

# 1

## Just and Juster

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Does it matter whether anything is just or unjust? Or does it matter only which things are juster than other things?<sup>1</sup> Amartya Sen asks, in the title of an important paper, “What Do We Want from a Theory of Justice?” Certainly, one thing we want is the ability to assess real available alternatives for their comparative degrees of justice in order to make good social choices.<sup>2</sup> For that practical purpose, we would not need a theory that gives any meaning to the distinction between just and unjust. As long as a theory allowed us to order the alternatives as if they lay on a line from less just to more, we could pursue not only greater justice but also greater “expected justice” (as I will explain). Then there is, arguably, no further practical value in a threshold—a “partition”—between just and unjust. For that particular purpose it does not matter whether slavery is unjust.<sup>3</sup>

While such a comparative theory would suffice for purposes of choice, it seems like a disadvantage that it would not find any legitimate meaning in

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<sup>2</sup> Some readers may prefer to substitute degrees of severity of injustice for degrees of injustice, leaving the latter as binary. I don’t believe that will affect any of the issues discussed later.

<sup>3</sup> The term “partition” is from Sen (2006). It denotes the boundary between just and unjust, and is not to be confused with different meanings for that term in mathematics and set theory. “Threshold” wouldn’t risk that confusion, but lacks a good adjectival form in place of “partitioned.” “Binary” doesn’t refer to the boundary. So I stick with Sen’s term. The central questions of this chapter were raised for me by his challenging article. This is not a full response to Sen’s own approach to justice, but an attempt to grapple with some central challenges for and from a comparativist approach to the theory of justice.

the statement that slavery is unjust, since that judgment entails a partition. If rendering such judgments meaningful, at the very least, is also something we want from a theory of justice, then we want more than a theory that would guide practical choice. My question is whether there are, nevertheless, good reasons for biting this comparativist bullet—for resisting any role for the partition and accepting that “slavery is unjust” is loose talk with no legitimate meaning. I will argue that there are not sufficiently good reasons for paying that price. Intuitive convictions that entail a justice partition would be an important resource in developing a rich account of comparative judgments of injustice, and there is no strong reason not to develop a systematic theory of the partitioned standard—the standard of full justice.

For the sake of argument I will here accept the methodological reduction of normative theorizing about justice to the theory of practical social choice in the following way: the most just thing, from a set of alternatives, is defined as whatever society should, morally speaking, choose.<sup>4</sup> And for purposes of rational choice there is no value in information about a partition so long as we have a (rich) comparative measure. In a strong form, this would seem to suggest that any alleged content of normative principles that has no role in practical choice is pointless philosophical musing. I do not accept that view, but my challenge to comparativism will accept this kind of practicalism for the sake of argument.<sup>5</sup>

One argument against employing the just/unjust partition is, as I have said, that it is of no use for purposes of choice between alternatives. I will call this argument the *sufficiency of comparisons*. I will leave until the very end a second reason for doubting the value of a partition between just and unjust, namely the claim that full justice is not for this world, while practical choices between unjust and less unjust conditions face us all the time. Whatever full justice might consist in, the energy of political philosophers is better spent, on this view, contributing to clear thinking about the important comparative choices societies actually face. Let us call this argument the *practicality of comparisons*. I will have to leave that line of argument aside here, and I mention it only to mark clearly the difference between this and the argument from the sufficiency of comparisons. In both cases, the target is what I will call *partitionism* about justice: theorizing about justice in a way that relies on a partition between just and unjust social structures, and not (merely) on comparisons between the just and the juster. A binary or *bare partitionism* would include only the partition (and the comparisons that it supports) but no further comparisons with respect

<sup>4</sup> Slightly more elaborately, there might be ties for “most just,” in which case society should choose one of those.

<sup>5</sup> I explore challenges to practicalism in Estlund (2011).

to relative justice or injustice. A *rich partitionism* would include both a partition and further comparisons. The approach that eschews the partition altogether is, as I have said, *comparativism* (weak or strong).<sup>6</sup>

Practicalism about justice has an advantage, namely that it is straightforwardly an answer to the fair question, “what good would such knowledge be?” If knowing the partition adds no practical value to the comparative information in a theory of justice, it is fair to ask whether it adds anything of value at all. More starkly, if justice should admit of only the partition but no comparative information, we might wonder what good it is to understand justice at all. We will see how, even if partition information is of no use for purposes of choice over and above comparative information, this does not establish that a wholly comparative theory of justice is adequate—even for purposes of choice. The reason is that epistemology might favor the richer measure, delivering a partitioned scale, or at least partition-entailing judgments, in the first instance. In short, my argument will be that even if practicalism were correct, and even though (as I will grant) comparisons are sufficient for choice, the enterprise of a theory of justice does not get to take such comparisons as given, but it must generate many of them from its own resources. A wholly comparative conception of justice would limit itself to impoverished resources, and for no good reason.

## 1. CATEGORICAL AND METHODOLOGICAL COMPARATIVISM

Suppose that, while there is no appeal to any partition, we have good warrant for more than merely an ordinal ranking, but also for an ordering of degrees of justice on an interval scale. That is, we could not only rank states of affairs as to which is juster, but we could compare pairs according to which represented a greater difference in justice, and by what proportion. That is, we could say not only that A is juster than B, but also that the difference between A and B is greater than that between A and C. But suppose we were not in any position to represent how distant any arrangement was from full justice. This intermediate “interval” measure of justice would still be highly limiting intuitively, since it would not allow any

<sup>6</sup> The idea of a partition between just and unjust is only one kind of salient dividing point that might be present in an ordering of relative justness. I will not explore the possibilities, but will suppose, for simplicity, that if there is a partition, there is only one, the division between just and unjust. Also, I allow and discuss the possibility of rankings within the unjust category, although for simplicity I leave aside the question whether there might be orderings above the threshold as well (a kind of supererogatory justice).

meaning to be assigned to judgments such as that slavery is profoundly unjust, since that judgment entails a partition. Moreover, the interval ranking does not assign any meaning to the judgment that slavery is unjust at all. That is meaningless if there is no partition between cases that are just and cases that are unjust. I think this is such a big cost, intuitively, that I will regard this as decisive against what I will call *categorical comparativism*, the claim that justice does not (in reality or “metaphysically”) admit of richer comparison than an interval scale allows: there is no partition between just and unjust societies. On that view, which I will now put aside, there is only “juster,” to varying degrees allowed by an interval scale. It denies that a society organized around slavery (or any society at all, for that matter) is either just or unjust.

There remains a more nuanced kind of philosophical reticence about the just/unjust partition, and I will call it *methodological comparativism*. While there is or may be a partition in fact, we ought to theorize wholly in terms of comparisons.<sup>7</sup>

Here is an argument, which I will eventually reject, that methodological comparativism would follow from the sufficiency of comparisons, combined with methodological practicalism:

1. We ought to theorize only in whatever ways would best facilitate rational social choice (*methodological practicalism*).
2. Comparisons are fully sufficient for rational choice (*sufficiency of comparisons*).
3. We ought to theorize wholly in terms of comparisons, not in terms of a partition between just and unjust (*methodological comparativism*).

As noted earlier, I am accepting methodological practicalism for the sake of argument. The same goes for the second premise, the sufficiency of comparisons, although I would like to sketch what I take to be a strong case for its truth. Then, if all we want from a theory of justice is the structure and information needed to make the most rational social choices it may seem that there is no reason to build a partition into our working theory.<sup>8</sup> I will argue that this conclusion, *methodological comparativism*, does not follow from the *sufficiency of comparisons* along with *methodological practicalism*.

<sup>7</sup> Sen never denies that there might be a partition, and so I take his position to be that of methodological comparativism.

<sup>8</sup> Sen writes: “Perhaps the most important contribution of the social choice approach to the theory of justice is its concern with comparative assessments. This relational, rather than transcendental, framework concentrates on the practical reason behind what is to be chosen and which decisions should be taken, rather than speculating on what a perfectly just society (on which there may or may not be any agreement) would look like” (Sen 2011, p. 106).

## 2. THE SCALE OF JUSTICE

To fully appreciate the case for the *sufficiency of comparisons*, let's put the question of the partition in a slightly broader context by reviewing quickly and informally the several levels of richness that can be possessed by scales for comparing things. Our concern is the comparison of alternative social arrangements with respect to their justice or injustice, but these points apply to comparisons generally. Three kinds of scales—*ordinal*, *interval*, and *ratio*—can be distinguished by how much information they include for purposes of comparing two or more cases. Ordinal contains the least, and ratio the most, and they might be the most familiar to common sense. An interval scale lies in between. An ordinal scale, the weakest, allows no more than an ordering. A ratio scale tells us much more, since it incorporates information about how much of something is present. Notice that no amount of anything, such as an amount of preferredness, could be recovered from a mere ordinal preference ranking. By contrast, an ordering of, say, quantities of sugar by weight contains more than mere ranking. There is a natural zero point (no sugar at all), and some quantities can be expressed as fractions of other quantities (a half cup to a cup). The ordering does not contain that information. Other cases that contain this richer information including a natural or objective zero point and meaningful ratios include: runners' times in a race, length of anything, annual salary. In many contexts, such as all of my examples so far, there are only positive amounts but no negative amounts. In other cases, though, such as a person's net financial worth, the amount can be negative. In some cases, in fact, there are only negative cases. We might think of purity as an upper bound, with all levels of impurity on the negative side (note that there can be a maximum level of impurity as well: 100 percent impurity). There is nothing above the zero point in that case. As we'll see, purity is one possible way to think about justice.

Between these familiar ideas of *rank* (ordinal scale) and *amount* (ratio scale) is the interval scale. The specific meaning of such a scale is more complex, although there are plenty of familiar examples. The key idea in an interval scale is *distance* between points on a line. For any pair of points, each point on a line is at some distance from its mate, and we can compare the distance of one pair to the distance of another pair as a ratio. AB might be half as far apart as CD, for example. What is missing, though, is any idea of the amount of distance represented by any point and this is the way in which it is weaker than a ratio scale. That would require a natural or objective zero point in addition to the distance or ratio information, as we have seen in the examples. We might ask, for example, how far Halifax is from here, or from Detroit, but there is no

question of how far Halifax is—how much distance it has. That would require a zero point or origin. But even without that, distance information is obviously richer than mere ordering information. We might know that Halifax is farther from Detroit than Toronto, but we might also want to know how much farther. And whether we want to know it or not, there is an answer—a fact of the matter. Points in space bear distance relations, even though no point has any meaningful amount of distance itself. That is because there is no privileged zero point or origin.<sup>9</sup> Points in time can easily be seen on an interval scale but not a ratio scale, assuming there is no beginning or end of time.

The *scale of justice*, as I will call it, might take any of three forms: ordinal, interval, or ratio. Since the ratio scale contains a partition or zero point, a comparativist (that is, non-partitioned) scale of justice must be on an ordinal or interval, but not a ratio scale. To say that a ratio scale is richer than an interval scale, with both being richer than an ordinal scale, is to say that they incorporate more comparative information. That sounds like a good thing about them, but those are features for which a theorist must pay extra, so to speak. If we don't know how much more Lori likes one film than another, but only her ordinal preference ranking, then we are unable to upgrade our scale from ordinal to interval. From a theorist's point of view, the scales that contain less information have the advantage of being, as it were, informationally less expensive. Of course, a theory will use a scale for certain purposes, and some purposes might require informationally richer scales. A tool with fewer features might be less expensive, but that is no advantage if it is inadequate for the job at hand.

A particularly severe version of the sufficiency objection to partitionism would hold that all we need in a theory of justice are ordinal rankings of certain available social structures as juster than others. On this *ordinal comparativism* no use is made of the idea that one alternative is far juster than another, only that it is juster. For that, a richer kind of comparison would be required, namely one that supports comparisons of the intervals between the injustice of one alternative and that of another—an *interval comparativism*.

<sup>9</sup> The measurement of temperature is a common but not perfectly clear example often used to illustrate interval measure without a ratio scale: distance without amount. It can be confusing because Fahrenheit and Celsius each posit a zero point. It is arbitrary rather than objective, which is why the case can be useful, but the Kelvin scale seems to identify a true objective zero point with nothing meaningful on the other side: zero kinetic energy is the coldest possible temperature. So temperature is not a good case of interval scale without ratio information after all.

### 3. A THEORY OF JUSTER: THE LIMITS OF ORDINAL AND INTERVAL COMPARATIVISM

I want to emphasize the limits of comparativism, and I begin with the weakest form, ordinal comparativism. Here are some familiar forms of judgment about justice that are obviously not available on an ordinal comparativist framework. To speak in a simple shorthand: If there is only “juster,” then there is:

- a. no “just,” no “unjust”
- b. no “much more just,” no “much more unjust”
- c. no “highly just,” no “gravely unjust”
- d. no “nearly just,” no “far from just”
- e. no “nearly as just,” no “nearly as unjust.”

There would be no meaning to the claim that slavery is unjust, or that it is severely unjust. We could not meaningfully say that slavery is significantly more unjust than gender differentials in wages, only that it is more unjust. We could not argue that one policy would improve justice much more than an alternative. And so on.

There is more. Suppose that you are devoted to the cause of eradicating a certain source of corruption in the political process. Suppose, for example, that Supreme Court Justices are exploiting a loophole in the law and receiving highly lucrative favors and gifts from parties to cases they will hear. (Many examples would serve as well.) As strongly as you believe in this cause, there are other valuable causes too and your chances of success are uncertain. You should consider working on something else if this loophole-closing project is unlikely to succeed and other causes are not. For example, if one condition were twice as much juster (so to speak) than the status quo than another condition would be, then a 50 percent chance of attaining it would be as good as a certainty of attaining the other. If you take its chances to be less than that, you should work on the other cause. However, on a simple ordinalist framework, that form of reasoning is incoherent. The reason is that there is no measure by which the justice-difference of a certain improvement is any multiple of the justice-difference (from the status quo) of any alternative. Ordinal rankings contain no such information, not even roughly. In that case, the information about probability is of no use. Simple ordinalism, all things considered, is quite devastating to the purposes to which we hope to put our thought about justice. For this reason, I will put ordinal comparativism aside, and hereafter use the term “comparativism” to refer to approaches that include richer than ordinal comparisons.

An interval scale, as we saw, is one that contains not only rank orderings, but what we intuitively think of as *distance* information, on the model of

points on a line. Some of the limitations in ordinal comparativism would be removed if interval information were available. On an interval scale we can now meaningfully say that the improvement from  $x$  to  $z$  is greater than the improvement from  $x$  to  $y$  by some multiple. Whether or not a precise multiplier could be ascertained, ordinal rankings do not allow that form of comparison at all. That same point allows us to say that  $y$  is nearer in justice to  $x$  than is  $z$  by some multiplier. Again, the point is not about precision. The rough judgment that  $z$  is “many” times further from  $x$  than  $y$  is would not be allowed at all by ordinal ranking. It implies an interval measure, albeit maybe only a rough one. So, if enough richness were available to support an interval comparison, this would support at least somewhat more of our standard reasoning about justice.

However, even interval ordering would not allow any meaning for many of the standard judgments listed above. To see this, think of a line with no beginning or end, and each alternative state of justice lying at some point. Since the line segment defined by any pair is some fraction of any other line segment, the comparisons marked by (b) and (e) are meaningful, but since there is no privileged place to put the line between just and unjust (no “partition” as we are calling it), (a), (c), and (d) are meaningless.

#### 4. JUSTICE IS NOT LIKE UTILITY

If comparativism leaves behind so much of our thought about degrees and amounts of justice, then what countervailing advantages does it have over partitionism? There are well-known reasons for comparativism about utility, but a brief review will show that they have no application to the question of the scale of justice. We turn, after that, to a more promising basis for comparativism about justice, namely the tight relation between comparison and choice.

Ordinalism has been extremely important in the theory of utility as developed by economists and others, and this has been driven mainly by arguments that richer scales require more information than we have any way to obtain. In particular, many have argued that there is no scientifically defensible way to measure amounts of psychological states of pleasure, contentment, or satisfaction—as intuitively familiar as such states may be. For one thing, it has often been argued that there is no scientifically respectable epistemic access to how much pleasure or satisfaction an individual experiences in any given case. This is a special difficulty in the epistemology of psychology, the so-called “problem of other minds.” Second, economics, along with utilitarian moral philosophy, has wanted to aggregate utility across persons in pursuit, often, of the greatest sum or



average. Even if there were a way to know such things as a person's relative strength of desire across alternatives, there may not yet be any way to know how it compares to any other person's experience—the problem of interpersonal comparisons of utility. As a proxy, theorists have substituted the less rich idea of an individual's preference between two available options. (Arguably, there is no need even to suppose there is some richer mental state that this is partly measuring.) The resulting scale is only ordinal, but it comes at a low informational cost. This, put very briefly, is the epistemic pressure in favor of a merely ordinalist account of individual utility.

These familiar epistemic arguments in the theory of utility, if sound, militate against any measure of utility that has a partition between good and bad, a zero point of any fixed kind. That is more than can be generated from the merely ordinal information implicit in choices, or from the amplifications of that ordinal information into interval information.

Our topic is not utility, of course, and that, in fact, is my point. The theory of utility has its own purposes and faces its own epistemological challenges. In the context of the theory of justice there is no similar reason to limit ourselves to what can be built out of ordinal rankings. First, since we are asking about a scale of the justice of a single society (nothing rules out its comprising the whole globe), there is nothing akin to the epistemic issue about interpersonal comparisons. (Whether some similar epistemological problem would arise in comparing the justice of one society to another, I leave aside.)

Second, apart from aggregation, recall the alleged epistemological problem about how to know the psychological state of utility even in one (other) person's mind. Epistemological questions of the kind familiar from the theory of utility do not apply to the question of the scale of justice, and so they are no pressure toward a weaker, comparativist account.

Third, in the case of a justice ranking there is no clear basis for introducing lotteries into the ranked elements in order to generate ratio information. In the case of utility, it is evidently legitimate to suppose that a choosing agent would have dispositions to choose even when at least one of the options was a lottery—a probability distribution between two determinate options. However, the justice of a state of affairs is not a measure of any agent's disposition to choose it.<sup>10</sup> It would be possible to interpret justice as what

<sup>10</sup> There are a number of proposed techniques in economics and decision theory for generating interval orderings out of merely ordinal rankings. These tend to be still informationally more demanding in the following respect. For any set of alternatives that are merely ordinally ranked, there is no technique for placing any subset of them on an interval scale without adding more ordinally ranked elements to the set. In the case of the von Neumann-Morgenstern method, the additional elements are lotteries between the initially ranked elements. See the perspicuous presentation in Resnick (1987, 88–91).

would be chosen by some hypothetical chooser, such as an impartial spectator (Gaus 2011). But since this is not a real chooser the difficulties familiar from utility theory around ascertaining the chooser's psychological attitudes would not apply. There is no impartial spectator whose attitudes we might wish to know. Whatever basis we might have for theoretically positing rankings of lotteries into the utility function of a hypothesized impartial chooser would serve just as well and more directly as a basis for introducing the stronger interval information between determinate states.<sup>11</sup>

So, lotteries are not themselves juster or less just than states of affairs or other lotteries, and so they are absent from rankings with respect to comparative justice. This is a metaphysical point. In addition, there is the methodological point that there is no reason for a detour through ordinal rankings of lotteries, even if such things made sense, since the aim would be to retrieve interval information that could be directly posited with no mention of lotteries. This point reinforces the severe limitations of ordinal comparativism in the theory of justice. It cannot be ramped up into cardinal information in the way it arguably can in the case of utility. So the only interesting comparativism is interval comparativism, that is, an ordering of (as I assume) basic social structures which contains interval information but no partition.

## 5. IS "JUST" LIKE "TALL?"

Could comparativism accept that slavery is unjust after all? Suppose we tried understanding "slavery is unjust" on the model of statements such as "the John Hancock Building is tall." Tallness statements might be contextual and comparative, but that doesn't mean that nothing is tall.<sup>12</sup> Roughly, let's suppose (at first) that normally the statement, "the John Hancock Building is tall," sets the appropriate comparison class as the set of all buildings past and present. Then, to say that this building is tall is to say that it is among the tallest in that class, measured by comparison to the average (or by the

<sup>11</sup> The point holds even if the universe is not deterministic but essentially probabilistic. The method of recovering (a) interval information from (b) a hypothetical agent's attitudes toward even objective lotteries (so to speak); (a) and (b) are equivalent, and there is no independent epistemological step in first ascertaining (a) when the choosing agent is merely hypothetical.

<sup>12</sup> The semantics of "tall" are not simple. In addition to several varieties of contextualism, among the views that are now actively debated is the view that there is such a thing as being "just plain tall," in a way that is not relative to any speaker or context. On that view tallness would be partitioned even without relation to a context. John MacFarlane discusses several options in MacFarlane (2007); MacFarlane attributes the "just plain tall" position to Cappelen and Lepore (2005). Thanks to Assaf Sharon and Sahar Akhtar for urging me to consider the "tall" analogy, and to Sean Aas for helpful discussion.

fraction of the buildings that it is taller than, or combinations of such things, any of which might naturally be partially vague). Call this kind of threshold a *context-statistical threshold*.

I doubt that statements such as “slavery is unjust” can be understood in the context-statistical manner. For one thing, this makes it hostage to the arbitrary setting of the comparison class. Whether it is true to say that chattel slavery in the American South was unjust should not depend on which other conceivable arrangements land in the context-determined comparison class in an instance of utterance. We could allow that its truth might be relative to the class of available alternatives, but that is different. Even Rawls says that slavery might be justified in unfortunate circumstances where if war prisoners were not enslaved they would be killed.<sup>13</sup> (He does not say it would be “just” even in that case.) For our purposes, we can leave these issues aside in the following way: Consider a case in which the available alternatives are also specified along with the option in question, such as American chattel slavery along with the alternatives that were available, including freeing the slaves or not enslaving them in the first place. Call that embedded case of slavery “S.” The context-statistical model still says that whether S is unjust depends on what other (alternative-embedded) cases of slavery land in the comparison class that is somehow set by a context of utterance.<sup>14</sup> So, the context-statistical approach would say that America’s wholly optional enslavement of hundreds of thousands of Africans would not truly be said to be unjust if the comparison class turned out to consist mostly of even worse atrocities. And maybe it does turn out that way. Consider two possible comparison classes: (a) all the ways people are or have been actually treated, and (b) all the conceivable or possible ways people might be treated.<sup>15</sup> Even if slavery is quite low in the comparison class (a), since people are relatively rarely treated as badly as slavery, this appears to shift in the case of (b). Is there any reason to think that of all the conceivable or possible ways of treating people, vastly more of them are better than slavery? I see no reason to think so. But then whether it is true to say “slavery is unjust” depends, implausibly, on which of those comparison classes is triggered in the context of utterance. Unlike the case of someone being tall, I doubt that the truth or meaning of statements about slavery’s injustice is relative to the context of utterance in this way.

<sup>13</sup> “For example, suppose that city-states that previously have not taken prisoners of war but have always put captives to death agree by treaty to hold prisoners as slaves instead” (Rawls 1971, p. 248).

<sup>14</sup> That is not the same as the set of alternatives in the context of action.

<sup>15</sup> I’m allowing, for the sake of argument, that such “ways of treating” are countable in some appropriate way. If not, the context-statistical approach cannot get off the ground.

Second, even if the setting of the comparison class is not arbitrary and variable, the context-statistical interpretation remains implausible for another reason. Suppose that the comparison class triggered by the statement “slavery is unjust” is always and automatically the class of all the ways people are or have been treated. That would avoid my first objection. But in this case, the context-statistical claim that slavery is unjust is still nothing but a claim about the fraction of all the forms of treatment (considered in the context of the available alternatives at the time of action) that are better than slavery. In that case, “slavery is unjust” depends on—because it is nothing but a claim about—whether people have, in fact, usually been treated better than that. I doubt that slavery being counting as unjust (the statement being true) is even partly a fact about how people have normally been treated. Slavery would be unjust even if most people were slaves. A person’s counting as tall is different, and it can be captured plausibly in the context-statistical way. “Just,” then, does not appear to be like “tall.” That analogy will not save comparativism from the objection that it cannot accommodate such robust judgments as “slavery is unjust.”

## 6. THE VARIETY OF PARTITIONS

I am mostly concentrating on the idea of a partition between just and unjust social arrangements, but the very idea of a partition is more complex than I have been acknowledging. If someone denies that there is any value or truth in partitioned measures of justice, it is important to know which kind of partition is at issue. As I will explain, we can distinguish between the following kinds of partitions: floors, ceilings, thresholds, and toggles (or “bare” partitions).

First, there is a floor partition when there are comparisons, and also a zero point, but no comparisons below that point. Height is a simple example. Strength seems to be another. This is a partition because it marks a line between things that have some strength and things that do not. The ideal of a floor partition will not concern us in the context of justice, though all the other three kinds will. Second, a threshold partition is present when there is a significant origin or zero-point, but also comparisons above the line and comparisons below the line. Wealth is like that, since one can have positive wealth of different degrees, but also, in the case of debt, negative wealth of various degrees. Similarly, for our purposes, cases below will be unjust, cases at or above just.

Third, a ceiling threshold is where there are comparisons and a point of fullness or perfection. Purity is like that; also verticality, scores on many tests, and much else. Finally, the simplest kind of partition is what I will call

a toggle or binary partition, the case in which the standard or property is either met fully or not at all, and there are no further comparative degrees. An appliance might be on or off, but not partly on or partly off (at least for many appliances). Famously, one is pregnant or not pregnant; never a little bit pregnant. (When I speak of an account of justice being “comparative,” I will mean that there are more comparisons than simply the binary division given by a toggle partition.)

When Sen considers the “grand partition” between just and unjust, he is explicit that he means justice as a perfection point, and so this would be a ceiling partition (Sen 2006, pp. 216–17). He argues or at least assumes that justice is also not a toggle or binary partition, so that there are further comparisons among the unjust cases.<sup>16</sup>

<sup>16</sup> Sen writes: “... Rawls explores in depth the nature of an entirely just society...”, (2006) p. 216. However, contra Sen, Rawls understands justice as a threshold partition rather than as a ceiling. Is Rawls’s conception of justice partitioned at all? One reason for doubting it lies in Rawls’s second principle, the Difference Principle. It is often said that the Difference Principle requires, in effect, maximizing the benefits (measured as an index of “primary goods”) of those in the worst-off class. It is important to remember that Rawls’s own view is that distributions are not directly evaluable by his principles of justice. The basic social structure is just insofar as it tends to promote the satisfaction of Rawls’s two distributive principles. Officially, distributions themselves are just or unjust only in a purely procedural sense: just if they were produced by a just basic structure, otherwise not. Nevertheless, the principles themselves might have a partitioned or a comparative structure, and our present question is which structure they have. In speaking of the justice of distributions here, I simply mean the conformity of the distributions to the principles. Any distribution of primary goods that violates the equal basic liberties principle (which is not, on Rawls’s mature view, a maximizing principle. See Rawls (1993) Lecture VIII, p. 291: “... the words ‘a fully adequate scheme’ replace the words ‘the most extensive total system’ which were used in *Theory*”), and where the inequality is not for the sake of greater liberty for all, would be unjust. So that is a partition of a kind, a bright line below which distributions are unjust. However, among the distributions above the line, the second principle would favor adopting the one, from those available, that is best for those who will be worst off. That would render the overall account of justice comparative, involving no ceiling partition. Rawls explicitly interprets the first principle, the principle of “equal basic liberties,” as being fully or perfectly satisfiable, and so having a ceiling partition (see Rawls 1971, section 8). It is common, as I have said, to interpret the Difference Principle itself as requiring the maximization of the goods held by the worst off. In that case, the principle would be maximizing, with no ceiling or threshold partition. As a result, the theory as a whole would not admit of full satisfaction. It would not be ceiling or threshold partitioned either. Fortunately, Rawls addresses this question directly. He explicitly says that an arrangement in which advantages to the better off could not be reduced without harming the worst off is “just through and through, but not the best just arrangement.” The best just arrangement, or the “perfectly just scheme” (earlier on the page), would be where there are no possible changes, not even *benefits* to the better off, that would further improve the position of the worst off. The resulting structure of the view, then, is that there is a threshold partition of full justice—the complete absence of injustice—but also the possibility of supererogation—further improvements to justice within the not-unjust range, and so no ceiling partition of perfect justice. The view of just

## 7. WHAT JUSTICE MIGHT BE LIKE (DOESN'T FAVOR COMPARISONS)

One might be tempted toward comparativism by the following thought, which, in the end, I think is mistaken: whether or not justice is partitioned, surely it will at least be comparative, and that comparative information is all we need for choice; thus we can dispense with the partition. This might seem to put justice comparisons on firmer methodological ground than a justice partition. I doubt that it does. After all, some perfectible standards might not admit of any further rankings. They might involve no subpar rankings and include only a toggle or binary partition. This point is similar rhetorically to Sen's use of the example of height (Sen 2006 and 2011). He points out that mountains can be compared with respect to height even without any identification of the tallest mountain in the world (Sen 2011, p. 22). As stated, that is not quite pertinent, since his opponent, the partition theorist, says nothing about the most just society in the world, but rather makes appeal to a standard of full or complete justice. But Sen still has a point, namely that mountains can be compared with respect to height even without any identification of a standard of full or perfect height. (Indeed, it is clear that there is no such thing as being fully or perfectly tall.) Sen's point is that, since some standards such as height are like that, justice might be like that: comparisons of societies with respect to justice may not require any reference to a standard of full or perfect justice.

However, it should not be thought that this is any advantage for comparisons as compared with partitions. For one thing, some comparative standards do depend on there being a partition. Purity is evidently like this: there is, it seems to me, no way to understand comparative degrees of impurity without positing such a thing as complete purity. It is not the "purer than" relation as such that entails a ceiling partition, any more than the "greater than" relation does. But greater purity is nothing but greater proximity to perfect purity. Standards such as purity have a ceiling partition. So, justice might be like that.

Second, just as there might be comparisons without a partition, for some standards there can be a partition without comparisons—a toggle or binary partition. Examples include truth and arithmetical equality. So, justice might be like that. Consider, first, the standard of *truth*. It is a perfectible property of a proposition (or belief, or statement, etc.). But it does not

versus unjust is evidently threshold partitioned. In saying the view is threshold partitioned I assume that there are comparisons among degrees of injustice as well. The principles do not give much guidance on those comparisons, but it is clear, for one thing, that the principle of equal basic liberties could be violated more or less severely.

(at least not obviously) come in degrees.<sup>17</sup> Even a statement that asserts several things is not partially true if some of them are true; it is false. It is possible that there are no subpar rankings among degrees of truth. Might justice be like that? As I explain in the next section, the case of arithmetical equality illustrates how it could be.

## 8. THE CASE OF EQUALITY

There is a common though not unanimous view that social justice consists, at least partly, in an equal distribution across individuals of something or other. Among the candidates for what is to be distributed equally are: certain resources, capabilities, opportunities, formal rights and liberties, and the substantive value of certain rights and liberties. Distributive equality, of course, is a partitioned concept. But does it admit of rankings within the range of unequal distributions? If not, then the idea that justice is equality would entail a partition but no subpar rankings. Justice might be like that.

There are numerous ways to measure and rank species of distributive inequality.<sup>18</sup> Sen himself, in earlier work, lists “coefficient of variation, Gini coefficient, standard deviation of logarithms, measures of entropy” (Sen 1992, p. 132). Consider a few simple examples of sets of numbers, without interpreting them as measures of the holdings or utilities of people, but simply as numbers. Which column, 1 or 2, is a more equal distribution in the following examples?<sup>19</sup> It is not as if we can never “tell.” Consider a first example:

A1	A2
100	200
100	100

<sup>17</sup> There is a large literature, however, laying out the problems with the several proposals for defining a plausible property of one theory being truer or closer to the truth than another. So even though there is a perfectly achievable standard of truth for a theory (all its statements and all the implications are true), this may not, as far as we know, generate any measure of comparative truth at all. The literature began with Popper (1963). For citations to some of the literature, as well as a contribution, see Forster (2004).

<sup>18</sup> Even perfect distributive equality is not always a simple thing, when the thing distributed exhibits what Sen calls “internal plurality.” For a brief discussion, see Sen (1992) p. 131ff.

<sup>19</sup> Temkin (1993) discusses related issues, but there is a difference between his question and ours here. He considers the question of which distributions are worse with respect to equality. That is not obviously the same as the question I’m briefly considering, which is which distributions contain more inequality. This latter question could be asked about distributions of weights rather than wealth or utility, and so it is independent of any questions about value.

One thing we are looking for is perfect arithmetical equality, if it should be present. Where it is, there is more distributive equality than in any case where perfect equality is absent. We can rank these two cases with respect to relative inequality: A1 is more equal than A2. Now consider two more examples:

B1	B2
100	100
90	20
10	10

C1	C2
2	200
1	100

A moment's reflection reveals that we are not immediately sure what we are looking for as we scan these for degrees of distributive equality. We see that there is inequality, but the criterion that establishes that fact (namely, that some of the numbers are larger than others) is very little guidance in interpreting degrees of inequality. Perfect arithmetical equality is a clear and simple thing, but except in a small range of cases (see D1, D2) it does not come in degrees. There is no such thing as the one true purely arithmetical, non-normative, measure of inequality. In economic contexts, then, as Atkinson says, "any measure of inequality involves judgements about social welfare" (Atkinson 1970). The degree of inequality of a distribution of goods, if it is interpreted arithmetically—that is, without any reference to normative standards—would be undefined.

Would it follow that, if justice is distributive equality, there is no defined measure of degrees of injustice? It would not follow. The reason is that full arithmetical equality also lies at the top of a variety of normative measures of inequality (Gini, etc.). So when someone says that full justice is full equality, they could mean that inequality as measured in one of the normative ways is the content of injustice, and zero normative inequality is the content of zero injustice.

On the other hand, there is a different position about justice and equality. Call this *arithmetical egalitarianism*. It is not about degrees of inequality in the first instance, but about the clear and salient relation of arithmetical equality. That, according to a natural view, is the content of justice, and not in a way that is derivative from some prior normative measure of inequality. An analogy might be the standard of legality: an action conforms to the law



or it does not, and the idea of degrees of legality is undefined. On this view of distributive justice as arithmetic equality, any degrees of injustice would have to derive from a standard of degrees of arithmetical inequality. But since there is no such thing as degree of arithmetical inequality, there is no such thing as degree of injustice.<sup>20</sup>

Of course, for many of us, accommodating the firm conviction that some unjust arrangements *are* less unjust than others will be among the touchstones by which we will evaluate a conception of justice. In that case, arithmetical egalitarianism is presumptively highly implausible. If we are quite sure that there are sub par comparisons of injustice, then since arithmetical egalitarianism cannot allow this, we will be quite sure that it is false (pending, of course, any powerful arguments that might shake up our initial convictions).

The next closest thing to an interpretation of the idea that justice is equality would be to defend one of the various measures of inequality as a measure of injustice. But the idea that justice is equality will be of no use in recommending one measure over another in that case. None of them counts as more egalitarian, and so they must be compared as interpretations of justice on some other—that is, non-egalitarian—grounds.

Equality is just one example. What I say here about equality will transfer to many other concepts. Briefly, consider sufficiency: sufficiency for all is binary. But the idea of degrees of sufficiency is not obviously a defined notion. Summing the number of individuals above the sufficiency level will not work for comparing different population sizes. It also pays no attention to anyone's distance from the sufficiency point, which seems perverse in the normative context. Degree of injustice in a sufficientarian framework could only be defined by invoking values other than sufficiency.

Summarizing: in this section I have argued that there is no advantage for comparativism in the fact that justice might, like some other standards, admit of comparisons but not a partition. After all, it is also true that justice might, like some other standards, admit of a partition but no further comparisons. Arithmetical egalitarianism would be a bare partitionism of that kind. I grant that, intuitively, most of us will have firm convictions about some justice comparisons, erecting a certain presumption against bare partitionism. But equally, most of us will have firm partitioned convictions, such as that slavery is unjust, erecting a presumption against comparativism, the view that there are only comparisons and no partitions.

<sup>20</sup> A similar result applies to a view in which arithmetic equality is one among several ingredients of justice, somehow weighted against each other.

## 9. SPARE PARTITIONISM

But, it might be objected, surely there are obvious comparisons of inequality. Why not grant that there is a kind of proto-theory of degrees of inequality underlying such judgments? Certainly, it is true that even if the idea of equality does not immediately suggest any general criterion for subpar rankings, there are cases in which one of two unequal distributions seems very clearly to be arithmetically more unequal than another. Consider:

D1	D2
100	100
99	50

Surely, D1 is more equal than D2. Or is it? This much seems clear: *if there is any such thing as a true measure of arithmetical inequality*, it must surely count D1 as more equal than D2. This is an intuitive data point that we conjecture any adequate comparative measure of arithmetic inequality will accommodate. We can expect the same to be true in the case of normative distributive inequality: there will be intuitive subpar comparative judgments to which any more general theory of normative inequality must conform.

This raises an important point about the epistemology of theory-building in this area (and in many others). We do not, in the first instance, learn that D1 is the more equal of the two from seeing that it is implied by our best comparative theory of arithmetic inequality. Rather, we simply “eyeball” this case—we expose ourselves to it and form a judgment, pre-theoretically. There will be many cases that we are inclined to resolve in this way, and many that we cannot (such as cases B and C). The same goes for cases of comparative justice more generally. Prior to any theory, there will be certain cases that seem to us more unjust than others: most will think slavery to be more unjust than wage discrimination, for example. Some cases we simply eyeball in that way, but many others we cannot. Is rampant incarceration more unjust than widespread state appropriation of property? Is denial of women’s suffrage more unjust than inadequate procedural protections at trial? These and many other issues will often defy the simple eyeball method.

In his discussion of the limits of partitionism, Sen gives numerous examples of widely accepted comparative judgments of relative justice that evidently neither entail nor derive from an account of full or “transcendental” justice. Among other things, he names “... persistent famines ... widespread exclusion from medical access, ... government-arranged torture of prisoners, ... arbitrary incarceration of accused people without access to court procedures”

(Sen 2011, p. 104). Importantly, though, these are never shown to be derived from or explained by any general account of even *comparative* justice. Rather, they are offered as plausible or even obvious on their face—the reader is expected to eyeball them. Distinguish, then, between comparisons that are *accepted* by a theory of justice and those that are *delivered* by it.

Consider the case in which there is a partition, but there are no other comparisons except those delivered pre-theoretically, by the eyeball method. Call this a *spare partitionism*. Spare partitionism is an important class of views if, as is difficult to rule out, standards such as distributive equality or sufficiency yield no more subpar comparative content than what can be eyeballed pre-theoretically. A spare partitionist theory does have some subpar comparative content, unlike bare partitionism, but it is not a theory that contributes anything of its own to the problem at hand: identifying comparisons between alternatives with respect to their degree of justice in order to facilitate good choice. A spare partitionism has nothing to contribute for purposes of choice beyond the binary structure of bare partitionism. More generally, an eyeball comparativism with or without a partition is not delivering the eyeballed comparisons that it accepts. Our eyeball knowledge of the additional comparativist content owes nothing to the theory of justice, but precedes it.

## 10. RICHNESS FIRST

Return, now, to the prospects for a comparative theory, one without any appeal to the just/unjust partition. A methodologically comparativist (hereafter MC) approach might hope, in one way or another, to leverage the spare comparativist information generated by the eyeball method into further comparisons not available to the eyeball. Suppose very roughly that the method involves reasoning with the eyeball cases, along with arguments from analogy and consistency, and so on. This is often how normative moral philosophy proceeds, after all. In that case, theory will have delivered new comparative information of its own. If we begin with a sufficiently rich set of eyeball comparisons, some such method might hope to leverage these into a useful number of new and practically relevant comparisons.

A first point is that it should be clear that the eyeball judgments about lesser levels of arithmetic equality (and truth and consistency) are nothing but interpretations of explicit and precise partition standards, and have no place unless the partition has a place. Take away the understanding of perfect arithmetic equality (which is among the simplest of all arithmetic ideas, of course), and there is little to go on in trying to rank one case as less unequal than another. In those cases, “x is more F than y is” means nothing

but the vague proposition that “*x* has ‘more’ of the perfection-standard *F* than *y* does.” Arguably, then, on a comparativist theory, in which no use is to be made of the idea of a partition (such as the partitions in perfection standards such as equality, truth, consistency...), none of these eyeball cases can be incorporated into the theory, since they would be meaningless.

A second point is that our pre-theoretic judgments about justice are very often partition-entailing, even if no particular partition standard is entailed. We might, for example, think that among the eyeball judgments, we would find “slavery is unjust,” but recall that this judgment goes beyond what comparativism can access. It entails a just/unjust partition, and the methodological avoidance of any such partition is what defines MC as comparativist. The same goes, of course, for “slavery is severely unjust.” In order to steer clear of partitionism, the eyeball judgments to be gathered and leveraged must be either merely ordinal, or merely interval-comparable. So, the fund of pre-theoretic judgments must not be any kind of interpretation of a specific partition or perfection standard, and they must not even entail that there is some partition or perfection standard or other. Obviously, then, many of our eyeball judgments of justice are impermissible by these comparativist strictures. To that extent, this shrinks the fund of pre-theoretic fixed points that might be leveraged by argumentation into a rich theory-delivered set of comparisons. The question is what rationale there is for this constraint. What rationale is there, in light of this impoverishing constraint, for methodological comparativism?<sup>21</sup>

We are granting that once comparisons are given, no partition information is of any further use for purposes of choice, and we are supposing, with practicalism, that this is all that matters. The question at this point is how the comparisons are to be “given.” The sufficiency of comparisons for choice is no answer to this. One of our only routes to the comparative information we want for choice is, as a matter of moral epistemology, to reason with our considered judgments about justice, and these come, as often as not, in partition-entailing forms. A theory of justice that engages with (rather than simply stripping away) such partitioned judgments about justice must, by

<sup>21</sup> Consider the possible view that there is nothing wrong with theorizing with partition-implying judgments, but that doing so does not require theorizing the nature of the partition itself, which might be more difficult. Steve Wall rightly pointed out to me that one version of MC could hold that we ought not to bother theorizing the partition—seeking full understanding of the standard of justice involved—but might perfectly well draw on our partitioned eyeball judgments for their value in building a comparative theory. It is hard to see why, if such value is granted to those judgments, it would not be enhanced by theoretically elaborating and systematizing them in the manner of a theory of the standard. Since we have seen no strong reason to think such theorizing is either pointless or hopelessly difficult, there seems to be no point in eschewing the theoretical understanding of full justice.

definition, be non-comparativist. And as we have seen, there is no basis for MC to hold either (a) that such partitioned judgments are false or confused (it allows that they might be true), or (b) that they are epistemically less available or respectable (in what way?). Practicalism plus the sufficiency of comparisons for choice do not entail the sufficiency of comparisons for a theory of justice—methodological comparativism—after all. The reason is that we would be left with either too few eyeball judgments that are not delivered by theory at all, or those along with what further purely comparative judgments into which they could somehow be leveraged. There may be much richer comparisons available if only we could reason with a fully partitioned conception of justice along with the much larger set of pre-theoretic judgments this would make available. Without some principled reason for eschewing the broad set of pre-theoretic but partition-entailing judgments about justice, the sufficiency of comparisons for choice does not provide any reason for a comparative theory of justice.

The tempting idea that a theory of “perfect justice” is not only useless in practice but also a relatively intractable theoretical ambition should not be taken at face value. Perfect equality is dead simple to define; degrees of inequality—not so much. What about the case of justice? As for degrees of injustice, it is, so far, not at all clear how a comparative theory could be constructed. A theory of perfect justice? It could be a matter of a couple of principles.

## 11. COMPARATIVISM AND CONSERVATISM

I turn, finally, to a second aim of Sen’s advocacy of a theory of “juster.” In de-emphasizing the search for a theory of “perfect” justice, Sen is not only calling for a comparative theory of degrees of justice. He is also calling for a theory of realistic, immediate, and incremental improvements in justice. Why, after all, would we want anything else? This concern is analytically separate from the concern about the value, if any, of a partition between just and unjust. The reason is that even without any partition at all, there will be relatively higher and less realistic reaches on the comparative scale. This second concern attempts to orient our theorizing more (if not exclusively) toward the more realistic range.

Let’s call *methodological conservatism*:

The view that the theory of justice ought to favor the investigation of standards whose achievement is not too remote in one of the following ways: too far in the *future*, too *dissimilar* to the status quo (or to what has been seen), too *unlikely*, or too *difficult* or costly.

This is different from *practical conservatism*:

The view that social changes that are remote in one of the above ways are, to that extent, less advisable.

Methodological conservatism is a position about the merits of certain kinds of normative theory, while practical conservatism pronounces on action. I will briefly question one way of arguing for methodological conservatism before turning to my main point, which is that even if it were a sound view, it would not provide the support it might seem to provide for comparativism.

Practical conservatism plus practicalism about political philosophy might seem to support methodological conservatism. That is, if political philosophy ought mainly to serve political or social choice, and such choice ought itself to be conservative, then it may seem to follow (at least in a rough sense) that so ought political philosophy to be conservative. To reject that strategy of argument, one must reject either practical conservatism (I will take no stand for or against it), or reject practicalism about political philosophy (I reject it in fact, but here I leave this open), or deny that the conclusion of methodological conservatism would follow from those premises. I deny that it would follow.

We would need some reason to believe that wise conservative social choice could not benefit from normative political theory's investigations of less conservative possibilities. For just one example of how it might benefit, consider the attempt to understand just how remote certain practical options really are or are not (in time, similarity, likelihood, or difficulty). We can hardly rule out in advance that this might be facilitated by reflection on a broader set of options, including some that are patently remote. The case is similar to the failure, noted earlier, of the argument that since comparisons are sufficient for choice, theory ought to be comparativist. Here I assert the failure of the argument that since choice ought to be conservative, theory ought to be conservative. And this is even on the concession for the sake of argument that political theory ought mainly to serve political practice.

Whatever the merits of methodological conservatism, it is sometimes thought to count in favor of comparativism about justice. Methodological conservatism is certainly no argument for comparativism as superior to partitionism. Suppose that meeting the partitioned standard, the standard of full social justice is remote (in one or another way). If standards of full justice are unworthy of theoretical attention because of their remoteness, then remote reaches of justness on a wholly comparative scale must be unworthy too. There is no particular challenge to partitionism in that.

However, if there is a standard of full justice and it is remote, then if remote standards, be they partitioned or comparative, are unworthy of theory (as says methodological conservatism) then full justice is unworthy

of theory. The partition standard itself would be of no theoretical interest on that methodologically conservative view, being so remote. The objection is not to partitionism as such in that case, but to wasting time theorizing about such a remote standard—the standard of full justice. In that case, we would hope at least to have subpar comparisons with which to work. The argument does not favor comparativism over partitionism, but favors theorizing only with the subpar comparisons, and only with those that are not themselves too remote.

It is true, then, that methodological conservatism's preference for non-remote comparisons would indeed count against theorizing with a justice partition if full justice is a remote standard. However, this is a count against methodological conservatism itself. As I have argued, reasoning with partitioned or at least partition-implying comparisons may be the only way to leverage our intuitive or eyeball convictions about justice into a set of comparative judgments that have any support in normative theory. If methodological conservatism rejects that method on the ground that it is contaminated by the remote (which we can grant for the argument) partition between just and unjust, then methodological conservatism, for no evident reason, bans the use of a wealth of ordinary convictions about the nature and content of not only justice but even of "juster." The point is exactly like my central point above about the pointlessness of comparativism's averting its eyes from partition-implying judgments. Whether those judgments are excluded on the ground that they are partitioned, or on the ground that they are remote, the exclusion appears to me to have no adequate justification.

There is more to be said about each of the several species of methodological conservatism—those based on remoteness in time, similarity, likelihood, and difficulty. I believe a start would be to point out that these are often conflated, as if the changes that would be least difficult are also those that would be least dissimilar to what has been known, etc. That correlation is weak at best, and similar questions could be raised about the other possible pairings. But I leave all this for another occasion.

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