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The Criminalisation of Women in Joint Enterprise Cases: Exposing the Limits to 'Serving' Girls and Women Justice

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Abstract

This paper reports original evidence about the experiences of 109 girls and women criminalised in England and Wales under the controversial legal doctrine of joint enterprise (JE). Over three-quarters of the women were convicted of murder or manslaughter. Yet, in no cases was evidence presented that the girl or woman used a deadly weapon. In 90% of the cases, the defendants engaged in no violence at all, and in nearly half of the cases, they were not present at the scene of the violent incident.

In seeking to make sense of these findings, JE becomes a lens through which we can conceptualise gendered processes of criminalisation. Decisions to charge women that reflect strategic approaches to policing and prosecuting *some* forms of violence and harm, alongside prosecution and defence strategies used in the courtroom that reproduce patriarchy, class stigma and racism, will be explored. Simultaneously, the criminalising processes actively obscure and silence the wider context and personal histories of the lives of girls and women, which once surfaced, expose wider tensions in addressing all harms to deliver justice for women.

Keywords: Process of criminalisation; women's punishment; joint enterprise; gendering justice.

Introduction

The paper examines the gendered nature of processes of criminalisation through the experiences of a group of 109 girls and women convicted of serious violent offences under joint enterprise (JE) principles. Over three-quarters were convicted for offences of 'murder' or 'manslaughter'. Yet, in none of these cases did the girl or woman use a deadly weapon. In 90% of these cases, they engaged in no violence at all, and in almost half of the cases, they were not present at the scene of the offence. Most of the women are serving extremely long custodial sentences. The mean sentence length is 15 years. Two-thirds (67%) of the women were sentenced to an indeterminate life sentence.

We open the paper by presenting the legal issue that is the context for these convictions, specifically the application of the legal principle of 'JE' allowing for collective punishment of secondary parties to a crime through a charge for the main or 'principal' offence. It is important to establish what we know about the utilisation of such legal strategies across a number of jurisdictions, examining legal and academic analysis and challenge of this to date. Our approach to the empirical research that underpins this article is then outlined, establishing the principles we foreground in our collaborative work, the methods drawn on to gather a range of data and the decisions made in our routes to analysis.

The main body of the article discusses the analysis of empirical data across four sections. The first outlines the case of 'Carrie', from the violent incident to offence charge and into the courtroom. From here, we seek to make sense of such cases. The second section examines the dragnet—decisions by police and Crown Prosecution Service (CPS) in the early stages of this process of criminalisation. The third section considers the women's experiences of being on trial, how in the courtrooms, girls and women are constructed as the facilitators of violence and the significance of gendered discourses of girls and women that draw on racialised, classed and age-based tropes. The final section reflects specifically on the women's extensive experiences of harm: violence, exploitation, domestic abuse, sexual violence, marginalisation and isolation. We consider why, for many of the women convicted under JE, proposed legal reforms that seek to recognise victimisation would likely fail to deliver justice.

In engaging in a detailed analysis of the process of criminalisation in these cases, the article surfaces how women, so peripheral in many cases, are deemed deserving of such severe punishments, thus allowing us to begin to make sense of why criminalisation in these cases occurs. Judgements about the girls and women, including their 'damaged' status as survivors of violence, shape perceptions of their credibility in the eyes of the law and the media. Gendered forms of victimisation and marginalisation become the drivers of their criminalisation. This is distinct from causal arguments placing such context as the pathways to women's criminality, prompting alternative priorities for analysis, which centre institutional decisions and failures in the power to punish girls and women.

The Legal Issue: JE in Application and Challenge

Often referred to as JE, the law of complicity is a set of legal principles grounded in common law and originating from Victorian times. While the law of complicity can be traced back through British and colonial law over many centuries (Clarke and Williams 2020), the re-emergence in their application in recent decades has facilitated the collective punishments of many hundreds (possibly thousands) of people in England and Wales (McClenaghan et al. 2014). This recent use has seen the extended application of 'secondary liability', where, for those charged alongside the principal offender, arguably the need to establish Mens Rea, the guilty mind of the defendant, can be lessened, and an association to events and others assumed as a proxy for the intent of the individual to commit the principal offence (Gerry 2019; Krebs 2015). As a result, individuals can be convicted as secondary parties for the principal offence without taking into account the differing roles played; some may not have participated, encouraged or been present when the incident occurred and argue they could not have known that the offence was likely to happen.

Despite repeated calls, the extent to which JE is used and against whom has remained hidden (Williams and Clarke 2016; Jacobson et al. 2016; CCJS 2022). To date, there has been no officially reported data on the use of JE. Challenges regarding the legitimacy and discriminatory application of JE have gathered volume over the last decade, largely driven by grassroots campaigners JENGbA (Joint Enterprise Not Guilty by Association)—a growing group of prisoners and their families, who, with the support of a network of legal, academic and political allies, have sought to intervene.[1]

JENGbA were an Intervener in the *R v Jogee* appeal at the United Kingdom (UK) Supreme Court in 2016. The appeal concluded that the law had taken a 'wrong turn'. Yet, six years on, this 'landmark ruling' has led to very little change. Only a few retrospective cases have been granted leave to appeal, often without success (Robins 2021), and the use of collective punishments such as JE has continued at scale (CCJS 2022).

The UK Supreme Court appeal included the case of a second appellant 'Ruddock' convicted in Jamaica, as another common law jurisdiction, thus pointing to the colonial and international context of the application of JE. At a conference of the Supreme Court in New South Wales, reflecting on the ongoing application of 'extended joint criminal enterprise' in the State of Victoria, the Hon. Justice Weinberg concluded, 'One thing is clear. The present law of criminal complicity is in a state of some disorder, if not disarray. The problem is straightforward to diagnose. The solution is less apparent' (Weinberg, 2018: 53).

A central theme in the academic debate surrounding the recent re-emergence of JE has been the disproportionate impact of its use on defendants from racialised communities. The longitudinal study of life sentences by Cambridge University revealed that 37.3% of those convicted under JE were 'Black/Black British', 11 times the proportion of Black or Black British people in the general population and three times that in the wider prison population (Crewe et al. 2015). Drawing on a national research project with 241 prisoners convicted under JE, Clarke and Williams (2020) sought to examine the causal mechanisms at play in JE prosecutions. This analysis, almost exclusively involving male prisoners, reveals a series of primary and secondary strategies in the criminalisation of these defendants. While the narrative of the 'gang' is the primary means of associating defendants, the prosecution relies acutely on a series of secondary associations that draw on longstanding racialised tropes and related policing practices. In these cases, stereotypical and racialised discourses are key for prosecution teams wishing to signal to a judge or jury the common purpose and culpability of all the defendants.

While previous research identified a small number of women convicted under JE (Williams and Clarke 2016), it has been acknowledged that 'we know very little about the gendered aspect of joint enterprise' (Hulley et al. 2019: 9). Concerns about the gendered impact of such legal principles are also being raised in other jurisdictions. Analysis of the application of the 'joint liability' doctrine in Scotland has demonstrated that 'attention must now be paid to the routes through which criminal responsibility for homicide is attributed to women accused of killing with others' (McPherson 2022: 498). Beyond the UK, Leigh Goodmark's recent work reveals the gendered and racialised drivers of criminalisation for survivors of violence in the United States (US) through principles of complicity and culpability (Goodmark 2023).

JE as a Lens: Examining Women's Criminalisation and Punishment

A central aspect of enquiry in this paper is the examination of the application of JE with girls and women. In undertaking this detailed qualitative analysis, the paper argues that JE convictions, through the extension of principles of blameworthiness and judgements of culpability, provide a lens through which we can understand the wider dynamics of the criminalisation of girls and women.

Our analysis does not seek to explain why women offend, nor are we contributing to the ever-burgeoning literature about 'criminal women' or 'women's pathways into crime'. Instead, our analysis here demands that we revisit a longstanding but arguably under-conceptualised aspect of women's punishment, that of gendered processes of criminalisation (Carlen 1983; Edwards 1984; Chadwick and Little 1987). Lacey (2018) provides a helpful operational definition, importantly distinguishing between 'formal criminalisation' as reflected by policy responses and legislative changes that impact on the potential to criminalise and 'substantive criminalisation', which manifests in the decisions, patterns and impact of the application and enforcement of any formal law or policy. Our analysis contributes to a conceptualisation of substantive criminalisation, examining how such processes and decisions are structured and experienced by those girls and women selected for punishment (Carlen 1983).

Our Approach: A Collaborative Effort to Identify Girls and Women Impacted by JE

We have considered elsewhere how our commitment to critical analyses 'prioritises structural contexts and their relation to personal experience' (Clarke et al. 2017: 264), placing institutional power at the centre of both empirical and conceptual work. We are explicit in our intention for our work to be interventionist, recognising that 'critical social research intellectually has the potential to be transformative' (Scraton 2016: 17). By creating an oppositional agenda, outside of the customary focus on 'offending' or the 'causes of crime', we are exposing 'the contradictions which inevitably exist within powerful institutions and systems' (Clarke et al. 2017: 278).

The hidden nature of the use of JE laws required a collaborative approach to identify the girls and women affected. Working with JENGbA, we re-established contact with 63 of the 80 women who had contacted the campaign group over the previous eight years, and most were still serving long sentences. We also put in place a strategy to actively identify 'new' female defendants not yet in touch with the campaign. We were working with a small number of 'inside' JENGbA campaigners—serving women on wings in prisons—and voluntary sector organisations entering women's prisons to distribute postage-paid returnable flyers. In six months, this strategy identified a further 29 women convicted under JE. While infinitely valuable, these approaches pose limitations. We were unable to trace accounts from women charged but then acquitted, as they will not be in prison or likely to contact the campaign. Hence, the pressure for official data and recording is key to a fuller understanding of the use of JE.

The 109 women whose experiences became the focus of our analysis span all ages; the youngest was a girl of just 13 years when she was convicted, and the oldest is currently 70 years old, serving a life sentence in prison. They come from all corners of England and Wales, from urban cities and rural towns. They represent diverse communities, with almost one-quarter of the women self-defining their heritage as either 'Black', 'Black African', 'Black Caribbean', 'mixed' or 'mixed race', 'Arabic', 'Middle Eastern', 'Asian', 'Pakistani', 'Irish' or 'Welsh'.

The majority of women (78%) were convicted of murder and manslaughter. The remaining women are convicted of a range of offences, including other conspiracy charges—such as 'to endanger lives' or 'to supply drugs'—other violent offences—such as false imprisonment—attempted robbery or Grievous Bodily Harm. In the cases of five women, the victim who died was the small child or baby of the convicted women. In two of these cases, the woman was convicted of murder. In the other three cases, the conviction is for 'causing or allowing the death of a child'. Only three of the women were convicted of 'assisting an offender' or 'perverting the course of justice'.

Our analysis here draws from the following sources of data:

- Campaign information, from written correspondence to more structured information gathered by JENGbA on forms and questionnaires and copies of legal documents
- Twenty-one narrative interviews, conducted by the researchers, 15 with women convicted under JE (for all but two released women, these were undertaken in prisons), as well as a further six interviews with family members of the women
- An online search for media reports, which found that in most cases—for 84 of the 109 women—the women's trials had been reported on, with many articles quoting prosecution arguments or the judge's comments at sentencing.

Once gathered, we developed a case study approach to consistently record and transform this information for each of the 109 women.[2]

We undertook a careful and iterative process of thematic analysis that sought to be reflexive and acknowledge our interpretive decision-making, ensuring that the qualitative quotes selected were representative of the most common and significant themes from the wider group of girls and women (Braun and Clarke 2021). In this process of analysis and writing, we centred principles of narrative, dialogue and reflexivity within the research team and supported by our advisory group, which included women who had experienced JE convictions (Krumer-Nevo and Sidi 2012).

The women's accounts provide a rich source for understanding both the process of criminalisation (from police investigations, charge decisions and plea bargaining through to the criminal trial) and the wider personal context of events. In our routes to analysis, we chose to foreground women's reflections about their interactions through the criminal justice process. While prioritising this, an understanding of the wider context of the women's lives, in particular the silencing or objectifying of the harms they were experiencing, surfaces broader questions about processes of criminalisation for girls and women.

The Case of 'Carrie'

Carrie was 15 years old. Following an afternoon and evening spent with her boyfriend on their way home in the early hours, whilst walking with her boyfriend's mum and her partner, an argument broke out with another group of local young people who had also been drinking. One individual from the other group was killed by an injury caused by a bottle. During the early stages of this spontaneous and drunken fight, Carrie was also the victim of a violent attack; someone glassed her face with a bottle. Carrie was charged with murder alongside her boyfriend, his mum and her partner, and they all stood trial in Crown Court.

The judge, in summing up the case, acknowledged Carrie was 'so drunk, not had the ability to join in a fight' and warned the jury that 'mere presence is not enough there must be some form of participation'.

The judge then directed the jury as follows:

> In this case we know that a bottle caused the fatal wound. We know who caused the fatal wound because [The partner of Carrie's boyfriend's mum] admitted it.
>
> In the case of [Carrie], the evidence shows that she was too drunk to form the necessary intent or had the necessary foresight. [Carrie], as you know, claims to have been a victim and did not participate at all in the attack.

The offence was committed by a 35-year-old man (he had confessed to the police at an early point in the investigation) and had taken place while Carrie was 'too drunk to stand', with forensic evidence provided by an A&E consultant confirming Carrie had received an incision in her left cheek. During the trial, representations about Carrie in the courtroom centred on her as a girl who had smoked cannabis and had drunk excessive amounts of alcohol and what this might infer, rather than any evidence of encouragement or involvement in the violence.

The jury found the man guilty of murder. Carrie was found guilty of manslaughter under JE legislation. In the following sections, we trace the processes of criminalisation across many similar cases, drawing on the accounts of women convicted to make sense of how and why these convictions occur.

The Dragnet: Police and CPS

The first step in any legal process is contact with the police, with the decision to charge an individual with an offence then taken by the CPS. In around one-third (35%) of these cases, the women reported their contact with the police in the JE case as problematic. For some, this related to their experiences of being in police custody and their treatment as evidence was gathered during the investigation:

> I was pressured into saying things that were incorrect. (Julia) [Charge: Murder; Sentence: Life imprisonment; Tariff: 25 years]

> Too many police interviewing me, it was scary. (Athena, 20-year-old with autism) [Charge: Murder; Sentence: Life imprisonment; Tariff: 19 years]

> I was being difficult with the police, because I didn't want anything to do with it and I didn't want to send my brother to prison. I didn't know what had happened. The police and prosecution both indicated I was innocent of murder … I was guilty of perverting the course of justice, trying to protect my brother. (Elena) [Charge: Murder; Sentence: Life imprisonment; Tariff: 12 years]

Family members, recalling the early stages of the investigation, further reveal some of the women's confused and contradictory experiences:

> She was a witness at first, protected by armed police. (Yasmin's daughter)

> She was arrested and then NFA'd [told there would be no further action]. The police officer hugged her and said to us that she didn't do it. They wanted her as a prosecution witness. This changed, the police created a different story. She was rearrested. (Jenna's mum)

The women's accounts reveal the experience of police questioning; some were initially arrested as witnesses. In many of these cases, the police may not have been able to establish who was responsible; as one police source quoted in the media shows, 'it is not easy to piece together exactly what happened in the house' (media in Hazel's case). The pressure is on police forces to investigate and detect crimes involving serious injury or death. The police may use a strategy of charging to expedite information or encourage witnesses or those charged to turn in Queen's evidence (become a formal witness for the prosecution) as a way of maintaining the momentum of the investigation. The opaque nature of charge decisions taken by the police and CPS means that it remains an unexplored stage in the process of criminalisation.

Following the Supreme Court ruling in 2016, the CPS released a revised charging policy document (2019), which states that when applying the evidential test in cases of secondary liability, the full test code must apply. The document explicitly warns about spontaneous and multi-handed acts of violence plus cases where children or young people are being considered for charge:

> … inference must be approached with particular care because of the real possibility that the spontaneous situation, or the age, nature or condition of the person, might mean that they did not have such foresight, which will contribute to the decision about their intention. (CPS 2019)

The policy document acknowledges that in many cases, a lesser charge, or even no charge at all, is appropriate:

> In the vast majority of cases there is likely to be an appropriate lesser charge available. However, in the unlikely event that no lesser charge is available, prosecutors must weigh carefully the merits of proceeding with a charge for the serious offence, or not proceeding at all. (CPS 2019)

There are many examples where women report wanting to take responsibility for a related but lesser crime, one they believe reflected their intent and involvement in events:

> My drug dealer made me ring another dealer to come so he could rob him. I pleaded guilty to conspiracy to rob because I knew he was gonna rob him, but not that he was gonna get killed. (Gabriella) [Charge: Manslaughter, Sentence: 11 years imprisonment (determinate)]

> The prosecution case was weak so they used me to convict my co-d[efendant]s. I offered to plead guilty to conspiracy to rob, I was not there I didn't know they would kill him. I accepted my wrong doing, I'm not portraying myself as a victim. (Freya) [Charge: Manslaughter, Sentence: 16 years imprisonment (determinate)]

> They offered to him to go guilty and they would drop the charges on me. Nothing was offered to me. (Kyra) [Charge: Murder and Perverting the course of justice, Sentence: Life, Tariff: 18-years]

The women's statements of accountability and assertions of agency in the context of these crimes echo other qualitative discussions with women lifers, some of whom are convicted under JE, who seek to acknowledge moral responsibility for their action or inaction in the context of serious violence (Hulley et al. 2019).
In the few cases where women took a guilty plea, they often report pressure and coercion to do so. Conversely, some women follow their legal advice against the plea and go to trial:

> They got me to go guilty so they would NFA [no further action] my mum. I had kids I needed to think of and couldn't have mum go to jail too. (Isla) [Charge: Perverting the course of justice, Sentence: 4 years imprisonment (determinate)]

> I was scare mongered, my co-defendant threw in an early guilty plea and my defence said I must do the same. I wasn't saying I wasn't guilty of anything, I wanted to tell the truth. They said 'you're being done under joint enterprise if you go not guilty and he's gone guilty he is saying it's happened and you've no choice'…I was in the cells under the court, I was scared. (Evelyn) [Charges: Section 18 kidnap and other robbery offences, Sentence: 12 years imprisonment (determinate) minus 4 years for a guilty plea]

> We were offered conspiracy to rob but advised not to take. The defence said not to, they said 'they'll never find you guilty'. If we were to take the deal we would get 10 years, and was scared would lose the kids. (Iona) [Charge: Murder, Sentence: Life, Tariff: 22-years]

> I was naive and trusted them [defence], I was given a lesser plea and my defence said no. I wanted to take the section 18 charge, to hold my hands up I'd hit him. (Sienna) [Charge: Murder, Sentence: Life, Tariff: 18-years]

In multiple cases, the CPS reflects an understanding that the woman is not guilty of the serious violent offence, often murder. Yet, such coercive interactions play out in an attempt to secure a guilty plea and conviction.

However, the CPS policy unequivocally challenges such charging tactics and strategies:

> Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one. (CPS 2019)

As reflected in the documented offences and sentences tariffs, a perverse outcome in these JE cases is that, due to the reduction in sentence for guilty pleas, the women seeking to maintain their innocence can receive a longer sentence than her co-defendant who accepts the culpability for the violence through the guilty plea:

> The one that did the murder got less because he went guilty for manslaughter. (Ciara) [Charge: Murder, Sentence: Life, Tariff: 20-years]

> My co-d[efendant] who committed the murder got less than me. (Evie) [Charge: Murder, Sentence: Life, Tariff: 21-years]

The women's experiences of these early interactions and decisions reveal how in their cases, the potential to criminalise invoked in JE legislation and policy around secondary liability is then acted upon at multiple points in the process to realise substantive criminalisation (Lacey 2018). We can begin to pinpoint policing and prosecution decision-making that results in women being on trial for these serious violent offences. In the following section, examining the prosecution and defence team strategies in the courtroom, we see the significance of institutionalised narratives about girls and women in producing intent and, ultimately, guilt.

The Trial: Girls and Women as Facilitators and Victims of Violence

In JE trials, women are regularly constructed as facilitators of violence, often this inferred sexual power or jealousy, as a 'love rival' (Glenda) or 'honey trap' (Freya). Prosecution teams use narratives of 'knowingness' or presence, regularly combining with other legal strategies such as establishing the women's 'bad character':

> I should have foreseen what would happen, known what would happen before I agreed to go to the victims house … They made me out a bad mum 'cos kids already taken away. (Poppy)

> Prosecution said I knew the victim would be seriously hurt or killed … My lifestyle working for escort agency and that I was on drugs. (Kaylee)

> We were called a gang, I do not agree. I was the only female, a mother and studying to be a midwife. They over-highlighted me to keep my presence in mind [of jury]. (Lillian)

> You started the matter. You have previous for drunken loutish behaviour. (The judge's remarks in Brook's case)

In Brook's case, as with Carrie above, the descriptions in court draw on long-established gendered narratives about 'modern girls' or 'ladettes' who at particular times are (re)produced as a particularly troublesome reflection of youth and wider societal problems (Jackson and Tinkler 2007).

For women who report their ethnicity as 'Black', 'Black British', 'Black Caribbean', 'Black African' or else as mixed race 'White and Black Caribbean', the prosecution narratives, echoed in media reporting as in Lisa's case here, refer specifically to her as 'honey trap girl' 'good riddance honey trap killer', 'girls in gang culture' or 'gang violence'. (Clarke and Chadwick 2020), or as the woman 'luring' men to violent situations:

> I was mentally weak and unstable so I accepted all of his abuse. I was unaware of their criminal activity that he had a knife. I apparently lured my boyfriend to be murdered. (Lisa)

By obscuring the context and drawing on simple stereotypes of women and girls, their age, class, 'race' or cultural background is used to signal guilt (Brennan and Vandenberg 2009). Such narratives serve as powerful strategies to convict female defendants in JE trials, echoing representations found in research in the United States where Black and Latina women in contact with the criminal justice system are often constructed as sexually dangerous or 'jezabelled' (Slakoff and Brennan 2019). In other cases, the prosecution argues that due to feelings of jealousy, anger or hurt, the female defendant must have encouraged or intended the actions of the co-defendant. This use of women's feelings to infer intent is present in Willow's case:

> My role in the crime was deemed to be as this woman full of hate who somehow managed to convince everyone to end up fighting … the focus was on me and the fact I was a woman. (Willow)

Prosecution narratives also centred on a woman's non-action, failing to stop something happening or intervening either during the event or in the immediate aftermath, as a further argument for intent and encouragement:

> I was present when the crime happened but I didn't do anything. It was a very traumatic experience. I felt anxious sitting in dock with co-d[efendant]. I was a foreign national, ex-drug user with not much English. (Lena)

> In summing up they said although you didn't have intention to kill you still caused serious harm by blind loyalty to my co-d[efendant]s. (Lucy)

> They said because he was violent to me that I would have known that he would hurt the baby. They believed I knew. co-d[efendant] was on the stand less than a day. I was on for two days, more. I was an easy target they used my breakdown as a weakness against me. I was disgusted I was sat in the dock with the man who hurt my daughter. (Savannah)

In constructing women as facilitators, either active or docile in this role, events are decontextualised from the women's experiences of violence or abuse as victims and survivors:

> Needed to argue stronger, show how my co-d[efendant] was aggressive and violent. (Aria)

> Said not to use the DV [domestic violence] stuff. (Nisha)

As Nisha's experience shows, women also reported their defence teams actively discouraging disclosure of violence or mental health issues in court; this included advice not to give evidence due to perceptions of women as uncredible witnesses. Sadly, we can see from the handful of cases where the history of exploitation, domestic violence or sexual abuse was brought into the courtroom why defence teams might be active in this silencing. In Sienna's case, her victimisation is used to signal her agency and, therefore, dismiss her fear and inaction, simultaneously silencing longstanding failures to protect or provide support, as she reveals in her narrative account:

> My mum died when I was 13, it was a really hard time in my teens. I had depression was on pills from 15 or 16. I didn't want to admit it, my dad was depressed too, an alcoholic, but it was all taboo. I was very lonely, for a long time I was just on my own. Alcohol was my coping mechanism, we drank together.
>
> I left him but he never left me. He would follow me, wait for me and threaten to kidnap [my daughter]. I tried to move on but he had a hold over me. The time he broke my jaw, I called the police that time, and he plead guilty. He got a 3-month suspended sentence.

> It was used against me, being strong and going to the police that time before. I'd asked for help and it was used against me. They used it as the motive, in court it was all just used against me. I did feel being a single mother who was on benefits and having been in an abusive relationship was used as a negative. (Sienna)

When Jenna's experiences of exploitation and sexual violence as a girl and young woman were brought into the court, she was both pathologised and disbelieved. The media reported this as 'the 20-year-old would use men to get her hands on drink and drugs':

> 'My abuse was used by the prosecution to paint a bad picture of me. I think also when used by the defence it didn't help. I just don't think they believed me.' (Jenna)

Jenna's mum provided a painful account of the wider context, excluded from any narrative in the trial:

> She had no friends, well just boys, older males. They were offering her money, drugs and alcohol for sexual favours. She'd disclosed a rape, she was in foster care then away from the area. He was harassing her [the 81-year-old man accused of raping her] and she was 15. Every time anything happened we would tell the police and they would put it on the system. Purely boxes being ticked and time kept going on. After a year I chased the police up. They had not even filed it with the CPS. (Mum of Jenna)

We can see how the prosecution and defence teams contribute to the silencing of women defendants. For other women like Dalia, the idea that she could talk about such experiences during the trial was impossible to imagine; she was silenced:

> I didn't think that me and my co-d[efendant] should have been in the same waiting area and courtroom. I felt I couldn't talk due to all the domestic violence and what would happen to me. I felt I had to keep my mouth closed, I was under duress. (Dalia)

In seven of the JE trials involving female defendants, the victim is a baby or child, and in all but one, this is the women's infant child. In some of these cases, evidence of police and social services awareness (and intervention) in response to the risk of domestic violence is brought into the trial. In others, this context of domestic violence remains hidden throughout the trial:

> No mention of his violence, the domestic violence to me, the [defence] QC [Queens Counsel] said it would affect my case … I was disgusted I sat in the same dock as the man who hurt my daughter. They truly believed I knew or saw. They didn't think hard enough, they didn't believe me. (Savannah)

These strategies all serve to support the criminalisation of the women, ominously echoing analysis by Sarah Singh, where mothers are convicted for 'causing or allowing a child to die' and context is actively obscured. Singh argues that these 'unexplained gaps in women's testimonies' placed alongside narratives of their bad character facilitate their criminalisation:

> Silencing women in this way exacerbates the woman's vulnerability to conviction because the lack of factual context results in an increased reliance on misogynistic tropes of female criminality and idealised notions of motherhood. (Singh 2021: 7)

The women's accounts, as with the mothers in Singh's analysis, show how they are damned if they do and damned if they don't have their experiences of interpersonal violence included in their trial. These contradictions in how women's experiences of violence are presented in trials to support their criminalisation are relevant in so many of the JE trials involving girls and women as defendants, with almost half disclosing that their daily life when the offence occurred was marked by domestic violence; in most of these cases (87%) the perpetrator of this violence is the co-defendant(s). For a larger number still, they have experienced violence or abuse, been exploited, 'pimped out' or controlled through fear. For so many women, being subject to and witnessing violence was described as an 'everyday part of life'.

A further consequence of these silencing strategies in cases where women are convicted by way of complicity, inferred by judgements of facilitation or inaction, is that they serve to conceal the repeated failure of criminal justice and welfare agencies to respond to the risks of harm that women and children face. As we and others have argued elsewhere, there is an urgent need to surface and critically examine these institutional failures (Clarke and Chadwick 2018; Seagrave and Carlton 2010).

Our decision to foreground the process of criminalisation, while retaining a focus within this analysis of the women's accounts of the wider harms they are surviving, revealed how particular narratives and strategies to silence are central to the punishment of women. These findings support wider debates about women's criminalisation and victimisation, demanding careful consideration of the risks of reforms that seek to respond to interpersonal violence and harm (Fitz-Gibbon and Walklate 2021).

‘Gendering’ the Justice System

In recent years legal reform initiatives, particularly in the UK, have focused on improving awareness of women’s experiences of violence and abuse in the legal process and, through strategic litigation, the strengthening of legal defence principles in such cases where women kill violent partners (Centre for Women’s Justice 2021). In the UK and beyond, such approaches have generated optimism regarding the potential for concepts like coercive control to be taken into account in criminal cases involving women as defendants (Walklate and Fitz-Gibbon 2019).

Susie Hulley (2021: 2) explicitly considers the potential of such arguments in the legal defence of women charged as secondary parties in JE cases, women ‘who are considered to have ‘encouraged or assisted’ a coercive or abusive partner to commit the act of violence’. Drawing on a range of detailed scholarship, Hulley explores how this violence might be viewed as having influenced both the woman’s ‘decision to offend’ (Barlow 2016 cited in Hulley 2021: 69) and shaped her engagement with a police investigation and court trial. Hulley advocates for a range of practical reforms, including increased awareness and training, changes to charging policy and the potential for specific defences, to address the ‘grossly disproportionate prison sentences’ in JE cases for women whose lives are ‘saturated with multiple experiences of violence, control and abuse’ (2021: 10).

These proposals are understandably pragmatic—providing ‘life-jackets’ to pull women out of the deep water of a JE trial and possible life sentence. Yet, as Hulley warns, the women’s accounts in this research reveal the risks of such approaches. We should consider these risks very carefully. When accounting for our analysis of the process of criminalisation, we are concerned that legal reforms such as the coercive control ‘life-jacket’ will only ever be available to a few criminalised women. Echoing the warnings of Sister’s Inside in the Australian context, that such carceral approaches to justice are inherently racist and further harm indigenous girls and women (Watego et al. 2021). We expect that such strategies applied in JE cases will only benefit girls and women who can place themselves furthest away from deeply misogynistic, classed and racialised narratives that drive criminalisation—contributing to and reproducing rather than dismantling the multiple inequalities, injustice and institutional harms they have experienced. As with Pat Carlen’s study of imprisonment as social control four decades ago (1983) and Nicola Harding’s recent critical examination of gendered community punishment (2022), such reforms which seek ‘gender’ justice favour white middle-class versions of femininity.

Walklate and Fitz-Gibbon’s work on policing coercive control in Australia warns of the ‘unintended consequences of harnessing the law in this way- particularly for those who it is believed might be protected’, of a ‘coercive control creep’, which may negatively impact those women whose willingness or ability to engage the law in their protection could be failed by such strategies (2019: 101). Similar concerns are echoed by Goodmark (2023) in the US and by Day and Gill (2020) in the UK. Here, domestic violence interventions have led to increased criminalisation of some women through both pro-arrest policies and immigration priorities of the police and the Home Office. As Helena Kennedy QC reflects in her work, revisiting the failures of British justice for women, reforms are negated by these racialised, classed and gendered narratives that ultimately structure the punishment of women: ‘All the legal reforms have produced only marginal advances. [Gendered] Myths and stereotypes still pervade the courts’ (Kennedy 2018: 317).

The Power to Criminalise and Punish Women

A critical examination of the punishment of women must go beyond considerations of harsh or lenient treatment to recognise ‘the role of punishment in maintaining the dominant, gendered social order’ (Ballinger 2012: 476). Justice is partial; only some harms will be deemed ‘crimes’, and even less will result in prosecution (Dearden 2019). This inherent partiality in the law, as administered by the state, is neither random nor neutral but determined by ‘the degree that they [victims or defendants] are removed from the characteristics of white masculinity’ (Hudson 2006: 6).

Contemporary contributions examining women’s criminalisation and punishment push us to consider how we rely on processes of criminalisation to respond to a range of social and personal harms (Clarke and Chadwick 2018; Harding 2022; Seagrave and Carlton 2010; Singh 2021). As with our focus of analysis here, this work shares scrutiny of state intervention and how a power to punish and consequent harms inflicted by the state are often ‘the elephant in the room’ in debates around women’s experiences of justice (Fitz-Gibbon and Walklate 2021: iii). Significantly, rather than attempting to explain women’s ‘offending’, this work focuses on the state’s decision through institutional policy and practice to selectively regulate, control and punish women.

Our conclusions are distinct from other arguments about how marginalisation and victimisation are drivers of women’s offending. Here, the experiences of women convicted under JE illustrate how, substantive criminalisation operates subjecting some girls and women to punishment. The wider context of women’s lives exposes failures to protect the same girls and women

or to provide desperately needed support. In surfacing, the question of justice, both in the courts and wider social justice, is keenly brought into focus—what would justice be for the women in these cases? (Hudson 2008).

Concluding Comments: Gendered Criminalisation, What of Justice?

> Although the justice system brought me to justice, it has not served me justice. (Freya)

Our analysis demonstrates that criminalisation is a complex process. Formal provisions in policy and the law, such as JE, create a potential to punish, yet it is through a series of cumulative decisions that the power to criminalise is realised (Lacey 2018; McNamara et al. 2018). The women convicted under JE are arguably at the most severe end of the spectrum of women's criminalisation, convicted of serious violent crimes such as manslaughter or murder, with minimal or no involvement in violence, and sentenced to very long prison terms.

The stories in this paper may at first hearing sound all too familiar. We are explicit in our focus here; in our analysis, we are pushed to look beyond the interpersonal to the structural contexts and institutional processes. The women's accounts of their criminalisation, placed in a wider personal and structural context, transform their JE convictions into a lens—a lens through which we can expand our understanding of gendered criminalisation.

In decontextualising women's lives, the legal process leaves them open to objectifying representations in the courtroom, which undermine their credibility and facilitate blame and punishment. Actions (or inaction) are read as inferring criminal intent rather than understood in the complex context and history of institutional as well as interpersonal power and control.

In cases of JE, the inference of blameworthiness is crucial. The convictions of secondary parties rest on the success of prosecution and police narratives to establish responsibility and intent. These judgements rely on gendered, classed and racialised inferences of culpability, just as with other research, which has shown the significance of processes of racialisation in determining the guilt of many young male secondary parties in JE cases (Clarke and Chadwick, 2020). A range of misogynistic discourses, longstanding and mediated across society, about out-of-place girls, failed mothers and manipulative females as facilitators of violence are drawn on to effectively support criminalisation.

Freya, like many of the women, is 'brought to justice', with state institutions 'ready to leap into action' and criminalise women (Hulley 2021: 18). Yet, there is no broader sense of how legal processes can 'serve' women justice, as victims *and* defendants, with the same girls and women too often failed in both regards. By justice, we mean freedom from the harms of interpersonal violence and oppressive institutional interventions, the right of all girls and women to live without fear, without stigma, and instead with support and within community.

A lack of distinct progress in regard to legal reform, whether with regard to JE or broader attempts to 'gender' the justice system, necessitates that we invest in further collaborative and interventionist work that can fundamentally transform how we deliver justice for girls and women.

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[2] This case study approach allowed for the reviewing of extensive qualitative evidence and the creation of a quantitative dataset to allow for descriptive and comparative analysis. A more detailed description of the research process can be found in Clarke and Chadwick (2020).

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