

**WRITTEN EVIDENCE SUBMITTED BY DR BEN CREWE, DR SUSIE HULLEY AND MS. SERENA WRIGHT,
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EXECUTIVE SUMMARY

The main points of the following written evidence are as follows:

- The evidence presented in this submission is based on a major, ESRC-funded study being undertaken by researchers from the Institute of Criminology, at the University of Cambridge. The study is examining the experiences of male prisoners serving very long life sentences (with tariffs of 15 years or more) who were sentenced when aged 25 or younger.
- Just over half of the survey sample (n = 294) have been convicted under the doctrine of Joint Enterprise.
- Compared to the general prison population, White prisoners and Asian/Asian British prisoners are under-represented in our sample of Joint Enterprise prisoners. Black/Black British and mixed race prisoners are considerably over-represented.
- Compared to our general survey sample, higher proportions of the prisoners serving their sentence under Joint Enterprise: are serving longer tariffs; consider themselves not guilty of the offence for which they are convicted; and are currently appealing against their conviction, their sentence length or both.
- Prisoners who have been convicted under Joint Enterprise are more likely to feel that their sentence lacks legitimacy compared to those not convicted under this doctrine, complaining about a perceived absence of procedural fairness, and about both the ambiguity and the moral legitimacy of the doctrine of Joint Enterprise.
- We recommend improvements in data collection, so that there is greater clarity about the prevalence of successful prosecutions under Joint Enterprise and greater transparency about the offender groups to whom it is being applied.

INTRODUCTION

This written evidence is submitted by Dr Ben Crewe, Dr Susie Hulley, and Ms Serena Wright from the Institute of Criminology at the University of Cambridge, who are currently undertaking a study entitled '*Experiencing very long term imprisonment from young adulthood: identity, adaptation and penal legitimacy*', funded by the Economic and Social Research Council. The information presented in this submission is based on the data generated from this study (outlined below).

Dr Crewe, the Principal Investigator on the study, is Deputy Director of the Prisons Research Centre, at the Institute of Criminology, University of Cambridge. He has been researching and writing about various aspects of prisons and imprisonment for 13 years, and is widely published in international peer-review journals, on topics including penal power, the pains of imprisonment, prison governors, and prison quality. He is on the editorial board of the *British Journal of Criminology* and *The Prison Service Journal*, and is on the international advisory board of *Punishment and Society*. He is director of a part-time Masters course in Applied Criminology, Penology and Management, designed for senior practitioners working in prisons, probation and other areas of the criminal justice system. Dr Hulley, the study's Co-Investigator, has been engaged in criminological research for 11 years. Her PhD, completed in 2007, examined the experiences and perceptions of anti-social behaviour amongst adults and young people in the community, and she has subsequently worked on a major study of public and private sector imprisonment and an evaluation of in-prison diversity training. She has also provided analytical support to the National Offender Management Service for a number of years. Ms Wright, the study's Research Assistant, has been conducting research on gender and justice for five years, specifically women identified within the criminal justice system as 'persistent' or 'Prolific and other Priority Offenders'. She has also worked voluntarily as a member of the Independent Monitoring Board at HM Prison Kingston.

The study which forms the basis of this submission began in May 2012 and is ongoing. Its aim is to explore the experiences of prisoners given life sentences with very long tariffs (15 years or more) when aged 25 or under. Extensive fieldwork has been conducted in 16 prisons overall, ranging in levels of security (from high-security to category D prisons), and including young offender institutions as well as adult establishments. In-depth interviews have been undertaken with 125 men – around 15 per cent of the total population of men who meet the study’s criteria – deliberately sampled to be at different sentence stages. The interviews focus on a number of aspects of the men’s experiences, including: how they cope with (and develop during) such long sentences; how they adapt socially to imprisonment; their perceptions of penal legitimacy; and their levels of compliance, engagement and resistance. In all 16 prisons, surveys were also offered to all men who met the research criteria, regardless of sentence stage. Overall, completed surveys were received from 294 prisoners – i.e. well over one-third of those men within the prison system who meet our criteria. While the study did not set out to examine Joint Enterprise convictions specifically, the survey allowed for the responses of those convicted under Joint Enterprise to be directly compared to the responses of those not convicted under the doctrine. In addition, many prisoners discussed their feelings about, and the impact of, Joint Enterprise during the course of the interviews. We believe that this research represents the largest, current, survey of prisoners serving long-term sentences in England and Wales, and a good source of data about prisoners convicted under the Joint Enterprise doctrine, albeit one that was not designed specifically for this purpose.

This submission includes evidence from both the interviews and the surveys. It is provided in response to the Justice Committee’s request for ‘factual and/or statistical information on the extent, if any, to which the use of joint enterprise has disproportionately affected certain communities and ethnic groups’. The evidence is presented under four key headings which detail: 1) contextual information, briefly describing the demographics of our overall survey sample; 2) the prevalence of convictions under the doctrine of Joint Enterprise within the sample; 3) the distribution of convictions under Joint Enterprise by ethnicity; and 4) concerns relating to the impact on *penal legitimacy* of Joint Enterprise convictions.

1. CONTEXTUAL INFORMATION - GENERAL DEMOGRAPHIC DATA

1.1. To provide some context for the data relating to Joint Enterprise presented in the subsequent sections, the data below briefly report the length of sentences, prevalence of previous convictions and ethnicity of our broader survey sample.

1.2. The majority of prisoners in our survey sample are serving tariffs of between 15 and 29 years (92.7%) and over 80% received these sentences within the last ten years. We believe that these figures are likely to reflect recent changes in legislation (which have increased starting point tariffs for certain kinds of murders) and the revival of the use of ‘Joint Enterprise’ as the basis for prosecutions in such cases. For 55.6% of survey respondents this is their first custodial sentence. This is not, therefore, a highly recidivist population.

1.3. In terms of ethnicity, compared to the general prison population in December 2013, White prisoners are under-represented in our overall survey sample (49.5% in our sample compared to 72.4% in the prison population) (Ministry of Justice 2014). Black/Black British and mixed race prisoners are particularly over-represented within the sample (29.4% of our sample are Black/Black British, compared to 12.8% in the prison population; and 11.9% of our sample are mixed race compared to 3.9% in the general prison population). The representation of Asian/Asian British prisoners in our sample (6.1%) broadly corresponds with the general prison population (7.9%). ‘Other’ ethnic groups (including Arabic, Kurdish and Afghan) comprise 3% of our sample, compared to 1.2% in the general prison population.

2. PREVALENCE OF JOINT ENTERPRISE CONVICTIONS WITHIN THE STUDY SAMPLE

- 2.1 **This section presents data showing that around half of the prisoners within our sample have been convicted under the doctrine of Joint Enterprise. It also shows that whilst two thirds recognise the terms ‘principal’ or ‘secondary’ offender and how these terms relate to their own conviction, the remainder do not. Qualitative data is used to highlight the confusion associated with this terminology.**
- 2.2 51.6% of our overall survey sample have been convicted under the doctrine of Joint Enterprise. Of these, 27.9% report that they had been convicted as the ‘principal offender’, and 38.8% as the ‘secondary offender’. The remaining third (33.3%) do not know whether they have been convicted as the principal or secondary offender. Interviews with prisoners confirm that there is confusion regarding this terminology:

Were you done as a secondary offender or primary... do they think it was you that did it, or one of your co-d[efendant]s that...?

I don't know...Seriously, I ... I don't even know [...] I don't think they know who done it.

3 ETHNICITY AND CONVICTIONS UNDER JOINT ENTERPRISE

- 3.1 **The survey data presented in this section shows that, although similar proportions of White and Black/Black British respondents are convicted under the doctrine of Joint Enterprise, White prisoners are under-represented and Black/Black British prisoners are considerably over-represented in this sample, compared to the general prison population. There are proportionately fewer Asian/Asian British men serving sentences for Joint Enterprise compared to the general prisoner population, but prisoners from mixed race backgrounds are over-represented.**
- 3.2 Of those convicted under Joint Enterprise in our sample, 38.5% are White, compared to 72.4% in the general male prison population (December 2013). Asian/Asian British prisoners are also under-represented (4.7%) in our sample, compared to the prison population (9.0%). In contrast, 37.2% of those in our sample who are convicted under Joint Enterprise are Black/Black British - almost three times as many Black/Black British prisoners as are in the general prison population (12.8%). Similarly, over three times more mixed race prisoners are in our sample of prisoners convicted under Joint Enterprise (15.5%) than are in the general prison population (3.9%). 4.1% are of ‘Other’ ethnic grouping in our sample, compared to 1.2% in the general prison population (Ministry of Justice 2014).
- 3.3 These findings are particularly significant given that Black/Black British people are already significantly over-represented in the prison population compared to the general population of England and Wales (3.3%) (ONS 2012). That is, there are over 11 times as many Black/Black British prisoners in our sample who are serving time under Joint Enterprise compared to the proportion of Black/Black British people in the general population.

4 JOINT ENTERPRISE CONVICTIONS & IMPLICATIONS FOR PENAL LEGITIMACY

- 4.1 **The data presented in this section shows that, compared to the rest of the survey sample, higher proportions of prisoners convicted under Joint Enterprise: receive longer tariffs; consider themselves not guilty of the offence for which they have been convicted; and are currently appealing their conviction, the length of the sentence, or both. There are also**

indications that those convicted under Joint Enterprise – particularly those convicted as secondary offenders – consider their sentence to lack important components of legitimacy.

- 4.2 Within our survey sample, 27.6% of those convicted under Joint Enterprise have a tariff length of 25 years or more compared to 20.2% of those not convicted under Joint Enterprise.
- 4.3 Almost three-quarters (74%) of those convicted under the doctrine of Joint Enterprise do *not* consider themselves to be guilty of the offence for which they are convicted, compared to just over 43% of respondents who are not convicted under Joint Enterprise.
- 4.4 Of those who report that they are convicted as the principal offender in the survey, 56.1% regard themselves as not guilty of the offence for which they are convicted. This compares to 82.1% of secondary offenders and 80% of those who 'don't know'.
- 4.5 Almost half (49.7%) of those convicted under Joint Enterprise are currently appealing their conviction, the length of their sentence, or both. Of these, the majority – almost 59% - are contesting the conviction, compared to 32.8% who are appealing both their conviction and sentence and 8.2% who are contesting their sentence only.
- 4.6 The main body of the survey lists 39 problems associated with very long term imprisonment, using 'problem statements' taken from previous studies in the UK (Richards 1978) and the US (Flanagan 1980), supplemented by some original 'problem statements' designed as part of this study. Prisoners are asked to report how often they have experienced each problem (on a five point Likert scale from 'never' to 'very often') and how difficult the problem is to deal with (on a five point Likert scale from 'very easy' to 'very difficult'). The combination of the responses to these questions produces a 'severity score' for each problem i.e. how severe the problem is overall. 'Feeling your sentence is unfair' is the only problem for which the severity score is significantly higher for those convicted under Joint Enterprise, compared to those who are not.
- 4.7 There is a great deal of evidence in the qualitative data that, for those convicted under the doctrine of Joint Enterprise, the sentence is perceived to be in some way illegitimate. This sentiment often reflects an outright claim of innocence or an acknowledgment by the offender that he is guilty of *an* offence, for example, 'perverting the course of justice' or manslaughter, but is not guilty of the crime of murder.

I find it hard to accept that I'm a convicted murderer and I'm now... in my eyes I haven't murdered anyone. I've... I've, kind of, led to someone's death through my actions, like, which I would say was a manslaughter, but that's another thing. [...] I wasn't saying that I wasn't involved or anything. I said look, I were involved. If that's led to this fella's death, I'm sorry and I'll hold my hands up to it, but I'm not guilty of murder.

Yeah, it's joint enterprise. So I don't see... understand why... there was no evidence saying that I actually done it [the murder]. There was no evidence saying they knew what happened so doesn't make sense when I got so long for just knowing. To be honest, joint enterprise doesn't make sense. If you didn't actually do it and you know you didn't actually do it, how can they give you so long just for not speaking?

Some interviewees had come to recognise that they were *legally* guilty of murder, once they became aware of how murder was defined under the doctrine of Joint Enterprise, but could not accept that they were *morally* guilty of murder.

I didn't even know what Joint Enterprise was, when my QC was trying to explain it to me, Joint Enterprise, all I was saying to him [was] 'look, the pathologist said I haven't touched this guy, the friends have said I haven't touched this guy, so therefore I'm not guilty'. That's how I thought it was anyway. But I was wrong, I was wrong.

- 4.8 The feelings of injustice associated with Joint Enterprise were also shaped by perceptions that the *process* of receiving the conviction was unfair. There is a strong body of evidence showing that the process by which courts and criminal justice representatives resolve matters have a strong bearing on people's willingness to accept outcomes (Blader and Tyler 2003; Tyler 2007). Procedural fairness has a number of components, including whether the individual feels that their side of the story is heard ('voice'), whether s/he feels that the court demonstrates bias, whether s/he feels that his or her rights are being respected and whether s/he feels that relevant personnel are trustworthy, honest and sincere (Tyler 2007). Some prisoners convicted under the Joint Enterprise doctrine described experiencing bias – feeling that their personal case was prejudice by the evidence presented against their co-defendants – and a cavalier attitude to their futures, as individual human beings.

I think [the jury didn't] have a clue what was going on. I think they just said 'Guilty' because that's what it sounded like with the rest of [the co-defendants].

So what do you think of the experience of being in court and going through the trial and everything.

It is not fair, put it that way.

What's not fair the conviction or the process?

The process, it is not fair at all. [...] And even the judge said to the Jury that there is no evidence against me, there is nothing that says that I was there, there is nothing that puts me there. There's nothing that says I am even involved, it is highly likely that I wasn't even a part of it, anything to do with it. And I still get found 'Guilty'.

5. RECOMMENDATIONS

- 5.1 There is a lack of statistical data on the number of successful prosecutions under Joint Enterprise, and the characteristics of those who are prosecuted under this doctrine. The prevalence of Joint Enterprise conviction, and its impact on different ethnic, religious and demographic groups, is not currently known and cannot easily be tracked over time.
- 5.2 We recommend the collection of the following statistics: a) the number of individuals convicted under the doctrine of Joint Enterprise per year across England and Wales; b) the offence for which each individual is convicted; c) the proportion of those convicted as 'principal' or 'secondary' offenders; d) the sentence received in each case; and e) a number of key demographic details for each offender, including ethnicity, religion, age and sex.
- 5.3 Based on our findings, we would also ask the Committee to consider whether the current use of the doctrine of JE is in the best interests of the law, justice, and due process, particularly in relation to the experiences of young Black/Black British men, a disproportionate and growing number of whom are serving sentences which a generation ago were extremely rare.
- 5.4. We would also ask the Committee to reflect on the implications for the prison system of the use of the Joint Enterprise doctrine, which is having a significant impact on the number of men (particularly young men) who will spend many years in prison harbouring feelings of injustice about their convictions and sentence lengths.

REFERENCES

- Blader, S.L. and Tyler, T.R. (2003) A four-component model of procedural justice: Defining the meaning of a "fair" process. *Personality and Social Psychology Bulletin* 29(6), 747-758.
- Flanagan, Timothy J. (1980). The pains of long-term imprisonment - A comparison of British and American perspectives. *British Journal of Criminology* 20(2), 148-156.
- Ministry of Justice (2014). *Prison population tables*. London: Ministry of Justice. Accessed 24.03.14 from <https://www.gov.uk/government/publications/offender-management-statistics-quarterly-july-september-2013>.
- ONS (2012). *Ethnicity and national identity in England and Wales 2011*. London: Office for National Statistics. Accessed 14.06.14 from http://www.ons.gov.uk/ons/dcp171776_290558.pdf.
- Richards, B. (1978). The experience of long-term imprisonment: An exploratory investigation. *British Journal of Criminology* 18(2), 162-169.
- Tankebe, J. (2013). Viewing things differently: The dimensions of public perceptions of police legitimacy. *Criminology* 51(1), 103-135.
- Tyler, T. (2007). Procedural justice and the courts. *Court Review: The Journal of the American Judges Association* 44(1/2), 26-31.