RIGHTS OF ASSEMBLY AND PETITION

Background and Development

The right of petition took its rise from the modest provision made for it in chapter 61 of the Magna Carta (1215).[1577] To this meager beginning are traceable, in some measure, Parliament itself and its procedures for the enactment of legislation, the equity jurisdiction of the Lord Chancellor, and proceedings against the Crown by "petition of right." Thus, while the King summoned Parliament for the purpose of supply, the latter—but especially the House of Commons—petitioned the King for a redress of grievances as its price for meeting the financial needs of the Monarch, and as it increased in importance, it came to claim the right to dictate the form of the King's reply, until, in 1414, Commons declared itself to be "as well assenters as petitioners." Two hundred and fifty years later, in 1669, Commons further resolved that every commoner in England possessed "the inherent right to prepare and present petitions" to it "in case of grievance," and of Commons "to receive the same" and to judge whether they were "fit" to be received. Finally Chapter 5 of the Bill of Rights of 1689 asserted the right of the subjects to petition the King and "all commitments and prosecutions for such petitioning to be illegal." [1578]

Historically, therefore, the right of petition is the primary right, the right peaceably to assemble a subordinate and instrumental right, as if the First Amendment read: "the right of the people peaceably to assemble" in order to "petition the government." [1579] Today, however, the right of peaceable assembly is, in the language of the Court, "cognate to those of free speech and free press and is equally fundamental. . . . [It] is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions,—principles which the Fourteenth Amendment embodies in the general terms of its due process clause. . . . The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question . . . is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of

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[1577] C. Stephenson & F. Marcham, Sources of English Constitutional History 125 (1937).

[1578] 12 Encyclopedia of the Social Sciences 98 (1934).

[1579] United States v. Cruikshank, 92 U.S. 542, 552 (1876), reflects this view.