

# Fascism and Criminal Law

History, Theory, Continuity

Edited by  
Stephen Skinner



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## FASCISM AND CRIMINAL LAW

Fascism was one of the twentieth century's principal political forces, and one of the most violent and problematic. Brutal, repressive and in some cases totalitarian, the fascist and authoritarian regimes of the early twentieth century, in Europe and beyond, sought to create revolutionary new orders that crushed their opponents. A central component of such regimes' exertion of control was criminal law, a focal point and key instrument of State punitive and repressive power. This collection brings together a range of original essays by international experts in the field to explore questions of criminal law under Italian Fascism and other similar regimes, including Franco's Spain, Vargas's Brazil and interwar Romania and Japan. Addressing issues of substantive criminal law, criminology and ideology, the form and function of criminal justice institutions, and the role and perception of criminal law in processes of transition, the collection casts new light on fascism's criminal legal history and related questions of theoretical interpretation and historiography. At the heart of the collection is the problematic issue of continuity and similarity among fascist systems and preceding, contemporaneous and subsequent legal orders, an issue that goes to the heart of fascist regimes' historical identity and the complex relationship between them and the legal orders constructed in their aftermath. The collection thus makes an innovative contribution both to the comparative understanding of fascism, and to critical engagement with the foundations and modalities of criminal law across systems.

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## PREFACE

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This collection brings together a range of critical perspectives on the nature, operation and functions of criminal law and aspects of criminal justice under Italian Fascism and other authoritarian and repressive regimes. It is mainly the fruit of four panels that I convened at the second biennial conference of the European Society for Comparative Legal History in Amsterdam, July 2012, under the broad banner of 'Fascist Criminal Law'. My aim with the panels was to bring together colleagues working on the history of criminal law and its connections with political tyranny, in order to try to open some comparative conversations and, as far as possible, explore some of the related critical currents in legal history scholarship. The focus was on criminal law due to its particular significance under what may be described as generically fascist regimes, in terms of reflecting their ideological values and constituting a central component of their power structures, and in that light the panels addressed questions of historical interpretation, comparative significance and especially continuity with previous and subsequent criminal legal orders. Seven of the panel members have contributed to this volume, together with two additional scholars who subsequently joined us to provide the chapters on Spain and Brazil. A particular objective of this collection was to combine established and emerging voices in the field, and to include a range of systemic perspectives, both within and beyond Europe. As some contributors have occasionally needed to remind each other, this work is more of a beginning than an end, the start of something hopefully bigger, and one criterion of achievement is to open further avenues for research. Above all it is hoped that the collection will feed into ongoing work on a period of history that must not be forgotten, and underline the need for constant questioning of the genesis, substance, form and deeper discursive dimensions of (criminal) law, which may be an instrument of justice and protection, but has too often been a tool of power, control and repression.

Many thanks and acknowledgements are due for the support and encouragement I have received as this project took shape. I wish to thank from the project's earliest stages Michele Papa, Richard Ireland, Dirk Heirbaut and Cosmin Cercel; as the project developed, David Fraser, Thomas Watkin, Michael Stolleis and Karl Haerter; as the conference panels moved from suggestion to reality, Setu Masferrer and Jan Hallebeek; all participants in the conference panels themselves and those who came to listen and ask questions; and all contributors to this volume. In preparing the collection I am very grateful to the numerous expert reviewers across three continents who read and commented on draft chapters, but who must as agreed remain behind the veil of anonymity. Specifically in relation to my own

chapter, I am grateful to the British Academy for the Small Grant funding that enabled me to undertake research in 2011–12 at the University of Florence Social Sciences Library, the Max Planck Institute for European Legal History, Frankfurt and the British Library; I also thank the staff of those institutions for their assistance, and Cosmin Cercel, Catherine Dupré, David Fraser, Jenny McEwan and my external reviewer for their comments on various drafts. My thanks also go to Richard Hart, Rachel Turner and the rest of the team at Hart Publishing for their interest, support and assistance. Finally, I thank from the bottom of my heart Catherine Dupré, for everything, but more precisely her patience. The usual editorial caveat applies.

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**Stephen Skinner** is a Senior Lecturer in Law at the University of Exeter, UK. He has a PhD in legal history (European University Institute, 1998) and his research interests span comparative criminal law and history, legal theory, and European human rights law. He has published numerous articles in these fields, including 'Violence in Fascist Criminal Law Discourse: War, Repression and Anti-Democracy' (2013) 26(2) *International Journal for the Semiotics of Law* 439–58; and 'Tainted Law? The Italian Penal Code, Fascism and Democracy', (2011) 7(4) *International Journal of Law in Context* 423–46. He is currently focusing on anti-democratic ideology and criminal law under Fascism, and developing research on lethal force and the right to life.



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# Introduction: Fascism and Criminal Law, 'One of the Greatest Attributes of Sovereignty'

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STEPHEN SKINNER

Fascism has been described as 'the major political innovation of the twentieth century, and the source of much of its pain'.<sup>1</sup> Emerging in post-First World War Italy as the name of the political movement, and then self-styled totalitarian regime led by Benito Mussolini, as well as their ideological amalgam, 'fascism' soon became a term used to describe other similar authoritarian and repressive movements and regimes elsewhere.<sup>2</sup> Although fascism's history and meanings continue 'to launch a thousand books',<sup>3</sup> the specificities of its systemic construction and operation remain a rich vein for research, especially with regard to its legal order and from critical and comparative perspectives. This collection therefore seeks to provide new insights into the relationships between fascism and what is arguably the central component of state repressive power, namely the power to prohibit and punish, and the means for doing so through criminal law and institutions of criminal justice. These are fundamental dimensions of state-individual relations, and areas of inquiry that serve to highlight the ways in which fascist and closely related politico-legal orders conceived and determined the nature and boundaries of wrongdoing, the protection of state interests, and the limits of individual freedom. Indeed, as the Fascist Minister of Justice, Alfredo Rocco, famously observed when outlining Italy's new draft penal code in 1930:

In the new legislation the penal reform excels not only for its intrinsic grandiosity, but also for its indubitably superior importance in relation to any other legislative reform.

<sup>1</sup> RO Paxton, *The Anatomy of Fascism* (London, Penguin Books, 2005) 3.

<sup>2</sup> As discussed below; see text relating to nn 8–23. Following the general convention, capitalised Fascism is used here to mean the Mussolini regime, while uncapitalised fascism is used to indicate a more generic sense.

<sup>3</sup> RJB Bosworth, 'Introduction' in RJB Bosworth (ed), *The Oxford Handbook of Fascism* (Oxford, Oxford University Press, 2009) 1–7, 1.

The power to punish is in fact one of the greatest attributes of sovereignty, such that our ancestors considered it to be one of the most essential manifestations of imperium.<sup>4</sup>

The chapters in this collection thus provide a range of perspectives on fascism and criminal law in terms of their historical development and significance, theoretical dimensions, as well as their continuities and connections with previous, contemporaneous and subsequent legal orders. The first part focuses on aspects of criminal law and criminal justice under and after Italian Fascism, while the second part addresses questions of criminal law and justice under other regimes, covering interwar Romania, Franco's Spain, Vargas's Brazil, and interwar Japan, with comparative regard to conceptual models of generic fascism. The collection does not directly address issues of criminal law under the German National Socialist (Nazi) regime, partly because that system has been the main object of inquiry of the major recent studies of law and the 'darker past',<sup>5</sup> and partly because of its distinct approach to law, and other much-debated systemic differences.<sup>6</sup> Before outlining each chapter, it is necessary to look a little more closely at the nature of Fascism/fascism, how it is considered here in relation to the wider politico-legal landscape of the twentieth and twenty-first centuries, and why criminal law is particularly important.

First, any engagement with forms of fascism inevitably encounters the minefield of conceptual meanings and conflicting schools of thought that have developed in this area. Although a full critical review essay on the theoretical and historiographical terrain of debate about the meanings and historical significance of fascism is not possible here, an outline of some key axes of discussion may be useful.<sup>7</sup> As noted above, Fascism first took shape in post-First World War Italy.

<sup>4</sup> A Rocco, 'Relazione a sua Maestà il Re del Ministro Guardasigilli (Rocco) Presentata nell'udienza del 19 Ottobre 1930-VIII per l'approvazione del testo definitivo del Codice Penale' in Ministero della Giustizia e degli Affari di Culto, *Lavori Preparatori del Codice Penale e Del Codice di Procedura Penale*, Vol VII, *Testo del Nuovo Codice Penale con la Relazione a Sua Maestà il Re del Guardasigilli (Rocco)*, (Rome, Tipografia delle Mantellate, 1930) 7–28, 7. Author's translation.

<sup>5</sup> C Joerges and N Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: the Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Oxford, Hart Publishing, 2003) and D Fraser, *Law After Auschwitz. Towards a Jurisprudence of the Holocaust* (Durham NC, Carolina Academic Press, 2005).

<sup>6</sup> On criminal law under Nazism see T Vormbaum (M Bohlander ed, M Hiley trans), *A Modern History of German Criminal Law* (Berlin, Springer-Verlag, 2014) 172–208; J Rückert, 'Strafrecht zwischen Nationalsozialismus und Demokratischer Rechtsstaatlichkeit' in F Lanchester and I Staff (eds), *Lo Stato di Diritto Democratico dopo il Fascismo ed il Nazionalsocialismo* (Milan, Giuffrè, 1999) 159–211 and L Klinkhammer, 'Was There a Fascist Revolution? The Function of Penal Law in Fascist Italy and Nazi Germany' (2010) 15.3 *Journal of Modern Italian Studies* 390–409. On generic fascism, the possible distinction between fascism and Nazism, and Marxist/Communist interpretations, compare AJ Gregor, *The Ideology of Fascism: The Rationale of Totalitarianism* (New York, The Free Press, 1969) ix–xiv; Z Sternhell with M Snajder, and M Asheri, *The Birth of Fascist Ideology: From Cultural Rebellion to Political Revolution* (David Maisel trans) (Princeton NJ, Princeton University Press, 1994) 3–5; SG Payne, *Fascism: Comparison and Definition* (Madison, University of Wisconsin Press, 1980) 191–212; and R Griffin, *The Nature of Fascism* (London, Routledge, 1993) 1–25.

<sup>7</sup> See further Paxton, *The Anatomy of Fascism* 221–49; Griffin, *The Nature of Fascism* 4–15; and Bosworth, 'Introduction' 3–6.

Mussolini's *fasci di combattimento*<sup>8</sup> initially constituted an eclectic political movement with mixed ideas and motives, drawing on the support of war veterans, futurists and nationalists to become the first totalitarian regime, which rose to power in 1922 and held onto it violently until 1943.<sup>9</sup> However, although Fascism was a particular product of interwar Italy, it was not solely rooted in that period, nor did it dominate it utterly. As outlined below, Fascism's origins can also be traced back to earlier influences that link it with deeper currents of early twentieth-century modernity.<sup>10</sup> Moreover, as historical studies have shown, the connections and distances between the regime and lived realities in Italy at the time indicate the limits of its totalitarian rhetoric.<sup>11</sup>

Identifying the essence, or core tenets, of Fascism, and considering whether or not a generic label of fascism may be extended to other, similar regimes is a complex matter and an area of semantic, theoretical and ideological disagreement. Aside from its historically and system-specific Italian application, fascism has both a broadly indicative (and abused) sense, and a more narrowly defined political meaning. Broadly, as most commentators observe, the term fascism has become a general, pejorative term for any system, or exercise of power, that is contested for apparently dictatorial qualities and for critical purposes associated, however exaggeratedly, with fascism's historical manifestations of brutal authoritarianism.<sup>12</sup> Consequently, in popular usage the term has to some extent been hollowed out.

However, fascism is also generally agreed to have a generic application to certain sorts of – predominantly, but not only, historical – authoritarian political order, of which the specific nature and meaning are nevertheless debated.<sup>13</sup> In this regard, the term fascism may be used to describe systems that are characterised by a distinctively strong ideological basis,<sup>14</sup> and that are authoritarian, tyrannical or totalitarian, generally militaristic, revolutionary or reactive, and violent, although whilst each of these attributes may be a necessary element of fascism, they are not alone sufficient<sup>15</sup> or even consistent.<sup>16</sup> Whereas some leading scholars prefer to

<sup>8</sup> Paxton notes the origin of the term in the Italian *fascio*, meaning group or bundle; but it also draws on the Latin word for the lictor's symbol of a bundle of rods surrounding an axe, to represent unity and discipline, *The Anatomy of Fascism* 4. Also RJB Bosworth, *Mussolini's Italy: Life Under the Dictatorship* (London, Penguin Books, 2006) 121–22 and Griffin, *The Nature of Fascism* 64.

<sup>9</sup> Especially Paxton *ibid* and Bosworth *ibid*. The regime's totalitarian nature is also debated: with regard to law see especially P Costa, 'Lo "stato totalitario": un campo semantico nella giuspubblicistica del fascismo' (1999) 28 *Quaderni fiorentini per la storia del pensiero giuridico moderno* 61–174.

<sup>10</sup> For example M Neocleous, *Fascism* (Buckingham, Open University Press, 1997). Key (somewhat controversial) Italian studies include R De Felice (B Huff Everett trans) *Interpretations of Fascism* (London, Harvard University Press, 1977) and E Gentile, *Le origini dell'ideologia Fascista, 1918–1925* (Bologna, Il Mulino, 1996).

<sup>11</sup> Especially Bosworth, *Mussolini's Italy*.

<sup>12</sup> For a recent example of this criticism see R Griffin 'What Fascism is not and is. Thoughts on the Re-inflation of a Concept' (2013) 2 *Fascism* 259–261; also Griffin, *The Nature of Fascism* 1–4.

<sup>13</sup> Paxton, *The Anatomy of Fascism* 14–21; Griffin, *The Nature of Fascism* 4–15; Payne, *Fascism: Comparison and Definition* 191–212.

<sup>14</sup> Especially Griffin, *The Nature of Fascism* 15–19, 30–32.

<sup>15</sup> Paxton, *The Anatomy of Fascism* 216.

<sup>16</sup> Payne, *Fascism: Comparison and Definition* 5.

use the term fascism in a more open-textured way,<sup>17</sup> in effect encapsulating most of the above attributes, others underline a set of key dimensions and attributes, focusing on the perceived threats to, and needs and priorities of fascist movements.<sup>18</sup> Other commentators adopt a much narrower and more specific definition, which constitutes what is said to be the 'new consensus' interpretation, emphasising fascism's focus on the idea of revolutionary rebirth through the concise formula of 'a genus of political ideology whose mythic core in its various permutations is a palingenetic form of populist ultranationalism'.<sup>19</sup> The terrain of fascist studies therefore provides some common ground of predominant characteristics, but is also marked by significant variations on a theme and is fraught with terminological and conceptual peril. For the purposes of this collection's predominantly legal focus, the regimes considered in the second half are not approached in terms of a single definition, and each chapter engages with the issue of how to situate the system it addresses by drawing on elements of fascism studies to different degrees.<sup>20</sup>

Secondly, given this collection's critically oriented focus on fascism and criminal law, the deeper politico-legal nature of the triangular nexus among fascism, law, and pre- and post-Second World War liberal and democratic orders (which are themselves terms with shifting meanings from the late nineteenth into the twentieth centuries) also needs to be considered. The principal argument is that the forms of fascism and authoritarianism considered here, although constituting new extreme forms of polity, were nevertheless not entirely exceptional 'Others'. Despite such regimes' many differences from, and self-construction in opposition to, liberal and democratic orders, the general view here is that all of these types of system shared similarities and were related to each other, in terms of their origins, the various factors shaping them in the early twentieth century, and the means and strategies of power they adopted.<sup>21</sup> This is largely due to the ways in which all politico-legal systems – democratic and anti-democratic – in that period were influenced by and developed through the forces of crisis, rising nationalism and populism, technology and industrialised militarism, economic breakdown, war and modernism, which was itself moulded by the philosophical and experiential contexts of the end of the nineteenth century, and acutely crystallised by the First World War.<sup>22</sup> In that light, forms of fascism were not completely aberrant or dis-

<sup>17</sup> Especially Bosworth, 'Introduction' 1–7.

<sup>18</sup> Paxton, *The Anatomy of Fascism* 218 and 219–20; Payne, *Fascism: Comparison and Definition* 4–7.

<sup>19</sup> Griffin, *The Nature of Fascism* 26–52, 26. For Griffin, similar regimes that share this ideological core but which develop less radical pathways to power should be described as proto-fascist (ibid 50–51), and similar regimes that appear to imitate fascism as para-fascist (ibid 121). Also R Griffin, 'Introduction' in R Griffin (ed), *International Fascism: Theories, Causes and the New Consensus* (London, Arnold, 1998) 1–20.

<sup>20</sup> Although an aim here is to identify similarities and core concerns, as Paxton recalls from Marc Bloch, comparison may primarily serve to highlight differences: Paxton, *The Anatomy of Fascism* 20.

<sup>21</sup> Compare Bosworth, 'Introduction' 6.

<sup>22</sup> Neocleous, *Fascism* x–xi, 59–62; Griffin, *The Nature of Fascism* viii; R Griffin, *Modernism and Fascism: The Sense of a New Beginning under Mussolini and Hitler* (Basingstoke, Palgrave Macmillan, 2007).

connected eruptions, but products of the early twentieth century, interlinked with the web of influences and developments that were constituting modernity including, as discussed in some of the chapters in this collection, similar modes of governance through law. That is not to deny fascism's bloody impact on human history and individual lives, or to seek to whitewash it through relativisation, but to indicate its disturbing similarities and proximities.

Furthermore in this regard, although fascism appears to be a predominantly historical concern, as a relatively short-lived form of repressive and destructive political system that largely ended with the Second World War, understanding its origins and dynamics is still significant today. This is arguably most important where fascism was a key part of a specific state's history, and has left traces and shadows in its socio-political and legal order,<sup>23</sup> but fascism's broader connections with other forms of political system, especially democracy,<sup>24</sup> and thus its relevance for all such states, also demand attention.<sup>25</sup> Moreover, fascism is of concern today both because it is echoed, even emulated, in far right movements across the world, and because it lurks as a critical point of comparison at the edges of all states' repressive practices. This is not to say that fascism is the only 'dark past' or negative comparator, for democracies also have other shadows in their histories and have engendered their own forms of pain (such as slavery, empire, state violence, internal conflict and corruption), but it nevertheless remains a key point of reference.

In this light, turning to the third point addressed here, the collection's focus on criminal law is grounded on factual and theoretical reasons. In factual terms, the Fascist and other regimes discussed here all used criminal law and related judicial procedures to assert control, repress opposition and consolidate their power. As such, the nature and role of criminal law and criminal courts in fascist orders are core aspects of the latter's systemic actuality and methods of governance. In addition to its central role as an attribute of sovereign power and in more theoretical terms, criminal law also has a powerful representative and instrumental function. As David Garland emphasised in relation to processes of punishment more generally, 'official penal practice is particularly laden with social and cultural significance'<sup>26</sup> and operates together with other factors of an economic and

<sup>23</sup> With regard to law specifically see Joerges and Ghaleigh (eds), *Darker Legacies of Law in Europe* and for example L. Garlati (ed), *L'Inconscio Inquisitorio. L'Eredità del Codice Rocco nella cultura processualpenalistica Italiana* (Milan, Giuffrè, 2010).

<sup>24</sup> Such connections include both historical similarities among fascism and other political systems, and fascism's influence as a negative stimulus to later legal developments. This issue is apparent in the constitutional law of many European states, as well as in the genesis of foundational democratic normative safeguards, such as the European Convention on Human Rights. It is also apparent as a spectral antithesis in legal orders elsewhere: for example M. Raymond, 'Rejecting Totalitarianism: Translating the Guarantees of Constitutional Criminal Procedure' (1998) 76 *North Carolina Law Review* 1193–1263 and R. Primus, 'A Brooding Omnipresence: Totalitarianism in Postwar Constitutional Thought', (1996–97) 106 *Yale Law Journal* 423–57.

<sup>25</sup> Compare generally Fraser, *Law After Auschwitz*; Neocleous, *Fascism* x–xii; and Joerges and Singh Ghaleigh, *Darker Legacies of Law in Europe* ix for a distillation of the Habermasian rationale for engaging with the constitutive force of history.

<sup>26</sup> D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, Clarendon Press, 1991) 255.

political nature in 'a complex, aggregative process of world-making'.<sup>27</sup> Consequently penalty and criminal or penal law are symbols and tools of power, and their forms and functions provide significant 'windows' into a political order's constitutive elements and objectives.

With regard to forms, Ernst Fraenkel argued in his major study of the 'dual State' under dictatorship, focusing on Nazism, that that regime generally operated through a parallel system of laws and prerogatives.<sup>28</sup> However, whether and how exactly this concept of duality worked in other systems, and the extent to which the distinction between law and prerogative was clear-cut, has been questioned in subsequent studies.<sup>29</sup> With regard to law specifically, authoritative commentary shows that whereas Nazism sought to circumvent law to maximise the regime's power (through, for example, the erosion of legal certainty via analogical reasoning and the *Führerprinzip*), Italian Fascism sought to use law to achieve the regime's ends.<sup>30</sup> Recurrent issues in this collection are thus the forms of criminal law and courts, especially whether and if so how Fraenkel's duality – or something similar – operated.

In terms of how criminal law and courts were used, or rather, what perhaps were their objectives and functions, although Fascists claimed to prize violence and action above ideas and theories, the Mussolini regime had identifiable ideological ambitions and strategies of power, which had significant legal and institutional dimensions. This included its repressive laws and related Special Tribunal for the Defence of the State introduced in the mid-1920s, as well as subsequently the 1930 Penal Code and Code of Penal Procedure.<sup>31</sup> A leading figure in relation to all of these developments was the nationalist ideologue and Fascist Minister of Justice, Alfredo Rocco, whose ideas about the 'strong State' were particularly influential.<sup>32</sup> However, as with the nature of the regime in general, the extent to which such developments in criminal law were distinctive, innovative or even revolutionary, and what roles they played under the regime, are matters of debate, which are taken up in the first part of this collection.<sup>33</sup> Similarly, the second half

<sup>27</sup> Ibid 265–66.

<sup>28</sup> E Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York, Oxford University Press, 1941). Also Paxton, *The Anatomy of Fascism* 119–22.

<sup>29</sup> For example Klinkhammer, 'Was There a Fascist Revolution?' 405.

<sup>30</sup> Vormbaum *A Modern History of German Criminal Law* 172–208, 184; also Klinkhammer, 'Was There a Fascist Revolution?' 398.

<sup>31</sup> On other related issues see for example M Canali, 'Crime and Repression' in Bosworth (ed), *The Oxford Handbook of Fascism* 221–38, which concentrates on policing and political offences, and J Dunnage, *Mussolini's Policemen: Behaviour, Ideology and Institutional Culture in Representation and Practice* (Manchester, Manchester University Press, 2012).

<sup>32</sup> AJ Gregor, *Mussolini's Intellectuals: Fascist Social and Political Thought* (Princeton NJ, Princeton University Press, 2005); G Neppi Modona and M Pelissero, 'La politica criminale durante il fascismo' in L Violante (ed), *Storia d'Italia. Annali*, vol 12: *La Criminalità* (Turin, Einaudi, 1997) 759–847; S Skinner, 'Violence in Fascist Criminal Law Discourse: War, Repression and Anti-Democracy' (2013) 26 *International Journal for the Semiotics of Law* 439–58.

<sup>33</sup> Generally Klinkhammer, 'Was There a Fascist Revolution?'; M Sbriccoli, 'Giustizia criminale', in M Fioravanti (ed), *Lo Stato Moderno in Europa: Istituzioni e diritto* (Rome-Bari, Laterza, 2004) 163–205; G Neppi Modona, 'Diritto e giustizia penale nel periodo fascista' in L Lacché, C Latini, P Marchetti



discusses how criminal law and aspects of criminal justice reflected the values and priorities of the regimes considered there, how they were utilised in the consolidation of power, and how they might elucidate the deeper forces at stake in the emergence of fascism and its connections with new (modern) legal paradigms.

Furthermore, the criminal law sphere is significant not only because of the way it can help to indicate the key features of individual fascist orders, but also the nature and extent of their similarities to each other and to non-fascist systems, before and after the interwar period. Although fascist orders' self-perception and self-definition included a significant element of opposition to democratic liberalism, fascist and nominally democratic orders in this period were not entirely substantive opposites in the legal field. This includes matters of proximity in the forms, techniques and substance of penal law, as well as its very 'lawness', which all reveal disturbing contiguities among fascism's predecessors, apparent opponents and successors. In relation to the latter, criminal law has been both an instrument of change and justice in the aftermath of fascist violence, and a site of conflict in that transition, revealing problematic doctrinal, procedural and institutional tensions and continuities up to the present.

Turning to the chapters themselves, the collection's exploration of the relationships between fascism and criminal law is structured by system, broadly chronologically, and considers the criminal law field from three main angles. First, in six of the eight chapters (Chapters 2, 3, 5, 6, 7 and 8) the criminal law of four systems is considered in normative and substantive terms, together with its ideological and theoretical foundations, specifically under the regime in question and comparatively with regard to other contemporaneous orders. Secondly, in four chapters (1, 6, 7 and 8) criminal law is discussed in a broader criminal justice sense, involving the systemic and procedural dimensions of courts and judicial processes across four systems. In particular, these chapters consider the fascist technique of establishing parallel and overlapping criminal justice institutions and procedures, and the reasons why such regimes chose to rely on the mechanisms of law. Thirdly, three chapters (3, 4 and 8) relating to two systems, consider the role of criminal law in the transition from fascism to democracy, as well as an object of discursive reflection of, and on, that process. This involves especially the extent to which the connections between fascism and criminal law have been expunged, denied or recast retrospectively as part of broader post-war processes of political reconstruction and identification. A brief summary of each chapter suffices to highlight these perspectives and lines of argument.

In the collection's opening chapter, 'The Shadow of the Law: the Special Tribunal for the Defence of the State between Justice and Politics in the Italian Fascist Period', Luigi Lacché focuses on the establishment and role of the Special Tribunal for the Defence of the State, the court established by the regime in 1926 to try political offences and bolster its power. Lacché considers the symbolic