1
Crisis? What Crisis?

Is there a Crisis?

1.1
The penal system is in a state of crisis.

This might not seem a controversial claim. Nor would most people in this country imagine that this penal crisis is either new or sudden. For many years, media reports have acquainted everyone with the notion that rocketing prison populations, overcrowding, unrest among staff and inmates, escapes and riots and disorder in prisons add up to a severe and deepening penal crisis. The term ‘crisis’ has been common currency in both media and academic accounts of the penal system for over 30 years now; the word recurs in newspaper headlines and in the titles of academic books and articles (for example, Bottoms and Preston, 1980). Evidence for the existence of a crisis seems to be constantly in the news. Recent years have seen – to mention just a few out of many possible illustrations – the prison system twice finding itself without a single spare cell space; a Home Secretary (Charles Clarke in 2006) being sacked because foreign prisoners were being released rather than deported; prison officers taking industrial action; other prison officers being jailed for planned and sustained attacks on inmates; the horrifying racist murder of Zahid Mubarek by a fellow inmate in Feltham Young Offender Institution in 2000; recurring riots and disorder in prisons; and the commission of disturbing crimes by offenders released early from prison or under probation supervision (Cavadino and Dignan, 2007: 304). All this comes against the background of a prison population scaling ever higher, all-time record levels and a continuing deep malaise running through the penal system as a whole.

Yet is it really a crisis? Perhaps few would dispute that the penal system has serious problems – but is it really in a state of crisis? Then again, how long can a crisis last while remaining a crisis rather than business as usual? Surely there is something paradoxical in claims that the crisis has lasted for decades, or even (as was once said) that the system has been ‘in a perpetual state of crisis since the Gladstone Committee report of 1895’ (Fitzgerald and Sim, 1982: 3).

If to be in crisis means that the whole system is on the brink of total collapse or explosion, then we probably do not have a crisis. (Although it should not be forgotten that when systems do collapse or explode – like the communist system in Eastern Europe in the late twentieth century, or the system of order within Strangeways Prison immediately before the historic riot of April 1990 – they can do so very suddenly.) But it can be validly claimed that there is a crisis in at least two senses,
identified by Terence Morris (1989: 125). First, we have ‘a state of affairs that is so acute as to constitute a danger’ – and, we would add, a moral challenge of a scale which makes it one of the most pressing social issues of the day. Second, we may be at a critical juncture, much as a seriously ill person may reach a ‘turning point at which the patient either begins to improve or sinks into a fatal decline’. In other words, either the present situation could be used as an opportunity to reform the system into something more rational and humane, or else it will deteriorate into something much worse even than the present. In this book we will be using the ‘C word’ in these senses to refer to the present penal situation in England and Wales, albeit with slight embarrassment and the worry that it has been used so often and for so long that there is a danger that it may be losing its dramatic impact.

Whether or not we choose to use the word ‘crisis’, what are the causes of the state the penal system is in, and how do its different problems relate to each other?

The Orthodox Account of the Crisis

1.2 The orthodox account of the penal crisis is probably still the kind of common-sensical analysis underlying most mass media reports of problems in the penal system. At least until Lord Justice Woolf’s 1991 report into the Strangeways riot (Woolf and Tumim, 1991) versions of it were also regularly found in official reports purporting to explain phenomena such as prison disturbances. It is well summarized by the following extract from an old newspaper article entitled ‘Why the Prisons Could Explode’ (Humphry and May, 1977):

Explosive problems remain in many of Britain’s prisons – a higher number of lifers ... who have nothing left to lose; overcrowding which forces men to sleep three to a cell and understaffing which weakens security. Prisons, too, are forced to handle men with profound psychiatric problems in conditions which are totally unsuitable.

This passage gives us almost all the components of the orthodox account of the penal crisis. The crisis is seen as being located very specifically within the prison system – it is not seen as a crisis of the whole penal system, or of the criminal justice system, let alone as a crisis of society as a whole. The immediate cause of the crisis is seen as the combination of different types of difficult prisoners – what has been called a ‘toxic mix’ of prisoners – in physically poor and insecure conditions which could give rise to an ‘explosion’.

The orthodox account points to the following factors as implicated in the crisis:

1. the high prison population (or numbers crisis);
2. overcrowding;
3. bad conditions within prison (for both inmates and prison officers);
4. understaffing;

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5 unrest among the staff;
6 poor security;
7 the ‘toxic mix’ of long-term and life sentence prisoners and mentally disturbed inmates;
8 riots and other breakdowns of control over prisoners.

These factors are seen as linked, with number 8 – riots and disorder – being the end product that epitomizes the state of crisis. Figure 1.1 shows how the different factors interact according to the orthodox account. The high prison population is held responsible for overcrowding and understaffing in prisons, both of which exacerbate the bad physical conditions within prison. The combination of poor

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**FIGURE 1.1**  The Orthodox Account of the Penal Crisis
conditions and inadequate staffing have an adverse effect on staff morale, causing unrest which (through industrial action, for example) serves to worsen conditions still further. The four factors of bad conditions, overcrowding, understaffing and staff unrest are blamed for poor security, which is another factor contributing to the unstable prison environment. Finally, the combination of the ‘toxic mix’ of prisoners with these deteriorating conditions within which they are contained is thought to trigger off the periodic riots and disturbances to which the prison system is prone.

We do not believe that the orthodox account provides a satisfactory explanation of the crisis, for reasons we shall be giving shortly. But most of the factors identified by this account are real and important, as we shall now detail.

The High Prison Population (the Numbers Crisis)

It is widely agreed – although perhaps not by all politicians – that the number of prisoners in England and Wales is alarmingly high. It is also rapidly rising. Table 1.1 shows how (despite occasional dips), the prison population has more than doubled to 86,000 from under 40,000 since 1975 (a time when prison numbers were already causing serious concern) and have almost doubled since 1993. The prison population reached its highest ever peak so far of over 88,000 in December 2011. But only so far: official Home Office projections estimate that by 2017 the prison population could be up to 94,800 if current trends continue (Ministry of Justice, 2011d).

There are several factors involved in this increase in prison numbers in recent years. In Chapter 4 we discuss the relationship between some of these factors, and conclude that the most crucial is the pattern of decisions by the courts. The most important of these is the sentencing decision – whether convicted offenders should be sent to custody and, if so, for how long – which we call ‘the crux of the crisis’. These court decisions can in their turn be greatly influenced by government policies, actions and rhetoric. As we stated briefly in the Introduction (section I.2) and detail further in Chapter 10 (section 10.2), for a long time both Conservative and Labour governments generally attempted to keep the size of the prison population under control by a mixture of legislation, executive action and exhortations to courts. However, from 1993 onwards John Major’s Conservative administration reversed this stand and pursued policies whose explicit aim was to increase the numbers of people in prison, with Home Secretary Michael Howard famously declaring in 1993 that ‘prison works’ to control crime. The New Labour administrations of Tony Blair and Gordon Brown (1997–2010) may have dropped the slogan ‘prison works’, but showed little interest in trying to reduce custodial sentences; indeed, Labour Home Secretaries repeatedly called for tougher sentences for a wide range of offenders. Not surprisingly, therefore, the prison population rose to even greater heights under New Labour and the same trend has continued under the Conservative–Liberal Democrat coalition government despite attempts by the Justice Secretary Kenneth
Clarke to turn the tide. The rate of increase in prison numbers did slow in 2010–2011, but the situation altered rapidly and drastically in August 2011 as the courts began dealing with defendants charged with offences connected with the urban riots of that month. With the explicit encouragement of Prime Minister David Cameron, sentencers imposed harsh and widely criticized sentences on rioters and looters, and magistrates remanded large numbers in custody to await trial at the Crown Court, thereby pushing prison numbers to their new peak of 88,179 in December 2011.

TABLE 1.1  Prison Population of England and Wales 1975–2012, selected years

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
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<tbody>
<tr>
<td>1975</td>
<td>39,820</td>
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<tr>
<td>1980</td>
<td>42,264</td>
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<td>1985</td>
<td>46,233</td>
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<td>48,872</td>
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<td>44,552</td>
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<td>66,301</td>
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<td>82,572</td>
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<td>83,559</td>
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<tr>
<td>2010</td>
<td>84,725</td>
</tr>
<tr>
<td>2011 (June)</td>
<td>85,266</td>
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<tr>
<td>2011 (December)</td>
<td>88,179</td>
</tr>
<tr>
<td>2012 (June)</td>
<td>86,352</td>
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</tbody>
</table>


¹Average prison populations are figures for all prisons averaged across the calendar year. (Figures include inmates in remand centres and institutions for young offenders plus any prisoners held in police cells, and now also include several hundred detainees in Immigration Removal Centres.) The prison population fluctuates seasonally, and at times in the year the average population is significantly exceeded.
As Table 1.2 shows, England and Wales (along with Scotland) currently have the largest prison population in Western Europe in proportion to the total number of people in the country as a whole.\(^2\) It is true that proportionate prison populations are even higher in some countries outside Western Europe: indeed, the United States has around five times as many prisoners relative to its population as do England and Wales.\(^3\) Nevertheless, within the Western European frame of reference Great Britain does seem to be strikingly punitive, having maintained a high position in the prison population league table for many years now. This relatively high prison population does not seem to be because the UK has more crime, or

\(^2\)In our opinion this measure of a country’s ‘imprisonment rate’ is a useful, if crude, yardstick of the relative punitiveness of different countries. See further Cavadino and Dignan (2006: 4–5).

\(^3\)The United States’ two million prisoners give it the highest proportionate prison population in the world, with 730 people in prison out of every 100,000 people in the general population. The US, which contains 5 per cent of the planet’s population, now accounts for a quarter of the world’s prison inmates.
more serious crime, than comparable countries. Rather, it is because more offenders are sent to custody, and for longer periods, in the UK than elsewhere in Western Europe (see, for example, Barclay and Tavares, 2000; NACRO, 1998; Pease, 1992).

There should be little doubt, then, that the present and predicted future size of the prison population is a major problem. If drastic steps are not taken to reduce prison numbers – and there is currently no sign of any such steps being taken – they seem likely to grow even more alarmingly in the coming years.

**Overcrowding**

At the end of June 2012 English and Welsh prisons officially had adequate space for 79,450 inmates, but actually contained 86,532, making the system as a whole overcrowded by a factor of 9 per cent. By adequate space we mean the official figure for the ‘in use certified normal accommodation’ (or ‘uncrowded capacity’) of all prisons in total. The Prison Service also identifies a higher figure, the ‘operational capacity’, defined as ‘the total number of prisoners that an establishment can hold taking into account control, security and the proper operation of the planned regime’. Adding the operational capacity of all prisons together and deducting a safety margin of 2,000 yields a total ‘useable operational capacity’ – informally known as the **bust limit** – for the system as a whole. This bust limit was actually exceeded in April 2004 and again in February 2008. In recent years the prison population has spent many months hovering perilously close to the bust limit, often with just a few hundred places to spare.

Even these overall figures do not do justice to the overcrowding problem because prisoners are not spread evenly throughout the system. **High security prisons** (see Chapter 6, section 6.3) are frequently not filled to capacity, while overcrowding is concentrated in **local prisons** (which predominantly house remand prisoners and those on short-term sentences). At the end of April 2012, 83 out of 134 prisons were overcrowded, with many of them containing more than half as many prisoners again as they should (Shrewsbury Prison had nearly twice as many, see Prison Reform Trust, 2012: 17). As a result of overcrowding, currently over 20,000 prisoners (nearly a quarter of all inmates) are sleeping two to a cell designed for a single inmate, or otherwise housed in overcrowded cells (Prison Reform Trust, 2012: 17). Indeed, between 2006 and 2008 prisoners overflowed

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4It is sometimes claimed that these figures can be explained by taking into account different countries’ crime rates (for example, Barclay et al., 1995: 54; see also Pease, 1994). It is true that some recent international surveys of victims of crime (e.g. van Kesteren et al., 2001) do show the English rate for certain crimes to be higher than those of several other countries. However, the relatively high English prison population dates back to times when similar surveys (for example, Mayhew, 1994) found the level of crime in Britain to be similar to the European average for most offences.

5For these various measures of prison capacity, see Chapter 6, section 6.5.
into cells in police stations and courthouses. Independent monitors of prison conditions have expressed concerns that such overcrowding is likely to threaten safety and have multiple other serious adverse effects on prison conditions and regimes (Prison Reform Trust, 2006a: 7–8; see also Chapter 6, section 6.5).

Bad Conditions

Overcrowding, of course, contributes to bad physical conditions in prisons. But there are other causes of bad conditions as well as overcrowding: many prisons are old and decaying, and newer prisons have often turned out to be so badly designed that they are not a noticeable improvement.

The particular issue of inadequate sanitary facilities in prison is something of a cliché. The fact that many prisoners routinely had to spend long periods in their cells without access to a toilet, having to use chamber pots and queue up to ‘slop out’, was for a long time a potent symbol of the squalor of British prisons. Since 1996 all prisoners are supposed to have 24-hour access to toilet facilities, although it seems clear that this is still not always the case (see Chapter 6 section 6.5 for details).

In any event, the problem of prison conditions was never limited to slopping out. As we shall see in Chapter 6, other elements of prison life are equally important, such as the amount of time prisoners are kept cooped up in cells and the lack of opportunities for activities of all kinds. In these respects, there has been a general and continuing decline in prison conditions over a long period of time (King and McDermott, 1989). According to a report by the Chief Inspector of Prisons published in 2008 (HM Inspectorate of Prisons, 2008: 11), half of prisoners were then spending less than six hours per day out of their cells, and 20 per cent less than two hours. Things then got worse. From April 2008 all Friday afternoon activities in public sector prisons were cancelled to help meet targets for efficiency savings, meaning that most prisoners now have very little time out of their cells between Friday lunchtime and Monday morning.

The poor conditions in prisons affect staff as well as inmates, contributing to low staff morale and unrest.

Understaffing

It is a constant complaint on the part of prison staff that they are overstretched, especially with the ever-rising prison population. Currently, cuts in funding, which can hardly fail to affect staffing levels, are affecting prisons as well as other public services. The Coalition government’s deficit-reduction strategy led to the Ministry of Justice being asked in 2010 to find cuts of 23 per cent to its overall annual budget over a three-year period. Cuts to the prisons budget were substantially less than this (2.72 per cent in 2010–11), but of course this reduced amount has to go around a fast-rising number of prisoners. Budgetary pressures mean that there is constant pressure on prisons to keep staff numbers to a minimum. Moreover, state-run
prisons increasingly have to justify their spending levels in comparison with privately-run prisons, which limit their own running costs by economizing on staff (see Chapter 6, section 6.3).

If prisons are understaffed (or if those running the prison believe they are understaffed) this affects conditions and regimes. Prisoners are left locked in their cells for longer, because there is not the staff to supervise out-of-cell activities or to escort them from place to place. Visits to prisoners may be restricted or cancelled. And prison staff may become restless.

**Staff Unrest**

For many years the relationship between prison staff and the government has rarely been better than one of simmering discontent. Local and national industrial action by prison officers has been a recurrent event. The most alarming disruption ever took place in 1986, as protest action including a national overtime ban by prison officers over staffing levels sparked off the worst sequence of riots by inmates that had occurred up until that date. Industrial action over staffing arrangements continued (most notably at Wandsworth Prison in 1989, when police officers were drafted in to replace prison officers). Conservative government legislation placed severe legal restrictions on the ability of prison officers to undertake industrial action, although this did not put an end to protest actions of varying degrees of legality and illegality. Under New Labour the relationship between the government and the **Prison Officers’ Association** (POA) seemed to improve for a while, and the statutory restrictions on industrial action were lifted in 2005 and replaced by a no-strike agreement. But in August 2007 prison officers held a snap two-hour national walk-out over pay. The government’s response was to obtain a court injunction to enforce the no-strike agreement and to reintroduce the law forbidding industrial action by prison officers. In 2009 a POA ballot overwhelmingly rejected government proposals for a ‘workforce modernisation programme’ which would create a new lower (and lower paid) grade of prison officer, and also threatened strike action in response to government proposals for the ‘market testing’ (i.e. possible **privatization**, see Chapter 6) of existing public sector prisons. In November 2009 unofficial action was taken by officers at several prisons in the north west over allegations of bullying and harassment by management at Liverpool prison. In early 2011 staff at Birmingham Prison walked out following the announcement that it was to be privatized, while the government implemented plans to train soldiers in the running of prisons in the event of further industrial action.

Staff unrest never seems far away from the prison system and is likely to be exacerbated by increasing workloads due to rising numbers of prisoners, or other threatening developments such as prison privatization (see Chapter 6, sections 6.3 and 6.5).
Security

Security lapses always seem to have the potential to create more public uproar than almost any other event surrounding the penal system. A good example occurred in the mid-1990s when breakouts occurred from two high security prisons, Whitemoor and Parkhurst, leading to two official reports (Woodcock, 1994 and Learmont, 1995), a major security crackdown across the prison system, the sacking of the Director General of the prison service and furious political rows (Cavadino and Dignan, 2002: 184–6). Yet despite the air of moral panic which surrounds such incidents, it remains the case that since the 1960s the English penal system has not had a bad record overall for security, in the sense of managing to keep prisoners inside prison. Escapes are currently neither common nor increasing: indeed, they have decreased in recent years (see further Chapter 6, section 6.5). Breakouts from high security prisons had been extremely rare prior to the escapes in the mid-90s, and have not recurred since.

The word ‘security’ is often used in a different sense, to mean the adequate exercise of control over inmates inside prison – for example, preventing them from assaulting the staff or each other (see Chapter 6, section 6.5). Prison staff often complain that understaffing (combined sometimes with other deficiencies in material resources) reduces security in prisons, making assaults, breakdowns in control and even escapes more likely. It is often ‘security considerations’ – fears about security and control – which exacerbate the physical conditions of prisoners; for example, they may be kept locked in their cells almost all day because they are not trusted to be let out without a high degree of staff-intensive supervision. In the wake of the official inquiries into the mid-1990s escapes there was a noticeable and damaging shift of emphasis towards security (see Chapter 6, sections 6.4 and 6.5). Such shifts have the natural tendency of diverting resources towards ensuring security and changing staff practices in ways that adversely affect prison conditions and regimes still further.

‘Toxic Mix’ of Prisoners

We can agree with the orthodox account on many details concerning the component factors of the crisis. But the notion of a ‘toxic mix’ of prisoners is an issue on which we definitely part company. We do not deny that some characteristics of prison inmates may make them more or less likely to cause problems: if the prisons predominantly housed old people or nuns rather than young men with a record of anti-social behaviour they would doubtless experience fewer riots. But there are several difficulties with ‘toxic mix’ theory.

It is often said that one important constituent of the so-called ‘toxic mix’ is lifers – prisoners serving sentences of life imprisonment. Such prisoners are often said to have ‘nothing left to lose’ (for example, Humphry and May, 1977). Yet although there are more lifers and other indeterminate sentence prisoners than there used to be (see Chapter 7, section 7.3) most of them have a great deal to lose. A life sentence does not usually mean that the prisoner is
kept in prison until he or she dies (although it may: about a dozen lifers die in prison each year), but lifers are only released at the discretion of the Parole Board (see Chapter 7). Few things jeopardize a prisoner’s parole chances more than misbehaviour within prison, and especially participation in riots and protests. (Similar logic applies to other prisoners who are serving long fixed-term sentences but are eligible for early release.) Yet ironically, some recent policy developments have threatened to create a situation whereby some lifers and other long-term prisoners do have relatively little to lose. For example, there are now some lifers with ‘whole life tariff’ sentences who can never receive parole (see Chapter 7, section 7.3). If the provision for early release becomes less generous, it becomes all the more likely that prisoners serving long sentences will feel that they have rather less to lose.

There is widespread agreement that there are many mentally disturbed people in prison who would be better off in hospital. Various surveys over the years have estimated that up to 90 per cent of prisoners could be categorized as having some form of mental disorder (see, for example, Gunn et al., 1991; Singleton et al., 1998). The surveys which find the highest incidence of mental disorder among prisoners tend to include not only mental illness but also diagnoses over which some scepticism is arguably warranted, such as ‘personality disorder’ and alcohol and drug misuse. Even discounting such categories, however, it is clear that many prisoners suffer a disproportionate amount of mental distress and disturbance. And it is equally clear that the quality of psychiatric services for mentally ill prisoners is woefully inadequate (Reed and Lyne, 2000; Prison Reform Trust, 2006a: 27–8). As human beings we are suitably horrified by this state of affairs; but as penologists we wonder cynically how great a contribution this factor really makes to the penal crisis. Despite popular stereotypes, much mental illness makes the sufferers if anything more amenable to control rather than less, and mentally ill prisoners have not been prominent in organizing riots.

One interesting feature of Lord Justice Woolf’s historic report into the Strangeways and other riots of 1990 (Woolf and Tumim, 1991) was its implicit rejection of the ‘toxic mix’ theory. We believe Woolf was right on this point. Apart from the difficulties we have already noted with the theory, we shall see shortly that the ‘toxic mix’ cannot always be implicated in causing riots, for it is often simply not present in prisons which experience disorder.

Riots and Disorder

To the general public, one of the most noticeable symptoms of the penal crisis – along with the occasional spectacular escape – is the prison riot. Apart from a riot at Parkhurst in 1969, disturbances were comparatively infrequent in British prisons until the year of 1972, which saw a major wave of rooftop demonstrations in many prisons. Subsequently – just to select some of the outstanding incidents – there were major riots at Hull in 1976, Gartree in 1978 and Albany in 1983. In 1986, as we have seen, a national overtime ban by prison officers sparked off riots in 18 prisons. April 1990 saw the worst ever series of prison riots, including a 25-day riot and siege at Strangeways Prison, Manchester. More riots have occurred...
in the years since Strangeways, including recent incidents at Ashwell Prison (2009), Moorland (2010), Cookham Wood Young Offender Institution (2010), Ford open prison (2011) and a young offender unit at Littlehey Prison (2011). Like staff unrest, inmate disorder shows no sign of disappearing from the scene.

Criticisms of the Orthodox Account

Generally speaking, then, most of the factors emphasized by the orthodox account are genuine enough (with the notable exception, in our opinion, of the ‘toxic mix’ idea). Where we believe the orthodox account to be seriously misleading is in the causal relationships it postulates between the different factors, and especially its explanation of prison riots.

One problem with the orthodox account is that it simply does not square with the facts about prison riots – and in particular, about where in the prison system they occur. If riots are caused by overcrowding, understaffing, bad physical conditions and poor security, one would expect them to occur exclusively in the local prisons and remand centres, which are the most overcrowded and understaffed, where conditions are worse and security less tight than in many longer-stay establishments. Yet prior to 1986, major disorder was almost entirely confined to high security prisons which house prisoners on long sentences, which are not overcrowded or understaffed, where conditions are relatively good and where security is by definition at a maximum. After 1986 the pattern was largely reversed, with most major disorders occurring in local prisons (such as Strangeways in 1990), remand centres and lower-security establishments. But these riots are not satisfactorily explained by the orthodox account either, for such institutions lack the particular ‘toxic mix’ of prisoners which is supposed to be an important causative factor in inmate disorder. In a nutshell, the worst conditions and the supposedly most ‘toxic mixes’ simply do not coexist in the same prisons. Then again, the prisons which experienced riots in 1986, 1990 and subsequently were not all overcrowded (for example Northeye in 1986 and Dartmoor in 1990) or the worst in terms of physical conditions (Wymott and Wayland in 1986).

The very phrase ‘toxic mix’, with its pseudo-scientific ring, indicates a more fundamental deficiency in the orthodox account. As we have portrayed it in Figure 1.1, the whole process of the crisis on this account seems very mechanistic (or positivistic, a term explained in Chapter 2, section 2.5). One thing leads automatically to another: prisoners and prison staff both seem to react to conditions in a mindless manner. The prisoners in particular seem to behave like molecules in a test tube: place such a combination in such a physical environment, agitate, increase the pressure, and an explosion is the automatic result.6 We do not believe that

6 Hennessy (1987: para. 9.06) – in an official report into widespread prison disturbances in 1986 – said almost exactly this in a passage which reads as not entirely metaphorical: ‘It can perhaps be explained in terms of a chemical reaction. When a number of elements are brought together and a suitable catalyst is added, an explosion may result.’
people are like that. Rioting is not mindless behaviour; it is meaningful human action. Lord Scarman said in his famous report on inner city riots that ‘public disorder usually arises out of a sense of injustice’ (Scarman, 1986: xiii; our italics), and as the Woolf Report rightly recognized, this is as true in prisons as it is in the inner city. And this crucial sense of injustice is not a mindless automatic reaction, but an active interpretation of a situation. So for an adequate description and explanation of the penal crisis, we need to explore why there is this perception of injustice, and even to ask whether this perception is correct. In our opinion this is the main flaw in the orthodox account, and one we hope to go some way towards rectifying.

Improving on the Orthodox Account

1.3 We think a more adequate account of the penal crisis can be developed by taking on board and integrating into our explanation the insights of a variety of penal commentators. In what follows we draw in particular upon the Woolf Report (Woolf and Tumim, 1991); the radical account furnished by Mike Fitzgerald and Joe Sim in their book British Prisons (1982); the contributions of Tony Bottoms (1980, 1983 and 1995a; Bottoms and Stevenson, 1992); and Stuart Hall’s work on the politics of law and order (1979 and 1980; Hall et al., 1978). To begin with, we shall highlight certain aspects of the crisis which the orthodox account either ignores or fails to address adequately.

The Crisis of Penological Resources

It is implicit in the orthodox account that there is a problem of limited resources such as space within prisons and numbers of prison officers. But the problem is wider and deeper than that. Tony Bottoms (1980) identified a general crisis of penological resources, affecting not only prisons (to which the orthodox account is limited) but also extending to the entire penal system. This includes the probation service, which provides and runs non-custodial penalties for a much increased number of clients (see Chapter 5) and post-custodial provision such as parole supervision (see Chapter 7). This twofold crisis of resources generates an imperative to limit the numbers in prison and to deal with more offenders outside the prison ‘in the community’, but without overloading the probation service. Another aspect of this crisis presumably is the lack of resources to keep prison officers sufficiently materially satisfied to defuse industrial relations problems within prisons, and to provide prison inmates with constructive and fulfilling ways of occupying their time.

This material aspect of the crisis – the ever-present issue of scarce material resources such as buildings, staff, equipment and money – is one which always needs to be borne in mind when seeking to understand the state of the penal system. As we shall see, however, this is only one side of the picture.
The Crisis of Visibility

Perhaps the crisis of visibility (so named by Fitzgerald and Sim, 1982: 6–11) does not deserve its own heading, but it is an interesting example of an aspect of the crisis which the orthodox account fails to encompass. It concerns the secrecy that has for many years shrouded prisons and what goes on inside them. Developments in recent years have meant that ‘slowly, but surely, the secrecy behind the prison walls is being breached, as alternative sources of information about the prisons are more securely established’ (Fitzgerald and Sim, 1982: 11; see further Chapter 6, section 6.5).

Fitzgerald and Sim seem to see the existence of secrecy as a ‘crisis’ in itself. Morally speaking, we have no doubt that it has been; but again reverting to our cynical sociological standpoint, we suspect that on the contrary it is often the dispelling of secrecy that causes problems for the system and exacerbates the crisis. For if we assume that there is much in prisons that will not bear being exposed (and if not, why keep it secret?) then opening up the prison is likely to decrease the legitimacy of the system. If ‘knowledge is power’ then there is a danger that the system will lose much of its power if it loses control of information about itself. (It may also increase staff unrest by leading prison officers to feel that their authority is threatened.) On the other hand, however, it is noticeable that many incidents of prison disorder – especially the popular form of demonstrating on the prison rooftop – have been clearly motivated by the desire to make prisoners’ grievances and allegations visible in a way that would never normally happen. And if greater visibility should lead to prisoners being better treated (for fear of abuse being exposed) then visibility rather than secrecy could help to defuse the crisis. So, while we have no doubt that it is right that prison secrecy should be dispelled, it seems as if (paradoxically) both secrecy and openness can contribute to the crisis – as long as there are secrets to hide.

The problem with secrecy is that the secret information is often of a discredit able nature which, if it gets out, can damage legitimacy. This means that the crisis of visibility is only a part of what has justly been termed ‘the final and most crucial aspect of the crisis in British prisons’ (Fitzgerald and Sim, 1982: 23), and to which we now turn.

The Crisis of Legitimacy

Whereas the crisis of penological resources is a material crisis, the crisis of legitimacy is ideological in nature: it exists in the minds of human beings. Sociologists use the term ‘legitimacy’ to mean power which is perceived as morally justified. The penal system wields power over its subjects, but its moral right to do so can be contested. Fitzgerald and Sim, who gave the crisis of legitimacy its name, related it to ‘calls for the abolition of imprisonment’ and to ‘a more fundamental political crisis which transcends the prison walls’ (1982: 23–4). There may have been an element of revolutionary wishful thinking here: if all the system had to worry
about was the minority of people who seriously call for the abolition of prisons or the prospect of the imminent overthrow of capitalism there might not be much of a crisis. Nevertheless, even among non-abolitionists (and across much of the political spectrum) there has been grave disquiet about the state of the prisons. Even conservative commentators can regard the conditions within some prisons as morally intolerable to a civilized community. The squalor produced by prison overcrowding is perhaps the issue which most scandalizes the public conscience, but there are others. These include the high incidence of suicides among prisoners (see Chapter 6, section 6.5); the presence in prisons (as noted previously) of large numbers of people with mental health problems; the over-representation within prisons of members of ethnic minorities and the issue of racism in prisons (see Chapter 9, section 9.3).

Tony Bottoms (1980) also saw the penal system as suffering from a crisis of legitimacy (though he did not use the term), as well as from the crisis of resources discussed earlier. He identified as an important cause of the crisis of legitimacy the collapse of the rehabilitative ideal. Prior to the 1970s, the penal system could plausibly legitimate itself by claiming as its raison d'être the rehabilitation of offenders: the provision of training and treatment which would cure them of their criminality, benefiting both them and society as a whole. As we shall see in Chapter 2 (section 2.2), this claim subsequently became less plausible and less acceptable, with a general belief arising that ‘nothing works’ in the treatment of offenders. This undermined the legitimacy of the penal system: not only of the prisons (whose claim to be providing effective rehabilitation was always shaky in many eyes) but equally for other components of the penal system. A notable example is the probation service, which has for many years now been demoralized and uncertain about what its proper rationale and direction should be (see Chapter 5). The system has found itself in dire need of new ways of legitimating itself, and this need has given rise to a variety of responses. We discuss these further in the following section; but they have included, most potently, the rise of what we shall be calling law and order ideology.

It is not only the system’s legitimacy with outside observers and the general public which is important. The system will also suffer severe difficulties if it lacks legitimacy with its own employees, including prison staff and probation officers. Perhaps most important of all is the legitimacy of the system with those who are its subjects – in our opinion, the crucial factor in the genesis of prison riots and of many of the system’s other problems. After all, a penal system can only run with the acquiescence of offenders. No prison could run for long if not for the fact that most prisoners most of the time are prepared simply to co-operate with the staff and ‘do their bird’. This is not to say that they normally have no sense of injustice. They may bear grievances about the fact that they are locked up in prison, perhaps for longer than they feel they deserve or for longer than other offenders whom they regard as comparable. (We shall see in Chapters 2, 4 and 9 that they may well have good grounds for this belief.) They may have other grievances concerning the prison regime, early release, the behaviour of prison staff and the prison disciplinary system (see Chapters 6 and 7). Even so, prisoners do not normally riot
unless this sense of injustice has been somehow inflamed beyond its normal sim-
mering state.

Prisoners’ sense of injustice was highlighted by the Woolf Report (Woolf and 
Tumim, 1991) on the prison riots of April 1990, which became established as a 
historic and classically liberal account of what is wrong with English prisons, what 
causes prison riots and what should be done to prevent them. Woolf’s central 
finding was that:

there are three requirements which must be met if the prison system is to be stable: 
they are security, control and justice . . . ‘security’ refers to the obligations of the 
Prison Service to prevent prisoners escaping. ‘Control’ deals with the obligation of 
the Prison Service to prevent prisoners being disruptive. ‘Justice’ refers to the obli-
gation of the Prison Service to treat prisoners with humanity and fairness, and to 
prepare them for their return to the community in a way which makes it less likely 
that they will re-offend. (paras 9.19–9.20; our italics)

‘Security’ and ‘control’ are hardly novel concepts, figuring significantly in the 
orthodox account. Woolf also acknowledged as relevant factors such as overcrown-
ing and insanitary physical conditions, but did not regard these as crucial. Their 
significance for Woolf was in contributing to prisoners’ sense of injustice.

Woolf did not use the word ‘legitimacy’, but it is clearly the prison’s lack of legiti-
macy with inmates which he saw as of central importance. He showed a keen aware-
ness that, on the one hand, legitimacy is in the mind, but on the other hand what is in 
people’s minds usually depends on the external reality: ‘It is not possible for the 
Inquiry to form any judgment on whether the specific grievances of these prisoners 
were or were not well-founded. What is clear is that the Prison Service had failed to 
persuade these prisoners that it was treating them fairly’ (para. 9.25). Despite not 
committing himself about specific grievances, Woolf believed that genuine injustice 
contributes to a lack of legitimacy, which in turn makes disorder more likely. A sub-
stantial number of prisoners participated in the riots ‘at least in part, because of the 
conditions in which they were held and the way in which they were treated. If a 
proper level of justice is provided in prisons, then it is less likely that prisoners will 
behave in this way. Justice, therefore, contributes to the maintenance of security and 
control’ (para. 1.151). Woolf’s humanistic attention to the subjective interpretation by 
prisoners of their situation marks a distinct departure from the orthodox account.

While talking about the need to keep security, control and justice in ‘bal-
ance’, Woolf appeared to emphasize the importance of justice, and the imbalance he was most concerned about was the prospect of security and control measures exacerbating prisoners’ sense of injustice. Although Woolf stated that ‘there is no single cause of riots’ (para. 9.23) it is perhaps not a great distortion to say that he saw the lack of legitimacy of the prison for its inmates as the key factor in explaining the disorders. For this reason he stressed in his recommend-
dations not only measures to improve prison conditions but also reforms of 
grievance and disciplinary procedures (see Chapter 6) which might both improve the objective standard of justice within prisons and be seen as fairer 
by prisoners.
The penal system’s legitimacy problems are – of course – by no means all related to feelings that the system is excessively harsh and inhumane. Rather more common among the general public is the perception (regularly encouraged by tabloid newspapers and many politicians) that the penal system is on the contrary overlenient, lax and insecure. It is bound to be difficult for the system to achieve legitimacy with all its different audiences – public, press, politicians, penal practitioners and penal subjects – under these circumstances.

Responses to the Crisis

1.4 How have governments responded to the penal crisis? And not only governments, but other actors in the penal arena, such as practitioners, commentators, civil servants and opposition politicians? Their responses can be roughly split into two categories: ideological (or philosophical) responses to the crisis of legitimacy in particular; and practical responses to the management problems caused by the material crisis of resources.

On the ideological side, Tony Bottoms (1980) listed a number of varying responses to the collapse of the rehabilitative ideal and the consequent dire need for the penal system to find new ways of legitimating itself. These responses included the revival of the philosophy of ‘just deserts’ (see Chapter 2, sections 2.3 and 2.5) between the 1970s and 1990s. But the most prominent ideological response, amounting to a massive shift in penal ideology, has been the new punitiveness (see Chapter 3, section 3.6): the rise and rise of what we call law and order ideology – the appeal to a harsh, Strategy A programme of ‘toughness’ which is represented as being an effective remedy for crime. (See the Introduction, section I.2, for a further explanation of Strategies A, B and C.) In the sense in which we use the phrase, law and order ideology is more than just the unexceptionable beliefs that society should be governed by law and that crime should be effectively controlled. It is a complex if naive set of attitudes, including the beliefs that human beings have free will, that they must be strictly disciplined by restrictive rules, and that they should be harshly punished if they break the rules or fail to respect authority. Such an ideology naturally leads its adherents to favour a Strategy A approach to criminal justice policy. (The phrase populist punitiveness, coined by Bottoms (1995a), means much the same thing.)

The ideology of law and order was notably and provocatively analysed in the late 1970s and early 1980s by the Marxist theorist Stuart Hall (1979, 1980; Hall et al., 1978). Hall saw law and order ideology as an important component of what he called ‘authoritarian populism’, which in turn constituted an important strand in the political phenomenon of Thatcherism. However, not only did the ‘drift into a law and order society’ in Britain begin well before the accession to power of the Conservative Party under Mrs Thatcher in 1979 – although that was something of a defining moment – it also accelerated significantly under her Conservative successor John Major. It persisted to a great extent under the New Labour government (1997–2010) and has been at least as evident a force in shaping the policies of the current Coalition government (see Chapter 10, section 10.2).
and order ideology forms part of a pro-ruling-class response to a wider crisis of social order whose roots lie partly in the problems of the British economy and of Britain’s declining role in the world.

This is far from a full explanation, however. It does not account for similar developments in many other countries (most notably the USA) in recent decades (see generally Cavadino and Dignan, 2006), or for the reinvigoration of law and order ideology between early 1993 and 1997, at a time when Britain’s role in the world may have continued to decline but its economy was not getting any worse. Other long-term social and political developments have led to a greater degree of populism in politics, in Britain and elsewhere, especially in respect of criminal justice policy. One likely partial explanation for this is that the decline of traditional communities has led to both an increase in crime and a general feeling of insecurity in the psyche of the modern individual. This in turn feeds into a fear of crime and a tendency to favour punitive fixes for the perceived threat it poses:7 In such a context, a politician seeking popularity can reasonably easily tap into the electorate’s insecurities by promising tough action on “villains” (Bottoms, 1995a: 47). And modern politicians increasingly attune their policies according to the results of opinion polls and focus groups, which seek to identify policies that are (often very superficially) attractive to voters. It is largely along these lines – by reference to the quest of contemporary politicians for power – that we would explain the law and order counter-reformation under John Major from 1993 to 1997 and the persistence of a high dose of ‘toughness’ in criminal justice policy in the years since then. As Hall (1979: 15) says, law and order ideology is not an automatic ‘reflection of the crisis: it is itself a response to the crisis’; in other words it is created by human beings operating in their own real environments, which for politicians is the world of politics.

This does not necessarily mean that pursuing Strategy A will be a genuine recipe for political success, let alone that it will solve the problems of crime and punishment. The fate of John Major’s government – defeated by a landslide in the general election of 1997 – suggests that ‘playing the law and order card’ is by no means a sure ticket to electoral success. For one thing, although politicians currently tend to see law and order ideology as ruling public perceptions about criminal justice, and consequently calculate that it is to their own advantage to be perceived as being tough, research suggests that the public may be nowhere near as punitive-minded as is generally supposed (see Chapter 10: section 10.3). And even assuming they were, there would be no way of satisfying the constant media calls for ever tougher criminal justice policies. So – on the ideological side of things – Strategy A will not solve the crisis of legitimacy. Moreover, pursuing ever harsher policies and indulging in law and order rhetoric inevitably worsens the crisis of penological resources (on the material side of the equation). Recent history bears out what one would expect, that tough policies and rhetoric have had the natural result of increasing the harshness of punishment – and consequently

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7Cf. Garland (2001). We would also highlight the shift towards neo-liberal economics as a factor in this process: see Chapter 3, section 3.6.
the size of the prison population and the scale of the penal crisis. Surges in the prison population (for example in the mid-1980s, from early 1993 onwards and following the urban riots of 2011) have also coincided with an increase in the intensity of law and order rhetoric emanating from government ministers (Travis, 1993; see also Hough et al., 2003).

For a long time – certainly until the law and order counter-reformation of 1993 – it could be said that the overall response of the British state to the penal crisis had been mostly directed towards the material crisis of resources rather than the ideological crisis of legitimacy. The response largely took the form of penological pragmatism: responding to developments and attempting to manage the resources crisis ‘with no clear or coherent philosophical or other theoretical basis’ (Bottoms, 1980: 4). This pragmatism – which is still a vital strand in policy even in these more ideological times – has not been completely shapeless. One strong theme, whose effect waxes and wanes repeatedly over time, was identified and christened by Tony Bottoms in a highly prescient paper back in 1977: the strategy of bifurcation (Bottoms, 1977, 1980). Bifurcation refers to a dual-edged (or twin-track) approach to punishment: differentiating between ‘ordinary’ or ‘run of the mill’ offenders with whom less severe measures can be taken on the one hand, and on the other hand ‘exceptional’, ‘very serious’ or ‘dangerous’ offenders who can be made subject to much tougher measures. In this way ‘a bifurcated policy allows governments to get tough and soft simultaneously’ (Pitts, 1988: 29). From the point of view of the resources crisis, bifurcation looks like a rational response: because there are so many more ‘run of the mill’ than ‘serious’ offenders, a bifurcated policy should save many more resources than it costs. In terms of legitimacy with the general public such a strategy could also be effective, since the public can be reassured that the really ‘serious’ offenders about whom they are most concerned will be kept locked up for long periods. Bifurcation can thus be seen as a pragmatic response to the combined crises of legitimacy and resources, conditioned by law and order ideology. But in terms of legitimacy with prisoners – and in terms of preventing disorder in prisons – bifurcation runs the risk of proving seriously counterproductive since it seems so unfair to those who are singled out as the ‘very serious’ cases in what they may see as an arbitrary manner.

As the politics of punishment have grown harsher, the other limb of bifurcation – being less harsh to less serious offenders – has come into conflict with law and order ideology. The Criminal Justice Act 1991 embodied what we have termed punitive bifurcation, a version in which even lesser offenders were to be treated with apparent toughness. For under that Act’s policy of punishment in the community, although more offenders were to be kept out of prison they would be punished in the community; non-custodial penalties were to be more punitive and controlling than hitherto. But even this harsher version of bifurcation did not survive the law and order counter-reformation, and as Michael Howard declared that ‘prison works’ and that more rather than fewer offenders should go to prison, both pragmatism and bifurcation were sacrificed on the altar of ideology. Between 1997 and 2010 New Labour persisted with bifurcatory policies of varying kinds, but – probably because of the greater emphasis that was placed on the tough side of the
coin – the results were further increases in the prison population and in the crisis of resources. The Coalition government temporarily toyed with punitive bifurcation but in the end the bifurcatory part went missing, leaving only punitiveness (see Chapter 10, section 10.2).

Another strand of the pragmatic approach to penal policy, one which seems to keep growing in strength over the long term, is the element known as managerialism. This is what we call the Strategy B approach to criminal justice (Cavadino et al., 1999: 41–5; Introduction, section I.2). (It is related to the new penology, which we discuss in Chapter 3, section 3.6.) This approach is based on the notion that modern managerial techniques can be successfully applied to the problems of crime and punishment, both to control crime and to deploy penal resources effectively and efficiently. The influence of managerialism (of different varieties) can be observed in such diverse developments as the systems management approach to dealing with young offenders (see Chapter 8, section 8.2), the creation of the National Offender Management Service (see Chapter 5), and the government interest in seeking and applying evidence of ‘what works’ to control crime and prevent criminals from reoffending (see Chapter 2, section 2.2). Above all it can be seen in successive governments’ dogmatic attachment to the principle of private sector participation in the delivery of both custodial (see Chapter 6) and non-custodial (see Chapter 5) penal interventions. Managerialism – like penological pragmatism more generally – is primarily directed at the material crisis of resources rather than the crisis of legitimacy. Pragmatism and bureaucracy may have their place in the practical running of things but are hardly likely in themselves to inspire minds sufficiently to defuse the legitimacy problems of the penal system.

A particularly influential, right-wing version of managerialism (known as ‘New Public Management’ – see Hood, 1991; McLaughlin et al., 2001) sees private sector business techniques as the model for management and seeks to improve the public sector by introducing privatization, commercial competition and general ‘marketization’. We shall have much more to say about the privatization and marketization of penal services in Chapters 5 and 6. Currently the Coalition government is pursuing the policy of privatization to greater lengths than ever before both in the realm of imprisonment and in non-custodial measures for dealing with offenders.

Eagle-eyed readers may have noticed that we have mentioned both Strategy A-type (harsh and punitive) and Strategy B-type (managerial) responses to the crisis, and wondered: have there been no Strategy C-type (humanitarian, human rights-based) responses? To be fair, there have – although in recent years they have tended to take a poor third place to the other two strategies. There has been a revival of interest in measures that can be taken to reform and rehabilitate offenders, which can be seen as a generally humanitarian approach as well as aiming at the efficient control of crime. And governments including the current Coalition government have shown increasing interest in the idea of restorative justice (see Chapters 2, 5, 8 and 10, sections 2.4, 5.3, 8.2 and 10.3), especially for young offenders. We will give more details about all these responses to the crisis throughout this book, and in Chapter 10 we return to these to provide a general
FIGURE 1.2 A radical pluralist account of the penal crisis

over view and give our own opinions, setting out the kind of responses we ourselves favour.
1.5 We said earlier that one problem with the orthodox account of the penal crisis is that it is *positivistic*: it sees the crisis in terms of mechanistic causes and effects and ignores the place of subjective human experience, perception, reflection and meaningful human action. It sees the crisis in overwhelmingly material terms – it recognizes the material crisis of resources but ignores the ideological crisis of legitimacy. In the previous two sections, by contrast, we have sought to emphasize that, although material circumstances are indeed of great importance in explaining the penal crisis, they are only one side of the story. The other side, equally crucial, is the realm of ideas and ideology. Material and ideological factors interact with each other in a manner that could be described (in unfashionable Marxian terminology) as ‘dialectical’.

In seeking to explain and understand the penal crisis, we wish to go further than just widening the orthodox account and adding the ideological dimension to it. We think the crisis can be analysed within the context of a general theoretical framework which is both intellectually respectable and useful, a theory we call *radical pluralism* (Cavadino, 1992). The nature of this theory will be explained in greater detail in Chapter 3 (section 3.5), but it is a composite, compromise theory, which is capable of incorporating those elements of the crisis that the orthodox account rightly identifies while also drawing upon the insights of commentators such as Fitzgerald and Sim, Bottoms, Hall and Lord Woolf.

The word ‘pluralism’ in the title of this theory means that we recognize that a large number of varied elements (including a variety of interest groups with greater or lesser power) are involved in the penal system and its crisis, and that these elements interact in a highly complex manner. We see a need to analyse the crisis in the context of the relationships between politics and economics, ideology and material conditions. We do not believe that this kind of analysis can be politically or morally neutral – and nor should it, for our understanding of the situation is that the penal system is morally indefensible and is in dire need of a programme of radical reform which would inevitably be highly political. On the other hand, the penal crisis is not simply a by-product of a ‘crisis of capitalism’, and it could be largely solved without a complete political and social revolution.

Our account is represented in diagrammatic form in Figure 1.2. The most striking feature of the diagram is its complexity; and yet Figure 1.2 is vastly oversimplified. An arrow in the diagram means that one factor affects (often this means exacerbates) another in the direction shown. Some of the connections pictured have already been discussed or mentioned. For example, we have already indicated how economic decline, political developments and the collapse of the rehabilitative ideal helped to give rise to a resurgence of law and order ideology. Similarly, bifurcation can be seen as having been produced by a combination of law and order ideology and the practical need to do something about the high prison population in a situation of scarce penal resources and general economic stringency. Other factors and relationships will be dealt with in later chapters.

A few more points are worth stressing about this kind of account. First, it is crucial to emphasize again that the crisis is composed of both material and ideological
elements, and we have consequently tried to organize Figure 1.2 accordingly. These two sides of the crisis interact in a complex fashion: indeed certain features of the system, for example bifurcation, cannot be neatly placed on one side or the other of the material/ideological divide since they are both ideologies and material practices at the same time.

The penal crisis is sometimes described as not one but several interlocking crises; indeed, we ourselves talk about, for example, the crisis of resources and the crisis of legitimacy as if they were separate things. But it may be best to think of the penal system as being essentially one highly complex system and the penal crisis as a single entity – albeit with multiplex causation and a variety of symptoms. For there is a single unifying factor of the penal crisis, into which all the exacerbating elements flow and from which most of the symptoms of the crisis proceed (as Figure 1.2 shows). This key factor is the crisis of legitimacy, which is ignored by the orthodox account, but which we see as crucial. Riots, staff unrest, the malaise in the probation service and the political problems caused by the penal system are not the direct results of a high prison population or a lack of money or of decent prison buildings (although these do contribute to the crisis). They result from what people believe and how they feel – from the moral reactions of people within and outside the penal system to the material situation. (In sociological jargon, the effects of the objective material conditions are ‘mediated’ through the subjective perceptions of human actors which are structured by ideology.)

The crisis of legitimacy, it is worth repeating, is at least threefold. The penal system needs to legitimate itself with different groups of people: with the public (including politicians, commentators, etc.), with penal staff (including prison staff and probation officers) and with penal subjects (prisoners, probationers and others who are subject to penal treatment). Failing to satisfy the sense of justice of these different audiences leads to the alarming visible symptoms of the crisis: political problems, industrial relations problems, malaise among prison and probation staff, and disorder among prisoners.

In saying that the crisis of legitimacy is central, we are saying that the penal crisis is in essence a moral crisis. By this we do not just mean that many people believe that the system is unjust. As we hope to make clear (especially in Chapter 2, but also throughout the whole of this book), the penal system is indeed in our opinion the source of very substantial injustice, and the crisis is unlikely to be solved unless this injustice is mitigated.

Finally, we are at pains to stress that, despite all the arrows in Figure 1.2, we do not believe that human actions and beliefs are mechanistically determined. For example, bifurcation was a policy which was occasioned and encouraged by the conjunction of overcrowding and a lack of resources in an ideological atmosphere of law and order and legitimacy crisis, but it was not inevitable: policy-makers could (and probably should) have decided to do something else instead. Nor were Michael Howard’s law and order policies between 1993 and 1997 inexorably brought about by an economic decline and the collapse of the rehabilitative ideal; nor are the policies of the current government determined by iron laws of history. All of which means that the crisis was not inevitable and is not insoluble. But it cannot be solved unless we change people’s ideas about punishment.