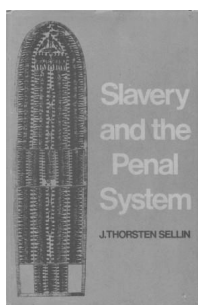


# Classic text revisited: *Slavery and the Penal System*

J M Moore reviews a classic text that provides insights that are invaluable in understanding our age of penal excess.



*In Slavery and the Penal System Thorsten Sellin set out to prove Gustav Radbruch's 1938 thesis that the modern 'criminal law bears the traits of its origin in slave punishments'. (cited at p. viii). Within a relatively short book Sellin charts the history of state punishment from Ancient Greece to mid-twentieth century America, a review that manages to take in the penal*

*systems of the Roman Empire and the European Middle Ages, as well as the development of Galley Slavery, Houses of Correction, the Bagnes, penal colonies in Siberia and Australia, and the US convict lease system. It is a massively ambitious work highlighting continuities in punishment from antiquity to modernity that show how key characteristics of penal systems have remained unchanged from their origins in slave punishments.*

*Slavery and the Penal System* locates the origins of the modern penal system in antiquity. The early chapters explore the legal systems of Ancient Greece, Rome and the Germanic Tribes of the Early Middle Ages and highlight how these societies dealt with 'offences' in three very distinct disciplinary domains. Firstly there was a very limited number of offences that directly threatened the state to which the state itself responded. Secondly there were disputes between freemen or their households which the state effectively mediated, but which were largely resolved in a restorative manner. Thirdly there was the largest domain, household discipline, through which the head of the household exercised virtually unlimited power. Whilst powerful relatives could provide limited protection for the head of the household's wives and children, slaves were left entirely at his mercy. In these slave societies this meant that, for the vast majority of the population, the penal system was a domestic one characterised by corporal and, on occasions, capital punishments. Over time, behaviour we now classify as 'crime' was transferred from this private domain into the public one through the development of criminal justice and penal systems. Sellin persuasively argues that this transfer was not the replacement of slave punishments by a new enlightened system of State punishment but instead that: 'The legislator simply made the practices employed

by slave-owners within the domestic establishment – flogging, castration, cutting off the hand, blinding, death, and physical force to elicit confessions – into public punishments and judicial procedures'.

Throughout *Slavery and the Penal System* it is the continuities in penal discipline that are evident to the reader. Sometimes these links are over centuries, for example between Ancient Greece where citizens were exempt from the torture that was considered essential to extracting the truth from slaves and Tsarist Russia where 'persons belonging to the nobility and the clergy, honourable citizens, and merchants of the two top guilds' were legally exempt from the judicial torture and corporal punishments that were routinely used on the bulk of the population. Other continuities highlighted are in the change from one regime to another, with, for example, the penal system of Soviet Russia having the same 'aims and functions' as its Tsarist predecessor. It is this emphasis on continuity that distinguishes *Slavery and the Penal System* from the far better known revisionist histories published around the same time.

By adopting a radically different approach, *Slavery and the Penal System* offers insights that both explain the history of punishment and contemporary developments in penality. Sellin highlights how the carceral and corporal have a shared history dating back to antiquity, and that the similarities between pre-modern and modern punishments are far greater than their differences. Whilst *Slavery and the Penal System's* impact on publication was limited and the book was largely overlooked in the excitement surrounding Foucault's *Discipline and Punish* (1979) and other revisionist texts, it provides insights that are invaluable in understanding our age of penal excess. Penal policies that highlight exclusion and the removal of civil rights, the torture of Abu Ghraib and Guantánamo Bay, the routine way that power distorts the criminal justice system and the massive over-representation of the powerless in the penal system cease to be aberrations when placed in the context of a genealogy of punishment linking the contemporary penal system to slavery and slave punishments. ■

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## References

- Foucault, M. (1979), *Discipline and Punish: the Birth of the Prison*, London: Penguin.
- Thorsten Sellin, J. (1976), *Slavery and the Penal System*, New York: Elsevier.