The Bill and Melinda Gates Foundation and Legitimacy in Global Health Governance

The Bill and Melinda Gates Foundation brings to light the legitimacy problem with global philanthropy. The legitimacy problem here is twofold: first with regard to the criteria used to assess the presence or absence of legitimacy in global governance; and second, how analysis of legitimacy does not fully account for how we understand the legitimate basis of rule drawn from private wealth. This paper begins to address this lacuna by analysing the legitimacy of an actor that wields considerable authority in the field of global health politics and has growing prominence in contemporary global governance: the Bill and Melinda Gates Foundation (BMGF).

Philanthropy is nothing new to global governance, it has a long history of establishing international organisations, developing some of the first international welfare programmes, and acting as a tool of US hegemony in the world.[1] The BMGF is an extension of the legacies left by US philanthropists such as John D. Rockefeller and Andrew Carnegie. However the BMGF exists in a post-globalisation world that encompasses global policy-making goals, public-private partnerships, global information exchanges, prominent non-state for-profit and not-for-profit actors, the cult of celebrity, and a myriad of new and old international institutions. This post-globalisation world is best typified by global health governance, the central domain in which the BMGF positions its international affairs. Global health governance is an ever-expanding field of governance that 'refers to trans-border agreements or initiatives between states and/or non-state actors to the control of public health and infectious disease and the protection of people from health risks or threats.'[2] It involves specialised public-private partnerships, multilateral and bilateral institutions, epistemic communities, private companies, celebrities, ex-politicians, and a variety of civil society organisations, and is underpinned by questions of equality, rights, and the efficacy of development assistance. Since the launch of the foundation in 2000, Bill Gates and Melinda Gates have shaken up interest in global health by capturing the attention of policy-makers and the general public through the foundation's Global Health Program. Much of the attention is not just about the work

of the foundation but personalised interest in Bill Gates and Warren Buffett (who pledged US$30 billion to the foundation).[3] The money and raising the profile of global health is seen to be a good thing by many people. However there has also been growing, but limited, criticism of the BMGF with regard to the sources of its money, how and where it spends its money, its partnerships, and the 'Bill chill' effect of the foundation on global health institutions.[4] Such criticism has led to a set of concerns as to who consented to the BMGF's prominence in global health governance and on what grounds the ability of the foundation to shape the future of global health is justified. These concerns over consent and justification of power speak to questions of legitimacy.

This paper has two inter-related aims. The first is to move away from discussions as to whether the BMGF is good or bad for global health and instead ascertain whether the BMGF can be considered a legitimate actor and on what basis that legitimacy can be justified. The second is to use such an analysis to reflect on the criteria we use for understanding legitimacy that takes into account the issue of private wealth and philanthropy. The article pursues these aims by using David Beetham's three criteria of legitimate rule. It does so by first justifying why legitimacy is important for understanding the BMGF and why the BMGF is important for understanding legitimacy. Second, the article outlines the problem of charismatic authority and processes of self-legitimation that are used by the foundation to justify its role. Third the article discusses how charismatic authority is an insufficient basis on which to assess the legitimacy of the foundation. The article uses Beetham's framework to show how the BMGF engages in consent and justification of the rules in global health governance, before exploring what a lack of public contestation or discontent means for the legitimacy of the foundation. The article then draws together its main findings in conclusion to argue that the charismatic authority and wealth of Bill Gates is not a sufficient basis on which the BMGF can make claim to legitimacy. This is because the foundation engages in a process of self-legitimation that reproduces elite structures of power in global health governance and buys conformity and consent to the rules. The scale and influence of private wealth in global

health governance suggest a key criterion for legitimacy must not only be rules and consent to the rules but the justification of the rules and, crucially, evidence of discontent.

Why legitimacy?

Before outlining the criteria on which the legitimacy of the BMGF can be assessed it is important to establish why a focus on legitimacy is warranted. For most people concerned with questions of legitimacy a distinction can be made between more philosophical normative theories of legitimacy – what criteria should we use to assess if an actor or system of rule can be considered legitimate; and social science-based empirical theories of legitimacy – an empirical analysis of the belief in legitimacy on the part of the ruler and the ruled.[5] Common to both normative and empirical understandings of legitimacy is the value of legitimacy as a means of justifying and practicing power and the key to why people obey such power.[6] Simply put legitimacy is the basis on which actors – predominantly the government of states – rule that is contingent on the consent of the ruled and mutually accepted rules. In this regard it is a key component of politics that requires justification and reflection depending on the system of rule and historical context in which legitimacy is to be considered.[7] The difficulty of legitimacy in global governance is the interpretation of the social contract and identifying who constitutes the ruler and the ruled.

Understandings of legitimacy in global governance have primarily focused on international organisations and state-based formations of intergovernmental actors. This debate, well summarised by Binder and Heupel, has focused on normative judgments on democratic deficits and means of consent to the operations and work of international organisations or empirical ways of understanding legal, procedural and performance legitimacy.[8] Legitimacy beyond state or intra- and inter-governmental accounts has been understood in the context of international society. For Clark, legitimacy is fluid and negotiated to account for shifting dynamics between actors involved

in global politics: legitimacy does not belong to any agent in particular but is mutually constituted between international and world society.[9] Where we see legitimacy or at least the idea of it we know society is active, where legitimacy is lacking the international order is threatened.[10] In this sense, legitimacy in global governance is often grounded in normative consensus.[11]

Studies on international organisations such as the World Bank and legitimacy,[12] the United Nations and legitimacy,[13] and the World Trade Organisation and legitimacy[14] abound, each with similar findings as to the transparency, inclusiveness and performance of legitimacy within these institutions and a similar basis of social contract being between the international organisation in question and member states. Research that has considered legitimacy and non-state actors has clustered around analysis of the role of international non-governmental organisations (NGOs) and transnational advocacy networks and groups, with a similar exploration between the engagement between such groups and their members or the states and international donors in which they interact with.[15] Legitimacy questions regarding private authority have focused on the role of the private sector in delivering a range of public goods,[16] public-private partnerships, and the increased influence of private authority in global governance.[17] Research on the legitimacy of private authority in global governance has mapped different types of co-operation and the rise of engagement with the private sector in global governance, but conform to the Weberian notion that 'an institution's legitimacy is based on the normative belief held by an actor that the rule of this institution ought to be obeyed.'[18]

Legitimacy in global governance is thus commonly identified as a process that is discursively shaped by different actors in international society that goes beyond the state and international organisations and conforms to the notion that legitimacy is based on normative belief. Such an account, however, does not help explain processes of self-legitimation, where private wealth is positioned in this process, and how some actors are more influential than others in shaping the outcomes of discursive processes. The intent of this article is to highlight how the criteria we have

for assessing legitimacy must not only account for perceptions and demonstrations of consent to mutually agreed rules, but must also show evidence of discontent and contestation in justification of such rules. The article argues that any criteria for assessing legitimacy have to be cognisant of the ability of sources of authority to shape what the public deems to be legitimate. In other words drawing directly on the work of Beetham, for an actor to be considered legitimate there needs to not only be evidence of rules and consent – two elements that are common to understanding of legitimacy in the international – but justification of the rules that interrogate processes of self-legitimation.

Why Legitimacy and the Bill and Melinda Gates Foundation?

An empirical study of the legitimacy of the BMGF is difficult because the impact of its rule applies to a variety of people who may constitute the ruled: employees of international health institutions, domestic health workers, people living with HIV/AIDS, community polio vaccinators etc. Such an empirical assessment is thus infinite and impossible to quantify in a meaningful way. As Barker highlights, 'legitimacy for most people is a form of quiet compliance'[19] and it is hard for those on the receiving end of the BMGF's work to trace the work back to the BMGF given the multi-level governance in which global health operates. Very few people working in global health will go on record to discuss the BMGF and to engage them would potentially compromise the finance they receive from the foundation. Empirical analysis is thus limited as it could apply to infinite actors and also potentially threaten the practice of research participants. However, legitimacy needs to be understood in context of the form of rule in which it is being questioned and in a manner that demonstrates how it is socially constructed.[20] Hence questions over legitimacy in global philanthropy have to be grounded with regard to a specific source of authority – the BMGF – in a specific context – global health governance.

The legitimacy of the BMGF matters for three reasons. The first is that the BMGF occupies a position of authority in global health governance. The BMGF occupies a position of authority in global health governance through its ability to use private wealth to buy influence in the policies and priorities of international institutions and shape the knowledge and ideas that underpin global health policy. A focus on the BMGF rather than the World Health Organisation (WHO) or the Global Fund to fight AIDS, Tuberculosis and Malaria (Global Fund) for example is justified because the scale of the foundation's funding portfolio and impact is far more significant and raises questions as to how we account for private power in global society and on what basis such power can be justified. Under its Global Health Program, the BMGF funds mainly US-based NGOs, think tanks, Universities, and international organisations such as the WHO and the World Bank.[21] These funds go towards multiple disease initiatives, but in general are committed to finding technological solutions to health problems, with a specific emphasis on elimination of disease through vaccination. The BMGF gave considerable sums to heighten the work of the GAVI Alliance and the Global Fund but has not made further grants since 2011, partly because the foundation pledged an earlier lump sum to cover a five year period.[22] The table below provides an indication of the amounts of money pledged and the types of international institutions, universities and NGOs the BMGF funds.

INSERT TABLE 1 HERE

The table reflects the sustained and significant investment the BMGF has made towards US-based NGOs such as PATH and the growth in university grant awards. The BMGF not only gives institutions such as the World Bank money in support of specific health programs, but also has representation on the Boards of the GAVI Alliance, the Global Fund, and UNITAID.[23] In addition, the BMGF is one of the core actors that make up the 'Health 8'[24] an informal group of key institutions in global health that meet to discuss, share, and strategize on issues of global health. The content of such meetings is rarely made public. Combined, the money committed and the

presence of BMGF representatives on high-level decision-making bodies gives the foundation influence over the content of policy decisions, priority-setting within global health, and an ability to heighten specific issues on the global health agenda through significant financial backing. This influence is evidenced by the invitation and presence of Bill and/or Melinda at high level global health meetings such as the WHO's World Health Assembly (WHA), and the opportunity to give speeches at the UN General Assembly.[25] The BMGF's rule exists through its ability to establish and sustain new institutions of global health such as the GAVI alliance and the Global Fund, and to invest in the health programs of post-World War II institutions such as the WHO.

The BMGF's influence in the WHO is particularly revealing. The WHO's budget is made up of 23% core assessed state contributions and 77% voluntary contributions from a range of actors that give money to specific projects or areas of health.[26] Voluntary contributions allow contributors to earmark their funds to a specific area of health in which they want to invest. Such contributions have risen significantly within the WHO's budget in the last fifteen years with voluntary contributions making up just 48.8% in 1998-99,[27] and as a result have become a major driver and sticking point in both internal and external debate on reform of the institution.[28] The table below outlines the total contributions (core assessed state + voluntary contributions) to the WHO of the BMGF and eight state-based donors:

INSERT TABLE 2 HERE

As Table 2 demonstrates, the BMGF provides the most voluntary contributions of any source to the WHO, and is second only to the United States for total contributions to the institution.[29] The increase of voluntary contributions and the amount of money the BMGF gives to the WHO brings it influence in agenda-setting. The WHO has always had a problem of finance and voluntary contributions. However the marked growth in this aspect of financing, the likelihood that it will increase further, and ongoing debate on institutional reform makes the issue particularly acute. As Sridhar notes, voluntary contributions lead to global health decisions and agendas being set by a

marketplace of global initiatives that can lead to short-term preferences.[30] When key actors such as the BMGF are able to invest significant funds to a certain issue, for example Polio eradication, particular diseases engage in market capture of the WHO's agenda. Since the investment of the BMGF towards Polio, the WHO has prioritised eradication as a 'programmatic emergency for global public health.'[31] Beyond the financing of the institution, the BMGF's influence is evident in the reaction and second-guessing of the foundation's interests and position on a number of health issues. This can be seen in leaked memos, Twitter comments of high profile global health actors and personal communications around the BMGF at global health conferences and seminars that tend to be discussed off-record. Through financing new and older institutions that has bought significant scope for agenda-setting, the BMGF has quickly established a dominant position within global health. Legitimacy matters here as it is a means of establishing the basis on which such elite power and wealth in shaping global public policy outcomes can be justified.

The second reason why legitimacy matters in the context of the BMGF is the foundation shapes the content of global health initiatives through knowledge creation and dissemination. Research distortion and funding allocation are perhaps the two areas in which criticism towards the foundation have been made public. One of the few on-record public criticisms of the BMGF is the memorandum of a WHO staff member published in the New York Times that suggested the foundation had created a cartel in malaria research.[32] A second high-profile critique is McCoy et al's 2009 study of BMGF grant allocation in which the authors argue that allocating the majority of funds to US-based organisations reduces the potential of low and middle income countries to conduct or compete in research and sustains US influence over global health politics.[33] The research distortion critique is not only about who conducts the research but also what the research is on. The hefty sums allocated to core areas of interest such as HIV/AIDS and malaria by the BMGF contribute to an on-going problem in global health governance over vertical disease-specific interventions and horizontal based programs that invest in health systems. This distinction

has become contentious as investment in vertical disease-specific priorities such as HIV/AIDS has been seen to lead to under-funding and a lack of attention to the horizontal health systems – e.g. procurement chains, referral systems, clinician training, health centre management – that sustain such interventions and provide the basis of healthcare. While such a problem predates the BMGF, the foundation is seen to exacerbate it.[34] Related to such criticism is what some people see as the contradictory practices of the foundation's investment portfolio in companies such as Coca-Cola and Dutch Shell that are seen to heighten health problems.[35] The issue of funding allocation raises questions of legitimacy in regard to the checks and balances on the BMGF's power to set the health policy agenda and the reproduction of knowledge in global health governance.

The third justification for why legitimacy and the BMGF matters is the role of the four trustees: Bill Gates, Melinda Gates, Bill Gates Sr and Warren Buffett. The foundation bases its legitimacy on the personal success of Bill Gates. Tales of the origins of the BMGF all reiterate how the Global Health Program was inspired by Bill and Melinda's travels, by Bill reading the World Bank's 1993 World Development Report 'Investing in Health' and books by public health journalists such as Laurie Garrett. For Bill Gates the problems of global health are similar to that of the computer world before the advent of the personal computer: market failure to stimulate research to solve some of the world's biggest health problems is akin to market failure on computer access that was based on low-volume, high price, before Microsoft reversed the model to high volume, low price.[36] For some, the influence of the trustees and limited sources of redress from those institutions and people they affect makes the BMGF undemocratic and unaccountable.[37] It is the personalised basis of the BMGF's legitimacy that provides one of the central limitations as to how we assess legitimacy in global health governance: much of the justification for the role and influence of the foundation has been based on the private wealth, ideas, and success of Bill Gates.

Legitimacy matters for those who benefit from the operations of global health and have different levels of influence over how agendas are set or how global actors account for their actions.

Legitimacy matters for actors such as the BMGF who want to maintain their influence on global health agendas and collaborate with partners in global health to achieve their aims. Finally it matters in that legitimacy is not a zero sum game in global health governance where one actor can be deemed more legitimate than another, or one actor's claim to legitimacy reduces that of another. What does matter is that claims to legitimacy are grounded in something more than wealth, elite capture or charismatic authority that have come to frame much of the debate around the BMGF in global health governance.

The charisma of Bill and the problem of self-legitimation

Given the personalisation of Bill Gates' role in the foundation, much of the existing work on the BMGF and legitimacy has followed Weber's methodological heuristic of ideal types of legitimacy based on charismatic authority and belief in rule.[38] Weber outlines three types of legitimate rule as: i) legal authority in which rules are based on 'belief in legality of enacted rules and right of those with elevated authority under such rules' and people obey on account of legal order; ii) traditional authority in which legitimacy is enshrined through tradition status and 'age-old rules and powers', for example the acceptance of a monarch's rule; and iii) charismatic authority in which legitimacy is ascribed to the 'exemplary character' of an individual and where compliance is sought through normative acceptance of their character and position to rule.[39] The BMGF could loosely fit in Weber's first criteria of legitimacy – legal authority – in that it has legitimacy by working with global institutions with legal mandates in global health governance; less with the second criteria as the foundation has no linkages to tradition other than the practice of philanthropic giving in the US; and quite neatly with the third criteria on charismatic authority. The BMGF makes claim to legitimacy through the charismatic authority of Bill Gates. Bill Gates fits Weber's typology of charismatic authority: he shows individual specific and exceptional qualities (vision, knowledge and application of revolutionary software); he is considered extraordinary (for his role in Microsoft

and for being the 2nd richest person in the world, as of 2013)[40] and there is much to suggest people believe in his role in technology and now global health.[41] The focus of Gates and the BMGF on the role of future technology and innovation as the key to solving global health's main challenges accords with Weber's note that 'charismatic authority repudiates the past, and is in this sense a specifically revolutionary force.'[42]

According to Weber's typology, legitimacy is less about an agreed basis or consent between the governed and governor; but the belief that the governor is legitimate on the part of the governed.[43] Weber's *legitimitatsglaube* refers to rule being legitimate when the ruled believe it to be – it is about the belief not necessarily the formal arrangements or social contract that gives rise to legitimacy. Hence, if the charismatic authority of Bill Gates is what gives the BMGF legitimacy then key to this is that people believe in the authority of Gates and thus comply with the foundation's rule. As long as the BMGF is recognised and believed to be legitimate in global health governance then it is legitimate. Following the Weberian heuristic, those who ascribe legitimacy to the BMGF give voluntary compliance and thus obedience to the role of the foundation in global health.[44]

To believe the popular press, the BMGF does not have a perception or belief problem in terms of legitimacy. When Bill Gates left Microsoft to work for the foundation full time a range of articles were published in the press praising him, Melinda and the BMGF's work. In 2005, Bill and Melinda alongside U2 lead singer Bono were named 'The Good Samaritans' of TIME magazine's persons of the year. The Guardian newspaper listed Bill Gates and Warren Buffett as Business Heroes of 2010 for founding the Giving Pledge that year.[45] Introducing Bill Gates to give the BBC's prestigious Richard Dimbleby lecture in 2013, Jonathan Dimbleby described him as 'one of the world's great philanthropists.'[46] Forbes magazine labelled Bill Gates one of the seven most influential 'vaccine heroes.'[47] The Economist's support for him arguably culminated in the publication of journalists Bishop and Green's popular book *Philanthrocapitalism*.[48] These select examples reflect the crafted public belief in the BMGF. First, that Bill Gates is a proven leader

who has used his intellect and passion to create Microsoft, if he applied such intellect and passion, and money, to global health problems the results could be the same. Second, Bill Gates is not Microsoft Bill Gates but Foundation Bill Gates meaning any past controversies with the company and his association with the anti-trust case are different to how Gates conducts himself with the BMGF. Work on celebrity politics support this view in their assertion that celebrities are legitimate on account of their celebrity that brings them to wider public attention.[49] Third, Bill and Melinda Gates fit with understandings of philanthropy and common notions that charitable giving is in itself a good thing: the Gates family and Buffett do not have to give away their money, they choose to and they could choose to give it to something other than global health projects.

Melinda Gates is central to the charismatic authority of Bill Gates and belief in the legitimacy of the BMGF. Before the launch of the BMGF, Melinda did not have a public role.[50] Since the launch of the BMGF, however, Melinda has occupied a very specific public role that is often depicted in gendered terms of being the understanding, humanising, and maternal caring woman to Bill's hard-number crunching, technology-loving, politician-partnering man. She is presented as integral to the BMGF in terms of her people skills and 'holistic approach to life has helped her see the bigger picture, rather than focus entirely on narrow technical fixes,' tellingly she is depicted as making Bill 'less lopsided.'[51] Melinda's public lectures and communications tend to focus on issues of family planning and child health.[52] An interest and concern for maternal health and family planning by a woman does not suggest a stringent gendered straightjacket of her interests or activities. However, combined with the depiction of Melinda as the approachable female trustee, pictured on the foundation's website holding an African baby in contrast to the suited business man Bill,[53] personalised gender roles are clearly used to promote a specific image of the BMGF and Bill and Melinda's place within it: Bill the man who knows how to make money and make money work and Melinda the intelligent woman who cares.

However, the popular perception of the BMGF and the ability of the foundation to shape perception highlights what Beetham refers to as the 'self-fulfilling character of legitimate power' whereby actors such as the BMGF are able to structure belief systems and shape perception in a manner that is 'conducive to their own legitimation.'[54] Beetham's critique of Weber is revealing here. Beetham criticises Weber's typology for misrepresenting relations between belief and legitimacy and emptying legitimacy from any moral content by 'acquiescing in the very manipulations of the powerful that they are concerned to describe.'[55] In other words, Weber's typology validates elite forms of legitimacy by accepting what is believed to be legitimate as legitimate without considering the power relations that shape people's beliefs. Popular belief about Bill and Melinda Gates and the BMGF are a constructed consequence of an advanced communications strategy that involves social media and building collaborative relationships with elites in the press and key institutions. Bill and Melinda communicate with the public in ways previously unheard of by other philanthropists of their scale: you can follow and like them on Facebook, tweet them on Twitter, read Bill's recommended books, watch Melinda on TED, read about them in the newspapers and watch them give lectures on television. This personalised advocacy is in part because of their interest and concern to promote health issues, and is also a very deliberate public relations strategy to shape belief in the foundation.[56] The BMGF pays for journalists to conduct research into global health and development. The BMGF finances The Guardian's 'Global Development' page of its website; and gave US television show 'Newshour' US$3.5billion to report on the health issues it works on.[57] Such influence puts an implicit onus on coverage that satisfies the foundation and establishes a working relationship between the BMGF and the news outlets that contribute to shaping popular perception. If the general public belief is that the foundation is legitimate then such legitimacy is constructed by the BMGF, the journalists it finances, and those that seek to benefit from the elite knowledge networks it finances.

Drawing on Beetham, it is therefore not enough to say that the BMGF is legitimate just because of the charismatic authority of Bill Gates and the popular perception of the foundation, as the BMGF is able to shape the content of people's beliefs and reproduce a self-fulfilling legitimacy. To suggest that anything Bill Gates does is legitimate because he is Bill Gates indicates that actors in global health governance can be legitimate as long as they are wealthy public figures irrespective of their engagement with the people they work with and upon whom their policies affect. Such criterion alone is an insufficient basis or justification for legitimacy as it has no check on rule by the ruled or justification of the rules.

Beetham, rules and justification of rules

The criterion on which the legitimacy of philanthropic actors in global governance is assessed must be based on more than wealth and elite privilege. Beetham sets out three criteria for power to be legitimate: conformity to established rules, the rules can be justified and shared by the dominant and subordinate, and evidence of consent.[58] What matters is not personal belief or perception, but the belief of the society studied and the manner in which such beliefs are historically and mutually justified and actioned.[59] Only when an actor or system of rule shows evidence of all three of these characteristics can it be deemed legitimate. By contrast, power is not legitimate where rules are breached (illegitimate), there is a discrepancy between rules and beliefs (legitimacy deficit) and consent is withdrawn (delegitimation).[60]

Rules and justification of rules underpin the formation of consensus in various aspects of global governance and the terrain of global health governance in which the BMGF operates is no different. Global health governance has first order rules that take on a legal form – the International Health Regulations, the Framework Convention on Tobacco Control – that, although mixed, show some level of adherence, domestic law adoption and behaviour change.[61] In

addition global health governance exhibits evidence of second order rules in which the first order rules are to be recognised and adjudicated by a specialised agency in the form of the WHO, UN specialised agencies for health such as the United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Bank.[62] All UN health agencies and their member states are committed to these two sources of international law and it is the job of the WHO to uphold and adjudicate on such laws. The WHO is committed to health for all as its normative basis which is reinforced through declarations such as the Alma Ata Declaration on health for all, health as a human right, and the importance of primary healthcare.[63] The WHO issues clear scientific and technical guidelines that all member states and partnering institutions adopt within their domestic health systems. Such recommendations and technical guidance are drawn from expertise within the WHO and consultation with specialist sectors of the health academy, clinical practice, and health industry. Hence, by this measure global health indicates the clear presence of a community as it has sources of legitimacy derived from a normative consensus on first order and second order rules that are shared between multiple actors, institutions, and states that are principally located with (though not limited to) the WHO. The BMGF both adopts and participates in the creation of such rules therefore reinforcing and participating in the legitimacy of global health governance.

Complete consensus and adherence to commonly agreed rules is of course impossible in any polity and in many ways contestation over private and public forms of delivering health for all show signs of legitimacy as these rules are justified and reconfigured by a multiplicity of actors. This is in part why Beetham sees justification of the rules as the most difficult to ascertain of the three criteria he sets out as it involves 'in turn an authoritative source for the rules, a principle of differentiation between dominant and subordinate, and a common interest that the system of power serves.'[64] However, if we are to judge the legitimacy of the BMGF with respect to its adherence to rules or innovation as the solution to global health challenges, then we are in effect judging the legitimacy

of an institution against the rules it helps perpetuate and create through its partnerships and financing of institutions. BMGF financing does not come without leveraging specific interests. Thus as Beetham highlights, rules and justification of the rules do not provide sufficient criteria alone to assess legitimacy; for rule to be legitimate there also needs to be indication of consent.

Consent, Conformity and the Bill Chill

Consent as criteria for legitimate rule is impossible to empirically measure at the global level and as such the normative criteria of what constitutes consent is similarly difficult to ascertain. For Beetham, consent is through action of public expression: for rule to be legitimate there must be evidence of the ruled and ruler taking part in legitimation processes that are publicly symbolic and determined by a specific context.[65] Establishing public consent to the authority of the BMGF in global health politics is challenging given the foundation's role in influencing public belief, as outlined above. What is more revealing here is not consent but the lack of discontent or publicly expressed grievance with the BMGF.

Consent to the BMGF's role can be seen in two ways: acceptance of financial support and partnership. Those who accept the foundation's money are tacitly consenting to its role in the production of knowledge, policy and projects for global health. Consent in the countries where the work of the BMGF is most evident is difficult to ascertain beyond formal consent through memoranda of understanding between the foundation and the government of the country. The broad nature of the BMGF's partnerships and financial bodies from think tanks, to university departments, to partnerships such as the Health8, to international institutions suggest a pluralist community of actors consenting to its role. Such partnerships are fundamental to the BMGF's position and legitimacy in global health. Arguably the BMGF has enough money to not have to enter into partnerships or discussions with institutions such as the World Bank. However in so

doing, the legitimacy of such intergovernmental agencies (however questionable) and the expertise of research centres infer legitimacy through knowledge and longevity. Hence in the global health community writ large – those intergovernmental bodies, established research centres, and publications that shape policy and opinion in global health – there are sources of consent that legitimate the authority of the BMGF. These organisations consent to the work of the foundation, and arguably would not align themselves to such a public foundation should their interests differ or research become compromised. The foundation can therefore make claim to legitimacy within the current structures of global health governance based on formal consent of the elite.

Where the critique and challenge to the BMGF is most evident is not within global health governance but within US teaching unions in response to the foundation's role in education reform and student surveillance.[66] There is less public criticism or disobedience towards the foundation in global health aside from the occasional academic journal article and newspaper piece.[67] People working in global health have anecdotal 'Bill chill' stories to tell but there is very little public evidence of this or willingness to go on-record. The vagaries of global health financing and sensitivity to the prominence of the BMGF create an arena of public silence and the appearance of conformity to the foundation's role and influence. Hence there is no public disobedience or concerted challenge to the legitimacy of the foundation, this is quite odd given the size and public prominence of the foundation.

The lack of disobedience or withdrawal of consent for the BMGF's role in global health could be explained by habit. For Barker, habit is a core component to the relationship between the ruler and ruled in determining legitimacy 'because it is an acceptance of unquestioned right.'[68] Liberal interpretations of habitual legitimacy suggest that for the most part the ruled are not concerned with legitimacy when the ruler is moderate: hence people working in global health are less concerned with the rule of the BMGF as habitually they are used to philanthropic wealth and for the most part do not take issue with the foundation as long as the money keeps flowing to key

causes and research. However, such an explanation overlooks the means in which elite rulers are able to shape the interests and thus consent of the people. A more convincing explanation of why people obey is Beetham's notion of the self-legitimation of power, whereby consent is bought and rules are shaped in the interest of the ruled.[69] The ruler cannot promote their legitimacy through coercion but through the promotion of their interests, education and propaganda:[70] all key functions evident in the work of the BMGF. Consent through self-legitimation arises from a narrow elite that occupy a specific community that have all stood to benefit (at least in the short term) from the BMGF, either financially or through the ability of the foundation to raise the international profile of global health concerns. Those institutions, research centres, and publications that loosely form the system of global health governance and those that give consent to the BMGF by accepting its money or entering into partnership are predominantly elite, US-based institutions with staff educated in US institutions. The basis for consent is thus not based on a pluralist polity of global actors but institutional elites. Consent by those outside of the global health elite and on the receiving end of the projects and ideas of the BMGF is less evident.

The BMGF engages in self-legitimation through the shaping of key issues, e.g. Polio eradication, as concerns of global health governance more widely; education in the type of health research that is deemed valid through investment in particular university projects; and propaganda that promotes both the 'good work' of the BMGF and justifies the research and issues it seeks to promote in global health. On the one hand, the BMGF partners institutions and research centres to deliver innovative research in specific areas of global health and thus gives funds to researchers to do what they are best at. There is an argument that recipients would not accept money inimical to their research interests. On the other hand, even the foundation acknowledges that is has made a direct intervention in the market of global health research to stimulate research and interest in specific areas. Researchers do therefore have to respond to this market intervention given competition over scientific research money and discovery. The purchase of legitimacy thus not

only raises questions for private philanthropy and the BMGF but for global health governance and the market of global health research.

Conclusion: Is the Bill and Melinda Gates Foundation legitimate?

The key question that informed this paper is whether the BMGF is a legitimate actor in global health governance and on what basis rule can be justified and considered legitimate in global health. The foundation uses the personal wealth of Bill Gates as a form of charismatic authority on which to base and justify its legitimacy in global health governance. If we look at popular perceptions of the foundation and wider engagement with its work by actors working in global health governance, such a claim to legitimacy may stand. However, this article has argued that such a basis for justification of rule is to be found wanting. The BMGF is able to engage in a process of self-legitimation which in effect buys consent to its rule and shapes popular perceptions of the foundation's work and influence in global health governance. The scale and breadth of the foundation's funding portfolio can shape the production of knowledge and ideas that form the basis for any justification of rule or normative consensus about what should be done in global health. Claims to legitimacy are not made through consent and contestation but self-legitimation and commitment to the formal and informal rules of those working in elite institutions. In developing an alternative set of criteria in which to assess legitimacy this article has argued that in addition to consent and conformity to the rules, legitimacy also requires justification of the rules and evidence of discontent. As Beetham suggests, justification of the rules is perhaps the trickiest criteria of legitimacy, but remains the most crucial. Publicly expressed discontent enhances the legitimacy of an actor as it shows evidence of debate over the justification of the rules and contestation over who makes and enacts such rules. Any form of rule without elements of discontent suggest elements of coercion or influence that silence opposition and are thus illegitimate. The absence of public debate as to the role of the BMGF in global health infers at

best habitual obedience rather than acceptance of legitimacy: public debate, contestation and justification would enhance not challenge the legitimacy of the foundation. The normative criteria we use to think about legitimacy needs to account for expressions of discontent (not necessarily disobedience) and a challenge to the rules that reconstitute and reaffirm forms of legitimacy and the role of actors such as the BMGF. When an actor can show conformity and consent to the rules, engages in debate over justification of rule, and is open to public contestation and critique then it should have a legitimate basis for rule in global governance. Rather than silencing criticism the BMGF needs such criticism as a means of justifying its position, rule and thus legitimacy. The absence of public contestation is not an asset to the BMGF but undermines the legitimacy of both the foundation and the wider processes of elite global health governance that it reproduces.

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