

## Why is life not fair?

Curtis Seltzer

**BLUE GRASS, Va.**—Despite being repulsively jolly as the Season expects, I found myself dogged this week by a discouraging question: Why is life not fair?

Do we have a fundamental cosmic right to fairness? If so, how much? Fair outcomes, fair process or both? Is unfairness life's inevitable norm?

Talk about throwing a wet blanket on the jingle-bell sleigh ride!

Students of American history will recall that Thomas Jefferson announced in 1776 that our Creator had endowed all men with certain unalienable rights, and “among these are Life, Liberty and the pursuit of Happiness.”

In Jefferson's Declaration of Independence, Happiness was a right not quite equal to Life and Liberty. The latter came to “all men” at birth as guarantees. But “all men” only had an unalienable right to *chase after* Happiness, which they might or might not acquire. It's our fault if we're unhappy. In that condition, we should chase harder, chase faster and chase smarter. Or adapt to the alternative.

Fairness, as either outcome or process, was not a listed right with which the Creator had wired us, according to Jefferson's understanding. But it's possible that he thought Fairness was holed up with other unspecified rights in the shadowy reaches of “among these.”

Owning civic Fairness -- or even just pursuing it -- is a much trickier right to yammer about than Happiness, because fairness can be defined and measured with some objectivity while Happiness is anyone's guess.

I suspect that Jefferson wrestled with the idea of “Fairness” (or maybe Justice) as an individual's right and decided that he was uncomfortable putting this word in the Creator's mouth. If Fairness was a Creator-granted right, what explains, he might have reasoned, so much unfairness? The cost of remedying unfairness would be exorbitant, and it would come out of pockets like his.

While the independence rebellion of 13 British colonies was radical for its time, the notion that “all men” -- perhaps, one day, all individuals -- possessed a right in fairness was a far more topsy-turvy prospect than shooting at dudes running around in red coats.

The founders didn't want to go that far.

As we know, “fairness for all” even if it had been proposed back then would have covered only a small minority of Americans. When the Constitution was ratified, the Bill of Rights applied to less than 10 percent of the adult population of the new United States. Excluded were those who weren’t citizens, as well as women, Native Americans, most free blacks, enslaved blacks, immigrants and, in 10 states, white men who did not own sufficient property or taxable wealth (which disenfranchised perhaps half of them).

The word “fair” (or its cognates) doesn’t appear in our Bill of Rights, although many of these 10 Amendments are about ensuring that government treats its citizens reasonably. I think the Founders decided to finesse the problem of fairness.

Civic fairness is manufactured fairness—the construction of public standards, protections and systems that set out the same rules for everyone.

The larger issue of fairness is what happens or doesn’t happen to you in life’s games of chance—what parents you had; what genes you inherit; where you were born and how you were raised.

While none of us is a player in his or her individual games, each of us is largely shaped by how they turn us out. We are beneficiaries and victims, winners and losers, and everything in between. There’s nothing fair about any of this.

There is a bias toward the norm when it comes to life fairness. The nearer you are to your culture’s perceived physical, psychological, economic, sexual and social norms, the easier it is to get a fair shake. The farther away you are, the harder it has been -- and is -- to get your ration of fairness out of life.

Andrew Solomon’s Far From The Tree (Scribner, 2012) discusses individuals (and the families who care for them) who are several circles outside the center of what we consider the cluster of normality, including those who are deaf, dwarfs, prodigies, children of rape, transgender, or living with Down Syndrome, autism, schizophrenia and multiple severe disabilities.

It’s easy to see how such individuals differ from the norm and are entitled to be first-in-line claimants to the unfairness of life. It’s also not much of a leap to realize that we all vary from idealized normality to one degree or another.

But it’s harder to slide into the idea that human variety is the source of life’s unfairness. Were we all the same in all aspects, the hooks on which unfairness hangs would not exist. Unfairness is built on the differences that variety produces.

Solomon's point is to see human difference as difference, and less as handicap, disability, flaw or defect. He doesn't diminish the burdens and impairments that beset these individuals and their families. But he believes that the condition of difference should not get in the way of seeing each person as largely the same, and, to the extent possible, of having that person see himself or herself that way.

He acknowledges the evolution in our thinking in recent years that finds identity and pride in what was once shame and silence.

Consider, for instance, that Joseph Kennedy ordered a secret lobotomy in 1941 for his 23-year-old daughter, Rosemary, who was mildly "retarded" from brain damage probably suffered at birth. Today, she would be mainstreamed to the extent possible. Her difference would have remained, but the treatment of her difference would have been better, and it would have been seen differently.

Or reflect for a moment on the "ugly laws" that a number of American cities, including San Francisco and Chicago, had on their books between the late 1860s and the 1970s.

The Chicago ordinance provided that "no person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, or shall therein or thereon expose himself to public view...." The Chicago penalty for being ugly in public was not less than \$1 or more than \$50. Homeless people were targeted under these laws. At least, we've finally dropped the fines for being unsightly or improper in public.

Human variety continues—and thankfully so. This means, I think, that unfairness will continue to stalk our differences.

Still, we live in interesting times on this dilemma. America's political system today tries to accommodate difference and even encourage it while minimizing the impacts of the unfairness thus created. That's probably the best we can do with contradictory propositions.

And so in the spirit of the season, I will remain jolly and in such good spirits that my teeth are starting to hurt.

I will also work on being less unsightly, disgusting and improper in public. To the extent that I regress to the norm, I will expand fairness in the world.

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