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## **Critical Theory of Justice: On Forst's 'Basic Structure of Justification' from a Cognitive-Sociological Perspective**

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### **Abstract**

This article offers a perspective on the critical theory of justice by presenting a structural and processual reconstruction of Rainer Forst's intriguing yet somewhat opaque concept of a basic structure of justification which is central to his proposed critique of justificatory relations. It shows from a cognitive-sociological perspective what a cooperative relation between a philosophical theory of justice and a social scientific approach could mean for critical theory. A basic structure of justification is revealed to be a cognitively available reflexive order above the order of substantive social and political relations that allows the identification, explanation and transformative critique of reflexivity deficits induced by hegemonic, ideological, repressive or obfuscating means. Far from being exclusively a theoretical and methodological tool, however, it is in principle accessible to those involved and affected on whose experience, suffering and critique critical theory vitally depends.

**Key words:** cognitive sociology, critical theory, critique, discourse, Forst, justification, public

### **Introduction**

Central to Rainer Forst's critical theory of justice taking the form of a critique of relations of justification is the intriguing concept of a 'basic structure of justification' (*Grundstruktur der Rechtfertigung*).<sup>1</sup> To my knowledge, while not developing a systematic account of this basic structure, he does specify various elements of which it is composed. What I propose, accordingly, is to attempt to systematize these different attributes by collating and consolidating them and elaborating on the implications from a philosophically informed social-scientific perspective. In pursuing this line, I am encouraged by Forst's explicit recognition that a critique of justificatory relations cannot be accomplished unless philosophy is aligned with a penetrating, explanatory social-scientific approach. The perspective I adopt for this purpose is a philosophically informed sociological one that associates closely with critical theory and has a pronounced cognitive-sociological dimension. In my estimation, it is appropriate, if not necessary, to bring at least some order and thus a first wave of clarity to the concept of a basic structure of justification. This choice seems all the more justified, moreover, since there are unmistakable indications that Forst himself capitalizes, consciously or unconsciously, on some of the resources of the cognitive approach.

To begin with, Forst's conception of critical theory which harbours the concept of a basic structure of justification is briefly reviewed, and then the sense of the concept within that theoretical framework is extrapolated. In a third step, the features Forst attributes to a basic structure of justification are collated in order to allow, in a fourth step, their theoretical systematization into a structural model of such a complex. The fifth and final section, the longest and most penetrating of all, is devoted to a processual analysis of the dynamic relations in which a basic structure of justification is embedded. It offers a glimpse of the complexity with which a philosophical theory of justice will have to deal when it joins forces with a social-scientific mode of analysis, particularly if it envisages bringing a critique of justificatory relations successfully to a conclusion.

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<sup>1</sup> All translations from German and French texts are my own.

### **1 Forst's conception of critical theory**

Briefly recapitulated, within the framework of his critical theory of justice Forst conceives of the critique of relations of justification as having five distinct yet interrelated dimensions.<sup>2</sup>

In keeping with critical theory's typical shunning of an affirmative orientation, first, the critique of justificatory relations in Forst's view aims to develop a critical societal analysis by starting from a negative instance of poorly justified, unjustified or unjustifiable phenomena. Relevant among the latter are social and political relations and structures in a broad societal rather than in a narrow institutional sense that are marred by, for instance, forms of exclusion, exploitation or domination. Again in accordance with critical theory, this time its reconstructive approach, he regards the critical assessment of such phenomena as being developed from both procedural and substantive perspectives under the guidance of the basic and decisive criteria of justice. Of the latter, he singles out reciprocity and generality in particular.

Given the measure of reciprocal and general justification, Forst sees the critique of justificatory relations secondly as proceeding to a normative critique of false or possibly ideological justifications of the asymmetrical relations in question. According to his proposal, this critique of groundless legitimations is conducted in discourse theoretical terms and, if it is necessary to assure the integrity of its normative criteria, it is supported by recourse to genealogical critique. Be that as it may, he stresses that the critique of deficient justifications is conducted in the awareness that, far from being the preserve of the critical theorist, it is ultimately the accomplishment of those affected themselves.

Thirdly, Forst acutely appreciates that while the critique of justificatory relations indeed articulates the demand for properly justified social and political relations, its reflexive nature calls for much more than this vital demand accompanying its engagement with the normatively deficient phenomena. This is the juncture where he introduces his key concept of a 'basic structure of justification'. It is the unique feature of his version of critical theory also to demand the realization of such a structure – a structure he considers as 'the first imperative of justice' (Forst 2011: 20).

In order to enable the critique to expose the conditions of unjustified relations and to contribute to changing them, Forst stresses in the fourth place that a carefully targeted explanation is necessary. The central point of such an explanation is to account for the failure or absence of effective societal and political structures of justification which is revealed by the existence of structural domination such as global relations of dependency and exploitation. He acknowledges that an explanatory critique of this kind – one which simultaneously uncovers a cause and induces change – is impossible without significant input from a historical-sociological perspective.

Forst finally asserts the philosophically important requirement that the critical theory of justice must be able to account for the normative criteria adopted for the purpose of its critical engagement and practice, and indeed in such a way that they are reflexively applicable in self-critique, particularly regarding its own blind spots and exclusions. Far from conjuring up absolute norms and ideals, however, critical theory is required to subject each one of its validity claims to the possible agreement of those to whom the critically recommended norms apply.

### **2 The basic structure of justification and its cognitive presuppositions**

Above it became clear that Forst gives a central place to the concept of a basic structure of justification in the critique of justificatory relations forming part of his critical theory of justice. The

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<sup>2</sup> Forst (2011: 20-21) offers a convenient outline of his position on critical theory, and in the same book also of his concept of the basic structure of justification. For a comparable yet somewhat different account, see the presentation of the methodological framework of contemporary critical theory in Strydom (2011).

task now is to briefly draw out the general sense of the concept and to establish points of contact for its more systematic elaboration.

Although its starting point is of a negative kind, the critique of inadequate, false, ideological or absent justifications for asymmetrical social and political relations is by no means of a purely negative nature. On the contrary, while delivering a normative critique with a negative thrust, it simultaneously issues a demand for properly justified social and political relations. Critique here obtains a positive or disclosing quality beyond its essential, negative, exposing function. And this demand for justification, as Forst gives to understand, is not of a one-dimensional kind since the critical theory of justice is a reflexive one which, in turn, moreover aims to generate reflexivity on the part of its addressees. Rather than being content with a demand for justification at the level of relations alone, therefore, a reflexive shift is required to a structural level that is presupposed by the relations and, hence, could be brought to the level of awareness. Although not explicitly presented like this in Forst's text, it is apparent that it is at this reflexive level that the basic structure of justification is located. It is a structure that lies beyond the actual social and political relations in question and is accessible only through reflexivity – accessible both to the critical theorist and, crucially, to his or her addressees.

The fact that Forst understands the basic structure of justification in terms of a reflexively accessible structural level makes it comprehensible why he is able to revert to the resources of the cognitive mode of thinking for the purpose of conceptualizing this vital core component of his critical theory. His recourse to these resources is abundantly evident from his employment of the concepts of 'frame' and 'script' (Forst 2011: 20). As is well-known, these concepts have been available for many years in distinct terminological forms in the different strands of thinking which had been given rise to by the cognitive revolution of the late 1950s. Piaget (1973, 1983), for instance, spoke of 'structure' or 'cognitive structure' and 'operation' as well as of 'schema' and 'scheme', while in cognitive psychology the conceptual pair of 'schema' and 'script' became common currency. And it could be added that, to this day, Goffman's influence stretches very far into the social sciences where the use of 'frame' has become almost standard, employed by many who do not pay allegiance to cognitive thinking or may not even be aware of the source of these concepts.<sup>3</sup>

Forst suggests that it is possible to conceive of a basic structure of justification both as a frame and as a script. In light of this distinction, he insists that this structure should not simply be treated as a script, even a complete script which admits of application. Far from just being a set of directions for actions that the critical theorist regards as essential ones to be taken in the situation in point, the basic structure of justification should be appreciated as being a frame for the autonomous discursive praxis of the addressees themselves. And since 'the right to justification' (Forst 2011: 21) is not confined to contexts of justification presided over by the state, the structure framing the public discourse is relevant also for the determination of the question of what it means to be affected or dominated. While being located on the reflexive dimension, then, a basic structure of justification possesses a number of distinct layers of meaning which need to be kept in mind.

It is possible now to begin the systematization of this key concept of Forst's. This calls first for an overview of his account of a basic structure of justification with a view to collating the different features he attributes to it.

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<sup>3</sup> Goffman's conceptual pair is 'frame' and 'key', the latter of which did not make it into mainstream social science. While key indeed refers to an activity presupposing a frame, Goffman understands it as the transformation of 'a given activity, one already meaningful in terms of some primary framework,...[.]...into something patterned on this activity but seen by the participants to be something quite different' (1986: 43-4).

### 3 Forst's description of a basic structure of justification

The explication in the previous section already drew attention to some crucial features of a basic structure of justification – more precisely, two features. They are, first, the fact that the basic structure of justification must be understood as being located on a reflexive level beyond the social and political relations serving as the substantive object of critique; and, second, the fact that a basic structure of justification is of a cognitive nature – that is, something that, apart from being rooted in the human brain-mind, is intelligible or can be comprehended, namely the structural form of an action or a sequence of actions and a set of directions for giving effect to this form by engagement in and realization of such action. Whereas Forst does not take the time to treat these features in any detail, he does specify, albeit somewhat randomly, a number of attributes in the course of describing what he has in mind with the concept of a basic structure of justification. In all, these various indications provide sufficient substance for an attempt to arrive at a more systematic statement of the concept.

In *Kritik der Rechtfertigungsverhältnisse*, Forst establishes a context for grasping the sense in which the concept of a basic structure of justification fits into his theory of justice, what he himself calls 'a comprehensive theory of political and social justice' (2011: 42). Here a categorical distinction between 'fundamental (minimal) and maximal justice' not only provides a conceptual opportunity for the introduction of the very important correlating distinction between a 'basic structure of justification' and a 'justified basic structure'. Simultaneously, it also makes clear that the attainment of fundamental justice requires the establishment of a basic structure of justification, while maximal justice calls for the actual achievement of a justified basic structure. On the one hand, the basic structure is the necessary complex of minimal conditions for the institutionalization of adequate justificatory procedures and practices that would allow the best possible equal distribution of justificatory power among those involved and affected. On the other hand, a justified basic structure is what can be and is envisaged and worked towards on the basis of such a set of necessary conditions.

It is in this context that Forst (2011: 42-3) offers a brief description of a basic structure of justification in which a variety of its attributes are identified. He writes that it embraces 'particular rights and institutions and a multiplicity of means, particular capacities and types of information, right up to real intervention and control possibilities in the basic structure'. And whatever belongs to this minimal structure must 'materially be justified on the basis of the principle of justification alone' and, thus, 'be legitimated and measured according to the criteria of reciprocity and generality'. For him, this culminates in 'a high-level, discursive...superordinate principle of justification of possible distributions' which establishes a 'general...justificatory duty', that is, 'over against the worst-off<sup>4</sup>...as well as the not-so-badly-off' – all of whom after all possess a right to demand justification. Erected on the foundation of a 'moral right to justification', the basic structure of justification secures the equal status of all those involved and affected.<sup>5</sup> Such equality is necessary for and sustained by the 'autonomous discursive practice of those affected themselves' (2011: 20-1) in which the equal distribution of justificatory power alone is possible. In Forst's view, fundamental justice – that is, a basic structure of justification – therefore entails the bringing together of a substantive goal with procedural justification in a seemingly paradoxical *coup de grâce*. Accordingly, when the implied

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<sup>4</sup> Under the worst-off, Forst (2011: 43, footnote 32) distinguishes according to the good to be divided among the unemployed, single parents, the aged, the sick, ethnic minorities and, in particular, combinations of these characteristics, especially as clustered from a gender perspective. Here one ought to add at least also asylum seekers and refugees, whether geopolitical or ecological/climate change refugees.

<sup>5</sup> Forst consistently speaks in an apparently limited manner of 'citizens', which indicates that, despite globalization and European transnationalization, he may in danger of remaining under the spell as what Beck (e.g. 2011: 17) calls 'methodological nationalism'.

primary power of justification is unequally divided, we have before us an unmistakable case of the violation of the basic structure of justification which is supposed to secure minimal justice.

#### 4 Systematization of the concept

Given the above overview of Forst's outline of his concept of a basic structure of justification and the identification of its principle features, it is now possible to make a proposal toward its systematization. This is done theoretically from the perspective of the cognitive-sociological architectonic I have developed over the past almost two decades<sup>6</sup> and which is conceived as articulating an essential, if neglected, dimension of critical theory based on the communication paradigm. What I have in mind, therefore, is a cognitive communication-theoretical version of critical theory which is entirely compatible with Forst's critical theory of justice with its core component of the critique of justificatory relations.

In Table 1 below, the bottom row is the outcome of the collation and theoretical sorting and ordering of the variety of features that Forst attributes to a basic structure of justification. The top row represents some basic architectonic categories of cognitive sociology which make possible the theoretical sorting and ordering of the collated features. In the following explication of the table, the four columns are sequentially addressed.

Table 1: Structural Model of a Basic Structure of Justification

Cognitive endowment (micro-level)	Public discursive/constructive-reconstructive process forms	Cultural, sociocultural & social models/systems/formats	Cognitive order (macro-level)
capacities	autonomous discursive practice/real intervention & control possibilities	rights/ institutions/ means/information	right to justification: reciprocity/generalizability

##### (i) Cognitive endowment

As regards the incorporation of 'capacities' as a component of a basic structure of justification, first, Forst's (2011: 37-8, 42 footnote 30) relation to Martha Nussbaum is of interest. He emphatically disagrees with her basic capabilities approach to the theory of justice in view of the fact that, rather than a matter of fulfilling pre-established needs, justice requires the construction of a political and social context of cooperation in which every individual is able to participate in the production of both material and immaterial goods as well as in their distribution. Despite this evaluation, however, he nevertheless sees fit to take over Nussbaum's concept of capacities, with the proviso that it be subordinated to the establishment of fundamental justice. What is remarkable about this move is that apparently both the nature and the significance of capacities are left unexplored. On the one hand, the capacities form part of the human cognitive endowment, especially the phylogenetically formed brain and mind,<sup>7</sup> which our species has acquired over millions of years of evolution. On the other, in their largely latent form they provide the basis for the development of a range of characteristically modern, human, generative competences which are essential for the construction of a context of cooperation and its underpinning basic structure of justification. This circumstance could perhaps be taken as an indication that Forst, despite using some cognitive concepts, tends in certain respects to remain captive to a normativistic theory of justice. He neither elaborates on the

<sup>6</sup> Strydom (2000, 2002, 2006, 2007, 2011, 2012a, 2012b, in press a); see also O'Mahony (2013) and Delanty (2013).

<sup>7</sup> See, for example, Mithen (1998). Although depending on older literature, Habermas (1979) demonstrated a good understanding of this aspect.

cognitive implications that his appeal to concepts like 'frame' and 'script' entail for his overall position nor, apparently, does he see his theory of justice in its relation to the theory of evolution.<sup>8</sup>

*(ii) Process forms*

When one secondly turns to autonomous discursive practices and real intervention and control possibilities on the part of those affected, the first thought is that these abilities and their discursive coordination and cooperative exercise are based on a range of cognitive presuppositions. They presuppose not only the phylogenetically acquired capacities and ontogenetically honed competences mentioned in the previous paragraph, but also the open possibility of refining existing competences in unforeseen ways and even tapping as yet undeveloped and hence unknown potential capacities. Besides generative capacities and competences, however, discursive practices and intervention and control possibilities further require higher-level and larger-scale cognitively available process forms. Forst's mentioning of discursive practices suggests that he acknowledges the necessity of democratic public discourse, but to this must be added also forms that allow those involved and affected to participate in constructive-reconstructive processes. Constructively, the participants must be enabled to traverse a number of distinct phases so as to be able to bring about a sequence of new formations; and, reconstructively, the participants must be enabled to orient themselves toward guiding ideas, potentialities and realizable possibilities for the purposes of producing the present by contending with and availing of conditions. Neither a social and political system of cooperation could be established and maintained nor would it be possible to cooperatively resolve problems and issues within such a context without the continuous, well-structured pulsation of such form-guided processes.

*(iii) Cultural, sociocultural and social models, systems and formats*

Processes such as public discourse and constructive-reconstructive engagement on the part of those involved and affected articulate closely with the structurally significant matters singled out by Forst as elements of a basic structure of justification and presented in the third column of Table 1 – namely, rights, institutions, means and information. Earlier, we have seen that, since the critical theory of justice is a reflexive theory which moreover seeks to generate reflexivity on the part of its addressees, a basic structure of justification cannot be confined to the actual order of social and political relations as such, but has to be seen as representing a higher-level, reflexive, structural order presupposed by those relations. Given that rights, institutions, means and information all belong to the actual order of relations, a move of reflexive abstraction is required to identify the components that would allow a proper grasp of the concept of a basic structure of justification. First among these components are the cognitive cultural models of different levels and scales that in a crucial respect make possible the institutionalization, organization and operation of the order of relations.<sup>9</sup> Without the relevant cognitive cultural models which not only set the context but, by the same token, also define what is relevant, there is little or no possibility of the formulation of rights, the establishment of institutions, the organization of units devising all sorts of means and procedures and mobilizing resources, and finally the articulation of information in the range of required formats. Implied in this concatenation of tasks and achievements, moreover, there are also more specific sociocultural and social models as well as social systems below the level of cognitive cultural models. In view of the fact that these cognitive cultural, sociocultural and social models as well as the social systems they inform all have both some structuring and enabling impact on the actual order of relations and, simultaneously, are typically also conduits for the intervention of

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<sup>8</sup> Again, while more recently having taken a strong normative turn, Habermas (1979, 1996) appreciates the connection between his theory of justice and evolutionary theory. Further, both *The Theory of Communicative Action* (1984, 1987) and *Between Facts and Norms* (1996) give evidence of Habermas's awareness of the cognitive dimension of his work, although he left the cognitive sociology contained in these works in a latent form (Strydom in press a and in press b).

<sup>9</sup> On cultural models, see Strydom (2000, 2012b), Delanty (2013) and O'Mahony (2013).

power and hence sources of deforming, distorting, obfuscating and misleading effects, they are obviously components of a basic structure of justification that are of absolutely central interest to critical theory. Besides problematic rights formulations, contradictory institutions, unequally divided means and inaccessible or distorted information, criticisable phenomena on the previously discussed levels of capacities and process forms can most often likewise be traced back to factors associated with these models, systems and formats.

At this juncture, it should also be noted that the different manifestations of power which enter the order of relations via the components of a basic structure of justification are indeed of a cognitive nature in the sense of 'intelligible power', as Forst (2011: 21) convincingly submits. At the same time, however, they are also deeply rooted in a substrate which becomes comprehensible from a still broader cognitive perspective.<sup>10</sup> Unjustifiable outcomes of power exertion, such as for example obfuscation, ideology, elitism, authoritarianism, domination, subjugation and violence, are conditioned from below by historically sedimented, regularized forms of second- or 'quasi-nature' (Apel 1979: 111). Among them are common-sense, habits and conventions in the guise of psychic systems, social practices, institutions, social systems and cultural forms. In turn, such forms of quasi-nature are rooted in elementary social forms (Kaufmann and Clément 2007) which are generated by processes which the human species shares with primates and themselves can be accounted for only in terms of natural historical processes such as evolution and, more specifically, phylogenesis. They include ecological processes (Park 1936; Conein 2005) – e.g., alliance-formation, cooperation, competition, rivalry, subordination and fighting – as well as coordination processes (Piaget 1973, 1983) – e.g., comparing, relating, combining, ordering, interacting, evaluating and judging. The overall project of critical theory in general and of Forst's critique of justificatory relations in particular, after all, is to penetrate the historically developed sociocultural reality, which always represents a quasi-nature not amenable to be treated in purely normative terms, with the aim of yet a further step in enlightenment and emancipation from its unnecessary limiting conditions. Over and above the kind of normative critique of false or possibly ideological justifications of asymmetrical relations that Forst presents as the second task of critical theory,<sup>11</sup> therefore, a kind of explanation is still required that exposes the causes of false and ideological justifications in a way that makes a contribution to changing those conditions. It should be emphasized, accordingly, that this kind of explanatory critique of quasi-nature, which Forst equates with the fourth task of critical theory, is impossible without reference to precisely these elementary social forms which we humans capture, unlike the pre-verbal categories of our primate neighbours (Jackendoff 1999; Conein 2005), by means of verbal categories – categories that often do limit our understanding of ourselves and of our form of life. The upshot of this argument regarding the significance of the elementary social forms mediating between first and second nature thus amounts to the insight that a basic structure of justification, despite the epistemological priority sociocultural reality possesses for critical theory, cannot and therefore should not be entirely decoupled from its ontologically primitive dimension.

#### *(iv) Cognitive order of society*

As regards the fourth and final column of Table 1, the epistemological priority of the sociocultural world complementing the ontological priority of nature is signified above all by the significance that critical theory ascribes to reason and Forst, more specifically, attributes to justice and the right to justification as well as to reciprocity and generality as the superordinate criteria of justice. Now

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<sup>10</sup> This broader cognitive perspective is given with the 'weak naturalistic' ontology underpinning critical theory which is itself comprehensible only in relation to the process of 'nature-culture coevolution' (Lumsden and Wilson 1983). On critical theory's weak naturalistic ontology, see Habermas (1999: 38, 2003: 27, 2005: 157) and Strydom (2002). More recently, Kaufmann and Clément (2007) also proposed a 'moderate social naturalism', while Kaufmann and Cordonier (2008) have stirred up a lively controversy in France regarding 'social naturalism'.

<sup>11</sup> See section 1 above.



rights, justice, reciprocity, generality and justification, like a variety of others, are ideas that historically have played and still play a more or less potent role in the structuring and regulation of social life. The incursive force of these conceptual foundations of social life is mediated by communication, while their resultant formative and informative impact is apparent from the formation and iterative revision of competences, process forms, cultural, sociocultural and social models, systems and formats. Presupposing a phylogenetic basis, particularly the meta-representational capacity and cognitive fluidity characterizing the mind of *Homo sapiens sapiens*,<sup>12</sup> these ideas have arisen historically through processes of reflexive abstraction from fecund, concrete, social situations typically involving contestation and conflict and subsequently became stabilized through sociocultural evolution as the directive and guiding principles of modernity.<sup>13</sup> As such, these principles occupy a macro-structural dimension of reflexively available meta-rules which together constitute what can be regarded as 'the cognitive order of society' or, more specifically, 'the cognitive order of modernity'.<sup>14</sup> Considering that justice, the right to justification, reciprocity and generality, the normative principles singled out by Forst, form part of the cognitive order, it can be submitted that the cognitive order thus contributes key components, if not the key components, of a basic structure of justification as he presents it. It should be noted, however, that the selected cognitive order principles on which Forst focuses never appear on their own and in pure form in any given situation. The cognitive order embraces in a potential combinatory form principles relevant to the objective, the social and the subjective worlds – indeed, multiple principles for each of these worlds, including various normative principles besides justice, reciprocity and generality applicable to the social domain. In any given situation marred by a negative instance of poorly justified, unjustified or unjustifiable phenomena calling for critique, therefore, the critical theorist will be compelled to take into account a unique combination of principles relevant to the issue at stake. This means that, relative to the fourth column of Table 1, an adequate understanding of the concept of a basic structure of justification requires a fuller and more flexible grasp of the cognitive order of society as a complex of combinatory structural potentialities than Forst's carefully targeted selection.<sup>15</sup>

Against the background of an essentially structural or synchronic account of a basic structure of justification just presented in which it was necessary to draw attention to the weak naturalistic ontology of critical theory, it is both possible and advisable now to shift to a more dynamic perspective which remains largely within the confines of critical theory's epistemological prioritization of the sociocultural world.

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<sup>12</sup> See Mithen (1998) on Dan Sperber's 'module of meta-representation' and on 'cognitive fluidity'.

<sup>13</sup> Marx, for example, wrote: 'As a rule, the most general abstractions arise only in the midst of the richest possible concrete development, where one thing appears common to many, to all. Then it ceases to be thinkable in a particular form alone.....The simplest abstraction...which expresses an immeasurably ancient relation valid in all forms of society, nevertheless achieves practical truth as an abstraction only as a category of the most modern society' (1974: 104, 105).

<sup>14</sup> For the introduction and development of the concept of the cognitive order, see Strydom (1996, 2000, 2012, in press a and b). Of this dimension, Simmel wrote: 'The theoretical understanding without which there is no human society rests on a small number of generally admitted – even if not abstractly conscious – norms which we call the logical. If those who want to associate with each other were at all to be able to relate, then this is the minimum they simply must recognize' (1992: 537). For Piaget, this dimension represents a provisionally completed set of cognitive structures occupying the meta-level, 'ideal norms...at the back of all rules' (1968: 285), which makes reflexivity, operations, cooperation and regulation possible and thus is in evidence 'wherever in a social system there is a trace of rationality' (1973: 223).

<sup>15</sup> While Boltanski and Thévenot's (1991) 'orders of worth' (*les forms de la grandeur*) might seem to correspond to the cognitive order of society as conceived here, it should be pointed out that their orders are not only rather arbitrarily selected from social and political philosophy and theory, but they actually occupy the level of cultural models – the third column of Table 1 – below the cognitive order. This is confirmed by the authors' emphatic treatment of the orders of worth as conventional rather than meta-conventional.

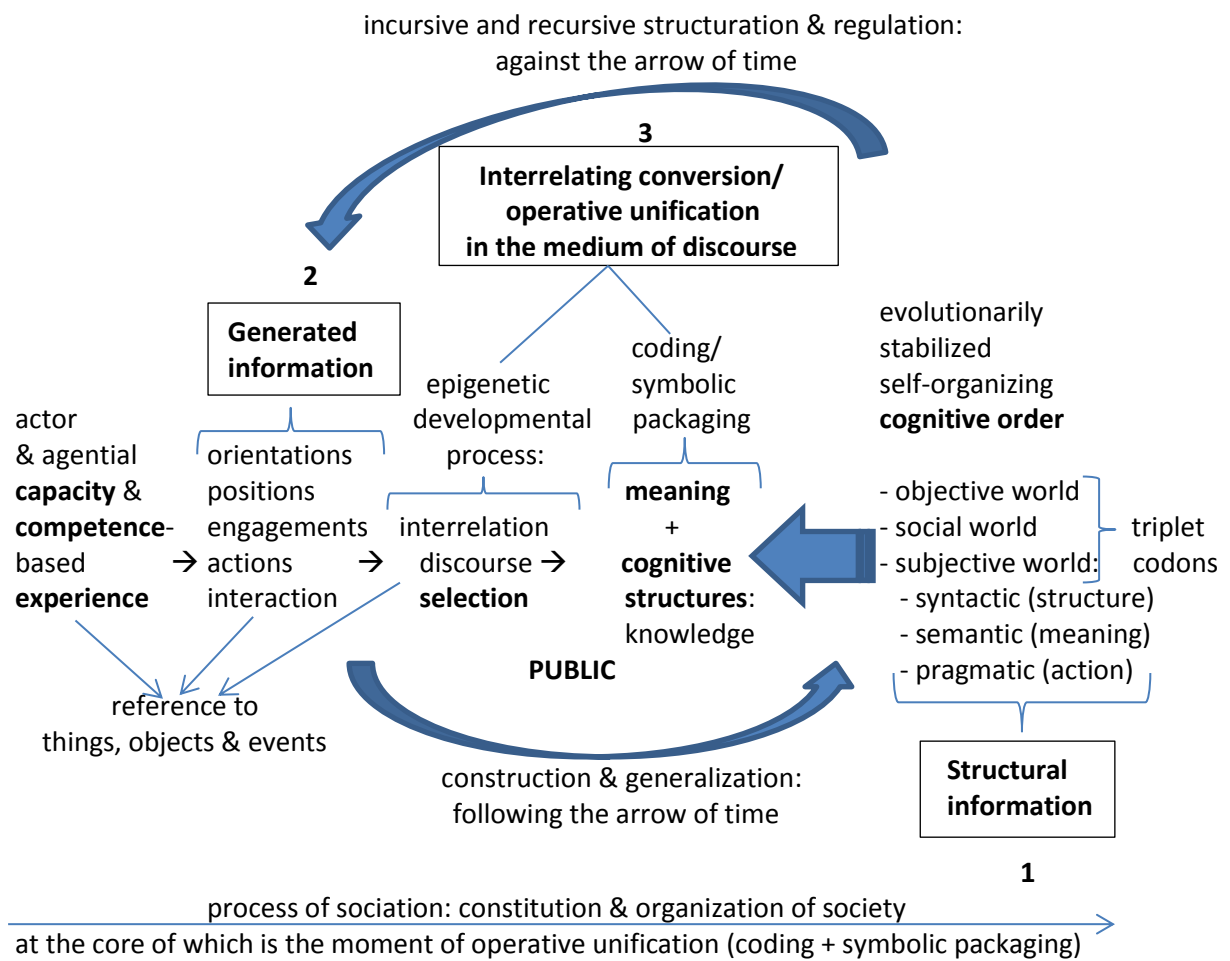
## **5 Dynamics of the basic structure of justification**

The fact that the critique of justificatory relations does not simply demand justified social and political relations, but at the same time reflexively also calls for a basic structure of justification as the first imperative of justice, as Forst (2011: 20) insists, has a significant implication. The critique of a particular set of problematic justificatory relations needs to identify, over and above the specific justificatory inadequacy, also the given state of the basic structure of justification exhibited by the situation. The question confronting the critical theorist here is thus: To what degree is a basic structure of justification in evidence and to what degree does it allow social and political justification to operate and take its course in relevant contexts? In tandem with a negative normative critique of poorly justified, unjustified or unjustifiable relations, therefore, goes not only an extension of such negative critique to whatever basic structure is actually in place, if any, but also a disclosing critique which reveals what could be attained or established to compensate for what is absent from the basic structure or what is non- or mal-functioning in it. A critique of justificatory relations thus requires an analytical grasp not only of the components of the basic structure of justification, but also – and especially – of the dynamics animating such a structure.

In order to analytically decompose these dynamic relations, the attention now shifts, taking the four dimensions specified in the columns of Table 1 as starting point, to the process of sociation, the process of the constitution and organization of society or the sociocultural form of life. It is only by doing so that it will be possible to show in some detail what the concept of the basic structure of justification amounts to. To recall, according to Forst, it is the necessary complex of minimal conditions for the institutionalization of adequate justificatory procedures and practices that would allow the best possible equal distribution of justificatory power among those involved and affected.

To facilitate the development of this argument, the next paragraphs will follow Figure 1 below. It should be noted that the basic tripartite pattern of the interrelating conversion or operative unification of generated information and structural information reflects Forst's (2011: 43) sense of a seemingly paradoxical articulation, mentioned earlier, of a substantive goal with procedural justification. In that context, as will be made clear, a special significance accrues to the public.

Figure 1: Dynamic Model of the Basic Structure of Justification



The overall process of sociation through the construction and organization of society is borne by two subordinate processes – first, a process of construction and generalization which follows the arrow of time and, second, a process of structuration and regulation which goes against the arrow of time. Of particular interest are the different structured and regulated phases in which a sequence of new formations is generated and the latter are then interrelated with existing elements through conversion or are operatively unified both under the particular conditions pertaining to the given concrete situation and the directing and guiding impact of the meta-level cognitive order of society. It is this set of dynamics that require some exploration in the following sub-sections.

*(i) Structuring and regulating impact of the cognitive order*

Of the utmost importance, first, is the cognitive order of modernity, the principles or meta-rules representing the conceptual foundations of society, which has over centuries since the late medieval period become sedimented and stabilized through sociocultural evolution on a phylogenetic basis. The diverse range of cognitive order principles, which fall into the three distinct worlds of objective, social and subjective reason,<sup>16</sup> including Forst's selected socially relevant normative ones, play a

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<sup>16</sup> For the most recent presentation of this conception of the cognitive order, see Strydom (in press a). Below is a selection of the principles which constitute the cognitive order of modernity, sorted according to its three domains or worlds. They are presented in terms of their date of stabilization, the representative name attached to their recognition, and the field in which they apply.

CENTURY	REPRESENTATIVE	FIELD	COGNITIVE ORDER
<b>Objective world:</b>			
15 <sup>th</sup>	Brunelleschi	technology	effectiveness
16-17 <sup>th</sup>	Galileo	nature	formalization
17 <sup>th</sup>	Bacon	knowledge	instrumentality
17 <sup>th</sup>	Descartes	<i>cogito</i>	self-reflection
17 <sup>th</sup>	Newton	science	mastery
18 <sup>th</sup>	Smith	economy	efficiency
18 <sup>th</sup>	Kant	culture: pure reason	truth
<b>Social world:</b>			
16 <sup>th</sup>	Machiavelli	power	control
16 <sup>th</sup>	Bodin	state	sovereignty
17 <sup>th</sup>	Hobbes	coercive law	legality
17 <sup>th</sup>	Locke	civil society	negative freedom
17 <sup>th</sup>	Bayle	conscience	critique/reflexive freedom
18 <sup>th</sup>	Montesquieu	civil society	constitutionalism
18 <sup>th</sup>	Rousseau	civil society	solidarity/social freedom
18 <sup>th</sup>	Sieyès	civil society	legitimacy
18 <sup>th</sup>	Payne	rights	equality
18 <sup>th</sup>	Kant	culture: practical reason	rightness/justice
19 <sup>th</sup>	Marx	society	association
<b>Subjective world:</b>			
12 <sup>th</sup>	the Troubadours	endeutics	needs
12 <sup>th</sup>	Capellanus	intimacy	love
18 <sup>th</sup>	Rousseau	education	learning
18 <sup>th</sup>	Kant	culture: judgement	truthfulness/appropriateness
19 <sup>th</sup>	Kierkegaard	the self	authenticity/aesthetic freedom

crucial structuring and regulating role in social life. This is made possible by the structural information that the cognitive order transmits, albeit in a mediated form, from its meta-level location to the cultural, social and subjective components of society at lower levels. This is precisely what is implied by the concepts of 'frame' and 'script' used by Forst (2011: 20) to describe the basic structure of justification. In its epistemic instantiation, the structural informational impact of the cognitive order contributes to the structuration of social life; in its normative instantiation, it contributes to the regulation of social life, and in its motivational instantiation, finally, it contributes to scripting possible corresponding courses of action. Since the cognitive order can be regarded as being analogous to the genetic and linguistic codes, some social scientists follow their biological and linguistic colleagues by regarding such incursive and recursive structuring and regulating impact on the components of society in terms of coding.<sup>17</sup> Here the latter is taken to refer to the interrelating conversion or the operative unification of the structural information deriving from the cognitive order and the constructively significant information and meaning generated through action, interaction and public discourse in social life. This means that to come to grips with this interrelating or unifying moment at the very core of the process of the constitution and organization of society, we need to relate the structuration and regulative aspect of the cognitive order to the constructive process borne by action, interaction and discourse.

*(ii) Construction and generalization by action, interaction and discourse*

The original emergence of the cognitive order principles can be led back to a process of construction, generalization and idealization, involving reflexive abstraction, which in turn depends on a reservoir of human capacities and competences with a long evolutionary history. Having become stabilized as generally taken-for-granted cognitive presuppositions, however, such principles thence have a definite, albeit mediated, structuring and regulating effect on the exploitation of capacities, the development and refinement of competences, and on the orientations, actions and practices following from this cognitive endowment. The incursive and recursive impact of the cognitive order, however, takes effect only to the degree to which actors and agents presuppose and are oriented toward its relevant principles. The important point following from this is that the reproduction of the cognitive order as well as shifts in its effective syntactic, semantic and pragmatic information content, whether positive or negative, crucially requires the generation of variety. Variety is generated by actions and practices that shape new orientations, introduce innovative ideas and advance new claims. The positions from which generative actions and practices are undertaken, together with the micro- and meso-level cognitive structures or frames organizing them, condition the engagements actors are able to undertake, the interactions into which they enter, and the information and meaning they generate. In the course of the constructive process, of course, cognitive reconfiguration could compel a comparable change in position, thus potentially benefiting the contributions made to public discourse. Another situational factor that figures strongly in the generation of variety and its generalization is the ability to make reference to things, objects and events as well to recall the past and project the future. The variety that is thus generated and feeds into the process of construction consists of information that admits of being communicatively generalized into meaning in a form allowing selection.

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<sup>17</sup> Of the major social theorists, Parsons (1977) and Luhmann (1995) both adopt the notion of 'coding'. The influence of the humanities is visible in the alternative conception of 'symbolic packaging' (e.g. Gamson 1988; Eder 1996). However, coding and symbolic packaging should not necessarily be seen as mutually exclusive, as is argued below. The reference to 'triplet codons' in Figure 1 invokes the fact that the coding or transcendental indexing of elements of a situation in terms of the cognitive order without exception involves the threefold pattern – analogous to DNA and syntax/semantics/pragmatics – of objective, social and subjective principles, each of which in turn transmits epistemic, normative and motivational information.

*(iii) Interrelating conversion or operative unification*

The extremely important moment of the emergence of public discourse opens the core process of the interrelating conversion or operative unification of the structural information deriving from the cognitive order, on the one extreme, and the generated information and meaning inserted into the public sphere from the actor and agent side, on the other extreme. Discourses emerge from the interrelation of differently positioned actors and agents, the actions and practices in which they engage and, in particular, the distinct sets of competing, contested and conflicting cognitive structures or frames they communicate and thereby introduce into the public sphere – cognitive structures or frames which already show signs of the incursive impact of the cognitive order. In this public discursive context and in the medium of communication, the available variety is converted into the form of a number of options among which a selection could be made in terms of their relevance to the situation. The form in which the options are made available around the situation for discursive mobilization represents a weakly emergent epi-level cultural model which outlines possible selections and thus possible paths of development. In the wake of a public discursive weighing of the competing options and developmental paths, discourse is the medium for a fateful selection of an option or a combination of a number of options to the exclusion of some and the keeping in abeyance of others. Ideally, the selection is made possible by public acceptance which brings the weighing of options to a close. It is on this basis that a strong emergent in the form of a permanent or, at least, a more enduring cultural model then becomes established. This form-providing model marks a vital moment, the culmination point as it were, of the interrelating conversion or operative unification in the whole process. It requires the bringing together, sometimes called 'coding' (Parsons 1977, Luhmann 1995) and at other times 'symbolic packaging' (Gamson 1988, Eder 1996), of the structural information transmitted from the cognitive order and the information and meaning generated by action, interaction and discourse. The model is a fusion in a semantic-symbolic form, involving both coding and symbolic packaging, of cognitively structured knowledge and discursively selected meaning. Such a permanent cognitive-semantic cultural model is the prerequisite for an authoritative institutional decision fixing the selection and its subsequent normative institutionalization. Although still exposed in the public sphere, such an institutional intervention typically leaves public discourse behind. The unavoidable yet variable cost of exclusion which already showed in the preceding phases of option formation and selection now becomes acute, giving rise to a more urgent need for justification and legitimation than earlier. Within the established parameters, nevertheless, administrative agencies and organizations of all sorts are now able to go about their business of organizing and bringing normative order to social life.

*(iv) Triple contingency and the public*

The role of the public in this process merits special mention – indeed, its importance cannot be over-emphasized. The whole trajectory, from the generation of variety, via the public discursive formation of a temporary cultural model and the emergence of a more enduring one, to the selection and institutionalization of a particular option or set of options, amounts to something like an epigenetic process. This means that it transpires as a sequential generation of new formations in which the options, akin to epigenetic rules, regulate the development which itself takes place within the encompassing domain structured and regulated by the cognitive order. In keeping with the threefold reflexive structure of communication, the process exhibits a 'triple contingency'<sup>18</sup> form in so far as a proponent and an opponent performing first- and second-person roles on the virtual stage are observed, evaluated, judged, monitored and, hence, compelled to be socially reflexive by a public on

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<sup>18</sup> The concept of triple contingency was originally introduced in Strydom (1999, 2001) and was subsequently taken up in a variety of disciplines, for instance, sociology and social theory (O'Mahony and Delanty 2002; Domingues 2002; Trenz and Eder 2004; García 2006; Eder 2007; Leydesdorff 2007, 2008; Ocampo and Zitello 2008; various authors in O'Tuama 2009; Haug 2013; O'Mahony 2013), US pragmatism and communication theory (Russill 2004; Craig 2006; Bergmann 2012), international relations (Herborth and Kessler 2010), and so forth.

the virtual gallery. As to its role, which is a mediating one in more than one sense, at least two aspects must be distinguished. First, the public is pivotal in the consolidation of constructed meaning by mediating between the actors on the virtual stage, learning from and monitoring them, in a way that eventually contributes more or less decisively to cultural model formation and selection. Second, the public is vital to the transmission of the structuration and regulative information emanating from the cognitive order by serving as the vehicle for the incursive force of the latter and incarnating it in a detranscendentalized form relevant to the particular situation.<sup>19</sup> In other words, there are no coding and symbolic packaging and, hence, no enduring cognitive-semantic cultural model without the public. This implies further that the public is an indispensable factor in the basic structure of justification and the attainment of a justifiable normative order. But, then, the public should be adequately understood in terms of its differentiated role.

Empirically, there are of course always multiple publics on the scene, the general public differentiated into publics in the plural who represent different identities and issue positions, some of whom could be reconciled only with the greatest difficulty and others not at all. Such a multiplicity of publics is an important element in the dynamics of public discourse and collective learning which feed on contestation and conflict. For one, they play a vital role in energizing the process of the development of options and the formation of a temporary cultural model which makes selection possible. To conclude from this, however, that the third point of view borne by the public introduces a level of contingency into public discourse that leads to fragmentation and dissipation which inevitably enforces a relativistic perspective, would be mistaken.<sup>20</sup> The necessary empirical observation and recording of multiplicity must be compensated for in view of the consideration that, since there is always some reference to a general concept, there is no pure matter-of-factness.<sup>21</sup> In the mind of every actor on the virtual stage who inescapably is deeply affected by the observing public, there is never just the one public who supports its position, but rather a reflexively abstracted general idea of the public. The third point of view borne by the public, in distinction to its sheer multiplicity, is precisely given with this 'peculiar reflexivity of the public sphere that allows *all* participants to consider what they perceive as public opinion'<sup>22</sup> (Habermas 2006: 419),<sup>23</sup> and exerts an important shaping force in public discourse. As Kant appreciated when he perspicaciously singled out the 'mode of thinking' of the French Revolution's spectators as the unforgettable 'historical sign' of normative learning on the part of the human species, the public in

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<sup>19</sup> For a discussion of this point, see Strydom (2013).

<sup>20</sup> This seems to be the way Bergman (2012) reads the implications of my concept of triple contingency, a tendency also observable, in Trenz and Eder (2004). Two things are overlooked in such an evaluation: that the threefold relation of proponent, opponent and public is not simply a matter of mutual conditioning, but also harbours a moment of conceptual – including normative – normative obligation; and that triple contingency marks a temporary window for selection, decision-making and institutionalization in an epigenetic-like process of sequential new formations. I owe the notion of a temporary window to Leydesdorff (2009).

<sup>21</sup> Peirce (1998: 481) wrote: 'No object can be denoted unless it be put into relation to the object of the *commens*...that mind into which the minds of the utterer and interpreter have to be fused in order that any communication should take place'. And Luhmann (1995: 61) echoes: 'there is no point-for-point self-sufficiency and also no *per se notum* (i.e., no matter-of-factness) ...meaning refers to meaning. The circular closure of these references appears in its unity as the ultimate horizon of all meaning: as *the world*.'

<sup>22</sup> It should be noted that instead of 'public opinion', which is based on individualist, subjectivist and statistical presuppositions, 'public acceptance' was used earlier in this text, an idea borrowed from Miller (1986).

<sup>23</sup> When Habermas, invoking triple contingency, writes that: 'The correctly emphasized triadic structure of argumentation is accounted for only by the fact that both the proponent and opponent in a competition for the better argument can appeal to some third, namely the authority of reason – or the logic of argumentation – recognized by all the participants' (2007: 415), he is clearly correct in one sense, but in another he misses the whole point of the differentiated mediation role of the public which cannot be brushed aside by a philosophical-sociological critique of justificatory relations.

the emphatic sense of the word is a particular agential form<sup>24</sup> which is characterized by being oriented 'towards what is ideal and, indeed, to what is purely moral, such as the concept of right' (1963: 143, 145, 147). The public is the carrier of a special kind of political agency which becomes publicly visible as its mode of thinking, the unforgettable trace it leaves behind. Beyond the multiplicity of publics, then, the characteristic cognitive property of the public is to be found in the principle-reflexivity it signifies. The more specific situation-relevant form this property takes depends on the type of conflict and the corresponding learning process involved.<sup>25</sup> It should be obvious that the public in the sense intended here can hardly be a more significant factor in the dynamics of the basic structure of justification and, therefore, it is something that a critique of justificatory relations can afford to overlook or ignore only at its own peril.

### Conclusion

Forst, as we saw earlier, draws a distinction between a 'basic structure of justification' and a 'justified basic structure' – indeed, these two seem to form a conceptual pair which ideally should be considered in their complementary relations. In the above, however, the focus was trained exclusively on the basic structure of justification with a view to explicating it with the assistance of a sociological perspective incorporating a significant cognitive component. The aim of the exercise was to embed Forst's critical theory of justice, particularly the critique of justificatory relations, in a broad philosophically aware yet very specific social-scientific perspective of which it is obviously in need.

In order to gain a better and, indeed, a social-scientifically meaningful understanding of Forst's concept of a basic structure of justification, it was necessary to pursue both a structural and a processual form of analysis. The structural analysis brought together the various features Forst attributes to a basic structure of justification and then ordered them theoretically by means of four categories – namely, first the cognitive endowment; second public discursive process forms; third cultural, institutional and organizational forms and formats; and finally the cognitive order of society. They were all conceived in terms of cognitive structures of different levels – that is, from the micro- to the macro-dimension – and of different scales – that is, from the human head to the meta-societal code, the conceptual foundation or transcendental structure. In this case, the weak naturalistic ontology of critical theory was brought in and its significance for the accomplishment of critical theory's characteristic form of explanation stressed. The processual or dynamic analysis considerably deepened the reflection and brought to light the complexity which an adequate philosophical-sociological critique of justificatory relations would be required to take into account. It highlighted three crucial sets of dynamics – namely, first the incursive and recursive structuring and regulating impact of variable combinations of cognitive order principles; second the constructive and generalizing generation of information and meaning by action, interaction and discourse on the basis of human capacities and competences; and finally the moment of coding and symbolic packaging effecting the interrelating conversion or operative unification of the formative cognitive impact of the cognitive order and the generalized meaning generated by public discourse. Moreover, a crucial aspect of this account of dynamics, the double mediating role of the public given with the threefold reflexive structure of communication, was highlighted to draw attention to a problematic which is typically overlooked or ignored in critical theory as well as in a variety of other approaches.

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<sup>24</sup> Krasnoff (1994: 32) offers a helpful interpretation of Kant's conception of the public as 'a special form of political agency'. In line with the concept of triple contingency, which distinguishes between the first- and second-person roles of the actively participating actors and the observing public embodying the third point of view, Krasnoff perceptively observes that 'Kant's division between actors and spectators ...[is not]...a distinction...between politics and aesthetics, but between two kinds of political agency'.

<sup>25</sup> On different types of conflict and learning processes see e.g. Brunkhorst (2010).



Together, the structural and dynamic analyses offer a cognitively theorized view of the basic structure of justification as an analytical framework for the conduct of a critique of relations of justification as the central task of a critical theory of justice. As a complex of dynamically interrelated structural components, it makes possible the identification of missing and inadequately operating structures and processes which is necessary for a normative critique of poorly justified, unjustified and unjustifiable social and political relations. Considering that it is a reflexive structural order above the substantive order of social and political relations, it is by no means accessible only to the critical theorist as a theoretical and methodological tool that could facilitate the identification, explanation and transformative critique of reflexivity deficits induced by hegemonic, ideological, repressive or obfuscating means. On the contrary, it is in principle accessible to those involved and affected, and had this not been the case, critical theory would not be able to count on the vital link with social and political life which is the very rationale for its existence.

Besides raising some philosophical considerations, a beginning was thus made with the preparation of the ground for a meaningful employment of the critical theory of justice for the purposes of a philosophically informed social-scientific analysis of some of the most pressing problems and challenges faced by contemporary humanity. As for a 'justified basic structure', however, it is best adopted as the directing and guiding analogical map, the historically specific lodestar, which fixes our attention on that cross-section of our world which is still in need of being brought within our reach yet is possible to be realized.

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