

Note of Guidance:
Slavery as the Powers Attaching to the Right of Ownership

AHRC Research Network Grant
Jean Allain
October 2009

The following note is meant to give guidance in your thinking as to a possible topic to write about as part of the Project which looks, has as an end product, to publication in 2012 an edited collection of pieces on the parameters of the definition of slavery.

The expected result is meant to be the sum of its parts. Each participant has been sought out because of their past interests indicated that they bring something unique to this Project. It is hoped that we will be able to work together to fill in some of the blank spaces which exists between what is the hardcore of the exercise of the powers attaching to the right of ownership and its borders-lands.

Background

1. The Arts and Humanities Research Council (AHRC) Research Network Grant is meant to bring together approximately twenty individuals, experts in various fields of law and other disciplines from the United Kingdom and the United States to consider, then establish, what should be understood as the outer limits of the definition of slavery in international law.

2. The definition of slavery as set out in the 1926 Slavery Convention reads:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

3. Last year the High Court of Australia in *The Queen v Tang* ([2008] HCA 39) recognised that the definition applies to both *de jure* (re: right of ownership) and *de facto* ownership (re: the powers attaching to that right of ownership). This confirms my findings based on the negotiation of the 1926 Slavery Convention and 1956 Supplementary Convention. (See: Jean Allain, “The Definition of Slavery in International Law”, 52 (2009) *Howard Law Journal* 239). The High Court looks to a 1953 pronouncement by the United Nations Secretary-General as to the characteristics of what those powers attaching to the right of ownership might be; this are:

1. the individual of servile status may be made the object of a purchase;
2. the master may use the individual of servile status, and in particular his capacity to work, in an absolute manner, without any restriction other than that which might be expressly provided by law;
3. the products of labour of the individual of servile status become the property of the master without any compensation commensurate to the value of the labour;
4. the ownership of the individual of servile status can be transferred to another person;
5. the servile status is permanent, that is to say, it cannot be terminated by the will of the individual subject to it;
6. the servile status is transmitted *ipso facto* to descendants of the individual having such status.

The basis for this understanding of the UN Secretary-General was, it appears, that of the authority of the master over the slave in Roman law, the '*dominica potestas*'.

Possible Topics to Consider

Above all, each participant should seek to work within their own research agenda whilst as much as possible engaging with the overall topic of flushing out the outer limits of the definition of slavery as constituting the exercise of the powers attaching to the right of ownership. That said, for those amongst you who are wavering, might you consider the following:

For those interested in issue of ownership:

Topics should seek to deal with either an element of the hard core of what constitutes ownership or the border-line between ownership and something else. Thus the following questions might be considered:

- 1) What constitutes ownership?

Can one go beyond Honoré's classic eleven standard incidents of ownership (See: Guest (ed.) *Oxford Essays in Jurisprudence*, 1961)?; Does Honoré go too far? Consider any one of these eleven standard incidents in depth; thus what constitutes a 'right of possession' at its core, and at its outer-limits?

- 2) Are there other instances when one has *de facto* ownership as opposed to *de jure* ownership? Can one rightly exercise powers attaching to the right of ownership?
- 3) What are the outer-limits of ownership? When does ownership become something else?
- 4) With regard to the UN Secretary-General's pronouncement of these six characteristics of powers attaching to the right of ownership; what constitutes, for instance with regard to item 1 making something the 'object of purchase'. What is at the core and what are the outer-limits of making something the object of purchase?

For those interested in issues of slavery:

Topics should seek to deal with ownership of persons, what this constituted historically, and what it constitutes today in a *de facto* situations. What was/is the core of such ownership and what are the outer-limits of such ownership.

- 1) Working from the 1926 definition of slavery, what constituted ownership of a person? What were the powers attaching to such ownership when slavery was legal?
- 2) Where does one draw the line between slavery and lesser servitudes? At what point does forced labour or debt bondage manifest the exercise, by one person over another, of the powers attaching to the right of ownership?

- 3) Consider one of the incidents of ownership set out by Honoré (See: Guest (ed.) *Oxford Essays in Jurisprudence*, 1961), or by the United Nations Secretary-General and apply it to the case of a slave or slavery in a specific jurisdiction or time period.
- 4) Did slavery mean different things in different places and in different times, and to what extent was this tied to ownership?

Collaborative Work

The AHRC Research Network Grant is meant to allow us to network, to meet each other and to see where there might be common interests across disciplines and sub-disciplines. Papers will be presented for the first time in the Europe in the Summer of 2010. At this point, it may be that some people will choose to work together and co-author pieces and pooling their expertise. This would be welcomed and encouraged.