

Safeguarding deliberative global governance: the case of The Global Fund to Fight AIDS, Tuberculosis and Malaria

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Abstract. It is often argued that multilateralism is no longer an effective mechanism to respond to global priorities and that more deliberative and multisectoral governance is needed. To explore this, the purpose of this article is to examine the practice of multisectoral deliberation within the Global Fund to Fight AIDS, Tuberculosis and Malaria and to determine whether it has resulted in providing a more deliberative response to global health priorities. To do so, this article will apply various theoretical arguments for deliberative democracy to the results of a four year study on the multisectoral organisation the Global Fund. By making links between theory and practice, the article will argue that the multisectoralism practiced by the Global Fund continues to suffer from a deliberative deficit and that it has not safeguarded equal stakeholder participation, equal deliberation between stakeholders or alleviate the asymmetric power relationships which are representative of current forms of multilateral governance. Nevertheless, by locating these gaps between theory and practice, it is possible to outline deliberative safeguards that might, if constitutionally enhanced, pull the Global Fund closer to its own normative values of multisectoral deliberative decision-making.

Introduction

As is often argued, globalisation has created various collective action problems that have failed to be properly addressed by a multilateral response. Cosmopolitans, transnational deliberative democrats and advocates for global civil society have often argued, as well as assumed, that increasing multisectoral participation and deliberation would provide for a more balanced, legitimate, accountable and ‘globally just’ alternative to current multilateral forms of global governance.¹ It is thus often argued that a new form of global governance based on deliberative principles of democratic accountability and equal multisectoral participation is

¹ Multisectoralism refers to formal governance structures or institutions that incorporate various sectors of society, or various stakeholder sectors, into the decision making process. Whereas traditional global governance has tended to be multilateral, in the sense that formal decisions were exclusively made by governmental representatives, multisectoralism refers to systems that seek to also include a broad range non-governmental groups or regional bodies. In the case of the Global Fund, governmental, regional, private foundations, businesses and people living with the diseases are formally incorporated into the governance structure. This is detailed further in section II and III below.

necessary to better resolve global collective action priorities. By making the process of governance more deliberative, it is argued that this system will be more representative of the needs of the global community and will therefore also provide for a more legitimate response to issues that affect the life choices of those most affected by global priorities.

The purpose of this article is to examine the practice of multisectoral deliberation within the Global Fund and determine whether it has resulted in providing a more deliberative response to global health priorities. In order to test the relationship between deliberative theory and multisectoral institutional practice, this article will apply the theoretical arguments for deliberative constitutional safeguards to the results of a four year study on the multisectoral organisation The Global Fund to Stop AIDS, Tuberculosis and Malaria.² By doing so, the article will examine whether the multisectoral alternative has been able to increase deliberation and sector participation as well as determine whether it has been able to alleviate the undemocratic power imbalances and G8 centric responses associated with traditional multilateral governance.

To do so, this article will start by outlining deliberative theory and to connect these deliberative principles to the constitutional decision-making procedures and safeguards that underwrite the Global Fund Framework Document. From this connection, this article will argue that the multisectoralism as practiced by the Global Fund continues to suffer from a deliberative deficit and that it has not safeguarded equal stakeholder participation, equal deliberation between stakeholders or alleviate the asymmetric power relationships which are representative of current forms of G8 driven multilateral governance. By making a link between deliberative theory and the practice of global health governance within the Global Fund, this article will further argue that traditional forms of multilateral power and influence have corrupted and colonised the deliberation process of the Global Fund. In this sense, the traditional forms of multilateral power and wealth have managed to undermine the constitutional safeguards that were meant to protect equal deliberation and the decision-making process of the Global Fund. By locating various deficits between theory and practice, the last section will briefly outline four possible deliberative safeguards that might, if constitutionally enhanced, pull the multisectoral organisation closer to its own normative values as well as toward a more genuine practice of deliberative decision-making. From this, the article will conclude by exploring the implications involved in using deliberative theory to evaluate deliberative practice and to highlight what insights this research may have on future studies that seek to connect deliberative theory to empirical practice.

² This case study is part of a larger Ford Foundation 'Global Institutional Design' grant project being conducted with David Held, Anthony McGrew & M. Koenig-Archibugi (publication forthcoming). The material used in this article was part of the GID Global Fund study that took place between 2002 and 2006. This research involved semi-structured elite interviews with Global Fund Board members, key members of the Global Fund Secretariat, 17 elite interviews in Russia, 36 elite interviews in the Republic of South Africa as well as 50 stakeholder interviews throughout the provinces of South Africa and Lesotho. Some names of the interviewees have been left anonymous by request, due to the political ramifications involved with their responses. The quotes used in this article were selected because they were most representative of a particular viewpoint or widely held belief.

I. Principles of deliberative democracy and safeguarding public reason from the colonising forces of power and wealth

The idea of transnational deliberation and global deliberative democracy has been the recent topic of considerable discussion and debate within the fields of Political Theory, International Relations and Global Governance. In its most basic form, deliberation denotes a process of public reasoning geared toward generating decisions or opinions about how to resolve shared problems.³ As Mark Warren suggests, ‘what distinguishes the theory and unites its proponents is a common commitment to the notion that political decisions are better made through deliberation than wealth or power, as well as to the ideal that participation in deliberative judgements should be as equal and widespread as possible.’⁴ In this regard, the motivational aim of deliberative theory is to legitimise political decisions by attempting to make those decisions a result of mutual understanding, publicly expressed reason and broadened political inclusion.⁵ It is thought that by increasing the processes of deliberative public reason, it will be possible to transform current systems of governance, which are often associated with processes of private interest maximisation, social exclusion, asymmetries in political influence and mutual distrust.⁶ Many advocates of deliberation and deliberative democracy suggest that deliberation can make public policy more efficient, effective and legitimate, by including multisectoral input and by creating a sense of policy ownership.⁷ As Shawn Rosenberg suggests, deliberative theorists ‘claim that citizens brought together to discuss public policy in a setting that emphasises equal participation, mutual respect and reasoned argument will be more likely to bridge differences.’⁸ In addition, many deliberative democrats argue that a deliberative system will reduce the prevalence of ‘democratic deficits’ by bringing disaffected individuals back into the fold of conventional politics.⁹

In this regard, the key emphasis within deliberation theory rests on broadening the *processes* of public reason and enlarging the scope for collective decision making. However, it is important to stress that deliberative theory is not a movement in simply reforming traditional forms of democratic public consultation and representation. The idea of deliberation and expanded deliberative democracy is concerned with the wholesale transformation of how public decision-making is generated. As Jon Elster suggests, the idea of deliberative democracy ‘revolves around the transformation’ of how political decisions are made, ‘rather than simply [retooling] [. . .] the aggregation of preferences.’¹⁰ In this case, deliberative theory

³ Will Smith and James Brassett, ‘Deliberation and Global Governance: Liberal, Cosmopolitan and Critical Perspectives’, in *Ethics and International Affairs*, 22:1 (2008), pp. 69–92.

⁴ Mark Warren, ‘Deliberative Democracy’, in A. Carter and G. Stokes, *Democratic Theory Today*, (Cambridge: Polity Press, 2002), p. 196.

⁵ J. Fishkin, *Democracy and Deliberation* (New Haven: Yale University Press, 1991).

⁶ Seyla Benhabib (ed.), *Democracy and Difference* (Princeton: Princeton University Press, 1996).

⁷ Amy Gutmann & Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004).

⁸ Shawn Rosenberg, ‘An Introduction: Theoretical Perspectives and Empirical Research on Deliberative Democracy’, in S. Rosenberg (ed.), *Can the People Govern: Deliberation, Participation and Democracy*, (New York, Pelgrave, 2007), p. 2.

⁹ Vibeke Normann Anderson & Kasper Hansen, ‘How Deliberation Makes Better Citizens: The Danish Deliberative Poll of the Euro’, *European Journal of Political Research*, 46 (2007), pp. 531–56.

¹⁰ Jon Elster (ed.), *Deliberative Democracy* (Cambridge, Cambridge University Press, 1998), p. 1.

involves more than public consultation, vote aggregation and interest compromise by elite representatives. For deliberative theory argues that public decisions should be made through active public reason and through the collective process of debate, argument and mutually consistent understanding within an expanded public sphere.¹¹

As April Carter and Geoffrey Stokes suggest, in practice, ‘this means that deliberation ought not be left to political representatives and other elite’s, but encouraged more widely within society.’¹² In other words, political deliberation ‘should extend to associations that are part of civil society’ as well as including other economic and political organisations.¹³ As Bohman and Rehg argue, ‘as a normative account of legitimacy, politics and self-governance [...] it presents an ideal of political autonomy based on the practical reasoning of citizens.’¹⁴ Since contemporary democratic procedures tend to ‘discourage deliberation [...] they [the procedures] ought to be reformed to create more opportunities for deliberation.’¹⁵

Nevertheless, these characterisations and recommendations for deliberation and deliberative democracy remain in practical terms vague, for they express only loose normative prescriptions for what a decision-making process should resemble rather than how it might be possible to operationalise a deliberative process in practice. Consequently, what deliberative theory seems most able to provide is a normative framework that could underwrite a constitutional system of democratic governance, in order for that system to be more legitimate and accountable to public reasoning. In a move from theory to practice, these normative factors are meant to inform and guide the constitutional framework of an expanded deliberative system of governance.¹⁶ As Warren claims, ‘deliberative democrats look to the democratic *potentials* of liberal constitutionalism, which establish political institutions that bind [...] power to communicative justification.’¹⁷

If we unpack the various discussions on deliberation and deliberative democracy, it becomes possible to discern three normative principles that are meant to underpin a deliberative constitutional process in practice. First, deliberative theorists maintain the normative position that *individuals* should have reasonable opportunities to affect decisions that affect their lives¹⁸ and/or to have meaningful opportunities to contest the arbitrary exercise of power.¹⁹ Second, these deliberative opportunities should in some sense be *equal opportunities* so that individuals, representatives and/or governments can engage in meaningful debates of public reason, regarding collective decisions and the eventual resolution of collective

¹¹ S. Freeman, ‘Deliberative Democracy; A Sympathetic Comment’, *Philosophy and Public Affairs*, 29:4 (2000), pp. 371–418.

¹² April Carter & Geoffrey Stokes, *Democratic Theory Today* (Cambridge: Polity Press, 2002), p. 11.

¹³ *Ibid.*

¹⁴ J. Bohman and W. Rehg, ‘Introduction’, in J. Bohman and W. Rehg (eds), *Deliberative Democracy: Essays on reason and Politics* (Cambridge, MIT Press, 1997), p. ix.

¹⁵ Iris Marion Young, ‘Communication and the Other: Beyond Deliberative Democracy’, in S. Benhabib (ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996), pp. 120–35.

¹⁶ Jurgen Habermas, ‘Three Normative Models of Democracy’, in Benhabib (ed.), *Democracy and Difference* (Princeton, Princeton University Press, 1996), pp. 67–94.

¹⁷ Warren, p. 176.

¹⁸ Jurgen Habermas, *Beyond Facts and Norms*, trans. W. Rehg (Cambridge: Cambridge University Press, 1996).

¹⁹ James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge: MIT University Press, 1996).

action problems.²⁰ Third, that public decisions can be seen by participants as being the result of a legitimate process of public reason, in that the process of deliberation, and the actions taken thereafter, can be seen as *acceptable by all* stakeholders involved.²¹

Therefore, the motivations behind deliberation, and deliberative democracy, primarily revolve around the three aforementioned normative principles, which are meant to eventually ground and regulate deliberative institutions and the practice of public debate.²² As stated above, these principles relate to the moral worth of individuals as deliberative political agents, who should have equal access to public decision making processes and who can ultimately view this process of decision-making and public reason as universally acceptable and legitimate by all. As Young suggests:

In the ideal of deliberative democracy, participants come to a political problem with an open mind about its solution [. . .] Each must have the equal opportunity to make proposals and criticize, and their speaking situation must be free from domination. No one can be in a position to threaten or coerce others to accept or reject certain proposals. The goal of deliberation is to arrive at consensus; even when this is not possible and participants resort to voting, their result is a collective judgement rather than the aggregate of private preferences.²³

Nevertheless, many deliberative democrats argue that in order to create opportunities for meaningful deliberation to occur, constitutional safeguards are required to insulate (as much as possible) the processes of deliberation from asymmetric influences and ‘colonization’ usually associated with power and wealth.²⁴ As Philip Pettit suggests, it is important to protect access to the democratic debate and consensus formation from coercive influence, so that a truly meaningful deliberation within the public sphere might be possible.²⁵ Similarly, Warren argues that

²⁰ This position is best exemplified by J. Cohen, who states that democratic deliberation is only legitimate ‘if and only if they could be the object of a free and reasoned agreement among equals’. J. Cohen, ‘Deliberation and Democratic Legitimacy’, in J. Bohman and W. Rehg (eds), *Deliberative Democracy* (Cambridge, MIT Press, 1997), p. 73. Variations can be found in Allen Buchanan and Robert Keohane, ‘The Legitimacy of Global Governance Institutions’, *Ethics and International Affairs*, 20:4 (2006), pp. 405–37. Jürgen Habermas, *The Divided West*, trans. C. Cronin (Cambridge: Polity Press, 2006); John Dryzek, *Deliberative Democracy and Beyond* (Oxford: Oxford University Press, 2000); Anthony McGrew, ‘Transnational Democracy’, in A. Carter & G. Stokes (eds), *Democratic Theory Today* (Cambridge: Polity Press, 2002); David Held, ‘Principles of the Cosmopolitan Order’, in G. Brock and H. Brighouse (eds), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005).

²¹ This seems to be a universal requirement maintained by all those associated with deliberative theory, except for perhaps Dryzek, who maintains a more critical and ‘insurgent’ vision of deliberation which comes from outside formal decision making bodies. In this case, deliberation takes the form of civil society movements that are excluded from formal procedures and thus operate in a global public sphere as activists and dissenting voices. Nevertheless, Dryzek still, perhaps inconsistently, prescribes to the first and second deliberative principles mentioned above, in that there should be ‘opportunities for participation by all those affected by a decision.’ See Dryzek, *op. cit.*

²² Freeman, *op. cit.*, p. 378.

²³ Young, ‘Communication and the Other,’ *op. cit.*, p. 122. It is important to highlight that most deliberative democrats do not view consensus as the goal of deliberation *per se*, but that the process of possible consensus formation, whether or not this takes place, is open to equal participation, so that the possibility of public reason formation might be achieved.

²⁴ Carlos Santiago Nino, *The Constitution of Deliberative Democracy* (New Haven: Yale University Press, 1996).

²⁵ Philip Pettit, ‘Deliberative Democracy, the Discursive Dilemma and Republican Theory’, in J. Fishkin and P. Laslett, *Debating Deliberative Democracy* (Oxford, Blackwell, 2003).

since ‘all political issues occur within the context of power and conflict, democratic institutions should structure decision-making ways that block the impact of power and wealth on decision-making.’²⁶ He further claims that ‘making room for influence requires close attention to the surrounding contexts of money and power, which must be constrained or equalized for influence to do its work.’²⁷ As Joshua Cohen explains, ‘this emphasis on subjecting power to reason’s discipline is a thread that runs through much of the literature on deliberative democracy.’²⁸ In this regard, deliberative democrats are providing the normative criteria for determining when institutional structures are more deliberative than not. As Warren argues, ‘when institutions allow communicative power to be converted into state power, and to limit and guide the reach of markets, then deliberation is institutionalized.’²⁹ He goes on to add that, ‘when all persons affected have the chance to influence decisions (backed by the rights to speak and organise, the power of the vote and petition, and the protections against economic blackmail) then deliberation is democratically institutionalized.’³⁰ Habermas echoes these sentiments, by claiming that deliberative legitimacy is maintained as long as ‘the settled routines [of courts, parliaments, and political parties] remain open to renovative impulses from the periphery’,³¹ and that ‘communicative power’ is promoted through ‘structures of undamaged intersubjectivity found in nondistorted communication.’³²

Although the applied theory of deliberative legitimacy remains vague, it does offer normative criteria in which to critically approximate the extent to which a decision-making process can be assessed as being more or less deliberative. In this sense, by examining the extent to which constitutional and institutional structures enable safeguards to provide greater deliberative opportunities and / or how these safeguards are colonised by power and wealth, we can better come to judgements about where legitimacy gaps between deliberative theory and practice exist. In other words, although deliberative theory cannot give us an explicit roadmap on how to institutionally bridge the gap between deliberative theory and practice, it can provide a normative blueprint from which current institutional models can be critiqued and measured. From this it becomes possible to make specific normative recommendations as to how an institution fails to safeguard meaningful deliberation or how it might be able to move closer toward a deliberative model by reformulating its constitutional framework. In this case, despite the fact that deliberative theory is still underdeveloped and often remains in practical terms nebulous, it can provide a heuristic tool for evaluating existing systems of governance and further provide criteria from which future deliberative procedures can be insulated from coercive and colonising influences. It is by applying deliberative criteria as a method for institutional critique, that the remainder of this article will examine the deliberative principles that underwrite the multisectoral Global Fund. By doing so, we can begin to understand to what degree these

²⁶ Warren, p. 181.

²⁷ Ibid.

²⁸ Joshua Cohen, ‘Deliberative Democracy’, in S. Rosenberg, *Can the People Govern: Deliberation, Participation and Democracy* (New York, Pelgrave, 2007), p. 221.

²⁹ Ibid.

³⁰ Ibid., p. 185. Also see Habermas, *Between Facts and Norms*, pp. 341–79.

³¹ Habermas, *Between Facts and Norms*, op. cit., p. 357.

³² Ibid. p. 148.

deliberative opportunities have been safeguarded from, or re-colonised by, traditional multilateral influences of power and wealth on the decision-making process.

II. Deliberative principles, transforming global governance and the creation of the Global Fund

In the recent decade, deliberative theorists have argued for the expansion of deliberation and democratic institutions at the global level.³³ Whether this increase in deliberation should take the appearance of globally reformed democratic institutions in-line with cosmopolitan values³⁴ or promoted through the increased activities of an emerging global civil society,³⁵ deliberative and democratic theorists have maintained that the current system of global governance is unrepresentative of the needs of those most affected by global priorities. To rectify the democratic deficit associated with decision-making at the global level, it has been argued that global institutions need to be reformed by constitutionally protecting the three normative principles of deliberation outlined in the previous section. By constitutionally safeguarding deliberation from the colonising forces of wealth and power, it is argued that global institutions will have greater legitimacy, be more responsive to affected communities and ultimately be seen as being more globally just.

Nevertheless, outside a limited number of local and national experiments,³⁶ the application of deliberative models at the transnational level has remained largely a theoretical exercise. However, it could be argued that at the 2000 G8 summit in Okinawa Japan, foundations were laid for a new multisectoral and more deliberative institution that could respond to global public health priorities. At this summit, the G8 countries acknowledged a need to create a new and more inclusive institution in order to effectively respond to global infectious diseases. Suggesting a direct relationship between global health, economic prosperity and multisectoral participation the members of the G8 stated that:

Health is key to prosperity. Good health contributes directly to economic growth whilst poor health drives poverty. Infectious and parasitic diseases, most notably HIV/AIDS, TB and malaria, as well as childhood diseases and common infections, to reverse decades of development and to rob an entire generation of hope for a better future. *Only through sustained action and coherent international cooperation to fully mobilize new and existing*

³³ Anthony McGrew, 'Transnational Democracy', in A. Carter and G. Stokes, *Democratic Theory Today* (Cambridge: Polity Press, 2002).

³⁴ David Held, *Democracy and the Global Order* (Cambridge: Polity Press, 1995); Danielle Archibugi and David Held, *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995); Richard Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective* (New York: Transnational Publishers, 1998).

³⁵ James Bohman, 'International Regimes and Democratic Governance: Political Equality and Influence in Global Institutions', *International Affairs*, 75:3 (1999), pp. 499–513; M. Cochran, 'A Democratic Critique of Cosmopolitan Democracy: Pragmatism From the Bottom-Up', *European Journal of International Relations*, 8:4 (2002), pp. 517–48; John Dryzek, *Deliberative Democracy and Beyond* (Cambridge, Polity Press, 2000).

³⁶ Graham Smith and Corinne Wales, 'Citizen's Juries and Deliberative Democracy', *Political Studies*, 48:1 (2000), pp. 51–65; Lawrence Pratchett, 'New Fashions in Public Participation: Towards Greater Democracy?', *Parliamentary Affairs*, 52:4 (1999), pp. 616–33. Also see the empirical studies provided in Shawn Rosenberg (ed.), *Can the People Govern: Deliberation, Participation and Democracy*, (New York, Pelgrave, 2007).

medical, technical and financial resources, can we strengthen health delivery systems and reach beyond traditional approaches to break the vicious cycle of disease and poverty.³⁷

At that meeting, the G8 concluded their summit with a commitment to reorganise global health governance, to broaden the scope of public debate and to add additional resources for the prevention of global infectious disease. As the G8 announced:

We will convene a conference in the autumn this year in Japan to deliver agreement on a new strategy to harness our commitments. The conference should look to define the operations of this new partnership, the areas of priority and the timetable for action. *Participation of developing country partners and other stakeholders will be essential.* We will take stock of progress at the Genoa Summit next year and will also work with the UN to organize a conference in 2001 focusing on strategies to facilitate access to AIDS treatment and care.³⁸

This call for the creation of a more multisectoral and deliberative form of governing institution was furthered in 2001 in Nigeria at the African summit. At this meeting, the UN Secretary General Kofi Annan called for the creation of a global fund to collect and distribute additional resources. As Annan stated:

This Fund must be structured in such a way as to ensure that it responds to the needs of the affected countries and people. *And it must be able to count on the advice of the best experts in the world – whether they are found in the UN system, in governments, in civil society organizations, or among those who live with HIV/AIDS or are directly affected by it.*³⁹

In June 2001, the UN General Assembly held a ‘Special Session on AIDS’ and reached an agreement to create a new global health body. The decision to create a new institution was based on a general understanding between participants that there was a significant governance gap in the multilateral organisation and collective response to the world’s three most destructive diseases (AIDS, Tuberculosis and Malaria). After considerable debate, there was mutual agreement regarding five existing failures in multilateral global health governance. First, many believed that there was a lack of local expertise in the global decision-making process, which had led to health initiatives which failed to reflect conditions on the ground and failed to take into account the infrastructures of recipient countries. Second, it was believed that this lack of participatory input had created a limited sense of local ownership and a feeling of disenfranchisement by receiving countries, which often resulted in a lack of local political will and commitment. Third, many donor countries argued that there was a lack of institutionalised accountability measures within the existing United Nations system. Fourth, many believed that the UN was failing to secure collective action due to traditional issues of state brinkmanship, unfair political influences within the UN and a general sense of political diffidence. Lastly, it was unanimously believed that there was no unified and collective resource stream to fund global health priorities and that AIDS, TB

³⁷ ‘G7-G8 summit in Okinawa’, 21–23 July 2000, {http://ec.europa.eu/comm/external-realtions/g7_g8/intro/conclusion.htm}. Emphasis added.

³⁸ Ibid. According to the Global Fund website, ‘they agree that, although existing bilateral and multilateral development institutions play important roles, they alone cannot channel the large volume of new resources necessary to combat the global health pandemics of HIV/AIDS, tuberculosis and malaria.’ {<http://www.theglobalfund.org/en/about/road/history/default.asp>}.

³⁹ Kofi Annan, ‘Secretary-General Proposes Global Fund for Fight Against HIV/AIDS and Other Infectious Diseases at African Leaders Summit’, UN Press Release, SG/SM/779/REV.1, April 2001.

and malaria could only be effectively managed through a system of multisectoral cooperation, multisectoral dialogue and a commitment to an internationally coordinated response.

Based on the past failure to organise a co-ordinated global health response, it was deemed critical to build a strong partnership between various local and global sectors in order to prevent and control outbreaks of AIDS, TB and Malaria. It was agreed that the creation of a new institution would need to include all the sectors and stakeholders involved and that multisectoral participation would be the most effective way to ‘appeal to a wide body of donors and secure stronger commitments to the fund.’⁴⁰ The Genoa summit concluded with the signing of the ‘Declaration of Commitment to HIV/AIDS’ and with a pledge of ten billion dollars by donor countries. In seeking to broaden public debate and deliberation globally between stakeholders, a Transitional Working Group (TWG) for the Fund was established, consisting of nearly 40 representatives of developing countries, donor countries, NGOs, the private sector, and the UN system. The task of the TWG was to develop the constitutional guidelines for the Fund’s operation, including its mission statement, institutional structure and governance procedures. In order to engage and enlarge the public sphere, the TWG held regional forums in Africa, Asia, Latin America and Eastern Europe, as well as thematic discussions with NGOs, civil society, the private sector, and academia.⁴¹ In late 2001, members of each of the Fund’s constituencies – including donor countries, developing countries, NGOs, and the private sector – selected representatives for the Fund’s Board.

In line with the deliberative criteria outlined in Section One, four normative commitments concerning increased deliberation and participation were constructed by the TWG as principles to guide the development and future operation of the Global Fund. These normative commitments were meant to outline the decision-making process of the Global Fund in such a way as to make it more multisectoral, deliberative, representative, accountable, transparent and legitimate to the needs of those most affected by the diseases. First, the TWG maintained that the Global Fund would involve local experts, implementing NGOs and those living with the diseases, within both the deliberation and decision-making process. Secondly, it was critical to involve local government in the deliberation and decision-making process and to secure strong commitments through creating a sense of local ownership and effective health implementation. Third, that the Global Fund would be accountable to all stakeholders involved through expressed reason giving, transparent governance, open dialogue and through multisectoral inclusion. Lastly, that the Global Fund would create a ‘streamlined’ organisation that could operate outside the political quagmire of the multilateral UN system and thus escape manipulation by a few powerful states.

These normative principles of deliberation, accountability and collective decision-making were codified into the Global Fund’s foundational documents. According to the Framework Document, ‘the fund will evaluate proposals through independent review processes [...] take into account local realities [...] giving due priority to the most affected countries and communities and to those countries

⁴⁰ Dr. Peter Piot, Director of UNAIDS and GF Board member, interview, London, 8 February 2005.

⁴¹ Dr. Franssen, EU Commission on Human and Social Development and GF Board member, interview, London, 10 March 2005.

most at risk.⁴² In this regard, approval is based on a project by project basis and will be based solely on multisectoral co-ordination toward ‘strategies that support clear and measurable results.’⁴³ The Framework Document further outlines that the Global Fund will work closely with other multilateral and bilateral organisations as well as with civil society and various NGOs involved in health and development to ensure that newly funded programs are coordinated with existing ones. A link between deliberative theory and proposed institutional practice is most evidenced by the two main normative concerns expressed in the Global Fund Framework Document. These normative commitments reflect both a deliberative and a distributive component. First, the Framework Document states that the Global Fund ‘*should* be a multisectoral partnership between governments, civil society, the private sector and affected communities.’⁴⁴ Second, that decisions should represent those most in need, in that ‘highest priority *should* be given to countries and regions with the greatest need, based on the highest burden of disease and the least ability to bring financial resources to address these health problems.’⁴⁵

III. Safeguarding deliberation and the multisectoral makeup of the global fund

In an attempt to broaden the deliberative process and to safeguard stakeholder participation, the multisectoral makeup of the Global Fund Board includes 1 NGO from a developing country, 1 NGO from a developed country, 1 representative of someone living with the diseases, 9 regional seats, 6 national seats (major donors), 1 private sector seat, 1 private foundation seat and 4 non-voting advisory seats representing the WHO, the World Bank, UNAIDS and a Swiss member. In order to safeguard equal opportunity within the decision-making process, all votes are distributed evenly so that even powerful states like the US will have the same voting weight as the representative of people living with the disease. In addition, in order to safeguard equal opportunity within the deliberation process, each member is constitutionally guaranteed an equal chance to place items on the agenda and are assured equal time to debate any issue.

Furthermore, decision-making procedures are constitutionally constrained by the formal rules outlined in the by-laws and the Board Operating Procedures (BOP) manual. In this regard, the decision-making process of the Board tend to follow formalised procedures and all decisions are to be made through a process of public reason, mutually consistent understanding and ideally, through deliberative consensus formation. As outlined in the BOP manual:

The Board shall use best efforts to reach all decisions by consensus. If all practical efforts by the Board and the Chair have not led to consensus, any member of the Board with voting privileges may call for a vote. In order to pass, motions require a two-thirds

⁴² Global Fund Framework Document, Sec. III, Subsection F and H, point 9 of SS H. Communities without official governments can also apply for funding and are covered under Section VI, Subsection B, Point 7.

⁴³ Global Fund Framework Document, Sec. IV, Subsection C.

⁴⁴ Global Fund Framework Document, Section III.

⁴⁵ *Ibid.*, Section VII.

majority of those present of both A) the group encompassing the 6 donor seats and the 2 private sector seats and B) the group encompassing the 9 developing country seats, the 2 non-governmental organization seats, and the representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria.⁴⁶

The implication of requiring consensus or a supermajority of votes comprising both donor and non donor seats is to assure that decisions are based on the broadest possible number of influences which encompass as many multisectoral positions as possible. The other deliberative safeguard is that by requiring both donor and non-donor votes for passage, motions cannot be simply determined by powerful donor countries and that mutually consistent interchange must take place between the various sectors. In other words, the procedural rules demand as much multisectoralism and deliberation as possible, while also seeking to determine all Global Fund decisions by deliberative consensus formation whenever possible. In relation to the need for deliberative safeguards as discussed in Section One, the colonising influence of power is meant to be constitutionally restrained by the equal vote distribution between partners, the protection of equal opportunity for discourse and through a supermajority and multisectoral threshold that promotes consensus formation via deliberation and expressed public reason.

IV. From theory to practice: multisectoralism, deliberation and the colonisation of the Global Fund by power and wealth

To chart the various sites of deliberation and the robustness of those deliberative procedures within the Global Fund's governance process is difficult. This is because deliberation takes place between various groups throughout the grant application and implementation process. For example, Country Coordination Mechanisms (CCM's) debate what programs to seek funding for at the local and/ or national level; the Technical Review Panel (TRP) deliberate on program feasibility; while the Global Fund Board deliberate Global Fund operational policy and retains the authority to make the final decision on which grants to approve. If we take deliberation to mean the discussion and consideration of different views, between a group of persons, which is aimed at making a decision concerning a collective action problem, then some form of deliberation takes place throughout the Global Fund's entire participation tree. However, due to maintaining a focus on deliberative theory as it pertains to the political decision-making process, it is prudent to isolate two deliberative relationships related to the Global Fund. This is sagacious because it will better allow for a determination of the effectiveness of deliberative safeguards on the processes of actual decision-making and to understand how colonisation by wealth and power has undermined the Global Fund's deliberative process. With this in mind, this section will be divided into two parts. In the first part, an analysis in relation to the deliberation relationship between the multisectoral members of the Global Fund Board will be conducted. In the second part, the analysis will focus on specific deliberative relationships between the Global Fund Board and its CCM stakeholder recipients. Since this

⁴⁶ Board Operating Procedures, {www.theglobalfund.org}, pg. 5.

article cannot explore all the factors affecting deliberation, the analysis of deliberative safeguards will be exclusively reserved to the colonising effects of power and wealth as it pertains to the systematic creation of unfair advantages for some members within the Global Fund's collective decision-making process. Although this will admittedly leave several internal governance functions within the Global Fund unexamined, it will allow for a more focused examination of the Global Fund's deliberative practice in relation to its self-proclaimed normative commitments, its established constitutional safeguards and to its overall contiguity with deliberative theory. The idea here is not to undermine the good work of the Global Fund. The idea is to use the empirical evidence of its deliberative process to critically reflect upon the relationship between deliberative theory and actual practice, in order to draw out the real-life considerations that will have to be addressed, in order to realise a more deliberative system.

Deliberation between members of the Global Fund Board and the practice of colonising power and wealth

In general, the members of the Global Fund Board related that there was a reasonable semblance of deliberative dialogue in regard to institutional decisions. Of the members interviewed, a vast majority related that they had opportunities to address the Board, voice opinions and to respond to questions or concerns. In addition, a large majority of Board members believed that their concerns were taken seriously and believed that there was a genuine attempt made by other Board members to engage with their views. Even non-voting advisory members of the Global Fund Board sustained the belief that their views were debated seriously and that they often had a deliberative effect on decision outcomes. As one Board member summarised, 'there is good dialogue on the Board, not everyone gets their way, but they are heard and taken seriously during the decision-making process.'⁴⁷

Nevertheless, this belief in deliberation relates strictly to the opportunity to equally debate and vote on various decisions. Although this component of equal opportunity is an important condition and safeguard for meaningful deliberation, the responses did not take into account how the colonisation of unequal advantage has corrupted the form and substance of those deliberations. When examining the practice of actual deliberation within the Global Fund, some non-donor Board members also expressed the presence of unequal political influence and power between donor and non-donor representatives. One such example of the colonisation of unequal advantage is witnessed by the fact that the representatives of donor states often meet prior to Global Fund meetings in order to discuss political strategy and to organise voting caucuses. Many Global Fund members related the belief that this practice has damaged the quality of deliberation and the robustness of equal multisectoral participation. Since members of the donor caucus meet prior to Global Fund Board meetings, in order to solidify their debate strategy, it was believed that the donor caucus had an unfair advantage to push through various

⁴⁷ Brian Brink, Alternative GF Board member for the Private Sector interview, South Africa (1 September 2005).

motions or funding decisions. Many interviewees stressed their concern that the donor countries wielded too much power on the Global Fund Board. Although constitutional mechanisms were in place to incorporate as many participants as possible, it was felt that donor states were able to maintain an ‘unfair advantage’ and that in practice ‘their ability to be better organized as a debating block naturally helped to favour donor states.’⁴⁸

In an attempt to redress this imbalance, several recipient counties lobbied the Global Fund donors for extra resources in order to organise their own pre-board meetings. Nevertheless, their request was flatly rejected. As one interviewee professed, ‘they declined the offer and gave the general impression that they do not deal with those at the bottom of the ladder.’⁴⁹ In practical terms, the implications of forming, and then maintaining, the unfair advantage of having a donor caucus, is that the deliberation process between Board members effectively becomes a process of interest based preference maximisation, which colonises and subverts any chance for meaningful deliberation in practice. Although there are safeguards in place to guarantee that some form of deliberation will take place, the existence of voting caucuses immediately narrows the scope of debate and hampers the ability of non-caucus members to appeal to collective and deliberated public reason. Since it is often the case that donor opinions have been predetermined prior to any deliberation, the process no longer resembles a process of mutual understanding and consensus formation, but one of multilateral power politics as usual. As was discussed in the first section, an ideal deliberation requires that ‘participants come to a political problem with an open mind about its solution [. . .] The goal of deliberation is to arrive at consensus; even when this is not possible and participants resort to voting, their result is a collective judgement rather than the aggregate of private preferences.’⁵⁰

The colonising effect of this subtle form of unequal advantage transcends the deliberation process itself, by also weakening a collective sense of multisectoral participation and stakeholder ownership, as it is prescribed in both the normative and constitutive principles embedded in the Global Fund Framework Document. As one board member admitted, ‘there is some confusion as to accountability. The Global Fund does lose focus at times and forgets that it exists to prevent these diseases. It can get overly political at times.’⁵¹ In relation to the normative commitment to being accountable to those most affected by the diseases, one regional seat on the Board claimed that ‘there is no consistent idea of who the Global Fund is accountable to and it seems to change depending on who the Global Fund is addressing.’⁵² As another senior health advisor for the African Union (NEPAD) suggested, ‘the Global Fund is accountable only to donor states and there is no accountability to local health experts.’⁵³ Similarly, recipient countries and Principle Recipients believed that ‘the Global Fund is accountable to donors

⁴⁸ Quotes taken from Vuyo Ray Maboep, Ex- Global Fund Representative for Southern Africa Region, interviewed, (19 August 2005).

⁴⁹ This interviewee wished to remain anonymous for political reasons.

⁵⁰ Young, ‘Communication and the Other’, op. cit., p. 122.

⁵¹ Brian Brink, Global Fund Board Alternate for the Private Sector, interview, (1 September 2005).

⁵² Vuyo Ray Maboep, Special Advisor to the Health Minister of South Africa and ex-Global Fund Board member, interview, (19 August 2005).

⁵³ Health Advisor for the New Partnership for Africa’s Development and the African Union, interview, (18 August 2005). Identity remains anonymous for political reasons.

and their own organization'⁵⁴ and that there is 'no accountability to NGOs.'⁵⁵ It would seem that in practice, the stated normative values of multisectoral participation, deliberative consensus formation and multisectoral accountability are being eroded by the colonisation of traditional forms of multilateral coalition building, private interest maximisation and power politics as usual.

Nevertheless, the colonisation of political power within the governance structure of the Global Fund Board is also coupled with an unfair advantage created by donor wealth and the influence this economic advantage can wield on the decision-making process. For example, donor states have an effective veto power by alluding that certain decisions taken by the Board might threaten future funding. As one Global Fund Board member suggested, 'the process seems to be dominated by those with political and economic power, leaving many representatives feeling marginalized.'⁵⁶ The most striking example of this form of effective veto power was evidenced by the US willingness to withhold funds until certain programs are eliminated or changed to the Bush administrations liking. This was witnessed both in the Bush administrations insistence that all HIV/AIDS generic ARV's were to be cleared by the FDA before the US would pay for them (meaning generics would not be supplied until they passed FDA testing) and in its continuous pressure to fund abstinence faith based programs. Unsurprisingly, several members of the Global Fund Board, various implementing NGOs and several recipient countries expressed dismay over how the deliberation process was stalled or controlled by the US and other large donors. This behaviour was viewed by many as weakening the deliberative processes of the fund, since donors had the threat potential to withhold funding and thus effectively trump the decisions of the Global Fund Board. As discussed in Section One, in ideal deliberative theory, 'each must have the equal opportunity to make proposals and criticize, and their speaking situation must be free from domination [. . .] No one can be in a position to threaten or coerce others to accept or reject certain proposals.'⁵⁷

By having an effective veto power, donor countries are able to colonise the deliberative process by forcing the removal of various alternatives from the debate or by using the threat of future funding reductions as a means to coerce outcomes. In deliberative terms, these outcomes then become the result of power, wealth and the ability to use these practices to limit the effectiveness of constitutionally entrenched safeguards. In this regard, the Global Fund has seemingly failed to effectively safeguard deliberation from the colonisation of power and wealth, which is usually associated with G8 dominated multilateralism, since those affected do not 'have the chance to influence decisions [. . .] [which are] backed by the protections against economic blackmail.'⁵⁸ Since this ability to blackmail is still the case, despite the normative and constitutional principles enumerated to safeguard participants from this, it is reasonable to suggest that in relation to the Global Fund Board, deliberation is not democratically institutionalised and that a significant deliberative deficit between theory and practice remains.

⁵⁴ Professor Ronnie Green, Head of Health Department, Province of KwaZulu-Natal, interview, (5 September 2005).

⁵⁵ Garth Japhet, Executive Director of Soul City, interview, (31 August 2005).

⁵⁶ This interviewee wished to remain anonymous for political reasons.

⁵⁷ Young, 'Communication and the Other,' op. cit., p. 122.

⁵⁸ Warren, op. cit., p. 185. Also see Habermas, *Between Facts and Norms*, pp. 341–79.

Deliberation between the Global Fund and stakeholders affected by the diseases

Although there is a significant deliberation deficit between donor and non-donor Global Fund Board members, there also seems to be an even larger deliberative gap between the Global Fund as an organisation and those most affected by its decisions (stakeholders outside of the Global Fund Board). In most cases, the opportunities for deliberation are seldom and when they do exist, they are generally informal. The formal and institutionalised exception is the Global Partnership Forum and the Global Fund on-line forum, where various members of civil society can voice opinions and debate issues. Nevertheless, this debate largely takes place between the members of civil society themselves and does not usually involve members of the Global Fund Board. It is only at the Global Partnership Forum every two years, where stake holders might be able to communicate directly with members of the Global Fund Secretariat, the Global Fund Board and in some rare cases, high level representatives of donor nations.⁵⁹

Nevertheless, many Recipient Countries believed that they had limited opportunity for genuine deliberation with either the Global Fund Board or its Secretariat. The vast majority of those interviewed believed the Global Fund to be unresponsive to localised needs due to under-representation. As the Special Advisor to the Health Minister of South Africa proclaimed, 'states off the [Global Fund] Board have little or no access to the process.'⁶⁰ He went on to state that, 'even once on the Board there is little room for dialogue because, those with the money have the mandate.'⁶¹ A recipient country health minister related a similar belief, arguing that 'the Global Fund tells and does not listen. At an African Union Summit, the Global Fund representative made blanket accusations and was unwilling to listen to the concerns of African heads of state. There was no asking, just telling.'⁶² Another stakeholder, the Head of Treasury for KwaZulu-Natal and a Primary Recipient named on an GF grant, stated that he once:

Tried to explain how a Global Fund policy was in conflict with a local act of Congress regarding procurement procedure. I wanted to construct a mutually acceptable alternative. All of my suggestions were absolutely rejected and there was no dialogue or reasoning beyond the Global Fund quoting rules and regulations.⁶³

He went on to state:

I wouldn't call it dialogue or deliberation, they do listen, but we usually only get rule quotation as an official response. The Global Fund Secretariat will sometimes acknowledge our concerns and sympathize, but in most cases they remain inflexible and unwilling to debate the subject. It would seem that we are expected to be happy with what we get and to not seem ungrateful.⁶⁴

⁵⁹ However, donor countries are sending fewer representatives due to what is perceived as a 'shouting match' and an emotive assault on donor representatives by activists. For example, the US cut its delegation at the last international conference by 60 per cent – this relates to the US sending 50 representatives and scientists versus the 250 they sent to Barcelona two years prior. 'AIDS 2004: Activists Confront Bush Administration', Joe De Capua, *Voice of America* (19 July 2004).

⁶⁰ Vuyo Ray Mabope, Special Advisor to the Health Minister of South Africa – also ex Global Fund Board member, interview, (19 August 2005).

⁶¹ *Ibid.*

⁶² This interviewee wished to remain anonymous for political reasons.

⁶³ Mr. Shakalala, Head of Treasury Department, Province of KwaZulu-Natal, interview, (2 September 2005).

⁶⁴ *Ibid.*

However, it is important to understand that the multisectoral dimension of the Global Fund is not about providing channels for *direct* deliberation with all stakeholders who might be affected by Global Fund policy. For the Global Fund's deliberative safeguards are specifically meant to protect a deliberative sphere within the Global Fund boardroom and to provide for equal deliberative opportunities between the multisectoral representatives on the Board. In this case, the problem is not with the Global Fund governance procedures *per se*, but with disconnects that might exist between Board representatives and their constituents. Due to a practical consideration for maintaining a workable form of governance, the Global Fund is forced to limit the number of participants on the Board, opting to encourage multisectoral participation at the local level. In other words, where local stakeholder participation is best fostered, according to the Global Fund Framework Document, is within the Country Coordination Mechanism (CCM), where various stakeholders are meant to deliberate and collectively agree on their grant proposals, health programs and program implementation strategies. It is once deliberation and collective understanding has taken place at this level, that additional deliberation takes place at the global level.

Nevertheless, one critique of this policy of multilevel deliberation(s) and collective decision making is that there are no safeguards to guarantee local level multisectoralism and deliberation. As it stands, there is no constitutionally demanded provision in the Framework Document requiring that a CMM is in fact multisectoral. Although the Global Fund recommends and encourages multisectoral CCM's, it does not hold CCM multisectoralism as a requirement. In other words, although the Global Fund would like all CCM's to have a genuine multisectoral make-up in order to create a sense of local ownership and a sense of inclusion by all stakeholders, it does not require a multisectoral condition before approving grant applications. The consequence of this policy has at times resulted in the creation of CCM's that are not multisectoral, where CCM's are dominated by a core of governmental elite. This has, in a few cases, resulted in programs and decision-making processes that have systematically excluded, or failed to include, various stakeholders affected by the diseases. As the Director of the Health Department in Cape Town suggested:

The National AIDS council (SANAC) is chosen by the Minister of Health and does not reflect local provincial members. It is not representative and there are no mechanisms for communication between us and the CCM. Our requests have gone unacknowledged and this needs to be addressed. The Global Fund needs to provide guidelines for the national CCM to comply with, otherwise the system will remain undemocratic.⁶⁵

As one NGO suggested,

There is a lack of honest communication and connection at the national level. This is due to political forces inside the national government and a lack of a consistent program within the Country Coordination Mechanism of South Africa.⁶⁶

This failure to safeguard multisectoralism at the CCM level has been additionally confirmed by a report generated by the London School of Hygiene and Tropical Medicine. In this report, it was discovered that 'CCM members were often

⁶⁵ Dr. Ivan Toms, Director of the Department of Health Cape Town, interview, (22 August 2005).

⁶⁶ Mariette Williams, Networking AIDS Community of Western Cape, interview, (23 August 2005).

ineffective at representing their constituencies and encountered obstacles in participating in CCM processes.⁶⁷ However, as stated above, this is not always the case and many CCM's continue to reflect a fairly broad multisectoral complexion. As a survey performed by the International HIV/AIDS Alliance relates, 'in the majority of the countries reviewed, participation in the Global Fund processes has resulted in a relative improvement in the relationship between NGOs and government, providing new opportunities to work together more effectively.'⁶⁸ However, this study also remained cautious, proclaiming 'that experiences varied greatly between countries' ranging from 'involvement in all stages' of the proposal process to 'exclusionary marginalization.'⁶⁹

What this deliberative deficit at the CCM level suggests, is that without constitutional safeguards guaranteeing multisectoral participation within the CCM deliberative process, opportunities for meaningful deliberation can be excluded from various stakeholder groups affected by the disease, or made available to only a small number of handpicked governmental elite. This deliberative deficit also illustrates that the multilevel deliberative model maintained between CCM decision-making and the final deliberation at the Board level cannot rest on the assumption that representation or multisectoral inclusion has in fact taken place. This is because without procedural safeguards that dictate some minimal threshold of multisectoral participation at the CCM level, inclusion will remain undelivered. Otherwise, there is only a practiced system where some genuine deliberation and public reason has been actualised, but also where this process can be easily colonised and corrupted by the influences of local power, wealth and exclusion.

V. Conclusion: evaluating the colonisation of public reason and transforming the deliberative safeguards of the Global Fund

In Section One, it was suggested that deliberative theory could offer normative criteria in which to critically approximate the extent to which a decision-making process is more or less deliberative. It was also argued that by examining the extent to which constitutional structures safeguard deliberative opportunities, and by further determining to what extent these safeguards have been colonised by power and wealth, we can better come to judgements about where gaps between deliberative theory and practice exist. By using deliberative theory as a method of critique, it becomes possible to make specific normative recommendations as to how an institution fails to safeguard meaningful deliberation or how an institution can move closer to a deliberative model by reformulating its constitutional framework. In the case of the Global Fund, by applying the normative criteria of deliberative theory to the actual practice of deliberation within the Global Fund, it was possible to locate four 'deliberation deficits' and locations within the governance mechanism where power and wealth have been able to colonise the

⁶⁷ Ruairi Brugha, et. al., 'The Global Fund: Managing Great Expectations', *The Lancet*, 364 (July 2004).

⁶⁸ 'NGO Participation in the Global Fund', *Review Paper*, International HIV/AIDS Alliance (October 2002), p. 2.

⁶⁹ *Ibid.*, p. 2.

deliberative process. In other words, these deliberative criteria provided a heuristic tool for evaluating the existing system of the Global Fund and to produce a position from which further procedural recommendations can be made in order to help insulate the deliberative process from coercive and colonising influences.

If we start the evaluation by using the two stated normative principles mentioned within the Global Fund Framework Document (deliberation and distribution) as base criteria to determine the appropriateness of the distribution of influence and decision-making. Then it can be stated that the Global Fund maintains an unequal distribution of influence and deliberative opportunity. This is because: a) the Global Fund Board does not represent a 'full' multisectoral partnership because affected individuals, NGOs and many recipient countries experience unequal disadvantage in relation to political and economic influence; b): although grants are largely distributed according to priority, the stakeholders most affected do not always have a proportional, or even remotely proportional, ability to influence any decisions on the Global Fund Board or within the CCM process, in relation to their priority status.

In addition, the colonisation of power and wealth by donor countries within the Global Fund Board has effectively retarded the deliberative process, by closing down or narrowing the public debate through voting caucuses and through the effective veto power maintained by the threat of withdrawing future funding. As outlined in Section One and Two, this colonisation is in violation of the three general principles consistent in deliberative theory, and to which are also seemingly expressed by the Global Fund's Framework Document. First, this colonisation violates the principle that individuals (Board representatives) should have a reasonable opportunity to affect decisions that affect their lives and/or to have meaningful opportunities to contest arbitrary exercises of power. Secondly, the colonisation of wealth and power violates the idea that these opportunities should in some sense be equal opportunities so that individuals, representatives and governments can engage in meaningful debates of public reason regarding collective decisions and the eventual resolution of collective action problems. Lastly, as many of the interview results reflected, the Global Fund maintains a significant deliberative deficit in that the decision-making process regarding collective concerns are not acceptable to all of the stakeholders involved.

By identifying the various locations of colonisation within the Global Fund's deliberative process, it can be possible to generate recommendations so as to bring its deliberative theory closer to its deliberative practice. From this, it is possible to generate four safeguard responses to the deliberative deficits discussed in Section Three and Four of this article. First, the Framework Document should stipulate that all CCM's should meet a minimal standard of multisectoral participation and membership. This would create a first expression of deliberative decision-making and help to safeguard broadened stakeholder participation at the local level.⁷⁰ Second, the Framework Document should stipulate that all financial commitments to the Global Fund are made prior to its funding decisions, so as to reduce the coercive influence of wealth and effective veto power by donors. Third, the Global

⁷⁰ Garrett Wallace Brown, 'Multisectoralism, Participation and Stakeholder Effectiveness: Increasing the Role of Non-state Actors in The Global Fund to Fight AIDS, Tuberculosis and Malaria', *Global Governance*, 15:2 (2009).

Public Forum should be enlarged so that all constitutional issues concerning the Global Fund are decided through the public forum every two years. Although day to day operations will remain the function of the Global Fund Board, the opening of constitutional issues to a larger public sphere will create a direct link to civil society, from which deliberative safeguards could be evaluated from the periphery. This influence from the periphery could reinforce the multisectoral dimension of the Global Fund and help to challenge the colonising effects of stronger donor states. Fourth, opportunities for deliberation, debate and collective understanding should be equal between all multisectoral partners. To safeguard this condition, pre-meeting voting caucuses should be discouraged by codifying them as an act of non-compliance within the Global Fund Framework Document. Although this does limit dialogue between some members, it does protect the public forum as the site for decision-making and for legitimate deliberation. By instituting these additional safeguards, the Global Fund might be better equipped to provide for a mutually consistent deliberative condition whereby the colonising effects of unequal political and economic advantage are reduced.

Nevertheless, there are other implications generated from this study in regards to the relationship between deliberative theory and practice. Through examining the process of deliberation within the Global Fund, one specific implication for deliberative theory is the fact that the way in which an institution is constitutionally designed has considerable impact on the quality of deliberation and on the range of deliberative decisions that can be made. This signifies the importance of institutional design and constitutional foundations in successfully moving deliberative values to deliberative practice. Warren has recently mirrored a similar concern with moving theory to practice, suggesting that there are ‘fragile qualities to deliberation – which in turn require a close focus on the institutional requirements for enabling and protecting deliberation.’⁷¹ Moreover, as shown in this study, ‘deliberation is vulnerable to unequal power, cultural and linguistic differences and inequalities, market forces, threats, and time constraints.’⁷² The implication being that, deliberative theorists who are concerned about real world practice ‘need to be attentive to both the conditions required for good deliberation and the conditions required for real impact on outcomes.’⁷³ Consequently, if deliberative theory is to have applied relevance, then theorists will need to focus renewed attention on the institutional foundations required for genuine deliberation to take place and to further develop complimentary constitutional mechanisms that could be employed to help mediate against the influences of power and wealth on decision-making.

In addition, as the example of the Global Fund also illustrates, the colonisation of power and wealth is a factor that seems to be something that will continually threaten the deliberation process. As Jane Mansbridge has realistically suggested, ‘no actual democracy, no matter how small and egalitarian, ever achieves a deliberative speech situation free from power.’⁷⁴ Furthermore, as the example of the Global Fund emphasises, the colonisation of power and wealth can still take

⁷¹ Mark Warren, ‘Institutionalizing Deliberative Democracy’, in Rosenberg, *op. cit.*, p. 276.

⁷² *Ibid.*

⁷³ Joshua Cohen, ‘Deliberative Democracy’, in Rosenberg, *op. cit.*, p. 231.

⁷⁴ Jane Mansbridge, ‘Deliberation Democracy or Democratic Deliberation’, in Rosenberg, *op. cit.*, p. 263.

place despite the fact that participants have signed onto constitutional principles that seek to restrain these influences. Thus, the authenticity of deliberation in practice seems to also require a continual negotiation between the ideal of deliberation theory and the real-world influence of power and wealth on the procedures and outcomes involved with deliberation. This is because deliberation can never be absolutely perfect in practice, but that it might be rendered more deliberative through a continued dedication to deliberative principles. In this regard, for deliberation theory to be meaningful in the practice of global governance, it will require some thoroughgoing dedication to mutually consistent deliberative justice and the continuous critical reflection regarding what constitutional mechanisms are necessary to safeguard the deliberative process from the colonisation of power and wealth. Furthermore, this condition of mutually consistent deliberative justice must not only be codified in its constitutional frameworks, but also protected by allowing a plurality of sectors to have continual access to constitutional and operational issues. This continual evaluation will be necessary if we want to take deliberative principles seriously, since meaningful deliberation requires a reasonable level of equal opportunity, or at least, a minimal level of multisectoral participation that can generate processes which are seen as acceptable to all stakeholders involved.