Total lockdown and fairness towards the sufferer: an egalitarian response to Savulescu & Cameron

In response to: Savulescu J, Cameron J, "Why lockdown of the elderly is not ageist and why levelling down equality is wrong", *Journal of Medical Ethics* 2020;46:717-721.
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ABSTRACT

Savulescu & Cameron supported selectively locking down the elderly during the COVID-19 pandemic on two grounds: first, that preserving total lockdown would entail levelling down and, second, that levelling down is wrong. Their first assumption has been thoroughly addressed, but more can be said about their wider anti-egalitarian point that levelling down is simply wrong. Egalitarians are not defenceless against the levelling-down objection. Even though some consider it the most serious challenge to supporters of equality, egalitarianism possesses sound reasons to assert, not only that something valuable is preserved when we level down, but also that preserving it may be, in certain circumstances, preferable to pursuing other fundamental moral goals. Although troublesome from a wellbeing-maximising standpoint, levelling down ensures that healthcare policy reflects a commitment with the idea that people are equal in moral worth. That commitment is important enough to trump certain improvements in individual wellbeing. In the case of pandemic lockdowns, not all the interests protected by free movement are as fundamental as to pursue them at the cost of equality. Savulescu & Cameron's framework is so reliant on the view that levelling down is wrong that it fails to account for the valuable loss that having the elderly suffer alone represents.

During the initial stages of the COVID-19 pandemic, governments faced a difficult choice: should restrictions on free movement affect the entire population (total lockdown, or TL) or only those citizens who, because of their higher risk of death or severe disease —most relevantly the elderly—, could burden healthcare facilities and resources beyond their capacity (selective lockdown, or SL)? In a widely discussed article, Savulescu & Cameron supported selectively locking down the elderly, among other reasons, on the assumption that it is better for only some, rather than all, to endure home isolation(1). Given that younger citizens were less likely to need comprehensive medical treatment if infected (and thus overburden the healthcare system), requiring them to self-isolate only on grounds of equality amounted, according to the authors, to "wrong" levelling-down equality. This response challenges Savulescu & Cameron's assumption that SL was preferable to TL *simply* because the latter entailed levelling down. Healthcare policy analyses that start from the preliminary hypothesis that we should never level down imply that even the most trivial Pareto gain will sufficiently justify forsaking equality, as understood in one specific sense that Temkin identifies with "comparative fairness"(2). In supporting SL *because TL entailed levelling down*, Savulescu & Cameron overlook that implication. This prevents more comprehensive policy assessments that ground support for a preferred solution on a balance between equality and improvements in individual wellbeing, both of which should be valuable goals for healthcare policy.

According to the levelling-down objection (LDO), egalitarianism is unsound because it opposes Pareto improvements (distributions that benefit some and make no one worse off) whenever they yield unequal outcomes, *only* for that reason. For proponents of the LDO, there is *no respect* in which a distribution that benefits some and harms no one can

be worse than one in which all enjoy less, but *equal*, wellbeing. Therefore, they claim, distributive equality is flawed as a moral ideal(3). Imagine a hypothetical society in which everybody is blind and, at a certain point, resources are available to cure some, but not to cure everyone(4). Egalitarians would allegedly oppose treating blindness in that situation, even if it would substantially improve some people's lives. For LDO supporters, this proves "that there is nothing valuable about equality itself"(2) because it supports trading off someone's "well-being with an impersonally valuable state of affairs"(5). In scenarios where this trade-off is possible, one should favour unequal Pareto improvements on a simple logic: it is better that only some can see than having all remain blind simply because we cannot *equally* help everybody. As for pandemic lockdowns, the equivalent to treating blindness in our previous example is alleviating restrictions on free movement. As LDO adherents, Savulescu & Cameron argue that, "given that there needs to be some restriction of liberty (or so we are assuming), it is better that this be less rather than more (even if more loss of liberty is more equal)"(1). Since SL could not worsen the elderly's position—their freedom of movement would remain as limited as under TL—, it would be unreasonable to impose the same burden on everyone else.

Some consider the LDO "the most serious objection to the principle of equality"(6). In reply, philosophers like Larry Temkin defend a *pluralistic* understanding of egalitarianism, according to which, the fact that people's levels of wellbeing do not reflect morally arbitrary contingencies matters non-instrumentally, but "it is not the only thing that matters"(7). In conceptions like Temkin's, equality is "valuable in itself, over and above the extent to which it promotes other ideals"(7) but, since pluralistic egalitarians accept that there are other relevant moral principles alongside equality, they *need not* assume that "a world in which everyone suffers and equally so" is "better *overall* (emphasis added) than a world in which everyone lives blissful lives, but some slightly more so than others"(8). This means that, during crises that demand confinement, egalitarians may not always prefer TL to SL *simply* because the former secures equality. When Pareto improvements in personal wellbeing are as significant as, for example, recovering vision in our previous hypothetical scenario, they may favour the unequal outcome even if they still regret that the only way for some people to see is through distributive inequality. Pluralistic egalitarians could thus side with Savulescu & Cameron in rejecting TL when it prevents significant improvements in wellbeing. Their theories recognise that sometimes equality should not interfere with more individual freedom, even if circumstances make it impossible to maximise it equally for everyone.

However, pluralistic egalitarians can also combine regard for personal gains with the view that we should not compromise equality for the sake of—even—*trivial* improvements in individual wellbeing(4). Even if levelling down was sometimes wrong, equality is so important a moral goal that some improvements in wellbeing do not count enough to sacrifice it. Pluralistic egalitarians emphasise the value of equal distributions because they track the view that all human beings share an equal moral status: "if […] we believe that one person ought to be better off than the other, it follows that we think that there is a reason for the [unequal distribution] and justice requires that this reason be a relevant difference between them. But, by hypothesis, there are no relevant differences, and the persons have equal status, so it follows that the same reason holds for the other person to be that well off. So, if the other person is not as well off, then that person is being treated in violation of […] his equal status"(9). This explains why our moral judgements on the

distributive outcomes of healthcare policies should not stem only from how much they improve *absolute* individual wellbeing, but also from how they have some people fare relative to others.

Savulescu & Cameron's framework does suggest that inequality might make a distribution bad in at least one respect, as they attempt to protect SL from the accusation that it entails "ageist" discrimination by appealing to considerations of proportionality(1). However, the claim that we should reject TL because it requires levelling down—and levelling down is *wrong*—implies, at the same time, that we should prefer even an ageist SL to TL *whenever* the latter trumps Pareto improvements in wellbeing. This prompts the following question: if equality generally informs us in evaluating healthcare policies, for example, by making inequalities on grounds of age legitimate *only* when they are *proportionate* means to pursue other ends, why should it stop to do so when equality requires levelling down? By automatically rejecting levelling down, the LDO prevents us from even considering proportionality when addressing *any* Pareto-improving inequalities. Within the LDO's framework, not even disproportionate ageism could count as a reason to prevent Pareto improvements.

The assumption that levelling down is wrong excludes a fundamental consideration that Eyal calls "fairness towards the sufferer"(4) from public healthcare policy. Of course, it is one thing for that consideration to, by itself, prevent all Pareto improvements that yield unequal outcomes (egalitarians like Temkin embraced pluralism to avoid this, precisely), but it is a very different one for decision-making procedures to completely obliterate it whenever some can enjoy more wellbeing by making others suffer alone. Pluralistic egalitarians acknowledge that something valuable is lost if the young are forced to self-isolate when their risk of morbidity and mortality is remarkably lower. Nevertheless, unlike Savulescu & Cameron, they may see an even bigger loss in maximising personal benefits if, "through no fault or choice of her own", a person or group endures hardships that others do not(4). Those unevenly shared hardships provide a fundamental reason to favour TL over the Pareto-superior SL: there is a strong sense of unfairness in the elderly being the only ones who experience the physical and mental afflictions that derive from isolation. Savulescu & Cameron's assumption that burdening only some, rather than all(1), is *necessarily* better than levelling-down equality neglects this important consideration.

Furthermore, pluralistic egalitarian conceptions need not weight all improvements in wellbeing similarly against equality. When imposing lockdowns, presuming that we should never level down conceals that free movement covers an array of interests, not all of which can equally justify distributive unfairness. Sure, TL entails a "loss of basic schooling", but it also involves things like "frustration at missing your morning coffee"(10). However, both interests count indistinctly against equality when TL is excluded as *simply wrong* if it means levelling down. This seems inadequate even for Savulescu & Cameron, who suggest that TL may have been preferable to SL in a scenario where "a vaccine were imminent"(1). Although they do not pursue the reasons behind this intuition further, one candidate *explanandum* would be to insist that some benefits are too trivial to, in certain contexts, morally validate forsaking equality. Had a vaccine been available earlier than it actually was, it may have seemed whimsical to selectively isolate the elderly so that the young could enjoy certain outdoor activities *a few weeks*

earlier. This intuition is, nevertheless, incompatible with the plain statement that levelling down is *wrong*.

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