

Presumption of Innocence and Complicity - 'Let him have it' and 'Come on let's go'

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Courtrooms are ultimately a place of danger, in complicity cases, often for very vulnerable people. That danger has been heightened by the courts over - stretching the law of complicity, sometimes deliberately to catch as many people as they can. Famously the UK Supreme Court in 2016 in *R v Jogee*, a case in which I appeared, admitted that the law had taken a wrong turn for 30 years but the people affected, many serving mandatory life sentences were denied release. Exploring the concept of complicity through selected cases, this paper asks what it means to be complicit in the acts of another, how the law responds to groups or gangs and do cases lose sight of the presumption of innocence denying access to justice?

Complicity is an extension of liability to include those who do not carry out the primary act. It might initially appear acceptable to convict everyone when dealing with groups of bank robbers, people who assist killers or leaders of states who order crimes against humanity and for the law to create pathways to find they were all complicit. Sometimes offenders are joint principals in the sense that they all act in concert as part of a plan where they know the essentials and have agreed to an outcome. Others assist or encourage a crime, again, knowing the essentials and but here acting with an intention to assist or encourage that crime.

However, over time, in common law jurisdictions, policy (or perhaps more properly described as politics) has extended criminal liability to catch groups, particularly (Black and Minority Ethnic) BAME people in a drag-net of guilt by association who are then locked up, having made no significant contribution to the crime and with no real meeting of minds with the main offender. Courts in the UK Australia and Hong Kong have deliberately ignored foundations of law and raised the bar for those affected to appeal.

The problem with complicity is that by extending liability there is a danger of overcriminalisation – that is punishing people on the periphery of events - rather than those truly responsible. The knock - on effect is the mass over incarceration of BAME people and a presumption of guilt.

This paper will cover some shocking examples

- In the US a young black teen convicted of murder when a police officer shot and killed his friend.
- In the UK, despite the well- known miscarriage of justice for Derek Bentley, in 2013, the law bowed so low as to convict an autistic youth on foresight of merely possible outcomes.
- In Australia a young Aboriginal man sentenced to life imprisonment when he was not present at the killing
- Trafficked victims on death row

It will also recommend some solutions.