

**BEWARE THOSE KNICKERS,
HANGING ON THE CLOTHESLINE!**

While freedom of speech can never be absolute, it appears only reasonable that it should be an absolute right and must where-ever it is possible.

For man covets, and jealously guards, his right to be free; and, his right to express free thought, openly.

Notwithstanding the enactment of any laws, proscribing freedoms, it behooves governments not to interfere with man's inalienable right to freedom of thought and freedom of expression.

The accepted international test of such lofty precepts is whether or not the words or deeds, said to be aimed at bringing about substantive evils to society, were present when those words or deeds were uttered.

This test is commonly referred to as the '*Clear and Present Danger Doctrine*'.

The celebrated US jurist, Mr Justice Oliver Wendell Holmes, Junior, put it this way: '*The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic ... The question in every case is whether (or not) the words used are used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the substantive evils that Congress has a right to prevent.*'

Which brings TARGET to the question of the day: Did the flying of the Taiwan flag on October 10 present any '*Clear and Present Danger*'? If so, to whom?

In living memory, every October 10, the Taiwan flag has been draped over select balconies, and has flown from handmade flagpoles in many parts of these 416 square miles as people, who, presumably, are loyal to the Kuomintang, showed their loyalty to Taiwan and, also presumably, to the late Generalissimo Chiang Kai Shek.

As soon as the Government of the People's Republic of China (PRC) assumed sovereignty over Hongkong from the British on July 1, 1997, the drafting, and subsequent enactment of legislation, making it illegal to burn or desecrate the flag of the PRC of the HKSAR, has been a sticking point of those who are determined on maintaining that freedom of speech inculcates the liberty to speak and to write without fear of government restraint.

Aside from the '*Clear and Present Danger Doctrine*', another test has come into being, a test which could be considered an extension of The Espionage Act (1917) of the United States of America.

This further test placed more restrictions on individual expression and begged the question as to whether or not an expression had a tendency to lead to results that are bad for the public.

It has been held that a State, in the exercise of its police power, may abuse this freedom of speech by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace.

In the case of Taiwan flags, flying cheekily in the HKSAR, in direct contravention to the laws of the HKSAR, it could hardly be said that their flying on October 10 was inimical to the public welfare, tending to corrupt public morals, incite to crime, or even disturb public peace.

If anything, in the HKSAR of today, those Taiwan diehards are looked upon as being anachronisms of a time, long gone.

It is laughable to think that anything political was ever hoped to be achieved by the flying of the flags.

More Jurisprudence:

Going further into US law, in 1940, the US Congress enacted The Smith Act.

This Act declared that it was unlawful to advocate the overthrowing of the government by force or violence.

From the promulgation of The Smith Act came a further refinement to the '*Clear and Present Danger Doctrine*': '*The Clear and Probable Danger Doctrine*'.

The difference, here, was that one had to ascertain whether or not the gravity of the evil, discounted by its improbability, justified such invasion of free speech as is necessary to avoid the danger.

The Supreme Court of the US strove to strike a balance between the value of liberty of expression and the demands of good order in a free society.

'*The Clear and Probable Danger Doctrine*' puts the onus of proof upon the government, which must demonstrate that '*Clear and Present Danger*' exists when a freedom is exercised.

The '*Preferred Freedoms*' approach has been important in constitutional law since World War II because it stresses, among other things, that civil liberties have a preferred position among other constitutional values due to the fact that they are a requisite to a democracy.

Interestingly enough, the PRC Government would be the first government in the world to state, categorically, that the composition of the government has its foundations in democracy; and, the Constitution of the People's Republic of China is more democratic than the Constitution of the United States of America.

And yet, freedom of expression in the HKSAR is restrained.

And few residents utter a dicky bird.

If free speech is to be linked to free expression – and it appears that this must be the case – then the judicial interpretation of the right of free speech (and free expression) has yet to produce a definitive determination at law.

Internationally, it is held in most Western democracies that seditious speech concerns language, which is aimed at tending to incite the violent overthrow of the government.

It would be ludicrous to suggest that the flying of Taiwan flags by a number of Chiang Kai Shek diehards, resident in the HKSAR, could be considered simultaneous acts, which are aimed at tending to incite the violent overthrow of the Government of the HKSAR, or of the PRC.

In 17th Century England, anybody found guilty of defacing the King's property could be transported for life.

This archaic law, translated into modern English, meant that the perpetrator would be shipped to Australia where he would live out the rest of his days in what was, then, the end of the world.

The law is still on the statute books, but nobody would think of trying to resurrect it.

The law is a wondrous thing, to be sure, because it allows for all manner of injustices to be made possible under the law ... and in the name of the law.

