A Reply to Halliday

KOK-CHOR TAN
University of Pennsylvania

I must first thank Daniel Halliday for his incisive but fair review essay of my book.[1] Regretfully, I can only consider, and only in outline at that, some of his well-taken questions.

Does an institutional approach to justice arbitrarily leave out of the purview of justice personal conduct that we would condemn as unjust? Halliday presents the example of the parent who, within the terms of institutional rules, significantly favours his son's education over his daughter's. Halliday's challenging example deserves closer discussion, but space allows only some general remarks. First, the institutional approach is a formal thesis about the structural division between justice and personal pursuits and not a substantive one about what justice in fact ought to demand. Thus an institutionalist could, consistent with the formal thesis, argue that institutional rules ought to be extended to restrict certain individual conduct currently permitted by the existing institutional rules. Second, certain individual conduct, even though consistent with just institutional rules, can still be deemed unjust if they have consequences that undermine background justice (hence in violation of one of the conditions of genuine personal pursuits described in my book). Thus it is not a foregone conclusion, under the institutional approach, that an individual conduct is just simply because it is permitted by the existing institutional rules. To be sure, an institutional response to some cases of individual conduct can only be indirect – taking the form of counteracting institutional arrangements to offset the effects of such choices – but this is still an institutional response.

But Halliday's basic challenge is against the formal thesis: is it not arbitrary to limit the locus of justice to institutions, he asks? In reply, consider a counter-question: if we start from the presumption that not all that is good is reducible to the ideal of justice, what other ways are there of approximating and implementing the division between justice and valuable personal pursuits? An institutional focus seems to me to be the most feasible method of demarcation. Indeed, it is not clear what a practicable alternative would be that does not just turn justice into the larger normative category of the morality of right and wrong. The

[1] Daniel Halliday, 'Review Essay', in this journal; Kok-Chor Tan, *Justice, Institutions, and Luck: The Site, Ground, and Scope of Equality* (Oxford, 2012).

© Cambridge University Press 2013
Utilitas Vol. 25, No. 1, March 2013
doi:10.1017/S0953820812000544

https://doi.org/10.1017/S0953820812000544 Published online by Cambridge University Press

institutional approach is in part a practical response to a philosophical problem, but this does not mean that it is an arbitrary solution.

I affirm a substantive position in adopting Rawls's difference principle as the institutional egalitarian principle. On this matter, Halliday notes that unlike the tolerance of hate-speech under the principle of free speech, the inequalities tolerated by the difference principle can undermine background social justice and create a divisive society. But if the difference principle is understood to operate in conjunction with other principles of justice, it cannot generate the vast inequalities implied in Halliday's worry. It is true that the difference principle does allow for inequalities that need not exist but for its incentive provision, but Rawls's justification procedure for the difference principle is meant to show that this principle, its allowance of certain inequalities notwithstanding, satisfies the condition of reciprocity and mutual acceptance amongst the parties to the agreement.

Concerning my attempt to situate luck egalitarianism within the institutional approach, Halliday argues that by limiting justice-relevant luck to those that have been combined with institutional arrangements to result in differential advantages, I ignore 'pre-institutional luck' that can differentially affect people's prospects. Although I anticipated and offered some mitigating arguments against this concern (which Halliday acknowledges), Halliday rightly points out that more can be said to distinguish differential life prospects affected by pre-institutional luck and those affected by the combination of institution and luck. But as a stop-gap response, which I hope is sufficient for getting the account off the ground, let me restate my key mitigating argument (which Halliday leaves out). This is that the kinds of inequalities that ignite egalitarian debates are usually inequalities that are institutionally influenced. For example, a person's congenital poor health is a matter of pre-institutional bad luck; but what excites egalitarian interest, what renders this situation one of egalitarian justice and social policy, is the issue of her *access* to proper health care, and this is an institutional matter. Luck egalitarianism is a theory of distributive equality proposed in response to a set of real world problems of economic inequalities. These real world problems characteristically are problems having to do with differences in social class, unequal educational and employment opportunities, lack of fairness in access to health care, and political inequality, and these are problems of institutions. Relative to the problems that luck egalitarianism is meant to confront, the blind spot (for pre-institutional luck) in my account is perhaps not as serious as it seems.

My luck egalitarianism presumes a distinction between humanitarian duties and distributive egalitarian obligations, and confines the

https://doi.org/10.1017/S0953820812000544 Published online by Cambridge University Press

application of the luck egalitarian principle to the latter. But are humanitarian commitments not at bottom commitments of equality itself, for example, the commitment to treat persons as moral equals? As I have tried to explain, there is a difference between regarding persons as moral equals as such and taking on distributive egalitarian obligations towards them. The latter I define specifically as a commitment to regulate economic inequalities between persons. I agree that all plausible political and moral theories are motivated by some general ideal of moral equality (as noted by Dworkin and others), but it does not follow that all plausible political and moral philosophies are committed to distributive equality as defined. What distinguishes humanitarian duties from distributive egalitarian obligations is not what we call them (though it helps to give them different labels if they are different things) but that they are different forms of commitments with different objectives and proximate grounding reasons (even if we allow that both ultimately derive from some basic ideal of moral equality). As a distinctive ideal, distributive equality presents important questions concerning its site, ground and scope, questions that should not be wholly reduced to an analysis of moral equality as a general ideal. Luck egalitarianism, so I argue, can be productively understood as a principle specific to distributive equality.

kctan@sas.upenn.edu

https://doi.org/10.1017/S0953820812000544 Published online by Cambridge University Press