

## Philanthropy and the All-Affected Principle

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The All-Affected Principle (AAP) in democratic theory claims that all who are affected by a decision should be able to have a voice in that decision. Questions immediately arise: How wide is the scope of the principle and what are its grounds? In this chapter, we focus initially on a question concerning scope. The AAP is most frequently assumed to apply to formal political decision making. We explore whether the principle should have any purchase in a particularly prominent and powerful extra-governmental domain: philanthropy. Should the All-Affected Principle be an important norm of good philanthropic practice?

If the AAP is understood modestly, then perhaps this is already the case. Donors and grant-making foundations often acknowledge the importance of learning from the feedback of two groups affected by their decision making: the grantees whose activities may be shaped by donor preferences and conditions (the strings attached to grants), and the beneficiaries whose interests those grantees attempt to advance. However, there is reason to doubt this modest application of the AAP. In foundation philanthropy, it remains rare to provide unrestricted general operating support to grantees, and many of the most prominent foundations deploy a decidedly technocratic approach (sometimes called strategic giving) that relies on highly targeted grant making. This approach treats grantees as subcontractors whose task it is to carry out a particular component of a vision or theory of change developed by philanthropists. The voices of beneficiaries and the knowledge possessed by grantees are routinely neglected.<sup>1</sup>

In general, foundations pay lip service to the notion of empowering grantees and beneficiaries, while reserving the right to define for themselves the interests and effects that are relevant to their objectives in grant making. An honest assessment of the AAP as applied to philanthropy reveals that the ways that most foundations have attempted to incorporate grantee and beneficiary voice fall very far short of the kinds of democratic reforms that the AAP envisions.

In what follows, we provide an example of the kind of dispute that can arise from foundations' technocratic orientation, and we use the case to reflect on whether the AAP should be applied to philanthropic decision making. Thinking about the AAP in the case of philanthropy invites exploration of the scope of the All-Affected Principle (and its application to nongovernmental actors). Against common interpretations of the AAP that apply it only to formal political decision making, we argue for extending to philanthropy the AAP's demand that affected parties be included in decision-making processes. We do so without relying on an expansive reading of the AAP that interprets it as applying to *all* kinds of decisions, public and private. Rather, we argue that the reasons we have for endorsing the AAP – for thinking that it is wrong for people to be denied influence over exercises of power that affect them – do not pick out formal political decision making as a uniquely important site of inclusion. Parallel reasons apply to philanthropy and some, we think, have particular force in that domain.

Our revisionary argument about the scope of the AAP also illuminates questions concerning the principle's grounds. Philanthropy is an interesting test case for our intuitions about the grounds of the AAP, because it calls attention to important differences between two ways that the AAP is often framed: as a demand to *consider* affected interests in decision making, or as an obligation to *enfranchise* the bearers of those interests. Of course, enfranchising affected interests is often an important instrumental strategy – probably the most reliable one – for ensuring that the relevant interests *are* considered: often, the goals of considering and enfranchising affected interests will overlap. But in the case of philanthropy, they often come apart: in general, philanthropists are attempting to consider and advance the *interests* of their intended beneficiaries, but *not* to grant beneficiaries or grantees control over how their interests are advanced. The case of philanthropy therefore provides resources for considering whether the AAP is instrumental to the consideration or advancement of substantive interests, or also grounded in respect for the autonomy of the people who bear those interests. By considering the appropriate scope of application of the AAP, we hope to underscore the broad implications of a commitment to democracy for the organization of social and political relationships in circumstances – as is the case of philanthropy – of unequal power.<sup>2</sup>

#### CASE: PHILANTHROPIC EFFECTS WITHOUT INCLUSION

The Bill and Melinda Gates Foundation's global health grant making in Africa has attracted criticism for its starkly technocratic orientation. Consider the case of Botswana, a democracy whose rate of HIV/AIDS prevalence has consistently ranked among the highest in the world.<sup>3</sup> The Gates Foundation launched a pilot program for HIV/AIDS prevention and treatment, the African Comprehensive HIV/AIDS Partnerships (ACHAP), in Botswana in 2000. By 2005, deaths from AIDS had fallen significantly (although prevention efforts showed less success).<sup>4</sup> However, over the same period, pregnancy-related

maternal deaths and child mortality both increased. This led to concerns that the foundation's initiative had drained many doctors away from primary care and into the foundation's areas of priority (Gates-supported salaries in the HIV/AIDS sector were significantly higher).<sup>5</sup> In response to criticism, the director of the Global Fund to Fight AIDS, Tuberculosis, and Malaria (a Gates partner) acknowledged that their interventions may have had a "distorting effect," but said, "we're a Global Fund for AIDS, TB, and malaria. We're not a global fund that funds local health."<sup>6</sup> The Global Fund reserved the right to determine the effects in which it was interested and for which it owed justification.

The Gates Foundation, like many large foundations, expresses a commitment to the empowerment of its beneficiaries; its announcement of the ACHAP grant is titled "Working *with* Botswana to Confront its Devastating AIDS Crisis" (my emphasis). However, in the face of complaints that democratically elected Botswana officials were excluded from decision making around the program,<sup>7</sup> Gates Foundation officials have defended selective interventions delivered outside countries' general health systems and targeted to the foundation's areas of focus. The stated rationale is that they do not want government departments to become dependent on foundation money. Dr. Tadataka Yamada, the executive director of the Gates Foundation's global health program from 2006–2011, explained that "What [the Foundation] can't do is fill the gaps in government budgets ... It's not sustainable."<sup>8</sup> Rather, "What we do is we catalyze ... We are not replacement mothers."<sup>9</sup>

Such comments, like those of the Global Fund director, reflect a potentially troubling combination of impulses: on the one hand, philanthropists' desire for impact; on the other, a reluctance to assume responsibility for effects (direct or indirect) that lie outside specific program goals. Philanthropists and foundations that have been exceptionally generous in giving money for the relief of global poverty and related problems have been less willing to cede control over how that spending is allocated and evaluated. This reflects a more general resistance, on the part of philanthropists, to characterize their relationships with beneficiaries as *political* relationships that involve significant differences in power. Many large foundations assume that the relevant knowledge resides primarily in the foundation itself, whose leaders and staff have their own theories about how to produce social change and strategies to test and measure those theories through grants. Democratic norms of inclusion and accountability are exactly what the foundation seeks to avoid. Put differently, foundations represent a form of technocratic or expert voice within democratic institutions and civil society. The question is whether this represents a problem from the point of view of democratic governance.

#### APPLYING THE ALL-AFFECTED PRINCIPLE TO PHILANTHROPY

On virtually any interpretation of the AAP, it will already be obvious that Botswana citizens ought to have a voice in decisions that affect their interests

as significantly as healthcare allocation does. But it is also unclear how this principle affects the obligations of the Gates Foundation. Most discussions of the All-Affected Principle focus on formal *political* decision making, at the level of state and interstate institutions.<sup>10</sup> The normative claim is straightforward: people whose interests are (significantly) affected by political decision making should have the opportunity to influence those decisions by, minimally, having their preferences consulted or, more ambitiously, by directly participating in the decision making. But should the AAP apply outside of formal political institutions?

Perhaps not. One possible reaction to the case discussed in the previous section is that democratic institutions, at the national, sub- and supranational levels, ought to ensure that citizens have a voice in the decisions that affect them. But in the absence of such institutions (or perhaps, in the domestic case, against the backdrop of democratic institutions), private actors operating on a voluntary or commercial basis are entitled to act as they like, provided they follow the rules set by political actors. In the philanthropic case, this means that the Gates Foundation, and any other philanthropic entity, is entitled to act in such a way *to produce the effects that it thinks are desirable* (and that may really *be* desirable). The framework is one of private contract: the foundation offers a grant, it is entitled to attach whatever strings it wishes in order to carry out its vision, and the potential grantee can either accept these strings or reject the grant altogether. To the extent that grantee or beneficiary voice is present at all, it is at this moment of initial negotiation and contract. Construed in this manner, provided they follow the rules set by political actors, the prerogative of foundations to discount or ignore the voices of beneficiaries and grantees is straightforward. If there is a problem here, it exists at the level of background institutions, and we should focus on resolving the problem at that same, political, level.

We question this argument. Private actors (and not only states and inter-governmental organizations) can acquire duties to allow the *people* affected by their decisions real influence over those decisions (and not, as is now common practice, simply to take those decisions with reference to the *interests* of the people affected). There are two principal reasons to apply a principle of affected interests to the activities of philanthropists.

First, the claim that private actors would be entitled to exercise broad discretion against the backdrop of distributively and politically just international institutions does not imply that they enjoy the identical moral discretion absent such institutions. In ideal theory, the AAP is generally understood as a principle regulating higher-order lawmaking and the design of political institutions, not as a requirement that individuals have a say in *each and every* decision that affects them. (Nozick's example – proposing that all hopeful suitors have a say in the decision of whom, if anyone, a woman should marry – is a famous *reductio* of the latter possibility.)<sup>11</sup> This restriction of democratic principles to higher-order institutions is a common feature in democratic theory, and the priority of equal influence over *political* institutions is clear enough, at least

when we are operating in ideal theory. As Kolodny puts it, “if we do have equal influence over political decisions, and those decisions have final authority over nonpolitical decisions, then that itself contributes to moderating the threat ... posed by unequal influence over nonpolitical decisions,” since in such a society “whatever hierarchy there may be is ultimately regulated or authorized from a standpoint of equality.”<sup>12</sup> This might seem to provide a rationale for restricting the AAP to higher-level public institutions – ones capable of regulating the downstream, nonpolitical distribution of influence. The practice of philanthropy would be such a downstream location, and the inclusion of beneficiaries in decisions about the targets and terms of donations might then be supererogatory. At the ideal end of the ideal–nonideal spectrum, the presence of just background conditions may make plausible a contractual framework of transacting parties in a voluntary exchange.<sup>13</sup>

In nonideal circumstances, this position is untenable. There is a case for applying the AAP to the activities of philanthropists, *even if* one thinks that, in ideal theory, the AAP could justifiably be restricted in its application to political institutions. This argument does not rest on the implausible claim that there is a first-order normative obligation to give all people affected by *any* decision a say in making that decision. Rather, when there are serious defects in either distributive or political justice, either globally or domestically, the AAP’s demands for inclusion and empowerment can devolve on actors on whom it might not otherwise be binding.

One important reason for treating the AAP as a norm of philanthropic practice concerns the devolution of responsibilities of inclusion in contexts where democratic domestic and/or transnational institutions are missing. To return to the Botswana case that we’ve been discussing: if global institutions were arranged in compliance with the AAP, such that the international political order was as responsive to the interests of Botswana citizens as it is to those of citizens of any other country, matters would look different. But it’s clear that foundation officials driving a hard bargain can *not*, in the real world, excuse themselves by pointing out the prior opportunities for Botswana citizens and officials to shape the rules and norms that distribute global economic and political power. While Botswana itself is a stable and functioning democracy, its officials and citizens are constrained by injustices and power asymmetries in the international system. On one interpretation of the AAP, which makes it solely a principle of ideal theory, this is just one way of restating the injustice of the international system (and perhaps of trying to motivate change). But on another interpretation, this changes the obligations of secondary actors: acknowledging the failure of political institutions at the transnational level, domestic political institutions and private actors may be morally constrained to grant rights of participation. Put simply, the case for restricting the AAP to higher-level institutions in ideal theory does not suffice to insulate secondary actors from responsibility for directly satisfying the principle in nonideal theory, where the just division of institutional labor envisioned in ideal theory is inoperative. If the AAP is a genuine ethical

or political principle (and not just a diagnostic tool), then we ought to consider its implications for individuals and private actors under conditions of injustice (which is to say, under all actually existing conditions).<sup>14</sup>

In a world where the All-Affected Principle was realized at the level of political institutions, people would (by assumption) have a say in the scope for action and political regulation of private actors. In nonideal circumstances, absent such higher-level principles of political inclusion, private actors exercise their superior power in a way that lacks full democratic authorization and legitimation. Against the backdrop of distributive unfairness and the presence of unjustly vulnerable or disadvantaged populations, the efforts of private actors through philanthropy to ameliorate inequality, to secure the dignity of the vulnerable, or to improve the prospects of the disadvantaged are often laudable. But charity is no substitute for justice. And even if charity is a second-best response to injustice, the standing of private actors to direct their charity as they please, and to exercise their discretion without including the voices of those whom they seek to affect, may not hold. To the extent that one holds a normative commitment to the All-Affected Principle, the failure to realize that principle through political institutions affects the downstream normative standing of private actors. This point applies broadly, for example to the activities of for-profit private actors.<sup>15</sup>

Second, separable from the presence of background injustice, there is a particularly strong case for applying a principle of affected interests to *philanthropic* decision making. It arises from the fact that, in the case of philanthropy, it is often *the very interests of the people affected* that foundations and NGOs invoke when defending the effects produced. This is different from what generally occurs in the case of for-profit multinational corporations. Of course, it might still be troubling when corporations produce effects (especially negative effects) on people in ways that those people are not able to influence. But one might argue for something like a version of the doctrine of double effect here: perhaps private actors pursuing their own interests are entitled (within some range) to produce negative effects on others, so long as they do not specifically intend those negative effects.

But the intentional structure of philanthropy is different, in ways that should encourage us to reflect on the kinds of effects that ground claims for inclusion in decision making. It is especially disrespectful to exclude people from influence over decisions that affect them *while claiming that one is promoting the interests of those people*. For most liberals, the normative standards for seeking to affect or influence someone for her *own* benefit are actually *more* stringent than the standards for affecting her as a by-product of the pursuit of one's own interests. And so a commitment to anti-paternalism could ground a particularly strong case for enfranchising affected interests in philanthropic contexts. The case of philanthropy invites conversation both about the domain of application of the All-Affected Principle, and the *kinds* of interests that ground claims for inclusion and influence.

Our argument does not require thinking (implausibly) that philanthropic action is distinctively likely to cause harm; we assume as overwhelmingly likely that profit-seeking corporate activities produce more negative effects than do those of philanthropists. Nor does our argument require thinking that philanthropies like the Gates Foundation produce more harm than good: it is likely that the good effects of Gates Foundation activities far outweigh the bad. Rather, we challenge the assumption that it is primarily the risk of *negative* effects that grounds people's claims to inclusion in decision making. The *reasons* underlying the pursuit of different effects also have a place when assessing claims for inclusion. On this argument, one need not think that all people potentially affected by Bill and Melinda Gates's philanthropy are entitled to a say in how they spend it, *before* they take any decisions about where to donate: the anti-paternalist argument is compatible with thinking that donors enjoy wide discretion as to whether and where to give. An anti-paternalist specification of the principle of affected interests focuses rather on *how* one gives and on how control of philanthropic funds is distributed between the donor, beneficiaries, and other affected interests.

Put differently, considering whether the AAP should apply to extra-governmental domains such as philanthropy opens up a conversation not just about the scope of the principle but about its very grounding.

#### INSTRUMENTAL AND INTRINSIC JUSTIFICATIONS FOR THE AAP

Why exactly ought the interests of those affected by a decision be included in the decision-making process? In the case of philanthropy, one answer is that doing so is very likely to produce better outcomes: by incorporating the voices of grantees and beneficiaries, philanthropic interventions are improved. On this view, the AAP has an *instrumental justification*: its application in philanthropic decision making tends to improve what it is that philanthropists or NGOs seek to produce.

Within the world of philanthropy and NGOs, this is not an especially controversial view, at least when expressed as an aspiration or as a general principle. Foundations often claim that they aim to incorporate the voices of grantees and their beneficiaries in their decision making for the simple reason that doing so is a basic condition for learning how to improve philanthropy and produce better outcomes. Foundations that seek to be learning organizations will routinely look to their grantees and beneficiaries as the sources of local knowledge and try to access that knowledge through organizational processes that routinize grantee feedback. However, given the obvious power imbalance between foundations and their grantees, creating meaningful feedback loops and learning mechanisms is structurally difficult. And foundations lack substantive forms of accountability for their performance (they neither have competitors, as do firms in the for-profit marketplace, nor governance

structures, as do government agencies in a democratic society, that could force the replacement of leaders through regular elections<sup>16</sup>), so they can easily operate *without* incorporating grantee or beneficiary voice. And apart from these considerations, in an age of highly technocratic philanthropy there is ample reason to doubt whether foundations do more than offer hollow gestures to the importance of grantee voice. The AAP might have an instrumental justification in the domain of philanthropy, but abiding by or operationalizing it in practice is evidently difficult if it is endorsed just as a norm of good practice. And this despite its being in the interest of donors, assuming that donors actually seek to produce good outcomes and to improve their grant-making practice over time.

We believe that the philanthropic context also reveals a potential *intrinsic justification* for the AAP. Suppose one believed that there are clear benefits to purely technocratically driven philanthropy (accepting that neglecting grantee and beneficiary voice is compatible with, or even necessary to produce, good outcomes), and suppose further that philanthropy was undertaken in the presence of fully just background conditions, giving philanthropists a wide discretion to practice grant making as they wish. Even so, we have reason to endorse an application of AAP to philanthropy.

The argument here is the anti-paternalism case we have briefly developed. Technocratic philanthropy might deliver uncontroversially good outcomes for grantees and beneficiaries, with those outcomes acknowledged by both grantees and beneficiaries. But in acting paternalistically, philanthropists wrong the agents they intend to benefit. Such paternalism is morally objectionable, and all the more so when we view philanthropy dynamically, as more than a one-off interaction between one donor and one grantee.

The germ of the argument can be seen in a cliché often invoked by grantees or critics of philanthropy: that philanthropy is something that should be *done with* rather than *done to* the people who benefit from it. Some of these cases can be understood on the instrumental argument that we discussed above, or as exposing the pitfalls of hierarchically organized social practices. But we can also understand the undemocratic practice of philanthropy as objectionable in itself, on anti-paternalist grounds that speak to the grounds of the AAP (and of democracy) more generally.

#### THE AAP AS AN ANTI-PATERNALIST PRINCIPLE

One reading of the moral principle underlying the AAP is this: that each person's comparably important interests deserve equal consideration.<sup>17</sup> This interpretation of the grounds of the AAP makes the AAP something close to a principle of justice. What's fundamental is the obligation to consider and promote the interests of all; *how* this is to be done is a downstream question.

We believe that a different premise grounds the appeal of the AAP: that people should be treated as both competent and entitled to articulate and promote their *own* interests, rather than, in the worst case, being vulnerable to powerful



actors who can negatively affect their interests with impunity or, in the best case, relying on technocratically benevolent but unaccountable external actors to promote their interests on their behalf. Democratic decision making is not merely instrumental to the protection of people's substantive interests (grounded in the empirical claim that if people are denied a say in the decisions that affect them, their objective interests are likely to be underserved). It is also required by respect for autonomy: affected people need to be able to define for themselves what their interests are. This interpretation of the AAP (unlike the one calling for equal consideration) makes it a fundamentally democratic principle: the *grounds* of the principle are not just about an open-ended commitment to the equal moral worth of persons but also about *how* we implement equal consideration (that is, by giving power to the people we want to be considered). On our reading, commitment to the AAP implies commitment to anti-paternalism: *hierarchically* organized consideration of affected interests is insufficient to satisfy the AAP.

We use the term paternalism broadly, to refer to attempts to influence an agent's decisions or actions that express the judgment that the agent's ability to choose or act well on her own behalf is deficient or inferior in some relevant respect. Our focus is therefore on the insult that paternalism expresses toward the person paternalized.<sup>18</sup>

We do not restrict our definition of paternalism to cases where the paternalizer engages in coercion or where there is otherwise some defect in the consent of the person paternalized. This is a controversial choice: some will judge it overinclusive, and instead wish to restrict the definition of paternalism to cases where the paternalizer coerces the person paternalized or otherwise infringes on her rights.<sup>19</sup> On the latter, more restrictive definition of paternalism, it will generally be difficult to see how the activities of philanthropists could count as paternalistic, since philanthropists are usually understood to be *adding* to the options available to beneficiaries rather than removing any preexisting options. Perhaps one could argue that background conditions are so flawed that the offers extended by philanthropists count as coercive (since grantees or beneficiaries lack any acceptable alternative) or that the grantees or beneficiaries are incapable of genuine consent. While we accept that such conditions might sometimes obtain, we do not believe that classifying philanthropy as paternalistic depends on accepting such claims.

Paternalism is not, on our understanding, a subset of coercion but a broader category of wrong: it is objectionable not (or not only) as an unjustified liberty restriction but as a failure to show respect for autonomous agents and a threat to relations of equality. It can be expressed not only where paternalizers unilaterally intervene in ways that restrict liberty relative to a pre-intervention baseline, but also where they attempt to put in place structures to restrict the *future* scope for choice of beneficiaries (even if beneficiaries consent to those structures). Suppose that a prospective beneficiary B has X range of liberty or scope for choice at time T. At time T+1, philanthropist A offers B a benefit, conditional on restricting B's scope for choice to X-Y at time T+2. On our reading, what is

relevant to the assessment of paternalism is not only whether there is any coercion or liberty-infringement at time  $T+1$  (we assume there is not: that B's scope for choice at  $T+1$  is actually *greater* than X, because of the added option that A offers), but A's reasons for seeking to constrain B's scope for choice at time  $T+2$ . If those reasons refer to B's inability to judge or act well on her own behalf, A's action can be paternalistic even if B is better off overall at time  $T+2$  and if her consent to receive the benefit with the attached conditions was genuine.

To motivate the possibility of noncoercive, non-rights-infringing, consensual paternalism, consider the following example. Suppose that wealthy parents set up a trust for their children, which is designed to be unlocked in stages over the life spans of the children: they come into an initial bundle of money at age 18, another at age 30, another at age 45, and so on. At each stage, there are conditions that specify whether the child is entitled to the money, and perhaps also conditions on how the money may be used (e.g. only for education, housing, or childcare). Stipulate that the adult children are not owed this money as a matter of justice: the parents have fulfilled their duties of care, the children are now self-sufficient, and by not receiving the money in the trust they would not be left badly off in absolute terms (we might even think that the money they receive through the trust may, in the big picture, leave them unjustly *well-off*).

It is easy to see that complying with the conditions in order to access the trust makes the adult children better off in welfarist terms – at least in one way (i.e. in respect of money) and presumably overall (since they have the option of refusing to comply with conditions that they judge to be too onerous, and of forgoing their claims to the money in the trust if they judge that the tradeoffs aren't worth their while). We can assume that the adult children's consent to the terms of the trust (if they accept them) is genuine and unforced. Still, we take it that such a trust represents an expression of distrust of the agency of the adult children, and that the parents in this case act in an insultingly and objectionably paternalistic way. (One might think this *even* if one still thought the parents had a moral and legal entitlement to dispose of their property as they see fit; we are not arguing that all forms of paternalism are all-things-considered impermissible or that they should all be legally barred.)

The reason for this intuition – and something important about paternalism that this case helps bring out – is that paternalism is often a feature of ongoing *relationships*, and not always of one-off transactions. Part of what can be objectionable about paternalism is the attempt to put oneself in a position of longer-term authority over an autonomous agent, even if that attempt proceeds by getting the agent to *agree* to defer to another person's judgment about the agent's best interests.<sup>20</sup> Assessing the consensual or noncoercive character of individual transactions does not always give us sufficient information to assess whether or not a social or political relation is objectionably paternalistic: we need more information about the ongoing patterns of interaction between the relevant actors, in particular regarding whose judgments are taken as authoritative in making decisions about an agent's important interests.

This understanding of paternalism has significant advantages for evaluating paternalistic treatment in globalized contexts of widespread injustice, where entitlement claims may be complex and obscure. Standard liberal definitions of coercion focus on the behavior, aims, and intentions of the coercer, not on the range of options or subjective experience of the person putatively coerced. While coercion does not require the exercise of force, it does require that the coercer have the intention and the ability credibly to threaten to make some of your preexisting options less attractive if you fail to act in the ways that they want.<sup>21</sup> Whether or not something is coercion also depends on the background structure of rights and entitlements. If I threaten to withhold something that you have a claim on unless my terms are met, that is coercion; if I offer you something that you do not have a claim on, subject to conditions, it becomes a noncoercive offer. In the case of international philanthropy, whether a philanthropist's action is coercive or not – and, derivatively, whether it is objectionably paternalistic or not – will depend on whether or not putative recipients have a claim on the good in question, and whether that claim is assignable to the philanthropist making the threat or offer. Often the answer will be mixed: for example, it will often seem plausible to say that potential recipients have a claim on *someone* for resources to meet basic needs, but that the claim is assignable to their own governments (or perhaps, derivatively, to the international community) and not to any particular philanthropist or group of philanthropists. So although aid recipients may encounter an unjustly constrained set of options, this is a fact that philanthropists are at worst *exploiting* rather than creating or threatening to create. *Relative to the no-donation baseline*, they are not coercing the recipients. And yet from the point of view of beneficiaries and an evaluation of their relationships, this seems beside the point; background injustice plays a significant role in motivating beneficiaries' consent to restrictions on their autonomy, and we should be able to register the unfair and insulting character of the resulting relationships. This requires a diachronic understanding of paternalism that shifts attention from the character of the paternalizer's infringement (at the moment of intervention) to ongoing curtailments of the paternalizee's autonomy.<sup>22</sup> The AAP is a useful anti-paternalist guide because it provides a better heuristic for avoiding paternalism than do calls to avoid coercion.

In summary, then, we believe that the case of philanthropy can be useful in illuminating both the scope of the AAP (and, in particular, how the democratic demands of that principle can devolve from public institutions to secondary actors in nonideal theory, where choice sets are tainted by background injustice) and its grounds (in particular, the insufficiency of a hierarchical organization of consideration).

## CONCLUSION

How might enfranchising affected interests work in the case of philanthropy? Here there is a spectrum of possible responses. At the weak end, recognizing

democratic deficits at the institutional level and incorporating commitments to anti-paternalism could encourage donors and foundations voluntarily to expand the kinds of nonbinding community “consultation” that they sometimes currently engage in. They could also choose to channel gifts through (rather than outside) democratic governments where those exist; where democratic institutions are absent, they could expand unconditioned gifts to civil society groups and individuals – more general operating support rather than targeting grant making. These are ways of incorporating a commitment to enfranchising affected interests as a matter of *ethical* theory – that is, of converting it into moral advice for donors.

As a matter of *political* theory, there are also ways that we might try to challenge the presumption that *donors* are entitled full discretion in controlling and assessing their spending. There are a range of possible mechanisms by which we could attempt to accomplish this, in ways that do not rely on distributing all control to *governmental* actors: for example, we could adjust tax incentives for philanthropic donations to favor unconditioned giving. We could insist upon community representation on the governance boards of foundations. We could demand greater transparency in grant making so that both grantees and beneficiaries have the opportunity to examine the records of past and current foundation activities. The challenge of implementation here is to increase people’s control over the decisions that affect them, in ways that do not rely on exaggerated estimations of the democratic responsiveness of either philanthropists or actually existing states.

As the trust case we sketch above suggests, paternalism can occur even in the presence of consensual transactions that make the paternalized better off. Paternalism can be morally objectionable even under such conditions. But consent does make some difference, politically; the same respect for agents that moves us against paternalism should make us hesitate to block genuinely voluntary transactions, since to do so would be to prevent agents from pursuing what they take to be the best options available to them. In the Botswana case, for example, it would seem outrageous for the US government to block the Gates Foundation’s philanthropy, given that the terms of the aid were in this case accepted by democratically elected and accountable officials in Botswana. In addition to bearing its share of responsibility for international distributive injustice, the United States would then be responsible for the added injustice of preventing Botswana officials from accessing remedial options that would otherwise be available to them.

However, there can nevertheless be reasons to adjust voluntarily (and, where possible, politically regulate) the terms of voluntary transactions with a view to equalizing bargaining power. The case for this does not require arguing that the consent of putatively paternalized agents (or representatives of paternalized agents) is not genuine. We can think that people really are *choosing* the best option available to them, but that the option set from which they are choosing is itself unfair. This in turn introduces unfairness into an outcome

that is nevertheless chosen (and chosen in a way that makes a real moral difference). The appropriate response is not to block the people paternalized from choosing what they wish, but to try to improve their bargaining position. This might be attempted in a range of ways: most weakly, by making ethical (or merely instrumental) appeals to philanthropists; more strongly, by incentivizing unconditional giving (unconditional cash transfers, for example, to the unjustly disadvantaged and their representatives) and by subjecting to public criticism giving that exploits the unfair inequalities in bargaining position that currently obtain internationally.

Philanthropy, especially big philanthropy as practiced by large foundations that seek to ameliorate inequality or respond to injustice, is characterized by – perhaps defined by – a situation of unequal power. One clear upshot of our arguments here is that philanthropists deserve scrutiny, not just gratitude, in exercising their power. Such scrutiny is warranted not merely for the reason that we should wish for philanthropists to be effective in ameliorating inequality or responding to injustice, and that scrutiny may contribute to effective philanthropic projects. It is warranted because we should recognize and illuminate the paternalism that is often at the core of big philanthropy.

Beyond scrutiny, however, we have argued more demandingly that the All-Affected Principle has purchase in the extra-governmental domain of philanthropy. This is so for instrumental and intrinsic reasons. Incorporating the voices of affected grantees and beneficiaries in philanthropic decision making is instrumentally valuable in bringing about more effective philanthropy. And incorporating the voices of grantees and beneficiaries in philanthropic decision making is intrinsically valuable in mitigating a situation of deeply unequal power and responding to potentially morally objectionable forms of paternalism at the heart of philanthropic relationships. The case of philanthropy thereby reveals important dimensions of the scope and grounds of the AAP.

## NOTES

- 1 Foundation officers themselves sometimes criticize foundations for failing to learn from the experiences of beneficiaries or incorporate the local knowledge of grantees; see for e.g. “The Future of Foundation Philanthropy: the CEO Perspective,” *Center for Effective Philanthropy*, 2016, p. 23, <http://research.effectivephilanthropy.org/the-future-of-foundation-philanthropy>. On the other hand, the years since this chapter was originally written (in 2016–17) have seen a flurry of high-profile unrestricted giving (notably by MacKenzie Scott) and a broader interest in developing new models of “trust-based philanthropy.” These developments have the potential to grant more power to affected interests, although it remains too early to tell how far that potential will be realized.
- 2 For other recent works investigating how democratic principles apply to philanthropy, see Rob Reich, Lucy Bernholz, and Chiara Cordelli, ed., *Philanthropy in Democratic Societies: History, Institutions, Values* (Chicago: University of Chicago Press, 2016); Chiara Cordelli, *The Privatized State* (Princeton: Princeton University

Press, 2020); Theodore Lechterman, *The Tyranny of Generosity: Why Philanthropy Corrupts Our Politics and How We Can Fix It* (Oxford: Oxford University Press 2021); Rob Reich, *Just Giving: Why Philanthropy Is Failing Democracy and How It Can Do Better* (Princeton: Princeton University Press, 2018); and Emma Saunders-Hastings, *Private Virtues, Public Vices: Philanthropy and Democratic Equality* (Chicago: University of Chicago Press, 2022). This chapter builds on arguments developed by the authors in the latter two works.

- 3 This paragraph and the next draw on Saunders-Hastings, *Private Virtues, Public Vices*, pp. 154–60, where this case is discussed in more detail.
- 4 See Bill and Melinda Gates Foundation, “Working with Botswana to Confront Its Devastating AIDS Crisis,” Bill and Melinda Gates Foundation, June 2006, <https://docs.gatesfoundation.org/Documents/achap.pdf>; John Stover et al., “Estimated HIV Trends and Program Effects in Botswana,” *PLoS ONE* 3, no. 11 (November 2008), [www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0003729](http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0003729); and Ilavenil Ramiah and Michael R. Reich, “Public-Private Partnerships And Antiretroviral Drugs for HIV/AIDS: Lessons From Botswana,” *Health Affairs* 24, no. 1 (March/April 2005): 545–51. Both the Stover and the Ramiah and Reich studies were funded by grants from ACHAP itself.
- 5 Charles Piller and Doug Smith, “Unintended Victims of Gates Foundation Generosity,” *Los Angeles Times*, December 16, 2007: <http://articles.latimes.com/2007/dec/16/nation/la-na-gates16dec16>.
- 6 Piller and Smith, “Unintended Victims of Gates Foundation Generosity.”
- 7 See Ramiah and Reich, for statements from Festus Mogae, then the Botswana president, as well as from the health minister serving at the time. Their objections are discussed in more detail in Saunders-Hastings, *Private Virtues, Public Vices*, pp. 158–9.
- 8 Piller and Smith, “Unintended Victims of Gates Foundation Generosity.”
- 9 Piller and Smith, “Unintended Victims of Gates Foundation Generosity.”
- 10 For an important exception, see Archon Fung, “The Principle of Affected Interests: An Interpretation and Defense,” in *Representation: Elections and Beyond*, ed. Rogers M. Smith and Jack H. Nagel (Philadelphia: University of Pennsylvania Press, 2013).
- 11 Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Basic Books, 1974), p. 269.
- 12 Niko Kolodny, “Rule Over None II: Social Equality and the Justification for Democracy,” *Philosophy and Public Affairs* 42, no. 4 (2014), p. 306.
- 13 But see Ruth Grant, *Strings Attached: Untangling the Ethics of Incentives* (Princeton: Princeton University Press, 2012) for an argument that the attachment of strings to a potential gift should be analyzed not as a straightforward choice situation between transacting parties in a voluntary exchange but as an exercise of power. The relevant question is whether the power relationship is deeply unequal. We return to this question later in our chapter.
- 14 It is an interesting question to consider whether philanthropy is best understood as a remedial activity, a second-best mechanism for responding to injustice that would be rendered wholly unnecessary if just background arrangements were secured. Donations to a soup kitchen or the private distribution of vaccinations for domestic or global health might be morally worthy endeavors, but such philanthropy, one might argue, should seek its own elimination by striving to end hunger or to create an adequate public health system. An alternative view of philanthropy leaves a place for it even in fully just conditions; it is a first-best activity for the production of

- certain goods. For more, see Reich, “What are Foundations For?” *Boston Review*, 2013.
- 15 See Chiara Cordelli, “Reparative Justice and the Moral Limits of Discretionary Philanthropy,” in *Philanthropy in Democratic Societies: History, Institutions, Values*, ed. Rob Reich, Lucy Bernholz, and Chiara Cordelli (Chicago: University of Chicago Press, 2016); “The Institutional Division of Labor and the Egalitarian Obligations of Nonprofits,” *Journal of Political Philosophy* 20, no. 2 (June 2012): 131–55; and “How Privatization Threatens the Private,” *Critical Review of International Social and Political Philosophy* 16, no. 1 (2013): 65–87, for arguments about how institutional duties of justice can devolve on private actors.
  - 16 See Rob Reich, “Repugnant to the Whole Idea of Democracy? On the Role of Foundations in Democratic Societies,” *PS: Political Science and Politics* 49 (July 2016): 466–70.
  - 17 This would align with a “broad” or “substantive” interpretation of the AAP, which interprets the AAP as mandating the *consideration* rather than the *enfranchisement* of affected interests. While we do not claim that the AAP commits us to a particular or strongly egalitarian procedure (e.g. to majoritarian voting with equal opportunity for influence), it does, in our view, require efforts to grant affected people *a say over decisions* that affect their interests, and not just that people’s *substantive interests be considered*.
  - 18 For similar accounts of paternalism, see Seana Valentine Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation,” *Philosophy & Public Affairs* 29, no. 3 (Summer 2000): 205–50; Jonathan Quong’s “judgmental definition” of paternalism in *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), p. 80; and Nicolas Cornell, “A Third Theory of Paternalism,” *Michigan Law Review* 113 (June 2015): 1295–336. Shiffrin and Quong’s definitions turn on the motives of the (putative) paternalist while Cornell (like us) focuses on the external meaning of the paternalist’s actions, but there is significant overlap on the centrality of insult or negative judgment (rather than classes of actions, e.g. coercive or noncoercive) to paternalism. See also Saunders-Hastings, “Benevolent Giving and the Problem of Paternalism,” in *Effective Altruism: Philosophical Issues*, ed. Hilary Greaves and Theron Pummer (Oxford: Oxford University Press, 2019) and *Private Virtues, Public Vices*, chapter 4.
  - 19 However, the claim that paternalism can be noncoercive does not depend on accepting an insult-based account (or critique) of paternalism; for an influential defense of noncoercive paternalism, see for Richard H. Thaler and Cass Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New York: Penguin, 2009).
  - 20 See Saunders-Hastings, *Private Virtues, Public Vices*, pp. 105–6.
  - 21 See for e.g. Robert Nozick, “Coercion,” in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin’s Press, 1969), pp. 440–72.
  - 22 Our concern with paternalism overlaps with the complaint about undemocratic exclusion that Sean Gray (this volume), following Patchen Markell, calls “usurpation.”