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Sorting and the ecology of freedom of association

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Abstract

Social connections between different types of people are necessary for individuals to fairly access resources and opportunities. Yet we tend to associate homophilously, with people who are more similar to us than different. Our associational choices therefore make it difficult for some groups to access a fair share of resources and opportunities; associational choices are thus a *prima facie* candidate for policy intervention. But as it commonly understood, freedom of association is negative: it enacts a normative bulwark against interventions on our associational choices, as it guarantees the presumptive right to exclude and a right against interference from the state on our associational choices. Thus there is a tension between freedom of association and the demands of justice – this is the problem of sorting. This paper argues that the commonly accepted negative conception of freedom of association is insufficient, and offers an ecological conception of freedom of association as a way to resolve the problem of sorting. On the ecological conception, certain social conditions are necessary for associational freedom. Freedom of association and justice can be jointly realized to an extent further than previously thought.

1. Introduction

We ought to be able to choose whom to socialize with, form clubs with, befriend, live among, date, and marry. Without the ability to make these choices, we are unable to determine the course of our lives. Freedom of association – “the right to choose the society most acceptable to us”, in John Stuart Mill’s canonical formulation¹ – is the basic liberty that protects our ability to make these choices. Call this the *negative conception of freedom of association*: it grants both a negative claim-right against others from interfering on our associational choices, as well as a general moral permission to choose whomever we want to associate with, conditional on the other’s reciprocity. Insofar as the ability to choose our associates is an essential part of what it means to be a self-determining, autonomous individual, each of us ought to enjoy negative freedom of association.

Negative freedom of association also implies the right to exclude others from our company. If we are not free to exclude others from our company, then we are not free to choose our associates at all. While intuitively appealing, the right to exclude also has a dark side: exclusion can harm others by preventing them from accessing goods that are concentrated within certain associations. Such exclusion is especially a problem in our nonideal world, where different social groups hold vastly unequal amounts of goods and people mostly associate with those who are similar to them. But freedom of association protects even morally criticizable choices. For example, suppose one prefers to befriend people from a higher socioeconomic class or non-stigmatized race – this choice may be morally questionable, but it is protected by the right against interference.

The result is that freedom of association undermines fair equality of opportunity. I call this the *problem of sorting*. It is a special case of exclusion, in which exercises of freedom of association perpetuate social inequalities. The problem of sorting brings to light a deep tension for liberal egalitarians, who both prioritize the individual autonomy that freedom of association protects and strive for the egalitarian ideals that are threatened by sorting. Sorting seems to show that these values are not realizable together, and that we will have to either accept some residual degree of inequality for the sake of respecting freedom of association, or interfere with

¹ Mill 1859, Ch.4.

freedom of association for the sake of mitigating inequality. The first horn of this dilemma seems unjust; the second horn seems illiberal.

The aim of this paper is to put forth a solution to the problem of sorting that is compatible with liberalism. By “solution”, I do not mean a theory that justifies a policy that would totally eliminate such inequalities. Rather, I mean to close the gulf between freedom of association and inequality as far as it will go, and no further – but still further than the negative conception permits. As I will argue, the negative conception ignores the importance of the social environment and the choices it affords. By itself, the negative conception is insufficient for freedom of association. On what I call the *ecological conception of freedom of association*, one necessary condition for freedom of association is the presence of different types of people to associate with. In the absence of these options, we lack a key dimension of associational choice. Because sorted social environments are homogeneous, we lack freedom of association within them. What is required to realize freedom of association is a diverse social environment. Freedom of association is not a static state achieved solely by non-interference on our associational choices; it must be dynamically maintained, which may require continual interventions on the social environment. The negative conception gains its value only where the ecological conditions are satisfied; by itself, the negative conception is an insufficient conception of freedom of association. The upshot is that freedom of association cannot legitimate sorting and its concomitant inequalities, but requires a significant degree of socioeconomic integration.

The paper proceeds as follows. Section 2 outlines how facts about homophily, group inequality, and economic connectedness give rise to the problem of sorting, and explains why it is not easily resolvable by extant redistributive or corrective justice approaches. The problem of sorting is a fundamentally associational dilemma. Section 3 presents the ecological conception of freedom of association as a response to the negative conception of freedom of association, which gives rise to this dilemma. Section 4 argues that sorting undermines the ecological conception. Rather than legitimating sorting, freedom of association requires interventions that unsort the social environment. Section 5 addresses some objections and clarifies how the ecological conception relates to the negative conception. Section 6 concludes.

2. The problem of sorting

We live in a society with high levels of *group inequality*: different groups have vastly unequal access to social and economic goods. In the United States in 2019, the median household income among Blacks was \$46,073 compared to \$76,057 among whites.² Residential neighborhoods are becoming increasingly stratified by income, especially as the affluent segregate themselves from middle- and lower-income households.³

An unequal society may be bad; a stratified society, in which people cannot escape the social circumstances they were born into, is worse. Social mobility is a measure of the degree to which people are able to move up and down economic positions other than the one they were born into. For example, a society where children raised in the 25th percentile of household income remain in the 25th percentile as adults, while children raised in the 90th percentile of household income remain in the 90th percentile as adults, is not a socioeconomically mobile society. Lack of social mobility should lead us to suspect that Rawls's ideal of fair equality of opportunity – that individuals with the same native talent and same ambition should have the same prospects of success⁴ – is far from being fulfilled in this society.

Economic connectedness – the degree to which different types of people are friends with each other – matters for upward social mobility, the degree to which people are able to move up and down economic positions other than the one they were born into. Specifically, the degree to which individuals of lower socioeconomic status (SES) are connected to higher-SES individuals is strongly associated with the former's upward mobility. In fact, social scientists find that economic connectedness is the strongest predictor of upward mobility, especially for children, independent of other predictors of mobility such as poverty rates and median household income.⁵ Economic connectedness matters so much for social mobility (and thus for fair equality of opportunity) because resources and opportunities are socially propagated: social and economic goods distribute through a population through social networks. For example,

² EPI 2019.

³ Reardon and Bischoff 2011.

⁴ Rawls 1999(1971), p.63.

⁵ Chetty et al 2022a, p.122.

information about job and housing opportunities often transmits through word-of-mouth, and the people that one is around can shape one's aspirations.⁶ One's social network can play an outsized role in shaping one's life prospects, more than native talent and ambition might.

Yet people tend to be connected with those who are similar to them, especially along the lines of race and class.⁷ Our neighbors, friends, romantic partners, and colleagues are more likely than not to look like us, talk and act like us, and have similar socioeconomic backgrounds. These patterns recur across different contexts, from high school cafeterias and neighborhood bars to places of worship. Sociologists call these patterns *homophily*: the observed tendency of people with similar characteristics to interact with each other more than a baseline rate of random association would predict.⁸

Together, these three facts – group inequality, the importance of economic connectedness, and homophily – generate what I call the *problem of sorting*. We tend not to be connected to those who are dissimilar to us, and this perpetuates economic inequality, undermining the ideal of fair equality of opportunity. The problem of sorting occurs because sufficiently segregated network structures affect information flows and aspirations and consequently, their access to opportunities. In the labor market, for example, homophily isolates workers of different ethnicities, limiting the extent to which workers in one group hear about opportunities in the other group. This insularity can lead to poverty traps: if fewer of one's friends are employed, that can lower the returns to education and employment, making it less attractive for one to become educated and seek a job.⁹ There is also growing evidence that assortative patterns in friendship, dating, and marriage maintain or accelerate segregation and income inequality by agglomerating resources within privileged groups.¹⁰

One way to realize fair equality of opportunity is to break apart sorted environments and increase economic connectedness – that is, increase the degree to which low-SES and high-

⁶ Granovetter 1973, Chetty et al 2014, Krysan & Crowder 2017.

⁷ I set aside dimensions such as political ideology for the purposes of this paper, since my focus is on fair equality of opportunity.

⁸ McPherson et al 2001.

⁹ Jackson et al 2017.

¹⁰ Schwartz 2013, Greenwood 2014, Jackson 2017.

SES individuals are friends with each other.¹¹ This can be done in two ways: either by increasing *exposure* to individuals of different SES, which requires manipulating the socioeconomic composition of groups, or by changing the rate of *friending bias*, the rate at which cross-SES friendships are formed conditional on exposure. Policies that might achieve economic connectedness include promoting neighborhood and school integration, and restructuring the architecture of space such that there is more cross-SES exposure and opportunities for interaction.¹²

Here, the project of realizing fair equality of opportunity runs into a conflict with freedom of association. On the traditional conception of freedom of association – call this the *negative conception*, for it is primarily defined by limits on the state’s action – these three conditions are individually necessary and jointly sufficient for freedom of association: 1) the moral permission to choose our associates, 2) the right against interference on our associations, and 3) the right to exclude.¹³ Sorting, at least to some degree, results from the exercise of associational choices, such as the choices to befriend and live among those who are similar to ourselves. These choices ought to be protected by freedom of association. A dilemma for the liberal egalitarian thus falls out of the problem of sorting. Either accept some residual degree of inequality that results from associational choice, or interfere with associational freedom.

Before proceeding, we should take a step back. To show that there is a genuine dilemma, it has to be the case that the problem of sorting is very unlikely to be solved by plausible alternatives, such as redistributive remedies, corrective justice approaches, or intimacy exemptions. Consider first a solution that narrowly focuses on redistributing economic holdings, according to whatever egalitarian principle you prefer. While it is theoretically possible to redistribute holdings to account for the arbitrary effects of sorting, this does not resolve the problem of sorting. Fair equality of opportunity concerns what one can *be*, not just what one has. But to the extent that segregated networks block the flow of information between

¹¹ Chetty et al 2022b.

¹² Chetty et al 2022b, p.133.

¹³ This definition comes from Brownlee 2015. I believe it is the most accurate and succinct statement of the negative conception of freedom of association.

groups, this can prevent individuals outside a given social network from even finding out about opportunities. Segregated networks can also promote different behaviors, norms, and expectations among groups, making it more difficult for individuals outside a group to pursue opportunities dominated by another group, or to aspire to and see certain opportunities as opportunities for *them*.¹⁴ Thus, more than the mere redistribution of economic holdings is needed to resolve the problem of sorting. As Erin Kelly puts it, informal social networks function as “mechanisms of inclusion and exclusion”, posing a fundamental challenge to fair equality of opportunity.¹⁵ On Kelly’s view, in line with the policy recommendations of Chetty et al, a necessary redistributive remedy would require diversifying social networks themselves in order to expand opportunities, but without infringing on personal liberty. This remedy would be underwritten by a principle of corrective justice.¹⁶

The corrective justice approach foregrounds the unjust causes of sorting and aims to bypass the associational dilemma. To the extent that sorting is caused by historical injustice, such as discriminatory policies or racial stigma, then there are grounds for policies that aim to unsort social networks. For example, affirmative action and increased state funding for school integration would be justified by corrective justice. This approach, Kelly argues, would resolve the tension between associational freedom and historical injustice without threatening personal liberty.¹⁷ Likewise, Elizabeth Anderson argues that segregation is unjust because it is the result of stigma. On Anderson’s “integrationist hypothesis”, we should promote integration in settings of institutional support through affirmative action; integration in domains of private life, such as neighborhoods and friendships, will slowly follow suit. Both are motivated by the presumptive inviolability of freedom of association to find ways to *bypass* interfering with it¹⁸ – call these “bypassing solutions”.

¹⁴ Jackson 2017.

¹⁵ Kelly 2017, p.90.

¹⁶ Kelly 2017, p.91.

¹⁷ Kelly 2017, p.90

¹⁸ See Anderson 2010, p. 70-71. Here Anderson argues that freedom of association is a “morally innocent” cause that does not explain the extent of segregation in the contemporary U.S.

But corrective justice approaches only have part of the normative picture in view. Sorting does not result *wholly* from historical injustice – at least, we do not have the evidence to make such a strong causal claim. Sorting results both from the homogeneity of opportunities for interaction (e.g. when a neighborhood is socioeconomically homogeneous), as well as from positive preference for those who are more similar to us.¹⁹ The former can be traceable to historical injustice, but it is less obvious that the latter has unjust roots. Cultural affinity, and simply wanting to be around those that you have things in common with, are seemingly innocuous examples of positive preference. But if there are seemingly innocuous causes of sorting as well – or if not innocuous, then causes that cannot easily be tied to historical injustice – then corrective justice remedies do not gain normative traction on these causes. Yet sorting has unjust consequences whether or not it is rooted in prior injustice. These unjust consequences nevertheless demand some answer.

Other liberal egalitarian approaches attempt to target the dilemma more directly rather than to bypass it, seeking to balance freedom of association against its social harms. Call this the *intimacy exemption* approach. Stuart White argues that the state may legitimately curtail the right to exclude if exclusion harms others’ “opportunity interests” – their right to fairly access income and other goods. For example, racists should not be permitted to exclude people from a neighborhood if doing so would harm the latter’s opportunity interests. But White carves out a “special right of intimate exclusion” for friendships and relationships that should be protected even if they undermine others’ opportunity interests.²⁰ Andres Moles, in a similar vein, argues that racist or sexist associations can change the “public ecology” of the social environment in ways that liberals should find troubling – but intimate associations must be permitted “brackets of privacy”, due to their “spontaneous nature,” even if more public associations need not be granted privacy.²¹

The trouble with the intimacy exemption is that it requires the state to decide what counts as an intimate association. It is a controversial matter whether the state should be in the

¹⁹ Winship 2011, p.522-537.

²⁰ White 1997, p.386

²¹ Moles 2014, p.99. The title of my paper is inspired by the title of this article.

business of deciding what counts as an intimate association, and how it should so decide. To put the intimacy exemption into practice would require the state to make controversial judgments of intimacy – judgments that, arguably, it should not be making at all.²²

Both the corrective-justice and intimacy-exemption approaches face a challenge. On one stringent variant of the negative conception – the classical liberal variant – these remedies *do* violate associational freedom, which trumps any social good. Richard Epstein argues that freedom of association should not be hindered even by antidiscrimination law in the commercial realm; businesses ought to reserve the right to discriminate against those whom they do not wish to commercially associate with.²³ A related difficulty concerns the boundaries of associations. As Larry Alexander argues, the boundaries between different types of associations are permeable – marketplace associations, clubs, private schools, universities, creedal organizations, and intimate associations all bleed into each other. For example, we form intimate associations within the contexts of other associations such as schools and creedal organizations. So, government interference on one type of association constitutes interference on any other. Alexander thus expresses skepticism that “social engineering” in the form of antidiscrimination law can be done without contravening classical liberal principles.²⁴ And Loren Lomasky argues that there may be a case for affirmative action and school integration – but this comes at the cost of negative freedom of association.²⁵ On these classical liberal views, interventions on the associational sphere, such as affirmative action and school integration, are not permitted, or at least do have associational costs, even if they would reduce inequality or other social ills.

Why should the liberal egalitarian take up the classical liberal’s challenge? Because the classical liberal points out, and insists on, a point that even liberals of a more egalitarian bent

²² Rosenbury 2007 and Chambers 2017 have each argued that the state unjustly privileges and shapes certain forms of association over others in making decisions about the relative importance of friendships, marriages, and other familial relationships. I am very sympathetic to this position, though I cannot defend it here.

²³ Epstein 2008, especially p.147-154.

²⁴ Alexander 2008, p.14-16.

²⁵ Lomasky 2008, p.191-195, 200.

would generally agree with: freedom of association is a basic liberty, which trumps trade-offs with social goods. Hence the appeal of the corrective justice theorist's bypassing approach. But if the classical liberal is right, then the corrective justice approach does not bypass the associational dilemma at all.

Perhaps the classical liberal is simply wrong that freedom of association is a simple trump right, and one that has such expansive scope. Michael Blake argues that freedom of association is just one in a "complex set of political rights – each of which is derived from a more basic moral norm, which is that governments should treat all those affected by their actions with equal concern and respect."²⁶ On this complex deontic model, freedom of association ought to be balanced against other rights, such as the right against discrimination. The Supreme Court implicitly employed this model in its seminal decisions regarding freedom of association.²⁷ But even if this model is correct, it does not yet offer a solution to the problem of sorting. It only tells us that some balancing needs to be done, not how to do it. A solution to the problem of sorting that goes down this path will need to tell us how this balancing should be done. To do so, it must answer questions such as: does the right to fair economic opportunity override others' right to exclude in the realm of friendships and relationships? To answer this, we fall back into the controversies attending the intimacy-exemption approach.

The terrain of bypassing, balancing, and exemption is highly unstable, and on each of these approaches, the problem of sorting remains intact as a dilemma. We can either accept that this is a true dilemma or look for a way to resolve it. The rest of this paper aims to do the latter. While the survey of extant approaches reveals issues with each approach, the lesson is not wholly negative; we also emerge from this survey with a clearer view of the normative criteria that a remedy for the problem of sorting should satisfy. It should justify a remedy for sorting,

²⁶ Blake 2012, p.751.

²⁷ In *Roberts v. U.S. Jaycees* (1984), the Court ruled that the Jaycees had no right to exclude women from their association because they were neither an intimate association, nor did their association have intrinsic or expressive value. Here, the Court ruled that the problem of sexual discrimination outweighed the Jaycees' associational preferences. In *Boy Scouts of America v. Dale* (2000), the Court ruled that the Boy Scouts had the right to exclude gay scout leaders from their association. Given the Boy Scouts' vision of ethical conduct, the forced inclusion of gay scout leaders would infringe on the Scouts' expressive freedom.

whatever its multifarious causes, and avoid hanging its normative warrant on the presence of historical injustice. It should avoid making judgments about the intimacy of associations. It should respond to the classical liberal's challenge, licensing interventions that this challenge proscribes, while taking seriously the value of self-determination, the value of which grounds freedom of association.

In what follows, I argue that we need a different conception of freedom of association for such a solution. The instability of extant approaches is shaped by the assumption that the negative conception is correct. The classical liberal finds firm footing on this terrain, which others must unsteadily negotiate. But the negative conception ignores the importance of the choice environment – in this case, the social environment – for freedom. A wider conception of freedom of association, which I call the *ecological conception*, can minimize the gulf between freedom of association and justice by drawing attention to how sorted social environments limit choice and freedom.

3. The ecological conception of freedom of association

Negative freedom presupposes the presence of a range of options. Without options, no choice is possible. Isaiah Berlin, perhaps the 20th century's canonical proponent of negative liberty, puts the point thusly: "The extent of a man's negative freedom is, as it were, a function of what doors, and how many, were open to him; upon what prospects they were open; and how open they are."²⁸ These options need not be limited by an external agent's explicit interference alone. John Stuart Mill, another quintessential proponent of negative liberty, argues that the "despotism of custom"²⁹, not agential interference alone, may also be a source of coercion that limits options.

Options are only genuine options when we have the ability to choose them. Some philosophers have therefore argued that freedom of association also has a positive face, which requires the government to institute the social and material conditions that enable us to choose our associates. Chiara Cordelli argues that, within the constraints of basic liberties, the

²⁸ Berlin 1969, xlvi.

²⁹ Mill 1859, Ch.3.

government should provide opportunities for associating by changing social norms that constrain such opportunities.³⁰ Julie Rose argues that freedom of association requires shared free time with one's associates, and that the government has the duty to institute a common period of free time.³¹ Katy Wells argues that an individual who is forced to share housing with others has their freedom of intimate association violated; the government should allow individuals to exercise lease-rights over a self-contained living space for a certain period.³² I take this approach one step further and argue that the social environment itself – the types of people that we have available to us – is necessary for freedom of association.

The *ecological conception of freedom of association* puts together these two faces of associational freedom to resolve the problem of sorting – on terms that the most stringent adherents of the negative conception should accept. And this acceptance would help license some interventions on sorting that are currently prohibited by the negative conception. The ecological conception argues that freedom of association requires a certain kind of social environment; sorted environments limit our associational freedom by limiting options, or by making some options too costly. I will say more about what the social environment is later, but first, let us first examine two commonly accepted conditions for choice.

3.1. The Choice Condition

We exercise associational choice on two levels: among types of people and among individuals. Churches might choose to exclude atheists; an all-male golf club might choose to exclude women. Individuals might choose to date or marry only those of their own race, or to exclude those of a certain race. This is to choose among types. An athletic club might choose to admit an excellent athlete and reject a mediocre one; a person might choose to befriend the humble neighbor over the condescending one. This is to choose among individuals. Just as it would seem obviously wrong for the state to dictate that someone choose one individual over

³⁰ Cordelli 2015, p.109.

³¹ Rose 2016.

³² Wells 2019.

another, it is also wrong for the state to dictate that one cannot choose someone of a particular type.³³

The state's interference is not all there is to the question of whether we are free to choose our associates. As Berlin suggests, to choose in a meaningful sense, one must first have a plurality of options to choose from. How many options? While it is difficult if not impossible to pin down a precise number, there should be at least more than one option. Call this the **Choice Condition**. If there is only one option available, one has not made a genuine choice in selecting that option, even if that option is in fact what one prefers. This is the most minimal condition for genuine choice. We need at least a plurality of individuals to choose from in order to have associational freedom, and these individuals need to be more than numerically distinct from one another. Someone who is the only human inhabitant on a deserted island lacks this freedom, and so does someone who lives in a world of clones with identical personalities. We can state this condition as follows.

Individual-Choice Condition: There is a plurality of individuals in the social environment, such that any individual who tries to form associations has a reasonable chance of forming an association with someone else.

We also choose among types. To motivate the Choice Condition as it applies to types, consider how it may apply to the trivial case of grocery shopping. Suppose I'm shopping for bread. There is only wheat bread available on the shelf – many loaves, but all of it wheat. I find wheat bread tolerable, so I buy a loaf, selecting among the individual loaves for the freshest one. In one sense, I have chosen to buy *wheat bread*. But in another sense, I haven't really chosen to buy *wheat* bread. Given my need to buy bread, and the fact that wheat bread was the only option available, I had no other choice. This is the case even if I do prefer wheat bread over alternatives, and even if there were hundreds of loaves of wheat bread available. If there had been pumpernickel, white, whole-grain, and challah available as well, but I nevertheless chose wheat, then I can be said to have freely chosen to buy wheat bread. My choice in the latter scenario would be a fuller expression of my preference. Similarly, freedom to choose our

³³ For this reason, among others, anti-miscegenation laws in the Southern United States that prohibited black-white interracial marriage violated freedom of association.

associates requires a plurality of types. To say that we have chosen one type over another requires that there is a plurality of types available to choose from. We can state this condition as follows.

Type-Choice Condition: There is a plurality of individuals belonging to different socially salient types in the social environment, such that any individual who tries to form associations has a reasonable chance of forming associations with a member of more than one type.

Socially salient types are classifications of individuals that are defined by socially salient properties. Properties are socially salient insofar as they have social ramifications or meaning.³⁴ I leave the task of developing a theory of social types to the social metaphysician, but for the purposes of this paper, it is sufficient to note that race, gender, class, religion, and culture are commonly accepted as socially salient types.

While I've stated the Individual-Choice and the Type-Choice Conditions as conceptually separate, there is in reality an interplay between the two. Our membership in socially salient types shapes our personalities, so individual variations in personality are likely to be smaller in an option set that consists only of people from one socially salient type, e.g. race or class. Thus an option set that consists solely of people of the same type constrains Individual-Choice as well.

What does it mean to have a "reasonable chance" of associating with more than one type of person? To illustrate, consider a scenario in which a social environment consists of two types, 99% Green and 1% Blue. On the surface, it seems that the Type-Choice Condition is satisfied. But no individual has a reasonable chance of associating with more than one type of person in this environment. Assume, for the sake of strengthening the argument, that both types are evenly distributed through the social environment. For simplicity and illustrative purposes, assume that both Blues and Greens are homogeneous along other social types (e.g. they are yuppies); that Blues and Greens can each only associate with X number of people; and that each

³⁴ "Types" are also interchangeably called "categories" in the social ontology literature, where categories are defined by properties that constrain and enable what individuals can do in a certain context. See e.g. Ásta 2018 for development of these ideas.

person has a search strategy that makes it equally likely that they will run into Blues or Greens, conditional on their proportion in the population. Now take the perspective of an arbitrary Green person: this person may want or prefer to associate with a Blue person, but other things equal, the likelihood that they can do so is 0.01; by contrast, the likelihood that they will associate with another Green person is approximately 0.99.³⁵ The converse is true from the perspective of an arbitrary Blue person: the likelihood of this person associating with a Green person is 0.99, while the likelihood that they associate with another Blue person is approximately 0.01.³⁶ While the concept of a “reasonable chance” is vague and would take us too far afield to develop, I hope that the reader will share the intuition that no one in this scenario has a reasonable chance of associating with more than one type of person. The reader may vary the demographic split to see how far the bounds of reasonableness intuitively extend. The general point served by this simple model is that merely having two types *present* in the population is insufficient to satisfy the Type-Choice Condition.

The Type-Choice Condition does not imply that freedom increases monotonically with the number of options available. At some point, the “paradox of choice” occurs; more choices induce anxiety and paralysis, which may compromise choice.³⁷ All I need assume is that genuine choice requires at least two options, likely with some substantial representation in the population, though it is difficult to pinpoint exactly how many options are necessary.

3.2. The Reasonable Costs Condition

On a general negative conception of freedom, freedom is at least an absence of relevant constraints on the agent’s action.³⁸ If one option or course of action is more constrained than another, then one is correspondingly less free to choose that option. Options can be constrained by costs, not just by being closed off. For example, if you need to work in order to reliably eat, it

³⁵ More precisely, $0.99 - (1/n)$.

³⁶ More precisely, $0.01 - (1/n)$. This probability may also just be 0.00 if there are only 100 people in the population.

³⁷ Schwartz 2004.

³⁸ Here is List and Valentini’s definition of negative freedom: “An agent’s freedom to do X is the absence of relevant constraints on the agent’s doing X.” (2016, p.1046)

becomes highly costly not to work; you are not really free to not work and spend all your time surfing instead. Thus, to make two or more options to count equally as options that one can choose between, they need to cost roughly the same amount, or at least have comparable costs within a reasonable range. We can apply this idea to associational options. Call this the

Reasonable Costs Condition:

For two or more associational options to count as genuine options on a par, they must have comparable costs within a reasonable range.

The Reasonable Costs Condition highlights the fact our associational options carry costs and benefits. Whether an option carries a cost or a benefit is a function of the type of association and the type of person that one relates to in that type of association. Some of these social costs have to do with what social scientists call “search frictions”: it simply takes more effort and social wherewithal to find and connect with someone outside the boundaries of a sorted environment, such as a segregated neighborhood. But even a spatially diverse environment can violate the Reasonable Costs Condition. For example, even in a diverse private school, it may be difficult for a student on financial aid and a wealthy student to befriend each other, as differences in social norms and spending capacity constitute hurdles to smooth communication and shared activities.

Other social costs stem from stigma. Some associations are unblinkingly accepted or expected; others are stigmatized. In such a situation, our options are not equal. In James Baldwin’s *Giovanni’s Room*,³⁹ David, the closeted bisexual protagonist, struggles to choose between Giovanni, a gay Italian bartender with whom he has a clandestine affair, and Hella, his fiancée. David is cognizant of the stigma attached to a public gay relationship, not to mention the likelihood that his father would cut him off financially if he found out. Besides, the prevailing social norms of the 1950s expect a young man of his age to marry soon and start a family. David tells Giovanni that they cannot have a life together and abandons him for Hella. While David is in many ways an unsympathetic character, his dilemma reflects the unreasonable costs that he faces: an inability to build a life accepted by mainstream society if he

³⁹ Baldwin 1956.

stays with Giovanni, and an inability to authentically be himself if he stays with Hella. Although the scale is tipped in favor of a relationship with Hella, which brings with it the considerable benefit of being accepted by society, both options are two horns of a dilemma – both have unreasonable costs. Unsurprisingly, David ends up alone.⁴⁰

3.4. The ecological conception, in sum

The Choice and Reasonable Costs Conditions provide additional conditions for freedom of association. An individual has ecological freedom of association if and only if:

(1) There is a plurality of individuals in the social environment, such that any individual who tries to form associations has a reasonable chance of forming an association with someone else (**Individual-Choice Condition**);

(2) There is a plurality of individuals belonging to different socially salient types in the social environment, such that any individual who tries to form associations has a reasonable chance of forming associations with a member of more than one socially salient type (**Type-Choice Condition**);

(3) There is a plurality of genuine associational options in the social environment. For two or more associational options to count as genuine options, they must have comparable costs within a reasonable range (**Reasonable Costs Condition**).

Only when (1) – (3) are fulfilled does the negative conception, particularly the right to exclude and the right against interference, secure self-determination.

The ecological conception takes individual freedom to be realizable only within a certain kind of social environment, since the social environment presents the menu of options from

⁴⁰One might question whether these agents really are unfree. On this line of questioning, since the agents have deliberated among the relevant options, they are making a genuinely free choice, and the problem is that they face a constraining choice situation. It is true that if autonomous deliberation is sufficient for freedom, then the agents are free. I set aside this notion of freedom here, as it is not directly relevant to the negative conception of freedom that is my target. The negative conception focuses on the presence of external constraints, as defined broadly by List and Valentini 2016. I thank an anonymous reviewer for raising this point.

which people choose their associates. But what is the social environment? It is not to be construed on a micro-scale, on which each club, each neighborhood, or each friendship network is a social environment. If this were how social environments were construed, we run headlong into the following challenge posed by Alexander: each social environment is also an association.⁴¹ Then we either have to interfere with associations for the sake of realizing freedom of association, or carve out some intimacy exemption. This move would bring us back to the earlier problems facing negative conception of freedom of association. It also seems unduly burdensome and intrusive: the state then has the duty to diversify every single micro-environment, peering into creedal organizations to determine their demographic makeup and making sure that each member had a diversity of options to choose from within that association. For example, religious organizations would then not be permitted to exclude non-worshippers. This would undermine the value of associational freedom, which is to allow people to realize their own form of life.

Instead, I construe the social environment on a macro-level. It consists of the totality of micro-environments, or associations: neighborhoods, schools, clubs, and informal social networks, etc. Each micro-environment contains a set of people that we might associate with, and together, these sets constitute the larger set of associational options. It is this larger set that is of concern. If all of these micro-environments are homogeneous in the same way (e.g. all have the same socioeconomic status), then the individual's ecological freedom of association is compromised. This construal captures the idea that each of us travels within various micro-social environments in the course of daily life, and forms associations in each of these. We are not locked in to any one micro-environment, so our options are not limited to those that are available in one micro-environment. But our options are limited if the macro-environment is homogeneous.

To illustrate, consider these two cities. In Sortopia, neighborhoods, clubs, and schools are sorted by class. Even the marketplace is economically sorted, such that people only go to grocery stores frequented by those of the same class. Thus, everyone only interacts with people

⁴¹ Alexander 2008.

of the same class, and anyone who tries to form an association will only form an association with someone of the same class. In Sortopia, residents are not ecologically free, as the macro-environment lacks a diversity of associational options, and the Type-Choice Condition is violated. In Mixtopia, by contrast, neighborhoods are sorted by race, and clubs by religion, but schools and the marketplace are integrated on those dimensions. There are no social norms or search frictions that impose unreasonable costs on certain associations. Anyone who tries to form an association has a reasonable chance of forming an association with someone of a different type. Mixtopia's residents are ecologically free.

The ecological conception does not displace the negative conception. Rather, the negative conception is nested within the ecological conception, which fleshes out the background conditions against which the negative conception gains its connection to self-determination. Without a plethora of associational options to choose from, freedom of association loses its grounding in self-determination. To choose in such an environment would be akin to choosing to walk down the only path available, unable to determine the direction in which one travels. By fleshing out these background conditions, the ecological conception displaces the implications of the negative conception for sorting – in particular, the implications of the right to exclude and the right against interference.

4. Resolving the problem of sorting

Sorting undermines ecological freedom of association. In sorted environments, the negative conception of freedom of association does not help secure self-determination. Freedom of association here cannot function as a bulwark against robust unsorting interventions.

Consider the phenomenon of economic residential segregation in the United States. I choose this example because it is not straightforwardly linked to historical injustice⁴², at least

⁴²As Krysan & Crowder 2017 show in a series of qualitative interviews, many people of color and those from working-class backgrounds choose to either stay in their original neighborhoods or move to neighborhoods with similar characteristics, even though they can afford to live elsewhere. Some of the reasons that interviewees cite include: feeling more comfortable around those who are similar to them, feeling uncomfortable in whiter, more privileged neighborhoods, and wanting to be close to friends and family.

not in all cases, and not to the degree that racial residential segregation is – yet it has consequences for access to opportunity and resources. In economically segregated communities, entire social environments are sorted on economic status – neighborhoods, schools, clubs, the marketplace, and social networks. If freedom of association is a cause of economic segregation⁴³, then according to the classical liberal’s challenge, the right to exclude and the right against interference should block the government from undertaking desegregation measures such as school integration and mandating mixed-income housing. But in a social environment where neighborhoods, schools, marketplaces, and other organizations are all sorted along the dimension of class, the Type-Choice Condition is undermined. Individuals do not have a reasonable chance of associating with those of a different class; this is a severe limitation of associational options.

Economic segregation can also undermine the Reasonable Costs Condition, either by stigmatizing inter-class associations, solidifying social norms that make it difficult to interact with people from different classes, or simply by making it more difficult to consistently find people of different classes to potentially associate with. Where the Reasonable Costs condition is undermined, the government has an associational freedom reason to interfere to shape social norms in ways that ameliorate these costs.

The ecological conception answers to the challenge from the classical liberal on the terrain of the negative conception itself, and avoids the pitfalls or gaps that challenge extant approaches. We can now examine whether the ecological conception satisfies the criteria for a remedy to sorting set out in Section 1. Does the ecological conception: rely on the presence of historical injustice to justify remedies for sorting? Does the ecological conception require judgments of intimacy? Does the ecological conception respond to the classical liberal’s challenge and license necessary interventions, while retaining the connection between freedom of association and self-determination? Let’s begin with the last and work back to the first.

⁴³ Note that this claim does not require the assumption that uncoordinated individual preferences are primarily responsible for residential segregation – these preferences are usually coordinated, and are mediated by policies on multiple levels of government. See Sharkey 2013, Rothstein 2017, Massey and Denton 1993.

The ecological conception licenses, and provides a pro tanto reason to require, interventions on the demographic composition of the social environment. Some of these interventions, such as affirmative action and school integration, have been offered by the corrective justice theorist, but justified on grounds that are too narrow and that do not respond to the classical liberal's challenge. Other interventions, such as mixed-income housing mandates, are necessitated by the ecological conception but not by corrective justice theories. Still other novel interventions are warranted by the ecological conception. Consider the digital environment, which has become an important element of the social environment. Machine-learning algorithms have been criticized as generating "filter bubbles" in which we only interact with people who are similar to us.⁴⁴ Such homogeneity does not seem traceable to historical injustice, only to the algorithmic codification of the assumption that we prefer those who are more similar to us.⁴⁵ Classical liberals may be concerned with intervening on the digital environment, for fear that doing so impermissibly interferes with associational preferences. And the intimacy exemption may rule out any interference on social networking sites or dating apps.⁴⁶ By contrast, the ecological conception necessitates regulations that unsort the digital environment, such as by limiting applications of the assumption of similarity.

The ecological conception thus removes a normative barrier to intervening on the problem of sorting, on grounds that adherents of the negative conception have reason to accept. Diverse social environments make it difficult for groups to hoard opportunities and resources, and make it more likely that people of different groups will interact, form associations, and share information and resources – thereby lessening the inequalities that result from associational life. I am not making the empirical claim that people *will* form associations with those who are unlike them, to the degree that there is no residual inequality that can be

⁴⁴ Pariser 2012

⁴⁵ <https://developers.google.com/machine-learning/recommendation/overview/candidate-generation>

⁴⁶ But see Bedi 2015 for the argument that justice requires such interference, as intimacy is a primary good. Also see Hutson et al 2018 for the argument that we should "debias desire" by designing platforms in ways that make it difficult to racially discriminate in the sexual realm.

attributed to sorting. I am merely offering a justification for policies that will make such a possibility a live one to liberals of all stripes.

Yet an elephant in the room remains. Does the ecological conception imply that the state can or should interfere with intimate associations⁴⁷? The ecological conception says that the right to exclude and the right against interference are not grounded in the value of self-determination in sorted environments. And if self-determination is what freedom of association attempts to secure, then it seems to follow that there is no such reason for the state to refrain from interfering in intimate associations. If true, this would lead to an illiberal conclusion. But we can step back from this precipice. It does not follow that the state is required or permitted to interfere with intimate relationships, or that individuals lose the right to exclude others from intimate relationships in sorted environments. Refer back to the Individual-Choice Condition. There is *some* choice realized even in personal relationships that are picked within sorted environments. Even within an environment sorted by race and class, people still freely choose within variations of personalities when they pick their friends and partners. Thankfully, we do not live in a world of identical clones, though the range of personalities available to choose from is likely much smaller in sorted environments than in diverse ones. The state has a duty to respect these choices and not to interfere on them – to the extent that they are choices. But these choices are not choices among types; they are choices among individuals. So both these things can be true at once: in sorted environments, we have choice among individuals, but no or little choice among types. Thus we retain the right against interference with respect to individuals, but lose the right against interference with respect to types. Since the problem of sorting is a problem of sorting among types, rather than among individual personalities, the fact that the ecological conception does not warrant interference on intimate associations does not weaken the view. And it can show why intimate associations are exempt from interference without carving out an intimacy exemption as such.

⁴⁷ I retain the term “intimate association” to track others’ usage in the literature, but want to note I do not subscribe to it either as a category that usefully marks out a special kind of association, or one that the state should have reason to use.

Corrective justice theories hitch remedies for sorting to the injustice of its causes. By contrast, the ecological conception is a purely patterned conception of freedom of association, which takes certain social patterns to be less conducive to freedom than others. The causal history of these patterns is irrelevant to the evaluation of freedom, though not necessarily to the evaluation of justice tout court. Both obviously unjust and seemingly innocuous forms of sorting are correlated with unjust distributions of goods and opportunities; if injustice results from sorting, it does not matter at the core whether that sorting is caused by the heavy hand of the state or it is just the emergent result of individual preferences. The ecological conception delivers an equal verdict on both forms of sorting on the grounds on freedom, and by doing so, enables interventions on both. While there is no doubt something *especially* bad about sorting that is caused by historical injustice, that simply adds to, rather than constitutes, the core problem at the heart of sorting. So, the ecological conception's causal agnosticism is an advantage rather than a disadvantage of the theory.

Another advantage of this causal agnosticism is that it is very difficult to empirically parse out the relative contribution of preference or structure for any given sorting pattern.⁴⁸ Indeed, many government policies that resulted in racial residential segregation were vociferously supported by whites as helping them realize their exclusionary associational preferences.⁴⁹ The ecological conception frees us philosophers from the need to evaluate social-scientific debates beyond our ken, and also frees us from the need to hinge our normative evaluation of a pattern with unjust consequences on complex empirical questions about its causes.

To what extent does the ecological conception solve the problem of sorting? While it provides an associational freedom reason to increase exposure to different types of people, it does not provide a justification to change friending bias such that people no longer associate homophilously. Perhaps people will still associate homophilously even in diverse social environments. We cannot force people to befriend those unlike themselves. But as Chetty et al have argued, both changes in exposure and friending bias are necessary for increasing economic

⁴⁸ Kossinets & Watts 2009, Shertzer and Walsh 2019.

⁴⁹ Kruse 2005.

connectedness.⁵⁰ The ecological theory faces a limitation here, as it only overcomes the negative conception's challenge to manipulating exposure. It may well be that we need to accept some residual degree of inequality – that left over by the degree of friending bias that is unresponsive to changes in exposure. I leave this open question to a later project. But even supposing that this is so, the ecological conception has shown us how wide the gulf is between freedom of association and justice – not as wide as previously thought, on the terms set by the negative conception.

5. Objections and clarifications

Suppose one begins from an unsorted environment that fulfills the ecological conditions. Yet one chooses to associate with people who are similar to oneself, such that over time, a sorted environment emerges. One might think that the ecological conception seems to generate a paradoxical result: that people become unfree as a result of associational choice. Call this the *paradoxical worry*.

The ecological conception would indeed say that this is a case in which one paradoxically chooses to be unfree. This is not a problem, but points to the dynamic nature of the conditions for associational freedom. To illustrate, consider cults or extremely insular religious communities. Many people join cults willingly, often in order to seek a community away from mainstream society. Many people derive great value from their membership in insular religious communities and choose to remain in them. But we might have the intuition that these individuals are unfree in some important sense. What grounds this intuition? The issue is not that they are brainwashed, which may or may not be the case. On the ecological view, individuals in these situations are unfree to associate because they have entered an environment in which they have no other choice but to continue to associate with those who are like them, should they eventually come to disprefer homogeneity.⁵¹ Freedom is a matter of what

⁵⁰ Exposure and friending bias are each about 50% responsible for the gap in economic connectedness, according to Chetty et al (2022b, p.126-127).

⁵¹ For example, it is extremely hard for ultra-Orthodox Jews to go “off the *derech* (path)”. Those who leave often face rejection from their communities, as well as the difficulty of integrating into mainstream society. See Brodesser-Akner 2017.

one might want to do, not just a matter of what one actually wants to do.⁵² Even sorted environments that are chosen constrain freedom by foreclosing options. One virtue of the ecological theory is that it can also help us see what is wrong with cults and other closed communities; the theory is not gerrymandered to fit the contours of the problem of sorting, but can also illuminate nearby cases.

In general, we often make a series of individually insignificant, preferred choices that have the perverse result of landing us in an undesirable end state, which is simply the aggregation of all these individual choices. This can occur for one individual over time, as in the case of someone who puts off exercising each day and as a predictable result, never reaches her fitness goal. Or it can occur for many individuals making simultaneous choices that result in collective harm, as with the impact of consumer decisions on factory farming or climate change. The ecological conception of freedom of association reveals that this freedom also the structure of the general paradox, in which a series of individually free choices becomes self-undermining.

Then there is the *symmetry objection*: sorting is not only caused or maintained by those with nefarious motivations, even if the most troubling instances are instances of exclusion by dominant groups. On this objection, the ecological conception is problematically symmetrical: it proscribes both ethnic enclaves formed out of affinity or solidarity, and unjust exclusion by powerful groups. Because the ecological conception is ahistorical and not moralized, in the sense that it does not take the moral worth of the association into account in evaluating associational freedom, it delivers the same verdict on both immoral associations and innocuous ones. One might think that the latter is morally permissible, even desirable, whereas the former is not. Clearly there is a moral difference between white flight and Black self-segregation, for example. But the ecological conception does not capture this difference. It seems to imply that what Tommie Shelby calls “egalitarian pluralism,” in which racial justice requires Blacks to be able to maintain their own communal and economic lives without access to white resources, is undesirable.

⁵² Van Parijs 1997. See also Pettit 2011 for criticism of Hobbes’ view that freedom only requires the choice that you prefer to be open to you.

The symmetry objection is partially right. While the ecological conception would permit some degree of self-sorting, such as living in an ethnic neighborhood, it does not permit the total sealing-off of homogeneous communities into homogeneous social environments, whatever their reason for existence. But this is not a problem for the ecological conception unless we expect all values to be maximizable together. Some values, such as cultural solidarity or even some conceptions of racial justice⁵³, may simply require a tradeoff with freedom of association. Freedom of association is only one value among many, and it may well not be the most important value. We sometimes have to make tradeoffs among values, but as this paper has tried to show, we have been premature to assume that sorting is a case that requires such a tradeoff.

6. Conclusion

The problem of sorting arises from several facts. First, there is group inequality. Second, we tend to associate with people who are similar to us. Third, economic connectedness between people of different types matters for realizing fair equality of opportunity. Thus our patterns of association result in the exclusion of certain groups from their fair share of opportunities and resources. But if our associational choices are protected by freedom of association, then we appear forced into a dilemma: either accept some degree of residual inequality, or interfere with associational freedom.

This article has argued that a more robust conception of freedom of association itself can minimize this dilemma. On the ecological conception developed here, our freedom to associate depends on the presence of different types of people in the environment. Sorted environments lack the conditions for freedom of association, and require interventions to diversify the demographic composition of the social environment. While it is not possible nor desirable to force people to befriend each other, we can engineer the social environment such that people can become more exposed to those of different types, making it more likely that such connections will form. There is an associational freedom reason to do so, not just reasons

⁵³ Shelby 2014.

of justice. Freedom of association, diversity, and justice can walk together much further than previously thought.

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