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RESEARCH ARTICLE

Fathoming philanthropy: transparency in environmental grant-making philanthropic foundations

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Abstract

Large grant-making philanthropic foundations in the UK and the EU can have a significant influence over environmental law and as such are worthy of more attention from environmental law scholars. Through analysis of publicly available documents, we identify in this paper an absence of *consistent* transparency by these foundations. This makes their influence hard to understand, hard to research, hard even to see at work in the world. Transparency is complex and challenging, however. And so, rather than berating problematic approaches, we explore through interviews with actors in the field, as well as the academic literature, both the difficulties that foundations experience in pursuing transparent practices and the benefits of transparency. We conclude by identifying some principles for improved visibility of foundation work.

Keywords: transparency; philanthropy; foundations; environmental law; openness; access to information

Introduction

Philanthropic grant-making foundations are well-recognised as wielding considerable influence, across a whole range of social objectives and transnationally. We are particularly interested in their importance in the development and evolution of environmental law.[1] They fund organisations and projects, supporting a range of environmental activities, including through law. They are also important agents in environmental governance, steering 'institutions, structures and processes through which decisions are made about the environment'.[2] They influence the existence and role of legal expertise in the environmental non-governmental organisation (NGO) community through the dispersal of financial resources, and use their non-material resources to contribute to ways of thinking in and about environmental law.[3] They have, however, been very little discussed by legal

[†]We are grateful to those who gave their time and expertise to interviews, and to those who have listened to us talk about our broader project. Maria discloses her membership of a FILE advisory group as FILE was being set up. Note that websites are constantly changing – quotations and description from the organisational websites below were taken in July 2025.

[1]See eg M Lee and C Abbot 'Philanthropy and environmental law' (2024) 51(3) Journal of Law and Society 413.

[2]M Betsill et al 'Philanthropic foundations as agents of environmental governance: a research agenda' (2022) 31 Environmental Politics 684 at 685.

[3]Lee and Abbot, above n 1; M Lee and C Abbot 'Why philanthropy matters for environmental law and legal scholars: funding environmental NGOs' (2026) Journal of Environmental Law advance access https://academic.oup.com/jel/advance-article/doi/10.1093/jel/eqaf034/8315816; see also C Abbot and M Lee 'Philanthropy shaping environmental law: the '"influence of thought"' (2026) Journal of Environmental Law advance access. https://academic.oup.com/jel/advance-article/doi/10.1093/jel/eqag002/8487560.

scholars,[4] especially in Europe.[5] This is in part because they are hard to understand, hard to research, hard even to see at work in the world. Looking inside the world of philanthropic funding is extremely difficult and 'following the money' in any comprehensive way is impossible. Beginning to understand the influence of these powerful but obscure (to legal academics) actors, 'surrounded' as they are 'by a certain mystique',[6] is crucial to a better understanding of where ideas and thoughts about law come from.

This paper explores just one aspect of the environmental philanthropic world, and that is the absence of a consistent approach to transparency in financially independent grant-making foundations, drawing on publicly available information such as websites and annual reports as well as academic literature. From our interviews with 11 actors in the field, we explore the reasons, some of which are compelling, for diverse approaches to transparency in philanthropy. We explore other issues about philanthropy elsewhere.[7]

In the section following this introduction, we outline the scope of our study, which explores three large independent environmental grant-making foundations and two large re-grantors, and our methodology. Given our broader interest in jurisdiction-specific legal development, we limit our analysis to UK organisations (and the Netherlands-based organisations they work with) that give large sums of money to environmental NGOs active in the UK and to some extent the EU. Section 2 explores what the sector actually reveals about its activities, through an examination of publicly available material, and resting on a broader literature on transparency. Our primary focus is on grants – where the money goes – since we see that as an important way of exercising influence on environmental law, although other forms of transparency (such as internal processes and approaches) are also important, and influence can be exercised in other ways. We find that the five philanthropic organisations we examine take very different approaches to transparency on grant-making.[8] Some disclose the recipient, amount and broad theme of many, if not all, of their grants, others provide broad-brush information on where their money goes, and others, virtually no information at all. These differences can be explained in part by the requirements of different regulatory frameworks, but it is clear that foundations have agency in determining what they disclose and to whom. Not only are they free to exceed legal mandates, but they are also free (up to a point) to choose their regulatory framework. It is also clear that re-grantors play a crucial role in ensuring the confidentiality of donations.

We then explore in Section 3 why transparency for philanthropy matters, and why it is difficult or controversial, leaning on our interviews and the professional philanthropy literature. Transparency can have intrinsic value, where transparency reflects the values of an organisation or society, and (some) people have a right to know what this organisation is doing. It also has instrumental value in the pursuit of other goals. For any organisation, there are trade-offs: 'when sunlight becomes searchlight it can be uncomfortable and when it becomes torch it may be destructive'.[9]

We do not purport to resolve the complexity of transparency for philanthropic grant-making organisations, and proposing a transparency regime would be a completely different task. We do,

[4]Although see eg G Holmes 'Biodiversity for billionaires: capitalism, conservation and the role of philanthropy in saving/selling nature' (2021) 43 Development and Change 185; D Tedesco 'American foundations in the Great Bear Rainforest: philanthrocapitalism, governmentality and democracy' (2015) 65 Geoforum 12; E Morena *The Price of Climate Action: Philanthropic Foundations in the International Climate Debate* (Palgrave Macmillan, 2016).

[5]There is more literature on international negotiations, eg Morena, ibid, discusses EU organisations, but largely in respect of international climate negotiations.

[6]SD Phillips 'Dancing with giraffes: why philanthropy matters for public management' (2018) 61 Canadian Public Administration 151 at 152.

[7]See above n 3.

[8]These differences are well-discussed in the professional literature: see eg Association of Charitable Foundations 'Transparency and Engagement: The Pillars of Strong Foundation Practice' (undated), https://www.acf.org.uk/acf/ACF/Research-and-resources/Stronger-Foundations%20content/Stronger-Foundations.aspx?hkey=25cf6dfa-5324-4659-82c9-14dbb8394af3.

[9]D Heald 'Transparency as an instrumental value' in C Hood and D Heald (eds) *Transparency: The Key to Better Governance? Proceedings of the British Academy* (Oxford: Oxford University Press, 2006) p 59 at p 71. Heald lists seven objectives pursued by transparency, all of which it also has the potential to undermine.

however, offer some thoughts in Section 4, arguing that a lack of transparency in independent grant-making foundations is problematic for at least two reasons. First, given the potential for philanthropic influence to convert economic power into political power,[10] and the ability of elite philanthropy to 'shape society in ways that are consistent with the philanthropist's own visions of what society should be like',[11] important questions must be asked about their limited and largely voluntary exposure to scrutiny. Secondly, there is a significant power imbalance between the providers of grants and their (potential) recipients, which a lack of information exacerbates. Transparency would enable key stakeholders, including potential grantees, to better understand an organisation's process, performance and structure. We should also note that whilst we are exploring foundations that at least intend to be pro-environment, others seek to stymie environmental progress behind the same veil of confidence.

Whilst there are strong arguments in favour of enhancing foundation transparency, however, there are inevitable and significant trade-offs. We do, therefore, urge some caution before turning to classic public law-inflected openness obligations, and believe that pursuing additional formal regulation is unlikely to be helpful.[12]

1. Scope and methodology[13]

To understand transparency in philanthropy better, we explore three independent grant-making foundations and two re-grantors. The independent foundations are the Children's Investment Fund Foundation (CIFF), the Esmée Fairbairn Foundation (Esmée) and the Quadrature Climate Foundation (QCF). The re-grantors are the European Climate Foundation (ECF) and the Foundation for International Law for the Environment (FILE). Our conclusions are necessarily derived from our understanding of the organisations we have analysed, and looking at different organisations may have provided different insights. The five organisations take very different approaches to transparency, as discussed below. Further, many of our interviewees had very broad experience, working with and in a range of organisations, and were able to offer insights beyond their own current organisation. Whilst we do not claim that our findings can necessarily be generalised, we are confident that we have identified significant issues applying to large independent grant-making organisations in the UK, and we are able to make some general observations in Section 5 below.

We did not select our five organisations specifically for their approaches to transparency, but according to five criteria. First, we focus on UK-based independent foundations, although they have a global reach. We acknowledge that there are many overseas, particularly US-based, philanthropies active in the UK and the EU, and whilst, again, many of our interviewees have experience with these organisations, they are not the focus of our work. We study our Netherlands-registered re-grantors because they are so closely associated with some UK independent foundations (especially in terms of transparency, as discussed below) that it would be impossible to understand philanthropy without considering the world of re-granting.[14]

[10] Eg M Maclean et al 'Elite philanthropy in the United States and United Kingdom in the new age of inequalities' (2021) 23(3) International Journal of Management Reviews 330.

[11] MK MacKenzie 'Democratic philanthropy' (2020) 20 Contemporary Political Theory 568 at 571; R Reich *Just Giving: Why Philanthropy Is Failing Democracy and How It Can Do Better* (Princeton: Princeton University Press, 2018); A Horvath and W Powell 'Contributory or disruptive: do new forms of philanthropy erode democracy?' in R Reich et al (eds) *Philanthropy in Democratic Societies: History, Institutions, Values* (Chicago: University of Chicago Press, 2016).

[12] K Chan *The Public-Private Nature of Charity Law* (Oxford: Hart Publishing, 2016) on the hybrid public-private nature of charity law, provides an insightful way of thinking about the tension between the 'private property' conceptualisation of foundation funds, and their public role.

[13] This section largely mirrors the discussion in Lee and Abbot, above n 3.

[14] CIFF disclosed grants of nearly \$20 million to ECF in 2023, nearly \$13.5 million to FILE (*The Children's Investment Fund Foundation (UK) Annual Report for the Year Ended 31 December 2023* (Charity Commission Register, 2024) p 58); QCF disclosed grants to ECF of nearly £12.5 million in 2023, over £6 million to FILE (*Quadrature Climate Foundation Report and Financial Statements for the Period Ended 31 December 2023* (Charity Commission Register, 2024) p 21). Note that there may be

Secondly, we are interested in 'large' organisations, because their scale enhances their capacity to exercise influence. Without putting a precise limit on 'large', these organisations have endowments in the billions, or income/expenditure in the tens or hundreds of millions. Specifically, by combined environmental grant, the most recent Environmental Funders Network report reveals that CIFF, QCF and Esmée were all in the top five UK foundations.[15] There may be large grant-making foundations that do not cooperate with the Environmental Funders Network, and although we would have expected to hear about them during our research into philanthropy and environmental NGOs, we do acknowledge that we cannot be completely sure that we have not omitted a large grant-maker. FILE and ECF were first and seventh recipients of UK foundation and trust money.[16] Again, there may be other relevant re-grantors, but these two work closely in our jurisdictions with both the independent foundations and environmental NGOs. We did not attempt more comprehensive coverage, given the need to keep the project manageable, and our preference for a qualitative rather than a quantitative understanding of the field.

Thirdly, we selected these foundations for their *independence*, in the sense that they enjoy either an endowment or regular funding from their founders and so do not need to fundraise. This independence pervades all they do. Unlike most environmental NGOs, independent foundations do not need to build and maintain the trust of a large community of potential donors, lessening their internal incentives for at least a form of transparency; on the other hand, it does mean that they can reveal warts and all. 'Re-grantors'[17] bring together large donations from foundations (and wealthy families and individuals) and manage the granting on to NGOs. They are not independent, but because their fundraising is narrowly focused, so is their need to engage with donors, who are often precisely the sort of independent foundations we focus on here. Our interviewees emphasise the role of re-grantors in enhancing the capacity (getting large sums into the field) and the expertise (in subject and geography) of foundations. It seems clear to us that they are also, as discussed in the following section, used to maintain the confidentiality of the ultimate provider and recipient of donations.[18]

Fourthly, we focus on organisations that make grants to environmental NGOs. Our five organisations do other things to exercise and magnify their influence, including generating and disseminating knowledge, convening networks of actors, and directly lobbying governments and international organisations. They use their wealth to make strategic 'social' investments as well as philanthropic grants.[19] They also fund other actors, including governments, international bodies and universities. In part, our grant-making focus is circumstantial: our interest in philanthropy arises out of our efforts to understand environmental NGOs, the ways they use and understand environmental law, and so their influence on

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other 'non-material' grants to ECF and FILE, under the provisions discussed below (text at n 66). CIFF and QCF both also gave large sums to other re-grantors.

[15]J Cracknell et al *Where the Green Grants Went 9*: *Patterns of UK Funding for Environmental Work* (Environmental Funders Network, 2024) p 14, https://www.greenfunders.org/wp-content/uploads/WTGGW9-FINAL1.pdf. The Arcadia Fund and the Gatsby Foundation are also in the top five, but do not meet our other criteria; Arcadia is a Liechtenstein registered foundation, which although interesting, raises an entirely different category of questions, and Gatsby is not a significant grant-maker to environmental NGOs.

[16]Ibid, p 18.

[17]They can go by other names, including intermediaries and 'collaborative giving platforms': Bill and Melinda Gates Foundation *The Power of Collaborative Philanthropy: Giving Together to Address the Climate Crisis* (2023).

[18]ECF and FILE can be distinguished from Donor Advised Funds (DAFs). DAFs are accounts held by a charity (generally a subsidiary of an established investment firm). Benefits include the administrative advantages of not having to set up and administer a foundation and confidentiality of donations. The sum donated benefits from immediate tax advantages, even if it is not disbursed for some time, which is often utilised at a big tax event like the sale of an asset. The academic literature on DAFs is from the US, where there are different tax regimes for charities and foundations, eg R Madoff 'When is philanthropy? How the tax code's answer to this question has given rise to the growth of donor-advised funds and why it's a problem' in Reich et al, above n 11. In the UK, the increasing commercialisation of philanthropic 'services' by financial services companies often call themselves 'donor advised funds'.

[19]Eg Esmée Fairbairn Foundation *Annual Report and Accounts* (2023) p 13.

environmental law.[20] What NGOs think about law is shaped in part by the grants they get and by their anticipation of the availability of funding.[21] More importantly, we focus on grant-making to environmental NGOs because environmental NGOs are expected to play an important role in the emergence and the detail of environmental law, in particular as a counterweight to economic interests.[22] Our inability, as legal scholars, to explore the activities of philanthropic foundations affects our ability to see where ideas in law, and law itself, come from. All five of our organisations reveal something publicly about their strategic objectives, but it is their funding activities that give those objectives meaning and bite.

Finally, we are looking at institutionalised giving, not personal philanthropy. Greg Setiya (one of QCF's two funders) could, for example, have chosen to give away his money without an organisational structure. We exclude such personal giving from our research because generally the ability to shape a field, to restrict and monitor grants and to pursue the activities associated with maximising influence, requires an organisational framework. An individual philanthropist could employ people to help give away money, but given the scale of the activity, there would be some risk and cost associated with that.[23] It does not seem likely that individuals will have quite the same ability to exercise influence through philanthropy without some sort of institutionalisation, but no doubt it does happen.

We have carried out desk-based research in the academic and the policy literature, as well as in the publicly available information on philanthropic organisations. In particular, we analysed in detail the information that our five foundations make publicly available. This includes their sometimes extensive websites and at least three years of annual reports and accounts (where publicly available). We also looked for our five organisations on 360giving, discussed below. We make no claim to have comprehensively identified all publicly available information, given especially that much of the information is not systematically organised or made easy for outsiders to find – which is interesting in itself. We identified what the organisations reveal about: (1) where the money went, to whom and for what, along the lines that we discuss in the following section; and (2) their internal processes and approaches to giving. We were not seeking to map or measure transparency (qualitatively or quantitatively) and we did not take a set of transparency criteria against which to rank our foundations.

We carried out 11 semi-structured interviews between April and October 2024.[24] Limits on the time we could expect from interviewees, together with the fact that we had identified issues to be explored in our desk-based research, meant that entirely open interviews were not an option. The diversity of organisations and a preference for allowing the interviewee to open up themes we had not contemplated precluded a closed list of questions. Transparency of processes and grants was one of the key themes identified, from the academic literature and from the public documents, ahead of the interviews.[25]

We initially approached people based on our own existing contacts and introductions from earlier invitees.[26] We also made a small number of 'cold' approaches. We shared with our invitees earlier work by the authors (along with an executive summary) and a Participant Information Sheet setting out details of the project and our commitment to confidentiality, as per our ethical approval.[27] We interviewed people who work, or have recently worked, in independent grant-making foundations or re-grantors.

[20]C Abbot and M Lee *Environmental Groups and Legal Expertise: Shaping the Brexit Process* (London: UCL Press, 2021); C Abbot and M Lee 'NGOs shaping public participation through law: the Aarhus Convention and legal mobilisation' (2024) 36 Journal of Environmental Law 85.

[21]Abbot and Lee (2024), ibid.

[22]C Abbot and M Lee 'Economic actors in EU environmental law' (2015) 34 Yearbook of European Law 26.

[23]See eg HK Anheier and D Leat 'Philanthropic foundations: what rationales?' (2013) 80 Social Research 449.

[24]S Brinkmann 'The interview' in NK Denzin and YS Lincoln (eds) *The SAGE Handbook of Qualitative Research* (London: SAGE, 5th edn, 2018) p 576 for a thought-provoking historical review. Note that the methodological discussion that follows is contained in similar terms in Lee and Abbot, above n 3.

[25]Others included the processes around grant-making, including priority-setting, application and granting procedures and the management of grants: see Lee and Abbot, above n 3.

[26]M Handcock and K Gile 'Comment: on the concept of snowball sampling' (2011) 41 Sociological Methodology 367.

[27]Lee and Abbot, above n 1. UCL Ethical approval dated 28 February 2024.

Their roles included CEO, trustee, director of particular areas of work, and grant management. Many of our interviewees have experience in a range of grantor and recipient organisations and provided insights from their experiences across organisations.

We were aware going into this project that our interviewees would consider some of their work sensitive. We undertook to keep the identities of individuals confidential (numbering our interviewees 1–12;[28] one numbered participant was not a formal interviewee, as discussed below). We also undertook to maintain the confidentiality of any disclosures of grant amounts and recipients. We are not claiming to have interviewed individuals currently working in every one of our five foundations, and we also spoke with people employed by other philanthropic organisations. We can, however, say that between them, our interviewees had direct experience of every one of our organisations. The experience of our interviewees across other parts of the philanthropic community enriched our understanding of the challenges and benefits of transparency in the UK and beyond. Our duty to protect the identity of our participants outweighs any advantage of disclosing further detail of who we interviewed or the full extent of what they said.[29]

Some very busy elite actors[30] in the philanthropic world were extremely generous with their time and energy. In addition to this individual commitment, some organisations were very open and engaged with us very enthusiastically. To some extent, however, our concerns about access were borne out.[31] It is difficult to say precisely how many people we contacted for interview, since we were in several cases passed around the organisation and put in touch with multiple people, some of whom may not have been potential interviewees, but were legal advisors, communications professionals or assistants. We made initial approaches to 21 people. As one might expect, some people we approached did not respond. But in other cases, we think there was a concern to maintain the confidentiality (if not secrecy) of their business. In the case of one organisation, we spent many hours, over several months, answering their detailed questions, only ultimately to be met with silence.

Three individuals we spoke to, independently expressed strong concern that participants may suffer negative professional or funding consequences for taking part. One of these individuals concluded when we met that s/he could not be interviewed, but was willing to have an informal conversation about philanthropy; we took handwritten notes, which we typed up together after the conversation. We numbered this record, but have not taken quotations from it. We had originally intended to interview actors from within NGOs, potential grant-recipients. Whilst we would maintain confidentiality of interviewees, people do talk amongst themselves in this relatively close community. We did not want individuals and their organisations to be put in a difficult position with (possible) funders, and decided not to interview anybody from recipient NGOs. Nevertheless, as some of our interviewees have worked (or do work) in or with one or more of many global re-grantors (who both receive and disburse funds), and many had experience in NGOs before moving to foundations, we did hear some grantee perspectives. We also decided not to invite more junior people from philanthropic organisations, unless their senior colleagues had put us in touch. Notwithstanding these self-imposed limitations, we have rich interview material.

We recognise the risk of a lack of frankness, that interviewees may represent a 'party line', especially where senior people put us in touch with more junior colleagues. Many of our interviewees, however, enthusiastically encouraged us to look into philanthropy and had a clear sense of the dangers of unconstrained power. There is also a risk, because many of our interviewees were familiar with our

[28]When a quotation may identify an individual, we do not attribute that quotation.

[29]This tension is well recognised in the literature, see eg A Moravscik 'Transparency in qualitative research' in SAGE Research Methods (London: Sage, 2019).

[30]Elite often implies interviewing 'up' with a power asymmetry between researcher and researched; some of our cases were closer to 'elite-lite' interviewing where interviewers and interviewees share some characteristics: S Vaughan 'Elite and elite-lite interviewing: managing our industrial legacy' in A Franklin and P Blyton (eds) *Researching Sustainability: A Guide to Social Science Methods, Practice and Engagement* (London: Earthscan, 2013).

[31]On the challenges of research access see generally J Baldwin and G Davis 'Empirical research in law' in M Tushnet and P Cane (eds) *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2005) p 880.

work, of seeing our own ideas reflected back at us. The very act of talking and writing about the power of philanthropy, and especially its limitations, may affect the way individuals talk to us, and the way that organisations behave or talk among themselves. We certainly felt that we were stimulating reflection in some of our interviews. This was a very self-assured group of mainly elite participants, however, and we also heard criticism of our approach. All of this is probably unavoidable in these small communities. We acknowledge the risk, which we countered as much as possible through open-ended questions and our reflection on what we were told.[32]

We asked our interviewees for an hour of their time, and some gave longer. One interviewee generously agreed to be a 'pilot', providing more time as well as invaluable feedback on our themes and questions. Our interviews took place in person or, in four cases, online. In-person interviews took place either in our university office, or for the convenience of the interviewees in their interviewees' offices (four interviewees), and one in a restaurant. Both researchers took part other in all but one case. One interview included two interviewees who are separately identified. The semi-structured interviews were recorded, professionally transcribed,[33] checked by one or both of us and password protected.

Drawing conclusions from our interview data was an iterative exercise that we carried out together.[34] We had, as mentioned above, identified themes, including transparency, for exploration during earlier research. We added further themes and sub-themes as we reflected after each interview. One of us listened to the interview recording and checked the transcription, and we each read the interview transcriptions, manually coding for those themes and identifying additional themes. Themes around transparency are reflected in our discussion in the following sections. We jointly produced a document of themes and associated quotations, on which we continue to work, referring back to the interview transcriptions to enrich our understanding. We do not claim that the issues we identify here (and other work with these interviews) are either uniquely important or universally applicable. They strike us, however, as important empirical additions to our understanding of transparency in philanthropic foundations.

2. Transparency in grant-making foundations: diversity and secrecy

'Transparency' is a complex idea, ranging across legal categories and social challenges. Although there are many ways of approaching transparency,[35] as is explored further as we proceed through this section, we would define, with Elizabeth Fisher, transparency broadly as 'the decision to make visible, or provide access to, the resources on which an exercise of public or private power may be based'.[36] Transparency is often tied to its associated values of accountability and legitimacy, which are also complex in terms of audience, content and purpose. We do not attempt to engage with accountability and legitimacy here, other than to suggest that access to information is the starting point for holding any organisation meaningfully to account, and makes a modest contribution to legitimacy.[37] While transparency is most

[32]The critical 'reflexivity' discussed in C Bailey et al 'Evaluating qualitative research: dealing with the tension between "science" and "creativity"' (1999) 31 Area 169.

[33]With one exception, where we experimented (we thought unsuccessfully) with an automatic transcription service, and listened again to the interview and re-wrote the transcript.

[34]See eg L Webley 'Qualitative approaches to empirical legal research' in P Cane and HM Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford: OUP, 2010) above n 31.

[35]Eg both outcome and process transparency are important, but speak to different stakeholders and alternative understandings of the purpose of transparency: D Heald 'Varieties of transparency' in Hood and Heald (eds), above n 9, p 25 at p 27.

[36]E Fisher 'Transparency and administrative law: a critical evaluation' (2010) 63 Current Legal Problems 272 at 274.

[37]S Hedemann and S Toepler 'Foundations and the challenge of legitimacy in comparative perspective' in K Prewitt et al (eds) *The Legitimacy of Philanthropic Foundations: United States and European Perspectives* (New York: Russell Sage Foundation, 2006) p 3 at p 4. And see eg A Williamson et al 'Why be accountable? Exploring voluntary accountability of Australian private ancillary funds' (2017) 77 Australian Journal of Public Administration 375 for a discussion of accountability resting heavily on transparency.

traditionally applied to public bodies, recognition of the scale of private power has made increasing demands on transparency in private organisations, including philanthropy.[38]

In this section, we explore the *publicly available* information on our foundations, in annual reports, on websites and in cross-sector voluntary initiatives, without attempting to measure or rank. Publicly available information implies transparency to the general public. This version of what Heald calls 'downwards' transparency[39] (the ruled observing the rulers), most prominent in the literature on public sector organisations, resonates strongly with debates about the public power and democratic impact of philanthropy.[40]

The philanthropy literature is more concerned with transparency towards particular stakeholders: internal stakeholders (those with responsibility for ensuring the organisation is properly run); and external stakeholders (recipients and potential recipients of foundation funds, as well as other funders).[41] Without some internal transparency there would be a stifling of self-understanding and reflection, and external transparency may enhance both effectiveness and legitimacy. Our interviewees' sense of the audience for transparency was consistent with the literature, with Interviewee 9 saying, 'we do view being open about what we do and how we choose to do it is an important way to both engage with the broader community of both grant holders, potential grantees and other funders'. Asked specifically about the audience for transparency, Interviewee 5 suggested that it is 'the people we fund. It's other funders …'. Transparency to these external, as well as internal, stakeholders may take place behind closed doors.[42] Information on grants awarded, grants declined, grant-monitoring and outcomes is likely to be compiled within these large organisations, and presumably selectively and differentially distributed to internal stakeholders and whichever grant-recipients or other funders are especially highly valued. Whilst the *public* transparency, transparency to citizens in a democracy, that we discuss in this section may stretch the notion of stakeholder beyond any useful limit, it would also capture these stakeholders.

As well as the who of transparency, there are questions about what should be rendered transparent. Our focus is on grants, and we turn to that below. First though, a range of other information is available. All of our organisations tell us something about their governance, board membership and key employees on their websites. It is not clear how comprehensive or systematic these disclosures are.

In government, the focus is often on decision-making processes, in the sense of who the public body has heard from, what they have taken into account and how they reached their decision. This might include records of meetings, agendas, minutes, files of evidence, consultation responses. That sort of information is held very close in all the foundations we have explored. They take different approaches, however, to disclosing details of funding priorities, current projects and details of the life-cycle of grants from application through to monitoring and end reporting. They all say something on their priorities, although that can be very open-ended, for example QCF's priorities to 'reduce [greenhouse gases], remove [greenhouse gases], respond [to climate impacts]'.[43] CIFF and Esmée provide the most information on the grant-making process. Esmée provides a great deal of support to potential grant applicants, probably reflecting its objectives to support communities, as well as its willingness to consider unsolicited applications. The others accept applications on an invitation-only basis, although some of our interviewees emphasised that they respond to unsolicited approaches.[44] Through a dedicated 'Our Support' tab on the Esmée home page, resources for applicants include FAQs (for instance, what is not funded and reasons for turning down applications), sample expressions of interest (EoIs), sample full

[38]Note Chan, above n 12, on the public-private nature of philanthropy.

[39]Transparency moves in different directions, see eg Heald, above n 35; Williamson et al, above n 37.

[40]Eg Reich, above n 11; Horvarth and Powell, above n 11; Maclean et al, above n 10.

[41]Eg H Abnett and R de Vires 'How transparent are charitable foundations?' (2024) 15 Voluntary Sector Review 394 at 398; RR Reid 'Foundation transparency: opacity – it's complicated' (2018) 10 The Foundation Review 77.

[42]The transparency could take place in fora such as the US-based 'funders' table' (Interviewee 1) or the UK 'funders forum' (Interviewee 5), or organisational retreats for grantees (unattributed), rather than in writing.

[43]See https://www.qc.foundation/news-and-research/fit-for-purpose-reviewing-qcfs-strategy-in-response-to-the-new-climate-reality/.

[44]Lee and Abbot (2026), above n 3.

grant proposals, sample equality, diversity and inclusion monitoring forms, short videos and an eligibility quiz. Esmée also provides data on the number of EoIs, proposals and grants awarded through both the website and as follow-on or invited grants. This sort of transparency, whereby individuals and organisations are informed of expectations at each stage of the process, may encourage more effective collaboration between funders and potential grant recipients, leading to higher-quality applications that align with foundation priorities. It can also manage the potential for disappointment from those who were never likely to be successful. Only Esmée provides anonymised information on why some applications are declined, but that fits with the absence of unsolicited applications to the other foundations – rejection is less explicit, in the sense that organisations are simply not invited to apply.

CIFF and QCF make grants primarily to re-grantors and professionalised NGOs, and so the nature of the information is somewhat different. CIFF nevertheless provides some detail on its processes.[45] QCF shares some useful albeit brief information on the criteria against which grant applications will be assessed and a short explanation of process.[46] Our re-grantors, ECF and FILE, provide no online information on grant-making processes, other than a simple statement that they do not accept unsolicited funding proposals.[47]

Turning to the grants themselves (how much, to whom, for what), a simple distinction with respect to transparency can be drawn between our three independent foundations and our two re-grantors. Neither of our re-grantors provides much information on where their funding comes from or goes to.

The closed nature of grant-making by ECF and FILE is enabled by the decision to register them in the Netherlands, as Stichtings (foundations),[48] 'a legal form created by juridical act, without members, and that aims to achieve a purpose specific in its articles of formation, by using capital which has been introduced for this purpose'.[49] A stichting can be used for economic or business as well as social purposes. Reporting and accounting requirements are minimal. Large foundations must file annual audited profit and loss accounts with the Commercial Register.[50] It probably goes without saying that there are no requirements to publish bespoke data on grant-giving activities. Both ECF and FILE are also registered as Algemeen Nut Beogende Instelling (ANBIs, public interest companies),[51] entitling them to tax benefits. Large ANBIs are required to use standard forms for the publication of data. In addition to broad statements on, inter alia, objectives, policies and revenue generation, a one-page summary of income and expenditure, including headline figures for donations and grant-giving, must be published on its website. These documents tell us that in 2024, FILE had grant income of over $34 million and made grants of nearly $32 million;[52] ECF had grant income of over €245 million and made grants of nearly €200 million.[53] There is no further disaggregation.[54]

[45]See https://ciff.org/grant-portfolio/our-grant-making-process/.

[46]See https://www.qc.foundation/our-grants/.

[47]See https://europeanclimate.org/our-grantmaking/; https://www.filefoundation.org/contact.

[48]Dutch Civil Code, Book 2 Title 6. See further LK Hoolwerf et al *European Foundations for Research and Innovation (EUFORI) Study. Country Report The Netherlands* (European Commission, 2015); T Schuyt et al 'Foundations in the Netherlands: toward a diversified social model' (2018) 62 American Behavioral Scientist 1833.

[49]Dutch Civil Code, Book 2, Art 285.

[50]Net turnover above €4.4 million over two consecutive financial years: Dutch Civil Code, Book 2, Arts 360(3) and 396(1). See https://www.kvk.nl/en/about-the-business-register/; we were unable to find any additional information about grant-making by FILE or ECF on this register.

[51]90% of the activities must be directed at the charitable purpose. See further https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/what_is_pbo/what_is_a_pbo.

[52]See https://www.filefoundation.org/contact; they also received some financial income.

[53]See https://europeanclimate.org/wp-content/uploads/2025/06/anbi-2024.pdf; this income is divided into government grants and 'grants from other not-for-profit organisations'; they additionally received over €1 million in 'contributions from lotteries'.

[54]Any of our organisations may also have obligations in other jurisdictions. For example, for the benefit of its US donors, ECF complies with certain US tax regulations: https://europeanclimate.org/financials/. We have not been able to locate any further information on donations by ECF or FILE through US registers.

Beyond this very minimal mandatory reporting, ECF and FILE have choices about what to disclose. At the time of our research, FILE's website says nothing about the grants it receives or makes. ECF's website shows some 'impact stories', some of which name organisations working with ECF, but with no associated information about the amount of funding, the nature of the project or the length of the grant. It also has separate pages showing the logos of grant recipients ('partners') and funders. Neither FILE nor ECF, however, provides systematic or comprehensive reporting sufficient to allow much analysis of how they shape environmental law. Most of our limited information on the ways FILE and ECF use their resources comes from disclosures by their funders or recipient organisations.[55]

One interviewee (unattributed) suggested that the lack of transparency of re-grantors was due to complexity and cost:

> it's quite a jigsaw puzzle I think, the way we get the funding and the timing at which it all comes in and the way it's packaged into different grants of earmarked funding and core funding. And it's kind of an ongoing train. And so for example, internally within the organisation, we receive, I think just about every month we receive an update from the strategic partnerships team about all of the grant proposals that are being worked on and who's working on them, and what stage they're at, and that kind of thing. And it's really complicated. So it might just be that it's simply a question of efficiency and time and stuff – that it's too complicated to put all of that information together.

However, we must conclude that part of the role of re-grantors is precisely to maintain the confidentiality of the source and the destination of resource in the environmental arena.[56] None of our interviewees made this suggestion directly, although there were some hints to that effect, in particular in respect of the capacity to encourage donations, 'if getting hundreds of millions out to the field means hiding behind a stichting, I'd rather the money got out than people said I'm just too scared to put the money out so I'm not gonna do it' (Interviewee 7). We return below to the 'genetically endowed thin skin of those who earn a living by giving away money'.[57]

Esmée, CIFF and QCF are more forthcoming on grant-making. They are all registered as UK charities, although that is not an obligation for a grant-making foundation,[58] and subject to charities law. Current accounting and reporting requirements can be found in Part 8 of the Charities Act 2011.[59] All charities (specifically their trustees)[60] must keep accounting records and prepare annual reports.[61] Larger charities[62] must file audited accounts, alongside annual reports, with the Charity Commission. Guidance on the content of accounts and reports is prescribed in a Charities Statement of Recommended

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[55] See also eg Lee and Abbot, above n 3.

[56] On DAFs, above n 18, see H Flannery and B Mittendorf 'Are donor-advised funds facilitating opaque giving to politically engaged charities?' Fisher College of Business Working Paper, available at https://ssrn.com/abstract=4744533 or https://doi.org/10.2139/ssrn.4744533.

[57] R Levy *America's Foundations: The Troubling Gap between their Promise and Performance* (Washington, DC: Georgetown University, 2002) cited in D Leat *Philanthropic Foundations, Public Good and Public Policy* (London: Palgrave MacMillan, 2016) p 136.

[58] Eg the Arcadia Fund, above n 15, is not a UK registered charity.

[59] As amended by the Charities Act 2022; Charity (Accounts and Reports) Regulations 2008, SI 2008/629. See on foundations A Dunn 'Regulation absent: the chimera of charitable foundation law in England and Wales' in C Prele (ed) *Developments in Foundation Law in Europe* (Dordrecht: Springer, 2014) p 51. And on charities generally see J Garton et al *Moffat's Trusts Law* (Cambridge: Cambridge University Press, 7th edn, 2020) chs 15 and 16 and J Picton and J Sigafoos (eds) *Debates in Charity Law* (Oxford: Hart Publishing, 2020).

[60] The definition of trustee extends to 'persons having control and management of the administration of a charity': Charities Act 2011, s 177.

[61] For an overview of the legal reporting and accounting requirements see Abnett and R de Vires, above n 41, at 396–397 and Table 1.

[62] Charities Act 2011, s 144.

Practice (SORP) on Financial Reporting Standard 102, issued by the Charity Commission and followed by the three charities in our research.[63]

Neither the legislation nor the guidance requires registered charities to disclose the details of all grants. The guidance focuses on the type and range of institutions supported and how the work of the grant recipients contributes to the overall strategy and aims of the charity.[64]

> Charities that make grants to institutions must also disclose details of a sufficient number of these institutional grants so that the user of the accounts can develop an understanding of the range of institutions the charity has supported. This disclosure must include all grants made to each institution when these are material in the context of the charity's total charitable expenditure.[65]

In common with standard accounting practice 'an item is material when its omission or misstatement could influence the economic decisions that users make on the basis of those accounts'.[66] The guidance also provides for exemptions. The most relevant is if disclosure 'could result in serious prejudice to the grant maker and/or the recipient institution or individual working for the recipient institution'.[67]

In 2023, CIFF's annual audited accounts specified the amount of grant to 12 named recipients in the climate change priority, most of which are re-grantors (and so there is no disclosure of the ultimate grant recipient), with $69.6 million (of $208.3 million) going to 'other grantees'.[68] QCF specified the amount of all grants over £750K, naming 63 recipients, many of which are re-grantors, with over £13 million (of nearly £250 million) going to 'Other grants to institutions'.[69] We return to Esmée below. Even foundations registered as charities therefore have some discretion in deciding what and how much grant-related information to disclose. That discretion is not unconstrained, but it explains why our three charities are able to take distinctive approaches to disclosure.

Turning to reports, the underlying purpose of which is 'to ensure that the charity is publicly accountable to its stakeholders for the stewardship and management of the funds it holds on trust',[70] the SORP emphasises both the need for objectivity, with charities reporting successes and failures, and the relevance of the report as providing context for interpreting accounts.[71] For larger charities with grant-making functions the report 'must explain the charity's grant-making policy and explain how its grant-making activities contribute to the achievement of its aims and objectives'.[72]

Mandatory reporting requirements are only part of the picture, with the three registered charities taking different approaches to voluntary disclosure on websites. QCF provides an apparently full database of its grants, including the name of the recipient, the amount and duration of the funding,

[63] *Charities SORP (FRS 102)* (2019), https://assets.publishing.service.gov.uk/media/5e6102c286650c513b442f14/charities-sorp-frs102-2019a.pdf. The FRS is a general standard, the SORP is guidance on how that should be applied by charities. A new Charities SORP came into effect on 1 January 2026.

[64] SI 2008/629, above n 59, requires charities to disclose 'such particulars of any grant made by the charity as may be required by the SORP to be disclosed': Sch 2, para (1)(o). This renders this element of the SORP mandatory.

[65] Para 16.17.

[66] Para 3.2.

[67] Para 16.21; 'Situations where serious prejudice is clearly indicated include those where disclosure could result in serious personal injury': para 16.22. Under the Act and the Regulations, the grant need not be disclosed if 'the settlor' of a charitable trust, or any spouse or civil partner of the settlor is still alive. CIFF and QCF are companies limited by guarantee, and the settlor of Esmée and his spouse are no longer alive.

[68] CIFF, above n 14, p 58.

[69] QCF, above n 14, pp 20–22. It is not clear whether the 'other' grants are all under £750K, or include some which they chose not to disclose.

[70] SORP, para 1.1.

[71] Ibid, para 1.11.

[72] Whilst giving charities some flexibility in how reports are presented, the SORP is prescriptive in the areas that must be covered: para 1.38.

and a brief description of the purpose of the grant.[73] ClientEarth, for example, has a one-year $500,000 grant from December 2024 for 'modelling, analysis and policy design to accelerate the clean energy transition in the Philippines';[74] there is a little more information about six grants on the front page of the 'our grants' page. Why some sections provide more information than others is not clear, although it might be as simple as transparency being a work in progress – this is a new and welcome innovation from QCF. CIFF hosts a 'grant portfolio' tool which covers current multi-year grant commitments and is scrollable by 'theme' and by 'region'. Themes can be further clicked through twice to reveal more granular data on grant funding. The amount of funding is always provided alongside the dates of funding; sometimes the recipient organisation is listed, sometimes not.[75] The portfolio tool does not provide any detail (however brief) on the nature of the funded activity, although this may be captured elsewhere in, for example, annual reports or news stories. We return to Esmée below.

These webpages are positive commitments to transparency, and we do not want to dismiss them, QCF's efforts in particular. This ad hoc approach does have its limitations, however. It is not clear how comprehensive the lists of funding are,[76] or the criteria according to which the lists have been compiled. Further, websites change and are not easily comparable. They provide a snapshot and in most cases, a positive gloss on an organisation's activities.

Many foundations have acknowledged the need to provide for more consistent and comprehensive reporting, and there are 'a number of different efforts within the sector to try and increase either transparency or ways of reporting' (Interviewee 9).[77] For example, the 360Giving platform hosts a free search engine for grants data (GrantNav) that stores data on grant-giving from those who sign up to the platform.[78] 360Giving emphasises the importance of standardised, searchable data. A minimum level of information must be provided, including name of funder, recipient, brief description, amount and award date. It is also possible to search against 'direct grant' or 'for regranting', although that is not a mandatory field for foundations uploading their data.[79] Of our foundations, only Esmée is committed to 360Giving,[80] although both CIFF and QCF have chosen, as discussed above, to give some information beyond what is available in their Charity Commission accounts.

The information provided on 360Giving can be rather sparse: by way of example, Esmée granted RSPB nearly £500K in 2023 'towards project costs accelerating the restoration of lowland raised peatlands in Northern Ireland'.[81] Further, it is not clear what proportion of total grants a funder is disclosing: participants 'decide what information to share … The majority of 360Giving publishers (sic) data about all their grants, but there are examples of those who share data about certain programmes, or only grants over a certain value.'[82] Esmée's Annual Report says that it has made 82 grants in the 'Our Natural World' theme, and lists in the report all 82 of those grants, including amount, recipient and brief

[73]This may be evidence of foundations reflecting on transparency around grant-making, since it was not available at the start of our project.

[74]That is the whole of the description.

[75]Take the climate change theme as an example. Sub-themes are 'cross-cutting', 'global cooling', 'energy', 'litigation', 'urbanisation', 'air quality', 'industry', 'engagement and communications', 'land use and food systems', and 'finance', with total spend of over $800 million. A further click through to eg litigation reveals three grants to ClientEarth Phase III, FILE and FILE – Land Use and Diversity: https://ciff.org/grant-portfolio/.

[76]The QCF website does have a 'View all partners' button, but it is not clear whether that is every partner funded or every partner on the website: https://www.qc.foundation/our-grants/.

[77]See also eg the Foundation Practice Rating, which randomly selects 100 UK foundations and ranks them against transparency criteria: https://foundationpracticerating.org.uk/; the US 'glass pockets' self-assessment tool: https://acf.org.uk/acf/ACF/Research-and-resources/Stronger-Foundations%20content/Transparency-and-engagement.aspx.

[78]See the 360Giving Data Standard Grant-making reflecting six key principles, including accessibility, flexibility and responsiveness: https://www.360giving.org/about/data-standard/.

[79]See https://standard.threesixtygiving.org/en/latest/guidance/regranting/.

[80]Esmée is one of 360Giving's funders.

[81]See https://grantnav.threesixtygiving.org/grant/360G-EFF-22-0661.

[82]See https://standard.threesixtygiving.org/en/latest/guidance/plan-the-process/.

description.[83] Its reporting seems to be comprehensive, albeit with no such ongoing commitment. Notwithstanding 360Giving's limitations, and although there is always the danger that voluntary approaches can be self-serving, it provides a useful insight into what individual organisations are doing.

As well as a choice around legal status (charity or not), foundations have discretion to weigh up the costs and benefits of being more or less transparent in different respects and to different audiences. Even if a foundation has taken a decision either to withhold or release as much information as possible, there is no binary outcome, where an organisation is either transparent or not transparent. Transparency in foundations should not be 'pitched as an absolute: a state of being, a destination, the end goal'.[84] It is multi-faceted, and organisations may be more or less transparent in different respects. It would, of course, be possible to wish that any of our three independent foundations provided more or different information, but they do provide varying levels of insight into how grant-making operates. The significant proviso hanging over what we have said so far is that they are able to maintain confidentiality by donating via re-grantors.

3. Why it matters and why it is controversial

Independent grant-making foundations occupy an unusual space in the environmental sector. They are not state actors, and yet increasingly fill the space left by retreating public service provision. They are not market actors, but are increasingly closely connected to markets. By comparison with other parts of civil society, their financial independence (or in the case of re-grantors, their narrowly drawn dependence) and their associated insulation from public opinion and political considerations, gives them, in the words of Stone, 'a singular freedom to act, a freedom which is at once [their] greatest virtue and [their] most vulnerable vice'.[85] In this section, we begin by setting out the positive reasons for transparency, which are intrinsic and instrumental, followed by the challenges that a better approach to transparency may throw up for philanthropic organisations.

Sometimes, transparency is understood as a virtue in itself, often related to the public interest in the relevant organisation's activities.[86] This was apparent in some of our interviews:

> I think it's our responsibility to say, 'Yeah, this is what we're about. This is what we're trying to achieve. These are the organisations that we're working with. And this is our approach to how we do that.' I just can't see why that is not a good thing (Interviewee 5).

In these cases, transparency can be seen as a core or basic value of the organisation, and possibly of the sector. Another interviewee said that:

> we are here to promote human rights and inclusion, and that is not something which is uncontested in and of itself. So we're not neutral in a debate around ideas or ways of working. But the kind of spirit of accountability sits very closely to the values that we bring to that work as well (Interviewee 9).

This can be connected to the public nature of the organisation's objectives: 'We just felt, you know, we're subject to a regulator, we exist for the public benefit, we should be open about what we fund and be transparent about it. I think that just felt appropriate' (Interviewee 10).

A common additional argument centres on the tax advantages granted to a foundation, suggesting that this means that foundation money is partly public money.[87] This counters any argument we might

[83] Esmée Fairbairn Foundation, above n 19, pp 43–49.

[84] Association of Charitable Foundations, above n 8, p 8.

[85] L Stone 'The charitable foundation: its governance' (1975) 39 Law and Contemporary Problems 57 at 57.

[86] See eg Williamson et al, above n 37, on the 'logic of appropriateness'.

[87] That is a justification for the disclosure obligations imposed on UK registered charities, and perhaps also a reason some foundations choose not to register as a UK charity. E Brody and J Tyler 'Respecting foundation and charity autonomy: how

hear that 'it's his money' (Interviewee 3),[88] and so the donor can basically do what he likes with it. The tax benefits arguably give us a 'right' to know what happens to the money. We do not disagree with this argument, but it does bypass interesting and complex issues around wealth. The economic and political structures that make the vast wealth of our foundations and their backers possible, mean that 'it's his money' is always too simple an analysis, regardless of organisational form or tax position.[89]

There are many instrumental reasons for transparency. Perhaps the most intuitive is what Jeremy Bentham described as 'an indisputable truth, and a truth that is one of the corner-stones of political science – the more strictly we are watched, the better we behave'.[90] Turning to the two categories of external stakeholder mentioned above (potential grant-recipients and other funders), grant-making foundations depend on their grantees in the environmental NGO world to achieve their strategic objectives, and NGOs have *some* choice about funding.[91] A more transparent approach may foster trust, confidence and respect between foundations and grant recipients. It may also extend the reach of foundations to grantees beyond the 'usual suspects' (a phrase used in this context by both Interviewees 1 and 7). Transparency to the environmental NGO community may also, as suggested above, enable higher quality applications that are better aligned with a foundation's objectives.

Our interviewees also told us that transparency would improve effectiveness with respect to collaboration with other funders:

> It should be about increasing effectiveness. What we want to move to as a sector is we're able to collaborate more with funders and do a pool of core cost funding for organizations that has limited reporting and application requirements that are all harmonized. And you know, being transparent about what we're doing is a step towards that (Interviewee 2).

In addition, our interviewees saw an instrumental role for transparency around learning, broadly speaking. Interviewee 5 sees 'the sharing of the learning and the sharing of … mistakes that we've made' as an important part of *funders* working together. Similarly, Interviewee 10 suggested more generally that 'working in the open, subjecting your work to scrutiny of others' could be helpful. Others recognised the importance of external input in particular contexts. So, on working with grantees:

> rather than lording from on top and having no idea what you're talking about, and saying, 'I don't really think that adds up for me,' we're saying, 'We threw this out to external scrutiny, these things have come up' (Interviewee 7).

This seems to imply that the external scrutiny will be invited from specific actors, for example an insider-outsider function like an advisory board, or ad hoc invited reviews.[92] People working within foundations are able to recognise that 'we don't have a monopoly of expertise or good ideas' (Interviewee 2) and that 'that no single funder can solve this alone' (Interviewee 6); transparency is one mechanism for accessing knowledge beyond the funder. But recognition of the need for external assistance is patchy, and there is an internal

public is private philanthropy?' (2010) 85 Chicago-Kent Law Review 571 attempt to de-bunk this and other arguments in favour of constraints on foundations. On the public-private complexity, see Chan, above n 12, especially ch 2, including on the different models of 'civil' or 'tax-based' regimes of charity regulation.

[88]Speaking specifically about appointments to the board of the foundations. Interviewee 3 was not approving of this argument.

[89]It is possible to forgo the tax advantages, eg EF Amarante 'The perils of philanthrocapitalism' (2018) 78 Maryland Law Review 1. See also on the potentially *reparative* nature of philanthropic giving C Cordelli *The Privatized State* (Princeton: Princeton University Press, 2020), especially ch 7.

[90]Cited in C Hood 'Transparency in historical perspective' in Hood and Heald, above n 9, p 9.

[91]Lee and Abbot, above n 1 on the tapestry of funding.

[92]Association of Charitable Foundations, above n 8, p 33, suggests that foundations should build more links with academia in pursuit of transparency.

assumption that they generally know who to ask. In the quotidian business of a foundation, outsiders will not easily make inroads into the self-belief and sense of agency of some parts of the philanthropic world.[93]

Turning to the challenges, as we discuss above, some foundations try to be as transparent about grants as possible. Of course, what they think is possible will vary. Some of our interviewees, however, expressed surprise when we asked them about the more confidential approaches of other organisations: 'I don't know why other funders are not keen to do it' (unattributed). This interviewee and one other both asked 'Why wouldn't you?'. We were offered a number of more or less compelling (certainly internally compelling) reasons for resisting calls for more transparency. There are trade-offs between transparency and other legitimate organisational goals, generally,[94] and we focus here on four overlapping issues raised by our interviewees.

First there is a practical trade-off.[95] The creation, curation and disclosure of information imposes an administrative burden and requires money, staff and time. This 'cost' of transparency is a particular issue for smaller foundations with fewer staff: some grant-makers may not have the capacity to be more transparent.[96] There can be a 'quite human practical side of it which is like, since I've come in, it just hasn't been at the top of the list until it suddenly was. You know, I've been restructuring a team, I've been having to exit people, hire people, do a new strategy, all the rest of it' (unattributed). Whilst we have some sympathy with the practical concerns with respect to small foundations, it does not apply to the five organisations that we discuss here, who make grants worth many millions of pounds a year, and have a significant bureaucracy associated with their processes. That tells us nothing, of course, about what should be transparent; there could be a level of transparency at which the costs would be disproportionate, but we are a long way from that. Further, if transparency is designed to stimulate external input, that may require additional specialist resource and perhaps a change in ways of working.

A second understandable, but manageable, concern is the importance of highlighting the recipient of grants, rather than the foundation: 'they wanted their partners to be in the spotlight … They wanted the field to be what the debate was about' (Interviewee 1); similarly 'I try not to stand on platforms and shout about how wonderful [the foundation] is, but I will accept a platform when I can shout about how wonderful a grantee is' (Interviewee 7). This interviewee also commented of individual funders that 'a lot of these guys actually do have a bit of humility'. It should be possible to disclose the fact of a grant without claiming credit for others' work. For some, the reticence to disclose funding could be an old-fashioned discretion about wealth, arguably part of the way in which disparities of wealth can be maintained without social unrest: 'maybe there's an unease about how much money is available' (Interviewee 1).[97]

A third reason offered by our interviewees for keeping grants confidential is 'to protect a lot of our grantees … we don't want to expose them' (Interviewee 3).[98] In some cases, this is clearly absolutely correct. For example, one of our interviewees talked about the risks of persecution to LGBTQI individuals and groups in parts of Africa. When donating to such causes,

> we don't make any disclosure beyond the fact that the grant is given to those [re-granting] organisations. And they have their own processes for disclosing either publicly or not. And for very obvious reasons, many of them are not public (unattributed).

[93] P Hagel *Billionaires in World Politics* (Oxford: Oxford University Press, 2020); HP Schmitz et al 'How billionaires explain their philanthropy: a mixed-method analysis of the giving pledge letters' (2021) 32 Voluntas 512.

[94] Heald, above n 9; for foundations specifically, see Leat, above n 57, pp 143–145.

[95] Australian Government Productivity Commission *Future Foundations for Giving: Inquiry Report* (2024) – although it is largely (not entirely) about what we would call recipient NGOs rather than grant-making organisations – discusses the administrative expenses of running a charity.

[96] Abnett and de Vires, above n 41, at 399.

[97] In response to a question about the different approaches of different organisations to transparency; Interviewee 1 also suggested at this point that 'vastly larger sums are spent on the opposition'.

[98] Echoing the 'serious prejudice' exemption in SORP, above n 67.

This is one of the few occasions on which re-grantors were explicitly acknowledged to be (in this case uncontroversial) tools of confidentiality. We might easily imagine the need to protect certain details (if not the existence) of grants and organisations in other cases, for example organisations that work with migrants or survivors of domestic abuse. At a time of huge vulnerability for environmental defenders, especially given our organisations' global reach,[99] they may fall into that category in some cases. How far this extends, what level of rights protection makes disclosure acceptable, is more open to question. This set of concerns does not justify complete secrecy, 'We don't have a secret docket of really controversial grants I mustn't tell anybody about. No.' (Interviewee 9).[100]

A strategic decision to protect grant-recipients can overlap with the fourth issue, which is the protection of donors, including the founders or funders of our organisations, as well as other donors to re-grantors: 'there are some donors who prefer to stay anonymous' (Interviewee 8).[101] Aside from humility, above, giving money to good causes can expose donors to a scrutiny that they may not experience if they stay out of things. So the *Daily Mail*, for example, implies disapproval of Chris Hohn's (the founder of CIFF) tax arrangements[102] and *The Guardian* questions the way in which QCF made their money. *The Guardian* has described QCF as 'a foundation run by billionaire hedge fund bosses whose investment fund has invested in fossil fuel companies';[103] the *Daily Mail* has described the European Climate Foundation as 'a shady organisation', and suggested that backing from Chris Hohn makes a campaign 'nothing less than pernicious'.[104] This illustrates also how criticism of a funder can create complications for their grant-recipients, especially for environmental NGOs who as well as taking philanthropic funding, need to convince their millions of members that they are legitimate. Further, political polarisation around climate and environment does seem to be a reason for some of the reluctance to be open about grant-making, and it is true that information can be used against environmental organisations. In our work, we have asked questions about the role of a small number of big philanthropies shaping the direction of many and apparently diverse organisations. We are concerned that this narrowness might be at the cost of environmental protection and environmental justice. Others ask the same questions when they seek to stymie regulation.[105]

[99]Which is not to be complacent about the place of environmental defenders in the UK and Europe, where they face increasing legal restrictions: see eg M Lee and C Armeni 'Participation and protest across civic space: an environmental law story' (forthcoming) Transnational Environmental Law, advance access.

[100]Asked expressly whether UK grants could be too sensitive to reveal; the interviewee could not recall any such grants.

[101]This reflects other empirical work in the field, see eg A Williamson et al 'Privateness, accountability and philanthropic foundations' (2019) 25 Third Sector Review 147.

[102]'His London-based hedge fund TCI's ultimate parent company is in the Cayman Islands – a well known tax haven': D Woodland, 'Extinction Rebellion billionaire financier "donates £46 million" to Sadiq Khan's climate network' (*Daily Mail*, 13 November 2023) https://www.dailymail.co.uk/news/article-12742309/extinction-rebellion-billionaire-financier-donation-sadiq-khan-climate-network.html.

[103]K Stacey 'Climate groups accept millions from charity linked to fossil fuel investments' (*The Guardian*, 30 June 2023), https://www.theguardian.com/environment/2023/jun/30/climate-groups-accept-millions-from-charity-linked-to-fossil-fuel-investments-quadrature-climate-foundation. There has been further *Guardian* scrutiny of QCF: see F Harvey 'UK climate envoy to keep role at charity whose founders invest in fossil fuels' (*The Guardian*, 28 September 2024), https://www.theguardian.com/environment/2024/sep/28/uk-climate-envoy-to-keep-role-at-charity-whose-founders-invest-in-fossil-fuels; Editorial 'The Guardian view on freebies and lobbyists: an own goal that Labour should have avoided' (*The Guardian*, 26 September 2024), https://www.theguardian.com/commentisfree/2024/sep/26/the-guardian-view-on-freebies-and-lobbyists-an-own-goal-that-labour-should-have-avoided.

[104]R Darwall 'Rishi Sunak has been bullied into a catastrophic onshore wind U-turn by a cabal of rebel Tories in thrall to Europe's eco-zealots' (*Daily Mail*, 6 September 2023), https://www.dailymail.co.uk/debate/article-12484885/RUPERT-DARWALL-Rishi-Sunak-bullied-catastrophic-onshore-wind-U-turn.html; for a more flattering picture of him as 'Britain's top tax payer' see https://www.dailymail.co.uk/news/article-14321621/Britains-biggest-taxpayers-revealed-Son-Jamaican-car-mechanic-Rishi-Sunaks-boss-tops-list-340m-tax-bill-bookies-builders-join-Ed-Sheeran-JK-Rowling-rock-band-Queen-100.html.

[105]See eg Together Association and Climate Debate UK *Clean Air, Dirty Money, Filthy Politics* (2023) p 5, available at https://togetherdeclaration.org/wp-content/uploads/2024/01/CleanAirDirtyMoneyFilthyPolitics_pub_2.pdf, arguing that air

Given the contentious space within which many foundations (and therefore their donors) work, 'some high net worth individuals are very cautious about giving away their money because there is this atmosphere of you're damned if you do, you're damned if you don't … if you're gonna do it, you're gonna get criticised'. This is from Interviewee 7, who concludes 'and you just need to do it'. The same interviewee, talking with insight about the source of philanthropic wealth and the potential for individual reputational damage, commented that 'they don't wanna be called hypocrites'. If philanthropy is a way of making 'certain ideas, such as the distribution of wealth, entrepreneurship, and the obligations of the rich, seem not just acceptable, but a normal state of affairs',[106] we may be talking about something more than hypocrisy.[107] The transparency trade-off, however, is not the hurt feelings of billionaires or even that public knowledge of funding will be used to stoke polarisation. It is the very real fear that funding will be withdrawn from controversial sectors like climate.[108] We return to this below.

4. Our thoughts on transparency in grant-making

We begin our discussion of philanthropic transparency from the basis that independent grant-making foundations exercise influence over matters of existentially important public interest. They exercise this influence subject to very few constraints: 'all you are responsible for is to your trustees … we don't have customers, we don't have clients, we don't have shareholders. Everybody tells you you're absolutely fantastic, because we give them money' (Interviewee 5). It is extremely difficult to scrutinise, research or understand philanthropy and its influence, generally in society, and specifically in respect of environmental protection and environmental law. Foundations shape our world and shape environmental law.[109] Where the public interest lies, what counts as a problem and how to solve it, is inevitably, and often profoundly, disputed. In the context of grant-making, the public interest is defined by foundations, perhaps in consultation with favoured stakeholders, but ultimately in isolation. In the absence of transparency, we do not even see clearly what activities individual foundations believe to be in the public interest. Transparency is a necessary starting point for examining the notions of public good being pursued by these private organisations.

From the narrower perspective of the environmental NGO community seeking and holding grants, a number of interviewees speak about the power of their organisations and/or funders. For example: 'obviously we are the funder and there is a power imbalance inevitably' (Interviewee 11); 'that's like something you have to get comfortable but not too comfortable with when you work in philanthropy because it's just a reality of the sector. And I think we try to correct for it as much as we can but we cannot correct for it fundamentally' (Interviewee 7); 'there is a power dynamic, that you can't get away from it. We are incredibly privileged, got a lot of money' (Interviewee 5). This power dynamic matters deeply for the individuals in NGOs, who strike us as vulnerable to the needs of their funders: 'it's really easy for us to forget that everybody's nice to us because we're funders' (Interviewee 9). And even from the perspective of individuals within foundations, 'it's not necessarily … an easy position to hold, to be making decisions about who gets resourced and who doesn't' (Interviewee 10). Beyond individuals, this power imbalance matters for organisations, whose ability to build independent strategies is compromised, especially by short-term and restricted funding ('an organisation cannot function if year to year it is coming back and back and back, trying to get money. How is it going to develop a long-term strategy? How is it going to develop clarity?' (Interviewee 11)). Funding some approaches and not others

pollution policies 'are in large part the consequence of undue influences in politics, rather than the result of either popular will or scientific discovery of a serious problem'.

[106]Holmes, above n 4.

[107]Being a hypocrite is not always the worst thing in the world: see D Runciman *Political Hypocrisy: The Mask of Power from Hobbes to Orwell and Beyond* (Princeton: Princeton University Press, 2010).

[108]See further the discussion below, and note that even supposedly 'safe' causes like arts and culture are increasingly subject to scrutiny.

[109]Lee and Abbot, above n 1.

prioritises and legitimises particular ways of thinking about environmental law and its role, and may leave little space for other approaches. Ideas that have philanthropic support could easily suffocate competing or just different perspectives, and a lack of transparency can make the chosen approaches, spread as they are across organisations and jurisdictions, seem inevitable.

These two fundamental arguments in favour of transparency – the exercise of public power and the power dynamic vis-a-vis the environmental NGO community – come together. A small number of powerful funders can both reduce the diversity of ideas and approaches and concentrate the distribution of resources in relatively few organisations.[110] This renders our world of environmental law more homogenous than it appears – although, of course, we do not know who re-grantors fund. Public transparency would diffuse knowledge about independent grant-making foundations, increasing the potential for a broader range of environmental actors to consider the ways in which foundations promote their understanding of the public interest. Understanding where ideas come from is a step towards enabling a greater diversity of ideas, approaches and perspectives on how to achieve objectives in environmental law.

Our aim here is not to set out a transparency regime, but we can offer some basic principles. The ways in which foundations operate, including their approach to creating, disbursing and monitoring grants, should be visible. Preparing grant applications is a long and costly process, and as well as reducing hopeless applications, clear, publicly available criteria can help individuals on both sides manage the power imbalance between funder and recipient. Foundations' grant-award meeting agendas and minutes should be available, just as they are for public bodies, notwithstanding the well-rehearsed risk that 'real' conversations are moved offline.[111]

For our particular interest in grants, there should be a presumption of comprehensive disclosure of certain minimum information. That information would include the basic details such as we see on 360Giving, or the QCF website – amount, timing, recipient, project definition – and in addition an end of project summary. Searchability is important, in order to bring together categories of grant (recipient, jurisdiction, topic, amount) according to the needs of the outsider rather than the foundation. Each foundation (or shared transparency mechanism) should establish consistent criteria for excluding grants from disclosure, which should be explicit and disclosed. Simply excluding the destination of grants where the recipient may come to real harm is, conceptually at least, straightforward, whatever the grey areas. But this cannot be a reason for us to be completely in the dark about either that grant in particular, or granting generally.[112] We should not be trying to protect anybody, donors or recipients, from *criticism*: 'it's super healthy that the media hold [independent foundations] to account because nobody else does' (Interviewee 7). If foundations choose not to disclose grants for this or other reasons, outsiders need to understand why and in what proportion. Finally, all of this material needs to be maintained for a substantial period, providing something more than a snapshot. Our key concerns are with the availability of consistent information, comprehensively across grants made.

Not even the most transparent of our foundations adopts the approach set out in the previous paragraph. The almost total absence of information on grants from our two re-grantors is more deeply problematic. ECF, and particularly FILE, tell us remarkably little about where their money goes. We also lack information on where their money comes from. Whilst re-grantors play other important roles for independent foundations, it is clear that they enable confidentiality or secrecy – CIFF and QCF disclose large grants to re-grantors, but that is as far as the chain of transparency goes. We should note that foundations (including CIFF) were central in the setting up of both FILE and ECF; if foundations wanted them to value transparency, that could have been arranged. We do not see any reason for re-grantors to be an exception from the principles we set out in the previous paragraph, subject to what follows, especially given the large amounts of money they receive, including from both CIFF and QCF.[113]

[110] Cracknell et al, above n 15, p 18.

[111] Eg Fisher, above n 36.

[112] As recognised by the SORP, above n 67, para 16.24.

[113] See above n 14.

There are reasons, however, to be cautious about imposing transparency on foundations in the position of any of our five organisations. Our view is that non-disclosure should be limited to the rare cases in which grantees need to be protected. We have no reason to believe that this justifies blanket non-disclosure. We have also said that shelter from criticism is not a good reason for secrecy. We do, however, recognise the real concern that money will be kept for private consumption, or perhaps diverted to less controversial causes, if more transparency is required: 'I'd rather the money got out, than people said I'm just too scared to put the money out so I'm not gonna do it' (Interviewee 7). This is particularly a problem with respect to the funding of re-grantors. We do not at this point feel able to take a firm position on that; we share the concern of Interviewee 7 (and others) about a loss of funding to the sector.[114] But, if a funder (especially an individual) insists that their identity is confidential, the re-grantor should, as a minimum, disclose the amount of the grant, its purpose, dates and the reason for the withholding of information. This principle around explaining any withholding of information applies to any exclusion from transparency. We need to 'know what we don't know'.[115]

Our argument so far has been that we want to see what philanthropic grant-making foundations are doing, or at least what they are not willing to tell us. The expectation is that this may create gentle pressures for more diverse scrutiny of and input to their work. This raises further challenges. As a funder of civil society, philanthropy contributes to the provision of an alternative to the state and the market.[116] Even if the distinctiveness of those three realms is eroding, foundations are sheltered from majoritarian views and financial constraints. Distinctiveness from the state and the market may require not just independence from them, but also a freedom from some of the (majoritarian, short-term or risk-averse) pressures to which they are subject.[117] Independence (or for re-grantors a narrow dependence) allows the support of people, ideas and activities that may not be popular or obvious. It is important to be alert to this concern, but we do not think it is fatal – the foundations remain autonomous, but subject to greater external understanding.

At the moment, foundations more or less choose what to disclose, through a combination of choice of regulatory approach and jurisdiction, and discretion within regulation. Our principles above would not *require* any grants to be disclosed that are not already. Instead, we argue for a presumption in favour of disclosure, and for non-disclosure to be explained. An introduction of mandatory reporting along these lines for UK donations is not very likely. It would lead to even more forum shopping than we have already, and probably an exit of philanthropic money to other jurisdictions.[118]

So our intuition is not to advocate mandatory regulation. We recognise that a voluntary approach has its limits. In particular, whilst schemes like 360Giving are growing[119] powerful actors can choose to remain unscrutinised. We should be mindful of what Interviewee 7 calls 'nefarious people funding nefarious things'. Think tanks and NGOs are used in many ways, and there is reporting of climate-denying and climate-confusing activities, as well as anti-protest and anti-regulation activities.[120] But

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[114]The impact of transparency on giving is under-researched according to A Williamson and B Luke 'Giving journeys: the role of private foundations' (2025) 35 Non-Profit Management and Leadership 593.

[115]A phrase common in the context of risk assessment: see eg A Stirling 'Keep it complex' (2010) 468 Nature 1029. Note that the SORP, above n 63, requires disclosure of 'the total number, value, and general purpose of those grants where these details have not been disclosed' due to the 'serious prejudice' exception: para 16.25.

[116]R Reich 'On the role of foundations in democracies' in Reich et al, above n 11.

[117]The tension between independence and accountability to the state (and, we would add, to citizens) is well-known for charities generally, see eg M Harding 'Independence and accountability in the charity sector' in Picton and Sigafoos, above n 59; Chan, above n 12.

[118]Especially for place-neutral climate action. The approach to regulating grant-making foundations varies enormously by jurisdiction, even if they do register for tax benefits. Note the differences between the English and Dutch approaches; also the Canadian tax-based approach: Chan, ibid.

[119]From a starting point in 2016 of 184,000 grants from 25 funders, the platform now hosts 322 funders and one million grants worth £302 billion: https://www.360giving.org/about/what-and-why/impact/.

[120]On the Koch brothers, see eg Hagel, above n 93; on Tufton Street, see eg A Bychawski 'US climate deniers pump millions into Tory-linked think tanks' (*Open Democracy*, 16 June 2022), https://www.opendemocracy.net/en/dark-money-investigations/think-tanks-adam-smith-policy-exchange-legatum-iea-taxpayers-alliance-climate-denial/.

there are also legitimate disagreements on what is in the public interest, and our views on the importance of environmental regulation are not universal. As above, the framing of the public interest by wealthy philanthropic foundations (be that 'pro' or 'anti' environmental regulation) is problematic. We accept that it is unlikely that the truly 'nefarious' actor will voluntarily follow the principles we propose above.

Our purpose here has not been to set out a transparency regime for foundations, but simply to outline some basic principles. We doubt that mandatory regulation would be feasible or even helpful at a jurisdictional level. The principles we set out in this section would provide more consistent expectations and norms within a context of voluntary disclosure, enhancing our ability to see into foundations and their influence over environmental law.

Conclusions

This paper is part of a broader project that seeks to understand better the relationship between philanthropy and environmental law. Our focus on transparency in this paper is an example of the ways in which research can reveal unexpected lines of inquiry. In this text, we have, first, identified a considerable diversity in approaches to transparency between our five organisations. Interviewee 5's response to a question on this was to suggest that 'there is a culture within foundations that each individual foundation is different, it's special, it takes a different approach'. Notwithstanding the diversity, and even given some significant efforts on transparency, the overall approach is lacking. Secondly, our interviews with actors in philanthropic organisations have revealed a range of perspectives on the benefits of transparency, and the risks and costs associated with that. Although we recognise the complexity and even risks, transparency in grant-making philanthropic organisations is important because of their significant ability to exercise influence over the public realm, and because of their power over environmental NGOs, who are themselves important actors in environmental law. Thirdly, whilst we have no intention to set out a transparency regime, we have set out some principles of transparency. These principles rest on a presumption that the recipient and purpose of grants should be disclosed, or that lack of disclosure should be identified and explained.

Philanthropy, specifically the ways in which it allows the wealthy to play a political role, is deeply controversial. Melinda French Gates (formerly half of the then Bill and Melinda Gates Foundation) is perhaps correct: 'I'm not sure that the attack has been on philanthropy, I think the attack has been on wealth'.[121] The scale of the wealth is indeed indefensible,[122] and philanthropy is far from a straightforward social good. For as long as we live with these vast inequalities of wealth, notwithstanding the problematic nature of philanthropy, the wealthy should try to do good.[123] We believe that our foundations are trying to do good, although in some cases, they have chosen to be so opaque that we cannot truly know. Allowing scrutiny of how they 'do good' moves towards a mitigation of the democratic harms of philanthropy.[124] Moves to greater transparency in any sector have been resisted by those accustomed to operating without scrutiny, and transparency always has costs (as does every other good thing). And whilst there is some resistance to transparency from foundations, we see patches of a genuine commitment to transparency, and perhaps even have some optimism that things might be changing.

[121] B Breeze 'Critiquing the critics' in G Neri-Castracane and G Ugazio (eds) *Philanthropy: Multi-disciplinary Perspectives* (Abingdon: Routledge, 2025) p 72.

[122] I Robeyns (ed) *Having Too Much: Philosophical Essays on Limitarianism* (Cambridge: Open Book Publishers, 2023); I Robeyns *Limitarianism: The Case against Extreme Wealth* (London: Penguin Books, 2024).

[123] Cordelli, above n 89.

[124] Ibid.

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