function as a rhetorical legitimation for social and economic policies that effectively punished the poor and as a justification for the development of strong disciplinary state. In the political discourse of this period, social accounts of the crime problem came to be completely discredited. Such accounts, so it was said, denied individual responsibility, excused moral fault, watered down punishment, encouraged bad behaviour and in that respect were emblematic of all that was wrong with welfarism. Crime came to be seen instead as a problem of indiscipline, a lack of self-control or social control, a matter of wicked individuals who needed to be deterred and who deserved to be punished. Instead of indicating need or deprivation, crime was a matter of anti-social cultures or personalities, and of rational individual choice in the face of lax law enforcement and lenient punishment regimes.

In this watershed period, effective crime control came to be viewed as a matter of imposing more controls, increasing disincentives, and, if necessary, segregating the dangerous sector of the population. The recurrent image of the offender ceased to be that of the needy delinquent or the feckless misfit and became much more threatening—a matter of career criminals, crackheads, thugs, and predators—and at the same time much more racialized. And the compassionate sensibility that used to temper punishment now increasingly enhanced it, as the sympathy invoked by political rhetoric centred exclusively on the victim and the fearful public, rather than the offender. Instead of idealism and humanity, penal policy discussions increasingly evoked cynicism about rehabilitative treatment, a distrust of penological experts, and a new righteousness about the importance and efficacy of punishment. If ‘radical non-interventionism’ epitomized the progressive ideal of the 1960s, the term that best captures the new right’s ideal is that of ‘zero tolerance’. In the political reaction against the welfare state and late modernity, crime acted as a lens through which to view the poor—as undeserving, deviant, dangerous, different—and as a barrier to lingering sentiments of fellow feeling and compassion. In this reactionary vision, the underlying problem of order was viewed not as a Durkheimian problem of solidarity but as a Hobbesian problem of order, to which the solution was to be a focused, disciplinary version of the Leviathan State.

5

Policy Predicament: Adaptation, Denial, and Acting Out

So how did the social changes of late modernity come to impress themselves upon the field of crime control and criminal justice? Not directly to be sure, but through a series of accommodations and adjustments undertaken by various agencies in response to the specific pressures, problems or opportunities that these agencies encountered. Sometimes these stimuli were experienced as coming from the outside the system; at other times they were generated from within the criminal justice agencies themselves. But as the new social relations and sensibilities of late modernity worked their way in and through these crime control institutions the distinction between ‘inside’ and ‘outside’ became increasingly obscure. Late modernity and the new politics to which it gave rise changed how organizations thought about crime and punishment, justice and control, just as it changed the terrain on which these organizations operated.

The present chapter seeks to describe and explain the recurring forms of calculation and decision-making that gave rise to the practices of the contemporary period. It is not a narrative account of policy developments although it does describe the key policies and how they took shape. It aims instead to describe the kinds of considerations that drove decision-making in this period, and the sorts of policies that emerged in consequence.

The last quarter of the twentieth century saw the emergence of non-correctionalist rationales for crime control—new criminologies, new philosophies of punishment, new penological aims, and objectives. Over the same period there was also an attempt on the part of politicians and others to improve the fit between crime policy and the new political and cultural context in which it operates—to invent new and more effective mechanisms of crime control as well as new ways of representing crime and justice. This ongoing attempt to reorient crime control institutions and revise their relation to a changing social environment was very much a matter of patchwork repairs and interim solutions rather than well thought-out reconstruction.

Any substantial challenge to a society’s institutional arrangements creates practical problems and uncertainties—for the publics served by the institutions, as well as for the institutions’ leadership and staff. In this chapter and the next I examine the problems posed by the challenge to penal modernism. My
assumption is that whenever societal change displays a distinctive structural pattern, with one field of social action (in this case crime control) appearing to align itself with structures and sensibilities that have developed in other fields, the explanation should be couched in terms that respect the motivations and actions of the actors and agencies involved. Instead of talking in the abstract about 'structural alignment', or assuming that 'underlying forces' are capable of automatically working their effects across different social fields, we should instead attend to specific actors and agencies. We should ask how they perceive their situations and how they address the problems that these situations pose for them. And we should attend to the perceptions and reactions of civil society's actors as well as state actors, particularly where the institutions involved have such a central significance for the public at large.

This problem-solving account of institutional change finds support in the fact that historical periods in which institutional arrangements are undermined and tend to be ones in which there is an outpouring of reform proposals and policymaking inventiveness. Whatever the problems and dysfunctions it brings in its wake, the process of institutional collapse tends also to act as a spur to action. Its immediate effect is to release energies and to foster new ideas, new programmes and new reform initiatives. As the old institutions relax their grip, new ways of thinking and acting are brought into existence. Novel ways of framing problems become more thinkable and more urgently relevant. New forms of action can be tried out. No wonder then, that the field of crime control in the 1980s and 1990s saw such constant ferment and reform.

It would be going too far to say that criminal justice suffered a 'collapse' or a 'breakdown' in the period after the mid-1970s, but there is no doubt that the institutional arrangements of penal-welfarism and, more generally, of modern criminal justice, were undermined and unsettled in these years. The field was disrupted, so was the criminological framework that it had anchored. In the years that followed, a deluge of new programmes and policy initiatives flooded forth, proposing new institutional aims and objectives, new policing and penal regimes, and new conceptions of the crime problem and its solution.

Some of these, such as the radical projects of abolitionism, decriminalization, and de-institutionalization that appeared in the 1970s, captured the imagination of academics and radicals but had little sustained impact upon government thinking and institutional policy. Some, such as the movement for fixed sentencing reform, have come to form central ingredients of contemporary policy and practice, though not in the form that their proponents intended. Others schemes, such as the proposals for mediation and restorative justice, have been allowed to operate on the margins of criminal justice, offsetting the central tendencies without much changing the overall balance of the system. Yet others, like the reintroduction of chain gangs and corporal punishments in some of the southern states of America have left their emblematic mark on the culture of punishment, even when their impact upon actual penal practice has been much more slight.

Many of the reforms that now constitute important elements in the crime control field—such as the victims' movement, privatized corrections, or community-based policing and crime prevention—began as low-key, local initiatives that at first attracted comparatively little public attention. Others measures which have had great public visibility and wide public support—such as mandatory sentencing of repeat offenders and 'sexual predators', or community notification of released sex-offenders—have been rapidly implemented with immediate repercussions, though these have often been less significant than either their supporters or critics claimed. Finally, there have been developments of the first importance—above all the emergence of very high rates of imprisonment in the USA—that were not originally articulated as reform programmes, nor implemented as explicit policies. Instead, they emerged over time as the overdetermined outcome of various converging processes. And though they subsequently became de facto strategies attracting widespread support and multiple ex post facto rationales, the plan followed the practice rather than the other way around.

This confusing maelstrom of developments makes it difficult to sort out why some proposals are taken up and legislated while others fail to produce practical results, particularly when outcomes often have little to do with proven credentials, research evidence, or even professional support. To render the process intelligible we need to examine more than just the details of the proposals themselves. We must also inspect the motivations and thought-processes of the authorities who select and implement them, and the cultural and political contexts in which their choices are validated. This chapter will focus on the problem of crime control as it was perceived and managed by the agencies and authorities of the criminal justice state, and the considerations and contexts that shaped their decisions. The chapter after this will look more closely at the issue of cultural context, examining the new collective experience of crime and the structures of feeling to which it gave rise, and the behaviour of various non-governmental actors who have become actively involved in the effort to govern crime.

The new predicament

During the last thirty years, the criminal justice authorities of the UK and the USA have had to formulate policy within a changing set of pressures and constraints. They have had to reorient their practices in the wake of internal developments, such as the critique of correctionalism; adjust to changes in adjacent fields, such as the decline of work and welfare; and accommodate to the newly dominant political currents of neo-liberalism and neo-conservatism, however much these currents pulled in different directions or went against the grain of their own beliefs. Above all, however, they have had to face a new criminological predicament—a new and problematic set of structural constraints that formed the policy horizon within which all decisions must be made. This
predicament has its origins in two major social facts of the last third of the twentieth century: the normality of high crime rates and the acknowledged limitations of the criminal justice state.

Over time, this predicament has appeared more or less pressing. In the 1970s and early 1980s it became starkly apparent to many administrators, although elected officials were often slower and more reluctant to recognize its force. In the late 1990s, with the falling off in crime rates, it has temporarily eased its effect, and it has become easier for politicians (and maverick police chiefs) to publicly deny it. But however much it shifts in and out of consciousness, the limits imposed by high crime rates and low criminal justice effectiveness remain a fundamental constraint upon contemporary policy and practice.

High crime rates as a normal social fact

In the post-war period, high rates of crime became a fact of life in the USA and the UK, just as they did in most Western societies. From the mid-1960s onwards, rates of property and violent crime that were double and treble those of pre-war rates increasingly became an acknowledged and commonplace feature of social experience. By the early 1990s, despite some levelling off, the recorded rates were as much as ten times those of forty years before. Between the 1960s and the 1990s, a whole complex of related phenomena had grown up around the fact of crime—most notably a widespread fear of crime, routine avoidance behaviours, pervasive media and cultural representations, and a generalized 'crime consciousness'. In that sense, high crime—and the responses to it—had become an organizing principle of everyday life, an integral part of social organization. If commentators in the immediate post-war period could regard increased rates as a temporary aberration, by the 1970s society's vulnerability to high rates of crime came to be viewed for what it was—a normal social fact. At the end of the 1990s, despite much publicized decreases, American and British rates of crime and violence remain at an historically high level, and are widely perceived as such, particularly by older people who recall the very different circumstances of the 1950s and early 1960s. Whatever successes police and politicians may claim, crime avoidance remains a prominent organizing principle of everyday life, and fear of crime persists at unprecedented levels.

Despite the fact that crime has a very uneven social distribution, and high risks of victimization are disproportionately concentrated in the poorest urban districts, crime is now widely experienced as a prominent fact of modern life. For most people, and especially for those living in cities and suburbs, crime is no longer an aberration or an unexpected, abnormal event. Instead, the threat of crime has become a routine part of modern consciousness, a standing possibility that is constantly to be 'kept in mind'. Crime has come to be regarded as an everyday risk that must be routinely assessed and managed in much the same way that we have come to deal with road traffic—another mortal danger that has become a normal feature of the modern landscape. High rates of crime have, over the period of a single generation, become a standard, background feature of our lives—a taken-for-granted element of late modernity. The now ubiquitous security advertisements telling us that 'a car theft occurs every minute', or 'a credit card is lost or stolen every second' express the experience quite well: crime forms a part of our daily environment, as constant and unremarkable at time itself.

High crime rates have become patterned regularities—normal and more or less intelligible features of our social and economic routines that are widely regarded as an inevitable accompaniment of modernization. Until recently, and with a consistency rarely seen in other social data, recorded crime statistics showed an annual increase, in most crime categories, in virtually every year for more than thirty years. This secular pattern established a set of cultural assumptions and collective representations that are now hard to dislodge. Public opinion polls since the 1970s show that the majority of people believe that the crime problem is bad and getting worse and that crime rates will continue to rise in the future: a belief that persists even in periods where both recorded and actual rates are stable or declining. We will see in the next chapter how the normality of high crime rates came to form the focal point for a whole cluster of other beliefs and behaviours—a new cultural complex that shapes and expresses the contemporary experience of crime. But for now the point I wish to make is that the emergence of this new social fact has had major implications for government and particularly for the agencies responsible for crime control and criminal justice.

The limits of the criminal justice state

The second social fact shaping the new predicament is closely related to the first, and concerns the way in which the criminal justice system has come to be regarded by the public, by the political authorities, and by its own personnel. If the 1970s is the period in which the normality of high crime rates began to be recognized as a fact, even by those with reason to resist this interpretation, it is also the period in which the criminal justice system came to be viewed primarily in terms of its limitations and propensity for failure rather than its prospects for future success.

It is not that rising crime rates had never before perturbed criminal justice, or presented the system with problems. Rises in recorded crime had been a nagging problem for the authorities even since the Second World War. But as late as the 1960s criminal justice institutions were quite capable of absorbing challenges of this kind and turning them to their own advantage. In 1964 the UK government White Paper The War Against Crime acknowledged that there had been an 'upsurge in crime and delinquency' that had continued unabated since the mid-1950s, but saw no need to question the penal-welfare framework to which it remained fully committed. Like its forerunner of 1959, Penal Practice in a Changing Society, the 1964 White Paper expressed confidence that the
penal-welfare strategy was the right approach, and asserted that vigorous policing and correctional measures, guided by research into the causes of crime and the effectiveness of penal treatments, would begin to stem the rising tide of crime. To the extent that these measures seemed to be failing, this was seen as a problem of resources and knowledge, or of methods and implementation, and plans were laid for further research, increased funding and the expansion of child welfare services. If there was any doubt about the state's capacity to deal with the problem it did not surface in these government statements. On the contrary, the thrust of the announcements was that the state would win the war against crime, just as the warfare state had vanquished its enemies and the welfare state was now tackling the social and economic problems of peacetime.

The reaffirmation of the existing paradigm in the face of growing evidence of its ineffectiveness was also a feature of the US President's Crime Commission Report of 1967. That Report responded to rapidly rising crime rates by asserting that with more federal resources, improved research and information management, and the crime-preventing effects of the government's War on Poverty, contemporary crime would be brought under control. Whatever problems 'the challenge of crime in a free society' might entail—and this in the midst of major urban riots and an all-time record rate of increase in UCR crime rates—these did not dispel confidence in the correctional, case-processing assumptions that framed the criminal justice state and its monopoly of crime control.

In the period since the late 1960s official discourse has moved away from the confident position set out in these documents. There is no longer a commitment to the penal-welfare framework, and the correctionalist assumptions that it entailed. But nor is there any settled confidence in the capacity of the criminal justice state to control crime and provide law and order, no matter what framework it adopts. The state's claims have become more modest and more hesitant, at least in some contexts and addressing some audiences. Particularly in the 1980s and early 1990s there was clear sense of the failure of criminal justice agencies, a new focus upon their limitations, and a much more restricted sense of the state's power to regulate conduct and prevent crime. This official view, usually expressed sotto voce, is more loudly echoed in public opinion, which has become highly critical of the system (particularly of courts and sentences) viewing the standard penalties as much too lenient and the penal system as too little concerned with public safety. This sense of the state's impotence in the face of crime has become so well established in recent decades that developments which challenge it—such as the claimed success of certain American police methods in America or the British government's claim that 'prison works'—have generated huge amount of media and professional attention.

The first signs of this challenge to penal modernism took quite specific and localized forms. From the late 1960s onwards an influential body of literature questioned the efficacy and legitimacy of rehabilitative measures and the individualized sentencing model. This opened the way to a more sweeping critique of criminal justice, as the sense of failure became widespread and iconoclastic evaluative research became more common. One by one, the limitations of prisons and young offenders institutions, probation and parole, conventional policing, and deterrent sentencing structures were carefully documented, each study contributing to the sense that the credibility of the whole criminal justice state was very much in doubt. The 'Nothing Works' slogan, which became pervasive in the late 1970s, may have been a hysterical overreaction, but it had the effect of establishing a new, more pessimistic mood that that would persist long after the data upon which it was based had been discredited.

Since that time, a more sober and abiding sense of the limits of criminal justice has become a central feature of policy discourse and criminological common sense. From the mid-1980s onwards, it has become increasingly common for government policy documents, Chief Constable and Police Commissioners' reports, even political party manifestos, to emphasize that government agencies cannot, by themselves, succeed in controlling crime. Modest improvements at the margin, the better management of risks and resources, reduction of the fear of crime, reduction of criminal justice expenditure, greater support for crime's victims, more expressive penal measures—these have become the new policy objectives, as policy analysts deem it more realistic to deal with the effects of crime rather than address the thing itself. For the first time since it was fully established in the late nineteenth century, confidence in the criminal justice state's capacity to control crime and provide security was seriously undermined. Even in the mid-1990s, when crime rates in the USA and the UK declined, few experts were willing to attribute this change to the effective actions of criminal justice agencies.

The myth of the sovereign state and its monopoly of crime control

This state of affairs was quite new and carried significant implications for government authorities and for criminal justice agencies. The perception of high crime rates as a normal social fact, together with the widely acknowledged limitations of the criminal justice system, had the effect of eroding one of the foundational myths of modern society: the myth that the sovereign state is capable of delivering 'law and order' and controlling crime within its territorial boundaries. This challenge to the state's law and order mythology was all the more persuasive and all the more troublesome because it occurred at a time when the wider notion of state sovereignty was already under attack on a number of different fronts.

Like all historically developed political concepts, sovereignty is a complex and much contested notion. Strictly defined, it refers to the competence of a state legislature to make or unmake laws without challenge by other law-making authorities. But the term has also a wider meaning that relates to the sovereign state's claimed capacity to rule a territory in the face of competition and resistance from external and internal enemies. Over time, the effective control of
crime and the routine protection of citizens from criminal depredations had come to form elements of the promise that the state holds out to its citizens. For all its importance in guiding state formation and strategies of rule, this notion of state sovereignty has proved unsustainable. In crime control, as in other spheres, the limitations of the state’s capacity to govern social life in all its details have become ever more apparent, particularly in the late modern era. So, having arrogated to itself control functions and responsibilities that once belonged to the institutions of civil society, the late modern state is now faced with its own inability to deliver the expected levels of control over crime and criminal conduct. Like all myths, the myth of the penal sovereign and its ‘law and order’ powers is too deeply inscribed, too long-standing, and too politically potent to be easily dismantled by rational critique and administrative reform. No doubt it will continue to be invoked, and will, for some time to come, retain some of its power to persuade. But what has changed in the last decade or so, is that the myth has itself become problematic—a source of ambivalence rather than reassurance. In consequence, it no longer forms the taken-for-granted frame for policy and practice in the field of crime control.

The predicament for government authorities today, then, is that they see the need to withdraw their claim to be the primary and effective provider of security and crime control, but they also see, just as clearly, that the political costs of such a withdrawal are liable to be disastrous. The consequence is that in recent years we have witnessed a remarkably volatile and ambivalent pattern of policy development—one that has become increasingly febrile in the urgency with which each policy initiative succeeds the one before.

The emergent outcome is a series of policies that appear deeply conflicted, even schizophrenic, in their relation to one another. On the one hand, there has been an attempt to face up to the predicament and develop pragmatic new strategies that are adapted to it: through institutional reforms aimed at overcoming the limits of the criminal justice state, or else through accommodations that recognize these limitations and work within them. But alongside these difficult adaptations to the reality principle, there is a recurring attempt to evade its terms altogether, particularly on the part of elected officials who play an increasingly prominent role in criminal justice policy-making. This politicized reaction takes two recurring forms. Either it willfully denies the predicament and reasserts the old myth of the sovereign state and its plenary power to punish. Or else it abandons reasoned, instrumental action and retreats into an expressive mode that we might, continuing the psychoanalytic metaphor, describe as acting out—a mode that is concerned not so much with controlling crime as with expressing the anger and outrage that crime provokes. It is this predicament and the authorities’ deeply ambivalent reactions to it—rather than any coherent programme or singular strategy—that have shaped crime control and criminal justice in the late modern period.16

The structured ambivalence of the state’s response

The predicament I have described has different implications for different kinds of authorities. For political actors, acting in the context of electoral competition, policy choices are heavily determined by the need to find popular and effective measures that will not be viewed as signs of weakness or an abandonment of the state’s responsibility to the public. Measures with which elected officials are identified must be phenomenologically credible but, above all, must maintain political credibility and popular support. In the choice of policy responses, those that can most easily be represented as strong, smart, and either effective or expressive are most attractive. Those that are most easily represented (by opponents or by the public) as a retreat, or an acknowledgement of failure, or as out of touch with public sentiment, are the ones that present the greatest difficulties. The problem is one of political rhetoric and appearance as much as practical effectiveness.

For administrative actors charged with the running of organizations, problems of political spin and public relations are also important, and act as an external constraint upon decisions. But on a day to day basis these are not the primary considerations that govern administrative decision-making. Rather, administrators are driven by the need to maintain the integrity of internal processes, to adjust their organization to keep pace with changes in its external environment, to repair perceived deficiencies and to address organizational failures. Their reference groups are other administrators as well as experts, researchers, and reform organizations. And though they must obey the laws and directives issued by politicians, the latter are regarded as a troublesome, external force, with different interests and agendas, rather than an integral part of the permanent organization.

The relation between the organization and its political masters routinely involves conflict over budgets and resources, especially in the context of neoliberal public expenditure cuts. It can also entail more substantive conflicts, particularly when measures are proposed that clash with the organization’s view of its mission and the most effective methods of pursuing it. (This kind of conflict has been increasingly pronounced in recent years, as the neo-conservative political agenda generates populist measures that few experts support.) Administrative decisions are thus shaped by two agendas, one internal, the other imposed from the outside, and it is the administrators’ job to pursue their organizational tasks in ways that at least appear to accord with the concerns of their political masters.17

The politician typically views policy initiatives in terms of their political appeal and in relation to other political positions; acts within the time horizon set by electoral competition and in the full glare of media publicity; and relies primarily upon ‘political’ knowledge—about public opinion, focus group preferences, opposition tactics, political values—rather than organizational experience or detailed research findings. Political initiatives are often reactive,
triggered by specific events, and deliberately partisan. As a consequence they tend to be urgent and impassioned, built around shocking but atypical cases, and more concerned to accord with political ideology and popular perception than with expert knowledge or the proven capacities of institutions.

In contrast, the administrator can and must focus upon the interests of a single organization, is oriented towards a longer time frame, and operates at a greater distance from press and public scrutiny. Statistical reasoning, resource management, and cost-benefit analysis are the stock-in-trade of organizational management. The administrator has a more realistic understanding of the organization’s processes and impacts, and more ready access to hard information about their costs and consequences. His or her primary concern is for the organization’s core business: the flow of activity, the modal decisions, the standard cases. Public opinion, partisan politics, and impassioned concern with atypical cases are disruptive distractions from the central organizational mission.

The politician and the administrator. Political discourse and administrative discourse. The scope and conditions for action in each case are quite different, as are their guiding rationalities, values, and interests. As we will see, these positional differences have shaped the different ways in which the predicament of crime control has been handled, and produced serious tensions in the process of policy formation.

As for government ministers and secretaries of state, caught in a contradictory location between the administrative and political domains—they run a department and are responsible for its actions; they are elected officials who must represent policy to the public and their party and contest future elections—theirs is a structurally generated ambivalence. Their position requires that they simultaneously attend to quite different interests, represent policy to different audiences, and continuously trade off administrative rationality and political advantage. They need to look both ways. To facilitate administrative efficiency but also to please the public. To put in place viable policies but also to minimize the political risks entailed in doing so. To pursue the goals of criminal justice but also to avoid the scandals and injustices that inevitably result. To be an effective administrator but also a popular politician.

This ambivalence is worsened by the quite unrealistic assumptions about criminal justice that are embodied in public opinion. Common sense attitudes are often characterized by an ‘absolutist’ conception based on front-stage appearances and ideological shibboleths—a conception that demands justice, punishment and protection, whatever the cost. In this way of thinking, criminals should be prosecuted to the full extent of the law, the guilty should always be punished, dangerous individuals should never be released, prisoners should serve their full terms, and an offender’s sentence should precisely reflect his offence. And somehow, at the same time, the innocent should always be acquitted, the rule of law upheld, and expenditure held within reasonable levels. The fact that there are serious incompatibilities between these ‘absolute’ imperatives, and that each shining public principle is routinely undermined by the

backstage realities—of resource rationing, evidentiary limits, plea negotiations, and sentencing compromises—means that the public is easily scandalized by many of the decisions that are routinely made.

These problems of public perception are exacerbated by the fact that the criminal justice system is, in any case, a minefield. It routinely deals with emotionally laden, high visibility cases that strain the meaning of justice and provoke hostile reaction on one side or the other. It manages risks and dangerous individuals, frequently releasing offenders back into the community when their legal sentence comes to an end, or worse, because of misguided parole decisions or scandalous escapes. In the context of a high crime society, both politicians and the public regard such a system with scepticism and distrust. A constant source of danger, injustice and insecurity, it becomes a part of the crime problem rather than a solution to it.

Major policy decisions will often depend upon how government ministers respond to these very different considerations and constituencies. And of course the dynamics of this process change when crime control issues are politicized and subject to fierce electoral competition and intense public scrutiny. As the system became more politicized in the 1980s and 1990s, the balance of forces often shifted away from the logic of administration and expert decision-making towards a more political and populist style. The following pages describe the contradictory ways in which ambivalent state authorities and their various agencies have responded to the predicament over time, sometimes adapting to it in a creative, realistic manner, sometimes evading it by means of forceful denials and expressive acting out.

Adaptive responses

Over the last three decades, and still today, these contradictory responses to the predicament of crime control have co-existed, with the authorities sponsoring quite different kinds of policy at different times and at different points in the criminal control field. Over time, however, there has been a perceptible shift in emphasis, with adaptive solutions being increasingly eclipsed by more politicized, more expressive, alternatives. In the USA this shift can be dated to the mid-1980s and President Reagan’s declaration of a ‘War on Drugs’ while in the UK, the most pronounced shift occurred in 1993 when Mr Major’s government abandoned the ‘punishment in the community’ approach in favour of a tougher, more populist policy based around the slogan that ‘prison works’. But prior to these shifts of emphasis, the authorities’ response to the problem was more often characterized by adaptive measures, usually developed by means of cumulative, low-visibility administrative decisions, rather than as announced policies subject to political or public debate. I will describe in turn the six main types of adaptation—the rationalization of justice; the commercialization of justice; defining deviance down; redefining success; concentrating upon consequences; and redistributing responsibility—and then outline the new style of criminological reasoning that accompanied and facilitated them.
Professionalization and the rationalization of justice

For the administrators in charge of criminal justice agencies, high rates of crime brought with them immediate problems of increased caseloads and strained resources as well as growing anxieties about a loss of public confidence. From the 1960s onwards, in both the USA and the UK, the rising levels of recorded crime increased the 'throughput' of the criminal justice system, with steep increases in the numbers of crimes reported to the police, prosecutions brought, cases tried, and offenders sanctioned. This fact alone meant that criminal justice agencies had to expand their capacities and transform their practices in order to keep pace with its new workload. But the increase in crime was also experienced as the failure of crime control, and above all, of the police, the courts and the prisons. This has led, in the last two decades, to frequent and sometimes quite radical reformulations of the objectives and priorities of these organizations.

The police have been on the frontline of this losing battle. This was particularly so in the USA in the 1960s and 1970s, where increased crime complaints, allegations of widespread corruption, and a series of urban riots and political demonstrations combined to reduce the legitimacy of the police and draw them deeper into the social conflicts that troubled the cities. Police departments across the USA responded to this crisis by seeking to professionalize themselves, by investing in the hardware and information systems made available by the Law Enforcement Administration Authority (LEAA), and by embracing the new, more reactive styles of '911 policing' made possible by the telephone and the automobile. The outcome—which was quickly copied by British forces—was a motorized police force, withdrawn from close community involvement (to avoid charges of corruption), and intent on providing a 'rapid response' in answer to emergency call-outs from the public. The unintended consequence was that relations between the police and the public became more distant and more strained, particularly in poor or minority neighbourhoods. Without cooperation from the public, the ability of the police to clear-up crimes decreased. Without the presence of police officers on foot patrolling the streets, fear of crime get worse. Without informal relations with residents and community leaders, police became less sensitive to the nuances of the neighbourhood, less responsive to the wishes of its law-abiding members, and less capable of keeping order and preventing crime. By the 1980s the folly of this hands-off style of policing approach was perfectly apparent and today a return to 'community policing' has come to be viewed as a universal panacea.

If the police initially responded to the predicament by seeking to professionalize themselves, a more general response was the attempt to rationalize the practice of criminal justice. As early as 1967 the US President's Commission Report had emphasized this solution, and had encouraged the criminal justice agencies to take a more informed, systematic approach to their work. A widespread demand for the curtailment of discretion and for a more formalized, more accountable, decision-making process—a demand that was endorsed by a series of Supreme Court decisions—lent further impetus to this development. From the 1970s onwards there was a major effort, led by the LEAA, to improve the efficiency of the criminal justice process by introducing more systematic information gathering, better caseload management, and new strategies of system integration and monitoring.

From this time onwards, the costs of criminal justice became an explicit feature of policy debate, thereby bringing into focus awkward questions about resources and the rationing of justice more candidly than ever before. The comparative costs of penal measures came to be a significant consideration in deciding between them, particularly when none of them appeared especially effective, and the 1970s and 1980s saw a series of government initiatives designed to shift sentencing away from expensive forms of custody towards cheaper sanctions such as intensive probation, half-way houses, and boot camps. These cost considerations were also applied to the other criminal justice functions. Prosecution became more selective; court expenses were reduced by shifts towards summary justice (the introduction of summary fines, the reduction of jury trials; more diversion, etc.) and probation offices developed 'gate-keeping' formulae designed to ensure that their case-loads included only those who were otherwise at risk of going to custody.

At one level, this was an obvious organizational response, and emulated reform patterns to be found in other areas of public administration. But it also registered, and for the first time, an official perception of the criminal justice system that saw the system not primarily as an embodiment of justice, or a solution to the crime problem, but instead as a problem in and of itself. From this point onwards, one can trace a settled perception that the criminal justice process is characterized by arbitrariness and injustice, with a tendency to generate uncontrollable costs and unplanned outcomes, and to create risks and dangers for the public it should be protecting. 'Taming the system'—its costs, its discretionary powers, its liability to expose the public to dangers—came to be part of the project of government in this field.

This systematization of criminal justice—using information technology, operational models, and computerized data processing as well as new mechanisms for promoting inter-agency co-ordination—has been an important feature of the 1980s and 1990s. It has been enthusiastically sponsored by central government in the UK and by both state and federal government in the USA, often in the face of opposition from the organizations themselves, who have been concerned to preserve the decision-making autonomy and institutional integrity that they previously enjoyed. To the extent that it has been achieved—and it varies greatly from place to place—this systematization has allowed a greater measure of central planning and control to occur, and has enhanced government's capacity to pursue system-wide policy objectives.

Once these information technologies and management practices were put in place, reflexivity and self-monitoring became standard parts of the system's operations. Martinson's question—'what works?'—has come to haunt the
practices of criminal justice, not as a critique of rehabilitative treatment, but as a routine feature of every aspect of criminal justice practice. Throughout the 1980s its most important impact was upon the control of criminal justice staff, who were subject to increased levels of monitoring, assessment, and accountability. And by the 1990s the new infrastructure of computers, information technology, and detailed data gathering had given rise to a new generation of ‘smart’ crime control, as the police, sentence and prison authorities began to use computers and geo-coded data to focus decision-making and target interventions.

The commercialization of justice

This drive towards formalization and managerial accountability was furthered by the sweeping public service reforms of the 1980s. For most of that decade criminal justice was sheltered from the public expenditure cuts that were being imposed in other areas, but the spreading ethos of business management, monetary measurement and value-for-money government was inescapable. By the mid-1980s criminal justice agencies in the USA and the UK had developed a managerialist, business-like ethos that emphasized economy, efficiency and effectiveness in the use of resources. The continuing effort to ‘re-invent government’ led to the development of clearly specified ‘performance indicators’ against which an organization’s activities might be measured, as well as an emphasis upon strategic planning, line management, devolved budgets and financial responsibility within the agencies. In time, these new practices affected not just the management of the organizations, but also their mission. Probation officers, prison governors and police chiefs found that their new budgetary responsibilities and financial reporting duties made a difference to how they responded to their staffs, the public and their clients. The reforms gave rise to new patterns of accountability, set formulae for decision-making, and brought about a gradual lessening of discretion and autonomy for rank and file staff.

The most publicized aspect of this new business ethos has been the rapid process of privatization and commercialization that has taken place in criminal justice, first in the USA and then from the mid-1980s onwards, in Britain. Specific criminal justice functions, ranging from court escort duties, routine parole supervision, and specialist prison services to the building and management of penal institutions, have increasingly been contracted out to commercial companies such as Securicor, Group 4, Wackenhut and the Corrections Corporation of America. What were once state-monopolized powers have increasingly been devolved to private, ‘for-profit’ contractors, who are allowed to pursue their commercial interests so long as they remain within the constraints established by their contract with the government authorities and submit to various forms of monitoring and regulation. These privatization measures, which correspond precisely to the fiscal and ideological principles of neo-liberal government, were imposed by central government and state legislatures in the face of strong opposition from penal professionals; especially from staff unions who feared that their conditions of work would deteriorate as a result of cheap competition and cost-trimming. But as prison populations expanded in the 1980s and 1990s, government reliance upon the private sector has increased, not least because of the comparative speed and low cost with which commercial companies could provide new prison places.

More recently, and for similar reasons, this willingness to blend public and private provision has begun to affect policing, as the public police have been encouraged to recognize and co-operate with their counterparts in the rapidly growing private sector police. This embrace of the private sector is liable to have further consequences, as it begins to transform the character of the crime control field, setting up new interests and incentives, creating new inequalities of access and provision, and facilitating a process of penal and security expansion that might otherwise have been more constrained.

If business management techniques have provided criminal justice with ways of responding to problems of cost and overload, the private sector model has also shaped the system’s response to problems of legitimacy and public confidence. The ethos of ‘customer relations’ that is so pervasive in the commercial sector, and so central to business management, has begun to influence the practice of government agencies as well. Organizations such as the police and the courts that used to view their task as being to uphold ‘the public interest’—in ways that were largely defined by the organization itself—have sought to become more responsive to the voices and preferences of the specific publics they serve, and to take steps to elicit these preferences. They have redefined their mission as being to serve particular ‘consumers’ such as local communities and businesses; victims and victims’ families; occasionally even inmates and their families. Like other public sector organizations, the bureaucracies of the criminal justice system have had to become more responsive, more attuned to the interests of individual consumers and stakeholders, and less assured in their definition of what constitutes the public interest.

Defining deviance down

In the face of high crime rates and high caseloads criminal justice agencies began to limit the demands placed upon them by means of a variety of devices that effectively ‘define deviance down’. This reduction effect was achieved either by filtering complaints and cases out of the system, or else by lowering the degree to which certain behaviours are criminalized and penalized. This process occurs at the ‘shallow’ and hence less visible end of criminal justice and typically takes place over a period of time and by administrative fiat, well away from the gaze of the mass media and politicians. This strategic adaptation (which began in earnest in the USA in the 1960s and about a decade later in the UK) was made possible by the coincidence of cost-saving concerns with a criminological
perception that viewed the criminalization of minor violations as unnecessarily stigmatizing and counter-productive. (As we will see, some twenty years later this convenient merging of fiscal and policy interests would be disrupted by a very different criminology that viewed the relaxation of low-level enforcement not as good sense but as an unmitigated disaster.)

The defining down process emerged in a number of contexts, ranging from the on-the-street decisions of individual police officers to the standardized procedures that managers developed to guide decisions about prosecution, probation, and parole. These patterns of decision-making were typically developed informally and ‘in-house’, though occasionally they were the result of legislative action, as with the juvenile court reforms that embraced deinstitutionalization and de-institutionalization. Often the changes were incremental, making them hard to detect from the outside except by retrospective comparison or focused research.

Police cautioning and diversion from prosecution; fixed penalties and summary hearings for offences that were previously prosecuted at more serious levels; the decriminalization of behaviours that were once routinely prosecuted; monetary penalties for offences that would once have attracted probation; community sentences for offenders who would previously have gone to custody—all of these had the effect of defining deviance down. So too did the emergent police policy that refused to expend investigative resources on offences that had a low likelihood of detection and a low priority for the public. This downwards shift in the threshold of enforcement continued for many years before it became publicly visible and a topic of some controversy. But, despite criticism from victims and the emergence of ‘zero-tolerance’ ideas, the practice of setting priorities and rationing the police response continues today.

Despite these attempts to define deviance down, the numbers processed through the criminal justice system continued to expand for much of the period under discussion. During the 1970s this was because of the marked increase in crime complaints that had, of course, prompted the process in the first place. In the UK, these increases continued into the 1980s and 1990s, although reductions in police clear-up rates and diversion from formal prosecution resulted in a drop in the number of persons sentenced for indictable offences after 1982. In the USA the situation was rather different. Here the increased caseload was produced not by property crime rates—which actually declined after the early 1980s, or by violent crimes, which fluctuated around a high mean, but instead because of the War on Drugs that produced increasing numbers of arrests and prosecutions throughout the 1980s and 1990s. This ‘war’, as we will see, was the outcome of a quite different dynamic within crime control policy.

For much of the last twenty years we have been experiencing a situation that is rather more complex, and rather more contradictory than is suggested by conventional analyses of ‘net-widening’ that voice concern about an ever-expanding criminal justice state. During this period, the state agencies of criminal justice have been steadily increasing in size, in ‘productivity’, and in the numbers of cases processed. At the same time, until quite recently, they have been reducing the extent to which they actually process and penalize minor offence behaviour. The recent focus on misdemeanour arrests and the ‘broken windows’, ‘zero-tolerance’ approach in New York is a very public exception to this, but even there it has become apparent that many arrestees are not subsequently prosecuted and punished. To do so would be to incur expenses that are too great, even for the law and order politics of New York City under Mayor Giuliani.

Redefining success

State agencies have also reacted to criticism by scaling down expectations, publicly redefining their aims, and seeking to change the criteria by which failure and success are judged. Rather than contest the charges of ineffectiveness, the agencies of criminal justice have increasingly adopted a self-conscious realism in the way that they represent themselves. Over the last two decades they have begun to admit their failings, emphasize the constraints that affect the system, and point to the limits of their capacity to control crime.

The police still claim success in solving serious crimes and in bringing the worst offenders to justice, and recently some American police departments have made much of their ability to make streets safer by vigorous action against low level crime and disorder. But they generally hold low expectations for the control of what they now refer to as ‘random’ and ‘opportunistic’ offending, which, in fact, constitutes the great majority of criminal behaviour. Similarly, the prison authorities focus more and more upon their ability to hold offenders securely in custody (and thus ‘incapacitate’ and punish them) and are much more circumspect in claiming the capacity to produce rehabilitative effects. Probation and community service agencies do much the same, highlighting their ability to deliver inexpensive forms of monitoring and community-based control, and placing their traditional rehabilitative function more and more in the background of their public rhetoric.

At the same time, the discourse of these agencies seeks to shift responsibility for outcomes onto the ‘customers’ with whom they deal, thereby offsetting the organization’s liability. The prison inmate is now said to be responsible for making use of any reformative opportunities that the prison might offer; the offender on probation or community service must sign a contract accepting responsibility for adhering to a prescribed course of conduct; the police emphasize that it is the victim’s responsibility to protect property, remain alert and avoid dangerous situations.

Increasingly these organizations seek to be evaluated by reference to internal goals, over which they have near total control, rather than by reference to social goals such as reducing crime rates, catching criminals, or reforming inmates, which involve too many contingencies and uncertainties. The new performance indicators are designed to measure ‘outputs’ rather than ‘outcomes’, what the