
Moderation in the Pursuit of Justice *Is* a Virtue

Nicholas Rescher's Quest for a Good Society

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Nicholas Rescher, who died in January at the age of ninety-five, was by far the most prolific of major analytic philosophers, having written over a hundred books and four hundred articles. There is a unifying theme in much of his work, pluralism, and this is what I should like to stress in this account of his work, concentrating on topics of interest to supporters of the free market and classical liberalism.

By *pluralism*, I mean the methodological view that truth comes from attempting to harmonize divergent perspectives, rather than from an exclusive emphasis on one of them. This position led him in practice to favor a relatively free market economy, with some room for a limited welfare state. He rejected ideological systems that sought to impose a single pattern of social and political reality.

A good indication of his stance may be found in his preface to *Is Social Justice Just?* He says,

Social justice, like motherhood, is hard to oppose. And yet motherhood too has its problems. For even as it ranges along a wide spectrum of modes ranging from tenderness to tough love, so social justice calls for

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safeguarding the weak and challenging the able. The complex desiderata at issue require the coordination of many gears that often do not mesh smoothly. (2023, xix)

Rescher holds that the “complex desiderata” cannot all be fulfilled perfectly because of scarcity. A great many questions of social justice are about the distribution of resources and, a point familiar to all economists, there are not enough resources to meet the desires for them. He describes the problem of scarcity here:

The ultimate problem is overcrowding, rooted in a situation when individuals seek to obtain a benefit for themselves that cannot be accommodated at the level of generality. In essence, the problem is an interlace created by supra-demand due to scarcity. And the biggest stumbling block for social justice is scarcity. There is not, and cannot be, any sort of technical fix for resolving the conundrum of justly allocating insufficiency. (xx)

Skeptical readers might wonder, “What is the great insight in that? Isn’t Rescher just stating commonplaces? What contribution to advancing knowledge has he made?” But the insight lies precisely in accepting the conflict, rather than trying to transcend it in a systematic way. Rescher is a pragmatist, not in the style of Richard Rorty, who questions the existence of objective truth, but rather as one who takes “what works fairly well” as a guide to what is objectively true. So long as the free market meets this standard, and, as seems likely, no other process does, we should accept it and confine “improvements” to small-scale measures.

Rescher puts it this way:

To arrive at a viable conception of social justice, we must turn from the optimizing *via positiva* to the satisficing *via negativa* of *treating everyone in line with procedures that avoid patently unacceptable outcomes in particular cases*. Such a fallback to negativity is the apparently unavoidable price of realism. . . . The possible better is all too often allowed to be enemy of the achievable good. By universally asking too much of our constitutional arrangement—in refusing to settle for realizable improvements that leave open the prospect—and perhaps even the need—for yet further improvement, we immobilize ourselves in avoidable imperfections. (xxi, xxiii; emphasis in original. By *satisficing*, Rescher means achieving a sufficient quantity of a good rather than maximizing it.)

Rescher’s contribution to political and social theory was by no means confined to the advocacy of caution and moderation that I have so far stressed. In *Unselfishness: The Role of the Vicarious Affects in Moral Philosophy and Social Theory* (1995), Rescher argues that the conflict between morality and self-interest is in many cases

not intractable. Consider the standard prisoner's dilemma, in which two prisoners are separately presented with the options of confessing or not confessing to a charge against them. If neither confesses, each will receive a moderate prison sentence. If both confess, each will receive a greater sentence. If one confesses and the other does not, then the one who confesses will go free and the other will receive a sentence much more severe than if both confess. If each person does what is in his own interest, which we assume to be minimizing the time he must spend in prison, he will confess. This option dominates the other option. If he confesses and the other doesn't, he will go free; if the other also confesses, they will both receive greater sentence than if neither one confesses, but not a very severe one. If however he fails to confess and the other does confess, he will receive a very severe sentence. (To avoid a complication, assume that the charge against them is unjust.)

What would happen, though, if each prisoner acted altruistically, i.e., he considered the interests of the other prisoner on a par with his own? In that case, they would see that they would both benefit from the "cooperative solution" in which neither confesses. Here taking account of moral considerations enables the prisoners to do better in terms of self-interest than they would do if they considered self-interest alone. This consideration does not resolve all conflicts between self-interest and morality, but is at least an incremental step forward—as we have seen, a theme of Rescher's thought.

In *Fairness: Theory and Practice of Distributive Justice* ([2017] 2002), Rescher offers a very large number of suggestions about difficult problems as well as penetrating criticisms of competing views, and I shall discuss a few of these.

Distributive justice involves the claims that people have to goods, but it should not be assumed from the start that a "fair" distribution is one that results in equality.

It is sometimes said that "what is bad about inequality is its unfairness" [quoting John Broome]. But this pious sentiment is very much an exaggeration that needs to be carefully qualified. For only when there is a preexisting equality of valid claims is an inequality of distribution bad, unreasonable, or unfair. There is nothing unfair about it when the victor of a race gets a prize but the losers a mere commendation for good effort. There is nothing unfair about it if the worker gets a wage and the onlooker nothing. There is nothing unfair about it if the ship's captain with his great responsibilities gets a large salary and the cabin boy a modest wage. For the fact of it is that the claims of these differently situated individuals are themselves very different. (1)

As mentioned earlier, Rescher is a pragmatist who favors "what works" in particular situations, though this should not be considered untethered from objective

principles that apply universally. But there is definitely a strong place from the particularities of time and circumstance:

To be sure, some contemporary justice theorists approach the matter of claim validation via the question of what sorts of claim-structure would be initiated by ideally rational agents designing a social order *de novo* and *in vacuo*. But, of course, this is obviously unrealistic pie in the sky. Such abstract idealization is not on the agenda of real-world concerns. The reality of it is that here we are emplaced *in medias res* within an existing and functioning socio-legal order. Of course this order is something that we can criticize and endeavor to change. But any effective efforts along these lines will unavoidably have to be channeled through the political processes in place. . . . Here, as elsewhere we have no plausible and unrealistic alternative to starting the journey from just exactly where we are. . . . And even if we do not like the *status quo*, we must deal with it within the conditions and circumstances of the moment. (7)

To reiterate, Rescher is not a complete relativist, because he thinks the customs and practices of a society can be evaluated from an objective standpoint: Are the customs and practices of a society to its advantage? “The rational validation of a claim accordingly is not merely its conformity to social practice: here too the real might not be normatively appropriate. For validation there must additionally be good reason to think that the practice at issue is one that redounds, on balance, to the advantage of the group in the setting of its prevailing circumstances” (7). It should be noted that Rescher does not require the practice to be better than any conceivable alternative practice, or even better than any practice that the group could consider a “live option,” but only that the practice is of some benefit to the group.

So far, it sounds as if Rescher hasn’t deviated very much from relativism. But matters soon take a decidedly different turn. Once the relevant claims are in place, allocating resources among them requires treating like claims alike. This is a matter of strict rationality. Of course, this will not bring about an equal distribution of resources unless the claims are equal.

Rescher holds a very strict view of this sort of procedural equality, taking it to be a requirement of logic, or close to it:

One of the salient elements of fairness is thus that identically situated people should be treated identically. Economists call this the principle of “horizontal equity.” But, of course, what is at issue is neither a principle of justice nor a principle of economic utility but simply one of rationality. For where there is no specifiable difference in condition there is no earthly

reason to treat the one case differently from the other. Here the Principle of Sufficient Reason holds sway. (12–13)

Rescher claims that procedural equality is required by rationality, but couldn't we ask a further question: why should we care about rationality as he thus characterizes it? He has an answer to this, and it is what you would expect from a pragmatist: it works.

Why pursue fairness? Because fairness is an essential component of justice. And homo sapiens is so constituted that unjust treatment offends not just its victims but bystanders as well. Only in a setting where fairness prevails can we manage to live satisfying lives. In particular, fair division can avert occasion for rationally warranted envy and dismay at discrimination. But not only can it serve to avoid discontent but wasted effort as well. If we have to meet a joint responsibility . . . then by dividing the task between us in a systematic way so that those involved can see it as fair we avert not only discontent but also the wasted effort in deciding who does what on a case-by-case basis. (14)

Although Rescher mentions avoiding envy as a reason to practice fairness in distribution, he by no means equates a fair distribution with one that generates an equal amount of satisfaction among the claimants:

Fairness as a matter of objective equity in distribution requires looking at an issue objectively and impersonally. Its task is not to anticipate the contingent circumstances or idiosyncratic preferences of the people involved. That sort of thing has to be left to the parties themselves. How people respond subjectively to the fair shares that come their way is their own personal affair. An impartial arbiter concerned to effect a fair distribution need not, and indeed should not be concerned about this. (27)

It comes as no surprise that Rescher sharply rejects attempts by some economists to define fairness as an “envy-free” distribution, i.e., a distribution where no one prefers someone else's share to his own.

The common practice of economists of characterizing a distribution among equally deserving recipients as *fair* if it is “envy free” in the sense that none of the recipients prefer the share allocated to someone else to that which they themselves receive is gravely deficient. For bringing preferences into it hopelessly psychologizes the issue and relativizes it to individual idiosyncrasies. If *A* out of generosity or self-loathing is happy that his rival *B* shall get the lion's share, that hardly makes the division a fair one. What matters with fairness is clearly not what the claimants prefer

with regard to distributions, but rather their inherent preferability—what reasonable people would and should prefer in their place. A division based on preferences conflates justice with paternalistic benevolence. (30–31; emphasis in original)

Economists might be inclined at this point to throw up their hands; can Rescher seriously propose that we jettison subjective value? It is important to understand that this is not what Rescher is saying. He does indeed believe that subjective value is important, but he deems it a separate consideration from fairness. He comments on economists such as William Baumol and Duncan Foley who have proposed models of “superfairness”:

Various recent writers on distributive justice have characterized distributions as *superfair* when for all of the claimants involved they are preferable to a strictly fair distribution. Such superfairness arises, for example, when three differently inclined parties are to share nine books—3 mysteries, 3 histories, and 3 romantic novels, and instead of the strictly fair distribution of one of each type per recipient, they all get three of the type they like best. Such a superfair distribution is more “efficient” (in the economist’s sense) than one that is strictly fair because it enhances the “utility” (i.e., subjective satisfaction) of each of the parties involved. And moreover it effects a result where no-one has any reason to envy the shares received by the others because he has the share that he deems superior to theirs. With fairness we are necessarily concerned for the claim-proportional division of goods. With superfairness, by contrast, we cast equity to the winds to suit the wishes of the parties at issue. Accordingly, when we shift from objectivity to superfairness we actually change the topic. . . . When we take the subjective evaluations of individuals into account—their idiosyncratic tastes—we enter an arena of considerations different from justice. (57–58; emphasis in original)

As an aside, one can imagine an egalitarian response to Robert Nozick’s famous criticism of “patterned” theories of distributive justice through his Wilt Chamberlain example. Nozick argued that if we start with equal shares, large inequalities can result and still be fair, because fans will voluntarily pay Chamberlain to see him play. The egalitarian might say that that this doesn’t show that the inequality is fair but only that people’s utility is greater with an outcome that isn’t strictly fair. In other words, this reply is based on superfairness considerations.

I have been able to cover only a few topics in Nicholas Rescher’s vast philosophical output. But I hope to have said enough to show that he is a thinker who deserves the attention of supporters of the free market.

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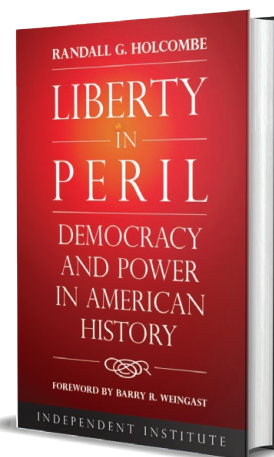
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