

THE CONSTITUTIONAL RIGHT OF ASSOCIATION. By David Fellman. Chicago: The University of Chicago Press. 1963. Pp. x, 110. \$3.95.

Professor Fellman's little book provides a helpful survey of the cases dealing with freedom of association. It is written simply enough to satisfy the demand of interested citizens who wish to be informed as to the legal principles applied in giving content to that "right of association" which has long been regarded as part of our constitutional heritage. Beyond that, however, the collection of cases and literature is sufficiently exhaustive to provide the base point from which legal scholars and social scientists may continue the research necessary for the "truly comprehensive study of the right of association" to which Professor Fellman looks forward in the Preface. (p. viii)

The book is divided into six chapters. The first gives a brief historical sketch. The second contains an analysis of the case law and statutes dealing with unlawful assembly and public meetings. Of particular interest in this chapter is his discussion of the right of association and the hostile audience—a discussion which he concludes by posing the dilemma: "Actually, there is no ready and easy solution to the problem of the hostile audience, for on the one hand the state has an incontestable duty to preserve order by controlling mobs, and on the other hand it is unthinkable that the right to hold a public meeting should be determined by the least tolerant people in the community." (p. 32)

The third chapter explores the "right of Americans freely to associate with whomever they choose" (p. 34), with emphasis on the problems posed by governmental regulations of political parties and trade unions. The fourth chapter deals with the use by government of exposure as a technique of regulating or repressing particular associations. Discussed in this chapter are the cases dealing with disclosure used as a weapon by the federal and state governments against such organizations as the Communist Party and with the use in certain states of disclosure as a means of deterring the activities of the N.A.A.C.P.

The fifth chapter bears the intriguing title of "The Bad Association and Bad Associates." Discussion in this too brief chapter is limited to anti-Klan laws, vagrancy statutes and public enemy acts. With respect to the problem of bad associates the author notes that most state courts refuse to enforce statutes making association with "bad" people per se a crime, concluding: "This is no more than right and proper, since in a country dedicated to respecting maximum personal

liberty it is unseemly to make it a crime merely to associate with 'wicked' people. As a matter of fact, even 'wicked' people have the same elemental right of human association that all other people enjoy, and ostracism or outlawry is wholly repugnant to our moral and legal traditions. It is time enough for the criminal law to intervene when actual actions of an illegal character have been taken." (p. 86)

The last chapter is a discussion of the rights of association in the European democracies. The bulk of the chapter deals with Great Britain, with less than four pages devoted to other countries. This brief survey indicates that whatever may be true in the day to day conduct of affairs in these countries, the right of association has less formal legal protection in Europe than in the United States.

In one major respect this book is a disappointment: Professor Fellman, one of the distinguished political scientists in this country, restricted his attention to legal doctrines. In the Preface he made the important observation: "Human associations involve sociological, political, economic, and psychological considerations of the greatest complexity." (p. viii) But he then added that "all I have attempted here is to examine the legal aspects of the subject." (p. viii) But what courts and legislatures need most in dealing with the issues posed with respect to the right of association is not legal analysis. Lawyers who can provide such analysis are legion. But who is exploring the sociological, political, economic and psychological considerations? It is in this area that Professor Fellman and his colleagues in the social sciences could make significant contributions to intelligent resolution of legal problems.

My concern with the extent to which political scientists focus on exploring legal doctrine is not a new one. In his presidential address to the American Political Science Association in December, 1962,¹ Professor Charles S. Hyneman recalled a book review by Justice (then Professor) Felix Frankfurter in 1932 urging political scientists and economists to quit trying to be lawyers and to provide analyses of the realities of governmental problems apart from legal doctrines.² In this address Professor Hyneman went on to outline the kinds of studies which could usefully be done by political scientists in relations to problems of freedom of speech and the press. All persons concerned with the important problems in constitutional law may hope that Professor Hyneman's address will have a strong influence on the course of political science scholarship.

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¹ Hyneman, *Free Speech: At What Price*, 66 AM. POL. SCI. REV. 847 (1962).

² Frankfurter, *Book Review*, 45 HARV. L. REV. 762 (1932).

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