What Is Crime?
by Lawrence M. Friedman

For Your Journal
How would you answer the question “What is crime?” For you, what makes some acts criminal and others not? Explain.

There is no real answer to the question, What is crime? There are popular ideas about crime: crime is bad behavior, antisocial behavior, blameworthy acts, and the like. But in a very basic sense, crime is a legal concept: what makes some conduct criminal, and other conduct not, is the fact that some, but not others, are “against the law.”

Crimes, then, are forbidden acts. But they are forbidden in a special way. We are not supposed to break contracts, drive carelessly, slander people, or infringe copyrights; but these are not (usually) criminal acts. The distinction between a civil and a criminal case is fundamental in our legal system. A civil case has a life cycle entirely different from that of a criminal case. If I slander somebody, I might be dragged into court, and I might have to open my checkbook and pay damages: but I cannot be put in prison or executed, and if I lose the case, I do not get a criminal “record.” Also, in a slander case (or a negligence case, or a copyright-infringement case), the injured party pays for, runs, and manages the case herself. He or she makes the decisions and hires the lawyers. The case is entirely voluntary. Nobody forces anybody to sue. I can have a good claim, a valid claim, and simply forget it, if I want.

In a criminal case, in theory at least, society is the victim, along with the “real” victim—the person robbed or assaulted or cheated. The crime may be punished without the victim’s approval (though, practically speaking, the complaining witness often has a crucial role to play). In “victimless crimes,” there is nobody to complain; both parties are equally guilty (or innocent). Here the machine most definitely has a mind of its own. In criminal cases, moreover, the state pays the bills. It should be pointed out, however, that the further back in history one goes, the more this pat distinction between “civil” and “criminal” tends to blur. In some older cultures, the line between private vengeance and public prosecution was indistinct or completely absent. Even in our own history, we shall see some evidence that the cleavage between “public” and “private” enforcement was not always deep and pervasive.

All sorts of nasty acts and evil deeds are not against the law, and thus not crimes. These include most of the daily events that anger or irritate us, even those we might consider totally outrageous. Ordinary lying is not a crime; cheating on a wife or husband is not a crime in most states (at one time it was, almost everywhere); charging a huge markup at a restaurant or store is not, in general, a crime; psychological abuse is (mostly) not a crime.

Before some act can be isolated and labeled as a crime, there must be a special, solemn, social and political decision. In our society, Congress, a state legislature, or a city government has to pass a law or enact an ordinance adding to behavior to the list of crimes. Then this behavior, like a bottle of poison, carries the proper label and can be turned over to the heavy artillery of law for possible enforcement.
We repeat: crime is a legal concept. This point, however, can lead to a misunderstanding. The law, in a sense, "creates" the crimes it punishes; but what creates criminal law? Behind the law, and above it, enveloping it, is society; before the law made the crime a crime, some aspect of social reality transformed the behavior, culturally speaking, into a crime; and it is the social context that gives the act, and the legal responses, their real meaning. Justice is supposed to be blind, which is to say impartial. This may or may not be so, but justice is blind in one fundamental sense: justice is an abstraction. It cannot see or act on its own. It cannot generate its own norms, principles, and rules. Everything depends on society. Behind every legal judgment of criminality is a more powerful, more basic social judgment; a judgment that this behavior, whatever it is, deserves to be outlawed and punished.

Thinking Critically about This Reading
What does Friedman mean when he states, "Behind every legal judgment of criminality is a more powerful, more basic social judgment; a judgment that this behavior, whatever it is, deserves to be outlawed and punished" (last paragraph)? According to Friedman, what must happen before any offensive behavior can be deemed criminal?

What general definition of crime do most criminologists agree on, according to Friedman?

According to this definition of crime, was the Count of Monte Cristo committing a crime when he began taking revenge on his accusers?

Write an essay recounting a time when you were the "victim" of somebody's outrageous behavior. What were the circumstances of the incident? How did you respond at the time? What action, if any, did you take at a later time? Did you feel that what you were doing was criminal?

Debates continue about the meanings of other controversial words. Using one of the following controversial terms or another of your choosing, discuss not only its definition but also the problems with defining it.

death  minority (ethnic)  cheating  theft  lying
life  equality  success  marriage