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Bloomberg Wants To Be Our Mommy And Daddy, But Judge Scheindlin Stands In The Way

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Another of Mayor Michael Bloomberg's pet policies has hit a judicial impasse. This week, federal Judge Shira Scheindlin of the Southern District of New York correctly ruled that the NYPD acted with "deliberate indifference" in carrying out its egregiously broad stop-and-frisk program.

As we well know, Bloomberg wants to be both our mommy and our daddy: the mommy who protects us from the harm we may do ourselves, and the daddy who lays down hard rules to shield us from others. His version of non-partisan technocratic meddling is one of the biggest threats to freedom.

While courts have struck down some of Bloomberg's most egregious policies, such as his famous "big soda ban," it will take more than courts to protect us from those who share Bloomberg's view of the proper role for government. Only principles can save us from the technocrats.

Principles prevent rights from becoming objects of statistical measurement. Non-partisan technocrats love to talk about "best practices." They trot out statistics to demonstrate how this or that policy will lead to better health, improved safety, or increased well-being.

Mayor Bloomberg loves to point to outcomes. In justifying the NYPD's stop-and-frisk program, which has hassled 4.4 million individuals who just "looked suspicious," he claimed, without direct evidence, that the program saved "countless lives." And we know, according to Bloomberg, "based on the statistics," that those saved lives have been disproportionately Hispanic and African American. Yet, as Judge Scheindlin pointed out, guns were only found in 0.1 percent of stops and other contraband was found in 1.8 percent of stops. It is a long jump from those confiscated guns to a saved life.

But even debating statistics is the problem. Statistics do not answer whether it is okay for an ostensibly free society to gratuitously stop-and-frisk its citizens. In a free society, the police are accountable to the people, not vice versa. The Fourth Amendment's prohibition on unreasonable searches and seizures underscores this foundational truth.

Police do not gain or lose the stop-and-frisk ability by proving its efficacy. If so, then we should jettison the Fourth Amendment and replace it with a statistician, or perhaps a post-retirement Michael Bloomberg. The entire amendment after all, is an inefficient encumbrance on crime fighting.

The same goes for Bloomberg's much criticized big soda ban, which was struck down as an overreach of executive power in March. That ruling was upheld by the appellate court in late July (the Bloomberg administration plans to appeal to the state's highest court).

The soda ban would help poor people who "don't have the ability to take care of themselves," said Bloomberg, apparently tossing off all pretenses and ostentatiously embracing a view of a benighted public and him as a daddy-mayor who knows best. As a bonus, lowering obesity, as well as eliminating trans fats and banning smoking in public places (two other Bloomberg ordinances), will also lower health-care costs, particularly for the taxpayer contributions to Medicare and Medicaid.

This is of course true, as it is also true that stopping and searching everyone on the streets of New York, suspicion be damned, will lower many types of street crime. Those who believe in principles and rights cannot deny the technocrat's numbers.

It may also be true that wearing hats diminish chances for brain cancer, eating meat contributes to obesity, and smoking pot turns people into lazy bums, thus diminishing our national productivity. Perhaps, with the right collection of mandates, bans, and subsidies, we can move the statistical needle in a positive direction. Unleash the technocrats, some would say. If we didn't care about rights and principles, that's exactly what we should do. But rights mean that people are not cogs in a machine fine tuned by anointed societal engineers.

Yet principles and rights are only as good as their exceptions. Conservatives who rail against Bloomberg's soda ban while supporting the drug war have already jettisoned the principle that government cannot meddle with what we put into our bodies. They are left with the argument that Bloomberg's soda ban, unlike the drug war, is somehow a bad idea, and maybe they have the statistics to prove it. Similarly, liberals who lambaste the stop-and-frisk policy while championing intrusive TSA practices have also jettisoned principle. Principles, it seems, have too many fair-weather fans who will quickly abandon them to bring about favored outcomes.

Thus, courts are unfortunately our best option for stopping technocratic meddling. Too many voters support policies that could easily be used against them if the political and statistical winds change. Do you believe in the drug war but want to swill giant sodas? Better hope politics stays on your side. Believe in TSA intrusions but don't want to be stopped and frisked? Better hope the statistics don't change and put you into a suspected class.

Although the judicial victories over Bloomberg's governmental parenting are heartening, they do not guarantee that such policies won't happen in the future. In striking down the big soda ban, the court merely ruled that the executive branch lacked the official power to enact the ban, not whether such bans can be enacted. Similarly, Judge Scheindlin only ordered more oversight for the stop-and-frisk program. Stopping technocrats from treating our rights as barriers to desired statistical outcomes will take more than the occasionally friendly judge.