NORMATIVITY AND POWER
Normativity and Power

Analyzing Social Orders of Justification

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Preface

We tend to assume that the terms “normativity” and “power” have opposite meanings: the former is characterized by justifying reasons for our thought and action, the latter by the absence of justifications and the rule of pure facticity—or so it seems, at any rate. On closer consideration, however, normativity must also develop power if it is to be able to move us, and if social power is to be effective it must permeate the normativity of social life, of our thought and action, even when it is not well founded. This book attempts to analyze these relationships with the help of the concepts of justification and of orders of justification, the guiding idea being that justification must be viewed both normatively and descriptively. This approach makes it possible to connect the perspective of philosophy with those of social science and history without succumbing to reductionism. However, the main focus of the individual studies is on philosophical analyses.

The texts in this volume owe their existence to a number of scientific contexts that inspire and shape my thought in a variety of ways. First of all, there is the Frankfurt Cluster of Excellence “The Formation of Normative Orders,” which repeatedly requires me to take account of the perspectives of disciplines besides philosophy. Any meaningful discourse concerning normative orders is predicated on such interdisciplinarity. Here, I would like to express my thanks, as representative for many others, to Klaus Günther, with whom it is always a pleasure to reflect on these questions, even if this is sometimes connected with writing research proposals. Furthermore, the Centre for Advanced Studies “Justitia Amplificata,” which is primarily situated at the Institute for Advanced Studies in the Humanities in Bad Homburg, has greatly enriched my work. For this I am particularly grateful to Stefan Gosepath with whom I direct the Centre, also across the distance separating Frankfurt and Berlin. Finally, the award of the Gottfried Wilhelm Leibniz Prize in 2012 placed me in the comfortable position of being able to form a research group on issues of transnational justice whose goal is to integrate a wide range of perspectives on these problems. For all of these funding relationships, I owe a major debt of gratitude to the German Research Foundation.

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Rainer Forst
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Introduction
Orders of Justification: On the Relationship between Philosophy, Social Theory, and Criticism

The aim of the texts collected in this volume is to realize a comprehensive program of critical analysis of social orders of justification informed by philosophy and social science. Of course, given the sheer diversity of the relevant research perspectives and methods, they cannot hope to realize such a program in its entirety any more than can any single work or any single author. Therefore, the individual chapters will be confined to specific, important aspects of such an undertaking, with a particular emphasis on philosophical questions. As a counterweight, this introduction will present some general remarks on the design of such a theory with references to the relevant chapters. I will concentrate on the question of what it means to regard such a theory as “critical.”

1. Critical Theory

By critical theory we mean a connection between reflection in philosophy and in social science informed by an interest in emancipation. It inquires into the rational form of a social order that is both historically possible and normatively justified in general terms. At the same time it asks why the existing power relations within (and beyond) a society prevent the emergence of such an order. This is consistent with Horkheimer’s original understanding of critical theory as “a theory guided at every turn by a concern for reasonable conditions of life.”

As the history of this theoretical program demonstrates, these definitions pose a multitude of questions: How should the “interest in emancipation” be defined? What kinds of cooperation between social theory and philosophy does it call for?

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Is such a comprehensive social theory still even possible now that confidence in the explanatory power of a unified materialistic theory has dwindled? And, finally, what is meant here by “historically possible” and “normatively justified?” Which concept of reason should be used when what is at issue is a “rational” form of social order? How should we conceive of modes of justification that mediate between the claim to rational justification and lived social practice? What kind of theory of power and ideology enables us to understand the existing order of justification as one which prevents emancipation—also especially in the light of transnational power relations?

In my studies presented here and elsewhere, the concept of justification serves to establish an immanent connection between philosophy, social theory, and social criticism. Central to my approach is the idea that a critical theory turns the question of justification into a theoretical and a practical one and seeks to analyze and transform existing orders and relations of justification. It offers a twofold analysis of such normative orders: first, it treats justifications that legitimize and constitute norms, institutions, and social relations as “raw material” or social facts for a critical examination of their emergence (for example, in the context of justification narratives), stability, and complexity; and, second, it takes a critical stance on these justifications by scrutinizing their normative constitution, how they came about, and the structures they justify. “Justifications” and corresponding “orders,” therefore, are the object, on the one hand, of a descriptive and critical analysis and, on the other, of normative reflection that lends the question of justification a practical turn. This is ultimately a question for those who are subjected to a normative order themselves and not one to be decided elsewhere, whether in the justification complexes that have evolved in societies discursively (in Foucault’s sense, among others) or in expert or proxy discourses, such as those Habermas criticizes in his discourse theory. When we speak of “justifications,” therefore, we are not only thinking of “good justifications” but also of ones which are socially effective, even if (and perhaps because) they have an ideological character. When the concept of justification is used critically, by contrast, it refers to a practice of discursive justification among the norm addressees who are supposed to become authors of norms. In a critical theory, everything turns on correctly distinguishing and combining these dimensions. This is the key to the relationship between philosophy, social theory, and criticism.

In order to achieve progress in this regard, it is indispensable to de-reify conventional philosophical definitions of concepts that suppress their practical, political character. This is where critical and, if you will, “traditional” theories part company. The latter was Horkheimer’s term for theories that do not reflect sufficiently on the

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social dynamics of which they themselves are a part—in both descriptive and normative senses.

In the first place, the concept of reason must be understood practically—following, but going beyond, Habermas—in terms of a theory of discourse or justification.\(^4\) Reason is the faculty of being guided by reasons or justifications; and to employ this faculty in the best way possible is to know which justifications should be examined and in what way. Thus, a generally valid principle of reason or justification is that those norms are rationally justified whose validity claim can be redeemed in a way that is implicit in this claim—for example, that reciprocal and general binding power must be redeemed through reciprocal-general justification.

Here it must be observed that a theory cannot claim to be “critical” unless it seeks explicit reassurance about its concept of reason and subjects it to criticism.\(^5\) For no matter how much critical theory opposes the “pathologies of reason” in modernity, it nevertheless always subjects, as Axel Honneth emphasizes, “universality—which should, at the same time, be both embodied by and realized through social cooperation—to the standards of rational justification.”\(^6\) Hence, no other concepts—for example, concepts of the “good”—can take the place of the imperative and the criteria of rational justification. Contrary to such attempts to lend critical theory an ethical character, we must insist that all candidates for the “good,” if they are to count as generally and reciprocally valid, must withstand the discursive test of reciprocal and general justification and not, on the contrary, claim intrinsic validity (appealing, for example, to anthropological considerations). This is what sets certain theories that appeal directly to ethical concepts (such as that of “resonance”)\(^7\) apart from those that try to evaluate ethical forms of life, but in doing so look for ethically parsimonious, formal criteria of the relevant problem-solving rationality.\(^8\)

The conception of reason outlined not only enables us to understand what counts in social discourses in a descriptive sense as “reasonable” (and hence as justified), even though on critical examination it is not so. It also shows that the question of whether the principle of reason has a transcendent (in fact, transcendental), an abstract, or, on the contrary, a historical, context-specific character, is wrongly posed. The question of justification always arises in concrete contexts and equally points beyond them. It sets in train a dynamic that specifically calls into question “ethically reasonable”

\(^7\) Hartmut Rosa, *Weltbeziehungen im Zeitalter der Beschleunigung: Umrisse einer neuen Gesellschaftskritik* (Suhrkamp 2012) 9: “Successful world relationships are ones in which the world appears to acting subjects as a responsive, breathing, supportive, and at certain moments even a benevolent, forthcoming, or ‘benign’ ‘resonance system.’” It is doubtful whether this kind of social criticism is compatible with the tradition of a critical theory, as Rosa seems to think. The problem is that if “resonance” is not filtered through reasonable justification among free and equal persons, it can be produced in ways that have scant emancipatory potential.
\(^8\) Rahel Jaeggi, *Kritik von Lebensformen* (Suhrkamp 2014).
standards of justification in an intensified reflective process that concerns not only the immanence of a context of justification, but is also able to subject the latter to general critical scrutiny. One can, of course, try to offer the best possible answer to a normative question within the context of established norms and institutions. But one can equally place these established norms and institutions in question in principle, whether immanently (do they fulfill their purpose?) or radically (what is their purpose and is it an appropriate purpose that is justified in general terms?). Although all of these questions begin as immanent ones, the demand for reciprocal and general justification cannot be restricted by appealing to “prior ethical life.” Reason is at once the most immanent and the most transcendent faculty that human beings possess, and hence it is neither exclusively immanent nor exclusively transcendent. It always appeals contextually and recursively to what counts as justified and what may be valid (the formal criteria of justification having a transcendental character). In between lies the space of criticism, which can also be opened up toward utopian conceptions.9

Therefore, a historical a priori is not possible which could claim priority for the purposes of a theory of validity over the imperative of reciprocal and general justification, such that it could determine what counts as genuine progress and what does not. The kind of “normative reconstruction” of the “promise of freedom”10 of modern societies undertaken by Honneth presupposes that the “moral rationality”11 that is supposed to become effective in realizing individual freedom points beyond the established institutions from the viewpoint of a theory of validity. Therefore, the notion of reason must have a “free-standing” character. But then the reflexive and justificatory pressure exerted by individuals and groups on social institutions is not bound to a “pre-given” ethical life or promise and the critique of injustice is not only able to look, as Honneth claims following Hegel, “just beyond the horizon of existing ethical life.”12 On the contrary, it can see as far as reciprocal-general justification permits or demands. Normatively speaking, therefore, it is not true that “social and historical conditions [are] needed to determine what can count as ‘justified’ in each case.”13 This cannot be stipulated by any person or institution, but must instead be determined in a collective discursive practice. The conditions that make social learning processes possible cannot set limits to these processes when it comes to a theory of validity.14 That would be to stand the relation between genesis and validity on its head and facilitating freedom would become inverted into limiting freedom, which would amount to a dialectic of (un-)freedom.15 The normative possibility of freedom has a higher status than its normative reality.

11 ibid 2.
12 ibid 8. (In German: “knapp über den Horizont der existierenden Sittlichkeit.”)
13 ibid 337, n. 6.
14 Although this is what Honneth asserts in *Freedom’s Right* (n. 10) 63 ff.
15 Where this is avoided in Honneth’s reconstruction a reflexive form of freedom is at work that forces established institutions to go beyond themselves by demanding reciprocity and generality. An example is when “old role fixations” must succumb to a “permanent pressure [to justify]” (*Freedom’s Right* (n. 10) 164), when the economic system is measured by whether it lives “up to moral norms to
The only form of critique that merits the name is one oriented to rational standards because it confronts the test of discursive justification. That it is always “immanent” in the sense that it takes the status quo as its starting point is trivial; what is not obvious, however, is the demand that it should orient itself to “settled,” “pre-given,” “accepted,” or “inherent” norms. There are forms of criticism of which this is true because they reveal the explicit or implicit contradictions within an order of justification in an immanent way, and with good reasons. But that the reasons in question are good does not follow from the fact that one appeals to accepted or inherent norms. For example, libertarians who criticize capitalism for not adhering consistently enough to the market principle and thus becoming mired in contradictions also argue in an immanent way that appeals to systemic features of capitalism. But they cannot justify their criticism toward those who, qua free and equal persons, should be the authorities who determine which economic system can be politically justified, insofar as market processes undermine this very authority (as must be shown in a justice-based analysis).

Hence, the fact that a critique is immanent is neither a reason for nor a hallmark of its legitimacy. A radical critique that rejects an entire historically developed understanding of the market, by contrast, may have much more going for it. And a critique that seeks to transform a liberal understanding of the market into a socialist one will hardly be able to justify this in a purely “immanent” way—or will it have to.

Besides, who would want to suggest to a critic of the Indian caste system who rejects this system in toto that she should proceed in an “immanent” way? Or remind a critic of patriarchy in a given society in which this was hardly ever challenged that she should not speak a “foreign language”? Would that not amount to ostracizing such critics from social discourses? Those who understand criticism as an autonomous practice of challenging existing orders of justification will not formulate an artificial opposition between internal or immanent criticism, on the one hand, and external criticism, on the other. Rather, they will orient themselves exclusively to the quality of the social analysis and the demand for reciprocity and generality, even where this is “unheard of” and goes far beyond the firmly established understandings of justifiability or ethical life. Radical criticism may be immanent or transcending so that it is no longer clear where the one form of criticism ends and the other begins—as, for example, when Luther described the Pope as the true “Antichrist,” the Levellers declared the king to be the servant of the people “by the grace of God,” or Marx saw bourgeois society as the locus of modern slavery.

which everybody could consent in principle” (184), and correspondingly the “heart” of the political order for Honneth is not Hegel’s state but “public deliberation and will-formation” (253).

The two latter provisions can be found in Jaeggi, Kritik von Lebensformen (n. 8) 297, 288.

See Forst, The Right to Justification (n. 4) ch. 8.

On this see Uma Narayan, “Contesting Cultures: ‘Westernization’, Respect for Cultures and Third-World-Feminists,” in Uma Narayan, Dislocating Cultures: Identities, Traditions, and Third World Feminism (Routledge 1997) 1–40. This is also the point at which certain forms of “postcolonial” criticism become inverted into their opposite—that is, into essentialistic and culturalistic homogenizations of non-Western cultures or societies. This can be observed in Amy Allen, The End of Progress: Decolonizing the Normative Foundations of Critical Theory (Columbia University Press 2016).
ethical life is the object of criticism, not its ground or limit. Critical theory cannot dispense with the transcending power of reason, which may venture into regions that were previously unthinkable. To recall the words of Adorno: “The limit of immanent critique is that the law of the immanent context is ultimately one with the delusion that has to be overcome.”

These remarks bear on a further problem, namely, that of the historicity of the normative foundations of criticism. Again, the fact that the latter assume a historical form is trivial. What is not trivial, by contrast, is whether the criteria of reason or normativity should be regarded as “historically contingent,” as Seyla Benhabib, for example, argues when she describes the right to justification as “a contingent legacy of struggles against slavery, oppression, inequality, degradation, and humiliation over centuries,” and accordingly as a historical “achievement.” As I tried to show in my historical analysis of the development of the practice of toleration in its many different forms and justifications, we do in fact have to understand such concepts against the background of concrete historical processes of which we ourselves are part. This enables us to see how the demand for reciprocal and general justifications gave rise, and continues to give rise, to a historical dynamic that forces existing conceptions and justifications to go beyond themselves—always in a dialectical process involving new attempts to bring this dynamic to a close.

If we want to distinguish in a historically situated way between emancipatory and non-emancipatory struggles and to view certain developments as “achievements” or “learning processes,” we cannot assume that they are merely “contingent.” We cannot claim that they are “necessary” either, however, for want of an equivalent of Hegel’s absolute. Finite reason does not have access to a “worldless” standpoint from which it can regard its own norms as “merely contingent” or to a divine standpoint from which it could recognize historical necessity. From a finite rational perspective that understands itself as practical, the principle of justification is the principle of reason and the right to justification is its moral implication—no more, but no less either. There is no perspective from which its contingency or necessity could be transcended in a further step; but we have no need of such a perspective either. The only perspective to which we have access is that of a participant, not one of a transhistorical observer. We take stances as part of this history, therefore, and when we speak of moral achievements we mean that they are in fact moral achievements and

we relate to them accordingly with reasons—and of course we know that further learning processes could prove us wrong.

Consistency demands that we recognize that the pioneers of emancipation developed their positions, described above as “unheard of,” in societies in which they were regarded as immoral or crazy—for example, the aforementioned radical Levellers or Pierre Bayle who defended the thesis, which was frowned upon at the time, that even atheists are capable of being moral. Should we follow the historicist in saying that what first made these positions true was that they won out over time, and hence that they were neither true nor justified when these radical thinkers were alive? Should we join with those who condemned Bayle and others in crying “heresy” because this corresponded to the order of justification valid at the time? Could we ever understand and valorize emancipatory and radical criticism on this basis—the criticism of those who in their own day spoke a language in which they called slavery a crime and not a form of benevolence, in which they called tyranny by its name and not divine right, and in which intolerance no longer counted as service to God but instead as brutal violence? If we view these languages as achievements, then we cannot regard them either as contingent or as necessary, but only as moral progress, as progress in our moral self-understanding through morally justified innovation, but not through historical “success.” The latter would represent a form of moral Darwinism in which the winners decide what constitutes moral truth. But that would have nothing to do with a critical theory. “Prevailing” historically cannot determine the criteria for what counts as success in evaluative terms; only critical reason can. But reason does not elevate itself to a super-historical power in this regard either. It only scrutinizes here and now what counted and what may count as reasonable. The twofold analysis of orders of justification as historically occurring social facts and as orders with a claim to justification that opens them up to criticism enables us to say that, even though certain criticisms were considered to be unjustified in their time, they were nevertheless justified from a normative point of view because they brought the principle of justification itself to bear. As an aside, the assertion that the history of certain societies was shaped by the historical success of emancipatory movements is frequently overoptimistic and overlooks the many ways in which forms of domination are reproduced in contemporary societies.

The perspective outlined enables us to define a conception of progress that cannot be suspected of disguising ethnocentrisms behind the claim to justification. Only those processes can count as progress that break open orders of justification in ways

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22 On this see Rainer Forst, “Religion and Toleration from the Enlightenment to the Post-Secular Era: Bayle, Kant, and Habermas,” ch. 5 in this volume.


24 On this see my interpretation of Bayle in “Religion and Toleration from the Enlightenment to the Post-Secular Era” (n. 22).

that make new forms of reciprocal and general justification possible, so that those affected themselves can determine in which direction their society should develop. Only in this way can the alleged “increase in autonomy” be prevented from becoming an instrument through which social and political autonomy is lost—for example, by other economically or politically powerful societies or institutions dictating to a society how it should develop. Genuine progress occurs where new levels of justification are made accessible or are achieved through struggles that make subjects into justificatory authorities in the first place. Comprehensive progress involves more than just the existence of better justified social relations (for example, ones involving a higher standard of living). It occurs when the justification conditions within a society are such that a basic structure of justification either exists or is being aimed at. Discursive autonomy is realized only in internal processes and procedures, not in conditions imposed from the outside. A critical theory cannot dispense with such a concept of progress.

A whole series of basic concepts of practical philosophy must be de-reified or re-politicized in the light of these orientations in the theory of reason. Or, to put it differently, they must be interpreted in a “dialectical” way that understands them as having the character of social processes.

This is especially true of the concept of justice, which is equally essential for critical theory. As I have emphasized in a number of places, the question of justice should not be answered in an apolitical way in terms of a false picture that looks at packages of goods, minimum standards of material provision, and other units of welfare. For these could just as well be conferred on “those in need” by a benevolent dictator, a correctly programmed distribution machine, or a welfare institution. Rather, political and social justice is an autonomous collective process of producing social and political conditions that are not only susceptible of justification in reciprocal and general terms, but can themselves be established via justification and aim to realize a basic structure of justification. Thus, the question of power, qua social and political power that shapes collective processes, is central to justice. Reified, unpolitical conceptions of justice, by contrast, detach justice from political autonomy in accordance with ideas of recipients and goods, resulting in deficient conceptions of justice. Horkheimer, on the other hand, advocates an unabridged notion that points to the reflexivity of the concept: “That is the universal content of the concept of justice; according to this concept, the social inequality prevailing at any given time requires a rational justification. It ceases to be considered as a good, and becomes something that should be overcome.”

In this context, I would like to make an observation about the much used and repeatedly misunderstood concept of the “ethical neutrality” of a reflexive conception of justice. Among the learning processes of modernity is that societies with a

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26 On this see Forst, “The Concept of Progress” (n. 23).
27 Here I can only mention a couple of additional concepts. On the concepts of freedom and equality, to which this also applies see Forst, The Right to Justification (n. 4) Pt. 2.
28 On this see chs. 7–10 in this volume.
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plurality of religious or cultural communities have to find a way to justify universally binding norms of justice that does not absolutize the particular values of one community and thereby dominate the others. The only viable candidate for this role is the discursive mode of justification. It seeks to identify norms that cannot be reciprocally and generally rejected and considers the foundation of fundamental justice, of a basic structure of justification among free and equal persons, to be indispensable for this purpose.30

How relevant this idea of “neutrality of justification” is in social reality is shown by the numerous debates over discrimination against forms of life, as reflected, for example, in occupational bans on women who wear headscarves for religious reasons.31 This by no means implies, as Rahel Jaeggi conjectures, that forms of life are or should be immune to criticism.32 For, as was always pointed out in the neutrality debate,33 the foundations of this neutrality of justification are themselves substantive, and the corresponding conception of justice is critical of all forms of life that are not compatible with it. Something like “neutrality of effects” was never intended. Forms of life are undoubtedly part of the social relations that are open to criticism: economic conditions and institutions, social educational institutions, and the patriarchal family and recent medical technologies, to name just a few of those Jaeggi has in mind.34 But the fact that ethical forms of life are objects of criticism does not mean that the criticism must have an ethical basis. There is a difference between finding an educational practice morally reprehensible (for example, because it involves the use of force) or ethically wrong (for example, on religious grounds). Both forms of criticism are possible. But when it comes to the reasons and possible consequences (for example, legal intervention), it is highly relevant which criticism is put forward. Eroding the boundaries, which indeed are not always easy to draw and are subject to historical change,35 is problematic in this context, because to have one’s basic rights protected against ethical condemnations by others (especially majorities) represents an important increase in freedom, if one thinks, for example, of homosexual lifestyles. Of course, ethical forms of criticism, whether they are based on values or are rationally grounded (as in Jaeggi), remain unaffected by this. The theories that demand reciprocal and general justifications for conceptions of justice, and only for these, by no means regard ethical discussions and criticisms as irrational; already the concept of “reasonable disagreement” (Rawls) speaks against this.36 Finally, whether the general

30 For a detailed account see Forst, Tolerant in Conflict (n. 21) and “Religion and Tolerant from the Enlightenment to the Post-Secular Era” (n. 22).
31 On this see my discussions of the rulings of the German Federal Constitutional Court in “One Court and Many Cultures: Jurisprudence in Conflict,” ch. 6 in this volume.
32 See Jaeggi, Kritik von Lebensformen (n. 8).
34 Theories that are blind to the fact that the market is not a “neutral” institution are indeed “ideological” (see Jaeggi, Kritik von Lebensformen (n. 8) 40). However, the theories of Rawls and Habermas discussed by Jaeggi do not fall into this category.
35 Thus Jaeggi, Kritik von Lebensformen (n. 8) 41–7.
36 The “irrationalization” of ethics bemoaned by Jaeggi (Kritik von Lebensformen (n. 8) 50) is not to be found in Habermas either; see e.g. Habermas’s discussion “Was macht eine Lebensform rational?,” in Jürgen Habermas, Erläuterungen zur Diskursthetik (Suhrkamp 1991) 31–48.
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conception of forms of life as “experiments” does justice to the nature of religious forms of life, for example, remains to be seen. At any rate, this ethical view, which advocates a form of “experimental pluralism of forms of life,” is closely related to John Stuart Mill’s plea for a plurality of “different experiments of living” and thus closer to Liberalism than Jaeggi thinks.

Recent discussions that seek to place social philosophy on an ethical footing largely ignore one of the fundamental concepts of critical theory, namely, power. But a concept of power is indispensable to a critical theory. Like the concept of justice, however, the concept of power also needs to be de-reified. Power should be understood in processual terms as the ability to determine, or if necessary even to close off (or also to open up), the space of reasons for others, whether based on a good argument, an ideological justification, or a threat. Social power does not have its “seat” in certain means, institutions, or structures, but instead in the noumenal space in which struggles over hegemony take place. Thus the concept of power is neither positively nor negatively charged, but is instead neutral; only its modes of exercise, ranging from “empowerment” to domination and oppression, whether interpersonal or structural, must be differentiated and evaluated. Power is always “discursive” in nature, therefore, but it is not always “communicative” in Habermas’s sense or exclusively part of subject-constituting, disciplining “epistemes,” as Foucault argues. This shows once again the advantages of varying our use of the concept of justification between descriptive and normative understandings. Oftentimes social power can be explained only by reconstructing the justification narrative that shape and in part constitute a normative order. Here a genealogy in the Foucauldian sense creates an important normative distance. But this does not exhaust the critical task. First, it must be shown whether this narrative contains (epistemically or normatively) false or contradictory justifications. In this way, as suggested above, one can also develop an understanding of ideology that does not operate with problematic constructions of “genuine interests,” but instead proceeds on the basis of a right to justification that is falsely portrayed by ideologies either as nonexistent or as already satisfied.

Another essential concept that must be de-reified is that of democracy. Democracy does not designate a static institutional model. Rather, it must be understood as a process of criticism and justification, both within and outside of institutions, in which those who are subjected to rule become the co-authors of their political order.

37 As Jaeggi argues in Kritik von Lebensformen (n. 8) 451. 38 ibid.
40 A further interesting variant that tries to establish an ethical connection between immanence and transcendence is Maeve Cooke, Re-Presenting the Good Society (MIT Press 2006).
41 On this see Rainer Forst, “Noumenal Power,” ch. 2 in this volume.
43 On this see Rainer Forst, “On the Concept of a Justification Narrative,” ch. 3 in this volume. See also in general Andreas Fahrmeir (ed.), Rechtfertigungsnarrative: Zur Begründung normativer Ordnung durch Erzählungen (Campus 2013).
44 On this see Martin Saar, Genealogie als Kritik: Geschichte und Theorie des Subjekts nach Nietzsche und Foucault (Campus 2007).
Introduction

Democracy on this conception is the political form of justice.\(^{45}\) Within a political normative order, no mode of “problem-solving” can count as legitimate unless it assumes a democratic form or is democratically legitimized. In this way, the concept of democracy does not remain wedded to “ethical” preunderstandings or national framings either, but extends to transnational relations. This is important, in particular, where a realistic picture of existing relations of rule and domination is necessary to determine the locus of democratic justice within, between, and beyond states.\(^{46}\) In this regard collaboration with social science is indispensable.

From here further concepts in need of re-politicization also become accessible. Human rights, for example, are not a means of satisfying the pleas for help of needy beings, but are instead rights to be involved in all aspects of the design of the social and political order to which one is subjected, which means that one must know the nature of the orders to which one belongs.\(^{47}\) The primary locus of human rights is and remains the normative legal order of which one is a member, because this is where the political self-determination that is central to the idea of human rights begins. However, self-determination includes not only active democratic participation but also the elaboration of all of the rights that assure persons the status of free and equal legal and political authorities. And it does not end at the borders of nation-states either.

Against this background, it becomes possible to formulate a political concept of alienation such as the one sketched by Horkheimer (and is central to Marx\(^{48}\)):

The collaboration of men in society is the mode of existence which reason urges upon them, and so they do apply their powers and thus confirm their own rationality. But at the same time their work and its results are alienated from them, and the whole process with all its waste of work-power and human life, and with its wars and all its senseless wretchedness, seems to be an unchangeable force of nature, a fate beyond man’s control.\(^{49}\)

The goal of a critical theory concerned with recovering political autonomy is to overcome this alienation—that is, alienation from social reality and from the possibility of political intervention as a form of collective action. True alienation consists in failing to see oneself and others as socially, morally, and politically autonomous subjects of justification or as authorities within a normative order. This reflection is more Kantian than Aristotelian and is close to Marx, without itself presupposing a theory of the good or authentic life.\(^{50}\) Alienation is a violation of the dignity of

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\(^{45}\) On this see Forst, “Legitimacy, Democracy, and Justice: On the Reflexivity of Normative Orders,” ch. 8 in this volume.

\(^{46}\) On this see Forst, “Realisms in International Political Theory,” ch. 9, and “Transnational Justice and Non-Domination: A Discourse-Theoretical Approach,” ch. 10 in this volume.


\(^{49}\) See Horkheimer, “Traditional and Critical Theory” (n. 2) 204.

\(^{50}\) For Adorno’s critique of an ethical concept of alienation see *Negative Dialectics* (n. 19) 278.
subjects of justification. It may also prevent them from living the “good life,” but that is another story.

The key difference from other forms of political theory and social philosophy, therefore, is that the critical approach, on the one hand, accords central theoretical importance to the question of justification as a political and practical question, and thereby lends the aforementioned concepts dialectical resonance: and, on the other hand, it starts from an analysis of the real relations of subjugation in order to develop a “grounded” conception of critical justice. By contrast, someone who thinks up an “ideal” theory unconnected with these relations can still make a productive contribution to a normative discussion; but if this ideal theory is conceived in such a way that it must be “applied” by a deus ex machina, then it is mistaken: it fails to understand the need to conceive of the process of realizing justice as a politically autonomous procedure. Anyone who fails to see this inverts the theory of justice into a technocratic program. There are better addressees of such a criticism than Rawls—for example, approaches that focus on equalizing happiness.51

Theories of justice that are blind to the structural injustices characteristic of our postcolonial global capitalist era are especially deserving of criticism. They either paint a positive picture of “cooperation” at the international level52 or are content to strengthen “capabilities,” whereas the key issue should actually be to put an end to structural exploitation. The problem appears most clearly when it is proposed to compensate the effects of such injustice through benevolent conduct by individuals. Then a political issue is converted into a question of individual morality.53

A critical theory of justice, as we have seen, is in need of a social scientific theory of structural dependence and asymmetry, ideally one embedded in a comprehensive social theory. This is an ambitious goal, especially as the analysis of transnational relations would have to be integral to such a theory. But the imperative to develop a theory of in-justice that is at once critical and realistic means that we have no alternative.

2. A Sociology of Justification

Within critical social theory, Jürgen Habermas’s Theory of Communicative Action remains the most comprehensive attempt to provide a general sociological theory with an immanent connection to the normative perspective. Competing theories have to be measured against its explanatory power.

The concept of an order of justification has the potential to take important steps toward a more developed theory which—very much along Habermas’s lines—retains the twofold perspective of a normative and a descriptive understanding of

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51 See Forst, Justification and Critique (n. 3) ch. 1. Unlike Raymond Geuss in Philosophy and Real Politics (Princeton University Press 2008), therefore, I do not think that Kantian approaches typically lean toward a moral ideal theory that is far removed from contexts of action and power.

52 On this see my critique of “practice positivism” in “Transnational Justice and Non-Domination” (n. 46).

53 See Forst, The Right to Justification (n. 4) ch. 11.