Law philanthropy and justice

Litigation is but one weapon that philanthropy can deploy to achieve sustained, meaningful and far-reaching social and economic justice.
Lead article
Advancing justice is a multi-pronged act

Many funders are reluctant to delve into legal work because they see it as too specialised. However, it can be a more supple and accessible instrument for achieving change than they realise.

To a degree unprecedented in the lifetimes of most of us, 2020 saw government intervention in the lives of citizens with legislation and policy changing at speeds unimaginable before the pandemic. It provided a forcible reminder to many of us working in philanthropy that now, more than ever, our work often sits at the intersection of state and citizen. In a world of growing inequality, attacks on the rule of law and deep uncertainty, we are excited to examine legal action as a key tool for interrogating and challenging power and advancing justice.

A call to funders
From the various contributions to this special feature and from our own experience working for foundations in South Africa and the UK at the intersection of law and philanthropy, we urge funders to:

- recognise that there is a wide range of legal strategies that can be supported by foundations. No matter what issue area we are working on, the law probably touches on that issue area and can be a means of furthering it
- support experts and the building of expertise in this field, from paralegals to strategic litigators to community organising
- support the institutions of democracy including the independence of the judiciary and a robust civil society sector. These institutions are essential to protect, promote and fulﬁll the rule of law and rights of litigation made grants of $1 million or less. Of the almost $350 million spent on law education in 2017-18, only 11 per cent was spent outside the US and only 1.8 per cent went to non-US based recipients.

Our experience is also that many funders ﬁnd this work daunting, believing that it requires legal knowledge or new grantmaking practices. As so many of us refocus our efforts on how to better listen to the communities we serve, the specialised work of legal action and legal strategies may seem to smack of elitism. This edition will challenge those misconceptions. It does not offer a silver bullet, but it highlights the fact that civil society is using legal action to do urgent and effective work and it needs the backing of philanthropy. The entry points exist for all of us and they are more familiar than we think:

- long-term funding
- core support
- people-centred strategies.

And, yes, the risks are familiar also: backlash, unintended consequences and messy movement building, but if you do any social change work, you will have navigated these before.

This special feature reﬂects the wide range of activities and strategies involved in legal action and explores the unique contributions of many foundations and organisations in their quest to advance justice.
More than strategic litigation
This special feature also reflects the wide range of activities and strategies involved in legal action and explores the unique contributions of many foundations and organisations in this field in their quest to advance justice. Atlantic Philanthropies and Open Society Foundations reflect on more than a quarter of a century of strategic litigation to defend and advance human rights, and combat torture and inhuman treatment (see page 43). The work of their partners to give South Africans access to anti-retrovirals to fight HIV and to advance digital democracy in Kenya are all critical markers that tell a powerful story of how the law can serve the ends of justice. They also reflect on how the law can be used and misappropriated by authoritarian leaders to consolidate control and suppress dissent and why now more than ever the role of human rights lawyers, strategic litigators and funders willing to fund this work is so critical.

By presenting these and other cases, we hope to better equip readers with an analysis of the accomplishments of philanthropy as well as the ongoing challenges that we may need to grapple with in 2021 and beyond. We also look back at some of the literature that informs our practice.

Funding people-centred justice
On page 52, Lorenzo Wakefield from the Matt Foundation highlights people-centred justice and the role of the paralegal infrastructure across Africa – an often neglected area of funding. The Matt Foundation’s experience shows that work at local community level by paralegals, far away from the highest apex courts of a country, are just as critical to advancing justice for poor communities and levelling the playing field in terms of access to justice. He makes a plea for financing people-centered justice at community level, recognising that justice may take many forms. This requires more innovative and creative thinking by foundations so that they fund work in a way that does not fuel competition for resources and builds on a broader global movement for people-centered justice where law is recognised as one of the many powerful tools for change.

Jackson Otieno from UHAI EASHRI reminds us that, even when strategic litigation has a role to play, it is rarely an end in itself (see page 54). It must be used as a tool by and for strong and resilient movements and sit alongside work for social progress. UHAI has been working for sexual and gender minorities in East Africa for over a decade and has funded litigation to decriminalise same-sex conduct and to push back against efforts to legislate away the rights of LGBTI people. At the heart of this work are the communities themselves.

Building alliances, building capacity
In a similar vein, Alelyamma Mathew points out the interconnected movements for change and alliances that we need to support to truly uphold the rule of law and democracy – from activists and organisers to policy advocates (see page 49). They flag and celebrate the important work of #MeToo movements in ensuring that perpetrators of sexual harassment are held accountable in the court of public opinion as well as courts of law. Like so many of our contributors, they highlight that litigation is one component of a legal strategy and that advancing law and social change should never mean funding only lawyers but rather considering the role of a wide range of actors. In the feminist movement, this means considering the role of survivors, community mobilisation, policy advocacy and research as all critical to advancing social change.

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This ecosystem approach is useful since it allows foundations to consider the role that law plays in a range of thematic and issue areas that we all work on, be it healthcare, human rights, technology, women’s rights or migration – the role of law as a tool to fight systematic oppression across a range of areas is worthy of more in-depth analysis and funding.

Nick Grono from the Freedom Fund demonstrates on page 56 that these themes of effective legal action are also relevant to their work to challenge the actions of the corporate sector in the fight against modern slavery. Alongside an active strategic litigation programme, the Freedom Fund is developing the capacity of organisations in the Global South to undertake investigations as the core of a sustainable ecosystem for this work that builds bridges between organisations in the Global South and Global North.
Summary of US and International Grant Dollars for Litigation, Law education, Legal services, 2017-2018

<table>
<thead>
<tr>
<th>Focus of giving</th>
<th>Dollar value of grants US</th>
<th>International</th>
<th>% US</th>
<th>International</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation</td>
<td>$242,028,935</td>
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<td>75.6</td>
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<td>$37,852,645</td>
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<td>Legal services</td>
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<td>$287,680,022</td>
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<td>10.7</td>
</tr>
</tbody>
</table>

Source: Candid, 2020

Connecting the local and the global
Ultimately, law is a tool that crosses boundaries and can be an excellent means of building transnational solidarity from South Africa to the US, Ireland, the UK and Germany. Romy Krämer highlights on page 60 the pressing issue of closing civic space in Germany, an issue that will resonate for many of us in other jurisdictions. In the UK, access to justice and closing civic space have become directly intertwined as the government reviews both the system of administrative law and the Human Rights Act. These local examples of a global phenomenon also highlight that progress in this space – like much social change – can also produce a backlash. Many of the authors in this special feature remind us that legal action takes time and funders need to invest over the long term and make the connections from local to global and global to local.

We know that the law cannot change the world by itself and no one in this special feature is offering a romanticised vision of how the law or litigation and legal action can solve all the world’s problems. But we do want to emphasise that these tools are critical in terms of incremental and systemic change. For funders of all kinds, there are numerous pathways available to support this work. For some, this will mean direct financing for strategic litigation; for many, it could simply mean core or project funding for organisations working to advance justice and the rule of law at community level, movement level or within the courts by lawyers.

As guest editors, we feel privileged to have learned from all the extraordinary contributors to this special feature. Our hope is that their insights will cause readers to reflect on legal action in their own work, because funders of all kinds have a role to play in this ecosystem. We recognise that funders often struggle with entry points to legal action – there is no right approach – but we do think that the diversity of activity in this area makes it more accessible than ever.

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All of us working in philanthropy can and should question whether our funding supports the communities we serve. We should aim to see what justice looks like for them, within their context, and help people make their own, informed decisions on legal action. This may involve re-imagining justice and how the law interacts with communities most in need. It may well involve challenging power at a range of levels within society. In the end, it will be their knowledge, courage and leadership that will create lasting social change and this requires philanthropy to be bold in its approaches and generous in its support.

US recipients received 90.2% of grants awarded for legal services in 2017-18.
Laws prescribe the rights and duties of citizens; the courts provide the means of upholding the one and enforcing the other. Too often, though, laws are inadequate to protect the rights of all citizens, or access to justice though the courts becomes the preserve of the wealthy. As a result, there is a considerable role for philanthropy to play in both supporting campaigns to change or introduce legislation and enabling groups to uphold their rights under existing laws. The following is a snapshot of funders’ involvement in the law.

TrustLaw

TrustLaw is the Thomson Reuters Foundation’s global pro bono legal programme, connecting NGOs and social enterprises with law firms and corporate legal teams to provide them with free legal assistance. It also provides legal research and training courses worldwide. It runs, for example, legal training courses on social enterprise and impact investing as well as capacity-building workshops and webinars to offer practical guidance on legal issues relevant to NGOs and social enterprises. Its research helps equip NGOs to pursue effective policy reform and advocacy. It is also providing dedicated pro bono support to help NGOs cope with the effects of Covid-19.

The GOOD Lobby

Founded in 2015 by Alberto Alemanno, The GOOD Lobby is a non-profit committed to equalising access to power. It trains and helps citizens to influence major policy decisions, hold their political representatives accountable and share new solutions with them, in the process, demystifying and promoting lobbying as a legitimate practice of participatory democracy. It provides a school for individuals, NGO advocates, grassroots movements, social entrepreneurs and progressive companies, exposing them to the expertise of public affairs consultants, lawyers, business professionals and academics. It also runs an incubator for promising citizen-driven projects and campaigns for causes that enhance social and environmental justice, and counter corruption and inequality.

Namati

Namati is a network which trains and deploys community paralegals to fight legal actions on behalf of local communities around the world whose rights are under threat from powerful interests. The name derives from a Sanskrit word meaning ‘to shape into an arc’ and the reference is to a remark by Martin Luther King about the arc of the moral universe bending towards justice. Membership includes over 2,000 organisations and almost 10,000 individuals. It also convenes the Legal Empowerment Network, a community of grassroots justice defenders with members in 160 countries, which shares experiences and resources, and undertakes collective campaigns on a variety of issues including land rights, environmental justice, and rights to health and citizenship. Its supporters include foundations such as the Hewlett Foundation, the Robert Wood Johnson and Mott Foundations, Centers for Disease Control and Prevention and the Climate Justice Resilience Fund.

Open Society Foundations

The premise of the Open Society Foundations’ Public Health Program is that health is a public good, so healthcare should be available to all and laws and policies that impact on health should be transparent and democratically accountable. OSF therefore supports communities that receive sub-standard care or face barriers to services because of who they are, such as Roma and other minorities, transgender and intersex people, people with lived experience of mental health challenges, sex workers, people who use drugs, and migrants and refugees. The programme is active in Asia, Eurasia, Europe, Latin America, North America and sub-Saharan Africa. Key to its approach is the use of litigation and it has produced a report ‘Advancing Public Health through Strategic Litigation’ which offers six case studies on health rights issues drawn from these regions, highlighting lessons for practitioners involved in this work and for funders concerned about justice and health.

The State of Bahia (AATR) whose purpose is to provide legal advice to community organisations and movements involved in the struggle of rural workers and rural populations to uphold their rights. AATR has about 100 associates working in various regions in Bahia and the rest of the country, mostly in the field of legal advising, university teaching, public prosecution, and judicaries.

In addition to its more publicised work to strengthen US democracy, the Hewlett Foundation began in the early 2000s to fund the China Law Center at Yale Law School. The Center has offices in Beijing and the US and works to professionalise China’s legal and regulatory systems, whose development has lagged behind the country’s economic liberalisation, but where there is a growing awareness of the need for the protection of rights. This presence allows it to interact with Chinese partners, which include such high-level government institutions as the Supreme People’s Court and the Standing Committee of the National People’s Congress. Its current focus is on judicial reform, constitutional law and civil rights, and administrative law and regulatory reform.

In Profile

Funders and the law

The GOOD Lobby

For more, read our interview with Thomson Reuters Foundation CEO, Antonio Zappulla at:

tinyurl.com/Antonio-Zappulla

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thegoodlobby.eu/about

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tinyurl.com/ChinaLaw-Hewlett

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tinyurl.org/namati

OSF-public-health-program

Tinyurl.com/Financing-people-centered-justice-in-Africa - see page 52

Open Society Foundations

Established in 2003, with a grant of $3 million from the Ford Foundation to set up an endowment, the Brazil Human Rights Fund has an abiding interest in the use of the legal system to prevent or draw attention to human rights violations. Among its grantees is The Lawyers Association in defence of Rural Workers in the State of Bahia (AATR) whose purpose is to provide legal advice to community organisations and movements involved in the struggle of rural workers and rural populations to uphold their rights. AATR has about 100 associates working in various regions in Bahia and the rest of the country, mostly in the field of legal advising, university teaching, public prosecution, and judicaries.

tinyurl.com/Brazil-human-rights-fund
Since 2015, Baring Foundation has run a Strengthening Civil Society programme premised on the idea that legal action is crucial to tackling discrimination and that its use needs to be better understood by civil society. The programme has a particular focus supporting lawyers and legal organisations to act as hubs for civil society and communities – rooting their work in broader social change movements. More recently, it has also set up a Covid-19 Legal Action Fund, making £1 million available in emergency funding, in amounts of up to £40,000, for organisations with legal expertise in the area of their work. The aim of the fund is to support legal action to protect vulnerable individuals and communities from the impact of Covid-19 and the response to the pandemic from public authorities, businesses and communities.

The Access to Justice Foundation (ATJF) is a UK initiative set up by members of the legal profession in 2010 to fund law centres, local citizens’ advice offices, independent advice agencies, pro bono projects and national charities, which help to facilitate access to justice. According to the foundation’s website, 14 million people in the UK can’t afford access to justice and half of all legal advice centres in the country have closed. Over the past ten years, ATJF has provided grants worth over £7 million to its target beneficiaries. It is also the founder and host of the Community Justice Fund (co-founded with the Baring Foundation) to help specialist social welfare legal advice organisations cope with the effects of Covid-19 and to strengthen it for the future. The fund has made over £1 million in grants since May last year. Other partners in the fund are Advice UK, Law Centres Network and Citizens Advice and five other social welfare funders, the AB Charitable Trust, Indigo Trust, Paul Hamlyn Foundation, The Legal Education Foundation and Therium Access. It is also supported by the Ministry of Justice and a £5 million grant from The National Lottery Community Fund’s Covid-19 crisis response funding.

Digital Freedom Fund (DFF) provides support to advance digital rights in Europe through strategic litigation. Its three thematic focus areas are advancing individuals’ ability to exercise their right to privacy; protecting and promoting the free flow of information online; and ensuring accountability, transparency and adherence to human rights standards in the use and design of technology. It provides three kinds of grant support, for single-instance litigation, pre-litigation research and emergency support (support, for instance, for filing an appeal at short notice). In June 2020, it launched a Covid-19 Litigation Fund which supports strategic cases challenging digital rights violations committed in the context of the pandemic. Examples of groups supported by the fund include the Civil Liberties Union for Europe which is fighting the use of Covid-19 apps that do not respect people’s rights to privacy and data protection, and Big Brother Watch in the UK, which is concerned about the extended use of thermal scanning following the outbreak of the pandemic. DFF’s grantmaking in 2019 was just over €510,000 while support for field-building activities was €198,000.

As part of the Bertha Justice Initiative, the Bertha Foundation trains young or aspiring social justice and movement lawyers by funding two-year fellowships at public interest law centres around the world. Centres involved include Zimbabwe Environmental Law Association (ZELA), Colectivo de Abogados Jose Alvear Restrepo in Colombia and Lembagat Bantuan Hukum Masyarakat in Indonesia. At any one time, Bertha funds over 100 fellowships at 20 partner organisations spanning 18 countries. Current fellows include Josephine Chimama at ZELA and Maria Paula Lemus Parra at Colectivo de Abogados (CAJAR). Josephine works closely with mining affected communities raising awareness of their rights. In 2019, she was part of the litigation team which ensured that a mining company (Imani mine) was ordered by the High Court of Zimbabwe to stop operations as it had not complied with environmental regulations. Maria Paula works with CAJAR on its Integral System of Truth, Justice, Reparation and Non-Repetition.

Digital Freedom Fund (DFF)
http://digitalfreedomfund.org

Bertha Foundation
http://berthafoundation.org/lawyers

ATJF
http://atj.org.uk

The Baring Foundation
http://baringfoundation.org.uk
Skadden

Launched in 1988 to commemorate the 40th anniversary of US law firm Skadden Arps, the Skadden Fellowship Foundation programme provides two-year fellowships to talented young lawyers to pursue the practice of public interest law on a full-time basis under the guiding principles of improving legal services for the poor and encouraging economic independence. To date, the foundation has funded over 900 fellowships. A measure of the programme’s success is that 90 per cent of the recipients remain in public service, and almost all of them continue working on the same issues they addressed in their original fellowship projects.

Among the recently named 2021 Fellows are:

Molly Broderick, a student at Harvard Law School, who will work at Greater Boston Legal Services where she will provide direct representation for tenants to combat the wave of Covid-19 related evictions disproportionately affecting communities of colour.

Ramis Wadood, a student at Yale Law School who under the Skadden Fellowship will work at the American Civil Liberties Union of Michigan to represent low-income immigrants who are victims of abusive immigration enforcement, aiming to secure money damages for misconduct, bring about disciplinary action against individual officers, raise public awareness of law enforcement bias and abuse, and effectuate systemic policy change.

Last year Skadden’s London office announced the launch of its Justice First Skadden Trainee (JUST) Programme, which will provide a two-year training contract each year to a student pursuing a career in public interest or social justice law. The first JUST Trainee began their training contract at the Greater Manchester Immigration Aid Unit in January this year.

Law in action: protecting South African miners from Covid-19

In May last year, the Johannesburg Labour Court ordered mining companies to develop new regulations and a code of practice to ensure that mineworkers and mining communities are properly protected from Covid-19. The campaign to bring the case to court and to secure this ruling was supported by the Ford Foundation in South Africa and conducted by its grantees including Mining Affected Communities United in Action (MACUA).

Women Affected by Mining United in Action (WAMUA), the Centre for Applied Legal Studies (CALS) and the Centre for Environmental Rights (CER). In April, the mining industry had secured a partial exemption for South Africa’s industry had secured a partial lockdown regulations, allowing it to operate at 50 per cent capacity. Mineworkers are particularly vulnerable to Covid-19 because they operate in confined spaces where social distancing is difficult or impossible and they are widely affected by lung diseases such as pulmonary tuberculosis. The court extended its ruling beyond miners themselves to the communities in which mines are situated, and also ordered companies and the state to engage meaningfully on the new regulations with both trade unions and community networks, like MACUA, who host mines.

As Alliance magazine celebrates its 25th anniversary, we asked two long-standing funders of legal action to reflect on their experience over those 25 years and to point out some of the most important lessons learned.

James A. Goldston writes:
At a time when the rule of law is under siege in large parts of the world, the Open Society Foundations attaches particular importance to strategic litigation and legal tools more generally in advancing human rights and justice. For more than a quarter century, OSF has supported the use of litigation by civil society actors and, where appropriate, state agencies as one component of a multi-pronged strategy for change that includes advocacy, campaigning, community mobilisation and communications.

Strategic litigation creates space for dialogue, evens the field of power, spotlights abuse and focuses public pressure. When pursued
and provide legal advice has fostered myriad synergies with OSF and other grantmakers and partners.

Martin O’Brien writes: The founder of Atlantic Philanthropies wanted to put the foundation’s assets in the hands of people working to make a lasting difference to the lives of marginalised and disadvantaged communities. He believed that deploying funds over a fixed period could maximise their impact. The foundation closed in 2020 after distributing just under $9 billion. The mission of making a lasting difference led Atlantic to support strategic litigation.

We believed that if you could change the law you could make broader systemic change that would benefit larger numbers of people. Strategic litigation offers opportunities for change at scale. Atlantic supported different changemaking strategies but strategic litigation was an element across all of the programmes and in nearly all of the geographies where it operated.

In some places and programmatic themes, it was a significant element of the portfolio. For example, we believed that South Africa’s progressive constitution provided lots of opportunities for both our health and human rights grantees to advance change. Among other gains, those investments helped to deliver widespread access to anti-retrovirals for people with HIV, improvements in education for poor people, access to land rights and social welfare benefits, and significant gains for the LGBTI community including the right to marriage.

The political winds have shifted since the end of Communism and the focus of the law, courts and litigation have shifted with them so that, in too many places, law is the currency by which authoritarian leaders have consolidated control, suppressed dissent and concealed theft. It is also one of the principal levers by which corporate power has been magnified and worker power diminished.

At the same time, popular demands for a better life are framed ever more widely in the language of rights. In many countries, human rights remain amongst the few places where uncomfortable questions can be aired. Litigation cannot change the world by itself but wins in court can be important, granting legitimacy to claims long silenced and narrowing the range of justifications for
defenders of oppression who can no longer say ‘You may not like it, but it’s the law.’

If the world is to re-emerge from this dark authoritarian period, law – and more specifically, litigation – will play a central role in that struggle.

For all its imperfections, litigation can have real and positive impacts along a spectrum from the material to the emotional. At one end, courts order the construction of schools, the provision of reparations for victims of torture and criminal prosecution of perpetrators. At the other, a judgment may offer complainants the personal satisfaction of having officially confirmed a narrative of events falsely but vehemently denied. And in between, lawsuits can lead to enhanced recognition of rights, new institutions to enforce them and the adoption or reform of legislation.

OSF’s commitment to strategic litigation extends beyond grantmaking to operational support. In 2003, the foundation established the Open Society Justice Initiative as an in-house public interest law firm to put into practice the rule of law ideals that underpin its financial support for grantees. The ability to deploy legal action strategically – that is, deliberately and as part of a broader mosaic of tools – litigation furthers open society values on two levels. Most concretely, it contributes to an advocacy goal specific to time and place, from digital democracy in Kenya to racial equality in the United States. Simultaneously, each legal action tells a powerful story: ordinary people can use the law to serve the ends of justice.

In the Republic of Ireland support was given to FLAC in Ireland which have litigation as a core activity. Resources also went to encourage new support for organisations that undertake strategic litigation and other human rights activities. Examples include the Constitutionalism Fund in South Africa and the Human Rights Fund in Northern Ireland.

In reflecting on this work, the greatest impact came when litigation was allied to other change strategies such as community organising, mobilising opinion and legal advocacy. The impact is also greatest when those who need the change are closely involved in the development of legal strategies and allied campaigns. The lawyers work at the service of the clients rather than the other way round. It’s also clear that you can sometimes lose in court but win in the broader campaign because the case mobilises opinion and drives change.

The converse is also true. Donors interested in supporting strategic litigation should also resource efforts to secure implementation of legal judgments. Just because it’s the law doesn’t mean that change happens on the ground.

In common with other philanthropic strategies for change, there can often be unintended consequences. Unless carefully thought through, cases can establish regressive precedents. Alternatively, they can yield unintended benefits. For example, in the US, as part of work to abolish the death penalty, Atlantic supported the Roper case which successfully challenged the juvenile death penalty in the Supreme Court. Happily, this death penalty case has also had significant impact on the broader juvenile justice system.
Can litigation achieve true social justice?

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In the 1954 case of Brown v Board of Education, the US Supreme Court found that racial segregation in educational facilities was unconstitutional. The judgment was heralded as a major success – one Black newspaper proclaimed it to be ‘the greatest victory for the Negro people since the Emancipation Proclamation’. Constitutional lawyers and historians often deem Brown the most important US Supreme Court decision of the 20th century, if not of all time. The case is held up by proponents of strategic litigation as a shining example of the ways in which legal action by social movements can drive wide-scale social change.

Diverging views
Yet over the last 25 years scholars have studied the impacts of the case and drawn wildly different conclusions about whether it can be deemed a ‘success’ at all. In fact, Brown resulted in little school desegregation during the decade after the judgment, raising questions about whether litigation is a useful tool in shaping societal transformation. In his book The Hollow Hope, Gerald Rosenberg argues, using the Brown case as one of a series of case studies, that litigation as a strategy for social reform has been vastly overrated and can even be counter-productive. The most in-depth analysis of Brown is Michael Klarman’s rich account in From Jim Crow to Civil Rights: The Supreme Court and the struggle for racial equality. He argues that steps towards racial equality often attributed to Brown were instead the result of long-term political, social and economic changes.

He argues that steps towards racial equality often attributed to Brown were instead the result of long-term political, social and economic changes that would have transformed southern race relations regardless of the Supreme Court’s intervention. The book also documents the many negative impacts precipitated by the Brown case including the prioritising of desegregated education over other urgent pressing civil rights issues in the Black community and the conflict within the civil rights movement about whether to pursue goals through litigation or direct action. Klarman is cautious about drawing conclusions on whether Brown may have done more harm than good but the book (not without its critics) raises the phenomenon of backlash as an important factor to consider when evaluating whether legal action has been successful.

Harvard scholar Martha Minnow in her book In Brown’s Wake: Legacies of America’s educational landmark strikes a more upbeat tone by focusing on the symbolic importance of Brown and the ways in which the court’s findings have reverberated across other equality movements in the US and beyond.

What can funders learn?
The example of the Brown case and subsequent analysis raises interesting and important questions about how best to evaluate strategic legal action. Why should those who are using litigation as a tool for social change think about impact? What is the best way of evaluating strategic litigation?

Funders are increasingly asking these questions and the Open Society Justice Initiative’s report Strategic Litigation: Insights from global experience was pathbreaking in this regard. We support a number of funders and NGOs involved in strategic legal action as learning partners and we’ve been inspired by two recent books that also tackle these issues and will be of particular interest to those working in philanthropy or interested in funding legal work.

Atlantic Insights: Strategic litigation by Susan Hansen highlights the various ways Atlantic Philanthropies’ grantees have used strategic litigation to pursue social and economic justice. It includes important prompts for those interested in funding strategic litigation such as considerations about whether even unsuccessful litigation can have upsides, the risks for funders who support strategic litigation and the right balance in terms of oversight and grantee autonomy. Pulling together case studies of landmark suits across Northern Ireland, the Republic of Ireland, South Africa and the US the publication makes for an enjoyable and inspiring read. It shows how using the law can result in important changes in policy and practice on issues ranging from education, poverty reduction measures, and transgender rights, to police racial profiling and the provision of Medicare.

From Jim Crow to Civil Rights: The Supreme Court and the struggle for racial equality.
Strategic Human Rights Litigation: Understanding and maximising impact, Helen Duffy confronts this problem directly through the development and application of a framework for understanding strategic human rights litigation and its contribution to various forms of personal, legal, social, political and cultural change. Through five in-depth case studies that are drawn largely from the author’s own experiences of working with NGOs and in practice she explores a broad range of issues and contexts: genocide in Guatemala, slavery in Niger, forced disappearance in Argentina, torture and detention related to the ‘war on terror’ in Guantanamo, the US and the UK, and Palestinian land rights.

Can litigation ever be strategic?

The book calls into question the idea that litigation can and does make a difference, sometimes directly and dramatically but more often subtly and even imperceptibly, changing the human rights landscape. 'Strategic Human Rights Litigation' will be incredibly useful for those who are interested in planning, pursuing or evaluating litigation.

Strategic legal action has become the subject of growing interest – one need only look at the huge increase in the number of climate change cases globally, for example – and together these recent publications offer important insights for future endeavours. The incorporation of these lessons into strategic funding interventions are all the more important during a time of societal and geopolitical turbulence that includes a growing backlash to human rights at the international level and threats to courts, judicial independence and the democratic role of lawyers across a number of countries. In such challenging times, there can be no doubt that lessons from the past will be instrumental in guiding and shaping strategic legal action in future.

Litigation, ‘rarely resolves human rights problems. However, it can and does make a difference, sometimes directly and dramatically but more often subtly and even imperceptibly, changing the human rights landscape’. 

To ensure a democratic future, funders should help build ecosystems and get behind intersectional approaches

The victory of the Biden-Harris campaign in the 2020 US presidential election was not born out of fundraising campaigns and legal cases, although they were the bookends to this historic election. This victory was the result of the interconnected alliance of activists, organisers, and policy advocates who worked together to uphold the rule of law while mobilising political power at the grassroots level. Intersectional organising across race, class, gender and sexuality revealed the interdependent systems of discrimination as well as power that could be mobilised for change. From another perspective, it was undoubtedly the #MeToo movement, founded in 2006 by Tarana Burke, that led to 23 women coming forward to recount the sexual harassment and assault they allege to have experienced at the hands of former President Donald Trump.

The Collective Future Fund is a collaborative fund dedicated to ending gender-based violence. Created in 2019, it started to leverage the momentum of the #MeToo movement which is part of a long-term and larger effort to address the use of sexual violence as a key tool in race politics. Before Rosa Parks sat on a bus in Montgomery in December 1955, she investigated the brutal rape of Recy Taylor by four white men, who used this to send a message of terror to Black communities. Today, survivors of sexual and structural violence are leading the way in creating change.

The #MeToo movement and the vital activism of BIPOC (Black, Indigenous and people of colour) women, gender non-conforming, and trans communities are creating much-needed change in national elections, building power at the local and state level and advocating for policy and culture change. Traditional philanthropy gives primacy to specific tactics such as strategic litigation. However, when funding strategic litigation work related to gender-based violence, funders should consider the approaches used by the survivor-centred organisations they are resourceing.

In ‘Strategic litigation for sexual and gender-based violence: Lessons learned’ the Office of the UN High Commissioner for Human Rights suggests that ‘ensuring a [survivor]-centred approach is critical to the success of any strategic gender-based violence litigation’, including the continuous participation of survivors throughout the process. Most importantly, the report found that successful strategic litigation is only one component in resolving long-lasting, historical oppressions and should be part of a sustained, multi-pronged advocacy strategy, involving partnership with social movements, community-based groups, and relevant experts. Philanthropy must therefore dedicate resources with an
An example of such a successful collaboration was the Survivors' Summit held virtually in September 2020 and over the time of the global pandemic. This was the culmination of several localised conversations and broad collaboration with workers' rights, policy and healing justice organisations working with survivors across the board including the National Women's Law Center, #MeToo International, Justice for Migrant Women, and National Domestic Workers Alliance. Through localised convenings led by membership-based organising, groups were able to develop a survivors' platform and raise the visibility of violence, especially in the run-up to the 2020 Presidential elections.

Another example is the National Women's Law Center’s (NWLC) involvement in a lawsuit filed on behalf of a school student expelled for ‘sexual impropriety’ after reporting she was sexually assaulted by another student on school property. NWLC argued that the school was deliberately indifferent to the sexual harassment the student alleged and had violated her by depriving her of educational opportunities and retaliating against her by expelling her from school. A win in this case sends a strong message that victim-blaming is unacceptable.

Traditional philanthropy must shift its approach to take account of intersectional issues, especially as they relate to anti-Blackness, misogyny and xenophobia and these systems' dependence on violence to maintain power and control. An example of such investment and a successful challenge to it is provided by the Sandra Bland case. Sandra Bland, a 27-year-old Black woman, spokesperson and organiser with Black Lives Matter was found hanged in a prison cell in 2016. The ensuing outcry, along with legal efforts, led to the Sandra Bland Act, which requires among other things, de-escalation training for police officers, mandates county jails to divert people with mental health and substance abuse issues toward treatment, and requires that independent law enforcement agencies investigate jail deaths.

The National Black Women’s Justice Institute analysis of civil rights data shows that Black girls are seven times more likely than their white counterparts to experience out of school suspensions. Moreover, nine states allow carceral punishment in schools, which helps create a school-to-prison pipeline among young Black girls. Lastly, 2020 was the deadliest year on record for violence against trans and gender non-conforming (GNC) people. Of the 45 trans and GNC people murdered, 22 were Black and seven were Latinx; 25 were Black or Latinx women. Not enough has been done to protect and share the stories of violence used against GNC and trans women.

Intersectional investment
In order to fight the continuing rise of authoritarianism, philanthropy must invest in BIPOC women, gender justice movements, and feminist movements across the globe to create opportunities for transnational solidarity building. Our democratic future relies on investment in an intersectional analysis as well as interconnected strategies that utilise a broad range of tactics.

When Covid shutdowns began, multiple rapid responses were set up, including the Collective Future Fund. Many of the relief funds were delivered by women of colour-led and feminist organisations with deep ties to their local community who stepped forward to deliver food, protective equipment, water and soap to affected communities. However, feminist movements should not only be tapped during periods of crisis. Philanthropy must go beyond rapid response delivery and invest in support that is flexible and multi-year, so that movements can be nimble in their strategies, fortified organisationally and have the ability to plan for the future. If we are to safeguard democratic futures globally, we must invest in multi-pronged approaches to feminist organising and not in single issue movements. Philanthropy must support feminist ecosystems by supporting collaborations pushing for effective change over long periods.

1 Intersectionality is a legal concept that recognizes the simultaneous and interrelated impact of racism, sexism, homophobia, and other oppressions. It was coined by Kimberle Crenshaw to show the interconnections of structural power. Advertise here

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Financing people-centred justice in Africa

The 2019 ‘Justice for All’ report found that 5.1 billion people— a staggering two-thirds of the world’s population— lack access to meaningful justice solutions. This figure represents more than a 20 per cent increase over a decade in the number of people who are trapped in the justice gap. But what does this statistic really mean?

In places like Malawi and Sierra Leone, it means prisons are overcrowded with people who have been detained for petty offenses such as loitering or small debt charges, often for months in poor conditions, as they are tried for crimes that they did not commit. In these countries and many others, community paralegals provide the only access for disadvantaged populations to legal and other important services. This is what has been defined as people-centred justice—where people’s justice problems are resolved outside of court, using a human rights framework. Community paralegals work to address critical community needs, despite having limited resources and little to no financial support or recognition from their governments.

Mott’s approach

For nearly three decades, the Charles Stewart Mott Foundation has worked to strengthen South Africa’s paralegal infrastructure through our support for the country’s community advice offices (CAOs). CAOs were instrumental in leading community resistance to apartheid, and to providing justice services promised in South Africa’s post-apartheid constitution and we remain committed to bolstering the work of community-based paralegals and supporting the sector’s efforts to gain recognition and sustainable financing from the South African government.

Mott has expanded its justice portfolio beyond South Africa and is now supporting NGOs and independent legal aid institutions to provide people-centred justice services in Kenya, Malawi, Rwanda and Sierra Leone. On a broader scale, Mott is working to promote continental learning and sharing across Africa and to ensure that NGOs providing justice services are included in high-level global discussions around financing justice as part of development package negotiations.

In collaboration with the Hewlett Foundation and the Fund for Global Human Rights, we will launch a global Grassroots Legal Empowerment Fund in 2021 to help support local organisations that use legal empowerment approaches to address injustice in their communities. We aim to raise $100 million over ten years, in partnership with other philanthropic foundations and development institutions who are committed to financing justice services to achieve the SDG agenda.

Sustainable financing

SDG 16, with its focus on promoting peaceful societies and providing justice for all, has laid the foundation for countries to support justice outcomes more clearly. For the first time people-centred justice is not only viewed as a civil and political right, but also a development goal that needs to be financed and implemented. Though the justice goal has the potential to be a gamechanger, philanthropic support from Mott and other donors simply will not be enough to close the world’s justice gap.

Governments throughout Africa and beyond have an obligation to finance justice services, but funding rarely goes beyond the courts. Cost-benefit studies in various countries have shown how investing in people-centred community justice services has offset other high-cost expenditures. Instead of funding expensive detention centres, governments could channel those funds towards supporting paralegals who work to keep people from being detained in the first place. In the long run, outreach activities undertaken by paralegals on human rights and laws help foster law-abiding citizens, which eases the financial and operational burden on justice systems.

The ever-widening global justice gap makes it clear that it’s time to change the way we think about how people access justice services. SDG 16 provides a call to action, but to achieve the goal we need substantial, long-term financing to build new systems that put people—not institutions—at the centre of justice systems, and justice at the heart of the sustainable development agenda.

In the many places where access to justice is limited, funders should put money into supporting community-based paralegals.

Community paralegals work to address critical community needs, despite having limited resources and little to no financial support or recognition from their governments.

In 2019, the Hewlett Foundation and the Mott Foundation launched the Justice in Africa Fund, which aims to raise over $100 million over ten years to support local organisations accessing justice services.
The work of the East African Sexual Health and Rights Initiative shows the need to adopt a context-driven approach to eliminating the persecution of same-sex conduct.

Removal of laws that criminalise same-sex conduct will eliminate the injustices against sexual and gender minorities, right? Yes and no. Such injustices also arise in countries like Rwanda and the DRC that have no laws prohibiting same-sex conduct. The diverse cultures and traditions of eastern African countries mean that a cookie-cutter approach simply won’t work. Within each country, the proportion of eastern African countries that have no laws prohibiting same-sex conduct.

We have supported movement and capacity-building, which has provided platforms for our communities to develop strategies for challenging unjust legal structures. In Uganda, the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) came together to successfully challenge anti-homosexuality legislation. In Kenya, the Gay and Lesbian Coalition of Kenya (GALCK) teamed up with the Nyanza Rift Valley Western Kenya (NYARWEK) LGBTI coalition and the Kenya Human Rights Commission (KHRC) to file a petition challenging the laws prohibiting consensual same-sex conduct. These two examples demonstrate that strong, vibrant, resilient movements of activist and ally organisations are key to challenging unjust laws.

In both Kenya and Uganda where decriminalisation cases have been filed, activist organisations have undertaken massive civic education for sexual and gender minority communities in order to build communities of practice. In Uganda, GALCK and NYARWEK developed a community civic education training curriculum implemented through their community-based members. The National Gay and Lesbian Human Rights Commission (NGLHRC) has also been conducting legal aid clinics and training community members across the country on what the law currently was and what the desired situation is. In Uganda, prompt action mobilised public and media opposition to the proposed anti-homosexuality legislation mentioned above.

Investing in strategic interest legislation must recognise the insecurity involved. The Ugandan act was only law for six months, but violence against persons based on their real or perceived sexual orientation was so high that hundreds of Ugandans fled to refugee camps in neighbouring countries. As preparation for the expected backlash from the proposed petition in Kenya, GALCK created a network of security response teams across the country while at the same time building the capacity and supporting the resourcing of security components of member organisations, complementing NYARWEK’s work in Western Kenya. Both of these also worked hand in hand with NGLHRC’s legal aid initiative. The Kenyan approach was also adopted by the sexual and gender minority community in Burundi which has helped it navigate the aftermath of a violent election in 2015.

Social advocacy.

Laws are great, but changing the realities of sexual and gender minorities cannot be achieved without accompanying social progress. Getting the general public on the side of a community’s petition has been a key component of the litigation petitions that we have supported. Activist organisations have done this by aligning with mainstream organisations not only for the shared values and technical expertise they may bring, but also for the authoritative positions they hold in society. In Uganda, CSCHRCL includes many leading mainstream civil society organisations. In addition, the community strategy included media interviews and social media campaigns on what the litigation campaigns are really about that were vital in countering the misinformation and resultant backlash.

However, building community consensus around a formalised litigation strategy is difficult work. Movements, even within the same country, are seldom homogenous in their thinking. For a process to truly remain under the control of the affected communities and their activists on the ground, the movements need to be allowed to determine the best solution to an impasse. Funders also need to remain open and objective in supporting all components of a national challenge that are in line with their values.

Even when all these things are in place, there is no guarantee that cases will be won. Losses in courts have led communities and other stakeholders including funders to doubt the efficacy of such costly undertakings if they don’t guarantee wins. What is important to remember is that for criminalised, economically disenfranchised and politically marginalised communities, the ability to challenge discrimination using constitutional means is in itself a powerful tool in the recognition of our communities’ existence!
Law and Freedom

Abolishing slavery once and for all

More than 40 million people live in slavery today – where a person is exploited for sex or labour, and controlled by threats, violence, coercion, deception and/or abuse of power according to the International Labour Office.¹ They are forced to work in dangerous and punishing conditions – to make bricks, peel prawns, mine tin and gold, pick cotton and weave carpets, and much more besides. It is a crime that requires a legal response but although national laws prohibit and criminalise slavery or create civil means to pursue its perpetrators, these mechanisms are often poorly enforced and the organisations seeking to use them are poorly resourced.

As a leader in the global movement to end modern slavery, the Freedom Fund sees the law – harnessing a wide range of legal mechanisms to tackle modern slavery. So, at the same time as supporting civil lawsuits or criminal complaints, we are also dedicating funding to explore how trade law can be used to disrupt imports of goods tainted by modern slavery.

Our programme is operating within a nascent area of human rights litigation which presents us with numerous challenges. Strategic litigation can be high-risk and expensive and often holds limited prospects of success. Lawsuits against corporations for human rights abuses in their overseas operations involve complex areas of domestic and international law, and there are only a small group of organisations and law firms (mostly based in North America and Europe) with the expertise and appetite to pursue these cases. Cases may take years and many fail even before they reach a court. We have also seen an increase in the use of defamation suits against NGOs and human rights defenders that seek to reclaim their rights in court. So-called SLAPP (strategic lawsuits against public participation) suits have a chilling effect on the willingness of groups investigating and pursuing strategic litigation against corporations, whether in their own jurisdiction or overseas.

Finally, there is a clear need for additional funding in this area. The Freedom Fund is one of few donors that are actively supporting international human rights litigation. Increased investment in legal efforts, including through donor collaboration, is essential to push forward the global accountability agenda and end impunity for human rights abuses.

¹ Global Estimates of Modern Slavery 2017, International Labour Office

Running through our programming is an emphasis on the need to adopt an expansive approach to using the law – harnessing a wide range of legal mechanisms to tackle modern slavery.

More than 40 million people live in slavery today.
Restrictions blot the landscape

Despite the growth of philanthropy in Europe and moves towards greater European integration, new research finds that foundations face ongoing restrictions.

A favourable legal and operating environment is crucial for the philanthropy sector to meet today’s unique challenges. While many governments have introduced tax incentives to stimulate philanthropic activity, an enabling environment goes far beyond tax incentives. It includes the freedom to set up a public benefit organisation, as well as the freedom of foundations to operate without undue restrictions, either domestically or across borders. It involves matters like foundations’ day-to-day operations, investments, the relocation of the seat of a foundation, or mergers. The latest research, however, suggests that there is a spectrum of new and old restrictive rules and practices facing European philanthropy. The fifth edition of legal country profiles collected throughout 2020 by Philanthropy Advocacy, a joint Dafne and EFC initiative, in cooperation with leading experts, and a new edition of comparative highlights, shows that the regulatory environment and the political climate are increasingly challenging for European foundations and wider civil society.

The EU and national governments have also developed a number of stricter anti-money laundering and terrorism-financing rules, which have had a chilling effect on philanthropy. Some countries have gone beyond EU requirements and consider all non-profit organisations and public benefit foundations as ‘obliged entities’, increasing the reporting burden for these organisations without clearly identifying related risks.

A few countries also require reporting of and public access to detailed information on beneficiaries or donors, measures which are disproportionate to a risk-based approach and a clear over-interpretation of the EU Directive or international standards. While ensuring the security of citizens is of great importance, policy measures must be based on a proper assessment of risk, be targeted and take into account fundamental rights. Caution is needed to avoid unintended consequences for the philanthropy and the wider civil society sector. In some countries, laws also limit the scope of activities considered ‘political’ that public benefit organisations may undertake.

Despite the focus of the research being on national law, the implementation of EU law and international policies was also taken into consideration. The ability of foundations and donors to be active across borders has become increasingly important as the practice of philanthropy becomes more international. It is with this in mind that questions on the cross-border tax treatment of foundations and donors and the recognition of foreign-based foundations were included in the research.

The analysis also confirmed that a single market for philanthropy does not yet exist. While businesses can operate freely within the EU, philanthropic organisations sometimes need to register or create a branch before they are able to operate in another country in Europe. Philanthropic entities cannot merge across borders as companies can and it is often impossible for the organisation to move its seat across borders.

Furthermore, some national laws are still considered to be potentially in conflict with EU law. Recognition of foreign EU-based public benefit organisations and their donors remains complex, and some governments still discriminate against foreign-based organisations. This slows down some of the cross-border philanthropy that could help mitigate the effects of the Covid-19 crisis. For example, Spain is only now removing discrimination of foreign-based comparable public benefit foundations and their donors, probably as a consequence of a recent infringement procedure launched by the European Commission against Spain.

Experts also doubt that German law is fully in line with EU law. Thus, a non-German based public benefit organisation carrying out its charitable activities outside of Germany can only benefit from a corporate tax exemption when its beneficiaries have their residence in Germany, or its activities contribute to Germany’s international reputation. The research also revealed that some national laws are restrictive when it comes to new forms of impact investing or mission-related investments. Some require preservation of the value of the endowment – mission-related investments or investments in social enterprises do not always generate the required returns (or are considered too risky investments) – while others do not permit the giving of grants to social businesses or loans or any other programme activity that generates income on the programme side. That is why it is crucial to advocate for favourable policy conditions for impact investing, social business financing and for mission-related investments of the endowment – both at the EU and national levels.

This research will be of use to anyone interested in the position of philanthropy in a particular country. The country profiles and comparative analysis provides for a greater uniformity of data at the European level which, in turn, is contributing to positive outcomes for philanthropy in Europe. For example, comparative data has helped Poland and the Netherlands to advocate for more favourable conditions for cross-border philanthropy in their respective countries. It has also helped the Finnish and Swedish foundation sector to argue that tax incentives for giving are the norm in other European countries and should also be introduced there.

By better understanding the regulatory framework for philanthropy in Europe, we are better placed to act on development, to promote good practice and to challenge barriers.

For more information, visit www.philanthropyadvocacy.eu

The authors wish to thank Hanna Stähle for her contribution to this article.

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Above: Analyses of national legal environments.
The interpretation of an antiquated law on charitable status is threatening politically active civil society organisations in Germany

In February 2019, the German Supreme Tax Court issued a judgment with far-reaching consequences. It ruled that the charitable cause of political education was to be interpreted in a very narrow way that explicitly excludes attempts to influence public opinion on political issues according to one’s own views. As a result, the anti-globalisation platform Attac, that had been in legal proceedings with its local finance authorities since 2014, lost its charitable status on the grounds that its work was to be interpreted in line with the letter of German law. The current law lists specific causes that are considered charitable: chess, model flying, and animal husbandry have their own separate mention while human rights and social justice are strangely absent. Fighting climate change was recently added to the list – a small success of the alliance’s work. While some causes might not have been relevant in the 1950s when the law was first formulated, they are certainly relevant today and many NGOs want to address them need to find workarounds to be able to operate, which results in a second major issue.

For lack of specific inclusion in the list mentioned above, Attac and many other organisations resort to so-called ‘meta causes’ like political education (in Attac’s case), supporting a democratic state, or science and research when they register their charitable status. However, under the current interpretation of the law, organisations are explicitly forbidden to use ‘political tools’ to work towards such meta causes. Political tools can only be used to achieve specific causes like the protection of the environment and even there they cannot be the main lever for creating change. As a result, while a charitable environmental organisation can actively make political demands, and an organisation like Attac can develop political demands, it cannot actively interject them into the political discourse (by, for instance, organising demonstrations). The ability of charitable organisations to exert political influence as part of their work is therefore severely curtailed by the current interpretation of the law because it is possible only with respect to a list of incomplete and often outdated charitable issues.

Effects on civil society
The result is a depoliticisation of civil society.

While the struggle about this specific case is ongoing, it reveals a much broader complex situation that is threatening critical civil society in Germany and Europe.

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**Model aircraft, yes – social justice, no**

By Mika Baumeister

**Right:** An uncharitable act?
and with it the funding and other resources that are only available to charitable organisations.

Several foundations we spoke to also report that they have become more cautious since the Attac ruling and are now more hesitant to support politically outspoken associations because they fear a backlash on their own charitable status. Moreover, and in line with what is happening in the NGO field, this exacerbates differences between small and large foundations. A massive player like the Open Society Foundations Initiative for Europe, known as OSIFE, recently set up a non-charitable entity in Germany. It has the legal power to distribute money to its grantees from different entities all over the world depending on what is considered charitable in different locations. Smaller foundations like the Guerrilla Foundation, however, which might have a very similar funding strategy but no legal team are faced with the choice of either operating in a grey zone and possibly losing their charitable status or ceasing to fund politically active civil society organisations. In these circumstances, it is to be expected that progressive next-generation donors and international civil society organisations will think twice before setting up their foundations or offices in Germany for lack of a supportive environment.

The response

In response, the alliance was formed in 2015 as a collective support and advocacy organisation. It demands a fundamental revision of the charity law and instructions for implementation given to finance authorities with respect to the two issues mentioned above as well as a number of others, such as the lack of clarity regarding the charitable status of foreign donations.

We believe that the time to act is now. The position of the German state on such matters has important signalling effects for other countries in the EU. We should not wait until Civics downgrades Germany (as happened to Austria in 2019) because of the shrinking civic space for civil society but act now to push for a modern charity law that allows civil society to address the pressing needs of our time. We are also surprised at the lack of response among the majority of German foundations. Despite its potential implications, just over 20 foundations officially support the alliance (out of over 20,000 foundations in Germany).}

Several foundations report that they have become more cautious since the Attac ruling and are now more hesitant to support politically outspoken associations.

Above: A protest too far?

How to Fight Inequality (and why that fight needs you)

Ben Phillips

Inequality is ‘the meta issue’ we should all focus on, argues Ben Phillips. It is looking back progress on all other issues from poverty to climate change.

One of the first things he reminds us of in his short and accessible book How to Fight Inequality (and why that fight needs you) is that history provides useful signposts: inequality has been overcome in the past, and it will be again. He draws on the lessons from the Great Depression and the Civil Rights movement in the US, but it’s the story of Scandinavia that is most elucidating. He writes that until the early 20th century, there was grinding poverty in the region, and how, through the power of building rural collectives and unions, Scandinavia’s small farmers and workers were able to fight back. ‘What created the conditions... for the egalitarianism we see as so Scandinavian today,’ he argues forcefully, ‘was massive pressure from below,’ and the tactics for today should be to build collective power from below, not to convince the wealthy to let go of their power. Here, he quotes South African activist Jay Naidoo, who founded the trade union coalition which helped bring down apartheid... ‘It’s not about how brilliant your argument is... What matters is the balance of power between your side... and the side of the elite. The truly effective civil society organisations will be those that work out how to organise people in the twenty-first century.’

Phillips urges us to get beyond report-writing and evidence building. Instead, the latter part of the book provides some thoughts drawn from a wide range of case studies, such as the case of the Fight for 15 in the US that normalised the idea of the $15 minimum wage. He talks about how to foster capacity, collective leadership and coalition building. ‘We are... not suffering from a dearth of ideas about what a government committed to tackling inequality could do. The key challenge now is how to make such change possible.’

There are two key messages for funders. First is the need for patience: ‘Organising is difficult, time-consuming and never guaranteed to work.’ The fight for inequality will not be delivered within a measurable log-frame, however, and requires long-term, patient ‘capital’.

The second message is more profound. Inequality is a difficult subject to broker with philanthropy, because philanthropy itself is the very essence of inequality: ‘it’s about those with money and power making decisions for those without either. Phillips tells activists to let go of their deference, pointing out how those without either. Phillips tells activists to let go of their deference, pointing out how much greater outrage is always expressed about those challenging injustice. If activists need to be more comfortable in confronting the wealthy, then philanthropy needs to be more comfortable with being uncomfortable when it comes to inequality, too.

Perhaps the events of 2020 will have provided the kick needed to finally put it on the agenda of funders everywhere. It was, of course, the lowest-paid – the delivery drivers, the healthcare workers – who kept things going during the darkest of times; and it is those without means who will be most affected. If it’s not on the agenda of funders yet, it certainly should be. Refusing to have these conversations at all would be complicity.