P1: Legal personality is necessary for an association to act, it entails specific rights and duties allowing an association to pursue its objectives,
- P2: Certain persons or groups face legal, practical, social, religious, and/or cultural barriers to formally establishing an association, and
- C: Associations and their members should freely choose whether they want to apply for legal status, and should be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered.

[170] This position is shared by the UN/Human Rights Council (2013, paragraph. 56).

[171] Fundamental rights are by definition rights that are inalienable; they cannot be denied, nor 'waived, conveyed, delegated and voided' (Brown, 1955, p. 192).

To assume the necessity of legal personhood as a right and simultaneously consider the case of those associations that cannot claim this right because of their resources is actually counterintuitive. Consider this analogy. To pass their exams during the COVID-19 pandemic, students are required to log in to a new online platform on which they have to pass their exams on-line. All those who do not register because they lack, for instance, a computer or stable Internet connection, shall be allowed to take the exam physically. In this example, it seems to be an understatement to claim that this waiver for people without computers truly addresses the conundrum facing those who cannot log in on the relevant platform because they lack the resources to do so. This measure does not penalise them (hold them unjustifiably absent), of course, but these students without useful resources do not enjoy any effective right to try to pass their exams safely, under the same conditions as other students. It is only a plan B, better than nothing for those lacking the resources, but that cannot not be taken to be the conditions students are entitled to (this is why we generally consider that students are entitled to a form of compensation, e.g. a second attempt to pass the exam). The same goes for people who, without the necessary resources to acquire legal protection over their association: they are entitled to act collectively under legal personality, and the fact of allowing these people to exist as group without legal personality is certainly better than to deny their existence, but it is not the right citizens are entitled to. Coherently, having legal rights is having a legal status, and if legal personality is necessary for an association to act, the law should reduce the requirements for one to obtain legal personality and guarantee equal access for everyone.

The European doctrine addresses the importance of legal personality as a necessity for an association to act, but does not claim any unconditional right to it. It fails to adequately protect the recognition of legal personality of social associations in juridical terms, independently of any state authorisation, and, in so doing, makes the circumstances under which individuals can develop a sense of self-worth less accessible. The doctrine remains oriented towards the democratic and functional value of associations and assumes the right to access legal personality, which it fails to effectively defend as a matter of right. In my view, the requirement of democratic organisation and the conditioning of the legal recognition of associations to the principle of authorization go hand in hand. It is because associations are considered of collective importance, as contributors to democratic debate and the development of civic virtues, that the need for their recognition and the possibility of imposing on them forms of organisation that respect certain liberal principles are considered a precondition. Together these assumptions underestimate the importance of social associations serving only the purpose of their members and their need for legal capacity and constitutional protection. Among the positive obligations of the state, my argument supports a duty of the state to recognise the

acquisition of legal personality for social associations as a matter of right, on the sole condition that members have expressed the wish to be organised corporately and that they have agreed on a collective decision structure.

3.2.2 Legal Personality as a Matter of Individual Rights

Issues around the acquisition of legal personality have been ignored in the main philosophical discussions of the freedom of association, which are mostly anchored in the US legal context and have focussed on the right to refuse to associate in discriminatory associations (Gutmann, 1998; White, 1998), and, increasingly, on the right to exit from organised religious associations (Cordelli, 2017; Rouméas, 2020).

With respect to the all-encompassing category of non-political association inspired by Rawls, there can be little doubt that the wide range of organisations included in the category of non-political associations cannot be granted legal personality without prior state authorisation and without relative substantial requirements to comply with the legal and normative order. It is likely that only a strong libertarian position could support the application of the principle for corporate creation for all of them. I presume that trade unions, churches, and corporations need to be authorised and regulated, at least in their formation phase, but I am convinced that this should not be the case for social associations.

Thus, because liberal-egalitarians have obscured social associations and the associational interest in self-respect, they have never been involved in the debates on how to acquire legal personality. They have restricted the debate on corporate autonomy to commercial companies and religious organisations and obscured the question of the recognition of the legitimate existence of less complex forms of organised associations, drowning them in issues related to collective property rights and the freedom of religious organisations. However, the simplest forms of our organised social relations require a capacity to act legally in a collective name. Social associations need the legal capacity to exist in practice and to relate, as an organised group, to other actors that populate the social world. This is as true of our most intimate associations, such as marriage, as of social associations, such as neighbourhood associations. Liberal-egalitarians have not only abandoned the question of the acquisition of legal personality to collectivist ontology, they have also granted the state just to authorise the simplest form of organised associations, thereby denying the capacity of social associations to exist on their own.

While the existence and importance of legal personality for associations are legally uncontroversial and can be philosophically justified by arguments of a very different nature, the claim on the acquisition of legal personality as a matter of right has historically been

narrowly defended by British pluralists (Figgis, [1913] 2015; Maitland, [1911] 2003), through the idea of group personality, as emerging 'from the extended practice of self-reflexive interactions', with its own will and identity (Muñiz-Fraticelli, 2014, p. 185). The fundamental issue, obscured in liberal thinking, is whether the state must recognise the existence of other collective entities on its territory in order for them to exist effectively (i.e., to give legal personality to the individuals associated and to grant them related rights). This debate is often associated with a questioning of the state's authority and the existence of other competing and legitimate authorities than the one of the state, but it can in no way be reduced to this. To accept the authority of the liberal-democratic state, as I do, cannot prevent questioning the legitimacy of its acts of authorization and the criteria it uses to authorize or not the existence of social associations.

An Individual Entitlement

Historically, there is a deep divide between the Roman and German conceptions of legal association, which is currently the subject of renewed interest among liberal pluralist authors (Bevir, 2012; Levy, 2012; 2015; Muñiz-Fraticelli, 2014). For the concession theory of group personality, adopted by the Roman civil law and philosophically defended by Hobbes ([1651] 2004) and his followers, 'corporate group life is a fictious privilege granted by sovereign command' (Levy, 2015, p. 235). The theory therefore takes 'these groups to be purely artificial persons or legal fictions whose capacity to be bearer of rights and privileges – their personality – is derived only from a concession of the state' (Muñiz-Fraticelli, 2014, p. 185). On the other hand, the Germanic and Christian ideas of spontaneous fellowship, linked to the emergence of medieval canon law and the proliferation of guilds, considers that 'persons joining together in shared bonds created something of independent social and moral significance, as real as individual persons' (Levy, 2015, p. 236). This paves the way for the idea of 'fellowship' where rights and duties, and thus personality, are legally recognised (Muñiz-Fraticelli, 2014, p. 185). The core idea of British pluralists, defended by figures like Gierke ([1900] 2014), Maitland ([1911] 2003) and Figgis ([1913] 2015), and to a lesser extent by functionalists like Cole (1920) and Laski ([1930] 2014), was that 'groups have a real existence that the state recognises but does not create' (Levy, 2015, p. 244)[172]. According to the British pluralists, associations have

[172] For Figgis ([1913] 2015, p. 59), the Church – as an association – 'inevitably acts with that unity and sense of direction which we attribute to personality'. For Maitland ([1911] 2003), trusts as corporations are places of collective interest, 'where individuals engage in collective endeavours they create collective interests not reducible to the aggregate of individual interests, and that these properly collective interests require formal legal representation' (Muñiz-Fraticelli, 2014, p. 187).

a personality because they represent collective interests that are not reducible to individual ones, or at least, collective interests that are distinct from individual ones (Figgis, [1913] 2015; see also Maitland, [1911] 2003)[173].

Since then, recent works have sought to clarify and elaborate the premises of the British pluralists, and various arguments have supported legal personality as a necessary structural condition for collective intentionality allowing group responsibility (French, 1984), agency (List & Pettit, 2013), and/or authority (Muñiz-Fraticelli, 2014)[174]. However, all these arguments, whatever form they take, rely on the idea that legal personality presupposes the interest of the association as distinct from those of its members, even if reducible to it. The capacity of groups for a collective sense of perception (Figgis, [1913] 2015), rationality (List & Pettit, 2013), and/or authority (Muñiz-Fraticelli, 2014) are inappropriate and too demanding in my view. My argument is based on the fundamental individual interests that every individual possesses equally as a political person. The 'corporate' right to form social associations can be understood as a 'collective' right, but only to the extent that it is a joint individual right, exercised synchronously and enjoyed jointly by (at least two) individuals[175]. This implies that the legal personality of a social association founded on self-respect cannot justify the

[173] Many commentators have highlighted intragroup inequalities, the risk of oppression by hierarchy, and the preponderant influence of some, as the many dangers of a group's personality for individual interests (Muñiz-Fraticelli, 2014; Cohen, 1919). Others have underlined the lack of 'dramatic unity' in the self-perception of such groups (Runciman, 1989, p. 243). At their intersection, List and Pettit (2013, p. 9) thought that 'the reference to an unexplained force offends against methodological individualism in suggesting that group agency requires something above and beyond the emergence of coordinated, psychologically intelligible dispositions in individual members'.

[174] This is the case of Pettit and List, who supported the existence of a collective rationality distinct from that of the members without denying its individual origin, which supervenes individual rationality through group discipline and collective discursive control

This is the case of Pettit and List who supported the existence of a collective rationality (List & Pettit, 2013). This is also the case of Muniz-Fraticelli, who supported the recognition of the personality of the association as a condition of possibility for its collective authority, allowing the collective agency of groups to supervene on individual behaviours (Muñiz-Fraticelli, 2014).

[175] Public goods imply that 'the consumption of these goods by one of the parties within a particular relationship does not generally reduce the consumption of the same good by the other parties (Cordelli, 2015, p. 90). Participatory goods are a type of public good that can only be enjoyed jointly with others (Ceva & Zuolo, 2016; Morauta, 2002; Reaume, 1988). There is no consensual definition of 'collective' and 'corporate' rights. There is no consensual definition of 'collective' and 'corporate' rights. I understand the first as assuming a form of collective interest(s), whereas I use 'corporate right(s)' to describe the conception of a group right as a shared or joint right, while conceiving a social association as several individuals that are bound together in a manner that enables them to hold their right collectively.

infringement of individual rights (Preda, 2012b), which are themselves the grounds for the justification of the legal personality for social associations.

To these ideas of associations as real and artificial persons created from state concession, Ripken added that of associations as an 'aggregation of persons' created from a contractual relationship (2019, p. 34). As Ripken explained, the contractual approach and the idea of a person 'as a nexus of contracts' became dominant in the 1980s in the economic sphere, through a renewed interest in corporate personality and development of finance (2019, p. 43)[176]. I argue that the contractual approach offers an interesting alternative to the dilemma around the concession of personality/real personality of association. It paves the way for an argument against the idea of state concession and privilege, not on a phenomenological or metaphysical basis, but 'as an individual entitlement' (Ripken, 2019, p. 31). Contrary to the artificial theory, legal personality is not the product of a sovereign concession, and contrary to the real personality doctrine, the association has no independent personality, identity, or will.

The idea of an association as an aggregation of persons created by contractual relations echoes a classical pragmatic argument according to which legal personality is whatever the law makes it (Dewey, 1926). This pragmatic position suggests that the state should recognise the contractual usages and practices that emerge from individual interactions and common undertakings, without attributing a moral standing to this fictional legal aggregation. Maitland ([1911] 2003), the British pluralist, relied on ordinary usage and practices to justify association personality[177]. Dewey pursued the same intuition, arguing that a person has to be understood in a pragmatic way, in terms of consequences, without any reference to some philosophical essence or nature. In this narrow sense, a person means 'whatever the law makes it mean in real distribution of rights and duties'; and associations are persons if they are considered 'right-and-duty-bearing units' (Dewey, 1926, p. 659)[178]. In this pragmatic sense, the personality of an association is only a nomen juris, a fiction, following the idea that 'in order that a society of

[176] The contractual theory is not limited to a neoliberal theory that minimises the regulation of business and eliminates restrictions on corporation activity (Ripken, 2019). The contractual idea of association was already present in Roman law through the idea of *societas* as a kind of private contract (Jolowicz & Nicholas, 1972).

[177] Maitland ([1911] 2003, p. 68) wrote: 'If the law allows men to form permanently organized groups, those groups will be for common opinion right-and-duty-bearing units; and if the law-giver will not openly treat them as such he will misrepresent, or as the French say, he will "denature" the facts: in other words, he will make a mess and call it law'.

[178] Dewey explained: 'The definition of a legal subject is thus legitimate, and quite conceivably a practically important matter. However, it is a matter of analysis of facts, not a search for an inhering essence. The facts in question are whatever specific consequences flow from being right-and-duty-bearing -units' ([1927] 1926, p. 661).

men may be able to act, to hold property, to sue and be sued, it is necessary to treat them as what they are not, i.e. as a person' (Hirst, 2005, p. 117).

My argument, while adopting a pragmatic understanding of legal personality, does not reduce it to 'a convenient shorthand for the aggregate of contracts' (Muñiz-Fraticelli, 2014, p. 194), but is based on the recognition of legal personality of social associations as a fundamental matter of political justice. The individual entitlement is the interest that free and equal citizens have in developing self-respect and in having at least one community of interest where they can seek mutual appraisal. Social associations, from this perspective, have to be understood as rational agents that are capable of ordering ends and addressing rules 'to rational persons in order to give shape to their activities' (Rawls, 2005a, p. 236). Legal personality for social associations is justified by this individual entitlement because it offers a set of rights and duties that organises the relationship between associates within the association, and between them and other legal personalities that populate the social world. The formal structure of a social association and its legal recognition allows associates to conceive, formulate, and achieve a shared determinate conception of the good. In the pragmatic perspective defended here, therefore, legal personality for social associations is justified by the consequences for the social bases of standard self-respect that flow from recognising 'the internal procedures, communications and actions undertaken in the name of the association' (Muñiz-Fraticelli, 2014, p. 72).

This is a very different justification of legal personality from the one that sees associations as producing collective rationality supervening on individual rationality (List & Pettit, 2013), or from the idea of collective authority supervening on individual behaviours (Muñiz-Fraticelli, 2014, p. 72), or from a joint intention produced by communication between members engaged in a joint enterprise (Gilbert, 1992)[179].

As a Matter of Right

My argument supports the idea that the acquisition of legal personality for social associations is a matter of right, and not a concession or privilege (Muñiz-Fraticelli, 2014), a

[179] Gilbert (1992, p. 141) argued that a group of people in which all members 'are jointly committed to doing something as a body — in the broad sense of "do"' is imbued with the joint intentions of its members, irreducible to its individual agents. As Muñiz-Fraticelli (2014, p. 72) noted, 'although it exists because of the beliefs and attitudes of these individuals, a mere aggregation of people does not produce community; rather, it is their communication to each other of being engaged in a joint enterprise'. Associates in social associations do not need to be engaged in a joint enterprise to enjoy corporate rights, the sole expression of their will to be part of the enterprise is sufficient.

claim made by members in furtherance of their individual associative interests in standard self-respect, which does not depend on prior state authorisation. This means that legal personality should be acquired by social associations as soon as their members have expressed the will to organise. I just argued that legal personality, the recognition of the capacity of associations to enter into legal relations, is necessary for rational persons to give shape to their mutually appraised activities and pursue their collective conception of the good. Given that the *act of incorporation* itself formally constitutes a legal entity in the legal system (Hopkins, 2011; Ripken, 2019), I argue that legal personality should be acquired by social associations without formal incorporation, as soon as their members have expressed the will to be organised. Accordingly, the right to legal personality for social associations requires only a formal decision structure, which is indispensable to collective responsibility – as the capacity 'to be a party in responsibility relationships - without which any conception of legal personality would be impossible (Preda, 2012b; see also French, 1984).

To be appreciated, the principle of *corporate creation* should be put in perspective with the ones of *declaration* and *authorisation* that refer to fundamentally different modes of acquisition of the capacity for legal relations[180]. While the first principle requires only the expression of the will to be thus organised, the second subordinates the acquisition of the legal personality to a prior authorisation, and the third conditions it to prior notification. The principles of declaration and authorisation are situated on the same continuum, and the border between them is not easy to define. In relaxing or tightening conditions of access, a state can easily move from one principle to the other[181]. In both cases, the formal incorporation requirement for social associations unfairly increases the burden of knowledge and skills on the social conditions to form social associations and thus undermines the institutional conditions necessary to ensure the social bases of standard self-respect. In order to avoid social associations being formed by an act of incorporation, demanding resources for which

[180] There is a distinction in comparative law between the principles of declaration and authorisation. Following the principle of declaration, 'a group of people willing to create an association should meet no obstacle to its constitution' (Doucin, 2007, p. 7 my translation). The procedures 'must have no other object than notifying third parties of this creation in order to warn them of the potential legal effects' (Doucin, 2007, p. 7 my translation).This declarative principle is opposed to that of authorisation, which 'subordinates the acquisition of the legal personality to a prior authorisation' (Doucin, 2007, p. 7 my translation).

[181] It is no exaggeration to say that a major obstacle to the freedom of association in the world today is the slip from declaration to authorisation, by making the procedure to create an association more complex (Doucin, 2007). Some countries proclaim 'the inviolable character of the freedom to create an association, while setting up legal devices which submit them to technical, judicial, and administrative agreements and authorisations'(Doucin, 2007, p. 7 my translation).

individuals are legitimately unequally endowed, they must be constituted according to the principle of corporate creation and the mere expression of the will of the associates to be corporately organised.

Returning to the example, let me now assume that Martina lives in Bay City, Michigan. She and her associates regularly organise events for the entire neighbourhood in the central courtyard. For this, they need to use the public domain, and thus need to be recognised by the municipality and the building management. They also need to contract in a collective name, rent or buy property, have a bank account, collect membership fees, and eventually sue for justice. For these reasons, Martina will quickly need to create a recognised legal entity that enables her to enter collective contracts. To do this, Martina must follow a process of incorporation to be officially recognised by the State of Michigan, where the principle of declaration prevails. This process will be identical to that of creating a regular corporation or trust, with the extra steps of applying for tax-exempt status with the Internal Revenue Service (IRS), at the federal level, and their state tax division (Hopkins, 2011). In this context, all social associations fall under the general category of a non-profit, and must follow a specific process of incorporation to obtain legal personality, which is regulated at the state and federal levels[182]. To obtain incorporation as a social club, for instance, Martina and her associates 'must show that members are bound together by a common objective of pleasure, recreation, and other non-profit purposes, which would characterise it as a club, with limits on admission to membership consistent with the character of the club[183]. The final step is to register with the state; to find the correct office, complete the procedures, and provide annual reporting requirements; there are fees to pay for both state incorporation and federal tax-exemption. Although non-lawyers

[182] In US law, social associations like Martina's would fall under the general legal category of non-profit associations (IRS, 2021; see also Hopkins, 2011). As non-profits, the organisation does not distribute profits to members or stakeholders but rather cycles them back into the organisation (Hopkins, 2011; Perrin & Chappuis, 2008). Different types of social associations can qualify under different sections of the IRS, depending on their purpose and activities. Most social associations are classified either as charitable organisations under 501(c)(3), or as social clubs under 501(c)(7) of the IRS Code and are subject to related requirements (Hopkins, 2011, p. 3).

[183] Hopkins highlighted the two main historical and philosophical rationales that inform the logic of tax-exemption in the US : the 'inherent tax rationale', which justifies tax-exemption to some associations because they do not constitute 'a taxable event, in that the organization is merely a convenience or means to an end, a vehicle by which each of those participating in the enterprise may receive and expend money in much the same way as they would if the money was expended by them individually' (Hopkins, 2011, p. 17); and the 'political philosophy rationales', based on the fact that some associations 'perform functions contributing to the well-being and functioning of society' for which, 'in the absence of these organizations, government would have to perform' (Hopkins, 2011, p. 10). He emphasised, however that tax-exemption is a prerogative of the US Senate and follows a political logic; it is not the product of a carefully formulated plan.

can successfully comply with such requirements, specialised websites recommend consulting a non-profit lawyer before starting incorporation and online legal services provide various related offers. On its official website, the US government warns that starting a non-profit organisation can be challenging (USA Government, 2021). We can understand, through Martina's example and this outline of the US process of incorporation that starting an incorporated social association – understood in the US context as a non-profit, tax-exempted social club – can be very demanding. The act of incorporation itself, and the acquisition of tax exemptions, require basic knowledge of incorporation and taxation laws, important skills and, certainly, time. Citizens have an unequal share of these resources and this will affect their sense of self-worth and their capacity to abide by fair terms of cooperation.

In opposition, the principle of corporate creation holds that corporate legal personality exists as soon as the will to be thus organised is formally expressed by the constitutive members[184]. It means that any registration with local or national authorities is required, and that people interested in establishing an association – at least two people – have only to meet in a constitutive assembly to formally adopt and sign the statutes of the association to make it legally recognised (Perrin & Chappuis, 2008). The association immediately becomes a legal entity with rights and obligations, and is responsible for the actions of its members (Perrin & Chappuis, 2008). If Martina lives in Geneva, Switzerland, then to make her association legally recognised, she has only to meet with at least one other associate at a general assembly and express, through written statute, their will to be corporately organised; and the process to be declared tax-exempt is optional. The principle of corporate creation reduces as such the burden of skills and knowledge required to form a legal association and avoids the slip from the principle of declaration to authorisation.

A strong objection to the principle of corporate creation lies in the absence of pre-judicial review and non-publicity of the legal relations that emerge from it. The case of Switzerland illustrates it well, associations are not registered and there is no prior minimal control over the legality of an association. Legality is only examined when a legal conflict occurs between the association and third party, and at this very moment, an association can be declared invalid *ex-nunc*, meaning that it does not exist anymore, or even *ex-tunc*, meaning that it entity has never existed. In the latter case, all legal acts and contracts that were realised since the foundation of

[184] The principle is in force in some European countries. In Switzerland, the establishment of an association is regulated by the principle of corporate creation as affirmed under Article 60 al. 1 of the Civil Code. Accordingly, members of an association 'acquire the personality as soon as they express in their statutes the will to be corporately organised' (Art. 60 al. 1 CC, my translation).

the association are declared invalid. It can thus be argued that the principle may be an important cause for instability in legal relations.

In light of this, in the only Swiss case decided by the ECHR on the freedom of association, the ECHR invalidated the sentence and underlined the difficulty to understand why national authorities 'needed about 20 years to conclude that all legal acts and contracts of the association were, since its creation incompatible, with the Swiss right' (*Association Rhino and other c. Suisse*, 2011, p. 183)[185]. Part of the explanation why the Swiss authority took so long is evident in the legal principle of corporate creation and its side effects. It is because there is no registration and no prior legal review of the establishment of an association that the Swiss authority takes so long to claim that the purpose of the association was incompatible with Swiss law. In the *Association Rhino and other c. Suisse* (2011) case, this side effect of the invisibility of legal relations materialised in the fact that the association would have never really formally existed, and each and every one of its transactions and contracts with other legal persons since its creation would have been declared null and void. Thus, in Switzerland, citizens are free to create an association, but are never sure whether it is an effective and valid legal person. Instability in legal relations may have a negative impact on the rule of law. It may reduce the transparency and predictability of legal relations, which may prevent people from organising as they want and eventually affect their moral capacities.

These objections must be nuanced. First, Switzerland is a signatory to the EHCR, which compelled it to find a middle ground that allowed the *ex-nunc* dissolution of the Rhino association by the Swiss authorities but prevented its *ex-tunc* dissolution and thus recognised

[185] The case refers to the dissolution ex-tunc of 'Rhino', an association of squatters in Geneva whose purpose was considered illicit (*Association Rhino and other c. Suisse,* 2011, 183). In 2005, the owners of a squatted building asked the Court of the Canton of Geneva to pronounce the dissolution of the squatter's association as pursuing an illicit purpose (BGE (2007) 133 III 593). They considered the purposes of the association, which stipulated that the association tried 'to withdraw the building it occupies from the real estate market and speculation', illicit and declared that it violated property rights). The State Court of Geneva pronounced the dissolution ex-nunc of the association. On appeal, the Court of the Canton of Geneva confirmed the dissolution in 2006, but with effect ex-tunc, meaning that the association had never existed. The Federal Court confirmed the decision of the lower authority (ATF (2007) 133 III 593). Finally, in 2011, the ECHR invalidated the sentence, considering that the dissolution of the association constituted a severe measure for its members, particularly regarding the financial consequences of the dissolution ex-tunc. According to the ECHR, this neither aimed at the protection of the rights of the owners nor at that of law and order (Association Rhino and other c. Suisse, 2011, p. 183, my translation), and the court underlined the difficulty of understanding why national authorities 'needed about 20 years to conclude that all legal acts and contracts of the association were, since its creation incompatible, with the Swiss right' (*Association Rhino and other c. Suisse,* 2011, p. 183, my translation).

the validity of its previous legal personality. I can only support this nuanced balance. Second, the argument I defend, as the principle I am arguing for, applies exclusively to social associations relying on the influence of norms for their cohesion, and not, for instance, to political or religious corporations, which certainly raise very different legal, moral, and political challenges. In this perspective, the principle of corporate creation seem like the best legal arrangement to secure easy access to legal personality and reduce the legal burden on the social conditions for the formation of social associations. In this balanced understanding, the principle of corporate creation must be reserved for social associations and made compatible with a minimal threshold of security for legal relations. Because this legal arrangement reviews major administrative obstacles and legal constraints, the lack of transparency in legal relations – if maintained within reasonable limits (i.e. limited to social associations and without endanger the stability of legal relations or justice) – seems to be a small price to pay to free the social bases of standard self-respect from the legal shackles of the state.

This normative perspective on the acquisition of legal personality contrasts both with the US conception of the association's agency as individual authorisation and the EU idea of an alienable right to legal personality, regulated by the principle of authorisation/declaration that disadvantaged people can renounce.

My support for the principle of corporate creation, narrowly defended for social associations, goes further in the idea of spontaneous recognition than did the British pluralists themselves. British pluralists did not support a principle of corporate creation, but at best, a principle of declaration. Figgis, for instance, was not opposed to formal requirements for incorporation, as he contended that these 'formal requirements must track pre-existing social, or more accurately socio-psychological, reality'([1913] 2015, p. 41)[186]. Both the British pluralists' and my arguments come to radically different conclusions because they start from very different premises. They start with the existence of an independent authority, or with the real personality of associations that emerge from group interactions, which the state should recognise as legitimate. I start from the associative interests of individual members in standard self-respect and the correlated duty of the basic structure to ensure the social bases of standard self-respect. The principle of declaration is sufficient for British pluralists, as their proposal aims at not conditioning the legal existence of real and pre-existing associations to prior state

[186] Figgis ([1913] 2015, p. 41) wrote: 'Government must require certain marks, such as proofs of registration, permanence, constitution, before it recognizes the personality of societies, just as it does, though in a less degree, in the case of individuals; and the complex nature of the body may necessitate a more complex procedure'.

authorisation. The principle of corporate creation is required by my argument for levelling down social and cultural barriers to free contractual association. It aims at providing for social associations the easiest access to legal personality, and at affording members a fair opportunity – unburdened by unnecessary legal requirements – to develop a sense of self-worth in social associations.

All social associations, voluntarily organised and formally structured, ought to have access to legal personality as a matter of right. When individuals exercise their individual joint right to form social associations and simultaneously express their will to be corporately organised, then their association should be recognised as capable of legal relations – even if it results in some instability for legal order. The social bases of standard self-respect, part of the justification and scope of the legal right to form social associations, justify the easiest access possible to the capacity for legal relations for social associations. The circumstances of standard self-respect require the recognition of the legal capacity of the entity newly created, and it does so as matter of right as soon as members have expressed the will to be so organised. My argument on the relation between social associations and self-respect thus suggests that a liberal egalitarian position on the acquisition of legal personality is both possible and necessary, and my argument shows that this position can press some of the conclusions of the British Pluralists further, although it does not share their premises.

3.3 Helping to Form Social Associations

Even if a constitutional right to the freedom of social association was specified independently of any fundamental right to expression, conscience, and assembly, even if we agreed on the fair scope of state interference in discriminatory memberships, and if laws provided easy access to legal personality and recognised the rights and duties of social associations, the equal worth of the liberty to form social associations would not be ensured. Individuals would still face insurmountable barriers in forming social associations and social difficulties in finding the adequate circumstances for mutual appreciation. Positive measures are necessary beyond the simplification of the acquisition of legal personality, and the state has a duty to subsidise and to help the formation of social associations.

However, determining how to provide such help to collective action and guarantee such minimal and adequate opportunities to form social associations to citizens is complicated. On the one hand, guaranteeing adequate opportunities is difficult. We have seen that relational resources do not match the proxy of income and wealth, and social connections are one

dimension of social capital, which 'wears out with disuse', which is not easy to observe or measure and is 'hard to construct through external intervention' (Ostrom, 2000, p. 173). On the other hand, guaranteeing adequate opportunities is also risky. If freedom to form social associations does not involve forcing others to join[187], state efforts to promote social associations risk counting as unjustified forms of paternalistic interference. Most public policies targeting directly civil society, aiming at promoting civic engagement, encouraging citizens to revive civic life, restoring civic virtue, or reducing the scope of government, match such qualifiers[188].

To avoid such risks, I have drawn out a set of conditions emerging from my argument, which requires a distinct framework of interaction to regulate the relationships between the state's services and social associations. I argued in Section 2.3.3 that, in fulfilling its duty to help to form social associations, the state should make sure that individuals are equally able to access such services and infrastructure, that they are free to leave or not to join, that certain associative beliefs are not favoured over others, and that it does not impose its own views and interests in the course of the intervention.

In context of scarce resources, there are good reasons to think that the public agent helping citizens to form social associations has to be a professional social service adopting a specific methodology targeting those who most need it and helping individuals without the resources to exercise their formal right to form social associations. We can reasonably assume indeed that, in non-ideal conditions, the reasons to ensure the equal value have to be considered as pro tanto reasons, which should be appreciated in context, with respect to available resources and needs, and that must be fleshed out and nuanced to account for competitive values. Moreover, the existence of deep and longstanding inequalities in terms of material and cultural resources, social connections and networks (Cook, 2014), as well as the increasing gap in the quantity and quality of free time at disposal of individuals (Chatzitheochari & Arber, 2012), are as many unfair social disadvantages that negatively affect the worth of the liberty to form social associations. The equal worth is an ideal, and it is here necessary to deal with the more urgent.

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[187] In my argument, relational resources refer to interpersonal relations that are valued for the sense of one's own worth that such relations sustain. Chandran's fundamental associative interest is not to associate with Martina, but with someone else and to be able to affirm activities that are rational for him and shared by others.

[188] Many studies in the US, Switzerland, and the UK critically examine public policies as carrying substantial conceptions of citizenship, aiming at changing citizens' behaviours in an attempt to align actions of civil society with governmental orientations and actions (Clarke et al., 2014). These conceptions are sometimes contested by streetlevel social workers themselves (Grand, 2018).

It is likely in practice that not all empirical claims to the formation of social associations will be legitimate and that some legitimate claims will not be voiced. If Martina is part of a marginalised community and lives in an area with a predominantly minority population, it is likely for Martina and her neighbours living in this area to have no or few organised associations and for many of their associative interests to not be realised or claimed. Thus, the state and its services should be able to identify unchosen social disadvantages affecting the worth of the liberty to form social associations, which may be correlated or not to socioeconomic disadvantages[189], in order to target those who are the less advantaged in terms of relational resources. Thus, the professional social service must therefore be proactive to reach individuals and members of groups that do not have the resources to exercise their legal right to form social associations. At the same time, it must respect the central range of application of freedom of social association and the associative interests carried by citizens.

I contend that the duty to help to form social associations, associated with this set of restrictive conditions, requires a very different way to conceive the relationship between the state and civil society. In this perspective, the category of social association replaces the vague idea of civil society, in order to question the relationship between the state and this basic type of associative relationships. I will use the contested concept of community organising, and the role that we attribute to it in the promotion of specific values as a mirror of the relations that one thinks the state should have with civil society. Its purpose and content depend on background normative assumptions and echo the evolving relationship between the state and civil society. The concept can thus reflect the central idea that I have defended until now of enhancing associations for the moral value they have for their members and respecting the associative interests of their members, as it can be inspired by its perfect opposite and be conceived as a means to improve the social, expressive, or democratic functions assigned to associations in the society at large.

I propose to translate my argument on the duty of the state to help to form social associations through the idea of public community organising – that is, the methodology of community organising when adopted by a specialised public service – in order to present an appropriate means to equalise the opportunity of citizens to develop a sense of self-worth in their own associations through individual assistance and the provision of public facilities and

[189] The worst off group comprises 'those who have the lowest index of primary goods' (Rawls, 1982, p. 164). Yet, according to Stark (2012, p. 258), the risk of 'diminishing standard self-respect' is not a prerogative for the worst off, but is 'equally distributed throughout the population'

infrastructure. I contend that the state, if it follows the basic methodological requirement of community organising as defined, can in a non-paternalistic way help citizens who would like to form social associations by organising them around the issues they care about, by offering them organizational and legal advice, by providing public infrastructure in which they can meet, by connecting them to existing relevant networks, and by putting them in touch with people with similar interests.

I now propose to extract the core ethos of the methodology of community organising in order to show that this practice makes sense for public institutions to ensure a minimal opportunity to form social associations and examine the conditions under which and costs it incurs in doing so. In Section 3.3.1, I show that the central methodological standard of community organising, making the interests of the organised prevail, is well suited to a liberal political perspective that holds as core principles the equal consideration of different conceptions of the good life and the fair opportunity to exercise a defined set of liberties. In Section 3.3.2, I illustrate how the various constraints that I have underlined can be handled by a professional social service – and the challenges that such methodology raises in practice – by drawing on previous empirical studies conducted in the Swiss canton of Geneva. I show that community organising, thus understood, can be a relevant methodology to help to form social associations in a non-paternalistic way, but that it requires a very different measure of 'success' or 'failure' than those employed in public management (Sabl, 2002, p. 13). My argument, I argue, provides a substantive justification of a circumstantial discrepancy to public management core principles in order to address unfair inequalities undermining the equal value of the liberty to form social associations.

3.3.1 The Liberal Ethos of Community Organising[190]

Historically, community organisations and centres have given some citizens the resources they need to exercise their legal rights. Community centres have provided important facilities and infrastructure to help various types of associations flourish. In this context, community organising has mainly been claimed as a means to give political power to marginalised communities and has been associated through time with a particular conception of the common good.

[190] This section is inspired by a previously published article titled 'Public Community Organising: A Defence Against Managerialism' published in the journal Ethics and Social Welfare (Grand, 2021).

I support the view that the concept of community organising is best understood as a methodology of intervention, a 'way of working' (Tattersall, 2015, p. 382), which is defined as an intervention through intermediate groups and organisations (Panet-Raymond & Lavoie, 2011), working with 'community themselves to foster skills, capacity and relationships for people to take action to improve their situation and tackle local issues' (Taylor, 2019, p. 111). I develop the argument that such a methodology is required by political liberalism as a means to tend to equalise the value of the liberty to form social associations, in a non-paternalistic way and without undermining the equal consideration of different conceptions of a good life. Beyond its historical association with specific conceptions of the common good, the crux of this methodology can be made compatible with a liberal political perspective. Thus, I present and support an orthodox view of community organising, as a means of working carried out by the public administration that is strongly rooted in a liberal-egalitarian ideal of equal opportunity for the freedom of social association; and an unorthodox view of community organising as a means of fulfilling the positive obligations of the liberal state regarding the liberty to form social associations.

Community Organising as a Contested Concept

Community organising is subject to several interpretations. Over the last three decades, community practices have spread throughout the world (Mizrahi, 2016; Tattersall, 2015). Community organising has different theoretical accounts centred on different aims, actors, and organisations and for which several different classifications exist (Taylor, 2019). It is a means of working that can be adopted by different types of actors and with varying objectives. Private and para-public organisations and public administrations may adopt this work style in the pursuit of different political objectives to constitute community or promote a sense of belonging, improve governance and the responsiveness of institutions, promote autonomy and empower the poor, equalise the democratic representation of interests, transfer responsibility, and reduce the state budget[191]. In principle, any theory of democracy or justice attributing a

[191] For instance, community organising can be associated with a conception of radical democracy, as a means to build the power of marginalised communities (Bunyan, 2013). It can be associated with deliberative democratic perspectives as a means to enable citizens to become problem solvers and co-creators of public goods in order to foster civic agency and to learn to act cooperatively (Boyte, 2005; 2020). It can be associated with the idea of participatory democracy as a means to build bottom-up/top-down synergy in promoting community involvement through official channels (Staples, 2012), just as it can be associated with a Tocquevillian perspective on liberal democracy, as a mean to fight atrophy and the majority tyranny, giving people the courage of their opinions and enabling social action across social cleavages (Sabl, 2002).

special role to secondary associations may be associated with community organising as a means to implement the theory.

The mainstream approach thinks of community organising as a politic of necessity (Zuern, 2011) used by independent community organisations like the Industrial Area Foundation (IAF) - the oldest and largest community-organising network in the world (Tattersall, 2015) - Greenpeace (Staples, 2012), and the NAACP (Ginwright & James 2002), to alter decision-making and power relations. From a general perspective, most theorisations interpret community organising as a means to change, in order to 'channel the vast resources of volunteerism towards social change' (Marullo & Edwards, 2000). Nevertheless, the content of this change is neither univocal nor always clear (Hamington, 2010). In its radical interpretation, community organising has been understood as a means to obtain power.[192] This idea is central to many community organising networks and organisations seeing community organising as a 'power struggle to gain right and privilege to marginalised community' (Hamington, 2010, p. 261)[193]. This is the power approach of community organising, an instrumental function based on power relations having the aim of building 'grassroots organisations that democratically leveraged power to address social inequalities' (Hamington, 2010, p. 261). Nonetheless, feminists have long contested Alinsky's dominant model. Stall and Stoecker (1998) contrasted it with what they call the women-centred model, with the aim of organising relationships to build community; an alternative tradition goes back to Addams (1899) and the idea of social settlement that 'intended to facilitate education and connection' (Hamington, 2010, p. 262). Contrary to Alinsky (2010), Addams 'emphasized cooperation devoid of antagonism', and 'her interest was in widening the circle of those actively engaged in any particular issue' (Hamington, 2010, p. 262). The objective is no longer to give the organisations the capacity to define and defend their interests collectively, but rather, to give the communities the value of autonomy, self-help, and solidarity (Stall & Stoecker, 1998).

Furthermore, community organising cannot just be seen as a form of empowerment or community building, as it has often been associated with paternalism. This tension is already evident in the literature on British and American housing settlements (Addams, 1899). The

[192] The Industrial Areas Foundation states that community organising aims 'to build community power for the common good' and supports the reinforcement of civil society against the power of the state and the market (Tattersall, 2015, p. 382).

[193] In this quest, conflict cannot be dissociated from community organising, the alternative being the consensus for the status quo (Alinsky, 2010) and the aim of community organising 'to equalise the political bargaining in creating and empowering organisation capable of mobilising community resources into an effective interest group' (Reitzes & Reitzes, 1982, p. 54).

same evolving tension nurtured the debate on community activism and state-sponsored community work in the 1960s and 1970s (Alinsky, 2010; Harris, 2012). The purpose of community organising should thus be understood in the wider context of the emergence and transformation of the welfare state and the evolving role of the voluntary sector in social services[194]. Since the shift towards welfare pluralism in the 1990s, the practises of organising have spread the world over, and community organisations have become increasingly involved in public sector contracts to provide services (Cockburn, 1977; Craig & Mayo, 1995; Mowbray, 2011). New approaches to organising have tended to see it as a means to facilitate collective problem-solving and to achieve public objectives (Craig & Mayo, 1995; de Souza, 2009; Duthy & Bolo-Duthy, 2003), as a toolbox of practices rather than as a mechanism with an underpinning political philosophy or objective, leaving aside the fundamental question of 'what are they organising for' (Simms & Holgate, 2010, p.157). This is what I call the governance approach of community organising, which seeks 'to work with the institutions and systems that affect people's lives and make them more responsive' (Taylor, 2019, p. 111).

Obviously, there are many ways to understand community organising, not all compatible with the liberal political objectives of my arguments for the fair value of freedom to form social associations. So, let's understand community organising as a 'way of working (Tattersall, 2015, p. 382) that can be consistently associated with the idea of fair equality of opportunity and neutrality towards different conceptions of a good life.

The Practices of Good Organising

Based on the theory of organising developed by Moses et al. (2010) and Saul Alinsky (2010), Sabl (2002) examined the practices that characterise good organising. He contended that three principles inform the tradition of community organisation: i) integrating the family, ii) empowering people at the grassroots, and iii) organising in context. The principle of *integrating the family* refers to the fact that community organising leans on the 'relationship among people who are personally acquainted and who trust one another on a personal level that does not require shared convictions or ends' (Sabl, 2002, p. 10). Entering this personal level requires the organiser to negate the label of 'outside agitator' and proceed to an 'informal

[194]Decentralisation and marketisation in social policy, combined with budgetary pressures, have opened up a space for the voluntary and private sectors, including regional and local authorities, for-profit corporations, and non-profit actors. In this perspective, the role of voluntary organisations in the provision of social services is not to 'merely add something extra to the framework of services provided by government', in providing parallel services to different clientele, but to 'supplement the basic statutory services that provide a minimum standard of life for all' (Kramer, 1981, p. 39).

absorption', by invitation, to earn the local people's trust (Moses et al., 2010, p. 425; see also Sabl, 2002)[195]. The principle of *empowering grassroots people* refers to developing local leadership, networks, and connections among different communities. None of the objectives of organising can be achieved if the organiser 'acts as a top-down leader' (Sabl, 2002, p. 11). Yet, Sabl (2002, p. 11) explained, 'an educated, politically sophisticated organiser facing a group of uneducated political neophytes will face every temptation simply to take over, to make decisions in the name of those organised'.[196] Finally, the principle of *organising in context* means 'a willingness to find out and organise around the issues that the people being organised care about, rather than the issues that one cares most about oneself' (Sabl, 2002, p. 13)[197]. Organising in context requires both a 'democratic attitude towards human imperfection and a tenacious suppression of the organiser's own moralistic and ideological wishes' and, therefore, 'a great deal of self-denial' (Sabl, 2002, pp. 12–13). Therefore, a good organiser proceeds by informal absorption in the community. He or she must encourage local leadership and connections and organise people around the issues they care about. These three principles together provide a 'normative criteria of good organising', Sabl (2002, p. 13) contended, according to which 'people are good judges of their own interest'. This criterion is a condition of success for community organisation, and implies a different standard of 'success' or 'failure' than empirical studies employ. Here, 'enabling passive citizens to defend their own interests and exercise their own judgement is an end in itself' (Sabl, 2002, p. 13).

Sabl (2002, p. 14) presented different examples of community organising that he criticised for 'abandoning in clear ways the goals of citizen independence'. He provided many examples of community organisations in which 'political influence takes precedence over the development of independent viewpoints' (Sabl, 2002, p. 14)[198]. The risk of community

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[195] After the organiser succeeds in gaining local acceptance, as Alinsky (2010) suggested, a period of quiet observation similar to a sociological study should follow, in order to identify local leaders, patterns of formal and informal interactions, local customs and traditions, and issues of particular salience for residents.

[196] For Ella Baker (1992, p. 351), who was the director of the branches of NAACP, the ability to resist this temptation was the hallmark of good organisers, which must be 'interested not in being leaders as much as in developing leadership among other people'.

[197] Ella Baker (1992, p. 347), for instance, used to work on issues that people cared about, such as streetlights, and to then explain how these concerns were related to NAACP's fight. For Alinsky (2010, pp. 79-80), organisers should 'identify, agitate, teach and coordinate leaders, and to support them to take action, but not to "preach" and tell a community what it should do'.

[198] These examples relate to three community organisations: the Association of Community Organizations for Reform Now (ACORN), which was an independent national organisation of low and moderate-income families that failed because its founders 'chose a path of manipulation, using various tactics to make the more conservative local chapters feel unwelcome'; the Communities Organized for

organising, Sabl concluded, is a 'politicising of the organisation that undermines the goals of citizen independence and social mixing, and with them the capacity to make prevail local interests' (Sabl, 2002, p. 14). Allowing people to define for themselves where their interests lie is the ethos of community organising, the spirit of its methodology, and its primary condition of success. Whatever finality is pursued, regardless of the institutional context, we can expect a good organiser to follow such basic methodological requirements. This is the common denominator for various approaches and multiple organisations claiming to belong to the family of community organising.

Community organising, defined as a means of working, is a methodology that can be adopted by very different actors – not only by independent community organisations like the IAF, Greenpeace, and the NAACP. Para-public organisations and the public administration, may adopt this mode of working.

The Ethic of Public Community Organising

From here, I define public community organising as an approach that associates the methodology of community organising with the normative perspective of political liberalism. To bridge them, I adopt a thin notion of community and a relational approach of community organising focussing on its core methodological requirements. I understand *community* as a collection of individuals facing similar concerns (Meenaghan, 1972; Panet-Raymond & Lavoie, 2011). In this sense, a community can be a 'geographic' community, a community of 'interest', or a community of 'identity' (Panet-Raymond & Lavoie, 2011, p. 12). Neither do the members of a community necessarily see themselves as members of the same category by attaching some emotional value to it and arriving at a consensus regarding its evaluation (Tajfel & Turner, 2010), nor is the community 'a social fact' (Searle, 2010), or a joint commitment in which all members are jointly committed to doing something 'as a body' (Gilbert, 2015, p. 18)[199]. This

Public Service (COPS), which was a parish-based community action that 'did not actively foster a broadening of sympathies outside the sectarian group'; and the Student Nonviolent Coordinating Committee (SNCC), which focussed on ideological coherence and discipline and held no meaning for locals who 'were more focused on immediate social and economic problems and had a much more practical outlook'(Sabl, 2002, p. 16).

[199] A community becomes a social association only under the conditions specified, that is, if it takes the organised form of a voluntary, intermediate, and associative relationship with collective decision-making and rules. This understanding of association, as an organised community, is not only in line with my methodological individualism, but also joins with Alinsky's practical conception of community. Alinsky is not really interested in the question of defining a community, but underlines that it cannot be defined by cultural, religious, physical and geographic criteria, but by its formal or informal organisation (Alinsky, 2010; Meenaghan, 1972).

idea of a thin community uncontestably echoes Fleischacker's (1998) 'insignificant, particle communities', which are based on weak ties and are easy to exit.

Based on this, I argue that the ethos of community organising − understood as a means of intervention − can be consistently associated with the ethic of political perspective liberalism to support low-level activities and provide all-purpose means to form social associations. The normative requirement of letting people define where their interests lie for themselves gives concrete form to the equal consideration of different conceptions of the good life and associative interests. There is no a priori conflict between community organising and 'restraining from telling people how, overall, they ought to live' (Fleischacker, 1998, p. 303). This association takes its full meaning when the normative perspective recognises the special importance for citizens of sharing their conception of the good with others, and when community organising is understood as having as its main purpose to 'support and foster positive connections among individuals, groups, organisations, neighbourhoods, and geographic and functional communities' (Weil, 1996, p. 482)[200]. In working with individuals and communities themselves 'to foster skills, capacity and relationships' for people to act together (Taylor, 2019, p. 111), this mode of working contributes towards the ideal of equal worth of the liberty to form social associations. Thus, community organising can be valued from the liberal political perspective, not because it politically empowers citizens by helping them widen their sense of interest, nurturing public deliberation, or making them better represented, but by ensuring equal opportunity to standard self-respect and protecting the fundamental individual interest in the capacity of collectively pursuing a conception of the good. It can be valued for its importance to self-respect, even if it achieves nothing else. Through the provision of public facilities and infrastructure, legal and organisational advisory services, and key links to local networks and social connections, the state can facilitate access to the circumstances in which individuals see their achievements, deeds, endeavours, and conceptions appraised, and reinforce the confidence that their conception of the good is worthy and that they can pursue and achieve it by themselves. Thus, I provide a liberal understanding of the concepts of community organising and community, and argue that public community organising may contribute to come closer to the equal value of the liberty to form social associations. While such arrangement remains far from ensuring a roughly equal opportunity

[200] An idea of 'community building', going back to Addams (1899), as 'intended to facilitate education and connection' (Hamington, 2010, p. 262). This is in the context of social settlements that spread across America (also called settlement houses, community centres, or neighbourhood houses) in the beginning of the twentieth century in order to develop and improve the neighbourhood.

for all citizens to access standard self-respect, it is still a valuable expression of the consideration by social institutions of the equal value of citizens' conceptions of the good and their equal moral capacities to achieve it.

The state can, however, do so only under restrictive conditions and at a certain cost. Recall that the great risk of community action is the instrumentalisation of the action that undermines 'the assumption that people are good judges of their own interest' (Sabl, 2002, p. 13). This echoes − in a condensed and reduced way − Section 6.2, where I argued that such a service should ensure that individuals are free to leave or not to join, that certain associative beliefs are not favoured over others, and that it does not impose its own purpose and interests in the course of the intervention. A public service ethos and the political neutrality of administration seem a priori adequate to constitute a relevant framework to avoid such instrumentalisation. In the case of UAC, social workers are subject to administrative law and ought to act in accordance with the public values that the municipality promotes. Nonetheless, this institutional context has its own burdens, and politicisation is not the only risk to the normative standard according to which the interests of the people who are supported in their associative undertaking should prevail. In the context of public community organising, public management and the realisation of public objectives can be a threat to a genuine community-organising methodology. Public policies are meant to solve a problem that is politically defined as collective and requires a chain of intentionally consistent decisions and activities (Knoepfel et al., 2015). Whatever the type of actors involved in their definition, realisation, and evaluation, public policies are intended to fulfil political objectives and answer problems that are politically defined as collective (Varone et al., 2019). These objectives are legitimate as they are politically defined, directly or indirectly originate from a democratic procedure, and are intended to address what has been collectively defined as a public problem. From the perspective of community organising, these public objectives may undermine people's particular interests.

Overall, community organising is a means to help to form social associations without interfering with the interests of people who benefit from such support, while targeting those who do not have the resources to exercise their legal rights, which, however, requires a very different approach to apprehend the relationship between the public administration and civil society. To illustrate this change and the challenges it raises for public administration, I outline the features of such social services through the real case of Geneva.

3.3.2 State, Civil Society, and the Community Action Unit

Through the concrete example of the social sector in Geneva, I aim to provide a descriptive account of a public service that refers to community organising to qualify its

practices and point to challenges posed for public administration by this bottom-up means of working with civil society. In my demonstration, I do not claim that this case meets the entire set of desiderata that I have expounded[201]. I only aim to illustrate the opportunities and challenges that represent the kinds of social services I am calling for in order to tend to equalise to social conditions to form social associations, and offering clues for futures empirical research. In so doing, I hope that the public justification of the methodology of community organising that I provide contributes to a better understanding of the importance of community organising for freedom of association.

For 15 years between 2002 and 2017, the social sector in Geneva practiced community organising as its way of working. Strongly criticised by the municipal council of the city of Geneva in 2013 and by an independent audit in 2016 for being non-coordinated and inefficient and for creating unequal treatment, the social sector abandoned this methodology in 2017 and reoriented its actions towards social benefits in line with identified public objectives and clear criteria of evaluation. With those few preliminary remarks, we may ask whether Unités d'Action Communautaire (Community Action Units, 'UAC') really did apply community organising or not, and accordingly, what tensions arose between this mode of working and public management principles. Political justice, the final claim of this thesis asserts, justifies an exceptional and circumstantial deviation from the core principles of public management, namely equal treatment, consistency, and accountability, in order to empower citizens to form their own social associations for the stake of the associative interests in standard self-respect.

A Bottom-up Approach

Geneva is the second largest city in Switzerland, with more than 200,000 inhabitants. With 40% of its population comprising foreign residents, it is home to around 20 international organisations. Geneva is a small multicultural and international city, holds great importance for immigration, and has the highest rate of unemployment in Switzerland (OCS, 2017). As a result of executive federalism and the superposition of different levels of government in charge of specific fields in Switzerland, the Genevan welfare state is the main provider of social benefits, comprising myriads of institutions and social actors (Bonvin & Dahmen, 2017), many focussed on the delivery of social benefits; those who work 'with' their customers, and not 'for' them, do not necessarily adhere to the criteria of good organising described above. The social sector

[201]Recall that these *desiderata* are: i) Individuals are free to leave, or not to join, ii) certain associative beliefs are not favoured over others, iii) the state does not impose its own purpose and interests in the course of the intervention and iv) the infrastructure and services are equally available to all.

in Geneva is an exception[202]. There are good reasons for this. The liberal ethos of community organising I argue for constitutes a necessary condition and presumes a specific conception of the nature and methodology of social work with civil society.

The Department of Social Cohesion and Solidarity of the City of Geneva aims to strengthen social solidarity and improve the well-being of the population (Sa Barretto et al., 2015). This last general objective especially relates to UAC, which comprises four units that have the mission to 'support the capacity of the inhabitants for collective action and the initiatives of local residents, associations, and informal groups' (Horber-Papazioni et al., 2015, p. 2 my translation). Two neighbourhood centres (*Espaces de Quartier*, 'EdQ') provide residents and neighbourhood associations with space to organise their events and meetings[203]. Active since 2002 in Geneva, UAC supports any type of group that pursues a non-profit purpose, including associations like informal groups for elders, strangers, neighbours, caregivers, and young mothers (Sa Barretto et al., 2015). Their main mission, through initiation or support of projects, is to meet the needs of the population. The UAC is thus asked to 'adopt a meta-role that is not explicitly based on specific issues or target audiences' (Horber-Papazioni et al., 2015, p. 23 my translation). It thus plays an indirect role in solving problems, and its beneficiaries are the inhabitants, informal groups, and associations in the neighbourhood that they help create or support (Horber-Papazioni et al., 2015). Some projects are realised at the request of the head of the department (International Elderly Day, Neighbours' Day); and half of UAC's actions are in response to residents' demands. These demands situate UAC in the position of a facilitator, in which the methodological document explains, 'the social workers should facilitate the realisation of the group's purpose if they are asked to do so' (Sa Barretto et al., 2015, p. 8 my translation). The UAC positions itself as an external resource for the group, and acts on requests for organisational and technical advice (for example, how an association works, or where to apply for authorisation)[204]. 'The fewer personal resources the individuals in

[202] The only official communication on the procedure to create an association is made by the Canton of Geneva through its *The International Geneva Welcome Centre* (Centre d'Accueil de la Genève Internationale – CAGI). Its mission is 'to facilitate the installation and integration in the Geneva and Lemanic region of international civil servants, members of permanent missions, consulates, NGOs, Multinational Corporations, as well as their families' (CAGI, 2021). The website is the only official source of information online on the statute, registration, and taxation of non-profit associations, and is specifically addressed to international associations that want to establish associative forms in Geneva (CAGI, 2021).

[203] The 2 EdQs are given 9 rooms and 1 school cafeteria for 800 people, and allow about 50 associations and groups of inhabitants to organise their activities (Horber-Papazioni et al., 2015, p. 64).

[204] Community Action Units are 'in the background and check whether the local actors are in a situation to plan, lead, and evaluate a given project' (Sa Barretto et al. 2015, p. 16). Social workers are not

a group have, the more active the social worker will be. If they may be called upon to carry out administrative tasks in certain circumstances, they must be able to show the priority and essential activities for the group to be empowered' (Sa Barretto et al., 2015, p. 4 my translation). As a facilitator, the social service also provides administrative support and logistical assistance to associations. Rooms for regular and occasional use may be provided by the UAC. It may take charge of small expenses and provide micro financing on a project basis[205]. Social workers may act as mediators among individuals within the group and may help the association communicate its activities and find new volunteers and members (Sa Barretto et al. 2015). The UAC also plays an important role in enhancing actors' networks and connecting them with similar groups, supporting existing coordination, and networks at the district and city levels. Social workers may bridge the gap between public administration and associations in demand for authorisation and information pertaining to regulations (Sa Barretto et al. 2015).

I am not in a position to empirically determine whether such help and infrastructure are adequate and available to all in reality, or to assess whether the UAC's intervention fully respects the associative interests of the people it helps organise. On paper, at least, it formally adopts the purpose and method of community organisation. The methodological concerns that nurture the UAC's references and interventions that I have just highlighted strongly echo the core principles of community organising and the central idea according to which the interests of the organised should prevail. The UAC, as a good organiser, should proceed through informal absorption in the community, encourage local leadership, and attempt to organise people around issues they care about. It represents a real bottom-up approach that does not attempt to impose external objectives on a group. It supports the initiatives of citizens without preventing them from pursuing their objectives through their organisations.

The UAC is a public service. It is not an independent organisation that is privately funded. It is a part of the state, which is, in a classical liberal democratic sense, the guardian of all citizens' interests. It focusses on the most vulnerable and supports the financial needs of those in modest conditions. It supports any group that pursues a non-profit purpose and is strictly limited, in theory and practice, to the non-political and non-economic domains (Sa Barretto et

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responsible for the development of projects and activities, but rather for support and collective learning (Sa Barretto et al. 2015)

[205] In 2014, a sum of a little more than 100,000 CHFS was devoted to the 'subvention project', which directly or indirectly supports the projects of informal groups or small associations without funding (Horber-papazioni et al., 2015). It is a highly pragmatic support mechanism for informal groups and associations that are fundamental for the survival and development of groups that have little to no resources (Sa Barretto et al. 2015, p. 17).

al., 2015)[206], and is not based on specific issues or target audiences (Horber-Papazioni et al., 2015). The UAC's intervention does not aim at the redistribution of political power, and is actually closer to a feminist conception of community organising, namely organising as building community, widening the circle of those actively engaged in any particular issue, supporting positive connections among individuals, and fostering the value of autonomous organisations and self-help (Addams, 1899; 1961; 2002; Hamington, 2010; Stall & Stoecker, 1998; Weil, 1996). It positions itself as a facilitator, supplementing associations' lack of knowledge, skills, and resources, while also trying not to interfere with people's interests and conceptions. Thus, we can say that the UAC's social workers act like a local associative leader, that is, as a super-connector who provides the group of aspirational associates with his/her skills, knowledge, and social connections and networks, developed through his/her professional activity. Martina only needs to benefit from the assistance of one UAC social worker in order to access a wide range resources and connections. Thus, in theory the UAC represents an interesting means to provide all-purpose means necessary for citizens to develop a sense of value through mutual appraisal. By so doing, the state equalises the opportunity to form social associations by providing practical support for the creation of social associations through financial, logistical, and methodological help, without interfering with the interests of people who are supported in their associative undertaking.

Nonetheless, from the perspective of public management, the UAC's interventions avoid all phases of the cycle of public policymaking, namely agenda setting, operationalisation and programming, and implementation and evaluation (Knoepfel et al., 2015; Varone et al., 2019). The literature shows that all support provided by the UAC is discreet and the personal identities of social workers often prevails over their institutional affiliations. Social workers are scarcely identified with the municipality and their institutional affiliation remains unclear. Ossipow Wüest and Bozzini (2013, p. 10 my translation) used the expression 'presence-absence'. They see the community sector as a 'bridge between the Department of Social Cohesion and Solidarity of the City of Geneva and local associations' and highlighted 'the presence and the intervention of the City in the everyday reality' (Ossipow Wüest & Bozzini, 2013, p. 10 my translation), and stressed that it is sometimes 'hard to identify institutional affiliation' (Ossipow

[206] The associations they support are social in the sense of not being related to the market, as is a union, or to the state, as is a political party (Warren, 2001). They are voluntary and intermediate, but not all organised, as the UAC also works with informal associations and supports them, if appropriate, in their process of organisation.

Wüest & Bozzini, 2013, p. 10 my translation). This mode of working implies the invisibility of the organisers and raises important challenges for the public management requirements of consistency, equal treatment, and accountability.

Making the Interests of the Organized Prevail in Public Policies

The UAC's mode of working has been criticised for being inconsistent with public policy objectives, causing unequal treatment among different districts, and having a low accountability and visibility of its actions (Horber-Papazioni et al., 2015)[207]. At the request of the Department of Social Cohesion and Solidarity, the Institute for Higher Education of Public Administration performed an audit in 2015 (Ville de Genève, 2017).

The lack of visibility and difficulty in identifying the UAC is a recurrent theme in the audit (Horber-Papazioni et al., 2015). The specific mode of intervention of the UAC, and its disjunction from public policy objectives, the audit explained, led to a lack of understanding of the methods of intervention by most actors in relation to the UAC. The audit noted that this misunderstanding was associated with the lack of a frame of reference and the absence of a legal basis. It clearly connected the lack of visibility to the mode of intervention of the UAC. The report emphasised that their missions were too broad and not prioritised, and that some of them were located at different levels. The report highlighted that the mode of action of the UAC can lead to unequal treatment (Horber-Papazioni et al., 2015, p. 25 my translation). As projects arise out of the residents' demands and depend on the willingness of the inhabitants and associations to mobilise for specific themes and the ability of UAC employees to motivate and support them, they entail a 'very great risk of unequal treatment for the same problem from one neighbourhood to another' (Horber-Papazioni et al., 2015, p. 24 my translation). Horber-Papazioni et al. (2015) explain this state of affairs by the Department's management choosing to give the UACs the greatest autonomy in defining priorities according to the demands of the inhabitants of the neighbourhoods. The audit therefore questions the operating procedure, coordination, and piloting of the UAC in the following words:

[207] In 2013, most members of the Finance Committee of the municipal council of the city of Geneva proposed discontinuing community service in debates preceding the approval of the city's budget in 2014. The commission demanded a cut of CHF 20.9 million to generate additional savings in the 2014 budget and the deletion of the UACs and the Service de l'Agenda 21 (Horber-Papazioni et al., 2015). The municipal parliament refused this amendment to the budget, but this event led to a long and profound questioning of the municipal social service. In the public debate and other debates preceding the budgetary approval, the usefulness of the UAC intervention has been questioned. This has resulted in the tabling of a motion 'for an audit of the functioning and efficiency of UACs'(Horber-Papazioni et al., 2015, p. 83 my translation)

> (…) the flexibility given to the UACs in the choice of projects to be supported leads to inequalities in the treatment of problems similar from one quarter to the next. (…) The management of all public action requires that clear priorities be established among the missions selected, that a strategic reflection takes place on the operationalisation of these and that targets be defined. At present, the actions are carried out at the request of the population (…) (Horber-Papazioni et al., 2015, p. 3 my translation).

The report concludes with the following question: 'Are we going to ask them to continue to do what they have done to date, without a clear frame of reference, or are we going to ask them to put their action in the context of public policy?' (Horber-Papazioni et al., 2015, p. 80 my translation). The evaluation team clearly favoured the second option and contended that 'their role can no longer be reduced to that of supporting the emergence of new ideas, needs or desires, or of the creation or actions of associations' (Horber-Papazioni et al., 2015, p. 83 my translation). They thus recommend that the primary mode of intervention for the community sector should no longer be bottom-up, but rather top-down (Horber-Papazioni et al., 2015, p. 83 my translation). They recommend framing UAC's actions in terms of public policy and adopting a 'social policy of proximity', strengthening the role of the leader of the UAC and improving the management of their interventions via monitoring tools based on indicators (Horber-Papazioni et al. 2015, p. 80 my translation). They recommend that each mission should define clear objectives, targets, beneficiaries, and measures to evaluate the intervention in order to ensure that the public policy objectives are achieved. Since this audit, social services have undergone deep transformations. Based on the recommendations of the audit, the reforms aim to address deficiencies and improve the understanding of the actions of social service (TDG, 2015). The UAC was replaced by what the municipality called '*Antenne sociale de proximité*' and four 'Info-Service Points' launched as pilot projects between 2014 and 2015[208].

The audit highlights the tensions between the logics of community organising and public administration. The bottom-up approach and the flexibility given to social workers, which are necessary conditions for community organising according to my definition are in tension with public management principles that require clear priorities, strategic reflection, equal treatment, and a top-down approach.

[208] The mission of Info Service Point is 'to orient and support the inhabitants in their administrative procedures' (Horber-Papazioni et al., 2015, p. 65 my translation).

In sum, the UAC faced constitutive tensions between the classic public management rationale and the liberal ethos of community organising. It clearly adopts, if not applies, the methodology of community organising and is very attentive to the prevalence of the interests of the organised. The UAC, as a unit of public administration, is subject to political objectives and public accountability. This is hardly compatible with its mission to offer practical support for citizen initiatives with a bottom-up approach. As stated by one of the strategic actors in the community sector, 'the very nature of community action has as a corollary the difficulty of developing a monitoring system' (Horber-Papazioni et al., 2015, p. 41 my translation). The UAC does not have beneficiaries or targets, and does not deliver benefits or clear services. Its actions do not have independent visibility. It is clear that such a service is an exception rather than the norm in the field of public management. This tension has certainly been exacerbated in the social sector in Geneva's municipalities, as a very weak rationale has been mobilised to support this mode of working[209]. Yet, if community organising should be practised successfully, it must make the interests of the organised prevail; to do so in public administration, this mode of working must at least rest on a clear rationale that is strong enough to justify a different measure of success (Sabl, 2002, p. 13), and should be morally and politically compelling in order to outweigh concurrent moral and political considerations.

There are many reasons to support the idea that it is important and necessary for public institutions to help people organise themselves[210]. My argument provides a strong liberal political ground for the public justification of such a social service. I have argued that such an intervention is necessary to ensure the equal opportunity to form social associations, as a fundamental matter of political conception of justice. This imperative outweighs public management requirements.

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[209] Nothing is said on the substance of community organising in the Social Action and Health Centres Act. The social sector of Geneva has itself developed a frame of reference for its practices where it is conceived as a means 'to act on the determinants of health, such as precariousness, isolation of the elderly, and integration' (Horber-Papazioni et al., 2015, p. 3 my translation). Social workers at the UAC, under the direction of the department, have never employed this formal reference during the budget crisis, neither in official documents nor in public interviews; the idea did not even appear in the public debate on the suppression of the service in 2013 (TDG, 2015; 2016). The reference to community organising for health has a very weak role to play, theoretically and in practice, in justifying the action of the UAC.

[210] We have seen various finalities and democratic theories that can make sense of community organising. Adopting the idea of community organising for power, it can be argued that the main purpose of the social sector in Geneva should be to fight political inequalities and organise and defend marginalised groups. This imperative outweighs public management requirements.

In Geneva, as elsewhere, many individuals are not able to live or develop a collective conception of the good life. Among the aspirational associates, some do not have the cultural and institutional knowledge to form and run associations, while others may have a specific associative interest that is too dispersed and as yet not well represented[211]. Still others may not have the infrastructure they need to exercise their conception of the good life collectively[212]. Martina may fall under one of these categories. In this perspective, we can think of the UAC as a public service dispensing organisational and legal advice, providing aspirational associates appropriate organisational facilities and infrastructure, and enabling access to social connections and networks (Sa Barretto et al. 2015). We can think of the UAC as a kind of *social incubator* that aims at equalising the opportunity to associate and enabling citizens to exercise their formal right to the freedom of association. This justification does not discharge the social sector from fulfilling the requirement of equal treatment central to my argument on the equal consideration of associative interests, but certainly constitutes a reason to lighten the weight of accountability and efficiency.

My argument emphasises that there is, in the context of the UAC, another narrative besides public accountability and a different rationale at stake than public management. To the idea of community organising as involving securing the support of communities to realise public objectives, we can now oppose the idea of community organising as supporting insignificant communities so as to provide individuals with the equal value of their liberty to form social associations. This is fundamental as long as Martina's actions pertain to reasons other than delivering services, and that her association is a means for her to look out for others and do things with them not because the government promotes them, but as part of her conception of the good life (Pharoah, 2012), but as part of her conception of the good life. From this perspective, the association has a value that does not answer a functionalist logic of needs and is not to be judged on its results, a value that we may call self-respect, for which we must ensure 'access to self-respect' (Penny & Finnegan, 2019, p. 152). Public institutions should

[211] In a wealthy country like Switzerland, for instance, the typical profile of a member of an association is a male of Swiss nationality with tertiary training. Among those with mandatory training, only 20.4% agreed to 'actively participate' in an association, whereas 47.6% of those with tertiary training, 21.8% foreigners, and 44.1% Swiss citizens (33.8% women and 44.1% for men) agreed to 'actively participate' in an association (OFS, 2008).

[212] When interviewed on this point, the Delegate to the Integration of the Canton of Geneva made this last concern explicit, saying: 'There's a lot of demand, there's a lot of communities that aren't able to exercise their beliefs. Why? Because they cannot get rooms, because they cannot get this group together, because we are throwing them out. I found myself in impossible situations where communities were actually not able to live their beliefs' (Personal communication, Interview Nicolas Roguet, Bureau de l'intégration des étrangers, 2017).

support the creation of associations even if they consider them pointless and useless, because people have the right to develop a sphere of autonomy that goes beyond political principles, and because doing so will affect their sense of self-worth and capacity to pursue a conception of the good life.

This deontological alternative justification of community organising is at least strong enough in the context of this case for us to theoretically reconsider the weight of public accountability. However, it seems incontestable that the entire social sector of Geneva cannot work in a counter-current of public management; the use of public resources must be publicly justified and expenses should be prioritised[213]. The equalisation of the social conditions to form social associations should not be obtained at the expense of the improvement of those who are worst off, or at the expense of a welfare loss for society as a whole (which would have the same effects). The challenge is to think of a public device that is capable of providing the basic support while answering the classical logic of public management. Under non-ideal conditions, at least, such a dilemma must be explained and expressed in a public forum, unlike what eventuated in Geneva in 2013, where the fundamental purpose of community organising and its liberal meaning were entirely ignored in the public debate in favour of a focus on efficiency and consistency. Overall, I hope that the philosophical argument I have proposed here can justify an exceptional and circumstantial discrepancy from the core principles of public management in order to allow public institutions to address through community organising the inequalities that undermine the equal value of the liberty to form social associations. In light of this, what is expected of the UAC and the purpose of its action are very clear in my liberal political view. However, this area continues to be in conflict with the consistency and accountability that is required of the public administration.

The fairness of the intervention of such a social service adopting community organising can only be appreciated through its everyday practices, in context, and it is likely that paternalism and state interference are never far away from such daily state interventions. Its success depends on effective practice, professional deontology, and allocated means, and requires methodological and empirical exploration.

Public community organising, associated with the principle of corporate creation, constitutes only a specific social arrangement inspired by the Swiss and Geneva case, to ensure as far as

[213] In 2014, the community sector represented approximatively 40% of the whole staff of the social service and their budgets were close to seven million CHF (Horber-Papazioni et al., 2015). It is clear that such a massive public service will be required to be accountable.

possible among the many possibilities and their combinations the equal worth of the liberty to form social associations and the full social bases of standard self-respect. There exist other social arrangements, and I imagine that it is possible to support alternatively the idea that the existence of a wide web of public infrastructure at the disposal of various associations and a universal allowance for the creation of social associations can be better and safer means to equalise in a non-paternalistic way the social conditions to form social associations than a specialised professional service, which is certainly less expensive but adds to state power and subjects daily practices to greater uncertainty. Nevertheless, it seems hard to see how any financial allowance and infrastructure could compensate for the lack of social connections and social capital at the very heart of the capacity to form social associations, which are by contrast relational goods that social workers are able to provide through their own professional connections and networks. In this respect, public community organising and the principle of corporate creation constitute a promising two-lane avenue of reforms to get as close as possible to the liberal political ideal I have outlined.

Conclusion

Freedom of association is a quintessential liberal right. However, what is perhaps the most important political philosophical work in modern Western thought, Rawls' *A Theory of Justice* (Rawls, 2005a), and what is perhaps the most influential political document in modern Western history, the Constitution of the United States of America, have both neglected the freedom of association in their constitutive formulation.

Freedom of association has a complex relationship with a political conception of justice, and standard liberal treatments of this liberty tend to obscure the fact that associations are important to people's ability to realise their conception of a good life.

On the one hand, freedom of association is best thought as a bundle of rights and a complex liberty. It is a set of rights because the rights to form, belong, and not associate are all constitutive of the freedom of association. It is a complex liberty because the concept of association refers to a wide range of organisations (voluntary/involuntary, primary/secondary, social/economic), (primary and non-primary) goods and relationships, of various importance for the moral powers. This is because some authors have contested the status of basic liberty accorded to the freedom of association (Kordana & Tabachnick, 2008), and others have limited it to a strict institutional condition to conscience (Laborde, 2017). This is why I disaggregated the general category of the non-political association and the generic right to associate, to advance the category of social association and the right to create social associations as a paradigmatic illustration of the neglected associative interest in self-respect.

On the other hand, it is clear that freedom of association contributes to the capacity of citizens to pursue collective conceptions of the good with like-minded people and to develop of a sense of self-worth and provide a place where citizens see the activities that are rational for them being respected and publicly affirmed by others. The certainty of having the capacity to seek such mutual appraisal, irrespective of social circumstances and effective social positions, serves as social bases of self-respect. It gives citizens an effective means to determinate conceptions of the good and makes it known to the parties that their agreement is not vain and that citizens in society will act on the principles they agreed on. These ideas are only hidden by the general category of non-political association and the liberal obsession with the right to refuse to associate and to leave. The value that emerges from my reassessment, namely standard self-respect and the ability to develop and effectively exercise a conception of the good life – whether individual or collective, substantial or futile – is essential to political liberalism. The

idea that developing and sharing this conception with others confers a sense of value and strengthens its pursuit is a constitutive idea of justice as fairness that has not been appreciated for its fair value. Beyond the guarantee of equal citizenship and the private pursuit of excellence, political liberalism recognises that individuals need to interact with and be recognised by others. It acknowledges that citizens do need not only to feel equal in relation to each other but also that they need each other to realise and revise their own conception of the good life. In this perspective, social associations are useful to recall that associations are also important to be able to do certain things and to realise ideas, and not only to contribute to public deliberation or have a certain status. Thus, my argument proclaims that political liberalism, through the freedom of social association, puts sociability and intersubjectivity at the heart of this conception of moral capacities and, as a result, sheds light on both the freedom of association and political liberalism.

The interest in standard self-respect I put forward is only one of the associative interests that free and equal citizens may have in associations. I do not aim to provide a general principle to regulate the state's interference and assistance that would be valid for all non-political associations. I make no claim of standard self-respect as the universal value of the freedom of association. My argument, however, supports the central idea that social associations are a privileged place to develop regular interpersonal relationships that can be left at a reasonable cost and that are able to generate mutual appraisal, and that they are formal and organised enough to see their social conditions of exercise supported by the basic structure of society as part of the social bases of standard self-respect. It emphasises the 'generating function' of the liberty to form social associations, which has been ignored in the literature, and sees its equal worth as a necessary condition to ensure that each citizen has the equal opportunity to enjoy a place in which to develop a sense of self-worth, in a way that is complementary with the rights to join and refuse to associate and which does not weigh on the opportunity of others to associate. This interest has never been fully appreciated by political liberalism, and it has far-reaching normative implications for political justice.

From this perspective, I emphasise the relationship between the liberty to form social associations, determinant of the capacity to find an adequate community of interest, and the social bases of standard self-respect. Through its generative function, the liberty to form social associations offers a concrete turn to the idea that individuals should have the opportunity to find a community of interest in which their conception of the good is shared and valued. It offers an alternative for excluded or leaving members. The worth of this liberty affects citizens' capacity to seek mutual appreciation and access standard self-respect and it has an expressive

effect that bears on the general capacity of citizens to value their conception of the good and their capacity to achieve it. These are the central reasons that I support the view that citizens should have an equal worth of their liberty to form social associations, in addition to the substantive ability to leave associations and a fair equal opportunity to join and refuse to associate.

In exploring the best available justification of the fair value of political liberties as an essential feature of the social bases of self-respect, I argue that this additional measure to the proviso ensures citizens' social bases of self-respect both as a public status and as the potentiality to advance their view of the good life and practically achieve it (Schemmel, 2019; Wall, 2006). As the restricted extension of the proviso of fair value applies in a limited way to the opportunity to form social associations and concerns a narrow set of social conditions common to all conceptions of the good, it avoids the pitfalls of irrationality and social division which Rawls insisted upon as concomitant to any extension of the proviso of the fair value of political liberties. Providing an all-purpose means to create a social association does not require an interest in having others equally fulfil their conception of the good, but rather an interest in treating them justly. As relational resources cannot be distributed fairly, specific complementary institutional arrangements must ensure the social bases of standard self-respect. I argued that the content of such a social arrangement should be inspired by the one that Rawls outlines for the fair value of political liberties, and to parallel Rawls' statement, I assert that it additionally requires 'rough equal access to the use of a public facility and infrastructures' designed to serve a definite social associative purpose, and 'a fair chance' to form social associations (Rawls, 2001, p. 150). The fundamental associative interest in self-respect generates a positive obligation for the state to equalise some of the most important social conditions to form social associations. I argue that, under ideal conditions, as the justification of the fair value of political liberties and the liberty to form social associations complement and reinforce each other, the broad (re)distributive implications of the former are likely to provide a sufficient material basis for the latter, if combined with a modest and symbolic financial allowance, the provision of public infrastructure and with specific measures easing the formation of social associations. I contend that it is the responsibility of the state to intervene to guarantee specific social conditions to afford citizens an effective opportunity to establish their own social association, in particular through the duties to provide adequate public infrastructure and to help to form social associations in a non-paternalistic way.

I then looked at the implications of my arguments for transitional arrangements. I focused on the law, which defines in part the forms, structures, and objectives that social associations

can adopt and how they can carry out their activities, and on social policies, whose interactions with associations can serve a variety of purposes, means and methods, only some of which are compatible with my liberal political argument.

My argument highlights that the legal domain, as is the philosophical one, is mainly nurtured by the idea that the freedom of association was a negative liberty generating a limited duty of non-interference, with but few exceptions. While the US doctrine reduces the freedom of (non-intimate and non-religious) association to an individual claim right to express a refusal to associate, my dissertation brings to the fore that the EU doctrine of contractual association recognises the positive obligations of signatory states. These positive obligations include 'simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources' and 'taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups' (OSCE, 2015, p. 93). Nonetheless, I stressed that the doctrine is oriented towards the democratic interests we may have in associations, fails to effectively assert the right to form social associations independently of any state's authorisation, and remains far from clear regarding the extent to which signatory states must take strong social measures, or even what these measures are. My argument is however inspired by this credible and ancient legal tradition and only calls for stronger and more precise obligations regarding both the simplification of regulatory requirements and the positive measures to overcome challenges confronting disadvantaged persons.

Overall, my argument shows that constitutionalism generally ignores this relational value of associations and tends to value secondary associations exclusively for their collective functions and their supposed contribution to the wider society, because they express the voice of particular organised groups and because they are means to public interest or are a means to be guided by public interest, being at least legitimised by decisions taken by members with equal status and voice. This affects the distribution of opportunities that citizens have to exercise their right to associate. We have seen that social associations can be valuable simply because they support the self-respect of their members. It is therefore unnecessary to show that social associations support conscience or expression and, morally and legally, such demands on freedom of association are unjustified and likely to be unfairly exclusionary. Some social associations are central neither to the moral interests in conscience, expression, or democracy, nor to the legal issues related to exemption, discrimination, and democratic equality, but the relational value that they have for their members is an interest rooted in the social bases of self-respect. An adequate constitutional protection of the associative interest in standard self-respect

requires the right to the freedom of association independent of any other fundamental right, which values and protects the rights and duties of associations not only for their democratic contributions and expressive functions, but also for the basic relational value that they have for their members.

This value requires different but not less substantive constitutional protections. The concrete existence of the right to form social associations is conditioned by the ways in which social associations are recognised as legal entities in particular legal systems. In my view, this is the most important moral and legal issue hidden by the exclusive focus on the rights to refuse and to exit association. I understand the legal personality of social associations as an all-purpose means to consistently formulate, express, and pursue collective conceptions of the good and to interact with other individuals and collective agents that populate the social world, a means that allows political people to associate in order to realise their associative interest in standard self-respect. The simplest forms of our organised social relations, which allow us to obtain the circumstances under which we find mutual appraisal, require the capacity for legal relations. I argued that the equal worth of the liberty to form social associations provides a liberal-egalitarian defence of the principle of corporate creation, recognising the personality of social associations as soon as members have expressed the will to establish it by virtue of an individual interest that is exercised independently of any state authorisation. While I emphasised that such a principle has a cost in terms of the publicity of legal relations, I also supported the view that it is a small price to pay to reduce social and cultural barriers to incorporation and equalise the social conditions to form a formally recognised social association.

Beyond an equal consideration of associative interests and the simplification of the acquisition of legal personality, I stressed that positive measures are necessary and that the state has a duty to help to form social associations. In reducing the idea of civil society to the specific concept of purely associative relationships and in taking the contested concept of community organising as a mirror of the relations that one thinks the state should have with civil society, I have questioned the relationship between the liberal state and social associations. I have shown that the core methodology of community organising could be applied to public institutions to tend to facilitate the access to the circumstances under which citizens develop a sense of self-worth in their own social associations. By organising citizens around the issues they care about, by offering them organisational and legal advice, by providing public infrastructures in which they can meet, by connecting them to existing relevant networks, and by putting them in touch with people with similar interests, the state can in a non-paternalistic way help citizens who would like to form social associations. Here, I concede that there is a cost in terms of public

management in applying this methodology. Through an illustration by the social sector of Geneva, Switzerland, I argued that the requirement of respecting the interests of the people who are supported in their associative undertaking, constitutive of this methodology, justifies an exceptional discrepancy in the core principles of public management.

Thus, as regards the implications of my thesis for law and social policy, my argument provides a triple contribution. It proposes a new public justification for the methodology of community organising - historically carried out by private actors and anchored in a conception of radical democracy - grounded in an ideal of equal worth of the liberty to form social associations applied to public institutions. It offers a liberal political defence of legal personality of social associations as a matter of right, until now philosophically reduced to British pluralists' ontological argument on groups' inherent personality. And it provides a significative transcontinental criticism of the existing legal doctrines on the freedom of association, focused on the interests in intimacy, expression, assembly, conscience, and democracy, and the right to refuse to associate.

The general idea that I have defended is that the liberty to form social associations matters for standard self-respect, that self-respect is essential for a citizen's moral capacities, and that for this reason, social institutions should ensure adequate background legal and social conditions for the formation of social associations. While Rawls suggested that the status of the basic liberty of the freedom of association is justified as an institutional condition for the freedom of conscience, I advance the view that the liberty to form social associations has a direct relationship with the two moral powers and the social bases of self-respect, and that the principle of corporate creation and the activities of public community organising are genuinely institutional conditions for its fair value.

It is not necessary to adopt the Rawlsian apparatus to accept the basis of my argument on the value of mutual appraisal for moral capacities and to accept my claim that specific features of fair institutions should ensure the social conditions to make this mutual appreciation possible. The very premise of my demonstration rests on the Aristotelian principle and its companion effect that 'influences the extent to which others confirm and take pleasure in what we do' (Rawls, 2005a, p. 440). It is the foundation for the idea of social associations as a kind of relationship in which each party 'sees in the other qualities that are useful for attaining a particular end' (DeLue, 1980, p. 388), and the basis of my thin understanding of standard self-respect generated through mutual appraisal, including but not limited to excellence and achievements. It is a relational conception of human motivation and moral capacities that lies at the heart of my normative argument regarding what it means to be free and equal for the

freedom of association. The Rawlsian theoretical framework allows me to question the implications of this basic principle of human motivation for the status of the freedom of social association within the principles of justice, and to explore the contours of such principles that are conceived of as equal liberty, and then to firmly argue for the equalisation of social conditions to form social associations as social bases of standard self-respect. Beyond this limiting Rawlsian theoretical framework that I have tried to push to its limits, I have no doubt that it is certainly possible to develop powerful alternative arguments to mine, such as that the fundamental interest in standard self-respect would be better supported by equality in material goods (Eyal, 2005; Penny, 2013), or through a universal basic income, than with the priority of liberty, the special treatment of political liberties and with the extension of this special treatment to the liberty to form social associations.

The central normative ideas of my demonstration, namely the value of social associations for mutual appraisal, their role in sustaining the moral capacities of citizens, and the social conditions they require, can definitely find resonance well beyond this liberal political perspective. In light of the entire dissertation, the category of social association, inspired by Warren (2001), can be apprehended as a heuristic tool that is useful in exploring the normative relationship between a particular type of association and politics. In the context of my argument, this paradigmatic category allows me to proceed to a systematic reading of the value of a basic form of organised association for political justice via an unambiguous definition of what an association is, both relationally and organisationally. The category does similar work for the pragmatic justification of moral legal personality, highlighting the rights and duties it entails and the stringent conditions required by the state to concede it (through incorporation and tax-exemption) even to a very basic form of organised association. The category illustrates the idea that I have tried to transcribe through Martina's case, that is, of an association generating appraisal-respect through interactions among its members, who freely associate around non-competitive standards that are not narrowly related to excellence, democracy, expression, or conscience. I believe that social associations form the very heart of the idea of secondary associations and the daily experience we have of them, and while they form a fundamental part of associational life, they are ostensibly ignored by constitutional theories and theories of justice.

The category of social associations excludes unorganised and informal associations, and my argument says nothing about the value of other forms of associations and the way institutions should or not support and/or regulate them. I focus on a very basic type of associative interest, establish an undemanding definition of organised associations, and defend

a generous understanding of appraisal-respect and an accessible and pragmatic conception of legal personality. Thus, while the dominant legal and philosophical accounts of the freedom of association focus on complex forms of expressive, religious, and democratic associations, my account of social associations is certainly formal and restrictive as regards the various forms and functions of associative relationships, but it illuminates the value of an ordinary type of organised interpersonal relationship and the basic associative interest it serves. The exercise is important in order not to forget the very conceptual base of what constitutes associative relationships, but to also recall that this specific type of human interaction, namely voluntary, organised, secondary, and social, has an important role to play for justice. Whereas attempts have been made to provide a renewed justification of the fair value of political liberties (Cass, 2021; Edmundson, 2020; Queralt & González-Ricoy, 2021), and relevant and fruitful efforts have been made to make political justice more economically inclusive (Lafont, 2019; Landemore & Ferreras, 2016; O'Neill & Williamson, 2012; Thomas, 2016)[214], the category of social association gives us an opportunity to evoke the idea that there is a space between economics and politics, the social domain, that is as essential for free and equal citizens as are other domains. It raises issues of justice regarding the rights and duties it entails. This idea of social associations and the conceptual divisions on which it is built thus constitute a heuristic tool that exceeds my liberal political perspective and exploration of the relationship between non-political associations and Rawlsian self-respect. The category can serve as a more general tool to explore the confusion surrounding the relationship between different types of associations and politics – including that of canonical authors like Rousseau ([1758] 1968)[215].

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[214] Among the possible variations, property-owning democracy requires roughly equal private ownership of capital, and liberal socialism requires firms to be owned and democratically controlled by their workers. Interestingly, for Edmundson the justification for the special treatment of political liberties also lies at the heart of some of the main debates on the place of property in justice as fairness, as 'disavowing an interest in fair value is what disqualifies welfare-state capitalism as a possible realizer of Justice as fairness'(2020, p. 497).

[215] In Rousseau, all political and non-political associations are easily understood as fostering particular interests, bonds of loyalty, social affiliations, and interdependence that may subvert the general will (Goldschmidt, 2017; Rousseau, [1762] 2012). In this *Letter to d'Alembert*, however, Rousseau expressed a strong attachment to the future of the 'circles', which can be thought of as social associations in many ways. He opposed the construction of a new theatre in Geneva, arguing that such an innovation would destroy the pre-existing extensive networks of voluntary organisations, while expressing high admiration for the circles and their value in ensuring good governance and civic-mindedness. He feared the destruction of 'these societies [that] contribute greatly to "the tone of good sense and judgement"' which prevailed in Geneva (Rousseau, [1758] 1968 , pp. 27–28). The circle was a kind of voluntary association comprising 10 or more people of the same sex who were organised as clubs for the purpose of amusement (reading, talking, dining, going on excursions, walking, hunting, and swimming). Male circles were favourable to political discussions and discussions of public affairs (Goldschmidt, 2017). These associations, which Rousseau never described as political, helped preserve republican morals

It gives shape to the hidden theoretical space that exists between politics and economics, and the family and tertiary organisations – spaces that are often (conjointly) obscured by moral and political philosophers, but that have a place in all political theories worth the name.

The world I call for is pluralist in terms of the good forms of organisation of associations, the virtues they develop, and the objectives they pursue; and egalitarian in terms of the basic opportunities to form social associations and the social conditions it requires. The Rawlsian perspective allows me to reconcile both perspectives easily, thus emphasising the exclusion of social associations from the basic structure of society as subject to the principles of justice, and the special treatment of the rights of their members within the principle of equal freedom. The reminder of this pluralist and egalitarian world is important in view of the limited literature on the freedom of association and its current orientation towards the American constitutional context, filled by the concepts of expression, exclusion, and authority. My argument highlights the value of a simple and basic form of association, previously drowned in a maze of complex economic, political, religious, and family functions, and demanding a strict form of equal opportunity. I hope this study will open up more spaces for creation and schism in a field dominated by questions of social exclusion and legal exemptions.

The pluralistic world I call for stands in opposition to the functionalist thinking that has animated philosophers with an interest in associations, while continually seeking to identify and improve their social or political functions (Cohen & Rogers, 1992; Cole, 1920; Hirst, 2013; Parsons, 2013; Warren, 2001). My research borrows key concepts and definitions from them in order to reverse them and focus on the value of associations regardless of such collective functions. Not everyone will be convinced by my disaggregation of the concept of association into several rights and types of associations and my enthusiasm in justifying the proviso of fair value as social bases of self-respect. Fewer still may be convinced by the extension of the proviso of fair value to the liberty to form social associations and by the institutional design I propose. Nevertheless, the idea of social associations allows me to highlight the moral and political value that secondary associations have for individuals independently of expressive or democratic collective functions, and to illustrate how the establishment of the simplest form of formal associations requires several social conditions to which any egalitarian-liberal theory worth its name should pay attention. My argument highlights that freedom of association cannot be reduced to the right to refuse to associate and delineates its proper limits in terms of the right

among the citizens, and ‘combine[d] everything which can contribute to making friends, citizens, and soldiers out of the same free people’ (Rousseau, [1758] 1968, pp. 27–28).

of others to join without discrimination. Freedom of association includes very different types of association, not all of which are essential to distributive justice or democracy, and its scope is not limited to a right to non-interference but includes a positive facet, notably related to the value of these associations for their members, which requires adequate conditions of exercise. I am convinced that my argument can, at least, encourage egalitarian liberals to do more than simply pray for the 'intrinsic value of associational life' in order to guarantee this value to all citizens.

The reminder of this pluralist and egalitarian world is important in the social world in which we live, which is already deeply institutionalised, where there are few major empty social spaces, and where daily social life has already been largely colonised by instrumental rationality and the breakdown into functional subsystems (Habermas, 1991). We live in a world where most social, economic, and political organisations have been created over the last century and have progressively been extended and centralised, and where the state externalises – through private companies, welfare organisations, associations, and faith-based organisations – an increasing part of its social policies. There is not much room left for local cooperation beyond sclerotic electoral participation and the already institutionalised associational sphere that is active in welfare state programmes. Terms like 'voluntary work' and 'volunteering' have become lexically dominant to describe participation in an association. I am convinced that, along with this functionalist colonisation of civil society, which can certainly be a vector of democratic and economic inclusion, it is important to highlight that social associations have a value that does not answer a functionalist logic of needs and is not to be judged on its results. It is with this hope that my argument offers an alternative narrative to the demand for efficiency in the third sector. This functionalist logic that can also take form through the more widespread belief that it would be possible to have something like 'too many associations' if each of them followed a predetermined function in a predetermined set of social tasks to be fulfilled. From my perspective, in contrast, participation in social associations should not be maximised or optimised, but is something that all people should have equal minimal access to. The state should support the creation of social associations even if it considers them pointless and useless, because people have the right to develop a sphere of autonomy beyond political principles and have very unequal resources to do so, and doing so will affect their sense of self-worth and their capacity to abide by fair terms of cooperation.

Social policies must make every citizen effectively able to participate in social cooperation, not only in making them conscious of their rights and aware of their interests by providing education and information, but also by providing the public facilities for meetings

and events in support of their collective actions through advice and modest funding, without a moralising view of participation as something good and without imposing an instrumental objective, whether it be a matter of employment or of democratisation. My argument provides a liberal political idea of empowerment that is not only grounded in equal political influence, but based on equal moral capacities as well. It takes Kant's idea that we must aim at 'treating persons as ends in themselves and never simply as means' (Kant, 1959, p. 428), extends it to social associations, and draws out its ultimate consequences for the relationship between public policies and social associations. This rationale implies that it is possible to reframe many social policies affecting the volunteering sector, and is consistent with many recent empirical findings on the ambiguities of this relationship. For instance, Penny and Finnegan (2019) showed that volunteering has inconsistent effects in terms of employability and suggested an alternative justification built on volunteering, which offers long-term unemployed people 'access to self-respect'.

We can qualify the constellation of arguments that I have developed here supporting an individual active claim right against the state to the social conditions necessary to form social associations as constituting a rough sketch of a theory of 'liberal associative citizenship', a conception of what citizens are entitled to with respect to associational participation, from a liberal-egalitarian perspective. Many of the positive duties generated by a full-bloom freedom of association remain to be discovered theoretically, and many of the contours of adequate state assistance remain to be explored in practice. The idea that the issue of self-respect reflects the interdependence between relational (recognition) and distributive justice (redistribution) in the field of social justice is not new, but it has seen renewed interest over the last few years (Cordelli, 2015; Lafaye, 2020; Schemmel, 2011). My argument only suggests interesting connections between distributive and relational justice by thinking of the freedom of social association as a basic liberty, dependent on relational resources and constitutive of the social bases of standard self-respect. There is little doubt that political philosophers will continue discussing the meaning of the social bases of self-respect and its relationship with basic liberties in the years to come. However, my argument opens up an original way forward in the discussion of the role of the freedom of association for the social bases of self-respect, as it does not take a stand against the justification of the fair value of political liberties (Schemmel, 2019) and does not require an additional principle of justice to account for relational resources (Brake, 2017; Cordelli, 2015), but rather positions itself in complementarity with the fair value of political liberties as social bases of self-respect (Krishnamurthy, 2012; 2013; Queralt & González-Ricoy, 2021).

My argument has important implications for the way in which we understand the role and functioning of public services in relation to civil society and builds a new bridge between political liberalism and the ethics of social work, a topic whose treatment has been simply non-existent thus far, despite some interesting work on the relationship between social work and social justice (Joseph, 2020; Reisch & Garvin, 2016).

My argument, I hope, can nurture new perspectives on justification and reforms for many existing sociocultural programmes and infrastructure. It carries the central idea that beyond education and the promotion of socio-educative activities as a means of investing in human capital, public infrastructure and services for sociocultural animation must be deployed as a matter of individual right. It also suggests that there is a specific way in which public social services must work with respect to the very organisation of the service as regards the absence of an external objective, which would be alien to the methodology and the daily practices of social workers, who should value the interests of the people they organise in their daily work. We know that the lack of capacity to associate may or may not be correlated with socioeconomic disadvantages, and that those who need assistance to associate may be voiceless, hard to identify, or reach. The risk of paternalism is never far away. What I call the liberal political ethos of community organising requires field investigations into the effective practices of social workers. Most issues take place in their daily practices and must be so assessed. My theoretical work only suggests interesting new lines of empirical research for ethnographic studies of social work and civil society.

I hope that my work will inspire theoretical and empirical research programmes on the value of associative relationships and the means to make this value available to all citizens. We should be aware of the collective framework that defines the opportunities and constraints on our most mundane but organised social interactions. Sadly, Covid-19, and the sanitary restrictions necessary to fight it, have shown how topical my thesis is.

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Résumé

De la Juste Valeur de la Liberté d'Association

Une théorie libérale-égalitaire de la citoyenneté associative

Cette thèse porte sur le besoin fondamental que nous avons, en tant que personnes, d'interagir les uns avec les autres. Elle est motivée par la croyance que le libéralisme politique n'a jamais pris au sérieux l'implication de l'égalité des chances des citoyens pour la liberté d'association. Sa revendication centrale est que celle-ci sert une multiplicité d'intérêts fondamentaux, tels que la délibération, l'expression, la conscience, l'autodétermination, la liberté personnelle, l'excellence, mais aussi le respect mutuel, le respect de soi, la convivialité et le simple plaisir d'être avec les autres. J'insisterai tout particulièrement sur l'intérêt associatif pour le respect de soi-même; un intérêt qui donne un contenu moral individuel au plaisir d'être avec les autres, mais qui a été négligé par les principales justifications philosophiques et juridiques de la liberté d'association. Je soutiens que cet intérêt associatif oublié est celui que nous avons dans le développement d'un sens de notre propre valeur lorsque l'on poursuit volontairement avec d'autres des activités qui sont rationnelles pour nous d'entreprendre dans le cadre de notre plan de vie rationnel.

Cette thèse affirme que cet intérêt associatif pour le respect de soi-même a été rendu philosophiquement et juridiquement invisible par la catégorie d'association non-politique, qui inclue généreusement en son sein la famille, les syndicats, les associations économiques et sociales, ainsi que les associations religieuses. Je soutiens que cette vaste catégorie a créé, paradoxalement, un écart théorique entre les intérêts associatifs collectifs et personnels que nous avons. Il en résulte une polarisation de la littérature entre, d'une part, un excès d'intérêt des philosophes politiques pour les associations en tant qu'organisations essentielles à la démocratie libérale (par ex. à travers leurs liens pour la liberté d'expression, la liberté de conscience, ou pour leur importance pour la formation civique, la représentation des intérêts et la résistance civile) et, d'autres part, un intérêt des philosophes moraux pour la signification morale des relations personnelles (par ex., l'amour, l'amitié, appréciés comme étant constitutifs de nos devoirs naturels et comme une voie d'accès au bonheur, au bien-être ou à l'épanouissement personnel). Pourtant, dans cette zone intermédiaire entre les relations que nous développons pour elles-mêmes et c'est-à-dire celles que nous formons pour défendre un intérêt commun, les individus trouvent un soutien mutuel et des ressources pour développer une

forme de confiance en soi nécessaire à la poursuite de leur conception particulière de la vie bonne.

Le constitutionnalisme américain est la principale source de justification légale de la liberté d'association qui ignore cet intérêt fondamental pour le respect de soi-même. Selon la jurisprudence américaine en effet, les associations méritent d'être protégées uniquement si elles sont liées à un élément fondamental de la liberté personnelle (les associations intimes), ou parce qu'elles sont un moyen indispensable de préserver la liberté d'expression, amplifiant le premier amendement et rendant les voix individuelles plus audibles et plus fortes (les associations expressives). La doctrine, par conséquent, conçoit la liberté d'association (non-intime) comme un droit individuel dérivant sa valeur de la liberté d'expression et adopte une focalisation étroite sur l'expression.

De plus, cette catégorie juridique est reprise de manière très peu critique par les philosophes politiques plaidant pour un traitement égal des associations religieuses et non-religieuses. Ces auteurs réaffirment en effet l'idée d'une catégorie générale d'association non-politique qui serait régie par un intérêt mixte entre expression et conscience et qui permettrait de traiter les associations religieuses sur un pied d'égalité avec les autres associations, mais qui exclue de facto certaines associations qui ne sont pas nécessairement consacrées à l'expression d'un message ou la pratique d'une croyance. Par conséquent, une telle orientation exclusive conduit les auteurs libéraux à réduire les intérêts associatifs à un intérêt mixte, mais limité et qui exclut implicitement tous les intérêts associatifs non-religieux et non-expressifs dont les associations sociales sont emblématiques.

Bien que le libéralisme politique soit explicite sur la relation entre les associations non-politiques et le respect de soi-même, j'insiste sur le fait que la catégorie générale d'association non-politique noie cette contribution fondamentale dans le questionnement des justes limites de cette catégorie générale aux frontières floues (par exemple, en questionnant - à raison - l'inclusion de la famille). Cette catégorie ne permet pas de mettre en lien les contributions de différents types d'association et des différents types de droits avec la multiplicité des intérêts associatifs que nous pouvons avoir dans les associations, en particulier en ce qui concerne le respect de soi-même et ses bases sociales.

Pour reconnaître la valeur des divers intérêts en jeu dans les différentes justifications philosophiques de la liberté d'association, je soutiens dans que nous devons désagréger la catégorie d'association en plusieurs sous-catégories, et séquencer le droit général de s'associer en plusieurs droits spécifiques. Pour mettre en évidence et comprendre l'intérêt associatif dans

le respect de soi-même, cette thèse se concentre sur la catégorie paradigmatique de l'association sociale et, en particulier, sur le droit de former des associations sociales, en tant qu'illustration de l'intérêt associatif que nous avons dans le respect de nous-même. Je définis l'association sociale comme une association formellement organisée, avec des buts et des règles, basée sur des liens personnels non-intimes, que nous pouvons quitter à un coût raisonnable, et qui n'a aucune fonction économique ou politique particulière, ni aucune revendication d'une forme d'autorité prévalente sur celle de l'Etat. Les clubs sportifs, les groupes d'entraide, les associations artistiques et scientifiques sont tous des exemples de ce type d'association.

J'utilise cette catégorie pour montrer comment les associations servent un intérêt particulier dans le respect de soi-même que le constitutionnalisme américain ignore et que le libéralisme politique néglige, et pour illustrer comment nous pouvons nous émanciper d'eux. Cette catégorie me permet ainsi de mettre en évidence l'intérêt associatif pour le respect de soi-même, sans négliger la possibilité d'intérêts associatifs coexistant et d'associations aux formes et aux fonctions plus complexes. De fait, mon argument ne porte pas sur la juste organisation de la famille, sur l'étendue de la liberté de conscience accordée aux organisations religieuses, sur la réglementation des partis politiques, sur l'importance des syndicats et des entreprises pour la justice distributive, ou sur le rôle des associations pour la représentation démocratique et la délibération. Par contraste, malgré ou en sus de ces fonctions particulières, mon projet vise à identifier ce vague quelque chose que certains auteurs considèrent comme « la valeur intrinsèque » de la liberté d'association ou « l'indétermination du pluralisme moral » – termes que je trouve insuffisants pour établir la valeur spécifique que les associations ont pour notre besoin d'interagir avec les autres.

Mon argument souligne que les associations sociales ont une valeur fondamentale pour la justice politique dans la mesure où, dans une perspective rawlsienne, elles permettent aux citoyens d'explorer collectivement des valeurs non-politiques comme l'excellence, de renforcer leur sens de leur valeur et de la valeur de leur conception du bien, ainsi que de développer un sentiment de réciprocité généralisée et d'attachement aux institutions sociales. Cette catégorie me permet tout particulièrement de souligner et d'insister sur l'intérêt des citoyens libres et égaux à avoir accès à une communauté d'intérêts partagés où ils puissent réaliser des activités valorisées par les autres membres et où ils seront à même de développer, à travers l'appréciation mutuelle, un sens de leur propre valeur et une confiance dans leur conception du bien et de leur capacité à la mener à bien.

Je soutiens que cet intérêt associatif demande une compréhension exigeante de l'égalité d'opportunité et qu'il a le potentiel de contribuer aux discussions sur la nature et l'étendue des

bases sociales du respect de soi-même, et par la même de compléter et de renforcer la justification de la juste valeur des libertés politiques. Je montre que les associations sociales sont un lieu privilégié pour développer des relations interpersonnelles régulières, qui peuvent être quittées sans coût excessif, qui sont capables de générer une appréciation interpersonnelle, et qui sont suffisamment formelles et organisées pour voir leurs conditions sociales d'exercice soutenues par les institutions publiques. J'insiste ensuite sur le fait que le droit de former des associations sociales, qui est ignoré dans la littérature, a une fonction génératrice pour le respect de soi-même des individus qui exercent leur droit, en leur permettant de jouir d'un lieu dans lequel ils peuvent développer un sentiment de valeur personnelle, sans empiéter sur l'opportunité de s'associer des autres. Je soutiens que, pour ses raisons, la valeur de la liberté de créer une association sociale a un effet expressif sur la manière dont les citoyens se considèrent et considèrent la valeur de leur conception du bien, et donc sur leurs capacités morales. L'égale valeur du droit de former une association sociale, c'est là la revendication centrale de ma dissertation, contribue à égaliser les conditions sociales de l'appréciation mutuelle et à rassurer les citoyens sur leurs capacités à mener à bien leur conception de la vie bonne et à la réviser, et à assurer ainsi les bases sociales du respect de soi-même.

Cet intérêt n'a jamais été pleinement apprécié par le libéralisme politique et cela a des implications normatives de grande portée. En m'appuyant sur la meilleure justification disponible de la juste valeur des libertés politiques, la sécurisation des bases sociales permettant aux citoyens de développer un sens de leur propre valeur, je soutiens que l'extension du proviso de la juste valeur au droit de créer une association sociale permet sa pleine justification en étendant cette expression non seulement au statut public de citoyens garantit par les libertés politiques, mais aussi aux conceptions particulières de la vie bonne et à la capacité des citoyens de la mener à bien. Ainsi je soutiens que les citoyens doivent jouir non seulement d'une juste part de moyens pour exercer leurs libertés de base et d'une juste égalité des chances relative à leur carrière et à leur position sociale, mais aussi d'une stricte égale opportunité de contribuer à l'agenda politique et de former une association sociale. J'argumente qu'il en résulte pour l'Etat un devoir de financier et d'aider les associations sociales dans leur phase de création, notamment en mettant à disposition des infrastructures publiques adéquates et en assistant de manière non-paternaliste les individus et les groupes dans leur entreprise associative.

Enfin j'explore les implications de mon argument dans des conditions non-idéales et je dessine les contours de dispositions transitoires permettant de s'approcher de l'égale valeur de la liberté de former des associations sociales. En examinant les arrangements légaux existant à l'aune de ce standard, je montre que la doctrine états-unienne des associations expressives

véhicule une vision réductrice de la liberté d'association qui occulte tous les intérêts non-expressifs dans les associations, alors même qu'elle influence profondément le débat philosophique sur l'égale considération des différents intérêts associatifs. J'insiste toutefois sur le fait que l'on peut s'émanciper d'un tel cadre de pensée, et que la doctrine européenne offre des pistes intéressantes, mais imparfaites, à cet égard. Le Cour Européenne des Droits de l'Hommes reconnaît notamment des obligations positives, qui comprennent la simplification des exigences réglementaires et la facilitation de l'accès aux ressources par des mesures à l'intention des personnes socialement défavorisées. Néanmoins, j'insiste sur le fait que la doctrine est orientée sur l'intérêt démocratique des associations, et qu'elle ne parvient pas à affirmer un droit de former des associations sociales indépendant de toute autorisation étatique.

De manière générale, mon argument montre que le constitutionnalisme ignore la valeur relationnelle des associations et tend à valoriser les associations exclusivement pour leurs fonctions collectives supposée pour la société, parce qu'elles expriment la voix de groupes organisés particuliers, parce qu'elles sont des moyens de servir l'intérêt public, ou d'être guidé par l'intérêt public. Cela affecte la répartition des opportunités qu'ont les citoyens d'exercer leur liberté d'association. Une protection constitutionnelle adéquate de l'intérêt associatif dans le respect de soi-même demande un droit à la liberté d'association qui soit indépendant de tout autre droit fondamental et qui valorise et protège les droits et devoirs des associations non seulement pour leurs contributions démocratiques et leurs fonctions expressives, mais aussi pour la valeur relationnelle fondamentale qu'elles ont pour leurs membres. Cette valeur requiert une protection constitutionnelle différente mais non moins substantielle. C'est notamment le cas du droit de former des associations sociales, dont l'existence concrète est conditionnée par la manière dont les associations sociales sont reconnues comme des entités juridiques dans des systèmes juridiques particuliers.

L'idée centrale que je défends sur le plan institutionnel est que la poursuite de la juste valeur de la liberté d'association doit se traduire, d'une part, par un accès facilité à la personnalité légale et la reconnaissance juridique des droits propres à l'association et à ses membres aussi tôt que ceux-ci en ont exprimé la volonté (le principe de création corporative). D'autres part, cet arrangement légal doit être complété par un service public fonctionnant de bas en haut – à contre-courant des principes de gestion publique – pour offrir un soutien administratif, organisationnel, financier et logistique aux individus qui n'ont pas les ressources pour exercer leur droit formel à la création d'une association sociale (l'action communautaire publique).

Je montre ainsi que mon argument a d'importantes implications sur la manière dont nous appréhendons la justification et la protection de la liberté d'association, mais aussi sur la manière dont nous concevons la personnalité juridique des associations et dont nous justifions son acquisition, ainsi que sur notre compréhension du rôle et du fonctionnement des services publics en lien direct avec la société civile.