

In Defense of the Nanny State

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INTRODUCTION

New York City mayor Michael Bloomberg, in a September 2006 speech, endorsed the forceful application of the law as the principal instrument of public health policy. Since then, New Yorkers have felt the effects of that stance through regulations on everything from smoking to trans-fats, as well as in his efforts to limit the serving size of sugary drinks, known popularly as the “soda ban.” With the city set to elect its first new mayor in 11 years, it’s time to urge New York’s next chief executive to take up the mantle of “public health autocrat,” as the Washington Post once called Bloomberg.

It is easy to see why public health ethicists would encourage forceful regulation in health matters. But why on earth would a bioethicist endorse rules that infringe on consumer autonomy, such as by dictating how much soda someone can buy at one time? To answer this question, consider why people might be inclined to, say, purchase a 44-ounce soda at a movie theater. Even with calorie counts posted above their heads—another Bloomberg innovation—moviegoers often still choose to drink unhealthy quantities of empty calories (560 of them in the larger servings). Why would they knowingly act against their best interests, in this case by potentially compromising their health? One reasonable answer is that something or someone has tinkered with their rational decision-making processes.

ANALYSIS

If critics of the junk food industry are to be believed—and they offer plenty of compelling evidence to do so—the “someone” doing the tinkering is the soda industry. The tinkering itself is the manipulation of consumers through incessant marketing and the exploitation of cognitive biases to which all humans are subject. The “present bias,” for example, keeps us focused on what’s in front of us—a big, sweet, refreshing soda, sold at a bargain price—and downplays in our mind’s future ill effects of the choice, such as weight gain and poor health. A quick peek at Principles of Biomedical Ethics will remind bioethicists that choices manipulated are not choices given freely, and that freedom from controlling interference is crucial to any theory of autonomy. Thus, if “nanny-state” regulations, as critics have labeled Bloomberg’s aggressive public-health regulatory schemes, blunt the effects of this industry manipulation, logically bioethicists should not only defend the regulations but also encourage these efforts to restore citizens’ free choice, a hallmark of autonomy.

Democratic mayoral candidate Bill de Blasio supported Bloomberg’s failed soda ban but since then has not said publicly if he will pursue similar legislation. Joe Lhota, the Republican candidate (who was trailing de Blasio by 50 percentage points a month before the election), will not pursue Bloomberg-type legislation; he has said that he prefers instead to educate New Yorkers about the dangers of overconsumption of soda and junk food, and leave the decision

of whether to indulge in them to consumers. Lhota might be overestimating the power of education alone. Bloomberg himself argued in that 2006 speech that information campaigns are “insufficient to the enormous tasks” involved in implementing public health policy, which is why he believes the full force of law to be necessary.

CONCLUSION

Trying to revive Bloomberg’s soda ban legislation might be legally unfeasible. A New York state judge already struck down the original proposed amendment to the city’s Health Code on several fronts, and a state appellate court later affirmed that decision. But that doesn’t mean the next mayor shouldn’t strive to defend citizens’ autonomy from attempts by corporations, advertisers, and other market “persuaders” to short-circuit rational decision-making in pursuit of profit. De Blasio’s success, in this predominantly Democratic town, has come in large part from promises to narrow the income gap that widened so dramatically under Bloomberg’s watch. This, along with his earlier support of the failed serving-size legislation, is reason to be optimistic that he will continue nanny-state legislation for public health issues. Bioethicists should cheer.