



The Betty Letters

My Dear Grandchild,

It would appear to me, and any and all right-minded residents of this territory, that Hongkong is fast becoming a part of China, which is ruled by complaint and/or money. If a sufficient number of people complain, stentorianly and long, the Government of Hongkong and/or the Judiciary may be pressured into making changes to existing law(s), or, alternatively, be more generous in their collective interpretation of the law(s). If a very well-heeled mogul, on the other hand, wants to make another pile of money and is willing to share some of that money with either the Government of Hongkong or the powers that be in China, that mogul may well be able to obtain special concessions. In that case, of course, determinations in respect of the concessions to be awarded to the mogul for services to be rendered would boil down to how much money goes into whose pocket(s): The more money that is shared around, the easier and more expeditious would be the concessions. In order to bring about changes in Hongkong, one definitely has to have a sufficient large supply of money in order to fund a legal expedition to bring about change. The recent case in Hongkong of the quashing of the charges, brought against sixteen members of the Falun Gong, charges that go back in March 2002, those Falun Gong members, who had been found guilty of obstructing a public place, with some of their number assaulting some police officers, is interesting and, clearly, it is a victory for the Falun Gong. But, perhaps, the quashing of the charges was wrong, both at law and in the Honorable Justices' determinations of the law as it applies in that instance. The Court of Final Appeal of Hongkong overturned the convictions of the Falun Gong members on the grounds that Hongkong people had a right to hold peaceful demonstrations, that right, having been enshrined in The Basic Law of the Hongkong Special Administrative Region of the People's Republic of China. The Court of Final Appeal, in rendering its collective decision, said, inter alia: 'Those freedoms are at the heart of Hongkong's system and the Courts should give them a generous interpretation ...'. Some of the Falun Gong members had refused to cooperate with the police officers, following their arrests, and force had been found necessary in order to permit the police officers to carry out their sworn duty. In commenting on that matter, the Court of Final Appeal determined: 'If a person is subjected to an unlawful arrest by a police officer, the continued detention of that person, pursuant to the arrest, perpetuates the unlawfulness and constitutes a false imprisonment ... Persons unlawfully in custody are entitled to use reasonable force to free themselves ...'.

This is a nonsense, of course, because it pre-assumes that an accused person has the mental ability and the legal training to make a determination as to his guilt or innocence, in the first instance, and it permits, if it does not fully condone, also, total disregard for the law as well as disrespect for those members of the Hongkong society, who are empowered to uphold the law, in this case, the police officers who made the arrest. Whether or not a policeman is perpetrating an act in accordance with the law or contrary to the law, it is not for an accused to make a determination in respect of his/her acts and whether or not those acts were lawful: That is the bailiwick of a court of law, which renders determinations in accordance with the law. If an accused person, for instance, on seeing a police officer's hand, resting on his revolver in what is suggested to the accused as being in a threatening gesture, it does not give the accused the right to use, what he considers, equal or reasonable force in order to protect himself while being held in custody. If an accused, in such a situation, were to rush forward to

try to restrain the police officer from drawing his revolver from his holster, the changes are great that the accused with either be beaten, severely – if he is not shot to death by another officer. Respect for the law is paramount in an orderly society. If accused persons are permitted to make determinations as to lawfulness or otherwise of their detentions, it places the onus of responsibility on them to measure the weight of law as it applies to them and to take, what they consider to be, reasonable actions in order to counterbalance the unjustness/unlawfulness of the charges, levelled, or to be levelled, against them. I do not want to continue this theme for any great length of time because it is obvious that legal homicide is the ultimate and final road where is all leads, the conclusion of such an argument, being reductio ad absurdum.

If on the other hand, an accused determines not to exercise, or neglects to insist, on his right(s), it does not, and must not, follow that the accused has abandoned his right(s), as he perceives them to be, rightly or wrongly. Courts of law are established in the civilised world in order to redress the balance when, in the case of civil actions, aggrieved parties are unable to reach, between them, a compromise and, in the case of alleged criminality, Magistracies make determinations in accordance with established laws, which have been promulgated in accordance with the will of the people, that will, seeking what is commonly known as justice.

The Court of Final Appeal of Hongkong, in making its determinations in respect of the case, involving the Falun Gong members, had to listen to the arguments from solicitors, acting on behalf of the Falun Gong, and from the Attorney General's Office. It took three years for this case to reach the Court of Final Appeal and, on the basis of a cost of about four thousand dollars per hour for the Falun Gong's solicitor(s), the final bill must have been in the millions of dollars. (It may, of course, have been pro bona publico work for the solicitor/barrister, handling this brief on behalf of the Falun Gong, but of that I have no knowledge and, in any event, it is quite immaterial for this academic exercise) It follows that had not the Falun Gong a sufficient treasure chest to launch an appeal against the decision of a Magistrate in 2002, justice would not have been served in Hongkong. And so, it must follow, that justice is the preserve of the wealthy and/or the powerful, for there is nothing in the law of Hongkong that states that the Judiciary ought to be proactive: It is, by its very nature, reactive.

*Chew on this for hors d'oeuvres at dinner, tonight, My Dear Grandchild.
Love you,*

Chief Lady

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