

Article

The Innocence Trap

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What makes a conviction wrongful? Developments in DNA science have led to a wave of exonerations over the past thirty years, revealing sources of error in the criminal legal process. Innocence organizations proliferated to represent people whose convictions could be overturned by newly discovered evidence. This is vital work for the individuals who are released and for the purpose of systemic change. At the same time, a focus on exonerations constructs a relatively narrow conception of wrongful convictions—one that is synonymous with factual innocence.

This Article argues that a broader conception of wrongful convictions may be revealed through co-ideation with people in prison who are engaged in efforts to contest criminal law. Taking

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one example as a case study, we focus on a coalition called We Are Joint Venture, Inc., which is comprised of incarcerated organizers whose convictions rest on imputed liability murder doctrines like accomplice/joint venture liability and felony murder. These organizers highlight procedural and substantive features of imputed liability murder doctrines that lead to convictions contradicting community expectations of accountability—something we call “the innocence trap.”

Drawing on the methods of movement law and Participatory Law Scholarship, this Article is coauthored by the director of We Are Joint Venture, Inc., who is serving a life sentence for murder under the joint venture theory, and a law scholar who has written about imputed liability doctrines. Our analysis contributes to legal thought in three ways. First, it builds on scholarship questioning the legitimacy of imputed liability murder doctrines and offers new possibilities for legislative and judicial interventions. Second, we advance a conception of wrongful convictions that invites inquiry into the logic and merits of criminal law, transforming even entrenched doctrines into sites of contestation. Finally, this Article underscores the epistemic, democratic, and substantive benefits of engaging with legal thinkers whose insights about the law stem not from the academy but from experience, study, and struggle.

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INTRODUCTION

Imagine that you are a teenager who never got past the ninth grade. You find yourself locked up, charged, and indicted for murder. Your murder indictment states that you killed and beat an individual. You were there that night, but you didn't do those things. No one explains the joint venture theory—a doctrine that permits you to be convicted of murder even if you never killed anyone. The indictment is like a trap: You are innocent of the facts described, and you may even be legally innocent, but the law allows you to be found guilty and sentenced to death based on a theory, inferences about your intent, and very little proof.

The term “wrongful conviction” is typically construed through a binary lens of guilt and innocence.¹ Law offices focusing on wrongful convictions typically limit their docket to clients who can prove that *they got the wrong guy*, so to speak.² The innocence movement has offered critical insights about vectors of injustice in criminal legal practice, including racism, police and prosecutorial misconduct, and unreliable evidence.³ This is vitally important work—not only for the people who are freed

1. See Keith A. Findley, *Defining Innocence*, 74 ALB. L. REV. 1157, 1162 (2011) (arguing that the “notion of ‘innocence’ does indeed mean factual innocence, in the sense that the defendant committed no crime”); Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer’s Growing Anxiety About Innocence Projects*, 13 U. PA. J.L. & SOC. CHANGE 315, 325 (2009) (discussing the “focus on factual, DNA-proven innocence” over other “wrongful convictions”); Daniel S. Medwed, *Innocentrism*, 2008 U. ILL. L. REV. 1549, 1549 (describing “innocentrism” as “the increasing centrality of issues related to actual innocence in courtrooms, classrooms, and newsrooms”); Carol S. Steiker & Jordan M. Steiker, *The Seduction of Innocence: The Attraction and Limitations of the Focus on Innocence in Capital Punishment Law and Advocacy*, 95 J. CRIM. L. & CRIMINOLOGY 587, 598 (2005) (noting that, in the death penalty context, “the sort of innocence that has captured popular and political attention is ‘pure’ innocence, with DNA exonerations serving as the paradigm of ‘erroneous’ convictions”).

2. See Anna Roberts, *Convictions as Guilt*, 88 FORDHAM L. REV. 2501, 2503 (2020) (noting that the “innocence movement” has focused on “wrong-man convictions”); Smith, *supra* note 1, at 319–22 (discussing how some innocence projects have defined their missions and described the cases they take on). It is important to note that not all innocence organizations take so limited a view. Some innocence organizations’ caseloads encompass convictions tainted by police or prosecutorial misconduct, unreliable evidence, or other factors, without a requirement that a potential client also be able to establish factual innocence. See, e.g., Smith, *supra* note 1, at 318–19 (describing the various backgrounds and virtues of some innocence organizations).

3. For further description and discussion of the innocence movement, see *infra* Part II.

from prison after the Kafkaesque nightmare of being mistakenly or maliciously imprisoned by the State, but also for society-at-large, which benefits from systemic changes driven by exonerations.

But there are other types of wrongful convictions, too. As Abbe Smith explains, wrongfulness pervades the criminal legal system:

There are criminal defendants who are guilty of something but not the worst thing they are charged with. There are defendants who are guilty of something other than what they are charged with. There are defendants who committed the crime charged but with significant mitigating or extenuating circumstances. There are defendants who committed the crime[,] but they had never done anything like this before, they lost control in a trying situation. There are defendants who committed the crime[,] and it is no wonder in view of how they came into the world and what they endured after. There are defendants who committed the crime and have no excuse whatsoever but, as death penalty lawyer Bryan Stevenson says, “[e]ach of us is more than the worst thing we ever did.” For every crime there is a story.⁴

Similarly, Valena Beety has recently examined wrongful convictions based on ableism and gender stereotypes, such as convictions of women labeled as “unfit” due to disability or alleged disability.⁵ Beety explores the root of these “reproductive wrongful convictions” as deriving not from aberrational error but from the systematic reliance on faulty evidence and bias to criminalize and punish pregnancy and parenting behaviors.⁶ As these examples show, a relatively narrow conception of wrongful convictions—one that focuses solely on factual innocence⁷—may obscure wrongful convictions that derive not from mistake or

4. Smith, *supra* note 1, at 324.

5. See Valena Beety, “*Unfit*”: Gender, Ableism and Reproductive Wrongful Convictions, UCLA L. REV. (forthcoming 2026).

6. *Id.* (manuscript at 12–23).

7. We use the term “factual innocence” and “actual innocence” in this Article to describe innocence in the sense of complete exoneration. See Smith, *supra* note 1, at 325 (describing “factual, DNA-proven innocence” and suggesting that a narrow focus on factual innocence threatens to “change the discourse about wrongful convictions”); Medwed, *supra* note 1, at 1555 (distinguishing between “factual innocence” on the one hand and “run-of-the-mill” cases “involving justification defenses, constitutional violations, and the like” on the other); Margaret Raymond, *The Problem with Innocence*, 49 CLEV. ST. L. REV. 449, 456–57 (2001) (noting that a “not guilty” verdict reflects “factual innocence” when a jury believes that the defendant did not commit the charged offense, as opposed to cases where the jury believes the prosecution did not meet its burden (“burden of proof innocence”) or where the jury believes that the defendant’s actions only partially satisfied the elements of an offense (“legal innocence”).

misconduct but from the regular functions of criminal law and procedure.⁸

This Article argues that a broader concept of wrongful convictions may be revealed through co-ideation with people who have experienced incarceration and are engaged in efforts to challenge criminalization and punishment. Taking one example as a case study, we focus on a coalition called We Are Joint Venture, Inc. (WAJV) that has challenged the doctrines of accomplice liability murder and felony murder, which allow someone to be convicted of murder even if they did not kill anyone. Together, we refer to these doctrines as “imputed liability murder” because they permit the State to impute to the accused an element of the murder that it would otherwise be required to prove.⁹ Accomplice liability murder relieves the prosecution of its burden to prove an act that caused death, requiring only proof that the accused aided in the offense and shared the principal’s mens rea, whereas felony murder relieves the prosecution of its

8. Smith, *supra* note 1, at 323–24. Indeed, many scholars have argued against the idea that the criminal legal system is flawed, suggesting instead that the system has been constructed to fulfill a function of social control. See Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2518–27 (2023) (“Reformism telegraphs to the public that the system, institution, or set of relations it seeks to tweak are here to stay; that the problem is not structural or symptomatic but stray.”); Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About “Criminal Justice Reform,”* 128 YALE L.J.F. 848, 851 (2019) (challenging the idea that the system is “broken” and noting that “[i]f the function of the modern punishment system is to preserve racial and economic hierarchy through brutality and control, then its bureaucracy is performing well”); Paul Butler, *The System Is Working the Way It Is Supposed To: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1426 (2016) (“The Court has sanctioned racially unjust criminal justice practices, creating a system where racially unjust police conduct is both lawful and how the system is supposed to work.”); Syrus Ware et al., *It Can’t be Fixed Because It’s Not Broken: Racism and Disability in the Prison Industrial Complex*, in *DISABILITY INCARCERATED* 163, 163–84 (Liat Ben-Moshe et al. eds., 2014) (arguing that criminal legal institutions are designed to reinforce logics of racism and ableism).

9. For purposes of this Article, “imputed liability murder” includes joint venture murder (also known as accomplice liability murder) and felony murder, which can be applied individually or together. See Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 FORDHAM URB. L.J. 675, 679 n.25 (2024) (employing the term “imputed liability murder” to describe felony murder and accomplice liability); Paul H. Robinson, *Imputed Criminal Liability*, 93 YALE L.J. 609, 619 (1984) (delineating and discussing the rationality of several types of “imputed criminal liability,” including felony murder, accessory liability, strict liability, voluntary intoxication, status offenses, and liability for omissions).

burden to prove *mens rea* regarding the death, requiring only that the person committed a felony and that a death occurred during that felony.¹⁰ Drawing on the methods of movement law and Participatory Law Scholarship (PLS), this Article is coauthored by the executive director of WAJV—who is currently serving a life sentence based on the joint venture theory—and a law scholar who has written about imputed liability murder doctrines.¹¹

Our analysis illustrates several reasons that imputed liability murder convictions may be considered wrongful. In particular, we highlight the misalignment between imputed liability murder doctrines and moral intuitions—a dynamic that we call “the innocence trap.”¹² As a result of the innocence trap, a person accused of murder may misperceive their own legal culpability and proceed to trial only to learn that they can be convicted under a theory that is broad and counterintuitive in scope. The innocence trap also interacts with other features of imputed liability doctrines, including the doctrines’ susceptibility to error, relationship to racial subordination, imposition of extreme punishments, and impediment to restorative and transformative justice practices.¹³ Our analysis undermines the theoretical foundations of imputed liability murder doctrines and advances an understanding of imputed liability murder convictions as wrongful.¹⁴

Through this case study, we imagine a conception of wrongful convictions that extends beyond factual innocence and encompasses convictions resulting from legal doctrines that, though accepted, may be morally, theoretically, or practically unsound. Wrongful convictions in this sense may include, for example, those resulting from: laws that are morally repugnant or mismatched with community expectations, laws that are influenced by or reinforce racism, laws that are disproportionately punitive, or laws that contradict the aims of healing from community harm.¹⁵

10. Moriearty et al., *supra* note 9, at 678–79.

11. *See infra* Part I.

12. *See infra* Part III.B.1.

13. *See infra* Part III.B.2–6.

14. *See infra* Part IV.A.

15. *See infra* Part IV.B.

We do not define an outer bound to this broader conception of wrongful convictions, nor do we suggest that there are “rightful” convictions. Instead, we argue that an expansive understanding of wrongful convictions invites inquiry into the logic and merits of criminal law, rather than shutting down that inquiry by asking only whether the accused was factually innocent. We further argue that understanding the full scope of wrongful convictions requires looking to the insights of people whose ideas about the law stem not from the legal academy, but from experience, study, and struggle.¹⁶

Part I of this Article introduces the WAJV coalition and describes the methodological frameworks of movement law and PLS, which we employ to engage with the organizers’ insights.¹⁷

Part II addresses the harms resulting from a narrow conception of wrongful convictions and suggests the benefits of a broader conception of the term.

Part III considers the WAJV organizers’ moral and conceptual challenges to imputed liability murder doctrines.¹⁸ We suggest that these challenges support a theorization of imputed liability murder convictions as wrongful. In turn, this theorization

16. In doing so, we build on a growing body of scholarship urging diversification of the epistemic sources that inform legal thought. *See, e.g.*, Rachel López, Essay, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795 (2023); Seema Tahir Saifee, *Decarceration’s Inside Partners*, 91 FORDHAM L. REV. 53 (2022); Jules Lobel, *Participatory Litigation: A New Framework for Impact Lawyering*, 74 STAN. L. REV. 87 (2022); Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821 (2021); M. Eve Hanan, *Invisible Prisons*, 54 UC DAVIS L. REV. 1185 (2020); Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward A Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740 (2014); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

17. Throughout this Article, we use the term “organizers” to describe a group of incarcerated people with joint venture murder convictions who have testified before the Massachusetts legislature regarding proposed changes to joint venture (accomplice) liability or have otherwise contributed to the WAJV coalition. Some of these people might not necessarily self-identify as “organizers.” However, we refer to these individuals as organizers in that they have collectively mobilized toward legal and narrative change.

18. This Article makes no claim about whether the organizers quoted here are factually innocent or not. Indeed, some of the organizers may be factually innocent. Others may be legally innocent, in the sense that one or more elements of an imputed liability murder offense did not exist in their case. Others may concede that the elements of imputed liability murder were met in their case, but argue that those elements should not amount to the crime of murder. The point is that the organizers assert important and valid challenges to imputed liability doctrines that do not rest exclusively on factual innocence.

contributes to a conception of wrongful convictions that extends beyond factual innocence.

Part IV identifies three implications of our analysis. First, this Article contributes to law and scholarship regarding imputed liability murder doctrines, presenting new possibilities for legislative and judicial interventions. Second, our proposed expansive conception of wrongful convictions invites contestation of even entrenched aspects of criminal law. Third, the organizers' insights point to visions of accountability and responses to community harm that exist outside the confines of criminal punishment.

I. THE INQUIRY AND THE METHOD

In this Part, we introduce WAJV and describe the impetus for this Article. We then turn toward movement law and PLS as methodological frameworks that invite the insights of legal thinkers who have experienced criminalization.

A. WE ARE JOINT VENTURE, INC.

“Good afternoon. I’m nervous.”¹⁹ That’s how Julian Green’s testimony about House Bill 3962 began on a hot July day in the Summer of 2023. Julian, one of this Article’s authors, is a father and organizer who is currently serving a life sentence for murder under the joint venture doctrine, which holds a person to be as culpable as the direct principal of an offense if they are found to have aided in that offense and shared the principal’s mens rea.²⁰ Julian was testifying virtually from prison.²¹

19. *Criminal Justice System Administration: Hearing on H.3962 Before the J. Comm. on the Judiciary*, 2023–2024 Leg., 193d Gen. Ct. (Mass. 2023) [hereinafter *Hearing on H.3962*] (testimony of Julian Green).

20. *Commonwealth v. Zanetti*, 910 N.E.2d 869, 883 (Mass. 2009) (“At its core, joint venture criminal liability has two essential elements: that the defendant knowingly participated in the commission of the crime charged, and that the defendant had or shared the required criminal intent.”).

21. Massachusetts only recently began allowing people in prison to testify virtually at legislative hearings, and this July 25th hearing in front of the Massachusetts Joint Committee on the Judiciary marked “the first time that superintendents from six prisons collaborated with lawmakers, activists, incarcerated people, and the Department of Correction (DOC) to give those behind bars the opportunity to testify live.” Jean Trounstein, *Unprecedented Testimony*, BOS. INST. NONPROFIT JOURNALISM, <https://binjonline.com/2023/07/31/unprecedented-testimony> [<https://perma.cc/R2S9-398V>]; see also Emmett Sanders, *In Their Own Words: Organizing Legislative Testimony from Incarcerated*

The joint venture doctrine is Massachusetts's version of accomplice liability. At common law, parties to a felony were divided into four categories: principals in the first degree, principals in the second degree, accessories before the fact, and accessories after the fact.²² Ultimately, Massachusetts—along with most states—enacted statutes delineating the scope of accomplice liability and eliminating the distinction between the first three categories.²³ Chapter 274, section 2 of the Massachusetts General Laws addresses the substantive liability of principals, accomplices, and accessories before the fact,²⁴ and chapter 274, section 3 sets forth the procedure for charging accessories before the fact.²⁵ Despite these statutory provisions, the

People, PRISON POLY INITIATIVE (last updated Apr. 3, 2025), https://www.prisonpolicy.org/trainings/incarcerated_testimony.html [<https://perma.cc/7J8D-PQN4>] (discussing efforts in Washington, Massachusetts, and Connecticut to organize legislative testimony from people who are incarcerated).

22. *Commonwealth v. Ortiz*, 679 N.E.2d 1007, 1009–10 (Mass. 1997).

23. *See, e.g.*, MODEL PENAL CODE § 2.06(2) (AM. L. INST. 2024) (“A person is legally accountable for the conduct of another person when . . . he is an accomplice of such other person in the commission of the offense.”); *id.* § 2.06(3) (“A person is an accomplice of another person in the commission of an offense if: (a) with the purpose of promoting or facilitating the commission of the offense, he: (i) solicits such other person to commit it, or (ii) aids or agrees or attempts to aid such other person in planning or committing it, or (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or (b) his conduct is expressly declared by law to establish his complicity.”). In Massachusetts, accomplice liability was codified as early as 1835. *See* MASS. GEN. LAWS. ch. 133, § 1 (1835) (“Every person, who shall be aiding in the commission of any offence, which shall be a felony either at common law, or by any statute now made, or which shall hereafter be made, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the same manner, which is or which shall be prescribed for the punishment of the principal felon.”).

24. *See* MASS. GEN. LAWS ANN. ch. 274, § 2 (West 2025) (“Whoever aids in the commission of a felony, or is accessory thereto before the fact by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the manner provided for the punishment of the principal felon.”); *see also Ortiz*, 679 N.E.2d at 1010 (“Consistent with the action taken by most States, Massachusetts has corrected these problems by means of legislation, specifically by G.L. c. 274, § 2, which makes a joint participant in the commission of a felony liable to the same extent as the principal felon . . .”).

25. This provision states that:

Whoever counsels, hires or otherwise procures a felony to be committed may be indicted and convicted as an accessory before the fact, either with the principal felon or after his conviction; or may be indicted and convicted of the substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice; and in the last mentioned case may be punished in the same manner as if

Commonwealth may charge a person with an underlying substantive felony, pursuant to the joint venture doctrine, without any reference to these statutes and without specifying whether the accused is being prosecuted as a principal or joint venturer.²⁶

Jurisprudential developments over the past twenty years have greatly expanded the scope of the joint venture doctrine, allowing the Commonwealth to impose extreme mandatory minimum sentences in a broader range of cases while meeting a lower burden.²⁷ Before 2009, the Supreme Judicial Court considered joint venture liability and principal liability to be distinct theories, with joint venture liability requiring proof that:

[T]he defendant was at the scene of the crime, with knowledge that another intended to commit the crime and with a shared intent to commit the crime, and that the defendant aided or assisted in the commission of the crime, or was willing and available to assist the other person in carrying out the crime if necessary.²⁸

In *Commonwealth v. Zanetti*, however, the Court held that joint venture was not a distinct theory of liability and that both joint venture liability and principal liability are established by showing that the accused knowingly participated in the charged offense with criminal intent.²⁹ The prosecution need not identify

convicted of being an accessory before the fact. An accessory to a felony before the fact may be indicted, tried and punished in the same county where the principal felon might be indicted and tried, although the counselling, hiring or procuring the commission of such felony was committed within or without the commonwealth or on the high seas.

MASS. GEN. LAWS ANN. ch. 274, § 3 (West 2025).

26. See *Marshall v. Commonwealth*, 977 N.E.2d 40, 45 (Mass. 2012) (noting accomplice liability has been described through the term “joint venture” as well as “aiding and abetting”); see also *id.* at 46 n.12 (noting that “both prongs of G.L. c. 274, § 2, ha[ve] long been viewed as a unified theory of joint venture liability”); *Commonwealth v. Zanetti*, 910 N.E.2d 869, 883 (Mass. 2009) (noting that the operative test for assessing joint venture liability “best reflects the spirit behind the common law as now reflected in the aiding and abetting statute, G.L. c. 274, § 2, which declares the aider and abettor to be as culpable as the chief perpetrator of the offense”).

27. See *infra* Part III.A.1.

28. *Commonwealth v. Cannon*, 869 N.E.2d 594, 600 (Mass. 2007).

29. In announcing this standard, the Court emphasized the lack of any distinction between the aiding and abetting statute, MASS. GEN. LAWS ANN. ch. 274, § 2 (West 2025), and the joint venture doctrine, stating that, going forward, courts should “adopt the language of aiding and abetting rather than joint venture” in jury trials. *Zanetti*, 910 N.E.2d at 883. Nevertheless, the Court still refers to the joint venture doctrine in its jurisprudence. See, e.g., *Commonwealth v. Tse*, 245 N.E.3d 710, 715–18 (Mass. 2024) (using the term joint venture); *Commonwealth v. Baez*, 237 N.E.3d 744, 749–53 (Mass. 2024) (same).

the accused as a principal or joint venturer, and jurors need not find whether the accused was a principal or joint venturer. As one practitioner put it, “in the defense community, the sense [after *Zanetti*] was that your client would now get convicted if they breathed the same air as [their co-defendant].”³⁰ Similarly, while the Court previously held that chapter 274, section 2 of the Massachusetts General Laws imposed two distinct forms of accomplice liability—aiding and abetting, on the one hand, and accessory before the fact, on the other—the Court has since found the two to be coextensive.³¹

The upshot is that where more than one person is charged with an offense, liability hinges greatly on whether a juror determines that the parties shared the same intent—a determination that frequently rests on circumstantial evidence and is susceptible to bias.³² When it comes to murder offenses, the stakes are especially high because Massachusetts imposes mandatory life sentences for second-degree murder and mandatory life-without-parole (LWOP) sentences for first-degree murder.³³

A group of incarcerated organizers who call themselves WAJV has helped to elucidate some of the harms of the joint venture doctrine.³⁴ The group formed after a visit by State Representative Lindsay Sabadosa to Massachusetts Correctional Institution (MCI) Norfolk in 2019. Representative Sabadosa met with several men there to hear their stories. One of those men

30. Conversation between Caitlin Glass and practitioner (Aug. 22, 2025).

31. *Compare* Commonwealth v. Rodriguez, 931 N.E.2d 20, 40 (Mass. 2010) (“[T]he actions of one who ‘aids’ and ‘accessories before the fact’ are not the same, and are separate and distinct forms of accomplice liability.”) with *Marshall v. Bristol Cnty. Superior Ct.*, 951 F. Supp. 2d 232, 234 (D. Mass. 2013), *rev’d sub nom. Marshall v. Bristol Superior Ct.*, 753 F.3d 10 (1st Cir. 2014) (“Upon review by the full Court, the Supreme Judicial Court held that (1) the actions of one who ‘aids’ in the commission of an offense and the actions of ‘accessories before the fact,’ do not constitute ‘separate and distinct’ offenses, but rather constitute different routes to the same end of criminal liability as a knowing participant to the crime, abrogating *Rodriguez*. . . . The Supreme Judicial Court in *Marshall* changed the crime of accessory before the fact under MASS. GEN. LAWS ch. 274, § 2, from a ‘separate and distinct’ crime as held by *Rodriguez*, to a new theory of accomplice liability for murder.”).

32. See *infra* Part III.B.3–4.

33. MASS. GEN. LAWS ANN. ch. 265, § 2 (West 2025) (imposing LWOP for first-degree murder convictions, and life for second-degree murder convictions).

34. Although we discuss the members of WAJV as a collective throughout this paper, it is important to acknowledge that the group is composed of individuals with differing opinions on a range of subjects. The organizers referenced in this Article do not necessarily adopt all of the views expressed in this Article.

was Julian. He told Rep. Sabadosa that he was serving a life sentence for murder even though he never killed anyone. At the end of his story, Rep. Sabadosa asked a question that would spark a movement. She asked the auditorium filled with people, “how many of you are in prison for murder and haven’t killed anyone?” Person after person stood up. Rep. Sabadosa wrote down her information and told the men to contact her if they saw a way to address their concerns about accomplice liability through legislation.

The men began organizing. They formed WAJV, which is composed of people serving life and LWOP sentences for joint venture murder, as well as others who support the group and participate in their advocacy efforts from a position of solidarity. As one organizer describes the group’s process:

The way WAJV is structured is like this. It’s a collaboration of several prisoners who are convicted of either joint venture or felony murder[] in here, with people and resources out there. Weekly meetings are held in here, . . . through a committee (i.e., president, vice president, secretary, treasurer, public relations and members) where topics/strategies/ideas are discussed on (1) how to gather more public support[,] (2) how to better educate the public around what joint venture/felony murder is and our proposed legislation[, and] (3) what events/rallies to host, where and when. Those ideas are then shared with our outside support.³⁵

By the Spring of 2023, WAJV had helped shape legislation that would separate the offenses of murder and accomplice murder such that a person accused of being an accomplice would face a separate charge with an associated sentence range of two and a half to twenty-five years in prison.³⁶ Murder convictions would require a finding that the accused was “a principal perpetrator who is personally and directly responsible for committing the killing.”³⁷ Over the course of two hearings in the summer and fall of 2023, the legislature’s Judiciary Committee heard from WAJV members and a coalition of currently and formerly

35. Letter from Edker Rock, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (May 2024) (on file with the Minnesota Law Review).

36. H.B. 45, 2023–2024 Leg., 193d Gen. Ct. (Mass. 2023) (“Whoever aids in the commission of a killing or is accessory thereto before the fact by counseling, hiring, or otherwise procuring such killing to be committed but is not a principal perpetrator who is personally and directly responsible for committing the killing, shall be punished by imprisonment in the state prison for a period of not less than 2 and 1/2 years nor more than 25 years.”).

37. *Id.*

incarcerated people, their family members, advocacy groups, and scholars.³⁸

Unfortunately, as many scholars have observed, criminal law often functions as “a one-way ratchet” that ever expands and rarely restricts the scope of liability and punishment.³⁹ Politicians fear making retroactive changes in the law that could result in the release of someone who goes on to commit a future act of harm.⁴⁰ Narratives equating punishment with safety are pervasive, which can shape constituent demands. Institutional dynamics support this ratchet as well: “[P]rosecutors seek more and broader power to charge criminal conduct, and legislators oblige these prosecutors by creating vaguer laws that increase prosecutorial discretion to file more charges and seek more prison time.”⁴¹ This is true across the aisle.⁴²

Given these constraints, it is rare for legislation limiting criminal law or punishment to pass in the first session it is filed, and, indeed, this bill did not. However, WAJV’s organizing efforts have continued to grow: In the 2025–2026 legislative session, the bill was proposed again by Rep. Sabadosa and gained a new sponsor, Senator Liz Miranda.⁴³ At the time of this writing, the bill has advanced to the Senate Ways and Means

38. Both authors of this Article testified at the hearings. See *Hearing on H.3962*, *supra* note 19 (testimony of Caitlin Glass & Julian Green); *Criminal Procedure: Hearing on H.45 Before J. Comm. on the Judiciary*, 2023–2024 Leg., 193d Gen. Ct. (Mass. 2023) [hereinafter *Hearing on H.45*] (same); see also *Addressing Racialized Harms of Incarceration: CAR’s Caitlin Glass Testified in Front of Massachusetts Legislative Committee*, B.U. CTR. FOR ANTIRACIST RSCH. (Aug. 2, 2023), <https://web.archive.org/web/20250617220001/https://www.bu.edu/antiracism-center/2023/08/02/addressing-racialized-harms-of-incarceration-cars-caitlin-glass-testified-in-front-of-the-massachusetts-joint-committee> [<https://perma.cc/E58C-4MAG>].

39. Robert J. Smith et al., *State Constitutionalism and the Crisis of Excessive Punishment*, 108 IOWA L. REV. 537, 551 (2023) (quoting William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509 (2001)).

40. *Id.* at 548–50.

41. *Id.* at 551.

42. *Id.*

43. S.B. 1179, 2025–2026 Leg., 194th Gen. Ct. (Mass. 2025); see Ivy Scott, *Convicted of Murder Without Ever Killing, Joint Venturers are Petitioning the State House to Rethink the Law*, BOS. GLOBE (Feb. 10, 2024), <https://www.bostonglobe.com/2024/02/10/metro/convicted-murder-without-ever-killing-joint-venturers-are-petitioning-state-house-rethink-law> [<https://perma.cc/2NUU-5H6L>] (covering WAJV’s advocacy efforts).

Committee—already making it further in the legislative process than in the prior session.⁴⁴

Throughout their advocacy, the WAJV organizers have articulated what we describe in this Article as “the innocence trap”: the mismatch between a criminal charge, on the one hand, and community expectations about culpability and accountability, on the other. Several organizers emphasize that they were convicted of murder without having committed murder, thereby appealing to commonsense moral intuitions to illustrate something absurd, incoherent, and *wrongful* about their convictions.⁴⁵ The organizers’ arguments also reveal troubling problems with the process by which the State pursues joint venture charges. Since joint venturers are indicted for murder, some do not understand until the eve of trial that they can be convicted under a theory of liability that does not require proof that they killed anyone.⁴⁶ Finally, the coalition has highlighted how imputed liability murder doctrines encourage error, reinforce racial subordination, impose severe punishments, and impede transformative and restorative justice practices.⁴⁷

The WAJV organizers’ insights contest not only imputed liability murder doctrines as a substantive area of law, but also the conceptual boundaries of what the law accepts as wrongful convictions. To the extent imputed liability murder convictions are wrongful, then wrongful convictions are not limited to the context of factual innocence.

B. THE METHOD

This Article draws from two methodological frameworks: PLS and movement law. While distinct, both methods attend to the insights of legal thinkers outside of the legal academy.⁴⁸ In

44. Mass. S.B. 1179.

45. See Scott, *supra* note 43 (describing one organizer’s experience trying to explain to his daughter how he could be convicted of murder without ever killing anyone).

46. *Id.*

47. *Cf. id.* (Professor Caitlin Glass arguing that joint venture legal theory “leaves a lot more room for racial bias to fill in the gaps” in prosecutorial discretion).

48. In this sense, these methods are closely related to *demosprudence*: the study of how social movements contribute to the creation and interpretation of law. Guinier & Torres, *supra* note 16, at 2752; see Kempis Songster et al., *Participatory Law Scholarship as Demosprudence*, 110 VA. L. REV. ONLINE 298, 302

doing so, these methods challenge the epistemic hierarchies that generally pervade law and academia.⁴⁹ These methods also build on traditions of critical legal scholarship that has “long complicated conventional accounts of law—what it does and for whom and how it can and should change—with an eye toward collective struggle and ideation.”⁵⁰ We describe each method in turn and then explain how we have employed them.

1. Participatory Law Scholarship

PLS entails “legal scholarship written in collaboration with authors who have no formal training in the law but rather expertise in its function and dysfunction through lived experience.”⁵¹ Rachel López details the theory and practice of PLS in an essay following her experience coauthoring scholarship with Kempis Songster and Terrell Carter, two men serving LWOP sentences in a Pennsylvania prison where they led a group called the Right to Redemption Committee.⁵² The essay articulates the Committee’s conceptualization of redemption as a human right.⁵³ Extending Antonio Gramsci’s concept of “organic intellectuals”—people from subordinated groups who challenge dominant ideologies and advance transformative change—López describes her coauthors as “organic legal theorists, in that they

(2024), https://virginialawreview.org/wp-content/uploads/2024/11/SongsterLopezTorres_Book.pdf [<https://perma.cc/4S3H-M8XS>] (describing “PLS as a form of demsprudential praxis”).

49. See, e.g., Terrell Carter & Rachel López, *If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law and the Legal Academy*, 109 MINN. L. REV. 1, 25–54 (2024) (discussing “epistemic violence in the legal academy”); Saifee, *supra* note 16, at 61 (arguing that “legal scholars rarely consider people in prison to be thought leaders, let alone equal partners, in progressing toward a decarceral future”); S. Lisa Washington, Essay, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1134–49 (2022) (discussing epistemic injustice in the family regulation system); Hanan, *supra* note 16, at 1216 (describing a “mistrust of prisoner speech about prison conditions”).

50. Akbar et al., *supra* note 16, at 826–27; accord López, *supra* note 16, at 1817 (explaining that PLS “is informed by the tradition of Critical Race Theory (CRT), which at times employs storytelling to reveal alternative accounts of our social and legal realities”); Matsuda, *supra* note 16, at 325 (arguing that “the imagination of the academic philosopher cannot recreate the experience of life on the bottom” and that “[i]nstead we must look to . . . grass roots philosophers who are uniquely able to relate theory to the concrete experience of oppression”).

51. López, *supra* note 16, at 1803.

52. *Id.* at 1797; see Terrell Carter et al., *Redeeming Justice*, 116 NW. U. L. REV. 315, 324–35 (2021).

53. See Carter et al., *supra* note 52, at 323–37.

generate knowledge and liberatory theory through critical reflection on their lived experience.”⁵⁴

One purpose of PLS is to gain a clearer understanding of the law as it is through dialectical engagement.⁵⁵ PLS posits that collaborations between academic law scholars and organic legal theorists can produce a more “holistic and democratic” account of the law’s function and effects than solo-authored scholarship or collaborations between academics.⁵⁶ This is because organic legal theorists bring interpretive frameworks for legal meaning-making—what Robert Cover described in terms of *nomos* and narrative—that are generally not supplied by academic scholars alone.⁵⁷ Cover conceptualizes *nomos* as our normative world, including “the material world we inhabit and the imagined community we wish we did.”⁵⁸ Narratives are the collectively created “codes” that create our *nomos*.⁵⁹ As López puts it: “[W]hen a narrow group of elites—whether lawmakers, judges, or scholars—develop the law through their own *nomos* and narratives, the

54. López, *supra* note 16, at 1801 (citing ANTONIO GRAMSCI, *Intellectuals and Education*, in THE ANTONIO GRAMSCI READER: SELECTED WRITINGS, 1916–35, at 300, 304–05, 310 (David Forgacs ed., 2000)); accord Christina John et al., *Subversive Legal Education: Reformist Steps Toward Abolitionist Visions*, 90 *FORDHAM L. REV.* 2089, 2092 (2022) (defining and employing the concepts of “organic jurists” and “community legal writers” to describe the coauthors of the article, including “formerly incarcerated persons, legal fellows, legal workers, paralegals, a law student, recent law graduates, and a law professor”).

55. López, *supra* note 16, at 1805, 1818–20 (referencing PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 48 (Myra Bergman Ramos trans., 2014)).

56. *Id.* at 1820. bell hooks explains this phenomenon in the context of the classroom as follows:

[I]f I bring to the class only analytical ways of knowing and someone else brings personal experience, I welcome that knowledge because it will enhance our learning. . . . [I]f my knowledge is limited, and if someone else brings a combination of facts and experience, then I humble myself and respectfully learn from those who bring this great gift. I can do this without negating the position of authority professors have, since fundamentally, I believe that combining the analytical and experiential is a richer way of knowing.

BELL HOOKS, *Essentialism and Experience*, in *TEACHING TO TRANSGRESS* 77, 89 (1994).

57. López, *supra* note 16, at 1820–23; see Robert M. Cover, *Foreword: Nomos and Narrative*, 97 *HARV. L. REV.* 4, 7 (1983) (“The normative universe is held together by the force of interpretive commitments—some small and private, others immense and public. These commitments—of officials and of others—do determine what law means and what law shall be.”).

58. López, *supra* note 16, at 1821 (citing Cover, *supra* note 57, at 4, 9).

59. *Id.* (quoting Cover, *supra* note 57, at 10).

law can reflect a version of reality that is inapposite to the way people experience it in their daily lives.”⁶⁰ One objective of PLS, therefore, is to bring our knowledge of the law closer to the truth.

A second purpose of PLS is to encourage imagination of new possibilities for the law.⁶¹ Like Critical Race Theory and other critical legal traditions, PLS presents “neglected evidence,” revealing normative assumptions that have been baked into the law and presented as fact.⁶² Through PLS, organic legal theorists contribute their own *nomos* and narratives to “delegitimize legal structures that marginalize or dehumanize them.”⁶³ This process also invites both organic legal theorists and their academic collaborators to think beyond the constraints of law and the dominant *nomos* and narratives that frame it.

The method of PLS, like its epistemology, is relational.⁶⁴ The key to PLS is dialectical engagement between a law scholar and organic legal theorist that produces “critical legal imagination.”⁶⁵ Importantly, PLS is not about elevating the organic jurist as representative of a subordinated group.⁶⁶ Instead, PLS seeks to bring a broader range of *nomos* and narratives to a legal question and, through dialogue, co-create meaning.

2. Movement Law

Movement law is “a methodology for working alongside social movements within scholarly work.”⁶⁷ Conceptualized by Anna

60. *Id.* at 1823, 1844 (“[O]nly engaging with other academics in scholarship may have the unintended consequence of reinforcing white heteronormative subjectivity.”).

61. *Id.* at 1824 (“PLS proposes legal scholarship as one site where these new worlds of law can be imagined.”).

62. *Id.* at 1824; see RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY* 50 (3d ed. 2017) (“In legal discourse, preconceptions and myths, for example, about black criminality or Muslim terrorism, shape mindset—the bundle of received wisdoms, stock stories, and suppositions that allocate suspicion, place the burden of proof on one party or the other, and tell us in cases of divided evidence what probably happened.”).

63. López, *supra* note 16, at 1824.

64. Carter & López, *supra* note 49, at 9.

65. *Id.* at 10.

66. *Id.* at 13–14; see Rachel López, *Experiential Expertise in Law: What Lived Experience Can Teach*, 105 B.U. L. REV. 101, 106–10 (2025) (discussing the development of experiential expertise not through mere exposure as an individual, but through sustained inquiry and struggle that produces resonant ideas).

67. Akbar et al., *supra* note 16, at 825.

Akbar, Sameer Ashar, and Jocelyn Simonson in an article of the same name, movement law presents a scholarly process by which to “take seriously the epistemological universe of today’s left social movements, their imaginations, experiments, tactics, and strategies for legal and social change.”⁶⁸ Movement law is similar to PLS in that it recognizes the potential for legal thinkers from outside the academy to transcend normative thinking that reproduces the status quo.⁶⁹ Movement law’s distinguishing characteristic is that it emphasizes ideas that come from the *collective* thought of those who are closest to a problem and who are working engaged in efforts to address that problem.⁷⁰

There are four key aspects of movement law scholarship. First, movement law scholars pay attention to “existing modes of resistance as a source for new insights” about what the law is and what it could be.⁷¹ Second, movement law scholars study these modes of resistance, which may include “campaigns for legal and political change as well as prefigurative arrangements or experiments.”⁷² Third, movement law centers the “worldviews, source material, and intellectual traditions” of social movements as opposed to conventional legal sources of knowledge, thereby “[s]hifting the [e]pisteme.”⁷³ Finally, movement law—like PLS—is relational. It requires the legal scholar to “writ[e] in conversation rather than from above in critique.”⁷⁴ Through this solidaristic stance, scholars and movement leaders engage in a process of collective analysis, experimentation, and imagination.⁷⁵

68. *Id.* at 826.

69. *Id.* at 829.

70. *Id.*

71. *Id.*

72. *Id.* at 853.

73. *Id.* at 859; *see id.* at 862 (suggesting co-authorship with movement leaders as one means of shifting the episteme).

74. *Id.* at 864.

75. In this way, movement law and PLS may also be understood as forms of critical praxis—that is, employing critical theory toward transformative action. *See, e.g.*, BERNARD E. HARCOURT, CRITIQUE AND PRAXIS 17 (2020) (arguing that critical theory must “cultivate spaces where all can be heard, especially those who are most affected by our crises today” in order to meaningfully consider what should be done about those crises).

3. Applying PLS and Movement Law

Drawing on both the PLS and movement law frameworks, this Article arises from the work we have done in collaboration and solidarity with one another and with broader organized efforts to challenge imputed liability murder doctrines. Based on Caitlin's testimony at the State House, Julian reached out to her to ask for legal insights, and they drafted a bill to transform the charging and sentencing of joint venture murder. After they worked together for a while, Caitlin shared with Julian her observation that people challenging imputed liability murder convictions sometimes described those convictions as wrongful in some way. In some instances, the statements seemed to be traditional assertions of factual innocence or arguments about an erroneous application of the law; in other instances, it seemed that the person was asserting that *the law itself* produced wrongful convictions.⁷⁶ This observation was based not only on the WAJV organizers' testimony, but also other organizing efforts Caitlin had seen around the country. For example, Free Hearts, a Tennessee-based organization led by formerly incarcerated women of color, created a coalition called "Separate Acts, Separate Facts" to point out how imputed liability murder doctrines produce "unjust sentences."⁷⁷ Coalitions in California,⁷⁸ Minnesota,⁷⁹ and New York⁸⁰ have similarly emphasized the mismatch between the charge of murder and the actions of the accused in imputed liability murder cases.

We decided to collaborate on an article analyzing whether and how imputed liability convictions may be understood as wrongful. Our process involved regular phone calls and email exchanges in which we shared our questions and ideas with one another. Caitlin reviewed the WAJV organizers' legislative testimony and identified themes. Julian filled in gaps, suggested

76. See *infra* Part III.B.1.

77. Image posted by Free Hearts (@freeheartsorg), INSTAGRAM, *Separate Acts, Separate Facts* (Aug. 1, 2024), <https://www.instagram.com/freeheartsorg/p/C-IL0BG0abl> [<https://perma.cc/MW3G-YBYE>].

78. *About Us*, FELONY MURDER ELIMINATION PROJECT, <https://www.endfmrnow.org/about> [<https://perma.cc/6RXD-ZNAS>].

79. *Who is FMLR Minnesota?*, FELONY MURDER L. REFORM MINN., <https://fmlr.org/who-is-fmlr> [<https://perma.cc/M8YG-VYQQ>].

80. *Faces of the Felony Murder Law Campaign*, PRISONERS' BRAIN TR., <https://www.prisonersbraintrust.org/fml-campaign> [<https://perma.cc/J9PU-PYD4>].

alternative interpretations or framings, and conceptualized what we have come to call “the innocence trap.”⁸¹ Once we had developed a draft, we shared it with other members of WAJV and invited their ideas, corrections, or disagreements, which we have continued to discuss and incorporate through iterative revisions. In this way, the resulting Article reflects not only the co-ideation of its authors but also the collective thought of those who are part of the WAJV movement.

In alignment with PLS and movement law, this Article both advances knowledge of the law as it is and experiments with ideas about what the law can be.⁸² Through dialectical exchange, we have diversified the epistemic sources regarding imputed liability murder doctrines and, in doing so, produced a more comprehensive account of these doctrines.⁸³ We have also taken seriously the WAJV coalition’s advocacy—including their specific recommendations for changes to imputed liability murder laws and testimonies that prefigure an expansive conception of wrongful convictions.⁸⁴

In the Part that follows, we discuss reasons to explore a more expansive conception of wrongful convictions before turning to our theorization of imputed liability murder convictions as wrongful.

81. Notably, we initially had different definitions of “the innocence trap.” This Article reflects Julian’s definition of the “innocence trap” and our co-created analysis of the concept and its implications.

82. As we discuss in Part IV, aspects of the coalition’s organizing efforts are arguably reformist and, therefore, outside the focus of movement law laid out by Akbar, Ashar, and Simonson, who emphasize “movements that posit wholesale transformation rather than reform as their end goal.” Akbar et al., *supra* note 16, at 827. *But see id.* at 827 (noting that “[s]ocial movements exist on all sides of the political spectrum” and that “scholars across the ideological spectrum might claim movement law”). At the same time, the coalition’s advocacy efforts contest dominant narratives about wrongful convictions, accountability, and criminalization as a response to community harm. In this respect, our analysis aligns with movement law’s purpose to locate movements engaging in “experiments of resistance and contestation” and, in solidarity with those movements, consider their potential to transform legal thought. *Id.* at 859.

83. *See infra* Part III; *see also* López, *supra* note 16, at 1805 (“[L]egal scholars can better understand how the law functions in the world by examining it in concert with those who have experienced its bluntest consequences.”); Akbar et al., *supra* note 16, at 848 (arguing that attending to resistance “meaningfully diversifies the voices and sources within legal scholarship”).

84. *See infra* Part IV.

II. THE HARM OF A NARROW CONCEPTION OF WRONGFUL CONVICTIONS

The emergence of DNA testing in the late 1980s led to what many have described as an “innocence movement” in the United States, in which nonprofit organizations proliferated to provide representation in cases offering the promise of exoneration.⁸⁵ As discussed above, however, WAJV and other movements challenging imputed liability murder convictions have framed such convictions as wrongful in a way that pushes the bounds of traditional notions of innocence.⁸⁶ These organizers have suggested that the law itself may produce wrongful convictions.⁸⁷ In this Part, we suggest reasons to explore a broader conception of wrongful convictions that extends beyond cases involving factual innocence claims.

A. WRONGFUL CONVICTIONS AS FACTUAL INNOCENCE

“There is nothing more compelling than a story about an innocent person wrongly convicted and ultimately vindicated.”⁸⁸ Over a decade ago, Abbe Smith acknowledged the allure of innocence cases, even as she expressed her concerns about the innocence movement’s potential narrowing effects on the concept of wrongful convictions.⁸⁹ The idea of innocence captures the public imagination and brings critical attention to the criminal legal system’s harms. Stories of innocence invoke horror. People who otherwise have no experience with the criminal legal system may feel that they have something in common with the innocent

85. See Smith, *supra* note 1, at 316–17 (citing references to the “innocence movement” and “innocence revolution”); Medwed, *supra* note 1, at 1550–51 (describing the “innocence movement” and noting that “[i]t may not be farfetched to suggest, as others have done, that the effort to free the innocent has become the civil rights movement of the twenty-first century”).

86. See *supra* notes 76–80 and accompanying text.

87. See *infra* Part III.B.1.

88. Smith, *supra* note 1, at 315; see Medwed, *supra* note 1, at 1556 (“Critiques of the criminal justice system grounded in the desire for greater protection of defendants’ constitutional rights, say, stricter rules regarding police searches and seizures, certainly lack the intuitive, visceral appeal of allegations that innocent people have been convicted of crimes they did not commit.”).

89. Smith, *supra* note 1, at 325.

prisoners who find themselves in the crosshairs of the State through some fateful accident.⁹⁰

This visceral horror of an exoneration can motivate positive changes in the criminal legal system.⁹¹ Indeed, innocence cases illustrate not only tragic individual stories but broader institutional problems, including “inadequate standards and pay for court-appointed counsel, reliance on junk science, lack of safeguards in the use of eyewitness testimony, lack of safeguards in the use of snitch testimony, unreliable ‘confessions,’ and resistance by police and prosecutors to disclosing exculpatory material.”⁹² Exonerations may lead policymakers and the public—even true believers in criminalization and punishment—to support policy reforms that address the root causes of error.⁹³

At the same time, many scholars have argued that a focus on exonerations may obscure other types of wrongful convictions.⁹⁴ In this vein, Smith has argued that “[f]actual innocence has never been the gravamen of a wrongful conviction, and should not be.”⁹⁵ She asserts that “[c]onvictions are wrongful even if the convicted person is guilty when there is demonstrable unfairness” and “[i]mprisonment is wrongful if the person in prison is serving a sentence disproportionate to the circumstances of the

90. *Id.* at 315 (noting that innocence stories feature “[a]n ordinary citizen” who “is caught up in the criminal justice system through circumstances beyond his or her control”).

91. *Id.* at 317 (noting that the errors revealed through innocence cases have led to “important legislative changes and some new police practices”); *see id.* at 323 (“There is some evidence to suggest that, in the wake of DNA exonerations, juries are less inclined to impose death sentences.”).

92. *Id.* at 318.

93. *See* Medwed, *supra* note 1, at 1549–50 (noting that, by 2008, over forty state legislatures had passed statutes facilitating access to biological evidence for post-conviction DNA testing, and others had passed laws designed to prohibit or mitigate the use of unreliable evidence that contributes to wrongful convictions).

94. *See* Roberts, *supra* note 2, at 2504 (arguing that plea bargaining dynamics and constraints on defense representation “[c]reate a significant risk of convictions incurred in the absence of factual guilt”); Smith, *supra* note 1, at 329 (arguing that “the conviction of innocents is not the only thing wrong with our criminal justice system” and “may not even be the worst problem,” yet the innocence movement “may distract us” from addressing these broader harms). *But see* Medwed, *supra* note 1, at 1570 (arguing that innocentism—the centrality of innocence in discourses about the criminal legal system—may complement, rather than displace, efforts to address other aspects of criminalization and incarceration).

95. Smith, *supra* note 1, at 325.

crime or who the person is or has become.”⁹⁶ Other scholars have suggested that wrongful convictions should include those involving “legal innocence,” where a person did not have the requisite *actus reus* or *mens rea* necessary to be guilty of an offense, or “burden of proof innocence,” where the prosecution failed to prove those elements.⁹⁷ We contribute to this scholarship by exploring imputed liability convictions as another potential subtype of a broader category of wrongful convictions.⁹⁸

To be sure, there may be reasons to distinguish cases involving factual innocence from other types of wrongful convictions for the purpose of research and analysis. Skeptics of the innocence movement have challenged advocates’ data regarding exonerations.⁹⁹ Some advocates responded by limiting their data to factually certain exonerations, potentially contributing to the conceptual conflation of wrongful convictions with factual innocence.¹⁰⁰ Nevertheless, it seems feasible to embrace a broader conception of wrongful convictions without disregarding distinctions between these subtypes. We address the benefits of a broader conception of wrongful convictions in the next Section.

B. LOOKING BEYOND FACTUAL INNOCENCE

The concept of wrongful convictions shapes public and legal understandings of problems in criminal law that require

96. *Id.*; see Medwed, *supra* note 1, at 1555 (noting that criminal defense lawyers have questioned the innocence movement’s relationship to “cases where factual innocence does not lie at the crux: matters involving justification defenses, constitutional violations, and the like”).

97. Raymond, *supra* note 7, at 456; see BARRY SCHECK ET AL., ACTUAL INNOCENCE 222 (2000) (distinguishing between “legal innocence, in which a person who participated in a crime was charged incorrectly with the murder,” and “actual innocence”).

98. See *infra* Part IV.B.

99. Medwed, *supra* note 1, at 1559 (arguing in response to critiques that cases must be “vetted thoroughly before being characterized as true exonerations”).

100. Findley, *supra* note 1, at 1161 (“The DNA cases raised the expectation, for some, that ‘exoneration’ and ‘innocence’ are findings that can—and must—be established to levels of virtual certainty.”); Medwed, *supra* note 1, at 1552 (discussing scholars and commentators who “have studied individual cases treated as exonerations by innocence projects and suggested that, in their view, those cases do not unequivocally involve innocent defendants”).

intervention.¹⁰¹ A conception of wrongful convictions that extends beyond factual innocence offers several potential benefits.

First, a broader conception of wrongful convictions could mitigate material and dignitary harm experienced by people who understand their convictions to be wrongful in ways not recognized by the law. In the context of sentencing, clemency, and parole proceedings, if a person's description of their conviction as wrongful does not map onto common or legal understandings of wrongful convictions, then the person may be perceived as failing to take accountability, resulting in a longer sentence or the denial of early release.¹⁰² In turn, the specter of these consequences deters people from articulating why they understand their criminalization to be wrongful. In this way, a narrow conception of wrongful convictions can produce not only longer periods of incarceration but also what Terrell Carter and Rachel López describe as "legal smothering," a form of epistemic injustice in which "a testifier engages in self-censorship out of fear of the consequences of [their] speech."¹⁰³ Legal smothering harms both people with criminal convictions who seek to share their insights and the broader public who could benefit from those insights.¹⁰⁴ A broader conception of wrongful convictions invites assertions of wrongfulness, rather than silencing them.

Second, a broader conception of wrongful convictions considers ways that technically accurate applications of criminal law may still be conceptually, philosophically, or morally repugnant. A definition of wrongful convictions that turns on accuracy avoids deeper questions about who, why, and how we punish. Reforms based on accuracy alone will leave in place many of the criminal legal system's harms while giving the illusion of

101. See Cover, *supra* note 57, at 4–5 ("No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning.").

102. We are grateful to Perry Moriearty for raising this point.

103. Carter & López, *supra* note 49, at 33.

104. M. Eve Hanan, *Talking Back in Court*, 96 WASH. L. REV. 493, 547 (2021) (arguing that contestation is "an assertion of the humanity of the speaker" and a "demonstration of agency"); Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1486 (2005) (arguing that there are "[f]ree speech concerns" when criminal defendants are silenced "because the criminal justice system—its value judgments and its place within the political economy—is deprived of the challenges that defendant voices might pose," thereby inflicting a "democratic and dignitary loss").

progress.¹⁰⁵ Moreover, the perception that wrongful convictions are “episodic” rather than “endemic” can lead to arguments that “some degree of error is inevitable and, possibly, acceptable.”¹⁰⁶ Even for those who find error to be unacceptable, stories of exonerations suggest that the post-conviction process is an effective one and that the system eventually self-corrects.¹⁰⁷ A broader conception of wrongful convictions may elucidate wrongs perpetuated not by the dysfunction but the function of criminal law.

Third, a broader conception of wrongful convictions could help counter cognitive biases and social meta-narratives that separate those who are deserving of relief from those who are not.¹⁰⁸ Although there is an extremely high number of incarcerated people in the United States, policing and criminalization are concentrated in poor, primarily Black and Brown communities.¹⁰⁹ The result is that many people outside of those

105. See Akbar, *supra* note 8, at 2516 (distinguishing between non-reformist reforms, which “change the essential character of a system,” and reformist reforms, which seek to “improve it”); Karakatsanis, *supra* note 8, at 929–35 (discussing reforms and their drawbacks, in contrast to transformative interventions); Butler, *supra* note 8, at 1425 (“[M]any of the problems identified by critics are not actually problems, but are instead integral features of policing and punishment in the United States.”).

106. Medwed, *supra* note 1, at 1553–54; see *Gregg v. Georgia*, 428 U.S. 153, 226 (1976) (White, J., concurring) (upholding the death penalty while acknowledging that “[m]istakes will be made and discriminations will occur which will be difficult to explain”).

107. Medwed, *supra* note 1, at 1557 (noting that exonerations “suggest[] that the post-conviction process serves an effective corrective function—that, under the current regime, justice will be served, albeit delayed”); Smith, *supra* note 1, at 315–16 (noting that exonerations can “lead apologists for the system—even police and prosecutors implicated in the wrongful conviction—to proudly declare that the system ‘worked’”); Steiker & Steiker, *supra* note 1, at 622 (discussing how the eventual use of pre-conviction DNA testing can give the impression that errors in the administration of the death penalty are fixed, thereby entrenching capital punishment); Raymond, *supra* note 7, at 451 (“[F]ar from suggesting that the system is irreparably broken, the innocence movement suggests, instead, that the system works.”).

108. By social meta-narratives, we mean accepted frameworks that explain why the world is the way it is and, in doing so, “legitimize specific knowledges and practices.” Jordan Blair Woods, *Metanarratives of Traffic Policing*, 53 CONN. L. REV. 645, 651 (2021). One value of critical theory and praxis—including through methods like PLS and movement law—is to challenge universalist assumptions and reshape these narratives through engagement with a broader range of epistemic sources. See *supra* Part 1.B.1–2.

109. See, e.g., Rachel Foran et al., *Abolitionist Principles for Prosecutor Organizing: Origins and Next Steps*, 16 STAN. J. C.R. & C.L. 496, 530 (2021)

communities have not been directly impacted by incarceration. The resonance of innocence reflects the tendency of observers to “empathize with the harms that they fear could happen to themselves” and not the harms that happen to those they perceive as “bad people” based on stigmas associated with criminalization.¹¹⁰ By trafficking in these psychological dynamics, which are often racialized, an emphasis on factual innocence risks fueling indifference to aspects of the criminal legal system that harm those who are not—or cannot prove themselves to be—innocent.

Finally, a broader conception of wrongful convictions may support efforts to expand post-conviction review to cases that

(discussing the “severe investment in policing, surveillance, militarization, and incarceration” and “deliberate disinvestment in poor communities of color”).

This Article discusses the ways that false and harmful stereotypes regarding Black and Latinx people may influence imputed liability murder charges and convictions. *See infra* Part III.B.4. However, we use the more general term “Brown” when describing communities impacted by imputed liability murder because people may be racialized in a manner that is out of step with how they racially identify. For example, a prosecutor or juror may consciously or subconsciously associate a Southeast Asian person with anti-Black and anti-Latinx stereotypes. Although the term “Brown” does not refer to a specific cultural group, we choose to capitalize the term because of its reference shared or overlapping experiences of discrimination. *See* Hugo Balta, *Capitalize the B in Brown*, CHI. REP. (Jan. 13, 2022), <https://www.chicagoreporter.com/capitalize-the-b-in-brown> [<https://perma.cc/ESC7-UC85>] (“Yes, Brown people come from many countries, cultures, and ethnicities and should always first be identified by what makes them unique. But in the U.S., they’re discriminated against as a group, and as such, deserve the dignity of an uppercase B.”); *cf.* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (explaining that “Black” should be capitalized because “Blacks, like Asians . . . constitute a specific cultural group and, as such, require denotation as a proper noun”). We capitalize the term “White” because it is its own socially constructed category. *See* LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 568–69 n.1 (2021) (“Choosing to not capitalize White while capitalizing other racial and ethnic identifiers would implicitly affirm Whiteness as the standard and the norm.”); Matiangai Sirleaf, Letter to the Editor, *Rendering Whiteness Visible*, 117 AM. J. INT’L L. 484, 484 (2023) (“The process of racialization does not only manifest through discrimination. It also occurs through a shared relative position of privilege as compared to another group(s). . . . The move to capitalize White challenges global conventions informed by anti-Blackness and White supremacy that seek to race certain groups of people and leave Whiteness untouched.”). We are grateful to Eric Paris Whitfield for his engagement regarding these choices.

110. Steiker & Steiker, *supra* note 1, at 597; *see, e.g.*, Buck v. Davis, 580 U.S. 100, 121 (2017) (describing the “powerful racial stereotype” that Black men are “violence prone” (quoting Turner v. Murray, 476 U.S. 28, 35 (1986) (plurality opinion))); Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987, 990–1012 (2019) (discussing negative perceptions associated with arrests).

lack proof of factual innocence. Carol Steiker and Jordan Steiker argue that a “focus on truth-seeking rather than vindication of constitutional rights *per se*” has contributed to jurisprudence precluding people with criminal convictions from bringing constitutional challenges absent a showing of innocence.¹¹¹ For example, in the 1970s and 1980s, the U.S. Supreme Court incorporated the requirement that defendants asserting constitutional challenges demonstrate not only that their rights were violated, but that for the constitutional violation, there was “reasonable probability” that they would have been acquitted.¹¹² Around the same period, the Court narrowed the availability of federal habeas review except for those presenting “actual innocence” claims.¹¹³ Congress codified and further narrowed the scope of habeas review.¹¹⁴ By pushing back against the narrative that a wrongful conviction can only be one demonstrating actual innocence, a broader framework for wrongful convictions could support efforts to expand eligibility for post-conviction relief to more cases, including those that do not involve proof of exoneration.¹¹⁵

In the next Part, we argue that imputed liability murder convictions may be understood as wrongful. We then discuss the implications of our argument with respect to the concept of wrongful convictions more broadly.

III. THEORIZING THE WRONGFULNESS OF IMPUTED LIABILITY MURDER CONVICTIONS

This Part begins by explaining what imputed liability murder doctrines are, before turning to our theorization of why

111. Steiker & Steiker, *supra* note 1, at 609.

112. The “reasonable probability” of acquittal requirement is absorbed into the prejudice prong of the ineffective assistance of counsel standard set forth in *Strickland v. Washington*, 466 U.S. 668, 691–96 (1984), as well as in the materiality prong of the exculpatory evidence analysis set forth in *Brady v. United States*, 397 U.S. 742 (1970), and its progeny. Steiker & Steiker, *supra* note 1, at 613.

113. Steiker & Steiker, *supra* note 1, at 609.

114. *Id.*

115. *See id.* at 616 (“We think that there are good reasons to empower criminal defendants with the ability to challenge police and prosecutorial misconduct, racial discrimination and disparity, and structural inequities in the criminal process, even when such challenges might undermine the validity of otherwise accurate criminal convictions.”).

convictions arising from these doctrines may be understood as wrongful.

A. IMPUTED LIABILITY MURDER

The imputed liability murder doctrines of accomplice liability murder and felony murder allow a person to be convicted of murder even if they did not kill anyone.¹¹⁶ These doctrines reflect the premise that if a person aids one who commits murder or engages in a reckless felony that results in a death (whether intentional or accidental), that person should be held liable for murder.¹¹⁷ In many states, this means courts may sentence someone who never killed anyone to life or LWOP—sometimes pursuant to a mandatory sentencing scheme.¹¹⁸

Felony murder and accomplice murder are two imputed liability murder doctrines that are controversial and long criticized but also deeply entrenched in criminal law.¹¹⁹ These doctrines

116. This Article focuses on the doctrines of felony murder and accomplice murder because they are at the heart of WAJV's organizing efforts, but it is important to note that there are other types of imputed liability offenses. *See supra* note 9. Perhaps most notably, conspiracy doctrine produces convictions that suffer from many of the same problems as those discussed here. *See* Evan D. Bernick, *Conspiracy Abolition*, VA. L. REV. (forthcoming 2026) (manuscript at 51–57) (discussing the unsubstantiated benefits of conspiracy doctrine); Joshua Dressler, *Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem*, 37 HASTINGS L.J. 91, 91 n.1 (1985) (noting that several arguments challenging the theoretical foundations of accomplice liability apply to conspiracy as well). This is especially true in jurisdictions that adopt the *Pinkerton* doctrine of derivative liability, which permits a conspirator to be convicted of a substantive offense committed by a co-conspirator, even if that offense was outside the scope of the conspiratorial plan. *Pinkerton v. United States*, 328 U.S. 640, 647 (1946).

117. *See* Commonwealth v. Zanetti, 910 N.E.2d 869, 881 (Mass. 2009) (“[W]e renounce the false distinction between a principal and an accomplice, and have recognized that the accomplice commits the crime no less than the principal”); Guyora Binder, *Making the Best of Felony Murder*, 91 B.U. L. REV. 403, 408 (2011) (“Felony murder liability can be justified by the plausible moral intuition that blame for causing harm is properly affected by our evaluation of the actor’s aims.”); *see also id.* at 410 (suggesting that felony murder charges should only rest on felonies that “aim[] at some other wrongful end that justified aggravating a resulting death to murder”).

118. *See, e.g.*, MASS. GEN. LAWS. ANN. ch. 265, § 2 (West 2025) (imposing LWOP for first-degree murder convictions, and life for second-degree murder convictions).

119. *See* Moriearty et al., *supra* note 9, at 685–97 (providing an overview of critiques of imputed liability murder doctrines); *see also* Charles F. Capps, *Rethinking Accomplice Liability*, 56 ARIZ. ST. L.J. 1, 3 (2024) (stating that

are not rare or exceptional sub-types of murder; they are commonplace. One study analyzing a decade of Minnesota data showed that over seventy percent of murder charges involved a charge of felony murder, accomplice liability, or both.¹²⁰

While distinct, both doctrines deviate from the general requirement that the State prove criminal liability through evidence of both a person's acts (*actus reus*) and some culpable mental state (*mens rea*).¹²¹ For this reason, these doctrines each "sit at the fulcrum of the criminal legal system's false promise of individualized moral culpability."¹²² The result is that a person may face extreme punishment for death that was unintended,¹²³ caused by another,¹²⁴ or both.¹²⁵

commentators have described the law of accomplice liability as "vexing,' 'a disgrace,' 'extraordinarily difficult,' a 'Gordian knot' and a scene of 'chaos'" (footnotes omitted); Sherif Girgis, Note, *The Mens Rea of Accomplice Liability: Supporting Intentions*, 123 YALE L.J. 460, 462 (2013) (noting that the rationale for accomplice liability "has beset courts and commentators for more than a century"); Guyora Binder, *The Culpability of Felony Murder*, 83 NOTRE DAME L. REV. 965, 981 (2008) ("[C]riminal law theorists have almost unanimously condemned felony murder as a form of strict liability."); Dressler, *supra* note 116, at 93 ("[O]ur basic legal assumptions regarding the appropriate guilt and punishment of accomplices are quite possibly wrong.").

120. Moriearty et al., *supra* note 9, at 708.

121. See *Fowler v. Padget* (1798) 101 Eng. Rep. 1103, 1106, 7 Term Rep. 509, 514 (Gr. Brit.) ("[I]t is a principle of natural justice, and of our law, that *actus non facit reum nisi mens sit rea*. The intent and the Act must both concur to constitute the crime . . ."); Robinson, *supra* note 9, at 611 ("Typically, the set of elements defining a crime comprise what may be called the *paradigm* of liability for that offense: An actor is criminally liable if and only if the state proves all these elements.").

122. G. Ben Cohen et al., *Racial Bias, Accomplice Liability, and the Felony Murder Rule: A National Empirical Study*, 101 DENV. L. REV. 65, 74 (2024).

123. See, e.g., Brief of Amici Curiae Campaign for Fair Sentencing of Youth et al. at 2–3, *People v. Joseph*, No. 2018-4813 (NY App. Div. Dec. 13, 2024) (addressing a felony murder conviction in a case involving a justification defense).

124. See, e.g., Alisa Bierria & Colby Lenz, *Battering Court Syndrome: A Structural Critique of "Failure to Protect,"* in THE POLITICIZATION OF SAFETY 91, 99–101 (2019) (describing Kelly Ann Savage, a woman who was convicted of accomplice liability murder for leaving her four year old son with her abusive husband while she ran errands—an act that was part of a safety plan she had developed with a domestic violence hotline in preparation for leaving her husband the next day).

125. See, e.g., Sarah Stillman, *Sentenced to Life for an Accident Miles Away*, NEW YORKER (Dec. 11, 2023), <https://www.newyorker.com/magazine/2023/12/18/felony-murder-laws> [<https://perma.cc/L2DK-WP8V>] (discussing the case of Sadik Baxter, who was convicted of felony murder based on an accidental car crash caused by his co-defendant).

Imputed liability doctrines expand the reach of the carceral state.¹²⁶ These doctrines create more “punishable people”—something that scholars Alisa Bierria and Colby Lenz describe as “culpability inflation.”¹²⁷ In particular, Bierria and Lenz, along with others like Leigh Goodmark, highlight the doctrines’ criminalization of survivors of domestic violence, trafficking, or other forms of abuse—criminalization that arises from a survivor’s proximity to violence or coerced participation in violence.¹²⁸ Other scholars emphasize the doctrines’ criminalization of youth, whose developing brains are susceptible to peer pressure and unable to forecast remote future events.¹²⁹ Still others demonstrate ways that racial bias and structural racism play into imputed liability murder prosecutions.¹³⁰

Grappling with the effects of these doctrines, courts and scholars have described them as “injudicious and unprincipled,”¹³¹ “monstrous,”¹³² and “a disgrace.”¹³³ In the following Subsections, we briefly describe each doctrine and its

126. Here, we adopt Marie Gottschalk’s definition of the carceral state as including not only “the country’s vast archipelago of jails and prisons, but also the far-reaching and growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship.” MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 1 (2015); see Esther Hong, *The Carceral State(s)*, 30 MICH. J. RACE & L. 1, 7–16 (2025) (discussing widely varying definitions of the term carceral state).

127. Bierria & Lenz, *supra* note 124, at 97.

128. *E.g.*, *id.* at 97–98; LEIGH GOODMARK, *IMPERFECT VICTIMS* 77 (2023); see *infra* Part III.B.5.

129. *E.g.*, Moriearty et al., *supra* note 9, at 689–90; Beth Caldwell, *The Twice Diminished Culpability of Juvenile Accomplices to Felony Murder*, 11 U.C. IRVINE L. REV. 905, 907 (2021); Dawn Delfin McDaniel, *Risk and Protective Factors Associated with Gang Affiliation Among High-Risk Youth: A Public Health Approach*, 18 INJ. PREVENTION 253, 255 (2012); see *infra* Part III.B.5.

130. *E.g.*, Guyora Binder & Alexandra Harrington, *Racially Disparate and Disproportionate Punishment of Felony Murder: Evidence from New York*, 110 IOWA L. REV. 1055, 1061 (2025); Cohen et al., *supra* note 122, at 75; Moriearty et al., *supra* note 9, at 681; Guyora Binder & Ekow N. Yankah, *Police Killings as Felony Murder*, 17 HARV. L. & POL’Y REV. 157, 206 (2022); see *infra* Part III.B.4.

131. *People v. Aaron*, 299 N.W.2d 304, 334 (Mich. 1980) (Ryan, J., concurring in part and dissenting in part) (describing felony murder).

132. Nelson E. Roth & Scott E. Sundby, *The Felony-Murder Rule: A Doctrine at a Constitutional Crossroads*, 70 CORNELL L. REV. 446, 446 (1985) (quoting 3 JAMES FITZJAMES STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND* 57, 65 (1883)).

133. Joshua Dressler, *Reforming Complicity Law: Trivial Assistance as a Lesser Offense?*, 5 OHIO ST. J. CRIM. L. 427, 427 (2008).

discontents. We then engage with the WAJV organizers' insights about these doctrines and, in Part IV, discuss how these insights can inform legislative reforms of imputed liability murder doctrines and constitutional challenges to the punishments these doctrines impose.

1. Accomplice Liability Murder

The accomplice liability doctrine allows a person (the accomplice) to be held liable for the conduct of another (the principal) if the prosecution proves that the accomplice “participated in some way” in an offense and shared the mental state of the principal who committed the offense.¹³⁴ Generally, the mental states giving rise to a murder conviction include deliberate premeditation, extreme atrocity or cruelty, or malice.¹³⁵

A person who is prosecuted as an accomplice is not convicted of a stand-alone offense that punishes the act of assistance.¹³⁶ Instead, the accomplice is held as responsible as the principal for the offense, convicted of the same offense as the principal, and

134. See *Commonwealth v. Bonner*, 182 N.E.3d 311, 319–20 n.10 (Mass. 2022) (describing the elements of accomplice liability in Massachusetts); see also JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* 480 (5th ed. 2009) (“The *mens rea* of accomplice liability is usually described in terms of ‘intention.’”); MODEL PENAL CODE § 2.06(3)–(4) (AM. L. INST. 1985) (articulating a two-pronged test for the *mens rea* of accomplice liability: (1) The defendant must have “the purpose of promoting or facilitating the commission of the offense,” and (2) with respect to result elements of a crime, the defendant must have acted “with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense”). Some states have adopted even more expansive versions of accomplice liability that hold the accomplice responsible for not only the intended results of the offense, but also any “natural and probable consequences” of that offense. Moriearty et al., *supra* note 9, at 685–97 (quoting John F. Decker, *The Mental State Requirement for Accomplice Liability in American Criminal Law*, 60 S.C. L. REV. 237, 242 (2008)). Similarly, the *Pinkerton* doctrine allows accomplices to “be convicted of any substantive offenses that are ‘within the scope’ or are ‘reasonably foresee[able]’ as a ‘necessary or natural consequence’” of a conspiracy. Moriearty et al., *supra* note 9, at 696 (alteration in original) (quoting *Pinkerton v. United States*, 328 U.S. 640, 647–48 (1946)).

135. In Massachusetts, malice is defined as intent to kill, intent to cause grievous bodily harm, or intent to do an act that a reasonable person would have known created a plain and strong likelihood of death. MODEL JURY INSTRUCTIONS ON HOMICIDE 42–74 (MASS. SUPREME JUD. CT. 2018); see MASS. GEN. LAWS. ANN. ch. 265, § 1 (West 2025) (defining first- and second-degree murder).

136. See Sanford H. Kadish, *Complicity, Cause and Blame: A Study in the Interpretation of Doctrine*, 73 CALIF. L. REV. 323 (1985) (developing analytical framework to interpret the doctrine of complicity).

“punished in the manner provided for the punishment of the principal.”¹³⁷ This Article focuses on the context of murder offenses in particular because murder convictions generally result in severe mandatory minimum penalties—including life or LWOP sentences, also known as “death-by-incarceration”¹³⁸—and, therefore, present particular concerns about the accomplice liability doctrine’s lack of differentiation between accomplices and principals.

Accomplice liability has evolved over time to become more expansive and punitive. Early iterations of accomplice liability in common law “distinguished between ‘principals’ who were either of the first degree or of the second degree and ‘accessories,’ who were either ‘before the fact’ or ‘after the fact.’”¹³⁹ This resulted in complicated distinctions based primarily on whether the accessory was at the scene of the offense, resulting in legal fictions like “constructive presence”¹⁴⁰ and anomalous outcomes, in which an accessory-before-the-fact would face a lesser penalty even if they were the more culpable party.¹⁴¹ Other perceived problems with these distinctions include “jurisdictional difficulties (an accessory could be tried only in the State where his acts took place, which could be a different State from the one where the felony was committed)” and “variances between charge and proof (a principal could not be convicted on proof that he was an accessory and vice versa).”¹⁴²

137. MASS. GEN. LAWS. ANN. ch. 274, § 2 (West 2025); see *Commonwealth v. Zanetti*, 910 N.E.2d 869, 883 (Mass. 2009) (“[T]he spirit behind the common law as now reflected in the aiding and abetting statute, G.L. c. 274, § 2, which declares the aider and abettor to be as culpable as the chief perpetrator of the offense. . . . ‘is to hold the criminal actor who participates in a felony liable as a principle without regard to whether the felony is completed or committed by another.’” (quoting *Commonwealth v. Ortiz*, 679 N.E.2d 1007, 1010 (Mass. 1997))).

138. See *Carter et al.*, *supra* note 52, at 347–49 (discussing the landscape of death-by-incarceration sentencing in the United States).

139. *Dressler*, *supra* note 116, at 94–95.

140. *Id.* at 95 n.16.

141. *Ortiz*, 679 N.E.2d at 1010 n.6 (citing R.M. PERKINS & R.N. BOYCE, *CRIMINAL LAW* 764 (3d ed. 1982)); see *Dressler*, *supra* note 116, at 96 (describing these distinctions as “morally counterintuitive and probably empirically indefensible,” since presence at the scene of an offense is only one factor on which to assess an actor’s culpability—a factor that may or may not correlate with conceptions of moral blameworthiness or receptiveness to deterrence).

142. *Ortiz*, 679 N.E.2d at 1010 n.5.

As discussed above, legislative reform in Massachusetts and elsewhere resulted in the abolition of legal distinctions between principals in the first degree, principals in the second degree, and accessories before the fact.¹⁴³ However, if the intent of eliminating these distinctions was to align accomplice liability with moral culpability, these reforms failed. As scholar Joshua Dressler has pointed out, “the rush to repeal indefensible distinctions was so powerful that there appears to have been no legislative consideration of other theories that may justify distinctions between parties.”¹⁴⁴ Dressler argues that a more reasonable alternative theory would apportion criminal liability and punishment for accomplices based on their causal contribution to the alleged harm.¹⁴⁵

As it stands, several counterintuitive consequences flow from the premise that accomplices and principals are interchangeable. For example, the prosecution need not notify the accused in advance of trial whether they are being prosecuted as a principal or an accomplice.¹⁴⁶ Likewise, a jury may convict a person of murder without unanimity as to whether the person was a principal or accomplice.¹⁴⁷ A person may be convicted as an

143. See *supra* Part I.A.

144. Dressler, *supra* note 116, at 98; see Rachel Still, *Coercion, Control, and Criminal Law: Rethinking Accomplice Liability and Duress for Intimate Partner Violence Survivor-Defendants*, 30 LOY. PUB. INT. L. REP. 96, 111 (2024) (“The erasure of nuanced distinctions [within accomplice liability] further entrenches a system that prioritizes efficiency over justice, disproportionately impacting individuals whose actions are shaped by coercive and abusive dynamics.”).

145. Dressler, *supra* note 116, at 93.

146. See, e.g., *Taylor v. Powell*, 7 F.4th 920, 934 (10th Cir. 2021) (stating that notice of intent to pursue a theory of accomplice liability must be given “prior to the close of trial”); *Commonwealth v. Zanetti*, 910 N.E.2d 869, 874 (Mass. 2009) (noting, in this case, that the prosecution proceeded on a theory of principal liability and, in the alternative, accomplice liability and that “[t]he judge presented both alternatives to the jury in his instructions” and “[t]he jury verdict slip was written so that the jury could make this choice”); *Baker v. State*, 905 P.2d 479, 488 (Alaska Ct. App. 1995) (finding that indictment for robbery was sufficient to notify the defendant that he could be prosecuted as an accomplice, even though “the prosecutor announced at trial that the State viewed Baker as a principal, not an ‘accomplice’”).

147. See, e.g., *Commonwealth v. Santos*, 797 N.E.2d 1191, 1198 (Mass. 2003) (“While we sometimes use the term ‘theory’ of principal liability or ‘theory’ of joint venture, those are not alternate, differing ‘theories’ of the crime that are to be subjected to the specific unanimity and verdict slip requirements . . .”). *But see Zanetti*, 910 N.E.2d at 887–88 (Cowin, J., dissenting) (“In my view,

accomplice even if the principal was never charged or was acquitted.¹⁴⁸ In sum, the doctrine affords broad prosecutorial discretion to cast a wide net around any homicide and pursue murder charges under multiple theories.

2. Felony Murder

The felony murder doctrine suffers from many of the same dynamics as accomplice liability murder, in that it reduces the legal elements that the State must prove in order to obtain a murder conviction—thereby expanding the scope of people subjected to the harshest available punishments our legal system permits.

The felony murder doctrine allows the State to convict a person of murder if the prosecution proves that the person participated in a felony and a death occurred during that felony.¹⁴⁹ It does not matter whether the death was accidental or intentional.¹⁵⁰ In some states, it also does not matter whether the person who caused the death was one of the participants in the felony or a third party, like a police officer.¹⁵¹ Qualifying underlying felonies are theoretically limited to those that “inherently involv[e] . . . violence or destruction.”¹⁵² In practice,

commission of crimes as a principal or as a joint venturer involves more than simply different theories; the acts are in fact different crimes, with different elements, each of which must be proved by the Commonwealth beyond a reasonable doubt. They require different instructions by the trial judge. The fact that the penalties for the crimes are the same does not transform them into a single offense.”)

148. See, e.g., *Commonwealth v. Bianco*, 446 N.E.2d 1041 (Mass. 1983) (allowing for prosecutions pursuant to accomplice liability where several individuals were present, but there was no evidence that specifically identified any participants as a principal).

149. Rudolph J. Gerber, *The Felony Murder Rule: Conundrum Without Principle*, 31 ARIZ. ST. L.J. 763, 763 (1999).

150. *Id.*; see Binder, *supra* note 117, at 405–07 (discussing examples of felony murder convictions arising from unforeseeable deaths).

151. Under what is known as the “proximate cause theory,” nineteen states allow participants in a felony to be convicted of murder in cases where the death was caused by a third party. *Policy Map, FELONY MURDER L.*, <https://felonymurderlaws.com/learn> [<https://perma.cc/3DGH-WLYY>]; see Binder & Yankah, *supra* note 130, at 208–23 (discussing how the proximate cause theory arguably facilitates racially biased policing and prosecution).

152. See Binder, *supra* note 119, at 1045; see also *id.* at 967 (providing what the author describes as a “long-missing principled defense of the felony murder doctrine” by arguing that “felony murder liability is deserved for those who negligently cause death by attempting felonies inherently involving (1) violence or

however, many such felonies—like burglary and robbery—are committed without any violence at all.¹⁵³

In this way, the felony murder doctrine, like accomplice liability, reduces the elements that prosecutors must prove in order to get a conviction. Depending on the state, people who are convicted of felony murder generally face extreme sentences.¹⁵⁴ In many places, these sentences include the death penalty and LWOP.¹⁵⁵ This means that a person who deliberately kills during a felony would face the same penalty as another participant in the felony who had no knowledge of his co-defendant's plans. The story of Sadik Baxter and O'Brien Oakley, highlighted in a Pulitzer Prize-winning article by Sarah Stillman, is illustrative of the features that define the felony murder doctrine.¹⁵⁶ Mr. Baxter and Mr. Oakley had been rifling through unoccupied cars for cash—technically a burglary—when police appeared and Mr. Oakley fled.¹⁵⁷ Mr. Baxter, then just twenty-five years old, was

destruction and (2) an additional malign purpose independent of injury to the victim killed”).

153. For example, a study by the U.S. Department of Justice's Bureau of Justice Statistics examining burglaries that occurred between 2003 and 2007 found that “[a]n estimated 3.7 million household burglaries occurred,” that a person was home during “roughly 1 million” of those burglaries, and that of the 1 million burglaries where a household member was present, 266,560 involved violence. SHANNAN CATALANO, U.S. DEPT OF JUST., OFF. OF JUST. PROGRAMS, NCJ 227379, NATIONAL CRIME VICTIMIZATION SURVEY: VICTIMIZATION DURING HOUSEHOLD BURGLARY 1 (2010), <https://bjs.ojp.gov/content/pub/pdf/vdhh.pdf> [<https://perma.cc/936J-2SG4>]. This means that violence occurred in *less than eight percent* of burglaries over the studied time period. *See id.* at 3 (emphasis added).

154. While some states have stand-alone felony murder laws, in most places, felony murder is imposed as a subsection of the state's first- or second-degree murder laws. *See Moriearty et al.*, *supra* note 9, at 691–94 (discussing punishments imposed for felony murder convictions); *Policy Map*, *supra* note 151 (policy map listing the felony murder laws for each of the forty-eight states that have such a law). *Compare* CONN. GEN. STAT. ANN. §§ 53a–54c (West 2025) (example of a stand-alone felony murder statute), *with* FLA. STAT. ANN. § 782.04 (West 2025) (example of felony murder as part of a first-degree murder statute).

155. While the U.S. Supreme Court held in 1982 that the Eighth and Fourteenth Amendments prohibited states from executing accomplices who did not kill, attempt to kill, or intend to kill, *Enmund v. Florida*, 458 U.S. 782, 801 (1982), it walked back that decision five years later in a decision affirming the constitutionality of the death penalty as applied to accomplices who acted with “reckless indifference to human life” and were major participants in the felony. *Tison v. Arizona*, 481 U.S. 137, 158 (1987).

156. *See* Stillman, *supra* note 125.

157. *Id.*

handcuffed and put in the back of a police car.¹⁵⁸ Officers, in contravention of their own department's policy, got into a high-speed chase with Oakley, who lost control of the car and killed two cyclists.¹⁵⁹ Although Mr. Baxter's actions and intent were limited to the burglary of unoccupied cars, and although Mr. Baxter was handcuffed and immobilized at the time of the car crash, and although the crash itself was unintentional, both Mr. Baxter and Mr. Oakley were convicted of first-degree murder pursuant to the felony murder doctrine.¹⁶⁰ They were sentenced to LWOP—the mandatory penalty for first-degree murder in Florida, where this all occurred.¹⁶¹

Notably, other criminal statutes cover the same conduct that is punished so severely by felony murder laws. In the cases of Mr. Baxter and Mr. Oakley, for example, the prosecution could have potentially charged them with manslaughter or could have charged Mr. Baxter with burglary alone.¹⁶² Manslaughter carries a mandatory minimum sentence of fifteen years in prison, and burglary of a conveyance carries a maximum five-year penalty—both a far cry from death-by-incarceration.¹⁶³ This case illustrates just a few ways that the felony murder doctrine produces outcomes that challenge common conceptions of culpability and punishment.

3. Theoretical Foundations of Imputed Liability Murder Doctrines

The theoretical justifications for imputed liability murder doctrines are primarily grounded in the concepts of retribution and deterrence.¹⁶⁴ From a retributive perspective, it may be

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *See* FLA. CRIM. JURY INSTRUCTIONS § 7.7 (FLA. SUPREME CT. CRIM. JURY INSTRUCTIONS COMM. 2025) (explaining that the State may prove manslaughter by showing “[t]he death of [the] (victim) was caused by the culpable negligence of [the] (defendant)”).

163. FLA. STAT. ANN. §§ 782.07, 810.02 (West 2025); *see id.* § 775.082(3)(d).

164. We address these concepts because scholars and jurists regularly engage them to explain or justify criminalization and punishment. However, as other scholars have argued, criminal law may be better explained through a framework of social control, *supra* note 8, or through the “politics of institutional design and incentives.” William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 510 (2001).

argued that a person who had a role in an offense that led to death bears the same moral culpability as one who engages in an intentional act of murder.¹⁶⁵ For example, if two people participate in a murder with a culpable mental state regarding that murder, the argument would be that they are equally responsible regardless of which person engages in the fatal act. Consider a hypothetical scenario: Two people agree to kill someone, go together to find the victim, and then Person B fires the gun. Accomplice liability reasons that Person A (the accomplice) is no less responsible than Person B (the principal) for the outcome.

One critique of the retributive justification for accomplice murder is that it cannot be squared with the law's treatment of inchoate offenses. To impose criminal liability on someone who directly engaged in an act of harm, the State must "prove beyond a reasonable doubt that but for the perpetrator's acts, the prohibited social harm would not have occurred when it did."¹⁶⁶ For this reason, in many jurisdictions, the law treats attempted offenses differently from completed offenses. If someone tries to kill another but fails, they may be convicted of attempted murder or assault but not murder.¹⁶⁷ The law recognizes that having culpable intent is not the same as intentionally taking an action that causes a harmful result. In Massachusetts, armed assault with intent to murder carries a sentence of between five and twenty years in prison.¹⁶⁸ Attempted murder by any means other than armed assault is punishable by up to twenty years in prison.¹⁶⁹ Both of these punishments are far less than the mandatory life or LWOP sentence a person would receive for a joint venture murder conviction.

Another critique of the retributive rationale for imputed liability murder doctrines is that these doctrines take a wide spectrum of actions and intentions and impose the same extreme

165. See Binder & Yankah, *supra* note 130, at 171 (stating that a "sufficiently malign and dangerous felony *could* supply enough moral fault to merit murder liability, without requiring any mental state corresponding to death," but acknowledging "that does not mean that every felony murder crime does").

166. Dressler, *supra* note 116, at 99.

167. See *id.* at 100. *But see* 21 U.S.C. § 846 ("Any person who attempts or conspires to commit any offense defined in this subchapter [drug offenses] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.").

168. MASS. GEN. LAWS. ANN. ch. 265, § 18 (b) (West 2025).

169. *Id.* § 16.

punishments across the board. The actus reus element of accomplice liability can be satisfied by conduct that is remarkably trivial, such as “[m]eeting with the perpetrator before the crime is committed,” or “serving as a lookout.”¹⁷⁰ In some jurisdictions, mere presence at an offense may be sufficient to confer liability.¹⁷¹ Even helping a principal with domestic duties around the time of the offense may be enough.¹⁷²

The felony murder doctrine involves similar problems because it deviates from the “tiered hierarchy” of mental states that criminal codes employ to situate offenses on a spectrum of culpability, placing “deliberation” and “premeditation” at the most severe end of the spectrum and negligence at the opposite end.¹⁷³ Under the felony murder doctrine, a negligent or reckless killing is punished the same as one that is premeditated. Indeed, many felony murder statutes are “strict liability” in the sense that they only require a showing of mens rea as to the underlying felony, not the homicide.¹⁷⁴

Imputed liability doctrines also introduce sentencing anomalies that are misaligned with the retributive principle that punishment should be apportioned based on relative culpability.

170. Dressler, *supra* note 116, at 102.

171. *Id.* (noting that a person’s presence may confer accomplice liability if that presence “encourage[d]” the principal “by adding apparent numerical strength”).

172. *Id.* (citing case examples illustrating that “[h]olding the perpetrator’s child while he commits the crime” or “preparing food for the perpetrator” may be sufficient to confer liability); see *Marshall v. Commonwealth*, 977 N.E.2d 40, 46 (Mass. 2012) (“Such participation may take any of several forms. It may take the form of personally committing the acts that constitute the crime, or of aiding or assisting another in those acts. It may take the form of asking or encouraging another person to commit the crime, or helping to plan the commission of the crime. Alternatively, it may take the form of agreeing to stand by at, or near, the scene of the crime to act as a lookout, or to provide aid or assistance in committing the crime, or in escaping, if such help becomes necessary.” (quoting *Commonwealth v. Zanetti*, 910 N.E.2d 869, 885 (Mass. 2009))).

173. *Moriearty et al.*, *supra* note 9, at 686; see *Enmund v. Florida*, 458 U.S. 782, 798 (1982) (“It is fundamental that ‘causing harm intentionally must be punished more severely than causing the same harm unintentionally.’” (quoting H.L.A. HART, *Punishment and the Elimination of Responsibility*, in PUNISHMENT AND RESPONSIBILITY 158, 162 (1968))).

174. See Michael Serota, *Strict Liability Abolition*, 98 N.Y.U. L. REV. 112, 115 (2023) (referring to “[s]trict liability felony murder statutes”); see also Brief of Amici Curiae the Antiracism and Community Lawyering Practicum at Boston University School of Law et al. in Support of Appellant Derek Lee at 3, *Commonwealth v. Lee*, 313 A.3d 452 (Pa. 2024) (No. 3 WAP 2024) (describing Pennsylvania’s “strict-liability” felony murder law).

Pursuant to imputed liability doctrines, a principal who orchestrated and enacted a murder may receive a lesser penalty than the accomplice.¹⁷⁵ Indeed, a person may be convicted as an accomplice and even where the alleged principal was acquitted or never charged.¹⁷⁶

From a utilitarian perspective, some may argue that by imposing a severe punishment for any role in a death, imputed liability doctrines deter people from engaging in dangerous risk-taking behavior.¹⁷⁷ In this view, the law should deter a person from associating with anyone who might engage in violence and should refrain from any activity involving the risk of death—however remote that risk may be. However, utilitarian theory does not always support the harshest possible punishment. On the contrary, theorists like Cesare Beccaria suggest that the effectiveness of a deterrent derives from the certainty of punishment, not its severity.¹⁷⁸ Dressler highlights that a more precise calibration of punishment and culpability, resulting in lesser punishments for accomplices, would arguably incentivize people to be accomplices rather than principals.¹⁷⁹ Indeed, “[i]f fully successful, such a system would result in willing accomplices, but no perpetrators.”¹⁸⁰ In other words, a system that imposes lesser punishments for accomplices might disincentivize a person from initiating an act of harm, leaving a world of all followers and no leaders. A utilitarian theory thus cuts both ways in terms

175. See, e.g., Dressler, *supra* note 133, at 428 (calling accomplice liability “a disgrace” because “[i]t treats the accomplice in terms of guilt and potential punishment as if she were the perpetrator, even when her culpability may be less than that of the perpetrator . . . and/or her involvement to the crime is tangential”); see also G.R. Sullivan, *Doing Without Complicity*, 2012 J. COMMONWEALTH CRIM. L. 199, 199 (highlighting that complicity law gives rise to “complexity, uncertainty, excessive litigation and, on occasion, injustice”).

176. See, e.g., *Commonwealth v. Bianco*, 446 N.E.2d 1041, 1047 (Mass. 1983) (allowing for prosecutions pursuant to accomplice liability where several individuals were present, but there was no evidence that specifically identified any participants as a principal).

177. See, e.g., Dressler, *supra* note 116, at 105 n.81 (discussing differing perspectives surrounding theories of punishment).

178. See CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 63 (Richard Bellamy ed., Cambridge Univ. Press 1995) (1764).

179. See Dressler, *supra* note 116, at 114 (“[A]s between perpetration and assistance, the system of punishment should convince the rational criminal to serve in a secondary rather than a primary role.”); see also BECCARIA, *supra* note 178, at 95 (providing a similar rationale for punishing attempted offenses less severely than completed offenses).

180. Dressler, *supra* note 116, at 114.

of determining the scope and punishment of accomplice murder that would best deter harm.

In the Section that follows, we discuss the WAJV coalition's advocacy efforts, which further challenge the theoretical foundations of imputed liability murder doctrines.

B. THE WRONGFULNESS OF IMPUTED LIABILITY MURDER CONVICTIONS

Drawing on the testimony of the WAJV organizers and our own analysis, we identified several features of imputed liability doctrines that lead to convictions that may be considered wrongful. These features include: the doctrines' misalignment with moral intuitions (which we describe as "the innocence trap"); their susceptibility to error; their relationship to racial subordination; their imprecise calibration of culpability and punishment; and their impediment to transformative and restorative justice practices. We discuss each of these in turn.

1. The Innocence Trap: "I'm . . . a convicted killer who never killed anyone."¹⁸¹

To many, imputed liability murder doctrines are counterintuitive and perplexing. Generally, people do not anticipate the breadth of liability or extent of punishment that a person might face pursuant to these doctrines.¹⁸² We call this mismatch between imputed liability murder doctrines and moral intuitions "the innocence trap."

The innocence trap reflects a disconnect between the charge of murder and commonsense understandings of accountability. Several organizers emphasized their incredulity at being convicted of murder when they did not commit murder:

I'm here with this committee as a convicted killer who never killed anyone. . . . [T]he prosecutor in most cases has the knowledge that these individuals did not kill anyone or in other cases acknowledge that they do not know who's the actual killer. The truth is, Massachusetts is literally creating murderers through the joint venture theory.¹⁸³

181. *Hearing on H.45, supra* note 38 (testimony of Julian Green).

182. *See, e.g.,* Ian P. Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study 9* (Sept. 5, 2023) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562486.

183. *Hearing on H.45, supra* note 38 (testimony of Julian Green).

There's no way that a person should be serving a life sentence for a crime they didn't do. You know, I'm happy with being charged for whatever my situation was that I did that night but for murder—[it] wasn't me.¹⁸⁴

I am seventy years old[,] and I have served nearly five decades for a crime I did not commit. For example, when I went to trial in 1975, the District Attorney was well informed that I was not the person who actually committed the murder. Yet I was still convicted of murder and sentenced to imprisonment. Based on how joint venture was applied in my case[,] I feel that I have been treated unfairly. It pains me much to know I have to spend more time in prison for something I did not do.¹⁸⁵

By permitting the State to indict a person for murder—as opposed to a separate offense—even where that person did not kill or intend to kill anyone, the procedural features of imputed liability murder doctrines amplify confusion. Prosecutors need not specify whether a person accused of murder will be prosecuted under a theory of direct liability or imputed liability.¹⁸⁶ As a result, an indictment may describe the events of a murder as if the accused person engaged in the act of murder.¹⁸⁷

This dissonance between a murder charge and a person's sense of innocence makes imputed liability offenses seem like a legal trick or fiction. This misalignment has serious practical implications regarding the choices that a person makes during plea negotiations and trial proceedings. As discussed further below, a person may falsely claim minimal involvement in an offense in an effort to end an interrogation, only to find that even minimal involvement exposes them to an imputed liability conviction.¹⁸⁸ Similarly, the accused may turn down plea offers and go to trial,

184. *Hearing on H.3962, supra* note 19 (testimony of Thomas Woods).

185. *Hearing on H.45, supra* note 38 (testimony of Neil Parham).

186. *See* *Marshall v. Commonwealth*, 977 N.E.2d 40, 47 (Mass. 2012) (describing direct liability and accomplice liability not as different theories but “different routes to the same end: criminal liability as a knowing participant in a crime”); *see also* *Commonwealth v. Santos*, 797 N.E.2d 1191, 1198 (Mass. 2003) (“While we sometimes use the term ‘theory’ of principal liability or ‘theory’ of joint venture, those are not alternate, differing ‘theories’ of the crime that are to be subjected to the specific unanimity and verdict slip requirements . . .”).

187. *See* *Commonwealth v. Caramanica*, 729 N.E.2d 656, 661 (Mass. App. Ct. 2000) (noting that the statutory provisions regarding accomplice liability in Massachusetts “are often available to prosecutors, but apparently rarely used as a basis for indictment”).

188. *See infra* Part III.B.3; *see also* *Cohen et al., supra* note 122, at 95 (describing law enforcement officials' usage of the Reid technique in convicting individuals under the felony murder doctrine).

thinking that their innocence is clear, without recognizing that imputed liability murder offenses permit convictions in a broad range of circumstances. As one organizer explained:

When I first caught my case[,] I felt like I was innocent because I didn't take anyone's life. I was only there. So how could I be found guilty of first-degree murder? That[']s] the trap we all fall into: the joint venture innocence trap. . . . You go to trial knowing that you did not shoot, stab[,] or beat anyone to death. You think that the jury will see and know that. There will be no evidence presented that says you personally stabbed, shot[,] or beat anybody to death. Only that you were there either before the murder, during the murder, or after the murder.¹⁸⁹

Many accused joint venturers do not have any clue what joint venture liability is until the start of their trial.¹⁹⁰ In this sense, imputed liability murder doctrines raise due process concerns:

When I got indicted for murder[,] it came after I was detained for 10 months awaiting trial. The indictment read "I" was responsible for the killing, and that "I" committed the killing. All the way up 'til trial[,] I was under the impression I was being tried as the actual person who committed the murder. I didn't know anything about being an accomplice or a secondary's role in a murder. So there was no explanation or way I could challenge the joint venture theory, or properly defend myself against it as well. By not giving me any notice that joint venture was going to be pursued at my . . . murder trial, [it] was a direct violation of my due process [rights]. Every accused defendant has a right to know every charge that will be brought up against them before trial.¹⁹¹

The intuitive sense that imputed liability murder doctrines violate principles of fairness and due process may weigh on a person for the duration of their incarceration. As one organizer explained:

I feel like everybody has the right to a fair trial. And I feel like a fair trial relies heavily on due process. I had never heard of joint venture to the day of my trial on the day of picking the jury. The DA goes to the judge and says to the courtroom that we'll be moving forward with the joint venture theory on myself and my co-defendant[,] and I remember sitting at the table and whispering to my attorney: "What does that mean? Can they do that?" He said "Yeah, they could do that," I said. "Are you prepared for that?" It's been ten years since that happened and I still find myself asking what is joint venture and How did that happen to me?¹⁹²

189. E-mail from Edker Rock, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (July 30, 2024) (on file with author).

190. See, e.g., *Hearing on H.3962*, *supra* note 19 (testimony of Julian Green).

191. Letter from Valentino Facey, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (Aug. 1, 2024) (on file with the Minnesota Law Review).

192. *Hearing on H.45*, *supra* note 38 (testimony of Earl Fulgiam).

The innocence trap is not just an issue of effective representation or attorney-client counseling. Even if an attorney advises their client about imputed liability theories, a description of a technical legal concept simply may not outweigh the accused person's knowledge that the indictment's allegations against them are false. The challenge of understanding the scope of imputed liability theories may be compounded where the accused person is young, as people convicted of imputed liability offenses often are.¹⁹³ Under these circumstances, notice and legal advice may be insufficient to transcend an accused person's reasonable belief that no juror could possibly find them guilty of murder. These insights raise constitutional concerns about the rights of the accused to participate in their own defense.¹⁹⁴

Imputed liability murder doctrines are not only confusing for the accused, but also for policymakers and the public. One organizer highlighted that most legislators are shocked to learn about imputed liability theories, suggesting that these offenses are not a reflection of democratic will:

Murder is defined by the courts and by the statutes of the law as the unlawful killing of a human being with malice aforethought. . . . So if someone did not take a life, why are they being given life in prison? . . . Another big issue is all of you, our elected officials—whether councilmen, the governor themselves—a lot of you never even knew that these charges existed. And how they work. When you heard someone was in prison for murder, you automatically assumed that they took a life. Is that not the case? I know for a fact because when a lot of senators and state reps came up, [t]hey couldn't believe it. They really didn't figure out how someone can be in jail for murder without taking a life.¹⁹⁵

Family members of the accused experience similar confusion. As one family member stated,

[M]y son . . . has been incarcerated for over thirty years. . . . [L]ike everyone, I didn't know anything about joint venture[,] and it bothers me, being his mom. I have four boys[,] and he was my youngest and somewhere he got caught up . . . on a Halloween night and it led to a murder case. He was on the second floor and the murder happened in the basement. He was accused of being joint venture.¹⁹⁶

193. See, e.g., Caldwell, *supra* note 129, at 907 (“[F]elony murder laws are a driving force behind the high numbers of young offenders in the United States who have been sentenced to spend the rest of their lives in prison.”).

194. See *infra* Part IV.A.

195. *Hearing on H.45, supra* note 38 (testimony of Tabue Smiley).

196. *Id.* (testimony of Shirley Smiley).

Sometimes, confusion can lead to permanent ruptures within a family. On its own, incarceration imposes onerous burdens on family relationships, forcing people into remote, rural prisons with barriers to visitation and communication.¹⁹⁷ Prolonged family separation can impact parent-child relationships and parental rights.¹⁹⁸ Imputed liability offenses add, on top of all of this, a layer of confusion and mistrust. Family members may not believe an accused person can be convicted of murder without killing anyone. They may think that not only did the accused person kill someone, but now they are lying about it. As several organizers explained:

Not only is this practice wrong morally but it destroyed my relationship with my daughter. My daughter was only four months when I was arrested. She was almost three years old when I was sentenced. I went ten years without speaking to my daughter . . . [who] at twelve years old lost her mother from apparent heroin overdose. That day, [my daughter's mother] died, but I became alive in my daughter's life. While reconnecting with my daughter, she thought I was in prison for killing someone because that's the label that is defining me right now. That's what she was told. Most of her life, she revealed to me that she was ashamed to talk about me in school. I had to explain to her that I didn't kill anyone.¹⁹⁹

[E]ven explaining it to my family members and explaining it to children is very hard because my children [have] a very innocent mind and they don't fathom someone being held responsible for something that they didn't do.²⁰⁰

Scholarship affirms the organizers' articulation of the misalignment between community expectations and imputed liability murder doctrines. A survey study by Ian Farrell presented over 500 Colorado residents with several felony murder scenarios and asked what "each perpetrator deserved for the felony murder they committed."²⁰¹ The survey did not inform participants of the applicable penalty in these cases, but under Colorado law at

197. See Saifee, *supra* note 16, at 107 (discussing the social isolation of predominantly marginalized individuals through incarceration). See generally Jack Smith IV, *The End of Prison Visitation*, MIC (last updated Sept. 6, 2016), <https://www.mic.com/articles/142779/the-end-of-prison-visitation> [https://perma.cc/Q3XS-8TLM].

198. See Philip M. Genty, *Damage to Family Relationships as a Collateral Consequence of Parental Incarceration*, 30 *FORDHAM URB. L.J.* 1671, 1673–79 (2003) (discussing the impact of incarceration on families and parental rights).

199. *Hearing on H.3962*, *supra* note 19 (testimony of Julian Green).

200. *Hearing on H.45*, *supra* note 38 (testimony of Earl Fulgiam).

201. Farrell, *supra* note 182, at 9.

the time it would have been mandatory LWOP.²⁰² The average sentence proposed by survey participants for most scenarios was between two and four years.²⁰³ The most severe scenario produced an average proposed sentence of twenty years.²⁰⁴

The innocence trap challenges the theoretical rationales for imputed liability murder doctrines. It undermines the utilitarian rationale for imputed liability murder doctrines because people cannot be deterred by sanctions they do not anticipate. Moreover, the law's deterrent impact arguably decreases in direct relationship to its moral authority, which is undermined by the kind of confusion and misalignment that is exemplified by the innocence trap.²⁰⁵ The law's lack of moral authority also invites arbitrary enforcement, which undermines the retributive principle that punishment be tied to culpability.²⁰⁶ Finally, the innocence trap violates the general concept, incorporated in both retributive and utilitarian theories, that the law should clearly and precisely reflect the wrongdoing of the accused.²⁰⁷ This conceptualization of the innocence trap thus supports potential constitutional challenges to the proportionality of imputed liability murder sentences, which are unsubstantiated by any purported theoretical purpose of punishment.²⁰⁸

202. *Id.*

203. *Id.*

204. *Id.*

205. See Paul H. Robinson et al., *The Disutility of Injustice*, 85 N.Y.U. L. REV. 1940, 1942 (2010) (“[N]ormative crime control is possible . . . only if the criminal law has earned a reputation as a moral authority.”); see also Jeffrey Fagan & Tracy L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, OHIO ST. J. CRIM. L. 173, 174 (2008) (“Dissatisfaction with both procedural and distributive justice can motivate legal cynicism and noncompliance.”).

206. See Dressler, *supra* note 116, at 119 (noting that when the law does not reflect moral intuitions, “[w]e are forced either to treat alike those about whom we have dissimilar feelings” or avoid the law through “wide-ranging prosecutorial discretion, plea bargaining and jury nullification”).

207. See Matthew Dyson, *The Contribution of Complicity*, 86 J. CRIM. L. 389, 392 (2022) (arguing that offenses should be labeled with several audiences in mind—“the criminal justice system, the offender and the wider public, including any victim(s)” —and “[o]n each level, offences generally, and participation in offences in particular, should be defined in a way that differentiates enough to obviously capture the wrongdoing they purport to prohibit”).

208. See *infra* Part IV.A.

2. Moral Injury: “Do we consider one individual equally accountable for the actions and deeds of another?”²⁰⁹

The misalignment between imputed liability murder doctrines and community expectations also impacts jurors, who may experience their role in an imputed liability trial as a form of moral injury.²¹⁰ One organizer explained that jurors are rendered “powerless” in the sense that “[a]lthough jurors may think felony murder/joint venture is unjust, they are forced by a judge to convict someone” who will then be sentenced to LWOP.²¹¹ This can also cause jurors a sense of “shame and guilt” as they struggle to balance their obligation to “administer justice to the victim’s family” with their obligation to render a just verdict.²¹² In this sense, imputed liability doctrines have a “psychological effect” not only on the accused, but on others who are in the orbit of imputed liability prosecutions and their outcomes.²¹³

These dynamics are exemplified by the case of Pat Johnson, who was convicted of accomplice liability murder after her abusive partner shot and killed three people.²¹⁴ For seven years, Johnson had withstood her partner’s abuse:

If dinner was not ready on time, he broke furniture and beat her. If she was home after her curfew, he hit her. He had hurt her so badly, she landed in the hospital. She knew what he was capable of. So she did what he told her to do and helped stuff jewelry and money into a bag, and then she kept her mouth shut.²¹⁵

She was sentenced to life in prison.

Decades later, a juror from Johnson’s case reported that she and other jurors had been conflicted about how to evaluate

209. See Shannon Heffernan, *Serving Time for Their Abusers’ Crimes*, MARSHALL PROJECT (June 13, 2024), <https://www.themarshallproject.org/2024/06/13/abuse-domestic-violence-survivors-liability-prison> [https://perma.cc/C7EB-YT2Y].

210. The term “moral injury,” frequently used in the context of military service, refers to “the damage done to one’s conscience or moral compass when that person perpetrates, witnesses, or fails to prevent acts that transgress one’s own moral beliefs, values, or ethical codes of conduct.” *What is Moral Injury*, SYRACUSE UNIV.: THE MORAL INJ. PROJECT, <https://moralinjuryproject.syr.edu/about-moral-injury> [https://perma.cc/JT8C-S667].

211. Letter from Peter Bin, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (July 15, 2024) (on file with the Minnesota Law Review).

212. *Id.*

213. *Id.*

214. Heffernan, *supra* note 209.

215. *Id.*

Johnson's culpability.²¹⁶ The juror believed that two things were true: Johnson had provided aid to her abusive partner, the principal of the offense, *and* Johnson would not have done so but for his abuse.²¹⁷ The jurors "wrestl[ed] with what the 'theory of accountability' meant for someone like Johnson."²¹⁸ They sent one note asking what it meant to be "legally responsible," and another asking "[d]o we consider one individual equally accountable for the actions and deeds of another?"²¹⁹

The jurors' questions in Pat Johnson's case illustrate the misalignment of imputed liability murder with moral instincts about accountability for harm. The juror interviewed for the article did not believe that Johnson was innocent, yet she also suggests that Johnson's conviction was wrongful:

The juror who spoke with me grew up in a home with domestic violence. She understood why a woman could be so afraid that she wouldn't flee an abuser, no matter how dire the circumstances. But she also wanted to do a good job and follow the law—it wasn't her place to rewrite it. She said there was almost a hung jury, but in the end, they reached an agreement and found Johnson guilty.

She remembers crying along with other jurors—tears not of relief, but of sadness. Three decades later, the weight of what they did still remains with her. To this day, she said, she believes Johnson was the fourth victim in that crime and that the world is not safer with Johnson behind bars.²²⁰

The effects of moral injury cannot be easily measured. But it is notable that the juror in Johnson's case still feels the weight of her decision three decades later.²²¹ Arguably, jurors' experiences of moral injury should impact our assessment of whether a particular application of the law is rightful or wrongful.

3. Legal Innocence

Imputed liability murder doctrines invite jurors to make an inferential leap that leaves their determinations of guilt susceptible to error.²²² In this way, some imputed liability doctrines

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *See, e.g.,* Commonwealth v. Tse, 245 N.E.3d 710, 715–18 (Mass. 2024) (overturning the conviction based on insufficient evidence that the defendant

lead to some convictions that are wrongful not only because the law itself is unsound but because the accused did not possess the *actus reus* or *mens rea* required for a conviction.²²³

In particular, accomplice liability's minimal *actus reus* requirement means that jurors are frequently asked to infer an accomplice's intent from surrounding circumstances, rather than direct action.²²⁴ Unlike in a direct liability case, where the State must show an act that caused death, accomplice liability calls on jurors to infer an accomplice's intent from the surrounding circumstances.²²⁵ Pinning down a person's intentions is hard enough in any case, but the challenge is even greater when the State seeks to hold someone liable for an action that is attenuated from the outcome. Did a person who drove a getaway car participate in a murder with the intent required to commit it?²²⁶ What about a person who participated in a series of armed robberies, but in which his co-defendant never shot anyone until the final fatal robbery?²²⁷ If a group of youth reluctantly agree to follow the lead of a person engaged in violence and that person ultimately kills someone, were those other youth acting out of intent, fear, reluctant acquiescence, hopelessness, confusion, or

intended to cause a death); *see also* Commonwealth v. Baez, 237 N.E.3d 744, 750–53 (Mass. 2024) (same).

223. *See* Raymond, *supra* note 7, at 456–57 (distinguishing between “factual innocence” wherein a jury believes that the defendant did not commit the charged offense, “burden of proof innocence” wherein the prosecution did not meet its burden to prove the alleged elements, and “legal innocence” where not all elements of the offense were satisfied).

224. *See* Girgis, *supra* note 119, at 465 (“Convicting an accomplice naturally requires inquiry into *mens rea* and *actus reus*. . . . [T]he *actus reus* bar is set remarkably low. It is cleared by any words or behavior that count as *aiding* the principal”); *see also* Michael S. Moore, *Causing, Aiding, and the Superfluity of Accomplice Liability*, 156 U. PA. L. REV. 395, 448 (2007) (“[T]he *actus reus* of [accomplice] liability—aiding—has proved . . . elusive.”).

225. Moriearty et al., *supra* note 9, at 680–81. Proof of intent is not necessarily intent to cause death. For example, in Massachusetts, to convict a person of second-degree murder or first-degree murder in the course of a felony, the prosecution need only prove the mental state of malice, which can be established by showing that the accused intended to do an act that a reasonable person would have known created a plain and strong likelihood of death. *See* Commonwealth v. Brown, 81 N.E.3d 1173, 1191 (Mass. 2017) (Gants, C.J., concurring).

226. *See* Baez, 237 N.E.3d at 750–53 (overturning the conviction of the defendant getaway driver where there was insufficient evidence that the defendant knew his co-defendants intended to cause a death or shared that intent).

227. *See* Commonwealth v. Fisher, 216 N.E.3d 1218, 1252–53 (Mass. 2023) (finding that the defendant's participation in an armed robbery was sufficient to establish malice necessary for first-degree felony murder as a joint venturer).

something else entirely? It may be difficult for a person who went through such an experience to understand their own motives, let alone for a jury to isolate one motive above the others.

In this sense, the mismatch between an imputed liability murder conviction and a person's self-conception of accountability may reflect not only the law's misalignment with community expectations, as discussed above, but also the law's susceptibility to convicting the legally innocent. As one organizer put it:

In a lot of these cases murder was never the intention. In some cases[,] the defendant wasn't there. In too many cases[,] the joint venture theory is being used as a wide casting net to give out capital punishment to someone who played a lesser role. . . . Under the joint venture theory[,] the burden of proof drops drastically. The confusion in the language leaves the jury lost and forced to make life ending choices with blurred details. . . . In cases with no principall[,] defendants are forced to share the burden and intents of a phantom of the courts.²²⁸

Another vector of error in imputed liability cases follows from the innocence trap—that is, a person's confusion about the law's scope of liability. A person may admit to facts that expose them to an imputed liability murder conviction because they believe—based on common expectation and moral intuition—that those facts exonerate them by showing that they did not commit murder. Common interrogation techniques pressure suspects to admit to lesser involvement in an offense or to falsely claim lesser involvement in an offense even when they had none.²²⁹ In an imputed liability murder case, this admission of what may seem like minimal or innocuous involvement may actually expose the accused person to a murder conviction.²³⁰

The issue described here is not that some new evidence can prove the wrongful conviction; rather, the jury simply got it wrong. Given appellate courts' deference to jury determinations regarding questions of fact, these errors are rarely corrected on appeal. Even when an appellate court does reverse a conviction based on insufficient evidence, the correction comes years into a

228. E-mail from Earl Fulgiam, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (Aug. 7, 2024) (on file with the Minnesota Law Review).

229. Cohen et al., *supra* note 122, at 95 (describing the Reid technique, a method law enforcement officers utilize to pressure suspects into admitting lesser involvement).

230. *Id.*

person's prison sentence.²³¹ In other words, imputed liability doctrines invite wrongful convictions of people who should legally be acquitted, but these convictions do not lend themselves to traditional methods of exoneration.

4. Relationship to Racial Subordination: "I feel like joint venture is a tool that makes it easy to convict Black and Brown people . . ." ²³²

Several WAJV organizers have highlighted the influence of racism and government overreach in imputed liability prosecutions.²³³ A mother of one of the organizers stated it plainly in front of the legislature:

[K]now what I feel like? I feel like I'm back in slavery but with a different twist. It's so sad, as a mother. It is so sad. I feel like I am being hung from an oak tree, my hands are behind my back, my feet is [sic] tied, and only by the grace of God he will not let that noose hang me. Because it's a burden to me. I wish the judicial system would just take some time and go through these [cases] . . . if these kids didn't kill no one and you don't have no evidence . . . we can fix this. If we don't have no evidence, let these kids and people come out of jail that didn't murder . . . Just let us have mercy. All of us are human.²³⁴

It is challenging to obtain data regarding the racialized impact of imputed liability prosecutions because many states do not distinguish between direct liability and imputed liability murder charges or convictions; all such convictions are collapsed into the category of murder.²³⁵ Even where researchers can obtain data specific to imputed liability murder prosecutions, the information is generally only detailed enough to show who was charged and convicted of imputed liability murder—not who

231. See, e.g., *Commonwealth v. Tse*, 245 N.E.3d 710, 716–18 (Mass. 2024) (overturning a conviction five years later); *Baez*, 237 N.E.3d at 750–53 (overturning a conviction six years later).

232. *Hearing on H.45, supra* note 38 (testimony of Earl Fulgiam).

233. *Id.* ("There's a thing that we do when we have our meetings where we have people stand up who have been held liable for joint venture and in that meeting, when we stand up. [sic] I look around[,] and it's hard to overlook that in general the people are Black and Brown people."); *Id.* (testimony of Valentino Facey) ("As I sit in this cell, I'm realizing that this is the thing that is really[]; this is really a problem that's going on in the Black communities and with a lot of people out here for joint venture are men of color.").

234. *Id.* (alteration in original) (testimony of Shirley Smiley).

235. See, e.g., *Methodology*, FELONY MURDER REPORTING PROJECT, <https://felonymurderreporting.org/methodology> [<https://perma.cc/VWW4-WNH7>] ("In the plurality of states, we were not able to obtain any data that would illuminate the true impact of the felony murder rule.").

could have been charged and wasn't.²³⁶ Such data can shed light on the racially disparate impact of imputed liability charges but not the factors that contribute to these charges.²³⁷ Nevertheless, a growing body of research and scholarship lends support to the organizers' argument that imputed liability murder doctrines are a vector of racial subordination.²³⁸

Researchers have demonstrated the disproportionate impact of felony murder convictions on Black and Brown people in at least thirteen jurisdictions.²³⁹ Massachusetts does not retain

236. See Caitlin Glass et al., *Prosecutorial Data Transparency and Data Justice*, 119 NW. U. L. REV. 193, 209 (2024).

237. *Id.*

238. See generally Cohen et al., *supra* note 122; Moriearty et al., *supra* note 9; Binder & Yankah, *supra* note 130.

239. See Binder & Harrington, *supra* note 130, at 1063 (New York); Brief of Amici Curiae the Antiracism and Community Lawyering Practicum et al. in Support of Appellant Sadik Baxter at 5–7, *Baxter v. Fla. Dep't of Corr.*, No. 23-12275 (11th Cir. Aug. 8, 2024) (Florida); *Connecticut Data, FELONY MURDER REPORTING PROJECT* (Mar. 2023), <https://felonymurderreporting.org/states/ct> [<https://perma.cc/NA2F-7S9F>] (Connecticut); *Maine Data, FELONY MURDER REPORTING PROJECT* (Feb. 2023), <https://felonymurderreporting.org/states/me> [<https://perma.cc/MW94-E3QU>] (Maine); *Michigan Data, FELONY MURDER REPORTING PROJECT* (Mar. 2023), <https://felonymurderreporting.org/states/mi> [<https://perma.cc/LUZ6-UFLJ>] (Michigan); *New Jersey Data, FELONY MURDER REPORTING PROJECT* (Apr. 2023), <https://felonymurderreporting.org/states/nj> [<https://perma.cc/KL5P-9WS4>] (New Jersey); David C. Pyrooz, *Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait 2*, 6–9 (Sept. 9, 2023) (unpublished manuscript), <https://dx.doi.org/10.2139/ssrn.4527501> (Colorado); Kat Albrecht, *The Stickiness of Felony Murder: The Morality of a Murder Charge*, 92 MISS. L.J. 481, 501–05 (2023) (Illinois); *Wisconsin Data, FELONY MURDER REPORTING PROJECT* (Mar. 2023), <https://felonymurderreporting.org/states/wi> [<https://perma.cc/M4K2-BC39>] (Wisconsin); Brief of Amici Curiae Boston University Center for Antiracist Research et al. in Support of Appellant Rashad A. Shepherd at 8–9, *Commonwealth v. Shepherd*, 227 N.E.3d 248 (Mass. 2024) (SJC-12405) (Massachusetts); Lindsay Turner, *Task Force on Aiding and Abetting Felony Murder: Report to the Minnesota Legislature*, MINN. DEP'T OF CORR. 6, 13 (2022), https://mn.gov/doc/assets/Task%20Force%20on%20Aiding%20and%20Abetting%20Felony%20Murder_%20Report%20Executive%20Summary_tcm1089-517326.pdf [<https://perma.cc/S3NB-7A87>] (Minnesota); Nazgol Ghandnoosh et al., *Felony Murder: An On-Ramp for Extreme Sentencing*, SENT'G PROJECT 5 (2024), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing> [<https://perma.cc/X6CB-JN3V>] (Missouri); Andrea Lindsay & Clara Rawlings, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Race*, PHILA. LAWS. FOR SOC. EQUITY 13–21 (2021), https://plsephilly.org/wp-content/uploads/2021/04/PLSE_SecondDegreeMurder_and_Race_Apr2021.pdf [<https://perma.cc/M6SA-SYEF>] (Pennsylvania); Catherine M. Grosso et al., *Death by*

data on the number of people convicted of joint venture murder, nor does it release individualized racial demographic data for people in prison. This makes it challenging to analyze even the disparate impact of joint venture convictions. However, WAJV has attempted to fill this gap by reviewing cases over a fifty-one-year period and identifying the counties producing these convictions. Their analysis found that the counties responsible for the highest number of joint venture convictions were comprised of “predominantly [B]lack and [B]rown populations.”²⁴⁰ Additionally, the organizers conducted a survey study of fifty men at one Massachusetts prison who had been convicted of joint venture murder and found that “80% were African American, 13% were Hispanic, 7% were White.”²⁴¹

Some scholarship suggests that differences in the severity of alleged criminal conduct do not explain the gross racial disparities in imputed liability murder prosecutions. A Minnesota study compared the facts and outcomes of individual felony murder cases—including comparisons of co-defendants of different races within the same case—and found that when it comes to felony murder, “White defendants are frequently punished leniently, while defendants of color receive harsher treatment even when the facts support opposite outcomes.”²⁴² The study suggested that White defendants generally receive more favorable plea offers in felony murder cases.²⁴³ Similarly, a California study used regression analyses to examine the application of certain felony murder sentencing enhancements and, controlling for culpability, found that prosecutors were more likely to charge people of color than White people with such enhancements.²⁴⁴

Stereotype: Race, Ethnicity, and California’s Failure to Implement Furman’s Narrowing Requirement, 66 UCLA L. REV. 1394, 1442 (2019) (California).

240. We Are Joint Venture, *Fact Sheet* (on file with author).

241. We Are Joint Venture, *Fact Sheet* (on file with author).

242. Greg Egan, *George Floyd’s Legacy: Reforming, Relating, and Rethinking Through Chauvin’s Conviction and Appeal Under a Felony-Murder Doctrine Long-Weaponized Against People of Color*, 39 LAW & INEQ. 543, 548 (2021).

243. *Id.* (finding that White defendants who were convicted of second-degree felony murder were more likely to have pled down to that charge, whereas Black defendants convicted of the same offense were more likely to have been convicted of the most severe offense with which they were charged).

244. Grosso et al., *supra* note 239, at 1438 (noting that the California data findings “suggest[ed] robust patterns of differential charging of aggravators by defendant race”); *id.* at 1440 (“The results overall confirm the heterogeneity of the application of special circumstances, but the disparate treatment model suggests that race and ethnicity affect charging.”).

The racially disparate impact of imputed liability murder doctrines may derive from the broad discretion and lower burden these doctrines afford prosecutors. Put simply, imputed liability doctrines contain fewer legal elements and therefore require less evidence to pursue and sustain.²⁴⁵ By dispensing with the requirement to prove *actus reus*, *mens rea*, or both, imputed liability offenses offer fewer legal guidelines regarding both charging decisions and determinations of guilt.²⁴⁶ As a general matter, cognitive biases can impact decision-making at each stage of the criminal legal process.²⁴⁷ Social psychology research shows that racial biases are especially likely to influence decision-making under the precise circumstances presented by imputed liability offenses—that is, when “decisional criteria are uncertain,” and when “decisions . . . involve high levels of discretion or subjectivity.”²⁴⁸ Asked to engage in an “imaginative inquiry whereby both intent and action are inferred,” prosecutors and jurors may draw those inferences in part based on racial biases.²⁴⁹

245. Moriearty et al., *supra* note 9, at 681; see Cohen et al., *supra* note 122, at 75 (“Unlike the majority of elements in a criminal prosecution, the felony murder rule and accomplice liability doctrine invite jurors to engage in an imaginative inquiry whereby both intent and action are inferred.”).

246. See Moriearty et al., *supra* note 9, at 681 (“Imputed liability murder doctrines also allow prosecutors to cast a wide net around almost any homicide.”).

247. See *Buck v. Davis*, 580 U.S. 100, 121 (2017) (describing the “powerful racial stereotype” that “[B]lack men [are] ‘violence prone’” (quoting *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion))); Robert J. Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 ALA. L. REV. 871, 872–75 (2015) (discussing how racial bias can affect perceptions and behaviors in the criminal legal process through both derogation involving negative stereotypes about Black people and favoritism involving “association of positive stereotypes and attitudes” with White people, which can result in “preferential treatment” of White people); Katherine B. Spencer et al., *Implicit Bias and Policing*, 10 SOC. & PERSONALITY PSYCH. COMPASS 50, 51–53 (2016) (discussing how biases influence judgments in policing through processes of “misattribution,” “disambiguation,” “cognitive load/depletion,” and “automatic activation”); Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L. J. 2176, 2184 n.35 (2013) (noting that “[p]rosecutors are more likely to charge [B]lack suspects than [W]hites, even controlling for factors like prior criminal record” and that “[r]esearch on implicit bias suggests that [B]lacks are more likely to be suspected of crime, convicted, and punished for longer than others”).

248. Moriearty et al., *supra* note 9, at 737.

249. Cohen et al., *supra* note 122, at 75; see Moriearty et al., *supra* note 9, at 681 (noting that “[t]he net effect” of the imputed liability murder’s reduced burden of proof “is that charging decisions in imputed liability murder cases are inherently more normative, more subjective, and more likely to be influenced

Indeed, empirical research by Ben Cohen, Justin Levinson, and Koichi Hioki suggests that racial bias may influence accomplice liability prosecutions because decision-makers are more likely to infer group liability in cases involving defendants of color, yet more likely to treat White defendants as individuals.²⁵⁰ Their research involved a study of over 500 jury-eligible participants and the use of an Implicit Association Test to measure racialized differences in how jurors perceive defendants to be individuals or members of a group.²⁵¹ The researchers found that “[p]articipants were significantly more likely to quickly group together Black and Latino names with words associated with groups, such as ‘group, pack, crew, them, crowd, folks, bunch,’ and [W]hite faces with individuality, such as ‘individual, self, one, solo, single, somebody, character.’”²⁵² Participants were also more likely to see “[d]efendants with Latino-sounding names” as “more culpable.”²⁵³

The degree to which a defendant is seen as an individual impacts their exposure to an imputed liability charge or conviction because it stands to reason that a juror who sees defendants as part of a group would be more likely to conclude that the defendants were working together or shared the same objectives.²⁵⁴ As an example, imagine that there are two people in a car and one person gets out and kills someone. Are you going to infer that these people were working together, and both intended to kill? Or are you going to infer that guy in the car got caught up in something he never intended to happen and ended up in the wrong place at the wrong time? The research discussed above suggests that an observer’s answer might change based on the perceived racialization of the people in the car.

These findings raise serious concerns that police, prosecutors, and juries are more likely to impute liability for Black and Latino defendants. As two organizers put it:

by extra-legal factors”); Binder & Yankah, *supra* note 130, at 206 (discussing felony murder as a “vector of racial subordination”).

250. See Cohen et al., *supra* note 122, at 100–08 (discussing the prevalence of stereotypes in group/accomplice liability and felony murder charges).

251. See *id.* at 103–04 (discussing research study).

252. *Id.* at 108.

253. *Id.* at 109.

254. *Id.* at 104 (discussing how some “jurors automatically perceive some racial or ethnic groups” as individuals or groups).

In my case they switched me from principal to joint venture on the first day of trial. I was notified of this at jury selection. This type of practice is proof the DA's officer [sic] is aware how easier [sic] it is to get a conviction.²⁵⁵

[T]he issue that a lot of people do not want to deal with and accept is that this is shrouded in institutional, structural[,] and systemic racism. Black and [B]rown people are disproportionately affected by joint venture and felony murder. . . . And they're crushing our communities.²⁵⁶

Other structural dynamics may contribute to the racialized impact of imputed liability doctrines. One organizer highlighted a connection between intergenerational trauma and gang involvement, which can lead to potential accomplice liability charges arising from the acts of another gang member.²⁵⁷ He explained, “[the] Cambodian genocide caused a ripple effect that led to gang involvement and . . . gang involvement can lead to incarceration under joint venture.”²⁵⁸ The experience of incarceration, in turn, compounds intergenerational trauma by exposing the person who is incarcerated to further violence and their loved ones to the violence of family separation.²⁵⁹ Challenging joint venture liability is one way of intervening in cycles of trauma and incarceration that derive from, among other things, histories of racialized subordination.

Another organizer highlighted the power that imputed liability murder doctrines give prosecutors, leading to coercive plea-bargaining dynamics. Under an imputed liability theory, a prosecutor can credibly charge an accomplice with murder, even if that accomplice's role was negligible, as a way of pressuring

255. Letter from Earl Fulgiam, Organizer, WAJV, to Caitlin Glass, Lecturer & Clinical Instructor, Bos. Univ. Sch. of L. (August 7, 2024) (on file with the Minnesota Law Review).

256. *Hearing on H.45, supra* note 38 (testimony of Tabue Smiley).

257. Letter from Peter Bin to Caitlin Glass, *supra* note 211.

258. *Id.*

259. *See, e.g.,* Benjamin C. Hattem, Note, *Carceral Trauma and Disability Law*, 72 STAN. L. REV. 995, 998 (2020) (arguing that “the traumatic effects of incarceration. . . . are a central part of the carceral experience” and that “advocates should start to understand the carceral system as a whole through its impacts on the mental health of people who interact with it”); *Generational Harm: Incarceration's Impact on Children and Families*, PARTNERS FOR JUST. (last updated 2023), [https://cdn.prod.website-files.com/6082d94f16ba7348d54d034d/654023420cb20fde856c71e4_Generational%20Harm_%20Incarceration%27s%20Impact%20on%20Children%20and%20Families%20\(Updated\).pdf](https://cdn.prod.website-files.com/6082d94f16ba7348d54d034d/654023420cb20fde856c71e4_Generational%20Harm_%20Incarceration%27s%20Impact%20on%20Children%20and%20Families%20(Updated).pdf) [https://perma.cc/5BPK-NZUY] (discussing the impact of incarceration on loved ones).

the accomplice to cooperate in the prosecution of their co-defendants:

In some cases [imputed liability charges are] used as a tool to turn co[-]defendants against each other. That also goes directly into structural racism. Most of our [B]lack and [B]rown neighborhoods distrust the police and judicial system. . . . To go against that could lead to death. Or culture suicide.²⁶⁰

In this sense, imputed liability doctrines allow prosecutors to wield significant coercive power against a wide swath of people who may have varying levels of involvement or information, punishing those who cannot or will not aid in a prosecution.²⁶¹

These insights—based on scholarship, research, and experience—undermine the retributive justification for imputed liability doctrines and support challenges to the constitutionality of the extreme punishments that imputed liability murder doctrines impose.²⁶² This research suggests that imputed liability murder doctrines are especially susceptible to the influence of racism, undermining retribution's purported aim of apportioning punishment according to moral culpability. Where the law does not give "legal status to . . . moral intuitions"—that is, where the law is overly broad or overly harsh—the "invisible" mechanisms of "prosecutorial discretion, plea bargaining, and jury nullification" lead to selective enforcement.²⁶³ Leaving it to prosecutors "to enforce moral values not evident in the legislative code" creates "the opportunity, if not the incentive, to conduct abusive prosecution of peripheral accomplices as if they were perpetrators."²⁶⁴ In combination with the history of racial subordination in the United States and individualized racial biases that flow from this history, the broad scope of imputed liability murder doctrines can never align with a retributive ideal.

260. Letter from Earl Fulgiam to Caitlin Glass, *supra* note 255.

261. See Cohen et al., *supra* note 122, at 69 ("[C]ombining the felony murder rule and the accomplice liability doctrine . . . vastly expands the government's prosecutorial power, extended further through the expansion of group liability offenses like conspiracy, Racketeer Influenced and Corrupt Organizations (RICO) charges, and other association offenses.").

262. See *infra* Part IV.A.

263. Dressler, *supra* note 116, at 119.

264. *Id.*

5. Punishment and Proportionality: “The death penalty still exists in Massachusetts due to the fact that my sentence doesn’t end until I’m dead.”²⁶⁵

Imputed liability doctrines impose the most severe available convictions and punishments on all parties connected to an act of community harm without differentiating between greater and lesser contributions to that harm. Setting aside the argument that permanent incarceration is never proportionate, imputed liability murder doctrines introduce particular concerns by reducing the legal elements that the State must prove in order to impose mandatory lifetime incarceration.²⁶⁶ Several organizers emphasized concerns about the severity of punishments imposed for imputed liability murder convictions:

Life without parole can be imposed on people who never took a life or intended to commit any harm. For example, a person could be waiting outside in a car for an individual and not knowing that that individual may be committing a crime. Or he may have just provided a[n] item that we used in a crime but remain at home under the laws of joint venture and felony murder. If a person does anything that the Commonwealth consider[s] an act of furthering a criminal enterprise[,] [h]e or she is liable to be sentenced to life without parole . . . [It’s as easy] as just answering [a] phone call[,] [w]hich can be seen as an act of furthering our criminal enterprise. Now this can happen to anyone, including everyone in this room. And I bring up these scenarios because I believe that no one should die in prison for someone else’s actions. And no one[] [d]eserves to die in prison because of harsh laws. . . . So I urge you to consider . . . the injustices of joint venture.²⁶⁷

265. *Hearing on H.45, supra* note 38 (testimony of Tabue Smiley).

266. *See, e.g.,* RACHEL ELISE BARKOW, PRISONERS OF POLITICS 25–27 (2019) (noting that felony murder laws “lump disparate categories of people together”); Serota, *supra* note 174, at 115 (“Strict liability felony murder statutes punish getaway drivers, lookouts, and general encouragers of offenses like intentional murderers.”); Dyson, *supra* note 207, at 392 (“English law’s approach of equal labelling for principals and accessories arguably mischaracterises and misrepresents what the accessory did. It groups all participants under the same label, such as ‘person convicted of murder,’ wiping out all nuance in discussing a potentially huge range of contribution and culpability.”); Michael Heyman, *Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability*, 87 SAINT JOHN’S L. REV. 129, 129 (2013) (“[C]omplicity law seems to violate the fundamental precept of personal wrongdoing as a predicate for punishment. And, though it need not, in practice it has with terrible frequency.”); Dressler, *supra* note 116, at 92 (“To treat accomplices as if they had actually perpetrated the crime, however, deviates from the normal rules of criminal liability.”); Moore, *supra* note 224, at 452 (“Standing in the shoes of someone else and being blamed for what she did, and for the culpability with which she did it, violates proportionality between desert and punishment.”).

267. *Hearing on H.3962, supra* note 19 (testimony of Peter Bin).

I've been incarcerated [for] all of my [twenties], my [thirties], my [forties] [a]nd now going into my [fifties] for the charge of murder in the first degree under joint venture and felony murder[,] [a]nd I never took a life. . . . [s]o if someone did not take a life, why are they being given life in prison?²⁶⁸

In addition to imposing severe punishments, imputed liability doctrines also introduce proportionality concerns with respect to disparate outcomes between co-defendants in the same case.²⁶⁹ As one organizer explained: “You know, I’ve been incarcerated eighteen years behind the joint venture theory. . . . The principal in my case has never been arrested. And I’m in here where they know that I am not the murderer and the murderer is still at large to this day.”²⁷⁰ Another emphasized this point by stating: “The Commonwealth has the joint ventures sitting here with life, with no parole and the primary person which is the actual killer has never even been brought to trial.”²⁷¹ A third organizer similarly testified:

I’ve been in prison twenty-nine years for being convicted under the theory of joint venture. Basically, the Commonwealth said that I was the driver. In my case[,] I was tried with the princ[ipal] of my case. The principal was acquitted of all the charges[,] and I’m sitting here doing a natural life sentence without the eligibility of parole.²⁷²

Imputed liability murder doctrines also introduce proportionality problems in cases involving a power imbalance or coercion between co-defendants. One example is the doctrines’ criminalization of survivors of domestic violence, trafficking, and abuse.²⁷³ As one organizer explained:

268. *Hearing on H.45, supra* note 38 (testimony of Tabue Smiley).

269. *See Moore, supra* note 224, at 449 (arguing that an accomplice’s “blameworthiness is established by their own causal contribution to the result, their own allowing or failing to prevent that result, their own risking of that result, or their own culpable tryings” but that “those we now call accomplices, in general and on average, present lesser degrees of blameworthiness” on those metrics).

270. *Hearing on H.3962, supra* note 19 (testimony of Thomas Woods).

271. *Hearing on H.45, supra* note 38 (testimony of Earl Fulgiam).

272. *Id.* (testimony of Edker Rock).

273. *See GOODMARK, supra* note 128, at 77 (“Prosecutors also use felony murder and accomplice liability laws to hold survivors criminally responsible for the acts of others.”); Bierria & Lenz, *supra* note 124, at 97 (describing how imputed liability murder doctrines “either construct survivor culpability as if it is bound with abuser action through conflating their respective culpability or openly shifting the bulk of moral responsibility from the batterer to the survivor”); Savanna Jones, *Ending Extreme Sentencing Is a Women’s Rights Issue*, GEO. J. GENDER & L. ONLINE 1, 3–4 (2022),

At the time of my sentencing, nothing was taken into account[,] and the simple fact that I have never committed a crime before in my life[,] or that I was a mother of three, or that I was enrolled in college[,] or that . . . I was a victim of domestic violence [and the person who actually committed the killing] was also serving time for what they had done to me and my children. Nothing is taken into account when a person is just being present at the time of an act or at the time of the crime. Nothing is taken into account that this person didn't understand the circumstances that they were dealt at that moment. . . . No one cares whether or not you're afraid. No one cares whether or not you're terrified of what might happen to you if you leave. . . . No one's asked that question, no one's giv[en] a chance to even truly explain themselves when it comes to being charged with a crime that they were just present for.²⁷⁴

Similar issues exist with respect to youth who are susceptible to peer pressure and unable to foresee how a sequence of events may play out.²⁷⁵ While some scholars have suggested that proportionality concerns with imputed liability could be addressed by the addition of a causation element requiring proof that the accomplice's actions helped bring about a death, this fix would not address situations such as those described here, involving coercion or abuse between co-defendants.²⁷⁶

In sum, the blanket application of life and LWOP sentences for all parties in an offense precludes any inquiry into factors

https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2022/03/S.-Jones_Ending-Extreme-Sentences-is-a-Womens-Rights-Issue.pdf [<https://perma.cc/Y3E4-RGSU>] (noting that women may be coerced to participate in felony murder offenses or engage in felony conduct to defend themselves from abuse); Ghandnoosh et al., *supra* note 239, at 6 (citing research from the California Coalition for Women Prisoners, showing that “the majority of their members convicted of felony murder were accomplices navigating intimate partner violence at the time of the offense and were criminalized for acts of survival”); Heffernan, *supra* note 209 (noting that accomplice liability laws “can make victims of intimate partner violence particularly vulnerable to prosecution”).

274. *Hearing on H.45, supra* note 38 (testimony of Zeno Williams).

275. *See* Moriearty et al., *supra* note 9, at 689–90 (discussing studies showing “that youth and emerging adults are disproportionately charged”); Caldwell, *supra* note 129, at 907 (explaining how “felony murder laws are a driving force behind the high numbers of young offenders”); McDaniel, *supra* note 129, at 255 (finding that “gang affiliation was most common among youth of ethnic minority status”).

276. Dressler, *supra* note 116, at 93 (“[E]ven though those who intentionally, unjustifiably, and inexcusably aid others in criminal conduct should be punished, the degree of an accomplice’s crime and punishment should depend on the presence or absence of a causal connection between [their actions] and the ultimate injury.”).

that contributed to the harm that occurred or the relative involvement of each accused participant. A sentence range—or non-carceral responses to community harm—would allow for a more precise calibration of culpability.²⁷⁷

6. Barriers to Transformational Healing and Restorative

Justice: “[A]ccountability . . . allow[s] us to humanize each other and love each other.”²⁷⁸

Imputed liability murder doctrines silence and misplace accountability. The doctrines silence accountability by deterring the accused from speaking about their role in an offense for fear of extreme punishment. They misplace accountability by imposing murder convictions on participants whose actions were far from that. The doctrines’ interference with meaningful accountability harms not only the person who is incarcerated, but also the person who has suffered the loss of a loved one and seeks a deeper understanding of how and why this harm has occurred.

Restorative justice and transformative justice frameworks generally require responsible parties to acknowledge their role in community harm in service of healing from that harm.²⁷⁹ The

277. See *infra* Part IV.A.

278. Julian Green, *Our Path Towards Accountability*, WE ARE JOINT VENTURE, INC. 3 (June 2024) (on file with the Minnesota Law Review).

279. See M. Eve Hanan & Lydia Nussbaum, *Community Accountability*, 20 HASTINGS RACE & POVERTY L.J. 5, 9–33 (2023) (discussing the differences between restorative and transformative justice frameworks). See generally Mia Mingus, *Transformative Justice: A Brief Description*, LEAVING EVIDENCE (Jan. 9, 2019), <https://leavingevidence.wordpress.com/2019/01/09/transformative-justice-a-brief-description> [<https://perma.cc/BS6B-4JXP>] (describing a transformative justice framework for “community accountability,” in which members of a community work with a person who has caused harm so that the person “understands their actions and the impact they had on the survivor(s) and others involved, apologizes, makes amends, repairs damage caused by their actions and—most importantly—works to change their behavior so that the harm doesn’t happen again”); DANIELLE SERED, UNTIL WE RECKON 96 (2019) (describing the elements of accountability from a restorative justice perspective as: “(1) acknowledging responsibility for one’s actions; (2) acknowledging the impact of one’s actions on others; (3) expressing genuine remorse; (4) taking actions to repair the harm to the degree possible, and guided when feasible by the people harmed, or ‘doing sorry’; and (5) no longer committing similar harm”); Cameron Rasmussen & Sonya Shah, *Growing Justice*, INQUEST (Sept. 9, 2022), <https://inquest.org/growing-restorative-transformative-justice> [<https://perma.cc/N467-ATE2>] (noting that “[a]t their best” both frameworks “are invested in non-punitive responses to harm that seek healing, accountability, and transformation while avoiding the reproduction of violence and domination core to the criminal legal system and other carceral settings”).

premise of these practices is that acknowledgement and exchange between people who have caused harm and people who have experienced harm can lead to meaningful repair for both parties.²⁸⁰

Criminal law in general, and imputed liability doctrines in particular, discourage honest conversations about accountability.²⁸¹ Criminal law deters the accused from speaking through the constant threat that any statement may be used to further their prosecution.²⁸² These effects are amplified in the context of imputed liability murder, since a claim of accountability for even a small or incidental aspect of an offense exposes the accused to a substantial risk of liability for homicide. This may be true even where a person is legally innocent. For example, a person who did not intend to kill anyone but was present at a murder may decline to share their experience—even if they want to and even if the harmed party wants them to—because their words could

280. See Washington, *supra* note 49, at 1119 (noting, in the context of domestic violence, that “[w]hile some survivors welcome a criminal legal response to violence, many survivors do not wish to engage with carceral forms of intervention”); Stephanos Bibas & Richard A. Bierschbach, Essay, *Integrating Remorse and Apology into Criminal Procedure*, 114 YALE L.J. 85, 90 (2004) (arguing that “[a]pology . . . is a powerful ritual for offenders, victims, and communities”); *Crime Survivors Speak: The First-Ever National Survey of Victims’ Views on Safety and Justice*, ALL. FOR SAFETY & JUST. 5 (2016), <https://build.allianceforsafetyandjustice.org/sites/default/files/2025-09/Crime-Survivors-Speak-Report.pdf> [<https://perma.cc/7JR4-GW5M>] (showing, through survey study, that by a margin of two to one, victims surveyed preferred that the criminal justice system focus on rehabilitation instead of punishment, and, “by a margin of 3 to 1, victims prefer[red] holding people accountable through options beyond prison,” such as treatment and rehabilitation programs).

281. See SERED, *supra* note 279, at 92 (discussing ways that “the criminal justice system is like kryptonite to accountability”); Carter et al., *supra* note 52, at 333 (“Instead of cultivating transformation or encouraging us to make amends, the carceral state locked us in the worst expression of ourselves. No avenue was built into the criminal legal process for recompense, reconciliation, healing, and hope, which families and communities enclosed by all forms of violence so desperately need.”); Bibas & Bierschbach, *supra* note 280, at 92 (“[C]riminal procedure does little to encourage or even allow meaningful apologies and expressions of remorse from offenders to their victims and the community.”).

282. See Natapoff, *supra* note 104, at 1460 (discussing constraints on defendant speech, including “the ease with which their testimony can be turned against them”).

be used against them to support a finding of intent even where there was none.²⁸³

The innocence trap further complicates accountability-based practices. A person convicted of imputed liability murder may wish to accept accountability for some aspects of their conduct yet contest that their conviction or punishment reflects that conduct. As one organizer put it, “I would like to be held accountable for my actions and not the actions of somebody else.”²⁸⁴ By imposing punishment that is misaligned with a person’s self-conception of accountability, imputed liability doctrines interfere with genuine efforts to determine what accountability really means.

The WAJV coalition’s advocacy rejects the notion that contesting criminalization amounts to an abdication of accountability for community harm. Instead, the organizers’ testimony articulates a wish for more meaningful forms of accountability. As one organizer testified:

We’re . . . looking for due process, a fair trial[,] and being held responsible for whatever actions that we actually did do. And I understand that people want justice for people losing their family. As I said, I’ve lost my family too, but one thing that I always said is that I would never want somebody to be held accountable for something that they didn’t do. Especially of life fitted with no chance of parole . . .²⁸⁵

Another organizer similarly stated: “[n]o one is saying that no wrong has been done[] [i]n our cases, because that would be disrespectful to the victims. But to sentence us to the rest of our lives in prison for murder, when no one has lost their lives by these hands is unfair.”²⁸⁶

Additionally, the coalition has made efforts to center people who have lost loved ones to violence. In June of 2024, the coalition held a community event that brought together people impacted by homicide as well as people impacted by incarceration, recognizing that no bright line separates these groups.²⁸⁷ Speakers at the event, called *Restoring Hope: A Path Towards Healing*

283. See *supra* Part III.B.3; see also Natapoff, *supra* note 104, at 1495 (“[I]t can be highly risky for a defendant to express remorse in his own voice, either because it can lead to additional liability, or because the ways in which defendants express remorse may be misinterpreted by their intended audience.”).

284. *Hearing on H.45, supra* note 38 (testimony of Valentino Facey).

285. *Id.* (testimony of Earl Fulgiam).

286. *Id.* (testimony of Tabue Smiley).

287. See SERED, *supra* note 279, at 3 (identifying “exposure to violence” as one driver of violence).

and Accountability, included two women who lost their sons to homicide and have since dedicated their lives to intervening in cycles of violence and incarceration through restorative justice and transformational healing practices.²⁸⁸ Through events like these, WAJV has reclaimed the concept of accountability, prefiguring alternative possibilities for understanding accountability outside the confines of a criminal conviction.

* * *

The WAJV organizers have articulated important moral, legal, and theoretical challenges to imputed liability murder doctrines. These insights support a theorization of imputed liability murder convictions as wrongful. In the next Part, we discuss the implications of the organizers' arguments with respect to imputed liability murder doctrines, the concept of wrongful convictions, and criminal law more broadly.

IV. RECONSIDERING WRONGFUL CONVICTIONS

The analysis set forth above has three primary implications for law and scholarship. First, the WAJV organizers' epistemic insights can guide meaningful changes to imputed liability murder doctrines. Second, our analysis invites a broader conception of wrongful convictions, thereby implicating not just imputed liability doctrines but criminal law and punishment generally. Finally, WAJV encourages imagination regarding practices for accountability and responding to community harm outside the confines of punishment. We discuss each of these contributions in turn.

288. See *Restoring Hope: A Path Towards Healing and Accountability*, B.U. SCH. OF L. (June 22, 2024), <https://www.bu.edu/law/engagements/restoring-hope-a-path-towards-healing-and-accountability> [https://perma.cc/5S4M-K7GH]. The women who spoke at the event were Janet Connors and Ruth Rollins. See *About*, CIRCLE UP, <http://circleupdoc.com/about-2> [https://perma.cc/CV2L-EZ2T] ("For Janet, Clarissa, and the other survivor moms, real justice is not about punishment: it's about preventing more violence."); *About*, WE ARE BETTER TOGETHER, <https://wab2g.org/about> [https://perma.cc/DN2Q-8CWN] ("Ruth found her voice and founded We Are Better Together, Warren Daniel Hairston Project to honor her son's legacy and to engage and empower mothers impacted on both sides of gun violence in the peacemaking process. We Are Better Together aims to bring together families impacted on both sides of homicide and incarceration to foster healing and unity in the community.").

A. LIMITING OR ELIMINATING IMPUTED LIABILITY MURDER DOCTRINES

The coalition's insights challenge the legitimacy of imputed liability murder doctrines and the convictions these doctrines produce. The wrongfulness of imputed liability murder convictions derives from the doctrines' misalignment with moral intuitions, susceptibility to error, relationship to racial subordination, imprecise calibration of culpability and punishment, and impediment to transformative and restorative justice practices. The organizers point to concrete legislative and judicial interventions that would help address these problems.

First, WAJV's proposed legislative change would mitigate the misalignment between the law and community expectations by creating a separate offense of accomplice murder, distinguishing between accomplices and principals with respect to murder prosecutions and punishments.²⁸⁹ Massachusetts General Laws chapter 274, section 2 currently states: "Whoever aids in the commission of a felony, or is accessory thereto before the fact by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the manner provided for the punishment of the principal felon."²⁹⁰ The proposed bill would add, after that sentence, the following:

Section 2A. Accomplice Murder

Whoever aids in the commission of a killing or is accessory thereto before the fact by counseling, hiring, or otherwise procuring such killing to be committed but is not a principal perpetrator who is personally and directly responsible for committing the killing, shall be punished by imprisonment in the state prison for a period of not less than [two] and [a half] years nor more than [twenty-five] years.²⁹¹

The organizers describe the mental and emotional toll of bearing a label that implies they took a life when they did not.²⁹² The conflation of murder and accomplice murder may also cause confusion—or even moral injury—for those proximate to imputed liability murder prosecutions, such as jurors.²⁹³ Distinguishing these offenses mitigates some of these mental,

289. While the coalition's proposal specifically focuses on accomplices, their insights would support similar changes to felony murder doctrines, which also cover principals.

290. MASS. GEN. LAWS ANN. ch. 274, § 2 (West 2025).

291. H. 1977, 2025–2026 Leg., 194th Gen. Ct. (Mass. 2025).

292. See *supra* Part III.B.1.

293. See *supra* Part II.B.2.

emotional, and relational impacts of imputed liability murder offenses. This distinction also arguably better aligns with a deterrent rationale by incentivizing lesser versus greater involvement in community harm.²⁹⁴

Separating accomplice murder from murder would also address some of the due process and notice concerns discussed above. The current law allows prosecutors to charge a person with murder without specifying whether they are pursuing that charge under a theory of direct (principal) liability or accomplice liability.²⁹⁵ As a result, a murder indictment does not adequately notify the accused of the charges they are facing and the elements a prosecutor will need to prove to obtain a conviction. This innocence trap can limit the ability of the accused to participate in their defense and cloud the plea-bargaining process.²⁹⁶ By making accomplice murder a separate charge from murder, WAJV's proposal would require prosecutors to identify whether they are pursuing charges for murder, accomplice murder, or both.

Second, WAJV's proposed legislation creates a sentencing range, allowing for a clearer relationship between culpability and punishment and creating more opportunity for expressions of accountability. Rather than imposing a mandatory minimum sentence of life or LWOP, the proposed offense of accomplice murder would carry a sentence between two and a half and twenty-five years.²⁹⁷ A sentencing range, as opposed to the blunt force of an extreme mandatory minimum sentence, better reflects the wide range of conduct subsumed under imputed liability murder. While judicial sentencing discretion can also be a vector of racial bias, judicial discretion within the parameters of two and a half to twenty-five years would be a vast improvement over the current regime, which presents prosecutors with the choice of either seeking a murder conviction carrying a mandatory life or LWOP sentence or declining to charge at all.²⁹⁸ Since imputed liability murder doctrines permit convictions without requiring the prosecutor to prove that the accused actually

294. See Dressler, *supra* note 116, at 114 (arguing that, between secondary and primary involvement in an offense, the law should incentivize the former).

295. See *supra* Parts I.A., III.A.

296. See *supra* Part III.B.1.

297. H. 1977, 2025–2026 Leg., 194th Gen. Ct. (Mass. 2025).

298. Scott, *supra* note 43 (arguing that joint venture legal theory “leaves a lot more room for racial bias to fill in the gaps” in prosecutorial discretion).

caused a death, a prosecutor's charging incentives—combined with the racial biases impacting group liability determinations discussed above—invite especially egregious outcomes.²⁹⁹

A sentencing range also creates more space for people accused or convicted of imputed liability offenses to participate in transformative and restorative justice practices, which can promote healing for both people who have caused harm and people who have lost loved ones to violence.³⁰⁰ These practices require a responsible party to take accountability for their role in causing harm. Imputed liability murder doctrines inhibit this practice by imposing labels and categories that are misaligned with a person's understanding of their own culpability—and possibly misaligned with external perceptions of their culpability. No honest conversation about accountability can begin from this place. Moreover, mandatory life and LWOP sentences strongly disincentivize people who are facing these sentences from speaking at all, let alone honestly engaging with ways they may have contributed to community harm. A separate offense of accomplice murder with an associated sentencing range invites a more honest conversation about accountability and rejects permanent banishment as an outcome of that conversation.

Third, the analysis presented here can inform not only legislation, but also jurisprudence regarding the constitutionality of imputed liability murder doctrines and the extreme punishments these doctrines impose. The WAJV organizers illustrate that imputed liability murder doctrines are especially susceptible to the influence of racial biases and impose punishments that are disproportionately severe. These findings support potential challenges to imputed liability murder convictions and punishments under state and federal constitutional provisions prohibiting cruel punishments.³⁰¹ Engaging in what has come to be known as the categorical approach to proportionality analysis, the U.S. Supreme Court has prohibited “a certain category of

299. See *supra* Part III.B.4.

300. See Bibas & Bierschbach, *supra* note 280, at 87 (noting that “[p]eople value remorse and apology because they heal psychic wounds, teach lessons, and reconcile damaged relationships” and “[v]ictims and victimized communities have long viewed remorse and apology as essential elements of justice for crimes”).

301. See *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016) (“Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment . . .”).

punishment for a class of defendants because of their status or offense.”³⁰² State courts have extended even broader protections under state constitutional analogues to the Eighth Amendment.³⁰³ Both state and federal courts have affirmed the proposition that racial bias and arbitrariness in the application of a punishment contribute to its disproportionality.³⁰⁴

The WAJV organizers’ insights support an argument that life and LWOP sentences for imputed liability murder convictions are categorically disproportionate. Indeed, advocates in Pennsylvania, Colorado, and Michigan have challenged LWOP

302. *Id.* at 201 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989). When determining whether to impose a categorical ban on a sentence for a particular class of offenses, courts employ a two-pronged approach: (1) evaluating “objective indicia of society’s standards, as expressed in legislative enactments and state practice” to determine whether there is a “national consensus . . . against” the challenged sentence, and (2) balancing the culpability of those sought to be excluded from the penalty against the severity of that penalty, and determining whether the challenged punishment is supported by legitimate penological purposes. *Roper v. Simmons*, 543 U.S. 551, 563, 564, 568–72 (2005).

303. *See, e.g.*, *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024) (finding that LWOP sentences for children under twenty-one violate the state constitution); *In re Monschke*, 482 P.3d 276, 280 (Wash. 2021) (finding that mandatory LWOP sentences for children under twenty-one violate the State Constitution); *People v. Taylor*, No. 166428, 2025 WL 1085247 (Mich. Apr. 10, 2025) (same); *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014) (finding that mandatory LWOP sentences for children under eighteen violate the state constitution); *Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023) (holding that under the State Constitution, contrary to the U.S. Supreme Court’s interpretation of the Eighth Amendment in *Jones v. Mississippi*, sentencing courts must make a finding of a young person’s supposed incorrigibility before imposing a LWOP sentence).

304. *See, e.g.*, *State v. Kelliher*, 873 S.E.2d 366, 386–87 (N.C. 2022) (finding that “sentencing a juvenile who can be rehabilitated to life without parole is cruel,” in violation of the State Constitution, and noting that this holding is “bolstered by empirical data demonstrating that an individual juvenile offender’s chances of receiving a sentence of life without parole may be at least partially attributable to factors that are not salient in assessing the penological appropriateness of a sentence, such as race, socioeconomic status, and geography”); *State v. Gregory*, 427 P.3d 621 (Wash. 2018) (holding that the death penalty violates its cruel punishment clause, in part because it is imposed in an arbitrary and racially biased manner); *Dist. Att’y for Suffolk Dist. v. Watson*, 411 N.E.2d 1274, 1283 (Mass. 1980) (striking down the death penalty as unconstitutionally cruel punishment in part because “experience has shown that the death penalty will fall discriminatorily upon minorities, particularly blacks”); *see also* *Buck v. Davis*, 580 U.S. 100, 123 (2017) (explaining that “a basic premise of our criminal justice system” is that the law must “punish[] people for what they do, not who they are”).

sentences for felony murder on these grounds.³⁰⁵ While both state and federal courts are generally reluctant to restrain punishments, these arguments are worth pursuing.³⁰⁶ The organizers' insights can help shape the direction of potential litigation in this area.³⁰⁷

At the very least, our analysis urges courts to review jury determinations in imputed liability murder cases and overturn convictions based on unsupported inferences of liability.³⁰⁸ Additionally, by exposing the ways that imputed liability murder doctrines interfere with the rights of the accused to participate in their own defense, the coalition's insights raise Sixth Amendment concerns about how these doctrines operate in practice.³⁰⁹

WAJV's proposed changes to accomplice liability murder are modest, and some might find them to be reformist rather than transformative interventions. As Marbre Stahly-Butts and Amna Akbar explain, "[w]hereas a reform is simply a change, a transformation reflects a change in structure, composition or character."³¹⁰ If one believes that the criminal legal system is fundamentally flawed, then one concern with reformism is that improving that system will merely entrench it, rather than

305. See *Commonwealth v. Lee*, 3 WAP 2024 (Pa. Feb. 16, 2024) (pending challenge to LWOP for felony murder in Pennsylvania); *People v. Langston*, No. 163968 (Mich. Sept. 15, 2021) (pending challenge to LWOP for felony murder in Michigan). *But see* *Sellars v. People*, 560 P.3d 954, 954 (Colo. 2024) (rejecting a similar challenge in Colorado).

306. See Kathryn E. Miller, *The Antisubordination Eighth Amendment*, 112 CALIF. L. REV. 2065, 2117–33 (2024) (discussing the potential to advance more robust Eighth Amendment restrictions on punishment through an antisubordination interpretation); Smith et al., *supra* note 39, at 562–77 (discussing the potential for state constitutional antipunishment clauses to curb excessive punishment).

307. See *generally* Lobel, *supra* note 16, at 93–94 (describing a framework for participatory impact litigation that involves a dialogic relationship between attorneys and clients, centers clients' voices, and demands democratic changes to challenged institutions).

308. See *Commonwealth v. Tse*, 245 N.E.3d 710, 715–18 (Mass. 2024) (overturning a conviction based on insufficient evidence that the defendant intended to cause a death); *Commonwealth v. Baez*, 237 N.E.3d 744, 744 (Mass. 2024) (same).

309. See, e.g., *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial . . . is, in essence, the right to a fair opportunity to defend against the State's accusations.").

310. Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1548 (2022).

challenge its underlying logics and constitutive power relations.³¹¹ A “non-reformist reform,” by contrast, “aims to undermine the political, economic, and social system or set of relations as it gestures at a fundamentally distinct system.”³¹² A non-reformist reform is necessarily part of a “democratic project” that “draws from and builds the popular strength, consciousness, and organization of revolutionary or agential classes.”³¹³

Creating a new offense of accomplice murder might be viewed as an expansion of criminal law that entrenches the tools and logics that form the criminal legal system.³¹⁴ Additionally, although WAJV is in coalition with other groups to end LWOP sentences for all, some might argue that differentiating accomplices from principals reinforces the view that principals are more culpable and thus deserving of longer carceral sentences.³¹⁵ These arguments apply with equal force to the potential constitutional challenges that focus specifically on the disproportionality of punishments imposed pursuant to imputed liability murder theories, which may risk implicitly endorsing punishments for everyone else.

Still, some features of the organizers’ advocacy efforts are arguably more aligned with a paradigm of non-reformist reform. By separating accomplice murder from direct liability murder, their proposal would eliminate a tool that prosecutors use to bring murder charges without meeting the burden generally required to sustain such charges. This would reduce the overall number of people who could be convicted of murder and sentenced to death by incarceration, thereby shrinking the criminal system.³¹⁶ As discussed in the next Sections, the organizers’ insights also invite lawmakers and the public to think differently about violence and accountability, thereby challenging the narratives that undergird criminalization and punishment writ

311. See Akbar, *supra* note 8, at 2518–20 (noting criticism that criminal justice reform can entrench faulty systems).

312. *Id.* at 2527.

313. *Id.*

314. Stahly-Butts & Akbar, *supra* note 310, at 1552 (arguing that a radical reform “shrinks the system doing harm”).

315. See *id.* at 1563 (“[R]adical reforms aim not to harm anyone or worsen the conditions of those already oppressed or vulnerable.”).

316. See *id.* at 1552 (“A radical reform . . . shrinks the system doing harm . . .”).

large.³¹⁷ Finally, by contesting their criminalization in the halls of the State House and the pages of legal scholarship, the organizers challenge forms of epistemic injustice that otherwise threaten to silence them.³¹⁸ In this sense, the organizers' contributions aim to undermine the power relations that uphold the punishment system and support a broader, potentially transformative democratic project.

B. MOVING TOWARD A BROADER CONCEPTION OF WRONGFUL CONVICTIONS

This Article has presented a case study that supports expanding social and legal conceptions of wrongful convictions beyond the context of factual innocence. In doing so, it offers an invitation, rather than an answer, to the question of what constitutes a wrongful conviction. By investigating how imputed liability murder convictions might be understood as wrongful, we have endeavored to take seriously the ideas of one organizing effort in our proximity. We expect that attention to other movements of people who have experienced criminalization will reveal other sources of wrongful convictions.

Building on prior scholarship, our analysis contributes some insight into ways that wrongful convictions may derive from the function, rather than the dysfunction, of criminal law.³¹⁹ Wrongful convictions might include those resulting from criminal laws or procedures that are morally, theoretically, or practically unsound—those that are mismatched with community expectations, influenced by or reinforce racism, disproportionately punitive, or counterproductive to the aim of healing from community

317. See *id.* at 1557 (“[Radical reforms] point to or embody distinct modes of accountability and organizing collective life. . . . [and] provide people an opportunity to imagine different ways of being in relationship with each other and of dealing with harm.”); Saifee, *supra* note 16, at 59 (arguing that “changing how the law and the public think about violence is central to decarceration”).

318. See Stahly-Butts & Akbar, *supra* note 310, at 1559 (“Radical reforms are about more than the demands themselves; it matters who articulated the demands, which organizing efforts and organizations pushed for them, and what ongoing space the demands create for collective learning and governance.”).

319. See Smith, *supra* note 1, at 319–22 (discussing how “Innocence Projects” are inherent to criminal justice systems); Steiker & Steiker, *supra* note 1, at 613 (arguing that evidence suppression helps cause wrongful convictions); Raymond, *supra* note 7, at 456 (arguing that wrongful convictions necessitate burden shifting on appeal).

harm.³²⁰ To take a few examples, one might characterize as wrongful convictions those resulting from the criminalization of status,³²¹ pregnancy,³²² or a person's prior experiences of trauma and violence.³²³

A broader conception of wrongful convictions encourages contestation of criminal doctrine and procedure. Can every conviction be considered wrongful in some way? We do not answer that question, but we hope that this may be a site for further inquiry. We urge that inquiry to be in partnership and solidarity with people who have experienced criminalization and who are engaged in study and struggle. Without the insight of people who have experienced criminalization, legal institutions miss out on critical sources of information regarding wrongfulness in criminal law and potential interventions.³²⁴ While legal education may provide lawyers with information about the history and functions of the law, indoctrination in the law-as-it-is can limit lawyers' capacity to spot and subvert legal norms that perpetuate subordination.³²⁵ People whose lives have been upended by the law may be more adept at challenging harmful legal norms

320. See *supra* Part III.

321. See *City of Grants Pass v. Johnson*, 144 S. Ct. 2202, 2022–03 (2024) (upholding local ordinance criminalizing the unhoused).

322. Beety, *supra* note 5 (manuscript at 15–18) (describing the criminalization and punishment of pregnancy-related behaviors that are perceived as risky without any scientific basis, resulting in wrongful convictions for fetal harm and child abuse).

323. See generally GOODMARK, *supra* note 128 (outlining cases of domestic violence resulting in wrongful convictions).

324. See Saifee, *supra* note 16, at 59 (“People in prison have ushered in new metrics to measure public safety, generated innovative ways of thinking to make complex social problems more understandable to policy makers, and spearheaded advancements in criminal procedure to reduce the numbers of people cycling into prison.”).

325. See Angelo Petrih, *Counseling Oppression*, 104 B.U. L. REV. 1895, 1918 (2024) (discussing client counseling as a site where attorneys who are “steeped in the law come face to face with epistemes from below” and where clients “impart their knowledge of how the law oppresses and reveal the flaws in the assumptions made by systems of oppression”); López, *supra* note 16, at 1805 (“[L]egal scholars can better understand how the law functions in the world by examining it in concert with those who have experienced its bluntest consequences.”); Natapoff, *supra* note 104, at 1452 (suggesting that the silencing of criminal defendants “reinforces the social and psychological gaps between defendants and those who adjudicate them”).

and imagining alternative possibilities.³²⁶ For these reasons, the methods of movement law and PLS offer an especially promising path for further exploration of wrongful convictions.

C. IMAGINING ACCOUNTABILITY

The WAJV organizers lay bare the reality that accountability for harm can rarely be reduced to the choice juries are given: “guilty” or “not guilty.” Under the adversarial system’s binary outcomes, a person who is accused of accomplice murder or felony murder will either be condemned to die in prison or will be acquitted. Neither option demands reckoning with the impacts of violence or repairing community harm.

While carceral punishment imposes great suffering, it does not demand accountability.³²⁷ As Danielle Sered, Executive Director of the restorative-justice-based alternative-to-incarceration program Common Justice, has explained:

No one in prison is required to face the human impacts of what they have done, to come face to face with the people whose lives are changed

326. See Guinier & Torres, *supra* note 16, at 2758 (contrasting the power of social movement activism to “narrate new social meanings, often through their interaction with, and resistance to, more conventional understandings” with “lawyer-driven lawmaking” which “is tied to precedent and thus depends on conventional understandings as a point of departure”); see also HOOKS, *supra* note 56, at 91 (“When I use the phrase ‘passion of experience,’ it encompasses many feelings but particularly suffering, for there is a particular knowledge that comes from suffering. It is a way of knowing that is often expressed through the body, what it knows, what has been deeply inscribed on it through experience. This complexity of experience can rarely be voiced and named from a distance.”); Hanan, *supra* note 104, at 501 (suggesting that the speech of defendants in criminal proceedings “illuminates criminal legal practices that are unjust, serving as an important check on institutional power”).

327. See SERED, *supra* note 279, at 91 (differentiating between punishment and accountability); Karakatsanis, *supra* note 8, at 933–34 (discussing the potential for restorative justice movements to change “norms around how to think about accountability when a person harms another person” and noting that Washington D.C.’s employment of restorative justice methods has “eliminated the use of jails to incarcerate youth in the juvenile system”); *Creative Interventions Tool Kit: A Practical Guide to Stop Interpersonal Violence*, CREATIVE INTERVENTIONS § 4F, at 3 (2012), <https://www.creative-interventions.org/wp-content/uploads/2020/10/CI-Toolkit-Final-ENTIRE-Aug-2020-new-cover.pdf> [<https://perma.cc/UM86-9C7X>] (distinguishing between accountability, which is “driven by connection,” from punishment, which is driven by banishment). *But see* Hanan & Nussbaum, *supra* note 279, at 34 (contending that “the attempt [by transformative justice and restorative justice processes] to dichotomize accountability and punishment breaks down upon closer examination,” since people may still be banished or punished under the guise of “accountability”).

as a result of their decisions, to own their responsibility for those decisions and the pain they have caused, and to do the extraordinarily hard work of answering for that pain and becoming someone who will not commit that harm again.³²⁸

By centering survivors of violence in their advocacy efforts, the WAJV organizers explore how our society might consider what accountability looks like outside the confines of carceral punishment.³²⁹ This could include the incorporation of transformative justice practices that consider not only the immediate factors that contributed to community harm, but also the root causes of violence, including societal power structures and systems of oppression, which are generally excluded from consideration in the adversarial system.³³⁰ In this way, the organizers contribute to a broader landscape of advocacy led by people who have been directly impacted by criminalization and incarceration who seek to interrupt cycles of subordination, trauma, violence, and incarceration.³³¹ Expanding opportunities for

328. SERED, *supra* note 279, at 91.

329. *See supra* Part III.B.6.

330. *See, e.g.*, Washington, *supra* note 49, at 1119 (“The carceral response to violence is limited to addressing a specific instance of violence and unable to provide a solution to violence within larger societal power structures.”).

331. *See, e.g.*, JOCELYN SIMONSON, RADICAL ACTS OF JUSTICE (2023) (discussing organizing efforts to create community bail funds, court-watching programs, participatory defense hubs, participatory budgets, and redefine justice and safety); Saifee, *supra* note 16, at 65 (describing how people in prison have contributed to “decarceral moves,” i.e., “legal or conceptual strategies that can reduce new prison admissions, for long stays or at all, release more people from prison, or transform conventional understandings of the reasons people land in prison”); *Overview*, TRANSFORMATIONAL PRISON PROJECT, <https://www.transformprison.org/overview.html> [<https://perma.cc/2SEA-Y4ZV>] (describing the history of a restorative justice organization founded in prison and led by formerly incarcerated people that aims to bring together “those who have been harmed and those who have done the harming . . . to build understanding and empathy toward those who have been victims of violent crime” and to address “individual harms and the systemic harms that affect communities, more specifically communities of color”); *Reimagining Communities*, NAT’L COUNCIL FOR INCARCERATED & FORMERLY INCARCERATED WOMEN & GIRLS, <https://www.nationalcouncil.us/reimagining-communities> [<https://perma.cc/JP6H-JS2L>] (discussing a platform for ending the incarceration of women and girls developed after “a two-year series of meetings, convenings, listening tours, and town halls, including the ideas and voices of incarcerated women”); ONE MILLION EXPERIMENTS, <https://millionexperiments.com> [<https://perma.cc/AX23-YJKB>] (gathering “snapshots of community-based projects that expand our ideas about what keeps us safe”); *History of the Domestic Violence Survivors Justice Act (DVJSA)*, SURVIVORS JUST. PROJECT, <https://www.sjpnj.org/dvsja/history> [<https://perma.cc/J8SE-LEPH>] (providing history of a decades-long campaign by

restorative justice and transformative justice in the context of imputed liability murder could support other efforts to engage in these practices instead of carceral punishment.

CONCLUSION

Factual innocence represents an important category of wrongful convictions, but not an exhaustive one. People in prison who are engaged in movements to contest criminal law have critical insights about ways that the law produces wrongful convictions. Employing the methods of PLS and movement law, this Article analyzes features of imputed liability murder convictions that render these convictions wrongful. In doing so, we offer new possibilities for legislative and judicial interventions. We also advance a conception of wrongful convictions that extends beyond factual innocence to encompass convictions arising out of unsound, even if widely accepted, aspects of criminal law and procedure. Finally, our analysis aligns with broader efforts to imagine and practice accountability outside the bounds of carceral punishment.

incarcerated organizers to pass the Domestic Violence Survivors Justice Act); *About*, N.Y. CAMPAIGN FOR ALTS. TO ISOLATED CONFINEMENT, <https://nycaic.org/statement-of-principles> [<https://perma.cc/7DEM-ZDW2>] (describing the history of a campaign to end solitary confinement in New York).