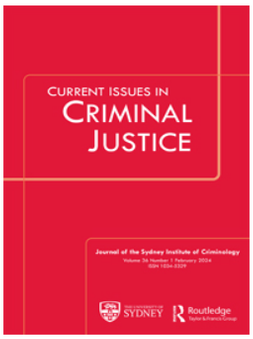

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Joint enterprise in England and Wales: why problems persist despite legal change

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ABSTRACT

The law in England and Wales (as in Australia and other jurisdictions) enables a person to be convicted of an offence committed by another using complicity liability, sometimes termed 'joint enterprise'. In England and Wales, 'joint enterprise' has been widely criticised for: failing to distinguish between the moral and legal culpability of the person who commits the substantive offence and those on the periphery of it; being disproportionality applied in cases involving young men from black and mixed ethnic backgrounds; and for lacking legal legitimacy. Thus, it was hoped that the decision of the Supreme Court in England and Wales in 2016 to abolish the extended form of complicity liability, known as Parasitic Accessorial Liability (PAL), would resolve these issues. Reporting on interviews with police detectives, and prosecution and defence lawyers in England involved in cases of serious youth violence, this paper argues that the problems associated with 'joint enterprise' in England and Wales remain, despite the change in the law. This is due to there being only 'subtle shift' in practice and a continued reliance on racialised inferences about young men from black and mixed ethnic backgrounds. To reduce problems with disproportionality and improve the fairness of the law related to complicity liability, changes to police and prosecutorial practice are required, alongside meaningful law reform.

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complicity liability; extended joint criminal enterprise; joint enterprise; law reform; secondary liability.

Introduction

The law in England and Wales, as in Australia, Hong Kong and other jurisdictions (van Sliedregt, 2019), allows the responsibility for a criminal offence to fall 'beyond the person who commits the crime itself', to others who are implicated in it (Weinberg, 2019, p. 209) through complicity, or secondary, liabilty. In England and Wales, the term 'joint enterprise' has been used to describe this complex area of law, while in Australia, the term 'joint criminal enterprise' is used (Stark, 2016; Weinberg, 2019, p. 212). In both jurisdictions an *extended* form of this liability, called Parasitic Accessorial Liability (PAL)

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in England and Wales and Extended Joint Criminal Enterprise (EJCE) in Australia (Smartt, 2018), has allowed a person who embarked on the commission of one crime to be convicted of a second crime committed by another person, if the latter was considered to be part of the joint criminal enterprise.

In England and Wales there has been no consistent, official monitoring of the use of joint enterprise in practice (in its standard or extended form), over time. However, an analysis of longitudinal data on the prosecution and conviction of multiple defendants in homicide cases between 2005 and 2020, indicated that joint enterprise has been used to charge up to 7,649 people and convict up to 5,783 people of homicide in England and Wales, over this period (Mills et al., 2022). More recently, in a pilot set up to monitorthe use of joint enterprise in homicide and attempted homicide cases in six geographical areas in England and Wales, the Crown Prosecution Service (2023) reported that it had been used in 190 cases, involving 680 defendants over an eight-month period (February-September 2023), although around two thirds of cases had not been finalised at the time of reporting. Joint enterprise has also been used to prosecute multiple individuals for violent crimes other than homicide, such as robbery and assault (Kirby et al., 2016) and is frequently applied in cases involving young men (Green & McGourlay, 2015; Williams & Clarke, 2016). The recent Crown Prosecution Service (2023) data (noted above) showed that 93% of the defendants in the homicide cases recorded as part of the pilot were male and 53.5% were aged 14–24 years old (compared to 29% of the population of England and Wales who were aged under 25 years old (National Statistics, 2023)). Green and McGourlay (2015, p. 282) argue that the targetted use of joint enterprise, in cases involving young men in England and Wales, has been driven by policy designed to respond to 'a perceived serious problem of group or gang violence'.

In this context, critics have raised significant concerns about the application of joint enterprise in practice, and PAL in particular, specifically: that it fails to distinguish between the moral and legal culpability of the principal and secondary parties; that it is disproportionately applied in cases involving defendants from black and mixed ethnic backgrounds; and that it lacks legal legitimacy (see, for example, Hulley et al., 2019; Williams & Clarke, 2016; Young et al., 2020). Therefore, when the Supreme Court in England and Wales abolished PAL in 2016 (in *R v Jogee* [2016] UKSC 8 [87]), critics were hopeful that these issues would be resoloved. However, in the recent analysis of homicide convictions between 2005 and 2020 the authors concluded that the change in the law had 'no discernible impact' on the use of joint enterprise in practice in England and Wales, noting that issues of disproportionality continue (Mills et al., 2022, p. 5). Yet, little is known about how joint enterprise has been applied in practice either prior to, or since the change in the law, to help make sense of these findings.

This paper presents the findings from interviews with criminal justice practitioners involved in investigating, prosecuting and defending cases of serious youth violence in which joint enterprise has been applied. It demonstrates that the change in the law has resulted in only a 'subtle shift' in practice. Although practitioners were cognisant of the abolition of PAL, in their day-to-day practice the distinction between the law prior to the change and since was blurred and they continued to rely on the same assumptions and inferences about young men implicated in group violence, particularly those from black and mixed ethnic backgrounds. This enabled practitioners to narrate young men's involvement in violence in much the same way as they had prior to the

change in the law, supporting prosecution lawyers' decisions to charge multiple young people with the same substantive offence. The paper argues that further changes are needed to the way joint enterprise is applied in practice in England and Wales, along with changes to the drafting of the law, to resolve the significant and ongoing problems associated with the lack of legal legitimacy and the disproportionate application of joint enterprise in cases involving young men from black and mixed ethnic backgrounds.

The law in England and Wales – joint enterprise and the abolition of PAL

In England and Wales, 'joint enterprise' has been used as an informal term to describe a complex area of law. Until the change in the law in 2016, it tended to describe four scenarios in which individuals could be convicted of an offence committed by another (Hulley et al., 2019), These are outlined in Figure 1.

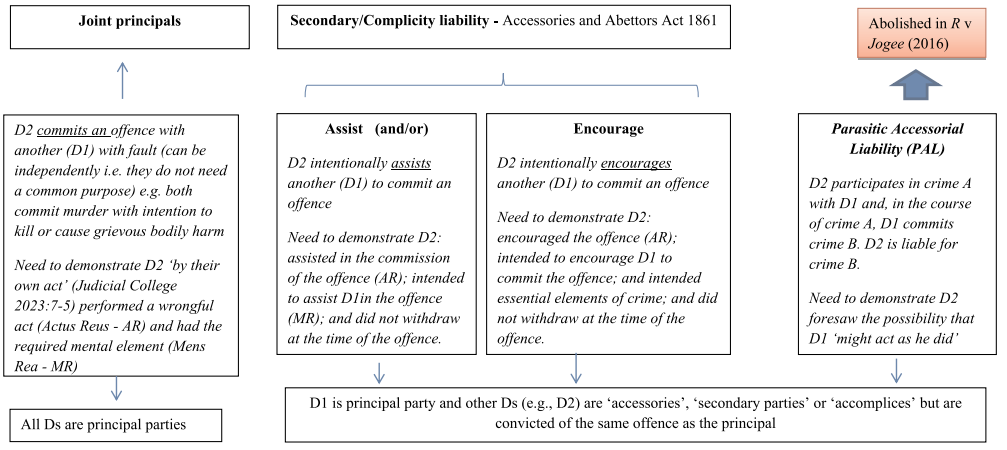

Figure 1. Four circumstances in which individuals may be jointly liable for a single criminal offence.

Note: Adapted from Judicial College (2023). Procuring also makes D an accessory, where D2's 'liability of commanding or procuring will depend on proof that [D2's] conduct caused [D1] to commit the offence and that [D2] acted with the intent to 'to produce by endeavour' the commission of the offence' (Judicial College 2023: 7-9 emphasis in original).

In the first scenario, two (or more) people take part in a criminal act, for which they both possess the mental element (mens rea) and are therefore considered 'joint principals' (Maddison et al., 2016). In the context of murder, this would involve, for example, two people stabbing the victim (who dies), with the intention to kill. In the second and third scenarios (which are often described together as 'assisting and encouraging'), the principal party (D1) commits an offence, which another (D2) (the 'secondary party') intends to 'assist or encourage'. For example, this might involve four people chasing a victim, one of whom (D1, the 'principal party') stabs them with the intention to kill, while the others hold the victim down shouting encouragement, which they intend to encourage the principal party. In the fourth scenario, D1 and D2 set out to commit one crime (crime A) and D1 commits a second crime (crime B). D2 is also liable for crime B if it was considered that D2 could have foreseen the possibility that D1 might 'act as he did' during the joint criminal enterprise. This is known as 'Parasitic Accessorial Liability'

(PAL) and is exemplified in a scenario in which two people (D1 and D2) burgle a house and one (D1) stabs the homeowner who has confronted them. If it is established that D2 could have foreseen that the homeowner would have been killed by D1, who intended to kill, D2 would also be liable for murder. Although PAL has existed since the sixteenth century in England and Wales (Stark, 2016; cf. Dyson, 2018), it was confirmed by the Privy Council in *Chan Wing-Siu v R* in 1984 (Stark, 2016) and has since been used to respond to political concerns about the perceived growing threat of dangerous, violent 'gangs' of young men involved in serious violent crime (Green & McGourlay, 2015; Kirby et al., 2016; Krebs, 2018).[1] PAL has been considered particularly valuable in so-called 'gang-related' cases, as it allowed multiple individuals to be convicted in circumstances where it could not be proven who committed the substantive offence (Krebs, 2018).

The case that led to the abolition of PAL, *R v Jogee and Ruddock (2016),* offers a notable example of its use in the context of serious violence involving young men. In this case, Ameen Jogee and his co-defendant Mohammed Hirshi travelled to the home of the victim's girlfriend and became involved in an altercation with the victim. Inside the house, Hirshi stabbed the victim Paul Fyfe, while Jogee stood outside, although Jogee he had been heard shouting aggressively at the victim before the stabbing. In the original trial, the judge directed the jury to find Jogee guilty of murder if they considered that he participated in the attack on the victim and foresaw the possibility that Hirshi might use the knife with the intention to cause serious harm (van Sliedregt, 2019). However, on appeal, the Supreme Court ruled that to convict Jogee of murder it was necessary to prove that he intended to encourage and assist Hirshi to commit murder, in line with the non-extended form of complicity liability (the second and third scenarios in Figure 1). Thus, the Supreme Court abolished PAL resulting in foresight no longer being sufficient to convict the secondary party of the substantive offence. It is notable that the Supreme Court ruled that foresight could still be used as evidence of intention, including circumstances in which the secondary party's intention was conditional, e.g., in cases where the secondary party intended to commit crime A and shared the common intention to commit crime B 'if things came to it' (Crown Prosecution Service, 2019).

Although the non-extended version of joint enterprise remained (in the form of complicity or 'secondary' liability) (Crown Prosecution Service, 2019), the change to the law in England and Wales brought about by *Jogee* was welcomed by critics of joint enterprise, who hoped that it would resolve a number of problems associated with joint enterprise.

Criticisms of joint enterprise

The criticisms of joint enterprise have coalesced around three key issues: the lack of distinction that this form of liability makes between the moral and legal culpability of the principal and secondary parties; the disproportionate use of joint enterprise to convict men from black and mixed ethnic backgrounds of serious violent offences; and the

[1] Although it has been used in other types of cases, including to convict women of fatal violence committed by their male partners (see Hulley, 2021; Clarke & Chadwick, 2023), it is most associated with cases involving young men involved group violence.

lack of legal legitimacy associated with this form of liability. It is to these criticisms that the paper now turns.

Distinction between moral and legal culpability

Joint enterprise and PAL in particular, and its international equivalents, holds all parties equally legally culpable for an offence committed by an individual and, in doing so, fails to differentiate between the moral position of the secondary party, who foresaw that a serious offence may occur, and the principal party *who intended* the offence (van Sliedregt, 2019). Weinberg (2019, p. 222) asserted, in the Australian context, that extended forms of complicity liability allow a passive participant to be liable for an offence 'which they may have strongly disapproved, and which they did not carry out, agree to, authorise, intend, assist, encourage or even acknowledge was likely to transpire'. The severity of this is most striking in England and Wales in murder cases, as they attract a mandatory life sentence (van Sliedregt, 2019).

Yet, the proported distinction between the moral and legal culpability of principal and secondary parties is rebutted by supporters of extended forms of secondary liability, who argue that a joint criminal venture is a moral commitment shared by those involved in the collective action (Amatrudo, 2016). Simester (2006) explains that once a secondary party has engaged in one crime, they have changed their 'normative position' toward immoral action. Therefore, they should be held morally and legally responsible for any further offences that occur which they foresaw. However, this approach ignores that possibility that some individuals may feel unable to 'extricate themselves from a group as violence gets out of hand', including 'potentially weak and vulnerable secondary offenders' who were 'in the wrong place at the wrong time' (Justice Gageler, cited in Weinberg, 2019). For example, commentators have noted the problematic use of joint enterprise to convict young people with Autism Spectrum Disorders (ASD) – defined as 'neurodevelopmental disorders characterised by reciprocal social interaction and communication impairments and restricted repetitive behaviours' (Gerry et al., 2021), and research in England has documented the ways in which women's experiences of domestic violence and coercive control have led to them being implicated in, and convicted of, serious violent crimes perpetrated by their partners and ex-partners, including murder (Hulley, 2021).

Critics of joint enterprise in England and Wales were, therefore, hopeful that the abolition of PAL in *Jogee* would rectify the peculiar (and, many argued, unjust) anomaly that allowed a secondary party to be convicted of murder based on a 'lower mental threshold' for guilt than the principal offender, who had to intend to cause grievous bodily harm or kill (van Sliedregt, 2019, p. 208). Following the change in the law, only those who *intended* to assist and encourage a principal offender were expected to be considered blameworthy of killing and convicted of murder. In this way, it was also anticipated that the change could reduce problems of ethnic disproportionality associated with joint enterprise.

Ethnic disproportionality

In England and Wales studies have repeatedly exposed ethnic disproportionality in samples of prisoners convicted using joint enterprise (Hulley et al., 2019 Mills et al.,

2022; Williams & Clarke, 2016;). Similarly, the recent Crown Prosecution Service (2023) pilot data found that 30.2% of defendants in the joint enterprise homicide and attempted homicide cases recorded were from black ethnic backgrounds and 8.4% were from mixed ethnic backgrounds. This is more than seven times higher than the proportion of people from a black ethnic background in the population of England and Wales (4.0%), and almost three times higher than the proportion of people from mixed ethnic backgrounds (2.8%). In their study of young men and women serving long life sentences from a young age, Hulley et al. (2019) found that 11 times more men from black ethnic backgrounds were convicted of murder using joint enterprise than men from black ethnic backgrounds in the general population of England and Wales.

Research has shown the role that racialised tropes related to 'gang signifiers' (e.g., tattoos, specific colours, music videos and lyrics) have played in convicting men from black and mixed ethnic backgrounds on the periphery of violence, due to the low evidential threshold for guilt required by joint enterprise and PAL in particular (foresight of the possibility that the second crime would occur) (Owusu-Bempah, 2022; Williams & Clarke, 2016; Young et al., 2020; Young and Hulley, in press). For example, Young et al. (2020) found that police officers inferred that young men from black ethnic background were involved in 'gangs' due to assumptions about young black male gang 'culture' and the perpetuation of violent criminality. Williams and Clarke's (2016) research with men convicted of serious violence using joint enterprise revealed that 69% of Black, Asian and Minority Ethnic (BAME) participants reported that the gang discourse was used at their trial, compared to 30% of white British participants, and that friendships between BAME men were imbued with inferences about shared criminal attitudes in a way that young white men's friendships were not. They argued that the deeply embedded racialised 'gang narrative' in England and Wales creates a 'plausible' story at trial that ties the violent incident to the multiple defendants presented in court, based on jury understandings of what 'typically happens in the world' (Kern Griffin, 2013, p. 294).

It was anticipated that the abolition of PAL in England and Wales would reduce the disproportionate criminalisation of minority ethnic men implicated in multi-handed trials, as courts were required to present more compelling evidence of secondary parties *intention to encourage or assist* rather than relying on inferences about what a secondary party foresaw. In this way, raising the threshold of culpability was also expected to improve the perceived legitimacy of the law.

Legal (il)legitimacy

Murphy et al. (2009, p. 3) have described legal legitimacy in terms of the fairness of the law itself: 'an authority itself may be seen to have legitimate authority, but the rules and laws it tries to enforce may be seen to be illegitimate'. Hulley et al's (2019) research in England has shown that men and women convicted of murder as secondary parties when they were young perceived the law related to joint enterprise to be unfair, in terms of both the *conviction* they received *and* the *punishment* it resulted in.

Fair labeling is one of the 'normative principles governing criminal liability' (Chalmers & Leverick, 2008, p. 219) based on the need: to support the communicative function of the law in maintaining and emphasising 'social standards' by delivering a

proportionate response to wrongdoing; and to reflect differences in wrongdoing as recognised by society (Ashworth, 2006, p. 88). This is particularly necessary in complex areas of criminal law, such as joint enterprise (Chalmers & Leverick, 2008). For individuals who have not committed the fatal act, being labelled a 'murderer' and being sentenced to a long indeterminate period of custody (sometimes as long as the principal party), feels deeply illegitimate and generates strong feelings of anger and frustration (Hulley et al., 2019). Inaccurate labelling of one's actions is also stigmatising and can significantly curtail an individual's life chance post release (e.g., leading to difficulties in finding employment) (Chalmers & Leverick, 2008).

In addition to fair labellng, proportionate punishment is a 'requirement of justice', as the '*severity of punishment should be commensurate with the seriousness of the wrong*' (von Hirsch, 1976, p. 609, emphasis in original). An assessment of seriousness should consider the gravity of the offence itself ('cardinal proportionality') and where the offence fits within a framework of overall offence seriousness ('ordinal proportionality') (von Hirsch, 1992). This assessment is expected to be conducted both when offences are initially 'graded' for the purpose of legislation and at the point at which an individual is sentenced in court. It was hoped that the constraining of joint enterprise in England and Wales would reduce the number of cases in which individuals would be unfairly labelled and disproportionately punished for their actions, therefore improving the legitimacy of the law.

Despite the anticipated resolution of the issues associated with joint enterprise, set out above, recent research suggests that *R v Jogee* has had 'no discernible impact' on the use of joint enterprise in practice (Mills et al., 2022, p. 5). The data shows that since the change in the law there has been an increase in both the number of secondary suspects indicted for homicide offences in England and Wales, and the number of secondary suspects from black and Asian ethnic groups (compared to a reduction in the number of white secondary suspects) (Mills et al., 2022). This paper complements this quantitative analysis of current practice, with qualitative data based on interviews with police detectives and lawyers in England undertaken 18 months after the ruling in *R v Jogee*. It argues that the underwhelming impact of the law change in England and Wales and the increase in disproportionality can be explained by the only 'subtle shift' in how joint enterprise has been applied in practice post *Jogee*. It calls for further changes to both the law and legal practice, to respond to the significant problems of joint enterprise that persist.

Methodology

This article draws on interviews undertaken with criminal justice practitioners in London, England, as part of a broader qualitative study of youth violence, friendship and legal consciousness in the context of joint enterprise in England and Wales.[2] Given that the focus of the study, the content of the interviews attended to the application of joint enterprise in the context of serious youth violence.

Police detectives, working in the Homicide and 'gang-violence' units in the Metropolitan Police Service (the police service for the Greater London area) and prosecution and defence lawyers, were approached to take part in the study. These detectives were

[2]The study was approved by the Institute of Criminology's Research Ethics Committee at the University of Cambridge.

accessed through a senior officer in each of the units, who requested volunteers for the study via email. Contact was then undertaken directly by the research team. A purposive sample of lawyers was sought, specifically those with experience of prosecuting or defending cases of serious violence involving multiple young people. Prosecution lawyers at the Crown Prosecution Service (the public agency who prosecutes criminal cases in England and Wales) were contacted through senior staff in the organisation, who identified individuals with relevant experience and prepared a schedule of those who volunteered to participate. Barristers (including those who work as prosecution lawyers) were identified through key contacts, snowballing and internet research focusing on lawyers with experience of prosecuting and defending cases of serious violence involving multiple young people. The Criminal Bar Association also advertised the study on its website and, as a result, a small number of individuals contacted the research team. Each lawyer was contacted either directly or through their chambers. As part of this snowballing process, one retired judge with experience of multi-handed trials also participated in an interview.

Initially 20 police detectives volunteered to participate in the research, although one officer did not respond to further correspondence, therefore nineteen officers were interviewed in total. A short survey was undertaken with each individual to gather basic demographic data and work experience. At the time of the interview, all but two of the participants were serving officers (one had retired from duty a week prior to the interviews and the other been retired for three years) and occupied a variety of ranks of seniority (from Detective Constable to Detective Superintendent). Nearly all (17) had served longer than 10 years. The two remaining detectives had served between seven and ten years. Twenty-one lawyers (12 barristers and nine solicitors) and one retired judge were interviewed. Eleven lawyers identified themselves as primarily involved in prosecution work, and nine primarily identified themselves as defence lawyers. The majority had over 10 years' experience (85 per cent), two lawyers had between seven and ten years experience (10 per cent) and one lawyer had between four and six years' experience (five per cent). Table 1 shows the demographic details of the interview samples.

The interviews lasted between one and three hours and all were audio-recorded. Participants were asked questions that related to their professional histories; the process of investigating, prosecuting or defending cases of serious 'group-related' violence involving young people; understandings and perceptions of joint enterprise and the law related to serious violence; and perceptions of young people and their understandings of the law. The data were analyzed on a computer software package (NVivo) using an iterative

Table 1. Demographic details of research participants.

Participants	Source of recruitment	No. of participants	Age range in years (mean)	Gender	Ethnic background
Police officers	Metropolitan Police Service, London (Homicide and 'gang-violence' units)	19	32–58 (43.5)	11% female 89% male	89% White 11% Mixed
Lawyers	Crown Prosecution Service, private chambers (involved in defence and prosecution work)	22	27–61 (42.8)	32% female 68% male	60% White 10% Black 23% Asian 5% 'Other'

approach. This is a reflexive process, whereby the data is repeatedly revisited to develop and refine meaning and understanding (Srivastava & Hopwood, 2009).

Findings

The findings below outline the practice narratives of police detectives and prosecution and defence lawyers around 18 months after PAL was abolished by the Supreme Court in *R v Jogee*. They show that all practitioners' were cognisant of the change in the law. However, when assessing the culpability of individuals implicated in a violent incident, while a small number of practitioners emphasised that it had led to them focusing on the 'intention' of all parties (rather than relying on what secondary parties'foresaw'), many highlighted the blurred line between the law prior to and post *Jogee*. Most police officers and lawyers reported little change in their practice, specifically in the way that they continued to rely on inferences regarding what young people 'must have known' or intended and to draw on gang narratives to support such inferences, particularly when assessing the culpability of young men from black and mixed ethnic backgrounds.

Focusing on intention–- bringing together moral and legal culpability

Following the change in the law in *R v Jogee* it was expected that practitioners would focus on the extent to which a secondary party *intended* to encourage and assist a principal party, rather than relying on foresight. This would bring the moral and legal culpability of the secondary party closer together. One police detective, Connor,[3] agreed that post *Jogee* he looked for *more than* foresight:

> For us, the starting point is what physical action they did. Is it enough that they just shout encouragement? These are very difficult things. Foresight, if you're aware they have the knife, aware that a knife might be used, so that bit of evidence goes before the jury. I think you've got to have more than that – you've got to have actual involvement. Stamping on the head, that sort of real intent. I think it becomes uncomfortable to convict them of the same offence as the main principal if it's just 'go on'. Now what does that mean? That's ambiguous. (Connor, police detective)

In the context of a fatal stabbing, Connor highlights a move away from focusing on knowledge of the weapon as evidence of foresight of the substantive offence, which was reiterated by other participants. However, Connor also describes the complexity of applying the law of secondary or complicity liability in England and Wales post-*Jogee*, as foresight can still be used as evidence of assisting and encouraging. Although, his example of 'stamping on the head' of the victim could meet the legal definition of intention, that is acting 'in order to bring [the consequence, in this case serious harm] about' or making the outcome [serious harm] 'virtually certain' (Krebs, 2018, p. 3). In this sense, he did recognise that conviction should require *more* than foresight.

Prosecuting lawyers also noted that the line between secondary liability and PAL remained blurred, despite the change in the law, and that this often made distinctions between the culpability of different parties to the crime difficult to ascertain. One

[3]All names used in the findings are pseudonyms, to preserve the anonymity of participants.

participant admitted that, post *Jogee,* prosecuting lawyers had 'tended to charge everyone', including 'what historically we called "tail-end Charlies"' (Viv, prosecuting lawyer),[4] indicating that there had continued to be an over-charging of individuals, based on an inappropriately low threshold of contribution.

> Certainly, [at that time], I thought we were prosecuting a few people that we really couldn't prove that participation, and I think we've tightened up on that. It's appropriate for us to tighten up on that. Is that any major change in policy? No. Actually, it's just applying the law as it should have always been applied. […] That we have to show that someone knew what was happening and they participated, that they joined in. We can't prosecute someone who is just part of a group and we don't. (Viv, prosecuting lawyer)

By noting that there had been a change in practice some time after the change in the law, Viv highlights the central role of professional practice in implementing policy changes (Forde, 2021). For example, in the context of youth justice, Smith and Gray (2019: 567) have shown how 'practice 'models'' mediate the way policy is applied: 'After all, practice is only realised on the basis of what practitioners believe to be legitimate, credible, achievable, effective and right in any given context' (Forde, 2021, p. 566). The current study highlights the extent to which being charged as a secondary party depends on practitioners' implementation of the law, post *Jogee*. The next section illustrates that there has been little, if any, change in the way inference is used by practitioners to ascertain the culpability of secondary parties implicated in a violent offence.

The ongoing place of inference in decision-making and the 'subtle shift' in practice

Despite Viv's reassurances (above) that prosecutors had 'tightened up' their approach and were no longer prosecuting individuals who were 'just part of a group', the research found that practitioners' continued to rely on their own subjective assessments of secondary parties, based on inferences about who they were and what they must have known. As noted in research conducted prior to *R v Jogee* (Williams and Clarke, 2016), many detectives and prosecution lawyers drew on notions of 'association' between the principal and secondary parties when applying the law in practice, rather than focusing on an individual's intention. Here, 'the connection was linked to 'joining a group' rather than through influencing another's actions' (Du Bois-Pedain, 2016, p. 1062). As Viv explained, when describing their approach to building a case:

> […] we would say, 'this was a group of five, all of whom chased this individual, we say that as part of the group, they knew what was happening and they all participated.' They all chased him, and because we have knowledge of participation, we would say that is sufficient for a jury to infer that they were part of a joint enterprise. (Viv, prosecution lawyer)

In this statement, Viv draws on evidence that the individuals in the group were associated with each other, to infer that by chasing the secondary parties 'knew what was happening' or, in legal terms, had knowledge of the essential facts (or that they had the conditional intent to support the use of fatal violence 'if it came to it') (Crown Prosecution Service,

[4]'Tail-end Charlies' was a phrase Viv used to describe the people who were furthest from the incident.

2019; Reid et al., 2019). This may not be the case for young people involved in spontaneous incidents, in particular. Rather Viv's analysis relies on their own interpretation of the secondary party's knowledge.

Some practitioners who relied on association between parties to demonstrate secondary liability, went further to include an evaluation of an individual's awareness of what *might* occur:

> Joint enterprise for me […] there has to be evidence of just something. It has to be more than just merely being there. So there has to be some evidence of […] knowledge in relation to what you could have foreseen, what was likely to have foreseen … […] Because if you actively put yourself in that situation, again, you have to take the consequences of that action. (Vincent, police detective)

In his assessment, Vincent is straying into the realms of the now abolished PAL. Relying on what the secondary party was 'likely to have foreseen', is arguably beyond the scope of foresight being used as evidence of intention to encourage and assist. In his quote Vincent appears to be supporting the 'change of normative position' theory, arguing that once a person 'actively' puts themselves into 'a situation' they must be responsible for all of the consequences. Keith offered a similar assessment:

> Simply because somebody didn't inflict the fatal blow they then can't acquit themselves of all responsibility, that there is an understanding that you were there, you understood that your colleague was armed, you understood that this was a likely outcome, you can't just abdicate all responsibility for this. (Keith, police detective)

In this quote, Keith clarifies his understanding of joint enterprise: that when a person associates with an armed accomplice, they become morally and legally responsible for the substantive violent offence that results, which they (he argues) foresaw (Simester, 2006). However, the law requires that the young person intended to encourage or assist the substantive offence, or that there is evidence of conditional intent – that they intended the outcome in the particular circumstances that unfolded. The decision in *Jogee* suggests that where an individual has no intent to kill but is party to a violent attack, which they ought to realise carries a risk of some harm, and death results, they are guilty of manslaughter rather than murder (van Sliedregt, 2019).

In the current study, practitioners' assessment of intention and culpability was strongly influenced by their beliefs about what people *must* have known, based on their perceptions of the suspects' relationships with one another, as Vincent explains:

> [when investigating] you might look and say, 'Well, he's got four associates. Actually, associate two is the stabber.'. So you concentrate on that, and then you try and build up the picture from there in relation to that association. […] But what you know is that they are all together and they all have – and I don't care what anybody says – they all have an understanding of what is going on. They all have it. And I will go as far as to say in this day and age, if your mate is carrying a knife, you've probably got a good idea that he's got it. (Vincent, police detective)

Vincent infers knowledge of a weapon from his beliefs about young people's relationships 'in this day and age'. This 'fact' is key to developing a case against a secondary party, he believes. However, it is some distance from intention – that the secondary party understood that the outcome was a virtual certainty of their actions. This highlights

the continued role of foresight in pulling multiple young people into criminal trials involving very serious charges, such as murder. Patrick, below, expresses similar sentiments:

> If four of you go out in a car with a gun and someone gets murdered by someone in that car, then you are all culpable. […] If I can't find that text message or that agreement, does it make anyone less guilty? I'd say no. […] A chance meeting, you don't know your mate has a knife? Fine, but I would imagine there is a rule that if your mate has a knife on him, *everyone knows* your mate has a knife on him. I think it opens up the window of naivety that people can say 'maybe he didn't know there was that two-foot-long shotgun in the footwell of the car' [laughter] 'What's this, Dave?'. (Patrick, police detective)

Both Vincent and Patrick's reflections rely on their own interpretations of young people's relationships, substantial leaps of 'imagination' and assumptions of 'probability', which move us back toward PAL (Krebs, 2019).

Crucially, the reflections of practitioners in this study show that understandings of secondary liability lagged behind the changes made in *R v Jogee* 18 months previously. Indeed, prosecution lawyers themselves reflected on the only 'subtle shift' that the abolition of PAL had produced in charging practice:

> Well [*R v Jogee* has] changed the test obviously that I'm applying, because foresight versus looking at foresight as evidence of intention. So, it's a subtle shift, that is in real terms, because some of the evidence that you would have used to prove foresight, that foresight will be evidence of intention. On a practical level, you're looking at the case, […] do any of these potential defendants encourage or assist the offence practically during the course? And that might be by doing something physical or it might be by … As we know, mere presence is a possibility. [… so …] It's made a difference in the sense that the analysis has become finer and more careful about the way that you express it and think about it. I personally have not had a case where I've thought 'I wouldn't have charged that person under the old law, but I would charge them now' or vice versa. (Alex, prosecution lawyer)

The findings show that, in practice, the distinction between foresight and intention remains blurred, not least because the law, post *Jogee,* allows practitioners to continue to use foresight as evidence of intention and conditional intent remains. Inference continues to play a key role in practitioners' deliberations about the extent to which individuals foresaw or intended to encourage or assist the substantive offence. Such inferences are rooted in practitioners' own subjective interpretations of the actions of secondary parties and these show little evidence of changing despite the change in the law. The following section highlights the relevance of the gang narrative to these inferences and impact on minoritised groups.

The low threshold of association and the prominence of the 'gang narrative'

The emphasis that practitioners placed on association between parties, to establish intention, relied on inferences about what the suspects knew – explicitly and implicitly. Alex's quote below highlights the process by which practitioners made inferences about young people knew 'implicitly':

> Most of what you're dealing with is where there's an implicit understanding among the group either that they're going to cause serious harm or if he resists or struggles.
>
> And how would you know that? How do you know if it's implicit?

> That is about inference and about building a picture of the group, how they know each other, how friendly they are, do they know for example that their mate always carries a knife? Do they know that he's got a hair trigger for violence? Because some of those things matter, which is why everything comes down to the facts. (Alex, prosecution lawyer)

For Alex, the key facts from which evidence of the secondary parties' intention – or conditional intent – was deduced included how close each party was to other individuals in the group, their prior knowledge of an associate's weapon carrying behavior and their propensity to violence. While such information might be factually established in some cases, research has shown the ways in which racial stereotyping impacts assumptions that the police and legal practitioners make about the attachments between young boys from black and mixed ethnic backgrounds, and their knowledge about one another's weapon carrying and involvement in violence (Williams & Clarke, 2016; Young et al., 2020). These are entangled in a racialised discourse which associates blackness with gang involvement (Young et al., 2020). This is demonstrated in the interview with Viv, a prosecution lawyer who emphasised the role that the gang narrative played in the way information was inferred from the facts, for the purpose of prosecuting multiple individuals in cases of serious youth violence:

> So, in a joint enterprise case, frequently you will have a situation where a great deal of the preamble is captured on CCTV, but often when someone is attacked they run away and frequently they run down a side street [where there is no CCTV]. So, we will see one person pursued by four or five others and then we'll see them all running and we may be able to see that some of them are carrying weapons, but we won't be able to demonstrate which of them actually killed the person that was running away from them. So, we would say, 'This was a group of five, all of whom chased this individual, we say that as part of the group, they knew what was happening and they all participated.' They all chased him, and because we have knowledge of participation, we would say that is sufficient for a jury to infer that they were part of a joint enterprise. […] Then it becomes relevant to show: 'Look, this group were part of … ' say the 'guns and shanks gang' […] 'and here is some footage that they posted of all the gang members together,' posturing, singing, chanting, whatever it is. (Viv, prosecution lawyer)

Viv makes an explicit link between the murder committed by *one* of the group in pursuit of the victim and the other *four* individuals who are assumed to be part of this cohesive group, each of whom shared a moral commitment to the murder (Simester, 2006). This narrative is based on the belief that all individuals are members of a gang and Viv's quote shows how the posting of music videos online is used as evidence to confirm this. However, research in the UK has demonstrated the ways in which practitioners misunderstand and misrepresent minoritised young people who engage in the art of making music and music videos, particularly in the genre of hip hop, rap and grime (Fastis, 2023; Ilan, 2020 Owusu-Bempah, 2022; Young and Hulley, in press). Lyrics and music videos that contain references to violence are assumed to be confessions, rather than being interpreted as a creative outlet for young people embroiled in difficult life worlds (Dunbar, 2020, Young and Hulley, in press). Viv's belief that each individual captured on CCTV was part of a 'gang', because they appeared in a music video together, led them to infer that all individuals in the CCTV footage intended for the victim to be seriously injured or killed. The racialised nature of such assumptions (Young et al., 2020) contribute to the over-representation of young men from black and mixed

ethnic backgrounds in samples of people convicted of murder using joint enterprise (Hulley et al., 2019).

Defence lawyers who took part in the study raised concerns about the way in which the gang narrative drove prosecution decision making:

> I think […] if the CPS or the prosecution as a whole [including the police] think they're capable of identifying a gang phenomenon in a case, then I think that has a huge influence on them jointly charging defendants because, so far as they're concerned, if you're in the same gang, then you all sign up to the same action, and that's not necessarily true at all, actually, especially obviously in more informal kind of less organised gangs, but even sometimes in organised gangs that's not so. (Hugo, defence lawyer)

Hugo's unease is supported by findings from repeated research studies (Williams & Clarke, 2016; Young et al., 2020).

Defence lawyers asserted that assumptions about young men in gangs oversimplified the reality of the ways in which young people become implicated in violence and failed to establish that an individual young person *intended to encourage or assist* the substantive offence. Participants underlined the damaging impact on the secondary party, of being 'tarred with the same brush' (Simon, defence lawyer), as explained by Gita:

> … everyone gets labelled: 'gang', 'murder'. Seven of them is a 'gang' but it might not be a gang, five of them play football together and the driver of the car, and they went. Things got heated, someone acted out, suddenly they're all convicted of murder. They're just seven, normal, 17-year-old lads playing football, someone started on his sister, there was a bit of a fight, someone pulled out a knife. One person pulled out a knife, seven of them got convicted because they didn't stop him. Is that fair to have the same label, the same mandatory sentencing? (Gita, defence solicitor)

Gita highlights the issue of young people being misidentified as members of cohesive, criminally active gangs and the resultant overcriminalisation of young men, particularly those from a black or mixed ethnic backgrounds as shown in recent data (Crown Prosecution Service, 2023; Mills et al., 2022). This perpetuates the problem of unfair labeling and disproportionate punishment of secondary parties.

The persisting problem of unfair labeling and disproportionate punishment

For prosecution lawyers, joint enterprise was considered an effective legal tool, as it allowed *all* suspects involved in an offence to be brought into the courtroom as defendants, to paint 'the whole picture' for jury members. By pulling everyone in to be tried in court, prosecutors maximised the chances of conviction for all individuals whom they identified as being morally and legally responsible for the serious violent incident. Police and prosecutors were satisfied that once all defendants had been convicted by a jury of the same substantive offence, individual accountability would be differentiated at sentencing. As noted by Connor and Austin:.

> It doesn't necessarily mean [that the secondary party] gets exactly the same sentence, but they can be convicted of the same offence and the role that they played within it is then taken into consideration on sentence. (Connor, Homicide detective)

> *So, it's the sentencing part which you think is what differentiates the kind of roles that people played?*

> Most definitely, it's not the conviction. (Austin, Homicide detective)

Such comments neglect or downplay the problem reported by secondary parties, that being convicted of murder and labelled a murderer feels unfair (Hulley et al., 2019). Connor and Austin's view also ignores the issue of the mandatory life sentence for murder in England and Wales. Although judges are able to take account of differences in culpability and harm in their application of aggravating and mitigating factors, the scope of differentiation is limited by mandatory starting points which are based on the type of offence and the age of the perpetrator. This, in practice, leads to relatively small differences in custodial terms for principal and secondary parties convicted of the same substantive offence (Hulley et al., 2019).

Defence lawyers in our study agreed that secondary parties continued to be unfairly stigmatised by the offence label when convicted of murder, post *Jogee,* as it gave the false impression that the individual had killed another human being, failing to accurately represent their part in the substantive criminal act (Chalmers & Leverick, 2008). They called for clearer distinctions to be drawn between the principal and secondary parties at conviction, as well as sentencing, supporting Wang's (2019, p. 155) argument that there is good reason to distinguish between the autonomous, independent actions of the principal party who *directly caused* the ultimate harm and the secondary party, who does 'not have control over the occurrence of the prohibited harm'.

Some defence lawyers believed that juries responded to perceived overcharging by the Crown Prosecution Service, by distinguishing between the actions of the principal and secondary parties in their verdicts, when possible. This was demonstrated in cases that defence lawyers had been party to, in which individuals were charged with murder but convicted of manslaughter by the jury, or acquitted altogether. Defence lawyers believed that this was a silent (and undetectable) protest against secondary liability:

> [Juries] might think 'well actually he wasn't as bad as the principal but actually he still signed up for something really bad and so manslaughter is a medium of sorts'. Not necessarily a happy medium, but it's a compromise. (Josie, defence lawyer)

> [In the case I told you about] where the guy got completely acquitted, if there was an offence of accessory before the fact, and they thought 'Well, actually, he should be guilty for something' then they may have convicted him for that. But they were never going to convict him of murder because, Jesus Christ, he absolutely did nothing! So, they're going to take 25 years off this lad's life away because [of nothing]? (Simon, defence lawyer)

Post *Jogee* juries may be more likely to convict individuals of manslaughter *(*Krebs, 2019) and participants in the current study reported that, in their experience, juries were particularly likely to distinguish between the culpability of the principal and secondary parties in cases involving young people. They hypothesised that jury members felt uncomfortable convicting some young people who were charged as secondary parties with murder, for which they would receive a life sentence and a long minimum period in custody. This could generate inconsistency in convictions, as some young defendants in particular cases (with juries who were sympathetic to their situation) were 'saved' from receiving the label of murderer and the severe punishment, while others continued to be convicted of murder and given a life sentence.

This led to calls for a more consistent system based on fair rules that could be applied in similar cases, as suggested by Hugo:

> I suppose that […] one factor of consideration [is] how often do the prosecution actually charge manslaughter? How often are they prepared to look at circumstances and say, 'Despite the fact of death, we're not sure that an inference is available to us that this person meant really serious harm, or had an intent to kill.' In many circumstances, that may be a fair assessment, but […] I've never had a case charged with manslaughter, even in circumstances where there are, what can be said to be mitigating circumstances surrounding the death. Never once. […] Only, as I said, rarely actually I had a jury return a manslaughter verdict. It's usually not guilty completely, or guilty. (Hugo, defence lawyer)

In this context, defence lawyers called for a further, systematic change in English and Welsh law to ensure that the principles of fair labeling and proportionate punishment could be achieved by embedding fair charging into the process.

Alternative approaches post jogee – suggested changes to practice

The practitioners interviewed for the purpose of this study offered alternative solutions to counter the issues associated with secondary liability that continued to persist post Jogee. A modest alternative, suggested by Baj, involved legislating for an automatic reduction in the sentence length of secondary parties compared to their principal counterparts:

> I don't agree with what tariffs are dished [out] at the moment […] For example, if it's a stabbing, you're looking at a starting point of 25 [years minimum tariff]. If the principal [party] is getting 25, then it should be significantly less I think for the other members of a joint enterprise and lower still for the accessory. So different gradations. […] (Baj, defence lawyer)

Baj's suggestion reflects Horder's (2019, p. 52) recommendations to develop a 'general guideline' in which the starting point for a secondary party's sentence is set at 'no more than half' that of the principal. Although a reduction in sentence could be considered a significant step in the right direction toward more proportionate punishment, as noted above, it does not adequately address the issue of liability and the unfair labeling of the secondary party, who would still receive the same conviction.

An alternative solution proposed by participants, was for prosecution lawyers to offer different charges for each individual in a multi-handed case, depending on their specific actions. This would require prosecution lawyers to specify the role that each individual played in the incident:

> I'd love to see a case where there were five different charges for five kids who were all present at the time of the murder, because that's really clever, sensible – that's doing a proper appreciation of everybody's role there. (Simon, defence lawyer)

In *R v Jogee,* the Supreme Court in England and Wales urged that manslaughter be explicitly offered to individuals who are party to violence that resulted in death, but who did not intend to assist in causing death or really serious harm. It is possible that the charging of manslaughter *instead of murder* has increased (see Krebs, 2019 for a full analysis) but the extent to which this is the case is currently unknown due to the lack of data collection.

In cases of 'spontaneous, unplanned violence', Du Bois-Pedain (2016) suggests that a separate charge should be offered based on an independent assessment of each participant's contribution to the wrongful harm. For example, where an individual does

'something' but they are not clear about the objective of the incident and they do not act in an organised, cooperative manner, a charge of affray or public violence should be pursued. If death or serious injury results from the incident, this could be considered as an aggravating factor at sentencing for the public order offence. Du Bois-Pedain (2016) also notes that the German Criminal Code (section 231) provides an alternative aggravated offence of 'taking part in a fight during which serious injury or death is caused to any person" (see Du Bois-Pedain, 2016).

While the need for reform was clearly stated in defence lawyers' narratives there was recognition that the appropriate balance needed to be achieved, between holding individuals' responsible for their actions and avoiding over-criminalisation, however difficult this was in practice. Some participants feared that further changes to joint enterprise could 'embolden' individuals, giving them 'carte blanche' to behave without sanction. However, we argue that rather than allowing individuals to get away with murder, reform to the law of complicity and prosecution practice is essential to ensure those involved in multi-handed violence are *fairly labeled* and *proportionately punished*.

Concluding comments

Based on the experiences and reflections of practitioners, this article offers a unique perspective on the impact of changes to the law related to joint enterprise in England and Wales. It shows that 18 months post *Jogee* little had changed in practice, supporting data that found an increased use of secondary liability in homicide cases and the continued disproportionate impact of the law on men from minority ethnic backgrounds post *Jogee* (Crown Prosecution Service, 2023 Mills et al., 2022;).

Our findings show that this practice statis was rooted in the blurring of the line between foresight and intention, and the continued use of inferences that practitioners draw about young people involved in violence, particularly young men from black and mixed ethnic backgrounds. They persistently conflated association between individuals with intention to assist and encourage, particularly when a 'gang' narrative was invoked. Weak links between parties were strengthened by practitioners' own interpretations about who young people were, the nature of their relationships with one another and what they 'must have' known, rather than what they *did* know, generating the potential for injustice. While it is essential that individuals are held accountable for their wrongdoing, it is a necessity of justice that they be appropriately labeled and proportionately punished. This is particularly marked in relation to the immense force of a murder label and the (literally) lifelong impact of a mandatory life sentence in England and Wales, which comes at a significant human cost to those convicted and their families (see Crewe et al., 2020).

On the basis of the findings presented here we call for changes to the law and legal practice in England and Wales to ensure that the criminal wrongdoings of individual parties are distinguished. In some instances, this might mean charging the principal party with murder, but charging others who are implicated in the violent incident with existing, alternative offences that more accurately represent their actions – such as manslaughter, assault or a public order offence. However, actions are not thought to be accurately represented by an existing offence, a change to the law must be considered, offering a different offence. In England and Wales this could involve developing the law on conspiracy (Sullivan, 2019) or creating a new aggravated

offence, such as that offered in the German Criminal Code (outlined above). Such an approach allows the law to 'develop distinctive typologies of structurally different wrongs' and to respond in a more nuanced way to the actions of individuals caught up in a group incident, by recognising the personal wrongdoing of those who had substantial involvement in causing the ultimate harm, as well as appropriately responding to those whose wrongdoing was minimal (Du Bois-Pedain, 2016). At the time of writing, a Private Member's Bill has been presented to the UK parliament, called the 'Joint Enterprise (Significant Contribution) Bill', which seeks to change the wording of the law that underpins secondary liability so that a secondary party would need to make a 'significant contribution' to the crime to be convicted (Centre for Crime and Justice Studies, 2023).

Further changes to the law, or the use of alternative charges for secondary parties may not be supported by some criminal justice practitioners. However, in a principled criminal justice system, we argue that restraint is needed in the application of the law of complicity: 'No individual, even an offender, should have his or her interests sacrificed except to the extent that it is both absolutely necessary and reasonably proportionate to the harm committed or threatened' (Ashworth, 2006, p. 67). This would also fulfill another key principle of the criminal justice system – that of 'minimalism', which requires governments and courts to demonstrate 'side-constraints' to limit the extension of the processes of punishment (Horder, 2019). In this context, minimalism supports the need for a humane response to offending, which involves:

> minimizing criminalization, because this response acknowledges that the censure and punishment of a fellow human being is a distasteful duty, not a legitimate means by which full vent can be given to the righteous indignation of those affected by or informed of the crime. (Horder, 2019, p. 73).

The law of complicity liability, as it is currently applied in England and Wales violates the principle of minimalism, particularly when it relies on weak assessments of culpability and subjective assessments of knowledge. As Wang (2019, p. 154) argues: 'There is nothing to be gained by obtaining easy convictions at the cost of circumventing the core principles of justice'.

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References

Amatrudo, T. (2016). Applying analytic reasoning to clarify intention and responsibility in joint enterprise cases. *Onati Socio-Legal Series*, *6*(4), 920–936.

Ashworth, A. 2006. *Principles of criminal Law* (5th ed.). Oxford: Oxford University Press.

Centre for Crime and Justice Studies. (2023). *Changing the law on joint enterprise*. https://www.crimeandjustice.org.uk/news/2023-12-06/changing-law-joint-enterprise.

Chalmers, J., & Leverick, F. (2008). Fair labelling in criminal law. *The Modern Law Review*, *71*(2), 217–246. https://doi.org/10.1111/j.1468-2230.2008.00689.x

Clarke, B., & Chadwick, K. (2023). The criminalisation of women in joint enterprise cases: Exposing the limits to 'serving' girls and women justice. *International Journal for Crime, Justice and Social Democracy*, *12*(4), 80–91.

Crewe, B., Hulley, S., & Wright, S. (2020). *Life imprisonment from young adulthood: Adaptation, identity and time*. Palgrave.

Crown Prosecution Service. (2019). *Secondary Liability Charging Decisions on Principals and Accessories*. https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories.

Crown Prosecution Service. (2023). *Crown Prosecution Service Joint Enterprise Pilot 2023: Data Analysis*. https://www.cps.gov.uk/publication/crown-prosecution-service-joint-enterprise-pilot-2023-data-analysis.

Du Bois-Pedain, A. (2016). Violent dynamics: Exploring, responsibility-attribution for harms inflicted during spontaneous group violence. *Onati Socio-Legal Series*, *6*, 1053–1078.

Dunbar, A. (2020). Art or confession? Evaluating rap lyrics as evidence in criminal cases. *Race and Justice*, *10*(3), 320–340. https://doi.org/10.1177/2153368717749879

Dyson, M. (2018). Principals without distinction. *Criminal Law Review*, *4*, 296–320.

Fastis, L. (2023). The road, In court: How UK drill music became a criminal offence. In J. Levell, T. Young, & R. Earle (Eds.), *Exploring urban youth culture outside of the gang paradigm: Critical questions of youth, gender and race On-road* (pp. 100–114). Bristol University Press.

Forde, L. (2021). Welfare, justice, and diverse models of youth justice: A children's rights analysis. *The International Journal of Children's Rights*, *29*(4), 920–945. https://doi.org/10.1163/15718182-29040005

Gerry, F., Allely, C., & Rowland, A. (2021). *Autism spectrum disorder and the criminal law*. https://www.libertaschambers.com/wp-content/uploads/Autism-Spectrum-Disorder-and-the-Criminal-Law-Felicity-Gerry-June-2021.pdf.

Green, A., & McGourlay, C. (2015). The wolf packs in our midst and other products of criminal joint enterprise prosecutions. *The Journal of Criminal Law*, *79*(4), 280–297. https://doi.org/10.1177/0022018315597816

Horder, J. 2019. *Ashworth's principles of criminal Law* (9th ed.). Oxford: Oxford University Press.

Hulley, S. (2021). Defending 'Co-offending' women: Recognising domestic abuse and coercive control in 'joint enterprise' cases involving women and their intimate partners. *The Howard Journal of Crime and Justice*, *60*(4), 580–603. https://doi.org/10.1111/hojo.12445

Hulley, S., Crewe, B., & Wright, S. (2019). Making sense of 'joint enterprise' for murder: Legal legitimacy or instrumental acquiescence? *The British Journal of Criminology*, *59*(6), 1328–1346. https://doi.org/10.1093/bjc/azz034

Ilan, J. (2020). Digital street culture decoded: Why criminalizing drill music is street illiterate and counterproductive. *The British Journal of Criminology*, *60*(4), 994–1013. https://doi.org/10.1093/bjc/azz086

Judicial College. (2023). *The crown court compendium. Part I: Jury and trial management and summing up*. https://www.judiciary.uk/wp-content/uploads/2023/06/Crown-Court-Compendium-Part-I-June-2023-updated-Feb-2024.pdf

Kern Griffin, L. (2013). Narrative, truth, and trial. *Georgetown Law Journal*, *101*, 281–335.

Kirby, A., Jacobson, J., & Hunter, G. (2016). Prosecuting joint enterprise cases: Seeking ways through the fog. *British Society of Criminology Newsletters*, *79*, 11–15.

Krebs, B. (2018). Oblique intent, foresight and authorisation. *UCL Journal of Law and Jurisprudence*, *7*(2), 1–24.
Krebs, B. (2019). Joint enterprise murder is dead – long live joint enterprise manslaughter? In B. Krebs (Ed.), *Accessorial liability after jogee* (pp. 107–132). Bloomsbury Publishing.
Maddison, D., Ormerod, D., Tonking, S., & Wait, J. (2016). *The Crown Court Compendium. Part I: Jury and Trial Management and Summing Up*. Judicial College.
Mills, H., Ford, M., & Grimshaw, R. (2022). *The usual suspects* (2nd ed.). https://www.crimeandjustice.org.uk/publications/usual-suspects-second-edition.
Murphy, K., Tyler, T. R., & Curtis, A. (2009). Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law? *Regulation & Governance*, *3* (1), 1–26. https://doi.org/10.1111/j.1748-5991.2009.01043.x
National Statistics. (2023). *UK population by ethnicity: Age groups*. https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/age-groups/latest/.
Owusu-Bempah, A. (2022). The irrelevance of rap, criminal law review. *Criminal Law Review*, *2*, 130–151.
Reid, V., Sarch, A., & Walker, S. (2019). Thinking like an accomplice: The mens Rea for complicity in US and English law after rosemond and jogee. In B. Krebs (Ed.), *Accessorial liability after jogee* (pp. 157–180). Bloomsbury Publishing.
Simester, A. (2006). The mental element of complicity. *Law Quarterly Review*, *122*(4), 578–601.
Smartt, T. (2018). The doctrine of extended joint criminal enterprise: A "wrong turn' in Australian common law. *Melbourne University Law Review*, *41*(3), 1324–1359.
Smith, R., & Gray, P. (2019). The changing shape of youth justice: Models of practice. *Criminology and Criminal Justice*, *19*(5), 554–571.
Srivastava, P., & Hopwood, N. (2009). A practical iterative framework for qualitative data analysis. *International Journal of Qualitative Methods*, *8*(1), 76–84. https://doi.org/10.1177/160940690900800107
Stark, F. (2016). The demise of "parasitic accessorial liability": Substantive judicial law reform, not common law housekeeping. *The Cambridge Law Journal*, *75*(3), 550–579. https://doi.org/10.1017/S0008197316000611
Sullivan, G. R. (2019). Law reform in the supreme court: The abolition of joint enterprise. In B. Krebs (Ed.), *In accessorial liability after jogee* (pp. 7–28). Bloomsbury Publishing.
van Sliedregt, E. (2019). Joint criminal confusion: Exploring the merits and demerits of joint enterprise liability. In B. Krebs (Ed.), *In accessorial liability after Jogee* (pp. 181–208). Bloomsbury.
von Hirsch, A. (1976). *Doing justice: The choice of punishments*. Hill and Wang.
von Hirsch, A. (1992). Proportionality in the philosophy of punishment. *Crime and Justice*, *16*, 55–98. https://doi.org/10.1086/449204
Wang, V. B. (2019). A normative case for abolishing the doctrine of extended joint criminal enterprise. *The Journal of Criminal Law*, *83*(2), 144–160. https://doi.org/10.1177/0022018318822219
Weinberg, M. (2019). Extended joint criminal enterprise – 'top-down' or 'bottoms-up' legal reasoning? In B. Krebs (Ed.), *In accessorial liability after jogee* (pp. 209–246). Bloomsbury Publishing.
Williams, P., & Clarke, B. (2016). *Dangerous associations: Joint enterprise, Gangs and Racism*. https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20assocations%20Joint%20Enterprise%20gangs%20and%20racism.pdf.
Young, T., & Hulley, S. (in press). "It's tantalising evidence … but you've got to look at the wider picture": Rap music as evidence in joint enterprise cases. *Crime, Media, Culture*.
Young, T., Hulley, S., & Pritchard, G. (2020). A 'good job' in difficult conditions: Detectives' reflections, decisions and discriminations in the context of 'joint enterprise'. *Theoretical Criminology*, *24*(3), 461–481. https://doi.org/10.1177/1362480620907592