of study and more explanatory theories for understanding crime. The current direction seems to be toward a more inclusive criminology that considers crime as deprivation and harm—regardless of legislated law.

In the next chapter, we turn to the first building block of the criminological enterprise and examine how crime is defined. We look at how what counts as crime varies depending on who defines it, where it is defined, and when. We see how the definition is shaped by our personal experiences (whether we are victimized or victimizer); our social standing (whether we stand to benefit or lose from crime); and many other factors, such as the media, family, and friends. We introduce a way of taking account of most of the essential components of crime through a graphic illustration that we call the prism of crime.

Chapter Two

Defining Crime

"THAT'S CRIMINAL!" people often say when they feel they have been unjustly harmed. Most people have a sense of what is criminal, but deciding precisely what is—or is not—criminal is not as obvious as it may seem. What is criminal to one person may be sharp business practice to another, such as when a supermarket erases the "sell by" date, extending the time to sell a perishable fish rather than throwing it out. What is morally reprehensible to one group may be a lifestyle preference to another. For example, prostitution is condemned by the moral right yet celebrated by organizations for prostitutes such as COYOTE (Cast Off Your Old Tired Ethics). Like *deviance*, *crime* is a concept with elusive, varied, and diverse meanings. How we decide what is criminal is a matter of definition.

An important consideration when defining crime is the observation that crime is *contextual*. Criminal harm takes different forms depending on the historical period, specific context, social setting, or situation in which it occurs. The written law might seem to provide an answer, but laws are open to interpretation. In this chapter, we look at the various definitions of crime, ranging from the legal definition to definitions that take account of crime's changing meaning as social harm.

The Legal Definition

Since the eighteenth century, the legal definition of crime has referred to acts prohibited, prosecuted, and punished by criminal law. Most commentators have agreed with Michael and Adler (1933: 5) that "criminal law gives behavior its quality of criminality." In other words, criminal law specifies the acts or omissions that constitute crime. Tappan's (1947: 100) classic definition is illustrative. He defined crime as "an intentional act or omission in violation of criminal law (statutory and case law), committed without defense or justification, and sanctioned by the state as a felony or misdemeanor." Tappan believed that the study of *criminals* should be restricted to those convicted by the courts.

Many criminologists argue that for several reasons the legal definition is too limited in scope. First, it takes no account of harms defined by administrative law as regulative violations. Edwin Sutherland (1949a) argued that as a result a strict legal definition excluded "white-collar crime." Suffering salmonella poisoning as a result of eating in a restaurant that systematically violates FDA regulations governing hygienic food preparation is no less criminal, according to Sutherland, than being robbed in the street. Both injure human life in the interest of profit. Sutherland believed that any definition of crime should take account of all offenses that are *socially injurious* or *socially harmful* and that repeat white-collar offenders deserve the label "habitual white-collar criminals."

A second problem with a strict legal definition of crime is that it ignores the cultural and historical relativity of law. What is defined as crime by the legal code varies from location to location and changes over time. For example, prostitution is generally illegal in the United States but is legal in some states, such as Nevada. Tappan (1947) acknowledged the cultural and historical variability of crime in society's norms but said this is why law's precision makes it the only certain guide. Others have claimed that the law offers only a false certainty, for what the law defines as crime "is somewhat arbitrary, and represents, a highly selective process" (Barak, 1998: 21). Indeed, Barak notes with regard to crime, "There are no purely objective definitions; all definitions are value laden and biased to some degree" (1998: 21).

Consider, for example, the criminalization of substance abuse. During Prohibition, the production and distribution of alcoholic beverages in the United States was illegal. Today, the same acts are generally legal, although some counties still prohibit the sale of alcohol and some states regulate its sale more than others. Similarly, the public use of tobacco has been increasingly criminalized (Markle and Troyer, 1979). In colonial Virginia, smoking was encouraged for medicinal purposes. In much of the twentieth century, smoking was celebrated as an aid to relaxation and social enjoyment. It is now illegal to smoke in most public places. In the 1920s, cocaine was promoted as a pick-me-up and was even included in the original formula for Coca Cola. Today, such activity would result in a long prison sentence for drug dealing. Clearly, what counts as a crime at one point in time or in one culture may not be considered criminal at another time or in another culture. Nettler (1984: 1) summed up the relativity problems with a strict legal definition: "Because there are so many possible wrongs and because 'crime' denotes only a select sample of all disapproved acts, the definition of crime varies from time to time and from place to place and there is continuing controversy about what should or should not be called 'crime.'" In addition, relying on a legal definition of crime presents other problems related to who defines the kinds

of behavior labeled crime. Crimes are not produced by legislation alone. Judicial interpretation also determines what is or is not crime. For example, the English law of larceny was significantly transformed by judges, not legislators, in the 1473 Carrier's Case: In spite of the existence of a clear common law, the society's changing economic needs, the growth of trade, and the rising merchant class influenced the English "Star Chamber" of judges (equivalent to the U.S. Supreme Court) to create an expanded theft law that better fit the needs of the economically powerful (Hall, 1952). Judicial effects on the law are still very evident today. Judicial decisions can be appealed, overturned, and revised. Consider, for example, *Roe v. Wade*, the 1973 Supreme Court case that legalized abortion during the first three months of pregnancy (Fiero, 1996: 684), and the more recent limitations that recriminalize certain aspects of abortion.

Even where legislators make law, a significant problem is whose views they represent. Some critical criminologists argue that criminal actions by corporations often go unrecognized because those who hold economic power in society are, in effect, those who make the law. Legislators are influenced through lobbyists and through receiving donations from political action committees (PACs) set up by owners of corporations and financial institutions (Simon and Eitzen, 1982). Their influence minimizes the criminalization of corporate behavior. This was at the heart of Sutherland's (1949a) original concern (discussed previously) to incorporate crimes defined by administrative regulations into the criminological realm. In short, relying on a strict legal definition for crime may be appropriate study for police cadets but is sorely inadequate for students of criminology or the thinking criminal justice professional. The contextual aspects of crime and crime control require serious reflective study. A more comprehensive approach to accommodate the range of definitions is to divide them into one of two types depending on whether they reflect consensus or conflict in society.

Consensus and Conflict Approaches

Consensus refers to definitions that reflect the ideas of the society as a whole. Such definitions constitute a set of universal values. *Conflict* refers to definitions of crime based on the belief that society is composed of different interest groups and that divisions may be especially prominent between the powerful and powerless.

Consensus

Consensus theorists try to get around the problem of variations in the law by tying the definition of crime to social morality. They draw on the ideas

of the nineteenth-century French sociologist Emile Durkheim ([1893] 1984), who believed that in the kind of integrated community that preceded industrialization, people were held together by common religious beliefs and traditions and similar worldviews. The similarity between people acted as a "social glue" that bonded them to each other in a shared morality. Thus, the consensus position states that crimes are acts that shock the common conscience, or collective morality, producing intense moral outrage in people. Thus, for Burgess (1950), "A lack of public outrage, stigma, and official punishment, attached to social action indicates that such action is not a violation of society's rules, independent of whether it is legally punishable" (quoted in Green, 1990: 9). Current supporters of this position claim there is a "consensus," or agreement, between most people of all economic, social, and political positions about what behaviors are unacceptable and what should be labeled criminal. Indeed, echoing Durkheim some recent commentators, such as Roshier (1989: 76), define crime "as only identifiable by the discouraging response it evokes."

Even this definition has problems, however. What at first appears as an obvious example of universally agreed-on crime—the malicious intentional taking of human life—may appear different when we take account of the social context. Closer inspection reveals that killing others is not universally condemned. Whether it is condemned depends on the social context and the definition of human life. For example, killing humans is regrettable yet acceptable in war. It is even honored. Humans identified as "the enemy" (as in the Persian Gulf War) are redefined as "collateral" and their death is described as "collateral damage." Soldiers have followed "illegal" orders, taken lives, and avoided punishment and the stigma associated with crime. Consider pro-life advocates in the abortion debate who define life as beginning with conception. They believe abortion of a fetus is murder. Pro-choice advocates, by contrast, do not believe life begins until birth, so abortion of a fetus is seen as an expression of women's right to choose; no more, no less.

Another major problem with the consensus view is the question of *whose* morality is important in defining the common morality. If harm affects a minority, will the majority be outraged? Is the conduct any less harmful if they are not outraged? Examples abound. Sexual harassment in the workplace, which was not previously defined as crime, was no less harmful to those forced to engage in sexual relations under the threat of losing their job. Because men were the predominant employers and managers, women's needs were not addressed and their complaints were not heard. The 1990s sexual harassment cases in the military provide a vivid illustration of this problem.

Furthermore, whether an issue becomes a public harm depends on a group's ability to turn private concerns into public issues (Mills, 1959) or

their skills at *moral entrepreneurship* (Becker, [1963] 1973). This is the ability to whip up moral consensus around an issue that affects some individuals or a minority and to recruit support from the majority by convincing them it is in their interests to support the issue too. Creating a public harm often involves identifying and signifying offensive behavior and then attempting to influence legislators to ban it officially. Becker argued that behavior that is unacceptable in society depends on what people first label as such and whether they can successfully apply the label to those designated "offenders." For example, prior to the 1930s smoking marijuana in the United States was generally acceptable. Intensive government agency efforts, particularly by the federal Bureau of Narcotics, culminated in the passage of the Marihuana Tax Act of 1937. This type of smoking was labeled unacceptable and illegal and those who engaged in it were stigmatized as "outsiders." In this tradition, Pavarini (1994) points out that what becomes defined as crime depends on the power to define and the power to resist definitions. This in turn depends on who has access to the media and how skilled moral entrepreneurs are at using such access to their advantage (Barak, 1994; Pfhul and Henry, 1993). As the following discussion illustrates, for these and other reasons the consensus position is too simplistic.

Conflict Approaches

Conflict theory is based on the idea that rather than being similar, people are different and struggle over their differences. According to this theory, society is made up of groups that compete with one another over scarce resources. The conflict over different interests produces differing definitions of crime. These definitions are determined by the group in power and are used to further its needs and consolidate its power. Powerless groups are generally the victims of oppressive laws. For example, prison sentences for using crack cocaine, the form of the drug generally preferred by African Americans, are ten to fifteen years longer than sentences for using powder cocaine, favored mainly by the white middle and upper classes (DeKeseredy and Schwartz, 1996: 61; Tonry, 1995). Compare the rights you have in your job to those of your employer. The doctrine of "at-will" employment that governs the majority of employment relationships (65 percent, or 70 million employees) in the United States specifies that an employer may terminate an employee "for good cause, for no cause or even for cause morally wrong, without thereby being guilty of a legal wrong" (*Payne v. Western & A.R.R.*, cited in Henry, 1994: 8).

As well as being based on wealth and power, groups in society form around culture, prestige, status, morality, ethics, religion, ethnicity, gender, race, ideology, human rights, the right to own guns, and so on. Each

group may fight to dominate others on issues other than power and wealth. Approaches to defining crime that take account of these multiple dimensions are known as *pluralist conflict theories*. Ethnic or cultural conflict is a good example. From the perspective of culture conflict, different cultures, ethnic groups, or subcultures compete for dominance. According to Sellin's (1938) classic culture conflict theory, criminology should not merely focus on crime but include violations of "culture norms," that is, behaviors that are considered standard for a specific cultural group, such as Arab Americans or Asian Americans. Sellin describes two forms of conflict. The first, *primary conflict*, occurs when a person raised in one culture is transposed into a different one. As an immigrant, the person may follow traditional cultural norms, such as the assumption by those of the Islamic faith that women revealing bare skin are sexually promiscuous and can be propositioned for sex. But acting on such assumptions may violate norms of the host country. Where these norms are expressed in law, criminal violation occurs.

Secondary conflict occurs between groups of people who live in specific geographic areas who begin to create their own distinct value systems. Where these clash, conflict and norm violation occurs. An example of culture conflict as crime is where a father from an "honor and shame culture" kills the lover of his unmarried daughter for violating her honor. In the father's ancestral culture, this would be expected. He would be deviating from the norm if he did *not* pursue such action! In the United States, his action is defined as murder.

When power is determined by wealth, the conflict is considered class based. Analysis of this type of conflict is founded on principles outlined by the nineteenth-century social philosopher Karl Marx. In *Marxist conflict theory*, the definition of crime focuses on conflicts that arise in capitalist society. Crime is rooted in the vast differences of wealth and power associated with class divisions. Groups that acquire power through political or economic manipulation and exploitation place legal constraints on those without power. A definition of crime based on economic interests emphasizes that "crime and deviance are the inevitable consequences of fundamental contradictions within society's economic infrastructure" (Farrell and Swigert, 1988: 3). Crime is defined as the activities of those who threaten the powerful. Such a view explains why serious crimes are those of street offenders, whereas those of corporate or white-collar "suite" offenders are considered less serious, even though the financial losses from such white-collar crimes amount to at least ten times that from street crimes (Timmer and Eitzen, 1989; Friedrichs, 1996). Richard Quinney has expressed this position: "Crime is a definition of human conduct created by authorized agents in a politically organized society.... [It describes] behaviors that conflict with the interests of the

segments of society that have the power to shape public policy" (1970: 15–16). In other words, the definition of crime is a political tool used to protect power, wealth, and position in a society. Not surprising, this power-and-wealth version of conflict theory has been termed *critical criminology* (Taylor, Walton, and Young, 1975). This is because it criticizes the overall kind of society in which we live and suggests we replace it with a socialist system.

Critical criminologists also suggest that the *harm* of crime should become central. They assert that the definition of crime should be expanded to include the socially injurious activities of powerful groups against the powerless as well as behavior that violates or intrudes into others' *human rights* (Schwendinger and Schwendinger, 1970).[1] Thus, they argue that criminal harm can come not just from individuals but from the *social contexts* of conditions such as imperialism, racism, sexism, and poverty.

The idea of crime as a violation of human rights has become a major theme of critical humanist criminologists. As Quinney and Wildeman note, "The notion of crime as social injury, social harm, or a violation of human rights is, in effect, basic to those who strive to improve the human condition, for it provides the intellectual and practical tools for the reconstruction of society" (1991: 5; see also Cohen, 1993). Yet other criminologists want to extend these rights to animals, arguing that harm to animals is a crime (Beirne, 1994).

Marxist conflict theorists are farthest away from the view that law should define the content of crime. Instead, they argue that any behavior that causes harm is crime (Reiman, [1979] 1995). Expanding Sutherland's (1949a) definition, Michalowski (1985) uses the term "analogous social injury," which includes harm caused by acts or conditions that are legal but produce similar consequences to those produced by illegal acts. For example, promoting and selling alcoholic beverages and cigarettes (recently described as "drug delivery systems"), although legal, still produce considerable social, health, and psychological problems. Other substances that are illegal, such as marijuana, may produce less negative consequences. The insidious injuries produced by the Johns-Manville asbestos company's knowing exposure of millions to deadly asbestos dust, in spite of the company's own research evidence that showed asbestos has carcinogenic effects (Calhoun and Hiller, 1986), would be a good example of producing "analogous social injury.'

Beyond Consensus and Conflict

Going beyond consensus, pluralist conflict, and critical Marxist theorists, other criminologists have begun to redefine crime more broadly. One such approach has pluralist leanings, but instead of seeing established

groups as significant it sees the situational context and its constituent players as important. Crime is defined as a *social event*, involving many players, actors, and agencies. Thus, crimes "involve not only the actions of individual offenders, but the actions of other persons as well. In particular, they involve the actions of such persons as victims, bystanders and witnesses, law enforcement officers, and members of political society at large. A crime, in other words, is a particular set of interactions among offender(s), crime target(s), agent(s) of social control and society" (Gould, Kleck, and Gertz, 1992: 4). This broader view of crime highlights the complexities associated with defining crime by recognizing its socially constructed nature.

Another recent reassessment of the definition of crime that takes account of the total context of powerful relations and the situational context comes from postmodernist-influenced *constitutive criminologists*. Postmodernism is a perspective that rejects claims that any body of knowledge is true or can be true. Instead, its advocates believe that "claims to know" are simply power plays by some to dominate others. These theorists advocate an anarchy of knowledge giving the oppressed, marginalized, and excluded their own voice to define what harms them, rather than having others claim to know how to protect them. For example, consistent with the important place given to power, Henry and Milovanovic see *constitutive criminology* as "the framework for reconnecting crime and its control with the society from which it is conceptually and institutionally constructed by human agents. . . . Crime is both *in* and *of* society" (1991: 307). They define crime as an agency's ability to make a negative difference to others (1996: 104). Thus, they assert, "Crimes are nothing less than moments in the expression of power such that those who are subjected to these expressions are denied their own contribution to the encounter and often to future encounters. Crime then is the power to deny others . . . in which those subject to the power of another, suffer the pain of being denied their own humanity, the power to make a difference" (1994: 119).

It is clear that criminological approaches to crime have come a long way from the simplistic idea that crime is behavior defined by law. Recent ideas suggest that far more is involved than law. These ideas resurrect the central role of harm, the victim, and the context. Importantly, they even suggest that law itself can create crime, not merely by definition but by its use of power over others. Together, these definitions express the increasingly broad range of conceptions of crime that criminologists now share. Even though the division between consensus and conflict theory is helpful to gain an overall sense of different definitions, it does not present an integrated approach. But there is one attempt to define crime that, with modification, helps us overcome many of the difficulties so far identified.

This approach has its beginnings in the criminologist John Hagan's (1977, 1985) idea of crime as a continuous variable.

Hagan's Pyramid of Crime

From the previous discussion, it is clear that there is little agreement among criminologists about what constitutes crime. One very useful conception of crime, however, which takes account of several of the positions reviewed here, is provided by the Canadian criminologist John Hagan (1977, 1985) in his notion of crime and deviance as "a continuous variable." Explaining this concept, Hagan notes that rule breaking ranges from minor deviance from accepted standards of behavior, such as public drunkenness or dress code violations, to highly offensive acts that involve serious harm, such as urban terrorism or mass murder. He defines crime as "a kind of deviance, which in turn consists of variation from a social norm that is proscribed by criminal law" (1985: 49). His definition includes three measures of seriousness, each ranging from low/weak to high/strong. First is the degree of consensus or agreement, the degree to which people accept an act as being right or wrong. Most Americans believe that planting a bomb in a public building and causing serious death or injury, as in the 1995 bombing of a downtown federal building in Oklahoma by antigovernment extremists, is very wrong. In contrast, few people consider a sixteen-year-old's skipping school seriously wrong (see Table 2.1). All crimes can be ranked on a scale of seriousness between these extremes. Hagan offers as the first measure of seriousness the degree of consensus or agreement about the wrongfulness of an act, which "can range from confusion and apathy, through levels of disagreement to conditions of general agreement" (1985: 49).

A second dimension of Hagan's approach is the severity of society's response in law. This may range from social avoidance or an official warning, through fines and imprisonment, to expulsion from society or ultimately the death penalty. Hagan argues, "The more severe the penalty prescribed, and the more extensive the support for this sanction, the more serious is the societal evaluation of the act" (1985: 49). Clearly, the sentencing to death of a convicted child murderer in Utah and the state's execution of the offender by firing squad would rank higher on the scale of social response than imprisonment of a small businessperson for tax evasion.

Hagan's third dimension is the relative seriousness of crime based on the harm it has caused. He argues that some acts, like drug use, gambling, and prostitution, are *victimless crimes*, which harm only the participants. Victimless crimes, or *crimes without victims*, are consensual crimes, involving lawbreaking that does not harm anyone other than perhaps the perpetrator (Schur, 1965).[2] Many crimes, such as domestic violence, harm

TABLE 2.1 The Seriousness of Crimes

Conventional Crimes
Severity Score and Offense

72.1	Planting a bomb in a public building that explodes killing twenty people.	15.5	Breaking into a bank at night and stealing $100,000.
52.8	A man forcibly rapes a women who dies from her injuries.	12.2	Paying a witness to give false testimony in a criminal trial.
43.2	Robbery at gunpoint during which the victim is shot to death.	12.0	Intentionally injuring a victim resulting in hospitalization.
39.2	A man stabs his wife who dies from the injuries.	10.5	Smuggling marijuana into the country for resale.
35.7	Stabbing a victim to death.	10.4	Intentionally hitting a victim with a lead pipe resulting in hospitalization.
33.8	Running a narcotics ring.		
27.9	A woman stabs her husband and he dies from the injuries.	10.3	Illegally selling barbiturates, such as sleeping pills, to others for resale.
26.3	An armed person hijacks a plane and demands to be flown to another country.	10.3	Operating a store that knowingly sells stolen property.
25.9	A man forcibly rapes a woman.	9.7	Breaking into a school and stealing equipment worth $1,000.
24.9	Intentionally setting fire to a building causing $100,000 of damage.	9.7	Walking into a museum and stealing a painting worth $1,000.
22.9	A parent beats his young child with his fists and the child requires hospitalization.	9.6	Breaking into a home and stealing $1,000.
21.2	Kidnapping a victim.	9.4	Robbing a victim of $10 at gunpoint without physical harm resulting.
20.7	Selling heroin to others for resale.		
19.5	Smuggling heroin into the country.	9.3	Threatening to seriously injure a victim.
19.5	Killing a victim by reckless driving.	8.5	Selling marijuana to others for resale.
17.9	Robbing a victim of $10 at gunpoint, resulting in the victim being wounded.	7.9	A teenage boy beats his father with his fists resulting in hospitalization.
16.9	A man drags a woman into an alley and tears her clothes but flees before causing further harm.	7.5	Robbing a victim armed with a lead pipe without injury resulting.
16.4	Attempting to kill a victim with a gun, which misfires and the victim escapes.	7.3	Threatening a victim with a weapon, receiving $10 with no harm to the victim.
		7.3	Breaking into a department store and stealing $1,000 worth of merchandise.
15.9	A teenage boy beats his mother with his fists and she requires hospitalization.	7.2	Signing someone else's name on a check and cashing it.

(continues)

TABLE 2.1 *(continued)*

Conventional Crimes
Severity Score and Offense

6.9	Stealing property worth $1,000 from outside a building.	2.1	A women engages in prostitution.
6.5	Using heroin.	1.9	Making an obscene phone call.
6.4	Getting customers for a prostitute.	1.8	A minor being drunk in public.
		1.8	Being a knowing customer in a place holding illegal gambling.
6.3	Failure to appear at court while on bail for a serious offense.		
5.4	Possessing heroin for personal use.	1.7	Stealing $10 worth of property from outside a building.
5.1	A man runs his hands over the body of a female victim, then runs away.	1.6	Being a customer in a brothel.
		1.6	A male over 16 has sexual relations with a willing female under age 16.
5.1	Using force to rob a victim of $10 but without causing injury.	1.6	Taking barbiturates without a prescription.
4.9	Snatching a handbag containing $10.	1.5	Intentional shoving or pushing without resulting injury.
4.8	A man exposes himself in public.	1.4	Smoking marijuana.
4.6	Carrying a gun illegally.	1.3	A consensual homosexual act.
4.4	Picking a victim's pocket of $100.	1.1	Disturbing a neighbor with noisy behavior.
4.2	Attempting to break into a home but leaving when disturbed by police.	1.1	Taking bets on numbers.
		1.1	Loitering after being told to move on by police.
3.8	Turning in a false fire alarm.	0.9	Teenager under 16 runs away from home.
3.6	Knowingly passing a bad check.	0.8	Being drunk in public.
3.6	Stealing property worth $100 from outside a building.	0.7	Teenager under 16 breaks curfew laws.
3.5	Running illegal gambling premises.	0.6	Trespassing in the backyard of a home.
2.5	Knowingly carrying an illegal knife.	0.3	Being a vagrant.
		0.2	Youth under 16 plays hooky from school.
2.2	Stealing $10 worth of merchandise from a department store.		

White-Collar Crimes
Severity Score and Offense

14.1	A doctor cheats on claims to a federal health insurance plan for patient service.	13.0	A factory knowingly gets rid of its waste in a way that pollutes a city water supply.
13.9	A legislator takes a bribe from a company to vote for a law favoring the company.	12.0	A police officer takes a bribe not to interfere with an illegal gambling operation.

(continues)

TABLE 2.1   *(continued)*

White-Collar Crimes
Severity Score and Offense

10.0	A government official intentionally hinders the investigation of a criminal offense.	6.5	An employer refuses to hire a qualified person because of the person's race.
9.6	A police officer knowingly makes a false arrest.	6.3	An employee embezzles $1,000 from the employer.
9.5	A public official takes $1,000 of public money for personal use.	5.4	A real estate agent refuses to sell a house to a person because of the person's race.
9.2	Several large companies illegally fix the retail prices of their products.	5.3	Loaning money at an illegally high interest rate.
8.6	Performing an illegal abortion.	4.5	Cheating on federal income tax.
8.2	Knowing that a shipment of cooking oil is bad, a store owner decides to sell it anyway, resulting in one person being sick and treated by a doctor.	3.7	A labor union official illegally threatens to organize a strike if an employer hires nonunion workers.
7.7	Knowing that a shipment of cooking oil is bad, a store owner decides to sell it anyway.	3.2	An employer illegally threatens to fire employees if they join a labor union.
7.4	Illegally getting monthly welfare checks.	1.9	A store owner intentionally puts "large" eggs in containers marked "extra large."

SOURCE: Adapted from Bureau of Justice Statistics, 1983.

others, and some crimes harm more than one person at a time, as in the Beechnut corporation's export of sugar water as 100 percent apple juice for babies or the export of infant formula that denied Third World babies necessary nutrients, exacerbating their malnourishment (Ermann and Clements, 1984).

Hagan illustrates the integration of these three dimensions on his "pyramid of crime" (see Figure 2.1). On the consensus dimension is the degree of agreement among people about the wrongfulness of an act. On the societal response dimension is the severity of penalties elicited in response to the act. Finally, on the third dimension is social evaluation of the harm an act inflicts on others. This can range from crimes of violence such as murder or terrorism at the peak down to victimless crimes at the base. Hagan claims,

FIGURE 2.1   Hagan's Pyramid of Crime
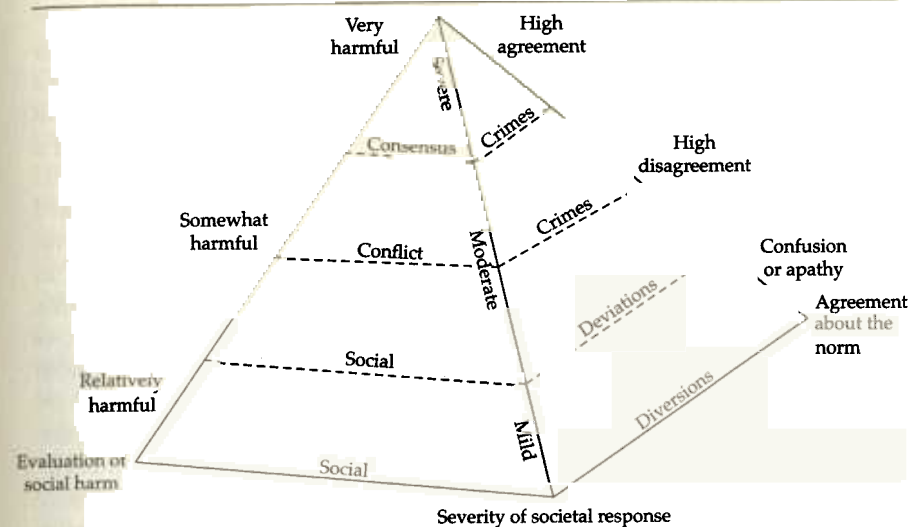
SOURCE: Hagan, *The Disrefutable Pleasures*, Toronto: McGraw-Hill Ryerson (1977, p. 14). Used by permission.

The three measures of seriousness are closely associated . . . the more serious acts of deviance, which are most likely to be called "criminal," are likely to involve (1) broad agreement about the wrongfulness of such acts, (2) a severe social response, and (3) an evaluation of being very harmful. However, the correlation between these three dimensions certainly is not perfect, and . . in regard to many acts that are defined as crimes, there is disagreement as to their wrongfulness, an equivocal social response, and uncertainty in perceptions of their harmfulness. (Hagan, 1985: 50)

Although Hagan goes farther than most criminologists in attempting an integrated definition of crime, we believe that his analysis can be improved by adding three further dimensions and by configuring the pyramid display into a "crime prism." Let us see why.

From *Hagan's Pyramid to the Prism of Crime*

We suggest that Hagan's pyramid is incomplete because it neglects *public awareness* of crime—that is, the realization that one has been a victim. Crime takes many forms, all of which involve harm, but not all of those harmed necessarily realize they have been victimized. We have already seen that participants in victimless crimes may claim that the criminal label is wrong. In the case of victims of government and corporate crimes, it is of-

ten a long time before the victims become aware that they have been harmed, and many never realize it! For example, the effects of environmental crimes may be so slow and diffused that no one notices any harm or change in the environment. Yet, over a period of years a particular area may become uninhabitable due to environmental crimes, as happened in the case of New York's famous Love Canal near Niagara Falls, in which the Hooker Chemical Corporation dumped 55-gallon drums of toxic waste. When the area was subsequently developed by an unwitting school board and settled as a residential area, children and residents were, over several decades, exposed to noxious fumes and surfacing chemicals resulting in birth defects, liver disease, and emotional disorders (Mokhiber, 1988). Such crimes can result in insidious injuries when the links between the causes and the effects are obscure, take a long time to appear, affect only a segment of the population, result in increased risk of injury or disease, and are widely dispersed through the population (Calhoun and Hiller, 1986). Thus, we argue that crime can range from being "obvious" or "readily apparent" to "relatively hidden" and, finally, so "obscure" that it is accepted by many as normal, even though it harms its victims (e.g., environmental crimes, racism, and patriarchy). Hagan acknowledges this but does not include the measure of obscurity as one of his dimensions.

A second missing, although implied, part of the pyramid of crime is the number of victims. If only one person is affected by a crime, this is certainly tragic and serious, as in the example of a person shot to death on the subway on the way home from work or by an intimate. But this crime is qualitatively different from, say, the Japanese terrorist religious cult that murdered many people in rush hour by intentionally setting off poisonous fumes in the subway system. These two additional dimensions, visibility and numbers harmed, are implied in surveys that depict the perceived seriousness of various acts (see Table 2.1). Note the difference in seriousness rating for different types of terrorism in the table. Absolute numbers of victims influence a society's perception as to the seriousness of crime.

A third limitation of Hagan's pyramid relates to his dimension of seriousness of response. This dimension fails to capture the probability or likelihood that a convicted offender will receive a serious response even when the law sets such a penalty. Crimes of the powerless are far more likely to receive the full weight of the law than are crimes of the powerful. For example, Calavita and Pontell (1993) found that of 580 people convicted of serious thrift fraud in 1988, 78 percent received a prison sentence but only 13 percent received a sentence of five years or more. They point out that the average sentence for major thrift crime was 36.4 months, compared with an average sentence for burglars of 55.6 months. In contrast, the average value of property stolen in a burglary was $250 compared to the average loss in embezzlement of $17,500.

Another limitation of Hagan's analysis is in its visual structure. The way that it is laid out does not allow other elements (such as those we have noted) to be included. The pyramid suggests that crimes for which conflict exists about their criminality are only somewhat harmful. Some crimes may be extremely harmful, yet still not be seen as harms by society, not least because the media present them in a way that favors the perpetrators. Until recently, this was the case with crimes of gender, such as sexual harassment and date rape, in which the male offender was shown as having poor judgment but not intending harm. It is clear to us that there is not always consensus about the seriousness of such actions as corporate crimes (such as pollution from toxic waste, deaths from avoidable faulty product manufacture, and deliberate violations of health and safety regulations). An obvious example is the padlocking of fire doors that resulted in the death of twenty-five employees in a North Carolina chicken plant fire in 1991. We should be perfectly clear that corporate crimes can be extremely harmful. This is in spite of the moderate societal response to such acts and conflict between interest groups in society over the need for health and safety regulations and the like and whether their violation constitutes a crime. For example, corporations historically oppose health and safety regulations if they slow down production or add to cost, depicting consumer or environmental protections as government interference in industry. Consumer protection groups such as Ralph Nader's Common Cause earn a living from disputing this point.

To solve the problems with Hagan's pyramid, we have redesigned the visual structure of this depiction of crime by making it a double pyramid, or what we call the "crime prism" (see Figure 2.2). In our schema, we place an inverted pyramid beneath the first pyramid. The top pyramid represents the highly visible crimes that are typically crimes of the powerless committed in public. These include crimes such as robbery, theft, auto theft, burglary, assault, murder, stranger rape, and arson. These crimes are similar to many of what for years were called *index crimes* by the FBI, because their measure was seen as an index of the changing incidence of crime (see Chapter 3 for an explanation of index crimes and the FBI's changing classification). The bottom, inverted pyramid represents relatively invisible crimes. These include a variety of crimes of the powerful, such as offenses by government officials, corporations, and organizations, as well as crimes by people committed through their occupations, for example, fraud and embezzlement, and even some crimes such as date rape, sexual harassment, domestic violence, sexism, racism, ageism, and crimes of hate. These are crimes typically conducted in private contexts, such as organizations and workplaces, that involve violations of trusted relationships. Together, crimes of the powerless and crimes of the powerful constitute the visible and invisible halves of our prism of crime.

FIGURE 2.2   The Crime Prism
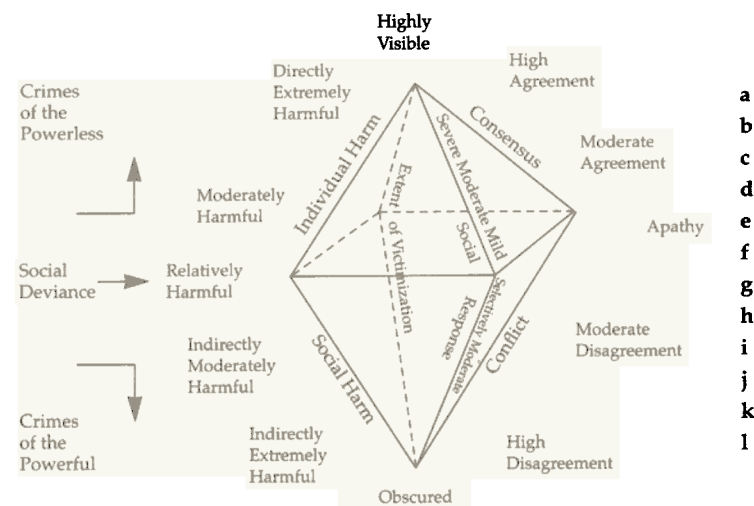
We use the term *prism* not only because of the visual appearance of the figure, but also because, just as a prism is used to analyze a continuous spectrum, so in our case the crime prism can be used to analyze the spectrum of important dimensions that make up crime. Let us look carefully at these revised dimensions of the crime prism before explaining how they come together. The letters on the right side are used to provide illustrative examples. We begin with the dimension of agreement.

Social Agreement.   The range of social agreement varies from the top of the crime prism, a, representing most agreement; through moderate agreement, c; down to the widest section of the pyramid, where there is apathy or disinterest, e. Social agreement then ranges through the lower half of the prism to crimes for which there is moderate disagreement, i, to those in which there is high disagreement or extreme conflict, l, at the opposite extreme. Beginning in the visible area (top half) of the prism, a planned murder might be placed at position b, whereas the crime of robbery at gunpoint would rank on the agreement scale at c. Acts of social deviance, such as wearing punk hairstyles or rings piercing various parts of the skin or engaging in a homosexual act, would rank at position e, since these are acts about which many people are generally apathetic. Moving down to the invisible area, a doctor cheating on claims made to a federal health insurance plan for her patient would be placed at position i, whereas a factory discharging polluted waste in a way that results in

pollution of the city water supply would rank around k. This is because people disagree about the need for government regulation, the intended or accidental nature of the action, and so on. Considerable conflict exists over these "invisible crimes" located in the lower half of the pyramid, such as whether workplace deaths and injuries resulting from accidents or criminal negligence of safety standards are crimes.

Probable Social Response.   The upper segment of this dimension runs from a high probability of severe sanctions for convicted offenders (e.g., death penalty or life in prison), a, through moderate sanctions (e.g., short prison terms, fines, probation), b and c, to a high probability of mild sanctions (community service, public condemnation), d. In our revision of Hagan's pyramid, this dimension now also extends from mild through selectively severe sanctions (e.g., fines, probation, restitution), f, and continues to symbolically severe sanctions at the lowest point, j through l. *Symbolically severe* refers to the low probability that severe sentences will be widespread and the recognition that these will often be reduced on appeal. For example, the ten-year imprisonment of Charles Keating for crimes in the 1980s savings and loans scandal provides one example of a symbolically severe sanction, since numerous similar offenders received much lower sentences; reduced sentences; and in many cases, restitution orders for million-dollar offenses. Ivan Boesky agreed to pay a $100 million penalty (from his fortune of $200 million amassed from "insider trading") and served a three-year prison sentence. Michael Milken, found guilty of felony securities fraud and conspiracy, was sentenced to ten years but only served twenty-two months and agreed to pay a fine of $600 million from his billion-dollar fortune (Friedrichs, 1996: 171–172). As DeKeseredy and Schwartz forcibly argue: "Poor people who accidentally kill bank tellers while attempting to rob them are labelled as murderers and are subject to harsh punishment. . . . Corporate executives who create unsafe working conditions are often exempt from both formal censure and prosecution, despite the fact that their decisions result in injuries and even death for thousands of people each year" (1996: 47).

Individual and Social Harm.   For the upper section of the crime prism, the dimension of individual and social harm is also the same as in Hagan's analysis, except that in our crime prism it refers to direct individual harm, in which the offender has specifically targeted the victim. The most harmful crimes here include those whereby the victims are denied their life or become permanently injured and maimed, a, b; through crimes that are harmful through some temporary loss of capability, money, property, or position, c; to those that might offend moral sensibilities but do not directly result in personal loss, e, f.

The dimension of individual and social harm also reaches into the lower half of the prism to include, first, offenses creating moderate social

harm (such as price-fixing that increases the costs of products to consumers), h, and then those social harms in which people have been physically injured and killed in the course of the general need to meet an organizational goal, as in the Union Carbide chemical factory disaster in Bhopal, India; the NASA space shuttle disaster; or the Ford Pinto gas tank explosions, all of which might be located at k or l.

Extent of Victimization.   The final dimension, extent of victimization, implied but not explicitly included in Hagan's measure of harm, represents the number of victims affected by a crime. Put simply, this spans a range from crimes in which numerous random victims result from highly visible individual crimes, a, through crimes in which several are affected by random crime, b and c, to crimes in which a few are affected, d. As this dimension extends into the lower prism of invisible crime, through f to l, more are affected, but now by being members of a particular "targeted" social category. For example, employees working with hazardous materials or in high-risk occupations, such as mining, construction, or chemicals; consumers buying a particular kind of faulty product; or residents living in an area where pollutants have contaminated the drinking water.

Integrating the Dimensions

Now that we have briefly illustrated the dimensions of the crime prism, let us discuss the spatial location of a few examples. Take the earlier example of terrorism. Here, crime is obvious, highly visible, extremely harmful, and noncontroversial with regard to the measure of consensus-conflict, as can be seen in Table 2.1. Smith and Orvis (1993) indicate that this kind of crime can be horrifying to the sensibilities of virtually all people, although directly harming relatively few (e.g., the Oklahoma City bombing). Societal response and outrage to this type of crime are immediate and pointed. Law enforcement agencies devote all available resources and form special task forces to deal with these crimes. Punishment is severe and can include the death penalty. As a result, such crimes would be placed on the top or very near the apex of the prism at point a. This only holds true if several people were harmed, however. If few were harmed, the ranking of the crime on the extent of victimization scale moves it down.

Further down the prism, but still at its upper end, are violent acts of individual crime. These are also readily apparent as being criminal. They were traditionally called *mala in se*, meaning "acts bad in themselves," or inherently evil; they are universally recognized as being crimes. Crimes of this type would include homicides, rapes, incest, and so on. Relatively few people are hurt by each act, yet societal reaction is severe and involves little controversy. Law enforcement considers these crimes its top

priority. Sanctions are very severe, ranging from lengthy penal confinement to death. Beneath these come acts of robbery, burglary, larceny, and vandalism, perhaps at location b or c.

At the lowest levels of the upper segment is where Hagan (1985: 59) placed social deviations and social diversions. Deviance, the higher placed of the two, includes acts such as public drunkenness, juvenile status offenses (acts that if committed by an adult would be legal), and trespass. It should be noted, however, that these are small-scale or low-value violations. Beneath the social deviations are what Hagan terms social diversions of unconventional lifestyles or sexual practices and so on. These offenses are relatively harmless and are met with confusion or apathy, a lack of consensus about their criminal status, and little formal law enforcement response. These will be located at f on the prism.

From this point on the inverted pyramid of our modified visual, it can be seen that the perception of criminality is relatively hidden. Offenses here are mildly responded to by law enforcement and often merely subject to a variety of informal social sanctions or systems of *internal social control*.

As we move into the lower section of the prism and toward its lower point, the obscurity of the crime increases. Its harm becomes less direct. Conflict over its criminal definition increases and the seriousness of society's response becomes more selective. Acts that have been called *mala prohibita* are positioned here. *Mala prohibita* crimes are those that have been created by legislative action (i.e., they are bad because they have been created or legislated as being bad). *Mala prohibita* definitions of crime necessarily involve a social, ecological, and temporal context. As we have seen, these acts may be criminal in one society but not criminal in another. Likewise, an act that is criminal in one county or state may be legal in another (e.g., prostitution). Such crimes also change over time. Crimes that do not reflect a consensus in society move toward the lower inverted part of the prism. In 1995, Calvin Klein was under investigation by the U.S. Department of Justice for using underage models in an advertisement campaign. The ads in question did not involve nudity but were apparently suggestive of child pornography. Many more people are harmed by similar acts, yet societal responses are moderate. The police exercise considerable discretion when dealing with these types of offenses. Often, fines and "second chances" are given to violators of these laws.

At a lower level, crime is unapparent (hidden) and indirect, yet hurts many people over an extended time period. For example, in 1987 and 1988, 11,319 savings and loan cases were referred to the Justice Department for possible criminal prosecution. It has been estimated that criminal activity was involved in 70 to 80 percent of the thrift institution failures (Calavita and Pontell, 1993). Yet, the impact of this type of crime is diffused and societal reactions diluted. Law enforcement is rarely equipped to handle it.

Prison sentences are rarely given; the more common sanctions are fines, restitutions settlements, censure, and signs of disapproval. Regulatory agencies rather than law enforcement are responsible for law enforcement. Unless the offense is made public, corporations and their trade associations often handle these problems through their own disciplinary mechanisms. These offenses will be located at point i on the prism.

At the final level, crimes are so hidden that many may deny their existence and others may argue as to whether or not they are crimes. Sexism, for example, is an institutionalized type of crime. It is patriarchal, subdued, and so ingrained into the fabric of a society as to often go unnoticed, yet the impact is very influential. In 1995, a leading Republican senator, Bob Packwood, was forced to resign his U.S. Senate seat as a result of sexual improprieties. Yet, no criminal charges were filed. The law enforcement community generally scoffs at consideration of these crimes as criminal. These crimes are rarely, if ever punished. Those sanctions that occur generally involve social disapproval (some groups will even voice approval) and verbal admonishment, although occasionally symbolically severe sentences are given.

It is clear that the range of different crimes can be located on the crime prism. To better understand the prism, attempt to identify some different types of crimes and consider where they would be positioned. Consider, for example, where on the prism to locate *hate crimes* and the 1993 Los Angeles riots following the Rodney King beating verdict. Riots and rebellion and some revolutionary activity would fall toward the bottom of the lower half of our schema. Why is this?

Considering the location of crimes on the prism makes two things apparent. First, the positioning of crimes on the prism varies over time as society becomes more or less aware of the crime and recognizes it as more or less serious. For example, consider the changing position of domestic violence and sexual harassment, both of which have recently begun to move from the lower half to the upper half of the prism. In contrast, other acts that were once in the upper half have become so common as to be hidden, are relatively harmless, and evoke neither public outcry nor societal response. For example, Sutherland and Cressey (1966) pointed out that at different times it has been a crime to print a book professing the medical doctrine of blood circulation, to drive with reins, to sell coins to a foreigner, to keep gold in the house, or to write a check for less than a dollar.

Second, the upper half of the prism (Hagan's pyramid) contains predominantly conventional crimes, or "street crimes," whereas the lower half of the prism contains the greater preponderance of *white-collar crimes*, or "suite crimes." Some have suggested that the characteristic of offenders committing the majority of the former crimes is that they are relatively powerless in society, whereas those committing the majority of the latter

hold structural positions of power (Balkan, Berger, and Schmidt, 1980; Box, 1983). A central question is, what does being powerful affect? Is it the type of crime that is committed or the ability to escape the effects of the law? Let us conclude our examination of definitions of crime by looking a little more closely at these two broad types of crime and what the criminological research about them reveals.

Crimes of the *Powerless*

Power can be considered on several dimensions, including class, gender, race, and ethnicity. Consider *social class* as an illustration. The original conception of crimes of the powerless was based upon the accumulated evidence from data gathered by the criminal justice system. This showed that those predominantly *arrested* for conventional criminal activities were from lower- or working-class backgrounds. It seemed clear that these street crimes of theft and personal violence, such as homicide, rape, aggravated assault, robbery, burglary, larceny, and auto theft (these are defined and discussed in Chapter 3), were committed by people holding relatively weak *legitimate* economic and political positions in society. For example, Balkan and her colleagues argued that street crime, "conventionally considered the most serious form of crime, is committed primarily by working-class persons" (1980: 340).

But the emergence of findings from numerous self-report surveys (discussed in Chapter 3) in which people are asked to anonymously report to researchers about the kinds of crimes they actually commit rather than those they are arrested for suggests that this view is inaccurate. Except for the most serious crimes, it was found that the proportions of street crimes committed by middle-class and lower-class youths are similar (Currie, 1985; Elliott and Huizinger, 1983). It was further found that the lower-class offender is more likely to be arrested, charged, and convicted by the criminal justice system (Liska and Chamin, 1984; Sampson, 1986). Other dimensions of power, such as race or gender, are interlocked with the class dimension and can be subject to a similar analysis. Take race as an illustration. Self-report surveys found that black and white offense rates were similar except for serious offenses, but black arrest and conviction rates were higher (Elliott and Ageton, 1980; Huizinger and Elliott, 1987; Reiman, [1979] 1995).

These findings show the importance of criminological research in shaping our thinking about crime. They suggest that we need to revise our conception of crimes of the powerless. Taking account of these data, "crimes of the powerless" refers to crimes for which those in relatively weak economic and political positions in society are predominately arrested. In other words, powerlessness reflects qualities affecting not so

much the commission of crimes but the ability to resist arrest, prosecution, and conviction.

Crimes of the Powerful

Crimes of the powerful are those crimes committed by people who are in relatively strong *legitimate* economic and political positions in society. Again, let us illustrate the argument on the social class dimension of power. Such crimes include offenses by those in powerful occupational or political positions, such as business executives, professionals, lawyers, doctors, accountants, and politicians. Here, we see crimes such as insider trading, tax evasion, bribery and corruption, Medicare fraud, price-fixing, pollution, and so on. Crimes of the powerful include much of what are called *white-collar crimes* (Sutherland, 1949a) because of the occupational position of those who carry them out. They are also called *suite crimes* because of where they occur; typically this is in offices, corridors of power, and corporate boardrooms.

As with crimes of the powerless, it helps to understand the range of crimes committed. These are not only offenses by individuals but also by corporations, organizations, and agencies of government (Ermann and Lundman, [1992] 1996; Schlegel and Weisburd, 1994) and government policies (Barak, 1991). Thus, we need to include (1) corporate crimes such as faulty product manufacture, dangerous work conditions, price-fixing, and consumer fraud; (2) government agency crime, such as systemic police corruption, subversion of regulatory enforcement, and violence (e.g., the Bureau of Alcohol, Tobacco, and Firearms—ATF—in Waco, Texas, and the FBI in Ruby Ridge, Idaho); and (3) state crimes resulting from government policy such as violations of privacy rights, involuntary medical experimentation (e.g., radiation tests on unwitting subjects and the Tuskeegee syphilis study in which African American males were not treated for syphilis so the government could see the long-term effects of this disease), state monopolies and government subsidies, and crimes against other states.

It is also important to note, as with crimes of the powerless, that power shapes not only the opportunity to commit crime but also the ability to resist arrest, prosecution, and conviction: "Crimes committed by the powerful are responsible for even greater social harms than those committed by the powerless. The former have escaped public attention precisely because, given the individualistic political-legal framework of capitalist society, it is difficult to identify and prosecute the persons who are responsible for crimes that take place within organizations" (Balkan et al., 1980: 145).

Considering our crime prism, the power of some to influence government, law, and the media; to obscure their harms; to resist arrest and prosecution; and to minimize sentences is why such crimes are located in the

bottom segment. They are very harmful but obscured, and they harm their victims indirectly and diffusely, often without the victims realizing who the offender is or perhaps even that they were victimized. The victims of these crimes are blamed for being stupid, careless, or unfortunate (as in the savings and loan fraud, injury and death in the workplace, and pollution and food poisoning). Only in recent years has social reaction begun to respond to these offenses and then only feebly, through selective regulatory control rather than criminalization. Until victims are clearly identified, crimes of the powerful are brought to public awareness, and governments are more democratically representative of the people rather than industry lobbyists, the location of these crimes on the crime prism will be low.

Summary

We began by discussing the legal definition of crime and its limitations in accounting for the variability of crime across time and cultures. We then looked at how consensus theorists had tied crime to societal agreement about universal morality. We went on to discuss the criticisms of this approach by those who saw division and conflict in society. We saw how conflict theorists disagreed in their ideas about the basis of division in society and how their differences produced definitions of crime highlighting different issues, not least of which is the nature of harm itself.

After exploring some social constructionist and postmodernist alternatives, we explained Hagan's crime pyramid and then offered a modified version through our prism of crime. The prism aimed at integrating the range of different approaches previously discussed. We concluded by briefly outlining the two kinds of crime emerging from this discussion: those of the powerful and the powerless. We noted that empirical research suggests that power not only shapes the opportunity to commit crime but also a person's likelihood of getting arrested and convicted for one kind of crime rather than another. In the next chapter, we will look at the different kinds of data on crime and at how criminologists measure crime, determine its extensiveness, and establish crime trends.

Notes

1. See also Cohen (1993: 98–101), Lea and Young (1984: 55), Michalowski (1985), Reiman (1979), Von Hirsch and Jareborg (1991).

2. Unfortunately, when examples are given of so-called consensual crimes, such as personal drug use, prostitution, gambling, etc., the role of power in the structural context in which the offender-victim eventually "chooses" the behavior is ignored.