

Joint Enterprise and legitimacy among long-term prisoners

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Joint Enterprise is the term given to a form of secondary liability in common law, which allows for a person (or persons) to be held liable for a criminal act perpetrated by another person, if the crime was committed as part of a 'joint criminal venture' (House of Commons Justice Committee 2012: 3). The most controversial form of Joint Enterprise – 'parasitic accessory liability' – has attracted significant criticism and has been the focus of Governmental and judicial review. Most recently the Supreme Court ruled that the law had taken a 'wrong turn' and the judges corrected what they saw as an error in the way in which one aspect of this legal doctrine had been interpreted (in *R v Jogee*). Despite this official focus on Joint Enterprise, research has been limited, primarily adopting a quantitative approach to determine the prevalence of Joint Enterprise, its distribution within particular demographics and the possible reasons for disparities in its use (Bureau of Investigative Journalism 2014, Jacobson et al 2015, Williams and Clarke 2016). While the results of a recent study of men and women imprisoned for long life sentences from a young age, undertaken by myself, Dr Ben Crewe and Dr Serena Wright, also demonstrated the disproportionate representation of particular ethnicities among those convicted under Joint Enterprise, the qualitative dimension of the study provided a rare insight into the feelings of illegitimacy associated with such convictions and the subsequent sentences.

The study had not set out to investigate Joint Enterprise specifically and did not do so in detail, yet around half of the 333 participants who undertook surveys and/or in-depth interviews had been convicted under the doctrine of Joint Enterprise. Within the male sample, Black/Black British and Mixed race men were disproportionately represented – a finding that was later supported by Williams and Clarke (2016). In our study, compared to their representation in the general prison population (based on data from Ministry of Justice 2014): around half as many Joint Enterprise prisoners identified themselves as White; around three times as many identified themselves as Black/Black British, and over three times as many identified themselves as Mixed race. These findings are particularly significant given that Black/Black British men are already significantly over represented in the prison population, compared to the general population of England and Wales. That is, there were over 11 times as many Black/Black British prisoners in our sample of prisoners serving very long life sentences from a young age, who were convicted under Joint Enterprise, compared to the proportion of Black/Black British men in the community. While we did not investigate the causes of such disparities specifically, prisoners who were convicted of Joint Enterprise thought that the over representation of Black and Mixed race men might be due to stereotypes of gangs held by Criminal Justice agents and jury members – a view that was echoed by the participants in Williams and Clarke's (2016) study. From June 2017, I will be undertaking a study with Dr Tara Young funded by the ESRC, one of the aims of which will be to examine the way in which associations are

established between young people by police officers and lawyers involved in Joint Enterprise cases.

In the long-term prisoner study, it was significant that almost three quarters of the male prisoners and half of the female prisoners who were convicted of Joint Enterprise *did not consider themselves to be guilty of the offence for which they were convicted* (which, due to the sampling criteria, was always murder). The majority of these prisoners accepted responsibility for *some legal wrongdoing*, but did not accept that they were legally or morally guilty of murder. Some recognised that their behaviour had led to the death of the victim, believing themselves to be *morally guilty* of killing someone but *legally guilty* of manslaughter, rather than murder. In this sense, these prisoners felt that they lacked the required mens rea for murder – malice aforethought or ‘intent to kill’. However, most prisoners denied being legally or morally responsible for killing anyone, accepting instead that their actions rendered them culpable of some (lesser) legal offence. For example, many admitted that they were present at the scene, or acknowledged that they had lied to the police. In legal terms, then, they felt they were guilty of perverting the course of justice, for example, and reported that being convicted for this lesser offence would have felt legitimate. Instead, their murder conviction and subsequent mandatory life sentence, with an average tariff of 21 years for the male Joint Enterprise prisoners and 19 years for the female Joint Enterprise prisoners, felt deeply *illegitimate*. This had particular implications at different stages of the life sentence.

For many of those in the *early* stage of their life sentence, this sense of illegitimacy led to strong feelings of anger, resentment and bitterness. While such sentiments did not translate into hostility towards prison staff or an aggressive resistance towards the prison regime, research by Liebling et al (2016) suggests that, within particular prison environments, such feelings among male prisoners can contribute to a culture of ‘political charge’, which in turn can generate dangerous faith identities. For women, strong feelings of anger are often ‘directed inward with either cognitive outcomes (such as depression) or behavioural outcomes (such as self-harm)’ (Suter et al 2002: 1096). There was evidence in the narratives of the women convicted under Joint Enterprise of the links between their sense of illegitimacy and self-harming behaviour: ‘I’m not sitting in here doing this [conviction for Joint Enterprise] when I haven’t done anything. [...] *how does that then make you feel about the sentence and things like that?* It makes me feel angry. I’m quite an angry person, but that’s why I take it out on myself, because I don’t know how far I would go if it was someone else. So that’s why I sit here and I end up hurting myself.’ (Tamara, 23 year tariff).

Many Joint Enterprise prisoners who were further into their sentences expressed a sense of resignation regarding the perceived illegitimacy of their conviction. They conceded that anger was a psychologically damaging emotion that could have behavioural outcomes (such as self-harm or violence towards others), which could have implications for their day-to-day life, as well as for their potential release. Consequently they had come to accept their predicament *in order to cope*. Schinkel (2014: 72) calls this ‘coping acceptance’: ‘It was acceptance induced by the need to cope [...] rather than acceptance because the sentence was normatively just.’ This type of acceptance took different forms,

as prisoners directed themselves down a number of cognitive paths in an attempt to close the gap between their legal status and their perception of moral guilt. Put another way, prisoners found ways to persuade themselves that they were more culpable of murder than their actions would suggest, in order to cope with their sentences. Some used past crimes to 'justify' their current imprisonment, while others had come to define their role in the offence as having *contributed* to the death of the individual: 'I played a big part, even though I didn't actually physically stab [the victim]' (Jill, 42 years old, 20 year tariff). Other Joint Enterprise prisoners concluded that their *failure to act* ('omission' in legal terms) contributed to the death of the victim: 'when I first came to prison I used to be like well, no I'm not guilty of murder [...] but now I totally accept, do you know what, you are guilty of murder because in the eyes of the law if you don't stop something then you are guilty.' (Carly, 17 year tariff). As is clear in Carly's quote, these 'acceptance' narratives developed over time for the purpose of psychological survival.

These findings are disconcerting. The potential 'drag-net' effect of Joint Enterprise convictions, on young Black and Mixed race men in particular, means that there are a growing number of men and women serving sentences that are significantly longer than even a decade, which, for many, feel deeply illegitimate. Even for the Joint Enterprise prisoners in our study who had come to 'accept' their murder conviction, their internal conflicts leaked out: 'by calling me a murderer you're saying I killed someone, and I haven't actually physically killed someone.' (Gail, 25 year tariff). For such prisoners, who ultimately dispute their guilt or are conflicted as they attempt to come to terms with it, the impact post-release is unknown. The outcomes for long-term prisoners generally on release can be devastating, including 'post-incarceration syndrome' (PICS) (exhibiting symptoms similar to PTSD) (Liem and Kunst 2013: 333), with those who suffer *wrongful convictions* experiencing further difficulties, including unresolved anger and confusion about their experience (Grounds 2005). There are also implications for an already overcrowded prison system of a Criminal Justice System that is willing to condemn multiple people to very long prison sentences for the same offence, particularly when those convictions and sentences generate feelings of anger and alienation.

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