SHAME, BLAME AND CULPABILITY
CRIME AND VIOLENCE IN THE MODERN STATE

EDITED BY JUDITH ROWBOTHAM,
MARIANNA MURAVYEVA AND DAVID NASH

Shame, Blame and Culpability

This ground-breaking collection of research-based chapters addresses the themes of shame, blame and culpability in their historical perspective in the broad area of crime, violence and the modern state, drawing on less familiar territories such as Russia and Greece, not just on material from familiar locations in Western Europe. Ranging from the early modern to the late twentieth century, the collection has implications for how we understand punishments imposed by states or the community today.

Shame, Blame and Culpability is divided into three sections, with a crucial case study part complementing two theoretical parts on shame, and on blame and culpability, exploring the continuance of shaming strategies and examining their interaction with and challenge to 'modern' state-sponsored blaming mechanisms, including allocations of culpability. The collection includes chapters on the deviant body, capital punishment and, of particular interest, Russian case studies, which demonstrate the extent to which the Russian, like the Greek, experience needs to be seen as part of a wider European whole when examining ideas and themes.

The volume challenges ideas that shame strategies were largely eradicated in post-Enlightenment Western states and societies, showing their survival into the twentieth century as a challenge to state dominance over identification of what constituted 'crime' and also over punishment practices. *Shame, Blame and Culpability* will be a key text for students and academics in the fields of criminology and criminal justice, law and European history.

Judith Rowbotham is a Director of SOLON and one of the General Editors of the Routledge SOLON series and a noted interdisciplinary scholar working in law, history and criminology. Her research interests include the presentation or reportage of the legal process, including the criminal justice system, in various media formats (non-fiction, including newspapers, and fiction) and issues of gender, violence and cultural comprehensions of the law in action, from the late eighteenth century to the present.

Marianna Muravyeva is Associate Professor of Law at Herzen State Pedagogical University, St Petersburg, Russia, and a senior researcher at the University of Helsinki. Fluent in several languages and an acknowledged interdisciplinary scholar, she specialises in gender history, history of crime and violence against women in early modern Europe.

David Nash is a Director of SOLON and one of the General Editors of the Routledge SOLON series. He has researched and published extensively on the history of the secular movement in Britain as well as on the links between religion and crime. He is an acknowledged world expert on the history of blasphemy who has given advice on the issue to a number of governments in the Western world and who regularly comments on the matter for the media. He is currently working on a volume investigating twentieth-century dimensions of shame.

Routledge SOLON Explorations in Crime and Criminal Justice Histories
Edited by Kim Stevenson, University of Plymouth,
Judith Rowbotham, Nottingham Trent University and
David Nash, Oxford Brookes University

This series is a collaboration between Routledge and the SOLON consortium (promoting studies in law, crime and history), to present cutting-edge interdisciplinary research in crime and criminal justice history, through monographs and thematic collected editions that reflect on key issues and dilemmas in criminology and socio-legal studies by locating them within a historical dimension. The emphasis here is on inspiring the use of historical and historiographical methodological approaches to the contextualising and understanding of current priorities and problems. This series aims to highlight the best, most innovative interdisciplinary work from both new and established scholars in the field, through focusing on the enduring historical resonances to current core criminological and socio-legal issues.

Shame, Blame and Culpability

Crime and violence in the modern state

**Edited by Judith Rowbotham,
Marianna Muravyeva and David Nash**

Routledge
Taylor & Francis Group

LONDON AND NEW YORK

Contents

Notes on contributors

Julia Barlova is Associate Professor of History at the World History Department, Yaroslavl State Pedagogical University, Russia, specialising in problems of poverty in modern Europe and the history of social policy. The author of over forty articles in such research fields as the eighteenth century: British political and cultural history, her latest publications include 'The System of Poor Relief in Britain', in *Dialog so Vremenem: Almanach Intellektualnoi Istorii IVI RAN* [Dialogue with Time: Intellectual History Review, Institute of Universal History, Russian Academy of Sciences], 28, 2009; and 'Sir Frederic Morton Eden and His Work "The State of the Poor"', *Voprosi Istorii* [Issues in History], 5, 2009, 162–70. A monograph, *Punish or Help? Attitudes to Poverty and the Poor in Modern Britain*, will be published in 2012.

Antonella Bettoni completed her Ph.D. in legal history in 2004, and her present research interests include early modern and modern juridical doctrines of infamy, of 'social danger' and of certain aspects of the criminal trial (crime information, *res judicata*). Recently, she has started studying Home Rule implementation in Northern Ireland and the discipline of political crime in the United Kingdom. The author of numerous scholarly articles and chapters, she is currently a research assistant at the Istituto di Studi storici, University of Macerata, Italy.

Neil Davie is Professor of British History at Université Lumière Lyon 2, France. His research is mainly in the field of criminal justice history, particulary the history of criminology and penal policy in the Victorian and Edwardian periods. His published work includes *Visages de la criminalité: À la recherche d'une théorie scientifique du criminel-type en Angleterre, 1860–1914* [Criminal Faces: In Search of a Scientific Criminological Theory in England 1860–1914] (Kimé, 2004), and *Tracing the Criminal: The Rise of Scientific Criminology in Britain, 1860–1918* (Bardwell, 2005). He is currently working on a study of the penitentiary movement in Britain, 1770–1850, also to be published by Bardwells.

Paul Friedland is Associate Professor of History at Bowdoin College and a Visiting Fellow at the Centre for European Studies, Harvard University. His

research includes the history of France and Europe more widely (including Russia) in the early modern period and the eighteenth century, with a particular focus on spectacle and theatricality and the role of crowds and the state. His publications include *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford University Press, 2012), *Political Actors: Representative Bodies and Theatricality in the Age of the French Revolution* (Cornell University Press, 2002) and numerous articles.

Barry Godfrey is Professor of Social Justice at Liverpool University. He researches the history of crime, criminal justice policy in the realm of sentencing and the management of habitual and serious offenders, and has an interest in longitudinal studies of offenders and offending. His latest books, written with colleagues, include two volumes in the Clarendon Series in Criminology (*Criminal Lives*, 2007; *Serious Offenders*, 2010). In 2012, *Policing the Factory* will be published by Continuum.

Anne-Marie Kilday is a Director of SOLON and Professor of Criminal History at Oxford Brookes. Her specialist teaching focuses on the history of violent crime and its punishment in Britain and America. Her research focus is on the history of crime, examined through a range of different contexts and perspectives. She has published extensively on the history of criminality with a particular focus on female violence in the early modern period and beyond. Her most recent monographs include *Women and Violent Crime in Enlightenment Scotland* (Boydell, 2007) and (with David Nash) *Cultures of Shame: Exploring Crime and Morality in Britain 1600–1900* (Palgrave Macmillan, 2010). She is currently working on two book projects: *A History of Infanticide in Britain since 1600* (forthcoming, Palgrave, 2013) and *The Violent North? A History of Crime in Scotland since 1600* (forthcoming, Routledge, 2014). Professor Kilday is an editor of the SOLON e-journal, *Law, Crime and History*.

Boris Kolonitsky is a Vice-Rector and Professor at the European University in St Petersburg. A specialist in Russian pre-revolutionary political history, he is the author of over one hundred publications. His books include *Simvoly vlasti i bor'ba za vlast': K izucheniiu politicheskoi kul'tury Rossiiskoi revolutsii 1917 goda*]Symbols of Power: The Political Culture of the Russian Revolution of 1917] (Dmitry Bulanin, 2011); *'Tragicheskaia erotika': Obrazy imperatorskoi sem'I v gody Pervoi mirovoi voiny* ['Tragic erotica': The Images of Russian Royal Family during the First World War] (Novoe literarutnor obozrenie, 2010); and (co-authored with Orlando Figes), *Interpreting the Russian Revolution: The Language and Symbols of 1917* (Yale University Press, 1999).

Katarina Mousadakou is a professional historian, with an MA in Modern and Contemporary Greek History from the University of Athens, where she is also a Ph.D. candidate. Her research interests cover many aspects of social history: the history of private life, social institutions, education, police and

justice, and gender history, as she speaks Greek, English, French and Italian. She has undertaken research projects with the National Hellenic Research Foundation, the Academy of Athens, the University of Athens, the Athens Byzantine Museum and the Music Library of Greece, regularly presenting papers at international conferences. Publications include 'Community and Embassies of the Greek regions under Venetian rule. Aspects of institutions of social concern', *Eoa and Esperia*, 7, 2007, 191–212.

Marianna Muravyeva is Associate Professor of Law at Herzen State Pedagogical University, St Petersburg, Russia, and a senior researcher at the University of Helsinki. The Russian local organiser of the SOLON conference in St Petersburg, she specialises in the gender history, history of crime and violence against women in early modern Europe and is the author of over one hundred publications, including edited volumes such as *Vina i pozor v kontekste stanovleniia evropeiskikh gosudarstv novogo vremeni (XVI–XX vv.): sbornik statei* [Shame, Blame and the Modern State (XVI–XX centuries)] (European University Press, 2011); *Gendernaia istoriia: pro et contra* [Gender History: pro et contra] (Nestor, 2000). Recent chapters and articles include 'Le viol dans les codes militaires russes de Pierre le Grand à l'Armée rouge', in Raphalelle Blanche et Fabrice Virgili (eds), *Viols en temps de guerre* (Payot, 2011) and 'Sexual Variations', in Julie Peakman (ed.), *Cultural History of Sexuality*, Berg, 2010, Vol. 4.

David Nash is a Director of SOLON and Professor of History at Oxford Brookes University, a Fellow of the Royal Historical Society and one of the General Editors of the Routledge SOLON series, Explorations in Crime and Criminal Justice History. He has researched and published extensively on the history of the secular movement in Britain as well as on the links between religion and crime. He is an acknowledged world expert on the history of blasphemy who has given advice on the issue to a number of governments in the Western world and who regularly comments on the matter for the media. His publications include two ground-breaking monographs on blasphemy, *Blasphemy in Modern Britain 1789–Present* (Ashgate, 1999); *Blasphemy in the Christian World* (Oxford University Press, 2007); and (with Anne-Marie Kilday) *Cultures of Shame: Exploring Crime and Morality in Britain 1600–1900* (Palgrave Macmillan, 2010), and he is currently working on a further volume investigating twentieth-century dimensions of shame.

Natalia Pushkareva is Professor and Head of the Department of Gender Studies at the Institute of Ethnology and Anthropology, Russian Academy of Sciences, and President of the Russian Association of Researchers in Women's History. A specialist in the history of Russian women, she has written 8 monographs and over 450 articles, chapters, etc. Her key works include *Zhenshschiny Drevnei Rusi* [Women of Ancient Russia] (Mysl',

1989); *Russkaia zhenshschina: istoriia i sovremennost* [The Russian Woman: Past and Present] (Ladomir, 2002); *Women in Russian History from the 10th to the 20th Century* (M.E. Sharpe, 1997).

Judith Rowbotham is a (founding) Director of SOLON, one of the General Editors of the Routledge SOLON series, Explorations in Crime and Criminal Justice History, a Reader in Historical Criminal Justice Studies at Nottingham Trent University and a Fellow of the Royal Historical Society. Her research interests include the presentation or reportage of the legal process, including the criminal justice system, in various media formats (non-fiction, including newspapers and fiction) and issues of gender, violence and cultural comprehensions of the law in action, from the late eighteenth century through to the present. Her long-term research project focuses on the exporting of legal cultures to the British Empire and its modern legacies. Publications include *Crime Intelligence, A Socio-Legal History of Crime Reportage from c.1760 to the Leveson Enquiry* (with Kim Stevenson and Samantha Pegg, forthcoming Palgrave, 2012); *Gender, Violence and Visibility: Interpreting and Managing Public and Private Violence c.1760–2011* (forthcoming, Routledge SOLON, 2013) as well as numerous articles.

Aris Tsantiropoulos is Assistant Professor of Social Anthropology at University of Crete (Greece) and has conducted fieldwork and archival research in Crete. His current research uses historical and psychoanalytical anthropology, discourse analysis to focus on interconnections between forms of local violence and the state and social memory (especially in its connection with traumatic facts). Publications include *The Blood-feud in Contemporary Mountainous Crete* (Plethron Editions, 2004); 'Collective memory and blood feud: the case of mountainous Crete', *Crimes and Misdemeanours*, 2(1), 2008; and 'Social and economic transformation in central mountainous Crete: the village Zoniana as a case for a preliminary approach', *Ariadni*, 13, 2007.

Preface

Towards a history of shaming and blaming

Xavier Rousseau

Since the 1980s, the argument for a return to defamatory and stigmatising penalties in criminal justice management has made a reappearance in the West.[1] This resurgence seeks to affirm the legitimacy of public sanctions against behaviours judged to be anathema to law as well as to society. Such impulses are a response to a perceived failure of preventive and reconciliatory policies, particularly incarceration. At a time when the media consistently highlights the negative impacts of crime, resorting to an insistence that miscreants are publicly vilified and/or publicly express their culpability offers a way of escaping the modern reliance on the monopoly of prison sentences as the only available sanction in law. It also enables the 'public' to participate in what has come to be termed 'restorative' justice. In the United States, for example, four categories of delinquents have become the key targets for such defaming penalties: first-time offenders and juveniles, minor offenders, sex offenders and, more recently, commercial offenders.

However, criticisms have also arisen relating to the uncontrollable (and unpredictable) character of those penalties that the state 'legitimately' delegates to the population at large. Such penalties arguably subvert the fundamental ethics on which American democracy was built – i.e. 'restraint and sobriety'.[2] Jurists, philosophers and sociologists have noted the extent to which a return to defamatory penalties represents a deep rupture with the penal philosophy inherited from the eighteenth century. Many Enlightenment philosophers, whether upholders of the *Lumières*, the *Aufklärung* or English liberal rationality, denounced defamatory penalties that drew on concepts such as the primacy of the individual will (moral freedom or religious choice) or pointed to conduct where the nature and extent of the delinquency involved was debatable (adulterous behaviour, bigamy). Beccaria, Voltaire, Bentham and other critics of *ancien régime* justice powerfully emphasised the destructive effects of defamatory penalties leading to the 'civil' and social death of those condemned. Indeed, the major, contemporary juridical systems of the West were built on the foundations of such lucid analysis of the abuses inherent in shaming punishments. More recently, Foucault, in analysing Damiens' tortures, showed the extent to which the 'infamy' inextricably associated with punishment has served to reinforce the ideology of sovereign power.[3] From

the end of the eighteenth century, the laws of national states have favoured the progressive disappearance of both defamatory penalties and public penalties as signs of an increasing 'civilisation' in the moralities and manners of their citizens. Nevertheless, penalisation involving strategies to slander, and so shame, individuals never entirely disappeared as evidenced in the twentieth century by 'totalitarian' regimes or in colonial societies. The stigmatising practices of Nazi, Stalinist or Maoist justice find echoes with the culture of lynching that developed in the southern states following the end of the American Civil War, or the use of public penalties by European colonists to reinforce segregationist policies.[4] Similarly, the European experience shows the extent to which even parliamentary democracies utilised such forms of popular justice in the aftermath of its two world wars, as illustrated by the shaming treatment of collaborating French women in 1918 and 1943–44.[5] Far from being eruptions of uncontrolled violence, a recourse to defamatory punishments appears to be a marked phenomenon in periods when there is a reduction of state legitimacy, such as at the end of military occupations or conflicts. Defamatory penalties may, therefore, frequently manifest themselves in the context of a weakened state as a means of political relegitimation.

This debate around the re-emergence of defamatory penalties invites historians to revisit the history of stigmatisation observable in pre-modern Europe, for example. The emergence of various forms of defamatory sanction at the end of the Middle Ages and their subsequent incorporation within legal processes and penal practices characterised European justice from the sixteenth to the nineteenth centuries. Such penalisation represented innovative attempts to address the issue of problematic public and moral behaviours that had previously been managed by a system of levying fines.[6] Historians of pre-modern Europe have renewed our knowledge of the mental competencies of pre-modern humanity by drawing on anthropologists' work on 'honour'-based societies.[7] Anthropological concepts have consequently been used as an interpretational model, particularly when working through extensive judicial archives with material testifying to the range of behaviours and rituals involved in conflict resolution, resulting in the histories of the emotions current in European society from the thirteenth century onwards.[8] A return to examining emotions through historically inflected legal analysis is perceptible in such a project as this, which tries to look beyond the over-generalising conclusions provided by the interpretations of political or social histories.

The anthropological approach to honour and shame as the bases of social relations in pre-industrial societies also influenced Norbert Elias' perspectives on the transformation of moral values in the West. He delineated two tendencies: one *top-down* and the other *bottom-up.* The socio-political perspective (*top-down*) insists on the actions of a modern state in gradually imposing a monopoly on the legitimate use of force. This evolution is manifested by the disciplining of populations via public expressions of shame. The socio-anthropological perspective (*bottom-up*) sheds light on the development of Western societies towards an increasing individualisation in

lifestyles. On the level of individual mores, this movement is accompanied by an internalisation of the values of honour and shame. Elias' approach does not contradict Foucault's conclusions, but underlines their common descent from Max Weber's central assumption about the ability to detect (in Western history) a process of rationalisation, involving the gradual emergence of those bureaucratic forms of power which constitute the modern state. Among the most efficient of these, law and an associated model for the public delivery of justice have, over the long term, steadily imposed themselves as practices rationalising the processes involved in conflict resolution. This was Western society's mighty Leviathan, guaranteeing the stability of conflict resolution between citizens, between communities and between states. Such forms of justice delivery were imposed first by an integration within state-managed legal systems of the existing stigmatising practices and functions of local communities, and subsequently by their reduction over time to a minimal expression involving such communities. Thus, a position developed where the death penalty had to be performed without accompanying shaming rituals, and then without public visibility, as expressed first in the development of the guillotine during the French Revolution, followed by the disappearance of public executions in France.

After the first conference volume devoted to a multidisciplinary approach to violence,[9] *Shame, Blame and Culpability* extends SOLON's investigation of the modernisation of European societies by exploring the dimensions of the transition to modernity from pre-modern society, a transition which is clearly illustrated through change and continuities in the uses of law and criminal justice processes. As a number of the case studies reveal, the volume also shows the dangers of and limits to the current 'rediscovery' of the social power of shame, pointing up the destructive uses that post-modern states can make of such policies. This volume therefore presents an important revisiting of a nexus of values relating to norms within modern societies. It does so in a number of ways, including its discussion in various chapters of the anthropological concepts in use in modern law and justice systems; by a continuing emphasis on research undertaken in Southern and Eastern Europe to challenge the certainties of established European research; and, finally, by its comments on the transformations of what constitutes 'shame' in modern societies.

The value of this work lies in its insistence on the phenomena revealing shame's complexity and the polysemia of shaming practices. On the one hand, it insists on the variety of 'reputations' depending on cultures, social memberships, gender and age. However, additionally it particularly insists on the ambivalence of *fama* (reputation), coming into play in slandering processes and in the subsequent practices aimed at recovering individual honour. The volume demonstrates the range of ways in which, over time, modern states constructed their modernity, by differential integrations of the oppositions between cultures of responsibility and ones of guilt. Thus, a valorisation of practices for allocating blame and culpability enabled their widespread emergence in modern Western Europe. In this sense, shame is a 'social

emotion'. If expressed differently in pre-modern and modern society, it remains at the heart of modern society, now fostering individual and internalised guilt instead of externalised dishonour. Finally, regulation by shame, if it largely depends on values popularly promoted as constituting social status, leaves room for personal agency in the construction or reconstruction of individual honour.

The second characteristic of the volume before us is its presentation of a variety of case studies, including pre-modern Russia, the Balkans, Greece and even Australia. This contributes substantially to a 'de-Westernising' and thus a globalisation of the debate process on shaming. Lastly, these contributions highlight the extent to which the processes of *shame, blame and culpability* are at the heart of the evolution of relations between communities and the modernising state, including explorations of individuals torn between their community and the state. Crimes of honour and defamatory penalties are two manifestations of shaming at the extremes of the legal/judiciary chain. This work thus insists on the transformations manifest in shaming processes in the eighteenth and nineteenth centuries and their integration into law and judicial practices, as shown by the distinction that modern jurists have consistently made between natural and civil honour. As a complete and rounded volume, the editors and contributors invite us to reflect on a history of honour and shame, examining both the heights and the depths of humankind and human nature.[10]

Notes

1 John Braithwaite, *Crime, Shame and Reintegration*, Cambridge: University Press, 1989.
2 James Q. Whitman, 'What is Wrong with Inflicting Shame Sanctions?', *Yale Law Journal*, 107(5), 1998, 1055–92, p.1089.
3 Michel Foucault, *Discipline and Punish, The Birth of the Prison*, New York: Vintage Books, 1979.
4 Pieter Spierenburg (ed.), *Men and Violence: Gender, Honor, and Rituals in Modern Europe and America*, Columbia, OH: Ohio State University Press, 1998.
5 Fabrice Virgili, *Shorn Women: Gender and Punishment in Liberation France*, Oxford: Berg, 2002.
6 Xavier Rousseaux, ' "Sozialdisziplinierung", Civilization of Manners and Mono-polisation of Power: Towards a History of Social Control in Southern Netherlands 1500–1815', in Maria Ågren, Åsa Karlsson, Xavier Rousseaux (eds), *Guises of Power: Integration of Society and Legitimation of Power in Sweden and the Southern Low Countries, ca 1500–ca 1900*, Uppsala: Uppsala, History Department, 2001, pp.109–31.
7 Julian Pitt-Rivers, *The Fate of Shechem or, The Politics of Sex: Essays in the Anthropology of the Mediterranean*, Cambridge: Cambridge University Press, 1977.
8 Daniel L. Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*, Ithaca, NY: Cornell University Press, 2003.
9 Shani D'Cruze, Efi Avdela and Judith Rowbotham (eds), *Problems of Crime and Violence in Europe 1750–2000*, Lampeter: Mellen, 2010.
10 Daniel L. Smail, *On Deep History and the Brain*, Berkeley and Los Angeles, CA: University of California Press, 2008.

Acknowledgements

Introduction

Judith Rowbotham, Marianna Muravyeva and David Nash

Background

The legal history of crime and violence, and its management by the state, is a well-established field of study, and one with an extensive historiography, especially for Western Europe and the Americas.[1] This is the second volume in a series that seeks to widen considerations of this socio-legal history by examining these themes within the context of the management of crime and violence by states. The series also does this by approaching these concepts from interdisciplinary perspectives (chiefly law, history and criminology), and also by expanding the usual locational perspectives for such studies, to include Northern as well as Eastern Europe in this comparative exploration of themes and issues. As with the first volume, *Problems of Crime and Violence in Europe, 1780–2000*,[2] this collection emerges from an important conference, Crime Violence and the Modern State II: Blame, Shame and Culpability, which took place in St Petersburg in May 2009.

This conference adopted the tropes of shame, blame and culpability to advance understanding of the processes through which crime was managed and, in particular, punishments, formal and informal, have been used by the modern state and accepted (or not) by societies or groups within these states. There are often expectations that 'shaming' punishments do not easily fit into a 'modern' state framework for the management of crime and violence, and that the 'civilising process' means a move away, over a historical timeline, from shame to the more 'sophisticated' and 'modern' conceptualisations inherent in the operation of blame and culpability. These were stereotypes we sought both to explore and to challenge, by asking the extent to which all three approaches could, in theory and in practice, work together within state management processes.

Our starting point was to query the extent to which 'modern' states have, from medieval times and with surprising longevity, continued to find it important to use the concepts of blame and culpability in association with shame as the end product of criminalisation processes, making all three core pillars of a criminal justice system. This of itself raised several questions, including the apparent or even alleged 'modernity' of such concepts and their

usage in this context. How has blame/culpability been placed and described by particular societies in particular times and places? Have certain types of individual or group conduct been targeted increasingly for attention by state authorities (local or central) within this process, especially that coming under the heading of interpersonal violence, and, if so, why? Historically (with the exception of murder) everyday interpersonal violence has been seen as more 'private' and less part of the public province of the state.[3] Is it a feature of 'modernity' to find it being progressively targeted by state procedures instead of being left to internal community management, or is the interest of the 'modern' state simply an enhancement of a pre-existing interest in interpersonal violence? This is an approach that takes further, and questions, some of the issues raised by scholars of violence in the modern era such as John Carter Wood.[4]

Blame, shame and culpability – and modernity

Why shame, blame and culpability? What this collection will demonstrate is that these apparently similar terms cannot be seen as interchangeable, and yet there can be complimentarities between them, both in the theoretical frameworks in which they operate and the actual practices pursued by states. We here understand shame as an essentially public thing, as part of long-standing community strategies for management of offensive behaviour that may, or may not, have a formal legal dimension to it. Blame rests on ancient cultural formulae for allocating responsibility for 'bad' behaviour among the players in an offending scenario, enabling punishments to be mediated according to the levels of blame allocated to those most responsible for the offending. Culpability, by contrast, is a more mechanistic process, located firmly within formal legal processes and requiring an assessment of 'guilt', rather than blame or shame. Culpability implies offending that results from a state of mind where individuals, either deliberately or negligently, cause harm, but where that harm may not be to another individual but to the state. Thus, in making these terms our defining and unifying core, our aim is not semantic imprecision. Instead, it is an extended and sustained discussion of just why it is important to conceptualise these terms and explore their applications within modern states, especially when looking beyond anglophone scholarship. Use of these concepts also invites the reader, if indirectly, to reflect critically on the usefulness of the civilising trope put forward by Elias and others, which has already received direct critical attention in the previous volume.[5]

The modern state, law and violence

Behind these questions lie deeper questions about the state and its relationship to its citizens. Any normative account of the proper role, reach, content and enforcement of the criminal law depends on a political conception of the role and authority of the state, and how this has changed and evolved over time,

though legal theorists have too rarely articulated such historically inflected conceptions in any depth.[6] Does an examination of the operation of the law (particularly in the processes of allocating blame, shame and culpability) in historical context reveal a broad consensus about what constitutes criminality within those parameters? Can an historical examination of a criminalisation process, one advanced by ideas of blame and culpability in particular, be revealing of the state responding to popular concerns about violence, or instead be a process where the state and its supporting elites are out of step with popular understandings of what constitutes unacceptable violence? Where does shame locate itself in terms of such popular understandings? Indeed, given that violence as a descriptor in itself carries connotations of conduct that historically go beyond the normal parameters of interpersonal reactions, when (chronologically) and why does the label of violence become applied to particular manifestations of personal conduct? When identifying 'violence' and its application to situations, how far does it signal a transitional community response, reflecting new or enhanced concerns over the acceptability of types of visible behaviour that are labelled as 'violent'? This collection demonstrates that it is by no means clear that there has been a linear development, amounting to modernity, in attitudes towards what comes to be labelled as violence in different times and places. Instead, the chapters show how complex and fluid, over time, such conceptualisations have been in different regions, and for different reasons.

The context in which this is explored is that of the 'modern' state and its laws, broadly comprehended. If 'modernity' in relation to errant behaviour that is targeted by law is a term much used, but not always well understood, the same holds true for what constitutes a 'modern' state. Implicitly at least, those who work in the areas of crime and legal history will look to Foucault and Elias, and the concepts they inspired relating to the modern state as a promoter of 'disciplined' and 'civilised' conduct.[7] But, as several of the chapters in this collection reveal, even analyses of aspects of criminalisation in Western European states do not always readily fit into a model which, from the eighteenth century on, identifies a will to create a disciplined and orderly state by the imposition of greater central authority upon everyday life through the processes of the law. This collection illuminates this complexity and challenges established certainties about chronologies and characteristics of modernity. A key theme in this book is the promotion of a greater understanding of the relationship between law and culture. Here we look beyond a model that moves from an early modern dynamism to a more modern, state-controlled, ideal type to one that is, again, less predictably linear and where community reactions to state interventions are also less predictable.

For all these reasons, this collection on the 'modern' state includes a wide chronological range to reflect the complexity involved in the development of what can be labelled a 'modern' state. This challenges established understandings of the way in which criminal justice systems have operated by using these concepts (which do, indeed, materialise as social phenomena,

attesting to their significance). By using a set of concepts that have relevance to diverse societies and legal systems, we can reveal unexpected similarities and cross-fertilisation of ideas as well as differences, and the reasons for these differences.

The chronology moves away from the 'usual' constraints dividing the early modern from the modern, because these are largely Western European or anglophone conceptualisations that distort the realities in other regions that comprise, historically, a more integral European unit in terms of cross-influences and references. Broadly, we conceive of an identifiable emergence of an entity that has a claim to be identified as a 'modern' state from certainly the sixteenth century and have included chapters that explore the evolution of key ideas and institutions from that period onwards. As the chapters also indicate, history, law and other disciplines interested in the issues covered in this collection need to think afresh – to problematise in different ways – a number of core concepts identifying the modern state and its management through the tropes of crime and violence. The issues of what constitutes, and of where responsibility lies for, crime and violence in the modern state is partially dealt with by exploring the identification and measuring of the 'harm' of such acts from the perspective of both the individuals affected and the state. This is further contextualised in this Introduction by an outlining of how the chapters debate the issues of blame, shame and culpability, and the implications this has for existing scholarship.

Languages of law and modernity

An aspect of modernity is often held to be the development of robust, sophisticated languages of law (particularly over the last 250 years), suggesting a key role being played by the Western European based Enlightenment.[8] However, it cannot just be assumed that the Enlightenment was crucial in such development. There was clearly, for instance, a preparedness in the minds of Russians and Venetians to engage with such a development, because there was already a robust and complementary tradition there. Thus, this volume also challenges existing scholarship to consider the implications of the point that ideas are rarely a one-way street. There has, historically, usually been an exchange of ideas and experience, fostered through contacts that are broadly economic and cultural, between apparently disconnected states and regions, traceable even before the French Revolution, as the conference underlined.[9] So, it must be asked not just what impact European ideas had on Russia, but also what was the impact Russian ideas had, say, on Western European under-standings. The historical dimensions to the interchange of ideas relating to values, emotions and perceptions will require more work than that indicated here.

Equally, how universal has a 'popular' belief in an equitable or 'just' world been, and how substantial, in practice, has been popular commitment to concepts of justice and equal access to justice? There are competing issues

here, ones debated in the West since the days of classical Greece, including the invocation of the idea of *lex naturalis*, or natural law, and allied concepts such as 'natural justice' or 'natural right' (*ius naturale*). The debates testify to a long-standing tradition that certain things are 'of nature', and thus that, regardless of a different custom or culture, disputes can or should 'naturally' be 'reasonably' resolved in order to restore balance and equity in communities.[10] In summary, there has traditionally been an investment by Western intellectual thinkers in the belief that the world is fundamentally equitable and that either nature, or God as the divine force governing nature, will ensure the maintenance of that balance in some way. How widespread was that belief, and how did it survive into modernity?[11] Have 'modern' criminal justice systems incorporated that belief into their processes? A modern Western tradition of community resentments over state actions (including the criminalisation of some behaviour) suggests that this has not been perceived as happening by communities, but what have been the reactions to state actions in non-Western states?[12] Has it been a universal that perceptions of such actions as overweening intrusions by authority have, on occasions, undermined the practical effectiveness of the criminal justice process and so the reputation of the state?

The underlying theme of this volume is thus strategies for managing justice, examining both community and state inputs into such strategies. An important aspect of these explorations is to highlight the continuing role of shame, and its use by communities and state agencies. This is followed by a section on modern invocations of blame and culpability as ways of contextualising understandings of the continuing use of shame in both the criminalisation and punishment processes. The implications that the continuing invocation of shame in these processes have for the ability of states to impose management strategies within legal processes is explored in the final section, where a series of case studies show shame, blame and culpability in operation.

Managing justice: the role of shame

A common, almost rhetorical, question has been to query whether, in practice, it has not provided 'better' justice when states largely leave many areas of everyday conduct up to the judgement of and consequent management by local communities. Historically, however, states have shown themselves increasingly reluctant to be so laissez-faire about this aspect of social management. A clear testament to this reality is provided by the increasing sophistication of Western criminal justice systems as they have proceeded to criminalise more and more areas of everyday life, not simply during these last 'modern' centuries but during the last millennium. All the chapters thus provide some challenge to those conclusions reached by Foucault, and relied on so heavily by crime historians in recent years, that 'shame' was something that largely disappeared from the armoury of state management of crime and transgressive behaviour – a move supported by communities and individuals who, it used to be argued, no longer supported shaming punishments such as the stocks.

In order to point up both continuities and changes, we have divided the book into three sections, looking first at shame as a factor in the management of crime and violence, then examining blame and culpability in operation. The final section is based on a series of case studies drawn from across Europe, but particularly featuring Russia as well as Greece and Britain. As a starting point for the first section, Muravyeva provides a comparative perspective, analysing concepts of shame and honour in different European contexts. In seeking out a pan-European approach, or indeed a multi-layered and differing approach governed by other local or specific national factors, she analyses the meaning of these concepts in English, French, German and Russian penal laws, offering penetrating conclusions from those comparisons. Thus, in assessing the prevailing assumption that there was a north–south divide around the issue of honour – with the Mediterranean countries exhibiting something of an obsession with this – Muravyeva demonstrates the existence of a more complex reality, which is also touched on (at least implicitly) by Bettoni and later Friedland. Thus, as her systematic analysis of shame punishments and their function underlines, a focus on honour was, in fact, scarcely geographically unique if the terminologies used do not always make this immediately obvious.

There is a need to explore the extent to which the value systems governing and shaping shame are key to understanding its wide currency and operation throughout the early modern period, as well as to their enduring legacy. Shame and honour emerge from many of these chapters in ways that reflect the points raised by Muravyeva: they act as remarkably effective measures of social control, while being also more flexible than the social control label suggests. All protagonists in shame episodes could manipulate many of shame's components. This perhaps strengthened its power, making it both a formidable deterrent and flexible enough to enjoy a remarkable level of popular assent for long periods.

In its focus on the operation of shame in earlier periods, Bettoni's chapter highlights the echoes between an early modern desire for shame punishments and impulses, which are surprisingly close to the surface of modern society also. This is her inspiration for an investigation of how the concept of *fama* (reputation) amounted to a sophisticated tool in the hands of the early modern community and its courts, one shown here to have acted as an effective discretionary instrument used by both legal processes and individuals to establish the 'infamous' character of an offence or an individual performing such offences. She argues that the pre-modern state could engage in a process of seeking to remove the responsibility for identifying bad *fama*, and so the justification for deciding punishment, from local communities, while the stigma of shame in punishment was diluted by a state anxious to counteract community power via control over popular justice. Bettoni reflects that gradual state interest and encroachments upon the power and ideas underpinning justice had, over time, a corrosive effect upon the power, significance and consequences of *fama*. However, she points out also that this project was not totally successful, since that power persisted in the interactions of daily life

away from judicial reach, and this, again, is a perspective that finds echoes in many of the chapters found in Part III.

Drawing the threads of this section together, Nash seeks to suggest a methodological agenda for the scholarly study of shame that moves interest beyond the previously chronologically bound conceptions of the primitive and the civilised. Using already available work, and rejecting the simple reading of modern emotional individualism inspiring guilt rather than shame, he suggests precisely why socio-cultural historians and socio-legal scholars should seek to explore this area. Analysing how theoreticians such as Elias and Foucault created something of an aura and stranglehold around the teleological model of behavioural change, Nash advocates a more nuanced look at how shame had a still more resonating function in a modern society, precisely because it was modern. This is both challenged and affirmed by concluding chapters in Part III by Aris Tsantiropoulos and Boris Kolonitsky.

Chapters from Part III generally take this agenda for the study of shame further, as reforms to systems of control and punishment explored by these case studies demonstrate how locales and power structures can be seen to have *incorporated* shame, rather than actively transcending it. Yet shame could also appear in other places and assume new guises. Thus, issues in behavioural propriety around drink, marital discord and shame punishments, alluded to by Nash, appear also in other chapters to suggest a continuity of shame's existence as a social emotion. The power of the growing mass media emerges within some of these new studies as allowing the machinery of modernity to be harnessed for what some would consider older purposes. This allowed shame to be exercised around figures of national prominence transcending its existence as a primitive face-to-face emotion, a perspective requiring us to look back to earlier operations of shame.

Managing justice: the role of blame and culpability

Part II, on rethinking the patterns of blame and culpability in relation to shame, starts with Rowbotham's chapter, highlighting the use by state mechanisms of blame and culpability as ways of containing and contextualising older shaming processes at a time when the criminal justice process was being 'modernised'. The process of prioritising the allocation of blame is shown to have become a 'modernising' device that promoted a reliance on state-managed formal justice processes, where culpability was used to justify the state's actions in deciding on punishment strategies. True, older elements of shaming were retained as key aspects of a criminal justice process, operating in practice as a factor promoting popular assent to the increasing criminalisation of private behaviour. She argues that effectively, shame remained a more informal aspect of the criminal justice process, encouraged by the state as an essentially private reaction to standards of criminality established by that process, an attitude that persists today within a number of punishment and rehabilitation mechanisms. Public knowledge is also shown to be a continuing factor in the

continuing role of shaming as an aspect of criminalisation – both Nash and Rowbotham emphasise the importance in modernity of the developing mass media as a channel of communication between state and community in conveying the grounds on which shame should be felt as a result of the allocations of blame and culpability. Again, this has interesting echoes in the case studies in Part III, where, for instance, Tsantiropoulos indicates the role of the media in identifying the tensions between localised shaming mechanisms and the 'blame' perspectives of the state-controlled formal justice system.

In arguing that this has worked within the modern state because it permits a continuing degree of community involvement in the punishment process at least, enabling an easier acceptance by such communities of the arrogation of power over blame and culpability by the state, this chapter provides a perspective that enables reflections on the case studies of Barlova, Pushkareva and Mousadouko, for instance. However, provocatively Rowbotham concludes that a weakness of more recent criminal justice processes may lie in the fact that this shaming dimension of the system has fallen into abeyance in states such as the UK, as a result of a shying away by the formal legal process from the public shaming process – a point underlined further by Kolonitsky's chapter exploring the usages of blame, shame and culpability by the Russian state.

Helping to explain this reduction in the usage of shaming strategies, Davie's chapter focuses on the early developments in what has become modern criminological theory with its emphasis on blame and culpability rather than shame. His chapter provides an exploration of the uneven history, during the late nineteenth century, of what he terms 'precrime', encompassing crime prevention and social cleansing initiatives that have little to do with the issue of individual choice to offend, which is implicit in shaming processes. He outlines the thinking and imperatives behind the search for the physical identifiers of a criminal type, with their implicit rejection of the voluntary impulses that justify and underpin a shaming process. Davie reveals the spectacular range of techniques and technologies that offered a 'science' of culpability as an alternative to older methodologies of shame and a consequentially simpler blaming process. In noting that a reappraisal of the supposedly opposing views of Francis Galton and Alphonse Bertillon allow us to see that they were much closer in intent than has previously been realised, Davie powerfully argues that Galton and Bertillon's work should be seen together as part of a pattern of integrating generalised approaches to criminal identification that significantly shifted the emphasis to culpability, rather than choice, within Western criminology, with a consequent reshaping of how blame itself was understood. Although he accepts that by the 1950s such views had slid firmly from fashion as environmental explanations returned to criminological considerations, Davie's conclusion is that such attitudes have had an enduring impact on the ways in which modern states understand criminality and incorporate that understanding into criminalisation processes. The re-emergence of 'biological' or 'biosocial' criminology in the 1980s, for