The ‘Gang’ as a Facilitator of Racialised State Violence: The Case of ‘Joint Enterprise’

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ABSTRACT

The law of secondary liability, or 'joint enterprise', permits the prosecution of individuals for crimes they did not carry out. Disproportionately used to prosecute young Black men for serious violent offences, the doctrine has faced extensive scrutiny, with critics and researchers contending that racialised patterns of prosecution stem from the erroneous use of the gang label. As this thesis demonstrates, Britain's politicised and racialised 'war on gangs' has seen this notoriously imprecise concept become the property of the state, engendering distinct forms of state violence (policing and prosecution) within Black communities. Despite this, joint enterprise has not been examined through the storied experiences of those most affected. Drawing on interviews with young Black men convicted as a secondary party to murder, and their relatives and lawyers, this thesis addresses this gap. In utilising the 'gang' as a lens through which to make sense of racialised patterns of prosecution, and situating participants narratives within a multi-level critical race framework, this thesis uncovers a complex architecture of racialisation in operation.

The thesis concludes that young Black men make the ideal defendant for the prosecution in joint enterprise homicide cases because they (1) fit into a historically enduring narrative of 'Black criminality' and 'gangs'; (2) are subject to distinct methods of policing which produce and preserve 'gang evidence'; and (3) are more likely to be subject to a 'conviction-maximising' gang narrative at trial. The thesis provides a more conceptually and theoretically expansive understanding of racialisation in joint enterprise, and the role of the 'gang' in facilitating racialised state violence. It illustrates that as Blackness continues to be weaponised at the level of governance and the policing of Blackness becomes further institutionalised, the triggers for racialised state violence are increasingly located *within* the law, necessitating both urgent legal reforms and broader transformative change. Beyond joint enterprise, the thesis demonstrates how our understanding of racial inequalities in criminal legal outcomes can be enhanced by situating subjective experiences – told through conversations – within the broader context of politics, policy, and historical and contemporary racial organisation.

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INTRODUCTION

In his book Chapter, '*Violence old and new: from slavery to Serco*', Adam Elliott-Cooper (2016) highlights how the British state has, over centuries, consistently devised methods to control populations in its own interest, largely enacted on negatively racialised[1] groups. From slave capture to stop and search, Elliott-Cooper conceptualises such physical control as state violence - using or threatening physical force, whether implicit or explicit, to control an individual or population (page 65). State violence has become increasingly subtle, sophisticated, and embedded in state practices (ibid), with the criminal legal system (CLS) being one conduit through which some of the most visceral forms of state violence are facilitated. Presented as vital to societal functioning, this violence - justified by supposedly race-neutral concepts like 'reasonable suspicion' and 'intelligence' - rarely dominates public discourse, overshadowed, sustained, legitimised and invisibilised by the perceived threat of violence from negatively racialised and marginalised groups (see Chapter Two).

State violence also encompasses that which materialises gradually and inconspicuously (Elliott-Cooper, 2023) - structural harms such as systemic poverty, unemployment, the exploitation of labour, inadequate housing, unequal access to essential services (ibid), and the systematic erosion of community resources and power. The catastrophic outcomes of these conditions, including interpersonal violence among young people (Billingham and Irwin-Rogers, 2022), are typically responded to with further state violence, through punitive mechanisms of the CLS, rather than a comprehensive examination of young people's environments. This thesis does not set out to explore the

[1] I use the term 'negatively racialised' throughout this thesis to refer to people who are subject to negative processes of racialisation and therefore experience racism and discrimination (i.e. the harms of racialisation). While negative racialisation is not limited to non-white individuals, in the context of this thesis, the term primarily refers to Black and Brown people.

drivers or solutions for serious violence amongst young people. However, it focuses on a form of racialised state violence which is primarily used to respond to serious violence involving young people - ‘joint enterprise’.

Joint enterprise not infrequently results in the imposition of life sentences for murder on young people who did not kill and who frequently assert their complete innocence. It represents one of the most extreme forms of contemporary *racialised* state violence, with recent data indicating that Black people are 16 times more likely than white people to be prosecuted under the doctrine (Liberty, 2023b). Those who participated in this study have been sentenced to a total of 300.5 years in prison, most of whom will be subject to life-long restrictive licence conditions.

How this racialised state violence is enacted, sustained and justified through the ‘gang’ and other racialised tropes is the central focus of this thesis. ‘Gangs’ have long been a point of contention within criminology, and the history of academic research is beset with debate about the correct definition of the term (Fraser and Atkinson, 2014: 156). Some researchers adopt an ontological perspective, viewing ‘gangs’ as a primary source of criminality and violence, thereby considering it a necessary and legitimate focus of empirical inquiry in the exploration of violence amongst young people (see for example Pitts, 2008; 2020; Densley, 2013; Pinkney and Robinson-Edwards, 2018). Others, however, argue that the ‘gang’ is primarily a social construct - one that has become stereotypically linked to Black youth, thereby racialising and oversimplifying explanations for violence among young people (see for example Hallsworth, 2014; Bridges, 2015; Williams and Clarke, 2016).

Regardless of where one sits within this debate, it is difficult to dispute that the ‘gang’ is a ‘notoriously imprecise’ (Quinn, Kane, and Pritchard, 2024) concept. And, as this thesis develops, it becomes clear that the ‘gang’ has become a property of the state through which

racialised state violence is legally sanctioned, enacted and justified. Indeed, it has been argued that since the ‘gang’ has been constructed as the organising force behind social disorder and violence amongst young people, the police have ‘been allowed to infect the public sector and CLS with their own unique form of institutionalised racism – the ability to criminalise young Black men without the need for proof (Scott, 2018: 38). The Metropolitan Police (the Met) gang intelligence Matrix alone has enabled deportation, school exclusion, stop and search, and the revoking of driving licences - forms of state violence predominantly impacting young Black people (Scott, 2020).

As it is adopted throughout this thesis then, the ‘gang’ becomes a resource through which to make sense of the operation of state violence and racial inequalities in criminal legal outcomes. Thus, whilst this thesis is concerned with joint enterprise, I adopt the ‘gang’ as a lens through which to make sense of racialised patterns of prosecution in its application. In doing so, the ‘gang’ emerges as a ‘facilitator of racialised state violence’.

ONE: THE CONTOURS OF JOINT ENTERPRISE, RACE AND GANG NARRATIVES

"I Am a Killer," an American true crime series, debuted on UK Netflix in 2020 and quickly became a top ten trending show. Episode two of season one explored the case of Kenneth Foster, an African American man convicted of murder. The state accepted that Kenneth did not kill the victim, but as the episode title suggested, he was a '*Killer in the Eyes of the Law*'. Whilst Kenneth was present at the scene, he did not touch the gun or even intend to take a life. Nonetheless, he was guilty and punishable by death, convicted under what was described as an 'unusual' Texas law - the 'Law of Parties'. But, as I watched on, I knew Kenneth's fate was *not* unusual.

In 2015, whilst perusing my undergraduate degree, Gloria Morrison, co-founder of campaign organisation JENGbA (Joint Enterprise Not Guilty by Association), joined us to talk about an area of English law mostly impacting young Black and Black mixed-race men. She spoke about her son's friend, also a young Black man named Kenneth, serving a life sentence for murder. The class heard how Kenneth Alexander was present during a spontaneous fatal group altercation involving his friends. Gloria told us that during the fight, Kenneth was struck from behind and could not physically take part; yet he was convicted of murder under a legal doctrine known as 'joint enterprise'. As opposed to a Netflix series, Kenneth Alexander featured in a short film on joint enterprise by New Scotland Yard in 2009 (see Wechsler, 2012). Commissioned as part of a crackdown on so- called 'gang violence', this film conveyed a clear message: if you are hanging around with friends and a fight breaks out, you could face a life sentence if someone is killed, regardless of whether you caused or intended to cause harm. Officers in the film did not shy away from the punitive nature of joint enterprise, nor the violence they were willing to exert to capture (young and often non-violent) suspects. One officer in the film threatened:

> If you are involved in a murder in any way shape or form, we will come to you, we will find you… we will enter your life. We will invade your home. Invariably, your front door will be removed. We will enter. This will be in front of your parents, your family, and possibly your friends, and we will change your life. No doubt about it. You will go to prison for a substantial term and even after you've served that time, your hopes and dreams will be gone (Wechsler, 2012).

This film warned young people of the danger in associating with 'gangs'. Yet, paradoxically, this danger did not necessarily originate in 'gangs' themselves, but from the endorsement of wide legal rules concerning collective punishment (Squires, 2016: 941- 942). Alongside another video called '*Who Killed Deon?*' (Ellis, 2010), the film was rolled out in schools, criticised for penalising young people for being in the wrong place at the wrong time, with the wrong crowd (Bridges, 2013: 35). Both videos represented the institutional endorsement of a punitive response to serious violence amongst young people, demonstrating the states willingness to respond to crime with violence that transcends the offender. In 2015, I heard JENGbA mothers tell of the heart-wrenching fate of their sons and the impact on friends and family. In 2017, I learnt that the officers' threats in the Scotland Yard film were not empty, as I too lost a loved one to this contentious legal principle. I return to how my personal experience has influenced this thesis in Chapter Three.

For centuries, the English law has allowed individuals to be prosecuted and convicted for crimes they did not carry out, so long as they assisted, encouraged, or brought about those crimes and were culpable for them (Waller, 2024: 6). The law concerning this fact was relatively uncontested (Jacobson, Kirby and Hunter 2016), facing extensive criticism only in the last two decades. The foremost concern is that the law allows people far removed from the conduct that led to the offence to be prosecuted and convicted. Frequently used in cases of serious street-based violence, this legal doctrine is referred to

as secondary liability or complicity in legal terms but is commonly described as 'joint enterprise'.

Joint enterprise is not only equated with injustice due to its broad scope for prosecution. The phenomenon provides a lens through which many of the problems within the CLS manifest, including domestic violence and the criminalisation of women (Clarke and Chadwick, 2020; Clarke and Chadwick, 2023; Hulley, 2021), the legitimacy and appropriateness of mandatory life sentences (Jacobson, Kirby and Hunter 2016), overcrowded prisons and a rising prison population (Carvalho, 2019), adverse inferences on suspects silence (Hulley and Young, 2021), the pains of familial imprisonment (Campbell, 2024), wrongful conviction and criminal appeals (see for example Krebs, 2019), the admissibility of evidence (Ward and Fouladvand, 2021; Owusu-Bempah 2022a; 2022b), and most significantly to this thesis, racial inequality.

Critics have long been concerned about the disproportionate use of joint enterprise in homicide and attempted homicide cases involving young Black men and teenagers (see for example, Stevenson, 2014; Williams and Clarke, 2016; Hattenstone, 2023), and this racial disproportionality has largely been explained by reference to the erroneous and stereotypical application of the gang label - a common feature of the prosecution narrative in joint enterprise trials (Williams and Clarke, 2016; Owusu-Bempah, 2022b; Quinn, Kane and Pritchard, 2024). Criminologists have argued that the 'gang' has become 'a primary signifier of collective culpability, acting as a deeply racialised marker of criminality and dangerousness' (Clarke, 2023). This thesis sets out to make sense of this inequality beyond what is already known.

This thesis relies on in-depth interviews with young Black men prosecuted or convicted of murder under joint enterprise, the relatives of young Black men who fulfil these criteria, as well as legal practitioners with experience working on joint enterprise

homicide cases. I utilise their narratives and experiences to foreground the structural and interpersonal mechanisms at play that make young Black men most susceptible to prosecution and conviction. I do so by adopting Phillips (2011) multi-level framework that gives significance to how race manifests in joint enterprise on 'three discrete but intersecting and overlapping levels' (page 175) - the micro, meso, and macro.

Phillips' (2011) multi-level framework offers a comprehensive conceptual and theoretical approach to understanding the origins of racial inequalities in social outcomes. At the micro level, it encourages us to consider how race operates in interpersonal settings, exploring how racialised bodies provoke emotions, ideas, stereotypes and shape human actions. At the meso level, the framework encourages us to think about the institutional settings in which individual actors operate, and the role of political and media discourse in shaping racialised processes. At the macro level, Phillips directs our attention towards the structural features of society that frame such institutional processes, encouraging us to theorise the impact of historical and contemporary racial organisation, as well as the wider forces that shape economic production, political relations and patterns of crime control. The objective of this thesis then, is to 'more clearly specify the mechanisms and interacting processes through which racial inequalities are reproduced and sustained' (Phillips, 2011: 175) in joint enterprise.

I begin this chapter with an overview of joint enterprise law and its evolution, illustrating how its vagueness can give rise to injustice. I then move on to present the statistical evidence of racial disproportionality. Here, I begin to make a case for why I examine such inequalities by considering racialised police and prosecution practices, rather than patterns of offending – an argument developed further in Chapter Two. I then set out how these inequalities have thus far been explained by criminologists. I conclude the chapter by discussing the implications of the existing literature for my research, setting out

the questions that form the basis of my research inquiry before ending with a chapter breakdown of the thesis.

What is ‘Joint Enterprise’?

‘Joint enterprise’, though not a legal term, is commonly used to describe completed offences involving more than one person. Participants involved in a crime categorised as a joint enterprise case might include:

1. ‘Principals’, who bring the crime about.

The prosecutor must prove that the defendant committed the elements of the crime alleged.

2. ‘Co-principals’ or ‘joint principals’ who work together to bring it about.

The prosecutor must prove that the defendants, acting together, committed the elements of the crime alleged.

3. ‘Accomplices’, ‘accessories’ or ‘secondary parties’ who are complicit in the crime.

The prosecutor must prove that the defendant intentionally assisted or encouraged the principal to commit the crime (Waller, 2024).

Each participant would be tried, sentenced, and labelled as if they had committed the crime, even where there are stark differences in their contribution. As such, if the crime alleged is murder, all those convicted would be considered a convicted murderer and subject to a mandatory life sentence. Indeed, many of the young men who participated in this study were given prison sentences longer than they had been alive. Combined, their

sentences totalled more than three *centuries*. With an average age of only 17 at the time of the incident, this fact underscores the severity of joint enterprise as a form of state violence. The most contentious uses of joint enterprise are therefore cases that involve secondary parties - those who do not carry out the crime but are liable based on their complicity in it. Thus, whilst the term joint enterprise cuts across legal categories, when it is being criticised in the public or political sphere, it is usually being used to describe 'secondary liability' or 'complicity' - a criminal law doctrine that allows legal responsibility to be attributed to those who do not actually bring about the crime.

Whilst it is said that joint enterprise principles were introduced in the 16th century, originally used to prosecute duellists and their associates (HC debate, 2018), the case of *R v Swindall and Osborne* (1846) 175 E.R 95 is seen as one of the first clear enunciations of the rules. In this case, two drunk men decided to race their horse and cart on a busy track. In the process, one of the defendants hit a pedestrian, causing their death. It was not known which defendant caused the fatality. Both defendants were convicted of manslaughter. It was ruled that:

> If each of two persons be driving a cart at a dangerous and furious rate, and they be inciting each other to drive at a dangerous and furious rate… and one of the carts run over a man and kill him, each of the two persons is guilty of manslaughter (*R v Swindall and Osborne* (1846), per Pollock LCJ)

It was therefore decided that two or more persons, although not equally culpable, could both be punished for the same offence, in the same way. In some cases, the evidence does not allow anyone to be sure which defendant committed the conduct, meaning prosecutors are not required to distinguish between principals and secondary parties when arguing their case.

The Law and its Evolution

The evolution of the law and the concerns surrounding its use are complex, at times impeding public and political understanding of it (Waller, 2024). This is not a legal thesis. Rather, it explores, criminologically, an area of law that overwhelmingly impacts young Black men. Nonetheless, a basic understanding of the law according to statutory and case law provisions is imperative in excavating the nuances of how race and 'gangs' manifest in its application.

Established in case law for centuries, the principle of secondary liability was consolidated in Section 8 of the Accessories and Abettors Act (1861), which stipulates that anyone who 'shall aid, abet, counsel, or procure the commission of any indictable offence… shall be liable to be tried, indicted, and punished as a principal offender.' This Act, alongside preceding legal precedents, provided the basis for decisions in subsequent cases. Since the 1861 act, judges have shaped the law through their rulings, resulting in different ways that secondary liability can be applied. These distinct applications are delineated below, taken from an earlier publication of mine (see Waller, 2024: 8-9):

> (1) **'General' or 'basic' accessorial (secondary) liability:** when an individual assists or encourages the principal offender in the commission of a crime.[2]
>
> (2) **'Parasitic accessorial (secondary) liability' (PAL):** where the principal's commission of a second offence (e.g., murder) occurs during an original joint offence (e.g., robbery). Everyone who participated in the original offence could be prosecuted for the second offence, even if they did not intend for the second offence to happen. They would only have to *foresee* the possibility that the second crime would occur for them to be liable.

[2] 'Assistance' and 'encouragement' are typically used in replacement of 'aid, abet, counsel and procure', as set out in the Accessories and Abettors Act 1861.

Historically, to be an accessory to a crime, an individual would have to know of the other party's intention to commit that crime. It was not until the case of *R v Chan Wing Siu* [1985] AC 168 that this was adjusted to the 'lowest subjective fault element in criminal law' (Dyson, 2017: 249) – 'foresight'. Following this precedent, an individual who simply foresaw the possibility that the principal might commit a second crime would be held liable for that second crime once it was committed. Their contribution to the second crime was not necessary to convict them; they only had to engage in the first crime having foreseen the risk of the second crime taking place.

This foresight test was later expanded beyond PAL case scenarios[3] (where a second crime occurs during another crime) and was eventually applied in all cases concerning secondary liability. This low threshold for convicting secondary parties, existing in criminal law for 30 years, faced sustained criticism (see for example Justice Select Committee, 2012; 2014) and the UK Supreme Court eventually considered the matter in *R v Jogee* [2016] UKSC 8. In this case, the Courts accepted that the law had taken a 'wrong turn' in *R v Chan Wing Siu* [1985], thus reversing the foresight principle. While *Jogee* has had virtually no retroactive impact (see Stark 2017; Krebs, 2019; Edwards 2021), since the judgment, prosecutors must once again prove that a secondary party assisted or encouraged the principal to commit the crime and that they *intended* the principal do so. Probable foresight can now only stand as evidence of intent. PAL has therefore been abolished, returning the law to basic secondary liability. It is the current application of secondary liability (i.e., basic accessorial liability) that I will explore in this thesis.

Given that PAL has been abolished, and PAL is the type of case scenario for which the phrase 'joint enterprise' most properly describes, legal scholars and higher courts are less

[3] See for example *R v Rook* [1993] 1 W.L.R 1005 - the Court of Appeal ruled that foresight was still

sufficient as a reason of fault and an intention to kill or cause serious harm was not required.

likely to refer to contemporary secondary liability as ‘joint enterprise’. However, when conducting this research, it became clear that lawyers continue to use the term in court, some judges continue to use the term in their directions to jurors, and people convicted since *Jogee* recognise their conviction as a product of ‘joint enterprise’. As I have set out elsewhere, the term ‘joint enterprise’ presents challenges (Waller, 2024). Amongst other things, its broad usage to describe all multi-handed completed offences lacks the nuance to differentiate between cases involving secondary liability and those that do not. This indiscriminate use of the term also means that it fails to distinguish cases of clear multi-handed offending from those where alternative charges or non-prosecution might be more suitable, meaning the term could inadvertently encourage imprecision in prosecution decision-making (ibid).

However, unlike terms such as ‘secondary liability’ or ‘complicity’, ‘joint enterprise’ is more recognisable to lay people. The positive aspects of the term therefore lie in its social and communicative benefits, including by allowing those impacted by the doctrine to identify one another, seek mutual support, solidarity and collective resistance, as well as allowing researchers to identify those impacted by the law (Waller, 2024). Whilst this thesis is concerned with secondary liability, I refer to it as joint enterprise throughout this thesis, largely because it remains the most recognisable language amongst those who participated in my research, and those most likely to read it.

Did the Supreme Court Fix the Law?

The sentiment that the Supreme Court in R v *Jogee* [2016] adequately dealt with or fixed the law has been consistently repeated by the Government (see Waller, 2024). Yet, this leading decision on secondary liability has been criticised on several fronts. As Grigg (2019) notes, some legal scholars argue that by restricting liability, *Jogee* left the law in a

less morally flexible state. Put simply, it is thought that the law is now less able to deal with the wide variety of situations in which secondary liability may arise. As I discuss in Chapter Six, it is not inconceivable that some guilty people could evade prosecution or conviction when secondary liability is restricted. However, it is equally, if not more conceivable that a wider law allows for unsafe convictions.

Indeed, it is argued that the law post-*Jogee* is still too vague and wide in scope. Dyson (2017) argues that beyond returning the law to its normative standard, *Jogee* provided an opportunity to set out more clearly what physical contributions of assistance or encouragement should be enough as a matter of law; instead, he says, the question was pushed onto the jury. When considering the R v *Jogee* [2016] decision, there appears to be no clear and direct judgment on the physical elements of complicity (actus reus). From the judgment:

> With regard to the conduct element, the act of assistance or encouragement may be infinitely varied… association between D2 and D1 may or may not involve assistance or encouragement… the same is true of the presence of D2 at the scene when D1 perpetrates the crime. Both association and presence are likely to be very relevant evidence on the question whether assistance or encouragement was provided. Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than the same thing done by an individual alone. A great many crimes, especially of actual or threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does. [11]

Juries are therefore directed to find ‘assistance’ or ‘encouragement’ towards the commission of the offence, without a clear or minimum threshold for what conduct will suffice (Dyson, 2022). Further to this, a direct causal link between the secondary party’s conduct and the principal’s offence does not need to be established to convict a secondary party. Thus, a secondary party can be convicted even if the principal’s offence would still have happened in the absence of their conduct. However, existing case law accepts that

there should be some connecting link between the two[4], which is somewhat implicit in the meaning of the words ‘assistance’ and ‘encouragement’. However, as Dyson (2022) contends, the courts have not been precise about what needs to be proven to show that such a connection exists, heightening the risk that people who are not responsible are convicted. In the absence of clear parameters for a secondary party’s conduct, a person can be convicted as a secondary party to an offence for conduct that amounts to no more than their presence at the scene of an offence, so long as that presence is deemed to be ‘supportive’.[5] At the same time, a person does not need to be present at the scene of a crime to be liable. That is not to say that a person who was not present at the scene could not have significantly contributed to a crime, nor a person who made no physical contribution beyond their presence. Considering the former scenario, a person could give the principal the location of the victim by telephone, making the principals commission of the offence more likely – thus, making a significant contribution. However, while the absence of parameters on physical conduct (the assistance or encouragement) and lack of clarity on contribution are somewhat distinct considerations, they are two interconnected issues. If there were stricter parameters defining what physical conduct constitutes assistance or encouragement, it would be more likely that a significant contribution to the principal’s crime occurred, and easier to demonstrate through evidence. Notably, people have been convicted of murder based on conduct that amounts to little more than a series of phone calls between them and the principal offender around the time of the offence (see *R v Hussain* [2023] EWCA Crim 687 as explored in Chapter Six). As I set out in Chapter Six, when most of the young men in this study recounted the incident at the centre of their case, the precise nature of their contribution to the offence remained obscured.

[4] See for example *R v Calhaem* [1985] Q.B. 808 and para 48 in *R v Stringer* [2012] Q.B 160

[5] See para 78 in *R v Jogee* [2016] UKSC 8

Dyson (2022) concludes that the English law does not embody the true meaning of being complicit because of its and weak concept of causation and absence of parameters on physical conduct. This wide scope and ambiguity, Dyson argues, positions the prosecution in a ‘conviction-maximising’ position (2022: 390) since *any* assistance or encouragement could be sufficient to establish the physical components of the crime. Later in this thesis, I adopt Dyson’s term, ‘conviction-maximising’, but with a different conceptual purpose. I adopt it to capture the prosecutorial benefits of the racialised ‘gang’ under the current law, illustrating how the ‘punitive vagueness’ of the law (2022: 390) and the ‘gang’, when combined, give rise to racial inequality and injustice in joint enterprise.

“16 x More Likely”: Racial Disproportionality in Joint Enterprise

In 2023, the Crown Prosecution Service (CPS) published data on joint enterprise homicide and attempted homicide prosecutions for the first time, part of a pilot scheme involving the review of case files from February to August 2023 in just 6 of the 14 CPS areas. This long- awaited data came after a judicial review was initiated by JENGbA and Human Rights group Liberty, alleging that the CPS’s failure to collect data on the protected characteristics of defendants in joint enterprise cases violated their duties under the Equality Act (2010) (Liberty, 2022a). The review identified a total of 190 joint enterprise cases involving 680 individual defendants, all within a six-month period (Crown Prosecution Service, 2023). Data obtained more recently by the Guardian newspaper shows that 28% of all those convicted for murder and manslaughter between 2020-2023 were secondary parties, compared with 19% in the same period 10 years earlier (McClenaghan, 2024). These numbers underscore the huge and escalating human and financial toll of joint enterprise prosecution and imprisonment (Clarke, 2023). On top of the lives irreparably altered and families and communities devastated (Haque, 2024),

the economic 'costs of [this] injustice'

have been estimated at £242 million annually to process defendants, and £1.2 billion in punishment costs each year (Clarke and Williams, 2024).

Considering the CPS data, the racially disproportionate use of joint enterprise is unequivocal. 56% of defendants across the dataset were from a negatively racialised background. Excluding cases where the defendant's ethnicity was 'unknown', two thirds of defendants were from a negatively racialised group and one third were Black, indicating that Black people are a staggering 16 x more likely to be prosecuted under joint enterprise when compared to white people (Liberty, 2023b). The CPS results merely substantiated findings of previous research, which has demonstrated that a significant number of homicide cases involve some element of joint enterprise (Mills, Ford and Grimshaw, 2022; McClenaghan, McFadyean and Stevenson, 2014), and the disproportionate impact of joint enterprise on negatively racialised people, particularly Black men, and those aged 18-25 (Williams and Clarke, 2016; Mills, Ford and Grimshaw, 2022). Children and young people (aged 14-24) made up over half of the defendants in the CPS pilot cases and these young people were disproportionately more likely to be from negatively racialised backgrounds. Given the contested nature of joint enterprise, the severity of sentences associated with it (Hulley, Crewe, and Wright, 2019), the difficulties it poses for people convicted and imprisoned under the doctrine (ibid), the emotional and material costs to children and families of those convicted, and the mounting economic costs (Clarke and Williams, 2024), understanding the processes, structures and mechanisms that cause such disproportionality is critical.

The CPS has provided no explanation for these racial disparities; their reticence allowing for conjecture that these inequalities reflect a race-crime relationship. However, earlier data somewhat challenges this assumption. Mills, Ford, and Pritchard (2022) compared data on ethnicity for all defendants convicted for murder with data on ethnicity

for secondary defendants[6] convicted for murder in England and Wales. The authors found that between 2010-2020, 22% of all defendants convicted for murder were Black, rising to 32% when looking at all secondary defendants convicted for murder in the same period. This significant statistical disparity did not exist for any other ethnic group and there was a significant decline of 12% for the white group. Similarly, the 18-24 age group formed 28% of all defendants prosecuted for homicide offences between 2005–2020, but 38% of defendants prosecuted in multi-defendant cases, most of which likely involved secondary liability. There was a similar statistical increase for the 14-17 age group, with a clear decline for the 25–59 age group. This data indicates that like race, age disparities in joint enterprise cannot simply be explained by reference to higher levels of serious violence[7] amongst young people. A rebuttal to my analysis might be that negatively racialised young people are more likely to commit violent offences collectively. However, the nuance in determining secondary liability, the police and CPS discretion in perusing charges against those who did not actually carry out the criminalised conduct, and the plethora of ongoing evidence of institutional racism within the CLS (Macpherson, 1999; Inquest, 2022; Monteith et al., 2022; Casey, 2023), ought to encourage us to consider how such inequalities are influenced by continuities in institutional and systemic forms of racism (Clarke, 2023), rather than patterns of offending.

Statistical evidence of racial disproportionality in outcomes does no more than contend with race at the margins (Philips et al., 2019), whilst generating speculative answers as to why such overrepresentations exist. Social researchers have been criticised

[6] According to the data obtained for this publication, the suspect with the longest sentence or most serious conviction is determined as the principal suspect. Where there is no court outcome, the principal suspect is either the person considered by the police to be the most involved in the homicide or the suspect with the closest connection to the victim. It is therefore an administrative definition and may not accurately reflect the form of liability for the offence.

[7] This research does not include the full scope of ‘serious violent’ offences and is only inclusive of murder and manslaughter.

for focusing on the numerical incidence of race and disproportionality in criminal legal outcomes, without comprehensively explaining such overrepresentations by theorising the social construction of race, and how it intersects with crime, criminalisation, and crime control (Bosworth, Bowling and Lee 2008; Philips et al., 2019). However, as it concerns joint enterprise, criminologists have moved beyond such simple quantification. When considering together these different pieces of existing research, researchers have begun to reveal how race manifests in joint enterprise at the three intersecting societal junctures underpinning Phillips's multi-level framework. This literature, which is the point of departure for this thesis, is discussed below.

Racialised Signifiers of Guilt: The Courtroom Gang Narrative

Largely, the limited research on joint enterprise has explained the overrepresentation of young negatively racialised men in joint enterprise convictions by reference to 'gangs'. Rather than turning to the ostensible relationship between race and 'gangs' as an ontological reality and cause of crime, researchers have illustrated how prosecutors, in adopting the 'gang' label, evoke racialised stereotypes which signify collective culpability, criminality and dangerousness.

Williams and Clarke (2016) undertook the first and only comprehensive empirical study which sought to investigate racialised processes of criminalisation in the context of joint enterprise. Their report, *Dangerous Associations,* is the most significant piece of criminological research exemplifying how the prosecution 'gang narrative' underpins joint enterprise convictions, and the extent to which its use is influenced by race. Through 241 questionnaires completed by people in prison convicted under joint enterprise, the authors found that 59% of the sample reported that 'gang terminology' was cited at trial, suggesting that the 'gang' is a central feature of prosecution case theory. Where the 'gang' was

introduced, most participants were from a negatively racialised group (69%). 78.9% of all negatively racialised participants in the sample reported that ‘gangs’ were introduced in court, comparing to 38.5% of white participants. 97% of those who reported the use of gang discourse dismissed it as a fabricated feature of the prosecution case, instead referring to associations with childhood friends or relatives, leading the authors to later argue that non-criminal encounters and associations were ‘manipulated and criminalised through the construct of the ‘gang’’ (Clarke and Williams, 2020: 123).

Williams and Clarke (2016) identified several racialised prosecution tactics used to evoke the ‘gang’, including the appropriation of music videos and lyrics as evidence - mostly from Black musical rap genres, which were more than five times as likely to be adopted in the trial of negatively racialised defendants. These findings have been consistently supported by recent research, which has identified the widespread use of rap in criminal trials in England and Wales, predominantly used to place the offence within a ‘gang’ context, and almost exclusively used in trials that involved serious violence, secondary liability, and young Black male defendants (Owusu-Bempah, 2022b; Quinn, Kane, and Pritchard, 2024).

Researchers suggest that in joint enterprise cases, rap music (particularly the drill subgenre, known for its conventionally violent lyrical theme) can do heavy lifting in a ‘racialised courtroom deliberation about what it means to assist or encourage a crime’ (Williams and Clarke, cited in Quinn, Kane and Pritchard, 2024: 5). It is argued that in a joint enterprise case, where there is often ‘very little or no forensic evidence’ against a secondary defendant, the improper use of rap - which evokes racialised stereotypes about violence and criminality (Fried, 1999; Dunbar, Kubrin and Scurich, 2016) - ‘wreaks havoc’ (Quinn, 2024: 19). The ‘gang’, which is not infrequently evoked through rap evidence, has also been described as a ‘rich resource for prosecutors in the courtroom’ (Williams and

Clarke, 2018b: 11). In *Dangerous Associations,* Williams and Clarke (2016) argued that constructing defendant's associations around the 'gang' construct helped prosecutors to establish the necessary foresight of a secondary defendant by inferring a shared 'belief and contemplation' that the principal offender might commit the offence (page 7). In other words, the 'gang' was a racialised signifier of criminal associations that made a conviction more likely under the pre-*Jogee* law. Focusing on the law post-*Jogee,* Hulley and Young (2024) similarly observed that the 'gang' infers shared knowledge between defendants, which can stand as evidence of a defendant's intention. Drawing on interviews with lawyers and detectives taking place 18 months after *Jogee*, the authors found that practitioners persistently conflated association with intention to assist and encourage, particularly when a gang narrative was present. Thus, they concluded that 'weak links between parties were strengthened by practitioners' own interpretations about who young people were, the nature of their relationships with one another and what they 'must have' known, rather than what they did know, generating the potential for injustice' (page 17).

Researchers have thus consistently argued that gang narratives can assist the prosecution in overcoming their burden of proof. However, demonstrating the specific mechanisms at play in the courtroom when the 'gang' is evoked by the prosecution remains underdeveloped. Beyond alluding to assumptions about shared knowledge and intention based on co-defendant's relationships, the current literature has not conceptualised exactly how the 'gang', under the current law, functions to construct the intentional assistance or encouragement of secondary parties. It is precisely this question that I answer in Chapter Six, where I demonstrate four distinct but interconnected ways that the 'gang narrative', sometimes underpinned by rap, can enhance the prospect of conviction.

The use of rap in criminal trials has been widely criticised. It has been described as

a legacy of imperial-colonial rule (Fatsis, 2021), representing continuities in systemic forms

of racism, where Black culture becomes the scapegoat for state failure (see Chapter Two), and violent lyrics and imagery - intentionally designed to be provocative - are interpreted as autobiographical confessions or evidence of criminal character (Fatsis and Oliver, 2024), made believable by longstanding constructions of Black bodies as signals of dangerousness (ibid; see also Chapter Two). In the following chapter, and later in this chapter, I explore some of these historical continuities and the law's 'intrinsic relation to broader issues of social order' (Carvalho, 2022: 352), illustrating how criminalising rap has become politically expedient. Drawing on the findings in *Dangerous Associations*, Okocha (2018) argued that during criminal trials, the stigmatisation of defendant's behaviours, such as the enjoyment of particular music, reflects a lack of understanding of negatively racialised subcultures amongst prosecutors, and that a deeper comprehension of these subcultures would enable more accurate distinctions between 'risky' behaviour and 'street subcultures' (page 135). Reflecting Okocha's perspective, Owusu-Bempah (2022a) concluded that the lack of understanding of conventions in Black musical genres such as rap presents a risk of prejudice arising when making decisions about the relevance of lyrical evidence and a defendant's guilt, as stereotypes about those who enjoy or participate in rap may take precedent, unduly prejudicing a judge or jury against a defendant. However, in Chapter Five, I illustrate that while elements of Black youth culture may be somewhat misunderstood by individual legal professionals, the appropriation of Black youth culture in court is an intentional prosecution tactic which invokes racialised criminal stereotypes about 'Black criminality' and is sustained by wider institutional policy which increasingly encourages the monitoring of social media and drill (see Chapter Four).

Alongside the use of rap as evidence, Williams and Clarke (2016) found frequent references to racially homogeneous neighbourhoods and racialised linguistic signifiers like 'pack of animals', which they interpreted as attempts to link defendants to the

gang

construct. These were tactics often employed when the judge had ruled that direct references to ‘gangs’ were unsubstantiated (Clarke and Williams, 2020), foregrounding how the conceptually imprecise ‘gang’ can be evoked without direct reference to the term - a feature of prosecution practice which I discuss in Chapter Five. Williams and Clarke (2016) also found that in some cases, prosecutors presented no direct evidence of ‘gang membership’, instead using police officers as ‘expert witnesses’ to provide an account of the ‘gang’ networks in the area, serving to construct associations that ‘transcend the individual’s proximity to the offence’ (page 19) but allowed an inference of criminal character to be drawn.

The Dangerous Associations report therefore elucidates the centrality of ‘gang’ discourse in joint enterprise prosecutions involving negatively racialised defendants, as well as some of the issues associated with its accuracy. As mentioned at the outset of this thesis, and discussed in detail in Chapter Two, criminologists have long been concerned with ‘gang-talk’ (Hallsworth, 2014), since the ‘gang’ is a heavily racialised and ambiguous term which encourages ostensive categorisation guided by racial assumptions (see Chapter Two). Through producing both quantitative and qualitative data to contextualise racial disproportionality in joint enterprise, *Dangerous Associations* indicates that both the evidence and narrative utilised at the trial of many joint enterprise prisoners is influenced by the defendant’s race. At present, the CPS guidance states: ‘given the negative connotations of the term ‘gang’, prosecutors should be cautious about referring to a group as a ‘gang’ and should only do so if there is an evidential basis to support the assertion’ (Crown Prosecution Service, 2021). Yet, there remains widespread concern that ‘gang evidence’ is often spurious, rooted in racially biased police ‘intelligence’ (Amnesty, 2018; Clarke and Williams, 2020; see also Chapter Four), and largely shaped by the non-criminal actions of young people (Amnesty, 2018; see also Chapter Five).

In acknowledgment of some of these concerns, the CPS is reviewing its guidance on ‘gang evidence’, including the use of drill music (Ball and Lowbridge, 2022). Yet during their pilot data collection, the CPS did not collect information which indicated their institutional categorisation of ‘gang cases’ according to the race or ethnicity of defendants. Instead, they calculated the overall percentage of joint enterprise cases which they categorised as ‘gang related’. As they see it, 33% of cases in London North, and 21% of overall cases in their pilot were considered ‘gang related’ (Crown Prosecution Service, 2023). These statistics have been criticised for downplaying the use of ‘gang narratives’ in court (Clarke, 2023; Mills and Waller, 2023), not least because the racialised signifiers that produce the ‘gang’ may remain present even where the explicit narrative is not (Clarke, 2023; see also Chapter Five), and because the ‘gang’ can be evoked at different stages of the prosecution process (Mills and Waller, 2023).

In their more recent review of joint enterprise cases inclusive of the use of rap evidence, Quinn, Kane and Pritchard (2024) found that 69% of cases had a prosecution gang narrative, far higher than the CPS case review finding. This more recent research supports the conclusion that there is a link between the use of rap and the prosecutions evocation of the ‘gang’. Although ethnicity was the most incomplete variable in the dataset[8], the authors identified that 84% of defendants across their dataset were negatively racialised people. Two-thirds (66%) of the defendants were Black, with a further 12% being Black mixed-race, once again illustrating the connection between rap, gang narratives, and Black defendants in joint enterprise trials.

Overall, the above literature demonstrates that prosecution instrumentalities in proceedings in criminal courts in joint enterprise cases are shaped by the defendant’s race.

[8] The authors ethnic identification of defendants was indicative only, determined by a mixture of police reports, media reports and an assessment of photos in media reporting.

It indicates that police and prosecutors are most likely to utilise gang discourse and evidence when prosecuting negatively racialised defendants and in particular, Black defendants. This racially stratified use of evidence and prosecution discourse suggests that a racialised understanding of 'gangs' and violence amongst police and prosecutors is influencing their decision-making. Upon interviewing Met police detectives about 'serious youth violence' and their understanding of joint enterprise, Young, Hulley and Pritchard (2020) found that the detectives exhibited a 'colour-blind' attitude that was likely to contribute to young Black and mixed-race men being overrepresented in joint enterprise convictions. The detectives claimed that racial disproportionality in joint enterprise was not a result of racialised stereotypes manifesting in prosecution processes, but a reflection of the higher numbers of mostly young Black men involved in serious violent crime. The detectives therefore claimed to be 'protecting the public' from the risk of violent 'gang' offending. Drawing on 'racialised stereotypes which categorised and positioned young black men as risky' (page 473), the detectives objectively justified the discriminatory nature of joint enterprise - a view also apparent in the accounts of some legal practitioners who took part in this study, as explored in Chapter Seven. As I demonstrate throughout this thesis, these discourses, which centre young Black men as prone to crime and violence, are rooted in colonial logics of race, serve wider political imperatives, and have resulted in the institutionalisation of racialised state violence, rather than the curtailment of criminalised conduct.

Young, Hulley, and Pritchard's (2020) findings explicate how racial disproportionality in joint enterprise can be partially attributed to micro-level processes of racialisation and discrimination by police officers making decisions about how to conduct investigations, which suspects to pursue, and what evidence to present. Their framing of violence committed by young Black and mixed-race men as 'gang related' provides some

explanation for racial inequalities in joint enterprise, as the successful application of the 'gang' label allows for a greater inference of liability to be drawn about a secondary suspect. Thus, if 'police interpretations of associations become the central argument in establishing guilt' (Clarke and Williams, 2020: 120), and the prosecution draw on this 'ready-made narrative to construct the primary association necessary to infer collective intent' (ibid: 122), it is likely that Black and mixed-race men will be disproportionately impacted. This observation was iterated back in 2014 by Professor Ben Crewe in his evidence to the Justice Select Committee on joint enterprise. Crewe argued that the stereotypical assumption that negatively racialised young men and teenagers are 'gangs' may exist, often unconsciously, in the minds of police and prosecutors, leading them to believe that they are more likely to be involved in street violence (Justice Select Committee, 2014: 12). He pointed out that negatively racialised youth are overrepresented in communities where young people typically hang around in groups, meaning they are more likely to be labelled as 'gangs' by 'outsiders'. His observation also implies that the racialised labelling of 'gangs' by the police could be directly tied to racialisation occurring at meso-level, as negatively racialised youth's use of street space, and thus, greater 'availability' on the streets, has been linked to broader socio-economic disadvantage and social class (Phillips, 2011; see also Chapter Five).

As the following chapters demonstrate, the mobilisation of so-called 'Black crime' in justifying racial disproportionality in outcomes is not isolated to police officers. Rather, it is a longstanding stance that is embedded in institutional policy. Indeed, the clear and racialised manifestation of 'gang discourse' in joint enterprise cases has prompted academics to turn their attention to the meso-level influences shaping the policing and prosecutorial decision-making occurring on the ground.

A Mechanism to Further Policy Goals

At the level of policy and police institutional practice, Williams and Clarke (2016) critically analysed institutional responses to ‘serious youth violence’, which were largely structured around ‘gang suppression’ at the time of their research. It is widely recognised that this direction in policy-making in the 2000s was the result of the politicised ‘war on gangs’ (Scott; 2018; Amnesty, 2018; Clarke and Williams, 2019), part of a succession of racialised moral panics about young Black masculinities and criminality which I explore in the following chapter. Analysing the profile of people identified by the police as being associated with ‘gangs’ in Manchester, Nottingham and London, the authors demonstrated that the gang construct was racialised to Black and Brown men. They noted that in the absence of specific ‘gang offences’, the identification of ‘gangs’, beyond self-disclosure, was predominantly contingent on the reliability and trustworthiness of ‘police intelligence’. As mentioned above, the police documentation and mapping of ‘gangs’ has been criticised for a lack of procedural rigour and clarity in criteria, allowing for documentation stratified by racialised assumptions rather than criminal conduct (Amnesty, 2018).

Notably, despite overwhelmingly featuring on gang databases, Williams and Clarke (2016) found that young negatively racialised people were not responsible for most serious violence. By comparing data on ‘gangs’ and ‘serious youth violence’ by ethnicity in Manchester and London, the authors found that each of these cohorts were distinct, and that race was significant in explicating the disconnect between the documentation of ‘serious youth violence’ and ‘gangs’. When focusing specifically on young Black and mixed-race individuals, the authors’ analysis revealed an even more significant disconnect between those engaging in violence and those labelled as ‘gang affiliated’. In effect, they were able to demonstrate that the CLS was attempting to address serious violence by responding to two different groups. This report therefore made clear that

decisions made at

a political level - in this case, the decision to focus on ‘gangs’ as a primary cause of serious violence - can filter through to institutional processes and practices that occur at the level of policing and prosecution. That most people responsible for the violence were not identified as ‘gang involved’ simultaneously highlighted the flaws in the evidence base that was informing attempts to respond to such violence. By demonstrating that ‘serious youth violence’ was not aligned to race in ways that were suggested by institutional ‘gang data’, Williams and Clarke revealed the ‘dangerous associations’ of a ‘series of negative constructs, signifying racialised stereotypes that endured and underpinned policing and prosecution strategies’ in relation to serious violence amongst young people (Williams and Clarke, 2016: 3), while pointing to a need re-examine and respond to the drivers of violence outside of gangs discourse (ibid: 21).

The findings presented by Williams and Clarke (2016) raise concerns about the formalisation of police racism through police ‘gang intelligence’ and police ‘gang experts’. Ward and Fouladvand (2021) highlight this risk, arguing that police ‘expert evidence’ on ‘gangs’ is likely to be ‘tainted by structural or institutional racism’ since the institutional ‘body of knowledge’ from which they draw is one in which serious violence is more likely to be identified as ‘gang-related’ when it takes place in areas with high negatively racialised populations (page 7). This analysis also illustrates that while not officially sanctioned, racial profiling, through the documentation of ‘gangs’, is unofficially practiced (Phillips, 2011). In turn, this practice continuously reifies perceptions of young Black men and teenagers as violent ‘gang members’, meaning unquestioned racialised stereotyping is likely to manifest in the perceptions, interactions and decisions of individual officers, but shaped by the obsessive concern with ‘gangs’ at the level of politics and policy.

Situating the above discussion within the context of joint enterprise, academics who have explored joint enterprise contend that the doctrine was ‘resurrected’ as part of policy

initiatives associated with the politicised ‘law-and-order’ response to the so-called ‘gang threat’ (Green and McGourlay, 2015; Squires, 2016; Clarke and Williams, 2020). Thus, it is argued that since joint enterprise is focused on targeting alleged ‘gang violence’, and ‘gangs’ have been identified by UK authorities as a particular problem in negatively racialised communities, these groups bear the brunt of its application (Bridges, 2013). Joint enterprise, particularly in the form it took after *R v Chan Wing Siu* [1985], exemplifies how such gang-centred policy goals took precedent over legal principles (Jacobson, Kirby, and Hunter, 2016, 14 - 15). In *R v Powell and Daniels; English* [1999] 1 A.C.1 Lord Hutton acknowledged that whilst it might seem aberrant to hold someone liable based on foresight, which would not usually be sufficient mens rea, such rules are not only about logic, but also about practical concerns, including ‘effective protection to the public against criminals operating in gangs’. Whilst this perspective had obvious political appeal, it also meant that negatively racialised groups were disproportionately affected, or even explicitly targeted in cases of assumed ‘gang-related’ violence (Jacobson, Kirby and Hunter, 2016). This analysis begins to demonstrate that the politicised framing of violence amongst young people as ‘gang related’ has been central to the use of joint enterprise as a prosecution tool. It also further indicates that the centrality of gang discourse to prosecution case theory is likely to be influenced by practices and decisions made at an institutional level.

Clarke and Williams’ (2020) later analysis of the *Dangerous Associations* data begins to locate the connections between police institutional policy and practice and the evidence coming before prosecutors. First, they suggest that the use of police as expert witnesses allows for facts in a criminal case to be inferred from subjective police intelligence – the existence of which relies on particular tools being in operation in a particular community. These tools may include CCTV, stop and search operations, cell site masts and an operational police gang unit or database. The authors contend that

considering the

government resources that accompany police-defined ‘gangs’ (Amnesty International 2018) alongside the racialisation of ‘gangs’, it is more likely that such tools, strategies and resources are deployed within negatively racialised communities, which in turn facilitates ‘gang-making’ (Fraser and Atkinson, 2014). Indeed, Clarke and Williams (2020) found that these policing resources, often used by prosecutors to construct associations between defendants, were present in more than half of cases involving negatively racialised defendants, compared to one quarter of white cases. Thus, the production of such intelligence, the authors argue, inevitably benefits from ‘the positioning of distinct police gang teams in racialised communities, such as Trident in London and Xcalibre in Manchester.’ (2020: 126). In Chapter Four, I explore the relationship between pre-emptive police initiatives and the operation of joint enterprise in more detail. Drawing on contemporary political discourse and policy on serious violence, and the experiences of the young men in this study, I explicate how racialised institutional practices at the level of policing filter through to ‘evidence’ presented in court, making young Black men the ‘ideal defendants’ for the prosecution.

By moving beyond a micro level analysis, the above literature demonstrates that the net effect of policies designed to disrupt ‘gangs’ is likely to be the disproportionate punishment of young negatively racialised men, rather than the curtailment of serious violence. Wider literature on the construction of ‘gangs’ supports this finding, as the ‘gang’ is too often used to provide a ‘shortcut to understanding youth conflict’ (Alexander, 2008: 5), fuelling the disproportionate punishment of Black youth (ibid; Gunter, 2017; see also Chapter Two). As this thesis develops, the ‘gang’ further emerges as a concept which fuels the misunderstanding and punitive response to serious violence amongst young people, but which serves a political and prosecutorial purpose and is thus deemed worthy of preservation and reuse by police and prosecutors.

The Political Imperatives and Historical Logics of Race in Joint Enterprise

As I have alluded to in the section above, academics have begun to situate joint enterprise within 'society's broader material and symbolic complex' (Carvalho, 2022: 352), illustrating the relation between the law and broader issues of social and political order. Extensive research covers the emergence of the 'gang' as the contemporary 'folk devil', offering a racialised and gendered scapegoat for the state failures underpinning the 2011 English uprisings (see for example Hallsworth and Brotherton, 2011; Williams, 2014) and a simplified explanation for serious violence and other social ills emanating from the ongoing effects of market-driven neoliberal policies (Liberty, 2023a).

Drawing on the work of Stuart Hall et al., (2013), Williams and Clarke (2018b) highlight parallels between the 'gang' and historical constructions of the Black 'folk-devil'. They argue that similarly to the moral panic surrounding the 'Black mugger' of the 1970s, the 'gang' has served a broader political function, while legitimising the expansion of racially stratified penal controls (see also Williams, 2014). Building on the findings of the *Dangerous Associations* report, Williams and Clarke (2018a) therefore begin to situate the prosecution's 'gang narrative' within a broader and longstanding discourse about 'Black criminality', arguing that the gang narrative allows prosecutors to place young Black defendants within a continuum of 'folk devil' narratives that have been amplified by politicians and media for decades. Thus, the racialised courtroom 'gang narrative' which derives from and relies on police institutional 'bodies of knowledge', also derives from and relies on historical constructions of Blackness which have been located in changing broader political and economic conditions in post-World War Two Britain. By utilising the 'gang' to describe associations between defendants, prosecutors convey a narrative to the jury which aligns with the well-established idea that (Black) 'urban street gangs' are responsible for serious violent offending (Clarke and Williams 2020: 123). The 'gang' as a 'guilt-

producing' device (ibid) also relies upon the reproduction of longstanding constructions of 'Black criminality', which I explore further in the following chapter. Clarke and Williams (2020) argue that law enforcement strategies in the context of joint enterprise are contingent upon these constructs, meaning that young Black men, 'who have historically been presented as a threat to the normative boundaries of the British state' (page 116), are the group amongst whom guilt is mostly reproduced.

Similarly considering the wider socio-political imperatives surrounding joint enterprise, Carvalho (2022) argues that the 'gang' serves an important socio-cultural function. Scapegoating young negatively racialised men as the source of violence and social fragmentation, he says, produces a sense of social solidarity that allows individuals to collectively pursue emotional release with a sense of belonging, allowing for limited engagement with public anxieties and insecurities in a way that does not challenge underlying structural conditions and ideological frameworks, thus 'safeguard[ing] the specific configurations of selfhood, law and violence at its core' (page 346). This 'danger formation', he argues, supports a pattern of blaming which not only shapes the application of joint enterprise, but also actively enables it. Thus, the criminal law reflects its own specific cultural context, on which it relies for its legitimacy whilst also actively articulating civil order (ibid: 341). With the latter point in mind, Clarke and Williams (2020) briefly touch on the relationship between joint enterprise and broader issues of social and political order beyond Britain, since joint enterprise has been employed in various jurisdictions, shaped by the historical influence of the British Empire. Commenting on a case whereby South African striking miners were collectively punished for the police shooting of their comrades, the authors suggest that principles of collective criminality were applied to 'shift blame' from those 'in power' to those 'out of power', thus managing political dissent and regaining state control of a political economic crisis. They therefore

highlight how collective punishment has been utilised to punish ‘outsiders’ who threaten the social and economic order across the globe, actively articulating ‘order’. In the following chapter, where I set out how I theorise ‘race’ and ‘gangs’, I explore how Britain’s interactions with its colonies in the post-war period are pivotal to the continuous use of Blackness as a political scapegoat, which cannot be demarcated from the application of joint enterprise today.

The relationship between joint enterprise and enduring discourse surrounding racialised and collective criminality has also been analysed by Nijjar (2018), who placed joint enterprise within the context of Britain’s history of collectively criminalising, controlling and exploiting racial subjects. In doing so, Nijjar acknowledges how longstanding ideologies of race and collective criminality have continuously been formalised and coded into policy and practice. He draws on the emergence of anti-gang units in British ruled India, and the introduction of the 1871 Criminal Tribes Act, which emerged from a combination of police intelligence on ‘suspect communities’ and a series of preceding laws designed to tackle ‘thuggee’ – a term similar in meaning to the ‘gang’ (Brown, 2014). With parallels to the language observed by Williams and Clarke (2016) in their analysis of joint enterprise trial discourse, the Criminal Tribes Act relied upon animalistic racialised constructions of criminality, as tribes were described as ‘wild’ and ‘savage’ groups who threatened the colonial state (Skaria, 1997 cited in Nijjar, 2018). The Criminal Tribes Act made it a legal requirement for any tribe, or ‘gang’ across India (that local government believed to be criminal) to be registered (Brown, 2014). Hence, similarly to contemporary police ‘gang’ databases, this legislation formalised a discourse in which myths about race and collective criminality combined to define and monitor colonised communities (Nijjar, 2018). Nijjar illustrates that such colonial and post-colonial practices of data gathering on ‘tribes’ or ‘gangs’, have both assisted in successfully criminalising

and punishing negatively racialised groups. Thus, he highlights the parallels with joint enterprise and historical forms of collective surveillance and punishment, as the overrepresentation of Black people in police 'gang' databases, alongside police 'gang experts who assist prosecutors in alleging 'gang membership', are central to joint enterprise prosecutions. Nijjar (2018) shows that 'by situating the racialisation of 'gang crime' against this colonial backdrop, it becomes apparent that there is some continuity from the colonial to the postcolonial concerning the formal construction of racialised subjects as criminal collectives' (page 152) and the material consequences of this. He therefore contends that the contemporary construction of 'gangs' or 'serious youth violence' as a 'black phenomenon', and the use of joint enterprise to disproportionately imprison 'clusters of black youth', is reflective of previous discourses and forms of collective punishment inflicted upon racialised groups by the British Empire (2018: 153). Thus, he begins to unpack how racialised discourse about 'gang crime' or collective criminality are reinvented and manifested in crime control.

Whilst the authors of the literature outlined here do not engage in a historical legal analysis of joint enterprise and its impact on negatively racialised groups, they have turned their attention toward the structural features of society that frame collective punishment. In doing so, criminologists like Nijjar, Williams and Clarke have begun to position joint enterprise as a legacy of colonial rule – its racialised application sustained by legacies of colonial thinking. The literature outlined in this chapter has therefore begun to produce a multi-layered criminological analysis that when put together, begins to highlight how race manifests in joint enterprise in multiple different but intersecting ways.

Implications for my Research

The existing literature has illustrated how the criminal law cannot be fully understood independently of the extra-legal factors that influence it. It therefore highlights the importance of a theoretical framework which situates the law within its socio-political, economic and historical context in seeking to explain and understand racial inequalities in social outcomes (more of which in the following chapter). Although the existing research has begun to explain the racialised application of joint enterprise, there are limitations to it. Most significantly, existing empirical research on race and joint enterprise focuses on the experiences of all negatively racialised groups, and there are three strong rationales for looking at the experiences of young Black and Black mixed-race men specifically. Firstly, this cohort are most disproportionately impacted by joint enterprise and are likely to be subject to racialised processes of prosecution in this context. Secondly, criminological literature illuminates the ubiquitous and longstanding stereotyping of young Black men as violent, dangerous (see for example Gilroy, 1982; Angiolini, 2017; see also Chapter Two) and 'gang affiliated', including by policy makers, politicians and media personnel, who continue to depict serious violence and 'gangs' – phenomenon intrinsically tied to joint enterprise - as explicitly Black issues (Perera, 2020; see also Chapter Two).

Lastly, a plethora of literature has uncovered the nuanced and often more profound experiences of criminalisation and criminal legal intervention encountered by Black men today and throughout history. This includes more negative experiences of prison, policing, charging decisions, sentencing, and probation (see for example Hall et al., 2013; Hood and Cordovil 1992; Mullen, 2014; Lammy, 2017; HM Inspectorate of Prisons, 2022), and a distinct ideological construct of crime and violence that has long surrounded the Black male body (see Chapter Two). Thus, in acknowledging this heterogeneity, I intend to explicate the unique and nuanced experiences of Black and Black mixed-race

men in the

context of secondary liability, to further explicate why they are disproportionately prosecuted and convicted. Importantly, I will also shift the focus to *young* Black and Black mixed-race men, who are not only the most impacted by joint enterprise, but also consistently exist at the centre of contemporary public debates over serious violence and how to respond to it.

Quantitative data on the scale of the use of joint enterprise has been produced since *Jogee*, but the comprehensive qualitative empirical research on race and joint enterprise concerns cases that took place prior to this change in law. Existing research does not tell us much about defendants' experiences of joint enterprise today, nor the nuances of how constructions of guilt (or intent) are currently being produced in cases involving secondary liability and young Black male defendants. Further, while the 'gang', has typically been centred as the primary marker driving racial inequality in joint enterprise, locating the specific mechanisms at play when it is used in court under the current law remain underdeveloped.

At the meso level, it is not clear to what extent contemporary policy initiatives and political decision-making are shaping institutional policy and practices linked to 'gangs', serious violence and joint enterprise. The current literature does not tell us how the personal lives of young Black men prosecuted under joint enterprise are impacted by broader institutional police practice and policy, and how their experiences of policing filter through to prosecution case theory and evidence. At the intersection between the meso and macro level, a clearer picture of the relationship between joint enterprise and historical constructions of race is needed to further illustrate how the continuities of Blackness as a defensive state ideology is tied to the application of joint enterprise today. Until now, these connections have not been excavated from the narratives of the young Black men and their relatives who are overwhelmingly subject to it. The existing research on race and joint

enterprise therefore opens the door to questions that can only be contended with by considering the interactive processes through which racial inequalities are reproduced at the micro, meso and macro level.

At the micro level, I will ask:

1. How do young Black and Black mixed-race men experience and interpret joint enterprise since the 2016 Supreme Court judgment?
2. What is the significance of ‘race’ and ‘gangs’ in constructions of their guilt in the court room?
3. What are the specific mechanisms at play when the ‘gang’ is used in the courtroom? (i.e. what are the legal instrumentalities of the ‘gang’?)

At the meso level, I will ask:

4. What is the relationship between the current political climate, contemporary police and policy initiatives associated with ‘gangs’ and ‘youth violence’, and the racialised application of joint enterprise?
5. What is the relationship between the policing of young Black men and the racialised application of joint enterprise?

At the macro level, I will ask:

6. What is the relationship between joint enterprise and historical processes of criminalising young Black men in Britain?
7. How do colonial logics of race manifest in constructions of complicity?

Taking the existing research as a point of departure, I aim to further interrogate how racialised patterns of criminalisation arise in the context of joint enterprise, focusing primarily on the 'gang' as a lens through which to make sense of racial inequality. Utilising a critical theoretical framework (see Chapter Two), I explore how punishment, state control and criminal law intersect with issues of race in the context of secondary liability, by placing the experiences of young Black and Black mixed-race men, their relatives and legal practitioners, within the broader context of politics, policy, and historical and contemporary racial organisation.

Chapter Outline

The following chapter sets out the broader theoretical roots of the thesis. Drawing on Critical Race Theory, Cultural and Black Studies literature, I centre the importance of race as an analytic tool, while emphasising the necessity of historicising and contextualising the 'making of race' when using racial categories. I argue that to comprehensively understand racial inequalities in joint enterprise, the legal doctrine must be examined with the historical, political, and socio-economic drivers of criminal legal practices in mind. This approach necessitates integrating theoretical positions which intentionally set out to locate and illustrate the origin and social impact of racialised epistemological myths which shape legal processes. Reflecting on such frameworks, I justify my decision not to explore the relationship between race and crime in seeking to understand the criminalised position of Black people. I end the chapter by situating joint enterprise within the wider trajectory of the politically driven criminalisation of young Black men in Britain since the post-war era. While Chapter Three includes the conventional discussions surrounding the mechanisms used for gathering and analysing data, this methodology chapter is largely dedicated to a critical self-reflection of my overall research approach and experience,

offering the reader an insight into how my personal biography has shaped the thesis. I consider how my race, class and gender have influenced the research process and discuss the significance of my ‘lived experience’, which reflects that of my research participants. I explore how my personal biography and experience of joint enterprise (through proximity to a convicted loved one) shaped why and ‘for what purpose’ I made particular methodological decisions, such as to intentionally surface a ‘counter-narrative’. In doing so, I elucidate the personal pains and privileges, as well as the positive and negative implications arising from this biographical congruence, while illustrating the disconnect between conventional institutional ethical and methodological procedures, activist-scholarship, and transformative research.

Chapter Four, ‘*Creating the Ideal Defendant for the Prosecution*’ is the first empirical data chapter. This chapter foregrounds the incessant state violence the young Black men have experienced throughout their teenage years in the form of police harassment. In conceptualising the characteristics of their police contact, I reflect on the convergence between their experiences and Lerman and Weaver’s (2014) concept of the ‘custodial citizen’, developed in the US. The chapter begins with an examination of wider state policy on ‘serious youth violence’ ‘knife crime’ and ‘gangs’, allowing me to situate the young men’s experiences within the broader context of pre-emptive (pre-crime) policing tactics which encourage the surveillance, ‘intelligence’-gathering, and thus ‘datafication’ of young Black men. The narratives of the young men foreground how this process of ‘datafication’, hinging on their interactions with the police, leads to the formation of a ‘shadow identity’. The shadow identity – which is revealed through the prosecution's portrayal of the young men in court - is a largely unfamiliar construct centred around ‘gangs’, shaped significantly by their previous police interactions. I therefore argue that the obsessive concern with ‘gangs’ at the level of politics and policy makes young

Black men the ‘ideal defendant’ for the prosecution. Practitioners acknowledge that the use (or not) of the gang narrative at trial is largely dependent on wider police work. Yet, they make clear that within the court arena, there is rarely any challenge to the structural conditions, policy frameworks, and prejudicial methodology from which ‘gang evidence’ derives.

Chapter Five, ‘*(Black) Youth Culture on Trial*’, is the second empirical data chapter. This chapter explores how constructions of guilt in the context of joint enterprise are shaped by the erroneous interpretation of the cultural and symbolic expressions of young Black male defendants. Whether through engagement in drill music, expressions of place-based identity, social media use, or simply occupying street spaces, the young men’s narratives emphasise that while cultural and criminal processes may sometimes converge, the latter cannot be safely inferred from the former. Yet, their expressions of identity are seen as potential evidence of ‘gang membership’ or criminal intent. As long demonstrated by subcultural theory, this chapter illustrates how the nuanced meaning behind youth behaviours is not considered in the context of joint enterprise prosecutions. Rather, they are oversimplified and erroneously interpreted as symbols of threat and criminality. In highlighting the centrality of the young men’s digital and social media footprint to prosecution evidence, the chapter illustrates how social media, where young people interact, carve out their identities, and chronicle their experiences, has become a repository of evidence for the police - a practice fuelled by the wider state policies discussed in Chapter Four.

Chapter Six, ‘*The Racialised ‘Gang’ as a ‘Conviction-Maximising’ Tool*’, explores how the vagueness of the law on contribution, an issue set out briefly in this introduction, is likely to encourage racial inequality and injustice in joint enterprise. Drawing on the narratives of practitioners and the young men, this chapter explores the extent to which

prosecution gang narratives assist in demonstrating a secondary defendant's intention to 'assist or encourage' the offence. Here, I set out four ways that the 'gang' operates to bring the prosecution closer to conviction under the current vague law, illustrating the power of the 'gang' as a prosecutorial resource. I contend that the lack of clear and reasonable parameters on the contribution required to be convicted as a secondary party encourages the use of the racialised gang narrative, while ensuring that police and prosecutors view the 'gang' as a tool worthy of preservation and reuse – a feature of 'corporate memory' (Megill, 2006). The chapter situates the 'gang' as a deliberate prosecution strategy used to 'evidence' assistance or encouragement where it might not actually exist.

Chapter Seven, '*Colonial logics of Race in Constructions of Complicity*', is the final empirical data chapter. This chapter centres how the young men and their relatives make sense of joint enterprise, focusing on their personal interpretation of the labels ascribed to them. Their narratives emphasise the 'historical significance of colonialism in the operation of modern punishment' (Aliverti, et al., 2021: 301) by illustrating how colonial logics of race provide a foundation from which the state can enact and legitimise their violence through joint enterprise, which, in its material consequences, somewhat reflects historical modes of racial violence and subjugation. Together, their narratives convey how historical constructions of whiteness as 'civilised', and Blackness as 'dangerous', continue to result in racialised state violence and disparate experiences of the legal system. They describe their Blackness as a permanent incriminating marker that nullifies their youth and the presumption of innocence, while producing and substantiating the gang label.

Chapter Eight offers a final interpretation of the key findings in this thesis. Highlighting the value of Phillips's multilevel framework and critical race thinking in making sense of racial inequalities, I unpack the architecture of racialisation in the

context of joint enterprise, setting out three ways in which young Black men are

‘*Disadvantaged*

by Default' when charged as a secondary party to murder. I emphasise that as the policing and criminalisation of Blackness have been embedded in policy, the triggers for racialised state violence now reside within the law itself, rather than in its misuse, rendering claims to a fair trial for young Black defendants increasingly dubious. More generally, I offer a critical evaluation of the study, drawing on its advantages and limitations both empirically and methodologically. I emphasise how the thesis has a broader intellectual reach than the topic of joint enterprise, presenting a way of understanding racial inequalities through elevating subjective experiences beyond mere anecdote. I reflect on what the findings reveal about the project of criminology more broadly, asserting that in seeking to transform the field, we must not neglect research that looks at society through the lens of the diaspora in the Global North. I conclude the chapter by discussing necessary actions, arguing that while urgent legal and procedural reforms are necessary in limiting the harm enacted through joint enterprise, we must remain focused on broader transformative goals to fully address racial injustice within joint enterprise and beyond.

TWO: THE DILEMMA OF 'BLACK CRIMINALITY': THEORISING RACE AND 'GANGS'

Introduction

As the previous chapter began to illustrate, 'the criminal law cannot be fully understood independent of the dynamics of criminalisation conceived as a broad social practice' (Lacey, 2018: 122). To interrogate how racialised patterns of criminalisation arise in the context of secondary liability, the law needs to be examined as a sociological project concerned with the political, socio-economic (Zedner, 2011) and historical motors of criminal legal practice. One must therefore study 'the criminal question' by taking seriously the relationship between law, crime, and the procedures by which it is defined, acknowledging the connection between imperialism and punishment (Aliverti et al., 2021) and the centrality of legislation in enabling and sustaining racial injustice and state violence. This chapter sets out how I theorise 'race', 'gangs' and 'crime' more generally. I draw largely on Critical Race Theory (CRT), and Cultural and Black Studies literature, illustrating how frameworks which acknowledge the origin and social impact of racialised epistemological myths, provide a foundation upon which to comprehend how and why 'race' configures the operation of joint enterprise.

I begin by centring the salience of race in human interaction, historicising race and Blackness as social constructs which have become a foundation of the organisation of the modern world (Mbembe, 2017). I therefore illustrate the importance of 'race' as an analytic concept. Drawing on the British government's response to the 2020 Black Lives Matter (BLM) protests, I demonstrate how race and racism have been naturalised, silenced and weaponised, as race-consciousness and anti-racist discourse are rendered racist and divisive, in an attempt to stifle the identification of racism. By individualising racial

inequalities in social outcomes, this ‘post-race’ position provides the conditions for institutionalised forms of racialised state violence to flourish, requiring us to dig deep to foreground discreet residues of racist arrangement. Thus, I illustrate the importance of critical theoretical frameworks which connect ‘race’ and contemporary Black experiences to their political, economic, and historical roots, allowing for the exposure of the contemporary predicament of Black communities (Issar, 2020) within this ‘post-racial’ framework.

Adopting these tenets of CRT, I move on to briefly contextualise the contemporary criminalisation of young Black men in England, illustrating how Blackness has long been used by the state as a defensive ideology – previously constructed to defend slavery and colonialism, now mobilised to defend state hegemony in times of political instability. Here, I begin to illustrate how critical race thinking can assist in demonstrating how socio- economic crises and their structural determinants influence the development and reproduction of racialised state violence, as interactions between politicians, media and the public reproduce guilt amongst the racialised ‘other’ constructed as a threat to the normative boundaries of the British state (Clarke and Williams, 2020). This section illustrates the prevalence of ‘Black criminality’ in the public and political imaginary, simultaneously foregrounding the political construction of Black masculinities as a unique and important site for criminological knowledge.

At this point, the chapter leaves a lingering question. If society is organised by racial thinking, the responses to *and* the sources of criminalised conduct must be influenced by race. Do I then study ‘Black criminality’ as an ontological reality, a construct, or both? Considering the Black Criminology paradigm, I explain my decision not to engage with the race-crime relationship in explicating Black people’s criminalised position. In doing

so, I highlight the importance of deconstructing popular constructions of violence, which are too often discussed independently of racialised state violence.

With my theoretical position established, I then examine and historicise ‘Black criminality’, starting with the post-World War Two period. Analysing the twenty-first century ‘war on gangs’, I illustrate how joint enterprise forms part of a trajectory of racialised moral panics about young Black masculinities in Britain. I demonstrate how Britain’s interactions with its colonies, which brought major demographic, economic and social policy changes, have been central to the ongoing politicisation of Blackness. Overall, the chapter highlights how the British state has consistently existed in a ‘dilemma of Black criminality’, where the ‘Black criminal other’ has been a vital card in the hands of politicians and the popular politics of policing (Gilroy, 1982). In so doing, the ‘gang’ begins to emerge as an instrument of state violence and a lens for understanding racial inequality in joint enterprise.

Why “Race” Matters

> It’s important to remember that “race” is only a socio-political category, nothing more. At the same time—in terms of its practical performative force — that doesn’t help me when I’m trying to get a taxi on the corner of 125th and Lenox Avenue. (Gates, 1992: 37–38, cited in Lawrence and Hylton, 2022)

During the summer protests of 2020, I was walking with a friend in Oxford when I saw two white men shouting at one another outside a pub. I distanced myself slightly, as I became worried that they might start hurling racial slurs at us. One man looked at us and shouted, "Black Lives Matter". Although his reaction was not my expectation, this experience revealed two things: my thoughts, expectations and actions were shaped by my racial identity, and my assumptions were not entirely wrong. Despite the absence of racial slurs, his reaction demonstrated that the first thing he interpreted about us was our

race; my

'black consciousness of blackness' (Mbembe, 2017: 30) influenced both my expectations and actions, as well as the man's choice of words. Yet, it has been argued that ‘race’ should be confined to ‘dustbin of analytically useless terms’ (Miles, 2003; Miles and Brown, 2003: 90). It is true that ‘race’ has no scientific utility; individuals with similar origins might share physical attributes such as skin colour and hair texture (Delgado and Stefancic, 2017), but the assertion that skin pigmentation correlates with human character is spurious (Bosworth, Bowling and Lee, 2008). So why do we still divide humanity into racialised identity groups (Gilroy, 2000)? Why not end language rooted in suffering?

We might hope to eradicate ‘race’, albeit without erasing our history, but the colonial desire to divide, classify, produce hierarchies and difference, leaves behind scars (Mbembe, 2017). Race should not matter, but disregarding group difference does not present a ‘ticket to equal citizenship’ (Loader, 2021: 2). If we remove racial language, what residues of racist arrangement and thinking will remain? In need of myths through which to justify global power and dominance, ‘the West’ painted itself as the ‘civilised’ region, inventing the ‘rights of the people’ (Mbembe, 2017: 11) through the construction of ‘race’. Most certainly as it concerns Britain, the world’s biggest coloniser and slave-trading nation (UK Parliament, 2024), race is a powerful pseudo-scientific project (Fryer, 2018) which has long underpinned economic and political relations and exists within the fabric of social institutions, human consciousness, and interpersonal experiences (Hall et al., 2013; Fryer, 2018; Gilroy, 2002). Whilst retelling this history of race as an instrument for modern social arrangement is beyond the scope of this thesis, by the late nineteenth century, race had become a taken for granted marking of social arrangements (Golberg, 2009), albeit rooted in fictitious ideas.

It is not uncommon for criminologists to posit race as a social construct. However, as Williams (2019) puts it, researchers who use racial categories ought to historicise this

racial construction, making a conceptual argument about what the racial categories represent (page 657). In other words, when we talk about race, we must not forget the importance of centring how race is made. The atheoreitcal and ahistorical use of race as a demographic variable in research ignores the social roots of racial differences (James, 2001: 245), which leads to the essentialising of race as a scientific causal mechanism (Sen and Wasow, 2016; Williams, 2019) for social outcomes. 'Race is the child of racism, not the father' (Coates, 2015). As such, we cannot simply say that colonialism was targeted at particular races; race is (re)made in the targeting (Wolfe, 2006: 388). The categorisation of people by race became necessary to justify European colonisation and the enslavement of Africans. Black people were racialised as slaves; slavery constituted their Blackness (ibid). As Bonilla-Silva (1999) explicates then, races are 'relations' rather than 'things' (page 902), but race has become a real category of group association and identity (Bonilla-Silva, 1997: 472). Racial ideologies therefore (re)emerge to justify the existing racial order and social relations (Bonilla-Silva, 2017; Doane, 2017), whilst no doubt perpetuating racism and inequality.

Opposition to using race as an analytical tool partly arises from the view that racism can be satisfactorily addressed through the class struggle; organising around racial categories in the study of or resistance against inequalities has been rendered illegitimate because of its perceived absence of material basis (see Miles, 1982). Yet, like class, social relations between races have become institutionalised, forming a structure as well as a culture, affecting individuals' lives whether they want it to or not (Bonilla-Silva, 1997). Scholarship has long acknowledged the overlap between regimes of capital accumulation and racial-colonial domination, highlighting how capitalist advancement has relied on racialised and gendered logics of expropriation (Issar, 2020). As Mmebe (2017) notes, racial capitalism 'rests on the traffic of the dead and human bone' and it is this history

which has given race the power to shape meaning and experience (page 136-137), Thus, race is not considered a mere epiphenomenon without power of its own, but as a fundamental organising principle of postcolonial society. Negatively racialised people are thus not ‘irreducible to their class positions’ (Gilroy, 2002: xviii) and race should be afforded ‘equivalent epistemological weight and power’ to shape structures, events, political patterns and dimensions of hierarchy and inequality (ibid).

There is of course variability in how individuals are impacted by or make-sense of race, particularly when considering how different aspects of individuals identities intersect, and the nuances across different geographical regions in socio-historical conditions and the causes and consequences of racialisation. Nonetheless, it is possible to acknowledge that race is non-essential and highly malleable while also acknowledging that it is a central principle of social organisation (Bonilla-Silva, 1999: 899) that can give or deny benefits and privileges (National Museum of African American History and Culture, 2024), as the opening quote to this section illustrates. Mbembe (2017) therefore argues that we move through the world underneath what is perceived. We are not imprisoned in a silhouette, but somewhat separated from our essence by ‘race’, he contends. Thus, when I refer to Black people, I am referring to people who have been racialised as Black. The societal or personal significance attached to Blackness may vary in different contexts, but being racialised as Black undeniably impacts the life trajectories of nations, communities, and individuals worldwide. Considering how power has clustered around socially constructed categories of people (Crenshaw 1991: 1297) has provided the opportunity for researchers to demonstrate how race remains socially significant and real in its material outcomes, including through joint enterprise. CRT’s ontological base is founded on the very principle that realities are shaped by categories, which while not ‘real’ have been crystalised into a series of structures (Lincoln and Guba, 2000: 165) that manifest real social outcomes. As

put by Lawrence and Hylton (2022), race remains salient because of histories and centuries of racialisation (Leonardo, 2005; Warmington, 2009), and its continued performance and repetition (Delgado and Stefancic, 2017). CRT's centring of 'race' and racism is not a denial of the complex self, but an approach recognising that contemporary institutional structures tend to reproduce racial processes and outcomes, even when a system is seemingly 'race-neutral' (Crenshaw, 1991). This point highlights precisely why race as an analytic concept must be retained. We can have colour-blind aspirations but to say race does not matter, or matters less than other social categories, is to deny that historical and systemic dimensions of racialisation continue to shape people's life experiences in profound ways.

Racism's "Invisible Touch"

In an era of 'post-raciality' (Goldberg, 2015) in which overt racialised language is less common (Kapoor, 2013), and where negatively racialised people inhabit powerful state positions, organise and oversee state violence, we are presented with 'slippages where race no longer matters and racism no longer exists' (Tate, 2014: 69). Fostered in part by decades of anti-discrimination laws, the fallacy that we are 'post-race' has generated an assumption that racism is obsolete because race is deemed irrelevant and racism legally prohibited (Tate, 2014). Paradoxically, anti-discrimination laws have long been used to stifle anti- racist discourse and resistance, as seen when Black Power Activists Roy Saw and Michael De Freitas were prosecuted under the Race Relations Act (1965). More recently, a negatively racialised woman was charged with a racially aggravated public order offence because her anti-racist protest banner displayed the term "coconut" (White, 2024) – an intracommunity political critique used to describe non-white people who are perceived to

be sympathetic to white supremacist agendas and adopt the attitudes and values perceived as characteristic of white society.

Through its critique of liberalism, CRT has demonstrated that racism cannot be legislated away by legal reform or anti-discrimination laws. Derek Bell (1980) and Kimberlé Cresnshaw's (1988) famous criticism of *Brown v. Board of Education* (1954), which declared school segregation unconstitutional, illustrates how formal law and policy serve no more than a fallacy of meritocracy (Tate, 2014), which allows for subtle, systemic and institutionalised manifestations of racism to be denied and individual overt acts of racism to be dismissed as 'bad apples'. Post-raciality operates by insisting that legacies of racial discrimination have lessened over time and thus, if racism exists now, it is anomalous and not structurally underpinned (Goldberg, 2015). As Goldberg (2015) argues, the post- racial is therefore racism's contemporary articulation. In other words, by insisting that a society long accustomed to invidiously ascribing and enforcing ethnoracial distinctions (Dawson and Bobo, 2009) is somehow 'beyond race', without having dealt with its historical legacy and contemporary structures that enable racism (Goldberg, 2015), the post-race position provides the perfect conditions for institutionalised and structural racism to flourish.

Following the rise of the British BLM movement, when the British state was heavily criticised for its historical and contemporary systemic racism, the British government adopted this 'post-race' stance. Whilst acknowledging Britain is not 'post-racist', the 2021 Commission on Race and Ethnic Disparities[9] report depicted racism as a past relic, claiming that Britain had 'come a long way' with accusations of racism at odds with 'stories of success' and 'dwindling white prejudice' (HM Government, 2021: 11). Trivialising

[9] The Commission was set up in 2020 to review inequality in the UK, focusing on education, employment,

health, and crime and policing.

institutional racism, the commission emphasised individual responsibility, family structure, and cultural attitudes to explain race disparities. The report focused not on constructions of race, but on constructions of *racism* that encompass attitudes and behaviours not previously considered racist, claiming that the meaning of racism had been ‘stretched’ without objective data, leading to increased ‘sensitivity’ (ibid: 45).

According to Goldberg (2015), a key aspect of post-raciality is the removal of references to race and racism from social discourse, which erases the language through which racism can be identified, analysed and addressed. As Goldberg notes, those who insist racism is largely of the past tend to insist that racism is now perpetrated by its historical victims (usually Black people), aimed at its historical perpetrators (white people). British political leaders’ criticism of the term ‘woke’ (Barret, 2003), the political and media attack on CRT for being ‘divisive’ (James, 2023), the banning of anti-racist books that provide an honest chronicling of US history (Robinson. 2021) and the British media outlet, *Daily Mail*, referring to these books as ‘racist’ in their attack on CRT founder Kimberlé Crenshaw (James, 2023) are all examples of how race consciousness has been constructed as racist. This phenomenon is also evident in the use of terms like ‘race-baiting’ or ‘race- grifting’ to describe anti-racist discourse and accusations of institutional racism (see Burchill, 2024). Consequently, negatively racialised individuals, including myself (see page 62 for details), have been labelled as racist simply for bringing up race or racism.

It appears then that the meaning of racism *has* been ‘stretched’ to encompass anti-racist discourse, evident in the increasing ‘expressed hostility towards race consciousness’ (Crenshaw et al., 1995: xxviii). Reflecting this standpoint, the Race Disparities Commission report made clear that the Government considered anti-racist discourse to be a threat to Britishness. They rejected the notion of ‘white privilege’ for alienating the ‘decent centre ground’, criticised ‘decolonising the curriculum’ for

‘rewriting’ British

history, and CRT for teaching white pupils to 'inherit racial guilt' (Trilling, 2020; HM Government, 2021). Discussions about racism were therefore attacked under the common- sense view that they threatened the 'nation' and 'British values', which contradictorily, are concepts infused with notions of belonging, race and ethnicity (Gilroy, 2002). The Government's explicit concern about alienating white people through anti-racist discourse further illustrates a race-conscious standpoint; hostility towards race-consciousness is a 'form of race-consciousness in and of itself' (Crenshaw et al., 1995: xxviii).

The Government report goes on to suggest that 'very few' racial disparities are related to racism, criticising the overuse of 'racism' as a catch-all explanation. Whilst individual circumstances are defined by a complexity of intersectional factors, a fundamental tenet of CRT (Delgado and Stefancic, 2017), this report downplays how race influences lives, whilst accentuating racial tropes through focusing on cultural blame for Black underachievement and crime. Thus, in a society where individualisation is promoted, overt racial language is increasingly 'evaporated' (Goldberg 2009), anti-racist discourse is perceived as racist, and Britain is deemed a 'model for white-majority countries' (HM Government, 2021: 9), the institutionalisation of racial governance becomes particularly difficult to identify and demonstrate (Kapoor, 2013). Thus, we can only theorise the criminalised position of Black people in Britain if we remain conscious of how race has been subtly 'naturalised' (Goldberg, 2009), silenced, and weaponised, operating in the absence of explicit racial language or discrimination, while comprehensively unpacking the seemingly 'race-neutral' laws, policies, and language through which we are governed and state violence legally sanctioned.

Like CRT, the BLM movement, which was the impetus behind the Government's 2020 Race Disparities Commission, has consistently linked contemporary anti-Black state practices to historical structures of oppression, and political and economic relations (Issar,

2020; Loader, 2021), facilitating the exposure of the predicament of Black communities within this ‘colour-blind’, ‘post-racial’ framework (Issar, 2020). CRT encourages a deeper analysis to foreground the discrete residues of racist governance that make racial oppression a persistent structural element of mainstream society. If we demarcate race from its political, economic, and historical roots, we will only address the tip of the iceberg of the oppressive structures at the core of Black people’s experiences, whilst failing to contextualise anti-racist struggles.

The Unique Contours of Blackness in Britain

Despite Britain’s history as the largest colonising power in the world, the Government’s 2021 Commission suggested that Black people should overcome this legacy (HM Government, 2021). This ‘fantasy of closure’, the idea that we must ‘move on’, serves to demarcate modern Black experiences from their roots (Andrews and Palmer, 2016), reducing racial injustices to individualised prejudices associated with a micro lapse in something derelict (Hesse, 2004). Yet, the process of differential racialisation that underpinned English racism and colonial domination in the seventeenth century (Fryer, 2018) was still rife in the twentieth century. Differential racialisation, as described by critical race scholars Delgado and Stefancic (2017), refers to the process by which groups of people are labelled and contextualised along racial lines in differing ways, at different times, based on what best serves the interests of whiteness. As I demonstrate later in the chapter, the construction of negatively racialised people as a ‘problem’ has been a constant theme since the post-World War two period, most pronounced in times of economic uncertainty and geopolitical dislocations (Gilroy 2004). As national crises emerged, ‘the extension of police power and the recruitment of law into political conflicts’ became

‘commonplace’ - accompanied by racist appeals to the British nation, integral to maintaining public support for government (Gilroy, 1982: 47).

Classic cultural studies of the post-war period such as Hall et al.,’s (2013) *Policing the Crisis,* and Gilroy’s (2002) *There Ain’t No Black in the Union Jack*, demonstrate how ‘Blackness’ remained a defensive ideology for the British state, constructed to signify and explain domestic ‘moral decline’ and to manufacture consent for the economic and political project of ‘rolling back the state’. ‘Mugging’ (Hall et al., 2013), and inner-city street crime more generally (Gilroy, 2002), became a particularly poignant construct through which the state communicated the socio-economic insecurity of this period as related to young Black masculinities, perpetuating and legitimising coercive state measures that predominantly targeted young Black men (Hall et al., 2013). This literature, which I explore in more detail later in this chapter, illustrates the continuities between the colonial and post-colonial. It demonstrates how racialised epistemological myths about Blackness, previously mobilised to defend ‘white power’ and colonialism (Fryer, 2018), are still mobilised to ‘manage’ threats to the legitimacy of those in power. Simultaneously, it illustrates how the CLS has become the primary entity through which to regulate populations deemed to be a threat to Western ways of life (Andrews and Palmer, 2016) and responsible for disorder (Williams, 2014: 23).

These negative constructions of Blackness have deep historical roots. The status of Black people, including in Britain, has never been fixed or homogenous (see Fryer, 2018) and it is not only Black people who have been subject to ubiquitous negative racialisation. However, the European colonial mission necessitated the widespread and centuries-long negative racialisation of people of African descent. They are indeed the population that was ‘transformed into… merchandise’ (Mmbembe, 2017: 6) on an unprecedented scale, leaving anti-Blackness underpinning the social, economic, and political arrangements of the

modern world (ibid). It is imperative to remember that various cohorts of people, categorised by race, have experienced varied forms of 'othering'. Colonial expansion, along with the dissolution of empires, engendered hierarchies and divisions among different racialised groups, profoundly shaping different modes of resistance and racialisation in Britain (see Sivanandan, 1981). At the same time, Britain’s interactions with its colonies in the post-war period generated inter-racial solidarity amongst negatively racialised people. The Government’s move to impose ‘coloured’ immigration controls broke down island and ethnic affiliations, as negatively racialised people collectively dealt with the immediate realities of race relations (Sivanandan,1981), forming some of the most radical anti-racist coalitions (Samdani, 2019).

Nonetheless, there were sustained differences and divides between Asians and West Indians, each of whom brought different cultures, experiences and understanding of colonisation to Britain, and who experienced different processes of racialisation. One example particularly relevant to this thesis is the discriminatory barring of West Indians from pubs and clubs, causing them to set up their own clubs; the popularisation of soundsystems flourished in underground circuits and word-of-mouth parties, as Jamaicans began to carve out their own social spaces in England (Outdoor Speakers, 2024). As Sivanandan (1981) noted, many Indians and Pakistanis on the other hand found their social lives more readily in their temples, mosques and cultural associations (page 113). The police clamped down on soundsystems, as they came to be perceived as an ‘audible sign of danger’ and disorder (Fatsis, 2021) and the strong religious and familial ties amongst South Asian communities have also been constructed as signs of danger and ‘community as problem’ (Alexander, 2004: 535; Phillips and Bowling, 2007). Since the post-war period, during distinct epochs of crisis, different groups have been co-opted as scapegoats for societal and economic turmoil, or to legitimise the augmentation of state authority,

violence and intervention, as exemplified through the 'war on terror' (see generally Kapoor, 2013), and the 'war on gangs' (Williams, 2014).

The notion of ‘Black crime’ has dominated political, media, and public discussion for decades (Gilroy, 1982; McMahon and Roberts, 2011; Perera, 2020). Young Black men have consistently been depicted as threats to the safety of the law-abiding majority (Gilroy, 1982; McMahon and Roberts, 2011; Angiolini 2017: 87), often grounded in narratives of ‘urban deprivation’ and the inner-city ‘ghetto’ (Gilroy, 2002; Hall and Jefferson, 1989). In particular, the idea of so-called ‘Black-on-Black violence’ has long existed in the public imaginary, stipulated by a clear tendency for political and media commentators to hone in on young Black men, rap music, gun and knife violence, and drug offences - the common thread being a crisis of criminality within Black communities, caused not by state failure, but by single parent households, school underachievement, ‘gang culture’, and music (McMahon and Roberts, 2011).

To observe its persistency, one only needs to look at the rhetoric used by British leaders over the past two decades, who have latched onto such stereotypes to individualise the causes of contemporary social issues. In 2006, Conservative leader at the time, David Cameron, claimed that BBC Radio 1’s Saturday night hip-hop show encouraged knife and gun crime (Day, 2006), simultaneously calling for a ‘responsibility revolution’ amongst absent Black fathers to change patterns of behaviour. The following year, then Prime Minister Tony Blair described ‘a specific problem, in a specific criminal culture amongst a specific group of young people’, arguing that Black communities need to denounce the ‘gang culture that is killing innocent young Black kids’ (Wintour and Dodd, 2007). In 2009 after a visit to Manchester, then shadow Home Secretary Chris Grayling reported observing ‘urban warfare’, likening ‘the streets of Moss Side to an episode of The Wire’ (Osuh, 2009), reaffirming the association between Black inner-city communities and criminality. In 2023,

then Home Secretary Suella Braverman condoned the ‘ramping up’ of stop and search to tackle ‘knife crime’, specifically singling out young Black men in her justification. In 2020, then Home Secretary, Priti Patel, made clear that she did not support the BLM protests, describing them as ‘thuggery’ during a Conservative Party conference (McIntosh, 2020).

At the time, similar language was adopted by individuals in the media. Controversial English media personality, Katie Hopkins, tweeted a response to ‘taking a knee’ in solidarity with BLM, stating: ‘…get off your knees to the thuggery’, framing the protests not as anti-racist resistance, but as a form of racialised collective criminality. Challenges to BLM’s legitimacy were also attempted through explicit references to so-called ‘Black crime’. Katie Hopkins tweeted: ‘Dear black people. If your lives matter, why do you stab and shoot each other…’. A white man sent me an Instagram video of a US police officer stating that Black men kill more Black people than any other race. His question was to the effect of, ‘why are you only outraged when a white police officer kills a Black man?’ Amongst other points, I responded by stating that there is usually a fundamental difference in outcome between the two scenarios; the perpetrator in the latter situation often goes unaccountable. The man replied, calling *me* racist, as I apparently did not care about ‘Black crime’. I was also sent ‘statistical evidence’ of white men killed by Black men. I was asked, ‘why didn’t people protest when British soldier Lee Rigby was murdered by Black men?’ I responded stating that unlike Lee Rigby, George Floyd was consistently called a criminal, his murderer was yet to be charged, and society was not in solidarity on whether he should be. These answers seemed clear to me; however, these encounters highlighted the fixity of the ideology of ‘Black criminality’ in the public imaginary. In 2021, it was adopted to challenge the victim status of an unarmed Black man, held down by a police officer’s knee for nearly nine minutes. These discourses and my experiences all represented ‘the recurrent

presumption that young Black men are a significant source of harm and risk in society as it relates to violence and criminality (McMahon and Roberts, 2011).

While it is clear there has long been a distinct social category attributed to young Black men, serving to legitimise increasingly punishing penal apparatus (Gutzmore, 1983: 26), negatively racialised groups are frequently considered collectively when analysing racial inequalities in social outcomes, framed under the banner of 'BAME'. Further, although Black people are overwhelmingly overrepresented throughout the English CLS, a fact frequently reiterated by academics and policymakers, researchers do not always contextualise these statistics, failing to consider the social construction of race and the continued relevance of colonial power, thus 'reaffirm[ing] a public consciousness' in which Black people are more 'crime-prone' (Williams and Clarke, 2018b: 2). More generally, it has been argued that 'race' still exists on criminology's periphery (Bosworth et al., 2008; Phillips et al., 2019), as the discipline fails to consistently situate contemporary formations of crime and control, and resistance to them, within historical and contemporary racial configurations.

The recent institutionalisation of the decolonisation paradigm (Cunneen et al., 2023) marks a positive step in addressing these epistemological deficits. While there is growing effort to critically interrogate the impact of colonialism on historical and contemporary criminal legal institutions and methods of crime control (see Aliverti, et al., 2021), the paradigm has primarily emerged from those advocating the 'Southernising' of the discipline. However, it remains imperative that we afford equal importance to the lives of the diaspora in the Global North. While young Black men in Britain are certainly not a monolith, this brief section begins to illustrate that there are specific historical and contemporary contours of British Blackness and representations of race and crime (Phillips, 2023), making the lived experience of Blackness in Britain an important site for knowledge

production (Palmer, 2016). Indeed, the literature concerning the late twentieth century, which I explore further in the latter part of this chapter, illustrates a longstanding and unique relationship between politics, 'crime', and the construction of Black masculinities.

Researching 'Black Criminality'

The discussion above begins to centre how 'Black criminality' has served as a construct used to stifle anti-racist discourse and communicate social disorder as related to the cultural inclinations of Black people, rather than structural inequalities. Nonetheless, if I accept that society is organised by racial thinking, I cannot assume that either the sources of, or responses to, criminalised conduct are race-neutral (Peterson, 2012). At the centre of every case in this study is an act of violence which resulted in the loss of life of a young person. The devastating impact of these deaths cannot be overstated. Should I not then study the relationship between this criminalised conduct and race?

While critical race scholarship has primarily expanded our theoretical understanding of how racial power is exerted and reproduced through law and crime control, the Black Criminology paradigm is designed to expand the theoretical and methodological framework for understanding offending amongst Black people. Like CRT, Black Criminology centres the structural dimensions of racial inequality, and is sensitive to the forms of white state violence that continue to pattern the experiences of negatively racialised groups. The paradigm therefore encourages theoretical developments that do not individualise experiences of offending (Phillips, 2023), but links them to the problems of 'white society' (Glynn, 2016). However, Black Criminology specifically sets out to understand and demonstrate how unique Black experiences, shaped by structural inequalities, cause a minority of Black people to offend (Unnever, Gabbidon and Chouhy, 2019).

General theories of crime assume there are no risk-factors for crime only experienced by Black people – a hypothesis known as 'racial invariance' which also assumes that the effects of crime-causing variables do not vary between ethnic groups (Unnever, Barnes and Cullen, 2015). This does not mean different ethnic groups do not experience risk-factors at different rates. Rather, it suggests that when they are experienced, they have the same impact on everyone. This position only marginally considers race, a pattern also evident in criminology's tendency to privilege social class and economic inequality (Phillips, 2023) in understanding offending, and elide race with class (Phillips et al., 2019) when making sense of racial disparities in social outcomes. By engaging with historical and contemporary racism, Black Criminology challenges this absence of racial nuance in empirical study about race and crime. Empirical research in the US has demonstrated that negatively racialised groups interpret their current experiences through the lens of historical derogatory stereotyping and inhumane treatment, fostering unique emotions and worldviews, leading to weaker bonds with educational and workplace institutions, and increasing offending (Unnever & Gabbidon, 2011). Further, whilst all groups experience crime 'risk-factors' such as poverty, Black Criminology posits that barriers to upward mobility faced by Black people are not reproducible (Unnever and Owusu-Bempah, 2019). It is therefore important to consider how unique racialised encounters influence an individual's interpretation and responses to life circumstances. While not an exploration of race and crime, Lerman and Weaver's (2014) empirical study of the contemporary US carceral state is a quintessential example. Through extensive empirical research, the authors found that incessant harassment from criminal legal agencies stimulates a process of alienation amongst African American citizens, socialising them into 'custodial citizenship', and leading to internalised narratives of low self-worth and political

abstention. Black Criminology suggests that racialised experiences like these translate into challenges to overcome or motivations to offend.

Whilst Black Criminology would demarcate general and specific causes of crime, challenge the 'white essentialism' within criminological theory and diversify curricula, it is not without problems. Although Black Criminology claims most Black people are resilient and law-abiding (Unnever, Gabbidon and Chouhy, 2019), and its theoretical underpinnings consider criminalisation as a broader social practice, focusing on the race-crime relationship and the 'fact' of crime rates inherently risks pathologising and accentuating negative constructions of Blackness. As Phillips (2023) notes, Black Criminology advocates acknowledge these risks, suggesting that to study the race-crime relationship without reinforcing genetics or racial stereotypes, we cannot causally link race to crime in an essentialist way. Black Criminology also emphasises the importance of Black criminologists, arguing that through familiarity, they can prevent explanations of crime founded upon racialised misconceptions (ibid). But, whilst it is no betrayal of Black people's interest to say Black people commit crime (Gilroy, 1982), and it is imperative not to ignore the serious concerns that negatively racialised people express about interpersonal harms taking place within their communities (Phillips and Bowling, 2003), *any* discussion about race and crime demarcates 'Blackness' and 'normativity', inadvertently accentuating Black people's 'outsider status' (Williams, 2014: 20). Black Criminology might somewhat mitigate this risk by exploring the relevance of racism and coloniality in offending. However, as Delgado (1994) highlights, left realists who address the 'root causes' of 'Black crime', and conservatives who address it with harsher punishment, both perpetuate the 'criminological other' (Clarke, Chadwick and Williams, 2017) by foregrounding a 'Black criminality' ontology. This is not to suggest criminologists should never engage with race and crime, but writing about the 'other' immediately raises questions of representation,

specifically the ‘risk of othering’ (Krumer-Nevo and Sidi, 2012: 299), making it imperative to consider how we can mitigate this through theoretical and methodological choices.

Knowing the relation of politics to crime, and the centrality of Blackness in that relationship, should make any of us concerned about the effects of researching race and crime. The imagery of ‘Black criminality’ personified in the 'mugger' (Hall et al., 2013) and now the ‘gang member’ (Williams and Clarke, 2018b) have become important cards in the hands of lawmakers and those who enforce it. When seeking to understand Black people’s criminalised position, it is therefore important to consider theoretical positions that assist in foregrounding how race manifests in law and criminalisation and whether it is necessary for our inquiry to study ‘Black crime’ as an ontological reality. The proximity of young Black men to violent criminalised conduct may partially explain racial disproportionality in joint enterprise, and it may be a legitimate subject of inquiry. However, in the case of secondary liability, the direct harm is not carried out by the criminalised and punished person. As a starting point, I am focused on criminalised conduct for which the harm is not always clearly locatable. Put simply, I am concerned with the mechanisms and ideologies used to define young Black men as killers, despite them not killing anyone. Further, considering the police discretion involved in perusing charges against secondary suspects, the evidence of racial disproportionality in charging decisions (Crown Prosecution Service, 2023a), and ongoing evidence of police institutional racism (MacPherson, 1993; Casey, 2023), including the overwhelmingly disproportionate labelling of young Black men as ‘gang affiliated’, studying ‘Black criminality’ as an ontological reality in this context is both risky and unnecessary.

I am also conscious that being a Black mixed-race researcher, engaging in race-crime research might also validate punitive and harmful state intervention. ‘Black concern’ about ‘Black crime’ can be interpreted as ‘Black support’ for ‘tough

policies’, allowing

politicians to argue that ubiquitous policing in Black communities is not discriminatory; rather, they can argue that neglecting this so-called 'crime problem' would be (Alexander, 2011). This point was precisely why I was labelled ‘racist’ on social media some years ago, as outlined earlier in this chapter. Alexander (2011) argues that Black people experience a ‘dual frustration’, feeling concern about disadvantage that stimulates crime, as well as the threat of law enforcement. Black communities no doubt suffer harm through being victims and perpetrators of criminalised conduct, but the reproduction of their ‘outsider’ status is also a cause of harm and state violence. Whilst the relationship between academic research and political decision-making is not linear, the literature set out in the previous chapter demonstrates that the political focus on ‘Black crime’ generates a CLS that focuses on controlling Black people, not crime (Williams, 2014; Williams and Clarke, 2016), making it imperative to consider our role as researchers in maintaining this race-crime nexus. It is this state violence, sustained by a ready acceptance of a 'Black criminality' ontology, that concerns me most. The perceived risk or threat to social order from young Black men is often given more significance than the serious harms and violence they experience (McMahon and Roberts, 2011), including at the hands of the state. For example, the Met’s Gangs Matrix, which operated based on the perceived risk of individuals (StopWatch, 2024), was only recognised as operating unlawfully following a legal challenge initiated by community-oriented charity, UNJUST (Liberty, 2022b).

Serious violence involving young people has been depicted as an almost explicitly ‘Black issue’, with tabloids presenting images of ‘menacing’ Black youths, and politicians linking ‘knife crime’ to so-called Black ‘gang culture’ (Perera, 2020: 11). In London in 2020, those most likely to carry out ‘serious youth violence’ were male (77%), aged 13-28 (60%) and from a white (41%) or Black background (35%) (Perera, 2020: 10), illustrating an overrepresentation of Black teenagers and young men as

perpetrators and victims.

However, this cohort represents less than 1% of the total young Black London population (ibid), meaning the popular image of nihilist, armed Black teens is only ‘a snapshot of the grim reality for a small minority’ (Wood, 2010: 97).

Analysing teenage homicides a decade earlier, Wood (2010) found that most London cases involved Black or Asian teenage victims and perpetrators with weapons. However, outside of greater London, most teenagers were killed by adults – many in domestic violence incidents. Only seven out of forty-three cases involved non-white teenagers as perpetrators or victims, and of the cases successfully prosecuted, only seven teenagers were killed by other teenagers carrying knives, all of whom were white (Wood, 2010: 99). Further, Glasgow, a predominantly white city, was once dubbed Europe’s ‘murder capital’ (McKay, 2006). Thus, whilst different geographic regions and racial groups might encounter different experiences of violence, violence is a society-wide problem (Delgado, 1994), and popular portrayals of teenage murders has generated a racialised, distorted image of serious violence amongst young people (Wood, 2010; I return to this point in Chapter Four). As noted by Bridges (2015), when considering different geographic regions and a broader range of offences, the race-crime nexus lacks credibility.

Definitions of crime and the responses of state institutions disguise the true range of harms inflicted (Hall et al., 2013; McMahon and Roberts, 2011), meaning state violence is generally absent from discussions about crime. I am interested in how and why some racial knowledge is given greater importance (McMahon and Roberts, 2011), why the ‘threat’ posed by young Black men is given more weight than the state violence inflicted upon them, and how the durability of the race-crime nexus serves to rationalise and legitimise the evocation of an array of powerful penal tools like joint enterprise. Whilst racial disproportionality in crime statistics could be explained in some part by a race-crime relationship, differential treatment cannot. In 2023, research commissioned by

the CPS

found significant statistical differences in the outcomes of charging decisions when ethnicity was isolated as a variable, with Black mixed-race suspects presenting the highest charge rates (Crown Prosecution Service, 2023a). In 2020, the Alliance for Youth Justice reported that use of force within youth custody was mostly deployed on Black children (the group most likely to be stereotyped as gang-affiliated), at a rate of 61.1 incidents per 100 children. In the 21 months leading up to 2013 (when white children still outnumbered negatively racialised children in custody), 44,000 strip searches took place in young offenders' institutions. Almost half of these were negatively racialised children; no weapons were found, and drugs were uncovered on only 15 occasions (Elliott-Cooper, 2016). More recently, the Casey Review (2023) and the Children's Commissioner (2023) reported widespread non-compliance with the statutory safeguards in place to protect children in the case of police strip searches, simultaneously finding that Black children were up to six times more likely to be strip searched when compared to national population statistics.

The institutional violence described above, which is subtle, embedded and normalised in state culture, is not so visible in mainstream discussions about violence (Elliot-Cooper, 2016), illustrating a need to reframe current, popular, conceptions and to challenge existing racial knowledge about crime and violence to understand racial disproportionality. By constructing racialised threats and using ambiguous terms such as 'reasonable force' 'suspicion' or 'intelligence', state violence is too often presented as rational decision-making (ibid) and people as more readily accepting of it (Delgado and Stefancic, 2017); few ask what purposes it serves beyond traditions such as 'public protection'. Might society's conception of 'Black criminality' therefore be more damaging to Black communities than the criminalised conduct experienced and carried out by Black people? Black Criminology accepts that 'Black crime' is rooted in systemic racism. For

example, Black Criminology advocates suggest that racialised patterns of mass incarceration in the US reify racialised offending patterns (Unnever and Owusu-Bempah, 2019), and that racism itself is an antecedent cause of 'Black crime' (Penn, 2003; Unnever, Gabbidon and Chouhy, 2019). Russell (1992) suggests that 'Black crime' is inextricable to colonial structures and racial inequality and is perpetuated by the political state. Thus, if Black Criminology accepts that such crime is rooted in systemic racism, and we accept that racism is reproduced and sustained by constructions of race and racialisation, one can only conclude that negative constructions of Blackness are more damaging than 'Black crime' alone. If we adopt Black Criminology's perspective then, Blackness as an ideology exists as both a cause of crime perpetrated or experienced by Black people *and* as a cause of state violence encountered by Black people, elucidating a dialectical relationship between race, crime, and punishment.

Whilst Russell (1992) suggests that the consequences of ignoring racial differences in offending are more damaging than the stigmatisation that might result from exploring them, for the reasons set out above, some of which are unique to the topic of this thesis, I will continue the work of Critical Race scholars to redress and make sense of how racialised epistemological myths underpin Black experiences of state violence. This will allow me to further explore how and why secondary liability disproportionately reproduces the guilt of young Black men, despite many of them not having carried out any violence. Whilst 'Black criminality' is central to how I make sense of the operation of joint enterprise, I do not study it as an ontological reality.

Adopting this theoretical position, I now explore 'Black criminality' in post-war Britain. I highlight how it has served to detach crime from its social roots (Hall et al., 2013), present cultural explanations for disorder, and absolve state responsibility while legitimising 'law-and-order' responses to criminalised conduct. I will show how such

political imperatives have led to the erroneous and institutionalised use of the concept of 'gangs' - an ideological weapon that represents part of an ongoing cycle of racialised criminalisation (Clarke and Williams, 2020) and is pivotal to joint enterprise prosecutions.

Historicising 'Gangs' and Joint Enterprise

Post-war immigration and a 'new racism'

Although Britain has a centuries-long trajectory of Black presence (see Fryer, 2018), the post-World War Two period saw Britain recruit thousands of 'willing hands' from its South Asian and West Indian Colonies to fill Labour shortages in this reconstruction period. These major demographic changes led to the reshaping of British society and identity, and a shift from a politics of race concerned with 'empire', towards a politics of race concerned with 'nation' (Hesse, 1997). Building upon pre-existing ideas about 'Blackness', this 'new racism' represented the importation of racial populism into political discourse, as colonial logics of Blackness were repurposed to address new challenges posed by a multicultural society (Gilroy, 2002). British racism assumed a new shape, reliant on the evocation of cultural incompatibility, identity, nation and belonging rather than biological determinism, allowing racism to persist in more subtle and seemingly "common-sense" ways (ibid). Historicising 'gangs' and the current state of joint enterprise requires an understanding of the reconceptualisation of the Black immigrant with 'willing hands', towards a construction of Black people as the cause of Britain's socio-economic problems, necessitating their social regulation.

In Britain, the genealogies of racial 'subjects' from the British colonies and their descendants are far more complex and nuanced than can be captured here. Migration more generally is not linear (Chamberlain, 1998); Caribbean migration did not begin after

World War Two, and the idea that it was driven solely by economic imperatives, rationally

experienced by migrants leaving countries riddled with poverty for the prosperity of Britain, presents migration through the lens of the colonial metropole (Olwig, 1998; Sivanandan, 2008). Similarly, the significant events and political responses discussed in this section are more nuanced than this summary allows. Racialisation is primarily theorised in this section as a top-down process, with those in positions of power seen as responsible for constructing race. This brief analysis does not capture the nuances of racialisation as also being the outcome of struggle and resistance (see for example Elliot-Cooper, 2017). Nonetheless, the purpose of this section is to illustrate how race, and specifically Blackness (i.e., 'Black criminality'), has consistently been used as a defensive resource by the state since the post-war period, while the CLS has constituted the principal institutional sites (Gilroy, 2002) where the racialised 'other' is managed and reproduced. In linking the contemporary ‘war on gangs’ to this historical trajectory, this section examines the racialised ‘gang’ at the macro-level, situating it as a lens through which to understand racial inequality in criminal legal outcomes.

In his extensive study, "*The History of Black People in Britain*," Peter Fryer (2018) notes that when Empire Windrush brought one of the first large groups of West Indian immigrants to Britain in 1948, over two-thirds of white Britons perceived Black people as less civilised and inferior. The ‘Welcome Home’ newspaper headlines soon turned to hostility, and although these new immigrants were educated under the assumption that they were considered ‘Englishmen,’ they soon realised that they would not be treated as such (ibid). Job and housing discrimination were rampant (Sivanandan, 1981); many white residents resented newcomers, and they faced frequent harassment and violence from factions of the white population, including the police. The 1958 so-called ‘race riots’ took place against this backdrop of ubiquitous racial attacks, increasing migration and economic difficulty (Rowe, 1994). Faced with contradictions in Britain’s self-image as a tolerant and

inclusive nation, British MPs concluded that the disorder was not a problem of white racism, but of Black presence in Britain - the ‘immigrant problem’. This idea became embedded into the law as the Government responded with successive legislation, specifically limiting non-white immigration (Fryer, 2018; Waller and Sakande, 2024). Adopting the view that Black culture constituted an alternative national identity (Gilroy, 2002), ‘Blackness’ was deemed responsible for moral decline. Almost from the outset, Black men were associated with deviance, depicted as ‘hypersexualised’ beings (Gray, 1995), and ‘pimps’ associated with the dislocation of white womanhood, family and the British ‘way of life’ (ibid).

The ‘pimp’ is said to be the first image of the Black male ‘folk devil’ in the popular politics of immigration control, later shifting towards images of violent disorder (Gilroy, 2002; Williams, 2014). Thus, during Britain’s decline as a great colonial power (Waters, 2015), and the amidst economic and socio-political instability of this period, the ideology of racial superiority, as constructed through the colonial enterprise, was something for the state to fall back on. ‘Race’ and ‘nation’ became the framework through which to articulate ‘order’ (Gilroy, 2002), evidenced by Conservative MP Enoch Powel’s *Rivers of Blood* speech, which linked ‘Blackness’, criminality and belonging inextricably, instilling public fear that Black men would soon ‘have the whip hand over the white man’ if immigration continued. This statement ‘reverberated through post-war Britain, a comfortable assertion that the position of blacks should be one of subjugation and enslavement’ (Yates, 2019). During this period, Black people defending themselves against white attacks was framed as ‘unforgivable’ (Fryer, 2018); Black power and anti-racist movements were considered ‘national threats’ and the 1960’s Black anti-racist activist succeeded the ‘pimp’ as ‘folk- devil’ (Keith 1993). Made evident by the Mangrove Nine case, a group of Black British activists charged and acquitted for ‘inciting a riot’, Black resistance to oppression was

constructed and understood as ‘lawlessness’, just as it was portrayed by Priti Patel in 2020 following George Floyd’s murder. News coverage of Black resistance from the US were used to generate fear that this could be Britain’s future if immigration was not limited (Waters, 2015). Having lost some of their colonial ‘enterprises’, the British state took Black Power seriously (Blankson, 2021). Committed to ‘break[ing] radical black self- organisation in its entirety’ (Woodman, 2018: 18), the state dedicated significant resources to surveilling and infiltrating Black populations (Blankson, 2021). As Britain moved towards ‘law-and-order’ popular politics, ‘legality’ and ‘criminality’ continued to articulate national identity and belonging (Gilroy, 2002).

The 1970s ‘mugging crisis’ is said to have firmly supplanted this race-violence nexus. As Hall et al., (2013) uncovered, ‘mugging’ became more than an illegal act. The way it was perceived, classified, and explained gave ‘mugging’ a greater social meaning. An old offence, given a racialised meaning imported from the US, was adopted by British media and government to orchestrate public opinion and allocate blame for the calamities of economic difficulty (ibid). Anti-mugging squads constructed Black guilt, framing Black men for falsified incidents (see for example ‘the Oval Four’ case in Robins, 2019). Existing ‘moral panics’ surrounding white youth subcultures were merged with fears of ‘coloured migration’ (Gunter, 2017) and once again, Black men were implicated as ‘folk devils’, while a unified national culture was articulated through ‘legality’, thrusted into the nation’s consciousness through media coverage (Gilroy, 2002; Hall et al., 2013). ‘Mugging’ and ‘Blackness’ became synonymous; young Black men became the ‘signifier of crisis’ and the ‘enemy of the state’, absolving state responsibility and generating a ‘common sense’ consensus surrounding the punitive policing of Black men (Rowe, 1994). Young Black men became the continual objects of this new-right strategy (Rowe, 2017), as the ideological construction of the lawless ‘enemy within’ became necessary to engineer public

consent for the market-driven neoliberal responses to economic crises of the time (ibid). Social discontent was therefore managed ideologically; national unity was manufactured by ‘staging a threat (Black criminality) and policing against it to restore control during [a time] when [state] authority [was] on the wane and in financial turmoil…’ (Fatsis, 2021: 139). Like Carvahlo’s (2022) analysis of joint enterprise, as discussed in the previous chapter, cultural studies of the post-war period illustrate the important socio-cultural function of ‘Black criminality’ in assuaging public anxieties in a way that does not challenge existing structural conditions.

Similar discourse emerged following the 1980’s uprisings, often referred to as the ‘inner-city riots’. By this point, many Black migrants and their children had experienced unfounded police brutality and racial attacks from members of the public without police protection (Fryer, 2018). The murder of David Oluwale in 1969 highlights how unimpeded police brutality was, as well as the CLS’s unequivocal contempt towards Black people. At the judge’s direction, a police sergeant and former inspector were acquitted of manslaughter for Oluwale’s death, despite witnesses stating that they battered, urinated on, and dumped his body (ibid). Black men in particular were permanently marked by a layer of suspicion and subject to frequent police harassment under the stop and search ‘sus laws’, which provided the contextual backdrop to the 1981 Brixton uprisings (Maggs, 2019).

Whilst these multiple inner-city events are categorised as ‘symbols of resistance’ (Fryer, 2018), each triggered by the death or mistreatment of Black people by the police, they also represent the early racialisation of public disorder (Rowe, 2017). Press coverage focused on the ‘rioters’ perceived ethnicity, using headlines such as ‘*Police Hurt in Black Riot*’ (Rowe, 2017: 7). Politicians and media located responsibility in an absence of parental care and work ethic (ibid), ignorant to issues of racism, economic deprivation and police brutality. Thus, it was not the state’s responsibility, but the cultural

predilections of

young Black men. This was ‘new racism’ in action once again as ‘Black culture’ was juxtaposed against national institutions of the family, work, education and law – reflecting the language adopted by the Government in the 2021 Race Disparities report. Drawing on such ‘common sense’ frameworks confirmed the public view that the disorder was indeed an expression of Black culture, meaning the young Black ‘rioter’ as ‘folk-devil’ was firmly supplanted. The Prime Minister at the time of the 1980s uprisings, Margaret Thatcher, contended that ‘all the resources and dedication’ of the police were needed to put the damage right (Castro, 2017), ‘fiercely rejecting’ claims that poverty and unemployment were contributing factors to the unrest, drawing instead on an absence of ‘authority in the home’ and the demise of family values (Castro, 2017), while west Indian British-born youth became continued police targets (Gunter, 2017).

Although contemporary racism can be traced to Britain’s imperial past, this discussion illustrates that contemporary racist ideas are not merely ‘outdated’ relics. Rather, as identified over 30 years ago by Lawrence (1992), they are ‘components of attempts to make sense of present crisis’ (page 47). Black ‘alien culture’ has continuously been depicted as the cause of national crisis, the ‘visible symptom of the destruction of the “British way of life”’ (ibid: 47), generating a succession of Black, male ‘folk devils’, constructed to provide justifications for punitive, discriminatory criminal legal practices (Gilroy, 1982), and an explanation for insecurity. So, how might conceptions of ‘lawlessness’ and ‘criminality’ set the epistemological conditions of the young Black inner- city man today? Who is the Black ‘folk devil’ now, and where does joint enterprise fit within this trajectory?

The twenty-first century ‘war on gangs’

For the last two decades, violence amongst young people has largely been depicted as the product of ‘gang culture’ (Hallsworth and Young, 2008; Perera, 2020). Public and political concern about ‘gangs’ has expanded beyond inner-city ‘inter-gang rivalries’ (Pitts, 2008), now inclusive of so-called ‘county lines’ suburban drug ‘gangs’ (Whittaker et al., 2020; I return to this in Chapter Four). Whilst many criminologists contend that ‘gangs’ pose a threat to young people (see for example, Densley, 2013; Pinkney and Robinson-Edwards, 2018; Whittaker, Densley and Moser, 2020), the relationship between ‘gangs’ and violence has been consistently challenged. Since most ‘youth violence’ in England and Wales is not categorised as being linked to ‘gangs’, even according to police data in London (Mayor of London Office for Policing and Crime, 2022), scholars have argued that presenting ‘gangs’ as the *leading* cause of violence amongst young people is epistemologically incorrect, indicative of ‘gang-talk’ (Hallsworth, 2014) founded upon sensationalist claims (Wood, 2010; Williams, 2014).

The relationship between 'gangs' and crime is not clear or easy to demonstrate, hindered by ontological and epistemological difficulties associated with the concept. To measure the prominence of any phenomena and its relationship to another, clear conceptualisation is important. However, the elusive and nebulous nature of 'gangs' means ‘the attribution of gang membership is a highly fraught and contingent process’ (Fraser and Atkinson, 2014: 155), leading Katz and Jackson-Jacobs (2004) to describe the debate over defining ‘gangs’ as ‘an argument over the correct descriptor of a ghost’ (page 106). The absence of any formal admission processes means that terms like ‘join’ or 'membership’, as used by some researchers, are incongruous with the lived realities of those on the ‘inside’ (Fleisher, 2000). Even gang researchers recognise the variability of the social reality of ‘gangs’ across different contexts (Pitts, 2008) which impedes the establishment of a reliable

foundation for exploring their correlation with criminalised conduct (Katz and Jackson-Jacobs, 2004). Despite researchers and criminal legal institutions commonly using violence as a defining characteristic of 'gangs', the two phenomena are not inextricably linked (Sharp, Aldridge and Medina, 2006), meaning research findings can automatically overstate this relationship (Katz and Jackson-Jacobs, 2004) and the labelling process can groundlessly reify the 'gang threat'.

'Gangs' in the ontological sense are therefore risky research territory, as research becomes susceptible to producing knowledge centred around a 'myth of gangs as a transcendent evil' (Katz and Jackson-Jacobs, 2004: 94), undermining the convolutions of violence beyond such reductive reasoning (Hallsworth, 2013). Violence, including amongst young people, persists without 'gangs' (Katz and Jackson-Jacobs, 2004, Hallsworth and Silverstone, 2009; Gunter, 2017); it has been situated within broader macro-structural harms such as poverty and declining welfare support (Gunter, 2017; Billingham and Irwin-Rogers, 2022), which produce a 'downward pressure on the lives of young people' (Billingham and Irwin-Rogers, 2022: 115) reinforced by institutional practices which demonise them, neglect discussions about structural harms, whilst encouraging punitive and surveillance-oriented responses (ibid).

As Billingham and Irwin-Rogers (2022) put it, violence amongst young people needs to be placed within 'the context of the many other harms which damage, diminish, degrade and demoralise too many young lives' (page 1), much of which is facilitated by the state. Put succinctly, any endeavour to understand and curtail interpersonal violence should capture the complexities of its causes, and the entire ecology of young people's environments (Hallsworth and Young, 2004; Joe-Laidler and Hunt, 2012; Liberty 2023a). Evoking the 'gang' presents a barrier to this approach, while producing the empirical evidence that reifies a racialised 'gang' threat (Sullivan, 2006; Williams, 2014) and thus,

harmful responses to violence amongst young people. Indeed, the detailed narrative of one young man in this study, Marcus, illustrates the complex interplay between external labelling and self-attributed gang labels, while urging a more nuanced understanding of violence amongst young people (see Chapter Five).

As outlined in the previous chapter, criminologists have connected ‘gangs’ to the transmogrifying Black ‘folk-devil’ of the post-war period. Reporting of the 1980’s ‘race-riots’ linked ‘urban youth violence’ to the ‘Black gangster culture’ associated with American ‘gangs’ (Cottrel-Boyce, 2013; Gunter, 2017). Like ‘mugging’, media, politicians, and ‘experts’ imported an already racialised term associated with moral decline and the term quickly became associated with British communities of African descent. In the wake of the social unrest of the 1980’s, during the 1990’s and early 2000’s, following a series of killings within London’s Black community, fears were raised that London was being plagued by ‘gang warfare’ underpinned by another racialised threat - the ‘Yardie’. Like ‘mugging’, the ‘yardie phenomenon’, initially sparked by real incidents of violence, has since been located as more myth than reality (Keith, 1993; Waranycia, 2015).

The Jamaican ‘Yardie’ as ‘folk-devil’ emerged contemporaneously to a wave of moral panics over drugs, guns and youth ‘gangs’ across the Atlantic, with the yardie phenomenon framed as the British version of the same crime problem (Waranycia, 2015). The Yardie was explicitly depicted as a foreign threat – a problem native to people from Jamaica, said to be of a specific violent nature, hypermasculine and sexually promiscuous (Murji, 2002). The yardie phenomenon manifested in the institutionalisation of the notion of ‘Black-on-Black violence’, which has mobilised law enforcement ever since, including the establishment of the Met’s Operation Trident (ibid), initially set up to tackle so-called ‘Black-on-Black’ gun crime. The idea that ‘gangs’ and Blackness were inextricably linked became imbued into police practice, made clear by the decision to put Operation

Trident at

the forefront of anti-gang initiatives (Laville, 2012). Thus, policing 'Blackness' continued to manifest within the 'institutional fabric' of police work (Keith, 1993).

Today's 'gang'-centred policy initiatives therefore pose a significant threat to Black youth in Britain today (Joseph and Gunter, 2011; Cottrel-Boyce, 2013; Williams, 2014; Gunter, 2017; Erase the Database, 2024). Definitional ambiguity surrounding 'gangs' has generated 'ostensive categorisation' in which police officers believe to 'know something when they see it' (Ball and Curry, 1995). Combined with media-driven, 'common-sense' racialised constructs of 'gangs' (Williams, 2014) and the Governments intentionally broad (HM Government, 2016) 'gang' definitions, such ambiguity increases police discretion and thus, the likelihood that conceptualisation and 'gang'-prevention tactics are applied discriminatorily. The 'gang' therefore has a certain 'punitive vagueness' (Dyson, 2022: 390) about it and 'gang intelligence' has been developed around 'Black collectives' rather than other groups just as capable of violence (Gunter, 2017). 'When police report gangs are out there, one should not [therefore] be sure they are' (Katz and Jackson-Jacobs, 2004: 93). Researchers who are concerned about the harm caused by 'gangs' ought to be just as concerned with understanding the processes that facilitate the labelling of 'gangs', and the harm caused by the uncritical acceptance of police 'gang' data. As the literature in the previous chapter illustrated, there is a fundamental disconnect between the racial background of those responsible for serious violence and those who the authorities consider to be 'gang affiliated'. Considering more recent statistics concerning London, Amnesty International (2020) noted that Black youth were responsible for 27% of London's 'serious youth violence' between 2019-2020. Yet, in July 2019, 80% of people on the Met police's 'gangs' intelligence Matrix were Black (2278 of 2831), 99% were male, and the majority were under 25 (Metropolitan Police, 2019). The 2020 figures presented an almost identical pattern (see Metropolitan Police, 2020a; Metropolitan Police, 2020b). The Matrix, now

disbanded, required just two pieces of ‘verifiable intelligence’ with unclear criteria to add individuals to the Matrix (Amnesty, 2020), highlighting a lack of procedural rigour, allowing for documentation highly stratified by race.

The English uprisings of 2011, catalysed by the fatal police shooting of Mark Duggan, have been located as the clear waging of the governments ‘war on gangs’ and a quintessential example of how the ‘gang’ has served to construct moral decline as related to ‘urban youth’ and Black masculinities. To begin with, the ‘gang’ was utilised to legitimise the most extreme form of state violence - the killing of Mark Duggan. Barkas (2014) illustrates the concerted strategy of ‘gang-making’, from anonymous police sources to media outlets which claimed Mark Duggan was ‘part of a gang linked to Jamaica’s Yardies’, thus creating a motive through police ‘intelligence’ that Mark Duggan intended to kill with a gun. Despite having just two minor convictions, his face became indicative of a ‘violent gangster’, with his funeral reported by the Daily Mail as ‘Gangsta salute for fallen soldier’ (ibid). The uprisings which followed were similarly reported as ‘gang’ facilitated (Williams, 2014; Scott, 2018). Yet, the ‘Riots, Communities and Victims’ panel, which set out to explore their causes, found no evidence of ‘gang’ orchestration; the panel found varying, complex causes, including social deprivation and unemployment (Scott, 2018). Many people who participated in the uprisings had experienced incessant police harassment and the demise of life opportunities (Lewis et al., 2011). Whilst rioters were far from a racial monolith, reflecting on the state of the economy during the uprisings, Scott (2018) noted that Black male unemployment was at 50 per cent in parts of the country. The Scarman enquiry into the 1981 Brixton ‘riots’ similarly concluded the disorder was attributable to anger associated with structural conditions like unemployment and racism (Gunter, 2017). Yet at the time, the Conservative government blamed the ‘Black rioter’, whose culture apparently lacked work-ethic and parental care. Fast-forward to 2011 and

Conservative Prime Minister David Cameron, blamed ‘gangs’, shifting public attention away from similar socio-economic explanations (Wood, 2010; Scott, 2018), simultaneously drawing upon ‘troubled families’ and a lack of ‘self-sufficiency’ (Crossley, 2016).

Many commentators saw ‘gangs’ as a euphemism for Black youth (Scott, 2018). *The Daily Mail* suggested ‘rioters’ were ungrateful youths who resorted to ‘street patois’ (Johns, 2011), while historian and radio and television presenter David Starkey suggested that white ‘rioters’ had ‘become Black’, absorbing a ‘nihilistic gangster culture’ (Cottrel-Boyce, 2013) as Jamaican patois ‘intrud[ed] England’. Enoch Powel’s 1968 narrative of a dangerous ‘alien culture’ was therefore harnessed in 2011, legitimising the introducing of successive policies designed to tackle the so-called ‘gang threat’, including the Ending Gangs and Youth Violence (EGYV) scheme, the MPS Gangs Matrix, and the *Troubled* Families Programme, which sought to suppress and monitor ‘gangs’, and regulate families receiving state welfare (Crossley, 2016). Little funds were given to austerity-stricken communities impacted by the uprisings (Scott, 2018) and once again, Britain ‘policed the crisis’. As with ‘mugging’, MPs sought political mileage, feeding public concerns, allocating blame, and actuating a reactive criminal legal response (Williams, 2014), including unprecedented prison sentences for minor offences.

In exploring the ‘gang’ threat, it is therefore imperative that criminologists consider the harm generated and sustained by the gang *narrative* and how their research might reinforce an epistemologically flawed and racialised threat. Like the ‘mugging crisis’, the ‘war on gangs’ served a particular political function for the governing party, emerging to justify the existing structural conditions underpinning the uprisings and racialised police violence. While racial ideologies no doubt (re)generate racism, as Bonilla-Silva (2017)

argues, racial ideologies, such as the ‘gang’, emerge to explain, justify and sustain the existing status quo.

Whilst ‘left-wing’ politics has also (re)produced racialised notions of threat, particularly through the ‘war-on-terror’ (Kapoor, 2013), the traditional conservative desire to avoid welfare responses to disorder, combined with the tendency to bring crime and deviance into discourse about ‘nation’ and normality (Hall et al., 2013), makes negatively racialised groups instinctive criminal scapegoats for insecurity (ibid). This racialised shift of responsibility was clear following the 2011 uprisings, as the Government presented the issue as one of ‘moral poverty’ associated with culture rather than austerity. The state once again adopted racialised rhetoric which tapped into ‘lay entities’ related to belonging and security. For conservatives in particular, insecurity generates language of ‘who ‘we’ are... and who threatens ‘us’ (Loader, 2020: 9), creating space for racial disdain, meaning the centrality of conservatism to the political usage of ‘Black criminality’ is something worth acknowledging.

Despite traditionally being sceptical about free-market capacity to destroy valuable institutions, Conservatives have long embraced neoliberal economics, particularly evident in the well-documented policy revolution of the Thatcher era (Davies, Freeman and Pemberton, 2022). The neoliberal demise of welfare, expansion of economic liberalisation and individualisation is accompanied by an imperative to remove crime from structural inequalities (Wacquant, 2009) - well suited to conservative concerns about welfare dependency, and the ideology that some individuals are simply ‘evil within’ (Hall et al., 2013). After the 2011 ‘riots’, the Conservative-led government attached the so-called ‘gang-centred’ disturbances to ‘the family’, simultaneously detaching them from structural inequalities. Conservative-oriented media claimed that structural explanations were immoral, and ‘rioters’ were simply ‘oblivious to traditional ideas of hard work and social

obligation' (Johns, 2011: 2). Cameron suggested that rioting represented a lack of self-restraint - not racism or welfare cuts (Crossley, 2016: 268) - protecting free-market principles, whilst endorsing the English 'natural way of life'. By presenting the uprisings as the outcome of a 'moral collapse' associated with parenting (ibid), the neoliberal imperative of locating responsibility outside of welfare demise was actuated. Conservative notions of morality were therefore mobilised as frames through which neoliberal economic principles were embodied (Wacquant, 2010). Focusing on 'gangs' and familial responsibility steered attention away from austerity, towards a pathologically violent Black culture which was seemingly 'capturing' white working-class youth (Hallsworth and Brotherton, 2011).

Indeed, in conditions whereby security must be maintained without mentioning the need for welfare, the CLS becomes reactive and exclusionary (Lacey, 2008) while popular politics becomes necessary to maintain state hegemony. The Government's request to disregard due process following the 2011 uprisings is an example of this reactive response in action, whereby average custodial sentence lengths of 17.1 months were given for offences usually averaging 3.7 months (Gunter, 2017: 55). While the EGYV scheme depicted 'gangs' as the driver of social breakdown (Cottrel-Boyce, 2013), the Troubled Families Programme aimed to establish familial responsibility for these 'gang members' and reduce their reliance on state-welfare (Crossley, 2016). Thus, it is argued that the Conservative-Liberal Democrat coalition utilised the 'gang' to 'craft a neoliberal state' (ibid), underpinned by the conservative ideologies that welfare expenditure generates disorder, and that the family are the responsible place whereby morality is instilled (Hall et al., 2013; Loader, 2020). Whilst the Troubles Families Programme aimed to reduce welfare through 'ethics of care' (Bond-Taylor, 2016), it 'punished the poor' (Crossley, 2016), inflicting sanctions upon those deemed not to be self-sufficient (Bond-Taylor,

2016). Governing through crime has therefore long reigned supreme (Simon, 2007), as British society has become imbued in a 'culture of control' (Garland, 2001), whereby managerialist and 'law-and-order' tendencies are imperative for governments to present electability (Lacey, 2008; Garland, 2022). Under conditions of insecurity or in need of quick, state absolving explanations for harm and disorder, governments become particularly susceptible to a penal populism reliant on reproducing the racialised 'other', who, as Koch, Williams and Wroe (2023) put it, are 'symbolically framed and communicated as essential for protecting an imagined (read white) public, giving way to public demands for order', 'not infrequently motivated by parochial desires for injustice, xenophobic antipathy toward others, or unattainable fantasies of absolute security' (Loader, 2006: 206). 'Gang-talk' therefore has obvious political appeal.

The discussion in this chapter foregrounds how the state has, for decades, been stuck in a 'prisoners' dilemma', to use Lacey's (2008) metaphorical conceptualisation – the result being a succession of racialised moral panics which have produced 'a common stigmatisation against a very specific section of the community' (Castro, 2017). Although Cohen's 'moral panic' theory has been met with criticism (see for example McRobbie and Thornton, 1995; Cohen, 2011; Garland, 2008), this discussion highlights the continued relevance of some of its key tenets. In response to several social phenomena, a group of people have become defined as the cause of disorder, threats to 'British' values. The 'Black criminal' has been presented in a 'stereotypical fashion' by media, whilst politicians and 'experts' have presented their 'diagnosis and solutions', contemporaneously reifying the threat. It is clear that 'distorted and exaggerated' Black 'folk-devils' have been responded to with 'crack-downs', whilst leaders have sought political mileage from the panics, offering legal responses to reassure the public (Williams, 2014: 23). However, while the intensity of moral panics may fluctuate, Cohen's (2011) observation of 'episodic' panic is

not so clear. This discussion foregrounds a more continuous panic surrounding ‘Black criminality’, albeit one that alters and adjusts. Cohen has acknowledged this critique of his term and has since drawn upon the idea of a more permanent moral panic, one that rests on a ‘seamless web of social anxieties’, as political state crises have manifested in a more persistent climate of hostility towards marginalised groups (2011: xxxvi).

Broadening the scope of the ‘war on gangs’

The moral panic surrounding the ‘urban Black gang’ is certainly not the end of this trajectory. The criminalisation of drill rap has more recently become politically expedient and cannot be demarcated from the ‘war on gangs’. As already mentioned earlier in this chapter, the criminalisation of Black musical subcultures in Britain is not new. Like the late twentieth century soundsystem culture, grime music was met with similar responses in the early 2000’s. Following media reports that tied a few factual violent incidents to ‘grime’ events, the Met introduced the ‘Risk Assessment’ 696 form (Barron, 2013; Ilan, 2012) which caused event cancellations, suppressing the growth of ‘grime’ and the earning of capital amongst predominantly Black artists (Fatsis, 2018). The form asked venues for their ‘target audience’, singling out Black genres by presenting questions that referenced R‘n’B, bashment, and grime (ibid). Again, Black entertainment was considered an affront to ‘traditional’ values - an audible sign of disorder (Fatsis, 2021b).

As further expounded in Chapter Four, the UK Government has sought to focus on the relationship between violence amongst young people, ‘gangs’ and drill music, a rap sub-genre which has been met with an unprecedented criminal legal response. Like grime (Fatsis, 2018), and characteristic of ‘moral panics’ more generally, suspicion of drill draws upon rare fatalities linked to musical performance (Fatsis, 2018). While the seriousness of these harms should not be ignored or downplayed, no causal link between drill and violence

has been established empirically (Fatsis, 2021b), highlighting the importance of refraining from making such associations about an entire genre, its performers and followers based on 'atypical events' (Fatsis, 2018). Yet, the media have not held back in framing drill as 'the knife crime rap' (Schwarze and Fatsis, 2022) and a 'demonic [type of] music linked to

[a] rise in youth murders' (Mararike and Harper, 2018). Policymakers and institutions within the CLS also embrace the idea that drill perpetuates serious violence and 'gang-related' behaviour amongst predominantly young Black men, as drill rappers have been banned from postcodes, using social media and unregistered phones, and attributed Criminal Behaviour Orders restricting lyrical expression of life experiences (BBC, 2020a). As will be illustrated in Chapter Four, current policies and practices are based on assumptions that drill is an audible representation of 'gangs' as police units scour social media, with drill videos used as signifiers of 'gang affiliation' and a key feature of prosecution evidence in joint enterprise cases (Quinn, Kane and Pritchard, 2024). Another racialised 'moral panic' has therefore been concocted over young Black men's perceived susceptibility to criminality, whilst the 'gang' as an instrument for state surveillance and intervention has further manifested in police work. If the government believes that drill is influencing serious violence and care about preventing it, why are the expressions of Black youth criminalised when lyrics are also 'glorified' by white audiences and producers (Ilan, 2020)? This question needs to be asked in any analysis of the political response to drill music. Seldom do media and politicians adopt such an inquisitive view (ibid). As the young men in my study iterate in Chapter Five, rap is a legitimate career, a multi-billion-dollar market, providing opportunity for upward mobility where opportunities are rare (Nielson and Dennis, 2019; Quinn, 2024). As art, it provides space to celebrate 'Blackness', offering a therapeutic place to express raw feelings (Neilson and Dennis, 2019; Oliver, 2023), and creatively negotiate trauma and blocked opportunity

(Ilan, 2020).

Rap lyrics are imbued with lived experiences of adversity, making artists social commentators of their communities (Perera, 2018). Black music has typically confronted and challenged power through lyrics and performance (Gilroy, 1993), and has assisted in developing Black resistance by organising consciousness and cultivating political agency through discussion of collective class oppression in the context of race (Perera, 2018). Expressions of political agency through music were evident in Stormzy's 2018 Brit Awards performance whereby he challenged the Government response to the Grenfell tragedy (ibid), as well as drill musicians' lyrical condemnation of 'Operation Trident' (Fatsis, 2018) and the police more generally (Pinkney and Robinson-Edwards, 2018). AJ Tracey and Headie One's 2021 Brit performance (see Headie One, 2021) is another clear example. During the performance, a prop radio played a news report stating: 'some say it is a symptom of societal failings… it is a form of aggressive rap music known as drill'. The camera immediately shifts to several young Black men wearing Black tracksuits, with the lyrics 'they should know better' played simultaneously. Headie One then goes on to point out the disenfranchised roots of drill musicians, rapping: 'what else can a drill youth rap about apart from my worst days? You see me on stage, but I was in jail for three of my birthdays'. AJ Tracey then raps: 'standing here at the Brits, but we ain't seen as British' (ibid). This elucidates drill artists' creative talent and political consciousness of the stereotypical 'common-sense' vision of drill and Blackness. It shows that drill can be a form of political resistance as the artists explicitly challenge the demonisation of the genre and the Black men and youth who perform it. And, by juxtaposing jail-time with an on- stage presence, the performance provides a contrast between state depictions of drill and the opportunities it can provide.

Both grime and drill have links with more direct political action. Rapper 'Drillminister' was a potential candidate for London Mayor (BBC, 2020b) and a

‘Grime4Corbyn’ hashtag circulated during the 2017 general election (Perera, 2018). According to a survey carried out by Ticketmaster in conjunction with the University of Westminster, 58% of grime fans voted for Corbyn at the election (Ticketmaster, 2017), suggesting that predominantly Black working-class voters had a significant impact in dismantling the Conservative majority (Perera, 2018). ‘Drillminister’ created a track using the violent language of MPs (Channel 4, 2018), demonstrating how their language fit ‘easily’ within drill sonics (ibid), yet there is scant concern surrounding the violence that MPs might encourage through their discourse. Indeed, Drillminister’s tactic highlighted that we only see prejudicial oversimplification of the violent and gendered politics of rap (Fatsis, 2021), highlighting that selective targeting represents a cultural attack, as non- criminal actions are criminalised simply because they are exerted by a particular social group. Not only does this highlight how Black music can encourage political engagement, but it also demonstrates its ability to challenge the status-quo (Nielson and Dennis, 2019), indicating a political imperative in the criminalisation of the genre. Black music has consistently been feared and suppressed for its power to communicate dissent, previously seen to encourage slave-resistance (Fryer, 2018). I, like Critical Race theorists, adopt a process of ‘storytelling’ for the very fact that Black voices have representational power, one that can challenge hegemonic narratives, the status quo (Delgado, 1989: 2413 cited in Headley, 2006: 340) and the fallacy of ‘white civilisation’. Policing Black music has therefore been described as a legacy of colonial rule that serves to maintain an unequal social order (Fatsis, 2021), as resistance to disadvantage is silenced.

Thus, even where lyrics are apolitical, policing them is not, highlighting the imperative in producing research that places criminal legal practices within the context of meso and macro-structural power-relations, acknowledging the broader political imperatives underlying criminalisation. As such, like ‘gang-talk’, it is argued that the

criminalisation of drill manifests ‘racial neoliberalism’ (Fatsis, 2019), as the structural inequalities underpinning violence amongst young people are blamed on Black culture instead of government failure (Perera, 2019; Fatsis, 2019). Again, the state is policing its crisis, this time, ‘beat by beat’ (Fatsis, 2021b), as another young Black male ‘folk-devil’ emerges - ‘the driller’, inextricable from ‘gang member’.

As illustrated in the previous chapter, both 'gangs' and 'rap' have been identified as key features of the prosecution process in joint enterprise cases, particularly cases involving young Black male defendants. This chapter, in line with the existing scholarly work on joint enterprise, also begins to foreground how these contemporary courtroom practices are contingent upon the macro-structural context of a 'new racism' and ‘the myth of Black criminality’, brought by Britain’s interactions with its colonies in the post-war period. Chapter Four further illustrates how this macro-structural context has shaped contemporary policy and police practices at the meso level, highlighting how such policies are integral to the policing of young inner-city Black men, the operation of joint enterprise and thus, racialised state violence. Going forward, this thesis illustrates how ‘evidence’ and discourse rooted in ‘the myth of Black criminality’ and underpinned by the ‘gang’, has manifested into mandatory life sentences for murder for young Black men.

Conclusion

This chapter illustrates how historicising race as a non-essentialist socially constructed category can assist in explicating the operation and outcomes of contemporary institutional criminal legal practices. The chapter shows how the fundamental tenets of CRT are central to answering ‘the criminal question’ (Aliverti et al., 2021). By centring the relationship between law, crime, and the macro-structural influences by which it is defined, one can illuminate how colonial logics of Blackness have been consistently repurposed, uncovering

a ceaseless ‘moral panic’ of the Black criminal ‘folk-devil’. As Keith put it three decades ago:

> The precise nature of ‘Blackness’ that is connoted evolves. In Britain, at a crude level, the succession of racist images of (gender-specific) Afro-Caribbean criminality have followed from the pimp of the 1950s, to the Black power activist of the 1960s, to the mugger of the 1970s, to the rioter of the 1980s and, quite possibly, to the ultimate folk devil, the underworld ‘Yardie’ of the 1990s’ (1993: 245).

Discourse surrounding the Black immigrant has never been located within empirical fact or social reality; rather, it has constructed Blackness as being imbued with characteristics incompatible with the social, economic, and cultural complexity of British society (Sivanandan 2008). The ‘pimp’, the ‘activist’, the ‘rioter’, the ‘mugger’, the ‘Yardie’, the ‘gang member’, and the ‘driller’ have each become a signifier of disorder, justifying solutions not sought in rectifying social conditions and structural inequalities, but in crime control (Hallsworth and Brotherton, 2011). As Black Studies scholar Lisa Palmer (2016) explains, understanding the colonial formations of racialisation that configured the meaning of ‘Blackness’ within the Western imperial framework helps to comprehend the emergence of contemporary constructions of ‘Blackness’ (page 2) and their impact on criminal legal practices. We might therefore recognise the ‘gang’ as ‘a scavenger ideology’ which gains ‘power from its ability to pick out and utilise ideas and values from other sets of ideas and beliefs in specific socio-historical contexts’ (Solomos & Back 1996: 18–19, cited in Nijjar, 2018).

The prominent cultural studies of the post-war period discussed in this chapter demonstrate how major demographic and socio-political changes influenced ideology and discourse about Blackness and culture domestically, and how politics, law and police power began to operate as conduits through which racially exclusionary notions of identity and belonging were (re)produced (Waller and Sakande, 2024: 38). Such literature has

highlighted how 'othering' - attaching moral inferiority to 'difference' (Krumer-Nevo and Sidi, 2012: 299) - is synonymous with notions of threat and insecurity (Williams, 2014), reminding us of 'how crime is seized upon by the state as a resource for political rule through the regulation of moral and social order' (Fatsis, 2021: 141). This chapter therefore situates 'Black criminality' as a construct 'appropriated by the state as an ideological device that drives the hyper-criminalisation' of Black people (Clarke and Williams, 2020), centring 'crime as a fundamentally political phenomenon, rather than a pathological behavioural trait or the target of impartial judicial punishment' (Fatsis, 2021: 140).

Thus, a critical race perspective has been instrumental in revealing the state's inability to function without race in a supposedly 'post-race' society, illuminating a 'dilemma of Black criminality' which has led to the institutionalisation of the policing of Blackness, leaving young inner-city Black men to navigate a society shadowed by a pre-existing layer of criminality and a 'gang stereotype', whilst subject to a pervasive system of control and surveillance (further discussed in Chapters Four and Seven). In considering 'race' and 'gangs' as two interconnected social constructs, this chapter begins to centre the convergence of these two resources as drivers of inequality in joint enterprise. Adopting the theoretical position set out in this chapter will therefore assist in situating the experiences of young Black men within the broader context of politics, policy, and historical and contemporary racial organisation, to make sense of the overwhelming number of Black people subject to joint enterprise. At the same time, this critical race position will allow me to generate new discourse about Black people that challenges hegemonic narratives and instead, links their narratives to the flaws of 'white society' (Glynn, 2016). The following chapter offers further insight into the methodological and theoretical underpinnings of this thesis, discussing my overall approach to the research through a lens of critical self-reflection.

THREE: COUNTER-NARRATIVES, CONGRUENCE AND COLLECTIVE MEMORIES

Introduction

Where a climate of hostility towards racialised groups persists (Cohen, 2011) and governing though crime is commonplace (Simon, 2007), racialised myths about criminality must be supplanted by counter-stories which challenge these pernicious beliefs (Delgado and Stefancic, 2017). In the preceding chapters, I articulated why I do not engage with the race-crime relationship in explicating the criminalised position of young Black men. This decision, while informed by existing literature and theoretical positions, was also guided by my personal experiences and 'collective memory' of racial injustice.

Social researchers, including criminologists, are increasingly attuned to the methodological and epistemological challenges and benefits associated with positionality, highlighting how their self-identifications and life experiences influence the research process (see for example Liebling, 2001; Bosworth et al., 2005; Phillips and Earle, 2010; Pelvin, 2022). Nonetheless, reflections on the implications of biographical congruence between researchers and participants are less common (for exceptions see Philips and Earle, 2010; Wakeman, 2014; Parmar, Earle and Phillips, 2021; Parmar, Earle and Phillips, 2023; Earle, Parmar and Phillips, 2023). Throughout this chapter, I consider how my race, class, and gender have influenced the research process and discuss the significance, difficulties, and benefits of 'lived experience' similar to my research participants. In 2017, my partner at the time, who was a young Black man, was convicted of attempted murder as a secondary party. Like many participants in this study, I endured police raids, the removal of my possessions, weeks in a Crown Court public gallery, and the accompanying prison visits.

Criminology's longstanding fixation on the pursuit of impartiality in studying crime and punishment has discouraged biographical or emotional invasion from researchers (Wakeman, 2014). Although universities are seen to be the 'bedrock of progressive values' (Kristof, 2016: 1), whether to reveal this part of my personal biography was a 'deeply ethical and personal dilemma' (Pelvin, 2022: 207). I worried that, despite not naming my ex-partner, my narrative positioning in relation to him might 'expose aspects of his life without his consent' (Pelvin, 2022: 206). I was conscious of the vulnerability inherent in such self-disclosure, which invites not only scrutiny of one's scholarly ideas but also of one's personal identity (Massoud, 2022: 65). I also contemplated the emotional labour in confronting painful memories and deciding which aspects of my 'self' added value to my research that justified the risks of disclosure.

Exploring the role of the 'self' in social research has faced criticism on various fronts, including the tendency to pay lip service to self-positioning without exploring the tangible effects of one's positionality on the research approach and interpretation of data, or without acknowledging the implications of unequal power relations (Guerzoni and Walter, 2023). There is also caution against descending into an 'infinite, narcissistic regress of self- consciousness' (Phillips and Earle, 2010: 362), talking about personal experiences without contributing to wider discussions about criminological knowledge, or doing so at the expense of engagement with participant experiences.

I accept that my positionality is not merely peripheral to the perspectives that emerged throughout my research. Researchers are not detached observers, but complex individuals with diverse personal experiences and histories (Wakeman, 2014) which shape our choice of topic, our field interactions (Phillips and Earle, 2010) and our interpretation of data (Pelvin, 2022). Reflecting on this fact cannot therefore make our research less valid (Jewkes, 2011). Rather it acknowledges researchers as 'active participants whose identities,

like those of participants, may be variously shaped' by their own personal experiences and 'powerful hierarchies of race/ethnicity, gender and class' (Philips and Earle, 2010: 362). Without knowing how a researcher's personal identity influenced the research process, it could be argued that we do not have all the information needed to make sense of its conclusions.

I decided that withholding these insights would detach my conclusions from their contextual foundations. Neglecting them would also be to overlook some of the reflections about criminological knowledge which arose from my research experience. Moreover, declarations of positionality can enrich the theoretical contribution of research (Masood, 2022). Given that my research is grounded in the assertion that race manifests in all facets of human interaction, failing to explore the significance of my biography on the research development and process would be to disregard the fundamental tenets underpinning my theoretical framework. Further, abstaining from this reflexive process would be inconsistent with the personal responsibility I feel to the research participants, who did not hesitate to reveal their 'self' in our conversations. I reflect on my personal experiences only in this chapter. The purpose of revealing aspects of my 'self' is to provide insight into the context that my thesis was produced, while highlighting some of the distinctive hurdles, advantages and questions arising from the research process. Achieving this does not require a detailed exploration of my experience.

This chapter consists of two main parts, both integrating critical self-reflection with more conventional discussions surrounding the mechanisms used for gathering and analysing data. The first section largely concerns my overall approach to the research. I begin with a discussion about how my personal experiences and 'collective memory' of racial injustice led me to unapologetically adopt a theoretical framework that does not engage with 'gangs' as an ontological reality. Continuing to foreground the inherent personal and political nature of research, I then set out why and how I made the decision

to prioritise the narratives of the young men, while considering lawyers' voices as somewhat supplementary. Drawing on Becker's (1967) concept of 'hierarchies of credibility', I argue that balancing differing perspectives (Liebling, 2001), or making claims of neutrality or objectivity, ignore the powerful hierarchies within which research takes place (Hamilton, 2020). This first section concludes with a discussion about my wider purpose in centring the 'counter-narrative', highlight the importance of contributing to existing 'sites of resistance' (Chadwick, Clarke and Williams, 2017) rather than deferentially 'giving voice' (Táíwò, 2021).

The second part of the chapter includes my reflections on doing the research. I begin with a specific fieldwork experience, wherein I was denied prison access due to my previous relationship with someone in prison. I draw on this incident to illustrate the fluidity between 'insider' and 'outsider' positionalities and how 'hierarchies of credibility' affect not just whose knowledge is legitimate, but also who is allowed to enter the spaces where marginalised voices are confined, controlled, and isolated. I move on to reflect on the interviews themselves, exploring the significance of shared cultural knowledge and experiences between participants and me. Focusing on the mutual linguistic cultural knowledge and shared experiences of injustice, I illustrate how biographical congruence can enrich research conversations, but also prove challenging to navigate.

Theorising Race: The 'Collective Memory'

While my choice of research topic is certainly tied to my personal experience of it, my broader biography had a profound influence on the development and direction of the project. As a Black mixed-race, working-class woman with a Black Dad and white Mum, racism and inequality have been ubiquitous and perpetual in my life experiences. My earliest memories primarily revolve around the differential treatment afforded to my

parents. This presented itself at the school gate, where the predominantly white parents more readily conversed with my mum. Similarly, at the supermarket, security would only follow us when my Dad was present – something which he regularly confronted them about, evoking in me a mix of embarrassment and pride. Racism also manifested in the deprivation of familial relationships, which my Mum explained were partly a result of the disapproval of her inter-racial relationship. My Mum also spoke of being violently pushed into the back of a police van along with my Dad, and the verbal racist assaults she faced when walking with my brother in the early 80's. My Dad, whose parents migrated from Jamaica to England in the 1950's, recounted being pursued by baton-wielding police officers when walking the streets of London as a teenager.

As my mum acknowledges, her experiences were defined by her proximity to Blackness. While I had my own direct experiences of racism growing up, these were not as poignant or violent as my fathers. Yet, we have a 'collective memory', not only of past injustices that are told in stories between us, but one that is reaffirmed by the continued exposure to overt and subtle racism, microaggressions, police violence, as well as multiple reports which document the over policing of negatively racialised communities and the psychological harm, injury and death that result (Harris et al., 2021: 8). Even in the absence of direct personal experience, there is 'psychological trauma associated with seeing images of people, and in particular people who look like you, being tortured in public by agents of the state' (Russell-Brown, 2021: 328-329). This collective memory is also why I use the term 'criminal legal system', rather than the conventional 'criminal justice system' throughout this thesis, since my personal understanding of the 'system', influenced by my direct and proximate experiences, makes it difficult for me to justify referring to our collection of agencies as an embodiment of 'justice'. Indeed, it became clear through my

conversations with some of the young men that they too shared this sense of collective memory:

> **Taylor:** I don't like the police still, in general.
>
> **Nisha:** Is that because of your personal experiences with them?
>
> **Taylor:** Yeah, but not just mine like obviously, my friends, even friends that weren't involved in anything that I was involved in… Black friends. Even then they get harassed too, it's mad still…

Taylor makes clear that in having seen and experienced, through both personal and proximate encounters, the negative effects of racialisation, his negative feelings towards the police have developed. In emphasising the harassment of his friends who he says were uninvolved with crime, it was clear that his disdain had been further reinforced by bearing witness to the indiscriminate nature of the policing of people who looked like him. This collective memory is why I approach this study with a conscious desire to avoid upholding the structures and ideologies that sustain such state violence. It is partly for this reasons that I have unashamedly adopted a theoretical framework that does not engage with ‘gangs’ and ‘crime’ as ontological realities. I have been intentional about my desire to challenge, through empirical research, the dominant ideological discourse and knowledge base about race, ‘gangs’, and crime, to illustrate how it contributes to racial inequalities in joint enterprise. As emphasised in the previous chapters, this stance is not solely based on my positionality. It is supported by empirical research and existing theoretical scholarship, which draws attention to the fallacy of the race-crime nexus and the political imperatives it has served. Through my examination of Black Criminology, the previous chapter makes clear that it is possible to explore race-crime relationships while accounting for historical

and contemporary racial organisation. However, my personal experiences have made it difficult for me to situate myself in a research study that risks reinforcing the 'other'. My research questions were decided with this position in mind and guided by the previous research examined in Chapter One, which points to racialised processes of prosecution as the source of racial inequality in joint enterprise.

'Whose Side Are We On?'

I therefore approached this research with pre-existing subjective allegiances. In his 1967 article, *'Whose Side Are We On?'*, Howard Becker urges researchers to acknowledge these allegiances, striving for transparency over objectivity. He contends that the dilemma is not whether to 'take sides', but 'whose side we are on'. Somewhat contrarily, Leibling (2001) suggests that it is possible to 'to find merit in [and balance] more than one perspective' (page 473). In this section, I reflect on this debate and my personal position in relation to this thesis, which draws on the narratives of three different participant groups, one of which holds considerably more power to define the epistemological terms of the others existence. This study is primarily informed by semi-structured interviews with 41 people fulfilling the criteria of one of the following groups:

1. Young Black (14), Black mixed-race (2) and other negatively racialised (2)[10] men prosecuted or convicted as a secondary party to murder.
2. The relatives or partners of young Black and Black mixed-race men prosecuted or convicted as a secondary party to murder (12).[11]

[10] These participants did not fulfil all the participant inclusion criteria. See following page for further details on participant recruitment.

[11] Three of the relatives were related to one of the young men I interviewed.

3. Legal practitioners (11), including barristers (8), solicitors (2) and one recently retired Crown Court Judge.[12]

All the legal practitioners have experience working on joint enterprise homicide cases, with the barristers doing a mixture of defence and prosecution work. Three are Kings Counsel and the remainder are junior barristers. Most of the relatives I interviewed are mothers (8) while others include a girlfriend, a sister and two stepfathers, with the latter being interviewed alongside the mother of the person in prison, meaning 39 interviews were conducted in total. A limit of approximately 40 participants was pre-set for the study.[13] The sample size for each participant group was intentionally structured to prioritise the voices of the young men, who bore the most immediate impact of joint enterprise, with a target of 20 participants. Although this target was not entirely met, a greater number of young men were interviewed compared to relatives and practitioners. However, sample size is not the primary means through which I sought to centre the narratives of the young men, as explored further in this section.

Purposive sampling guided participant outreach. Initial outreach to people in prison was facilitated by JENGbA, which allowed me to send approximately 30 targeted letters of invitation and advertise in their newsletter.[14] Participants had to self-identify as Black or Black mixed-race, have been charged or convicted as a secondary party to a serious

[12] The judge retired in 2019 and was interviewed in 2021.

[13] The sample size was sufficient to facilitate the identification of common themes among participants, without overwhelming the research process.

[14] In total, only seven young men who participated were contacted through JENGbA. Despite receiving more than seven responses to the initial outreach, some respondents relocated to different prisons during the access negotiation phase, resulting in them being unable to participate.

violent offence[15] since March 2016, and have been 25 years or younger at the time they were charged. This targeted outreach was crucial due to the absence of systematic documentation of information on joint enterprise by HMPPS.

Due to the highly specific inclusion criteria, selecting prisons for access was determined by the locations of the young men who responded to my initial outreach. To augment recruitment, prison staff assisted in targeted outreach efforts, and research posters were displayed in two establishments. Two interviewees also shared the details of other prisoners who wanted to participate, introducing an element of snowball sampling. While largely successful, the reliance on prison staff led to occasional challenges in ensuring full adherence to the inclusions criteria. My lack of control over outreach led to the participation of two young men from other negatively racialised backgrounds, as well as one young man who disclosed that he was the principal offender. Despite this, they were interviewed and included in the study since they were keen to participate and their non-adherence to the inclusion criteria was only apparent on arrival to interview, or once the interview had begun. I treated these participants no differently to others but took note of any experiences or reflections that were significantly different or uniquely relevant to their racial identities. Recruitment of legal practitioners and relatives also involved targeted outreach, leveraging existing contacts through email and phone communication, as well as snowball sampling. Overall, three of the legal practitioners were people I had previously communicated with, and four of the relatives were people I had pre-existing relationships with through our shared proximity to someone convicted under joint enterprise.

All participants' perspectives were valuable in making sense of secondary liability. Legal practitioners' narratives contribute to a nuanced understanding, beyond what is

[15] 'Serious violent offence' was inclusive of GBH with intent, attempted murder and homicide offences encompassing murder and manslaughter. Despite this inclusion criteria, all participants were prosecuted for

murder.

already known, about how the ‘gang’ and other racialised evidence is interpreted, constructed and resisted by legal counsel. Relatives also provided invaluable insights into trial discourse and prosecution practices from the perspective of a trial observer, albeit one who was directly impacted by and had a vested interest in the outcome. Relatives were also able to provide insight into the broader context of how their relatives and communities are policed. However, I sought to prioritise the young men’s narratives first and foremost, which are most central to the conclusions drawn in this thesis.

Liebling (2001) contends that in criminology, sensitivity towards research participants seems to be accepted only in some directions. She argues that sympathy is often reserved for the offender and denied to those who work in the CLS, which she questions:

> Is it because they wield power? Their voices are already legitimated? This assumption is simplistic and confuses taken-for-granted assumptions or ‘a political stance’ with ‘objectivity’. Why are we not so curious about the constraints under which the so-called powerful operate? Why are we not fascinated by the under-use as well as the over-use of power in real social practices? (page 476)

Liebling is therefore critical of Becker’s (1967) position that those ‘in power’, inherently possess the ability to define reality. Yet, in the context of my study, lawyers, by virtue of their practice, are afforded a degree of power and legitimacy that the young men and relatives are not. While there may be complexities and nuances to their use of power, lawyers actively construct and present arguments for or against defendants in court. Indeed, Christie’s work, “*Conflicts as Property*” (1977), illustrates that both victims and defendants are largely treated as passive objects of dispute. Notably, there exist disparities between prosecution and defence lawyers in their ability to shape public knowledge. Prosecution lawyers intentionally craft a narrative *against* the defendant, and their account is more commonly shared through media, meaning they have the potential to more significantly

contribute to defining the experiences and public perception of defendants and their families.

Liebling (2001) argues that researchers should develop a perspective that operates from a distance and synthesises or ‘balances’ competing perspectives (page: 476; 482). Yet, the ability to achieve such ‘neutrality’ is defined by a researcher’s access to power, their perceived legitimacy amongst those who grant access, and the legitimacy the researcher personally affords to the systems they are researching. As Kaufman (2015) acknowledges, much of Liebling’s prison research has been grounded in the concept of prison reform or ‘what works’. However, this concern with the performance of institutions is not neutral or apolitical and sets a research goal that is to ‘work within the state’s framework to improve its penal institutions’ (Kaufman, 2015: 33), affording legitimacy to imprisonment as a response to criminalised conduct.

Many of the relatives and young men who participated in this study were keen to publicise their side of the story, finding that no one was willing to listen. Instead, they encountered media reports which described them or their sons, partners, and brothers as ‘thugs’, ‘gangsters' and ‘killers’, without any nuance or acknowledgement that they did not kill anyone. Not only do state actors have more power to define knowledge; their knowledge is also more likely to be viewed as legitimate. Becker (1967) described the differential credibility or legitimacy afforded to different people based on their social position, power and status within a given context as ‘hierarchies of credibility’. For instance, I have received questions from legal experts asking if I have case papers to ‘back up’ what the young men and relatives tell me. Some people are deemed to be more ‘objective’ by nature of their position; what is deemed to constitute real and objective knowledge is shaped by dominant ideas about who is deserving of credibility, and whose knowledge is trustworthy and ‘impartial’, an assumption part responsible for the dismissal

of indigenous knowledges within Anglo Criminology (Cunneen and Tauri, 2019). In conventional accounts, ‘socially situated beliefs only get to count as opinions’. To achieve ‘the status of knowledge’, beliefs are expected ‘to break free of… their original ties to local, historical interests, values and agendas’ (Harding, 1992: 50). Yet, that which adheres to positivist principles is positioned as superior, despite such traditions originating in Lombroso’s racist phrenology (Cunneen and Tauri, 2017).

Some authors have therefore argued that the conventional conception of objectivity is not rigorous or objectifying enough. For example, in her discussion on standpoint epistemologies, Harding (1992) argued that exploring a topic through the lens of marginalised people means beginning in locations in the social order which will generate critical questions that do not arise in thought that begins from dominant group lives. She argues that these sites are where objective questions arise, criticising conventionally ‘objective’ research for its failure to adopt methods to eliminate or even identify the influence of dominant societal ideas. This can be seen in the uncritical acceptance of police gang lists of predominantly young Black men by some researchers who have used them as the starting point of their studies (see for example Pitts, 2008), and in claiming to be objective, are pretending to live outside a system of racial hierarchies in which researchers and their tools exist (Hamilton, 2020: 295). Reliance on these sources, especially when claims to neutrality are made, can only serve to ‘rationalise policing reconstructions of reality’ (Keith 1993). The English CLS itself is sustained by this fallacy of objectivity, or ‘independence’, evident in the prohibition of judges expressing political or personal views – a façade shattered by the unmistakeable but often covert presence of racial bias in judicial language and decision-making (Monteith KC et al., 2022). In this sense, conventionally ‘objective’ research can uphold the fallacy of post-raciality discussed in the previous chapter.

In its ability to influence the operation of the CLS then, criminology has indirectly facilitated systemic state violence (Parmar, Earle and Phillips, 2021) through its obsession with objectivity and positivist frameworks, its framing of indigenous (Guerzoni and Walter, 2023) and non-white (Gilroy, 1982) criminality, its failure to take seriously the voices of the most marginalised, and its failure to acknowledge the racist origins of tools, data and concepts like the 'gang'. Criminological mainstream has typically detached social phenomena from their political and historical context in the name of effectiveness, evaluation (Fatsis, 2021) and objectivity, as 'researchers unreflexively and reductively fix racial difference', while the 'inherent bias of white logic is masked through so-called objective methods' (Henne and Shah, 2013: 117).

I accept that my research endeavour is not objective in its origins and purpose (see section below on 'For what purpose'). I justify my stance by drawing on the CRT position that researchers who adopt conventional methodologies and approaches inherently reinforce oppression (Hylton, 2012: 26) by wilfully constraining themselves from critically exploring racialised relations of power and histories of racial oppression (Lawrence and Hylton, 2022), leading to knowledge that is not socially situated and thus, missing vital information needed to make sense of a particular phenomenon.

By prioritising the young men's narratives, I am not attempting to balance the scales or make claims that my research is objective in a non-conventional sense. However, when engaging in research concerning negatively racialised groups who have endured historical and contemporary state violence sustained by legacies of colonial thinking; in recognising the pervasive evidence of racism and discrimination within existing legal structures, sustained by its employees, whether actively or passively; in accepting that there are 'hierarchies of credibility', and that even conventionally 'objective' knowledge is not impartial, centring the narratives of the young men becomes necessary to provide a

differing perspective to the hegemonic state-led narratives about young Black men and criminality, and widely held assumptions that often guide research. In considering the points above, it is necessary to ensure that the 'counter-narrative' becomes 'part of the equation' (Allen-Bell, 2016: 592), to uncover neglected or alternative realities, (Delgado and Stefancic, 2017) which challenge the narrative accounts that are too often accepted as objective truths.

Surfacing the Counter-Narrative

Within the enduring discourse on 'Black criminality,' there is a notable lack of attention to the perspectives, narratives, and experiences of Black people, and those said to be responsible for so-called 'Black crime'. The silence of their voices within the mainstream of research and media only further dehumanises and amplifies their distance from the 'norm', trapping them in a harmful narrative that obscures their true stories. They become lost in the 'empirical haggling' (Gilroy, 1992) of academics, media personnel, politicians, policy makers, community groups and campaigners – as seen with joint enterprise, recently discussed in parliament (Centre for Crime and Justice Studies, 2024) whereby the voices of those subject to it remained absent and confined behind prison walls. There was no doubt then, that the research interview be adopted as my primary method, to allow for the counter- narrative to be surfaced by opening conversations for reflection and sense-making (Parmar, Earle and Phillips, 2021), offering insight into the complex texture of social interactions and subjective experiences.

In addition to interviews, this study involves limited analysis of case papers and trial transcripts. These documents were not systematically gathered or analysed; rather, participants were asked to provide whatever documentation they could. Hence, the documents provided ranged from case summaries, police interview transcripts, witness

statements, to appeal submissions, and in most cases, no paperwork at all. In all, I had access to paperwork for ten different cases. This endeavour was not intended to provide a holistic picture of any one case as it was understood in court and argued by the state. At most, it allowed me to know more about the 'facts' of the case according to the state, the evidence presented at trial, and post-conviction legal challenges. A few of the young men had publicly available appeal judgments and these were also useful in providing this further context. Nonetheless, they could not be cited as to ensure the participants anonymity.

The decision to prioritise interviews over document analysis was twofold. First was the expense of trial transcripts, likely to cost thousands of pounds for one case (Cross, 2023). The onus was thus on participants to provide the paperwork, a task which, as anticipated, proved challenging due to a lack of access to documents or means to copy and share them. More significantly though, my decision was based on my priority in developing the research, which was to surface, primarily through the lens of those convicted, how Blackness manifests in constructions of guilt in the context of joint enterprise. Unlike interviews, analysis of case papers could not capture the subtleties of race in courtroom dynamics. For instance, participants explored the significance of visual cues, such as multiple Black defendants in the dock, juxtaposed with a white bench, bar, and jury, and how such visuals amalgamated with racialised linguistical ques to construct guilt (see Chapter Seven). In adopting in-depth semi-structured interviews, I was able to gain insights into how race manifest, often subtly, in joint enterprise prosecutions, as understood by those actively involved in observing, constructing, negotiating, and resisting notions of guilt. In particular, these conversations allowed me to open a window into the young men's lives, experiences, and interpretations of 'guilt' as it relates to secondary liability, while also leaving room to explore the socio-political landscapes in which their lives and experiences were curated (Knowles,1999: 58). This capacity was

crucial to answering my

research questions, which were structured in accordance with a multilevel framework (Phillips, 2011) aimed at probing the significance of historical, political, and institutional processes in micro interactions and social outcomes.

Interview guides helped to structure the conversations. Questions concerned previously problematised aspects of prosecution practice, including gang narratives. The guides also aimed to capture the young men's broader experiences of state institutions, such as the police, while practitioners were asked about how policing and wider policy informed their decision-making. These questions allowed me to explore the relationship between their experiences and wider policy frameworks, police practices, prosecution evidence and case theory, ensuring that the research questions were addressed, and that the young men's micro-level experiences in court were better contextualised. I therefore encouraged participants to articulate their realities through multiple frames, permitting an analysis of how structural forces and institutional processes framed their lived experience and material outcomes (Parmar, Earle and Phillips 2021). Interviews were therefore vital in allowing me to make sense of the link between the racialised application of joint enterprise and 'the (over)investment and encroachment of the CLS' into Black and marginalised communities (Mwale and Williams, 2023: 8), as explored in the following Chapter. Exploring the historical literature concerning post-war Britain, as set out in the previous chapter, and the contemporary policies, police practices and political rhetoric surrounding 'gangs', serious violence and 'knife crime', expounded in the following chapter, allowed me to further ground the young men's experiences within their broader socio-political and historical context.

I acknowledge that these semi-structured interviews did not entirely democratise the research space, as the conversation and the resulting narrative remained guided by me. However, the interview guide was crucial to ensure I captured the key aspects of

participants' experiences necessary to answer the research questions, and further excavate an understanding of the mechanisms which maintain racial inequality in joint enterprise. This is particularly true of the prison interviews, for which I was not afforded the flexibility of time to capture these experiences in a less guided way. As already discussed, these research questions were crafted with a counter-narrative theoretical positioning in mind - one that recognises the law as an instrument of racial injustice. There were therefore certain elements I sought to capture in every interview. For example, I ensured that I asked all the young men whether the ‘gang’ was evoked at their trial, the significance they felt it had on their trial and its outcome, and whether it was challenged by the defence. However, comparability between interviews was not my priority. Rather than adhering to all predetermined questions, I tried to approach these interviews as a vehicle for opening a space for participants to surface their story, make sense of injustice and build a texture of how the conviction came to be. Ensuring that these interviews remained somewhat grounded in inductive inquiry was not only imperative to allow participants to share their stories as authentically as possible, but also to ensure that my ‘over-familiarity’ with the subject matter (Parmar, Earle and Phillips, 2021) did not remove space for participants to, in their own words, surface the different strategies utilised by prosecutors and deconstruct the labels ascribed to them.

As someone who has directly experienced harm because of the narratives that the police and prosecution wield control over, my decision to prioritise the young men’s voices was further reinforced. I found myself conflicted about whether to include lawyers’ perspectives at all. I considered many factors, shaped by my personal experience. As I explore later in this chapter, the idea of interviewing practitioners was anxiety-provoking, triggering difficult memories of my own personal experiences. At times, I had to resist a strong desire to tell the story as I experienced and understood it, while questioning whether

incorporating lawyers' voices would do a disservice to myself and others who had experienced injustice in this context. I also reflected on whether only including the voices of the young men and their relatives might lead my research to be perceived as biased and less credible due to my personal connection to the issue. In the end I decided that there was benefit to enquiry into practitioners' experiences, and that it could be done while maintaining a commitment to the counter-narrative. I did not interview lawyers in the hope to achieve a sense of neutrality, or to legitimise the project, myself as a researcher, or the voices of the young men and relatives. I did not choose to interview practitioners to 'hear their side' of the case, hence why I did not intentionally interview lawyers involved in the cases of the young men. I interviewed practitioners because they filled a deficit of understanding in the drivers of racialised practices in the context of joint enterprise convictions, as it is they who are directly responsible for constructing and resisting guilt in court.

While the narratives of those who experience racial injustice must be the point of departure in centring the counter-narrative, this does not preclude the inclusion of practitioners' narratives. Following the transcription of interviews, analysis of the data was carried out using qualitative data analysis software 'NVivo'. Thematic analysis, which is not exclusively tied to a particular epistemology or paradigm (Mihas, 2022), was adopted to accommodate an inductive approach to analysis. While no specific coding frame was utilised, my organisation of codes into themes was guided by the multi-level framework (Phillips, 2011) and broader theoretical frame informing my research questions, as set out in the previous chapter. I adopted an iterative approach to thematic analysis (see Braun and Clarke, 2006) to allow for a rich and nuanced account of the data. Due to the number of participants and the volume of data from the interviews, the longest of which was near three hours, and the many common themes which surfaced, it became difficult at this stage to

preserve the individual storied accounts of the young men. I therefore wrote a brief bulleted summary of each of their backgrounds and stories, including factors such as significant life events, and how the incident concerning their case transpired from their perspective. In writing my empirical data chapters, I foregrounded a counter-narrative through the common themes – the implicit agreements amongst the young men that emerged from their collective stories. The summaries of their accounts allowed me to, at times, refer to their individual stories, enriching the collective analysis with some of these personal insights.

Practitioners' narratives were not treated as subordinate, but somewhat supplementary. While in some of the data chapters, the words of practitioners may come first, or even take up a significant portion of the chapter, when analysing and making sense of the interviews and writing the thesis, I treated the young men's narratives as my point of departure, asking how the relatives and practitioners narratives help further explain or understand the experiences articulated by them. The young men's interviews were coded and analysed first, followed by the relatives and then practitioners. Following the coding process, for each participant group, I created a word document where I began to develop my written analysis around the common themes. I then began to layer these three documents together, using the themes emanating from the young men's accounts as the foundation. There were times when the narratives and opinions of practitioners differed significantly with those of the young men and relatives, posing questions as to how I uphold the counter-narrative while incorporating opposing viewpoints. For example, as set out in Chapter Seven (page 285-287), many practitioners explained racial disproportionality in joint enterprise by reference to so-called 'Black-on-Black' violence, rather than issues of racism in police and prosecution decision-making, with the latter view overwhelmingly expressed by the young men and relatives. When this arose, I did not ignore or suppress practitioners' narratives. Rather, in making sense of all

participants' narratives through the

same critical theoretical frame, I instead demonstrate how the lawyers' narratives inadvertently substantiated the young men's and relatives' sense-making.

At the analysis stage, I recognised that a level of 'distance' is particularly important, especially for a researcher with 'lived experience'. At times, I felt a desire to tell the story how I experienced it. For instance, findings on the negative impact of familial imprisonment within the context of joint enterprise felt important to me, and they are central to the broader counter-narrative surrounding joint enterprise. However, these findings were not central to answering the research questions. I had to stay conscious of my personal desires, ensuring that I did not intentionally select which themes I gave priority to in analysis and when writing up based on my personal experience of joint enterprise, but remained guided by the research questions and their theoretical underpinnings. Nonetheless, my decision to prioritise the counter-narrative through research design and analysis was no doubt driven by a personal desire to resist the dominant interpretations of guilt and responsibility surrounding the violence at the centre of joint enterprise cases, since these interpretations stand in direct contrast to my own.

Taking Sides: For What Purpose?

The discussion in this chapter so far illustrates that a researcher's position, 'taking sides', or even 'balancing competing perspectives' are both political and personal decisions, often rooted in a desire to influence in some way. However, it can also be a deferential decision, based on what have become 'the rules of the game' (Táíwò, 2021). Táíwò (2021) points out that the call to centre the most marginalised has become ubiquitous in academic and activist circles. While the core ideas underpinning this approach are not problematic, he says, the prevailing norms around it have become inauthentic and performative. Scholars have similarly raised concerns that components of the decolonisation paradigm can be used

by researchers out of compliance rather than a change in thinking (Guerzoni and Walter, 2023), and the use of the term 'lived experience' within job descriptions, accompanied by an absence of explanation as to why it is important, illustrates the same issue. Although I have reflected on why I prioritised the narratives of the young men in this study, my desire to avoid reinforcing the 'othering' of Black people is, in isolation, doing not much more than 'avoiding complicity in injustice' (Táíwò, 2021). Táíwò asks, 'How could a constructive approach to putting standpoint epistemology into practice differ from a deferential approach?' For Táíwò, a constructivist approach would focus on the pursuit of specific goals. It would align itself with the aim of redistributing social resources and power, rather than perusing interim objectives and symbolic gestures. It would be framed around asking how our work can contribute to challenging existing power structures and building structures of social connection and movement, rather than merely critiquing existing systems.

While my decision to prioritise the counter-narrative was by no means deferential or performative, Táíwò's question nonetheless highlights the importance of doing more than 'giving voice'. In prioritising the voices of those 'out of power', we ought to truly challenge the knowledge that has maintained oppressive power structures, creating a space within the academy through which we can support existing community groups resisting injustice (Clarke, Chadwick and Williams, 2017). Particularly when exploring Black people's experiences and their connectedness to structural and historical power relations, we should not treat our research participants as subjects that form the foundation of our publications. Instead, we ought to encourage activist-scholarship and interventionist research which prioritises knowledge that can contribute to existing 'sites of resistance'[16] (ibid). While this

[16] As conceptualised by Clarke, Chadwick and Williams (2017), these spaces are the intersections where state power and its impact on the lives of those who experience injustice is revealed. It could be both a physical space of meeting, but also a conscious space where, by coming together, individuals, families,

supporters, critical lawyers and academics, and other stakeholders make sense of the injustice together.

approach ought to be an institutional endeavour, individual researchers can resist normative ways of doing research and dissemination by choosing to work collectively with communities to expose, resist and alleviate injustice. (Clarke, Chadwick and Williams 2017: 264). To go beyond 'diversity speak' or 'giving voice', we must demonstrate a willingness to put our own politics and identities on the line to avoid being solely extractive; we must also adopt approaches which encourage us to 'stay close' to participants, providing ongoing support through knowledge sharing and production. Only through approaching research and dissemination in this more collaborative and transparent way will we be able to truly challenge the dominant and often racialised knowledge that underpins institutional policy and practice.

Whilst I cannot claim to embody this approach in its entirely, throughout my PhD journey, I have contributed to community-oriented work, including 'Erase the Database' - a coalition of community organisations, academics and lawyers seeking to challenge racist gangs policing through a combination of research, policy engagement, litigation, and community education. I also made a recent contribution to the formulation of a Private Members Bill which sought to change joint enterprise law, using my research to support JENGbA campaigners' advocacy efforts around the legislative proposal (Waller, 2024). I have also attempted to prioritise maintaining meaningful relationships with some participants, to the extent that is practically and appropriately feasible, to both demonstrate and ensure an ongoing commitment to social change, staying present, and 'bearing witness' (Clarke, Chadwick and Williams, 2017) to what is occurring on the ground. My ongoing engagement with community organising and campaigners has meant that I encounter some of the research participants regularly; however, my decision to 'stay close' has been guided by my personal proximity to their trauma. Having shared similar experiences, I can appreciate how my engagement and support, albeit minimal, can be profoundly meaningful

to them, and the power of solidarity in navigating adversity and uncertainty in this context. I also recognise the importance of maintaining proximity to and consistently observing injustice to ensure that the knowledge I produce, which has evolved over years, remains relevant in driving meaningful change.

As I am sure is the experience of many other doctoral students, I have revised my thesis multiple times due to new legal challenges and policies. However, beyond these revisions, my ongoing conversations with mothers, who continue to advocate for their sons, have prompted me to revisit and develop various aspects of my analysis. For instance, in our more in-depth conversations outside the interview setting, Caroline reflected on the continuous nature of the state's actions against her son Carlos: from repeated stop and search encounters, exclusion from school, the failure of police to protect him from criminal exploitation (see Chapter Seven) to his eventual prosecution under joint enterprise. Caroline situated these experiences within the context of Carlos being on the Gangs Matrix, illustrating how each instance of state violence was not an isolated event, but part of a deeply interconnected system of gangs policing that profoundly shaped his life trajectory. These conversations were pivotal to my conceptualisation of the 'gang' as a 'facilitator of racialised state violence' and my understanding of joint enterprise prosecutions as being informed by broader practices of racialised state violence similarly facilitated by the 'gang' (see Chapter Four).

Researchers have asked, 'do feelings of affection, identification, friendship, trust and allegiance belong in the research world?' (Liebling, 2001: 475). For me, forming and sustaining relationships beyond the confines of the researcher-researched relationship was unavoidable and imperative. I recognise that I have been inconsistent in my efforts to do so, largely due to time constraints and emotional challenges associated with 'staying close'. However, I have endeavoured to uphold a level of commitment to bearing witness and to

utilising my knowledge and networks to assist those undergoing experiences akin to my own. But my desire to increase the social power of marginalised people through research does not change the fact that I have control over the dissemination of their grief and trauma. Research involving disclosure of personal experiences is inherently extractive. Different methodological approaches such as participatory (action) research dilute distinctions between the researcher and respondents. However, there are innate challenges and contradictions in adopting this approach within a doctoral framework whereby we are expected to predetermine how the research will take place and the doctoral candidate obtains a doctorate at the end of the process.

It is me who has a greater degree of 'in the room privilege' – access to spaces in which one is placed in a position to affect institutions by way of deciding what one is to say and do (Táíwò, 2021). Irrespective of my 'lived experience', by virtue of being a doctoral researcher from the University of Oxford, which differentiates me from the participants, I may be afforded access to spaces which they are not. I have been in rooms with the CPS and the police in which I have been asked to present my work, and thus, my participants' experiences. As Táíwò (2021) notes, access to these rooms is a social advantage gained through some prior social advantage. He notes that the 'most affected' by the social injustices studied are often more likely to be imprisoned, underemployed, without internet access, and to add, stigmatised, leaving them left out of the rooms and largely ignored by the people in them. Indeed, most of the participants in this study are in prison. In these 'privileged' rooms, 'lived experience' seems to be increasingly sought after, although perhaps deferentially, and I have been encouraged to speak about my own experiences. But I am in these rooms largely by virtue of the fluidity between my 'insider' and 'outsider' positionalities, one facet of which includes my doctoral student title, that has somewhat 'filtered out those social identities' which may have negated that 'in the room

privilege'. It could therefore be that I am in the room precisely because I am different to the people that I am seeking to speak about when I am in the room, making it even more imperative that we try to disseminate our research in a way that does not risk causing them further harm. As identities are 'restructured, retained, and abandoned during the course of interaction between researchers and respondents' (Young, 2004: 192, cited in Parmar, Earle and Phillips, 2021), staying close to the community we are researching can assist in avoiding harmful dissemination practices, including deciding which rooms to enter in the first place.

However, making a commitment to 'staying close' while working within the parameters of formal ethical codes, particularly for a researcher with 'lived experience', can feel conflicting. Before outreach began, university ethical approval was obtained on 30th April 2021 to commence the project from 1st July 2021 (Ref: R74918/RE001). Approval was also sought through His Majesty's Prison and Probation Service (HMPPS) research committee, for permission to carry out the prison interviews. While all the formal ethical procedures required were followed, they inherently discouraged the establishment and maintenance of meaningful connections with participants by delineating a clear hierarchical boundary. At times, I felt uncomfortable when following these rigid protocols. This unease did not stem from a desire to deviate from principles of protection, but rather, from the feeling that these formal ethical standards were not always ethical. It felt dissonant to transition from somewhat personal relationships to more formal interactions with some of the mothers, requesting permission to have a conversation with them, then requesting they read information sheets and sign consent forms before we speak. I vividly recall Caroline's confusion and surprise at the notion of me 'managing her data'. This moment was the first and only time I sensed a brief doubt in her mind regarding my intentions, necessitating reassurance about why I had to adhere to these procedures, and why our

conversation was referred to as ‘data’. For the young men, I was mandated by HMPPS to disclose any other offences they might discuss during our conversations. Consequently, I had to communicate this obligation to them, a situation that positioned me as aligned with the state institutions which subject them to violence and harm.

This discussion is not to undermine the importance of seeking informed consent, for example, but rather to highlight the challenges and tensions inherent in navigating these formal procedures within the context of pre-existing relationships, where there is biographical congruence between the researcher and the researched, and while seeking to establish ongoing relationships intended to ‘serve communities’ (Dillard, 2008: 279). These reflections prompt critical inquiry into the determinants of ethical conduct. Who holds the authority to define ethics? Whose standards are we aligning with and whose interests are we serving? On reflection, I think ethics ought to revolve around ensuring that researchers are not solely extractive, maximising the use of data without perpetuating harmful ideas about marginalised groups who have traditionally been othered; it would also necessitate a thorough evaluation of the potential benefits and harms of the research from the perspective of the groups under study (Guerzino and Walter, 2023). However, participants are often categorised as ‘vulnerable people’, devoid of agency and self-definition, with little to no consultation regarding ethical considerations from their perspective. This circumstance raises questions about the feasibility of embodying research practices which encourage decolonisation and wider social change, while navigating institutional constraints, highlighting the importance of broader transformative change and not confining our knowledge to the academic realm.

Doing the Research: Access Denied

Beyond shaping the development of the project and my broader research position, my personal biography also had a profound influence on the conduct of the research, including when seeking access to prisons. Researchers seeking prison access must navigate not only University ethics boards, but also gain approval from HMPPS. Even then, there is no guarantee that establishments will approve access. After applying to HMPPS research committee, I was granted approval to access all male adult prisons and 18+ young offender institutions (YOI) in England and Wales in December 2021. Each prison was subsequently approached. Access to six male prisons was successfully negotiated through communication with senior prison staff via telephone and email exchanges. The psychology lead and governor at each establishment reviewed and approved the research. In the end, research was conducted in four of these six establishments. These included one category A high security prison, one category B YOI, one adult category B prison with a YOI unit and one category B private prison. Securing access was a time-consuming and iterative process and was delayed by fluctuating covid-19 restrictions.[17] Prison interviews took place between 1st August and 18th October 2022. Some prisons were more responsive than others, leading to a missed opportunity for data collection in one prison due to their delay in confirming approval. In the second instance, it was my personal biography which prevented my access.

Seeking access to prisons presented formidable emotional hurdles. Merely initiating the phone calls to request access triggered traumatic memories. Despite introducing myself as a University of Oxford researcher, I could not shake the nagging suspicion that my identity as an ex-prisoner's partner was transparent, fostering a sense of impostor syndrome. The mental fortitude required to muster the courage for a single phone call often

[17] There were no restrictive covid-19 measures in place on entering.

led to procrastination. Each phone call left me emotionally drained, rendering further work difficult to undertake, underscoring the profound impact of my personal biography on even the most ostensibly mundane aspects of the research process. While for the most part I could conceal this aspect of my identity when seeking access, there was one instance where I could not avoid explicitly revealing my connection to someone in prison.

During the initial outreach phase, one of the respondents to my letter was imprisoned in the same establishment where my ex-partner was at the time. Despite reservations, I requested access and disclosed my prior relationship. After offering staff the opportunity to inquire further about the nature of this relationship, no such inquiries were made, and the first interview was approved. Travelling to this prison stirred up a plethora of challenging emotions. Nevertheless, I was resolute in my determination not to let my personal history prevent my engagement with the young man I was visiting. However, upon giving my full name to the officer at the front desk, the initial reception of smiles shifted to murmurs emanating from behind the glass. I was then asked: “have you been here before?”. Despite reiterating my previous disclosure of the relationship to senior staff, I was directed to wait outside. It was at this moment that I realised I would not be granted entry. In a matter of seconds, I transitioned from being perceived as a trusted researcher, to a security risk, vividly illustrating the manifestation of multiple selves in the research process (Reinharz, 1992). The ramifications of this experience on my emotional state are difficult to articulate and the encounter reignited aspects of my identity that I had, to some extent, left behind, resurrecting feelings of fraudulence that had previously plagued me during phone calls to the prisons.

On reflection, I contemplated the stark contrast in my interactions with the Prison Service throughout my doctoral journey. From conducting research with the Prison Inspectorate, where I navigated prisons alone and was regarded with some deference, to

being treated almost identically to how I was treated on social visits some years prior. This experience left me with a lingering question: what was the perceived risk? Did they suspect that I might aid in his escape, transfer illicit items, or harm him in some way? Indeed, the officer who informed me that I could not enter the establishment remarked: "it's not about him, he's one of the good guys" – a comment which sparked a deep sense of guilt, as I reflected on the bewildering thought that this officer might now know him better than I do, given that I no longer have contact with him. The officer promised to explore the option of video link interviews. But it was not until I was later denied that opportunity that I realised their decision to deny access was not necessarily predicated on physical security risks. Rather, it appeared to be about preserving the institutions integrity. As far as I am aware, I am permitted to book a social visit with anyone at the establishment, but a remote interview was denied. What makes the latter riskier than the former? The latter would have involved me publishing knowledge emanating from within the institution. It became evident to me that the institutional gatekeepers, now conscious of my personal proximity to someone inside, likely perceived my intentions as a researcher in a different light. Perhaps they questioned how I could maintain principles of 'neutrality' and 'impartiality' with my past relationship in mind.

While I cannot ascertain their exact reasoning, upon disclosing my personal connection to someone inside, factors such as my high-level security vetting or association with the University of Oxford became irrelevant. My professional identity was entirely stripped, with one aspect of my personal identity taking centre stage. This suggests that institutional concerns regarding risk shifted significantly towards the epistemological and ideological security of the establishment, demonstrating that 'hierarchies of credibility' not only encompass questions about whose voices and knowledge are most likely to be perceived as impartial and thus credible, but who is deemed capable of impartiality and

thus, worthy of opportunities to extract, interpret and disseminate such knowledge. This experience prompts me to return to the earlier discussion about the political nature of research which aims to improve state institutions. The ability to adopt this position is not only shaped by powerful hierarchies of race, gender, and class, but by a researcher's personal history. For some, the ability to work within institutions is a taken for granted privilege; their credibility and trustworthiness are seldom scrutinised in any personal capacity. But for those with personal proximity to the marginalised groups we often study, when seeking access to the secure institutions within which they are held, are likely to face scrutiny, not just of our scholarly associations, but also our personal self. Thus, my experience illustrates how perceptions of risk amongst institutional gatekeepers further hierarchise criminological knowledge.

In the context of doing research in prisons, access is already shaped by institutional concerns regarding epistemological security. Approval from HMPPS is contingent upon the alignment of the research topic with their 'business priorities', which primarily revolve around security, cost-effectiveness, and rehabilitation. Consequently, the epistemological priorities of the institution dictate access. While 'diversity and inclusion' are central to the Ministry of Justice objectives (Ministry of Justice, 2024), we cannot be sure that this is more than an adherence to the 'rules of the game' (Táíwò, 2021), aimed at ostentatiously demonstrating a commitment to addressing 'racial disproportionality'. When access is allowed, conducting interviews in a prison environment presents unique restrictions and challenges. While most interviews were between 1.5 and 2.5 hours long, the duration varied unpredictably even within the same facility. Interviews had to be scheduled and rescheduled due to factors such as staff shortages, lack of awareness among staff about interview arrangements, and conflicts with the interviewees schedule. While interviews conducted through phone calls (Berg, Léon and Tosh, 2022), letter-writing or mail

correspondence (Bosworth et al., 2005; Vannier, 2018; Burtt, 2021) have become an increasingly common approach to qualitative research, as someone who supported someone in prison for years, I know that remote contact is not exempt from institutional constraints.

My experience of being denied access serves to illustrate how the delineation of criminological knowledge and its isolation within state institutions contributes to epistemic injustice. Not only do institutional gatekeepers decide which research is legitimate, but they also dictate the legitimacy of the researchers themselves, while simultaneously restricting the ability of imprisoned individuals to share their stories with any control over when, if, and how long they will have to do so. Indeed, while promoting the work of Indigenous and negatively racialised scholars and centring the voices of the most marginalised is central to the broader transformation of Criminology, there is always an inherent paradox in seeking to do so through producing knowledge on racialised people that requires our compliance with white-dominated state institutions.

Shared Cultural Knowledge

While my personal biography presented emotional and practical challenges in accessing prisons, when it came to carrying out the interviews, I felt that my personal biography enriched the research process at times. Criminologists have highlighted the value of shared cultural knowledge between researchers and participants in navigating access, field experiences, and enriching analysis (see for example Philips and Earle, 2010; Wakeman 2014). This cultural knowledge, as exemplified by Wakeman's (2014) study of heroin use, dealing and addiction, may be overlooked in its value and significance in mainstream society, but can assist in rendering a clear and progressive account of the topic at hand in criminological research. Indeed, my fieldwork experiences emphasised the significance of

shared cultural knowledge in the preparation and execution of the research conversations, most of which pertained to linguistic capital.

I grew up on a working-class council estate, my Mum a cleaner, Dad a demolition labourer. Neither of my parents went to university and from a fairly young age, they deferred to me for assistance with the drafting of formal letters or applications. Despite growing up in a predominantly white working-class council estate, my primary school was characterised by a predominantly white middle-class student body. The council flat, in which my parents and I still live, is situated directly opposite a landscape of multi-million- pound houses, three private schools, and two large golf courses. At a young age, I was cognisant of economic inequality and social and cultural distinctions, although I would not have articulated them in those terms at the time. Despite attending the same school, my closest friends and I lived markedly dissimilar lives. Annually, they embarked on skiing trips and visited countries unfamiliar to me. They participated in extracurricular activities financially out of reach for my family, such as judo and flute lessons, and my musical preferences, food, and recreational activities diverged from theirs. I found myself regularly 'code switching', adapting my speech to be more 'formal' or conventionally middle-class when interacting with my school friends, and I distinctly recall removing a Tupac poster from my bedroom wall, fearing judgement for listening to music outside of the realm of Avril Lavigne or Busted.

It was not until I studied A-level Sociology that I realised that this 'difference', as navigated in my childhood, had been conceptualised by sociologists as 'social' and 'cultural capital'. Social capital refers to the resources embedded within social networks, including relationships and social connections that can be mobilised for personal or collective gain. Cultural capital, on the other hand, refers to the cultural and symbolic recourses, knowledge, education, and skills that individuals acquire through socialisation

and contribute to social mobility. Unlike many of my childhood friends, my parents did not exist in a network of professional or personal relationships that may have given me a head start. I was not encouraged to read literature, able to travel to multiple continents, learn to play an instrument, and I am yet to go skiing. As defined by early sociologists then, I existed with a deficit of capital. This deficit has been noticeable; engaging in dialogue with those considered well-travelled, and well-read, remains difficult – something which became particularly noticeable when I began navigating the University of Oxford. But there are other, perhaps less 'esteemed' spaces that I find easier to occupy by virtue of my personal experiences and history, underscoring the relative and subjective nature of concepts which rely on a measurement of valuable cultural knowledge and social capital. A critical review of early sociological theory is beyond the scope of this chapter however, cultural capital has tended to be evaluated and understood based on white, Western European middle-class norms and values, devaluing cultural knowledges and practices that deviate from these – a longstanding effect of the European colonising mission. Yet, since criminology overwhelmingly 'gazes down' (Oleson, 2018) by exploring the lives of marginalised and minority groups (which in itself can reinforce the 'other'), conventionally undervalued forms of cultural knowledge can be useful in producing authentic criminological knowledge.

My conversations with Jamaican mothers, Caroline and Rose, illuminated the value of my own Jamaican heritage and familiarity with patois, as it facilitated effortless communication before, during and after our interviews. Similarly, some of the young men spoke in Black British English (BBE)[18], using terms which are both familiar and native to me. This shared linguistic repertoire likely reflected not only our shared racial background,

[18] BBE is characterised as a 'combination of Jamaican language (Patois), West African Creole (Pidgin) and

Black-British Vernacular’

but also our age, heritage, and upbringing. Many of us were close in age, shared the same heritage, and grew up in inner-city, working-class neighbourhoods. While experts have recognised BBE as a distinct language in its own right - it encompasses a rich vocabulary and consistent grammatical structure, including unique features such as the use of the third person as the first person (Purdy-Moore and Thompson, 2021) – exemplified by Marcus' disclosure: 'the police see [a tracksuit] and think that's… man's uniform'. 'Man' can also be used in the third person and is not necessarily confined to use in the context of one gender.

Consequently, when exchanging dialogue wherein BBE is used, inauthenticity quickly becomes apparent. And, despite its linguistic legitimacy, BBE, like African American Language (Saeedi and Richardson, 2020) is often dismissed as 'slang' or improper speech, sometimes leading those who use it to 'code switch' when communicating in professional settings or outside of their community (ibid). The uninterrupted use of BBE throughout some of the interviews therefore serves to indicate participants assumed shared cultural knowledge between us, most notable in my conversations with Shaun and Marcus. These conversations highlighted how cultural knowledge, as it relates to language and dialogue, may be stigmatised and penalised, including in the context of joint enterprise prosecutions (see Chapter Six), yet holds significant value when seeking to authentically engage with and understand the experiences of young Black people in Britain.

When discussing their experience of policing, the young men also employed specific phrases commonly used amongst young people from inner-city working-class communities, where police contact is frequent and far reaching. These included phrases such as 'under obo', which I recognised as meaning 'under police observation'. While it was apparent that participants often assumed shared cultural knowledge between us, there

were moments when they were pleasantly surprised that they did not need to offer further clarity. Toby occasionally expressed surprise with a smile and a spud (fist bump) when he realised that I understood him without needing further explanation. This surprise likely arose from my position as a researcher affiliated with the University of Oxford, an assumption implied by some of the young men and relatives during post-interview discussions. Some expressed pride that someone like me was studying at such a prestigious institution, while others inquired about my experience navigating an institutionally white and upper-class environment.

It is worth noting that a researcher with a different background might still have been able to understand the phrases and language used by some of the participants. Identifying research experiences that highlight the significance of race, ethnicity, class and gender in outcomes and interactions can be challenging without the opportunity for comparison (Phillips and Earle, 2010). A particular research experience occurring during the course of my doctoral work illustrated how this cultural knowledge, influenced by differences and similarities in the researcher's personal proximity and biography, can shape the flow and direction of interviews. In this instance, during a co-researcher prison interview, the interviewee mentioned the term 'bully van', which I understood to describe police riot vans. My colleague, a non-Black woman and former prison staff, interrupted him to seek clarification on the term, appearing to subtly alter the flow and direction of his storytelling. Whilst other colleagues likely knew the meaning of this term, their cultural knowledge had largely been acquired through their experiences working in prisons. Comparatively, my familiarity stemmed from my upbringing in an environment with a notable police presence and proximity to Black men facing persistent police harassment. I entered the field equipped with this cultural knowledge, eliminating the need to acquire it during the research process.

Understanding language without requiring explanation not only facilitates conversations that flow smoothly and without interruption, but also preserves the integrity of the participant's original expressions and language. It can also foster comfortability and rapport by establishing relatability between the researcher and participant. This sense of connection was explicitly conveyed by Carlos, who had anticipated meeting ‘some old woman’ and was pleasantly surprised to meet me. Others expressed satisfaction with the authenticity and ease of our discussions, relaying that they felt a sense of genuine care from me about the issue at hand. For those who did not know about my personal experience, this perception not infrequently led to questions about whether something ‘deeper’ motivated me to do this work (more of which below).

I also felt that this relatability manifested in how participants chose to make sense of their conviction in our conversations, most notable in their reflections about being judged by those who cannot relate to them, the descriptions of whom were often candid and frank and stood in direct contrast to our shared biography. For example, as seen in Chapter Seven, Shaun unashamedly described his jurors as ‘looking like two fucking white women, old women that look like they should be on Gogglebox’ (see page 275). Once again, a co- interview carried out during my doctoral journey demonstrated how interviewees are cognisant of the researcher’s biography in relation to how they articulate and make sense of the topic of discussion. The interviewee, a young Black man, was discussing the deficit of understanding and familiarity of Black culture amongst prison staff. Following probing from my colleague, an older, middle-class white man in a suit, the young man responded: ‘I can’t imagine you have many Black people at your BBQ’. Thus, he unapologetically exemplified my colleague to illustrate the social distance between staff and Black prisoners in that context.

My conversations with the young men and relatives presented a contrast to my interviews with some practitioners, where I found myself needing to acquire cultural knowledge specific to the legal sphere during the research process. While my experience researching institutions within the CLS provided me with a fairly comprehensive understanding of the terminology used and practices referenced by practitioners, there were moments when I encountered gaps in knowledge. For example, in instances when practitioners delved into discussions about evidential pathways, I either asked for clarity or hesitated to interrupt their flow, opting instead to seek this knowledge myself post interview, potentially leaving lines of further inquiry unexplored. Unlike my conversations with the young men and their relatives, where I was able to make sense of legal practitioners' narratives and language without clarification, it was not due to me possessing 'insider' status or any biographical congruence. Rather, my knowledge had been acquired through a combination of ongoing study and research, as well as bearing witness to criminal legal proceedings. I was not therefore immersed in legal culture in the same way that I have been consistently immersed in the culture familiar to many of the young men and relatives.

Shared Proximity to Injustice

Alongside the cultural knowledge accumulated over my lifetime, my direct personal experience of joint enterprise and supporting someone in prison contesting their innocence was also central in shaping the research conversations and my understanding of participants narratives. Some interviewees were already aware of my connection to my ex-partner through our existing relationship. For those who were not, I deliberated whether to disclose this information before the interview. I pondered whether providing them with some understanding of our shared life experiences might foster a sense of

confidence. However,

I was concerned that such disclosure could be perceived as opportunistic or presumptuous about shared experiences (Phillips and Earle, 2010: 366). Ultimately, I opted to disclose my experience when it felt right and organic. On several occasions, I was prompted to disclose my personal experience when participants asked me what motivated me to pursue this study. On another occasion, during an interview with Toby, I disclosed this information after pausing for a break due to his emotional distress during interview (more of which below).

Interviews took place in various spaces within each establishment. Most commonly, they were conducted in rooms designated for education or offender management programs. The prison staff typically organised these rooms with a formal setup: a table with a chair on either side, my recording device in the middle, while staff waited somewhere outside the room. In one facility, I had to conduct interviews in the legal visiting rooms due to a shortage of staff available to escort me through the prison. These rooms, similarly organised, were even more unwelcoming - a small, echoing box with transparent plastic windows, allowing officers to circulate in a panopticon-like setup. I was acutely aware that these settings mirrored a police interview room, which inherently hindered efforts to dismantle power dynamics and create a comfortable atmosphere. I attempted to mitigate this by adjusting my body language to maintain a relaxed and non-threatening posture, often leaning back in my seat. I also attempted to position my chair slightly diagonally to avoid sitting directly opposite them. However, the prison environment often posed challenges to my efforts, as my chair was not infrequently bolted to the floor. Time constraints imposed by the prison regime also impeded my efforts to democratise the space. While a more conversational and unstructured style of interaction is crucial to this process (Parmar, Earle and Phillips, 2021), as mentioned earlier in the chapter, there were specific elements of their experiences relevant to my research questions that I wanted to ensure I

captured in the limited time. Consequently, some interviews were less of a two-way process than I desired, and I remain, to a significant degree, the author of how they conveyed their stories.

For the most part, the young men did not show obvious signs of distress and were quite forthcoming. However, there were instances where my efforts to create a more relaxed environment were insufficient to counter the emotional impact of discussing their experiences. During our conversation, Toby, who had previously been subjected to a facial acid attack, became visibly distressed, clamming up and stuttering when recalling the violent incident at the centre of his case and the prosecution's case at trial. I immediately encouraged him to take a break. He apologised, explaining that it was difficult for him to relive what happened. After reassuring him that he had no reason to be sorry, I paused the recording device and shifted the conversation to the topic of studying criminology at university, which eventually provided a natural segue to share my personal experience. In doing so, I noticed an immediate sense of relaxation in Toby's body language, perhaps simply because the focus on revealing and discussing a difficult experience momentarily shifted to me. However, Toby became interested in what happened to my ex-partner, leading us to have a brief discussion about his case before continuing with the interview. I sensed the feeling that our shared proximity to injustice assisted in creating a safer space for Toby to reflect on and tell his story.

While recognising that my experiences and those of my participants are not homogenous, I found that my personal exposure to my ex-partners case, coupled with my own experiences of (often subtle) racist encounters, also enabled me to quickly discern the manifestations of race at play when participants discussed the trial process. For instance, when Rochelle, the girlfriend of Rav, remarked, 'the prosecutor kept saying that you guys came all the way from London to here', it immediately evoked memories of similar rhetoric

used in my ex-partner's trial. In that context, I interpreted it as a subtle yet deliberate invocation of racial difference and notions of 'invasion' of white suburban space. It was this personal experience that ensured I did not bypass Rochelle's statement merely as a mundane factual detail, but as a disclosure which required me to leave space for Rochelle to expand upon and make sense of (see Chapter Seven). Having experienced something similar myself, my understanding of the dynamics at play in Rochelle's description of her experience helped me to make sense of and analyse what she told me.

When interviewing relatives in particular, my personal experience of supporting someone in prison contesting their innocence also uplifted my confidence in creating a judgment-free environment. I know that being close to a convicted person under joint enterprise can impose a unique emotional burden when disclosing this to others; it is often accompanied by a sense of obligation to explain the entire case to demonstrate that the label attached to your relative does not reflect them or their actions, leading to a constant defensive stance. From the outset, I therefore approached these interviews with the understanding of the importance of conveying that I was not viewing them through a lens of suspicion, but rather, validation, whether it be through my facial expressions, or deciding whether to respond to their disclosures with questions or reflections.

My conversations with participants also significantly impacted upon my own emotional state. Scholars have acknowledged the emotional challenges of discussing and researching racism and racial injustice, especially for Black researchers (Phillips and Brown, 1997). As a Black mixed-race woman, comments from legal practitioners regarding so-called 'Black crime' (see Chapter Five and Seven) elicited particularly challenging emotions during some interviews, requiring me to remain focused on the interview process without succumbing to my feelings of anger and frustration. But my personal experience of joint enterprise added another layer of identity and emotions to navigate. During

interviews, I experienced intermittent emotional numbness - a defence mechanism to shield myself from difficult emotions - resulting in moments of disengagement. At other times, I felt goosebumps and throat lumps triggered by memories of my own experiences. Consequently, upon listening back to some interviews, I found myself questioning why I did not probe participants further in places. After interviews, I often struggled to process my thoughts. Despite urging myself to take notes on my current emotional state and reflections about the interview, I often found the task overwhelming and did not do so. These feelings extended to the analysis stage, where revisiting interviews felt daunting and overwhelming. Amidst these challenges, there were moments during interviews that I felt surges of excitement, realising that I was now able to share a story that resonated deeply with my own. However, this feeling occasionally made it difficult to avoid leading questions that mirrored my personal experiences, requiring constant vigilance, caution, and correction in my questioning.

Regarding practitioner interviews, my personal connection to the subject matter often triggered anxiety before these conversations, causing me to approach them in a state of unease. This feeling reached its peak before my interview with John, a recently retired Crown Court judge, resulting in tears before I even reached the location. Initially I struggled to comprehend why I had such an extreme reaction, but on reflection, it became evident that my last memorable interaction with a Crown Court judge occurred when they were sentencing my ex-partner to 31 years in prison. I undoubtedly experienced apprehension about interviewing those who were part of the system responsible for my trauma, while striving to maintain a level of neutrality and calmness in the interview process. These emotions stood in direct contrast to the feelings I experienced prior to interviewing the relatives and young men when the only significant source of anxiety was the prospect of being denied prison access again.

In exploring the manifestation of biographical congruence in the research process, it is also crucial to acknowledge the heterogeneity of experiences. First, it is essential to remain aware of the differential access to power, especially when engaging with people in prison. Despite meeting the criteria for one participant group, there remains a noticeable degree of outsider status, given my position as a doctoral researcher. Moreover, meeting the criteria for one participant group does not automatically grant insider status with others. Likewise, after supporting my ex-partner for several years, I no longer have contact with him, unlike those who participated in the study. Similarly, my experience differs significantly from most participants since I am not a mother, and therefore cannot comprehend the anguish of losing a son in this way. I know that navigating a romantic relationship with someone enduring long-term imprisonment raises unique questions, such as deciding whether to maintain the relationship at the potential cost of not having children, differing from the pains and worries expressed by the mothers in our conversations. While there were moments during our interviews that I often felt I was talking to myself, or at times, my ex-partner's mother, no two experiences are the same, nor is any phenomenon experienced homogenously. Indeed, the interviews emphasised how differences in one's broader biography, such as motherhood, cannot be considered in isolation from similarities in personal experiences like joint enterprise.

Conclusion

While this chapter has consisted of the conventional discussions surrounding the recruitment of participants, methods of data collection and analytic framework, the reflexive exploration of my broader methodological approach offers the reader insight into how my identity and personal experiences shaped the thesis and its findings. My reflections illustrate how my positionality, alongside my understanding of the existing empirical and

theoretical literature set out in the previous two chapters, imbued the study with a foundation that defies the purported neutrality of traditional research. Through this reflexive process, I have set out and explained my intention to resist racial injustice through knowledge production, adopting the CRT tenet of the counter-narrative to do so. The reflections on my wider purpose for 'taking sides' illustrate how 'staying close' and continuing to 'bear witness' to injustice (Clarke, Chadwick and Williams, 2017) can promote epistemic justice by ensuring that we disseminate participants' grief in a way that serves communities. However, through exploring the tensions I personally felt in following institutional ethical protocols, I emphasise how institutional procedures are not the most conducive to fostering relationships central to such interventionist scholarship.

My denial of access to a prison centres the inherent issues with criminology as a discipline when seeking to conduct research that does not uphold existing racial hierarchies and prioritises the voices of those subject to racial injustice. Criminology's focus on punishment, and society's reliance on prisons as the primary means of punishment for what is considered more serious criminalised behaviour, makes such aims difficult to achieve. Police cells, prisons and even courts are heavily surveilled and scrutinised, making them some of the most inaccessible state institutions, demarcating many forms of criminological knowledge. While all social research is conducted within wider systems of hierarchy and power relations, criminologists face unique challenges due to their focus on institutions specifically designed to demarcate. This experience thus illustrates how our broader research purpose as it concerns transformational change may be inherently restricted by the gatekeeping mechanisms of the systems in which we seek to study.

My discussion in the remainder of the chapter highlights the intricate web of relationships, experiences, and cultural knowledge that shape our ability to engage with various stakeholders in the CLS. Some aspects of our personal backgrounds may better

equip us to communicate with lawyers, while others may enhance our understanding of individuals affected by racialised state violence. However, my analysis also demonstrates how these distinctions are not always clear-cut, illustrating how our personal biographies can lead to nuanced dynamics in research interactions which flow between positive and negative implications, pains, and privileges. Furthermore, my reflections encourage us to reconsider what constitutes valuable cultural knowledge. We all possess unique experiences, each with their own value and relevance that may become apparent under different circumstances. However, when doing research involving marginalised and minority groups, what is traditionally perceived as valuable cultural knowledge, may not be the most valuable. In examining my research conversations through a lens of self-reflection, this chapter therefore elucidates the relativity of valuable cultural knowledge in the context of doing research. Now that I have laid the foundation for the counter-narrative, the following chapter is where I begin to surface it through participants stories.

FOUR: CREATING THE 'IDEAL DEFENDANT' FOR THE PROSECUTION: POLICING BLACKNESS AS POLICY

Introduction

Nils Christie (1986) defined the 'ideal victim' as a 'person or category of individuals who, when hit by crime, most readily are given the complete and legitimate status of being a victim' - a 'public status' akin to a 'hero' or 'traitor' (page 18). While Christie's framework recognises the influence of wider social conditions and power dynamics in ascribing the ideal victim, he emphasises characteristics of the individual and circumstances surrounding the crime in bestowing victim status. Even at this individual level, Christie's conceptualisation does not consider race. By adopting the term 'ideal defendant', this chapter invokes Christie's concept. I do not intend to test the applicability of the ideal victim theory in the context of the defendant. Instead, I adopt the term 'ideal defendant' to assist in conceptualising and demonstrating how young Black men are more vulnerable to prosecution and conviction in the context of joint enterprise.

There is an obvious distinction between the labels 'ideal victim' and 'ideal defendant'. While the 'victim', like the 'offender', is underpinned by cultural stereotypes and the normative language of societal discourse, the 'defendant' is typically ascribed through legal proceedings. Victimisation is a more subjective construct existing in the collective imagination. The 'ideal defendant' is explored by Field and Tata (2023). Their collection of chapters demonstrates that an implicit model of the 'ideal defendant' is operational across various CLSs. According to the authors, the ideal defendant is predicated on an assessment of the individual, akin to the ideal victim. The ideal defendant is compliant, admits guilt, accepts individual responsibility, and shows remorse, thus 'implicitly or explicitly… legitimising the state's claims to administer fair and humane

punishment' (Field and Tata, 2023: 3). The book therefore conceptualises the ideal defendant from the perspective of the state. However, the chapters also demonstrate the 'legitimating function' performed by the police and legal practitioners in constructing the ideal defendant, including defence barristers who can choreograph expressions of guilt through the guilty plea (Hodgson, 2023).

The book adopts a broad definition of the 'defendant', encompassing those proceeded against by the state but not yet prosecuted, through to those being considered for parole. The authors therefore utilise the term 'defendant' to encompass a range of scenarios where the individual could take responsibility for the alleged offence (i.e., be 'ideal'). Field and Tata's book therefore delves into a range of processes in constructing the ideal defendant through the making of remorse and responsibility. Unlike the ideal victim then, the ideal defendant is not about who is afforded public sympathy or recognition of harm. Rather, it is about how state actors construct the 'ideal' subject in the context of legal proceedings, including through institutional processes.

When I use the term defendant, I am referring to the person accused at the Crown Court trial stage where jurors have been summoned. It is at this juncture that attempts to make the defendant 'ideal' through admissions of guilt have failed, and consequently, where prosecution and defence objectives more conspicuously diverge. This chapter focuses on the role of the police, and the institutional conditions and specific mechanisms at play in constructing the ideal defendant for the prosecution in the context of joint enterprise murder cases. The characteristics of the individual remain important. As Chapter Two illustrated, the Black male is already interpreted as the hypermasculine and threatening being, characterised as a 'perpetual suspect' (Long, 2018). Thus, the physical attributes of the defendants in this study arguably make them more 'ideal' for the prosecution in and of themselves (more of which in Chapter Seven). However, this chapter

explores how the conditions within which young Black men are policed make them particularly ideal in a joint enterprise context. The chapter examines how the ideological and political convergence of Blackness and ‘gangs’, as set out in previous chapters, causes and sustains distinct interactions between the police and Black communities which set the groundwork for the prosecution case, even before an individual is arrested.

I begin this chapter by illuminating the enduring legacy of the ‘war on gangs’, the longer history of which was set out in Chapter Two. Through an analysis of contemporary policy, I underscore how political discourse and contemporary policies continue to manifest a racialised understanding of serious violence and advocate for police-led, data-driven, gang-centred responses. Thus, before introducing the narratives of the young men, I emphasise how policing Blackness has indirectly become embedded into policy, resulting in policies which encourage the accumulation of data about young Black men. Through the narratives of the young men, I then demonstrate how this accumulated data furnishes the requisite evidence for the prosecution to infer that the defendant is a ‘gang member’ or ‘gang affiliated’ - a narrative that has a particularly ‘conviction-maximising’ capacity in joint enterprise cases (see Chapter Six). In this chapter, the ‘ideal defendant’ is therefore about how the police, through established racialised gang-centred practices, construct a distinct ‘shadow identity’ for young Black men. It is this shadow identity, compounded by ‘gangs’, that makes the young Black defendant, who is already the ‘perpetual suspect’, the most ideal for prosecutors.

The narratives of the young men in this study demonstrate how the formation of a shadow identity, and thus the ‘ideal defendant’, hinges on various facets of their interactions with the police which are encouraged and sustained by wider policy. I reflect on the convergence between their experiences and Lerman and Weaver’s (2014) concept of the ‘custodial citizen’ developed in the US. In doing so, I demonstrate how the young

men, who have existed in a space reminiscent of the ‘custodial lifeworld’, experience a distinct form of policing which is pivotal in creating the shadow identity. I conceptualise the characteristics of this policing as follows:

1. Frequency and reach
2. Cumulative documentation
3. Resounding silence
4. Mutual disdain and avoidance

The latter part of the chapter explores the extent to which jurors are made aware of these institutional conditions within which young Black men are policed. Drawing on the narratives of legal practitioners, it becomes clear that the police violence and methodology underlying the prosecution’s case is rarely considered in court, meaning defence teams fail to confront the discriminatory policies and police practices which underpin prosecution evidence. This chapter therefore begins to foreground the punitive, racialised function of the ‘gang’ in the context of joint enterprise through the narratives of young Black men.

Policing Blackness as Policy

> I am Police Constable Mead a serving Police Officer… currently serving in an intelligence role… monitoring online gang related activity… I am one of a small Law Enforcement cohort termed as "Trusted Flaggers" by YouTube and Google and able to provide context and narrative via internal referrals to YouTube to remove drill music videos that have breached their community guidelines providing context for what is often very nuanced and hyper local references… I have previously been consulted in relation to gang related matters… owing to my historical and current knowledge of individual gang members, current dynamics, territory and the gang linked drill music… I have previously provided what has been termed expert evidence at several Crown Court cases involving gang members that additionally performed as drill music artists…

The above quotation is taken from a police officer's witness report in a joint enterprise murder case.[19] Speaking to their knowledge of 'gang activity', the officer describes dozens of cases for which they have provided 'expert evidence'. They describe their role in a Gangs Task Force, conducting 'pro-active patrols' and 'interventions in gang affected communities' to 'monitor the dynamic nature of gang activity' - a 'primarily intelligence-led' role. Despite claiming to assist the court through 'objective and unbiased opinion', the officer refers to the Black musical genre, drill, as one that provides an 'ongoing narrative to criminality'.

While the intensity of 'moral panics' may subside and fluctuate, they leave an enduring 'institutional legacy' (Goode and Ben-Yehuda, 1994) - a 'gang industry' wherein police officers are considered 'gang experts', specialised police units scrutinise drill videos and patrol designated 'gang hotspots', while a 'super court' is purpose built large enough to put 'gangs' on trial (Bardsley, 2021).

A plethora of literature addresses a transformation in British crime control over recent decades - a shift away from reforming individuals, towards the management and control of 'offender' or 'at risk' populations (Feeley and Simon, 1992; Brown and Pratt, 2000; Garland, 2001; O'Neill and Loftus, 2013). Within this paradigm shift and global technological change, policing has undergone corresponding shifts, becoming increasingly pre-emptive, intelligence-led, data-driven, and surveillance-oriented, raising concerns regarding privacy and civil liberties (Williams and Kind, 2019). Data-driven policing is enacted through official surveillance operations and informal intelligence-gathering,

[19] The statement was provided to me by one of the participants in this study. No identifiable features of the

statement have been included here.

including the population of secretive databases which may be subject to algorithms to predict or assess people's 'risk' of criminality (Ferris, 2022).

Rather than policing by 'hunch' and 'prejudice', the police now aspire to be guided by intelligence (Fraser and Atkinson, 2014). Police violence has therefore grown more sophisticated, with interventions seemingly directed only at those for whom it is necessary (Waddington, 2007, 130 in Fraser and Atkinson, 2014) - an objective calculation of risk, not a matter of discretion. Yet, police 'intelligence' reflects the locations, communities, and crimes most likely to be policed (ibid), leading to the hardwiring of discriminatory policing and harvesting of 'intelligence' on negatively racialised people (Williams and Kind, 2019) which can later be used for prosecution (O'Neill and Loftus, 2013; Williams and Kind, 2019). Contrary to conventional assumptions, surveillance-oriented policing is not isolated to terrorism or serious organised crime. Most relevant to joint enterprise is the surge in data-driven gangs policing, predicated on notions of 'risk-management' (Williams and Kind, 2019) and more recently, 'safeguarding' (more of which later).

As McConville, Sanders and Leng (1991) argue, prosecution case theory is a construct wherein the police are involved in the collection and *creation* of evidence for court. It is widely accepted that police powers are disproportionately exercised on young Black men (McConville, Sanders and Leng, 1991; Keeling, 2017; HM Inspectorate of Constabulary and Fire & Rescue Services, 2021). The recent Casey Review (2023), which investigated the culture of the Met, acknowledged that all police contact 'leaves a trace' (page 320). At the same time, all police stop powers are used racially disproportionately (Head, 2023). Even in the absence of crime, young Black men are more likely to encounter police violence like stop and search (Keeling, 2017). They exist in communities that are more likely to be identified as 'gang hotspots' (Williams and Clarke, 2016), while the music they are more likely to engage with is perceived as

synonymous with ‘gang crime’.

In the discussion that follows, I argue that the politicised ‘war on gangs’ and the proliferation of data-driven, pre-emptive policing and gang-centred policies, encourages the ‘datafication’ (Data Justice Lab, 2018)[20] of young Black men, where aspects of their daily lives become state ‘intelligence’. The section that follows illustrates these distinct police interactions and conceptualises them in the context of participant experiences, demonstrating how the accumulation of intelligence becomes ‘a rich resource for prosecutors’ in court (Clarke and Williams, 2020: 11). As we saw in Chapter Two, the ‘gang’ is part of a ‘post-war tradition of othering young Black people’ (Williams, 2014: 32) - an epitome of how colonial logics of race are still mobilised by British leaders today. Successive construction of the Black ‘folk-devil’ has seen an ongoing cycle of racialised moral panics, inclusive of ‘knife crime’, which has also come to be defined through Blackness (Williams and Squires, 2021). In turn, such matters have led to the rise of the ‘gang’ and ‘knife crime’ industries, whereby these phenomena have become a sector of economic activity. Their politicisation, accompanied by the marketisation of charitable services has stimulated a climate in which both have become a means for obtaining funding (Shute and Medina, 2014; Williams and Squires, 2021). With the industry reliant on a racialised 'risk' discourse, the community sector is incentivised to adopt the language of 'risk ' and 'gangs'. For example, Abianda (2021), a social enterprise supporting girls affected by criminal exploitation, acknowledges that while the term ‘gang’ is racialised and may not always reflect the experiences of the young women they support, being ‘gang-affected means young women can access’ their services (page 1). Likewise, individuals regarded as experts on ‘gangs’ and drill, including academics who are sometimes called to give

[20] The Data Justice Lab seeks to examine the relationship between social justice and ‘datafication’. The Lab uses the term ‘datafication’ to describe the systematic and growing process of collecting, analysing, and using large amounts of data generated from daily activities, interactions, and digital platforms to profile, sort, and influence the lives of individuals and communities, including through the denial of access to

opportunities, wrongful targeting and exploitation.

evidence, are often paid a healthy sum. Simultaneously, the government persists in allocating substantial funds towards new serious violence initiatives designed to respond to ‘knife crime’ and ‘gangs’.

After the 2011 uprisings, the government introduced a series of punitive measures designed to respond to the politically constructed ‘gang threat’, with the allocation of funding to tackle the effects of the uprisings contingent on the number of reported ‘gangs’ in a given area (4Front Media, 2023). Gang-centred policies and the state’s use of the ‘gang’ as a political strategy persists. However, an ideological and conceptual shift has recently emerged, with such policies now cloaked under the guise of ‘public health’ and ‘safeguarding’. Recently, the British government has claimed to adopt a public health response to ‘serious youth violence’. The public health paradigm conceptualises violence as a threat to public health rather than public order, acknowledging that criminal justice alone cannot achieve long-term change (Moore, 1995). This commitment should therefore have produced a shift away from a police-led ‘law-and-order’ agenda, towards an approach which responds to the complex, structural causes of violence. Yet, whilst the government’s 2018 Serious Violence Strategy recognised that ‘serious violence is not a law enforcement issue alone’ (HM Government 2018: 9), it contemporaneously encouraged the implementation of police measures to suppress ‘gang activity’ on social media platforms and endorsed Operation Sceptre - weeks of co-ordinated police action involving ‘targeted’ stop and search and ‘weapons sweeps’ of areas of suspected ‘knife activity’ (HM Government, 2018: 80).

In December 2019, then Home Secretary Priti Patel announced funding of £100 million to tackle serious violence. Of this, £63.4 million was said to be allocated towards ‘surge operational police activity’ (Home Office, 2020). Simultaneously, the Government endorsed enhanced stop and search powers for 43 forces (Home Office, 2019), the

recruitment of 20,000 new officers, and tougher sentences, all of which run counter to public health principles. Several proposals to enhance police stop and search powers have been made in recent years. In 2021, Priti Patel proposed plans to permanently scrap the discriminatory safeguards around section 60 'suspicionless' stop and search, only to abandon this decision following legal action from Human Rights Group Liberty (Liberty, 2021). Despite ongoing revelations about police misconduct and racism in 2023, including the disproportionate use of strip search against Black children (Casey Review, 2023; Children's Commissioner Report, 2023), then Home Secretary Suella Braverman gave her full support to the police to 'ramp up the use of stop and search' (Weaver, 2023), arguing that racial disproportionality was justified because young Black men are more likely to be victims of 'knife crime' (Huskisson, 2023).

Braverman's justification can be challenged on a number of fronts, not least because most stop and searches are made under the Misuse of Drugs Act (Home Office, 2023b) and its efficacy in reducing offending is notably low and difficult to measure (Stop Watch, 2019; Head, 2023). Her justification also indicates a profound misconception of 'knife crime'. As illustrated in Chapter Two, serious violence transcends race, and most victims of 'knife crime' are white (Wood, 2010). In fact, knives are the most frequently used weapon in intimate partner homicide and domestic violence (Cook and Walklate, 2020), yet 'knife crime' has not been framed as a gendered phenomenon concerning violence against women. Knives have only become the subject of fear in official discourse when they are used in public by young men and children, openly and regularly defined through ethnicity and gangs', perceived as a distinctively 'Black crime' (Williams and Squires, 2021: 171). The racialised 'gang' has therefore become reimagined through 'knife crime', which, like 'mugging' (see Chapter Two), is not an official offence category. Thus, policy responses to 'knife crime' do not address the dimensions of the phenomenon which have

been invisibilised by a racialised understanding of the issue. Similarly, the persistent use of the term '(serious) youth violence' in political, policy, and academic discourse, alongside discussions of 'gangs' and 'knife crime,' has the potential to racialise and saturate of our understanding of violence, leading us to instinctively associate any media coverage or research on violence with young (Black) people on the streets, rather than with other forms of violence (Billingham and Irwin-Rogers, 2022).

Contemporary Policy

A series of recent initiatives have been introduced to respond to 'serious youth violence', 'knife crime' and 'gangs'. The highly contested Police, Crime, Sentencing and Courts Act (2022) brought forth a Serious Violence Duty ('the Duty'), which mandates that various public bodies share data with the police, including information about children and victims. The Duty purports to embody a public health approach, concerned with safeguarding and protecting against criminal exploitation (Home Office, 2022b).

However, given it is police-led, it expands the scope for police intervention in individuals' lives, meaning it is likely to become an intelligence-gathering exercise - a 'new iteration of enforcement-driven policy akin to the Gangs Violence Matrix' (Justice, 2021b) and other predictive policing tools. The Met's Matrix, introduced following the 2011 uprisings, was recently ruled unlawful on the basis that it breached an individual's rights to private and family life (Liberty, 2022b) - a direct result of this multi-agency data sharing which led to (mostly Black) people being denied access to benefits, taken into care and evicted from their homes (ibid).

Analogous to The Duty is the recent expansion of other multi-agency initiatives such as ‘safer-schools officers’[21] (Runnymede, 2023), deployed in schools nationally, but central to the London Mayors ‘Knife Crime Strategy’ (Greater London Authority, 2017). Claiming to enhance safeguarding and provide feelings of safety within schools, this initiative disregards the trauma experienced by many children at the hands of police. It also encourages schools to act as a conduit for police intervention, as school-based officers become ‘extra sources of ‘intelligence’ gathering about young Black people, (re)institutionalising the ‘fabricated association between race and ‘gangs’ (Nijjar, 2021: 496). The allocation of officers reinforces this assertion, since officers are more likely to be based in schools with higher numbers of negatively racialised children (Runnymede, 2023).

‘County lines’ is also at the centre of new multiagency safeguarding responses. Defined by the Home Office as ‘gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK’ (Home Office, 2023a), ‘county lines’ has become prominent in government policies, media and public and academic discourse, with such discourse emphasising the ‘discovery of victimhood’ amongst drug dealers (Koch, Williams and Wroe, 2023: 4). Academics have welcomed the language of ‘safeguarding’ and ‘vulnerability’ as a departure from more exclusionary ‘law- and-order’ approaches (ibid; Koch, 2024). However, ‘county lines’ policy responses remain punitive. Koch, Williams and Wroe (2023) found that in some local authorities, the number of individuals (including adults) profiled through safeguarding partnerships which sought to identify young people exploited to sell drugs, exceeded the number of young people referred for support seven times over (ibid). The authors therefore express concern

[21] Safer Schools Officers are police officers who are assigned to a school(s). They have additional powers in relation to that particular school(s) that an ordinary police officer would not.

that being profiled by multi-agency safeguarding partners as being 'county lines'-affiliated could have similar consequences for the many young Black people profiled by the unlawful Gangs Matrix.

In 2022, the Government pledged to 'free young people' from the grip of 'vicious county lines gangs' (Home Office, 2022a) however, the CPS makes clear that victims 'do not enjoy blanket immunity' (Crown Prosecution Service, 2022). Indeed, community and court-based ethnographic research has demonstrated that the use of modern slavery legislation and safeguarding policy can produce contradictory results, as those identified as the criminally exploited 'slave' by one set of authorities have ended up facing charges for human trafficking (Koch, Williams and Wroe, 2023). The use of the Modern Slavery Act (2015) to prosecute individuals for 'criminal exploitation' has therefore raised concerns amongst commentators for its ability to apply a 'slave master' label to young Black men - often 'low-level' drug dealers 'not far removed from the streets themselves' (see Gebrekidan, 2022) - and the painful irony of the use of the label in this context.

Koch, Williams and Wroe (2023) argue that this new crime label, which draws on the rhetoric of a racialised crisis such as that of the 'mugger', requires critical interrogation. They identify the dearth of evidence to support the contention of an increase in the use and supply of (Class A) drugs because of 'county lines', while other commentators have argued that such 'new' approaches are politically convenient, policy-friendly soundbites replete with 'drug war rhetoric and hyperbole' to sound tough on crime (Bacon and Spicer, 2022: 2). Tracing the emergence of 'county lines' in policy, Koch, Williams and Wroe (2023) locate it as a continuity and extension of anti-gang initiatives that emerged in 2011, with the same tropes of Black male criminality and white victimhood being at the centre of county lines discourse, similarly occurring during deep political crises. Importantly, multi- agency safeguarding partnerships indicate a significant over-representation of Black young

people in county lines cohorts at a rate of six times more than other ethnicities (Koch, Williams and Wroe, 2023). Thus, the government's modern slavery agenda raises concerns about the extent to which new 'county-lines' initiatives have simply activated more racialised 'legal mechanisms of control' (Koch, 2020) and 'intelligence' gathering.

In all, through the proliferation of enforcement-driven multi-agency policy, predicated under notions of prevention and safeguarding, the government has created a network of institutions dedicated to surveillance and control, with the further encroachment of policing into young people's lives likely to result. Another recently introduced police power falling within this remit is the Serious Violence Reduction Order (SVRO) - a civil order which the prosecution can make an application to the court in criminal proceedings to impose. Also introduced through the Police, Crime, Sentencing and Courts Act (2022), SVROs, if applied to an individual, give the police power to stop and search them without the need for reasonable grounds.[22] Designed to prevent young people from carrying knives, these orders can be applied to anyone over the age of 18 who has been convicted of an offence where a knife or other offensive weapon was more likely than not to have been used or *present.* Courts can impose an SVRO regardless of whether the weapon was used, regardless of who possessed it, and regardless of whether the individual in question *knew* the weapon was present (Justice, 2021a; Head, 2023), thus introducing a 'de facto joint enterprise or guilt by association measure' (Justice, 2021a: 3). The Home Office acknowledged that SVROs could disproportionately affect Black people, but made the assessment that 'any indirect difference of treatment on the grounds of race is anticipated to be potentially positive and objectively justified as a proportionate means of… reducing

[22] SVROs are currently being piloted in four police areas. Only courts in these areas can impose an SVRO however, the corresponding SVRO stop and search power if available to all police forces across England

and Wales.

serious violence' (Dearden, 2021), thus relying on the perceived 'fact' of elevated crime rates amongst young Black people to justify discrimination.

The synonymising of 'gangs', 'knife crime', and Blackness means that any initiative designed to curtail knife related offences or supress 'gangs' is likely to encourage the disproportionate policing of young Black men. However, the policing of Blackness has become more explicitly embedded into policy. As discussed in Chapter Two, the government has attempted to criminalise and disrupt drill, a Black musical genre, in its efforts to tackle 'gangs' and serious violence amongst young people, despite the lack of empirical evidence demonstrating any causal relationship. Criminologically, drill music has largely been understood as an expression of youth culture, identity, and political engagement (Williams and Kind, 2019; see also Chapter Two). However, the genre is now deemed a legitimate target for police surveillance. In 2019, the Met launched an initiative known as Project Alpha, which allows the police to monitor various social media sites both overtly and covertly (Crisp, 2023). This strategy, which attracted 4.8 million pounds of Home Office funding (ibid) is a continuous surveillance and intelligence gathering operation involving 'systematic and extensive profiling' to 'assist with the reduction in serious youth violence' (Metropolitan Police, 2023: 7) - in practice, the monitoring of young people's social media profiles. In a statement to the *Guardian*, the Met disclosed that the scheme targeted 'gangs', removed videos glorifying violence and identified offenders (Crisp, 2023). While the Met's data protection impact assessment for Project Alpha states that it will not process 'exhaustive amounts of personal information on the loose premise that it may be useful now or in the future' (Metropolitan Police, 2023: 21), in 2023, the scheme had already produced nearly 7,000 records across two databases (Crisp, 2023), meaning that 'a police force that has just been re-identified as being institutionally racist' is potentially 'harvesting the names of young black kids without

actually having any evidence of them committing a crime.’ (Scott, in Crisp, 2023). Illustrating how this harvesting of data is encouraged, Met police officer Michael Railton, in an online article for the College of Policing, disclosed that a key element of his role in Project Alpha is ‘the development of an MPS catalogue of gang-related music’ - an initiative known as Operation Domain (Railton, 2022). This catalogue documents lyrics which officers think are linked to serious violent offences and may be used as evidence (ibid), with YouTube functioning as a significant resource for the police and prosecution in curating it (Schwarze and Fatsis, 2022). As illustrated in Chapter Two, the harbouring of social media, lyrics and video content is becoming an increasingly popular tool for police and prosecutors and is common in multi-handed cases (Pritchard, 2023; Quinn, Kane and Pritchard, 2024), indicating that ‘authorities have latched on to the approach as one that can secure convictions with juries’ (Pritchard, 2023), no doubt encouraged by the policy drive to monitor online media.

Project Insight, another Met police initiative, is designed to identify and train ‘MPS personnel who have expertise in urban street gangs and slang’ (Railton, 2022), preparing them to act as expert witnesses who provide courts with commentary on ‘gangs’ and lyrics (Pritchard, 2023), as the earlier quotation from Constable Mead demonstrated. A policy focus on drill raises questions about a police officer’s ability to act impartially when giving evidence on this matter. Not only is there a broader debate around the degree to which they can be ‘true experts’ on the genre (see for example Fatsis, 2022), but the police exist in an institution where suspicion of the genre is embedded in their institutional framework, as they are encouraged to see it predominantly through a lens of criminality and ‘gangs’, rather than artistry, persona, or exaggeration.

These recent initiatives have only added to already existing measures, such as Knife Crime Prevention Orders, Gang Injunctions, Criminal Behaviour Orders and intelligence

databases, each of which have been criticised for disproportionately funnelling young Black people into the CLS, placing restrictions on their daily lives and giving the police approved permission to monitor their activity (Lavin, 2022; Lavender, 2011; Justice, 2023; Williams and Clarke, 2016). Such initiatives are criticised for criminalising the ordinary, non-criminal, behaviours of young people, such as wearing particular colours, posting on social media or gathering in certain places (Lavender, 2011; Amnesty, 2018). Indeed, the following chapter illustrates how these non-criminal behaviours and symbolic expressions of identity reflect the type of (‘gang’) evidence presented at the trial of the young men in this study.

In short, despite an official commitment to ‘public health’, contemporary policy initiatives encourage the surveillance and ‘datafication’ of young Black men, while the structural conditions underpinning violence are not adequately addressed. Two things are clear from this brief and non-exhaustive overview of contemporary policy. First, the institutional understanding of serious violence amongst young people is one informed by a racialised understanding of its sources, as ‘knife crime’ and ‘gangs’, which have been constructed as ‘Black phenomena’, continue to be placed at the forefront of state initiatives. Second, these data-driven initiatives pre-emptively criminalise young Black men, adding to already racialised pre-crime practices like stop and search, resulting in a racialised ‘body of institutional knowledge’ (Ward and Fouladvand, 2021) which may later assist in building ‘a case for the prosecution’ (McConville, Sanders and Leng, 1991).

In *Dangerous Associations*, Williams and Clarke (2016) found that white defendants were two times more likely than negatively racialised defendants to report that there was no evidence presented by the prosecution to support the gang narrative at their trial. One explanation for this could be that the gang narrative was more accurately applied to negatively racialised defendants. However, this discussion makes it clear that ‘evidence’

of 'gang affiliation' is more likely to exist for young Black men, regardless of the accuracy of the claim. Irrespective of the ontological reality of the 'gang', the mere existence of police 'gang units' and intelligence databases necessitate the identification and labelling of people as 'gang members' - the 'making up' of 'gangs' (Fraser and Atkinson, 2014). The fact that the Met police recently removed thousands of people from their Gangs Matrix following a judicial review (Liberty, 2022b) demonstrates how the gang construct is largely owned by the police, who label 'gangs' as being overwhelmingly Black. Marked by the continual development of gang-centred policies, the move towards data-driven crime control practices has therefore seen British policing further evolve into an active and racialised state surveillance project.

I now turn to the experiences of the young men in this study. While establishing direct evidence linking the young men's police encounters to the specific policies outlined above is challenging, their narratives shed light on the crucial role of a persistent history of police contact and surveillance in constructing the case against them, much of which is encouraged by the aforementioned policies and practices. The discussion that follows attempts to tease out the connections between such policy and their experiences, demonstrating how this police violence makes young Black men the ideal defendant for the prosecution in joint enterprise.

Forming the 'Shadow Identity'

In their seminal work, 'Arresting Citizenship', Lerman and Weaver (2014) introduced the term 'custodial citizen' to conceptualise how individuals frequently entangled with the CLS navigate a distinct 'custodial lifeworld'. The authors provide a meticulous understanding of the calamitous effects of criminal legal policies on the life chances of those they encounter, framing this within the concept of the 'carceral state'. The carceral

state is one dedicated to controlling, confining, and supervising citizens, particularly targeted towards African Americans. The 'custodial lifeworld' thus resembles a 'parallel universe' wherein the CLS becomes 'the only government they know'. While this work was developed in the US context, contemporary crime control in the UK and US has displayed similar organising patterns, falling prey to reactionary, surveillance-oriented 'law-and-order' policies (Feeley and Simon, 1992; Garland 2001).

According to Lerman and Weaver, the negative effects of contact with the CLS produces second-class citizens, exiled within their own society. Those living in this custodial lifeworld become 'custodial citizens', marked by deep distrust for government, reduced civic and political participation, and the development of distinct norms for navigating the state. While this chapter touches on how the young men in this study have come to 'manage' their distinct interactions with the police, I do not set out to explore their perception of the state or civic or political participation. Nevertheless, as I transition to their testimonies, Lerman and Weaver's work serves as a useful framework to assist in conceptualising how their incessant police contact, encouraged by wider policy, makes them the prosecution's 'ideal defendant'. Central to this process is the construction of the defendants 'shadow identity'. The shadow identity refers to the identity imposed on the defendant by the police and prosecution, constructed through and sustained by their encounters with the police. As I will illustrate through the young men's narratives, this identity emerges from a cumulative process of police contact and intelligence gathering. It is characterised by opacity, remaining largely concealed from them until it is partially unveiled in court. At this point, it is leveraged by the prosecution to construct a gang narrative and establish guilt. In the discussion below, I conceptualise the specific mechanisms at play in constructing the shadow identity.

Frequency and Reach

As the young men in this study described their police encounters and the subsequent evidence presented at their trial, it became clear that the two were inextricably linked. Within their narratives emerged several key characteristics of their experiences of policing which played a crucial role in shaping the prosecution's case at their trial. The first of these characteristics was the frequency and reach of their police encounters. Their stop and search encounters were particularly incessant. Carlos, who disclosed that he was on the Gangs Matrix, recalled being stopped and searched several times in *one day*: 'I've been stopped 8 or 9 times a day, by the same officers. I'm saying what could I possibly have when you searched me an hour ago?'.

'Custodial citizenship' is characterised by frequent, sustained, and adversarial contact with the CLS. In alignment with this conceptualisation, the young men described how they had endured unrelenting police violence, including physical brutality (see Chapter Seven) throughout their teenage years. Much like Carlos, their narratives about policing reflected an ever-present but unwelcome shadow on their daily lives - reminiscent of Lerman and Weaver's (2014) notion of a 'state-within-a-state', which centres how marginalised groups experience a quasi-state through perpetual criminal legal intervention. Despite not residing in US housing projects, these young men largely resided in heavily policed inner city-communities, some of which had been identified as 'gang territories' by the police, mirroring the policy trend of labelling whole neighbourhoods as gang or 'knife crime' zones (Amnesty, 2018: 17).

Ryan's experience serves as an illustration. Ryan disclosed that the prosecution presented cell site[23] evidence which indicated that he frequently spent time on a particular

[23] Cell site is the data from mobile network networks which can establish the general location and movements of a mobile phone.

housing estate. The housing estate was near his home and his friends lived there, but it had been identified by the police as a ‘gang hotspot’. Evidence of him spending time there, he said, was used by the prosecution to suggest that he was ‘gang affiliated’, highlighting how the police mapping of ‘gangs’ was central to the prosecution case. Reflecting this, the young men were conscious that their frequent police contact was a distinct experience that depended on the community that they were from and the colour of their skin. While some had been involved in (mostly low level) criminal activity, they described having to ‘deal with’ the police, irrespective of crime:

> You come live in my shoe, see what I've seen as a young kid growing up in my area and you tell me racism doesn't exist. The amount of times I've dealt with police as a young Black guy, before I even thought about any criminality was absolutely absurd. (Ahmed)

Ahmed’s disclosure, alongside the evidence described by Ryan, illustrates that an individual’s interaction with the police is not contingent on the occurrence of crime, but rather, the communities in which a person resides. At the same time, Ahmed explicitly suggests that the frequency of his police contact is dependent on his Blackness. In alignment with his observation, Lerman and Weaver (2014) argue that the custodial citizen is not defined by their criminal behaviour, but rather, the broad reach of the CLS into individuals’ lives, as they astutely illustrate how experiencing ‘custodial’ conditions are not contingent upon prison nor crime. Whether it was hanging out with friends, accompanying their mother on a shopping trip, visiting their grandmother in another city, or taking a girl out on a date, the young men and teenagers in this study described being subjected to regular police stops, experiencing policing in a frequent, but also indiscriminate manner:

> I've been stopped and searched more than 500 times, I'm still 22 and two years I've been in jail, so in 20 years of my life, I've been stopped and searched more than 500 times. And if I could get a record, ask the Home Office to give me a disclosure, section 23 of misuse of drugs act, stop search, like I'll be with a girl going to Bournemouth, I'll be stopped by three different police forces on the way there. (Ahmed)

Ahmed’s disclosure, which reflects many others, demonstrates that while the young men’s contact with the police was frequent and sustained, it also reached into all aspects of their daily lives. While most of their police encounters occurred in public spaces, the reach of the police into their lives extended beyond these confines, permeating their home and personal life. David, who was sentenced to 18 years for murder, described an incident where he received a letter from the police which indicated that they had been monitoring his activity: ‘We got a knock on the door from the police… and they gave kind of a bit of paper saying that you hang around with a known knife carrier’.

This intrusion into the private realm showcases how police intervention also invaded the sanctity of their domestic spheres. The issuance of letters by the police, a common practice if an individual is identified by a gang unit (Erase the Database UK, 2024), serves as a manifestation of this intrusion. Such letters often carry warnings against associations with others, mirroring the sanctions imposed by Gang Injunctions and Criminal Behaviour Orders, which frequently restrict individuals from interacting with friends, family, or entering specific areas (ibid). Some letters even forewarn young people about the ability to be prosecuted under joint enterprise and the potential for them to be targeted by the police and partner agencies (see for example Williams and Clarke, 2016) - reflective of the multi- agency initiatives outlined in the section above. In Lerman and Weaver’s (2014) analysis of the custodial lifeworld, they also note how limits on freedom of association are disproportionately imposed on Black people through the use of injunctions, with a lack of

any rigorous evidentiary standards concerning gang involvement - a notable observation echoed in criticism of similar gang suppression measures in the UK.

In some cases, the reach of the police into the young men's lives also extended into the digital realm of surveillance. Closely reflecting practices endorsed by initiatives like Project Alpha, Simeon's testimony unveiled a disconcerting revelation: the police had been surveilling his social media for two years, closely monitoring the activities of his drill music group, 467. Simeon reported that during his trial, the prosecution's police witness asserted that Simeon's music group was in fact a 'gang' (a claim disputed by Simeon, as explored in the following chapter) and went further to 'decode' his lyrics, presenting them to the jury as though they were indicative of his 'gang lifestyle' and commentary of real-life offences. Simeon's account serves as a clear example of how a racialised understanding of the sources of serious violence at the level of policy has manifested in every-day police work, reaching into the lives of young Black men through the digital realm and subsequently being used to support the prosecution's case (more of which in the following chapter). Similarly, the young men's disclosures of stop and search multiple times a day is insidious of being on a gang database (Erase the Database UK, 2024), with some of them later coming to learn that they were 'known to' the local gang unit (see below).

As the young men reflected on their interactions with the state before they went to prison, they articulate a sense of permanent, non-consensual supervision over their lives. This pervasive surveillance, extending even into the digital realm, positions them in many ways akin to the custodial citizen - ostensibly 'free' but encumbered by a perpetual shadow of scrutiny and constraint. The carceral state, which dedicates itself to controlling and surveilling its citizens, is targeted towards these young Black men under the banner of 'gang suppression' and 'public health', and has manifested in incessant and far-reaching

police harassment - an unwelcome shadow which, through the cumulative documentation of data and 'intelligence', later becomes evidence for the prosecution.

Cumulative Documentation

When the young men found themselves in the courtroom facing trial for a murder that they did not carry out, they discovered that this unwelcome shadow had followed them into the dock. Their frequent and far-reaching police encounters were not confined to immediate interactions; instead, it appears they were meticulously documented by the police and strategically deployed by the prosecution during their trial. This marks the visibility of what I refer to as the 'shadow identity'. While the shadow identity becomes visible in court through the prosecution's description and portrayal of the defendant, it existed long before, underpinned by the defendant's previous encounters with the police, and is thus intrinsic to their status as custodial citizens subject to frequent and far-reaching police contact.

For the young men, when revealed in court, this shadow identity - constructed around the notion of 'gangs' - did not align with their self-perception. Of the eighteen young men who took part in this study, fourteen reported that the gang narrative was evoked in some way at their trial, while ten told me that the language of 'gangs' was explicitly referenced. It is worth noting that of the two non-Black young men interviewed, only Michael, who had Black co-defendants, reported that the 'gang' was evoked at trial. All but one of the young men rejected the accuracy of the prosecution's claims of gang membership or affiliation. Hearing the case against them therefore revealed much about their status and identity that felt unfamiliar to them, as they came to realise that the prosecution's gang narrative was somewhat contingent upon their previous, documented, police interactions – evidence that this 'shadow' had been following them for years.

David, who was sentenced to 18 years for murder, described his shock and confusion in court when the prosecutor claimed he was ‘known to’ the local ‘guns and gangs unit’. David had no criminal record, which only added to his confusion. He went on to say: ‘I said how?… that doesn’t make no sense, I’ve got no previous [convictions], how can I be known to the guns and gangs unit?’. David later learnt that he was ‘known to’ the unit merely because he had been present at an incident during which his friend was stabbed. But the shadow identity and the wider prosecution gang narrative did not necessarily stem from a single police encounter; some of the young men reflected on evidence at their trial which indicated that the police had been collating information about them and their community long before the incident at the centre of their conviction:

> Their whole thing was Ramz runs Duston, Ramz is the boss, Ramz is the leader… the police officer stood up and said that's Ramz from Duston and pointed at me. I'm looking at the guy, I've never seen him before. He’s saying I work in the gang unit. I don't know the guy. (Shaun)

Shaun was 21 years old when I interviewed him. Two years earlier, aged just 19, he had been sentenced to 20 years in prison. Shaun recalled countless police encounters throughout his childhood, the effect of which was made shockingly clear when he referred to his ethnicity using the police visual identity code in a conversation prior to our interview. Shaun described himself as a ‘troubled kid’. He had struggled to manage his ADHD in school, he said, and had frequently been excluded. Shaun had been convicted of low-level offences during his teenage years, including theft of a moped, but he described how he had become subject to perpetual police contact as a child. He described himself metaphorically as a ‘lamppost’, indicating his constant visibility and scrutiny by the police, explaining that he had been under police observation since the age of 15. He was acutely aware that the police thought of him as a ‘gang member’, mostly because staff at his Youth Offending

Team (YOT) would accuse him of being in a 'gang'. While Shaun was not shocked to hear the police accuse him of being 'gang affiliated' in court, he was surprised to hear an officer whom he had never seen before making detailed claims about him and his community in a way that did not resonate with his perception of reality.

Shaun's experience was not unique. Other young men shared similar accounts of officers providing testimony during their trial, asserting their familiarity with them over extended periods and categorising them as 'gang members' or 'affiliates'. A palpable frustration emerged among these young men, as they voiced sentiments like 'the police think they know me', coupled with questions about how they could possibly know them, almost identically reflecting the narratives emerging from earlier interviews with 15 Londoners on the Gangs Matrix (Williams, 2018). A few of the young men also reported that their historical stop and search encounters were mentioned in court to suggest they associated with 'known gang members', while it appeared to them that an accumulation of these encounters was used to build an ongoing profile of who the police perceived to be 'gangs', 'gang members' and the hierarchies and conflicts within and between them. As I illustrate in Chapter Six, such institutional 'bodies of knowledge' (Ward and Fouladvand, 2021) can become helpful to prosecutors in providing a contextual backdrop for the offence (see Chapter Seven). Simeon made several reflections in this regard, including:

> They were saying because me and the person who gave evidence were from Edington, we were two Edington gang members, and the three that were from Warf Avenue, they were alliances…With me they're saying he's a well-established gang member we've known him for years, his names popped up for years.

Simeon's disclosure illustrates a dual process of cumulative documentation, operating both at the individual and community level. At the individual level, a shadow identity is crafted - in Simeon's case, a 'well-established gang member'. This was then

placed within the broader community context, forming a narrative linked to the perceived presence of ‘gangs’ in his community, rooted in the police’s geographical understanding of ‘gangs’. This dual-layered prosecution gang narrative mirrors wider policy work, where individuals can be catalogued within a matrix or intelligence system, assigned to a specific ‘gang’ and corresponding area, while entire communities or ‘territories’ are marked as zones to be targeted by initiatives such as Operation Sceptre. The police construction of ‘gangs’ at the community level finds another manifestation in the cell site evidence presented in Ryan’s case, as detailed earlier. This dual-layered narrative underscores the interconnectedness of individual and community level police documentation and prosecution case theory.

Marcus, who faced trial aged 16 and was sentenced to 18 years in prison, was the only participant who referred to himself as a ‘gang member’, including at trial. Marcus acknowledged that his many police encounters had led to the accumulation of ‘gang intelligence’, which had been shown to him at his YOT. He disclosed that this was one reason he admitted that he was a ‘gang member’ at trial, stating that he knew that ‘if I say I’m not a gang member, they’re about to make me look like a liar’. Despite his acute awareness of the police perception of him as a ‘gang member,’ Marcus still grappled with the puzzling realisation that the police had compiled detailed ‘intelligence’ about him and his friends:

> **…**there's no point trying to fight it init… I'm getting stopped, like two, three times a day, you get used to it. So I will tell you I'm a gang member because you lot already got me down as a gang member. YOT showed me a list of bare man like names of what do they call it, gang nominals. Now, I was a 15-year- old kid when I saw this. And obviously one of my bredrins passed away init, he was at the top of the list in Garmorth, and then his right hand. Then it was my right hand, then it was me, yeah. I'm like hold on, how do you lot, yeah, tell me, in which world do you lot sit down and say, okay, he's at the top. He's there. He's there, and he's there. Why? What makes you do that?... You don't know me, I ain't had a conversation with you, so how can you do that?

This disjunction between his self-awareness and the extensive details within the police ‘intelligence’ led Marcus to struggle in comprehending the mechanisms through which this information was documented without any personal proximity to him. Nonetheless, confronted with this repository of intelligence, Marcus concluded that the ‘gang label’ was too difficult to shift. Resigned to the relentless police harassment that was woven into his daily life, and aware of the cumulative police intelligence which only fuelled this cycle of repeated police contact, Marcus readily accepted his shadow identity at trial. This scenario clearly illustrates the pivotal role of police in creating, shaping and sustaining the shadow identity, and consequently, the foundation of the prosecution’s case, underscoring the calamitous impact of ceaseless police contact, both in frequency and reach, for teenagers like Marcus.

While most of the young men had not initially recognised the potential consequences of their police encounters, their trial brought recognition that all their police contact left an indelible trace. Simeon described how he had routinely dismissed his police encounters which resulted in no action. However, reflecting on his trial, he recognised that the police were always collating information which they saved ‘for when they ha[d] something’ on you:

> …I feel being Black, just the whole build up with all the stop and searches and the interactions that I've had with the police, they all, like you think that you just get stopped and searched, they find nothing. Yeah, believe it, it gets logged and along the line, if you have a trial date or whatever then they bring that up, whatever you've said to them, whatever they've accused you of whatever the reasons was, so it's going in your one ear and coming out the other for you. But this is all, point one of a build-up that they have…

Simeon’s insight sheds light on the systemic challenges faced by young Black men. He underscores the troubling reality that this process of cumulative documentation is particularly problematic for young Black men, for whom police contact is often a frequent

and far-reaching aspect of their lives. Practitioners in this study did acknowledge that the prosecution's case is often shaped by police intelligence. Solicitor Eric described 'gang evidence' as beginning with 'gang intelligence', produced through 'hearsay' and stop and searches, with 'specialist gang officers' determining 'whether someone is a gang member or not'. For Eric, police intelligence 'feeds into so much of the evidence that ends up before the prosecutor'. Dean, who primarily did prosecution work, described the difficulties in locating the origins of 'gang intelligence', comparing 'intelligence' to a 'rumour going around school'. Not knowing where intelligence has come from, he said, 'hampers your ability to assess its reliability'. But despite expressing concern about the accuracy and origins of police intelligence, only a few practitioners expressed concern that the construction of joint enterprise cases and 'gang evidence' originated in police data collated through discriminatory methodology and profiling. Eric was one of only three practitioners to articulate this in some way:

> …stop and searches are used for intelligence gathering, to what extent is intelligence coming up from stops and searches and feeding into the intelligence that local gang units use? … you can get a situation where a young person who's not involved in gang violence can end up on a gang matrix, you are stopped and searched, and you're in the company of somebody who maybe is involved in violent crime… Intelligence can be wrong, and often is… the vast majority of people on the Met's gang database, are… vast majority Black… Black people are not primarily responsible for group violent crime. So there's a fundamental mismatch there. That suggests that there's an inherently racialised understanding of the sources of violent crime, where it comes from and where it needs to be targeted…

Here, Eric demonstrates a particular consciousness that 'gang intelligence' is more likely to exist for young Black men, as he acknowledges that policies and practices such as stop and search, which bear most heavily on them, are key intelligence tools. In discussing how stop and search draws people into the narrative of 'gangs' through their associations, while also recognising the dominant racialised understanding of the sources of serious

violence, Eric illustrates why the accumulation of police 'gang intelligence' is guided by racialised assumptions.

The prosecutorial advantage of documented stop and search encounters became glaringly evident in Carlos's case. Carlos, the only participant still awaiting trial when I interviewed him, later received a hung jury at trial. Throughout this process, I observed some of his trial and have maintained ongoing dialogue with his mother, Caroline. The prosecution evidence in Carlos's case involved CCTV footage that, in my assessment, was of extremely poor-quality. The CCTV captured several people entering the area where the fatality occurred. Despite an inability to identify the individuals on the CCTV based on facial features, the officer giving evidence claimed to identify Carlos by specific items of clothing. Notably, the ability to assert that Carlos was present in the CCTV relied on a stop and search encounter several days before the incident, where Carlos was said to be wearing the same item of clothing as someone in the footage. This example illustrates that even when not explicitly used to construct a gang narrative, racialised police violence contributes to the accumulation of potential evidence, even before a crime has transpired.

Resounding Silence

The young men's interactions with the police as described above are characterised by a paradox. On one hand, their police contact is ever-present and highly visible - the unwelcome shadow takes the form of frequent and far-reaching physical police contact. Yet, despite being acutely aware of the relentless nature of their interactions with the police, a palpable silence surrounds the construction of their shadow identity. This silence first becomes apparent in their expressions of shock regarding the revelations and claims made about them in court by the police and prosecution in the discussions above. While they describe their police encounters as incessant, permeating every aspect of their life, and

some were vaguely aware of the profiling taking place, a shroud of opacity surrounds the specific details. What is being recorded and how this information is being utilised remains largely unknown, with some aspects becoming clear only upon the presentation of the prosecution case. There is therefore a resounding silence about the police work which has curated and sustained the shadow identity.

Simeon's reflections above are a poignant example. Despite his disclosures of day-to-day interpersonal police contact, which he described as 'going in one ear and out the other', his reflections on how the accumulation of these encounters appeared when facing trial illustrates the resounding silence surrounding the formation of the shadow identity. While the actions contributing to its creation may be conspicuous, and certain aspects may surface before trial, such as in YOT meetings, the shadow identity largely remains silent until court. This opacity is somewhat inevitable, given that direct police contact is not the sole avenue for documentation and accumulation of information. The rise of online surveillance policies, as illustrated by the online police scrutiny of Simeon's music group, has expanded the role of indirect police contact in formulating the shadow identity. This silence is likely to contribute to a heightened sense of confusion when the shadow identity is revealed in court, as exemplified by Simeon's reflections:

> You fall into their trap without knowing…without you even knowing that this is what they're doing behind your back. It's like do you know what, like, here's money, just leave them and then they start taking note one by one, to where you're now taking handfulls, but everything is on camera.

Simeon's metaphor encapsulates the clandestine and often unsuspected nature of the surveillance contributing to the shadow identity. The evidence presented during Simeon's trial brought to light, for the first time, how the police had been, in his words, 'building' his 'gang identity' since 2015. Here, Simeon admits his previous ignorance to this and reflects on how the police collect 'intel' while operating in silence. Thus, the young men's

narratives centre that on one hand, the police are loud and ever-present in their lives. On the other, they were also subject to more covert and quiet forms of pre-emptive policing. At the same time, the process of cumulative documentation and profiling was largely invisible and thus, silent.

The resounding silence surrounding the construction of the shadow identity is further marked by the inability to challenge it or access information held by the police. Much like the custodial citizen, these young men have limited avenues to challenge state violence, protest or prevent unwarranted stops and racial profiling, or influence changes in police practice (Lerman and Weaver, 2014). Their encounters are therefore also characterised by an inability to protect themselves against the profiling and surveillance to which they are subjected. The Met, for instance, have long resisted disclosing individuals' status on the Gangs Matrix, relenting only under legal challenge, all while still requiring an official legal request for disclosure. Moreover, the relatively covert nature of intelligence work to those outside law enforcement results in state monitoring and violence that often evades public and academic scrutiny (O'Neill and Loftus, 2013).

Mutual Disdain and Avoidance

> When you do get charged with a… serious offence, and it tends to be a joint enterprise offence, they then look back and say, well, you know what, even though the evidence isn't there, this person has a history of engagement with the police and the criminal justice system, let's just charge it and see what happens anyway. And that, in my experience, is what happens. (Thomas, junior barrister)

As noted over thirty years ago by McConville, Sanders and Leng (1991), being 'known to' the police is sometimes all that is needed to make someone an official suspect. Policing decisions, far from being solely guided by evidence, are significantly shaped by reports on an individual's history and prior engagement with officers (ibid). This dynamic

takes on added significance in a joint enterprise case, where the distinction between a suspect and a witness can be difficult to discern from the evidence available (Hulley and Young, 2021). The existing knowledge about an individual not only acts as a starting point for investigations but also wields considerable influence over decisions to advance a case further (McConville, Sanders and Leng, 1991), including at the charging stage, as noted above by Thomas.

The young men's frequent, far-reaching, and documented police encounters solidified their status as being 'known to' the police. For many of them, these encounters, uniformly negative and largely hostile, gave rise to a persistent state of conflict with the police, wherein the young men felt that the police were resolutely intent on 'getting them' for something. Using phrases such as 'they've always been onto me', some of the young men expressed the view that joint enterprise provided the police with an opportunity to finally achieve their aims:

> I was thinking oooo they got me now. Literally cos that's what I think it is you know. You see with a local police force…. when they've nicked you so many times. Don't get it twisted, they're onto you. They're trying to get you. So I was like ahh, yeah, they finally got me. (Marcus)

What they described reflected their perception of a development of a police vendetta against them, compounded by mutual disdain. This disdain had led the young men to view the state as an institution actively intent on harming them. These sentiments reflect how custodial citizens, having experienced a distinct form of social education through interactions with law enforcement, view the state as an embodiment of control, hierarchy and arbitrary power (Lerman and Weaver, 2014). Like Marcus in the above quotation, the young men's narratives painted a picture of a permanent state of 'suspect-hood' which was contingent on their Blackness and had engendered a continuous state of awareness about

how they were viewed through a lens of suspicion. Like the custodial citizen, this awareness prompted some of them to develop strategies to evade interactions with the authorities, a phenomenon classified by Lerman and Weaver (2014) as ‘informal codes’ for how to move through daily life (page 59).

For instance, Marcus explained that he avoided wearing tracksuits and Air Force trainers, as ‘[the police] see that and think… that's man’s uniform, that's gang member.’ Simeon, who felt that the police had a longstanding vendetta against him, described how his ongoing conflict with the police had made him extra vigilant in prison. Simeon had been charged with three serious violent offences as a secondary party, each time being acquitted by the jury. For him, this was a direct result of the vendetta, as he felt that the police seized any opportunity to build a case against him. He described how this had disrupted his life for years, making it impossible for him to live in peace. After being convicted as a secondary party to murder, the CPS charged him with another offence as a secondary party, which he was awaiting trial for at the time of his interview. He disclosed that his legal team were confident that the second case would not go to trial however, Simeon wanted to clear his name through a jury trial, keen to ensure that the police could not resurface the case in the future. This police vendetta had triggered, in his words, ‘something along the lines of… post-traumatic stress disorder’, leading him to be hypervigilant and conscious of his actions in prison to avoid any negative interactions with prison staff. Simeon wanted to prevent staff from forming a negative profile about him that might give rise to a similar vendetta and hinder his progress in prison. The adoption of these avoidance strategies underscores the enduring impact of the violence of police targeting in their lives, shaping not only their perceptions of the law enforcement but also influencing how they navigate their current circumstances.

It is clear that for most of the young men, their police contact left a 'durable mark of criminality' (Lerman and Weaver, 2014: 63) that followed them through their daily lives and into court, and may have been pivotal to their conviction and life sentence. Consequently, their experiences of the police, as manifested in the frequency, reach, and cumulative documentation of their encounters, made them the 'ideal defendant', contributing to their physical custody today. Having developed a relationship with the police characterised by mutual disdain, they saw the state not as a force for good, but as an extension of systems of colonial rule (see Chapter Seven) - a system designed to oppress Black people, where tools like joint enterprise provide the coloniser with what Shaun described as a 'cheat code to keep Black people off the streets'. The discussions in this chapter have so far demonstrated how the prosecution capitalises on police work which helps to locate the case within a narrative of 'gangs'. But how are the origins of this shadow identity and the wider gang narrative challenged in court?

The Erasure of Structural Context in Court

As noted in Chapter One, because the institutional 'body of knowledge' from which 'gang evidence' derives is one where serious violence involving non-white youth is more likely to be labelled as gang-related, it is argued that 'gang evidence' should be closely scrutinised, including in court (Ward and Fouladvand, 2021). As I highlighted in the earlier discussion, it is also one where young Black men are most likely to encounter the police through a number of police tactics that have an intelligence-producing function. If gangs policing and intelligence sit at the origin of the 'gang narrative' and are collated through racialised tools such as stop and search, or the monitoring of drill, then young Black men, particularly those residing in inner-cities, have greater odds stacked against them when they are indicted as a secondary party to murder. Yet, practitioners made clear in interviews that

it was not common practice to interrogate the wider policy work and police methodology underlying 'gang evidence'. Their narratives suggested that the jury were rarely, if ever, made aware of the structural context within which 'gang evidence' or intelligence is produced, despite the reputable empirical research highlighting its discriminatory nature (Williams and Clarke, 2016; Amnesty, 2018).

Carl, a junior defence barrister, argued that this type of evidence was too 'personal', not always relevant, and would not be allowed by judges - the latter being something which other practitioners echoed. Carl reflected on a case in which he instructed an academic 'gang expert' to rebut the prosecution's 'gang evidence' which concerned drill. Carl felt that by referring to institutional racism, the expert made their evidence 'personal' and thus, not 'independent'. He went on to argue that 'institutional racism… has 'nothing to do with whether this was a gang thing or not' and suggested that this type of evidence had a 'self- interest'. For Carl, only micro-level interrogation of the evidence was appropriate, and evidence of structural inequality and racism did not belong in court. Instead, Carl told me that he challenged the prosecution's evidence by arguing that drill was not necessarily indicative of 'gang membership' or real-life events, but instead was a lucrative art form, originating in Chicago, and relying on expression and exaggeration. Carl's position is not wrong, but his micro-level interrogation ignores the centrality of broader racialised police initiatives in shaping the prosecution's evidence from the start. Despite claiming to 'tear down' the 'source material and bring it down to its bare bones', Carl did not explore why and how his client may have come to be identified as a 'gang member' to begin with, meaning the jury were not invited to consider how racialised intuitional practices may have influenced the evidence before them. In contrast, senior barrister Lacey described how evidence relating to systemic racism was relevant and necessary to – in the words of Carl

– properly ‘tear down’ the ‘source material’, arguing that research underpinned by a systemic analysis of racism should be given relevance in court:

> …that's an issue of trial fairness… unless you have those types of evidence that allow jurors to consider racial disparity or profiling issues… then you're not being fair.

Here, Lacey contends that defence teams ought to be allowed to provide a meso-level interrogation of the prosecution evidence and challenge specific state policies, such as Project Alpha, as discriminatory because of their ‘demonstrated racially disparate impact’, without being required to prove ‘intentional racial discrimination’. Without this context, Lacey felt that defendants did not receive fair trials, as the jury were unaware of the backdrop of racial profiling which had shaped the evidence before them. More widely, Lacey proposed a need to encourage juries to consider the broader context in which the case took place, and the historical, cultural, and societal factors that may have contributed to the events, allowing lawyers to advocate for a more nuanced understanding of the case. Lacey’s view was reflected in the apparent consideration of the young men’s cases in isolation to their wider experiences of frequent, far-reaching, and documented police contact.

For example, some of the young men reported that the prosecution suggested their lack of cooperation and failure to contact the police during or after the incident was indicative of their intentional involvement in the offence. While stop and search and harassment were common experiences, more physical police violence and brutality was also pervasive in the lives of some of the young men (see Chapter Seven), meaning they did not view the police as an institution of safety or security. The young men felt that jurors should have been made aware of their distinct experiences of policing. For example, Ahmed disclosed that his defence team had obtained body camera footage of police

officers, against whom disciplinary action was taken, discussing whether they should taser him while he was handcuffed in the back of their van. He felt that jurors should have been made aware of this, and his experience of the police more generally, to explain why he did not cooperate with the investigation. However, he reported that his barrister refused to bring this up in court, as they did not want to 'make the police look bad':

> When I was trying to bring that up in court, for my QC to bring up, to [say he] hasn't had the same experience of the police as some of you jurors so his trust to tell the truth, or tell the police information, might be withheld because of his experiences. I tried to get my barrister to say that, and they were like no, we don't want to make the police look bad. They're making me look bad!

For Ahmed and others, asking them why he did not call the police was a 'stupid question' rooted in the absence of an understanding of structural context. Yet, the jury were invited to draw inferences of guilt from their failure to cooperate with an organisation, which, in their view, had subjected them to brutality and harassment for years. For Shaun, by asking why he failed to call the police, the prosecution portrayed him as someone who would 'rather choose violence over a solution'. The exclusion of structural context in the courtroom not only reinforces the shadow identity by failing to comprehensively challenge it. It also encourages jurors to infer guilt from a young Black defendant's choices that may appear rational when viewed in the broader context of their experiences of state violence.

Conclusion

This chapter has sought to shed light on the lasting impact of the 'war on gangs' and its implications for young Black men indicted as a secondary party to murder. The chapter reveals pervasive racialised policing practices, designed to suppress serious violence, but encouraging the datafication of young Black men. This chapter foregrounds how the

young

men's wider experiences of state violence, most notably police harassment and surveillance, were pivotal to the prosecution case against them. Through conceptualising the mechanisms at play and the role of policing in constructing the prosecution's case, this chapter centres how this police intelligence, often flawed and prejudicial, can become a central component of the prosecution's case. It does so by producing a shadow identity, constructed around 'gangs', which makes young Black men the prosecution's 'ideal defendant'.

While this connection between data-driven policing and prosecution case theory is concerning for young Black men accused of any crime, it is particularly significant in joint enterprise cases. First, joint enterprise deals with multi-handed offences, and since the doctrine was 'reincarnated' as a response to 'gangs', such cases are more likely to concern gang-related prosecution case theory. Second, the defendant does not need to make any significant contribution to the crime to be liable, yet the prosecution must still prove that they intended to assist or encourage the principal in the commission of the offence. It is here that a case theory centred around 'gangs' can do significant prosecutorial work (the focus of Chapter Six). Thus, police practices which pre-emptively criminalise and label young Black men as 'gang members' are doing significant pre-emptive work for the prosecution. As McConville, Sanders and Leng (1991) put it, the make-up of the convicted population is the make-up of the suspect population - a police construct. While their skin might visually place them more convincingly within the narrative of 'gangs' (I explore this further in Chapter Seven), young Black men are also more likely to arrive at the police station with a backdrop of gang-related 'intelligence' and a history of police contact. Moreover, the resounding silence of this state violence makes it difficult to challenge before the shadow identity reaches the courtroom.

This chapter therefore highlights that endeavours to explain racial disproportionality in joint enterprise must consider the role of the police in constructing cases, as well as the structural and institutional conditions within which policing occurs. It also highlights how the experiences of young Black men subject to state violence in the form of prosecution, conviction and imprisonment under joint enterprise, cannot be fully understood in the absence of considering their previous experiences of state violence. Indeed, this chapter elucidates how constructions of their guilt are somewhat contingent on such violence having already occurred. While defence practitioners do challenge 'gang evidence' (explored further in the following chapter), this chapter highlights the lack of deep critical interrogation of 'gang evidence' in the courtroom, as the police methodology underlying it and the wider conditions within which it is produced are seldom raised or challenged.

The following chapter further examines how the daily lives of the young men are subject to scrutiny, exploring how prosecution evidence can be shaped by the often-erroneous interpretation of their non-criminal behaviours and cultural pastimes. In doing so, the chapter further illustrates the centrality of wider police practice and policies in constructions of guilt, as participants' reflections centre how social media - a space whereby they document their daily lives - has become a primary location for police surveillance and a repository of evidence for the prosecution.

FIVE: EVERYDAY ACTIONS, MISCONSTRUCTED MEANINGS: (BLACK) YOUTH CULTURE ON TRIAL

Introduction

> The indicators of gang involvement are now not so helpful because it's a youth thing. Anyone can be a gang member. All the kids use the words or sing the songs. (Gangs Unit Official, in Amnesty 2018)

Social scientists have maintained a longstanding interest in youth subcultures, predominantly understood within the framework of a working-class counter-hegemonic struggle against the dominant ideology and social order (see Tait, 1993: 84). This work has identified youth behaviours perceived to be diverging from societal norms, often marked by symbolism, music, clothing, and language, with societal responses frequently distorting and sensationalising these cultural symbols (see for example Cohen, 2011), resulting in their portrayal as threats warranting legal intervention.

This chapter is similarly concerned with the (mis)interpretation of cultural symbols, practices, and behaviours of young Black men, and how they are erroneously understood through the lens of 'gangs' in the context of joint enterprise. In 2018, an Amnesty report exposed the arbitrary criteria used by the Met to add suspected 'gang members' to their Matrix database, revealing that many indicators were simply elements of 'urban youth culture' unrelated to serious crime. (Amnesty, 2018: 3). These included actions as innocuous as sharing social media content which references a so-called 'gang name,' or wearing certain colours and attire purportedly linked to a 'gang'. Similarly, initiatives like Operation Domain and Project Insight, as described in the previous chapter, encourage the

police to ‘decode’ the ‘lyrics, hand gestures and symbolism of the content used by aspiring rappers’ (Railton, 2022), illustrating the institutionalisation of the monitoring of (Black) youth cultural expression and its role in constructing gang identities. Drawing on the young men’s and legal practitioners’ narratives, this chapter sets out how prosecution evidence and case theory is shaped by the often-erroneous interpretation of the non-criminal behaviours of young Black men and teenagers. The young men’s disclosures illustrate how innocuous elements of their daily lives and behaviour were translated into evidence, utilised to evoke the ‘gang’, and to construct criminal intent.

The chapter begins by focusing on expressions of place-based identity and territoriality, illustrating how the complexities of youth culture, street space, and identity are reduced to sensationalist narratives of ‘turf wars’ or ‘postcode gangs’. This section elucidates that while youth conflicts may manifest within specific locales, they are not necessarily understood through the lens of territory or ‘gangs’ by young people. I underscore the significance of place-based identity and territoriality in human organisation, emphasising how young people’s more frequent utilisation of street space makes local areas a hub for communication, action, and identity negotiation. In this section, Marcus’s reflections illuminate the complex interplay between self-attributed gang labels and external labelling, highlighting the role of self-attribution in reclaiming agency over one’s identity. His reflections also illuminate the problems inherent in reducing youth conflicts shaped by geographic regions to a phenomenon of ‘gangs’.

In the following section, participants’ reflections emphasise how the gang narrative does not hinge on the explicit use of the gang label, but on a range of signifiers, including young people’s use of street space. As the young men reflect on the prosecution interpretation of their use of street space, they foreground the stark divergence of their life experiences from those presiding over their cases, emphasising how both class and race

manifest in constructions of guilt. The subsequent section explores how the young men's use of digital space was central to prosecution case theory, further illustrating the allure of the digital realm for law enforcement. Participants' reflections highlight how various facets of young people's cultural and symbolic expressions, including music, dress code, language, and photography, each documented online, provide the police and prosecution with a repository of evidence from which the 'gang' and culpability can be communicated, even if the word 'gang' is not mentioned in court. Practitioners' disclosures underscore how the legal profession remains 'out of touch' with young people and social media. Yet, prosecutors leverage young people's digital media footprint - a practice endorsed by the broader police initiatives explored in the previous chapter.

The final section centres the use of rap in court, highlighting how the synonymising of drill music, 'gangs' and violence at the level of policy has manifested in prosecution work. Participants' experiences elucidate the lack of consideration for the conventions of rap and its significance within Black youth culture. Instead, this art form is often assumed to reflect real-life violence, bad character or 'gangs' – a practice evidently favourable to prosecutors. The chapter ends with a brief exploration of defence strategies aimed at countering racialised myths and the conflation of (Black) youth culture and 'gangs'. It becomes apparent that common defence strategies may inadvertently reinforce such stereotypes. Overall, this chapter further foregrounds the punitive function of the 'gang', its inherent epistemological inaccuracies, and its ability to communicate guilt.

"I Ain't Fighting For No Post-code": Place-based Identity as a Signifier of 'Gangs'

The young men's disclosures in the previous chapter illustrate that police intelligence operates at the individual and community level, highlighting how geography is central to the police understanding and 'mapping' of 'gangs'. In fact, 'identifying with or laying claim over territory' is an identifying characteristic of 'gangs' according to the Metropolitan Police (2024). This approach is not demarcated from the court room, as prosecutors draw on institutional knowledge deriving from the police, while utilising the language of 'territory' to 'cement… the popularised construction of 'gangs'' (Clarke and Williams, 2020: 135). Reflecting on their trials, the young men recounted references to specific boroughs, estates, so-called area-related 'gang rivalries', including accusations that defendants were eliciting 'gang signs' in their pictures and videos, purportedly linked to geographic boundaries or postcodes. Drill rapper Simeon, who was described as an 'Edington gang member' throughout his trial, described the prosecution narrative in his case:

> [The prosecution] said we know Edington and Warf Avenue, they're linked up… and they have common beef with Talford, Damford… so that was the common link.

Simeon's disclosure suggests that the prosecution's gang narrative relied on the assumption that common geographic affiliations translate into shared conflicts, crafting a link between the defendants and their alleged connection to the events. This reliance on geographic affiliations to construct collective responsibility highlights how a young person merely identifying with a particular area can become a risk factor for being labelled a 'gang member'. This sentiment was articulated by solicitor Eric as he reflected on police intelligence he received:

> …a map from the Hackney gangs unit, which divided up the whole of Hackney into different gangs, and their territory, which was outlined in different coloured felt tip pen, and the name of each gang… they were trying to show that all the defendants were part of a particular gang that was based in in West Hackney… Geography is obviously crucial to police's understanding of gangs. It's crucial to the… postcode wars, most people's understanding of gangs and how they operate. But that does mean that if you are a kid from a particular estate, you can end up on the gang matrix, just by virtue of where you live...

Eric illustrates how the common myopic focus on geography and ‘gangs’ within police work not only hinders a comprehensive understanding of youth culture, space, and identity, but also contributes to the potential misclassification and thus over-policing of individuals based on their residential and social ties. Given that Simeon had been monitored by the police as a ‘known gang member’ for years (see previous chapter), his experience further demonstrates the interconnectedness between geographic affiliations, police institutional knowledge, and prosecution ‘gang’ case theory.

Both the media and entertainment industry are guilty of perpetuating popular imagery of ‘urban’ Black youth embroiled in a crisis of intraracial violence over drugs, territory, or post-codes (Sade, 2022). Notably, the language legal practitioners used when describing ‘gang cases’ typically reflected this common sensationalist narrative of territory-related ‘tit-for-tat’ violence. Most practitioners expressed a dramatised and simplistic view of ‘gangs’ - one with a clear ‘hierarchical’ structure which involved ‘initiation ceremonies’, drug-dealing and a ‘snitches get stitches culture’, reducing the complexities of violence to the calamities of ‘gang warfare’. They frequently used language relating to territory and space, while some explicitly referenced ‘post-code wars’. Reflecting on a case he presided over, retired judge John made a particularly concerning disclosure: ‘What ends are you from is a worrying question to a young Black boy particularly’.

‘What ends are you from?’ is likely a provocative question for some young people. However, singling out Black boys illustrates John’s view that expressions relating to space, which he regarded as a signifier of ‘gangs’, are somewhat distinct to Black youth masculinities. Further illustrating this belief, John characterised a violent multi-handed incident as being carried out through the ‘drill tit-for-tat world’ of ‘post-code gangs’, implying that the rap genre is inherently linked to ‘gangs’ defined by geographic bounds. John’s comments illustrate the simplistic and racialised lens through which some legal practitioners understand ‘gangs’ and violence (more of which in Chapter Seven).

Amongst the young men who reported that the ‘gang’ was evoked at their trial, all but one described it as fabricated. Instead, they described long-term friendships from school and their local area, reflecting Clarke and Williams (2020) observation that non-criminal associations are criminalised through the ‘gang’ construct in joint enterprise cases. Marcus was the only one to describe himself as a ‘gang member’. Characterising this ‘gang’, Marcus said:

> Alright cool… I'm from a specific area. I've got specific friends. I've got a lot of friends, but I've got my little circle init, but under that, there's just bare of us, now. My bredrins, most of them are like family, yeah. I will do anything for my family. Regardless, if it's legal, illegal, whatever, that's my family init. Now, in terms of gang yeah, I dunno, it's just a group of friends init.

Marcus begins by acknowledging his specific geographical background, emphasising a sense of ‘place-based identity’ (Bannister, Kintrea and Pickering, 2013) and rootedness in his local area - a sentiment observed in discussions with other young men. Within this space, Marcus articulates a wide network of relationships and associations formed during childhood, emphasising his close ‘circle’ as becoming akin to family. In declaring that he would ‘do anything’ for them, he implies a deep sense of care and loyalty. While Marcus suggests an unwavering commitment to his ‘circle’, he references illegal behaviour to

illustrate the depth of his friendships, rather than to imply that his friendships have a criminal foundation or purpose. He therefore emphasises friendships that transcend legal boundaries, but which are not necessarily based on or originate from illegal activities. Marcus' reflections illustrate that even when a young person is 'accurately' labelled as a 'gang member' by authorities, the meaning ascribed to the ‘gang’ may vary considerably between young people and the police (Fraser and Atkinson, 2014). For Marcus, it largely represented the loyalty and shared identity among a close group of friends and associations. For police officers, the 'gang' may represent little more than a signal of risk, harm, and violence (ibid). I asked Marcus ‘why the label?’ and he responded: ‘The feds give it to us. We don't give ourselves that label… it's like, we’re just gonna get there before you do. I'm a gang member’. He went on to say:

> You play on it… what everyone seems to not look at is we all grew up together… I've known most of my bredrins since knee height… we know each other’s mum's, aunties. I can go to my bredrins yard when he's not there. That's family. So it's like, what the fuck, I don't get it, group of Black boys, yeah, I hear that, it looks intimidating. Cool. But so does a group of bare white man… there's no point trying to fight it… I will tell you I'm a gang member because you lot already got me down as a gang member.

Marcus’s narrative unveils a complex relationship with the gang label. His disclosures illustrate that adopting the label is not a linear process, further demonstrating why the ontological reality of ‘gangs’ and their relationship to social phenomena is a precarious subject for empirical enquiry. Marcus illustrates a reactive stance, whereby the label somewhat represents a strategic move to pre-emptively control the narrative imposed on him, allowing him to reclaim agency over his identity. As discussed in the previous chapter, Marcus was acutely aware that the police had compiled ‘intelligence’ which would make him look deceitful if he denied being a ‘gang member’. Similarly, his disclosures above highlight how external labelling can also underpin the self-attribution of the label

outside of legal proceedings. Marcus paradoxically demonstrates both acceptance and resistance to the label. He highlights that while his friendship group of Black boys is not particularly different to other groups in its characteristics, other than race, his group are seen through the lens of ‘gangs’. Marcus’ resistance to the gang label therefore becomes evident as he questions and challenges the racial duality in external labelling. Thus, while Marcus accepts that he ‘plays on’ the label, he is also frustrated about how it has been imposed on him, juxtaposing himself against his white counterparts to demonstrate the presence of racism in the labelling process. His disclosures reflect a complex negotiation of identity, where he grapples with the nuances of how the label has come to be part of his identity.

Indeed, Stafford Scott, in a recent documentary (4Front Media, 2023), sets out how the widespread use of the gang label in Britain today is not the result of young people self- labelling. Discussing the rise of the ‘gang industry’, Scott notes that after the 2011 uprisings, the state wrote to ‘urban’ regions asking about their ‘gang problem’. When these regions wrote back stating that they did ‘not have a gang problem’, the state simply suggested that they had a problem in *identifying* their ‘gang problem’. Scott points out that ‘all of a sudden, everyone had a gang problem’, as the state, which dangled funding for ‘gang issues’ in the faces of authorities and youth organisations, suddenly ‘had the whole system looking for gangsters’. As ‘gangs’ became the scapegoat for social disorder, the move towards gang-centred policies necessitated the identification and labelling of young people as ‘gang members’ at an institutional level.

While Marcus had been involved in violent conflicts involving friends and other young people, including those from different areas, his narrative illustrates the subjective and contextual nature of the gang label, revealing how young people may navigate and define the term differently based on their own experiences, relationships, social position,

and interactions with law enforcement. Despite these conflicts, and despite firmly identifying with a particular area, Marcus rejected the mediatised notion of ‘post-code’ wars to conceptualise his experience. He said: ‘I aint no eediat, I aint fighting for no post-code’. Yet, media reports of the prosecution’s case against Marcus, described the incident as a ‘postcode rivalry’, purportedly played out through rap lyrics. During our conversation, Marcus described the tensions between two groups in the context of his borough, including how they have (re)emerged and changed over time:

> Imagine the area… Collingdon, where everybody thinks they're bad already… And then you've got a group of yutes that's grown up together from knee height… they're family, and then you got the same thing on their side… they think they're bad… what's going to happen? And then it just carries on… that shit happens through every generation cos my side and their side have been beefing for God knows how long, and it was like we were cool, at one point… Then something kicked off again, at a party… It's not ever about postcode or mans from this area, mans from that area. Don't get it twisted, it is confined to a certain area, but it's not why we're fighting... What people need to understand is, when somebody dies, you forget about why this shit is happening in the first place, my bredrins dead now. It's not going to stop, do you know what I'm saying?

Marcus dispels the notion that violent conflicts involving young people with a strong place-based identity can simply be explained by territorial boundaries. While the conflicts he has experienced are confined to certain areas, Marcus emphasises that the source of the disputes is not geography, but rather, a complex interplay of relationships, histories, and past incidents. Marcus illustrates the cyclical nature of these conflicts, spanning a decade, which settle at times and reignite when another violent incident occurs, challenging the view that young people who adopt the gang label exist in a permanent state of ‘warfare’. Marcus’s account suggests a more dynamic and nuanced understanding of ongoing group conflicts, influenced by a variety of factors beyond geographical boundaries, ‘gangs’ or rap

music, such as loss, grief, and a historical cycle of harm that has never been reconciled, and which transcends any label ascribed to it.

Taylor and Shaun also reflected on ongoing conflicts which their friendship group experienced collectively and relative to geographic boundaries. However, they rejected 'gangs' and 'postcode wars' as a way of conceptualising their experience. Describing his friendship group, Taylor disclosed: 'We don't claim we're a gang, we're friends that grew up together… we all have the same problems, but we don't put a name on it'. Shaun similarly stated: 'We actually don't beef any postcode, only a group of Somalis… it's not a gang thing…'.

These disclosures suggest that shared conflict, identity, or even expressions of territoriality, are not necessarily indicative of 'gangs', nor inherently linked to violence. Territoriality is fundamental to human organisation at the international and national level (Sack, 1986) in formal dividers of space, economy, politics, and civilisation; and at the neighbourhood level, where citizens often take on less formal territorial roles intertwined with personal identity and place attachment (ibid). Space and boundaries, whether national, global, or local, are attributed different social meanings by different social groups and individuals (Malone, 2002). Our sense of identity is typically constructed in the places we inhabit (ibid), meaning the more common use of public street space amongst young and working-class people is likely to make this local space most significant to them. For many young people, street space is a place where 'things happen' (White, 1998 in Malone, 2002: 162) - a container of social events and relations (Valentine, 2004) that shapes their friendship groups, and no doubt, tensions, and conflicts.

Criminologists who explore 'gangs' through a realist ontological lens have identified a relationship between said 'gangs' and postcode affiliations (see Pitts, 2008), as well as 'turf wars' related to drug markets (Whittaker et al., 2019). Yet, empirical

research also

demonstrates that territoriality constitutes an integral aspect of the daily lives of young people; their identities are closely associated with the neighbourhoods they inhabit but are not always understood through the lens of ‘gangs’ (Kintrea et al., 2008). Research such as this demonstrates the multifaceted manifestation of territoriality, ranging from mere socialisation in street spaces to ‘organised criminal groups’, discerning many positive motivations driving territorial behaviour, such as developing identity and friendships, with territorial affiliations acting as a source of group solidarity (ibid).

For some young people, a strong place-based identity is a cultural expectation and a ‘learned behaviour’ which has deep historical roots (Kintrea at al., 2008). This finding aligns with Marcus’s revelation that conflicts in his local area have been handed down through generations. It illustrates how the historical narrative of a local community influences present-day relationships, tensions, and identities, each of which reinforce one another, akin to the impact of civilisational or national histories on the contemporary dynamic of entire nations. While territoriality and symbolic expression of space might be relevant to some youth conflicts, assuming it to be an indication of ‘gangs’ is dangerous. It is true that several of the young men in this study had engaged in violent conflicts, identifying themselves and their friends as a discernible group; their local area undoubtably played a significant role in shaping their identities and relationships. But a parallel could be drawn with white English ‘patriots’ who affirm their sense of self-worth by expressing unrelenting pride for their home country or community (Eddo-Lodge, 2021), which some see to be under threat from ‘outsiders’. These expressions of territoriality have no doubt been linked to harm in the form of right-wing violence, racism and hate speech, as seen in recent events across England (Cadwalladr, 2024), but are largely understood as positive expressions of pride, identity and belonging.

Deriving personal value from group-based affiliation and exercise of control over space is not isolated to young people and their local neighbourhoods. And, while cultural and criminal processes can sometimes overlap, the young men's narratives suggest that expressions of space identity should not be assumed as a signifier of 'gangs', particularly amongst young people who are in an ongoing process of contestation and acceptance of their sense of self (Hopkins, 2010). A major reason why 'gangs' cannot be easily defined is because of the complexities of social belonging and identity regarding how young people live their lives (Fraser and Atkinson, 2014). Despite this, practitioners made clear that expressions relating to geographic space, particularly when expressed through drill music, were seen solely as a signifier of 'gangs' in the legal sphere, and a more nuanced understanding of (Black) youth culture, territoriality and group identity was absent. Demonstrating how these assumptions about territoriality manifest in court, senior barrister Harry provides a description of what 'gang evidence' might typically look like in a joint enterprise case:

> It might be that a gang associates itself with a particular postcode so they will have a symbol, or hand gesture… that identifies themselves with that postcode, or… take photos of themselves standing next to street signs that have the postcode… or… talk in their videos about their association with that area...

Senior barrister Lacey expressed notable criticism towards the prevalent interpretation of territorial expressions and broader aspects of Black youth culture within the legal profession and criminal courts. Drawing on a case she defended in, Lacey criticised the prosecution's contention that a defendant's references to his local area in a rap video was indicative of 'gang affiliation':

> [The co-defendant] was the rapper, and he was an emerging artist. And they had footage of him singing, and making postcode movements, you know,

> making signs with his hands… [the prosecution] said that meant that he was a member of the gang… he said, no, I'm just singing about being in that area. And he seemed genuine to me, you know… any kid, if there's a way of showing your postcode number with your hands, you don't have to be Black… any kid would learn to do that. He was Black, of course, so it was used against him as though he was a member of the postcode gang...

Lacey went on to say: ‘people have always been jingoistic about where they live. Look at the football teams, we never say it about football teams’. Her comments draw attention to the racial duality in the interpretation of cultural expression, as she draws a sharp contrast with the normative identification with space, exemplified by football team affiliations, and the gang-centred interpretation of Black youths’ expressions of space through rap music. Her statement: ‘he was Black, of course, so it was used against him’ serves to illustrate a double standard in the evaluation of cultural expressions as potential evidence. Reflecting this, retired judge John contended that the innocuous actions of white defendants would not always be interpreted as ‘gang related’ in the same way:

> I remember thinking when I heard a prosecutor outlining what this gang was interested in and so on… they said, you know, these gangs… cars were important to them… they were obsessed with Mercedes and BMWs and Audis, and they’re obsessed with having girlfriends that look like models… and I thought, this sounds like the city of London, I don't think this is to do with gangs. I thought at the time… it is actually a sort of unconscious racism… you know, if black people like those things, they are probably gang people… if white people like those things, well what do you expect… they just don’t make the connection, they just think ‘well that’s a bit weird, black people, you know, how can they afford BMW’s?’

While John does not reflect on expressions of place-based identity, Lacey and John both illustrate how whiteness, or proximity to whiteness, can isolate an individual from a gang-centred interpretation of their cultural expressions and pastimes. In Chapter Seven I discuss the case of Yusuf Makki, which further demonstrates how the whiteness and social

class of a young defendant can create a perceptible distance from the ‘reality’ of the ‘gang’, even where they exhibit similar cultural expressions to those associated with Black men.

‘Chilling on the Block’: The Use of Street Space as ‘Gang Behaviour’

Local space outside often serves as the only autonomous space for some young people, offering a place to express themselves without adult supervision and at little financial cost (White, 1998 cited in Malone, 2002). A rise in child homelessness (see Woodhead, 2023) and sustained cuts to youth services (Liberty, 2023a) are also likely to contribute to young people’s utilisation of public street space, particularly those with limited financial resources and social opportunities. As some of the young men’s narratives unfolded, it became apparent that their *use* of street space was also understood through the lens of ‘gangs’ in the context of their conviction. This interpretation was particularly central to the prosecution’s case against Shaqueel, which I discuss below.

Practitioners in this study felt that it had become more common for judges to resist the use of ‘gang evidence’. Indeed, there were eight young men for whom the explicit language of ‘gangs’ was not referenced throughout their trial. However, several of these young men described how the ‘gang’ was still effectively produced through ‘a range of racialised signifiers’ (Clarke and Williams, 2020). These young men reported that prosecutors utilised language relating to territory and hierarchy and evoked their proximity to rap music and ‘knife crime’, including their own experiences of victimisation, to construct a ‘gang lifestyle’. This observation was supported by defence practitioners, including Thomas, who acknowledged that prosecutors would still ‘bring up certain things that would allow an inference to be drawn that there is a gang issue’, even if gang evidence was inadmissible. Shaqueel set out how this covert gang narrative

played out at his trial:

> They didn't say it was a gang, but they still said… we do this all the time… we try stab people, we've been stabbed, we're part of this… you've got [rap] music on your phone…

Exemplifying the conceptual imprecision of the ‘gang’ (see Chapter Three), these reflections emphasise that the gang narrative does not solely hinge on the label itself, but on signifiers that can either intensify the explicit gang narrative or produce it inexplicitly (Clarke, 2023). Imagery of ‘urban’ Black youth embroiled in ‘gang warfare’ has arguably become so entrenched in the public imaginary that the mere sight of a group of young Black men accused of murder could evoke the ‘gang’ alone. When coupled with references to rap music, housing estates, territory, hierarchy, and ‘knife crime’, each laden with their own stereotypical assumptions, the ‘gang’ is still effectively conveyed.

Shaqueel was just 17 when the incident at the centre of his case occurred. He grew up in and out of foster care, recalling periods of homelessness throughout his life. Shaqueel contended that his use of street space, along with his co-defendant’s possession of rap lyrics, were utilised to construct a ‘gang lifestyle’ and imply that the offence was rooted in ‘gang rivalries’. According to Shaqueel, the incident at the centre his case unfolded spontaneously. It was accepted that Shaqueel and his friend, while ‘chilling on the block’, were confronted by two people with knives before the fatality occurred. Yet, Shaqueel disclosed that the ‘gang’ was implicitly evoked to suggest that the incident was not *truly* spontaneous. Rather, the prosecution argued that by ‘chilling on the block’, Shaqueel and his friend were expecting and waiting for the appearance of their ‘rivals’:

> They tried to make the narrative as if we were waiting for them to come… For them, that means you’re a gang… if you're just chilling on the block… that was the way my life was init.

In describing how the prosecution framed his use of street space, he went on to say:

> …they misunderstand. Not everybody has houses they go to chill… at certain points, even the streets was my friends… I've been homeless… it's different to them…

Shaun made similar reflections. Mimicking the prosecution narrative, he said:

> They were trying to make it seem like the movements that we were doing was unordinary… But that day is basically what we do every day, we chill on the strip… "don't you think it's unusual that these guys… pedal bikes from the bottom… to the top of Hatfield". I do that every day… I'm from the bottom part… I might want to go KFC. There might be 10 of us on push bikes, we will all go KFC. … they're saying things like… "so you walk out that door first, you're the leader". That's what they said... He left the chicken shop first, look, he's the leader, everyone follows him …we ain't got jobs, we ain't got hobbies, we ain't got family that might say son… I've got a garage, come help us… we've got the streets…

Shaqueel and Shaun's disclosures demonstrate two things. First, their mundane use of street space was utilised to evoke the 'gang' and communicate culpability. It is worth noting that the estate, or 'the block', is often part of a symbolic way of living for working- class young people, yet Shaqueel's use of this space was constructed as indicative of awaiting his 'rivals'. Indeed, the cell site evidence presented at Ryan's trial, as highlighted in the previous chapter, exemplifies how spending time on the 'block' can literally translate into 'gang evidence'. In Shaun's case, leaving the shop first was utilised to construct his hierarchical power, while riding around the 'strip' was described as 'unusual', drawn upon to infer that the group were seeking to locate the victim. Secondly, Shaun and Shaqueel suggest that such interpretations illustrate a disconnect between their lifestyle and that of police and prosecutors, who are ignorant to the cultural behaviours of young people and the reasons why spending time outside may be their only viable option. By referencing homelessness and a lack of opportunities, both young men underscore how the prosecution's interpretation of their actions represents an ignorance of socio-economic

challenges. Their disclosures once again demonstrate how their experiences are decontextualised in court, as their social environment, economic position, and cultural practices were reduced to 'gang culture' and deviant behaviour. By illuminating the dearth of positive social and economic opportunities in the context of this discussion, the young men emphasise how social class, as well as race, was pivotal in constructions of their guilt.

Their narratives therefore illustrate the potential for structural and racialised patterns of socio-economic disadvantage (Phillips, 2011) to influence prosecution practice and the unequal application of joint enterprise. Successive governments continued policy of austerity has eroded essential social services for young, working-class people (Liberty, 2023a), decimating community infrastructure and funding for community organisations, particular those which are Black-led and oriented around racial justice (Mwale and Williams, 2023). Emphasising that defendants are often the only Black, young, and working-class people in the court room, practitioners described the bar as a 'privileged' and demarcated profession, meaning that the lives of those on trial were 'unrelatable' to most practitioners. This, they contended, meant that lawyers and judges were 'out of touch' with reality, and more likely to take a stereotypical view of the young Black people in the dock, who are already 'lined up… so they look like gangs' while negative inferences are drawn 'by white middle-aged men… who don't understand the music… the language… the texting, but would not draw the same inference if they were… white people' (senior barrister Lacey).

Looking beyond racial difference, retired judge John contended that the expectation that a judge of colour 'from a hugely privileged background' will somehow 'relate to someone from a council estate … is nonsense', demonstrating his awareness of the problems posed by an assumption of homogeneity between negatively racialised groups. Taking this observation further in sharing a personal encounter with a Black judge,

suggested that the wider demarcation of the judiciary from the lives of ordinary and young Black people like himself, meant that a shared racial identity was not conducive to greater understanding and empathy:

> I had had a Black judge one time yeah, chat to me like say I'm scum of the earth. I feel like rah, like you know, sometimes people get a Black judge and they're like yeah, it's gonna be calm. It's not that because the institute he's in is predominantly white, so if that's what he's around, he's gonna get whitewashed, he's gonna start believing certain things that they believe…

Here, Marcus contends that the prevailing norms and assumptions of a predominantly white institution shape the attitudes and behaviours of its members, regardless of their racial background. His use of the term ‘whitewashed’ captures the supposed erasure of the judge’s Black identity and the internalisation of the values of the dominant group, highlighting how institutional power and cultural dominance can override individual identity, leading to a reinforcement rather than a challenge of existing inequalities and differential treatment of defendants.

Indeed, practitioners’ reflections on diversity at the bar mirror Shaqueel’s observation that his use of street space was misunderstood by people who are entirely demarcated from his experiences, but who are responsible for deconstructing his actions. However, ‘misunderstanding’ might be too generous a term to describe what is taking place here. In fact, some practitioners, as did most of the young men and their relatives, believed that prosecutors intentionally exploited perceived ‘differences’ between defendants and their jury, aware that jurors are likely be credulous to the prosecution’s case and interpretation of defendant’s behaviour. This sentiment is explored further in Chapter Seven.

Digital Space and Social Media as a Repository of Evidence

Shaun and Shaqueel's disclosures above begin to demonstrate the prosecutorial benefits of the expanding infrastructure of crime prevention, including surveillance and digital technology which has long been a priority within Britain's contemporary approach to crime (Garland, 2001). While digital technology undoubtably aids in establishing important key facts about an offence, Shaun and Shaqueel illustrate how the widespread deployment of CCTV, particularly in inner-city street space, means young people's daily movements can be surveilled and documented, enabling the potential presentation of their use of street space as sinister, even when it might be innocuous in nature or purpose. But beyond the physical realm of street space, the digital landscape has become the primary arena for entertainment, communication, knowledge acquisition and expression for young people. Their smartphones are dynamic spaces where daily experiences and pivotal events are extensively documented, discussed, and shared. The allure of the digital realm for law enforcement is therefore apparent in its role as a platform where young people interact, carve out their identities and chronicle their experiences, presenting opportunities to gather information, imagery, and expression, which could be potential evidence in a criminal case. Indeed, 'an online presence in a modern world is [now] as important as traditional policing methods such as walking the beat' (The Police Foundation, 2014: 2). Just as every contact with the police 'leaves a trace' (Casey, 2023: 320), as illustrated in the previous chapter, 'every interaction with the internet leaves a trace and trawling through an individual's social media profile can give the police information on his or her circle of friends or their location at a specific time' (The Police Foundation, 2014: 6), while assisting in 'monitoring community tension levels and anticipating behaviour' (ibid: 10), illustrating the allure of social media for 'gangs policing' in particular. Indeed, the young men's narratives revealed a troubling trend wherein their non-criminal behaviours or expressions, exhibited through

various facets of their digital and online media, were utilised to draw inferences of 'gangs' and guilt. Their disclosures, as discussed below, foreground how the digital footprint, albeit not isolated to social media, is not so different to the DNA fingerprint in its ability to communicate guilt.

The prosecution's use of group photos, taken from their phones, became a focal point of discussion. Despite an abundance of diverse pictures on their phones and social media that could equally evidence their association with co-defendants, the young men felt that photos were strategically chosen by prosecutors. They described how prosecutors presented pictures that aligned with stereotypical imagery of a criminal lifestyle, including images where they were smoking, using explicit gestures, or posing for a video shoot. Marcus, who described these as 'gangland' type pictures, asserted that this selective curation of digital evidence was a deliberate prosecution tactic aimed at communicating to the jury that the defendants were 'gang associated', even if it was not considered by the court to be 'gang evidence'. Online images were particularly central to the case against Daniel. Daniel described how the prosecution utilised photos to demonstrate his purported 'gang membership'; they suggested that the colour he was wearing in one photo was 'gang' insignia - a common prosecution practice in joint enterprise cases involving negatively racialised defendants according to Williams and Clarke's (2016) research. Daniel described how a single photo of him wearing a blue bandana, coupled with a blue bandana found in his home, became central to the prosecution's case:

> I've got different Bandana colours… green… red… [the police] found several bandanas… Even my mum said on the statement that the bandanas, I use them at home… I put it around my head. My mum uses them… [The prosecutor] was trying to say because I had a blue bandana… and because my co-defendant had a blue bandana … they're a gang… this is nothing to do with gangs... why didn't they put pictures of me in the other different banana colours?

By highlighting the prosecution's selective emphasis on the blue bandana, Daniel underscored the calculated nature of the prosecution gang narrative. His disclosure sheds light on the intentional selection and disregarding of digital evidence to fit a particular narrative, revealing the inherent risks faced by young people whose personal artifacts, commonly documented through their mobile phones, can become tools for reinforcing the prosecution's case. Daniel described how the prosecution went so far as to compare his clothing with what the prosecution perceived to be an 'established' London 'gang' - the photo of which was taken from a screenshot of an online music video:

> … [the prosecution] said… "this is what they look like." Like saying, us, "this is what they look like… on the video, it was them in blue bandanas, in tracksuits" … because we wear tracksuits… [the prosecution said] "this is exactly what they like, they wear tracksuits, they've got blue bandanas" …

Marcus and Daniel's disclosures illustrate how digital media can serve as a repository of potential evidence for the police. In Daniel's case, the prosecution was able to utilise online media to locate videos of a purported 'gang', unrelated to the case, to present commonalities between their clothing. In Marcus's case, the vast assortment of photos on his phone, some of which may have conveyed or suggested varying and complex identities, offered the police a plethora of choice in shaping Marcus's character. In Marcus's view, they selected photos which most closely aligned with the prosecution's gang-centred case theory.

Beyond illustrating how digital space can be utilised as a catalogue of readily available evidence, Daniel's experience also exemplifies the conflation of symbolic aspects of youth culture and 'gangs' in court. Not only is the tracksuit a common item from which evidence of criminality simply cannot be adduced, it is also a longstanding cultural symbol, described as the 'uniform' of grime music, which itself represents a rejection of established

scenes rendered inaccessible to disenfranchised youth (Parmar Amin, 2019). As Parmar Amin (2019) notes, the tracksuit has been adopted as a symbol of resistance to the elitist fashion industry, exemplified by grime artist Skepta, who proudly proclaimed his presence at a high-profile event wearing a tracksuit in his song 'Shutdown'. It has been a form of resistance to police harassment and the surveillance era of CCTV, described as a means to move low-key (ibid). Like most subcultural symbols, it was not long before the clothing fell victim to politicisation, as the UK media and government equated hoodies and tracksuits with anti-social behaviour, violence and 'gangs'– a stereotypical view challenged by music artist, Stormzy, when he said 'everybody calm down it's a tracksuit… I ain't gonna stab you' in his freestyle, 'Wicked Skengman 4' (ibid; Stormzy, 2015).

Notably, when asked how 'gangs' could be identified, retired judge John referenced Chicago Bulls baseball caps as 'near [gang] uniforms'. The relevance of these so-called 'gang insignia', according to solicitor Eric, 'isn't always immediately obvious' because 'on the face of it, it doesn't mean very much'. According to practitioners' accounts, the meaning of 'gang insignia', including colours, clothing, names, hand gestures and rap video content, were often explained by police in 'expert' testimony. This examination of cultural symbols by purported 'expert' officers inherently strips these non-criminal symbols of innocent connotations. The act of police deciphering them suggests that these cultural artefacts require specialised police knowledge to interpret, communicating to the jury that they possess an inherent criminal meaning.

The use of smart phones as a location for evidence used to evoke the 'gang' also manifested in the interpretation of the young men's messages. This phenomenon particularly illustrated the centrality of Blackness in negative interpretations of cultural expression. For example, Casey reported that the use of BBE was intentionally scrutinised by prosecutors during his trial. As mentioned in Chapter Three, like many

Black diasporic

languages, BBE is often referred to as 'slang' and perceived to be grammatically incorrect (Purdy-Moore and Thompson, 2021), rather than embraced as an emerging and recognisable language. Some schools have even banned its use, which has been described as a 'linguistical injustice' fuelling the exclusions of Black students (BLAM, 2021). Casey and Rochelle, who is the girlfriend of Casey's co-defendant Rav, described how the prosecution repeatedly questioned Rav about the meaning of terms like "wagwan" and "my G", which he had used in his text messages, despite the messages having no obvious relevance to the offence or a disputed fact in the case. Both Casey and Rochelle interpreted this prosecution practice as an attempt to evoke 'gangs', as the jury are likely to, in Casey's words, view it as 'gang language'. Their disclosures raise questions about the degree to which the stigmatisation of BBE manifests in institutional practices beyond education, while once again drawing attention to how young people's digital footprint manifests in racialised prosecution strategy.

The manipulation of digital textual content extended to social media platforms. Ryan's Instagram photo caption, 'stay strong and bounce back', attached to a photo of his friend who endured a stabbing, was introduced as evidence. Ryan contended that the prosecution deliberately sought to distort the meaning of the caption, framing 'bounce back' as an endorsement of violent revenge, when it was a clear expression of sympathetic encouragement. The prosecution's failure to acknowledge the genuine empathy within Ryan's message reflects not only a strategic interpretation of his social media activity, but also underscores the dehumanisation and pervasive criminal assumptions associated with Black youth masculinities. In turning Ryan's expressions of compassion and reassurance into an alleged expression of violent intent, the prosecution utilised his social media content to communicate his complicity in the offence. Similarly, Carlos, who was awaiting trial, described an Instagram photo caption quoting a drill track in his evidence papers, which he

said the police were claiming to indicate an intention to ‘seek revenge’. The lyrics were not written by him, demonstrating how merely consuming or sharing drill presents a risk to young people.

In specifically discussing how the ‘gang’ is evoked through digital evidence, some practitioners reported that social media and gaming names were often presented as ‘gang names’ by prosecutors. This practice extends to the use of emojis and colours in social media handles, where the existence of similarity between defendants regarding these symbols is understood as common ‘gang’ ties. Practitioners expressed concerns regarding the misinterpretation of social media communications that, as junior barrister Lizzie described them, often had ‘perfectly innocent explanations.’ The youngest practitioner and seemingly familiar with social media, Lizzie felt that this misinterpretation stemmed from a deficit of lawyers who use these platforms, and the language used across them. Lacey argued that practitioners needed a ‘compendium of emojis’, similarly emphasising that lawyers must become more familiar with the evolving landscape of social media. She criticised the persistent adherence to outdated practices, highlighted how the courtroom had never been modernised - a place where lawyers still wear ‘ridiculous clothes’, illustrative of a systemic failure to adapt to the changing social world for which their decisions about young people concern.

Overall, participants’ disclosures demonstrate how the digital realm can be pivotal in shaping prosecution evidence and narratives, exacerbating the blurring of lines between (Black and working class) youth culture, ‘gang’ behaviour, and criminality. While it is argued that there has become an increasing blurring of boundaries between real and virtual spaces (Jordan, 2009), young people’s identity construction now involves the navigation of multiple realities (Chambers and Sandford, 2018), meaning they can construct multi- dimensional biographies influenced by the various spaces in which they spend time. Yet,

participants' narratives highlight how prosecutors can communicate criminality and culpability through selectively presenting various facets of young people's digital data, without proper consideration of context and the conventions of social media, as well as the role of persona and multidimensional identity construction in the digital sphere.

Quinn's (2024) detailed examination of the rap music evidence used in one joint enterprise case illustrates the insidious and strategic way that police and prosecutors may use young people's digital and social media content. In the case she examined, the defendant's lyrics, written on his phone, were appropriated to look as if they corresponded with the stabbing incident at the centre of the case, implying that the defendant was 'revelling in his involvement' (page 14). As Quinn shows and argues, the evidence had been cherry-picked, decontextualised, and tampered with, including the removal of the defendant's reference to a gun, which was not used in the incident, while also omitting to mention that the original composition of the note pre-dated the incident. Digital media therefore appeared to be intentionally selected and decontextualised to mislead the judge and jury in this case.

Prosecuting Drill

As already highlighted earlier in the thesis, criticism of the use of rap as evidence stems from the inherent dangers associated with using art as evidence, along with the discrepancy in how other fictionalised art forms, despite containing similarly violent content, are not typically thought of as demonstrating criminal disposition (Owusu-Bempah, 2022a). As set out in Chapters Two and Four, the policing of drill is an extension of the 'war on gangs'; a contemporary commodity for music industry owners and even white-middle class youth (Stuart, 2020) has been turned into another racialised moral panic. As highlighted in the previous chapter, drill has become the focus of police and policy initiatives, leading to the

development of specific guidance for prosecutors on the admissibility of lyrics (Crown Prosecution Service, 2021), and the establishment of a cadre of police 'experts' who give testimony on and monitor drill (Railton, 2022).

Five young men in this study reported that drill music was introduced in some way at their trial. Several others recalled attempts to adduce it which were rejected by the trial judge. The key contention in the debate over the use of rap is the extent to which it is relevant to the offence in question. Even critics of 'rap evidence' agree that direct links between lyrics or videos and the incident should be scrutinised in court, but the conventions of the genre make it difficult to distinguish fact from fiction (Quinn, 2024; Owusu-Bempah, 2022b), and police and prosecution manipulation and cherry-picking of evidence makes it inherently dangerous (Quinn, 2024). A few practitioners noted that judges had become more resistant to the admission of rap where it did not directly relate to or reference the incident at the centre of the case. This includes references to the incident's location, descriptions of events mirroring the incident, names of individuals involved, or supposed expressions of hostility between associated parties. According to practitioners, this type of rap evidence was the most valid, and would typically be submitted under section 98 of the Criminal Justice Act (2003), which pertains to evidence that is 'to do with the facts of the offence'. However, several practitioners recounted the frequent admission of rap through the 'bad character' gateways, which allow for the submission of evidence of a person's character, misconduct, or disposition towards misconduct. For senior barrister Lacey, rap was 'always brought in as bad character' and was never 'relevant to the offence', reflecting the findings of Owusu-Bempah's (2020a) earlier review of case law. Some practitioners also observed that judges were avoiding a comprehensive bad character analysis and legal directions, by simply ruling that rap, or 'gang evidence' more widely, is admissible under

section 98, suggest a blurring of lines between routes for admitting such evidence, and the potential dilution of section 98 in practice.

Bad Character or Persona?

The fact that a fictionalised art form can be submitted on grounds of ‘bad character’ is inherently controversial. Yet several practitioners reported experiences where rap was introduced to demonstrate propensity to violence and the use of weapons. Barrister Lizzie described her experience in one joint enterprise trial, stating: ‘…the [music] video did rounds… reinforcing… this is the behaviour that they casually talk about or are involved in, which is a stretch’. Lizzie went on to contend that violence and provocation is the ‘sort of content that is in drill music’, highlighting the dangers of taking rap at face value without considering the context in which they are created and consumed. A platform for artistic expression, storytelling, and social commentary, often characterised by exaggerated personas which captivate audiences, yet utilised as evidence in some of the most serious criminal cases. As discussed earlier, in the digital and social media sphere, of which drill music is undoubtably a part of, young people curate online identities that are not necessarily linear to their personality and behaviour in other settings. Particularly for music artists, cultivating and maintaining a specific online image is perhaps crucial for establishing a fan base.

Lizzie’s observation was reflected in the experiences of some of the young men. Drill artist Simeon disclosed that the prosecution argued that his lyrics, which included descriptions of violence, were representative of his daily lifestyle. In Shaqueel’s case, similar inferences were drawn from rap, although rap evidence was not officially adduced. Shaqueel reported that the trial judge accepted that his co-defendant’s lyrics, written as notes on his phone, were not relevant to the offence, precluding their presentation to the

jury. However, Shaqueel reported that the prosecution was granted permission to make the existence of the lyrics known to the jury, leading the prosecution to refer to rap in their closing arguments:

> They said this is just a day in the life of this individual… he's rapping about his experiences… They done it sly… they could tell the jury that we have these bars, but they weren't allowed to tell the jury what we were actually saying… in the closing statement they basically said… these individuals, they live a life of crime, they write…. violent lyrics.

For Shaqueel, the prosecution’s allusion to his involvement with rap was integral to their portrayal of him as a violent individual. Shaqueel’s disclosure is profoundly troubling, not least because it once again demonstrates how non-criminal forms of expression, captured through young people’s smartphones, are harnessed by prosecutors. As empirical studies have demonstrated, people are more likely to assume a direct connection between rap and real-life events when compared to other genres (Fried, 1999; Dunbar, Kubrin and Scurich, 2016). Thus, by permitting the prosecution to inform the jury about the existence of the rap lyrics, the judge enabled the prejudicing of the jury without any discernible probative value or justification. Given the prosecution still felt compelled to mention the lyrics, Shaqueel’s disclosure indicates prosecutors’ awareness of the conviction- maximising capacity of the genre and thus, the criminal stereotypes associated with it.

Reflecting this prosecutorial consciousness, Casey described how the prosecution in his case repeatedly questioned his co-defendant about his rap career, despite no rap evidence being adduced. These disclosures not only indicate that a mere association with rap presents a risk to defendants, but they also illustrate how rap, and the stereotypes attached to it, can be evoked in court through an unofficial pathway. This practice reflects how the gang narrative is covertly evoked, as discussed earlier in the chapter, and suggests that exposing a defendant’s association to rap is a favourable prosecution

strategy.

The use of drill as evidence went beyond demonstrating propensity and character. In some cases, rap was utilised entirely to 'evidence' affiliation with a 'gang'. As demonstrated in Chapters Two and Four, 'gang' centred policy initiatives have become imbued with the surveillance and suppression of rap, owing to and reinforcing the ideological synonymising of 'gangs' and drill. Tasharn disclosed that his mere presence in a music video was presented as indicative of 'gang affiliation'. Solicitor Corey contended that his client's appearance in a music video became a 'major plank in the prosecution's case', used to signify common hostilities, illustrating the significance of so-called 'gang affiliations', evidenced through rap, in cementing the prosecution's case of complicity. Rap

- mostly performed by young Black men, increasingly monitored by the police and integral to prosecution strategy (Pritchard, 2023) - is more likely to exist in relation to Black defendants, once again providing the police with a seemingly 'race-neutral' avenue for making young Black men the 'ideal defendant'.

There is no doubt that some young people who refer to themselves as 'gang members' also produce rap music, but the two phenomena are not inherently linked. Given that the 'gang' as an ontological reality is difficult to establish and define, and the self-attribution of the gang label is not isolated from external labelling, drawing conclusions about 'gang membership' from music production is spurious. Simeon, whose music movement, '467', was labelled as a 'gang' by the prosecution, explained why this was inaccurate, suggesting that the 'relationship' between music and 'gangs' is specious:

> …they're saying 467 is a gang… but… all the Brantford gang names…they all start years ago… up until the point I came to prison, there was only about five people that was 467. Since I've been in prison… You got people from Brantford realising the movement that the music group was making that… might be gang members that are now picking up the 467 name. If I'm not a gang member, who am I to tell someone that you can't put 467 in your name.

Simeon points out that the origins and purpose of ‘467’ do not align with the prosecution characterisation of the collective. He accepts that people affiliated with ‘gangs’ have adopted the ‘brand name’ due to its growing popularity. However, he underscores the complexity and fluidity of the relationship between his music collective and ‘gangs’, emphasising that the expansion of the brand name is beyond his control, reflecting the evolving nature of music, youth culture and the appropriation of cultural symbols.

The CPS’s current guidance on ‘gangs and drill music’ manifests the perception that rap and ‘gangs’ are inherently intertwined. According to the CPS, ‘gangs are increasingly using drill music… to promote gang culture, glamorise the gang lifestyle and the use of weapons’… while posting ‘videos online that seek to taunt rivals [and] incite violence….’ (2021). This portrayal reduces drill merely to a conduit for retaliatory ‘gang violence’, devoid of any acknowledgement of the conventions of rap, the risks of misinterpretation, and the genres links with Black youth culture and success in the mainstream music industry. It overlooks the artistic and social dimensions of drill music, portraying it instead as a platform for ‘taunting’ rivals. The discussion of Police Constable Mead’s ‘expert evidence’ in the previous chapter mirrors this view, as he described drill as ‘a genre that provides an ongoing narrative to gang rivalry’. Yet, these officers are represented as ‘impartial’ experts on the meaning and interpretation of the genre. Marcus and Simeon, both of whom had their lyrics ‘de-coded’ by police officers during their trials, contested the accuracy of the police interpretation:

> Half of the bar they would get right…the last two words they wouldn't, but then they would link it to something crazy, like, this is an active gang member, as in somebody that's been stabbed from a rival gang, confirming that he's part of this lifestyle. It's like, wow… there's people that sing my lyrics that don't even know that part… (Simeon)

Simeon and Marcus took issue with the idea that police officers were considered competent to decipher their lyrics, while their own interpretation was unheard in court. As Marcus emphasised: 'They're so far from what I'm actually saying'… '[My lyrics] originated from me. You can't tell me what it means… I'm the drill expert'. They both expressed frustration and disbelief at the inaccuracies in the police interpretation of their lyrics. Simeon's description of the police linking his ambiguous lyrics, which were perplexing even to his fans, to grave real-life violence prompts reflection on how the police alignment with prosecution goals inhibits a fair and nuanced examination of rap. Moreover, the potential lack of familiarity with rap and (Black) youth culture to jurors, judges and barristers may enable an obviously incorrect and biased police interpretation of rap to go unchallenged. Marcus' assertion that he is the true 'drill expert' underscores the inherent dangers posed by police officers interpreting rap which is not written by them *and* not native to them.

Academics have expressed similar concern over the extent to which officers are qualified rap 'experts' (see Ilan, 2020; Ward and Fouladvand, 2021; Owusu-Bempah, 2022b). It has also been argued that 'intense crime-fighting motivations and institutional racism' might discourage a more cautious analysis of rap. (Ilan, 2020: 1003). Lyrics and imagery can have multiple interpretations. For instance, in a recent GBH conviction case, rap lyrics containing the line, 'I put the A in the A&E', were presented to the jury. While the 'A' could *obviously* be interpreted as 'accident' in 'accident and emergency', it was interpreted by the police and prosecution as a representation of the victim, Ahmad, due to the matching initial (Railton, 2022). One could argue that this is simply coincidental, and the police interpretation is speculative, manipulative, opportunistic and biased. The previous chapter has already illustrated that the police operate within an environment where the surveillance of Black youth and drill is embedded in their institutional framework,

making the question of whether the police are capable of impartiality just as important as the question of whether they are true experts. It could be argued that it is inherently problematic that police officers, who do the groundwork for the prosecution case and exist within institutions that have been (re)identified as institutionally racist (MacPherson, 1999; Casey, 2023), are afforded the assumption of impartiality in assessing its meaning. Reflecting the CPS and police interpretation of drill, some practitioners in this study saw drill as a channel for 'gang feuds', further highlighting a racialised understanding of 'gangs' within the profession. Junior barrister Carl made a particularly concerning disclosure in this regard:

> Drill music is actually probably the heart of it, where they are antagonising opposing gangs within the same jurisdiction i.e., Stockwell, Newington or Hackney… those kinds of boroughs…

Reflecting Carl's narrative, retired judge John, when discussing how to tackle violence, stated:

> …you do get ad hoc gatherings of young people of other ethnicities that might commit a murder, but it's pretty rare, so you have to say in order to combat this problem you need first of all to understand the cultural thing that's influencing it, and that gets you back to things like drill music.

Carl and John's understanding of serious violence, 'gangs' and drill music was undoubtably saturated by what they had observed through their own case work. Nonetheless, their disclosures are troubling, not least because they underscore how a form of cultural expression almost exclusively associated with Black youth is singled out as the primary catalyst for violence and 'gang activity'. Carl's characterisation of drill as the 'heart of' the problem, coupled with his mention of inner-city boroughs with sizeable Black and Brown populations, and John's reference to murders carried out by non-Black people as 'pretty rare', further emphasises the racialised lens through which violence amongst young people is understood. However, what is most concerning about these statements is that they were made with no explicit racist intent, or expectation that

they would be

received as racist. It is disconcerting that they were articulated with such casualness to a Black mixed-race woman, illustrating their belief that these views are uncontroversial statements of objective fact. Indeed, it was clear that John in particular saw his concern about so-called 'Black crime' as somewhat of a necessary and anti-racist position, describing the 'fact' that 'gangs' are more likely to be Black as 'the elephant in the room' that must be acknowledged if we are to tackle the issue. In good faith, John went on to say he 'would like to stand shoulder to shoulder with an organisation of Black mothers… who are opposed to [gang crime] and to talk about what [he's] seen'. Carl and John did however acknowledge that engaging in rap does not automatically equate to criminality or 'gangs'. However, at the point that they made these claims, neither of them considered the multitude of factors, beyond the occurrence of crime, that lead to an individual coming before a court.

Only a few practitioners expressed a fully critical view of the narrative that drill music is a phenomenon of 'gangs' and violence. Thomas, the only Black barrister I interviewed, offered this dissenting view. Owing to his familiarity with Black musical genres, Thomas highlighted a longstanding trend of attributing violence to rap without empirical justification. Thomas pointed out the historical pattern of utilising different rap genres as scapegoats for violence, with groups and artists like So Solid Crew, Giggs and now Digga D, becoming the famous and heavily policed 'folk devils' of the genres. Thomas observed a recurring tendency to seek simplistic cause and effect explanations, with drill becoming the latest target. In doing so, he inadvertently centres the political benefits of rap - the ability to construct a cyclical moral panic, where Black culture and cultural figures can become continual scapegoats to deflect from systemic state failures, thus situating joint enterprise and courtroom discourse within the historical trajectory of politicised and racialised criminalisation explored in Chapter Two. Views expressed by practitioners like John and Carl, coupled with the proliferation of rap-oriented police initiatives, suggest that

this distraction from systemic failures is effective on both public opinion and institutional practice.

Confession or Convention?

It is not inconceivable to conclude that real life events are referenced in some drill lyrics and that, like any other conduit for communication, it could exacerbate existing conflicts (Irwin-Rogers and Pinkney, 2017). But drill, which is produced for public consumption and intentionally provocative, is likely to exhibit lyrics which reflect violent street-based incidents, meaning there is always a risk that generic lyrics are misinterpreted as commentaries on real events. Campaign group, Art Not Evidence, which advocates for restrictions on the use of rap as evidence, propose that decisions regarding the relevance of rap must therefore consider the 'extent to which the lyrics conform to' rap's conventions (Owusu-Bempah, 2022a: 442; Art Not Evidence, 2023). Even if lyrics do reference the incident in question, it cannot be assumed that the rapper themselves was directly involved. Both social media and drill music are sites for communication and reflection of things that happen in local communities. As such, where lyrics refer accurately to the events, it is argued that prosecutors must consider how accessible that information would have been to the defendant (Owusu-Bempah, 2022a; Owusu-Bempah, 2022b).

Participants' disclosures suggest that there is not always a thorough process of investigating the nature of lyrics and videos which are said to be directly linked to the incident. In defending a client, Lizzie described how she was able to draw clear parallels between her clients' lyrics and other drill songs to challenge the claim that they related to the event. 'This is generic…there is such common usage…you can't import meaning or intention to them', she said. Despite other lyrics being adduced into the trial which directly referenced the victim, Lizzie remained unconvinced that all the lyrics

presented at trial

were correctly interpreted as commentary of the incident. Instead, she felt that the defendants ‘generally just liked performing music… and this is the sort of content that is in drill.’ Speaking to the same issue, Simeon reported that his lyrics were used widely in evidence to demonstrate a particular ‘lifestyle’, but there was one lyric which the prosecution used to draw parallels with the incident in his case:

> …the prosecutor… said something like, “hop out the car with my Rambo (knife)…that's exactly what he did”… that song was released in 2018… so did I speak into the future?...

Simeon’s case did involve somebody getting out of a car with a knife. But his comment, ‘did I speak into the future?’, demonstrates a frustration in the fact that the prosecution was permitted to draw parallels between the lyrics and the facts of the case, despite the song being released years prior to the incident. Since Simeon’s lyrics were admitted into evidence more widely, this particular lyric may not have initially been admitted on the understanding that it was an admission to or representative of knowledge of the offence. Nonetheless, the prosecution was able to locate, amongst Simeon’s many lyrics, one which did reflect the incident, highlighting how easy it can be to identify drill lyrics that reflect a specific violent event. Similarly, Marcus’s music video was recorded near the scene of the murder. The prosecution argued that this was an intentional provocative choice, while Marcus said it was pure coincidence, since it was local to where he lived. He also reported that his lyrics were presented as commentary of previous offences he was arrested for, despite never being charged for them.

The Black arts have long been cast with a racist assumption that they cannot achieve sophistication (Gilroy, 1988). Drill is no exception, as artists are not given credibility when giving evidence (Omar Jalloh, 2023) and the career opportunities that the genre provides are often overlooked. In the case examined by Quinn (2024), the prosecution omitted to

mention that the defendant’s lyrical note formed a successful track which had 2.8 million views and was a ‘well known piece of popular culture’ (page 11). A few practitioners recognised the ability for drill to provide a lucrative opportunity, acknowledging that violent lyrics are somewhat necessary for success. Simeon and Marcus also saw drill as a route to living a lucrative and legitimate lifestyle. For Marcus, people struggled to look beyond violent lyrics, preventing them from seeing the genre’s legitimacy:

> Digga [D]… is a millionaire now…man change their life with drill... even though what I'm rapping it's violence…when my mum heard my lyrics… she's like oh shit, my son is a rapper… she was pumping my shit… it's positive. What mans saying might be negative but… when mans gone to the studio, mans not on the roads…I could be on the block, man pull up and I die… Blue Story, the brudda that made that movie… he got to that position… to make that movie, because he's a rapper.... they don't see that though. They just hear stab, kill, shoot... You can't win…

In foregrounding people’s inability to see beyond the violent lyrics, Marcus implicitly illustrates how Blackness fails to insulate an artist from the perceptible reality of their lyrics. Simeon made a more explicit disclosure in this regard:

> There's someone called Johnny Cash talking about I just shot someone… you're not gonna say he's a gang member… in a way we kind of fall into the trap that they have set for you.

In comparing himself to the white country singer, Johnny Cash, Simeon adopts the view that violent rap lyrics performed by young Black men are easier to present as their artists reality. His comment, ‘we kind of fall into the trap that they have set’ foregrounds the inherent risks in becoming a drill rapper as a young Black man, since their art is likely to be assumed as an accurate reflection of their character and lifestyle. During our conversation, Simeon reflected more widely on the fictions and non-fictions of drill, arguing that while some artists may rap about their reality, many do not. Marcus’s reference

to successful rap artists and his mother's approval demonstrates how drill has generated multidimensional perceptions of its social and cultural functions. For some, it is a representation of success and for others, particularly those on the outside, it represents criminality. Marcus expressed a frustration in being punished for pursuing something legitimate, describing how police harassment transcended any involvement in crime. He felt that as a young Black man, he would be criminalised regardless of his career choices, stating that anything a 'yute' like him tries to do that is legitimate will always be used against them. Indeed, a few practitioners acknowledged that there is a 'duality' in law and legal practice when it concerns the interpretation of art, as other fictionalised art forms which are largely white-oriented are not scrutinised in the same way. Despite his previous comments suggesting some racialised views about drill, barrister Carl acknowledged that 'no one would say Freddie Mercury is a gang member because he said "I killed a man"…'.

It could be argued that the lucrative and fictitious nature of rap ought to make it entirely irrelevant in a criminal trial. The convention of confrontational violent lyrics poses an unavoidable risk of misinterpretation. As exemplified by Owusu-Bempah's (2022b) research, even where the Court of Appeal has acknowledged the fictions of rap, it has still deemed it relevant, arguing instead that it would be apparent to the jury that lyrics do not necessarily have a connection to real events.[24] Yet, judges are not required to explain the culture, artistic conventions or social influences of rap to jurors, meaning defence counsel have to work hard to ensure their client is not unduly prejudiced.

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[24] Owusu-Bempah references *Soloman [2019] EWCA Crim 1356* at [15].

Mitigating Myths or Doing Prosecution Work?

This chapter has thus far illustrated that the social and cultural practices and pastimes of young Black men and teenagers are often seen through a lens of 'gangs' and criminality, particularly by those who enforce the law. In recent years, the legal profession has become somewhat enlightened to the prejudicial and stereotypical nature of 'gang-related evidence'. Legal chambers have held webinars on 'debunking' prosecution myths about Black youth culture (see Garden Court, 2020), and have published papers on the risks of injustice in the use of 'gang affiliation evidence' (see Mosley, 2021). As mentioned in Chapter One, the CPS guidance warns prosecutors of the negative and racialised connotations of the term and they are now reviewing their guidance. Nonetheless, concerns that evidence in joint enterprise cases is steeped in anti-Black stereotypes are unwavering. Judges routinely provide directions to juries about rape myths and stereotypes to ensure that blame for the offence is not wrongly attributed to the victim. However, despite widespread acknowledgement of the racialised stereotypes associated with Black youth, 'gangs' and violence, similar directions do not exist on racialised and gendered 'gang' stereotypes that might be evoked by prosecutors to spread the net of liability. Considering the prevalent racialised stereotypes evoked in court, two practitioners, Thomas and Lacey, expressed feeling compelled to counteract their influence. They adopted a direct approach, explicitly addressing the jury about racial myths, encouraging them to consider how stereotypes may have informed their thinking throughout the trial:

> I say to the jury… "you're more diverse than we are… you might go home to a Black husband… look, I'm the only woman in the room"… it's terrible that I have to…give them the myths and stereotypes speech. I have to… in one case, I had a prosecutor say "these people aren't normal"… what it sounds like is, these Black people aren't normal. (Lacey)

In recounting a prosecutor's remark about 'these people', Lacey illustrates the insidious nature of racialised language and its potential to reinforce harmful stereotypes, while underscoring the importance of proactive measures to mitigate their impact. Indeed, her lamentation about having to surface prosecution processes of racialisation by delivering these speeches, reflects her frustration with the broader failure within the legal system to challenge racism. By expressing her dismay, she implicitly criticises the absence of proactive measures from the judiciary to confront, counteract or suppress stereotypes in the courtroom.

Thomas felt that being Black gave him a unique advantage in addressing the jury about racial myths. He described his ability to 'juxtapose' himself against his Black clients, while directly asking jurors to consider whether they had made racialised assumptions about both him and the defendants, who were more than often the only non-white people in court. For these two barristers, the prosecution's interrogation of Black youth culture in court meant they had to deconstruct it to decriminalise it. Thomas described how he would deconstruct the associations and day-to-day activities of his clients through questioning, drawing on his own shared experience to inform his approach:

> Is it normal for the people in the local area to play football together? As a result of playing football together... have there been periods of time where you may not see each other, but if you do, would you greet each other?... you have to explain very basic concepts that seem normal to you… to others, who might think, well, if you don't know the person, why are you hanging around with them… why would you even be there?

Reflecting on a young defendant's use of street space and the normality of inconsistent engagements with one another, Thomas illustrates how this process of deconstruction serves to normalise and humanise these behaviours through contextualising them and reconstructing them as routine and benign. Based on the young men's accounts, the extent to which (and how) their legal teams challenged the gang

narrative varied.

However, none of the young men reported any expert witness being called on their behalf to rebut ‘gang evidence’, including when police officers had given ‘expert’ testimony affirming ‘gangs’. Some of the young men reported that it was not challenged by their defence at all. With this in mind, practitioners described two ways that defence barristers, perhaps unintentionally, might reinforce and legitimise the prosecution gang narrative. First, the defence agree on some ‘gang evidence’, often on the terms that the prosecution will not seek to adduce further evidence of this nature. Secondly, they accept the prosecution’s gang tropes as they concern other defendants, but not their own client. Lizzie and Corey offered examples of how they adopted this approach:

> …pointing to points of difference, so no social media evidence, no photos of us with weapons with other gang members, wearing gang colours, I don't think they even had our Snapchat details so they couldn't say look in his name he has certain emojis they used or colours… but… from the fact that they convicted him… that wasn’t enough. (Lizzie)

> our defence case at the end of the day was we weren’t in a gang, we only participated in the [rap] video because our brother was in the gang and we felt peer pressure… to join in…we were convicted by 10 to 2. (Corey)

Rather than attempt to directly dismantle the prosecution’s narrative, they draw on points of difference between their client and their co-defendants, suggesting to the jury that the ‘gang evidence’ and the inferences drawn from it are correct - just not for their client. Lizzie and Corey describe how they distanced their client from racialised gang tropes, including participation in a drill video and the use of certain emojis and colours on social media, rather than challenge the prosecutions interpretation of non-criminal behaviours head on. It is easy to see how this approach could work against defendants. In effect, reinforcing the gang narrative as it concerns co-defendants, confirms that their client is nonetheless associated with ‘gangs’. Yet, Thomas described this approach as the ‘usual strategy’ - the

result of an adversarial system whereby counsel is only concerned with defending *their* client. While the gang narrative might begin with the police investigation, followed by the prosecution's articulation, this analysis elucidates how a stereotypical understanding of (Black) youth culture and 'gangs' also manifests in defence work, as racialised tropes are accepted and reinforced in attempts to distance clients from them.

Conclusion

This chapter illuminates how constructions of guilt in the context of joint enterprise are shaped by the erroneous interpretation and scrutiny of the everyday actions, and cultural and symbolic expressions of young Black male defendants. These young men find their mundane activities decontextualised and recontextualised through the lens of the police and prosecution, heightening the risk of conviction based on actions that may otherwise be deemed non-deviant. Whether it is engagement in drill music, expressions of place-based identity, social media engagement, or simply occupying street space, these behaviours are judged by those who are not native to their meaning or cultural significance. The narratives shared by the young men reveal a stark disconnect between how they interpret their actions and how their actions are portrayed by the police and prosecution, demonstrating the risks of utilising a conceptually ambiguous label such as the 'gang' in the context of legal proceedings. In their interpretation of 'gangs' and 'gang evidence', the police and prosecution are driven not only by conviction-oriented objectives, but also by broader policies, which are increasingly focused on the surveillance of young people, their day-to- day activity and cultural expression. The young men's narratives foreground that while cultural and criminal processes may converge at times, the latter cannot be safely adduced from the former.

Yet young people's expressions of identity are, in the legal sphere, seen as potential evidence of 'gang membership'. Reflecting what subcultural theory has long demonstrated, this chapter suggests that the nuanced meaning behind youth behaviours is not considered in the context of joint enterprise prosecutions. While the narratives shared by the young men underscore the pressing need for a more nuanced comprehension of subcultural dynamics and youth behaviour in the context of prosecution work, their disclosures regarding the prosecution's selective presentation of evidence indicates a deliberate exploitation of stereotypical imagery to infer criminality. Further, the racial duality in interpretations of non-criminal behaviour, as acknowledged even by some practitioners, reveals how criminal interpretations of cultural expression are directly influenced by race. Actions and behaviours which are certainly not confined to 'gangs', appear to be disproportionately attributed to 'gangs' when the defendants are Black.

The interrogation of symbolic expression and culture in court becomes particularly concerning in the contemporary social world where young people's use of digital space can assist prosecutors in constructing a defendant's complicity. Participants' narratives suggest that the digital and social media realm is a space largely unfamiliar to police and prosecutors. Yet, the increasing monitoring and availability of social media to the police provides an open gateway to explore the lives of suspects and defendants, while gathering anything that may inconspicuously evoke the 'gang' and construct their complicity. The vast array of diverse material exhibited, documented, and shared, makes it a repository of evidence for the police. In this digital age, individuality and expression are extensively publicly documented meaning young people's visibility to the police is no longer confined to the street. The failure of legal practitioners to comprehend the nuances of digital spaces and cultural norms therein, not only indicates an institutional deficit in adaptation to evolving social landscapes. It also illustrates the institutionalisation of crime-oriented

interpretations of young people’s mundane online activity - a practice which is most likely exacerbated by the proliferation of policies designed to utilise social media as a site of ‘intelligence’.

Participants’ disclosures expose a glaring disconnect in life experience and understanding between defendants and practitioners, including defence counsel. While emphasising the pivotal role defence counsel can play in dismantling harmful racist and classist myths, the chapter also underscores their potential contribution to perpetuating these stereotypes. As elucidated in the preceding chapter, defence responses to the gang narrative often lack critical engagement with the racialised structures underpinning ‘gang evidence’, highlighting the importance of defence practitioners who both recognise and are willing to confront racialised discourse in court.

In the following chapter, I explore how the law’s ambiguity, coupled with its expansive reach encompassing the most tangential suspects, propels cases forward on the foundation of poor-quality evidence, where prosecutors find themselves leaning heavily on ‘gangs’, culture and character to bolster their case and navigate a vague law. As I will demonstrate, it is in this evidential vacuum that gang narratives and symbolic cultural expressions like rap music ‘wreak havoc’ (Quinn, 2024: 19).

SIX: THE RACIALISED ‘GANG’ AS A ‘CONVICTION-MAXIMISING’ TOOL

The issues discussed in this chapter relate to the scope of the law on secondary liability. A thorough understanding of this chapter therefore necessitates prior knowledge of the law, as outlined in Chapter One. This chapter forms the basis of a briefing I authored for the Centre for Crime and Justice Studies (Waller, 2024), written following the drafting of the ‘Joint Enterprise [Significant Contribution] Bill’, introduced to parliament by Kim Johnson MP in February 2024. The Private Members bill seeks to narrow the law on secondary liability, by requiring the prosecution to prove that a secondary defendant made a 'significant contribution' to the offence. As highlighted in Chapter One, there is currently no such requirement.

Introduction and Background

> …this is the legal doctrine which ensures that the getaway driver doesn't avoid culpability, that the lookout of the armed robbery is also culpable, that the person who supplies the murder weapon knowing that it will be used in that offence can also not escape liability. The [Supreme Court] has considered this at some length in the case of Jogee… we have to be very careful before seeking to recalibrate it… (Alex Chalk, Secretary of State for Justice HC, Jun 2023)

While Chalk’s statement above is not unfounded, the contribution of a secondary party to the principal’s offence is not always as clear-cut as he conveys. As set out in Chapter One of this thesis, the *R v Jogee* (2016) UKSC 8 judgment placed greater restrictions on how secondary liability could be established by requiring that a secondary party must intentionally assist or encourage the offence. However, it did not define the minimum level of contribution necessary for liability.

In his paper, *'The Contribution of Complicity'*, Dyson (2022) argues that an accessory is not meaningfully involved in a crime if they have made no 'significant contribution' towards it. The vagueness of the law, he argues, makes the law inconsistent, while reducing the ability for the public to know what conduct is illegal. He points out that legal actors 'routinely and mistakenly sacrifice precision about doctrine for the sake of purportedly practical application of the law' (page 389). In other words, it is perceived that vague rules make the law easier to apply, and that greater precision may lead to failures to convict guilty people. This position, which has obvious practical and political appeal, was echoed by the then Conservative Government in the debates following the reading of the Significant Contribution Bill. The Government's main argument was that mandating prosecutors to demonstrate that a defendant made a 'significant contribution' to the offence would be too difficult, citing cases where it was impossible to ascertain who carried out the offence and how each person contributed (see Waller, 2024). The state's approach has therefore been to prosecute everyone suspected of being involved in a crime, regardless of who contributed and how.

Dyson (2022) therefore argues that the lack of clarity in the law makes it 'punitively vague' and is an example of the tendency for English law to adopt a 'conviction-maximising' position (page 390). At present, there is no reliable data indicating what proportion of secondary liability convictions involved someone who played no significant role in the crime. But while campaigners and community-centred researchers contend that this is true of many cases (Waller, 2024), for Dyson (2022), there is often 'little doubt that an accessory has either made a crime more likely and/or easier to commit' through assistance or encouragement (page 391). However, he still contends that the English law assumes that such a contribution has occurred without a specific test, creating a risk that people are convicted who are not responsible. Despite this, concerns about narrowing the

scope of liability are not unfounded. Requiring that the prosecution prove 'significant contribution' might make convictions more difficult in some cases where the secondary parties' conduct is minimal and where their assistance and encouragement is not easily demonstrable. Consider a scenario where somebody agrees to accompany the principal offender to a fight, intending to act as an intimidating presence and intervene only if necessary. On one hand, this guilty person could evade prosecution if the law is amended; depending on the evidence, proving they made a significant contribution may be difficult. However, it is equally conceivable that under the current law, individuals who were merely present at the scene but did not intend to assist or encourage the crime, could be convicted based on a similar prosecution case theory.

Because the conduct of a secondary party is only rarely a crime in itself, establishing secondary liability normally hinges on the prosecution's ability to persuade the jury that the defendant possessed the necessary mens rea (intention) along with that actus reus (conduct). Formally, in R v *Jogee* [2016], the mens rea requirement of foresight that the principal might commit a crime was replaced with intent to assist or encourage that crime. *Jogee* therefore changed the directions provided to jurors regarding how they can render a secondary defendant guilty. Thus, while I agree that the absence of a clear threshold for contribution can place the prosecution in a 'conviction-maximising' position, doctrinal vagueness also presents a challenge for prosecutors post-*Jogee*. Prosecutors can be faced with the task of convincing a jury that a defendant who made no significant contribution to the crime *intended* to assist or encourage the principal.

This is where the 'gang narrative' becomes particularly relevant. The CPS (2021) state that using the term 'gang' inappropriately 'risks casting the net of liability beyond that which can be established', therefore acknowledging that the 'gang' can infer collective intent. However, the punitive function of the 'gang' and the specific mechanisms at play

when it is used by prosecutors remains under-developed. While at times the previous chapter illustrated how the 'gang' can function to infer defendants' (collective) intent, this chapter goes further by exploring the specific legal mechanisms at play when the 'gang' is used in conjunction with a punitively vague law. I raise three questions in this chapter, each answered through the reflections of the young men and legal practitioners.

1. Where a defendant's conduct does not clearly demonstrate assistance or encouragement, how is their intent to assist or encourage the offence constructed?
2. Is it constructed through the racialised construct of the 'gang'? If so, how?
3. Is the wide scope of the law on secondary liability likely to exacerbate racial disproportionality in joint enterprise?

In this chapter, I theorise how prosecutorial discourse and case theory associated with 'gangs' might assist them in overcoming the burden of proof, particularly when a defendant's physical conduct is minimal and there is no demonstrable evidence that they possessed the necessary intention. That is, how might prosecutorial discourse construct a mental state of mind in which an individual appears to have purposefully and knowingly engaged in the pursuit of murder or serious harm, despite a lack of physical participation? This chapter therefore considers the extent to which the 'gang' is a 'conviction-maximising' resource for police and prosecutors in joint enterprise cases post-*Jogee.*

I initiate the chapter by offering a brief outline of the young men in this study's conduct in relation to the offence, highlighting how their cases have contributed to my understanding of the issues covered. Drawing on legal practitioners disclosures, I move on to argue that the vagueness of the law encourages an environment of prosecutorial imprecision, where prosecutors neglect to thoroughly consider or demonstrate the specific

role of each defendant, even when it might be possible. This practice, I argue, has resulted in a climate where storytelling and narrative take precedent over strong evidentiary foundations. I move on to demonstrate how the 'gang narrative' becomes particularly significant in this climate, enhancing the prospect of conviction in four ways:

1. Establishing a contextual backdrop and shared motive
2. Assuming shared knowledge
3. Constructing a state of near-permanent premeditation or conditional intent
4. Constructing a criminal character

I end the chapter by arguing that the 'gang' functions to address weaknesses within the prosecution's case, which are more likely to emerge because of the law's vagueness. I therefore contend that the 'gang' is a feature of 'corporate memory' (Megill, 2006) - a 'body of information' which police and prosecutors deem worthy of preservation and re-use to achieve their organisational objectives. Thus, I conclude that the risks presented by legal vagueness are more significantly borne by those who are most likely to be labelled 'gang members'.

Where is the Contribution in Complicity?

> We're just filling prisons up… full of young people who haven't done very much. Something terrible has happened, but most of the people in there haven't done very much at all. Mostly its people's children (Senior barrister Lacey)

Hundreds of young people who did not carry out any serious violence are given a life sentence each year. In Ahmed's case, five defendants were convicted of murder and given a combined prison sentence of 120 years, referred to by the media as 'killers', despite the

alleged perpetrator avoiding prosecution and Ahmed being absent from the scene. While I do not intend to argue whether the conduct of the young men who participated in this study warranted prosecution for murder, I will briefly highlight how their cases have contributed to my understanding of the issues covered in this chapter.

All the cases took place post-*Jogee*, requiring that the prosecution prove that the defendant intentionally assisted or encouraged the principal to commit the relevant crime. According to participants' accounts, and the limited case papers available (see Chapter Three), most represent cases where there was minimal or no direct evidence of the defendant's physical contribution to the crime. Only four of the young men reported that they engaged in physical conduct directly associated with the principal offender's conduct. David threw a single punch during a spontaneous group altercation, Daniel used a stick to hit the victim during an attack, and Taylor, as the principal (see Chapter Three), directly caused the fatality. Reflecting on his role in the incident, Taylor expressed that his co- defendants, who were present when the fight between Taylor and the victim broke out, should never have been 'placed on the same platform as [him]' with respect to being charged with murder. Taylor's co-defendants were acquitted of murder but convicted of manslaughter.

Ryan was involved in an initial skirmish between two groups but did not follow the fight as it evolved and a weapon was drawn. Others were present at the scene of the incident but did not physically participate (Jason, Tasharn, Toby and Musa). Some were either driving a car (Simeon, Marcus, Shaun and Michael), or were passengers (Ernest and Casey) in a car in some proximity to the scene. However, they did not get out of the vehicle. As put by Ernest's co-defendant Michael,

> [Ernest] got 18 years, yeah, for sleeping in the back of my car. He didn't come out. He had a good excuse, yo, yeah… something was going on but [he] chose to stay in the car.

Ernest similarly reflected on his lack of physical conduct and proximity to the incident, describing himself as being in the backseat, 'zoned out', 'unaware of what was going on' after smoking cannabis. Notably, as each young man recounted the incident at the centre of their case, the absence of knowledge as to the particularities of the incident became apparent for many. Ahmed made a particularly poignant disclosure in this regard:

> Until today, If the guy was to walk past me, that passed away, God bless his soul, I would not know how he looks. I only seen his face once in the police station, and the second time the nurse in the prison… she put the news bulletin on.

The principal offender was not identified in Ahmed's case and his murder conviction was largely based on telephone calls, of which the content was unknown. From the judge's directions to the jury:

> There is no direct evidence that any defendant shot Edward or assisted or encouraged the gunman to do so. As such the prosecution case against each defendant substantially relies on circumstantial evidence.

As already described in the previous chapter, Shaqueel and his co-defendant were approached by two young people with knives. Shaqueel's co-defendant killed one of them in the fight that resulted. Carlos, who was on remand awaiting trial at the time of his interview, reported no proximity to the scene;[25] Devonte and Ahmed likewise.

[25] The prosecution's case was that Carlos was at the scene. Having observed some of Carlos' trial, the key evidence for this was CCTV footage which showed a person wearing a pair of popular Nike trainers which Carlos owned. The person could not be identified by their face as the footage of poor quality. There was no cell site evidence placing Carlos' phone at the scene. Carlos received a hung jury verdict.

Relatives whom I interviewed also provided accounts. Wendy, whose son Deon received a 20-year sentence for murder, described her relief upon seeing CCTV footage of Deon remaining in the car (which the alleged perpetrator was never in) and driving away when the violence began. The alleged perpetrator was acquitted by the jury, seemingly because his cell site did not place him at the scene. This case, for which I had access to the judge's summing up, served as a prime example of the absence of material contribution in finding assistance or encouragement. As succinctly put by Wendy:

> [The prosecution said] that he was the backup… his lawyer said, but if he was the backup, he wasn't much of a backup. Because he didn't do anything, he didn't get out the car. He didn't participate… he was a waste of time… we can see clearly he didn't do anything. Him and the boys in the car didn't do anything.

Nalia provided an account of her son Rakeel's involvement. Rakeel was at a party where a fatal fight involving more than a dozen people occurred. With the principal offender's identity being uncertain, other people suspected of being involved in the fight were prosecuted. Rakeel denied any violent conduct. From the judges' comments to the jury:

> The prosecution do not know who stabbed Karl twice in the chest. How then might either Rakeel or Harrison – neither of whom himself caused any fatal injury to Karl – be responsible for his murder?

Irrespective of whether Rakeel was involved in any physical altercation, the judge accepted that he was not the instigator of the violence and was unaware that anyone had picked up a knife to use it in the attack. Charged with murder, Rakeel was found guilty of manslaughter, convicted *alone* for a fatality he did not carry out.

Grace, mother to Tion and Dan, also shared an account, and I had access to the case papers detailing the events as presented to the jury. Tion and Dan were among many

people

present at a party when a man, armed with a large knife, began chasing party guests. The man - who is the victim in the case - used the knife to seriously injure one of the guests. Several partygoers then chased the attacker, resulting in a standoff between him and some of the guests. The man was subsequently stabbed and killed, but it was unclear who had inflicted the fatal wounds. Indeed, the jury were told that ‘it matters not who inflicted which injury, who was armed with which weapon, or even whether they actually took part in the violent attack’, as long as the accused knew there was going to be an attack and assisted or encouraged others in carrying it out.

The victim’s conduct had been reported to the police multiple times earlier in the day, as this incident was not his first attempt to carry out serious violence. However, the prosecution argued that the partygoers’ response did not constitute self-defence and was motivated by a desire for revenge. Tion, who did not give evidence at trial, was convicted of murder, while Dan, who provided evidence, received a hung jury verdict. Dan was subsequently re-tried and acquitted. Despite his conviction, Tion’s precise role in the incident was not clear. DNA evidence merely indicated that he was in close proximity to the victim.

In most of these cases, the defendant’s intent and precise nature of their contribution remains obscured when considering the incident and the defendant’s demonstrable physical conduct. Furthermore, if liability was correctly determined, most appear to have played an extremely marginal role at best. While I do not have all the facts of these cases, these real- life examples nonetheless illustrate how a wide legal framework for determining secondary liability can lead to outcomes which are viewed as controversial and unfair. As stated by solicitor Eric, it is easy to see why joint enterprise is often perceived as unjust because secondary parties are often ‘not being punished for a combination of mens rea and actus reus which is convincing.’

The examples above demonstrate how the law's approach of assigning equal labels to both principals and accessories can misrepresent the accessories' actions, disregarding the nuance in their potentially diverse contributions (Dyson, 2022: 392). Ahmed explicitly highlighted this issue of equal labelling, reflecting on the fact that he was charged with the same offence as the individual who pulled the trigger:

> Three phone calls, you're trying to tell him you are as guilty as that person… those feelings that went through his body, he pulled that trigger you are the same person under the law in this country. Nah man.

By contrasting his alleged conduct (three phone calls) with 'pulling the trigger,' Ahmed underscores the broad-brush and simplistic approach to prosecution permitted under the law. While legitimacy and fair labelling are important issues, the question of whether the law's vagueness is leading to the conviction of people who are not responsible is critical. It is therefore imperative to ask how doctrinal vagueness impacts prosecutorial practices, particularly in cases where the defendant's conduct was minimal and ambiguous.

How Doctrinal Vagueness Encourages Imprecision and Storytelling

> It strikes me as remarkable that we allow evidence forward with very little constraint on how the prosecution spin their narrative… if we combine that with tests that say any contribution is sufficient… people can be drawn into the negative criminality very, very easily. (Professor Dyson, Libertas Chambers Webinar, 2022)

In a criminal trial, the prosecution presents a story of what they claim happened based on the evidence (case theory); as Dyson points out in the above quote, there is little restraint on how they spin this narrative. This storytelling aspect of the prosecution's case becomes crucial where there is not clear and compelling evidence of intent and the

defendant's

physical conduct is minimal. One prosecutor felt that *Jogee* had encouraged prosecutors to look more closely at each defendant's physical conduct. However, most practitioners expressed that the absence of legal precision on contribution has maintained a climate in which prosecutors avoid illustrating the specific role of each defendant, while fostering a climate in which they do not adequately consider whether a murder (or even manslaughter) charge is appropriate for each defendant based on their individual role. As aptly expressed by senior barrister Lacey:

> What happens a lot now is you charge them all as having a shared intention. You're not really separating principals from accessories, everybody's in. I think if you say what someone's specific role is, you then have to… step back and think, is that really murder or manslaughter? Or is there something else?

This observation somewhat reflects Rakeel's case, who was charged with murder despite his contribution in a spontaneous group altercation being unclear. The jury nonetheless accepted that a murder conviction was not appropriate. However, a more rigorous examination of his contribution and the circumstances surrounding the incident may have ruled out murder, or even manslaughter, instead charging him solely with violent disorder, which was also on the indictment. The vagueness of the law therefore encourages a system that does not always comprehensively examine the details of each case during the charging stage, nor provide an articulate and nuanced account of the events at trial. As Lacey put it, no one seems to want to determine 'what actually happened'. Thus, doctrinal vagueness brings significant risks. First, it allows a wide net to be drawn, potentially bringing people most peripherally connected to incident, or perhaps not connected at all, into the scope of prosecution. Because of this lack of precision, and despite the new fault requirement after *Jogee*, joint enterprise can continue to act as a 'catch-all' law or 'drag-

net' (Waller, 2024), a sentiment captured by junior barrister Lizzie, who felt that police and prosecutors can rely on the law's impreciseness to draw a wide net at the charging stage:

> …the law allows them to draw so many people in they don't have to go to pinpointing an individual, so they grab as many people even as tangentially as they can… even if they lose a couple of them.. they'll get enough… that's what it feels like… throw the net as wide as we possibly can.

Lizzie implies that the imprecise law allows the police and prosecution to maximise their chances of securing a conviction. Even if some charges do not hold, she suggests, the sheer number of individuals implicated ensures that at least some convictions are achieved. She therefore contends that joint enterprise can be strategically used to fulfil conviction- oriented objectives while precision in prosecution practice is neglected.

Further to the term 'drag-net', which depicts the wide scope of the law, I have previously argued that joint enterprise is best characterised as a perfunctory or 'lazy' law characterised by a pronounced reliance on poor quality circumstantial evidence (Waller, 2024). This is not to suggest that police and prosecutors do not put effort into building a case. Rather, it implies that the current law allows for cases to be constructed with an absence of quality evidence and rigour, whereby the police and prosecution 'make the evidence fit' their theory, as opposed to being guided solely by the evidence. While the aggregation of circumstantial evidence can yield substantial and compelling evidence of guilt, some cases rely almost entirely on telephone calls and cell site data which aims to establish a defendant's proximity to the scene or demonstrate that the defendant was in contact with the principal before and after the incident.[26] Junior barrister Thomas reflected

[26] Such as the evidence in relation to one defendant in *R v Hussain* [2023] EWCA Crim 967. See discussion below.

on a recent case, in which he felt the circumstantial evidence was not of a sufficient quality to charge his client:

> There was a series of phone calls before the shooting, the vehicle that he is in drives in close proximity to the area of the shooting, leaves… others come down later and then a shooting happens.

One could argue that doctrinal flexibility inadvertently fosters the use of poor-quality evidence, as prosecutors are not required to adhere to a precise threshold for demonstrating an accessory's contribution. This absence of stringent requisites is therefore likely to result in a dearth of rigor at the charging stage, and in the articulation of a prosecution case. Circumstantial evidence is often accompanied by a prosecution case theory and narrative which relies heavily on their ability to convince a jury that the defendants were all 'in it together'. Cases are contemporaneously characterised by circumstantial evidence from which multiple inferences about a defendant's behaviour are drawn - described by some practitioners in this study as often speculative and unreasonable. For example, at Casey's trial, the prosecution drew the inference that by taking a different route home, the defendant was disposing of evidence, despite nothing being recovered on the route. While jurors are routinely advised against indulging in speculation based on the evidence before them, practitioners' accounts foreground a conspicuous absence of constraints on the narrative that prosecutors can interweave alongside their evidence. According to defence practitioners, inferences which were equally consistent with innocence were too often disregarded.

A recent Court of Appeal case, *R v Hussain* [2023] EWCA Crim 697, exemplifies these core issues. Colton Bryan, the victim, was killed in his home in July 2023. The

stabbing was carried out by Hammad[27] who fled the country. The appellants, who were tried as accessories, were Carpenter, Fiaz and Saddam, brother of Hammad. All three were convicted of murder and conspiracy to rob in February 2021. Saddam also admitted to helping his brother leave the country and pled guilty to perverting the course of justice. At trial, the judge reminded the jury of the defence submission that Saddam's conduct after the killing 'cannot show that he knew that his brother was going to Colton Bryan's flat or what he was going to do at Colton Bryan's flat'.[28]

The prosecution's case was that Hammad carried out this crime with the intentional assistance and encouragement of the three others. They contended that the murder was motivated by the victim and the defendants' involvement in cannabis dealing. According to the prosecution, the murder could have been part of a conspiracy to rob the victim's cannabis with the necessary conditional intent. Put simply, the prosecution argued that the defendants possessed the intention to seriously harm or kill the victim if certain conditions arose out of the robbery (e.g., if the victim tried to stop them). The prosecution contended that it was also possible that the intention was always to seriously harm or kill the victim because of a so-called 'turf war'.

The prosecution presented a circumstantial case at trial, relying mostly on a timeline of contact and mobile phone calls between the applicants. Carpenter was most physically involved in the incident. Known to Bryan, he arranged to meet him at his home and travelled to the flat with Hammad and Fiaz. Carpenter entered the building, propping open the outer door before going inside Bryan's flat. Fiaz stayed in the car throughout. Text messages were then sent from Fiaz' phone to Carpenter stating 'is the drop ready' and 'shall I send him in?' - argued by defence counsel to be consistent with a cannabis 'snatch', rather

[27] Appellants Hammad and Saddam are referred to by their middle names as they both have the same first and last names.

[28] Saddam's KC submitted that a more explicit direction should have been given.

than a murder. Hammad entered the flat soon after. On entering, the victim produced a baseball bat and Haddam produced a knife. They fought and the victim died from knife wounds. All three defendants left the scene together.

Saddam was not with the others at any point but was in phone contact with them in the days leading up to the incident and on the day. From the phone contact, despite no direct evidence of its contents, the prosecution drew the inference that Saddam was involved in organising the attack. Saddam's KC submitted that it was not possible for the jury to exclude alternative reasons for this contact with his co-accused.

Indeed, it is difficult to see how a jury could be sure that Saddam was involved in the organisation of the attack, given his absence from the scene, and evidence which purely rests on demonstrating his association with the others and their ongoing phone contact. Without giving significant weight to the fact Saddam helped his brother leave the country, which is not evidence of assistance or encouragement, it is difficult to see how the jury 'reject[ed] all realistic possibilities consistent with innocence.'[29] Yet, the Court ruled that the evidence adduced by the prosecution was 'unarguably sufficient to enable a reasonable jury to conclude that each of the applicants was party to a plan to attack and/or to rob' the victim, 'if necessary causing him really serious injury.' The judge in the trial directed the jury that 'a crime may be committed by people who… engage very little or not at all in the activity of the crime.' While it is impossible for me to determine whether the defendants were complicit, this case illustrates how the vagueness of contribution makes it difficult to safeguard against wrongful conviction, while also demonstrating the power of prosecution case theory and adverse inferences in constructing a defendant's intentional assistance or encouragement, despite the absence of engagement in the activity of the offence.

[29] See para 24 and 55 of *R v Hussain* [2023] EWCA Crim 697.

Submissions made on behalf of Fiaz in this case directly related to the issue of contribution. Drawing on Dyson's work, Fiaz's KC submitted that Fiaz had not made a significant or measurable contribution to the crime and should therefore not be liable. Since Fiaz stayed in the back of the car and was not in a position to be a 'look out', it was submitted that the evidence could not prove that he actually assisted or encouraged the murder, and that a more detailed direction was needed to assist the jury to distinguish between mere presence and intentional assistance or encouragement. His KC submitted that the court ought to narrow, not widen, the scope of liability by laying down rules stating that an accessory must make some 'measurable contribution' to the offence. In response, the Court deferred to the R v *Jogee* [2016] judgment, restating that juries must find assistance or encouragement, but without the need for causation.

Almost a decade ago, the Law Commission (2007) adopted the position that the accessory's conduct should at least have the capacity to influence the principal offender, without the need to prove a literal causative effect (para. 2.36). However, the Courts seem not to have completely committed to this position (Waller, 2024). By reducing secondary liability almost entirely to a question of fact and not a question of law[30], the jury has no clear tool to distinguish between an accessory who was merely present and one who by their presence had assisted or encouraged (Gerry, 2023). 'Juries are therefore 'left to make life-altering decisions with an absence of clear parameters and legal direction, heightening the risk of inconsistent and discriminatory outcomes, and wrongful convictions' (Waller, 2024: 17).

Indeed, some defence practitioners felt that the law's wide scope made it difficult to safeguard their clients against possible miscarriages of justice. This lack of clarity may also

[30] A question of fact is determined by examining the evidence, assessing the facts, and drawing reasonable inferences from those facts. In contrast, a question of law is addressed by applying established legal

principles to interpret and decide the legal issues involved.

present a moral challenge for prosecutors prior to the trial stage. On one hand, the law allows a prosecutor to charge widely; on the other, this latitude can engender ethical dilemmas about the potential consequences of pursuing charges against individuals who might not be responsible. Prosecutor Dean encapsulated this predicament:

> You come back to the struggle between the law allows the prosecutor to charge these 11 boys… but they aren't actually sort of physically involved in the sense of any actual violence, but it's on the basis of their presence and their support...

When it came to safeguarding defendants against miscarriages of justice, the ambiguity of 'encouragement' was the crux of practitioners' concerns, as they juxtaposed it against the more discernible framework of 'assistance'. They felt that assistance had greater demonstrability, presenting a more tangible foundation for arguments in front of juries, offering a higher degree of clarity on whether a defendant was meaningfully involved in the offence. Dyson (2022) similarly raises this distinction, arguing that while difficult to prove, showing that a principal was able to stab the victim due to the accessory providing a knife (assistance), is within the realm of external evidence. However, to demonstrate that a principal was encouraged by an accessory is far more difficult and relies more significantly on a person's state of mind. With the ambiguous concept of encouragement, we include a much broader scope of conduct (or lack of conduct), meaning that without having to prove that a significant contribution was made, we risk convicting people who are not complicit. Solicitor Eric articulated this distinction:

> It's not that you held them down… helped to chase him into an alleyway where he was more vulnerable to attack… those are palpable acts of assistance, which would make a quite properly founded guilty verdict… But the fact you've got this encouragement in there as well… encouragement should just go… it's through encouragement in a way that you can get all sorts of these… problems come in. What does it even mean? There isn't any adequate definition of it…

The attribution of secondary liability under the premise of encouragement is said to require a level of contribution beyond mere presence. However, this does not mean that physical actions beyond mere presence are necessary; rather, the necessity lies in the intentional and 'supportive' nature of an individual's presence. A conviction on such a basis could be justified when there is evidence that the defendant willingly and knowingly went to the scene for the purpose of violence however, where such evidence is not available, it is particularly difficult to discern liability. In instances where a defendant's purpose is not easy to demonstrate, a genuine understanding of their intent becomes difficult to determine. This challenge is especially pronounced in scenarios involving acts of violence, which frequently unfold in a spontaneous manner, escalating unpredictably, meaning initial intentions can quickly be replaced, further complicating the task of deciphering a defendant's role. When asked if joint enterprise is ever justified, Toby articulated this issue clearly:

> Possibly… if you can physically prove that this is the intention that you lot have gone with, which is so hard to prove, then, possibly, yes. But it's so hard to prove that especially on a murder, maybe if you go for a bank robbery that is blatant joint enterprise, you've all gone there, premeditated… But in some situations, like murder, manslaughter, a fight, it's hard to prove that you all had the same intention. How are you going to prove that? It's too hard. That's why I think that in some instances, yes. But it should be very well ratified in terms of the detail that we have to go into, details as to why they think it's joint enterprise and prove why it's a joint enterprise.

Here, Toby argues that where violence is concerned and there was no obvious plan to commit the violence collectively, it is imperative that the contribution of each person be articulated explicitly and thoroughly, requiring that the prosecution spell out exactly why and how they were part of the 'joint enterprise'. But rather than adopt this approach of precision, practitioners described how prosecutors, in cases where the defendants are present at the scene but abstain from direct participation in the events, frequently rely on

vague concepts such as ‘moral support’, lacking precise explanations of their meaning. Alternatively, prosecutors may contend that a defendant’s role was ‘to provide extra muscle just in case’. Specifically, it was reported that they adhere to an ‘in it together’ narrative, avoiding a separation of each party where possible. In other words, they can construct the necessary intent and bypass demonstrating whether a contribution has been made by relying on the architecture of their case theory and overarching narrative. This engenders a system predominantly reliant on establishing elaborate connections between defendants to ostensibly imply a shared purpose and collective intent. Senior barrister Lacey aptly described the problem:

> …We're convicting people of murder when they play a very small role, they're just more than merely present… [once] I had the direction to the jury that moral support was enough. I said it has to be conduct... “oh no moral support’s enough”. What does that mean? Force of numbers, you get that a lot… what does that mean?... we're not precise about what we mean… we're not explaining what we mean, we're not creating a system that really looks into what's happening…we are trained to come up with a case theory… that case theory is always they're all in it together.

This analysis and insight from legal practitioners highlight how the vagueness of the law has the potential to assist the prosecution in two ways. First, it allows a wide net to be drawn at the charging stage, bringing people into the scope of prosecution more easily, including those who may not actually be responsible. Second, it can put the prosecution in a ‘conviction-maximising’ position, as jurors are not guided by a law which requires prosecutors to prove that the defendant made any significant contribution. However, as mentioned in the introduction, doctrinal vagueness can also present a challenge for prosecutors. It is how this challenge can be overcome by the ‘gang’ that forms the remainder of the discussion in this chapter.

Excavating the 'Gang's' Conviction-Maximising Function

> …[the wide scope of the law] can be a problem for the prosecution, as well as defence, because if juries don't really know what the defendant whose case they're considering is actually supposed to have done then they're more likely to acquit them. And… that's why the gang narrative coming in deals with that problem from the prosecution point of view. (Solicitor Eric)

While doctrinal vagueness might support the practical application of the law, as solicitor Eric illustrates, it can also present an innate weakness in the prosecution's case. In implicating people who engage very little or not at all in the activity of the crime, the law fails to encourage good quality evidence, while prosecutors must nonetheless prove that the defendant *intended* to assist or encourage the principal. This leads to a reliance on case theory and storytelling, which might encourage juries to believe that a person's mere presence, or series of phone calls perhaps, are indicative of intentional assistance or encouragement. As Eric contends, it is here that the 'gang' becomes particularly useful to prosecutors.

The risks presented by doctrinal flexibility are borne by some of the most marginalised defendants in society (Dyson, 2022), those who are mostly young, Black and male. It is this group who fit most easily within the image of 'gangs' and 'criminality' (see also Chapter Seven) that may assist prosecutors in convincing a jury that while they may not have participated in the activity of the crime, they were 'in it together'. Drawing on the young men and practitioners' narratives, I illustrate the four conviction-maximising functions of the 'gang' below.

Establishing a Broader Context: Shared Motive

> …I think juries always feel more comfortable if they can understand why something has happened. And it may be that the gang evidence provides the why. (Senior barrister Harry)

As Harry notes, while the prosecution is not obliged to prove motive for the offence, demonstrating motive can assist juries in making sense of the events. Thus, establishing motive in this way offers juries an underlying reason for each defendant's involvement in the incident, potentially making them more comfortable rendering a conviction. In particular, the 'gang' can assist in establishing a broader contextual backdrop and potential motive for the crime, weaving a logical thread between the crime and the defendants, thus influencing how juries perceive the defendants state of mind. As Harry suggests, the 'gang' can function to elucidate the 'why' behind the crime. An example might be that a 'gang' is attributed with a history of hostility towards the victim and the accessory is said to be 'affiliated' with that 'gang'. This theory lends itself to notions of 'tit-for-tat' 'gang violence' and revenge, which signify a common intention to harm the victim, irrespective of each defendant's contribution.

The presence or participation of defendants in drill videos is particularly significant here. As discussed in previous chapters, the presence of defendants in drill videos is not infrequently interpreted as indicative of 'gang affiliation', gaining added potency if the police are able to demonstrate through their 'intelligence' that the said 'gang' had a history of animosity towards the victim and their associates, or that provocative remarks are being made in the video against another 'gang' connected to the victim. Solicitor Corey provided an illustration of the potential ramifications of this type of evidence, recounting a murder case in which his client, who had no previous convictions, was accused of involvement in ongoing 'gang warfare' based on his single appearance in a drill video. For Corey, the

entirety of the prosecution's case revolved around the notion of 'gang affiliation' and his purported quest for vengeance, with no direct evidence of his contribution to the offence:

> …there was no previous convictions at all against my client… but because he was said to have featured in a video making provocative remarks against another gang, and because the key theory of the prosecution case was that the murder was gang retribution, suddenly our involvement was all to do with our gang membership and gang warfare… the whole case, from the prosecution perspective without any hard evidence, dissolved into well this is gang warfare, and even though they hadn't proved that we'd done any gang activity whatsoever, because we were on that video, suddenly the whole case was… well an white jury… convicted us by 10 jurors to 2 jurors, of murder.

In discussing the admissibility of 'gang evidence', some lawyers emphasised that judges frequently avoided a full analysis of admissibility under the bad character pathways, instead allowing 'gang evidence' under section 98 of the Criminal Justice Act (2003), which does not require the same level of legal scrutiny before admission. This issue may be particularly pertinent when it comes to 'gang evidence' concerning motive. Retired judge John felt it was difficult to reject 'gang evidence' relating to motive under Section 98, particularly where defendants are said to be engaging in the 'taunting' of another 'gang' in a drill video. Echoing this, solicitor Eric observed a growing trend wherein police 'intelligence' pertaining to 'gang feuds' and serving as a testament to motive, is more frequently considered to be 'to do with the facts of the offence', and thus, more easily adduced into evidence.

It is crucial to recognise that this type of 'gang evidence' is intrinsically tied to the police interpretation of drill and 'gangs', which, as highlighted throughout this thesis, is underpinned by racialised assumptions. The role of police 'expert witnesses' is also important. As illustrated in previous chapters, officers who might present as 'experts' on 'gangs' and drill, may 'de-code' drill lyrics and speak to conflicts between different geographic regions which they claim are 'gang related'. This practice can provide the jury

with a seemingly logical contextual backdrop against which the incident occurred, simultaneously linking each defendant to an ongoing ‘gang feud’ and thus, a common purpose.

A backdrop of previous offences identified by the police as ‘gang related’ may therefore be significant. Indeed, some young men reported that prosecutors constructed the ‘gang’ by drawing on previous conflicts involving their friends and family or taking place in their neighbourhood. Ernest described how the prosecution at his trial presented CCTV footage of his relative visiting a victim of a stabbing in hospital months before the incident at the centre of his case. He reported that this evidence was used to suggest that the offence in question was a ‘revenge gang attack’, despite no definitive connection between the events – another example of how evidence can be admitted with little restrictions on how prosecutors construct their narrative around it. Ernest’s perceived proximity to ‘knife crime’, notably through his relative’s connection to a victim, was therefore a feature of the prosecution’s ‘gang’ case theory. Likewise, Michael noted that his previous victimisation, which had been defined by the police as ‘gang related’, was used to establish a collective motive of revenge, with the prosecution arguing that the absence of his physical participation in the crime was due to his injury from this stabbing two months prior:

> I got stabbed two months before this happened… they said I was injured. This is a revenge attack for me. Blah, blah, blah… They're saying, yeah, I'm a gang member… This has been going on for time and what not. I wanted this to happen. And I was injured. That's why I didn't get out the car...

Several young men reported that the notion of ‘tit for tat’ ‘gang violence’ was used by prosecutors to provide a story as to why the defendants would want to, collectively, carry out the crime. This not only underscores how the concept of the ‘gang’ plays a pivotal role in curating intent by providing the jury with a common motive, but also

accentuates,

as discussed in Chapter Four, how prosecution case theory heavily relies on police data and interpretation of ‘gangs’. This reliance on police data gains heightened importance when placed in the context of policies such as Project Alpha and Operation Domain (which exhibit a discernible focus on the surveillance of young Black men) and the continued racialised police documentation of ‘gangs’, as illustrated in Chapter Four. When considering this broader context, it becomes apparent that young Black men, irrespective of its accuracy, are likely to be disproportionately susceptible to evidence which can assist in establishing a shared motive.

‘Must Have Known’: ‘Gang’ Association and Knowledge

Joint enterprise has faced longstanding criticism for its perceived ability to render people ‘guilty by association’. While a person should not be held liable based on association alone, such connections are seen as relevant evidence and are thus leveraged to infer shared knowledge. Beyond its ability to convey a shared motive, the ‘gang’ may also be used to infer that a secondary party knew the events were going to take place, notwithstanding their absence of physical involvement. By drawing an established and criminally intertwined affiliation between defendants such as that of a ‘gang’, the prosecution gains an advantageous foundation from which to insinuate that defendants were cognisant of the principal’s intention to carry out the offence. This could stand as evidence of intent. Notably, the phrase ‘must have known’ reportedly constituted a central feature of the prosecution’s ‘gang narrative’ across some cases examined in this study. Ernest described how the prosecution drew on his so-called ‘gang affiliations’ to repeatedly suggest that he possessed knowledge that the offence would occur and was aware of the principal’s intentions:

> The prosecutor said [PM12] gang… he said "this is a tit for tat murder, the defendant must have known, must have known what was going on at the time, even though he was in the car, he must have known about the knife in the other car, he must have known when they got out the car and chased them boys, he must have known"… he was using that "he must have known" a lot like, like, "I believe that the defendant knew"… it was like he was persuading the jurors…

This assumption of knowledge was also raised as an issue in *R* v *Hussain* [2023]. It was submitted that Fiaz's conviction for murder was unsafe because there was no evidence to take the case beyond an attempted robbery where the conduct of Hammad amounted to an overwhelming supervening act – an act which is unforeseeable and/or departs from any agreement between defendants. It was argued that the judge therefore wrongly left the jury with the alternative route to verdict based on conditional intention and the prosecution were wrongly permitted to put their case on the basis that the applicants 'must have known' of Hammad's intentions and his possession of a knife. It was submitted that subjective knowledge must be demonstrated, not assumed, and it is therefore not sufficient to say that a defendant 'must have known' of an essential fact. While the 'gang narrative' is not a prerequisite for inferring knowledge in this way, by establishing close associations which are rooted in a criminal enterprise, the 'gang narrative' might have a greater ability to convince a jury that a secondary defendant would also be aware of the principal's prior violent conduct or their possession of weapons.

While knowledge of weapons alone should not be enough to convict a secondary party, it still, as put by junior barrister Lizzie, 'is doing a hell of a lot of work in terms of getting you closer to conviction.' David's account sheds light on how the prosecution asserted a presumed awareness of his co-defendant's previous conviction for possession of a knife, contending that this assertion simply relied on the association between them:

> …That's the only evidence they had. Because I know Ricardo, and I know that he went to jail for two months, for carrying a knife, I must have known he had one. That was it. That was the only concrete evidence they had. The rest of it was all provided by me.

In demonstrating a combination of motive and knowledge, the ‘gang’ begins to provide a powerful story as to why those who did not physically contribute intended to assist or encourage the crime. This interplay between motive and knowledge within the ‘gang narrative’ is therefore able to construct a robust story, providing a rationale behind the involvement of individuals who made little or no physical contribution. This unfolds further through Lizzie’s narrative. Lizzie described her client as being ‘on the periphery’ of the offence but present at the scene. However, she felt that her client’s intent was largely constructed through the ‘gang’. For Lizzie, the ‘gang’ provided the jury with an explanation as to why her client would be involved as well as showcasing their awareness of their co- defendant’s capabilities and likely intentions:

> [The gang] linked them all together and gave them all motive to be involved in the attack according to the prosecution. So the ones who were sort of involved on the periphery, the prosecution could still say well, they weren't there by accident, they came here deliberately for a purpose, with people, they knew what the people were like, they knew what the gang behaviour was like, so it… drove the narrative.

The ‘gang’ therefore offers a frame through which the entirety of a multi-defendant case can become more coherent and comprehensible to a jury.[31] By articulating criminal connections between defendants and attributing them with a shared motive, the ‘gang narrative’ lends credence to the idea that those who made no physical contribution but were

[31] I refer to multi-defendant cases rather than secondary liability cases specifically, since the ‘gang’ can

adopt a similar function in conspiracy cases for example.

present, purposefully congregated with the principal, well-acquainted with their co-defendant's characteristic and tenor of 'gang behaviour'.

As aptly described by Toby, the prosecution narrative often goes like this: 'you knew it was gonna happen [knowledge], you wanted it to happen [motive]. You intended for it to happen. That was your intention'. For some of the young men, even where there was no evidence to suggest that they had or used knives during the incident, the accusation that they 'must have known' of the principal's weapon was reportedly often accompanied by the suggestion that they themselves were likely carrying a knife, but were simply not required to use it on this occasion. This inference, often predicated on their associations with others or purported affiliation with 'gangs', was a source of frustration for the young men, as there was no evidence to suggest that it was true. The assumption purely rested on their associations, assumed knowledge and historical conflicts. In Toby's case, the prosecution contended that his prior victimisation of an 'acid attack' several years earlier suggests a likelihood that he was also carrying a knife. This illustrates once again how preceding incidents, including a defendant's own victimisation, are invoked as grounds to draw inferences about their state of mind.

Hulley and Young's (2024) recent research also illustrates that the key facts from which evidence of a secondary party's intention is drawn is often deduced from police and prosecutors' interpretation of how close each party was to other individuals in the group, their prior knowledge of their co-defendants weapon carrying, and their propensity to violence. While such information, including knowledge of weapons, might be factually established in some cases, this is often not the case. Rather, as Hulley and Young point out, racial stereotyping is likely to influence the inferences drawn about the associations between young Black and mixed-race boys.

It is for these reasons that bringing people who did not make a clear and significant contribution to the crime into the scope of prosecution to begin with is dangerous. Despite their lack of action, indictment brings them into a prosecution narrative, often compounded by stereotypes (see also Chapter Seven) and supported by evidence underpinned by racialised police practice and policy initiatives (see Chapter Four). This reality prompted Wendy to conclude that there was no recourse available to shield her son Deon from a conviction, other than if he had stayed home on the day of the incident. For her, the language of 'must have known' cemented her son's murder conviction. Whether he contributed to the crime or not, she said, did not matter.

'More Than Merely' Present: A Permanent State of Conditional Intent

> He's paid a high price for being there... He didn't contest being there, he just didn't know what was going on… It's just that they happened to be in the wrong place, at the wrong time with somebody who had different plans to what they were aware of. (Wendy, Deon's mum)

In Deon's case, there was no clear evidence that the defendants were out to cause harm, although a minor altercation earlier in the day between one of the defendants and another young man (who was not the victim) was drawn on by the prosecution to suggest that the two incidents were linked. The issue of whether a person's connection to the crime extended beyond mere presence was a key contention in several cases. One could argue that such scenarios, alongside those where the defendant was absent from the scene, require the most elaborate storytelling from the prosecution to demonstrate intentional assistance or encouragement. The analysis in this chapter thus far highlights that the gang narrative immediately makes a person 'more than merely' present. By indicating a shared motive and common knowledge, the 'gang' offers a purpose for their presence. As simplistically

articulated by Solicitor Eric, there is less need for the prosecution to focus on the defendant's physical conduct where the 'gang' is evoked:

> They don't need to prove that you actually did anything. If you're part of a gang, it doesn't matter because the actus reus and the mens rea is being in the gang

However, what is particularly concerning is how the 'gang' can be used to make this inference in cases of spontaneous violence. The 'gang' indicates an identity that is consumed by violent conflict. In particular, the popular image of the so-called 'urban Black gang' embroiled in 'post-code wars' and territorial conflicts depicts young people who are always intent on violence should it arise. Consequently, the 'gang' produces a framework resemblant of conditional intent in cases of spontaneous violence. That is, if a spontaneous incident of violence breaks out due to ongoing 'gang conflicts', 'gang members' are always 'ready' or acting in a supportive capacity, irrespective of their contribution. This point was articulated by retired judge John, who used the example of two 'gangs' bumping into one another unexpectedly: 'Gang A are armed and gang B are armed… it's spontaneous because they bump into each other, but it's planned because they're a little army…'.

Shaqueel's case is particularly significant here. While the 'gang' was technically ruled inadmissible at his trial, as illustrated in the previous chapter, it was still evoked through a range of signifiers. The implicit suggestion of 'gang rivalries' was used to infer that while Shaqueel and his defendants were confronted by other people with knives, the incident was not *strictly* spontaneous. Rather, the prosecution claimed that Shaqueel and his friend were deliberately 'chilling on the block', anticipating their 'rivals', suggesting they were embroiled in a lifestyle of ongoing violent conflict. Further to his reflections in the previous chapter, Shaqueel reflected on how this prosecution narrative was used to infer some element of premeditation:

> That was there whole thing that I woke up one day, I called my friend and I said to him, let's stay outside, let's chill on the block, bring your knife… let's chill on the block, let's wait for people to come and then let's kill them. That's basically, that was their whole thing init, premeditated, you knew he had a knife, you was out for the whole day… honestly, I did not want to see anyone dead on that day.

The spontaneity of the incident, and the likely absence of premeditation, is arguably reflected in the fact that the jury found Shaqueel guilty of manslaughter rather than murder. Yet, his experience nonetheless exemplifies how the narrative of ‘gangs’, which is both more likely (Williams and Clarke, 2016) and easier to apply to young Black men (see Chapter Seven), can be used to construct a permanent state of pre-meditation, or a state resemblant of conditional intent. The gang narrative therefore constructs violent incidents that, while spontaneous, are somewhat ‘predictable’ and ‘expected’ due to the defendant’s purported lifestyle. These implications gain added potency if the defendants were carrying weapons, even if they did not instigate the violence. Thus, as I began to illustrate in the previous chapter, Shaqueel’s use of street space became pivotal to determinations of intent. This narrative is also likely to make a defence of self-defence more difficult to establish – an issue apparent in the case of Grace’s two sons whereby the victim was the initial aggressor and the incident occurred spontaneously. For Grace, by evoking the notion of ‘gang warfare’, the prosecution negated the victim status of the group who retaliated. She felt that without this framing, the group responsible for warding off and killing the victim, would have been heralded ‘heros’. Perhaps most noteworthy here is that in neither of these cases did the CPS see it fit that the defendants be charged with manslaughter rather than murder.

A Case About ‘Character’

The final mechanism of the ‘gang’ requires less explanation. Few would argue that the word ‘gang’, or ‘gang member’ is a positive thing for a jury to hear - a person assumed to be of bad character, an entity assumed to be motivated by criminal intent, also carrying with it assumptions about race, class, gender (Mosley, 2021: 1) and age. Evoking the ‘gang’ inherently infers that the defendant is a person willing to carry out or intentionally contribute to violence. Generally, the young men felt that the construction of their character was a central feature of the prosecution’s case, with senior barrister Lacey strongly expressing the view that this is common prosecution practice: ‘We’ve got this obsession with character… you have clients that sit there and say, I don't recognise this person that they're describing...’.

According to the young men, the prosecution employed several strategies in the pursuit of constructing their ‘criminal character’. One tactic involved contesting their perceived professionalism, non-aggressive demeanour, and non-threatening appearance, with prosecutors insinuating that these traits were misleading and a deliberate façade. Overall, they described two distinct but synergising strategies through which their ‘character’ was constructed at trial. In the first they made references to prior police contact, arrests, cautions, charges and convictions (referred to as ‘previous’). The young men revealed that instances of police contact, arrests, and charges – including those which resulted in no further action or acquittals - were brought up during their trial. This practice in and of itself places young Black men at greater risk of conviction, primarily due the fact that they are more likely to arrive in the dock having had a series of negative previous police encounters (see Chapter Four). While some interviewees voiced a sense of unfairness in the presentation of their ‘previous’, discussions mostly centred around the second strategy through which their character was constructed - the reproduction of

stereotypes associated with Black youth culture and 'gangs'. Marcus contended: 'Me, 16-year-old, Black guy, gang member… rapper, I get 18 years…on character basically'.

For the young men, references to, or language inferring, involvement in or association to 'gangs' served to create an impression of criminality, portraying them as individuals habitually engaged in harmful and violent behaviour. Particularly with violent lyrics being taken at face value in court and presented as indicative of 'gangs', the implication that the defendants are no stranger to violence and generally of bad character becomes easier to infer. As highlighted in the previous chapter, the prosecution in Simeon's case contended that his violent lyrics were an accurate reflection of his character and daily lifestyle, while also labelling his music collective as a 'gang'. Simeon felt that by placing the evidence in the context of 'rap' and 'gangs', the prosecution fortified their case theory. This presentation and interpretation of Simeon's lyrics enabled them to convey, through the medium of artistic expression, that he was a person intrinsically predisposed to violence, and thus, willing to intentionally assist or encourage the violence at the centre of his case.

The 'Gang' as a Feature of 'Corporate Memory'

To summarise my arguments in this chapter so far, the vagueness of the law encourages the indictment of people who have not significantly contributed to the crime, a failure to seek high quality evidence and thus, a reliance on inferences drawn from mostly circumstantial evidence. Consequently, a compelling case theory and a persuasive prosecution narrative becomes of utmost significance. Hence, this chapter asserts that the 'gang', along with narratives that have similar implications, functions to address evidential deficits and weakness in the prosecution's case. And, with the 'gang' produced through the manipulation and interpretation of young people's non-criminal behaviours, often

excavated through digital and social media (see previous chapter), their digital footprint and cultural and symbolic expressions can be central to this process.

While acknowledging the greater constraints placed on the prosecution by *Jogee*, this chapter highlights how the gang narrative could negate these constraints. It does so by aiding in the establishment of the necessary intent, particularly where a defendant's physical conduct is minimal and contribution unclear. The young men and relatives explicitly interpreted the 'gang' and wider prosecution narratives as being pivotal to their conviction, or the conviction of their loved one. The young men recognised the prosecution's attack on their 'character' as an intentional 'guilt-producing' (Clarke and Williams, 2020) strategy, contending that this approach was a response to a deficit of direct evidence of their contribution. With the prosecution failing to say precisely how they contributed to the crime, the young men felt that evidence or discourse underpinned by 'gangs' and 'bad character' was used to bolster the case against them. As articulated by Simeon: 'It's like… we have no fight in our argument, so let's just cloud their judgement with what type of person we think he is'.

The young men felt that the stereotypical construction of their character made their case more challenging, and some felt it was pivotal to their conviction. After hearing how the prosecution presented his character to the jury, Marcus described feeling as though he was 'fighting a losing battle' and accepted that there was 'no way on earth' he would be acquitted. Likewise, Simeon stated that the prosecution's presentation of his 'character' was 'the main hurdle in the case'. There was an awareness, even amongst prosecutors, of the 'gang's' conviction-maximising abilities and potential to fill a deficit in the prosecution's case. Senior barrister Harry felt that where the defendant's intention was not so clear due to their lack of physical action, the gang narrative could be used to fill that

gap. However, he noted that judges would likely exercise particular caution when dealing with ‘gang evidence’ in these circumstances:

> I think potentially… a prosecutor could seek to fill that gap in that way, but I think that's the kind of case where a judge would be particularly careful not to let the evidence in because effectively it's filling a hole that actually shouldn't be filled.

In a similar vein, solicitor Corey employed a metaphor to illustrate the ‘conviction-maximising’ capacity of the gang narrative under the current law. He likened this capacity to ‘throwing a load of petrol’ onto a law that is inherently ‘hazy and undefined’ to ‘inflame it’. Likewise, other legal practitioners and the young men shared the sentiment that when prosecutors lack confidence in the strength of their case, they are more inclined to rely on the ‘gang’ and elaborate case theory to solidify their position:

> I think because they weren't confident… I think they were trying to make their case as sure as possible so pointing to every possible connection with gang membership (Lizzie, junior barrister)

Participants therefore recognised that the ‘gang’ acted as an amplifier of guilt, used by prosecutors to anchor their case to a negative criminal entity and seemingly logical case theory. Their narratives foreground why the ‘gang’ cannot simply be considered as an ontological reality. Rather, as illustrated by Carlos’s mum Caroline, the ‘gang’ must be analysed as a construct largely owned by the police and prosecution that is used to ‘fight crime’, albeit not in a literal sense: ‘Dey’re using gangs to fight crime… dat is what dey try use now… dat piece, di gang… di police, dey know how fi build di case to get conviction’.

Caroline’s observation, when considered alongside my analysis in this chapter, suggests that the ‘gang’ is a police and prosecutorial resource, worthy of constructing and

preserving for use in the pursuit of convictions. It is through these observations, and the legal instrumentalities of the ‘gang’ set out earlier, that the term ‘corporate memory’, as defined by Megill (2006), becomes relevant. While Megill comes from a field entirely distinct from law or criminology, his definition of ‘corporate memory’ can be extended to the ‘gang’ in the context of joint enterprise. According to Megill (2006), ‘corporate memory' is the ‘body of information that an organisation needs to keep for re-use… the active and historical information that an organisation has that is worth sharing, managing, and preserving to enable it to function effectively’ (page 539).

Indeed, by continually reproducing, safeguarding, managing, and maintaining ‘institutional bodies of knowledge’ (Ward and Fouladvand, 2021) related to ‘gangs’ supposed ‘gang conflicts’, and young Black men more generally, including on an individual level, the police are poised to ‘prepare the ground for building a case against the suspect’ (McConVille, Sanders and Leng, 1991: 56) while the prosecution subsequently leverages this groundwork for advancing their arguments. Indeed, the shadow identity, as illustrated in Chapter Four, is intrinsic to these bodies of knowledge. Thus, in the context of the criminal legal system and gangs policing, the concept of ‘corporate memory’ may be more aptly termed ‘carceral memory’, as it is fundamentally linked to the defendant’s status as a ‘carceral citizen’.

It is important to remember that our legal system operates within an adversarial framework, wherein the collective pursuit of ‘truth’ is absent. Instead, each side argues its case as best it can within legal limits. Though the police and prosecution are separate entities, they converge in the prosecution process. While this pursuit to achieve a particular objective applies to both the prosecution and defence, this analysis illuminates how the ‘gang’ is a body of information which can assist in achieving a prosecutorial aim in joint enterprise cases. This is reinforced by the pursuit of policy like Operation Domain, wherein

police efforts are directed towards compiling and maintaining records of so-called ‘gang-related music’, and the continued use of police ‘gang intelligence’ databases which can form the foundation of prosecution case theory. While it is claimed that such ‘catalogues’ assist in preventing crime (Railton, 2022), this chapter makes clear how they can also serve to construct it. The young men and their relatives therefore saw their guilt as an orchestration of state institutions, which prioritised convictions over truth and (legal) justice:

> The wickedest thing is the real joint enterprise… if you flip the script, it's in the opposite direction, it's not our young people, it’s the orchestrators of the joint enterprise.

Here, Natasha characterises her son Rakeel’s conviction as an act of collective state violence. Throughout her interview, she spoke of the complicity of the police and the prosecution in orchestrating her son's guilt, with the judge, ostensibly impartial, acting as the ultimate arbiter. For Natasha, the violence inflicted upon her and her son, and many others like them, was the true ‘joint enterprise’, where state institutions collaboratively, through their institutional practices and functions, orchestrate the conditions to secure the convictions of young Black men and define them as killers. For the young men and their relatives, the institutionalisation of the ‘gang’ and racialised and speculative prosecution case theory, not evidence, was the reason they were experiencing what they perceived as a grave injustice:

> [My son] was convicted on the suggestion, he was suggested [to be a gang member]. In an ideal world, he should have been convicted on evidence. In an ideal world…. when we heard guilty, we asked “what's going on? how!?” (Grace, Tion and Dan’s mother)

The perceived injustice of being convicted of such a serious offence for a crime they did not carry out creates a profound sense of illegitimacy in the conviction (Hulley, Crewe and Wright, 2019). This sense of injustice is exacerbated by a belief that the conviction stemmed from an intentional prosecutorial strategy and discourse which was underpinned by poor quality evidence, unfounded inferences, and the perpetuation of anti-Black stereotypes.

Conclusion

This chapter has sought to foreground the implications of doctrinal flexibility in secondary liability and the conviction-maximising function of the 'gang'. It demonstrates how the law's vagueness is part responsible for cultivating a climate of legal imprecision whereby storytelling and narrative, rather than strong evidentiary foundations take precedent. While prosecution case theory is not a new phenomenon, this chapter illustrates how it can assist them in overcoming their burden of proof post-*Jogee*. My analysis foregrounds how the gang narrative can do significant prosecutorial work where a defendant's contribution is minimal or ambiguous, and can be particularly useful in storying the presence of an individual at the scene of a crime. And it is police contact, data, and 'intelligence gathering', the effects of which are disproportionately born by young Black men, which can set the foundation for this narrative at trial.

This leads us towards the fundamental argument of this thesis. That is, young Black men are disadvantaged by default when they are indicted as a secondary party to murder. The over-policing of Black communities' and the proliferation of racialised 'gang' and 'knife crime' policies (see Chapter Four), play a role in determining whether there is substantial 'evidence' for the conviction-maximising gang narrative to be adopted at trial. Furthermore, it has already been demonstrated that the 'gang' is produced through a range

of signifiers, irrespective of whether it is officially ruled admissible at trial (see Chapter Five). Thus, young Black men, who visually fit more easily within the image of 'gangs' (more of which in the following chapter), are more likely to fall prey to inferences evoked by it, even when the term is not explicitly mentioned.

In the Discussion Chapter, I contend with the lack of transparency in charging decisions and juror decision-making, which present barriers to a fully comprehensive understanding of the impact of gang narratives and the impact of prosecution case theory on outcomes. However, this chapter elucidates that requiring prosecutors to prove significant contribution would encourage an environment where these conviction-maximising tactics, while not entirely eradicated, might be deemed less valuable or necessary to police and prosecutors, and thus potentially less impactful on jury decision-making when they are deployed. Narrowing the scope of secondary liability could therefore generate a safer legal landscape that values stronger evidentiary foundations, refrains from relying excessively on speculative strategies, character assassination, and racialised frames like the 'gang'. Under the present law, the 'gang' will undoubtedly continue as a feature of 'corporate memory', valued by the police and prosecution in joint enterprise cases. As the final chapter of this thesis highlights, law reform is not a panacea to injustice and it will not eradicate the obsessive police and policy focus on 'gangs', or the harm produced by it. However, there is a strong case for arguing that restricting the law could minimise the effects of this racialised and punitive construct in the context of joint enterprise.

The vagueness of the law has implications beyond those discussed so far in this chapter. In particular, it can give rise to defence counsel who perceive that they have less of a fight on their hands, or 'no case to answer', due to their client's lack of physical conduct. I speak to this issue in the following chapter, whereby the young men reflect on how their Blackness ensures that they, even if not recognised by their defence counsel,

always have a case to answer. Overall, the following chapter focuses on how the young men and their relatives make sense of joint enterprise and their conviction, foregrounding the legacies of colonial thinking in constructions of complicity.

SEVEN: THE COLONIAL LOGICS OF RACE IN CONSTRUCTIONS OF COMPLICITY

Introduction

While the genesis of Britain's colonial venture lies distant in time, Chapter Two demonstrated how Britain's interactions with its colonies in the post-war period led the CLS to become a site for the ongoing construction and contestation of racial identity, as successive moral panics and Black criminal 'folk-devils' were recurrently reproduced. Thus, amidst the gradual dissolution of empire, the colonial 'ideology of racial superiority' remained (Sivanandan, 1981: 116), reflected in the state's ability to situate crime, including violence amongst young people, within Black culture, rather than state failure. As Chapter Four demonstrates, for those caught up in this convergence between racialisation and criminalisation, the CLS is proximate to their everyday life (Earle, Parmar and Phillips, 2023). While the young men in this study have not directly experienced colonialism, the thesis thus far illustrates that their experiences are not the result of individualised and contemporary prejudices, but a reflection of racialised ideologies rooted in history and embedded in contemporary state structures.

As I mentioned in Chapter Two, I am conscious that racialisation is largely theorised throughout this thesis as a top-down process. While racialisation in the criminal legal context does operate in the direction of criminalising negatively racialised populations, racialisation is also the outcome of struggle and resistance in which negatively racialised people play a role. From the emergence of British Black Power in the 1960s, to the resistance against contemporary 'gangs policing' (see Erase the Database, 2023), Black people have never been passive subjects within the interplay between racialisation, social

control and punishment. Many of the young men and their relatives in this study maintained connections with organisations resisting joint enterprise. And, by telling their story, they are, in a sense, engaging in an ‘act of confrontation’ (Samia Nehrez, in hooks, 1992: 1) against mainstream systems of thought. This chapter does not delve into the active resistance of participants. However, it focuses on their personal interpretation of the labels ascribed to them, how they negotiate and interact with such mediated constructs, how they interpret the racialised social location in which they find themselves (Parmar, Earle and Phillips, 2023), and thus, how they perceive their guilty verdict and punishment in relation to their Blackness. Through their subjective sense-making, the chapter illustrates an implicit agreement about how their convictions came to be and the centrality of colonial logics of race in that process.

‘Teas[ing] out… the connections and routes through which we can appreciate the durability of colonialism and racism in the present is not an easy undertaking’ (Parmar, Earle and Phillips, 2023: 814). There are both ‘continuities and discontinuities’ between the colonial past and postcolonial present (Brown, 2016), and these connections are certainly not linear or easy to excavate. However, this chapter begins by illustrating how, throughout our conversations, several mothers - and one young man, Ahmed - explicitly situated joint enterprise as an extension of historical modes of oppression. Utilising colonialism and slavery as a lens through which to make sense of their experiences, they foreground how joint enterprise, in its material functions and consequences, upholds and reflects historical modes of anti-Black oppression.

These mothers acknowledged that such contemporary racialised state violence is sustained and reproduced by enduring colonial logics of Blackness and processes of negative racialisation. The chapter therefore moves on to foreground the awareness of the young men and their relatives of how their Blackness provided a foundation from which

the Crown could enact and legitimise their violence. They interrogate the interplay between whiteness and Blackness, locating differential treatment to demonstrate and make sense of the presence of racism. Their narratives convey how colonial logics of whiteness as ‘civilised’ and Blackness as ‘dangerous’ continue to result in disparate experiences of the CLS. They describe their Blackness as a permanent incriminating marker that nullified the presumption of innocence, allowed the prosecution to convey an ‘us’ and ‘them’ narrative to an all-white jury, and produce and substantiate the ‘gang’, making them most susceptible to collective punishments.

Practitioner’s narratives substantiate these observations, as they either recognise the problem of anti-Black stereotypes within the legal sphere or regurgitate their own racist assumptions about Black youth, ‘gangs’ and collective responsibility. The young men’s reflections on the sustenance of these enduring racist tropes centre the media as the source of responsibility, serving as a reminder of how control over images, literature and other cultural artefacts have long been integral to racial domination.

The final section introduces the dimensions of age and vulnerability. Drawing on their wider experiences of education and policing, the young men illustrate how childhood and vulnerability have been constructed through racial terms. I use their narratives to illustrate how youth and innocence can be displaced by prevailing stereotypes about Blackness, centring how colonial constructions of childhood have sustained themselves over time, potentially obscuring the victimhood of young Black people in decision-making about criminal liability.

‘Another Weapon of the Coloniser’

Throughout interviews, several participants, particularly the mothers, articulated the emotional and material consequences of joint enterprise, explicitly emphasising the legacies of colonialism within their contemporary experiences (Parmar, Earle and Phillips, 2023). Caroline, for instance, characterised Carlos’s arrest as akin to the historical abduction of Africans during the transatlantic slave trade, describing it as an unjustified ‘kidnap… [just] like how dem ah snatch dem in Africa’, this vivid comparison underscoring the enduring trauma of familial separation and the continuity of state-sanctioned racialised violence. Wendy articulated the sense of impending doom and uncertainty about her son’s life trajectory following his arrest as a constant ‘noose around your neck,’ reflecting the historical unpredictability faced by many Black populations who were similarly at the constant mercy of arbitrary and brutal systems of control. The ‘noose’, emblematic of lynching and the terrorisation of Black people, particularly in the post- slavery period, symbolises the exertion of state control through an ever-present yet uncertain threat of violence. These narratives highlight the mothers' perception of joint enterprise as a contemporary tool of racial subjugation, further exemplified by Caroline’s assertion that joint enterprise serves to ‘take our Black men off the road’, and Natasha's view that the law, in its scale and impact on young Black men, amounts to a contemporary form of racialised ‘human trafficking’.

Much like the commodification of enslaved Africans, the mothers also drew attention to the extraction of wealth from Black bodies as a fundamental material consequence of joint enterprise. Natasha employed the metaphor of bulk buying in Costco to liken the dragnet prosecution of Black boys to the ‘mass acquisition of goods’ based on minimal or no evidence. Noting that empty prisons ‘make no money’, she described her son's trial judge as ‘nothing but a banker’ ‘driving the ship’. The role of the judge, she articulated, is

to steer the jury towards a conviction, sustaining the conveyor belt of Black bodies into the prison system whilst orchestrating the fallacy of ‘justice served’ under the premise of judicial impartiality. Emphasising the extensive financial resources invested in these typically lengthy cases, which can reach millions in total and tens of thousands for individual legal representation (Clarke and Williams, 2024), Grace likened the police to slave catchers, describing them as ‘hunters’ bringing in their ‘property’ to be handed over to lawyers – another modern-day beneficiary of this exploitative system, for whom joint enterprise cases are the ‘moneymakers’.

Although only a small fraction of prisons in England and Wales are privately run, their economic impact remains significant. During one of my prison visits, I unexpectedly witnessed a meeting in which staff were informed of the companies failed bid to maintain the prison, leaving hundreds of employees concerned about job security. Beyond complete privatisation, ties between corporations and the maintenance of public prisons have been growing (Davis and Shaylor, 2001). For instance, on another visit I learned that my chair was made by prisoners through a contract with furniture retailer DFS. Additionally, services like telecommunications, food, and prison transport are often outsourced to private companies. Thus, regardless of ownership, prisons both support and are supported by private business. Describing the personal financial impact of Carlos’s imprisonment, a phenomenon that has been widely researched (see for example, Families Outside, 2022), Caroline discussed the commercialisation of essential goods within prison, where necessities are exorbitantly marked up and relatives are not allowed to bring them in from outside. Although many people in prison have prison jobs, she highlighted that their meagre compensation necessitates dependence on external financial support, something which she had struggled to maintain. As Nijjar (2018) put it in his historical analysis of collective criminalisation, the mothers felt that the use of joint enterprise to disproportionately

imprison groups of Black youth for long periods was integral to a broader material basis that sustains the prison as a privatised profit-making entity.

That they interpreted their experience as an extension of historical oppression was made further clear by how they discussed the residual impact of joint enterprise on Black communities. Describing the law as 'another colonised way of holding [Black people] down', Natasha illustrated how joint enterprise reproduces, through its material outcomes, systems of racial inequality, dependence on and subordination by the state:

> …our young people are our future, most of our young people have got these criminal records or… sentences, they're not coming out again when they're young… our society, in the Black society, it's gonna be unbalanced… It's another colonised way of holding us down…. Why are we still going through what we've gone through, like a couple 100 years ago. This is 2022 it's not 1860
> … A few 100 years ago, they could have put us on the ships with some chains and shackles around us. You can't do that no more. So you have to do it in a lot more sophisticated manner… this is just another weapon of the coloniser.

In emphasising the long-term consequences of the imprisonment of Black youth, Natasha illustrates how the contemporary legal system, through collective punishment, sustains a form of structural racism akin to historical modes of oppression. Her reference to the state's inability to use literal shackles underscores that systemic racism and state violence has evolved into more covert, sophisticated forms – as highlighted at the outset of this thesis - while sustaining the existing racial hierarchy. Natasha therefore uses slavery and colonialism not merely as metaphorical expressions, but as analytical frameworks to comprehend the discriminatory impact of joint enterprise and its role in maintaining racial inequalities. Together, the mothers' narratives therefore illustrate how the logics of slavery and colonialism – the commodification, exploitation, and control of Black lives – are present in contemporary state violence, albeit in more subtle ways. And it is through the

collaboration of state institutions, their narratives suggest, that joint enterprise becomes a mechanism of racial subjugation.

Of all the young men, Ahmed was the only one to make such explicit references to slavery and colonialism. Ahmed had a deep historical consciousness that profoundly shaped his understanding of his experiences of the British CLS. Born in the Netherlands to Somali parents who escaped war, Ahmed carried a strong disdain not only for the legal system, but for Britain more widely:

> If you see two fish fighting, an English man will walk past. They fucked up my country. They fucked up my race. They fucked everything that's got to do with Black… they went to us. They've colonised my country. Somalia from the North was British, the rest was French, then south the Italians… then you gave it to the Kenyans… they split my country five ways. The rest of my people. Yeah… Africans, you put them in slavery. You make Islands like Jamaica, Barbados, Trinidad that don't even exist… their laws right now are English laws and you've made us come to feel like we we're better living under our slave masters. You've made it normal. You've made it normal where we live under our slave masters, our colonisers…under their laws now, we feel like it's normal. And it's like you've took everything… the same men that are probably meant to be out there changing things better for their countries, for their nation… for their race, they're in prison, sitting a long time in prison… I just hate them for everything, real talk … We're still affected from what you guys done and what your government and what your royal family done.

Attributing the fragmentation of his country to the interference of European colonisers, Ahmed articulates the meaning he gives to his existence and struggle in Britain

- one rooted in the Englishman's doing. The metaphor of fish fighting symbolises his perception of Britain as an indifferent spectator of the suffering of Africans and the African diaspora in Europe, caused by their colonial interventions. His firm language, 'they fucked up my race,' underscores the intensity of his resentment. The expression, 'living under our slave master' and English laws, coupled with his frustration over the normalisation of this dynamic worldwide, preventing Indigenous population from

advancing their own nations, captures his personal understanding of the legacies of colonialism. Throughout our

interview, Ahmed not only sought to illustrate the legacies of colonialism in joint enterprise, but the pervasiveness and widespread impact of colonialism on Black life more generally, contending that the ‘norms of slavery’ have been subtly embedded into contemporary institutional practices:

> When the English said slavery finishes there's always a second plan. The second plan is the institution's, it’s normalised… it's so hidden … Black people… we've always been that bad colour… we're in a white country, even though it's a free country, it's still a white country…they want us down. They want us to be below them… a good percentage of us are still successful, but the other percentage, they just want us down, they want us in prison, or they want us poor, they want us dead.… I'm not saying that everyone's racist and the whole things racist. But I’m saying that there's laws in this country, and the institution is racist... I'm a strong believer that the English will never abolish something unless they've got a second plan. And that second plan is what's happening now… where everything that's bad happens to Black people, or people from the Empire, people from colonial countries, everything bad happens to them… A lot of Black yutes that I've met in prison that if they were white, and they went through the trial period that we went through that they will not be in prison….

Here, Ahmed draws attention to the paradox where, despite the illegality of discrimination, the operation of power still favours white populations, albeit more discreetly - made clear in his observation about Black people’s individual successes. The phrase ‘institutionalising the norms of slavery’ conveys the idea that the effects of slavery and state violence persist in normalised and seemingly race-neutral forms within contemporary institutions – the prison being an example highlighted earlier and echoed in much US literature (see for example Davis, 2003; Alexander, 2011). His statement, ‘they want us below them,’ encapsulated the states enduring desire to sustain the status quo, despite the abolition of legally sanctioned and explicit oppressive systems. The fact that the British taxpayer, including those of us who are descendants of slaves, was compensating slave owners until 2015 (Manjapra, 2018) is one example which demonstrates the states conscious desire to prevent the redistribution of power.

What is particularly significant about Ahmed's disclosure and my wider conversations with the mothers, is their recognition that the contemporary institutionalisation of racial subordination remains contingent on dichotomous racial logics of Blackness and whiteness. As Ahmed put it, Black has 'always been the bad colour'. Indeed, colonial rule has always relied on the cognitive architecture of knowledge about particular populations and societies from the coloniser's point of view (Brown, 2014: 38). As will become further apparent in this chapter, participants' narratives foreground that despite the prohibition of racial discrimination, the ideology of racial superiority remains, meaning the outcomes and consequences of historical colonial practices somewhat sustain themselves through modern institutional practices like joint enterprise.

Blackness as a Layer of Guilt, Whiteness as Privilege of Invisibility

> Being a Black boy… on a scale of 1 to 10, you're already at 9… they don't need much to tip you over into the 10 where you're straightaway guilty… if you're a white boy… you start maybe at two… Black boys… the stereotype is you've done it, you must have done it... you've got white boys who do sell drugs… but they'd rather watch the Black boys. So you've got Mick and Tim doing whatever they're doing, but Leroy and Hector over here, they're busy watching Hector and Leroy, so Tim and Mick can get on with what they're doing. Because the eyes are on the Blacks, we're at the forefront… we're stereotyped. Let me send two of my boys to the Tesco and see who the security is watching… it's the reality… But Miss little blonde hair she's taken the whole of the off-licence shelf in her handbag but they're busy watching you two, because you fit the stereotype. (Wendy, Deon's Mum)

In the pursuit of understanding and contextualising racialisation in the realm of the CLS, there is a tendency to emphasise the demonisation of negatively racialised populations without interrogating the interplay between constructions of whiteness and structures of inequality. Akin to Wendy's disclosure above, the young men repeatedly juxtaposed themselves in relation to whiteness to illuminate their experiences of racism,

demonstrating how white identity is also a fundamental part of racialised structured norms (Smith, 2014: 108), and the experiences and racial socialisation of Black people in Britain. Despite being emblematic of a particular mode of Western presence across the globe - one characterised by the brutal subjection and exploitation of foreign people (Mbembe, 2017) - whiteness has been positioned as the paragon of intelligence, authority, and civilisation. As highlighted in Chapter Two, the very invention of ‘race’ was for the benefit of European domination and oppression (Williams, 2019). Whiteness has, over centuries, been constructed in positive opposition to Blackness - civilised versus barbarity, reason versus irrationality (Hafiz, 2018) - and the creation of these categories was central to the ‘processes of accumulation that spanned the globe’ in the era of the transatlantic slave trade (Mbembe, 2017: 47). Black people were thus designated a distinct humanity – one which has consistently been in question (ibid). This Eurocentric worldview, which confers the privilege of white skin (Harris, 1993) is therefore argued to reflect a ‘psychosis of whiteness’, hallmarked by a dysfunctional and delusional view of reality (Andrews, 2016). Wendy’s narrative centres how these enduring, albeit not fixed, ideological contrasts between Blackness and whiteness continue to result in disparate experiences in contemporary society. As articulated by Wendy, within the context of the CLS, the white body is more likely to avoid the spotlight by virtue of its perceived moral standing, while the Black body navigates the world marked by suspicion.

Although the term ‘white privilege’ was not used by participants, their narratives conveyed an acute awareness of the advantages afforded to white skin. For the young men, this was often articulated when discussing their experiences of stop and search in the presence of white friends, who were not subject to equal treatment. They expressed the view that white people can navigate society outside of the spotlight, enjoying freedom from the pervasive police scrutiny that they encountered daily, as explored in Chapter

Four. This

sentiment was encapsulated by Carlos's mum, Caroline, who shared a sad exchange she had with Carlos about stop and search: 'He said he wants to get some white paint and paint himself to get away from these police.' Caroline's disclosure symbolises Carlos's deep desire to escape this incessant scrutiny, emphasising the personal and emotional ramifications of police harassment. His disclosure signifies a yearning to attain the privilege and safety which he perceived to be afforded to the white body, illustrating the enduring scars of colonial constructions of the Black-white dichotomy.

The young men also perceived their Blackness as a distinct disadvantage in the context of their trial, interpreting it as having profoundly contributed to the prosecution's construction of their guilt. Marcus's refection best encapsulates this shared perspective. He observes that prior to any presentation of evidence, young Black men and teenagers are already partially guilty: 'We're already slightly guilty cos we're Black… they just got to paint the picture… it makes it easier for them to get us.' Here, Marcus suggests that Blackness affords the prosecution a 'head start' - a pre-existing layer of guilt that prosecutors can exploit by conveying a narrative of criminality which effortless attaches to their skin. In essence, Marcus locates Blackness as an incriminating marker, a unique burden he carried with him into court alongside his 'shadow identity' (see Chapter Four). The foundational principle of 'innocent until proven guilty' became central in these discussions, as the young men perceived their Blackness as a nullification of this presumption. These perceptions manifested in how they navigated their trial, with the decision as to whether to give evidence emerging as a significant juncture which required them to navigate and consider their Blackness. Some of the young men reported that they did not give evidence at trial. Some made this decision on the legal advice of their counsel,

who, according to a few of the young men, felt that there was ‘no case to answer’.[32] Reflecting on his decision, Ahmed said: ‘I'm speaking to my lawyer he's saying “son, you don't even have a case to answer…”’.

Ahmed’s decision was also influenced by a fear of reinforcing negative stereotypes about Black boys[33]. Reflecting on how young and scared he felt at the time, he disclosed that he worried about how he would compare to the white ‘Cambridge educated’ prosecutor during cross-examination. Toby similarly reflected on concerns about how his manner of speaking and mannerisms would be perceived by jurors:

> I'm Black and I'm a young yute. I had a bop, a little bop and bare little things, so all these little things the way I talk and that. I'm a Londoner and a black yute so… I felt like people are blaming me and it's going to go peak for me…

For Toby, these feelings made it impossible to present his authentic self in the witness box. He described ‘trying to look as civilian as possible,’ but felt that his Blackness and the associated preconceptions of violence and criminality made this endeavour futile. Defence counsels’ own racialised preconceptions about Black clients giving evidence were also made apparent by Casey:

> The barrister didn't really want me to speak… they know how I'm going to be perceived when I go up there… he said… you sound too much like a gangster and I said well… I can't explain my story without speaking as myself.

While Casey’s barrister’s comment is undoubtably rooted in racialised stereotypical assumptions, his fear that Casey would be judged through a lens of stereotypes due to how

[32] ‘No case to answer’ is a legal argument which can be raised by the defence at the end of a prosecution’s case. This legal argument was not necessarily raised in the cases discussed here however, some interviewees reported that during discussions about whether they should give evidence, their defence counsel used language which mirrored or pertained to ‘no case to answer’.

[33] Other interviewees who did give evidence were still concerned about how they would be perceived by

the jury during cross examination

he spoke is not necessarily an irrational concern. Indeed, it is one shared by some of the young men. Through Britain's colonising mission, English usage became synonymous with wealth, intelligence, and class across the globe, and social mobility, approval and economic success are typically determined by one's ability to fulfil the linguistic expectations of a white British society (Alexandria, 2022). The fallacy of 'proper' English is therefore an example of English linguistic imperialism – the enforcement of the dominance of English by continuously upholding structural and cultural inequalities between English and other languages (BLAM, 2021), used as an instrument of 'spiritual subjugation' which forced learning through the colonial language and the annihilation of people's beliefs in their names, languages, heritage and collective unity (Wa Thiong, 1986: 3). The British educational system, and the CLS alike, serve to reinforce this superiority of 'white Englishness', maintaining the predominant whiteness of institutions, while forcing a dichotomy between versions of self by insisting on assimilation for success or acceptance (Alexandria, 2022). As demonstrated in Chapter Five, the interrogation of language which does not conform to the norms of 'white Englishness' - notably, BBE - has been stigmatised, suppressed and punished, including being utilised as a signifier of 'gangs', contributing to the reproduction of stereotypical imagery and constructions of guilt in court. Thus, while Casey's barrister's choice of words is inexcusable, their fear of negative judgment on Casey's behalf may not be unfounded. Participant's narratives once again demonstrate an awareness of how Blackness (or Black cultural expression) acts as an incriminating marker, while simultaneously illustrating how colonial thinking manifests in contemporary state practices associated with joint enterprise.

While the young men reflected on their concerns about how they would be perceived when giving evidence during their trial, their post-conviction sense-making led to deep

reflections about why it was important for them, as young Black men, to give their version of the events. On reflection, Ahmed regretted his decision not to give evidence:

> …in this country… if you're Black… you are guilty until you prove yourself innocent. And the only way is by getting on that stand… arguing with that prosecution, put it to the jury... there's that notion where we live in a prosperous democracy where the rule of law, what rule of law mate, you're just convicting anyone, any Tom, Dick and Harry that's Black.

Challenging the supposed ideals of democracy and rule of law, Ahmed expressed the view that his Blackness made providing a counter-narrative to the prosecution case more vital, and indeed necessary to 'prove himself innocent' in a country where Black people are not afforded this assumption. Similarly, while Ryan gave evidence at trial, he reported that his legal team advised him to limit his elaboration during questioning, as the 'evidence wasn't stacked up against him'. On reflection, Ryan articulated why that 'elaboration' was necessary:

> Less is more probably wasn't good in my case because of being a Black man… I did think at the time, less is more, I haven't done it so I haven't really got much to say... they've got to prove the case. But you need to elaborate.

The guidance offered to Ryan reflects a tactical legal decision, but Ryan's retrospective evaluation introduces a lens of race to this legal strategy. His reflections suggest that the approach of 'less is more' may not have been advantageous for him, recognising a need to elaborate which stems from his awareness of the ideological challenges associated with being Black. Their narratives thus underscore the value of counter-storytelling, which becomes necessary to invite people into the unfamiliar social worlds (Delgado and Stefancic, 2017), that have been distorted by dominant narratives about young Black men. Ahmed and Ryan's disclosures suggest that this interplay between

race and assertions of innocence may not typically be considered by defence counsel in their strategic advice on giving evidence.

It is worth nothing that while juries are invited to draw negative inferences about a defendant's silence, they are not routinely made aware of the multitude of reasons why defendants remain silent. Consequently, as Ahmed pointed out, the silence of young Black men may inadvertently perpetuate the existing presumption of guilt that surrounds them. Thus, while not necessarily unfounded, concerns about perpetuating stereotypes on the stand are problematic, particularly if defendants are less likely to give evidence and defence counsel are less inclined to advise in favour of giving evidence as a result. Indeed, it is argued that during the stage of investigation, silence places young Black and mixed-race men at greater risk of being charged as an accessory, as the police 'hear silence as guilt' (Hulley and Young, 2021: 14) while simultaneously viewing them through the lens of 'gangs' (Young, Hulley and Pritchard, 2020). At trial, jurors are invited to draw inference of guilt from a defendant's silence. Notably, decisions about giving evidence are a poignant example of how the structural convergence between race and criminalisation can subtly manifest in micro-level decision-making and constructions of guilt.[34] By centring their Blackness as a permanent incriminating marker, participants therefore alluded to Blackness being a crime in and of itself, reminiscent of critical race discourse around 'driving while Black' or 'being Black' as crimes (see Carbado and Roithmayer, 2014). They attributed this convergence to a broader societal conditioning, pointing to media as a significant source of responsibility:

> As soon as it hits the news, it'll be Black boys…, but if a white boy kills a white boy that doesn't even hit the news, it might just hit the paper in a little article… you then get subliminally put into one box… (Ryan)

[34] When considering why a defendant may or may not give evidence in a joint enterprise case, it is also crucial to consider the complexities of multi-defendant trials, where defendants are not only questioned about their own actions but may also face inquiries concerning the conduct of their co-accused.

Here, Ryan articulates the media's role in constructing and reinforcing the ideological link between Blackness and criminality in the public consciousness. His perspective is underpinned by his comparison with the media portrayal of white boys, once again illustrating how participants consistently engaged in a process of racial juxtapositioning throughout our conversations. As highlighted in Chapter Two, British media has long constituted space for the amplification and consolidation of the so-called 'Black criminal' (Hall et al., 2013; Gilroy, 1982), and analysis of British media coverage has revealed a disproportionate focus on crime-related stories featuring young Black men and boys, predominantly linking them to violence involving knives and 'gangs' (see Cushion, Moore and Jewell, 2011). It is crucial to recognise the institutional dynamics of the media as white-dominated and susceptible to state agendas - a powerful force for legitimising state violence on Black populations. A recent telling example is the revelations about the Daily Mail's involvement in ghost-writing what was described as a 'verging on racist' piece about Notting Hill carnival, followed by their attempt to find a Black author to act as the article's face (Abbey, 2023), seemingly to legitimise the article's depiction of Black youth as violent criminals and the proposed extension of police power. Likewise, the entertainment industry is guilty of perpetuating popular imagery of 'urban' Black youth embroiled in a crisis of intraracial violence over drugs, territory, or post-codes (Sade, 2022).

As articulated by bell hooks (1992), the institutionalisation of negative media representations of Blackness serves to maintain Black oppression - a remnant of slavery and colonialism, where white supremacists recognised that control over literature, art and images was integral to racial domination (page 2). As illustrated in Chapter Two, this form of state apparatus has persistently been utilised to maintain government support in moments

of crisis, and the suppression of Black literature and art through legislation similarly serves to preserve the existing status-quo. Those subject to the barbarous systems of the coloniser have long produced languages of their own and invented their own literatures and music (Mbembe, 2017: 48), which have threatened to transform Blackness into a 'symbol of beauty and pride', a 'sign of radical defiance [and] a call to revolt…' (ibid: 47). Likewise, as this thesis has so far illustrated, the politicised suppression of drill music is more about silencing dissent and curbing political agency than it is about preventing violence amongst young people.

Beyond sustaining and perpetuating the 'myth of Black criminality' (Gilroy, 1982), Marcus, who was just 16 when his trial began, also centred the symbolic role of media in maintaining state institutional legitimacy through discourse on crime and punishment. Marcus's case was widely reported in the media at the time. The judge, citing 'deterrence' as their reasoning, chose not to apply the order typically preventing the disclosure of the personal information of defendants under 18 years old. Reflecting on the state's use of media as an ideological and symbolic weapon, Marcus described how joint enterprise provides a means for the state to execute an 'overt action function' (Scott, 2013), as it provides a highly visible and punitive form of sanction:

> It's like cool "we got a few more Black lads off the roads" and then, they look good. Bare man in jail, sentences whatever, looks good in the newspapers… they probably get plaudits for it… so I don't see why they would want to stop it, cos it works for them…

Marcus's reflection foregrounds how joint enterprise can uphold the appearance of an effective 'law-and-order' state, conveying the message that the state and its institutions are doing something about 'knife crime' and 'gangs' through multiple decades-long sentences. In his view, the judge sought to 'make an example out of him,' as reflected in

his sentencing -18 years in prison at just 16 years old. Significantly, when looking at media coverage of the young men's cases, headlines not infrequently showcased the cumulative years of imprisonment for defendants, sometimes surpassing a century. Marcus's reflection locates his conviction within broader meso-level structures, illustrating how punitive tools like joint enterprise can serve to assuage the public's concerns about the enduring 'transmogrifying and racist stereotypes of young black men as dangerous' (Williams and Clarke, 2018a: 2), both easing and reaffirming the racialised moral panics constructed by the state and its institutions.

The young men therefore centred intermediate influences like media and cultural representation as the backdrop against which their personal experiences of state violence were enacted and enabled. Overall, they felt that the media were responsible for socially conditioning people to accept certain stereotypes and thus, a significant hurdle in conveying their innocence. For them, when they entered the dock, their skin functioned as a reminder to the jury of images they had likely seen in the media, with prosecutors perpetuating such images as a means through which to reinforce their case. Significantly, the young men felt that the whiteness of their jury was pivotal to the prosecution's ability to convey this imagery convincingly.

'Us and Them': The White Jury

> All of them were white, apart from one Asian dude… man's meant to be getting judged by a jury of mans peers. There was no one that could relate to man, there's two fucking white women, old women that look like they should be on Gogglebox. (Shaun)

Like Shaun, all the young men reported that they had an all or majority white jury (one or two non-white jurors at most), with many complaining that their jurors were much

older, of a perceived different social class, culture and thus, not a jury of their peers. They felt that this difference between themselves and those with the power to determine their fate rendered it easier for prosecutors to 'other' them by constructing an 'us' and 'them' narrative. This sentiment was poignant in Casey's case. The incident transpired after the defendants travelled to a predominantly white suburban area. Casey, his mother, and Rochelle - the girlfriend of Casey's co-defendant, Rav - disclosed that the prosecution repeatedly emphasised the defendant's journey from an inner-city area to a tranquil suburban town for the purpose of crime:

> The repetition of them going from Idelworth to Normington is racialised in itself… it's this idea of these urban Black youths going to Normington, this protected white area. And it's like, oh, look, they've come to commit some crime here. (Sarah, Casey's mum)

Like Sarah, they all sensed that this rhetoric, juxtaposed against the imagery of the white victim and four Black men in the dock, enabled prosecutors to subtly tap into racial divisions, framing the defendants' actions as a threatening invasion of 'white space', echoing sentiments steeped in anti-immigration discourse (see for example Anderson, 2015; Hubbard, 2022). This racialisation of space, as described by Sarah, was also apparent in an exchange I had with retired judge John:

> When I was trying cases in [London]… for shorthand we will call them gang cases because we know what we're talking about… in the [suburban] context, I'm not talking about black or ethnic minority gang cases.

Here, John draws a clear racialised distinction between multi-handed offences in London, and those occurring in suburban areas, further demonstrating how constructions of urban space are intertwined with racialised criminalisation. The demarcation of 'us' and 'them' acts as an ideological framework through which the imposition of punishment and regulatory controls have been enacted and legitimised (Anderson, 2013). These sentiments,

coupled with elusions of ‘white space’, were persistent during the moral panic surrounding the ‘Jamaican Yardie’, which signified the importation of ‘Black violence’ to England (white space). While it was known that the victim in Casey’s case was selling drugs, a pertinent detail in the context of the offence[35], Carlos, his mother and Rochelle felt that his whiteness eclipsed this context. They observed that he was never once characterised as a drug dealer throughout the trial, a descriptor that, in their view, would have been applied had he been Black. According to them, the prosecutor aimed to convey the message to the white jury that ‘outsiders’ had come and taken the life of one of their innocent own, disturbing the peace of their suburban town. They believed that this message would not have resonated so strongly had the victim’s drug-dealing been explicitly acknowledged, or if the jury had been more racially diverse. Rochelle was especially troubled by social media comments from people in this suburban community, who she said used racist slurs to describe the defendants and insisted that it was a racially motivated attack on the white victim. Casey, his mum and Rochelle all considered the ‘us’ and ‘them’ sentiment, tinged with racial overtones, as profoundly influential in securing the convictions:

> Cos of stereotypes and preconceptions… it’s almost like they can just say look you know what these type of people are like, they're guilty… when they think of criminals, that's what they imagine… If you had a more mixed jury, they might look at you and see… that's what my son looks like, my nephew... (Casey)

Here Casey articulates how the prosecution could capitalise on two things. First, the ideological criminalisation of Blackness. Second, the difference between the jury and the defendants. As Casey, his mum and Rochelle described it, the dynamic of the prosecution case, albeit not explicitly, leveraged longstanding assumptions about the stark dichotomies

[35] The defendants travelled to the victim's home with the intention of stealing his cannabis.

between whiteness and Blackness - a theme introduced by Wendy at the outset of this chapter. Overall, the young men perceived their all-white jury as particularly malleable to the negative assumptions that accompany their skin colour, and the prosecution narratives which evoke stereotypical imagery. For Ahmed, his Muslim name and dark skin presented markers which were likely to evoke preconceived assumptions in his all-white jury:

> The jury convicted me because of the colour of my skin… there's two things that it's bad to be in this country, being Muslim and being Black, I'm both. So when I've got Ahmed as my name… a Muslim name, and my skin colour is Black, dark. That is the two things where the jury are shocked, the prosecution are saying execution, shooting… These people are 9 - 5 working people like yo, you come to someone that's not about this life… not involved in shootings or is not a warlord or is not a soldier and you tell them what the prosecution fed to the jury, I would convict you if I was white… they've got that rhetoric where ahh young Black kids are causing problems...’

Ahmed highlights the significance of a lack of proximity to street-based violence, coupled with his Blackness, in facilitating the disconnect between defendants and jurors. He provides an intersectional understanding of the jury’s decision-making process, emphasising how stereotypes related to Blackness and Islam converged to solidify perceptions of his dangerousness and criminality, with the prosecutions emphasis on terms like ‘execution’ demonstrating an inclination to feed these assumptions. The view that a disconnect between the jury and defendants assisted the prosecution was not limited to the young men. The inclusion of evidence that problematised Black youth culture and non- criminal behaviours, as discussed in the previous chapter, was a concern for some defence practitioners. Indeed, Junior barrister Thomas felt that juries who are unfamiliar with inner city youth culture would be more credulous to the prosecution’s interpretation of this evidence. This observation is precisely why Thomas felt compelled to spend time ‘breaking down’ or unpacking the non-criminal actions of his young Black clients during their cross examination, to highlight to the culturally and demographically distant jury

that these are

‘normal’ and non-sinister things that young people frequently get up to (see previous chapter).

While considering the role of the jury in sustaining racial inequality in joint enterprise is beyond the scope of this thesis, the centrality of the white jury to the young men’s interpretation of their conviction is interesting. The jury is typically seen as an ‘institution of democracy’ (Devlin, 1956: 22). Indeed, the largest empirical studies on juries in England and Wales found that a defendant’s ethnicity does not impact overall jury verdicts (Thomas, 2007; Thomas, 2010; Thomas, 2017). The Lammy Review (2017) concluded that negatively racialised defendants are more likely to opt for a jury trial due to greater trust in the jury system compared to magistrates. This may be true. However, while specific to a small number of joint enterprise murder cases, the narratives of the young men in this study suggest that this perception may falter when there exists a stark disconnect between the jury composition and the defendant, and where a defendant perceives that the prosecution’s case is infused with stereotypes.

More generally, the jury ought not be considered in isolation from the state’s role in preserving the interests of whiteness. My recent co-authored archival research unveiled the British empire’s reluctance to include its ‘coloured’ subjects on English juries, finding that the decision to introduce majority jury verdicts in 1967 was influenced by desires to dilute the voices of new ‘coloured’ jurors in the post-war period of mass immigration (Waller and Sakande, 2024). The research also highlights that existing research on juries is primarily concerned with numerical representations of race, considering racism as if it operates ‘in a singular or binary form, marked by an identifiable presence or absence’ (Phillips et al., 2019: 432), meaning there has been an absence of qualitative enquiry into how the rules that govern the jury might better serve the interests of white defendants and the state. While entirely separate in focus and methodology, within the context of my archival research, and

the narratives from the young men in this study, the jury emerges as a potentially powerful institution in upholding racial inequality. For the young men in this study, the whiteness of the modern jury, whatever its underpinnings, serves as a conduit through which their guilt could be more easily conveyed and accepted. Despite existing research to the contrary, whether jury verdicts are influenced by the defendant's race has not been tested in the context of joint enterprise cases, in which racialised narratives of collective responsibility are not infrequently adopted.

The 'Gang' as a Racialised 'Cheat Code'

As demonstrated in Chapter Four, the young men in this study had long been subject to state violence through police surveillance and physical brutality, sustained and perpetuated by the 'gang'. As the previous chapter began to illustrate, the young men and their relatives also recognised the 'gang's' power in the courtroom. The young men therefore articulated a layered sense of disadvantage, wherein their Blackness not only readily elicited associations with criminality, but also carried a specific stereotype endowed with a conviction-maximising potency. For them, the racialised 'gang' stereotype placed them in a distinctly disadvantageous position, as it resulted in their associations being perceived as 'gang-related', heightening the probability that they would be presumed complicit. Tasharn vocalised this point: 'They think all Black people are part of gangs, so they think we're all involved.' This sentiment was echoed by senior barrister Lacey, who described the assumed association between Blackness and 'gangs' as having led to a racialised 'presumption of complicity'. Junior barrister Lizzie similarly described how this race- 'gangs' nexus had become a default assumption embedded in institutional practices, describing how young Black men are routinely seen through a lens of 'gangs' by lawyers,

leading to an absence of critical inquiry into the appropriateness of murder charges for multiple people:

> It's the default assumption… when referring to a group of usually young black men, to refer to them as a gang, whether or not they are officially affiliated
> …it's become a common narrative now… no one questions it… no one thinks should we actually be charging this, should we actually be going for murder for all of these people. It's just, "it's a gang crime, there's been a death - joint enterprise" … joint enterprise allows us to do this, its common practice, this is just the way we approach cases now.

Their narratives highlight how the ease through which the 'gang' evokes ideas about Black masculinities as collectively dangerous makes Black men the most 'legitimate objects' (Clarke and Williams, 2020: 117) for collective punishment. The prosecution can draw on a 'ready-made narrative' 'to construct the primary associations necessary to infer collective intent' (ibid: 122). And, as Lizzie elucidates, the law on joint enterprise, which is vague and wide in scope (see previous chapter), allows prosecutors to approach cases in this way. The young men expressed an acute awareness of the 'ready-made' narrative of the so-called 'urban Black gang' embroiled in 'knife crime', acknowledging how it lent credence to the prosecutions gang narrative in their case, rendering it more plausible. In this vein, Jason reflected: 'It's so easy to put us in a label of gang violence, knives, guns.' Most interviewees felt that the 'gang' stereotype was particularly distinct to young Black men and boys. Yousef Makki's tragic death in 2019 serves as a notable illustration. Joshua Molnar, a white boy from Cheshire who fatally stabbed Makki, was cleared of murder and manslaughter. Similarly, Adam Choudhury, another non-Black youth connected to the incident, was not charged as an accessory. This is not to suggest that they should have been charged. Rather, it is to suggest that under the same circumstances, Black and/or working-class youth *may* have been charged. The case underscores that in the absence of Blackness and the 'urban'

space - both powerful signifiers of ‘gangs’ - it can be

argued, as was heard in court, that these two boys were simply ‘playing “middle-class gangsters” listening to drill music, smoking cannabis… carrying knives’ (The Guardian, 2021), and engaging in ‘idiotic fantasies’ (Clarke, 2023). The case therefore serves an illustration of how violence may be understood and responded to differently according to who carried it out and where it took place. Simultaneously, it serves as a paradigmatic illustration of the importance of interrogating the interplay between constructions of whiteness, class, and disparate criminal legal outcomes, as it exemplifies how proximity to whiteness, and to ‘middle-class values, can insulate defendants from a charge and conviction by creating a perceptible distance from the ‘reality’ of the ‘gang’’, thereby mitigating perceptions of dangerousness (Clarke, 2023) and joint responsibility.

With this view in mind, senior barrister Lacey suggested that prosecutors are aware of the conviction-maximising benefits of a defendant’s Blackness or their perceived proximity to it. She described how seemingly ‘Black’ aspects of a white defendant’s appearance or behaviour would be intentionally drawn on by prosecutors. For example, she reported that in one case, the prosecution repeatedly referred to her white clients cornrowed hair, despite no disputes over his identity.

For the young men then, the prosecution’s ability to successfully evoke the ‘gang’ was contingent on the presence of Blackness in the dock. Overall, they saw the ‘gang’ as a racially specific stereotype that does not encompass all people of colour. As demonstrated in Chapter Two, the ‘gang’ has served to attribute social and economic disorder to Black culture, but the gang label is not limited to Black youth. Alexander (2004) illuminated a similar trend in the construction of the ‘Asian gang’ following the 2001 ‘riots’ in Oldham. However, Alexander (2004) noted that the ‘urban Black gang’ has been broadly constructed as a product of marginalisation, absent fathers and nihilism, ‘figured through images of the ghetto…’ (page 536). On the other hand, she highlights that the ‘Asian Gang’ in Oldham

was constructed as a problem of tension between two monolithic cultural presences - ‘oppressive’ parental and Islamic culture and the ‘freedoms’ of British life - sentiments which have also fuelled the racialised ‘war on terror’. While the Black and Asian ‘gang’ have both been constructed under the framework of culture and ‘community-as-problem’ (ibid: 535), as illustrated in Chapter Two, Black male identities have been constructed as perpetually in a crisis of intraracial street-based violence deemed synonymous with ‘gangs’.

Due to the relationship between collective responsibility and the construction of ‘gangs’ then, young Black men disproportionately endure the impact of joint enterprise, leading Shaun to describe the law as a ‘cheat code’ which allows the police to take Black people ‘off the streets.’ This metaphorical reflection, which centres the interconnectedness between successful joint enterprise prosecutions, ‘gangs’ and Blackness, highlights how the law serves as a convenient tool for police and prosecutors to bypass the standard burden of proof, effectively criminalising young Black men based on their proximity to an offence and their associations, rather than their individual actions. His use of the term ‘cheat code’ serves to highlight the intentional manipulation at play, wherein police can leverage joint enterprise to act upon the disdain they have developed with young Black people through ongoing hostile interactions (see Chapter Four). He contended, ‘85% of that trial was on man, not even the stabber’, intending to elucidate the prosecutions strength of desire to ensure his conviction. Through Shaun’s perspective, joint enterprise is not merely a legal doctrine, but a strategic mechanism which amplifies racial disproportionality and injustice under the guise of legal legitimacy.

The view that Blackness serves as a partial prerequisite for a successful ‘gang narrative’ was not a view limited to the young men. Discussing a case in which all but one defendant was Black, junior barrister Lizzie described how it was easier for defence

counsel to distance the Asian defendant from the 'gang' by inexplicitly drawing on race as a point of difference:

> He stood out…. If you're trying to differentiate your client and say he's not part of a gang you look to him and say, he's not Black, he's not from [country]… the gang stereotype is young Black men, not just people of colour.

For Lizzie, visual differences in the dock did the work, and disparities between defendants' country of origin were referenced to strengthen this point. Lizzie's disclosure illustrates that in attempting to counter the gang narrative, defence strategies may involve emphasising their clients' characteristics which deviate from the stereotypical image of the 'Black gang', highlighting how Black defendants are perceived, even by practitioners, to be disadvantaged by their skin colour. Although Lizzie could not say whether this strategy influenced jurors, she noted that the Asian defendant was the only one acquitted of murder. Setting out the disparate stereotypes attributed to different racial groups, Caroline, Carlos's mum, similarly centred the 'gang' as distinct to young Black men:

> …Dere are tree type a justice systim in dis country… Fi di white, dem seh dem need mental health evaluation. Di Asian, dem seh dem a terrorist, an di black young male, dem seh dem a gang.

Here, Caroline emphasises that white suspects or defendants can garner sympathy, while negatively racialised groups are attributed their own criminal, but disparate, labels which shape their interactions with the legal system. Senior barrister Lacey placed these racially specific stereotypes in the context of joint enterprise, referring to them as 'unwritten associations' that carry weight in the legal profession. She described how defendants' associations were interpreted differently according to race, with Asian collective criminality seen through the lens of the 'family', and Black collective criminality

seen through the lens of 'music… postcodes or gang', reflecting Alexander's (2004) observation of the distinctions between the construction of the Black and Asian 'gang'.

Lacey and junior barrister Thomas were critical of colleagues for their lack of 'willingness' to understand conflicts involving Black youth outside of a 'gang' context. Lacey argued: 'there is a serious problem with an assumption that all groups of Black people are knife wielding killers', directly attributing this issue to the longstanding 'folk-devil' myths and constructions of Black masculinities which have dominated the post-war era. Drawing on the historical and transmogrifying stereotypes about young Black men, she contended that the 'obsession' with the 'Yardie' has been morphed into an 'obsession' that 'every Black person is… a member of a gang', thus situating the application of joint enterprise within the historical trajectory of 'Black criminality' set out in Chapter Two. This inability to de-homogenise conflict involving Black youth was apparent in my conversations with other practitioners. In attempting to unpack racial disproportionality in joint enterprise, most practitioners expressed a racialised understanding of the sources of serious violence and implied that 'gangs' and violence were two inextricably linked issues predominantly concerning Black communities. Some also explained violence by reference to Black culture. As mentioned in Chapter Five, retired judge John contended that to combat serious violence, 'you need first of all to understand the cultural thing that's influencing it… things like drill music'. Practitioners also drew on the mediatised language of 'Black-on-Black' violence and expressed narratives that pathologised Black communities as inherently criminal. Junior barrister Carl made a particularly disturbing disclosure in this regard:

> 95% of my joint enterprise cases are Black young men fighting young Black men…which baffles me… why Black gangs are fighting Black gangs… its extraordinary, but it's because of the communities that they are from… they're

> largely populated with young Black people and the territories that they are dealing drugs… it's all about drugs… it's all about territory.

Carl's generalising assumptions about Black communities and characterisation of so- called 'Black-on-Black' violence as 'extraordinary', reflects the deeply rooted preoccupation with Black intra-racial violence within public discourse. This narrative, first discussed in Chapter Two, exemplifies the historical tendency to attribute social problems and systemic harms to the culture of the 'outsider', who experience social ills because they are not of the 'norm'. These discourses not only position the 'outsider' as a threat to those who 'belong', but also a threat to themselves, responsibilising them and their culture for the social harms they experience. Such rhetoric is reminiscent of dichotomic ideologies of Blackness as barbaric and whiteness as civilised, as well as contemporary attempts to legitimise the transatlantic slave trade and its enduring legacy through phrases like 'Africans sold other Africans', serving to obscure the broader socio-economic and political contexts that perpetuate systemic inequalities. Despite the diversity of Africa, with its many countries, tribes, languages, dialects, religions and cultures, and the Black diaspora retaining much of this heterogeneity, they are collectively framed as culturally problematic and having a perceived duty toward each other. Violence among white Europeans, who have long inflicted harm on one another through war and interpersonal violence, is not framed in the same way (Smith, 2018), and this sentiment is notably absent in contemporary public discourse about violence amongst young people involving a white victim and perpetrator. When Glasgow was labelled as the UK's 'knife crime capital' (McKay, 2006), the notion of 'white-on-white' did not come to fruition. Carl's narrative underscores how the framework of 'gangs' shapes the perception of intraracial violence among Black youth, rendering it 'extraordinary' in his view.

Discussions with practitioners about ‘police bias’ were almost always coupled with discussions about so-called ‘Black criminality’. Some practitioners suggested that racially stratified policing might influence how people are policed and prosecuted however, they ‘objectively justified’ racial disproportionality in joint enterprise by drawing on ‘Black-on- Black’ violence and their perception that Black youth were disproportionately involved in violent crime. For example, despite previously acknowledging that over-policing in Black communities might contribute to racial disproportionality, senior barrister Tara explained over-policing by drawing on the racialised distribution of police resources through initiatives like Operation Trident, justified by what she referred to as ‘Black-on-Black killings’. Despite a wealth of evidence of disparate treatment within the CLS, including in charging decisions (Crown Prosecution Service, 2023a), practitioners implied that racial disproportionality in joint enterprise was more to do with ‘Black crime’ than it was to do with how young Black people are policed and prosecuted. Senior prosecutor Harry said: ‘It's more what's going on in society rather than what's going on in in charging decisions that leads to people being before a court...’. The enduring notion of ‘Black gangs’ and ‘Black-on-Black violence’ therefore served, for some practitioners, as a justification for the harm disproportionately inflicted upon young Black men through joint enterprise, with a clear absence of critical reflection on constructions of Blackness and violence in contributing to the state violence enacted on Black populations through the law.

‘Mans a Child’: the Erasure of Childhood

While interpreting their Blackness as an incriminating marker, the young men explored the interplay between race and age, considering how their Blackness erased their youth, vulnerability, and victimhood. Their disclosures reveal a troubling narrative wherein state institutions, including schools, the police, and the courts actively denied their youth.

Carlos, who previously reflected on the disparate treatment between him and his white friends in relation to stop and search, articulated the stark disparity in how he and his white peers were perceived by schoolteachers: '…they look at the white kids as innocent little kids, but us, we're angry, troublemaking violent people.' Like Carlos, most of the young men observed a pervasive unwillingness within state institutions to recognise Black boys as children. Carlos's juxtaposition of his experiences against those of his white peers once again demonstrates how the young men interrogated the interplay between both whiteness and Blackness and state institutions, locating differential treatment as a method through which to demonstrate the presence of racism.

Some of the young men I interviewed were as young as 16 when they were tried for the offence, and they reported a range of vulnerabilities, including autism, ADHD, psychosis, and 'criminal exploitation'. They discussed how their vulnerabilities had always been overshadowed by a lens of risk, with school emerging as an institution in which this feeling was apparent. Shaun, who struggled with ADHD at school, disclosed that he 'didn't really get support'. He attributed this to teachers perceiving him not as a child in need but rather, a 'troubled' and 'intimidating' 'Black kid'. Similarly, the young men discussed how their vulnerability and youth was not recognised or responded to in court. Ryan spoke about the difficulties he faced while navigating the trial process as a teenager, underscoring the challenges in comprehending the complex language used in court:

> When you're young… you don't know things about the law. And even like the words that they're using, they used the word ambidextrous. I didn't even know what that meant.

I asked Ryan if he felt that his difficulties were considered by anyone in a position of authority during his trial. He responded: 'They just think, gang. That's all they think, gang… I don't think they take these things into consideration, at all'. Here, Ryan contends

that his youth and vulnerability was erased by the ‘gang’. The pervasive use of the gang label in and of itself is an example of how childhood innocence and vulnerability can so easily disintegrate for Black boys. Marcus, who was 16 years old at trial, spoke about an experience which demonstrates how this unwillingness to see Black boys as children, overshadowed by stereotypical assumptions associated with criminality, can manifest in court. Opting to wear a suit instead of a tracksuit on the advice of his mum, Marcus described an alarming response from the trial judge:

> On trial I was wearing a three-piece suit, top button done, the shoes, everything… Blud, that judge said to me, you ain't fooling no one, you look like a wolf in sheep's clothing... He said none of this stuff is fooling me…at first he said I look like a mobster yeah, I was like rah…. By the way, the suit ting was my mum’s idea yeah, because she's like you need to present yourself properly. I was thinking fuck this, I'll just go in a tracksuit, yeah, nah. Cool, three-piece suit, blazer, the ting under the blazer, everything tie, everything, blud, the man said you look like a mobster, you're a wolf in sheeps clothing. I was like oh shit, this is fucked.

Marcus continued, stating: ‘Man's a child… I got treated like… a full-blown adult.’ The judges comment not only substantiates Marcus’s assertion, but it also reveals a disconcerting reality. Rather than recognising Marcus as a child striving to present himself appropriately, the judge felt Marcus was attempting to conceal a criminal identity. In characterising a 16-year-old as a ‘mobster’, the judge perpetuated harmful stereotypes unabashedly within the courtroom, implying an unsettling acceptance of prejudicial remarks within the judiciary and criminal bar. Marcus’s interpretation is further reinforced by the judge’s decision to allow for the public disclosure of his identity and ‘mugshot’ in media coverage, as discussed earlier in the chapter.

The phenomenon described by the young men is now well recognised amongst academic and public policy literature as ‘adultification’ - a term used to conceptualise how Black children are typically seen as older, less vulnerable (Davis and Marsh, 2020), and

more responsible for their actions by the people and institutions with power over them (Davis, 2022). Ahmed explicitly conceptualised his experiences using the term:

> …it's the adultification of, if you're a young Black lad, they look at you like you're crazy. Like I've seen it in life.. when I was 17 or 16, I could go buy cigarettes from shops, they will not say to me give me your ID.

Adopting the term to make sense of his experiences, Ahmed's reflection sheds light on the interplay between the perception of Black masculinities as dangerous, and the premature attribution of adulthood, centring how this translates into tangible day-to-day experiences, including outside of the legal system. Like many of the other young men, school was a space in which adultification manifested most clearly for him:

> They said to me… “Mr. Saidi…you broke into school… you've put chewing gum all over the classroom”... that is some racist scumbag shit… you've got CCTV footage, you haven't even checked it, but you're calling my parents in…that's the adultification… where they actually think I'm capable, as a nine- year-old…

Ahmed’s experience is an example of the denial of the protective shield of childhood innocence. In this case, a place of supposed nurture and education, automatically perceived him through a lens of suspicion, leading to an accusation based on a presumption of capability. While conversations with the young men centred around the negation of childhood, their narratives unmistakably underscore how their Blackness and masculinity remain the primary markers driving their experiences. Unlike intersectional concepts like misogynoir, which is adopted to describe the intersection between misogyny and anti-Black racism, age does not serve the same function as race in the concept of adultification. Adultification does not conceptualise how ageism and racism converge. Rather, it describes how childhood has been constructed through racial terms, the ideological foundations of this construction and the consequences of it for Black youth.

The dehumanisation and adultification of Black children are not new, and the negation of childhood was central to the western colonial project. Indeed, at some points, Black childhood was explicitly denied through legislation, in which Black men, women and Black and mixed-race children were rendered into a single subjugated category (Breslow, 2019), illustrating how the law has long existed as an instrument of racial injustice. While the denial and attribution of Black childhood has never been linear (ibid), Black babies and children were expected to work in the fields as soon as they could stand, with many bred solely for this purpose (Quainoo, 2022). Colonial literature typically depicted Black boys and girls as more masculine, hyper-resilient, loud, aggressive, and sexual (Hill Collins, 2000), legitimising the subjecting of Black children to the same physical bodily assaults as adults (Feinstein, 2019; BLAM, 2023) and dampening the potential for emancipation (Breslow, 2019). Over time, these discourses and practices have socialised people and systems to dehumanise, devalue and demonise Black youth, fostering an ‘institutional unwillingness’ to see them as children (Gilmore and Bettis, 2021: 1). Although much of the existing research on adultification is US based, the disproportionate state violence that Black boys face has been attributed to the systematic denial of access to the protective confines of childhood (Goff et al., 2014), and the institutional perception of Black youth masculinities as threatening is said to be a driver of police violence (ibid). Reflecting these findings, Grace, Tion and Dan’s mum, described how she would frequently see half a dozen officers ‘holding one boy’, contending that the police see Black boys ‘as adults rather than children’. Indeed, violent and brutal policing had been pervasive in the lives of the young men, and they described daily harassment, racism, and brutalisation as children:

> …I've actually been George Floyd'ed… not dead but knees on my neck, banging me, “nigger, pussy, do you think you're that bad man?” Man’s been

> through that in the back of the van. Do you know how small that van is? Mans got three officers sitting on man. My hands are behind my back, I'm saying brudda I can't breathe and they're like shut the fuck up. (Shaun)

Shaun's harrowing experience encapsulates how the dehumanisation of Black boys can manifest in a disregard for safeguarding and thus, police violence. The racial slurs hurled at Shaun, combined with physical violence, emphasises how the police stripped him of his dignity, motivated by his race. Subjecting Shaun to this brutal attack in the confines of a police vehicle, demonstrates that he was not seen as deserving of protection. The failure to acknowledge Shaun's pleas for mercy raises serious concerns about the move towards police-led initiatives premised on the notion of safeguarding, including the presence of safer schools' officers (see Chapter Five) which became a particular concern following the case of Child Q – a 15-year-old Black girl strip searched by officers at school – leading to recognition that racism and 'adultification' had some part to play (Gamble and McCallum, 2022). Sadly, strip search as a child in the absence of a legal guardian was an experience that several young men in this study had in common:

> I'm one of them kids where I got strip searched without my mum and dad… you're arrested at the bottom of the road, you're 14… you're crying, you're saying my mum's in the house, take me to my mum. They don't take you to your mum… (Ahmed)

Their disclosures of strip search typify the findings of the Casey Review (2023) and Children's Commissioner report (2023) (see Chapter Four), the findings of which lend 'weight to the claim of adultification' (Casey, 2013: 326). Like these reports, wider literature, which documents police use of force against young Black men and children, illustrates the systemic failure to recognise their humanity (Prashad, 2023). Similarly to Shaun's experience, the decision to ignore Ahmed's cries for his mother, aged 14, further demonstrates how Black boys are objectified and degraded without protection. While the

racialisation of childhood has not always manifested in the denial of vulnerability and attribution of capability (see Breslow, 2019), the narratives of the young men in this study highlight how childhood, which brings with it assumptions about immaturity, innocence, and capability, has been constructed on racial terms. While race remains the primary marker in their experiences, how this intersects with construction of childhood could have calamitous consequences in the realm of law where determining liability is guided by an understanding of maturity and capability. The legal response to the case of Yusuf Makki, as described earlier, illustrates how behaviour which is seen to be rooted in immaturity in white boys may be more likely to be reinterpreted as wilful irrational behaviour in Black boys. This observation becomes particularly poignant where questions around 'exploitation' are at play.

The potential nexus between offending and victimisation in the context of so-called 'county lines' makes the issue of agency and consent difficult to discern. However, the racialised framing of 'county lines' (as discussed in Chapter Four) and the 'adultification' and labelling of Black youth as 'gang members', raises questions about the extent to which the harms they experience in this context are recognised or considered when determining liability for criminal behaviour. Exploring patterns of victimisation in this context is beyond the scope of this thesis. However, a racialised process of determining responsibility in such cases was articulated by junior barrister Thomas. He described a series of questions that would typically be asked before affording young Black men or teenagers victim status based on a Modern-day Slavery defence[36]:

> Is this a young Black man that's been involved in the criminal justice system before? Is this a young Black man that comes from a good family? Is this a young Black man that… lives in a council estate?

[36] Section 45 of the Modern Slavery Act offers a defence for people facing criminal liability for an offence that they committed because of their modern slavery or human trafficking experience.

Thomas illustrates how victim status for young Black men becomes contingent on several factors about where they are from, their family background, and perceived moral standing. Typifying Christie's conceptualisation of the 'ideal victim' (Christie, 1986), Thomas's list of characteristic questions encapsulates how victim status is not solely attributed on the experience of harm, but on cultural assumptions about who is deserving of recognition of harm. While Christie's conceptualisation does not consider race, Thomas contends that these determining characteristics - predicated on class ideals - are most central in ascribing victim status when the defendant is Black, thus highlighting the intersection of race and class in shaping perceptions of victimhood.

Carlos and Omari (16 and 17 years old when the offences occurred) were convicted for violent incidents occurring against a backdrop of 'criminal exploitation'. Carlos and his mother, Carol, were interviewed. At the time, Carlos was 21, awaiting trial for the murder that happened four years prior. Omari was not interviewed due to the risk of retraumatisation, but his mother, Rose, shared her experience. As Rose described Omari's victimisation, it became clear that Omari was ensnared in a harmful and violent web of relationships. With her son going missing regularly, 'big men' turning up to her house to collect Omari, and Omari sometimes returning with 'cuts on his face and body', Rose described how the police and social services repeatedly failed to act on the information she provided, serving as a poignant indictment of the inadequacy of state-led support structures designed to prevent harm of this kind.

Omari, aged 16 at the time, went on trial with an older teenager, Tristan, who had previously attempted to stab Omari and was, in Rose's view, the impetus for Omari's exploitation. Rose reported the stabbing to the police at the time, as well as her concerns about Omari's relationship with Tristian. Nevertheless, Omari was charged with a murder

carried out by Tristan, with the prosecution contending that their relationship was built on a genuine friendship. According to Rose, the incident was spontaneous. Omari ran from the scene when a firearm was discharged by the *victim*, which led to a retaliation from Tristan and another co-defendant in the case. The judge dismissed the case against Omari following a submission of 'no case to answer', but Omari still spent nine months on remand. The case as Rose described it, coupled with Omari's victimisation and the judge's dismissal of the case,[37] illustrates the police and prosecutions unwillingness to see or acknowledge Omari's innocence. As put by Rose: 'As soon as [police and prosecutors] see Black boys come in front ah dem, di only ting weh dem tink is dey're a murderer.'

Rose's perception aligns with the earlier assertions of the young men who argued that their Blackness negates the presumption of innocence. Her account suggests that Black boyhood is intrinsically linked with a presumption of guilt and violent capabilities, regardless of clear signs of exploitation, vulnerability and victimisation. In a similar vein, despite previously being acquitted by a jury for drug offences under the Modern-Day Slavery defence, Carlos described how the police never accepted his victim-status:

> …the Home Office and [National Referral Mechanism] told me I've a victim…the [jury] said I'm a victim, [the police] still don't accept it, they still have me on the Gangs Matrix.

Carlos felt that his earlier acquittal had disgruntled the police, leading them to re-arrest him for the murder that occurred four years earlier against the backdrop of his victimisation. Despite being attributed victim-status by the Home Office's National Referral Mechanism[38], Carlos highlighted that he was always a 'gang member' in the eyes

[37] A successful submission of no case to answer occurs either because there is no evidence to prove the offence or, although there is some evidence, the evidence is insufficient to support a conviction.

[38] The National Referral Mechanism is the national framework for identifying and referring victims of

modern slavery and ensuring they receive the appropriate support.

of the police, effectively negating his victimhood from their perspective, as they appeared to prioritise punishment over the prevention of harm. Further illustrating this disregard for safeguarding, Carlos disclosed that in the lead up to the drugs case, and after his mother had reported her concerns to the authorities, undercover police ‘test bought’ drugs from him nine times before arresting him. His mother Caroline contended: ‘…they failed my son... they could tell he's a child... This policeman used my son nine times, my 16-year-old son...’.

For Carlos and his mother, the repeat test-buying of drugs was indicative of an unwillingness to see his youth and vulnerability, and thus, an unwillingness to intercept the harm. Instead, the police’s conviction-oriented objectives were prioritised, seeking to, in the view of Carlos and Caroline, gather intelligence rather than safeguard. Indeed, Carlos, Caroline and Rose recounted that their reports of exploitation did not result in protection, leading instead to the intensified presence of policing in their lives. Following Omari’s charge, the police repeatedly visited Rose’s home, questioning her about the incident. Rose described these interactions as ‘mentally and physically damaging,’ feeling that even with her son imprisoned, it ‘wasn’t enough’– the police had to ‘terrorise’ her as well. Rose’s disclosure illustrates the paradox in her treatment by the police; they were ever-present and willing to intervene only once her son became a murder suspect. Her story therefore typifies the phrase - ‘overpoliced and under protected’ (Casey, 2023; Lamble and McElhone, 2023; Runnymede, 2023).

Conclusion

This chapter has explored how the young men and their relatives make sense of their conviction and the conviction of their loved one. Their narratives illustrate how the construction of ‘Blackness’ which legitimised colonialism continues to delineate the epistemological terms of the Black ‘others’ state of being (Palmer, 2016), now through the law, as the ‘convergence between racialisation and criminalisation’ has ‘become thoroughly entwined in the general modalities of government’, involving the ‘most powerful and potentially violent of state agencies’ that carry the ‘racialising force of their colonial history’ (Earle, Parmar and Phillips, 2023: 279).

The participants’ narratives illustrate how their experience of joint enterprise, and state violence prior to it, has been an important site for racial socialisation for them, shaping their understanding of how the state and its institutions continue to construct and view Blackness and whiteness, and what it means to be Black in Britain today. They highlight the profound impact of their Blackness and its associated ideologies and stereotypes, revealing that they entered the courtroom burdened by a pre-existing layer of guilt and a skin colour that effortless aligns with the narrative of ‘gangs’ and violence. Indeed, they situate their Blackness as an ideological force within society which has secured division and hierarchy (Earle, Parmar and Phillips, 2023) in the interest of whiteness, with the social language of their skin allowing prosecutors to communicate their guilt through stereotypical sentiments echoed in mainstream media and rooted in colonial thinking. Thus, it could be argued that young Black men, even prior to the construction of evidence, are already the most ‘ideal defendant’ for the prosecution.

Barrister Lizzie’s revelation regarding the capacity to separate the Asian defendant from the prevailing gang narrative by leaning on visual differences demonstrates this ideological disadvantage at play. Furthermore, while one can never be sure about what

motivated jurors, Lizzie's disclosure indicates that practitioners are conscious of their ability to leverage pre-existing discourses about Blackness to successfully construct or resist guilt. Likewise, the 'objective justifications' expounded by practitioners to account for racial disproportionality, illustrate a concerning alignment between the experiences of the young men and the narratives propagated by practitioners, lending credence to the young men's view that their conviction was shaped by racist assumptions. The apparent exclusivity of the gang stereotype to young Black men underscores the critical imperative of recognising the heterogeneity between negatively racialised groups, and how proximity to non-Black characteristics can shield defendants from constructions of complicity. The participants' stories therefore elucidate the disparate outcomes of unique trajectories for various racial cohorts, who have engendering varying experiences of 'othering' and stereotyping over the course of history.

The young men's apprehensions about reinforcing these negative stereotypes through giving evidence, and their acknowledgement that their Blackness requires a more comprehensive assertion of innocence, not only elucidates the subtle manifestation of race in pivotal trial decision-making; it also illustrates their acute, nuanced understanding of the racial dynamics at play during their trials. Revelations about their counsel advising against giving evidence, citing the absence of a 'case to answer', are concerning. While a prosecution case may appear 'weak', my analysis in the previous chapter demonstrates that having a 'case to answer' may not require a 'strong' case at all. As I suggest, the ability for the law to bring people who made no significant contribution to the crime into the scope of prosecution means prosecutors rely more heavily on their case theory. Although in principle the prosecution carries the burden of proof, the analysis in this current chapter suggests that a defendant's Blackness might influence the believability of prosecution case

theory, particularly when the ‘gang’ is evoked. Consequently, the silence of Black defendants may enhance the successful conveyance of the prosecution’s narrative.

Drawing the chapter to a close, participants’ disclosures on adultification and the denial of innocence further demonstrate the capacity for anti-Black ideology to sustain itself despite socio-political, legal, and cultural shifts (Breslow, 2019), as colonial logics of childhood continue to impact how Black populations experience state institutions and potentially, decisions about criminal responsibility. What this chapter, and indeed much of this thesis, therefore demonstrates is that decolonisation did not dismantle the colonial roots of the cultural, social and political mechanisms informing contemporary punishment (Aliverti et al., 2021) and that racially stratified state violence has always been ideological. While Black people, including the young men in this study, are agentic and ‘active subjects’, they are somewhat ‘imprisoned’ in a ‘dungeon of appearance’ (Mbembe, 2017: 2) - their Blackness serving to assist in making them a ‘murderer’.

EIGHT: DISADVANTAGED BY DEFAULT

Elevating our Understanding of Race and Racialisation

This thesis builds upon existing literature to deepen our understanding of racialised patterns of criminalisation in the context of joint enterprise. By integrating the narratives of those prosecuted and convicted and their families, alongside the perspectives of legal practitioners, the study reveals the multifaceted and interconnected ways in which race, and specifically the racialised 'gang', shapes the prosecution process. It demonstrates how racialised patterns of contemporary state violence can be comprehensively understood through subjective experiences, when they are situated within their broader historical and socio-political contexts. Grounding the analysis in Critical Race thinking and Phillips' (2011) multilevel framework has therefore allowed me to elevate participants' subjective experiences beyond anecdote, whilst offering a more nuanced understanding of why young Black men are disproportionately prosecuted and convicted.

This thesis illustrates that racism does not operate 'in a singular or binary form, marked by [a clear] identifiable presence' (Phillips et al., 2020: 432). Each question posed in the introduction to this thesis, which acknowledges the often-subtle role of racialisation at the intersecting micro, meso, and macro levels, has been essential in understanding how racialised patterns of criminalisation are reproduced. An exclusive micro-level analysis, such as the examination of courtroom discourse, would have erroneously implied that courtroom practices operate in a vacuum, driven exclusively by the prejudice and discrimination of agentic individual actors, without accounting for the institutional forces shaping their decision-making. Thus, if we do not consider the cumulative layers of racialisation, we do not have a comprehensive picture of their compounding effects (Phillips, 2011) and cannot properly address racial inequalities. Such a micro-level analysis

might, for instance, suggest the need for individual bias training related to prosecutorial decision-making on ‘gang evidence’. However, without any attempt to address the racialised spatial stratification of police gang units and resources, the trend toward surveillance-oriented and intelligence-led policing, and the persistent ‘othering’ and criminalisation of marginalised groups at the level of governance, such a recommendation would be unlikely to impact racialised patterns of ‘gang evidence’.

However, the exploration of how race manifests at each level could be more clearly specified and empirically demonstrated than it is in this thesis. Given the objective of providing a broad multi-layered understanding of race and joint enterprise within the scope of a single thesis, and relying on a single method of data collection, there remain questions warranting further exploration. For instance, at the meso level, the extent to which courtroom evidence stems directly from specific racialised police initiatives, such as Project Domain, is something that this thesis theorises about through participants’ subjective experiences but does not empirically measure. Nevertheless, as the phrase ‘the case of joint enterprise’ in the title suggests, this thesis has a wider intellectual reach than the topic of joint enterprise. The methodology and approach to exploring racialised patterns of state violence adopted here can be applied to other phenomena. That is, situating subjective experiences - told through conversations - within a broader, multi-level framework which historicises the social construction of race, acknowledges the connections between colonialism and contemporary punishment and takes seriously the relationship between politics, crime and Blackness. And indeed, within this approach, my interrogation of the construction of the ‘gang’ can be utilised as a resource through which to make sense of other forms of racialised state violence, such as stop and search or school exclusion.

In the remainder of this chapter, I will synthesise and reflect on the main findings of this study and their implications, illustrating how the thesis enhances our conceptual and theoretical understanding of racialisation in joint enterprise. In doing so, I set out the intersecting factors at play in the prosecution process that make young Black men more likely to be prosecuted and convicted. Reflecting on these findings, I will ask:

- What should be done to redress racial injustice in joint enterprise?
- What are we to make of the 'gang' considering the thesis findings?
- What do the findings tell us about the project of criminology more broadly?

Unpacking the Architecture of Racialisation in Joint Enterprise Prosecutions

The central argument of this thesis is that young Black men are disadvantaged by default when they are arrested and indicted as a secondary party to murder. The thesis uncovers a complex architecture of racialisation manifesting within and occurring throughout the prosecution process, which is likely to produce racialised patterns of prosecution and conviction. The findings highlight that young Black men:

A. Fit within a longstanding 'ready-made' narrative of 'Black criminality', 'gangs' and 'youth violence'.
B. Are more likely to have 'gang evidence' available for the prosecution to use against them, largely by virtue of how they have been policed.
C. Are more likely to be subject to a prosecution gang narrative which has a conviction-maximising capacity.

The ‘ready-made’ narrative

As demonstrated in Chapter Two, Britain has a long history of criminalising young Black men, and an even longer history of producing racial hierarchies through its colonial enterprise. The institutionalisation of racialised state violence, as illustrated throughout this thesis, is certainly not new. Chapter Two highlights the value of CRT and cultural studies literature, including the seminal contributions of Paul Gilroy and Stuart Hall, in illustrating this fact. Together, they have assisted in centring the legacies of colonialism in contemporary state violence, by encouraging us to consider how and why power continues to cluster around some social groups and the political imperatives actuated through articulations of race. It is this way of theorising about race that has been crucial in illustrating how and why Blackness continues to serve as a defensive ideology for the state, explicating the continuous, transmogrifying Black ‘folk-devil’ and the emergence and sustenance of racialised tools like the ‘gang’.

Cultural studies literature of the twentieth century has therefore been key to understanding how racialised lines continue powerfully in the twenty-first century, although non-exclusively, to define the state of being of Black people (Gilmore, 2022). Drawing on existing literature in combination with participants narratives, this thesis highlights that there has long been a distinct social category attributed to young Black men in Britain. And, whilst the character names have shifted from ‘pimps’ to ‘muggers’, to ‘gang members’, the consequence remains the same (Williams, 2014). This thesis highlights that the young men and relatives in this study have been subject to one of the most life altering forms of state violence, to some degree contingent upon longstanding ideological frameworks about Blackness. The young men’s dress, speech, and music have come to be viewed, at an institutional and individual level as indicative of ‘gangs’, submitted as evidence and subsequently interrogated in court as if so ‘alien’ that it

necessitates an (often white) ‘expert’ to deconstruct it. Participants' reflections on how their music, actions, clothing, photographs, and speech were dissected – or even translated - by the police and prosecution, evoke a distinctly anthropological endeavour, reminiscent of the historical relationship between the coloniser and the colonised. This thesis illustrates that the cataloguing, study and thus, the control of young Black men and their cultural expression, is a key feature of institutional practice. Just as the coloniser sought to 'understand' and thereby dominate the cultures they studied and exploited, the CLS employs a similar logic in its attempts to deconstruct and control Blackness through the prism of legality and criminality. The treatment of young Black people’s cultural expression as ‘evidence’ is in many ways a modern-day extension of this colonial logic, most clearly manifested in the ongoing suppression and criminalisation of Black musical expression.

Theoretically then, this thesis - alongside the literature it engages with - emphasises the importance of historical analysis in advancing scholarly discourse on race and criminalisation. By tracing the continuities between the past and present, this approach reveals that racial inequalities in outcomes are not merely the result of individual prejudices but are structurally underpinned – the product of ongoing conditions designed to justify and uphold the existing social order. In adopting such an approach, Barrister Lizzie’s reference to the ‘gang’ label as a ‘default assumption’ amongst lawyers when the defendants are Black - a ‘common narrative… where no one questions it’ - is neither indicative of individual bias nor a reflection of any objective measurement of ‘Black criminality.’ Rather, it reflects how the ‘Black gang’ as an ideological construct, firmly supplanted in the public imagination to defend state legitimacy following the 2011 uprisings, has infested the architecture of prosecution practice. Looking to the past has therefore affirmed that the power of skin to signify complicity does not emanate from the

skin itself. Rather, it is the consequence of the persistent and deliberate use of Blackness to uphold and justify the state's positions, actions, and interests.

This thesis therefore elucidates that the violence of the coloniser has always been ideological - an insight vividly reflected in the narratives of the young men and relatives discussed in the preceding chapter. Unless we challenge, discredit and counter these myths within society more widely, any step towards redressing racial inequalities will merely scrape the surface, further underscoring why scholars who study the criminalised position of Black people must only bring the race-crime relationship into the equation if truly necessary for such an inquiry.

As highlighted earlier in the thesis, the institutionalisation of the decolonisation paradigm marks a positive step in ensuring that criminological scholarship does not contribute to epistemic harm. However, this thesis also highlights a critical aspect that must not be overlooked in efforts to interrogate and disrupt the colonial and imperial legacies underpinning typical criminological thought. While it is crucial to reorient the criminological gaze towards the Global South and to reconfigure the field's foundational assumptions, theories, methods, and practices, it is equally important that this shift does not inadvertently marginalise or discourage research which addresses the experiences and needs of the diaspora within the Global North. Although criminological research has historically neglected the dynamics of punishment and crime control in the Global South, and it is imperative to redress this imbalance, assertions that metropolitan centres like London have been 'over-researched' (Aliverti, Carvalho, and Sozzo, 2021: 302) and explicit intentions to 'shift the criminological gaze away from the North' (ibid: 299), could inadvertently do so. It is important that the criminological façade of scientific objectivity which has historically perpetuated the mythologisation of the diaspora in the Global North, is critically examined and dismantled, just as it must be in relation to Indigenous peoples

in the Global South. The research imperatives within these two geographical contexts should not be viewed as competing but rather as complementary. Together, they can contribute to understanding and exposing the flaws of a society in which whiteness sits at the top of the hierarchy. Both can go far as to challenge the Western and positivist underpinnings of criminology, in which the Global North has long been the standard against which the shortcomings of nations in the Global South are assessed, and through which racialised ideas about civilisation and morality have been reproduced. This thesis demonstrates that the diaspora in the Global North continues to endure forms of state violence that are increasingly sophisticated and formalised *within* the law, yet deeply rooted in the lingering effects of colonialism, albeit frequently obscured or denied by the state.

Indeed, the 2023 visit of the United Nations (UN) to the UK unveiled a pervasive ‘culture of denial’ within the country, evident in the UK government's steadfast refusal to make reparations to British decedents of Africans who were enslaved, traded, or trafficked by the British (United Nations, 2023). The UN highlighted a wide array of racialised outcomes in state policies and practices, calling for urgent structural reforms across various sectors. They acknowledged how the UK's historical role in the social construction of race and racial hierarchies through enslavement and colonisation continues to shape national identity and belonging in the so-called ‘motherland’, as quintessentially illustrated by the recent ‘Windrush scandal’ (Home Office, 2024). They emphasised how the policing and prosecution of young people of African descent are inextricably linked to these enduring racial constructions. Specifically, the UN noted that racial tropes and stereotypes, such as the ‘gang’ label, have engendered distinct forms of policing, prosecution, and policy strategies within Black communities, as vividly demonstrated in Chapter Four through my analysis of contemporary policy and the stories of the young men. Much like the findings

of this thesis, the UN contended that these tropes racialise an entire phenomenon, disregarding the prevalence of youth violence across a range of communities.

In the effort to transform the project of criminology then, the emphasis should be more about *how* we look and whose experiences we look through, as opposed to *where* we look in a global geographical sense. We must ask broader, more critical questions about our research, many of which were explored or implied in Chapter Three and are central to the decolonisation paradigm. Whose interests does our research serve and could it benefit the communities under study? What existing epistemologies does it reinforce, if any? Is our research extractive, or does it optimise the use of data in a way that is ethically sound? Does it begin with a standpoint that acknowledges existing power hierarchies? Moreover, and perhaps most significantly, could it perpetuate harmful narratives about marginalised groups that have historically been othered and which sustain and reproduce racialised state violence like joint enterprise?

In situating the young men's experiences of state violence within a broader trajectory of racialised criminalisation, and by examining the interplay between politics, crime, and race, this thesis foregrounds the enduring conditions that have sustained and necessitated the reproduction of the racialised myths underpinning their convictions. Thus, it underscores the imperative for us, as knowledge producers, to critically evaluate where our research sits within this relationship. Does it work to expose it or conceal it? Does it disrupt it or sustain it?

A key aspect of theorising ought to be an endeavour to see things differently (Gilmore, 2022) - from perspectives that are alternative to those within mainstream systems of thought. Doing so ought not to entail looking away from the Global North, but rather, as Harding (1992) suggests, looking in locations within the existing social order that produce different and critical questions. Looking at joint enterprise through the lens of young Black

men convicted under the doctrine has offered a compelling illustration of how this cohort of young people, beyond being proximate to a violent offence, are consistently constructed as killers by the state.

The 'ideal defendant'

In considering the historical context in which 'gangs policing' and policy has proliferated, and in encouraging the young men to articulate their realities through multiple frames, I was able to discern the relationship between the racialised application of joint enterprise and the aggressive encroachment of the CLS into Black communities. Engaging with contemporary policy on 'gangs' and 'serious youth violence', and situating the young men's experiences within that context, demonstrates that the state's capacity to enact the violence of joint enterprise was contingent on the young men's earlier experiences of state violence. These earlier experiences were dependent on their contact with the police, who are guided by policy initiatives embedded with a racialised understanding of 'gangs' and violence amongst young people, including the inappropriate recasting of expressions of Black youth culture and non-criminal behaviour.

Chapter Four made clear that the move towards data-driven, pre-emptive crime control practices has seen British policing further evolve into an active and racialised state surveillance project, marked by the continual development of gang-centred policies which ensure that young Black men fall into 'a widening net of social control' and are 'subject to an intensifying gaze of the state' (O'Neill and Loftus, 2013: 439). Clarke and Williams (2020) were first to situate racialised prosecution practices and evidence in joint enterprise cases within the context of wider policing strategies. The existence of certain types of evidence, which they found, through their surveys, were more likely to be used in cases involving Black defendants, were intrinsically reliant upon the existence of particular

‘crime-control’ tools and strategies being available and in place in a local community, including things like higher levels of stop and search and police gang units. Using an entirely different methodology, this thesis similarly draws out connections between policy initiatives and institutional practice and the evidence coming before the jury. In delving into the lives of the young men beyond joint enterprise, and in drawing parallels between their disclosures and Lerman and Weavers’ conceptualisation of the ‘custodial citizen’, I was able to provide a more conceptually expansive understanding of the state of surveillance within which they existed, and how these conditions were pivotal to the prosecution case at trial. In conceptualising the mechanisms at play in constructing the shadow identity and illustrating the centrality of pre-emptive and intelligence-oriented policy in that process, I was similarly able to demonstrate that the court room gang narrative is part of a wider process. In asking ‘what is the relationship between contemporary policy, the policing of young Black men and the racialised application of joint enterprise?’, I was able to illustrate that when the prosecution adopts the gang narrative, they rely on a wider pre-existing ‘body of institutional knowledge’ (Ward and Fouladvand, 2021).

What is most concerning is that this knowledge is derived from an institution for which there are a plethora of ongoing accusations of institutional racism (Casey, 2023; Dodd, 2024; Trewern and Long, 2023), and which produces a wide array of racialised outcomes (HM Inspectorate of Constabulary and Fire & Rescue Services, 2021; 2023). Although evidence is presented in court as if it were impartially ‘discovered’ by the police through a process of investigation, this thesis shows that certain types of evidence, frequently employed in joint enterprise cases, are systematically collected and harboured as part of routine police practices which encourage the datafication of young Black men and teenagers. These findings therefore raise a critical question: how could the young men in this study have truly been afforded a fair trial if the racialised methodologies

underlying

the bodies of police knowledge presented in court are not made apparent to jurors? The lack of critical scrutiny concerning the origins of such evidence in court presupposes that it is somehow impartial. Similarly, considering that the police operate within an institution whereby the scrutiny, monitoring and censorship of Black youth culture is constructed as a necessary crime control measure, the use of experts on ‘gangs’ and rap inherently contradicts the principle of impartiality that is central to a fair trial.

Indeed, in a recent trial I observed while writing this thesis, a so-called police ‘expert’ on ‘gangs’ and ‘street language’ was asked how many cases he had provided such ‘expert’ testimony. The officer recounted numerous cases while asserting his obligation to give unbiased, impartial, and objective evidence. Paradoxically, when defence counsel reminded the officer that he had never once testified for the defence, he simply confirmed, ‘correct’. Thus, the courts not only accept 'gang evidence' without thoroughly considering the social and institutional framework in which it was produced, but they also permit those who have historically subjected young Black men to harm and violence through their daily interactions to be presented as unbiased in their testimony against them. This concern is amplified when considered in conjunction with the young men's accounts of the mutual disdain that has developed between them and the police over time. Their reflections on this antagonistic relationship, along with the personal vendettas held by officers (as discussed in Chapter Four), underscore how the racialised deployment of police resources at the meso level fosters and perpetuates hostile interactions between individual officers and young Black men at the micro level. This dynamic not only exacerbates tensions on the ground, but also institutionalises police-Black community conflict, making claims of police witness impartiality spurious.

The concept of a fair trial therefore becomes increasingly tenuous as racial injustice becomes embedded within the law itself. This thesis highlights how racialised state

violence is not merely a result of the misuse of legal authority but is enacted through ostensibly legitimate legal processes. The prosecution practices detailed throughout this study, such as police units that trawl social media, create catalogues of rap music, and train officers to testify on 'gangs' and rap, along with the development of CPS guidelines on such evidence, all serve to formalise and legitimise the use of Black youth expressive culture as evidence. Consequently, the mechanisms that trigger racialised state violence are woven into the fabric of the law itself, rather than in its abuse by individual actors (Quinn, 2024: 17).

The 'conviction-maximising' tool

Turning to the manifestation of race at the micro level, this thesis illustrates, for the first time, the specific mechanisms at play when the 'gang' is used in court by the prosecution in joint enterprise cases. By focusing on how the 'gang' operates at the level of prosecution case theory, whilst simultaneously engaging with the detail of the criminal law, I was able to demonstrate that the risks presented by doctrinal vagueness are borne by those who are most likely to be labelled 'gang members' – young Black male defendants.

In doing so, I have highlighted how a vague law encourages a reliance on gang narratives, speculative case theory, and broadbrush soundbites such as 'in it together' to construct collective responsibility. By examining the intricacies of the criminal law, I was therefore able to illustrate how the 'gang' can function to address weaknesses in the prosecution case, centring how a punitively vague law and a punitively vague concept converge to generate racial injustice. My analysis in Chapter Six therefore illustrates how the 'gang', and wider prosecution case theory, can allow the prosecutorial process to function effectively in the post-*Jogee* landscape, perhaps providing some explanation as to why the scale of joint enterprise seems to have gone unabated since the 2016 law

change

(Mills, Ford and Grimshaw, 2022). My analysis not only demonstrates the conviction-maximising capacity of the ‘gang’, but it also highlights the benefits in asking what is crime and what should it be? – questions which criminologists seldom ask (Zedner, 2011: 272).

Whilst expressed concerns about over-criminalisation are common in criminology, criminological scholarship does not always explore ‘formal criminalisation’ – the precise legislative or common law provisions which expand and constitute criminal liability (Lacey, 2009). Rather, criminologists are mostly concerned with what is referred to by legal theorists as ‘substantive criminalisation’ - the actual implementation of, or the patterns of enforcement of the law through the criminal process (ibid). Despite taking a particular interest in punishment, criminology does not always examine the fundamental concept that allows one, legitimately, to be brought into the scope of punishment – ‘crime’. In other words, criminologists do not always consider whether, according to legal and moral principles, an act in question should be considered crime at all.

There are several reasons why criminologists might be hesitant to engage with crime and criminal law. First and foremost, state violence and punishment - or what might be termed 'extra-legal' punishment - are often inflicted in the absence of any criminalised conduct. This reality was vividly illustrated by Ahmed earlier in this thesis, where he reflected on how many times he had ‘dealt with police’ even before he had ever ‘thought about any criminality’. Indeed, the indelible stop-and-search, police harassment, and brutality experienced by the young Black men in this study constitute a form of punishment
- albeit one that exists beyond the boundaries of the normative legal definition. Thus, by focusing exclusively on processes of formal criminalisation and responses to law breaking, scholars would risk relegating a significant proportion of state inflicted harm as it is exerted through criminal legal institutions. Moreover, we ought not to forget that

many harms - such as those committed by states and corporations – evade a criminal legal response for

the simple fact that they do not fit easily within definitions of crime. Any analysis of punishment as it is exerted through law ought to consider what this means for crime control policy and practice.

There are therefore legitimate reasons to take issue with the term ‘crime’ as an organising concept or analytical tool. However, my analysis in Chapter Six highlights that to develop clear limiting principles for criminalisation and punishment, criminology should not shy away from enquiry into processes of formal criminalisation and the legal principals under which an individual is subject to punishment (Zedner, 2011). Like race, it is possible to acknowledge that crime is a socially constructed and highly malleable category while also acknowledging that it is a central principle of social control and organisation. Thus, it seems counterintuitive to relegate the category of crime from criminological scholarship, particularly since it is this socially constructed category that allows so many people to become subject to state control, punishment and thus, harm and violence. As Zedner (2011) argues, criminology’s concerns about the harms induced by punishment should stimulate ‘concerted engagement with the scope and nature of crime, the principles upon which it is defined and the legal structures in which it is inscribed’ (page 273). Whilst it is true that many harms transcend ‘crime’ and that state violence is inflicted even in its absence - making ‘crime’ a restrictive concept - it is and will likely remain the most fundamental organising concept through which individuals become subject to punishment. Thus, if criminologists are to attempt to limit or scrutinise processes of criminalisation, the discipline may benefit from more frequently engaging with the detail of the criminal law and the principles that underpin it to analyse criminalisation in its entirety. We might not need to grapple with the extensive debates about criminalisation that exist within legal scholarship, however, if we are concerned about state power as it is exerted through law, we ought to consider incorporating an analysis of the specific legal principals and rules

upon which one can be considered criminally liable, as I have done in this thesis. In doing so, I have been able to explore how broader social forces, particularly those which surround ‘gangs’ policing, have amalgamated with specific legal rules and principals to produce contentious legal outcomes. In this case, explicitly considering the current state of the law on secondary liability and its remits has illustrated how narrowing the scope of liability through a clearer and more precise definition of assistance and encouragement, might somewhat negate or reduce racialised prosecution practices in joint enterprise trials.

However, it is imperative to recognise the limits of my analysis and what it is reasonably able to demonstrate. Whilst engaging with the criminal law has allowed me to better conceptualise the conviction-maximising functions of the racialised ‘gang’, the true extent of how such racialised narratives influence charging decisions and jury decision-making remains difficult to discern. This ambiguity is largely attributed to the lack of transparency during pivotal stages of the legal process. In particular, the legal safeguards which protect the confidentiality of juror deliberations create a veil over their thought processes, making it impossible to pinpoint precisely how types of evidence or discourse impact their verdict. Charging decisions are another opaque part of the process, meaning the degree to which police intelligence reports about suspects shapes the trajectory of a case at the charging stage remains enigmatic. These limitations in transparency prevent a fully comprehensive assessment of the precise impact of ‘gang evidence’ and gang narratives on the trajectory and outcome of a case.

The inability to empirically establish a causative relationship between the invocation of the 'gang' and the likelihood of conviction may affect the extent to which legislators and policymakers would take the findings of this thesis seriously. This limitation stems from the study’s reliance on qualitative empirical data, while also adopting a predominantly theoretical approach to interpret these narratives and reveal the

processes of racialisation

at play. This observation necessitates a reconsideration of the earlier discussion on the contemporary climate of post-raciality. In this context, subtle and implicit forms of racism are often denied, and recognising racism at the level of society and governance is likely to require empirical validation through positivist methods. However, despite legal restrictions on transparency, assessing the impact of gang narratives on decision-making is not an impossible research task. For instance, a comparative study could be conducted in which charge rates are analysed between similarly characterised cases, some which include reference to ‘gangs’ in the police reports and some which do not. Alternatively, a case simulation could be designed where an identical set of real or fictional cases are presented to CPS lawyers for charging decisions, with one group receiving cases including gang intelligence reports and the other group receiving cases without. The charge rates between these two groups could then be compared. Likewise, a comparative trial simulation could be conducted with jurors. While one strength of this thesis is its ability to elevate participants' disclosures beyond anecdote, and it is important to advocate for a broader acceptance of qualitative subjective experiences as valid facts and evidence, the findings of this thesis also point to avenues for future research that could yield more empirically demonstrable results.

Nevertheless, by using real storied examples from legal practitioners and those convicted, this thesis demonstrates that the ‘gang’ is, at the very least, perceived by prosecutors as a tool worth preserving and reusing. The acknowledgment among practitioners that the ‘gang’ narrative has a conviction-maximising ability, coupled with disclosures of attempts to invoke the ‘gang’ through various signifiers even when such evidence is ruled inadmissible, reveals a concerning awareness amongst lawyers of the ability to bolster a case through the evocations of bad character, stereotypes and constructions of culture as crime. Thus, whilst the CPS and judiciary may have become

more conscious of the prejudicial nature of the ‘gang’, there remains a lack of comprehensive critical engagement with the gang *narrative* within the legal profession. In other words, while ‘gang evidence’, and the term ‘gang’ may be more frequently challenged, racialised narratives that convey the image of ‘gangs’ prevail.

Reforming the Law, Taming the Prosecution

To begin addressing racial injustice in joint enterprise prosecutions, the findings of this thesis suggest that legal reform might be a necessary step. By highlighting the implications of the law’s vagueness and overly broad definitions, the thesis points to the potential benefits of narrowing the law’s scope to create a safer prosecutorial framework.

In advocating for law reform, I am prompted to briefly return to the concept of ‘taking sides’, introduced in Chapter Three. Within this earlier discussion, I criticised research endeavours which set out to improve the state's existing legal frameworks. Does my support for law reform therefore contradict my earlier contention? While it is easy to make the case that reformist measures and broader transformative goals are incompatible since reform efforts afford legitimacy to institutional processes, I argue that where there is an opportunity, it is necessary to support actions that could limit injustice and harm, even if this means engaging with existing legal structures. Notably, as illustrated through my experience of being denied access to one prison (see Chapter Three), I have had to engage with existing state structures and formal procedures simply to reach the sites in which critical questions arise and within which the counternarrative is confined.

Whilst I accept that reform will never be the solution to ending state violence, some reformist steps are not entirely incompatible with a broader transformative agenda. In fact, some reforms are said to exist in ‘productive tension’ (Sudbury, 2019) with wider systemic change, provided they sit within broader transformative goals. These are

conceptualised as

‘non-reformist reforms’ (ibid) or ‘abolition steps’ (4Front, 2020) - those which aim to mitigate harm for marginalised communities without expanding the power or resources of existing institutions. It is important to acknowledge that narrowing the scope of the law will not increase the resources available to communities – a key element of abolitionist steps (ibid). There is also a risk that law reform might make it more difficult to contend that the law is still unjust. However, narrowing the scope of the law would be to limit prosecution powers, and thus potentially reduce the numbers of people prosecuted and convicted under the doctrine.

At present, the vague law leaves the state unable to confidently assert that only those truly responsible are being convicted. The current framework propels cases forward based on poor quality circumstantial evidence, often involving defendants who did not participate in the activity of the crime at all. Yet, as stated in Chapter Six, the Crown are still tasked with convincing a jury that they are complicit, fostering a climate of imprecision where prosecutors are more likely to rely on tactics and mechanisms which can bolster their case, most notably by evoking bad character, ‘gangs’ and tenuous inferences.

As I have argued elsewhere, narrowing the law’s scope should encourage better precision from the police and prosecutors from the outset, and allow greater confidence that suspects are charged and convicted based on their contribution to the crime, rather than the prosecution’s case theory and narratives (Waller, 2024). Significantly, where a defendant’s contribution to the crime is clearer and more demonstrable, the ‘gang’ narrative is less likely to be doing prosecution work. The hope would be that the emphasis would shift toward obtaining more robust evidence, while inferences and case theory, whether ‘gang’ centred or not, would not constitute the foundational aspects of as many cases (ibid). In other words, the ‘gang’, at least in the context of joint enterprise, may no longer be deemed *as* valuable by the police and prosecution - no longer a key

feature of ‘carceral

memory' in this context. In other words, the 'gang' might no longer be deemed necessary to 'enable [joint enterprise prosecutions] to function effectively' (Megill, 2006: 539).

That is not to suggest that the 'gang' would lose its perceived value for preservation and reuse in various other contexts, nor is it likely to become irrelevant to prosecutors in joint enterprise cases. As discussed in Chapter Four, the 'gang industry' persistently generates and sustains bodies of knowledge that, regardless of the strength of the case presented to the jury, are likely to be seen as useful in constructing a criminal character at the very least. This recognition underscores the need for broader transformative changes (more of which below). However, it also suggests the need for two things at the trial stage. First, additional measures should be implemented to limit the use and influence of 'gang evidence' and the racialised discourse that is designed to evoke similar stereotypes. Second, the question ought to be asked, should the 'gang' ever be evoked in a criminal trial and is it necessary? I will deal with these two points below, in this order.

The covert gang narrative, which is evoked even in the absence of the explicit term (as highlighted in Chapter Five), demonstrates the limitations with criticism of the law which focus solely on explicit 'gang' references, or contend with what ought to legitimately constitute 'gang evidence'. I am prompted to revisit the discussion at the end of Chapter Five, where barristers Lacey and Thomas described their active resistance to racialisation. They spoke about how they attempted to deconstruct Black youth culture and behaviour to demonstrate that it is indeed routine and benign, not some obscure indication of 'gang culture'. However, leaving it to defence counsel to surface these often-subtle processes of racialisation reflects a broader failure within the legal system to see and resist racist and classist tropes. At the same time, the multifaceted nature of racialised prosecution practice highlights that implementing restrictive measures which limit the official use of 'gang evidence' is insufficient.

Focusing solely on restricting the admissibility of 'gang evidence' would be to ignore the fact that the prosecution was permitted to inform the jury of the existence of the rap lyrics in Shaqueel's case, despite the judge having ruled that they were inadmissible. Similarly, it would be not to question why Casey's co-defendant, Rav, was repeatedly questioned about his rap career, and why Casey was subjected to extensive questioning about his text messages and the meaning of BBE phrases, despite their clear irrelevance? It would be to disregard that Shaqueel chilling on the block was presented by the prosecution as indicative of him waiting for his 'rivals'. Moreover, it would be not to ask why a photo of Marcus and his co-defendants from a rap video shoot was presented to the jury, despite the availability of numerous other images?

Indeed, this thesis highlights that there is a clear absence of proactive measures to limit the use of language, imagery and discourse which evokes racialised ideas about crime and criminality. Perhaps defence lawyers and judges are not primed to sense the racist and classist undertones of prosecution practice. Perhaps some do see it but choose not to challenge it in an institutionally white space to avoid disrupting the status quo. Indeed, one limitation of this thesis is that it does not explore defence strategies in more detail.

However, there is something to be said about Lacey and Thomas who actively resist racialisation. Interestingly, both of them did mostly defence work, considered themselves a 'minority' in the profession, and were attuned to academic research on racial injustice. However, there is also something to be said about practitioners' personal backgrounds, and specific chambers or firms who encourage lawyers to challenge racialised discourse (see for example Garden Court Chambers, 2020), and how this is likely to inform their own understanding of serious violence, 'gangs' and youth culture. Nonetheless, it is judges who should also be taming the prosecution by confronting, counteracting, and suppressing racialisation.

At a minimum, jurors in multi-defendant homicide cases involving young people - especially those related to knife offences which inherently evoke racialised assumptions - should routinely receive judicial instructions addressing myths and stereotypes. This is particularly crucial in cases where 'gang evidence' is presented. These directions should remind jurors that the defendants' non-criminal actions and cultural pastimes are not inherently linked to 'gangs' and often have entirely innocent explanations. Jurors should also be cautioned that, although the defendants' actions, language, and behaviour may differ from what they are accustomed to, this does not render them wrong or inherently indicative of criminality. Furthermore, while the police may be regarded as 'experts' in interpreting this language or behaviour in court, it is important to recognise that it is also not native to them.

However, as emphasised throughout this thesis, the racialisation of the prosecution process begins well before trial. Even if myths and stereotypes directions were introduced in court, the institution which shapes the prosecution's case remains influenced by policies that promote the uncritical presentation of racialised 'gang evidence', which is more like to exist for Black defendants. For instance, even if judges were to remind jurors of the violent conventions of rap lyrics, the CPS guidance still fails to caution prosecutors about the risks of misinterpreting these lyrics. Meanwhile, the police continue to catalogue such lyrics for prosecutorial use.

This reflection raises a question alluded to in Chapter Four: why is the social context in which this evidence is produced, and in which young Black men are policed, typically overlooked in court? As I argued earlier in this chapter, and as barrister Lacey emphasised in our conversation, without informing juries about the racial profiling and inherent bias embedded in the police methodologies surrounding 'gang evidence,' it is misleading to suggest that a fair trial has been afforded. Therefore, if 'gang evidence' is introduced or if

police 'experts' on ‘gangs’ are called to testify, the courts should encourage the presentation of social framework evidence. This evidence would prompt jurors to consider that while the police may label the defendants as 'gang members,' the methods used for such identification have been repeatedly criticised for racial bias and produced racially disparate outcomes. It would also inform jurors that 'gang units' and operations are disproportionately concentrated in negatively racialised and working-class communities, where serious violence is more likely to be categorised as 'gang-related.’ It would make jurors aware that the identification of ‘gangs’ - beyond self-disclosure - primarily relies on the reliability and trustworthiness of police intelligence. It would inform jurors of the lack of procedural rigour and clarity in criteria in producing such intelligence. It would highlight that had the defendant not been a young Black man, the chances of this ‘gang affiliation’ evidence existing, may have been far less likely, given that racialised tools like stop and search are used to populate it. Finally, it would inform them of the unreliability of the ‘gang’ as a concept more generally and how it has evolved politically and socially.

This final point prompts me to move on to my second contention – that we should be questioning whether the ‘gang’ should ever be evoked in criminal trials. Throughout this thesis, the gang emerges as a vague, unreliable, weaponised and concealed concept owned by the state. It is vague because it does not have a universal or even national definition, it has a different meaning to those on the ‘inside’ and those on the ‘outside’, and there can be a complex relationship between self-attribution of the label and external labelling, as exemplified by Marcus’s reflections in Chapter Five. This vagueness has seen the police take ownership of what it means to be a ‘gang member’ ‘affiliate’ or ‘associate’, made worse by the government authorities’ intentionally broad definitions which have seen the ‘gang’ evolve into a signifier of Blackness and vice versa.

The vagueness of the ‘gang’ has also seen the non-criminal behaviours and pastimes of young Black people become its key signifiers by law enforcement – characterisations which are now formalised and located within law and policy, accepted even in case law, as an acceptable measurement from which the inference of ‘gangs’ can be evoked. The ‘gang’ is unreliable in that its vagueness and ambiguity make it unmeasurable. It is weaponised in how it has been utilised at the level of governance to shift blame, and at the level of policing and prosecution to enact conviction-oriented objectives. And it is concealed in how it is constructed, largely, in silence, albeit through methods which are quite often resounding.

In some cases, it may be challenging to assist the jury in understanding the background of a case without referring to 'gangs.' It could also be that, on arrest, suspects or witnesses disclose to the police that the incident arose from 'gang conflict’, which would then understandably shape the prosecution's case. However, considering the 'gang' in its entirety makes it difficult to see why such a misunderstood, flawed, and racialised concept is so frequently relied upon in high-stakes homicide cases. In particular, Marcus's reflections in Chapter Five on what it means to be in a ‘gang’ prompt me to suggest that the 'gang' may be too risky and unreliable to be used in legal proceedings. Even when a violent incident is deemed as 'gang-related,' there should be a full assessment as to whether the case can be reasonably presented and explained to a jury without referencing 'gangs'. For example, if there is a history of hostility between two alleged 'gangs' that is said to have led to the incident, the possibility of illustrating this conflict to the jury without evoking the 'gang' label should be thoroughly explored.

Beyond the CLS, this thesis also highlights the importance of limiting the examination of ‘gangs’ (in the ontological sense) within the academy. I am not going to claim that the ‘gang’ is an entirely illegitimate object of empirical inquiry. However, in

considering the convergence between race and ‘gangs’ in the constructivist sense, the ‘gang’ emerges as a mechanism through which I have made sense of racial inequality in joint enterprise. The wider discussions throughout this thesis also highlight that violence amongst young people transcends ‘gangs’ and may be better understood outside of this lens. Whilst the ‘gang’ has more typically been characterised as a group entity organised around criminality, this thesis repositions the ‘gang’ as a state-led industry through which racialised state violence manifests. The ‘gang’ might therefore be better understood as a police and prosecution resource, and for researchers, a lens through which to make sense of patterns of inequality in criminal legal outcomes.

Broader Transformative Change

It would be naïve to assume that the harm inflicted by joint enterprise on negatively racialised communities would cease following legal or procedural reform. Joint enterprise, in whatever form it takes according to statutory or case law previsions, operates within a system that overwhelmingly surveils, polices, and punishes Black people - a system that, as I would suggest this thesis contends, is inherently racist. Therefore, even if a new legal test for 'significant contribution' were introduced, it is crucial to recognise that such a framework is not immune to racialisation or prosecutorial manipulation. The concept of 'significant contribution' can still be strategically interpreted by prosecutors in ways that manifest racial assumptions and stereotypes.

Throughout this thesis, participants' narratives have consistently highlighted the absence of the presumption of innocence for young Black men. It is therefore entirely conceivable that, under a revised legal framework, a young Black man's contribution to a crime could quite easily become 'significant'. While narrowing the scope of the law may raise the bar for prosecution and compel the police and CPS to pursue cases with greater

consideration, accuracy, and specificity, the resilience of racism and the adaptability of racist systems should not be underestimated. Racism, as the underpinnings of this thesis acknowledge, is not static; it evolves within and through the malleable construct of race, continuously reshaping and upholding the legal and social landscape to sustain itself.

Moving away from a system that justifies such aggressive state violence against those who have not committed violence themselves necessitates a fundamental shift in society more generally. This thesis demonstrates how such state-sanctioned violence is sustained by normative and indeed populist ways of thinking about crime, violence, and marginalised groups. Consequently, any legal reform must be pursued in tandem with a broader transformation of popular consciousness. Addressing racial injustice in the context of joint enterprise requires a critical examination of the criminal legal system's foundational assumptions and a reimagining of society's understanding of crime and punishment. We must ask questions such as:

- Why is joint enterprise not utilised to prosecute state or corporate crimes at the same rate?
- Why has ‘knife crime’ been so readily associated with young Black men, despite its prevalence in domestic violence cases against women?
- Why is state violence inflicted upon young Black people so readily accepted as necessary and justified?
- How can we move away from a political climate that views enhanced police powers and surveillance as viable solutions to criminalised conduct?

To properly redress racial injustice, we need a political discourse that does not sacrifice equality to dominant punitive trends, meaning we need to change the conditions that give rise to this style of politics. To get there, we need to fundamentally alter our way

of thinking - escaping colonial logics of othering and controlling. Just as these oppressive modes of thinking have been constructed and ingrained in society over centuries, they can similarly be deconstructed and dismantled through deliberate efforts and collective organisation. Indeed, it is through the exposure of intolerable acts of state violence that the space for thinking about the unimaginable has been cracked open (Gilmore, 2022). While it is beyond the scope of this thesis to delve into the details of debates about what true liberation looks like and the pathways to achieving it, it nonetheless emphasises the responsibility of knowledge producers to educate others about the realities of racial subordination in the hope that, at the very least, we can contribute to the social recognition of Black suffering.

Research that contributes to efforts for reform must also play a role in the broader transformation of popular consciousness, making space for reimagining public security and safety – a society that does not respond to harm with further harm, but sets out to remove the conditions that give rise to violence, harm and negative racialisation. What is needed then is an attentiveness to grassroots-led initiatives that already experiment with and deliver alternative, community-driven responses to harm. As researchers, we must ask ourselves how we can support these spaces. This vision of change is not as far-fetched as it might seem; it is already in motion, with numerous community organisers actively fleshing out the social conditions necessary to create healthy, happy, and free communities (see for example Abolitionist Futures, 2014; 4Front, 2024; Kids of Colour, 2024).

Whilst these broader goals should remain in sight, we must also acknowledge the decades of demands for change by communities, lawyers, campaigners, and politicians. Many of these individuals' lives have been irreparably altered by joint enterprise, underscoring the need for some immediate change. This thesis offers actions that can be implemented now to potentially reduce the harms inflicted through joint enterprise.

Whilst

I accept that law reform, judicial directions on myths and stereotypes, or social framework evidence are not a panacea for racial injustice, it remains imperative to mitigate the harms of joint enterprise as swiftly as possible. The urgency of this is underscored by the 300.5 years of cumulative sentences being served by the 18 young men and teenagers who participated in this study - a figure that represents years of familial deprivation, labour exploitation, social alienation, threats of violence, literal violence, and psychological trauma.

It is sobering to reflect on the fact that 300.5 years ago, the transatlantic slave trade was in full force. A retrospective examination of that period would reveal the brutal conditions endured by some of the ancestors of the young men in this study – conditions that bear unsettling parallels to the conditions the young men confront today. The echoes of the past reverberate powerfully in the present, as these sentences encapsulate the ongoing fragmentation of families, where generations are torn apart and relationships are disrupted; the economic exploitation, where their potential and labour are diverted into punitive systems of profit-making; the systemic disempowerment, where their autonomy and voices are suppressed, while they are burdened with labels with which they cannot resonate; the social alienation, where they are cast out and stigmatised within society; and the enduring psychological trauma, where the weight of racialised state violence leaves lasting scars and a collective memory of injustice.

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