Public Domain versus Private Domain

First, an understanding of the difference between a *mala in se* crime and a *mala prohibita* crime is important. A mala in se crime is a "crime or evil in itself," e.g. murder, rape, bank robbery, etc. even under common-law. A mala prohibita crime is not a "crime in itself" but is only a crime because a state legislature or federal congress makes it a crime for the public welfare. For example, the federal government or a state may decide to license a certain profession that was legal to do before licensing. After the licensing statute, a person who conducts that profession without a license could be charged with a felony criminal offense for practicing without a license.

In the public domain, a person who advises another that his legal rights have been infringed and refers him to a particular attorney has committed a mala prohibita felony crime in the State of Virginia. But in the private domain of a First Amendment legal membership association, the state, "…in the domain of these indispensable liberties, whether of…association, the decisions of this Court recognize that abridgment of such rights." N.A.A.C.P. v. Button, 371 U.S. 415 at 421. The "modes of…association protected by the First and Fourteenth (are modes) which Virginia may not prohibit. N.A.A.C.P. v. Button, at 415. In other words, a private mode or domain is protected and is a different domain than a public domain. What was a mala prohibita felony criminal act in the public domain became a legally protected act in the private domain or private association. A mala in se crime is not legally protected in the private domain or private association.

Also, the private domain is referred to as a "sanctuary from unjustified interference by the State" in Pierce v. Society of Sisters, 268 U.S. 510 at 534-535. And as a "constitutional shelter" in Roberts v. United States, 82 L.Ed.2d 462 at 472. And again as a "shield" in Roberts v. United States, supra at 474.

In addition, the U.S. Supreme Court in Thomas v. Collins, 323 U.S. 516 at 531, specifically refers to the "Domains set apart…for free assembly." The First Amendment right to association creates a "preserve" in Baird v. Arizona, 401 U.S. 1.

The private domain of an association is a sanctuary, constitutional shelter, shield, and domain set apart and a preserve according to a number of U.S. Supreme Court decisions.