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# Feeding the Prison Crisis Through Hostile Criminalisation: The Case of Joint Enterprise

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The past few years have seen prisons in England and Wales consistently put under the spotlight by the media, politicians, independent campaigners and by the wider public. The image that comes out of this scrutiny is that of a system undergoing a serious and persistent crisis. Since 2015, various news and reports ‘unveiled disturbing conditions of violence, harm, corruption and disorder, besides unprecedentedly high numbers of deaths in custody, increases in self-injury, high rates of drugs misuse and, in some cases, large-scale riots’ occurring in English prisons.<sup>1</sup> In the last year alone, the Chief Inspector of Prisons issued two urgent notifications concerning significant and systematic failures at HMP Nottingham<sup>2</sup> and HMP Birmingham,<sup>3</sup> the latter a privately-run prison under the management of G4S, which was then taken under emergency control of the Ministry of Justice (MoJ). In addition, the number of assaults, including serious assaults, on both prisoners and staff, as well as the number of self-harming individuals in prison reached record high levels in the year ending in March 2018, and the number of deaths in custody in the year ending in June 2018 remained high, falling 2% in relation to the previous year, which was the highest number recorded to date.<sup>4</sup> The significant increase in inmate violence has led the Prison Officers’ Association to organise a mass walkout in September 2018, which was then called off on the same day after concessions from the prisons minister.<sup>5</sup>

In many ways, this crisis is one of numbers. It is inherently linked to a process of mass incarceration: overcrowding in estates that are not fit for purpose, a situation that has been exacerbated by decreases in staff numbers, which is only one of the significant consequences of austerity cuts and measures which have been imposed since the economic crisis. Considering that prisons in England and Wales have been, now for a decade, experiencing conditions of overcrowding, understaffing and underfunding, it should not be surprising that such institutions would be ripe with problems. That being said, this paper aims to broaden

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<sup>1</sup> Chamberlen, A. and Carvalho, H. (2019) ‘The Thrill of the Chase: Punishment, Hostility and the Prison Crisis’. *Social and Legal Studies* 28(1), 100-117, 101.

<sup>2</sup> HM Inspector of Prisons (2018), Urgent Notification: HM Prison Nottingham. London: Ministry of Justice. Available at: <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/01/17jan-sofs-nottingham-letter-and-debrief-pack-for-publication-1.pdf> (Accessed: 9 January 2019).

<sup>3</sup> HM Inspector of Prisons (2018) Urgent Notification: HM Prison Birmingham. London: Ministry of Justice. Available at: <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/08/16-Aug-UN-letter-HMP-Birmingham-Final.pdf> (Accessed: 9 January 2019).

<sup>4</sup> Ministry of Justice (2018) Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2018 Assaults and Self-harm to March 2018. London: Prime Minister’s Office. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/729496/safety-in-custody-bulletin-2018-Q1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729496/safety-in-custody-bulletin-2018-Q1.pdf) (Accessed: 9 January 2019).

<sup>5</sup> The Guardian (2018) Prison officers end mass walkout over inmate violence. Available at: <https://www.theguardian.com/society/2018/sep/14/thousands-of-prison-officers-to-protest-over-unprecedented-violence> (Accessed: 9 January 2019).

the debate around the so-called prison crisis, by critically examining its context from the perspective of criminalisation – of who is criminalised, how and why.

The first section of the article starts by characterising the prison crisis primarily as a crisis of hostility, as the reflection and one of the main manifestations of a problematic urge to punish in contemporary society. The hostility inherent in punishment drives its violent and exclusionary aspect, which is reflected in the character of the prison population, in which several markers of marginalisation, deprivation and social exclusion are over-represented. After discussing the links between the prison crisis and the hostility in punishment, the paper turns to an analysis of processes of criminalisation, that is, of the role of criminal justice in enabling the hostility which fuels the prison crisis. By drawing parallels between criminalisation and punishment, the paper explores how the current challenges experienced by prisons in England and Wales are one part of a broader framework, in which specific populations which espouse certain characteristics of ‘undesirability’ and exclusion are consistently marked as dangerous in order to be criminalised and punished.

The second section of the article then analyses this process of hostile criminalisation through the specific case study of joint enterprise (JE). Itself a controversial and contentious subject, which has received considerable attention by the media, politicians, courts and scholarship in the past few years, JE broadly refers to legal rules that allow multiple individuals to be prosecuted and punished for a crime substantially committed by another person, on the basis that they were associated with or participating in a previous joint criminal activity with that person. JE’s broad application, its ostensive character and its persistence in lieu of significant criticism arguably make it a prime example of the hostile dimension of both criminalisation and punishment.

### **Dangerousness and Hostility: The Links Between Criminalisation and Punishment**

Although it is undeniable that the penal system in England and Wales is currently undergoing a particularly challenging period, it is also important to avoid falling into the trap of thinking that this crisis represents an exceptional situation that contrasts with the ‘normal’ functioning of the prison, and that such normality can be rescued through targeted interventions, or even through more broad-ranging reforms. Rather, what is being referred to as the prison crisis is only the most recent manifestation of persistent issues, that have characterised the English and Welsh prison estates for decades.<sup>6</sup> Indeed, perhaps the best way to understand the prison crisis is to see it not as a deviation from the normal running of the prison, but rather as the manifestation of some of the most fundamental aspects of punishment as a social phenomenon. From this perspective, the prison crisis is intrinsically linked to the problematic socio-political function of punishment.<sup>7</sup>

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<sup>6</sup> See Hart, E. L.; Schlembach, R. (2015) ‘The Wrexham Titan prison and the case against prison expansion’. *Critical and Radical Social Work* 3(2), 289-294.

<sup>7</sup> See Chamberlen and Carvalho, ‘The Thrill of the Chase’ above.

In a collaborative project, Anastasia Chamberlen and I have examined how the idea and feeling that punishment is useful to society, and necessary from a normative standpoint, largely derive from the fact that punishment produces a sense of social solidarity through hostility.<sup>8</sup> In a nutshell, ‘punishment promotes the image of an ordered society bound together by moral values and legal rules and protected by a strong and legitimate coercive apparatus’.<sup>9</sup> This image is very emotionally appealing, especially in moments and situations of social fragmentation and conflict, and to those people who long for strong bonds of solidarity but feel alienated or neglected by the social order. Consequently, the image of civil order<sup>10</sup> promoted by punishment is more appealing the less it is concretely experienced by those who aspire to it. The most concerning aspect of this symbolic function of punishment, however, is that the sense of solidarity it fosters is achieved through hostility; that is, punishment brings people together only insofar as they are pitted against others, against whom they must unite.<sup>11</sup>

Punishment thus feeds on hostility. Its symbolic role relies on the existence of dangerous others towards whom feelings of insecurity, anxiety and aggression arising from the lack of concrete social solidarity can be channelled. This relationship explains the fundamental link between punishment and political exclusion: the civil order sustained by punishment requires groups and individuals who fall outside of it. Within any specific social setting, the most likely candidates to be made targets of such hostility are those groups and individuals who are already marginalised by socio-political conditions, something which is highlighted by the long-established notion that punishment, and especially incarceration, ‘represents a means to manage aggregate “undesirable” groups’.<sup>12</sup> This is clearly illustrated by the constitution of the prison population in England and Wales, where essentially all factors representing some form of social marginalisation and deprivation—such as homelessness, poverty, drug and alcohol dependency, persistent mental health issues, learning disabilities, and belonging to a largely marginalised ethnic minority—are over-represented in relation to the general population.<sup>13</sup>

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<sup>8</sup> See Carvalho, H. and Chamberlen, A. (2016) ‘Punishment, justice and emotions’. In: Tonry M (ed.) *Oxford Handbooks Online in Criminology*. Oxford: Oxford University Press, 1–31; Carvalho, H. and Chamberlen, A. (2018) ‘Why Punishment Pleases: Punitive Feelings in a World of Hostile Solidarity’. *Punishment and Society* 20(2), 217–234; Chamberlen, A. and Carvalho, H. (forthcoming) ‘Punitiveness and the Emotions of Punishment: Between Solidarity and Hostility’. In M. H. Jacobsen and S. Walklate (eds.) *Towards a Criminology of Emotions* (London: Routledge).

<sup>9</sup> Chamberlen and Carvalho, ‘The Thrill of the Chase’ above, 7.

<sup>10</sup> Farmer, L. (2016) *Making the Modern Criminal Law: Criminalization and Civil Order*. Oxford: Oxford University Press; Carvalho, H. (2017) *The Preventive Turn in Criminal Law*. Oxford: Oxford University Press.

<sup>11</sup> See Carvalho and Chamberlen, ‘Why Punishment Pleases’ above.

<sup>12</sup> Davis, A. P. and Gibson-Light, M. (2018) ‘Difference and Punishment: Ethno-political Exclusion, Colonial Institutional Legacies, and Incarceration’. *Punishment and Society* (Online First), 1–22, 17; see also Fassin, D. (2018) *The Will to Punish*. New York: Oxford University Press; Wacquant, L. (2009) *Punishing the Poor*. Durham, NC: Duke University Press; Feeley, M. and Simon, J. (1992) ‘The new penology: Notes on the emerging strategy of corrections and its implications’. *Criminology* 30(4), 449–474.

<sup>13</sup> Prison Reform Trust (2018) *Bromley Briefings Prison Factfile: Autumn 2018*. Available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Autumn%202018%20Factfile.pdf> (Accessed: 9 January 2019).

For punishment to be able to effectively channel hostility towards these marginalised populations, it relies on the many rituals of criminalisation<sup>14</sup> performed by the law and in the many stages of the criminal justice system. Essentially, criminal laws and criminal justice agents and institutions define and reproduce images that symbolically tie factors and characteristics of deprivation together with notions of violence and criminality, effectively turning what might otherwise be considered aspects of vulnerability into markers of dangerousness. Through this process of ‘dangerization’<sup>15</sup> of undesirable groups and individuals, criminalisation enacts one of its primary functions: that of reassuring law-abiding citizens (i.e. those who are not criminalised) of the security and legitimacy of society’s civil order, by channelling its insecurity towards the perceived threat of those identified as dangerous others.

The violent and exclusionary aspect of punishment thus begins with, and largely depends on, broader and earlier processes of criminalisation occurring in society. This relation is particularly acute in some areas of criminalisation, which can be seen to be directly geared towards the identification and construction of dangerous identities; such instances of criminalisation can be specifically conceptualised as hostile. The rest of this article focuses on examining one such example of hostile criminalisation, that of joint enterprise. Through this analysis, I aim to illustrate how the shape and effects of the law and policy around JE not only express the hostility of punishment discussed above, but also how this hostility directly relates to and feeds the most prominent and problematic aspects of the prison crisis.

### **The Hostile Criminalisation of Joint Enterprise**

As mentioned above, JE is one of the most widely criticised areas of criminal justice in England and Wales. Seen as a product of judicial policy, it is a broad and imprecise term, and can have different possible meanings. More generally, it refers to different rules and strategies aimed at ‘holding co-defendants equally responsible for offences which appeared to evince a common purpose’;<sup>16</sup> this can cover a diversity of situations. For instance, two or more individuals may be committing the same crime together, as joint principals; alternatively, someone can be acting as an accessory, assisting or encouraging another person(s) to commit the principal, substantive offence. But the most controversial situation covered by joint enterprise is what has been known as the doctrine of JE ‘proper’, also termed parasitic accessorial liability, or PAL;<sup>17</sup> this involves a situation when, during the course of a joint criminal activity, one of the participants commits a further crime that departs from the common purpose of said criminal activity. In such cases, PAL stipulated that the other

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<sup>14</sup> See Carvalho and Chamberlen, ‘Why Punishment Pleases’ above.

<sup>15</sup> Lianos, M. and Douglas, M. (2000) ‘Dangerization and the End of Deviance: The Institutional Environment’. *British Journal of Criminology* 40, 261-278.

<sup>16</sup> Squires, P. (2016a) ‘Voodoo Liability: Joint Enterprise Prosecution as an Aspect of Intensified Criminalisation’. *Oñati Socio-Legal Series* 6(4), 937-956, 937.

<sup>17</sup> For a comprehensive discussion of the legal aspects and the case history surrounding PAL, see the case of *R v Jogee* [2016] UKSC 8.

participants in the joint enterprise could be held liable and convicted of the further crime, so long as they had foreseen or realised that this further crime might happen.

Most importantly, the doctrine of JE has been widely (and quite effectively) used in recent decades to deal with cases involving homicide, especially murder. A 2014 report by the Bureau of Investigative Journalism<sup>18</sup> found that, between 2005 and 2013, 4,590 prosecutions for homicide involved two or more defendants (44% of all homicide prosecutions in that period), while 1,853 people have been prosecuted for homicide in a charge that involved four or more people, which amounted to 17.7% of all homicide prosecutions in that period. This is particularly significant since a conviction for murder carries a mandatory life sentence, meaning that individuals were sent to prison for long periods of time, potentially their whole lives, based on loose notions such as foresight of possible violence for which they were not directly responsible. The 2014 report estimated that around 500 people were serving life sentences for convictions based on JE at that time. More recently, JE was the focus of a debate in the House of Commons, where it was estimated that at least 4,500 people, including children, were incarcerated on the basis of the problematic doctrine, ‘serving long sentences for crimes that they did not commit’.<sup>19</sup>

### *Identifying the threat*

Besides being a prime example of ‘overcriminalization’,<sup>20</sup> since it stretches beyond what could be considered the appropriate limits of criminal liability, JE has also been decried as unfair and imbalanced, as it overwhelmingly targets young Black, Asian and minority ethnic (BAME) males from impoverished urban communities.<sup>21</sup> The 2016 report *Dangerous Associations: Joint enterprise, gangs and racism*, by Patrick Williams and Becky Clarke,<sup>22</sup> evidenced how criminalisation through JE predominantly relies on the racialised construction of the idea of ‘gang related’ violence. The symbolism of the gang as a paradigmatic ‘folk devil’<sup>23</sup> has proven to be a powerful tool through which marginalised groups of young BAME individuals can be effectively essentialised into the figure of dangerous others. This way, traits that could otherwise highlight a condition of vulnerability—a socially deprived background, lack of opportunities, experiences of discrimination and alienation—are reinterpreted as markers of dangerousness, which conditions a specific kind of response—individualistic criminal justice instead of a broader social justice, for instance.

This construction of a dangerous identity thus symbolically conjoins two different kinds of anxiety: a specific fear of crime, and a more general anxiety about socio-political fragmentation and uncertainty linked to conditions of structural violence. In so doing, it

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<sup>18</sup> McClenaghan, M., McFadyean, M. and Stevenson, R. (2014) *Joint Enterprise: An investigation into the legal doctrine of joint enterprise in criminal convictions*. London: The Bureau of Investigative Journalism.

<sup>19</sup> HC Deb (25 January 2018) vol. 635, col. 445. Available at: <https://hansard.parliament.uk/commons/2018-01-25/debates/00389B37-64AA-4AC8-BBBB-BE6B98F9C5C1/JointEnterprise> (Accessed: 9 January 2019).

<sup>20</sup> Husak, D. (2007) *Overcriminalization: The Limits of the Criminal Law*. Oxford: Oxford University Press.

<sup>21</sup> See Bridges, L. (2013) ‘The case against joint enterprise’. *Race & Class* 54(4), 33-42.

<sup>22</sup> Williams, P. and Clarke, B. (2016) *Dangerous associations: Joint enterprise, gangs and racism*. London: Centre for Crime and Justice Studies.

<sup>23</sup> Cohen, S. (1972) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*. London: MacGibbon and Kee.

produces a conception of 'group threat'<sup>24</sup> which concentrates feelings of hostility upon it, generating a skewed picture of the problem which downplays its complexity. The result is that the specific group that is identified as dangerous is disproportionately criminalised. For instance, Williams and Clarke's study has shown that the 'gang' label is overwhelmingly attributed to Black men, even though a much lower proportion of Black men is involved in violence: 81% of individuals identified by the police as gang members in Manchester, and 72% in London, were Black, while Black individuals only constituted 6% of those individuals involved in serious youth violence in Manchester, and 27% in London.<sup>25</sup>

So, even though such forms of criminalisation may sometimes be related to legitimate concerns, such as the serious social problem around knife crime and youth violence in socially deprived urban environments in England, the ostensible focus of criminalisation on specific populations that can more easily be constructed as dangerous others is not only unfair and discriminatory, but also fails to adequately identify and address the concrete origins of the harm in question. Instead, it seems that the main purpose of such criminalisation is precisely to provide a suitable target for hostility.

#### *Shaping and enabling the response*

This racialised and exclusionary definition of gang violence as the primary threat in this area of criminalisation not only shapes the deployment of JE, by making it disproportionately affect specific marginalised populations, but also enables such deployment, first by facilitating the prosecution and conviction of defendants, and second by giving them an appearance of social utility. The law around JE has been criticised to be unclear, and juries often find it confusing to apply.<sup>26</sup> The idea that individuals can be liable for having foreseen that a murder, for instance, might happen as a possible departure from another form of criminal activity (which can be broadly defined, and often involves occasions of spontaneous, not necessarily serious, violence) can be rather nebulous, and difficult to establish. But when defendants are characterised as members of a gang, or (which seems to be the rule in many cases) more loosely affiliated with notions of 'gang culture', this generates a presumption of dangerousness from which it is easier to infer that these individuals would be likely to foresee violence arising from their actions.<sup>27</sup> There is therefore a significant forensic usefulness in this characterisation, as it assigns a form of character responsibility<sup>28</sup> to defendants that sets them apart, thus making it easier to charge and prosecute them, and for juries to convict them.

What this also shows is that, in such prosecutions, the symbolism attached to the image of the dangerous other takes precedence over material circumstances, since it conditions the assessment of the blameworthiness of the defendants. This means, for

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<sup>24</sup> See Davis and Gibson-Light, 'Difference and Punishment' above.

<sup>25</sup> Williams and Clarke, Dangerous Associations above, charts 4 and 5).

<sup>26</sup> Crewe, B., Liebling, A., Padfield, N. and Virgo, G. (2015) 'Joint enterprise: The implications of an unfair and unclear law'. *Criminal Law Review*, 252-269.

<sup>27</sup> See Krebs, B. (2015) 'Mens Rea in Joint Enterprise: A Role for Endorsement?' *Cambridge Law Journal* 74(3), 480-504.

<sup>28</sup> Lacey, N. (2016) *In Search of Criminal Responsibility: Ideas, Interests, and Institutions*. Oxford: Oxford University Press.

instance, that the police can use a range of mainly circumstantial evidence, such as phone, text and social media records and Rap and Drill videos, to produce the image that the defendants have some connection and affiliation to something that can be identified as a gang.<sup>29</sup> JE enables criminalisation based on foresight and association, and the construction of dangerous belonging<sup>30</sup> enacted around gang violence enables such criminal responsibility to be mainly 'presumed, legally inferred or juridically established by proximity, appearance, and implied normative association. When it looks like a gang – and especially when the police call it a gang – it *must* be a gang'.<sup>31</sup>

Possibly one of the main factors that underpin these strategies and processes lies in the allure of the hostility engendered by them. To see defendants in these cases not as complex, socially deprived, and often vulnerable individuals, but as potentially violent gang members makes their criminalisation seem useful, even necessary. Under this prism, cases of JE become manifestations of a broader conflict between an ordered, peaceful, legitimate society, and those who pose a threat to it. This allows a process of estrangement from those who are dehumanised and essentialised as dangerous others—often characterised as 'wolf packs',<sup>32</sup> or 'packs of hyenas'<sup>33</sup>—by their criminalisation, which in turn makes it acceptable for them to be treated with violence and aggression, thus channelling such negative feelings and attitudes towards them.

#### *Deepening and obscuring the prison crisis*

Forms of hostile criminalisation such as that engendered by JE feed directly into the chaotic state in which prisons in England and Wales currently find themselves. They contribute to prison overcrowding, by enabling instances of 'wholesale' criminalisation grounded on a low threshold of criminal liability; and they provide the means through which marginalised groups are disproportionately targeted, thus contributing to their over-representation in the prison population. More specifically, JE not only feeds into the prison crisis but effectively deepens it. Its targeted and ostensible criminalisation of young Black urban men for serious crimes, often murder, on the basis of a low threshold of liability and often circumstantial evidence, exacerbates some of the worst aspects of mass incarceration. It sends a large number of marginalised individuals to prison for long sentences, often for crimes which they did not commit.

A series of studies by members of the Institute of Criminology at the University of Cambridge found that those convicted under JE were generally serving longer sentences than other individuals convicted of similar crimes, and that there was an even higher over-

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<sup>29</sup> Pitts, J. (2014) 'Who Dunit? Gangs, Joint Enterprise, Bad Character and Duress'. *Youth and Policy* 113, 48-59.

<sup>30</sup> See Carvalho, H. (forthcoming) 'Joint Enterprise, Hostility, and the Construction of Dangerous Belonging'. In J. Pratt (ed.), *Criminal Justice, Risk and the Revolt against Uncertainty*. Basingstoke: Palgrave-Macmillan.

<sup>31</sup> Squires, P. (2016b) 'Constructing the Dangerous, Black, Criminal 'Other''. *British Society of Criminology Newsletter* 79, 1-4.

<sup>32</sup> Green, A. and 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.

<sup>33</sup> See Crewe et al, 'Joint enterprise: The implications of an unfair and unclear law' above.

representation of BAME individuals in JE convictions than in the general prison population.<sup>34</sup> BAME individuals convicted under JE were also usually younger, were serving longer sentences, and usually had more co-defendants during trial.<sup>35</sup> In addition, a significant number of those convicted under JE do not feel they were justly treated by the criminal justice system; for this reason, they fail to understand or accept their conviction, and often appeal against them.<sup>36</sup> This tends to undermine these individuals' capacity to adapt to the prison environment and makes them more likely to rebel against it, thus worsening the already painful and detrimental effects of the experience of incarceration.<sup>37</sup>

At the same time, these processes of hostile criminalisation simultaneously obscure the causes and scope of the prison crisis, by reinforcing the idea of the prison as a legitimate institution, which is necessary to contain the threat of dangerous criminals. This logic leads to efforts to try and 'fix' the prison without concretely addressing its problems, since these problems are related to the main function that is given to the prison in the first place: the engendering of hostility.<sup>38</sup>

The same vicious cycle can be seen in recent developments in JE. After several attempts to engage with the issues around this area of the law, the Supreme Court (SC) finally addressed it in its decision in *R v Jogee*,<sup>39</sup> stating categorically that the doctrine of JE 'was based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalised and questionable policy arguments',<sup>40</sup> and it should therefore be abolished. However, what appeared at first to be a watershed in this area of the law was soon revealed to have changed very little. First, while the SC essentially declared that the law of JE was defective, it also paradoxically maintained that previous JE convictions should not be overturned unless 'substantial injustice' could be demonstrated. So far, nearly all appeals post-Jogee have been dismissed. And second, as the SC itself conceded in its decision in *Jogee*, while the error identified with the doctrine of JE was 'important as a matter of legal principle ... it does not follow that it will have been important on the facts to the outcome of the trial or to the safety of the conviction'.<sup>41</sup> In other words, while the law seems to have changed in form, in substance it has remained essentially the same. Indeed, individuals continue to be convicted in JE cases,<sup>42</sup> and the Crown Prosecution Service (CPS) continues to rely on the same prosecutorial strategies.<sup>43</sup> As long as we continue to use criminalisation both as a means of

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<sup>34</sup> See *ibid.*

<sup>35</sup> See Williams and Clarke, *Dangerous Associations* above.

<sup>36</sup> See Crewe et al, 'Joint enterprise: The implications of an unfair and unclear law' above.

<sup>37</sup> See Liebling, A. and Maruna, S. (2005) *The Effects of Imprisonment*. Willan Publishing: London.

<sup>38</sup> See Chamberlen and Carvalho, 'The Thrill of the Chase' above.

<sup>39</sup> [2016] UKSC 8.

<sup>40</sup> *Ibid* at para 79.

<sup>41</sup> *Ibid* at para 100.

<sup>42</sup> Croydon Advertiser (2018) *Jermaine Goupall killer has to be held back in the dock as he lashes out after being found guilty*. Available at: <https://www.croydonadvertiser.co.uk/news/croydon-news/jermaine-goupall-killer-held-back-1215673> (Accessed: 9 January 2019).

<sup>43</sup> Although the CPS has now, after criticism, amended its post-Jogee guidance on accessorial liability about being cautious when using the term 'gang' – see Crown Prosecution Service (2018) *Secondary Liability: charging decisions on principals and accessories*. Available at: <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories> (Accessed: 9 January 2019).

engendering a specific, hostile, form of solidarity, and as a scapegoat for broader social problems, it will continue to be violent, discriminatory and exclusionary; the same can be said of punishment.

## **Conclusion**

This paper has discussed how the challenges underpinning the current prison crisis are inherently linked to processes of producing hostile solidarity through the criminalisation of marginalised populations, which are themselves linked to broader social problems. Hostile criminalisation ostensibly identifies who should be punished by constructing specific, often vulnerable groups and individuals as dangerous others, and enables their punishment. In so doing, these processes not only feed but actively exacerbate the factors of the prison crisis: overcrowding, discrimination, exclusion and prison harm. At the same time, the symbolic allure of hostility also obscures the causes and scope of the crisis, by shifting the focus from the problems of punishment to the threat posed by dangerous others, thus making criminalisation and punishment seem necessary. To resist this logic, the paper has suggested that the prison crisis is primarily a manifestation of the pursuit of hostile solidarity in a fragmented and structurally violent society, which must be tackled before any significant change to the criminal justice system can be achieved.