

# Dangerous Patterns: Joint Enterprise and the Culture of Criminal Law

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## Abstract

This paper develops a methodological framework to understand criminal laws as cultural artefacts—as manifestations of structures, processes and struggles which are part of the broader social (re)production of meanings, values and affects. The first section sets out the groundwork for a cultural examination of criminal law, deploying insights from cultural theory to understand criminal law’s function in securing civil order. The paper then maps and critically analyses the cultural structure of the law of joint enterprise, which it argues is conditioned by a danger formation centred on the racialised and hostile construction of the image of the urban gang. The third section investigates the implications of this danger formation to the possibility of legal change through a cultural reading of the UK Supreme Court decision in *R v Jogee*. The paper concludes by reflecting on the value of a cultural understanding of criminal law.

## Keywords

cultural theory, civil order, criminal law, criminalisation, dangerousness, danger, joint enterprise, *Jogee*, hegemony, danger formation

On 5<sup>th</sup> June 2021, a newspaper article reported on an appeal being brought by three people against their conviction for murder handed down in 2017 (Conn, 2021). The convictions were part of what has been termed the ‘Moss Side murder trials’ by the media, a couple of trials referring to a killing in Manchester in 2016. As stated in the article, ‘On 12 May 2016, 12 young Moss Side men, all black or mixed race, were in the area of Broadfield Park, known locally as “the Rec” (...)’ (ibid). This is a usual gathering

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spot, and the group there claimed to be only loosely affiliated. ‘The afternoon took a dreadful, violent turn when they saw Abdul Hafidah, 18, whom some said they feared and resented.’

The group started to chase him, going across the traffic on Princess Parkway, the dual carriageway that bisects Moss Side, which was filmed on CCTV and shown in court. Some of the teenagers joined the chase and did nothing further. Some assaulted Hafidah when they caught him, badly beating him. But when a woman on her way home from work, one of many witnesses, shouted at them to leave him alone, all ran off except two. Then one, Devonte Cantrill, 19, wielded a knife, and stabbed Hafidah, who later died from those knife wounds (ibid).

The prosecution charged all 12 men with homicide offences. The main ground for the prosecution appears to be that the defendants were involved in a joint enterprise, as they were part of a gang known as ‘Active Only’, or ‘AO’ (Judiciary, 2017). To prove intent to assist and encourage, the prosecution relied on a series of inferences that associated the group and the area of Moss Side with gang violence, sometimes as loose as bringing attention to historical narratives of gang activity in Moss Side during the 80s and 90s; but one of the most relevant connections was a rap video recorded in 2014 that included some of the defendants. This video clip, also called ‘AO,’ was recorded as part of an initiative led by Kemoy Walker, an award-winning youth worker, and funded by many organisations including Great Manchester Police. Walker, who stated in an interview to the newspaper that the video had nothing to do with any gang, was not called to testify at the trials. Out of twelve defendants, seven were convicted of murder and four of manslaughter. One of them—the oldest, whom the prosecution initially presented as the leader of the group—was acquitted. Three of the seven people convicted of murder appealed against their convictions in 2021, claiming that the prosecutorial strategy adopted in the trials was racist and discriminatory.

While a number of issues could be raised about these convictions, what is perhaps most perplexing is that they happened one year after the UK Supreme Court (UKSC) laid down a landmark decision in *R v Jogee* [2016] 8 UKSC that abolished the legal doctrine grounding similar convictions, that of ‘parasitic accessory liability,’ or ‘PAL’. This doctrine has long been decried as problematic (See e.g. Simester, 2017; Krebs, 2020a), but the few years preceding the decision in *Jogee* saw PAL being increasingly challenged, especially with regards to its application in the area of ‘joint enterprise murder’ (Krebs, 2020b), in which several defendants can be held liable for a killing committed by one of them—and which has been shown to predominantly target young Black and minority ethnic men seemingly involved in gang-related violence (Williams and Clarke, 2016; Squires, 2016a). When the decision in *Jogee* abolished PAL, it was widely celebrated by lawyers, legal scholars, activists, and the media as ‘righting a wrong turn’ in legal history, presumably because most assumed that the abolition of PAL would lead to an end to, or at least to a significant reduction in joint enterprise murder charges and convictions. However, as the Moss Side trials exemplify, cases of joint enterprise continue to abound in English criminal law, and there is evidence that *Jogee* had ‘no discernible impact on the numbers of people prosecuted and convicted of serious violence’ as

secondary parties (Mills et al., 2022). Why has the law changed, and yet everything else—including its main area of application—remained essentially the same?

This article contends that a concrete answer to this question necessitates an engagement with the cultural dimension of criminal law. To do so, it advances a conceptual framework grounded on an application of ‘culture’ as the basis for an analytical methodology. The aim of this framework is to conceptualise the criminal law as a cultural apparatus, one embedded in cultural structures and processes that are part of the broader (re) production of meanings, identities and affects in society. For this purpose, the paper relies primarily on two insights taken from cultural theory. First, it deploys a Gramscian conception of hegemony, further developed in the work of cultural scholars such as Stuart Hall (2019a, 2019b), that sees the cultural field as dynamic and conflictual, in which dominant and emerging perspectives struggle for and against the dominance of common sense. On this basis, the paper engages with criminal law scholarship that defines the main institutional role of criminal law as that of ‘securing civil order’ (see Farmer, 2016, 2020; Carvalho, 2017). Applying a cultural perspective to this notion, the article reconceptualises civil order as a hegemonic outlook which preserves and legitimates dominant social arrangements by associating them with civility, trust, and peace. Thus understood, the criminal law’s function becomes that of maintaining and reinforcing the dominance of civil order, a task it primarily performs by setting and guarding the boundaries of civility by identifying and repressing criminal, uncivil behaviour and identities.

Second, the paper builds on Mary Douglas’ (1992) discussion of conceptions of danger and patterns of blaming in contemporary societies, which critiques the commonsensical presumption that ‘modern’ evaluations of risk and blame are grounded on objective criteria. Deploying this inversion of the traditional anthropological gaze onto the criminal law, the article examines how the criminal law performs its boundary-maintenance (Durkheim, 1964; Smith, 2008) role, looking at how criminalisation is related to underlying *danger formations* which underpin *patterns of blaming*. The paper proposes that tracing danger formations and how they are reflected in and reinforced by legal decisions can provide the basis for a cultural reading of criminal laws.

The first section of the paper sets out the conceptual framework for a cultural examination of criminal law. The second section then deploys this framework to map and critically analyse the cultural structure of the law of joint enterprise (JE). It explores how the law in this area has been conditioned by a specific danger formation centred on the racialised and hostile construction of the image of the urban gang and the dangerousness of gangsters and explores how JE criminalisation relies on this formation and actively reinforces it, both symbolically and materially. The third section then endeavours an examination of the decision in *Jogee*. By investigating its cultural meaning, the paper argues that despite the decision’s outward silence towards the broader social critique of JE and its strict focus on doctrinal issues regarding PAL, the main purpose of *Jogee* was precisely to secure JE criminalisation, and civil order more broadly, against this social critique. Instead of heeding the challenges raised against the context and effects of this area of criminalisation, *Jogee* ultimately reinforced its underlying common sense and thus allowed for its perpetuation, despite formally engendering significant legal reform.

The paper concludes by reflecting on what broader lessons can be taken from the enquiry pursued in the paper, and how these can contribute to a cultural understanding of criminal law, one that is attentive to the relation between law and social change—and to its limits.

## **Criminal law and Culture: Theoretical and Methodological Framework**

As Raymond Williams famously stated, ‘culture is one of the two or three most complicated words in the English language’ (Williams, 1988: 87). Williams acknowledges ‘three broad active categories of usage’—culture as ‘a general process of intellectual, spiritual or aesthetic development;’ as ‘a particular way of life, whether of a people, period, a group, or humanity in general;’ and as ‘the works and practices of intellectual and especially artistic activity’ (ibid: 90). Also, depending on the usage of the term, culture tends to sometimes emphasise ‘*material* production’ (for instance, in anthropological scholarship), and sometimes ‘*signifying* or *symbolic* systems’ (as, he indicates, is usual in history and cultural studies) (ibid, emphasis added). However, Williams proposes that, rather than selecting or privileging one usage over others, ‘it is the range and overlap of meanings that is significant’ (ibid: 91). The value of culture as an analytical concept, then, lies in recognising the relations and interconnectedness between these different aspects of human activity and organisation—between values and habits, structural and institutional arrangements in society, and intellectual practices and modes of analysis, both in their material and symbolic manifestations.

To comprehensively examine the criminal law as a cultural apparatus, it is useful to link it with a concept of significant currency both in cultural theory and in socio-legal studies, that of hegemony. Having its main roots in the work of Gramsci (1992), hegemony refers to the idea of ‘predominance by consent’ (Hoare and Smith, 2005), in which the state and ruling groups maintain power and exercise leadership by means of a dominant or ‘common’ worldview which is maintained primarily via cultural processes and institutions. In other words, political power and authority rely on its ideological apparatus having a hegemonic character—that is, on it appearing intelligible, acceptable, and ideally ‘natural’ and desirable. For Stuart Hall, following Gramsci, this ideological dimension of power and authority has two elements. The first is a ‘philosophy,’ a ‘conception of the [social] world’ that gives it formal coherence (Hall, 2019b: 43). However, the values and ideas contained within this ‘official...imposition of the legitimate vision of the social world’ (Bourdieu, 1991: 239) only become effective when they ‘enter into, modify, and transform the practical, everyday consciousness’ of the population; Gramsci called this second element ‘common sense’ (Hall, 2019b: 43). Common sense is thus the implicit aspect of this ideological dimension of power and authority, which gives it a ‘feeling of obviousness and necessity’ (Bourdieu, 1991: 131).

But while common sense appears as the ‘already-formed and “taken for granted” terrain’ of cultural production, it is in reality ‘disjointed,’ it is ‘fragmentary and contradictory’ (Hall, 2019b: 44; see also Rosenfeld, 2014), and it is the main stage of ideological contestation. This is mainly because the social realm is home to a set of

competing perspectives and distinct ways of life, including those which are longstanding and many others which are constantly emerging; that some appear natural and even necessary, while others are seen as strange, noxious and threatening, is primarily the reflection—and the purpose—of hegemony. Awareness of the fragmentary and contradictory character of common sense also urges us to resist a simplistic conception of hegemony which tends to see it as ‘a model of a static, dominant ideology unproblematically suffused throughout a society,’ and to rather conceive it ‘as an inherently unstable process of constantly shifting equilibria’ (Hall, 2019a: 104). Hegemony is thus best conceptualised as a struggle for the dominance of common sense, so that complex and often disparate social conditions can be naturalised and legitimised under the appearance of a common vision of the social world.

Therefore, while specific societies ‘tend to experience the particular ‘realities’ of our cultural world as fixed and unalterable, no more than simple reflections of the way the world is’ (Crehan, 2011: 277), this worldview is grounded on ‘an articulation of different processes or “modes of production,” that constitutes a set of relations, articulating different, often paradoxical “modes” that are governed by an overarching, dominant outlook or “formation” or “structure”’ (Hall, 2019a: 172). In other words, a hegemonic outlook contains and conceals a complex array of different, contradictory structural factors and relations that need to be somehow reconciled and harmonised by the state’s ideological apparatus if it hopes to remain hegemonic. The key to understanding the criminal law as a cultural apparatus performing a cultural function arguably lies in locating it within a specific hegemonic outlook, that of civil order, and examining the role it performs in that outlook’s articulation.

### *The Cultural Character of Civil Order*

The idea that criminal law is inherently linked to civil order is embedded in the conception of the modern state as structuring and allowing for the flourishing of civil society, which is a predominant feature of political philosophy (see Carvalho, 2017). More recently, this idea has become consolidated in a strand of criminal law scholarship that sees criminal law primarily as a political institution. The main elaboration of this perspective can be found in Lindsay Farmer’s institutional account of criminal law, which builds on Neil MacCormick’s work to posit criminal law’s main function as that of securing civil order. According to MacCormick (2007: 293, cited in Farmer, 2020: 123), ‘An effective and properly functioning system of criminal law and criminal justice is essential for the relative security of mutual expectations which is a condition of the civility of civil society. Criminal law becomes fully intelligible only from this perspective.’ Three primary insights can be taken from this postulate. First, that the criminal law is ‘an integral component of society’s basic structure’ (Chiao, 2016: 139), and therefore has a constitute role to play in social arrangements. Second, that this role is what allows us to make sense of what the criminal law is and what it does, to make it intelligible (Farmer, 2020). And third, that this role is primarily about securing mutual expectations in order to preserve ‘the civility of civil society’.

The idea of civility at the core of civil order suggests a specific notion of social order based on ‘a particular configuration of selfhood, violence, and law produced

by the modernizing process' (Farmer, 2016: 55). It is thus inherently tied to a modern social imaginary (Taylor, 2003) that sees civil society as peaceful and civilized (Elias, 1994), and as having equality and mutual respect as base values. This idea is thus both descriptive, in that it locates civil order within a particular history and context, and normative, in that it invests civil order with an aura of validity and desirability. But, just like hegemony, it must be acknowledged that civil order is also complex, fluid and fragmented (see Bobbio, 1979). As Farmer (2016: 63) stated, 'there is no single or simple concept of civil order which it is the aim of the criminal law to secure or produce.' Rather, this order is very much a reflection of the 'messiness' of civil society, where disparate values and interests are constantly interacting and often competing. Furthermore, unlike the political imaginary of the state where every individual is a citizen endowed with equal rights, civil society is replete with substantial inequalities and structural violence, so that it is home to radically different experiences and perceptions of the social reality. Particularly in late modernity, the fragmented and structurally violent character of civil society also means that social experience is pervaded by ontological insecurity and anxiety (Carvalho, 2017; Carvalho and Chamberlen, 2018). The social arrangements underpinning civil order are thus home to significant tensions and contradictions, many of which betray the values and ideals situated at the core of the notion of civility. The apparent unity and coherence of civil order, the sense of civic identity and belonging it fosters, are largely the product of the dominant ideological apparatus preserved by the state, by its effort to maintain its hold on common sense.

Usually, the criminal law is understood to secure mutual expectations primarily via 'an essentially coercive contribution to the maintenance of a distinctive kind of political order' (Duff 2020: 11); that is, through the threat of criminalisation and punishment. However, while coerciveness is integral to the material and symbolic apparatus of criminal law, the constitutive character of its contribution suggests that it has a more substantial role in producing these expectations. For securing mutual expectations involves not only coercively protecting their social conditions (for instance, securing the institution of private property through the criminalisation of theft), but also materially and symbolically legitimising the particular shape of the order grounding them and reaffirming the authority of its institutions. From this perspective, criminal law's role in securing civil order is predominantly cultural.

Criminal law can thus be seen as playing a main part in what Gramsci called the 'ethical' function of the state, which Hall defined as the 'work' the state performs in establishing and maintaining a specific 'level of civilization'<sup>1</sup> as well as the 'kind of social individual' appropriate to the respective conditions of material existence (Hall, 2019a: 164).

The modern state exercises moral and educative leadership—it "plans, urges, incites, solicits, punishes." It is where the bloc of social forces which dominates over it not only justifies and maintains its domination but wins by leadership and authority the active consent of those over whom it rules. Thus it plays a pivotal role in the construction of hegemony (Hall, 2019b: 41).

Criminal law's contribution to this role in the construction of hegemony is performed through practices and processes of boundary-maintenance (Durkheim, 1964; Smith, 2008), primarily externalised through rituals of criminalisation (Carvalho and Chamberlen, 2018). Through its application and its representation in political, media and public discourse, and through its material manifestations and consequences, the criminal law embeds itself within the way of life of society and seeps into the public consciousness. And what is embedded with it is a distinction between lawful and unlawful behaviour; between peaceful activity, justified force, and dangerous violence; and between 'good' and 'bad' citizens (Anderson, 2013), those who do and do not belong to the imagined community (Anderson, 1983) of the social imaginary.

By symbolically and materially articulating the outer contours of civil society, the criminal law performs a 'reassuring function' (Carvalho, 2017) that is ultimately aimed at securing trust, not only 'between individuals, but also the trust of individuals in the order of the law' (Farmer, 2016: 301), by legitimising those social arrangements deemed lawful. At the same time, by reinforcing those boundaries, the criminal law also limits the scope of belonging, by 'othering' (Williams and Clarke, 2018) those habits and ways of life that are contrary to the tenets of civil order. It thus generates a form of solidarity, preserving social bonds of identification; but it does so through hostility (Carvalho and Chamberlen, 2018), by channelling insecurity and aggression 'outwards', towards those activities and subjectivities that are pushed out of the imaginary of civil order.

The next subsection outlines an approach for how this cultural dimension of criminal law can be traced and examined.

### *Methodological Approach: Danger Formations and Structures of Feeling*

From the discussion above, it is possible to conceptualise civil order as a hegemonic outlook which the criminal law is aimed at securing. This role has two dimensions. On the one hand, the criminal law must reflect its specific cultural context, on which it relies for its own legitimation and intelligibility. It is thus important to understand how the criminal law is conditioned by cultural structures, understandings, processes, and representations, and how these are reflected in criminal law's form and content. This way, these can always be said to have a deeper cultural basis—the complex and contradictory aspects of civil order—and a deeper cultural meaning—that is, meaning that goes beyond the criminal law's self-understanding, that speaks both within and to its cultural context. This aspect of 'speaking to' is important, on the other hand, because the criminal law is always actively *articulating* civil order—reaffirming it, reproducing it, and sometimes reshaping it in order to secure it, to preserve its validity and common sense. Criminal law is thus both a *product* and a *producer* of civil order and its struggle for hegemony.

Recognising that the criminal law is a product of civil order requires us to look beyond its formal structure, beyond matters of doctrine; or, rather, it requires us to see the 'form' of the criminal law as *formed* within a specific cultural context, and as operating within that context. There is a significant body of scholarship, whose main exponents include Norrie (2014), Lacey (2016) and Farmer (2016), which has examined and exposed

how the criminal law is shaped and defined by institutional, structural, and ideological factors which are both reflected and obscured by legal forms. A cultural analysis feeds into these insights, and to a large extent relies on them. What it primarily adds to them is a focus on the dynamics of the *relation* between cultural and legal content and effects. In particular, there is an emphasis on uncovering, examining and scrutinising—de-naturalising—what legal content takes for granted, what it does not say or presents as unproblematic; that is, its common sense. This ‘absent-present’ content is arguably where we can find the aspects of civil order which legal structures and discourses are striving to secure. Thus understood, most of the cultural content of the law is concealed, in the background. This is partly because there is an active effort in legal discourse to insulate the law from cultural influences, to preserve its image as an autonomous, impartial, objective system. The language of law—at least in relation to criminal offences and criminal liability—is a language of rules and principles, of logic and reason. But this is also partly because the hegemonic character of this content relies on it being posited as self-evident, obvious, and unproblematic. To expose it could imply its need for justification, which could in turn open its dominant status to question.

Bringing out this cultural content and its relation to the criminal law thus requires an examination of the specific articulations and ideological formations underpinning the latter. Here, another strand of cultural theory, inaugurated by Mary Douglas, can be helpful. Douglas spent a significant part of her work examining how issues of danger, blame, pollution, and taboo had a socio-political function in ‘primitive’ societies (see e.g. Douglas, 1966). There was, in this work, already a hint that these ideas carried contemporary relevance; this insight was crystallised in the essays collected in *Risk and Blame* (Douglas, 1992), in which the starting point was to challenge the idea that there was a fundamental difference between ‘modern’ and ‘primitive’ blaming practices. This idea assumes that, while ‘primitive’ societies had a politicised and moralised conception of danger, where ‘bad things’ were always interpreted to have a charged meaning—i.e. the collapse of someone’s house was seen as the result of an envious neighbour’s curse, or the consequence of a moral failure on the part of one of the residents—in ‘modern’ societies, ideas of danger had a logical, scientific basis, and therefore blaming for harmful consequences was ‘real’ and objective. Against this, Douglas argued that modern conceptions of danger are just as moralised and politicised.

For Douglas (1992: 21), dangers are predominantly cultural; they are culturally constructed and play a prominent role in ‘the making of community consensus.’ In other words, our perceptions and evaluations of what and who is dangerous are significantly conditioned by our social imaginary and its underlying conception of order. Danger is thus ‘defined to protect the public good and the incidence of blame is a by-product of arrangements for persuading fellow members to contribute to it’ (ibid: 19). The idea that danger is always defined in relation to the public good finds some resonance in criminal law doctrine and scholarship, such as in the idea that crimes are ‘public wrongs’ that concern the community as a whole (see e.g. Duff, 2006). But the notion that the social character of danger conditions the incidence of blame presents a challenge to the possibility of ‘real blaming.’ It implies that our blaming practices predominantly follow specific patterns, set by our cultural perceptions with regards to danger. These perceptions,



shaped and conditioned by symbolic and material structures, ground assumptions and connections that strongly suggest what and who is to blame for specific dangers, in accordance with cultural expectations. While this does not mean that blaming is always pre-determined, it does indicate that our blaming practices are heavily influenced by moralised and politicised constructions of the common good, a 'by-product of arrangements' for securing civil order. Any pretence to 'real blaming' needs to acknowledge and actively resist these underlying patterns.

The task, then, for a cultural reading of criminal law, lies in identifying specific *danger formations* which can then be used to uncover patterns of blaming within particular areas of criminalisation. The idea of a danger formation can be linked to Raymond Williams's concept of a 'structure of feeling' (Williams, 2013: 69). A structure of feeling 'is as firm and definite as 'structure' suggests, yet it operates in the most delicate and least tangible parts of our activity' (ibid). Likewise, a danger formation has a solid structure which can be traced to ostensive material and symbolic processes; and yet its effect is subtle, that of a common sense 'feeling' of what/who is dangerous and criminal which is rarely scrutinised. However, the aim of examining a structure of feeling lies precisely in identifying moments and circumstances in which its 'taken for granted' appearance falters and its cultural content can thus be uncovered. Then, it is possible to observe not only the formation underpinning the 'dominant social character' of a field, but also its 'omissions and consequences, as lived' (ibid: 85). This structure thus reveals itself more clearly in the *gap* between 'public ideals' and the social reality which they attempt to regulate—in Williams's words, 'the conflict between the ethic and the experience' (ibid: 87). For Williams, this conflict is most apparent in moments of social change, during which there are ruptures and disturbances in the dominant social character before a new (or renewed) common sense becomes established.

Likewise, a danger formation can arguably be best explored by attending to the conflict between the 'ethics' it espouses and the actual, concrete experience of its effects. This approach thus has a primary focus on the dynamics of suppression involved in criminalisation—what it takes for granted, what it leaves out, what it does not say or address, and what it tries to prevent from emerging—and on their consequences. And, likewise, moments of change provide unique opportunities to observe these dynamics, as they are—at least momentarily and partially—exposed. These moments are important as well because they highlight the role of the criminal law as a *producer* of culture. The criminal law does not merely and passively reflect underlying patterns of blame; it *articulates* them through notions of responsibility, harm, and wrongdoing, embedding them in legal form and therefore giving them shape, validation, and authority. Especially in moments where the hegemonic character of a specific formation is under challenge or threat, then, the criminal law can be seen to perform a pivotal role not only in securing civil order, but in doing so via an active performance of civil *ordering* (on this, see Ristroph, 2020)—that is, by articulating new or shifting arrangements within the framework of civil order and, in so doing, preserving the latter's hegemonic status.

These points will be illustrated and further clarified through the discussion of joint enterprise in the remaining two sections.

## The Cultural Structure of Joint Enterprise

'Joint enterprise' is an imprecise term with a range of 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' (Squires, 2016a: 937). For instance, if three people decide to rob a store together, they can all be convicted of robbery, even if only one of them actually went into the store and pointed a gun at the cashier (i.e. committed the principal offence), while the other two contributed to the crime in other forms (i.e. acted as accessories or accomplices to the principal offence), such as driving the car or looking out for the police. It is important to note that although the idea of common purpose has traditionally been taken to underpin the notion of a JE, scholars have pointed out that this term does not encapsulate the broad array of situations where a JE can be established in law. A more accepted alternative is the notion of causation, where someone can be deemed to take part in a JE when they make a substantial contribution to the criminal activity, even in the absence of a common purpose (see Krebs, 2010).

In this more general sense, JE is simply an instance of accomplice liability, rules which govern when someone can be held liable for assisting or encouraging a criminal offence. However, the most controversial doctrinal aspect of this area of law relates to instances in which a pre-existing joint enterprise can ground liability for a further offence. For instance, if, in the course or as the result of a joint enterprise, an unlawful killing occurred, all those participating in the joint enterprise can also be potentially liable for that further crime. Prior to *Jogee*, these instances used to be governed by the principle of parasitic accessorial liability, or PAL, laid down in *Chan Wing-Siu* [1985] AC 168 and best articulated in the decision in *R v Powell and English* [1997] UKHL 57, which stipulated that, in such cases, 'it is sufficient to found a conviction for murder for a secondary party to have realised that in the course of the joint enterprise the primary party might kill with intent to do so or with intent to cause grievous bodily harm.'

JE is a particularly suitable object of cultural analysis, including because its most controversial aspect, PAL, long possessed an aura of exceptionality in legal scholarship. From a doctrinal perspective, this principle set a low threshold of culpability, which was particularly problematic in cases involving murder. This is because, for someone to be convicted of murder as a principal offender, it must be proven that the defendant killed with the intent to kill or with the intent to cause grievous bodily harm, intent being the 'highest' degree of culpability found in English law. But, at the same time as the definition of intent in the law of murder was becoming more stringent through development in case law, if the killing arose out of a JE, the requirement for culpability suddenly became much lower and more elusive. And although there were attempts to rationalise the scope of criminal liability under JE, some as recent as the Law Commission's idea of 'normative difference' in 2007 (Law Commission, 2007), the main reasoning grounding JE rules and decisions appeared to be its perceived usefulness in tackling gang activity and in prosecuting and convicting those considered dangerous for being identified (predominantly in racialised ways) as gang members. This is evidenced by one of the main judgments in the development of PAL, the often-cited *R v Powell and English* [1997] UKHL 57.

There, the then House of Lords, perhaps in a rare moment of candidness, reinstated and defended the doctrine of JE by asserting that ‘rules of common law are not based solely on logic but relate to practical concerns and, in relation to the crimes committed in the course of joint enterprises, to the need to give effective protection to the public against criminals operating in gangs.’

This focus of JE on public protection against dangerous criminals can be seen as representative of a broader shift in criminal law and criminalisation, from a concern with developing and protecting principles of individual responsibility and justice to an increasing preoccupation with improving the criminal law’s effectiveness as an instrument of crime control and harm prevention, through the development of forms of criminal responsibility grounded on notions of character, dangerousness and risk (Lacey, 2016). This shift did not sit comfortably with mainstream understandings within the liberal imaginary of criminal justice; nevertheless, JE clearly resonated with dominant cultural understandings around the social role of the criminal law and the perceived danger of gang violence, not least due to the breadth of its application. Although there are no official records regarding the use and ‘effectiveness’ of JE, an illustration can be provided by a report by the Bureau of Investigative Journalism in 2014 which found that, between 2005 and 2013, 4590 prosecutions for homicide involved two or more defendants (44% of all homicide prosecutions in that period), while 1853 people were prosecuted for homicide in a charge that involved four or more people, 17.7% of all homicide prosecutions in that period (McClenaghan et al., 2014). More recently, JE was the focus of a debate in the House of Commons, where it was estimated that at least 4500 people, including children, were incarcerated or detained on the basis of the doctrine, ‘serving long sentences for crimes that they did not commit’ (HC Deb, 2018).

Thus, despite its doctrinal controversies and sustained criticism, for decades JE murder persisted as a pervasive instrument of criminalisation. The ‘effectiveness’ and perceived utility of JE murder can arguably be traced to a danger formation underpinning this area of law, which grounds patterns of blaming structured around ‘a “common-sense,” racialized and stereotypical discourse that links BAME [Black, Asian, and Minority Ethnic] men with an involvement with gangs, drugs and violence’ (Williams and Clarke, 2016: 16).

### *The Danger Formation of Racialised Gang Violence and its Allure*

There has been extensive research on how the image of the gang has become a paradigmatic ‘folk devil’ in recent decades in the UK, especially since the mid-2000s when public, political and legal discourse around gang-related criminality arose to a new state of ‘moral panic’ (Cohen, 1972; Hall et al., 1978), especially in relation to the rise in violence in urban centres in England such as London, Manchester and Liverpool (see Williams and Clarke, 2018). This discourse presents the gang as a significant and ever-growing problem, and the predominant source of serious urban violence. It also portrays the gang and its members as inherently dangerous, callous and prone to violence, and so as a problem requiring strong criminal justice responses (Hallsworth and Young, 2008). Research has also shown that the image of the gang is ostensibly constructed in a racialised, gendered, exclusionary manner: the gangster is predominantly

a Black or ethnic minority young man from a socio-economically deprived background, living in a marginalised area (see Williams and Clarke, 2018; Squires, 2016b).

The danger formation built around gang violence thus symbolically and materially conjoins two different but interrelated kinds of anxiety. On the one hand, there is a specific fear of violent urban crime, which has recognisably had rises and spikes in recent years, especially before the Covid-19 pandemic. On the other hand, the image of the gang also speaks to a more generalised insecurity about socio-political fragmentation and uncertainty: the rise in poverty and the decrease of living conditions, racial and other structural inequalities, which are concentrated in and thus highlighted by the existence of marginalised communities. The image of the gang channels these anxieties in a way that essentialises both underlying issues as a 'gang problem,' and in doing so it produces a conception of 'group threat' (Davis and Gibson-Light, 2018) that concentrates feelings of hostility upon specific populations, generating a skewed picture of the problem which downplays its complexity and misidentifies it. For instance, Patrick Williams and Becky Clarke's study *Dangerous Associations* has shown that although 81% of individuals identified by the police as gang members in Manchester, and 72% in London, were Black, only 6% and 27% of youth violence incidents were attributed to Black individuals in Manchester and London, respectively, at that time (Williams and Clarke, 2016: charts 4 and 5). This over-targeting further contributes to the marginalisation of this population; however, this problem becomes 'invisibilised' by the symbolic construction of the gang as a dangerous other, through which traits that would otherwise be seen as signs of vulnerability (such as socio-economic deprivation and exclusion) become reinterpreted as 'markers of dangerousness' (Lianos, 2013: 73; see also Carvalho, 2020).

Although this focus on gangs can be said in many ways to compromise the effective tackling of the problems to which it is related, it serves an important cultural function. By scapegoating young, marginalised BAME men as the source of violence and social fragmentation, this formation 'produc[es] a kind of solidarity that allows individuals to pursue emotional release together with a sense of belonging, without having to question or address why it is that they felt alienated and insecure in the first place' (Carvalho and Chamberlen, 2018: 228). As such, this formation directly contributes to the hegemony of civil order, since it allows for a limited, distorted, essentialised engagement with prevalent anxieties and insecurities in a way that does not challenge its underlying structural conditions or ideological framework, and thus safeguards the specific configuration of selfhood, law and violence at its core.

This danger formation supports a pattern of blaming which not only shapes the deployment of JE criminalisation, but also in many ways actively enables it. Rules of accomplice liability in general, and PAL in particular, have been widely decried as unclear, and juries have often said that they found them confusing to apply (Crewe et al., 2015). But when defendants are successfully characterised as gang members, this generates a 'presumption of dangerousness' (Carvalho, 2017) which makes it easier, 'common-sensical' to infer that such individuals were likely to expect serious violence to arise from their actions and those of their associates (Krebs, 2015). There is thus a significant forensic usefulness in this pattern of blaming, as it allows culpability in JE cases to be established by use of cultural markers which often constitute mainly

circumstantial evidence, such as phone, text and social media records, the use of Rap and Drill videos posted online, tattoos and even someone's postcode (Pitts, 2014). This gives rise to a problematic form of character responsibility (Lacey, 2016) which allows culpability 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' (Squires, 2016b: 2, emphasis in original).

By pervasively deploying this pattern of blaming, JE criminalisation effectively reinforces its underlying danger formation. It does so first by reaffirming its necessity and common sense, giving expression to, and defending its apparent logic. And second, through its ostensive application, it contributes to the estrangement and the othering of its target populations which allows for their effective scapegoating. Symbolically, this estrangement is produced via a process of 'normative othering' (Lianos, 2013) through which the subjects of JE are characterised as dangerous others and little more. This often includes a process of dehumanisation, through which JE suspects and defendants are presented as less than human, possessed with bestial or barbaric characteristics; for instance, they are often portrayed as 'wolf packs' (Green and McGourlay, 2015) or 'pack of hyenas' (Crewe et al., 2015) in trials and media coverage. This, in turn, makes it acceptable, even necessary, for them to be treated with hatred and aggression. Materially, this estrangement manifests itself in the disproportionate criminalisation of these suspect communities (Pantazis and Pemberton, 2009), which significantly contributes to their marginalisation and social exclusion. The association of impoverished BAME communities with gang violence means that these populations and the areas in which they live are over-policed and considered intrinsically dangerous and undesirable. Furthermore, a series of studies by members of the Institute of Criminology at the University of Cambridge (Crewe et al., 2015; Hulley et al., 2019) found that there was an even higher over-representation of BAME individuals in prison for JE-related convictions than in the general prison population, and that those convicted under JE were usually serving longer sentences than others convicted of similar crimes. BAME individuals convicted under JE were also usually younger, serving longer sentences, and had more co-defendants during trial than white individuals.

JE as an area of criminalisation has thus symbolically and materially contributed to securing a danger formation that conflates and channels significant contemporary anxieties and insecurities through the construction of young BAME individuals from impoverished urban communities as dangerous others. Its pervasive application, its longevity, and its support in political, media and legal discourse also attest to the hegemonic status of this formation, as an embedded aspect of contemporary English civil order.

However, as previously mentioned, it is important to recognise the complexity and fluidity of hegemony. First, we saw that PAL never sat entirely comfortably in the formal structure of criminal law. This suggests that, rather than the criminal law singularly espousing the pattern of blaming centred around the image of the gang, JE is the manifestation of an ambivalence in criminal law between the promotion of ideas and principles of responsibility and justice on the one hand and the perceived need for security and protection from dangerous criminals on the other (see Carvalho, 2017). This ambivalence is also part of the hegemonic formation of civil order; indeed, it is partly because of its

existence that the criminal law feeds into danger formations such as the one under discussion, so that this ambivalence can at times be stabilised and repressed.

Second, this danger formation, although clearly dominant in the cultural imaginary around JE criminalisation, is also in a constant struggle with competing cultural understandings. Particularly in the last decade, this formation increasingly suffered a sustained challenge from a cultural perspective that sees race relations and inequalities as an urgent, fundamental problem in contemporary British society, and thus sees instances of criminalisation such as JE not as a necessary tool of crime control, but as a violent source of injustice and a primary manifestation of this fundamental problem. The last few years saw this cultural movement grow in strength and appeal, and this in turn fuelled a critical account of JE in public discourse. From policy and journalistic reports to documentaries (BBC, 2014), independent reviews (Lammy Review, 2017), Parliamentary reports and debates (House of Commons Justice Committee, 2012), the idea that there was a grave issue with JE became increasingly evident in the public consciousness. This, in turn, presented a potentially significant threat to that conception of civil order, since it struck at the heart of its structural, institutional, and ideological articulation. It is in this context that we must locate the decision in *Jogee* if we aim to investigate its symptoms.

## Jogee and its Patterns

After a wave of substantial criticism targeted at the unfairness of JE criminalisation and particularly JE murder, the UKSC finally addressed the status of PAL in its decision in *Jogee*. In a detailed judgment, the court proposed to offer a comprehensive review of previous case law to ground its conclusion that the PAL principle could not be supported, as its introduction 'was based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalised and questionable policy arguments' (*R v Jogee* [2016], para 79). The outcome of this decision was to formally declare that PAL was no longer good law; from then on, cases falling within the scope previously covered by this principle should be decided under the general rules and principles of accomplice liability. In essence, this meant that, from then on, for someone to be convicted of murder based on a further offence arising from a JE, this person would need to be found to have *intended* to assist or encourage the principal offender to commit the envisaged offence; foresight of violent acts committed by another, while held to be potential evidence of intention to assist or encourage, was no longer sufficient as a basis for culpability in and of itself.

This can be considered a significant doctrinal change, as intention represents the highest threshold of *mens rea* in English criminal law. Indeed, some have raised the question of whether the UKSC was well-placed to make it, or whether this constitutes a substantive piece of law reform that should have been reserved for Parliament (see Stark, 2016). However, in practical terms, this correction is not as significant as it might initially seem. Rules regarding intention and culpability in criminal law can be rather vague, and often counter-intuitive. This is the case even in the law of murder, where the rules of intention have been debated most comprehensively, and yet at least one form of intention, oblique intent, can be said to have no clear definition (see Norrie, 2018). Assessments of intention are usually reliant on discussions of what defendants knew or foresaw,

something which Jooee explicitly recognised when it stated that JE cases are still likely to depend on foresight to determine culpability: ‘The error was to equate foresight with intent to assist, as a matter of law; the correct approach is to treat it as evidence of intent’ (*R v Jooee* [2016], para 87).

While this comment could be enough to muddy the waters in relation to the significance of the formal correction in Jooee, it is possible to imagine ways in which this could have been remedied; for instance, the decision could have stressed that, although foresight will remain relevant in evaluations of culpability, the shift in the law should be taken as an indication that the threshold of foresight necessary to amount to an intention is qualitatively higher or different, and that future decisions should take that in mind. However, given how Jooee stressed how foresight would still be one of the main avenues to establish intention, and how such intent can also be ‘conditional,’ it is clear that Jooee did not seek to substantially alter the threshold of culpability in JE cases (see Xin, 2021; Stark, 2017). In fact, quite the opposite. Another indication of this is that, when stating that previous convictions under PAL would not be overturned unless ‘substantial injustice’ could be demonstrated, the court took pains to clarify that such findings would be exceptional, for ‘The error identified, of equating foresight with intent to assist rather than treating the first as evidence of the second, is important as a matter of legal principle, but it does not follow that it will have been important on the facts of the outcome of the trial or to the safety of the conviction’ (*R v Jooee* [2016] at para 100, emphasis added).

This statement could be interpreted as a mere reiteration of legal principles regarding appeals based on a change of law;<sup>2</sup> however, when read against the backdrop of the cultural context of JE criminalisation and challenges against its fairness, the downplaying of the practical effect of the doctrinal change introduced in Jooee can be seen as a significant effort to preserve the pattern of blaming underpinning this area of criminalisation. This interpretation resonates with Court of Appeal judgments dismissing appeals against JE convictions before Jooee. In *Johnson and Others* [2016] EWCA Crim 1613, the effect of Jooee on previous convictions has been further ‘tamed’ by the Court’s willingness to rely on defendants’ foresight to find a conditional intention to assist or encourage the principal offence (see Stark, 2017). This not only undermines the significance of the correction in Jooee to previous convictions—where, so far, virtually all appeals have been dismissed<sup>3</sup>—but also to future cases. This understanding was confirmed by the Court of Appeal decision in *R v Anwar and others* [2016] EWCA Crim 551:

we find it difficult to foresee circumstances in which there might have been a case to answer under the law before Jooee but, because of the way in which the law is now articulated, there no longer is [...]. [T]he same facts which would previously have been used to support the inference of mens rea before the decision in Jooee will equally be used now. What has changed is the articulation of the mens rea (...) (paras 20,22, emphasis added).

There is thus a significant ambivalence in Jooee, which reflects the ambivalence in criminal law between responsibility and dangerousness. The decision represents an effort to safeguard both notions: it sought to allay the critique that JE criminalisation broke with established principles of criminal responsibility, correcting the doctrinal

discrepancy identified in PAL and thus bringing JE in line with general rules of accomplice liability and with the law of murder; simultaneously, however, it also sought to guarantee that JE criminalisation would preserve its utility as an instrument of public protection against the ‘danger’ of gangs. As a result, the pattern of blaming underpinning JE remained essentially intact: racialised, marginalised and socio-economically deprived individuals continue to be convicted of murder (Conn, 2021; Tobin, 2018; Mills et al., 2022) on the grounds of the same questionable policing and prosecutorial strategies.<sup>4</sup>

This ambivalence found in *Jogee* can be seen as a symptom of the cultural function of criminal law: ultimately, the decision was striving to secure the civil order grounding JE criminalisation against its contemporary challenges. The problem is, the real challenge posed against JE criminalisation was targeted at structural and symbolic aspects of the hegemonic formation underpinning it; in other words, it was a challenge against that configuration of civil order. To properly address concerns around PAL and JE more broadly, it would be necessary to recognise the law’s complicity with broader elements of material and symbolic injustice. Doing so is undeniably arduous and, it could be argued, beyond the remit of a court judgment. Nevertheless, this realisation is important as a matter of analysis, especially to understand the difficulties and limits of legal decision and reform in areas of cultural contestation.

Arguably, then, the decision in *Jogee* reflects the law’s need to tackle the growing erosion of hegemony in an important area of criminalisation, coupled with an unwillingness, or perhaps incapacity, to address the deeper, substantial grounds of this erosion. The way in which the decision attempts to tackle this paradoxical aim is by deploying a specific *narrative*, in which the doctrinal ‘deviation’ in *Chan Wing-Siu* [1985] AC 168, later embodied in the PAL principle, is scapegoated as the sole source of the problems of JE criminalisation. Since the doctrine constitutes a deviation, ‘based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalised and questionable policy arguments’ (*R v Jogee* [2016] UKSC 8, para 79), the solution becomes simple: to abolish PAL, which is itself presented as a matter of correction rather than reform. All the other issues—the outcome of previous convictions, the issue of how foresight is still the basis for finding intent and how foresight is constructed by means of racialised, discriminatory, exclusionary, structurally violent strategies—become incidental, beyond the remit.

The importance of understanding this positioning as a narrative is that it highlights how it is used to articulate the decision as common-sensical, and to (re)present it as effective, useful. However, even *Jogee*’s basic tenet, that it was ‘righting a wrong turn’ in case law, can be questioned. As Findlay Stark (2016) has compellingly argued, a more comprehensive reading of JE case law can show that the principle set in *Chan Wing-Siu* and further elaborated in *Powell and English* simply elucidates and gives doctrinal form to established legal practice, thus presenting a (rather unusual) display of ‘intellectual honesty’ (ibid, 551). In cultural terms, this means that this case law managed to accurately, if unreflexively and uncritically, manifest its underlying pattern of blaming; this can especially be seen in the decision in *Powell and English*, which explicitly linked the utility of PAL to the need to protect the public against ‘criminals operating in gangs.’ From this perspective, the move in *Jogee* to abolish PAL was much more than



simple ‘housekeeping,’ but rather a substantial act of legal reform. It was a deliberate attempt to safeguard a conception of civil order currently in crisis.

Furthermore, in being silent about the danger formation underpinning JE criminalisation and deliberately not engaging with its practical legal reflections—such as how culpability is constructed in these cases—the decision in *Jogee* displays an aspect of ‘cheating’ (Williams, 2013: 88), as it takes substantial steps to solve the problems afflicting this area of law, but does so without questioning or acknowledging their grounding and context. This feature can be explored through an engagement with Raymond Williams’ discussion of ‘magic’ as a narrative device in novels of the 1840s. Williams looked at how success, wealth and status were values at the core of the dominant social character of the time; however, these values were in deep tension with lived experiences of debt, disgrace, and dispossession, which alienated people from those ideals. One predominant artifice used to try and resolve this tension in novels of the period was to explore experiences of poverty, marginalisation and hardship as the main challenges faced by protagonists, only to then resolve these experiences by means of a ‘magical’ solution, such as the discovery of a ‘legacy’ such as an inheritance, or a sojourn into some part of the ‘Empire’, from which the protagonist would return rich and dignified. ‘This element of cheating marks one crucial point of difference between the social character and the actual structure of feeling’ (ibid: 88), because while the dominant culture can and must acknowledge to some extent the complexity of lived experience if it is to maintain its hegemony, it does so only superficially, and only to ultimately reaffirm its legitimacy and common sense.

The decision in *Jogee* can be said to possess an aspect of ‘magic’, in that it resorts to ‘a simpler way of resolving the conflict between ethic and experience than any radical questioning of the ethic’ (ibid: 89). The purpose of this narrative device is to provide an affective bridge between ethic and experience, one which can allow people to identify with the values promoted by the dominant culture. In the novels of the 1840s, readers could identify with the protagonists who (even if momentarily) shared some of their own burdens, and they could also dream of similarly achieving wealth and status; likewise, *Jogee* (again, momentarily) made many believe that the law had acknowledged some of its problems and recognised their toils, and they could dream of having their convictions quashed, or at least of no longer being targeted by a hostile and discriminatory instrument of criminalisation. In so doing, *Jogee* followed the dictates of criminal law’s function of securing civil order, in the sense that it strived to protect an element of its hegemonic formation that is deeply embedded in contemporary structural arrangements: structurally violent conditions of racial and socio-economic marginalisation and exclusion.

However, although *Jogee* may have delayed a potential rupture in the dominant articulation underpinning this area of law, it has definitely not allayed its possibility, and its sleigh of hand may well prove to have been self-defeating. The initial enthusiasm with *Jogee* quickly died out and has been replaced with bitter disappointment (see e.g. Morrison, 2017) followed by renewed calls for legal reform (e.g. UK Parliament, 2018). It also further contributed to the feeling of confusion and disillusionment shared by many of those criminalised via JE murder (Crewe et al., 2015; Hulley et al., 2019) and those who advocate on their behalf, who experience *Jogee* as yet another manifestation of an unfair, and thus ultimately illegitimate, legal system.

## Conclusion

This paper has set out a theoretical and methodological framework for a cultural analysis of the criminal law. At its core, it highlighted the need to understand the criminal law as part of society's broader material and symbolic complex, intimately linked to dominant structures, institutions, understandings, and sentiments in society. It has argued that this interpretive perspective can help us better understand criminal law's functioning, limits, and problems, by shedding light on its intrinsic relation to broader issues of social order and experience. As the case of joint enterprise hopefully illustrated, there is much to be gained from this approach.

At the heart of the analysis performed in this paper was the suggestion of a link between civility and hostility: civil order must be kept within boundaries, which must be preserved through hostile mechanisms such as criminalisation. Going forward, it will be essential to investigate how far this link between civility and hostility goes, and whether judicial legal reform can play a part in its decoupling. Could another, different *Jogee* be possible? Ultimately, changing the material and symbolic articulations underpinning social (civil or otherwise) order is a political matter; but there is an open question as to the extent to which developments in criminal law can break with, or at least transform, hegemonic formations.

A cultural understanding of criminal law highlights these concerns and seeks to map and uncover the hegemonic underpinnings of criminal law and criminalisation. Hopefully, sustained attention to these issues can in turn inform the establishment of a counter-hegemonic tendency in criminal legal scholarship—if not, perhaps, in the criminal law itself.

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## Notes

1. An interesting observation is that the idea of ‘culture’ was historically used as a synonym for ‘civilization.’ See Williams, 1988: 89.
2. For a discussion of this point with regards to joint enterprise, see *R v Johnson-Haynes (Andre)* [2019] EWCA Crim 1217.
3. See e.g. *R v Johnson and others* [2016] EWCA Crim 1613; *R v Geidraitis (Andrus)* [2016] EWCA Crim 188; *R v Grant-Murray & Anor* [2017] EWCA Crim 1228; *R v Agera (Stephen)* [2017] EWCA Crim 740; *R v Popat (Sarju)* [2017] EWCA Crim 899; *R v Mitchell (Laura)* [2018] EWCA Crim 2687; *R v Towers (Jordan)* [2019] EWCA Crim 198; *Cunliffe v Criminal Cases Review Commission* [2019] EWHC 926 (Admin); *R v CN* [2020] EWCA Crim 1028; *R v Semusu (Hussein)* [2021] EWCA Crim 513; for a successful appeal, see *R v Crilly* [2018] EWCA Crim 16.
4. Even though the CPS (2019) has now, after criticism, amended its post-Jogee guidance on accessory liability to include instructions for prosecutors to ‘be cautious about referring to a group as a “gang”.’

## References

- Anderson B (1983) *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.
- Anderson B (2013) *Us and Them? The Dangerous Politics of Immigration Control*. Oxford: Oxford University Press.
- BBC (2014) Guilty by association. Available online: <https://www.bbc.co.uk/programmes/b049bb31> (Accessed 17 Feb 2022).
- Bobbio N (1979) Gramsci and the conception of civil society. In Mouffe C (ed) *Gramsci and Marxist Theory*. Oxon: Routledge, pp. 21–47.
- Bourdieu P (1991) *Language and Symbolic Power*. Cambridge: Harvard University Press.
- Carvalho H (2017) *The Preventive Turn in Criminal Law*. Oxford: Oxford University Press.
- Carvalho H. (2020) Joint enterprise, hostility and the construction of dangerous belonging. In Pratt J and Anderson J (eds) *Criminal Justice, Risk and the Revolt Against Uncertainty*. London: Palgrave, pp. 115–137.
- Carvalho H and Chamberlen A (2018) ‘Why punishment pleases: punitive feelings in a world of Hostile solidarity.’ *Punishment and Society* 20(2): 217–234.
- Chiao V (2016) What Is the criminal law for? *Law and Philosophy* 35(2): 137–163.
- Cohen S (1972) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*. London: Routledge.
- Conn D (2021) One death, 11 jailed teenagers: Was a moss Side murder trial racist? The Guardian. Available at <https://www.theguardian.com/world/2021/jun/05/one-death-11-jailed-teenagers-was-a-moss-side-trial-racist> (Accessed 11 Feb 2022).
- Crehan K (2011) gramsci’s concept of common sense: A useful concept for anthropologists? *Journal of Modern Italian Studies* 16(2): 273–287.
- Crewe B, Liebling A, Padfield N, et al. (2015) ‘Joint enterprise: the implications of an unfair and unclear law’. *Criminal Law Review* 4: 252–269.
- Crown Prosecution Services (CPS) (2019) Secondary liability: Charging decisions on principals and accessories. Available online: <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories> (Accessed 18 Feb 2022).
- Davis AP and Gibson-Light M (2018) Difference and punishment: ethno-political exclusion, colonial institutional legacies, and incarceration. *Punishment and Society* 22(1): 3–27.

- Douglas M (1966) *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*. London: Routledge.
- Douglas M (1992) *Risk and Blame: Essays in Cultural Theory*. London: Routledge.
- Duff RA (2006) *Answering for Crime: Responsibility and Liability in the Criminal Law*. London: Bloomsbury.
- Duff RA (2020) Criminal law and the constitution of civil order. *University of Toronto Law Journal* 70(1): 4–26.
- Durkheim E (1964) *The Division of Labor in Society*. New York: Free Press. (Original work published 1893).
- Elias N (1994) *The Civilizing Process*. Oxford: Blackwell.
- Farmer L (2016) *Making the Modern Criminal Law: Criminalization and Civil Order*. Oxford: Oxford University Press.
- Farmer L (2020) Civil order, markets, and the intelligibility of the criminal law. *University of Toronto Law Journal* 70(1): 123–140.
- Gramsci A (1992) *Prison Notebooks* (vol. 1). New York: Columbia University Press.
- 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.
- Hall S (2019a) *Essential Writings*, Vol. 1. Durham: Duke University Press.
- Hall S (2019b) *Essential Writings*, Vol. 2. Durham: Duke University Press.
- Hall S, Critcher C, Jefferson T, et al. (1978) *Policing the Crisis: Mugging, the State, and Law and Order*. London and Basingstoke: Macmillan.
- Hallsworth S and Young T (2008) Gang talk and gang talkers: A critique. *Crime, Media, Culture* 4(2): 175–195.
- HC Deb (2018) 25 January 2018, vol. 635, col. 445 [Online]. Available at: <https://hansard.parliament.uk/commons/2018-01-25/debates/00389B37-64AA-4AC8-BBBB-BE6B98F9C5C1/JointEnterprise> (Accessed: 17 Feb 2022).
- Hoare Q and Smith GN (2005) *Selections from the Prison Notebooks of Antonio Gramsci*. London: Lawrence & Wishart.
- House of Commons Justice Committee (2012) *Joint Enterprise*. London: The Stationery Office Limited.
- Hulley S, Crewe B and Wright S (2019) Making sense of ‘joint enterprise’ for murder: legal legitimacy of instrumental acquiescence? *British Journal of Criminology* 59: 1328–1346.
- Judiciary of England and Wales (2017) R v Delroy Wright and others, and R v Reano Walters and others, Sentencing remarks of Mr Justice Openshaw In the Manchester Crown Court. 14 September 2017. Available Online: <https://www.judiciary.uk/wp-content/uploads/2017/09/r-v-wright-sentencing-remarks.pdf> (Accessed: 25 Mar 2022).
- Krebs B (2010) Joint criminal enterprise. *Modern Law Review* 73(4): 578–604.
- Krebs B (2015) Mens rea in joint enterprise: A role for endorsement? *Cambridge Law Journal* 74(3): 480–504.
- Krebs B (ed.) (2020a) *Accessory Liability After Jogee*. Oxford: Hart Publishing.
- Krebs B (2020b) Joint enterprise murder is dead - long live joint enterprise manslaughter? In: Krebs B (ed.) *Accessory Liability After Jogee*. Oxford: Hart Publishing, 107–131.
- Lacey N (2016) *In Search of Criminal Responsibility: Ideas, Interests, and Institutions*. Oxford: Oxford University Press.
- Lammy Review, The (2017) Available online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf) (Accessed 17 Feb 2022).
- Law Commission (2007) Participating in crime. Available online: [https://www.lawcom.gov.uk/app/uploads/2015/03/lc305\\_Participating\\_in\\_Crime\\_report.pdf](https://www.lawcom.gov.uk/app/uploads/2015/03/lc305_Participating_in_Crime_report.pdf) (Accessed 18 Feb 2022).

- Lianos M (2013) Normative otherness: from 'sovereign Subjects' to 'collateral damage'. In Lianos M (ed) *Dangerous Others, Insecure Societies*. Farnham: Ashgate, pp. 69–86.
- MacCormick N (2007) *Institutions of Law*. Oxford: Oxford University Press.
- 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.
- Mills H, Ford M and Grimshaw R (2022) *The Usual Suspects: Joint Enterprise Prosecutions before and after the Supreme Court Ruling*. Centre for London: Crime and Justice Studies [Online]. Available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/The%20usual%20suspects%2C%20April%202022.pdf> (accessed 15 July 2022).
- Morrison G (2017) A year on from jogee – and nothing has really changed. *The Justice Gap*, 20 February 2017. Available Online: <https://www.thejusticegap.com/14656/> (Accessed 29 Mar 2022).
- Norrie A (2014) *Crime, Reason, and History*. Cambridge: Cambridge University Press.
- Norrie A (2018) Legal and social murder: what's the difference? *Criminal Law Review* 7: 531–542.
- Pantazis C and Pemberton S (2009) From the 'old' to the 'new' suspect community: examining the impacts of recent UK counter-terrorist legislation. *British Journal of Criminology* 49(5): 646–666.
- Pitts J (2014) Who dunnit? Gangs, joint enterprise, bad character and duress. *Youth and Policy*, 113: 48–59.
- Ristroph A (2020) Criminal law as public ordering. *University of Toronto Law Journal*, 70(1): 64–83.
- Rosenfeld S (2014) *Common Sense: A Political History*. Cambridge: Harvard University Press.
- Simester AP (2017) Accessory liability and common unlawful purposes. *Law Quarterly Review* 133: 73–90.
- Smith P (2008) Durkheim and criminology: reconstructing the legacy. *The Australian and New Zealand Journal of Criminology* 41(3): 333–344.
- Squires P (2016a) Voodoo liability: joint enterprise prosecution as an aspect of intensified criminalisation. *Oñati Socio-Legal Series* 6(4): 937–956.
- Squires P (2016b) Constructing the dangerous, black, criminal 'other'. *British Society of Criminology Newsletter* 79: 1–4.
- Stark F (2016) The demise of "parasitic accessorial liability": substantive judicial law reform, not common law housekeeping. *Cambridge Law Journal* 75(3): 550–579.
- Stark F (2017) the taming of jogee? *Cambridge Law Journal* 76(1): 4–7.
- Taylor C (2003) *Modern Social Imaginaries*. Durham: Duke University Press.
- Tobin O (2018) Jermaine goupall killer has to be held back in the dock as he lashes out after being found guilty. *Croydon Advertiser*. Available online: <https://www.croydonadvertiser.co.uk/news/croydon-news/jermaine-goupall-killer-held-back-1215673> (Accessed 18 Feb 2022).
- UK Parliament (2018) Hansard, House of Commons, Joint Enterprise, Volume 635: debated on Thursday 25 January 2018.
- Williams P and Clarke B (2016) *Dangerous Associations: Joint Enterprise, Gangs and Racism*. London: Centre for Crime and Justice Studies.
- Williams P and Clarke B (2018) The black criminal other as an object of social control. *Social Sciences* 7: 234.
- Williams R (1988) *Keywords: A Vocabulary of Culture and Society*. London: Fontana Press.
- Williams R (2013) *The Long Revolution*. Cardigan: Parthian Books.
- Xin CL (2021) Jogee and 'west side story' - still unresolved endings? *LSE Law Review Blog*. Available Online: <https://blog.lselawreview.com/2021/05/jogee-and-west-side-story-still-unresolved-endings> (Accessed: 28 Mar 2022).