

Crime & Delinquency

<http://cad.sagepub.com>

Toward a Critical Theory of Criminal Justice

R. Michael Buren

Crime Delinquency 1975; 21; 223

DOI: 10.1177/001112877502100303

The online version of this article can be found at:
<http://cad.sagepub.com/cgi/content/abstract/21/3/223>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Crime & Delinquency* can be found at:

Email Alerts: <http://cad.sagepub.com/cgi/alerts>

Subscriptions: <http://cad.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Toward a Critical Theory of Criminal Justice

R. MICHAEL BUREN

Assistant Head, Department of Criminal Justice,
University of Illinois at Chicago Circle

Criminal justice departments in higher education should take care that they critically evaluate today's justice agencies. What is suggested is the development, primarily in academic structures, of a subdiscipline, "critical theory," to stand midway between the lofty analysis of social ideals (social philosophy) and the exposure of the inefficiencies of particular justice institutions (social criticism).

CRIMINAL JUSTICE seems to be growing in importance at the college level. Concerned with some of society's fundamental requisites (law, social order, personal freedom, justice), higher education in this field is the locus of an increasing amount of well-funded applied research. Its multidisciplinary departments have attracted lawyers, criminalists, sociologists, systems engineers, psychologists, statisticians, and, most recently, economists, a diverse group attempting through common endeavors to generate a strong sense of social purpose.

Yet, with all this potential for making a permanent contribution to contemporary justice, an accompanying danger is present. If the curriculum of the criminal justice department in the academic setting becomes too applied and too practical, it will deserve the criticism that it is a "nuts and bolts" venture, meeting only the personnel needs of police departments, courts, and correctional systems. This danger can be augmented by pressures from students, many of whom are earning their degrees primarily as insurance toward securing or keeping a position

in the field. Of course, criminal justice departments *are* educating (and training) future personnel for the various agencies; *how* they proceed is the concern here.

Criminal justice educators must not accept, unwillingly or otherwise, an "agency definition of the situation."¹ Laymen and professionals alike know that all is not well today: violence is erupting in our correctional systems,² our courts are overcrowded,³ law enforcement resources are severely overtaxed.⁴ Those working in agencies feel

1. W. I. Thomas' famous aphorism, "If men define situations as real, they are real in their consequences," is referred to here. For a fuller analysis of "situation defining" in terms of social interaction, see W. I. Thomas, *Social Behavior and Personality* (New York: Social Science Research Council, 1951).

2. Hans W. Mattick, "The Prosaic Sources of Prison Violence," *Society*, November-December 1973, p. 13 ff.

3. Leonard Downie, Jr., *Justice Denied: The Case for Reform of the Courts* (Baltimore, Md.: Penguin, 1971); Herbert Jacob, *Urban Justice: Law and Order in American Cities* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

4. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (Washington, D.C.: Government Printing Office, 1967).

they are doing "a sufficient job given the circumstances." The present situation, they affirm, is the result of two conditions: the increasing number of offenders and their own organizational, budgetary constraints. The popular remedy for the former is to "step up the war on crime"⁵; for the latter, more money and qualified personnel. Consequently, agency administrators expect the academic departments to turn out more "soldiers to fill the ranks."

Given these pressures, criminal justice educators could neglect a role in contemporary justice that is distinctively theirs: the critical evaluation of present structures and their functioning. In its 1973 report, *The Purposes and the Performance of Higher Education in the United States: Approaching the Year 2000*, the Carnegie Commission on Higher Education lists this critical evaluation of society (its institutions, its values, its embodiment of democratic principles—for the sake of society's own self-renewal) as one of higher education's major purposes in the last quarter of the twentieth century.⁶

This is a unique charge for academic departments of criminal justice. To fulfill their proper role they must critically evaluate law enforcement, the courts, and postconviction practices.

5. For an analysis of this imagery in terms of policing, see Egon Bittner, *The Functions of the Police in Modern Society* (Washington, D.C.: Government Printing Office, 1973), pp. 48-62.

6. The Carnegie Commission on Higher Education was created in 1967 to make a systematic appraisal of higher education and to suggest guidelines for its future development. Its work is finished and its publications are of three kinds: the *Commission Reports*, the findings and opinions of the Commission itself; *Sponsored Research Reports*, the work of more than sixty authorities and investigators in the social sciences; and *Technical Reports*. The first two kinds of publications are available from McGraw-Hill.

If this responsibility is not met in the vital arena of criminal law, where private freedom is restricted on behalf of public safety and order, society's loss is all the greater. What is needed in every criminal justice department in higher education is a positive critical theory applied to justice agencies.

A "Critical Theory" of Criminal Justice

The idea of "critically evaluating" societal institutions is not a new one. In *A Theory of Justice*, for example, John Rawls discussed the judgment of societal and political institutions in normative terms, meaning that institutions should be held to high standards and be accountable for gross failure to achieve them. He assigned this task to political sociology.⁷

In his review of Rawls's book, Duncan MacRae suggested that a new intellectual discipline, termed "social philosophy," be developed for this task:

Who should discuss these normative questions? From the viewpoint of the sociology of science, one might propose a new academic discipline of "social philosophy" intersecting the social sciences and philosophy, to define a group of persons, problems, and a literature comprising the field. The closure of this discipline, like that of other academic disciplines, would separate the competent from the untrained and assure reasoned criticism.⁸

Actually, this discipline of social philosophy has been in existence for many years. More than a decade ago Olafson discussed many interpretations of the term. He considered its most familiar

7. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

8. Duncan MacRae, Jr., "Justice, Normative Discourse, and Sociology," *Contemporary Sociology: A Journal of Reviews*, March 1973, p. 131.

meaning to be "any more or less systematically worked out social ideal that can serve as a model of what our institutions ought to be." He then abandons this abstract conception for the "logically prior question of the nature of justification in political contexts." With this equally abstract understanding of the discipline, Olafson would have the social philosopher ask the following questions:

To what kinds of consideration is appeal properly made when the authority of the political and legal order and our obligation to comply with its dictates are called into question? And what are, in detail, the various stages of the argument by which one moves from the considerations that provide the final basis of social authority to specific political questions?⁹

Social philosophy thus becomes an analysis of political justification (and, correspondingly, civil disobedience). Olafson defined it as "that branch of moral philosophy which analyzes and appraises justificatory arguments offered in behalf of political and legal institutions, actual or proposed."

In his *Social Philosophy*, Feinberg uses the discipline as a grab bag, a "large miscellaneous set of philosophical questions about social relations"¹⁰—specifically, about the concept of freedom, grounds for coercion, hard cases for the harm principle, legal rights, conflicts of legal rights, human rights, and social justice.¹¹ At this point Feinberg makes a helpful distinction. Social philosophy for him is concerned with two kinds of problems: *conceptual* questions, which deal with

"what we normally mean when we employ certain words, and what we had better mean if we are to communicate efficiently, avoid paradox, and achieve general coherence," and *normative* questions, which advance Rawls's idea to the controversial realm of social policy. The normative questions "require us to discard our neutrality and to plunge into the moral arena where the interests and ideals of men are fully engaged, and conflicting practical norms and policies contend for our allegiances."

Feinberg's distinction thus expresses two mental operations necessary to evaluate criminal justice programs: conceptual clarification involving an ideal order and projection of the concept as far as possible into the real world. Delineating *ideal* societal institutions by conceptual analysis is not in itself an adequate method for social theorists; *real* policies specifying action are also needed. A sensitivity and willingness to consider the ideal is essential, however, if these policies are to have lasting value. Hence, one must hold fast to the high "social ideal" (Rawls's "normative questions"), yet not hesitate to discard neutrality and gird for action in the arena of conflicting public policies, as Feinberg suggests. This seems to indicate an unusual task, a blending of seldom combined skills, which we will here call *critical theory*.

This critical theory can be viewed as midway up a hill between *social criticism* (at the bottom) and *social philosophy* (at the top). It is far enough up the hill to discern more than the malfunctioning or social pathology of the particular institution with which the social critic is obsessed; for example, a police department, an urban court, the death penalty, or a state penal system. From its special vantage

9. Frederick A. Olafson, *Society, Law and Morality: Readings in Social Philosophy from Classical and Contemporary Sources* (Englewood Cliffs, N.J.: Prentice-Hall, 1961), pp. 1-2.

10. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p. 2.

11. These are Feinberg's chapter headings.

point, critical theory will go further to recognize institutions in their total system; it will take care to measure the congruence of organizational practice with the values of the larger democratic society. Yet, critical theory is not at the peak of the hill. Unlike social philosophy it can demonstrate the relevance and application of its theorizing to the institutions down on the plain and their personnel involved in the complex turmoil of everyday life. This then would embody both mental operations suggested by Feinberg: the conceptual and ideal, the concrete and real.

Critical theory is necessary in the system of criminal justice agencies. Social critics from outside are repeatedly pointing to particular injustices or inadequacies—William Turner on the FBI and the police establishment, Leonard Downey on the justice denied in our courts, and Jessica Mitford on punishment and correction.¹² From within, others (like the recent National Advisory Commission on Criminal Justice Standards and Goals¹³) propose detailed plans, specific standards, and guidelines for existing practices. Still more is needed—an evaluation by some who possess a good knowledge of the system and who can also offer a

12. William Turner, *The Public Establishment* (New York: Putnam, 1968), and *Hoover's F.B.I.: The Men and the Myth* (Los Angeles: Sherbourne, 1970); Downey, *op. cit. supra* note 3; Jessica Mitford, *Kind and Usual Punishment: The Prison Business* (New York: Knopf, 1973).

13. Appointed by the administrator of the Department of Justice's Law Enforcement Assistance Administration to formulate, for the first time, national standards and goals for crime reduction and prevention at the state and local levels. In the words of its chairman, Russell W. Peterson, the Commission "recommends *specific guidelines* for evaluating existing practices or for setting up new programs" (emphasis added).

broader perspective than *ad hoc* reform. The critical theorist (halfway up the hill) does this; like the social philosopher, he is sensitive to what criminal justice agencies profess to be doing, the ideals they were established to achieve, the values that are embodied within the publicly endorsed goals. The critic has the added responsibility of exposing organizational malfunctioning and recommending specific policies for improvement. Both operations, when performed by the same mind, can provide a much needed analysis for justice agencies.

An Illustration

These operations are not easily performed by the same mind. Conventional wisdom says that people are mostly either thinkers or doers, either dreamers or achievers. Enough examples of these stereotypes are around to keep the myth alive. And, it is true that between the agency administrator and the academic theorist the gap too often is wide and unbridgeable. The argument here is that the gap must be bridged if criminal justice departments in higher education are to achieve their proper role. The development of these two different mental operations is not easy; this has never been the claim.

To better appreciate the nature of the critical theorist's task, one should consider the word "foundations." Through his analysis of values and societal goals in a specific context it can be said that the theorist provides a firm "foundation" for the everyday effort to achieve justice and maintain order. At the University of Illinois at Chicago Circle a course entitled "The Foundations of Criminal Justice" is taught. Its objective (as currently formulated) is as follows:

To develop in the student the ability to evaluate present criminal justice structures and processes in the light of the values and principles they claim to embody and preserve: justice, the need for law and order, liberty and equality within a democratic society, the development of law, international peace and justice.

The word "foundations" is apt: the substantive matters discussed *are* the foundation upon which the criminal justice system, as we know it, is built. This course teaches critical theory.

The justice section is introduced by a short film, "Due Process of Law Denied" (29 min.).¹⁴ This true story portrays the lynching of three innocent men by Nevada townspeople in 1885, when an unsubstantiated report of murder resulted in the formation of an illegal vigilante group. The mob's injustice is felt by the student; its precise elements are analyzed in the discussion immediately after the film is shown. Subsequent lectures present the standard distinctions of justice (distributive, retributive, and commutative), Plato's just man, Aristotle's definition ("treating equals equally and unequals unequally in proportion to their relevant differences"), and the political vs. economic concept of justice evident in western thought. The essentials of every justice situation are presented—people pressing claims for something and justifying their arguments by some "standard" so fundamental that it cannot be disputed. "Standards" from the past are then explained: deities, the Holy Book, political constitutions, law codes, a "universal principle."

14. This film is part of the *Problems of Democracy* series. It is an edited abbreviation of *The Ox-Bow Incident*, a full-length film based on Walter Van Tilberg Clark's novel, published in 1940.

At this point a transition is made from the ideal, conceptual level to that of the actual functioning of criminal justice agencies today. This is achieved through an explication of what are called "the elements of adjudicated criminal justice decisions" and an inquiry into elements of injustice in the modern courtroom. A method for analysis is presented and discussed. Among the questions covered are the following:

1. Who are the involved parties? How is the judge appointed? What are the political backgrounds of the prosecutors and the attorneys for the defense? How is the jury chosen? What about the politics of the accused? Is politics relevant?

2. What do standard social indices tell us about the parties and their actual equality before the law: class and status, race, sex, IQ, education, lifestyle?

3. What is the law that the accused is allegedly guilty of violating? What is its overall effect in society? Has its violation by the accused been proven?

4. What is the purpose legislators had in creating the law? Is it constitutionally defensible? Has it been tested by appellate decision?

5. How is the accused being processed in the total judgment situation? Arrest? Preliminary hearing? Bail? Decision to prosecute? Indictment? Plea-bargaining? Jury selection?

6. What "standards" are the opposing sides appealing to in showing the obvious rightness of their case? Are they the same "standards"? How can others be convinced of their validity and relevance if they are different?

These questions are important if one is to understand the *critical theory* approach to justice.

In the "Foundations" course, students consider in detail a controversial, recent criminal case and apply the questions to it; currently in use is the trial of "the Chicago Seven" for activities connected with the 1968 Democratic Convention.¹⁵ Note how the movement in this section of the course has been from the conceptual and ideal of Plato and Aristotle to the controversial concrete situation of seven men on trial for conspiring and crossing state lines to incite a riot. The student sees that the foundations of Athenian democracy *are* relevant in the twentieth century and that criminal justice students should be pondering them. This is critical theory; the justice section strives to help the student see justice in a new way—as a part of the very foundations of the criminal justice system.

FIG. 1

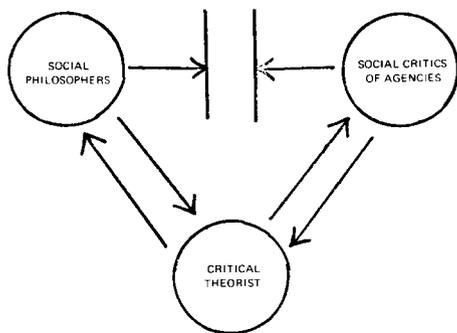


Figure 1 indicates the positioning of critical theory midway between social philosophy and social criticism. The philosopher discourses about the ideals our institutions should achieve; the critic exposes the inadequacies of real institutions currently in operation.

15. Jason Epstein, *The Great Conspiracy Trial: An Essay on Law, Liberty and the Constitution* (New York: Vintage, 1971).

Too often what each does seems not to be relevant or even known to the other (hence, the hiatus shown). What is needed is the critical theorist who will embody not only the philosophical method as it is applied to society, but also a close, critical familiarity with the actual operating criminal justice agencies in contemporary America. This person must be open to learning from the philosophers, the personnel in the agencies, and their social critics. In turn, he will be capable of communicating to each the fruits of a perspective that is not their own. This is a tall order, but nevertheless needed today.

The Current Need

Criminal justice agencies are established to process people for the furtherance of public safety and order, at the same time respecting personal rights and freedoms. These are fundamental, sometimes conflicting social values; it is proper that some writers in higher education analyze and apply these values in their writings.

This is all the more evident today, since justice, law, and order have become popular issues. Public concern has been heightened by, for example, the assassinations of national leaders, the popularity of "law and order" candidates, and the chaos involving the Justice Department with Watergate. Within the criminal justice system much has happened in the recent past—the 1964 election stressing the "war on crime," President Johnson's appointment of a Commission on Law Enforcement and Administration of Justice, the passage in late 1968 of the Omnibus Crime Control and Safe Streets Act and creation of the Law Enforcement Assistance Administration, the election of Richard Nixon

with his continuing emphasis on law enforcement, and recent disillusionment accompanying resignations in the FBI and the attorney general's office. The questioning and doubts concerning our system of laws has peaked with the resignation, after plea-bargaining, of a vice-president of the United States and the impeachment-dodging resignation and trial-extricating pardon of President Nixon.

Critical theory's concern for ideal values and concrete realizations is particularly needed now. The task of every democracy is to question its social values, to probe what has become important to it as a people. Questions involving the substantive issues of justice, freedom, law, and order are of primary importance in today's society. Are we living up to our democratic ideals? Will future consequences of present actions prove us unfaithful? Which of our traditions must we preserve at all costs? What qualities, the absence of which would be intolerable, make our communal life worth living?

Second, critical theory is needed today because current political necessity (our national unity) dictates it. The values of different groups within our democracy vary and contradict so greatly that there must be, as Walter Lippmann suggests, an analysis of what we as a people hold in common.¹⁶ "Justice" and "freedom" are constantly on the lips of those challenging the present political system; "law" and "order" are being answered back to them. Someone must discern the common foundation upon which all such concepts rest and must examine their connecting ties.

Talk of "justice" is especially prevalent today; the word not only is

16. Walter Lippmann, *Essays in the Public Philosophy* (Boston: Little, Brown, 1955).

bandied about by every group that claims to be disenfranchised or powerless, but is found in the platforms of the two major political parties and in the manifestoes of their spokesmen. The silent majority and the liberal minority read daily about "black justice," "red justice," "southern justice," "Watergate justice." These political slogans are easy to write and still easier to shout above the heads of crowds or to discuss at cocktail parties. Those at the center of the national controversy over justice must be detached, however, and possessed of a broad vision. It is not easy to rise in our thinking above political slogans; it cannot be done until one has analyzed the issues in the light of our democratic ideals. Are the values behind the slogan constructive or destructive of our national heritage? Are the rights demanded applicable to all citizens or are they the special privilege of a few?

There is concern today in criminal justice agencies, especially law enforcement, about professionalism. The demand for professionalization implies the need for improvement. Improvement according to what criteria and values? The necessary analysis here is a third reason why critical theory is vital today. Many standards accepted by large police departments seem to have been derived from corporate organizational theory; for example, the precise hierarchy of authority, a system of rules for dealing with all work activities, a detailed division of labor based on specialization, established routines, and impersonality in processing clientele.¹⁷ Behind these standards

17. Paul M. Whisenand and R. Fred Ferguson, *The Managing of Police Organizations* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), esp. pp. 6-20. Max Weber was one of the first to analyze the characteristics of bureaucratic organizations. See Max Weber, *The Theory*

are unquestioned assumptions based on the bureaucratic ethic of business organizations (progress, operational efficiency, the primacy of economic rationality, visibility of productive output).¹⁸ These must be examined.

Justice agencies are official public bodies created to process citizens in a free society. They must see that the values guiding their efforts at professionalization are consonant with and preserve those upon which our democracy is based. Here is another task for critical theory—the continuous questioning of assumptions. (Within the agency this takes the form of policy determination and control through feedback.) Without this, law enforcement agencies cannot have effective improvement. Instead, departments will be subject to whatever popular theory or mode of thinking is current: organizational theory, team policing, sensitivity training, the need for specialization, whatever. This is not to say that these or other changes are undesirable; rather, changes and the assumptions behind them should be subjected to evaluation in light of the fundamental values in a democratic justice system.

of Social and Economic Organization (Glencoe, Ill.: Free Press, 1964); *From Max Weber: Essays in Sociology*, H. H. Gerth and C. W. Mills, eds. (New York: Oxford University Press, 1946).

18. Some pertinent contributions to the literature on the business ethic are Peter F. Drucker, *The Effective Executive* (New York: Harper and Row, 1967); Robert T. Golembiewski, *Men, Management and Morality: Toward A New Organizational Ethic* (New York: McGraw-Hill, 1965); Chris Argyris, *Integrating the Individual and the Organization* (New York: Wiley, 1964); Daniel Katz and Robert L. Kahn, *The Social Psychology of Organizations* (New York: Wiley, 1966), pp. 149-70, 452-71.

This critical theory of criminal justice will be developed in an academic setting, where structures and adequate time are provided for the evaluation of society's institutions. Specifically, this will be accomplished in departments of criminal justice in which faculty members with diverse specializations pool their talents.

The Academic Setting

There are two aspects of professional education: the academic structure (primarily curriculum) and on-the-job training. The effectiveness of the first is essential if subsequent learning is to occur at the second. What academic structure in criminal justice is necessary to provide the support for continuing critical theory later on the job? How does higher education produce graduates who are capable of this type of theory?

It has been argued that the academic component of professional education is not important in itself and that it is valuable only to the extent that it equips people to produce and be creative in the later employment situation.¹⁹ If this argument were valid, criminal justice as a significant societal endeavor would truly be found in the agencies of law enforcement, adjudication, and correction. To the contrary, one must answer that the college or university setting is equally necessary; here specific curricula, knowledgeable teachers, and adequate time are provided so that the student can effectively question social values, probe assumptions, search for unity in our national heritage. Higher education

19. This is the assumption of the National Advisory Commission on Criminal Justice Standards and Goals, *Report on Criminal Justice Systems* (Washington, D.C.: Government Printing Office, 1973), pp. 165-71.

thus fulfills its proper task in society; as for the field of criminal justice, it develops critical theorists.

What would a curriculum sensitive to this task include? The one offered by the Department of Criminal Justice at the University of Illinois (Chicago Circle) is designed to produce graduates with a critical theory perspective.

With independent undergraduate standing since 1966, the department's graduate program is currently in its second academic year (1974-75).²⁰ After taking the required "Foundations of Criminal Justice" course, the undergraduate major has available a series of courses (in addition to those in law enforcement, criminal law, criminology, correction, and criminalistics) that deal specifically with substantive issues central to a critical theory of criminal justice. Their catalog listings read as follows:

Theories of Sanctions, Deterrents, and Rehabilitation—Analytical examination of the historical philosophies and practices of sanctions for criminal acts. Evaluation of modern approaches to the disposition of offenders, including sentencing, capital punishment, incarceration, fines, and rehabilitation programs.

Sociology of Law—The origin and development of legal norms in various social settings; their relationship to custom and incorporation in legal and quasi-legal institutions; special attention to the difference between legal and sociological reasoning; law as an instrument of social change.

20. The National Advisory Commission, *op. cit. supra* note 19, p. 165, lists a number of factors that "inhibit the development, implementation, and evaluation of effective Educational Curricula and Training Programs." The seventh item is "Inadequate sharing of Effective Educational Curricula, training programs, and education training and research among institutions and agencies." The criminal justice program outlined below is designed to overcome this inhibiting factor.

The Problem of Justice—The premodern view of justice such as Plato's or Aristotle's; the modern understanding of justice, such as Hobbes's or Locke's, which is the foundation of the modern political regime; Rousseau's seminal political thought on justice, the basis of a variety of reforms and alternatives offered to Hobbes's or Locke's political regime.

A proseminar is frequently held which studies "current issues, problems, and developments of serious concern within the field" and often investigates critical issues; "Man versus the State" is a recent topic. The graduate program offers several higher level courses dealing with similar questions:

Police in a Democratic Society—The inherent conflict between individual liberty and the agency set-up for the maintenance of social order is reviewed. The capacity to use force as the core of the police role; the inadequacy of the "war on crime" and other military models. The pros and cons of present limitations on police in detention, questioning, and search. Critiques of the police; the need for the police to speak out.

Law and Its Byways—An overview of laws and law systems that produce definitions of politically cognizable deviation, and procedures for the application of definitions in particular cases. Emphasis on the social dynamics that produce laws and "law-ways." Examination of the impact that implementing institutions can have on the interpretation of laws and future formulations.

Discretionary Justice—The relationship between rules of law and discretionary justice in all components of the criminal justice system. The consequences flowing either from an extravagant insistence on the letter of the law or from an excessive reliance on discretionary power. Methods for confining, structuring, and checking the uses of discretionary power.

Critical theory is not confined to courses designated for these topics.

When all instructors have the “habit” of critical theory, this perspective is communicated throughout the curriculum.

The Habit of Critical Theory

It is this “habit” of critical theory that higher education must strive to develop in its students—the future personnel of justice agencies. Critical theory is more than a selection of content matters (law, public order, freedom, justice, etc.) packaged for instruction in a classroom. In its essence it is much more; it is a *perspective*, a method of thinking which, once acquired, is not lost as are materials consigned to the memory.

Like eyeglasses for someone with impaired sight, critical theory should offer a view previously obscured. Like any intellectual habit, it is developed slowly and with difficulty; once ac-

quired, it focuses sharply on the dimensions of what is truly at stake. And, like binoculars, it provides the far-seeing vision that facilitates constructive and balanced criticism of the immediate issues.

In summary, there is evident a dialectical dimension to critical theory. On one hand, it concerns itself with broad, far-reaching ideals; on the other, it constructively criticizes current institutions and calls for particular action programs. In this way it proves itself distinct from social philosophy and social criticism. Critical theory thus provides a unique service vitally needed for American justice today. As Woodrow Wilson reminded us, this proper resolution of the ideal with the real is a perennial necessity: “Democratic institutions are never done; they are like living tissues, always a-making.”