

Institution: Queen's University, Belfast
Unit of Assessment: 20
Title of case study: The Definition of Slavery: Contemporary Relevance and Legal Certainty
<p>1. Summary of the impact</p> <p>Allain's research on the legal definition of slavery has transformed the concept of slavery from being seen primarily as a historical phenomenon to being a tool of relevance in dealing with contemporary exploitive practices. As a result, courts, particularly the Australian Supreme Court (known as the High Court of Australia), have applied the law of slavery where previously they did not; and leading NGOs now use Allain's work as the basis of their understanding of slavery in their lobbying efforts, in mobilizing public opinion, and in providing direct services to affected people. Furthermore, Allain's research is the foundation upon which an initiative, which has raised in excess of \$2 billion to address contemporary slavery, is based. This private/public funding initiative which is designed to 'eradicate slavery in one generation' is utilising Allain's research as the baseline as to what constitutes contemporary slavery for its funding allocation for governments and NGOs in their anti-slavery work.</p>
<p>2. Underpinning research</p> <p>Allain's research focuses on providing a definitive legal interpretation to the definition of slavery. The research insights are given their fullest expression in Allain's monograph <i>Slavery in International Law</i> (2013) [REF 2 output]. He published another monograph - a legislative history of the 1926 Slavery Convention and the 1956 Supplementary Convention - <i>The Slavery Conventions</i> (2008) [1], an edited volume with Oxford University Press [2], a range of academic articles [3], and he was the lead author of <i>The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery</i> (2012) [4], discussed below.</p> <p>Allain began to work in this field when he joined the faculty at Queen's in 2004. Allain used his Law School 'start-up package' (£4,000 funding for new academic staff) to do preliminary archival research in Geneva. As a result of that archival research, he secured a book contract (Allain, 2008) and a grant from the British Academy (£7,500) to complete the archival research for the book on the definition of slavery. That British Academy research allowed him to spend the Autumn of 2007 at the Archives of the League of Nations and the UN Library in Geneva working through the records from 1920 onwards gathering material related to slavery produced by these two Organisations</p> <p>In 2010, Allain secured further funding from the Arts and Humanities Research Council (£48,000) and the Rockefeller Foundation (£5,400) to underpin the impact of his research. That funding allowed Allain to lead a group of academics and practitioners in developing to 2012 <i>Bellagio-Harvard Guidelines</i>. Those <i>Guidelines</i> were initially intended to assist judges in their decision making process on slavery related cases. However, a number of the NGOs and others involved in the production of those <i>Guidelines</i> thought that these were so useful that they have made them the 'benchmark' for anti-slavery lobbying around the world.</p>
<p>3. References to the research</p> <p style="text-align: center;">(a) Key Publications</p> <p>[REF 2 output] Allain <i>Slavery in International Law: Of Human Exploitation and Trafficking</i>, (The Hague, Martinus Nijhoff, 2013), 428pp.</p> <p>[1] Allain, <i>The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention</i>, (Martinus Nijhoff, 2008) 821pp.</p> <p>[2] Allain (ed.) <i>The Legal Understanding of Slavery: From the Historical to the Contemporary</i></p>

Impact case study (REF3b)

(Oxford University Press, 2012) 350pp.

[3] See for instances, Allain and Hickey, "Property Law and the Definition of Slavery", *International and Comparative Law Quarterly*, Volume 61, 2012, pp. 915-938.

[4] *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* (also translated into French); see: <http://go.gub.ac.uk/hrc-legalparametersslavery>.

[5] Allain, "The International Legal Regime of Slavery and Human Exploitation and its Obfuscation by the Term of Art: 'Slavery-Like Practice'", [2012] 10 *Cahiers de la recherche en droits fondamentaux*, 27.

(b) Key Research Grants

British Academy Small Grant entitled 'Suppression of Slavery at the United Nations' to undertake research and draft the legislative history of the 1926 and 1956 Slavery Conventions in Geneva from August to December 2007. (£7,500)

Arts and Humanities Research Council Research Network Scheme for a project entitled 'Slavery as the Powers Attaching to the Right of Ownership' to determine the legal parameters of the definition of slavery in international law for September 2009-May 2012. (£47,999)

Rockefeller Foundation, Bellagio, Italy; Conference Grant hosting 20 participants, at a symposium entitled 'Considering the Parameters of Slavery'; in September 2010. (£5,400)

The Leverhulme Trust, as a Research Fellow undertook a project entitled 'Slavery in Domestic Jurisdictions' which gathered legislation and case-law related to slavery with the assistance of a post-doctoral researcher from September 2010-May 2012. (£39,962)

(c) Evidence of Quality of Research

Allain's (2013) monograph is a REF 2 output. In addition, as discussed above, his research has attracted significant funding from a range of funders and has become a key reference point in the field, including having been cited by the highest court in Australia.

4. Details of the impact

Background

Prior to Allain's research, the 1926 definition of slavery had not previously been utilised by courts of law. Following the introduction of the 1926 definition, Slavery was only utilised by the League of Nations against non-Members, in particular Liberia and Ethiopia. It was deemed not to be applicable to Western states because colonial practices were instead termed 'forced labour'. In the early years of the United Nations, newly independent states attempted to argue that colonialism and apartheid should be regarded as slavery. These efforts were negated by Western States. As a result of this stalemate at the international level, slavery was not considered by courts from 1926 onwards [6].

It was only after the year 2000, as a result of developments in international criminal law, most notably the establishment of the International Criminal Court and a number of anti-trafficking conventions, that the early 21st Century saw courts trying slavery cases for the first time. However, in the absence of a clear historical understanding of the concept, in 2002 and 2005 the European Court of Human Rights and the International Criminal Tribunal for the former Yugoslavia (ICTY) came to diametrically opposed views as to the definition of 'slavery'.

The Director of the UK-based leading international anti-slavery NGO, Anti-Slavery International, Aidan McQuade, has noted that there was “*a fundamental conceptual issue at the heart of focus of Anti-Slavery. The very notion of ‘slavery’ was contested, having no true settled meaning. This has caused discrepancies in reporting parameters, confusion in advocacy and difficulty in bring awareness to the general public*”. With the notion of slavery re-emerging as an important legal, political and social phenomenon, Allain’s research (as attested below) has become the benchmark for any discussion as to what constitutes contemporary slavery.

The reach and significance of the impact of his research is evident across three areas; in the courts, in the world of NGO activism, and in the policy/funding community.

Legal Impact

Allain’s research has become a central reference point in the courts. By way of illustration, in 2008 Allain was contacted by the Australian Human Rights and Equal Opportunity Commission, asking whether he had any new material relating to his research on slavery as they were contemplating intervening in a case before the supreme court of Australia (known as ‘the High Court of Australia’). Allain provided the Commission with an advanced copy of his book *The Slavery Conventions*. On the basis of Allain’s legislative history of the 1926 and 1956 Slavery Conventions, the Commission intervened[i].

In its ground-breaking 2008 judgment in the case (*Tang*), the High Court agreed with Allain’s view on the definition of slavery. Allain’s work is discussed in some detail in the intervention (paras 38-47), in the oral proceedings (pages 59-68, 94-103, 110-111, 124-125) and in the judgement (paras 25-26, 33-34). As the transcript demonstrates, Allain’s test for establishing whether or not slavery exists in a specific situation was discussed [ii] and later utilised by the Court in its judgement. The High Court noted that it “*is important not to debase the currency of language, or to banalise crimes against humanity, by giving slavery a meaning that extends beyond the limits set by the text, context, and purpose of the 1926 Slavery Convention. In particular it is important to recognise that harsh and exploitative conditions of labour do not of themselves amount to slavery. The term “slave” is sometimes used in a metaphorical sense to describe victims of such conditions*”. The Court continued, by stating that in all countries of the world “*legal ownership of a person is impossible*”, but that the 1926 definition was also “*concerned with de facto slavery*”. The High Court of Australia then cited Allain’s research, and set out the legal test for determining contemporary slavery that of “*effective (although not legal, for that is impossible) ownership*” [iii].

As a result of the *Tang* judgement underpinned and justified by Allain’s research, individuals are being prosecuted and found guilty of enslavement. Before the arguments and subsequent decision in *Tang*, nobody in Australia had even been tried for slavery. Between 2008 and 2013 there have been six cases which have percolated up to the appellant level, while dozens of cases have been tried to conviction in lower courts [iv].

Civil Society and Policy Impact

In addition to his influence in the legal arena, Allain has also had significant impact in the civil society and policy community, particularly in underpinning the lobbying and advocacy work of NGOs. He is lead author on the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery*. These guidelines were originally written to offer an accessible but legally accurate guide to the 1926 definition of slavery for use in the courts. However, in part because they were written as part of a collaborative process with key activists and organisations in the field, they have become the central template around which such organisation construct their lobbying and advocacy work concerning the lived experience of contemporary slaves. Kevin Bales (Co-founder of Free the Slaves, the leading US-based anti-slavery NGO) has stated: “*It is hard to convey just how important this achievement is today and is likely to be in the future. In a fundamental way Allain’s*

definitional guidelines have built a solid bridge between law and reality, between policy and action” [vi]. In a similar vein, McQuade, of Anti-Slavery International, has summed up Allain’s contribution by saying: “*Allain’s research has given a solid foundation to our work at Anti-Slavery*”.

McQuade goes on to say that Allain’s research on the definition of slavery has had fundamental and wide ranging impact beyond his Organisation: “*this definition which had not been utilised previously is now the benchmark which informs not only Anti-Slavery’s work, but increasingly all research, social policy, and advocacy around modern-day slavery*” [v].

Funding Impact

Allain’s research is also the foundation upon which a global movement to eradicate slavery is based. That movement is an initiative of the philanthropist Andrew Forrest, who has partnered with the likes of Bill Gates, Richard Branson and others, to seek to achieve the stated aim of ‘eradicating slavery in our life-time’ (see: <http://www.walkfree.org/>).

An initial part of the work of this initiative has been to document the prevalence of contemporary slavery worldwide. Of course to make such a determination the *Walkfree* initiative needed to have an agreed definition of what constitutes slavery. *Walkfree* have adopted the *Bellagio-Harvard Guidelines* as its working definition of slavery and is producing what is term the annual Global Slavery Index, which estimates the prevalence of slavery in 162 countries. The value of that base-line data – based on Allain’s underpinning research – is, as the Attorney General of Canada has made plain, in its capacity to “*improve information sharing and raise greater awareness and provide policy makers with the foundation they need to prevent and eradicate human rights violations*” [vi].

The Index is part of a broader four-pronged strategy that also includes a popular movement, business-to-business pressure and the Global Fund for the Eradication of Slavery. While the initiative is in its infancy, it has already had a number of conspicuous successes. For example, it has been successful in getting Inditex SA, the world’s largest clothing retailer, to stop using cotton picked by forced labourers in Uzbekistan and helping Philippine activists pressure their Senate into ratifying the International Labour Organisation’s convention regarding the treatment of domestic workers. Allain’s research, developed through the *Bellagio-Harvard Guidelines* informs the decisions regarding the allocation of the Global Fund for the Eradication of Slavery. The Global Fund is being used to back anti-slavery groups and help give governments and activists the resources need to tackle the problem of modern-day slavery.

As Bales has noted: “*Commitments to the fund already exceed \$2 billion and it is expected to lever further sums from participating governments. It is another clear impact that the fund and its guiding research base rest upon the foundation of Allain’s work*” [vi].

5. Sources to corroborate the impact

[i] Email correspondence with the Australian Human Rights and Equal Opportunity Commission.

[ii] *The Queen v Wei Tang* [2008] HCA Trans 180, 102-103.

[iii] *The Queen v Wei Tang* [2008] HCA 39, 17-18.

[iv] <http://www.law.uq.edu.au/case-report-slavery-sexual-servitude-debt-bondage/>; and <http://www.austlii.edu.au/> (typing in: s 270.3 AND slavery).

[v] Letter from Director of Anti-Slavery International.

[vi] Letter from the Co-Founder of Free the Slaves.