


# Lottery Justice

Dan E. Beauchamp

## EDITORIAL

 A CHILLING story by Shirley Jackson, called “The Lottery,” tells of a town that holds an unusual lottery every year. Tradition demands that the game be played, and that everyone in town draw lots. There is only one loser; everyone else wins. When the lottery is over, the loser is stoned to death in the town square by the winners.

### I

The lottery serves as an appropriate metaphor for a major ethical issue of our time: that of achieving a safer and more risk-free society. The hazards of today’s world are less and less the sport of nature or the gods; rather, as in Jackson’s story, our lotteries are public affairs, staged in the form of gigantic production, marketing, and consumption games. The stakes are the benefits and risks of our culture’s paraphernalia: guns, tobacco, alcohol and other drugs, pesticides, automobiles, motorcycles, dangerous work places, chemically contaminated foodstuffs.

In our case, as with Jackson’s story, holding the games has become accepted and traditional. We are told that, since life is filled with risks, we must balance progress against threats to life and limb. The odds are favorable enough to assure participation by millions. Knowing, for the most part, the numbers of the players and the names of the games, we can frequently predict with startling accuracy how many will lose. And like games everywhere, there are the little winners and the big winners. And then there are the big losers.

When we read Jackson’s story, we shudder at the morality of a game that gambles with human life. But why do we not feel the same revulsion at our own blood sports? Many of our lotteries are unnecessary; there is no fixed number who must die. It is possible to rig the odds or to try to eliminate some risks altogether. For example, the simple step of requiring

all automobile occupants to wear seatbelts or all motorcycle riders to wear helmets could achieve dramatic reductions in death and disability on the highways. Yet these forms of governmental regulations provoke a furious backlash from many citizens.

One reason for opposition to new safety regulations is our aversion toward paternalism. Few dispute the evidence that regulations to improve automobile and motorcycle safety will prevent a great deal of death and injury. The issue is perceived as the right of individual citizens to choose their own poison. Big Brother has no business interfering if people choose to risk their own necks.

Congress and the states are in full retreat. Earlier, the bikers organized and made common cause with several liberal and conservative senators. This coalition succeeded in amending the National Highway Traffic Safety Act in 1976 so that federal legislation cannot try to compel states to adopt mandatory helmet laws. Subsequently, twenty-eight states have dropped or weakened helmet laws, and the previous decline in motorcycle deaths from 1966 to 1976 has been replaced by a sharp increase in deaths. Earlier, Congress had repealed the required seatbelt interlock system for automobiles, and there is now a serious threat to the planned introduction of airbags in 1982 automobiles.

At first glance this opposition seems understandable. These cases seem different from, say, the regulation of pollution, because pollution is an imposed risk, while riding without seatbelts or helmets seems to be a chosen, self-imposed risk that brings harm to no one else. But this distinction fades in light of the lottery metaphor.

The lottery raises to view what we likely sense, if only dimly, about current levels of safety. The lottery metaphor exposes the norms for life and death in our system of market justice, norms which place profits, sales, productivity, and convenience before safety. When the cost in human life for these decisions is made manifest, the response is that it is not "we" as a society who decide how many shall die; it is the market "system" and individual choices. After all, or so the argument goes, for many of our most deadly games, society doesn't force the players to play; the small band of losers are not chosen by anybody but are the victims of their own bad choices and a kind of wild, blind, bad luck.

But the lottery helps us recall that we as a society determine the *number* who die from these bloodsports because of political decisions evading collective responsibility for these "statistical lives" (the veto of the seatbelt interlock system for the automobile comes to mind). It is also clear we

refuse to change the current state of affairs not because of our devout commitment to personal liberty, but because we are devoutly committed to profits and convenience and because the odds make it likely someone else will lose, and because members of Congress want to be seen getting the government off the public's back.

The current airbag controversy mirrors this conflict perfectly. It may well be that by the time this appears Congress will have decided to abandon mandatory passive restraints such as airbags for automobiles built after 1982. The *Washington Post* urged this position in a recent editorial (December 2, 1980), stating that "the government has only a limited responsibility to those who deliberately run obvious risks." Apparently, the *Post* believes that because millions of individuals ride without their seatbelts, they thereby accept the current levels of carnage on the highways and forfeit their right to collective protection. If Congress does elect to abandon the airbags, the clear result will be the loss of almost 9,000 lives annually that could be saved, assuming full implementation of some form of automatic restraint system. Will these deaths be deserved because the individuals in question could have buckled up? In the face of the fact that millions fail to buckle up and get away with it, are we punishing those who will die because they took a chance or because they lost? Is it gambling or losing we wish to punish?

## II

We must ask whether the issue of pollution controls is categorically different. The risk is imposed on an entire community originally by a small but usually influential group (corporations, mainly). Soon, however, other members of the community join in acknowledging the very real benefits of the pollution lottery. In times of unemployment, unions lobby against regulations (e.g., Leonard Woodcock's Congressional testimony against strict auto emission standards on grounds of the subsequent threat to jobs and the American auto industry). Consumers resentful of higher prices begin to voice the lottery's virtues. Few believe that they themselves will be losers in the game, not only because the numbers who actually do suffer premature death or serious disability are relatively small, but also because the loss (upper respiratory disease) usually does not show up until late in life.

Lottery justice reveals how misleading it is to see the seatbelt or helmet controversies on the one hand, and the pollution controversy on the other, as two distinctly different ethical conflicts. The larger truth is that both

cases implicate us in some very unfair collective choice processes—games in which we as a society enjoy the benefits of decreased safety with the hope, and quite frequently the reality, that “somebody else” will lose. In this light, both issues resemble—to borrow a phrase from Kurt Vonnegut —“a war between the winners and the losers, with the fix on and the prospects for peace awful.”

### III

Let's not kid ourselves about who wins. We among the general public are the small-time winners; our benefits amount to avoiding minor inconveniences and/or continuing to enjoy the unrestricted exercise of established privileges. The big winners are some truly powerful corporations that reap a huge harvest of profits from the playing of the game. The losers? They are insignificant, faceless statistics, quickly placed six feet under or on the back ward of some hospital.

A just community must be measured by its commitment to minimize serious threats to human life and well-being. In order to achieve a fairer and more just society, we must accept not only the burden of rules to eliminate poverty and racial discrimination, but also that of higher safety-level requirements.

A zero-risk society is impossible, but our society can be far safer than it is now. There are things we can do to make a start. We must first acknowledge that most of our modern public health problems involve crucial collective choices even where there is an important element of voluntary behavior. These choices raise the issue of our collective obligations to even “statistical lives”—anonymous, faceless, but nonetheless real individuals who, while not present or known to us, will lose their lives nonetheless if legislated restrictions are not adopted. From those obligations stems a duty to accept reasonable and fair regulations to minimize the number of that statistical minority who suffer early death or unnecessary disability.

We can also begin to challenge the lotteries. Some games we can run out of town. I cast my vote against the handgun lottery. Also, against cycling without helmets and riding without seatbelts. For most games, however, we will have to settle for rigging the odds, for trying to cut down sharply on the number of losers, rather than eliminating the lottery altogether. We might accomplish this, for example, through taxation—heavy taxation—on cigarettes and alcohol, stricter controls over the work place, and mandating safer automobiles until we can shift to public (and safer) modes of transportation. Congress has to act, for so long as the

temptations of the lottery are real and at hand, the prospects for voluntary measures are bleak.

No one is arguing for controls that violate fundamental constitutional protections, or that threaten the prospects for a viable economy or a just standard of living. The sole plea is for reasonable measures to be taken, at the sacrifice of minor privileges and conveniences and of unreasonable profits, for the sake of protecting a threatened minority.

Who knows, maybe in time we can regard these controls not so much as burdens but rather as gifts given to strangers—this saving of the lives of persons we will never meet. Miraculously, it may be that these acts of compassion and concern will nurture a real sense of community and respect for human life—qualities that market justice, individualism, and unbridled self-interest have only rarely managed to foster.