THE REALM OF METAPHOR: SLAVERY 'THIS MOST ROTTEN BRANCH OF HUMAN SHAME'.[1]

Australian Labour Law Conference, Melbourne, 14-15 November 2008.

Introduction

The illegal nature of slavery, or having property in a person, presents some unique problems of definition. In a non-slave owning society, there are no slaves but there can be people who try and treat others like slaves. Should extreme proprietorial misbehaviour over others be called slavery or something else? This is the question that the High Court in the *Queen v Tang*[2] has recently answered. The High Court's decision in the *Queen v Tang* was delivered on 28 August 2008 and provides guidance on the content of the slavery offences in the Commonwealth Criminal Code ('the Code').

The main issue that the High Court had to consider in the *Queen v Tang* was the *mens rea* necessary for a person to be guilty of possessing a slave. As Justice Haynes observed during the hearing of the *Queen v Tang*:

> … *we are in the realm of discourse where the rights of ownership in question are the antithesis of rights that are legally enforceable so we have entered at least a realm of comparison perhaps a realm of metaphor. The rights or the powers in question … are by definition … powers that are not going to find legal support for their exercise*.[3]

Slavery as a discrete criminal offence is a metaphor that has been marshalled to perform the role of proscribing the boundary of permissible labour relations. In one sense, making illegal something that has been illegal for over 150 years defies logic but it seems to be working (after a lot of difficulties).

Background

The Macquarie Dictionary defines a slave as '*one who is property of and wholly subject to another*'. This definition equates with what the literature terms '*chattel slavery*'. Namely, all aspects of the person being under the control of another.
For most recorded history and for as long as there have been developed legal systems, a slave was recognised as a legitimate type of property. Many ancient and no so ancient legal systems had extensive provisions concerning

---

[1] William Wordsworth, *The Preludes* (1850s text) line 265. Wordsworth was directly involved in the first and most effective movement to abolish slavery in the English common law world.
[2] [2008] HCA 39 (28 August 2008).
[3] *The Queen v Tang* [2008] HCA transcript 180 (13 May 2008) at p. 22.

the treatment and maintenance of slaves. As Jean Allan has observed the essence of slave laws *'since the time immemorial has been the inability to treat slaves as property and thus to recognise in them their humanity.'* [4]

Modern legal systems do not recognise that one person is able to own another. Slavery is a practise that has progressively become more and more aberrant- let alone legal. One of the reasons why modern slavery or slavery like practises are considered so degrading and worthy of condign denunciation is that they are an entirely illegal and exploitive activity. The protections that existed for slaves in slave owning systems do not exist.

The 19th Century Slave Acts

Prior to 1999, no Australian Parliament had legislated on slavey and the relevant law was found in old Imperial statutes produced as the by-product of the abolitionist movement in the early 19th Century and generally designed to outlaw the slave trade rather than slavery like practises.

The abolitionist movement of the early 19th century had as its focus the slave trade. In 1824, the Slavery Trade Act abolished the slave trade in the United Kingdom and its colonies. The 1824 Act also contained a number of criminal offences concerning participation in the slave trade and dealing in slaves. In 1833, the Slavery Abolition Act abolished the institution of slavery in all British Colonies. The *Slavery Abolition Act* 1833 stated:

> *Slavery shall be and is hereby utterly and forever abolished and declared unlawful throughout the British colonies, Plantations and Possessions abroad.*

Abolition is a powerful statement - a person cannot be property. The law that recognises that a person is a person negates any exercise of proprietorial rights over another person. Any specific attempt to '*own'* the person will be a discrete criminal offence such as assault or trespass. Abolition has a simply and attractive reliance on equality before the law.

The 1824 Act created a number of offences associated with dealing with slaves but it and subsequent Imperial enactments never specifically criminalise possessing a slave. These enactments of the British Parliament were incorporated into Australian law and only repealed in 1999. Until 1999, these enactments of the British Parliament and some later ones were the law in Australia concerning slavery.[5]

---

[4] The ancient Roman Law concerning slavery was concerned in ensuring that there were well defined limits over what an owners could do to 'his' slave see: Jean Allain, *The Definition of Slavery in General International Law and the Crime of Enslavement within the Rome Statute*, guest lecture series of the office of the Prosecutor, the Hague, 26 April 2007, p 10

[5] The Australian Law Reform Commission, *Criminal Admiralty Jurisdiction and Prize*, report no. 48. See chapter 5, paragraph 100. The British Slave Act 1873 also applied to Australia due to virtue of 'paramount force'.

The Australian Law Reform Commission in its 1990 report on the *Criminal Admiralty Jurisdiction and Prize* noted that the 19th century Slave Acts were '*obscure*', '*archaic*' and:

> *… a number of their provisions related to circumstances and institutions that have either changed or long fallen into disuse. … The Acts are less certain in their application to slavery itself. Unless enslavement and purporting to own a slave represents dealing in slaves they do not clearly constitute offences. Slavery is abolished and declared unlawful in Australia under the Slavery Abolition Act 1933 but no penalty is prescribed. (paras 108 – 111)*

The *Criminal Code Amendment (Slavery and Sexual Servitude) Act* 1999 criminalised possession of a slave as a discrete form of prohibited behaviour. This Act repealed the previous Imperial Acts that comprised Australian slavery law and reiterated the abolition of slavery and for the first time introduced slavery and sexual servitude offences. In addition to being abolished slavery or more correctly possession of a slave was now a discrete offence.

International law aspect

The 19th century Slave Acts dealt with what is termed '*chattel slavery'*. Persons as property and more specifically persons as items of international mercantile trade. From the beginning of last century, there was awareness that slavery should encompass a broader array of oppressive labour relationships and cultural practises. Under the broad banner of slavery there have been international efforts to deal with many diverse types of exploitative human relationships. In the *travaux prepratoires* to the 1926 Slavery Convention there was discussion of abolition of slavery '*in all its forms'* and similar conditions including '*debt slavery*', '*the enslaving of persons disguised as the adoption of children'* and '*the acquisition of girls in the context of dowry payments'*.[6] More recently in 2000, a United Nations Working Group on Contemporary Forms of Slavery has examined apartheid, colonialism and incest under the guise of slavery.[7] Needless to say many of these more ambitious definitions of slavery have not gain acceptance but public international law contains some important principles in relation to the proscription of slavery. Australia's international obligations concerning slavery provide the constitutional basis for slavery offences.

The 1926 Slavery Convention ('the 1926 Convention') is the first of a number of significant international conventions that seek to suppress the slave trade and bring about the abolition of slavery '*in all its forms'* and related practices. The article 1(1) slavery in 1926 Convention has been highly influential. Slavery is defined as '*the status or condition or a person over whom any or all*

---

[6] Allain, as above, p.4.

[7] United Nation Sub-Commission on the Promotion and Protection of Human Rights, *Contemporary Forms of Slavery: Updated review of the implementation of and follow up the convention on slavery*, UN doc E/CN.4/Sub.2/2000/3/Add.1, 26 May 2000.

of the powers attaching to the rights of ownership are exercised.' The use of the terms '*status'* and '*condition'* is significant:

> *… 'status and condition' seeks to distinguish between slavery de jure and slavery de facto, whereby slavery as 'status' is a recognition of slavery in law; and slavery as 'condition' is to be under stood as slavery in fact.*[8]

This definition acknowledges that it is one thing to abolish slavery within a legal system but there can still be persons whose lives are lived under slave like conditions.

The Supplementary Slavery Convention 1956 ('the 1956 Convention') was adopted by the United Nations in 1956 and was intended to '*supplement'* and '*augment'* the 1926 Convention. Article 1 of the 1956 Convention deals with institutions and practises similar to slavery and calls on parties to '*progressively and as soon as possible'* abolish or abandon the following practices:

> ' … *whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:*
>
> *(a)* ***Debt bondage****, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;*
>
> *(b)* ***Serfdom****, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;*
>
> *(c) Any institution or practice whereby:*
>
> *(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or*
>
> *(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or*

---

8 Allain, as above, p.12.

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Most recently and significantly the 1998 *Statute of the International Criminal Court* ('the Rome Statute') lists *'enslavement'* as a crime against humanity. The Rome Statute defines enslavements at article 7(2)(c) as '… *the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children*.'

The International Tribunal for the Former Yugoslavia also has dealt with allegations of enslavements. The Appeal chamber's decision *Kunarac* and others[9] deal with a number of persons found guilty of a variety of crimes against humanity including enslavement. The appeal chamber noted that slavery encompasses '*any exercise of any or all of the powers attached to the rights of ownership'* and:

> *… in the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of owner associated with chattel slavery, but in all cases, as a result of the exercise of any or all of the powers attached to the rights of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of chattel slavery but the difference is one of degree.*[10]

The Commonwealth is of Australia is a party to the 1926 and 1956 Conventions and the Rome Statutes. Chief Justice Gleeson in the *Queen v Tang* after a lengthy discussion of the international jurisprudence and *Kunarac* noted that slavery as proscribed in the Criminal Code is '*sustained by the external affairs power'* and is '*not limited to chattel slavery*.'[11]

Recent Commonwealth legislation

Australian legal systems did not proscribed possession of a slave as a criminal offence. Until in 1999, the *Criminal Code (Slavery and Sexual servitude) Act* remedied this situation. The Act inserted a new *Chapter 8-Offences against humanity and related offences* into the Commonwealth Criminal Code. The Division has been amended on a number of occasions most notably in relation to Australia's ratification of the Rome Statute and by a

---

[9] International Criminal Tribunal for the former Yugoslavia, *Kunarac et al.* (IT -96-23-T & IT-96-23/1-T) Judgment, 22 February 2001.
[10] *Queen V Wei Tang*, as cited above, paras 118-119.

significant overhaul of the Chapter in 2005 with the insertion of various new slavery related offences including an offence called debt bondage in relation to oppressive contracts.

The relevant parts of the current Code Act concerning slavery read:

> ***270.1 Definition of slavery***
> *For the purposes of this Division, slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.*
>
> ***270.2 Slavery is unlawful***
> *Slavery remains unlawful and its abolition is maintained, despite the repeal by the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 of Imperial Acts relating to slavery.*
>
> ***270.3 Slavery offences***
> *(1) A person who, whether within or outside Australia, intentionally:*
> *(a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or*
> *(b) engages in slave trading; or*
> *(c) enters into any commercial transaction involving a slave; or*
> *(d) exercises control or direction over, or provides finance for:*
> *(i) any act of slave trading; or*
> *(ii) any commercial transaction involving a slave;*
> *is guilty of an offence.*
> *Penalty: Imprisonment for 25 years.*
> *(2) A person who:*
> *(a) whether within or outside Australia:*
> *(i) enters into any commercial transaction involving a slave; or*
> *(ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or*
> *(iii) exercises control or direction over, or provides finance for, any act of slave trading; and*
> *(b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading;*
> *is guilty of an offence.*
> *Penalty: Imprisonment for 17 years.*
> *(3) In this section:*
> *slave trading includes:*
> *(a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or*
> *(b) the purchase or sale of a slave.*
> *(4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.*
> *(5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).*

In 2005, the Criminal Code Amendment (Trafficking in Persons Offences) Act inserted a number of new offences into Chapter 8 of the Code. The new offences included a general trafficking offence that criminalised bringing a person to Australia by means of threats, force or deception, an offence of trafficking in children and deceptive recruiting for sexual services.

The 2005 Act also included a debt bondage offence that criminalises the use of exploitative debt contracts or arrangements that force a person into providing sexual services or other labour to pay off large debts.

The Code Act defines debt bondage as:

> … the status or condition that arises from a pledge by a person:
>
> (a) of his or her personal services; or
>
> (b) of the personal services of another person under his or her control; as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:
>
> (ba) the debt owed or claimed to be owed is manifestly excessive; or
>
> (c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt;
>
> (d) the length and nature of those services are not respectively limited and defined.

A person commits the offence of debt bondage if '*the person engages in conduct that causes another person to enter into debt bondage'*. Debt bondage is punishable by a maximum of 12 months imprisonment. Compared with slavery that has a maximum of 25 years imprisonment it is a relatively minor offence. Debt bondage could be described as '*slavery lite'*.

In the slavery prosecution of Trevor McIvor and Kanokporn Tanuchit in New South Wales, both accused were initially charged with debt bondage offences in relation to contracts with sex worker in their brothel in Fairfield in Sydney. The prosecution did not present an indictment that included a charge of debt bondage as an alternative to slavery when both were tried in the NSW District Court. In 2007, a jury convicted both of slavery offences. Other than this prosecution, the author is unaware of any other prosecutions for debt bondage.

On 29 August 2008, District Court Judge Taylor in the NSW District Court sentenced both McIvor and Tanunchit in relation to 5 counts of possessing a slave and 5 related counts of exercising a right of ownership over a slave to a cumulative sentence of 10 years and a non parole period of 7 ½ years. An appeal is highly likely but the NSW District Court judgment is available and provides a useful insight into slavery prosecutions in contemporary Australia.[12]

Slavery does appear to be the preferred charge and the Commonwealth Director of Public Prosecution has had some success in slavery prosecutions over the last 5 years.

In summary, the Code Act includes the following slavery related offences:

- slavery (penalty of up to 25 years imprisonment);
- sexual servitude (up to 15 years);
- deceptive recruiting for sexual servitude (up to 7 years);
- trafficking (up to 12 years);
- trafficking in children (up to 25 years);
- domestic trafficking in persons (up to 12 years); and
- debt bondage (up to 12 months).

The Queen v Wei Tang

This is the leading and very recent case concerning the meaning of slavery in terms of the Criminal Code. The High Court delivered its judgment on 28 August 2008.

Ms Wei Tang was the owner of a licensed brothel 417 Brunswick Street, Fitzroy known as Club 417. Wei Tang was convicted following a trial in County Court of Victoria of 5 offences as intentionally exercising over persons powers attaching to the rights of ownership contrary to section 270.3(1)(a) of the Criminal Code. Each offence related to women who were Thai nationals. They had all previously worked in the sex industry in Thailand. Each came to Australia voluntarily as '*contract workers'* at Club 417. There was no written contract, but there were agreed conditions.

[12] See the NSW District Court's website: www.lawlink.nsw.gov.au/ddcjudgments.

The women were brought to Australia by a syndicate and acknowledged a debt to the persons who brought them to Australia and thereafter '*owned*' them. The women appeared to be able to be purchased for $20,000.00. At least in relation to 4 of the women Wei Tang was an '*owner*'. The debt amount varied between $40,000.00 and $45,000.00. For each customer the women had sex with the debt would be reduced by $50.00. An amount of $110 was charged per customer, the brothel owner, Wei Tang, received $43 and the rest went to the owners. Wei Tang was the owner for at least 4 of the women also. Each '*service*' reduced the debt by $50.00. The women received no payment except they were allowed a free day when they could retain $50 from the $110.00 fee charged to the customer. The work regime was that the women would work 6 days a week. The women were not kept under lock and key and the trial judge found that they well nourished and provided for. The demands of their work meant that they were effectively restricted to the brothel premises.

All the women came to Australia aware of their condition as contract workers on the understanding that once their debts had been paid off they had the opportunity to earn money working as prostitutes on their own account. The brothels in which they worked had a combination of '*contract girls*' and other workers. The High Court rejected that significance of consent or that a contract or debt was involved as somehow antithetical with slavery.

Wei Tang was convicted after a lengthy trial in the Victorian County Court. The co-accused Paul Pick was acquitted of slavery offences. The trial judge sentenced Wei Tang to 10 years imprisonment with a single non-parole period of 6 years. It was the first conviction in Australia for slavery offences after a trial by a jury. In 2005, DS had pleaded guilty to 3 counts of possessing a slave: (*R v DS* [2005] VSCA 99).

The Victorian Court of Appeal found the direction that the trial judge had given to the jury in relation to the knowledge that a possessor of slaves must have defective. In essence, the Victorian Court of Appeal demanded that an accused must be able to be shown to have intentionally exercised a power that an owner would have over property and was doing so with the knowledge or in the belief that the person was no more than property. Justice Eames in the Victorian Court of Appeal noted:

> *… much more is required than that the person be shown to have been exploited abused or humiliated, whether physically, emotionally or financially. To be a slave, the person must be in a state where others deal with him or her as though he or she was merely property- a thing. For the exercise of the power to contravene section 279.3(1)(a) the accused must have knowingly treated the person as though he or she was the accused's property. Only when that state of mind exists is the exercise of the power referable to rights of ownership as the section requires.*[13]

[13] *R v Wei Tang* [2007] VSCA 134 (27 June 2007), paragraph 84.

One of the concerns of the Court of Appeal was the apparent problem of differentiating exploitive employment relationships and slavery. The Court of Appeal's solution was to demand that the slave owner must know that the slave is a slave and then exercise proprietorial rights in relation to the slave. The High Court disagreed.

The leading judgment is that of the then Chief Justice and gives a thorough review of international developments in the area and clearly notes that slavery is not limited to chattel slavery.[14] It is one of the last judgments of Chief Justice Gleeson. Chief Justice Gleeson states that what is relevant are the nature and extent of the powers exercised over the person alleged to be a slave.[15] As Chief Justice Gleeson and Justice Haynes in their judgments noted section 270.03(1) (a) of the Code criminalises '*possession of a slave or exercises over a slave any of the other powers attaching to the rights of ownership*.'

Chief Justice Gleeson noted that various exploitive labour practises are not necessary mutually exclusive with the international law definition of slavery although it was unnecessary and unhelpful to determine whether '*servitude, peonage, forced labour or debt bondage were forms of slavery*.'[16] Further Chief Justice Gleeson observed that it was not necessary for the prosecution to establish that Wei Tang had any knowledge or belief concerning the source of the powers exercised over the women.[17]

The Chief Justice noted:

> *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, but that sense is not of present relevance. Some of the factors identified as relevant in Kunarac, such as control of movement and control of physical environment, involve questions of degree. An employer normally has some degree of control over the movements, or work environment, of an employee. Furthermore, geographical and other circumstances may limit an employee's freedom of movement. Powers of control, in the context of an issue of slavery, are powers of the kind and degree that would attach to a right of ownership if such a right were legally possible, not powers of a kind that are no more than an incident of harsh employment, either generally or at a particular time or place.*[18]

---

[14] *Queen v Wei Tang*, as cited above, paragraph 20
[15] As above, paragraph 44.
[16] As above, paragraph 29
[17] As above, paragraph 51.
[18] As above, paragraph 32.

Accordingly, the High Court, apart from Justice Kirby who agreed with the Victorian Court of Appeal, characterises possessing a slave in terms of behaviours that can be seen *'as a power attaching to ownership'*.

Accordingly, slavery is a matter of degree in terms of whether behaviours will constitute an exercise of '*a power attaching to ownership'*. From a practical point of view, the fact that there are a number of behaviours that are together consistent with ownership will be significant.

Justice Hayne found 2 powers attaching to ownership of critical importance in the case:

> *There was the evidence that each complainant came to Australia following a transaction described as purchase and sale. There was the evidence of how each complainant was treated in Australia, in particular evidence about the living and the working conditions of each. And a critical feature of that evidence was that each woman was treated as having incurred a debt that had to be repaid by working in the brothel. Although there was evidence that one of the complainants was able to secure a reduction in the amount of her initial debt, there was no satisfactory explanation in the evidence of how the so-called debt of any of the complainants was calculated, or of what had been or was to be provided in return for the incurring of the obligation.*[19]

The Hight Court confirmed the conviction of Wei Tang. The sentence appeal of Wei Tang was remitted to the Victorian Court of Appeal and is to date unresolved.

Conclusion

The initial title of the paper was '*The re-emergence of slavery'*. What there has been in Australia is an engaging of the legislature, the police and prosecution authorities with issues associated with forced labour and human trafficking in Australia that is significant. There have been problems but there has been real progress in dealing with some highly unpleasant labour relationships through the proscription of slavery. In either the County Court in Melbourne or the District Court in Sydney lengthy trials involving allegations of maintaining slaves or sexual servitude are occurring on a semi regular basis. This did not happen 10 years ago.

Accordingly in this sense there has been a re-emergence of slavery. Significantly, the High Court has recently considered what it means to possess a slave in a modern non-slave owning society in its decision in *R v Wei Tang*. Wei Tang's case is an important decision and provides some clear assistance in effectively denouncing practises that involve one person seeking to treat another as property.

[19] As above, paragraph 160.

The approach of the High Court is also consistent with current international practise. Significantly enslavement is now an offence in the Rome Statute.

What judicial scrutiny shows is that slavery is a sophisticated and complex vehicle to denounce extreme labour practises. Exercising ownership over an individual is an activity that requires something to be done but some resort to what Justice Hayne calls the *'realm of metaphor'*. The author's personal view is that the very extreme nature of the concept of slavery is at times unhelpful. No person in a modern society will identify his or her behaviour as keeping a slave. Therefore it will be almost impossible for an offender to see himself or herself as a keeper of slave. Workers will be '*contract girl*s' or described in some other euphemistic or culturally specific manner. Crimes that the subject cannot clearly identify as committing can be considered problematic in terms of general and specific deterrence. In cases such as Tang and other prosecutions, the accused focussed on freedoms enjoyed by the slaves so as to somehow negate the accusation that slaves were being kept. Wei Tang's legal representative in the High Court, for example, sought to advance the argument that the definition of slavery in Australia was limited to chattel slavery. Significantly, in the Wei Tang prosecution both at the trial, Court of Appeal and in the High Court no significance was given to a dispute whether the complainants were in fact locked in their accommodation in the evening.[20]

Slavery prosecutions are very expensive and difficult prosecutions. The trials that have been conducted have been long and arduous affairs and only recently has there been a consistent pattern of success. The 2 recent successful trials involving Wei Tang and co-accused McIvor and Tanuchit both concerned oppressive contractual arrangements, Despite the Chief Justice's coyness in the Queen v Tang to list all the practises that constitute slavery, there is a credible legal argument that the Australian law against slavery includes now oppressive contractual arrangement,

It may be more effective in terms of dealing with such aberrant labour relationships to identify and proscribe the particular practises that constitute

---

[20] The Victorian Court of Appeal noted in its judgment (at para 191 and 192): '*There was a voluminous body of evidence in this case. ... Perhaps the most important was the contention that the women who were housed in Flat 5 had been locked in the flat when they were not working, a deadlock having been activated by their controllers, to which they did not have a key. Not all of the women gave evidence to that effect and the reliability of the evidence of the two who did was challenged in cross-examination. It is significant that when he sentenced the applicant, the trial judge rejected the evidence of the two women in this respect and expressly found that the women were not kept under lock and key. He did, however, find that at the two places where they were housed they were "effectively restricted" to the apartments and only left on rare occasions, with consent and supervision. It may be presumed that the jury came to a similar conclusion in convicting the applicant, but, even so, such a finding would not necessarily have been inconsistent with verdicts of acquittal had the directions given to them been accurate as to the law*.' The High Court did not address this issue in any respect.

exercising a power of ownership over an individual. To some extent the Parliament has acknowledged these problems and Chapter 8 of the Criminal Code now contains offences such as debt bondage. The problem with the debt bondage offence is that the maximum penalty (12 months) is completely inadequate in relation to the types conduct concerned. If the punishment could fit the crime, a more robust debt bondage offence could do much of the work that metaphor has been pressed into recently.

The recent international jurisprudence concerning slavery indicates the needs for such an offence in Australia if not for no other reason than Australian criminal law should reflect current international practise.

Despite these problems, juries appear to '*get it'*. Since Wei Tang, there have been a number of cases where juries have found the offence of possessing a slave proven.[21] Juries abilities may further indicate that there is a role for slavery offences. Every group of criminal offences needs the metaphorical capital offence and slavery is '*it'* in terms of proscribed labour relationships. Lastly, for labour lawyers, slavery represents the really '*bad stuff'* and should remind labour lawyers that the discipline involves a spectrum of human relationships.

[21]Fiona David, Trafficking of Women for Sexual Purposes, The Australian Institute of Criminology, Research and Public Policy Series, No, 95, p. 49