

*The Implications of the Doctrine of Joint Enterprise in England on Families of
Imprisoned Youth: A Phenomenological Analysis.*

by

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Thesis Submitted for the degree of MSc by Research

2019

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Final Word Count: 21,953

Acknowledgements

Without writing an entirely different dissertation, I would like to thank everyone who has helped and supported me over the last four years. As some of you may know, it has not been the easiest ride, but what fun would that be? Throughout my time at university I have met some of the most incredible, wonderful and caring individuals and without them I would not have come this far, so here's to them.

Firstly, my family. Thank you for your emotional, physical and financial support. It has been a busy four years and I appreciate everything. You have seen me grow and change, I think in the most brilliant way, and I am very glad we are all here supporting each other as a family should do. I love you all dearly. You too Fudge.

My supervisors, Katarina and Martin, you are, well, super! You are incredible lecturers, amazing people, so intelligent it sometimes freaks me out and most importantly, the best of friends. I am proud to know you and know that if I need you, you will pick up the phone and tell me what I need to hear. Thank you for the best four years of my life (and for the booze).

Sophie Moores. Christ. What would I have done without you? Probably got a 2:2. Words cannot describe the love and admiration I have for you. You are extraordinary and I am so grateful for you and everything you have done for me regardless of the time and day. I apologise once again how annoying, late and in constant need of coffee and a sausage roll I am but in a

very weird way, I will always think of you when I am in Greggs. This Master's belongs to us and the endless amount of work we have put in. Thank you from the bottom of my heart.

Lastly, I would like to thank everyone at JENGBA and those associated with the organisation as without you all, this research project would not be possible. You have all been so helpful and vital to this study and guided me in making sure this project has been done properly and given those imprisoned under Joint Enterprise a voice. Thank you for your constant fight and drive to reform the justice system and reradiate Joint Enterprise.

Abstract

This dissertation concerns the implications of the doctrine of Joint Enterprise (JE) upon the family members and friends of those imprisoned by it. Reviewing the existing literature identified a research gap surrounding the attitudes and perceptions of this group with regards to JE and the impacts of a perceived Miscarriage of Justice (MOJ) following a JE conviction. Semi structured interviews were conducted with eight participants, all of whom were related or very close to individuals imprisoned under JE. Interpretative Phenomenological Analysis (IPA) was applied to the qualitative data and the findings provided some unexpected results.

Overwhelmingly, the participants were unaware of JE and perceived the Criminal Justice System (CJS) as effective and just, prior to their relative's conviction. Following the conviction, all the participants viewed the doctrine as inadequate and in need of reform and viewed the CJS as illegitimate. Additionally, the participants felt the prosecution acted unreasonably but perceived the police as fair and professional. The study's findings were in accordance with previous literature and found that demographics such as ethnicity, age, and socio-economic status influenced the decision to utilise JE, demonstrating disproportionality within the CJS. Significantly, the majority of the participants reported a change in their relationship with their imprisoned relative. Some reported irreversible damage, whilst others believed that this perceived MOJ brought them closer together and strengthened their relationship. Since the participants' encounter with JE and their subsequent reflections on the doctrine, they were able to raise awareness of the implications of JE and educate the wider community regarding the perceived injustice of JE. Communication of the perceived MOJ through their negative perceptions of JE and the CJS enabled a transfer throughout the community and influenced individuals' perceptions, thus creating 'signal harms'.

This dissertation concludes by acknowledging the limitations of this research and offers suggestions for further research. Lastly, recommendations are made offering solutions to these implications and proposals for policy and procedural change are presented.

Introduction

This introduction will present a brief history of Joint Enterprise (JE) and discuss its development from its early application to the present day. Historical and contemporary implementations of JE will be used to illustrate the variety of JE applications. Lastly, a definition of JE will be provided and the main types of JE will be outlined.

Beginning in the 16th century, Joint Enterprise (JE) was first introduced to prosecute duellists and their associates (House of Commons (HOC), 2012). Each duellist would attend with a previously arranged doctor and a second. Doctors would be responsible for attending to any injuries that were obtained and the seconds would be there to offer last minute negotiations. If a resolution could not be reached, the duel would proceed. It was determined that as the doctors and seconds were associated with the offence and did not attempt to prevent a crime being committed, they were partly responsible for the actions of the duellist. Therefore, the authorities found it difficult to legally apprehend and charge the duellists' associates, but as duels were on the rise and there seemed to be no deterrent, in 1536, JE was implemented to punish everyone involved and create a section of law specifically for those who possess secondary liability (HOC, 2012).

However, the use of the term JE was not officially recorded within criminal prosecutions until 1846 in the case of *R v Swindall and Osborne* [1846]. Each defendant was charged with manslaughter and subsequently convicted of driving a horse and cart over the victim, whilst encouraging one another to race. During the criminal proceedings, Lord Chief Baron Pollock stated; "If two persons are in this way inciting each other...the person who commits the act would be the principal in the first degree, and the other a principal in the second degree" (*R v*

Swindall and Osborne, 1846, p.2). This first legal definition of JE identifies the differing culpability of both defendants and was subsequently used as a template for further JE convictions. The Accessories and Abettors Act (1861) later specified when a defendant can be tried as a principal offender in the second degree: providing they 'aid, abet, counsel or procure' the commission of an offence. This then formed the basis for all subsequent trials involving JE from 1861 to the 1980s where principal and secondary defendants were convicted according to their criminal liability.

However, in the 1980s a new thread of secondary liability began to develop, and it was not until the case of *R v Chan Wing-Siu* [1984] where Parasitic Accessorial Liability (PAL) was first implemented. This interpretation of the doctrine dictated that PAL can be applied where two or more defendants commit crime A and in doing so crime B is committed by one defendant. This principle stated that the second defendant is guilty as an accessory to crime B if they could foresee it happening (Jacobson *et al.*, 2016). This landmark case set a precedent for JE cases for the next 30 years determining that foresight of further offences orchestrated by the principal offender was sufficient to convict individuals as secondary parties. The case of *R v Powell; R v English* [1997] enabled this principle to further develop and highlighted another example of how and where JE can be applied. In these cases, the prosecution could not determine which one of the defendants fatally injured the victim and therefore three defendants were found guilty; as at the time there was no legal requirement to prove intent, simply to prove foreseeability was sufficient to convict. This pivotal factor secured into case law that foresight must be proven for JE to be applied, which would go on to influence JE cases for the next 30 years. Arguably, foreseeing an offence does not equate to intention which has raised concerns over the capabilities and implications of JE which have been voiced over the last 25 years. This includes the conviction and subsequent execution of Derek Bentley (1994). These concerns

have been raised by academics and family members of those convicted, specifically, the family of Derek Bentley. Bentley was 18 years old when he was found guilty as a secondary to the murder of PC Sidney Miles, despite being under arrest when Christopher Craig fatally shot Miles (Williams, 1955). A campaign started by Bentley's family highlighted the distressing factors surrounding Bentley's MOJ as Bentley had the reading age of four years, the mental age of ten years, deemed mentally substandard and was diagnosed with epilepsy (Williams, 1955). Since Bentley's execution, his family campaigned until his conviction was quashed posthumously in 1998 (Gudjonsson, 2002). Over the past two decades, Bentley's remaining family have received support from the nation, in acknowledgement of the error made by the CJS and the lasting damage of this MOJ. Bentley's wrongful conviction highlights the harm caused to the families following a MOJ and demonstrates the 'signal harms' across the wider community. It is suggested that this case is one of the most significant JE cases and emphasises the dangers of misinterpreting the doctrine and its wrongful application. This case became significant in relation to JE as it began the discussion as to whether it was fit for purpose especially as its application resulted in a wrongful execution.

Conversely, JE has historically been a critical prosecution tool in providing justice to many families of homicide victims. The 1993 murder of Stephen Lawrence remained open for many years without any suspects being convicted. The 2012 conviction of Gary Dobson and David Norris (2012) highlighted the practical and efficient use of the doctrine, as without it, the convictions would not have occurred. Throughout its history, JE has been identified as a controversial tool and been both disputed and praised. Remarkably, the doctrine has not significantly developed since its early application in 1536. However, it was not until 2016 in the case of *R v Jogee* [2016] where the controversy surrounding JE reached a crucial point triggering, significant policy changes.

The Supreme Court identified a misinterpretation of the doctrine and passed a judgement returning the principles to their pre-1984 position. After 30 years, the Justices of the Supreme Court amended the principle and now required the prosecution to prove that each defendant intended for the offence to occur (Walker, 2016). Interestingly, in single defendant murder cases, there is a standard requirement for mens rea but within JE cases, this requirement is lower as the secondary parties only need to have prior knowledge of a potential offence, whereas a principle perpetrator needs to have intended the offence. As suggested by Krebs (2015), it is therefore easier to prove intention through the application of the doctrine as the standard mens rea is reduced. Jogee's [2016] conviction was overturned as the court concluded the conviction relied on the foresight element and the prosecution could not prove Jogee had actively encouraged the offence as he was not present in the room where the offence took place (Hopkins, 2017).

Arguably the misinterpretation of the doctrine since 1984 (Chan Wing Siu) has led to the overuse of JE and many perceived MOJs. It is still debated whether the changes to the doctrine have eradicated the previous controversies and if there are still amendments necessary to ensure the doctrine is applied appropriately and professionally. Following R v Jogee [2016], the CPS updated their guidelines and produced an improved definition and the three main types of JE:

“Two or more parties to be convicted of the same offences, whether each has played equal part in committing the criminal act or one was the principal offender and others had played secondary roles” (CPS, 2017)

Example One: Defendant A and B agree to commit a robbery and as a result they both equally possess the actus reus. They both attack and steal money from the victim. Therefore, they are both liable for the robbery as joint principal offenders (CPS, 2017).

Example Two: Defendant A and B commit a burglary. Defendant A trespasses and steals from the premises. Defendant B assists/encourages A by driving them to/from the scene with the knowledge that A is going to commit the offence. Both defendants are therefore liable for the burglary. A is charged as the principal and B as the accomplice (CPS, 2017).

Example Three: Defendant A and B engage in a burglary, during this offence defendant A foresees that defendant B might commit a further offence with the use of a weapon. Defendant B later uses the weapon to fatally injure the occupier of the premises. Under JE, both defendants are guilty of burglary and murder (CPS, 2017). This example is this most common application of JE and most of the participants' relatives were convicted under JE relating to this scenario.

Recent literature surrounding JE has criticised its application within gang prosecutions which has resulted in a 'drag-net' affect. This caused many individuals predominately from BAME groups to be swept up into the CJS based upon their social affiliations rather than their criminal involvement. The implementation of JE has brought controversy and sparked interest amongst academics and legal practitioners keen to explore and clarify this perceived disproportionality and overuse of the doctrine within gang prosecutions.

Chapter One: Literature Review

The first implementation of JE occurred in the 16th century (Squires, 2016); however, there is very limited research surrounding JE and its implications despite the identified misinterpretation of the doctrine between 1984 (R v Chan Wing Siu and others v The Queen [1984]) and 2016 (R v Jogee [2016]). Besides journal articles that summarise case law, legislation and discrepancies, there is little empirical JE research into the impact of the doctrine itself on either those convicted, or their families and friends left behind once they are incarcerated. This literature review appraises the available literature relating to JE in order to address the research gaps that currently exist. Firstly, it is necessary to discuss the specific elements of the doctrine and critically analyse where and how JE exists as a doctrine. Then, a discussion surrounding existing research relating to public perceptions and experiences of those engaged with the system will be presented, as these findings directly relate to the ‘*implications of the doctrine*’, such as the topic of disproportionality. Finally, the familial impacts and the conceptualisation of JE will be explored utilising the framework of ‘signal harms’.

Beale (2007, p.88) defines a doctrine as “a general principle of law”. Unlike legislation that has been passed as an Act of Parliament (HOC, 2018), JE is not written within legislation nor has it ever been written in statute law within the United Kingdom (UK). Instead of enshrining JE into statute law, it remains part of common law which can be defined as: “that body of law which has been judicially evolved from the general custom of the realm” (Greenberg, 2012, p. 508). This includes decisions made by different courts in the UK legal system, particularly the Court of Appeal and the Supreme Court. Without a statute or clear legislation, the only material and guidance on JE currently exists in case law, which therefore leaves the doctrine open to interpretation. As seen in the HOC (2012) on JE, concerns are raised over the inconsistency of

its application and it was recommended strongly that it “be enshrined in statute to ensure clarity for all involved in the CJS” (p.3). Despite this and the developments since R v Jogee [2016], it remains a common law doctrine and therefore subject to misinterpretation and over application. This is evidenced by the creation of organisations such as Joint Enterprise Not Guilty by Association (JENGBA), campaigning for the reform of the doctrine, as well as the continuing high number of cases taken to the Court of Appeal.

Since the Supreme Court ruling in R v Jogee [2016], academics and campaigners have expressed their feelings of injustice and illegitimacy towards JE (Lammy, 2017; HOC, 2012, JENGBA, 2019). However, when it emerged that for 30 years courts across the country had misinterpreted this doctrine, this created media and public criticism. How could something like this happen in England and Wales? To date, there is still a dearth of research within this area. Due to this gap, regarding a potential shift in individuals’ beliefs of the CJS and the application of JE, it is therefore relevant to discuss how misinterpretation of the doctrine has impacted on the lives of those directly affected by it, but also how this misinterpretation socially, politically and culturally has affected communities, neighbourhoods and the general public’s view of the application of JE. More specifically, this research will attempt to fill in this gap through a phenomenological perspective by identifying and understanding participants’ perceptions of JE specifically those who have been directly affected by the implementation of JE, with focus on their reflections on their experience of the legal process and the overall impact of their family member and/or partners conviction.

Public Perceptions of the Criminal Justice System

In modern society, it is very common for media headlines and stories to revolve around criminality and the increasing number of offences that are occurring on a local or national level. For instance, knife crime has instigated a national debate on the effectiveness of deterrents amongst young offenders and the sentencing options that exist. According to the Office for National Statistics (2019), the number of offences involving a knife (or sharp instrument) increased from over 41,000 to 44,000. In 12 months, knife crime offences had risen by 7 percent, encompassing a record high since 2011. However, the amount of homicides involving a knife decreased by 14 percent, illustrating a decline in fatal knife crime, yet, this is not reflected in the media. Topics such as these are of an enduring interest to the public and the way in which the government and CJS respond to this spike in violence will influence the public's opinion on the efficiency and, ultimately, the legitimacy of these organisations (Wood, 2009). Providing that these institutions, especially the CJS, have moral credibility with the public, they will be respected, and people will abide by the rule of law (Robinson and Darley, 1998).

Some would argue that public opinion has always been important, especially in relation to its influence on public policy (Wood, 2009). When referring to the CJS and public opinions, once the public become dissatisfied with the way the system is run, Flanagan *et al.* (1985), suggest that the public could refuse to comply and resort to vigilante justice. Wood (2009) suggests that without the public fulfilling its central function amongst the administration of justice, certain parts of the CJS would not operate, such as the reporting of crime and victims and witnesses attending court hearings. This lack of confidence in the CJS could undermine its

legitimacy and disrupt the judicial process. To avoid this loss of faith, it is therefore necessary to have some form of congruence between the CJS and public opinion (Morgan, 2002).

Hough *et al.* (2013) present findings following an empirical test of procedural justice theory and discuss the differences between empirical and normative legitimacy. This study details concerns surrounding institutional legitimacy and attempts to clarify the ‘slippery’ concept of legitimacy. It is suggested that moral alignment and procedural justice are necessary factors in order to retain institutional legitimacy (Hough *et al.*, 2013). It is implied that the justice system is viewed as legitimate “when it meets certain standards of effectiveness, fairness...and accountability” (Hough *et al.*, 2013, p. 5). If the police service is seen to be disrespectful and unfair, their trust could be damaged. This reduced level of trust reduces overall legitimacy and has the ability to deter the public from authority (the police) (Hough *et al.*, 2013). Hough *et al.* (2013) conclude by stating that trust within the police is correlated with legitimacy. To improve legitimacy amongst institutions, it is suggested that the respectful and fair treatment of the public by the police is the fastest route to achieve this (Hough *et al.*, 2013).

Therefore, the necessity of positive public opinion is essential in maintaining confidence and legitimacy amongst the CJS (Wood, 2009). In the United Kingdom, this is especially important due to the notion of ‘policing by consent’ (Home Office, 2012). For the police to achieve their goals, whether within neighbourhood policing or meeting national targets, it is vital that they have the support and cooperation of the public (Wood, 2009). Consequently, when public opinion changes unfavourably, in this case of the CJS, the public’s perception of the justice system can shift regardless of their previous opinions of the efficiency of said system.

In the early 2000s, countries from around the world began to question these perceptions, predominately public trust and confidence in the police and the CJS, in countries such as the United Kingdom, Canada and Australia (Hazel *et al.*, 2002). Most of the sociological research surrounding crime and young people and their criminal justice experiences placed emphasis on discrimination and attributions. Labelling theory and sub-cultural theories provided a reason for deviance and the causes for young people to become incarcerated. However, until the report by Hazel *et al.* (2002), the previously existing research literature demonstrated a lack of a universal theoretical approach. Prior to this report, the predominate comprehensive qualitative study in England and Wales was undertaken by Parker *et al.* (1981) which focused on closed-question interviews and measurement scales.

Hazel *et al.* (2002) conducted a study into the perceptions of young offenders and their experiences within the CJS in England and Wales. The study's aim was to review previously existing research and identify the offenders' interpretations of the procedures and purposes of the CJS. In addition to this, a comparison between these interpretations and the views of youth justice professionals was carried out to gain a holistic understanding of all those directly involved in youth offending. The goal of the Hazel *et al.* (2002) research was to inform and influence policy and practise development. Hazel *et al.* (2002) analysed all offenders as a group regardless of their age, gender, ethnicity or sex. This can present difficulties when making recommendations. To create a framework for theoretical and policy development which encompasses such a large group can potentially fail to offer appropriate responses to these particular groups. Due to the variety of research methods used in this report, multiple concerns were identified amongst the transcripts and descriptive qualitative data, and grounded theory analysis enabled the author to analyse these perceptions. As grounded theory is similar to

thematic analysis in the way it identifies, categories and codes the meaning of data (Strauss and Corbin, 1998), this report is important in highlighting how to conduct an accurate analysis.

Hazel *et al.* (2002) disclosed several findings and recommendations, one of which revealed that those under the age of eighteen who are convicted of an offence and sent to detention facilities find these situations difficult to comprehend as they are removed from their familiar surroundings and placed into an adult defined set of experiences and assumptions (Hazel *et al.*, 2002). Throughout the semi structured interviews, central themes unveiled that young offenders “gave in and submitted to supervising officers” (p.14) and felt as though they were “becoming marginalised” (p.14), contrary to what the CJS hopes to achieve (Hazel *et al.*, 2002). One of the relevant and distinguishing findings of this report suggests a disproportionate impact on the families of those engaged at the point of contact with the police. Concerns were raised in the report regarding parental reactions, pressures from their relatives’ actual involvement in an offence and “having parental exerted pressure on them in police interviews” (p.12).

Disproportionality within the Criminal Justice System

Within the last 30 years, the imprisonment of a large proportion young, BAME men has become an increasingly controversial topic. Crewe *et al.* (2014) found that 37.2% of offenders that were serving long term custodial sentences after being convicted under JE identified as black, as opposed to 12.8% of the general black prison population. At the time of this report, this was eleven times greater than the general black population in England and Wales. The Ministry of Justice (2014) found that white prisoners were underrepresented with the application of the doctrine as 38.5% identified as white, compared to 72.4% of the general

prison population. These statistics suggest a disproportionate use of the doctrine and highlights the possible overrepresentation of BAME individuals within England and Wales.

Within the discipline of Criminal Justice, there is much debate over how such a prominent prosecution tool, such as JE, had been overused by criminal justice practitioners for 30 years (HOC, 2018). In addition to this, scholars (Williams and Clarke, 2016; Pitts, 2014; Jacobson *et al.*, 2016) have raised their concerns over its application amongst defendants, and, in this case more specifically, the ethnicity of individuals who have been convicted under JE. Before *R v Jogee* [2016], there were discussions over the role ethnicity and an individual's socio-economic background played within the CJS in England and Wales. The Young Review (2014) examined previous literature and data from the Office of National Statistics in relation to young black and/or Muslim offenders. Although it was not the intention to conduct any new research, the Young Review (2014) formed a 'Task Group' consisting of representatives from multiple sectors including offenders and statutory agencies, to facilitate discussions surrounding the aims of the review and then used as a basis for the findings and recommendations.

The Young Review (2014) identified and labelled 'young black and/or Muslim men' which included men aged 18-24 who self-identify as black British, black African, black Caribbean, Muslim and mixed heritage or origin. This was problematic as there was a potential to misrepresent or discount other ethnic groups. This coding could limit the ability to capture new and changing ethnicities and their experiences, such as young Somali men and young men from Traveller communities. These groups were not significantly reflected in the data as they were put into the young black and/or Muslim men category. Furthermore, the review only refers to those who self-identify as male, limiting the overall application of the findings. In addition,

data collected from different prisons did not conform to one universal system as each prison can categorise individuals differently in terms of their demographic details such as, age, gender and ethnicity. As this was not accounted for in the review, this gap in research could be addressed to ascertain any possible differences amongst the demographics, and provide insight for further study.

The purpose of this report was to identify issues and problems and create recommendations for the Ministry of Justice which could improve and influence the outcomes for young black and/or Muslim men in the CJS. The objectives stated that the review would contribute to a design that would ensure the needs of black and Muslim men were addressed effectively, as well as providing examples of best practice to support the previous objective. The review concluded that young black and/or Muslim men are overrepresented within the CJS, but only statistics from 2011 were used as evidence, which were outdated at the time of the report's publication, limiting the value of the findings. The report went on to state that the use of stop and search is also disproportionate amongst black and Muslim men, but there is no comparison or other supporting evidence in either statement.

The Young Review (2014) summarises previously collected data and information surrounding the overrepresentation of young black and Muslim men within England and Wales but does not provide any type of analysis; nor does it produce appropriate solutions to establish applicable ways to improve the outcomes of young black and Muslim men in the CJS. However, this review does raise awareness of the issues that black and Muslim men can face. As this review focuses on improving the outcomes of young black and/or Muslim men, it is implied that there must be a sufficient difference in the prison population between these

ethnicities and the factors that influence these young people from entering the CJS as opposed to their white counterparts.

The Lammy Review (2017) took a very different approach in providing insight into the treatment and outcomes of BAME individuals in the CJS. From the beginning of the review the objective was to make recommendations aimed at reducing the proportion of BAME offenders within the CJS (Lammy, 2017). The report has two distinctive features, the first of which provides a comprehensive view of the Crown Prosecution Service (CPS), the court system, prisons and young offender institutions. This review does not undertake any primary research and therefore only compares previously existing secondary data collected from Ministry of Justice and Office of National Statistics.

In contrast to the Young Review (2014), data and information regarding the ‘overlooked’ minorities are addressed and it is specified what the review is referring to when stating BAME; for instance, Lammy (2014) details each ethnicity which he is including in the bracket of BAME. In addition to this, instead of the review analysing data just from England and Wales, resources and information have been gathered from six countries and eleven cities (Lammy, 2017). In comparison to the Young Review (2014), Lammy (2017) compares statistics of those arrested, charged and convicted, identifying where disproportionality exists within the system. Whereas Young (2014) only discussed young black and/or Muslim men, Lammy (2017) compares both men and women, from a variety of different ages as well as individuals from all ethnic backgrounds. In the data presented, there is always a comparison and analysis as to why these data are important and relevant to the review. However, there is no reference in the Lammy review (2017) to any methodology or what type of analysis was conducted. Lammy

(2017) uses a combination of statistics obtained from a variety of government sources and quotes from CJS officials and those incarcerated. This mixture of data assists in painting a picture of what BAME individuals are all too likely to face if becoming involved in the CJS. Nevertheless, due to this primary focus on offenders, Lammy (2017) does not address what life is like for their family members and friends who remain in the community following their relative's incarceration.

Lammy (2017) concludes by stating that black men are three times more likely to be stopped and searched under Section One of the Police and Criminal Evidence Act (1984) and Section 60 of the Criminal Justice and Public Order Act (1994). However, worryingly, the Ministry of Justice states that in 2016/17, as opposed to white ethnic groups, black individuals were eight times as likely to be stopped and searched in comparison to their population size; biracial individuals were between two and three times more likely; Asian were just over two times more likely and Chinese and other ethnic groups were one and half times as likely. These figures suggest disproportionality at arrest, as arrest rates are generally higher amongst BAME groups in comparison to the white group (MOJ, 2017). These data are important to mention as this disproportionality at arrest has the ability to influence the raw number of defendants going through the CJS. However, the overall CPS charging decisions seem to be proportionate amongst young BAME females and BAME adults (over 25), relative to their white counterparts (MOJ, 2017; Lammy, 2017). This can suggest the presence of racial bias and possible institutional racism within the police service due to the disproportionate use of stop and search and arrest rates, as opposed to the CPS which display proportionate figures of charging decisions. Lammy (2017) suggests this proportionately within the CPS can promote public confidence as any inequalities amongst charging decisions were not driven by bias, illustrating the accountability and efficiency of the CPS.

However, there is evidence that for young people, there may continue to be disproportionality in their treatment whilst under the direction of the CPS. Black and biracial young men (under 25) are far more likely to be charged in all types of offences, than their white counterparts and more likely to receive custodial sentences (Uhrig, 2016). This research illustrates the disparity surrounding youth offending and the role ethnicity plays. The current research will explore the implications of the JE doctrine, focusing on young adults, meaning any individual charged and/or convicted of an offence aged 25 and under. This demographic is necessary to pay attention to as the Jacobson *et al.*'s (2016) report concludes that out of 61 sampled CPS case files which included offences of robbery, section 18 assault and murder, two thirds were aged under 25. HOC (2018) disclosed that a large proportion of those convicted under JE are young black and biracial men. Furthermore, Lammy (2017) notes the number of young BAME prisoners has risen from 25% to 41% between 2006-2016, leading to concerns over the disproportionate number of incarcerated BAME young (16-25) within the CJS.

The Implications of Joint Enterprise amongst Gang Prosecutions

One of the most controversial topics was the implementation of JE amongst gang prosecutions and the subsequent drag-net effect that continues to sweep young black men into the CJS based upon their social affiliations as opposed to their criminal learning. However, it can become complicated as the line can be more blurred between young delinquent groups. The introduction of the Policing and Crime Act (2009) allowed the police in England and Wales to apply to the courts for a gang injunction against those who they believe are involved in gang-related activities (Pitts, 2014). Many constabularies have been known to favour prosecutions

of presumed gang members following the application of the doctrine as it is suggested as an influential deterrent to other gang members and would-be affiliates (Pitts, 2014). The application of the ‘gang’ discourse has been suggested as being unconstitutional since the 1950s because individuals are being categorised and labelled as gang members without sufficient evidence to prove it (legally). This categorisation is based on intelligence led policing and based on the individual’s social networks and associations as opposed to their active involvement in criminality (Jacobson *et al.* 2016).

Andell (2019) refreshes the debate surrounding UK street gangs and discusses whether the current policy incorporates gang denial and gang blame. Andell (2019) explores the ‘UK Gang Thesis’ by analysing empirical evidence in order to identify the relationship between policy, practice and theory. Whilst making suggestions for a more democratic approach to gang policy, Andell (2019) concludes by stating a critical realist approach is necessary to overcome the methodological and theoretical challenges as a means to critique the structure of UK street gangs. This critical realist approach acknowledges causal mechanisms identified by Andell (2019) and addresses the harms transpiring to young individuals and their communities in relation to the context of the current UK gang disclosure.

Pitts (2011) discusses previous research regarding the existence of gangs and their identification. Pitts (2011: 164) addresses the evolving phenomenon of youth gangs and the anxieties that follow as a by-product and examines whether these anxieties are overblown as a result of “governmental hype”. Pitts (2011) discusses the influence of social housing and the differing social fields upon those engaging in criminal behaviour and gang culture. This article discusses the disadvantages opposed to young men from urban backgrounds and their inability

to escape from these neighbourhoods particularly if they are BAME individuals (Pitts, 2011). Pitts (2011) sets out the realities for a high number of young individuals within the UK and details the contradicting arguments from a variety of sources discussing whether the public should be concerned with youth gangs or if this phenomena is being overblown.

The Lammy Review (2017, considers the complexity of gang membership within the United Kingdom and goes on to use the example of the Metropolitan Police database, the Trident Matrix, to illustrate the issues that surround identifying gang members and the controversy surrounding the ethnicity of those recorded on the database. At the time of the review, the database contained 3,621 names recorded by the Metropolitan Police and 86 % of these individuals were identified as BAME. Lammy (2017) goes on to recognise the difficulties in the classification of gang membership as there is not a precise legal definition of what constitutes a group of individuals to be part of a gang. Gangs can be fluid and chaotic and it is therefore difficult to identify where and how a gang is operating or whether a group of individuals are a gang or just a group of friends.

Following the outbreak of the London riots in August 2011, the Metropolitan Police Service reported that 81% of those arrested had not previously been identified as gang members (Amnesty International, 2018). Within six months of the riots, a review commissioned by the Home Secretary resulted in a national 'Ending Gang and Youth Violence Strategy' (HM Government, 2011). In February 2012, former Mayor of London, Boris Johnson and former Metropolitan Police Commissioner Sir Bernard Hogan-Howe launched the Trident Gang Crime Command originally to address 'black on black crime' (Amnesty International, 2018). To support this new Anti-Gang Strategy, the Metropolitan Police implemented a data collection

and risk assessment instrument across London: The Metropolitan Police Service Gangs Violent Matrix (The Metropolitan Police, 2019). The original purpose of this intelligence tool was to identify and risk-assess gang members across London, who were identified as being involved in gang violence. Officially, the Metropolitan Police state that its aim is to reduce gang-related violence and safeguard those who are exploited by gangs and to prevent loss of young people's lives (Metropolitan Police, 2019). Despite being used as an intelligence tool, it is currently being used to build a narrative even though it cannot provide proof of membership, bringing into question the reliability and safety of the Matrix.

Specifically, in recent years, the doctrine of JE has been a useful prosecution tool in convicting large groups of individuals, whom are generally being labelled by the prosecution as a 'gang'. Data discussed in the Lammy Review (2017) suggest that up to half of those convicted under JE identify as BAME. Lammy (2017) recommends protecting vulnerable individuals from current gang members as they can be coerced into gang activities. Therefore, it is essential to avoid equating gang membership with groups of young people who are simply associates and/or friends (Lammy, 2017). As mentioned previously, there is a blurred line between social friendships and criminal association which combined with JE being a common law doctrine, leaves it open to further misinterpretation and misuse.

Lammy (2017) concludes by providing 35 recommendations, such as the review of the Trident Matrix and alterations of JE guidance, and offers tangible solutions to increase trust and legitimacy between the police and the public. With each recommendation, it is clear how this can be achieved and the positive outcomes these will have on the BAME community. This review provides useful analysis involving the BAME community and the CPS. It has clarified

an essential need for transparency between communities and the legal system, as a lack of transparency ultimately undermines accountability and damages trust within the CPS and CJS, without this trust, these organisations would cease to function, therefore it is vital that public opinion of these services is favourable.

In addition to the Lammy Review (2017) analysing the relationship between JE and gang affiliation, Jacobson *et al.* (2016) undertook an exploratory study in response to the controversy surrounding JE and the lack of available systematic information about its application within prosecutions. The aim was to further understand how the doctrine is utilised by the CPS and this was conducted by analysing a sample of CPS cases files and court transcripts. A total of 61 case files were examined, resulting in a total of 157 defendants having been charged with the principal offences of robbery, section 18 assault and murder. Almost two-thirds of the defendants were aged under 25 and two thirds of the defendants identified as a minority ethnic group, over 40 % of whom were black (Jacobson *et al.*, 2016). The report identifies many criticisms and concerns regarding JE such as the problematic application of the mandatory sentence that must be imposed if an individual is convicted of murder. The report also argues the disproportionate use of JE amongst young people, particularly BAME groups who are explicitly targeted in cases of presumed gang related violence (Jacobson *et al.*, 2016). It states that the application of JE operates as a ‘drag-net’ which can sweep up large amounts of young people into the CJS based on their social networks and associations as opposed to their active involvement in criminality (HOC, 2012; 2014; Jacobson *et al.*, 2016; Williams and Clarke, 2016). Amnesty International (2018) examines the damage that is caused not only amongst those accused but the impact upon public confidence, legitimacy and trust amongst the police and CJS. The report encompasses a detailed explanation of the Gang Matrix and how the

racialisation of youth culture has influenced presumed gang affiliation and has led once again to disproportionality within the Gang Matrix figures (Amnesty International, 2018).

Jacobson *et al.* (2016) analyse a sample of CPS case files and transcripts, but it is not stated which kind of method and technique is used. Most of their findings are presented using quantitative data in the form of tables. For each case, a dataset was created containing details of the allegations, such as, charging details, defendants backgrounds, court hearings, outcomes and the nature of any relationship with other defendants. It was also noted each time reference was made to JE or any similar terminology within the documentation obtained from the CPS. This included fourteen court transcripts of the Judge's summary and/or sentencing remarks. An unknown type of analysis of the material gathered from the case files, and transcripts involved the development of a series of typologies of cases and outcomes (Jacobson *et al.*, 2016).

The report itself discloses the limitations of the dataset and methodology, stating that the number of CPS case samples were small and only represented a fraction of those prosecuted under JE. It also stated that the study did not reach a general conclusion to the extent or nature of any injustice. However, it is believed that the findings can be used to demonstrate the need for clarification and transparency in how the doctrine of JE can be applied in the CJS and by the CPS, a point echoed by Lammy (2017). Towards the end of the report, eight case studies are used to explain the variety of ways in which JE can be applied and the specific situations that have led to an individual's arrest, charge and/or conviction, but no in-depth analysis occurs. The case studies illustrate the variety of different ways JE can be applied, for instance, the implementation of foresight, counselled or procured, PAL and instances where defendants have

been acquitted during trial. Research into this area is limited and tangible illustrations of JE cases identify similarities and differences amongst cases and establish common applications and circumstances that can influence the implementation of JE.

Williams and Clarke (2016) explored the relationship between gang membership, police databases such as Trident, JE and ethnicity. The study was commissioned following the Young Review (2014) and formed part of a response to the HOC (2014). The primary research questions identify the relationship between the word 'gang' and individuals convicted of serious youth violence. In addition to this, Williams and Clarke (2016) wanted to ascertain how the word 'gang' is used within criminal prosecutions of JE cases. These research questions were approached using a combination of official data sources such as police gang databases, received qualitative questionnaire responses from JE prisoners (totalling 241) and two JE case studies. Unfortunately, it is not stated within this research paper the specific research methods and techniques that were used to analyse the qualitative data and identify the central themes within the questionnaires.

Williams and Clarke (2016) present their findings by using a mixture of correlation graphs and a written summary. The use of both pie charts and bar graphs display the correlation between gang and serious youth violence by ethnicity within the areas of London, Manchester and Nottingham. Williams and Clarke (2016) present their argument of the disproportionate use of the 'gang' label by comparing the three cities' population by ethnicity and gang membership by ethnicity, as gathered from police gang lists. The study suggests that the gang label is disproportionately attributed to BAME people in London, Manchester and Nottingham by comparing the size of the BAME populations within the three cities and the number of white

British individuals flagged/registered as involved or associated with gangs. By doing this, rather than simply stating that the gang label is disproportionality attributed to BAME people, this comparison of the general population clearly reveals that the amount of BAME individuals who are being identified as gang members is disproportionate to the general city population. This statement of disproportionality is also justified with the graphs that display a relationship between gang and serious youth violence and ethnicity in all three cities.

In comparison to the other studies that discuss JE and its controversy surrounding ethnicity, the Williams and Clarke (2016) study evidently provides discursive analysis to portray the experiences of those convicted under JE and used a range of data sources and research methods to discuss the processes of criminalisation of BAME individuals. Furthermore, Williams and Clarke (2016) analyse 241 questionnaires that were returned from prisoners regarding their experiences of JE and their relationship between their conviction and the use of the 'gangs' discourse. In addition to the questionnaires, two case studies were used to further understand the multiple applications of JE, as seen in Jacobson *et al.* (2016), and the relationship between the use of the word 'gang' and collective punishments. The respondents identified the incursion into the lives of young BAME people who are assumed to be gang involved and the imposition of punitive court disposals causing a profound impact on the opportunities and chances for BAME people. Williams and Clarke (2016) discuss how recent legislative changes have widened penal powers, such as the use of collective punishment strategies. The most recent manifestation of these changes can be found in Operation Shield within London boroughs. This shift towards collective punishment based upon an individual's learning, and behaviour signifies the substantial development in the government's response to tackle gang violence. Strategies such as these accompanied with the aforementioned intelligence led databases suggest an urgent need for review and that many individuals are at risk of being found guilty by association and sentenced collectively (Williams and Clarke, 2016).

This study's application of qualitative questionnaires is effective as prior to this study, reports suggested this correlation and provided quantitative data to support it. This study not only summarised its findings into quantitative data but analysed the impact of this relationship and how commonly the word 'gang' was used to describe a group of individuals being tried under JE. The study found that 59% of respondents indicated that the word 'gang' was cited at trial, with 31% reporting that the term was not used in their case, 7.5% of other participants did not know or were unsure (Williams and Clarke, 2016). Only five respondents disclosed being a gang-member. These findings suggest a significant relationship between the use of a 'gang' discourse by the prosecution in JE cases for BAME individuals.

Most of the participants challenged these assumed gang relations and the offence in question through attempts to clarify the context and nature of their association. Some of the defendants disclosed friendships or familial relationships but stated their lack of 'gang' association with their co-defendants (Williams and Clarke, 2016). Family members and friends present throughout court proceedings also contested their relative's innocence and lack of criminal associations. This is suggested to affect how family members view the capabilities of the CJS and the methods which the prosecution adapt to certify a conviction.

Familial Impact

The University of Cambridge (2019) are currently researching how parental imprisonment can influence economic, social and emotional outcomes of family members. It will focus on the effects of the CJS and social policies on the resilience of an individual and their family relationships and providing strategies and insight into reducing adversity and improving family relations during and following imprisonment (University of Cambridge, 2019). This study will

use a whole-family approach and investigate the dynamic nature of resilience of family members faced with multiple stressors. Similar to the current research project, the University of Cambridge (2019) aim to identify and analyse factors that influence the prisoners' families' experiences including economic, political, cultural and social factors. Relevant to the current research project, this study will use a variety of mixed methods, primarily, semi-structured interviews to interview families over a seven-year period to ascertain which factors have been negatively influenced and the impact this will have on their familial relationships. It is currently unclear what the overall findings of this study will be but from the initial interview stage the results are mixed. Even though this study's focus is on the resettlement of imprisoned fathers, the study does comment on the experiences of family members and the impact on the quality of family relations (University of Cambridge, 2019). Common themes throughout this study's preliminary findings highlight the difficulties experienced by other family members, specifically mothers who reported a greater impact on their physical and mental health as opposed to the imprisoned fathers. Moreover, the study shows negative impacts on employment opportunities for both the father and mother, accommodation, social and economic factors and parental relationships, with a greater impact shown for the partners not imprisoned (University of Cambridge, 2019). The study concludes that sentencing individuals to long periods of time in prison can lead to lasting damage to whole family systems regardless of whether they perceive the conviction as a MOJ.

Poyser *et al.* (2018) discuss victims of perceived MOJs and the impact imprisonment has on the defendant and their relationships with family members. They state that those who are wrongly convicted do not have the ability to develop and socially mature at the same rate as they would do on the outside. This can be especially damaging as those most likely to be impacted by JE are young adults. A consequence of this is their relationship with family

members as it has not been able to develop whilst they have been incarcerated and their perceptions of the CJS are often negative and disillusioned. Poyser *et al.* (2018) state that due to this lack of interaction with family members, upon release, their relationships are often estranged. Both University of Cambridge (2019) and Poyser *et al.* (2018) discuss the impact of imprisonment, wrongful or not, on family relations and the overarching effects of the defendant's incarceration.

Conceptualizing Joint Enterprise through Signal Harms

One of the most concerning aspects of JE is the perceived number of miscarriages of justice that has been estimated by JENGBA, Jacobson *et al.* (2016) and the HOC (2012). HOC (2012) have researched cases where JE has been applied and formed a database consisting of 250 cases of which they believe a wrongful conviction has been obtained. Walker and Starmer (1999: 32) defines a MOJ as “a failure to attain the desired end result of justice”. Walker and Starmer (1999) discuss the six categories of a miscarriage of justice and give examples of how they can be applicable within the justice system. Walker and Starmer (1999) discuss this approach and why MOJs revolve around the notions of due process and human rights. It is argued that a rights-based approach is necessary as the CJS is “designed in terms of loss of rights” (Walker and Starmer, 1999: 38). Walker and Starmer (1999) discuss how a rights-based approach is designed in terms of loss of rights as the CJS implements elements of the Human Rights Act 1998, such as Articles 2, 3, 5, 6, 7 and 8. A rights-based approach therefore seems appropriate as a fundamental aspect of the justice system is to deter and punish those who violate the rights of others (Walker, 2002).

Naughton (2013) offers different perspectives and definitions of a MOJ and the limitations of the justice system when dealing with perceived MOJs. Travis (2006) summarises a lay perspective as: society wants a justice system which correctly identifies guilty individuals as guilty and acquits those who are innocent on the basis of their actions as opposed to whether the legal process was adhered to or not. A lay perspective according to media outlets and campaigners is straightforward and concerns the moral correctness of the outcomes of the CJS process involving either a wrongful acquittal or a wrongful conviction (Naughton, 2013). On the contrary, a CJS perspective seeks to determine if there is sufficient evidence to find the defendants guilty or not guilty (Naughton, 2013). With this perspective, the problem arises as the CJS unwillingly acknowledge that there is a risk of convicting the factually innocent (Naughton, 2013). The distinction between individuals “who are really innocent and those who are acquitted on a technicality”, is based on whether a conviction arises from deceit or illegalities, both contradictory of the institutions claim of legitimacy on the basis of due process (Naughton, 2013: 25).

Naughton (2003) defines zemiology as the “holistic study of the social, psychological, physical and financial harmful consequences of social phenomena”. Naughton (2003) discusses the differences between the official statistics of appealed criminal convictions versus the true number of miscarriages of justice. It is concluded that the scale of the MOJ phenomenon in England and Wales is greater than portrayed to the public as a result of structural rules, procedures and practices that could cause MOJs but have never been acknowledged in official statistics. Naughton (2007) later states that in order to attempt to provide an adequate representation of miscarriages of justice and its impact, it is necessary to identify the ‘trails of harm’ that they leave behind. By identifying this phenomenon as a gap in research literature, it is therefore necessary to further this research and ask the question, what is the true extent of

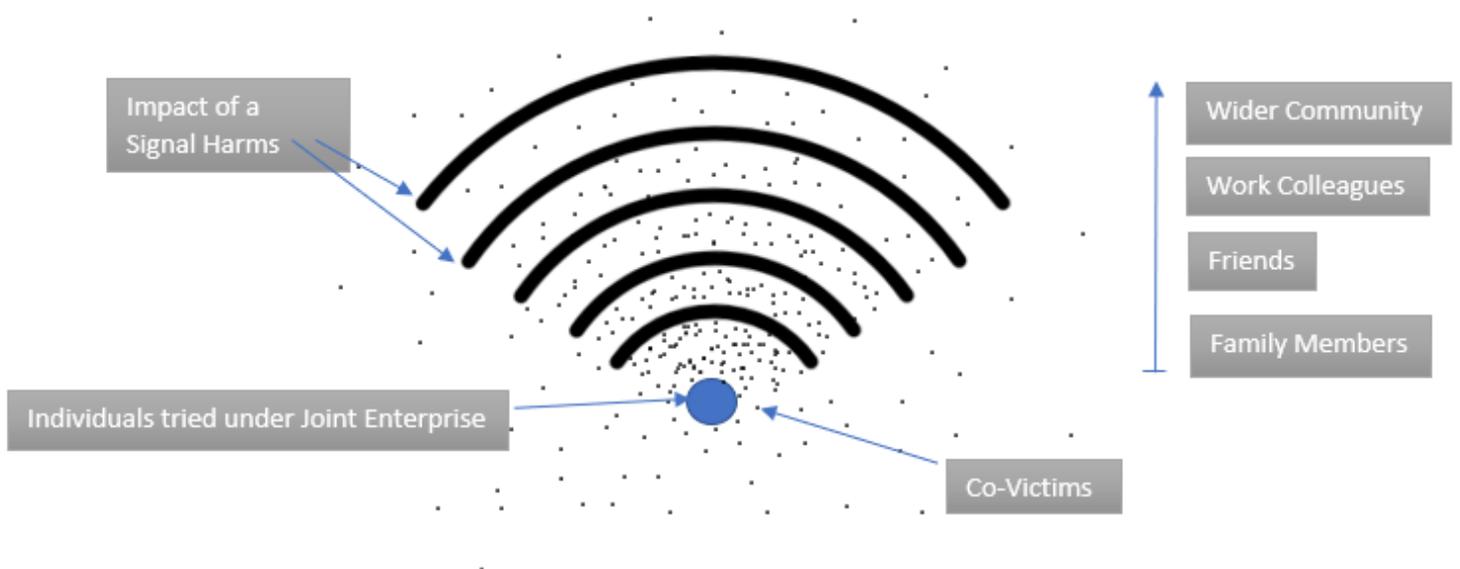
the harm caused by miscarriages of justice? Who do these ‘trials of harm’ affect and what is the extent of their impact? It is suggested that MOJs transmit beyond those convicted and impact family members and friends, extending their harm and creating further victims of real or perceived MOJs.

Connolly and Gordon (2014) conducted a systematic review into the existing literature surrounding ‘co-victims’, specifically in offences of homicide and the psychological, social and familial effects. The review identified that most of the family members were dissatisfied with the CJS and believed the system was unfair; for instance, some family members perceived the sentencing of the perpetrator to be lighter than deserved and the system is designed to benefit the defendants more so than the survivors. Connolly and Gordon (2014) conclude by suggesting additional research is required to further understand the effects of homicide on family members and the changes in relationships following an offence.

Innes (2014) discusses the impact and social reactions to homicides and how a ‘signal crime’ can influence an individual’s thought process, how they feel and act regarding their personal security. This framework identifies the fears that can develop throughout the community following a homicide. Hunter (1985) previously distinguished these impacts into three categories which Innes (2014) builds upon; private; parochial and public. Innes (2014) analysed previous literature pertaining to social harms and their impact politically and socially and discusses how crime and disorder can influence the public’s perceptions of safety and security. This framework identifies the social reactions and impacts of offences such as homicide, using this offence as an example of a prototypical signal crime due to its capacity to influence behaviour and people’s perception of their safety, describing this as a ‘harm footprint’ (Innes,

2014). Innes (2014) identifies these ‘harm footprints’ and their ability to radiate throughout a population dependent on the media coverage, describing the impact upon the victim’s family members, friends, neighbours and the local community. This framework provides an understanding of the impact of crime and the ripple effect this can have on a vast amount of people. However, whilst both Innes (2014) and Connolly and Gordon (2014) discuss the idea of social harm and the impact of family members, friends and the community relating to the victims of homicide, no discussion or emphasis relates to family members and friends of the defendant. Developing upon the ideology of a ‘signal crime’ and the co-victims of homicide, the following framework (FIGURE 1) illustrates the signal harms in perceived miscarriages of justice relating to JE.

Signal Harms in Miscarriages of Justice



(FIGURE 1: SIGNAL HARMS IN MISCARRIAGES OF JUSTICE)

This diagram illustrates the ripple effect of a perceived MOJ amongst co-victims, resulting in a ‘signal harm’. A ‘signal harm’ can be defined as a negative effect on an individual’s

perception of the legitimacy of the CJS, including the police, prosecution and judiciary, following a perceived MOJ.

Individuals convicted under Joint Enterprise are represented as the central blue point. The co-victims are represented in this diagram as the small black points scattered throughout the diagram. Individuals become co-victims following their relative's conviction as they are left to deal with the psychological and physical difficulties. In previous studies, co-victims have described the impact on the family members and friends of victims of homicide, but within this framework it will be used to refer to the family members and friends of those who are perceived to have been wrongfully imprisoned because of the JE doctrine.

The closer in proximity a co-victim is to the individuals tried under Joint Enterprise, the greater the impact of a 'signal harm'. The framework suggests that the impact of a 'signal harm' have a greater negative impact on individuals closer to someone convicted under Joint Enterprise. The research also suggested that negative impacts were present within the wider community, though these decreased in severity as the relationship to the defendant became more distant. As BAME individuals are disproportionality represented within the CJS, it is therefore more likely that the 'signal harms' noted in this diagram will be more concentrated for this population than in the wider society.

Summary

To date, the Williams and Clarke's (2016) study has been the most relevant and influential piece of research discussing JE. The majority of what is known to the public and academics has been through the doctrine itself, case law and this study. For the first time, the human factor behind JE is discussed, individuals are no longer a statistic, because their own perceptions and experiences are documented and published. It is hoped that in the future more research is carried out focusing on the doctrine and identifying why the HOC (2014) and other influential individuals, do not think there is a need to further review JE and its implications. All the contemporary research relating to JE focuses on the role ethnicity plays within criminal prosecutions and subsequently convictions and the application of JE amongst gang prosecutions. In reviewing the current literature, it has become clear that there is a significant gap in research, regarding the perception of the CJS by the defendants and their families. Previous researchers have taken a quantitative approach and focused on the statistical representation of JE convictions and the groups of individuals this has disproportionality affected (McClenaghan *et al.*, 2014). There is a lack of research into the perceptions of the individuals personally affected by JE including those imprisoned and their families. However, this lack of research highlights a knowledge gap that needs to be filled. As this has not yet been established, there is a necessity to identify, examine and analyse these perceptions and ascertain the implications of the common law doctrine of JE on those convicted and their families.

In almost every report and study that has been mentioned in this literature review, concerns are raised regarding an over-identification of BAME individuals as gang members. These reports are written and researched by a variety of different sources including individuals from the Ministry of Justice, the Home Office and the CPS. Disproportionality is constantly referenced

when the topic of gang affiliation and youth serious offending is mentioned, particularly when the topic JE is referred to. These multiple reports suggest that there is an issue with gang identification and classification and most importantly the impact this is having upon the young BAME community. Amnesty International (2018) state that once an individual is placed on the matrix, regardless of whether they have been arrested, charged or convicted of a gang-related or serious offence, places of education and recruitment organisations have access to this database. This alone can be permanently damaging to an individual's career and/or access to basic learning and education. Eighty seven percent of people on the matrix identify as BAME, 99% are male and 80% are aged between 12-24 suggesting disproportionality within the CJS.

As one of the main research questions surrounds the familial impact and the effects of JE upon these relationships, it was therefore necessary to discuss the existing literature relating to this topic and assess what the literature is lacking and whether this study can fill in those gaps. Through the culmination of this literature, the framework of 'signal harms' has been conceived which illustrates the impact of the negative perceptions of JE and the CJS and this transfer of perceptions throughout the wider community.

From these identified research gaps, it is evident that further research needs to be carried out into the perceptions of JE and its familial impact. Therefore, these research questions aim to contribute, through a qualitative analysis, an understanding of the implications of JE upon family and friends of eight individuals currently imprisoned. IPA is best suited to analyse these data due to the small sample size and in order to accurately convey the participants' perceptions and experiences of JE and its implications.

Chapter Two: Methodology

The purpose of this research is to analyse the experiences of family members who are related to those convicted under JE and how this has impacted on their perspectives of the CJS and their relationships, both with their family member and place in society. This chapter will discuss the methodological choices for this study and outline the methods and techniques employed.

Research Philosophy

The research philosophy of constructionism proposes that reality is socially constructed, and participants will construct their understanding of the world through experiencing situations and reflecting and learning from these experiences (Schwandt, 1994). This reality is formed as a construct of the human mind and therefore must be perceived as subjective (Mertens, 2015). Developing from hermeneutics, constructionism is the study of interpretive understanding and meaning (Adom et al. 2016). Clegg and Slife (2009, p.26) further Heidegger's original theory (1927/1962) and state that the meaning of research findings are fundamentally interpretive. Therefore, this research will adopt a constructivist approach which enables the researcher to identify the concepts of importance amongst the study's participants and for these to emerge as they have been originally constructed by the participants (Chilisa and Kawulich, 2012). The role of the researcher will be to understand this subjective reality in order to make sense of, and understand the participants' motives, experiences and perceptions. This research philosophy is a more interactive and personal model of data collection and when carried out successfully, constructivism will present an increasing understanding of the phenomenon of JE.

Research Design

Phenomenological research design provides the opportunity to analyse the participants' own subjective views (Romanoff-Miner, 2012; Frost, 2011; Shiner, 2007). Transcendental phenomenology focuses on the meaning behind an individual's lived experiences and perceptions, with the purpose of describing the essence and nature of an individual's experiences and examining each of these experiences in a unique manner making this design suitable for this type of study and its research questions (Husserl, 1999). As this study's research questions revolve around the participants' perceptions of JE, a phenomenological approach is necessary as qualitative data can be gathered regarding the perspectives of the participants about the phenomenon of the implications of JE and their subsequent perceptions of the English CJS.

This study's primary research questions are as follows;

- 1) How do the participants understand JE and its application?
- 2) What are the co-victims' reflections of the CJS process surrounding JE?
- 3) What is the participants' perceived impact of a JE conviction?

These questions have been formed and phrased in a way to gain an understanding of the perceived impact of JE on the family and friends of those convicted under the doctrine of JE. These research questions will guide this research and assist in obtaining a phenomenological understanding to assist in filling in the research gap. Due to the nature of the study, qualitative data were appropriate for this research as the main aim of this research was to provide a holistic understanding of the participants' experiences and perceptions of JE.

Participants

Eight participants were interviewed for this study and were from a variety of different age groups, ethnicities and social economic backgrounds, and each participant resided within the London Metropolitan area. The participants' ages ranged from 28 to 54. Three of the participants identified as black, one identified as Asian and four identified as white. Participants did not have to reside in the geographic area of London, but with the combination of convenience and snowball sampling, all of the participants coincidentally lived in the same area due to the location of the JENGBA offices and their meeting locations. In addition, each participant identified as a female and no individuals identifying as any other gender responded to any initial emails or messages. Subsequently, only females were interviewed.

For this qualitative study, a combination of convenience and snowball sampling was used to recruit participants and obtain the subsequent data. Convenience sampling (Lavrakas, 2008), a type of nonprobability sampling, enabled participant selection due to their voluntary involvement with the organisation JENGBA. JENGBA's focus is on providing support and advice for family members, friends and/or partners of those charged or convicted under JE.

Each participant was required to meet the following criteria:

- Be related to or a close friend of someone who has been convicted using JE.
- Over the age of 16
- Speaks fluent English

Only the participants' demographics of ethnicity and gender were collected for this study because previous research discusses the relationship between JE and BAME and gender. The participants' ages were not recorded as these data were determined irrelevant by the researcher.

However, it is important to note that seven of those imprisoned under JE who were related to the participants were under the age of 25 when they were convicted and therefore classified as a young adult.

Convenience sampling was best suited for this study as not only is the method quick and inexpensive, but the primary selection criteria revolves around being able to easily obtain the sample population (Lavrakas, 2008; Marshall, 1996). Furthermore, convenience sampling allows the researcher to specifically recruit individuals belonging to a relevant organisation, in this case, JENGBA.

After the first couple of interviews, it became difficult to communicate with any other participants due to the sensitivity of the research and their willingness to trust the researcher and discuss their experiences. Therefore, it was necessary to identify further participants through the application of snowball sampling (Lavrakas, 2008; Biernacki and Waldorf, 1981). This nonprobability sampling technique allows already existing participants, including those managing JENGBA, to contact additional participants who matched the study's criteria. This technique allowed an adequate sample size to be obtained and the minimum number of participants to be reached.

During the transcription stage, it was discovered that one of the participants had been misinformed about the circumstances surrounding their family members conviction. The defendant had been found guilty of murder without the application of JE and no other defendants were placed on trial in relation to the offence. The court deemed that the defendant

was the only principal offender. Therefore, this interview was excluded from this study's findings and conclusions.

It was also important that the majority of the participants were not related to one another and had experienced different court proceedings. Out of a total of eight participants interviewed for this study, six participants were a family member or friend of six separate defendants convicted under JE and two participants were related to the same defendant. The dates of their relatives' convictions range from 2004 to 2018, providing insight into their perceptions of JE before and after the Supreme Court ruling.

Materials

Kitto *et al.* (2008) states that within a qualitative study, data collection procedures are the main factors that can influence the overall quality, credibility and the overarching results of the study (Gibbs, 2007). When reviewing the variety of different data collection methods and techniques that were available for this study, it became apparent that using semi-structured interviews would allow the researcher to conduct a conversation with the participants using predetermined questions in order for comparisons to take place. It also allowed the researcher to explore issues in more depth that participants felt were important to them, within a flexible structure. This technique enables the interviewer to phrase follow up questions and/or enquire further into the participant's responses, increasing reciprocity between the participant and the interviewer (Rubin and Rubin, 2005; Kallio *et al.* 2016). By conducting interviews with this flexible structure, the interviewer is more successful in obtaining detailed qualitative data as well as allowing the participant space for their own individual verbal expressions (Robert Wood Johnson Foundation, 2008).

For this research, it was important to have separate discussions with the participants. This way their perceptions and opinions were not influenced or directed by the other participants. Therefore, focus groups would not be suitable for this study and a semi-structured interview would be appropriate as comparisons can be drawn from the interviews, as Nigbur *et al.* (2012) and Smith *et al.* (2009) previously identified. The specific interview questions were focused on topics relating to the participants' experiences within the CJS and JE. Previous literature (Lammy, 2017; Williams and Clarke, 2016; HOC 2012,2014; Young Review, 2014) has identified a disproportionate application of JE amongst BAME individuals. It was therefore necessary to ask participants questions surrounding disproportionality and which factors influence the application of JE and if JE has ever targeted specific groups or individuals; Question Eight: What factors do you think influenced the professionals' decision to use the Joint Enterprise doctrine in this specific case? Question Eleven: Do you think JE has in the past or currently, targets specific groups or individuals? (Appendix 1) These questions aimed to identify if they agreed or disagreed with these previously recognised factors. One of the main goals of this research was to ascertain the impact of JE upon the voices of the families of those convicted. Therefore, it was necessary to determine how the related JE conviction has affected their relationships with their family member/friend and the impact this has had upon their community status and relations; Questions Thirteen: How has the decision to convict your (family member/friend) impacted on your life? Question Fifteen: How has JE affected your relationship with (family member/friend)? (Appendix 1) These question were phrased to address the primary research questions and allow the participant to have an informal conversation with the researcher as opposed to a formal, structured interview. This allowed the researcher and the participant to build up a rapport and trust, essential to successfully identify and address the meanings of the participants' lived experiences.

Procedure

On the 11th of October 2018, the main researcher and supervisors attended an official JENGBA meeting in which introductions were made and the intention of the research was made clear. Participants provided their contact information in the form of emails and phone numbers. Over the following months, interviews were arranged with the participants who replied to the communications. Between the period of March 2019 and June 2019, all of the semi structured interviews were conducted and recorded on a Dictaphone. The interviews lasted between 13 and 70 minutes ($M= 35.19$, $SD= 25.05$). In total, there were three locations where the interviews took place, these locations were chosen as they were publicly accessible spaces. With some interviews, it was not possible to hire a private room and therefore complete confidentiality could not have been guaranteed, but the researcher made sure the participants were comfortable with the surroundings and were still willing to continue with the interview.

During the interview phase, five of the audio recordings were transcribed by hand and three were transcribed using the transcription software Trint. This software sped up the transcription process, allocating more time for the analytical stage. Once Trint provided a first draft of the transcriptions, the researcher then quality checked each one by listening to the recordings and comparing the accuracy of the transcription. As most of the interviews were recorded in a quiet and semi-private place, the recordings were relatively clear and therefore only minor corrections had to be made to the first draft. Once the recordings were transcribed, the files were deleted from the Trint account and the account was then deactivated. It was confirmed by Trint that no backup copies of the files are kept providing the account is deleted. The participants' confidentiality and anonymity were therefore maintained during this process and no secondary parties had access to the audio recordings or transcribed documents.

Analysis

Interpretative Phenomenological Analysis is most suited to analyse this study's qualitative data as IPA is valuable when examining perceptions which are complex and emotionally laden, and has the ability to illuminate sensitive subjects (Smith and Osborn, 2015). As this research focuses on such an emotional and complicated issue, IPA can effectively be applied to examine how the participants make sense of their specific lived experiences and in this case, the phenomenon of JE. The researcher moves between the viewpoints of emic (from within the social group and from the perspective of the participant) and etic (from the outside and the perspective of the observer). From these different perspectives, the researcher can develop their insights and theories regarding the meanings of the participants' perceptions and experiences, as well as looking at the qualitative data through a psychological lens and interpreting the data with psychological concepts to assist in understanding the participants' meanings (Smith, 2015).

Denovan and Macaskill (2013) illustrate the credibility of IPA amongst phenomenological research designs due to its successful application in analysing subjective experience and perceptions. Nigbur *et al.* (2012) address the necessity of IPA within studies that place emphasis on phenomenology and the participants' experiences and sense-making as opposed to analysing patterns and discourse. Within phenomenological and interpretative research, the purpose is to understand people's experiences. IPA enables a detailed examination of these personal lived experiences, particularly favourable when there is a small sample size as it enables the researcher to conduct micro-level readings of the transcripts (Smith and Osborn, 2015). IPA is a flexible method of analysis in matters of analytic development as it directs the attention towards the participants' attempts to understand their own experiences (Smith *et al.*,

2009). This type of analysis is becoming increasingly common within the psychology discipline and other related fields (Frost, 2011; Nigbur *et al.*, 2012; Aresti *et al.*, 2010). Considering the lack of knowledge of JE, it is important to explore this unfamiliar area and further the literature currently available whilst providing insight to family perceptions and the application of IPA.

There are a total of six stages within IPA, the initial stage involved reading and re-reading the transcripts and ensuring that the participant is always the focus of the analysis. There is no clear right or wrong way to conduct IPA which allows for an innovative approach; however, it is important to have protocol in place to conduct IPA effectively. Re-reading the transcripts repeatedly allowed a model of the overall interview structure to develop and the researcher could begin to gain an understanding of how certain narratives suggested by the participant can form an overall narrative. Secondly, any initial notes within the transcripts of content and language use were recorded in the left margin of the transcripts. The text was then divided into meanings and assigned a comment to each, this process is known as coding. The finished product of this stage was a comprehensive and detailed set of notes and comments about the data. Comments could have been made in three different ways: 1) descriptive comments, by describing the content and subject of what the participant has detailed; 2) linguistic comments, identifying the specific use of language. For this analysis, only 3) conceptual comments were made by capturing any narratives suggested by the participants at an interrogative and conceptual level (Smith *et al.* 2009).

A list of the initial themes was created and formed in chronological order to present the overall structure of the data. At stage three, the transcript was read through again and preliminary

themes were recorded in the right margin whilst reflecting on the participant's original thoughts and words but also their own interpretation of phrases and meanings. At stage four, connections across the emergent themes were explored and the analyst attempted to determine how the themes fit and cluster together. In this process, some themes were discarded due to their irrelevance and/or lack of relationship to the primary research questions. These clustered themes are known as super-ordinate themes. Next, this exact process was repeated for each transcript (total of eight), bracketing any ideas that emerge. Finally, the analyst searched for any patterns across all of the data and looked for any connections and which themes are the most potent. Was a particular theme more prevalent in one case than another? Did this theme illuminate a different theme? During this final analytical stage, the themes from each transcript were compared and showcased in a master list of themes. This list was presented in the form of a table and these themes were checked and re-checked against the transcripts to ensure they adequately represented the participants' perceptions of JE.

Ethics

To ensure this research met the ethical requirements of Canterbury Christ Church University and the British Society of Criminology (2015), a participant information sheet (Appendix 2) and a consent form (Appendix 3) were firstly created, then approved and signed by each participant and the researcher before the interview began. According to Bailey (1996, p.11), this consent agreement was developed in order to gain each participant's informed consent and ensure they understood the voluntary aspect of the research and the importance of consent. These forms detailed the following:

- The purpose and aims of the research
- The procedures of the research

- Background of the research and its relevance
- Confidentiality and anonymity of information
- The voluntary nature of the research and participants right to withdraw from the study at any time
- Dissemination of the results
- What the participant is required to do
- Contact details of the main researcher and the supervisors

Prior to the start of the interview, each participant read and signed the consent form and it was ensured they understood the confidentiality and anonymity of the project. At the end of the interview, the participants were given the debrief form (Appendix 4) to ensure they understood the purpose of the research and to conclude the interview. As soon as possible, each interview was uploaded to a secure laptop and then erased from the Dictaphone to secure the confidentiality of the data and to adhere to General Data Protection Regulations (GDPR, 2018).

Research Reflections

This study was the first for the main researcher and therefore he had no previous research experience. A lot of background research was required to undertake this study and confirmation from supervisors to ensure the structure and content was correct. It was important that these checks and confirmations were consistent to ensure the research was being carried out in line with CCCU and the British Society of Criminology (2015) ethical requirements and guidelines.

It must be acknowledged that the researcher has not personally experienced JE and no family members or friends have been affected by the doctrine. In addition, fortunately the researcher has not personally experienced issues specific to the participants such as racism,

disproportionality and socio-economic challenges. This allowed the researcher to approach the research with less preconceived bias, enabling a more open and honest stance. However, it may mean that the researcher was less able to understand nuances in the participants' responses. Careful analysis of the transcripts was carried out with this in mind in order to accurately present their perceptions and experiences.

The role of the researcher within qualitative research, more specifically when using semi-structured interviews, requires the researcher to be empathic and understanding to make the participants feel at ease and build trust with them whilst they are sharing their stories and experiences. From building a rapport with the participants and reassuring them about the intentions of the research and its potential ability to help highlight issues surrounding JE, participants felt comfortable with sharing their perceptions regardless of the researcher's 'outsider' perspective, reflecting the constructivist approach (Brown, 1996). The validity and credibility of the study is dependent on the interaction between the participant and the researcher, as a large amount of data is collected from a limited number of participants (in this case, eight). Consequently, the researcher is dependent on the participants revealing substantial amount of personal and sensitive information, in order to successfully answer the research question.

Throughout the duration of this study, a few limitations arose that were not originally thought of. For instance, from the beginning of the study the decision was made to only interview family members of those imprisoned under JE who spoke English, whether as their first or second language. This would eradicate any problems involving a language barrier and not being able to effectively communicate or understand the participants experiences and perceptions.

However, what was not anticipated was the participants varying accents depending on their nationality and upbringing. This created challenges when transcribing the interviews and as it was incredibly important to ensure that each word was being correctly transcribed as to not misinterpret the perceptions of the participants and alter the outcome of the study. Additionally, it became apparent during the transcription process how the role of spoken language as opposed to written language can create obstacles when interpreting the phrasing and structure of a sentence. Depending on an individual's cultural and regional variations in the language, one individual may form and verbally discuss a topic differently from another (Temple and Young, 2004). This presented challenges when interpreting the transcriptions; however, this limitation was eradicated by rereading the transcripts and ensuring that there was no misinterpretation of the data.

During the first JENGBA meeting in 2018, one family member spoke about their concerns over their safety and was very cautious about becoming involved in the study and was reluctant to speak about their experiences. This was a common concern amongst participants, and it was therefore vital that participants' anonymity was maintained. This reluctance could explain the low number of participants and the small sample size of the study; however, IPA is well suited to smaller numbers of participants. Following the data collection and the transcription of the interviews, it was then necessary to begin analysing the data using IPA to understand the participants' perceptions and identify any common themes.

Chapter Three: Results

After analysing the data from the interviews, a variety of themes were revealed. A total of five master themes were identified from the participants' responses. The themes that will be outlined in this chapter are: perceptions of JE; perceptions of the CPS; the influence of demographics and gang implementation within the court room; the impact upon familial relationships and 'signal harms'. In addition to these master super-ordinate themes, a multitude of sub-themes were identified. The sub-themes that will be presented in this chapter relate to lack of awareness of JE prior to conviction; sense of injustice; attitudes towards the police and perceptions of the court process.

Theme A: Perceptions of Joint Enterprise

Sub Theme: Lack of Knowledge Prior to the Conviction

One of the main themes that presented itself was the lack of prior knowledge of JE and their change in perception since first becoming aware of their relative's charge and/or trial. Seven participants were not aware of JE and its legal capabilities:

"I didn't know anything about it until at the very end" (Participant 5)

"Who knew of it? I didn't know until I was first told that my friend was being charged with murder" (Participant 7)

"I never knew of JE...the day of the sentencing I hear it" (Participant 1)

As JE is not commonly known to the general public or regularly spoken about in various forms of media, it is likely that the general public will not know about JE until they themselves, or someone they know, has been caught up in it. In 2010, the Metropolitan Police Service (2019) began the JE Presentation Programme which aims to reduce serious youth crime by educating

young people about the application of the doctrine. The programme is aimed at 11-18-year olds and delivered in schools to highlight the potential dangers of becoming associated or actively involved with groups of people and the possible outcomes for those involved. However, this programme is only available on request and specific to the Metropolitan area, leaving many young individuals unaware of JE.

Once the participants became aware of JE, they quickly realised how unpredictable and detrimental the doctrine can be. There was a range of opinion regarding the existence of JE and whether its original purpose had shifted into a controversial prosecution tool. Participants discussed whether they agreed with the principle of JE or if they perceived it as harmful.

“In principle adopting a doctrine of JE wouldn’t really be problematic if you’ve got several people intent on committing the same crime...but it’s not being used like that. It’s deeply flawed” (Participant 6)

“I understand why it’s there, it may sound contradicting, but I understand, I really do...But what I don’t understand is how loosely the term is used... I think they’re abusing the term JE” (Participant 3)

Each participant strongly disagreed with the doctrine and was concerned about its impact on those swept up into the CJS, specifically the effect upon young people. Upon understanding what JE is and how it can be applied in the court room, participants felt let down by their legal system and surprised at the reach and influence of JE. Participants understood the original purpose of the doctrine and some state that in theory, JE is a useful tool especially in cases where it is unclear which defendant fatally injured the victim. However, it is also understood how the doctrine is being misinterpreted and misused, subsequently impacting their relative’s life, as well as their own.

“It seems JE is the equivalent of the slinging of the witches in the water. If they float, they’re guilty so you kill them anyway...if they sink well, they were innocent, but they’re drowned” (Participant 7)

This quote in particular is striking as it highlights this complete lack of trust the respondent has within the justice system and compares what is currently happening with JE with a primitive trial process of the past in the UK. This perception can be understood as the participant’s view the prosecution did not prove the defendant’s guilt and were making assumptions rather than proving involvement with substantive evidence. When referring to those currently imprisoned under JE, this participant is implying that the defendants have little chance of proving their innocence when tried under JE doctrine.

One participant referred to the application of JE as *“if they were cutting a birthday cake”*, when describing the utilisation of the doctrine amongst a group of defendants, implying that only one person, being the principal perpetrator could hold the weapon and be directly involved in the murder, *“common sense will tell that one person delivered the fatal blow”*. Nonetheless, *R v Powell and Another [1999]* and *Dobson and Norris [2012]* demonstrated the necessity of the doctrine when the defendant responsible for the fatal injury cannot be identified. Therefore, historically, JE has been applied when ‘common sense’ or evidence could not identify the primary defendant.

Participants used a variety of phrases and words to describe their general thoughts on the doctrine of JE such as:

“A Stitch Up” (Participant 4) “It’s a Lazy Law” (Participant 5)

“Rubbish” (Participant 6) “This law of JE is not working” (Participant 1)

All of the participants share the same belief that JE has been and still is being used inappropriately in order to favour the prosecution. However, participant eight stated *“post Jogee is better but not that much better”* indicating that the Supreme Court have improved the doctrine, but there are still amendments necessary as it is still being over used. The participants perceive JE as an inadequate doctrine that is damaging the lives of many individuals and not just those imprisoned, but family members, friends and the local community. It is acknowledged by the participants that JE is not being applied correctly and even after the 2016 ruling, further guideline and changes within the CJS need to occur.

Every participant revealed that they do not agree with JE in its current form, described why, and discussed how they would change its application. There were a range of opinions regarding change, with some participants providing new options and guidelines to improve the reliability and objectivity of JE:

“I would scrap it” (Participant 1) “Abolish it” (Participant 4)

“Prove Intention” (Participant 6)

“The whole justice system that we’ve got needs completely and utterly overruling” (Participant 7)

“Maybe the term itself needs to have a tick box system...boxes that must be ticked before you even think about bringing JE into play” (Participant 3)

The participants’ responses provided a varied insight into their perceptions of how the doctrine can be improved or in some cases abolished completely. Since the participants had first hand experienced cases involving JE, it was interesting to hear what, how and why the participants would change the application of JE. Six participants revealed that they would remove it

completely especially the participants who are campaigning to abolish it. The rest provided ways to improve the doctrine in its current form, such as providing a tick box system which would ensure specific criteria must be met (at least five) before JE can be applied by the prosecution. Participant Eight stated that they would change JE by removing the ability to charge individuals based upon their *“presence at the scene in the absence of a premeditated incident”*. This would ensure that defendant’s assistance or verbal encouragement in the offence was premeditated. It is clear that the participants are aware of the changes that have previously occurred in relation to JE, likely due to their engagement with JENGBA but the participants feel that even after R v Jogee [2016], the doctrine is still inadequate and capable of doing more harm than good.

Sub Theme: Sense of Injustice

Of the eight participants interviewed, all believed their relatives did not receive a fair trial according to the Human Rights Act (1998), Article 6. Drawing from their responses to other questions, it can be interpreted that the participants believe this is the case for a number of reasons, some of which will be discussed in theme C. The participants all shared the same view, that there was no justice in sentencing these individuals for such long periods of time when they were not the principal offender and did not play a significant part in committing the offence. As the criteria of JE allows the doctrine to be easily applied to cases involving two or more defendants, the prosecution can adopt this strategy to improve the chances of a conviction:

“Absolutely not (have a fair trial), to be charged with something that they know you haven’t done is not fair” (Participant 7)

“If it was fair, he wouldn’t have been in prison” (Participant 1)

“No”, “No”, “No”, “No” (Participant 2, 3, 4, 5, 8)

“No, if they had a fair trial...three jury members burst into tears...why are they crying if they think that it was fair” (Participant 6)

It is interesting to see how all the participants view their experiences with the court processes and how these opinions differ from their original thoughts of the CJS. It can be interpreted that the participant's believed the trial was unfair because they have not been charged with JE from the outset. From these experiences and their adjusted perceptions, they view JE and ultimately the CJS as flawed and in need of reform. This change in perception reflects how damaging a negative experience with the CJS can be and how it can influence an individual's perception of whether the British CJS is effective and fair. It is also interesting how one participant noted that during their relative's trial three jury members began to cry upon announcement of the verdict. This suggests distress and regret over the verdict; it can be argued that the jury members may have been emotional after making an important decision and relieved that the trial was over. Either way, this is uncommon to hear of and can cast doubt over the jury making process which within adversarial justice system is essential in determining the appropriate judgement.

Theme B: Perceptions of the Criminal Justice System

Throughout this research, it quickly became apparent that every participant that took part in the study and those involved with the JENGbA campaign had negative views of their experiences within the CJS and in particular of the prosecution, although some participants reported a positive view of their interaction with the police service. As family members and friends of those convicted under JE, the participants have experienced first-hand how the CJS

process manages its cases and their experiences allow them to form a new concept of whether or not the current system is working.

According to the World Justice Project (2019), the UK is ranked 12th out of 126 countries by measuring the application of the rule of law. They define a country having effective rule of law by reducing corruption and protecting people from injustices (World Justice Project, 2019). The purpose of the British CJS “is to deliver an efficient, effective, accountable and fair justice process for the public” (Garside, 2008). A recurring issue that is consistently presented within the data, was the difference between the participant’s preconceptions of the CJS prior to their family member being convicted under JE and their perceptions following the conviction. The participants expressed their views regarding the CJS prior to their relative’s conviction due to JE:

“I walked around for 20 months thinking we had the best in the world” (Participant 4)

“I had quite a lot of faith in the criminal justice system” (Participant 8)

“I believed in British Justice” (Participant 7)

“I know as a British citizen...the criminal justice system its right. Its impossible to find someone guilty if they haven’t done something” (Participant 3)

“We have a really robust excellent criminal justice system” (Participant 6)

The participants all expressed their faith and trust in the CJS prior to their involvement with the process. Since their family members’ interaction with the CJS and their relative’s subsequent convictions, each participant described their change in perception resulting in a negative view of the CJS and their lack of trust in the fairness of the current system.

“I think our criminal justice system is absolutely as bad as it can get” (Participant 7)

“I’m deeply disillusioned with it” (Participant 8)

Every participant stated that after their exposure to the CJS and having witnessed first-hand their relative’s trial, their perceptions of the CJS and entire outlook of criminal justice changed. They described the system as “*biased*”, “*unjust*”, “*deluded*” and “*immoral*”. Their change in perception and overall thoughts on legitimacy of the CJS is reflected in their negative responses and strong feelings of injustice. Comments such as the ones stated above reflect doubt and lack of trust in the CJS’s ability to provide a fair justice process for all. The point at which the participants became aware of JE seems to be a catalyst for their change in perception and from this point on they perceived the CJS to be ineffective and no longer providing justice:

“That’s not a justice system, that’s an injustice system” (Participant 5)

“One of the things this country’s always been good at is how it’s differentiated us from other countries is our sense of fairness...I don’t think our society is fair any longer...and that’s a shame” (Participant 7)

Sub Theme: Attitudes Towards the Police

Participants presented mostly positive responses regarding their opinion of the police both in relation to the subsequent JE conviction and their general perception of the police:

“I don’t think I had such an issue with the police” (Participant 8)

“I think the police weren’t too bothered about him, but it was the prosecution that were like it’s a JE matter” (Participant 3)

“I don’t have a problem with them...they were accommodating...it wasn’t a hostile environment” (Participant 1)

“Unfortunately, the police are under a lot of pressure to get results...but I have a lot of respect for the police” (Participant 6)

Throughout their experiences with the police, prosecution, judge and jury, the majority of participants perceive the police as carrying out their duties correctly and professionally. As the participants reflected on their relations with the police, this positive experience emerged as a key element in most cases. Most of the participants reported that the police did not negatively influence their view of the CJS and overall perceived the police as being a legitimate service. This emphasises the importance of feeling supported by the police in order to maintain respect and authority for the police and therefore adhering to the notion of ‘policing by consent’ (Home Office, 2012). However, these perceptions indicate that the participants are not aware of the police’s involvement with JE as the police decide whether to construct a case using JE and then present this evidence to the CPS.

However, one participant felt that the police altered the investigative process to suit their aims and suggested the police are selective in their procedures relating to JE:

*“Too many of our cases involve police framing the case to suit their narrative”
(Participant 6)*

Following this statement, it can be interpreted that the participant believes the police are not adhering to their procedures in relation to investigating all line of enquiries regardless of how this reflects on the suspect. This strong perception highlights the damage negative interactions with the police can do and the solidarity the participants can have with their relatives in the belief that a conviction was only possible because of police corruption.

Sub Theme: Perceptions of the Court Process

It was not until the defendant was charged with the offence and placed on trial that the participants had the opportunity to reflect on their change in perspective and began to form negative conclusions surrounding the role of the prosecution resulting in the conviction of their relative. All eight participants believed that the prosecution (barristers and the CPS) was solely responsible for the decision-making process to utilise JE and therefore responsible for their relative receiving a lengthy custodial sentence following their guilty verdict:

“Wheeling out the same old prosecutors time after time because they can use the same formula to get a conviction” (Participant 6)

“The prosecution sexed it up and the jury convicted” (Participant 8)

“The prosecution needs to know that they can’t use that word (JE) so loosely and it’s their job to prove the guilt with hard core evidence” (Participant 3)

All the participants were highly critical of the prosecution and their handling of the interpretation of the JE doctrine. The participants expressed their dismissive views of the prosecution and criticized their processes. This suggests that the participants do not agree with the conduct of the prosecution and believe once again the doctrine has been overused in their cases, leading to their perceived MOJ. However, it can be argued that the prosecution can only follow the guideline and case law presented to them and therefore can do nothing but follow the law.

In addition to their perceptions of the prosecution, four participants revealed concerns and insecurities regarding the impact of the jury, solicitors and judges upon the verdict of the court case. Participants highlighted the significance of affordable and high-quality legal

representation, especially amongst defendants from low social economic backgrounds and describe their feelings of being let down by their legal representation. Participants also revealed their attitudes towards the jury, specifically their concerns surrounding the selection process and subsequent representation amongst jury members being reflective of the community:

“Because it was legal aid, all she was interested in was the money...if you had the money you would have a proper lawyer” (Participant 1)

Participants reflected on their experiences throughout their criminal proceeding and disclosed a sense of misconduct as they believed that the motivation behind their legal representation was financial gain as opposed to establishing the defendant is innocent regardless of their income and social status.

“They jury, they are not properly represented...you need to have representation because you need to understand that ethnicity” (Participant 2)

Additionally, many participants discussed a lack of faith regarding the lack of representation and diversification of jury members in the London area. Participants reported that in many of their relative’s trials, the jury did not appropriately represent the ethnic composition of the community and/or the defendants. Concerns were raised over the experience and understanding of the jury when they themselves had not personally experienced what it is like to be part of an ethnic minority group. However, in order to have an impartial jury, jury members need to have an understanding of the defendant’s background, otherwise members of the jury would be applying their own interpretation of the facts/evidence (Davies and Edwards, 2004; Sommers, 2006). In this specific case, BAME individuals who can provide the appropriate insight and background creating a diverse jury including individuals of different genders, ages, ethnicities, social economic backgrounds and cultures, were called for. Sommers (2006) discusses the significant effect racial composition can have on a jury verdict as within a diverse jury, white

members were less likely to vote guilty than when the jury was all white. This suggests that racial composition within juries can influence the group decision making process as this diversity leads to a broader exchange of knowledge, particularly black juries can guide the discussion of race-related issues and assert the notion that the defendant is being judged by their peers (Davies and Edwards, 2004). Regardless of the ethnicity of the defendant, the jury should be reflective of the community to ensure they are judged by their peers. In Central London, the demographics of the population vary meaning that the juries should consist of individuals from a variety of different ages, races, genders and backgrounds.

On the other hand, Thomas (2010) addressed the fairness of jury decision-making within the UK and whether factors such as ethnicity influence the jury's verdict. The research found that although BAME groups are disproportionality overrepresented in the CJS and are more likely to be stopped, searched, arrested, charged and imprisoned, BAME groups do not face discrimination amongst jury verdicts, regardless of the ethnicity of the jury (Thomas, 2010). This statement is contradictory of the participants' perceptions towards the influence of the racial composition of the jury and suggests that the ethnicity of jury members does not impact the defendant's chances of a conviction. However, Thomas (2010) does state that BAME defendants could perceive unfairness within the CJS when they are underrepresented amongst jury members. Therefore, it is suggested that the racial composition and other demographics such as age, gender, religion and culture should be represented within the jury so that they are reflective of the community and population of that specific area. This way the defendant and their family members feel represented amongst the jury and a broader exchange of knowledge can place, specifically in JE cases. This would allow a common understanding of age and race which would improve the jury's perceptions and possible prejudices and assumptions that may have previously existed.

Another significant theme that arose was the participants lasting impression of the judges involved in their relative's cases.

"We have got judges who are not reflective of our communities...they are not elected by any of us...we're not judged by our peers" (Participant 7)

"I think the judge was very biased...he didn't wait to do the summing up...he just generalised and said that it's a gang" (Participant 2)

"I spoke to a judge about two weeks ago...he said to me one of the reasons that he decided to stop down is because of the unfairness of JE and he sees things that he doesn't agree with" (Participant 7)

Similar to participants perceptions of the jury and the influence of racial composition, participants also suggested that judges did not appropriately reflect their communities nor were they representative of the defendant/s. As mentioned earlier, this lack of commonality and representation has the opportunity to further negatively influence the participants' and the defendants' views of the CJS and lower their sense of legitimacy amongst judges, juries, prosecutors and therefore the overall CJS. This is dangerous and unproductive as it is necessary that the CJS is viewed as effective and trustworthy and that the decisions and actions of justice professionals are made in line with policy, procedure and legitimacy; without this trust, the CJS would cease to function.

The last quote suggests a harrowing insight into not only the perceptions of those being involuntarily swept up into the CJS, but those enforcing the JE doctrine and those who are being employed to provide appropriate justice across the whole system. This statement supports

the participants' perceptions and of those who are aware of JE and raises concerns over the confidence in the professionals' utilisation of the doctrine. When those accountable for seeking justice and fair process are doubting their own policy and constitution, this brings into question the legitimacy of said system and whether JE is being used appropriately.

Theme C: The Influence of Demographics and Gang Affiliation Within the Court Room

Throughout the interview process, participants were asked to identify possible factors that have the ability to influence the professionals' decision to utilise the doctrine and which individuals and groups in society are targeted and most affected by JE. Each participant responded with the same perception that belonging to specific demographic categories such as age (under 25), gender (male), ethnic minority and low socio-economic backgrounds increase the likelihood of JE being applied:

“It's used against the poor, the working class and BAME people” (Participant 7)

“Definitely working class, 80% BAME” (Participant 4)

“It's always the poor...whites, poor Asians, poor blacks, those who don't know the law” (Participant 5)

The participants discussed how JE has in the past and currently targets young men (aged under 25) who are predominately from lower social economic backgrounds and who identify as BAME. These perceptions indicate that the participants agree with previous research identifying disproportionality in the application of JE (Lammy, 2017; Williams and Clarke, 2016). From their own experiences with their relatives, all of the participants stated that they believe their relatives demographics did influence the professionals' decision to apply the

doctrine, supporting the notion of disproportionality and the over criminalisation of young BAME men from lower socio-economic backgrounds.

Participant Five acknowledges this disproportionality and its significance and states “*especially when you’re one of the most weakest vulnerable people in society*”, indicating the participant’s experience with JE and the impact on their perception and place in society. From this statement, it can be interpreted that this participant feels vulnerable and threatened due to the implications of JE and the increased risk that JE is more likely to be used amongst BAME groups with which they identify. This participant, and others involved in this research feel as though their race and background can determine how they are treated by the police and CJS.

When asked specifically about the influence of the aforementioned factors in relation to the doctrine of JE, the participants revealed their concerns:

“I’ve heard it’s like ethnic cleansing...the majority that are caught up with JE are from ethnic groups” (Participant 1)

“It’s like a witch hunt” (Participant 2)

“Race played a very big part in this, unfortunately” (Participant 3)

This suggested a belief amongst participants that their particular race and ethnicity influenced the likelihood of JE being applied to their cases, indicating a strong sense of discrimination and prejudice within the CJS particularly when referring to the application of JE as “*ethnic cleansing*” and “*a witch hunt*”. Roberts *et al.* (2015) discussed the role of rumours in the aftermath of major crimes and suggested due to the speed of the communication of facts and information, the accuracy and provenance of these facts can be frequently uncertain and subject to revision. With JE, the participants’ perceptions can be constructed through others’ experiences and media coverage of JE and its disproportionality.

As already highlighted in previous research such as the Williams and Clarke (2016) study, JE is utilised by the prosecution in cases involving two or more defendants but most of the time these groups of individuals can be labelled as a ‘gang’, regardless of whether this is evidentially established. All the participants commented on the implications of using a ‘gang’ discourse and five participants commented on the casual link made by the prosecution between ethnic minorities and gang membership:

*“Because its five black boys, it’s a gang and you’ve already stereotyped them”
(Participant 1)*

“If it’s a set of black youths, then they generalise, they instantly assume it’s a gang...because it was a group of black guys, they say JE” (Participant 2)

“The word gang is used, loosely, to justify JE” (Participant 4)

“The police fed into this Albanian mafia narrative...they kept going on about Albanian mafia” (Participant 7)

Overall, the participants were keen to point out the tenuous connection created by the prosecution surrounding the defendants’ gang affiliations. It can be seen through the comments made by the participants that they believe the prosecution construct a gang narrative and question the validity of this, particularly in relation to a group of young, black men.

Theme D: The Impact Upon Familial Relationships

From the outset, it was clear that an integral part of this research was to give the family members and friends of those convicted under JE a voice to express their opinions and perceptions and understand and analyse their side of the story. The majority of the time once

an offence has been committed and a trial has taken place, the focus is placed on the defendant and whether or not justice has been achieved. But following a guilty verdict and subsequent sentencing these individuals, the family members and friends who are left to continue with their lives are forgotten about. Through these interviews it was very interesting to listen to the participants' experiences of the trial process and how they have dealt with their relative's conviction. For many family members, they had no choice but to carry on as normal despite their loss. Participant eight stated that although their family member had not died, *"you go from seeing someone every single day"* to only being able to visit them a couple times a month and have very limited communication with them. Fundamentally, the participants discussed the effect JE has had on their lives:

"Absolutely destroyed it...my way of life has completely changed...my life is completely on hold" (Participant 4)

"I think it's...a massive toll...I don't think I really realised what starting up the campaign was going to be like...I knew he's going to do some time, but I didn't think he was going to do the whole sentence" (Participant 6)

"The impact it's had on me was huge, I literally stopped everything my life came to a standstill" (Participant 3)

"My life has been on pause. I haven't lived" (Participant 5)

As can be seen from the participants' quotes, the participants have been deeply affected by their relative's conviction and their life's trajectory has shifted. Some of the participants have begun campaigning for the abolition of JE whilst others spend most of their time working on appeals, contacting solicitors, arranging prison visits and making sure the defendant has access to their finances. These quotes reiterate the range and depth of JE and the impact upon family members when they perceive a MOJ and believe in a sense of injustice.

When asked how the decision to utilise JE in their relative's case has impacted their lives both personally and socially, all of the participants discussed emotional and physical implications that have occurred as a result of the conviction:

"I lead a double life...financially, you know, mental health, how I feel about the country, how I feel about the police, the fairness of our society. It's made me angry. It's made me sad. My life has completely changed" (Participant 7)

"I haven't developed...I think I'm suffering from post-traumatic stress...your mind is in two places" (Participant 5)

"I may look fine now but emotionally I'm still not there, on the day he was sentenced, my husband sadly had a stroke...I have severe health issues, I left my job" (Participant 3)

"It's difficult because he's my only child...I had high hopes for him...I used to depend on him" (Participant 1)

All the participants reflect on the implications of their relative's JE conviction as being damaging and resulting in both physical and mental illnesses. Participants have lost their jobs or had no choice but to leave their jobs to support their relative at trial. Participants have been out of work for long periods, reported to have nightmares, panic attacks and hair loss. All of these are clear signs of distress and ill health all of which have been a result of their relative's JE conviction and subsequent imprisonment. These health issues are important and relevant to mention as these conditions could have been formed due to the impact of a perceived MOJ and the distress and despair of believing that your family member has been imprisoned for a crime they simply did not commit.

Interestingly, some of the participants expressed a profound impact upon their opinion and perception of their country. As stated within theme A: Perceptions of the CJS, there was a shift in the participants' perceptions of the CJS upon learning of JE. Not only has the JE conviction impacted their personal lives and relationship with the CJS and their relative, but the participants disclosed a significant lasting impression surrounding their ideology of their country and what it means to be British. Unsurprisingly, their negative experiences of JE have altered their perceptions of the CJS, which they now view as illegitimate. However, for an experience with the CJS to affect their relationship with their country and doubt their nationality, speaks volumes to the disappointment and outrage that they have towards JE and the current operation of the CJS:

“I am embarrassed and ashamed at this country...if I had the opportunity to do it, once this (JE) once this is resolved. I'd leave this country...Sometimes I wonder if I am angry because of the guilt that this has happened to him in my country...I'm not angry with him. I don't resent what's happened...he hasn't done anything, this country has done it, so it's affected my relationship with my country” (Participant 7)

This suggests that following their experiences within the CJS the participant felt that their relationship with their country has been profoundly affected. Having witnessed the implications of JE, the participants' comments seem to express the idea that their sense of nationality had been deconstructed resulting in a desire to leave the UK.

One of the main focuses of this research was to ascertain the impact JE has had on the relationship between the defendant and the family member. Notably, the participants reflected on the changes to their relationships with a variety of responses. Some participants felt the

subsequent JE conviction brought them closer to their relative and improved their communication, connection and overall relationship:

“It’s really strengthened it” (Participant 6)

*“It’s actually brought us closer together and we’ll talk about things more openly”
(Participant 3)*

Other participants felt that their relationship was not affected either positively or negatively:

*“No, it hasn’t (affected their relationship), we’ve always been one and we still are”
(Participant 4)*

*“The bond will never (break) no matter what...I’m his mother and he’s my son, that
will never change” (Participant 5)*

However, other participants express the view that the legal proceedings and ensuing conviction have a detrimental effect to their relationship:

*“You’re kind of living in the past constantly so your relationship isn’t able to
develop...it just destroys relationships” (Participant 8)*

*“That kind of relationship that I had with my (family member) is broken, because I can
only see him behind bars” (Participant 2)*

It can be suggested that as the families felt adamant that a MOJ had occurred following the conviction of their relative, this has severely affected their relationship. One participant reported that originally their relationship had suffered because they believed that their relative must have committed the offence because of their faith within the British CJS. However, upon learning of JE and the lack of substantial evidence against their relative, they became disillusioned about the reliability and legitimacy of the conviction and this process caused the relationship to strengthen and their relationship was able to develop. Sadly, some of the

participants disclosed that their relationship had been permanently damaged and ‘destroyed’ due to their relative’s JE conviction as a result of their incarceration. The participants acknowledge the changes to their relationships and describe the influence of having limited interactions with their relatives. Overall, these responses provide insight into the impact of perceived MOJs and the repercussions amongst family members, friends and the wider community.

Theme E: Signal Harms

It became prevalent when discussing the participants’ feelings and opinions towards JE that their experiences had not only influenced their personal relationships, but their communication and status within the community. The participants reported that once they learnt of JE and formed their perceptions of its illegitimacy and prejudicial nature, as time went, on the participants disclosed their stories and opinions of how the CJS applied the doctrine in their specific cases and explained through their perspective what JE actually is:

“All of us have the same perception, it’s a law that is not right” (Participant 1)

“They (the community) see the injustice of it and understand but there is a sense sadly of helplessness and hopelessness” (Participant 5)

“When I do talk to people, they just don’t believe it’s true” (Participant 7)

Consistent with the participants’ first perception of JE and being unaware of its existence, other family members, friends, work colleagues and people from their local communities that the participants spoke to were also unaware of the doctrine and did not know what JE was. For most of these individuals their first thought and perception of JE is heavily influenced by the participants’ experiences. This disclosure surrounding the danger of JE and the illegitimacy of

the CJS in its current form causes a ripple effect amongst all those who the participants have contact with. Ultimately, this communication between those who have personally experienced JE and their friends, family, work colleagues and their community can form a negative perception of JE and the CJS. This particular ‘signal harm’ portrays the CJS as illegitimate though its use of JE and severely damages perceptions of not only JE but the police, the prosecution, judges, juries and the integrity of the British CJS. This ‘signal harm’ is then sent through the wider community further damaging individuals’ perceptions of JE and the CJS.

“I ask everybody if they’ve heard of JE and I’d say 99% of them don’t. And I was once at a train station asking a boy what he was doing there...did he know about JE?”

(Participant 4)

“I’m raising awareness now...I’ve been sharing videos...you never know when someone will need it” (Participant 3)

“I made a point of telling everyone” (Participant 5)

Following their experiences with JE, the participants have become more aware of the CJS but are now more cautious of its implications, particularly its impact upon young people. Participants reported that they are now more attentive and aware of their surroundings, both legally and those whom they surround themselves with. Upon being involved in their relative’s cases, the participants have taken it upon themselves to raise awareness of JE and continue to engage with their friends and community about JE and how it can be applied. Three participants reported that they continue to raise awareness of JE in their local communities especially to their colleagues and friends from BAME backgrounds. Due to their dismissive view of JE and how it is currently being implemented, the participants are subconsciously educating individuals they are having contact with and by warning them, trying to ensure that they are not affected by JE and be put in the same position as their relatives currently are.

Summary

The implications of JE have had a considerable impact on the families of imprisoned youth. The participants reported that they had no knowledge of JE prior to their relative's conviction and felt a sense of injustice regarding the application of the doctrine and the subsequent imprisonment of their relative. The participants presented a variety of solutions to JE including the abolishment of the doctrine, clarity of guidance and the eradication of 'presence at the scene' without premeditation. The participants viewed the CPS as flawed following their awareness of the doctrine but perceived the police as fair and professional. What was noticeable were the participants' negative perceptions of the court process and the inadequate representation amongst jury members and judges. As mentioned in previous literature such as Williams and Clarke (2016), the topic of disproportionality is often applied when discussing the implications and issues of JE. The participants reinforced these findings and further suggest that young, BAME men from working class and/or low social economic backgrounds are more likely to be prosecuted under JE. In addition, five participants confirmed that the 'gang' discourse was applied in their relative's cases, highlighting the overuse of association and 'gang' terminology within JE cases. This 'gang' connotation can become prejudicial for the jury and considering the mandatory life sentences accompanying JE murder convictions, the lives of many defendants can be altered once deemed as a gang member by the jury.

The current study provides insight and understanding into the experiences and perceptions of the family members and friends of those imprisoned under JE and identifies the psychological, emotional, social and physical impact of a perceived MOJ. Fortunately, only two participants revealed that their relationships were damaged/broken whilst the rest discuss how the perceived MOJ has strengthen their relationship and brought them closer together. Still, all of the participants were negatively impacted by the JE sentence. These findings indicate the wider

impact of JE and the ‘signal harms’ which can transfer throughout the wider community and alter individuals’ perceptions of JE and the legitimacy of the CJS.

Chapter Four: Discussion

The aim of this study was to provide a holistic understanding of the experiences of family members and friends of those imprisoned under JE and its influence upon their perceptions of JE and the CJS. Conducting IPA allowed the researcher to interpret the data and illuminate the previously discussed sensitive subjects and understand how the participants make sense of their experiences. It was important to understand this as JE and its familial impacts are under researched and this study aims to fill in this research gap. This chapter will discuss if the research questions have been answered and a summary of the results will be presented. The limitations of this study will be discussed, as well as their influence within further research. Lastly, recommendations for JE will be explored.

The first research question aimed to identify how the participants understood JE within the parameters of the CJS. This study's findings establish the participants' lack of understanding prior to their relative's involvement in the CJS. They later comprehended JE's legal capabilities and how the prosecution determine if, when and how to apply it. The participants also expressed their lack of confidence in the doctrine and ideas of how to reform JE in its current state. This revealed mixed perceptions of the doctrine and the desire to either abolish it or dramatically amend it.

The second research question aimed to interpret how the participants reflected on the CJS process and whether their relative's case was handled appropriately. This question considered a variety agencies as it was necessary to obtain the participants' perceptions of the police, prosecution, judge and jury. The data highlighted the participants' negative perceptions of the CJS following their relatives' trial and determined a lack of trust and faith within the CJS. They

currently view it as an illegitimate service. Additionally, participants disclosed their thoughts on the factors believed to have influenced the professionals' decision to utilise the doctrine and concluded that specific demographics such as ethnicity, age, and the use of 'gang' discourse attributed to the application of JE. Overall, the participants felt let down by their justice system and felt a sense of injustice.

Finally, the third research question aimed to identify the impact of the relative's JE conviction and obtain the participants' subjective views of the personal implications of JE. The participants' responses provided insight into the psychological and social effects of the related JE conviction and how this has affected their relationship with their relative and the unfortunate reality that these relationships are unable to develop due to imprisonment. Unexpectedly, this lapse in relationship and the personal impacts of JE have influenced the participants' perceptions of their country, one even expressing their desire to leave. Additionally, most of the participants expressed their deep concerns with JE and have taken it upon themselves to educate those who are unaware and attempt to reduce the trials of harm left by JE. By doing this, the participants unconsciously projected their negative perceptions of JE and the CJS starting from their family members to the wider community. This has been defined as 'signal harms'.

This study reinforces previous literature from a variety of the research studies discussed within the literature review. Wood (2009) discusses the influence and importance of positive public opinion and the consequences of a lack of confidence in the CJS. This negative opinion can undermine its legitimacy and cause the public to doubt their justice system. This negative perception is illustrated by the participants' lack of trust and accountability in the CJS since

becoming aware of JE. Although these findings were not surprising, as Wood (2009) previously discussed the impact negative experiences with the CJS can have, what was unexpected was how the participants viewed their nationality and their relationship with their country. It can be understood how their experiences with the CJS formed their negative perceptions, but to even note thinking of leaving the country due to JE, this signifies how strongly they believe a MOJ occurred. This result is important in emphasising the impact of negative experiences within the CJS and how these perceptions can damage individuals' entire view of the legitimacy of the CJS and their relationship towards their country.

Most of the studies surrounding JE have already highlighted the disproportionality present within JE convictions. This study supported the findings made by Williams and Clarke (2016), Young (2014), Lammy (2017), Crewe *et al.* (2014) and the Ministry of Justice (2014) by identifying the participants' perceptions of which factors influence the application of JE. All of the participants argued that young BAME individuals were significantly more likely than their white counterparts to be overrepresented within the CJS and JE. Therefore, it can be suggested that there is a relation between the over criminalisation of young, BAME men from low social economic backgrounds and JE. In addition to this, the present study and Williams and Clarke (2016) both identify the inappropriate use of the 'gang' discourse within JE prosecutions which suggests that prosecutors are loosely implying gang affiliation between the defendants. In the majority of such cases, the defendants identify as BAME. The 2017-21 Policing and Crime Plan states that BAME individuals in London hold less confidence in the police than white Londoners. Particularly, confidence within the police is substantially lower in young black adults. Tools such as the Gangs Matrix are not fit for purpose as it has been distorted to fit the national topical narrative of the relation between gang violence and young BAME men. Databases such as these reflect a pattern of the over-policing of BAME

communities and create the perception that young BAME men are a risk to public safety and are responsible for all knife crime (Amnesty International, 2018). Following the MacPherson Report (1999), the proposed issue of institutional racism sparked a national debate on the professionalism and accountability of the CJS. Since then, it can be assumed that the recommendations were taken on board, and effort was made to improve the police service and reform police culture. However, the application of JE within recent years begs the question, has anything changed? From this study's results, it is clear that there is still work to be done and race plays some factor within the institution. This study's findings extend what was already known about the implications of JE but from the family's perspective, providing a better holistic understanding of the impact of JE.

To analyse the familial impact of JE, it was important to discuss previous literature that suggests the psychology and social impacts of imprisonment. University of Cambridge (2019) discuss in their preliminary findings the familial impact of imprisonment and the shift that occurs within the family. Prior to their awareness of JE, the participants believed in their CJS and their country. Miller (2011) suggests that individuals assume that the world is orderly and meaningful. It is only when circumstances arise that families never thought they would be in; their perceptions shift of the world around them. In this study, the participants later viewed the CJS and their country as illegitimate. King (2004) acknowledges this change in families following a homicide but each of the studies discussed in the literature review only reflect on the impact of the victim's family. By combining these previous studies and the research on signal crimes (Innes, 2014), and co-victims (Connolly and Gordon, 2014), the outcome portrays the trails of harm left by perceived miscarriages of justice, referred to as 'signal harms' (FIGURE ONE). This framework illustrates the varying 'signal harms' and the impact of negative perceptions throughout the community. Connolly and Gordon (2014) conclude their

review by identifying a lack of research and state that further research needs to be carried out into the impact upon family relationships following imprisonment. It is hoped that this study has contributed to this research gap and extending what was previously known about the familial effects.

Research Limitations:

Participant Recruitment

Due to the sensitive nature of this research and the personal connotations of the subject area, participants became anxious and nervous about attending the interviews and in most cases the interviews were rearranged several times. It took time and patience but most of the participants learned to trust the researcher and the reasoning behind this research. However, as most of the participants did not have quick access to their emails (did not have a mobile app or log in service) nor did they check their emails daily, in some cases, there was a delay to response by three to four days. It was also reported that some of the emails sent from the interviewer to the participants, were directed into a spam folder. This prolonged the organisation of the interview, which ultimately lengthened the interview schedule period. However, besides the delays in the overall interview schedule, an adequate sample size was reached, and the study could still produce credible and reliable findings and recommendations.

Sampling and Interview Methods

Although an adequate sample size was obtained for this scale of research, the sample size was relevantly small in comparison to previous JE research (Williams and Clarke, 2016; Lammy, 2017). However, IPA is applicable for small sample study's and obtained rich detail. This study was limited via convenience and snowball sampling and only interviewed participants involved with JENGbA. To capture a variety of different experiences and perceptions, it is suggested

that for further research, sampling methods such as purposive sampling can be used to expand the research capabilities and identify varying perceptions of JE and the CJS. Furthermore, the study was only conducted in the London area which therefore only includes the experiences and perceptions of those who have undergone the CJS process within London crown courts. Each participant involved in this study identified as female and spoke fluent English, therefore this study does not reflect the perceptions and experiences of those identifying as any other gender besides female and anyone who did not speak English. This only again narrowed down the study's reach and overall perception of JE and the CJS. It must be acknowledged that this study was unable to capture a comprehensive view of JE, as the focus was placed on MOJ 'co-victims' and so the views of the police, prosecutors, defence and the direct victims and their families of JE were not captured for this research. Although, these individuals were not part of this study, their insight and perceptions of JE would be valuable and further research should be focused on these perceptions.

It was determined at the start of the study that semi-structured interviews would be most suited for this qualitative and phenomenological approach to research. Even though this interview technique provided large, detailed accounts and were flexible and reliable, it did have its disadvantages. By applying this type of interview technique, the participants responded with their subjective views regarding JE and the CJS. However, as this research used qualitative data to present the research findings, these subjective views were necessary to illustrate the implications of the doctrine and identify the participants' perceptions and personal experiences.

Future Research

Although JE has been a part of the British CJS for over 300 years, surprisingly, it is still unknown to the general public and therefore their perceptions of the doctrine are unprecedented. Following this, it is suggested that further research be carried out into the awareness of JE and the number of individuals who are aware of JE and those who are not.

Further research into the perceptions of those currently imprisoned under JE should be considered, as well as the multi-agency professionals making the decisions to apply JE following the identification of a judge's critical opinion of JE.

It is recommended that further mixed methods research be carried out to develop the holistic understanding of JE in areas inside and outside of London, including all genders. This design would increase the amount of data which could be analysed and inform a better understanding of the implications of JE for both practitioners and researchers. These practitioners could consist of the following: solicitors, barristers, judges, CPS, prison and probation officers, to obtain their perception of JE and whether those convicted pose a substantial risk to the public and whether it is therefore necessary to have them incarcerated for a prolonged period of time.

With the HOC (2012) forming a database of perceived miscarriages of justice (250 cases) and JENGBA estimating a high amount of perceived number of miscarriages of justice, these statements alone should warrant further research into the implications of JE and if JE has been appropriately used since the Chan Wing Sui ruling (1984).

There are a range of options for further research into JE and perceived miscarriages of justice. It is hoped that the current study and further research can assist in informing policy makers to

implement structural changes and improve JE guidance to further prevent miscarriages of justice. However, it is a matter of urgency that the CPS and the Ministry of Justice recognise the faults within the CJS and take steps to eradicate them.

Recommendations

Recommendation One:

The previously existing literature surrounding JE such as the HOC (2012) and Jacobson *et al.* (2016) both recommend JE should be enshrined in statute to improve the clarity of the doctrine for those involved in the CJS and the general public. Most of the concerns surrounding JE relate to its inconsistency and lack of sufficient guidelines. Without JE being enshrined into statute, prosecutors, judges and juries interpret the doctrine on a case by cases basis. However, this was the original mistake made in Chan Wing Sui (1984). To ensure history does not repeat itself, it is advised that JE be enshrined in legislation to address the lack of clarity surrounding the doctrine for such a pivotal aspect of British criminal law.

Recommendation Two:

It is difficult to assess the impact of Joint Enterprise within the UK as there are no official statistics surrounding the application of JE and the conviction rates. It is therefore suggested to improve the accountability and transparency of the CJS and to provide a statistical understanding of the implications of JE, it is necessary to begin officially recording the number of defendants charged as secondary participants. This should be a legal requirement when the prosecution apply the doctrine successfully or otherwise. This information would assist in

addressing the existing gap in literature and further research can be conducted from these statistics.

Recommendation Three:

Before JE is applied to a case, additional and more specific criteria should be developed to heighten the evidential threshold required to imply the doctrine and to therefore attempt to decrease the disproportionality associated with JE and decrease the over-charging under JE. In addition, there must be sufficient evidence to prove the defendant physically or verbally participated in an offence and intentionally caused serious harm or death. There should be no presumption that the defendant is guilty by association. Providing these criteria are developed, it is suggested that the number of perceived miscarriages of justice would be lower.

JE can currently be applied by the prosecution providing there are two or more defendants and the requirements of the Full Code Test are met (CPS, 2017), for instance, did the defendant assist or encourage the commission of an offence? In its current form, this guidance allows prosecutors to interpret JE and create the narrative that each defendant was aware of all possible outcomes and were therefore responsible for any offence that occurred. Evidence pertaining to the existence of a weapon and proof a motive must be paramount in order to obtain a conviction. From this research, the participants express their concern over the flexibility of JE and its ability to convict large groups of predominately young, black men. The following areas are those with the most concern as highlighted throughout this research and in need of reform; the application of association and the use of ‘gang’ disclosure within the court room and the sentencing options ineffectively reflecting the participants’ involvement.

Recommendation Four:

It would be unrealistic to suggest an entire reform of the law on homicide as this would be financially straining and time consuming. However, it is believed that if this would occur, the reform of the JE doctrine would be a part of it as in some circumstances it is necessary when two or more defendants have intentionally caused serious harm or death. However, clarification of the doctrine and the required improvements to CPS guidance and criteria should not be deferred whilst waiting for this reform. It is hoped that this reform will occur within in the next five years, but JE reform should have already transpired.

Recommendation Five:

Whether the defendant physically participated in an offence or was simply present at the scene, the sentencing options are not reflexive of their involvement. Currently, many individuals convicted under JE are heavily sentenced and spending decades imprisoned. It is therefore recommended that the sentencing options pertaining to JE are re-evaluated and reflective of the defendant's level of participation as opposed to their co-defendants.

Overall, this chapter has reflected on the research questions and summarised the results. The findings are discussed in relation to their relevance to existing literature and the study's limitations are addressed. Lastly, further research is considered and recommendations to reduce the implications of JE are made.

Conclusion

It has been shown time and time again that JE has the ability to, and unfortunately has, permanently damaged people's lives. This is not limited to those imprisoned under JE but extends to their families, friends, work colleagues and the wider community. When individuals are finally hearing of JE, this tends to be from a pessimistic point of view, as their point of reference is family members of those convicted who are disappointed, discouraged and feel let down by their own justice system. This transfer of perceptions illustrates the influence and effects of a 'signal harm'.

Members of Parliament, government representatives and even crown court judges are concerned about the implications of JE and the impact this is having on the latest generations. Recommendations have been made by the HOC (2012) before the 30-year misinterpretation was uncovered and yet still no developments or reforms have taken place to stop the trails of harm left by JE. This research has highlighted the damaging implications of JE upon the reputation and legitimacy of the CPS. Furthermore, the current study supports previous literature which highlights the perception of JE and its capabilities, the negative influences of demographics, disproportionality, and the persistent use of the 'gang' discourse.

By conducting semi-structured interviews with family members and friends of those imprisoned under JE, it is clear that they feel helpless but hopeful that one day, optimistically soon, a much-needed criminal reform will take place and the doctrine of JE will either be enshrined into legislation or abolished completely. IPA has revealed the psychological and social impacts as a result of their relatives' convictions and giving a voice to those who are affected by the perceived injustice as a result of JE. For the first time, this study has presented

the impacts upon family relations and created a representation of how one person's negative experiences with the CJS and JE can influence a community of likeminded people who want a fair justice process for all and to be treated equally regardless of their age, gender, ethnicity, social status, economic background and who they surround themselves with.

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Appendix 1: Interview Questions

Semi- Structured Interview questions for family members:

Understanding of Joint Enterprise

- 1) What is your opinion of the Criminal Justice System?
 - Different agencies through the process: police, prosecution, judiciary...
- 2) What are your general thoughts on the doctrine of Joint Enterprise?
- 3) What do you actually understand under the words Joint Enterprise?
- 4) How do people in your environment perceive Joint Enterprise?
- 5) How do you feel the system applied the doctrine? Any positives/negatives?

Joint Enterprise and the CJS process

- 6) At what stage of the investigate process did you become aware of Joint Enterprise?
- 7) Why do you feel the decision was taken that your (family member/friend) will be tried under Joint Enterprise?
- 8) What factors do you think influenced the professionals' decision to use the Joint Enterprise doctrine in this specific case?
 - Prompts: Age, social status, gang affiliation, ethnicity
- 9) In general, what are your thoughts on the decision to utilise Joint Enterprise in cases
 - Prompt – relate to what was said in Q8
 - IF gang noted
 - What do you think of gangs, in general, and the impact gang membership might have on Joint Enterprise?
 - During the investigative and trial process such as interviews, charging decision, paperwork and during trial, was the term 'gang' used to refer to a group of people that were collectively involved in a crime?
 - Which ethnic minorities are represented in relation of JE convictions?
- 10) Do you think JE was used appropriately in this case?
 - Why yes/no
- 11) Do you think JE has in the past or currently, targets specific groups or individuals?
- 12) According to the Human Rights Act 1998, Article 6, do you think you had a fair trial?

Impact of Joint Enterprise

- 13) How has the decision to convict your (family member/friend) impacted on your life?
 - Why?
- 14) How has JE personally affected your way of life and/or place in society?
- 15) How has JE affected your relationship with (family member/friend)?

Closing

- 16) What would you change about JE and its application?
- 17) Any other thoughts?

The implications of the Doctrine of Joint Enterprise in England on families of imprisoned youth: A phenomenological analysis

PARTICIPANT INFORMATION SHEET

A research study is being conducted at Canterbury Christ Church University (CCCU) by Toby George. It is supervised by Dr. Katarina Mozova and Dr. Martin O'Neill.

Background

For my undergraduate degree, I focused on the Common Doctrine of Joint Enterprise and found that it has been used inappropriately, damaging the lives of many, and disproportionately affecting those of Black, Asian and Minority Ethnic groups (hence fore, BAME). In 1984, a ruling in R v Chan Wing Sui set the path for future prosecutions through Joint Enterprise; however, it was not until 2016 that it was found the doctrine was misinterpreted (case of R v Jogee). One of the strongest arguments relating to the doctrine of joint enterprise is the targeting of BAME individuals. As Crewe *et al.* (2014) found, 37.2% of offenders serving long term prison sentences identified as black. This is eleven times greater than the general prison population in England and Wales. A Survey conducted by the Ministry of Justice (2014) further found that white prisoners were underrepresented with the use of joint enterprise as 49.5% identified as white, compared to 72.4% of the general prison population. The main worries surrounding the joint enterprise doctrine lie in the fact that the doctrine is not used appropriately. In order to provide evidence to policy makers surrounding the impact of joint enterprise on individuals, we need more information from those directly impacted on by it.

For this Masters research project, I want to find out how family members of those imprisoned under Joint Enterprise, perceive the doctrine of joint enterprise, what changes they perceive need to be made, and how the convictions impacted on their lives. This is to provide evidence to policy makes surrounding the doctrine and identify steps forward.

What will you be required to do?

For this project, we aim to gain a holistic picture of the impact of joint enterprise has had on family members of those imprisoned.

Family members will be asked to spend approximately 60 minutes with the researcher and talk about their experiences. The interview will be audio-recorded. It is possible that the interview will touch on sensitive topics, as the area of the impact of joint enterprise can be a difficult area to discuss. You do not have to answer any questions that you do not want to and you do not have to continue with the interview if you decide that you do not want to.

To participate in this research you must:

Be related to or a close friend of someone who has been convicted under Joint Enterprise

Feedback

The completed study will be sent to participants, if requested, prior to any publications. The finalised study will be disseminated to all participants.

Confidentiality and Data Protection

On the legal basis of *consent*, all data and personal information will be stored securely within CCCU premises in accordance with the General Data Protection Regulation (GDPR) and the University's own data protection policies. No unrelated or unnecessary personal data will be collected or stored. The following categories of personal data will be processed: gender, age, ethnicity, years of experience, rank, your views. Personal data will be used to present readers of the publication with demographic information about participants, in order to understand the representatives of the sample, and to describe your views surrounding gang-related homicide. Data can only be accessed by Toby George and one or two more researcher(s) from Canterbury Christ Church University who will second-code responses for validity purposes. Data will not be transferred outside the EEA.

After completion of the study, all data will be made anonymous (i.e. all personal information associated with the data will be removed) and held for a period of the completion of the project and for up to five years afterward, at which point they will be destroyed.

Dissemination of results

At the end of the study, the data will be analysed and the research submitted as the focus of an 18,000 word dissertation and this may be published in an academic journal but you will be informed when and where. The results might be presented to policy makers and also wider in order to start a conversation about the doctrine of joint enterprise.

Deciding whether to participate

If you have any questions or concerns about the nature, procedures or requirements for participation do not hesitate to contact me or my supervisors. Should you decide to participate, you will be free to withdraw at any time without having to give a reason. If you do decide to participate, please, do bear in mind that the questions will ask you about possibly sensitive topics.

Any questions?

Please contact Toby George on t.george391@canterbury.ac.uk Canterbury Christ Church University. Alternatively, you can contact his supervisors: katarina.mozova@canterbury.ac.uk; martin.oneill@canterbury.ac.uk.



CONSENT FORM

Title of Project: The implications of the Doctrine of Joint Enterprise in England on families of imprisoned youth: A phenomenological analysis

Name of Researcher: Toby George

Contact details:

Address:

Gf15, Glebe House North Holmes Road CT1 1QU

Email:

t.george391@canterbury.ac.uk

Please initial box

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.
3. I understand that any personal information that I provide to the researchers will be kept strictly confidential

(I understand that the interview will be audio-recorded)/ (I understand that the letter can be checked and opened by prison staff before sent to the researcher)
5. I agree to take part in the above study.

Name of Participant Date Signature

Researcher Date Signature

Appendix 4: Debrief Form

The implications of the Common Doctrine of Joint Enterprise in England on families of imprisoned youth: A phenomenological analysis

Thank you very much for participating in this study which is being conducted at Canterbury Christ Church University (CCCU) Dr. Katarina Mozova, Dr. Martin O'Neill and Toby George.

We truly appreciate all the time you spent on answering our questions. As you likely know the doctrine of Joint Enterprise is surrounded by a lot of controversy. Researchers and officials have noted its inappropriate use, how it seems to target those of Black and Ethnic Minority Populations and those of lower socio-economic backgrounds. Your views can provide your real story to policy makers and bring the consequences of this doctrine to life.

If you no longer wish to participate in this study, you don't have to. Please, keep this debrief form as you can withdraw your answers for up to one more month after the interview. You just have to tell us your unique participant number which we quoted for you at the beginning of the questions. Only the researcher knows what number corresponds to what individual.

As this interview touched on sensitive topics, we would like to remind you that you can contact the Samaritans who will listen to your concerns in confidence: 08457 90 90 90.

If you have further questions about this study, you can write to the researchers directly.

If you have any concerns about the ethical conduct of this study, please contact the Government and Ethics department of Canterbury Christ Church University (North Holmes Road, Canterbury, CT1 1QU) in writing, providing a detailed account of your concern.

Once more, we are very grateful for your time!

Best regards, Katarina, Martin & Toby

Gf15, Glebe House, North Holmes Road, Canterbury, CT1 1QU. Or via e-mail:
katarina.mozova@canterbury.ac.uk; martin.oneill@canterbury.ac.uk;
t.george391@canterbury.ac.uk

Appendix Five:

22ND February 2019

Ref: 18/SAS/44C

Toby George

c/o School of Law, Criminal Justice & Computing Faculty of Social & Applied Sciences

Dear Toby,

Confirmation of ethics compliance for your study – ‘The implications of the Common Law Doctrine of Joint Enterprise in England on families of imprisoned youth: A phenomenological analysis’

The Faculty Ethics Chair has reviewed your Ethics Review Checklist application and appropriate supporting documentation for the above project. The Chair has confirmed that your application complies fully with the requirements for proportionate ethical review, as set out in this University’s Research Ethics and Governance Procedures. In confirming compliance for your study, you are reminded that it is your responsibility to follow, as appropriate, the policies and procedures set out in the Research Governance Framework (<http://www.canterbury.ac.uk/research-and-consultancy/governance-andethics/governance-and-ethics.aspx>) and any relevant academic or professional guidelines. This includes providing, if appropriate, information sheets and consent forms, and ensuring confidentiality in the storage and use of data. Any significant change in the question, design or conduct of

the study over its course should be notified via email to red.resgov@canterbury.ac.uk and may require a new application for ethics approval. It is a condition of compliance that you must inform red.resgov@canterbury.ac.uk once your research has completed.

Wishing you every success with your research.

Yours sincerely,

Penny

Penny Keogh

Research Integrity & Development Officer

Email: red.resgov@canterbury.ac.uk

CC Katarina Mozova, Supervisor

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