

RALLY ROUND THE FLAG, IF YOU PLEASE

Are the flags of the People's Republic of China (PRC) and of The Hongkong Special Administrative Region (HKSAR) made of such flimsy material that they have the ability to tear at the very thought that they may be desecrated?

Is freedom imperiled by the desecration of one or either of these flags?

Is the love of the majority of the peoples of the HKSAR and of the PRC at risk in the event that one Chinese political dissident, or one madman from another country, should decide to burn an emblem of national pride?

Surely it must be that the flags of the PRC and the HKSAR are merely symbols, nothing more than that; and, to have somebody desecrate them, for whatever reason, in no way can invalidate the fine virtues for which these flags have come to mean – if they are, in fact, held in high esteem, or should be held in high esteem.

One must raise oneself above emotion when a miscreant defaces or burns the flag of his country for one must look at the full ramifications of enacting laws, proscribing the desecration of the flag of a country.

Questions have been asked, very recently, as to where the line should be drawn on the inviolable Rights of Expression of the individual in a free society.

The answer must be that the line must not be drawn – because, by definition, those rights are, indeed, and must always be, inviolable.

The determination of the HKSAR Court of Final Appeal of December 15, 1999, making the desecration of the national and regional flags a crime, appears to be patently wrong; and, flies in the face of all that free nations hold to be sacred: The rights of the individual to be free; to exercise free speech; freedom of expression; and, freedom from fear.

Now that the proverbial Pandora's Box has been opened, all manner of horrors may fly out.

Mr Justice Andrew Li Kwok Nang, Chief Justice of the HKSAR, has determined that there should be restrictions on freedom of expression; and, proscribing the desecration of the flag of the PRC and the HKSAR is a permissible restriction.

Mr Justice Li's suggestion is that the flags of the PRC and the HKSAR are symbolic of national unity so that to desecrate the flags could, in some mystical way, endanger that unity.

He is quoted as saying: *'Protection of the national flag (of the PRC) and the regional flag (of the HKSAR) from desecration, having regard to their unique symbolism, will play an important part in the attainment of these goals.'*

'In these circumstances, there are strong grounds for concluding that the criminalisation of flag desecration is a justifiable restriction on the guaranteed right to the freedom of expression.'

Mr Justice Li's determination, no doubt, took into consideration the undeniable fact that Constitutional Law, by its very nature, must be organic in that it has the capacity to embrace growth.

In constitutional interpretation, what one must consider is that the whole is, always, greater than its parts.

It stands to reason, therefore, that the enactment of laws must be in harmony with constitutional precepts, for the constitution is the base upon which a free society is rooted.

No doubt, also, the Chief Justice was well aware that, in Sioux Falls, South Dakota, the US, the Minnehaha County Circuit Judge ruled that the burning of the flag of the United States of America was an undesirable action, but a legal form of protest, nevertheless.

Circuit Judge William Srstka Junior was sitting in the case of Mr Steven A. Knorr who was on trial for attempting to burn a US flag on October 24, 1998 in Sioux Falls.

Judge Srstka ruled that South Dakota's law, banning flag burning, was unconstitutional.

But the good judge, himself, did not agree with the burning of the US flag and lectured Mr Knorr on his disrespect for the flag, reciting a poem on the sanctity of the US flag.

Judge Srstka told the Court that the law couldn't forbid a protest just because it was, or may be, offensive to others.

In times of war, the flag of a country symbolises the ideals and/or aspirations of that warring nation. It has, always, been so from time immemorial.

It is a moral and ceremonial rallying point, around which the people of a warring nation gather to express, openly, their unity of purpose in the defense of their country; or, in times of peace, as a reaffirmation of the love that they bear for their country.

Chancellor of Germany during World War II, Adolf Hitler, employed the use of the Swastika as a symbol of German national unity.

Introduced in 1935, it remained as a symbol of unity until Germany was defeated in 1945.

The introduction of the Swastika was considered a masterly stroke on the part of Adolf Hitler, even by his enemies, because it appealed to the 1935 passions of Nazi Germany, during a period of great financial strife.

Today, the Swastika has come to be known as one of the most hated symbols of all time, a symbol of a governmental regime whose major premise has come to exemplify genocide.

Hitler had all the population of Germany swear allegiance to the flag of Germany with the open-hand salute ... while he burned about 6 million Jews in concentration camps throughout Germany and other parts of Europe.

Statistics indicate that his regime killed something of the order of 50 million people throughout Europe, during World War II, with some 20 million Russians, bearing the brunt of the madness of Hitler and his Nazi '*robots*'.

Hitler imposed forced patriotism on the population of Germany and in many of the countries that he conquered – and it appeared to appeal to those who embraced Nazi Germany, from waiters, to doctors, to jurists, and even to professors in universities.

He introduced, like the US, an Oath of Allegiance, and all members of the Nazi German fighting '*machine*' were forced to swear loyalty to Der Fuhrer.

For those people who refused to salute Der Fuhrer or to swear the Oath of Allegiance, there were legislative penalties.

It followed that forced patriotism provided the groundwork for the Nazi Regime to cause political protests to be subject to express governmental permission, as were parades in Germany, during World War II, those parades not organised by Hitler's henchmen.

And, thus, it followed that there was a substantial retreat from the concept of free expression.

Which was what the Hitler Regime required in order to obtain, and then to maintain, its aims and objectives.

The flag of the United States, on the other hand, was held in great reverence during the 2 World Wars.

It has been held in great reverence since it was first created by Betsy Griscom Ross in 1776, in point of fact.

With the lone exception of the period 1861 to 1865, when the US North and the US South had a bloody confrontation over, inter alia, States' rights, the average US citizen has held that his flag, Old Glory, needs protection.

But Old Glory does not need protection to the extent that that protection impinges on the rights of the individual to express himself, as Judge Srstka had made only too apparent, last December.

Old Glory is a symbol of freedom, but freedom not cherished, not protected, and not exercised, is freedom abandoned.

Since the HKSAR Court of Final Appeal has criminalised the desecration of the flag of the HKSAR and the PRC, will it, now, criminalise an act of refusing to salute the flags of these territories?

Logically, it follows that new flag issues will surface as the HKSAR Judiciary, like the high jumper, raises the bar of loyalty, love and reverence a little higher with each little jump.

What will constitute, at law, the flags of the HKSAR and the PRC?

Legal definitions must be explicit, not implicit, so that a person, who paints the likeness of the flag of the HKSAR, or the PRC, may not be deemed to have committed an act that is contrary to the law.

Insurmountable difficulties are guaranteed, now, to surface if the recent determination of the HKSAR KSAR Court of Final Appeal is challenged.

The territorial national anthem of the HKSAR has yet to be composed, but the PRC has had a national anthem for some years.

It is customary for nationalists to stand and to salute, or place their hands over their hearts, when their national anthems are played.

Will this be a legal requirement in the HKSAR, in due course?

If a man does not doff his hat to the national/territorial anthem, will that be considered an act, at law, equal to desecrating the national flag?

In 15th Century Catholic Europe, to paint a depiction of Jesus with his Disciples without Jesus' form, being taller than his Disciples, was considered a sacrilege and punishable at law.

It was held, in those days of religious fervour, that Jesus could never have been shorter in stature than any other living man, for he was the Son of God and, as such, stood taller and apart from all other men.

Today, the world looks at those days of Catholic fanaticism in wonder that the Courts of Europe could have thought in such a way.

The Court of Final Appeal's ruling with regard to the desecration of the flags of the PRC and the HKSAR is likely to have adverse effects, far beyond the issues before the highest court in the HKSAR.

Better it would have been never to have opened this box of horrors.

