

## Life Isn't Fair, But Can We Make It Fairer?

By Michael A. Schuler

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The late Ellsworth Snyder, who served as First Unitarian Society's music director for a quarter of a century, was known to respond to instances of misfortune, injustice, or disappointment with the phrase, "Life is not simple."

It was a statement, not of surrender, but of a certain acceptance of life in all its unpredictability, with all its attendant difficulties. Most of us prefer to believe, despite significant evidence to the contrary, that a certain order, rationality, and fairness govern human affairs, and we are chagrined when that proves not to be the case. But no matter how hard we try to *make* life simple, it insists on being messy, mysterious and inequitable. Ellsworth understood this, and tried to maintain a certain Stoic equanimity when life's events didn't meet his expectations.

That old Turkish teaching story you heard a moment ago speaks to this problem. Like the children in that story, we create for ourselves a standard of fairness that seems to make sense. If four people spend the same amount of time gathering a quantity of walnuts, each should receive an equal share. We presume that God's logic and ours are consistent. Experience proves that they're not, and that for reasons unfathomable to us but known to God, life's rewards aren't allocated fairly.

Jane Mauldin would say that the wise man was, like that Florida minister who thought he had some special insight into the mind of God, guilty of bad theology. God—however you might conceive of him or her—is not some cosmic Santa Claus who purposefully distributes rewards and punishments according to some arcane formula. Rather, God is that "creative force" who gave human beings the internal tools—love, compassion, reason—to create for ourselves a more just and equitable society. God has equipped us to grow in wisdom and progressively establish the Kingdom here on earth—to make life *less* demanding and difficult and, as Ellsworth would say, a great deal simpler.

But putting aside the irresolvable question of God's purpose and intent, we might ask whether fairness is worth pursuing in our communities, whether it should be for us a priority? I believe it is, because the fundamental lack of fairness within a social system breeds resentment, indignation, and, ultimately, unrest. It makes people cynical and

reduces their estimation of institutions in general. "It does not take a sociology degree," David Callahan writes,

... to predict that a society ever more stratified along social and economic lines will be one where people trust each other less, and may be more likely to live by the commandment, "Do unto others before they do unto you."

Today, in the United States, faith not only in the federal government but in corporations, universities, health care providers, and religious bodies has fallen dramatically. In many instances that is because people feel their voices have been excluded, their needs routinely discounted, their personhood undervalued—that the deck has been stacked against them.

How accurate is that perception? Has the system become less fair in recent years? Significant evidence seems to support that conclusion.

For instance, five days ago President Bush signed into law a military tribunal bill previously approved by Congress that for the first time curtails in peace-time the Constitutional right of habeas corpus for millions of people living within the territorial United States. Ultimately, this new law could adversely affect as many as 12 million of our country's permanent residents—people who live, work, pay taxes, support their communities but who happen not to have achieved full citizenship. All that needs to happen for a legal, permanent resident to be thrown in jail, without formal charge and without recourse to the court system, is for some official to declare that person a *possible*—not a *proven* but a *possible*—"unlawful enemy combatant." Furthermore, the definition given of "enemy combatant" is so broad that little justification would be needed for a resident non-citizen to be secretly and indefinitely detained.

Because the new law does not yet apply to legal citizens, most Americans have no immediate reason for personal complaint and are probably indifferent. Nevertheless, this legislation is entirely without precedent. Until now, legal residents have always been guaranteed their day in court by the Constitution. That has been changed. As Eric Freedman, an expert on *habeas corpus* who teaches at Hofstra University put it:

This is a core principle of law that was established by the prisoners who were tossed into the Tower of London by the king, and it was preserved in our own Constitution. Now, Congress has denied it to this disfavored group of prisoners.

“The emerging judicial philosophy,” George Soros adds,

... abandons the universality of human rights in favor of double standards.... [It] creates a growing gap between citizens and aliens and reduces the civil liberties of all citizens.

Nor is this the only instance in which the nation's statutes and regulations have become progressively less fair. One could cite recent “reforms” in the bankruptcy laws, which have compounded the hardship of families facing catastrophic medical bills. There have also been a host of executive decisions lowering standards for workplace safety and compromising the cleanliness of the environment. Our excessively punitive criminal justice system has swept millions of poor people, people of color, substance abusers, and persons afflicted with mental illness into the nation's prisons. How much of this is really just or fair?

Given the stock market's recent strong performance and dramatically lower prices at the gas pump, some would argue that the economy poses no problem in this respect. Recent statistics argue otherwise and point to the development of a plutocratic culture.

The statistics are sobering. In 2004 the median income for single mothers—women who are responsible for almost a quarter of America's children—was just \$18,000. Thirty million Americans

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made less than \$8.70 an hour in jobs that typically included few if any benefits. Between 2001-04, the productivity of American workers rose by 11.7%, but household income remained almost flat. In recent years productivity has actually outpaced income gains by a factor of eight to one, but only 10% of the population has claimed virtually all the income from those productivity gains.

David Korten tells us that in 1998 the top 1% of the population owned 47% of all household

financial assets, and that percentage is increasing. A comprehensive study of wealth and power in the United States completed in 2001 revealed an incredible concentration. Merely 7,314 individuals controlled almost three-quarters of the nation's industrial assets, almost two-thirds of all banking assets, and more than three-quarters of all insurance assets. This same group commanded over half of all assets of private foundations; they controlled the television networks, the national press, and the major newspaper chains. The same cohort dominated the nation's top law firms, directed its most prestigious civic and cultural associations, and occupied key positions in the executive, legislative, and judicial branches of government. Again, we're talking about fewer than 7500 individuals. Such findings raise concerns not only about fairness, but about democracy itself. As former Supreme Court Justice Louis Brandeis warned:

We can either have democracy in this country, or we can have great wealth (and power) concentrated in the hands of a few, but we can't have both.

The examples I've offered presuppose a certain concept of fairness, a standard against which to measure the actual performance of a society. It might, therefore, be helpful if that standard was made more explicit, since people's interpretation of words like fairness, justice and equity might well differ. We could begin with the Greek philosopher Aristotle who wrote in his treatise on *Ethics*:

This is what the just is—the proportional; the unjust is what violates the proportional. Hence, one term becomes too great; the other too small, as indeed happens in practice. For the man who acts unjustly has too much, and the man who is unjustly treated too little of what is good.

In *The Federalist*, American founding father James Madison offers a somewhat different but complimentary opinion:

In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may truly be said to reign, as in a state of nature, where the weaker individual is *not* secured against the violence of the stronger.

In keeping with these statements, we could say that fairness requires *not* perfect equality, but at least a decent *proportionality* between and among

citizens. It also provides adequate measures to protect society's weakest members against the deprivations of the powerful. These two dimensions of fairness are combined in a definition of justice developed by Marvin Ellison, Professor of Christian Ethics at Bangor Theological Seminary. "Justice consists of redistribution and recognition," he writes.

Each aspect must be addressed insofar as injustice is experienced, on the one hand, as economic disadvantage and exploitation and, on the other hand, as cultural disrespect and marginalization.

From these citations, it ought to be clear that the principle of fairness has been getting short shrift in our society of late. And, attempts to introduce *greater* fairness into the social and statutory system have encountered significant resistance—the legalization of same-sex marriage being a notable example.

I support that objective because it conforms to my own concept of justice and fairness, and, because I remember the uncomfortable position in which Ellsworth Snyder was placed after his life-partner, Sam, died prematurely of lung cancer. The social security and pension benefits that a surviving spouse would have received weren't available to Ellsworth, despite his and Sam's long-standing commitment to and affection for each other.

To me, it seems patently unfair to add to the Wisconsin Constitution words that would not only restrict marriage to members of the opposite sex, but ban civil unions and practically every other legal device by which cohabitating couples might protect themselves. That, according to Leslie Shear of the UW Law School, is precisely what the marriage amendment threatens to achieve.

Many Wisconsinites feel differently, and I suspect their own definition of "fairness" and "justice" diverges from my own. I began to appreciate their perspective driving north to Bayfield last week. Above Marshfield, yellow signs favoring the upcoming marriage amendment appeared every few miles along the road. Vote "Yes," they said, "for the children." The message was simple and clear: to grant legality to same-sex couples wouldn't be fair to the kids. No matter what one might believe to be proper between consenting adults, society is morally obliged to protect its children.

This appeal to the nation's children makes sense to a lot of people. According to gay marriage opponent David Blankenhorn, the purpose of mar-

riage "isn't to accomplish the goal of equality of people," but to raise healthy, well-adjusted children. According to Blankenhorn, this requires domestic exposure to "normally gendered" males and females. Maggie Gallagher agrees. To take the institution "most responsible for the protection of children" and alter it for the sake of "adult interests in sexual freedom ... would be ... socially irresponsible," she declares.

There is, however, negligible evidence that gay parenting adversely affects children. In 1995 The American Psychological Association performed a comprehensive review of existing research on same-sex households and found not a single study in which children were disadvantaged by same-sex parents. "The difficulties that these children may encounter," the report stated, "have as their source *not* their family structure but rather than cultural homophobia which views *anything* gay in a negative light."

I've heard and read the arguments against gay marriage and civil unions, most of which appear to be based on canards—half-truths, untruths, unreflective reading of scripture combined with a heavy dose of reflexive homophobia. The venerable institution of marriage may well be threatened by many modern developments—including rising economic inequality—but one fails to understand how it will be further undermined by same-sex unions. As Jeffrey Rosen wrote in *The New York Times*, "There is no obvious victim in gay marriage." On the other hand, to deny same-sex couples this opportunity *perpetuates* the victimization of an entire class of U.S. citizens, and that is unfair. In its 1999 decision legalizing civil unions, the Vermont Supreme Court agreed, saying: "To grant legal access to marriage benefits and protections is simply, when all is said and done, a recognition of our common humanity."

Ellsworth Snyder was right. Life is *not* simple, and far more often than we'd like, it is not particularly fair. Making it fairer is *our* assignment, not the Almighty's, and the task is daunting enough that we need to approach it with exceptional patience—issue by issue, day by day. Marriage equality is but one step toward the goal of *transforming* community itself; creating a space where all may participate meaningfully and have the resources to truly thrive.

"Justice, Marvin Ellison writes, "is the virtue of seeking abundant life not just for some, but for all." May we join our hearts and hands to create that abundance.