Credit Is Not a Right*

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"Every poor person must be allowed a fair chance to improve his/her economic condition. This can be easily done by ensuring his/her right to credit. If the existing financial institutions fail to ensure that right, it is the obligation of the state and the world community to help find alternative financial institutions which will guarantee this fundamental human right. This is basic for the economic emancipation of the poor, in general, and poor women, in particular."[1]

—*Muhammad Yunus*

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Introduction

Muhammad Yunus, the winner of the 2006 Nobel Peace Prize, is the most visible leader of a global movement to provide microcredit to world's poor. Microcredit refers to small loans, usually made to poor women with the aim of supporting their businesses. Yunus urges that we add such credit to the list of human rights.

The notion of "credit as a human right" flows from the argument that if we are concerned with universal access to food, shelter, and health, then we must be committed to providing access to the tools that are most likely to deliver those basic elements of life. For the sake of argument (and there is, of course, argument), we will follow Article 25(1) of the Universal Declaration of Human Rights, adopted by the United Nations in December 1948, and begin with the idea that access to food, shelter, and health constitute basic human rights. Yunus can then be interpreted as saying: access to credit is so powerful in reducing poverty, that access to credit should be a right itself.

The first part of the chapter sets the context by describing the "rights revolution" and the growing push to depict key anti-poverty interventions as rights. Here, microcredit joins a list of other possible interventions that may help poor families raise their incomes and secure health, food, and shelter. Other strategies on the list include giving access to public hand-outs, facilitating transfers between family members, being permitted

1. Muhammad Yunus. 1986. "Credit for Self-employment: A Fundamental Human Right." Background paper prepared for World Food Day, p.6. Available at http://www.worldfooddayusa.org/Object.File/Master/17/331/Yunus%20paper.pdf.

unfettered migration, reducing inflation, and promoting GDP growth that generates better jobs. Elevating microcredit to the status of a right risks diluting the urgency of attention given to other interventions. We take seriously that such "negative spillovers" from "rights creep" should be part of the conversation.

We ask whether a rights-based approach to microcredit will in fact be effective in making quality, affordable credit more available to poor families. More importantly, we question whether it is a constructive step in terms of the broader goal of global poverty reduction.

The second part of the chapter shows evidence that access to credit may be powerful for some people some of the time, but it is not powerful for everyone all of the time, and in some cases it can do damage. When viewed in the light of independent empirical analysis, Yunus's claim loses its urgency. Providing microcredit may be an activity worth pursuing, but its claim to being a *human right* is substantially diminished by the empirical results.

The third part of the chapter discusses who has the responsibility to ensure rights. Muhammad Yunus takes a critical view of government, and microcredit is often depicted as a response to government failure. We ask: If the government is badly–placed to fulfill rights, does it make sense to create rights in the first place? If accountability of non-state actors cannot be established, is it useful to adopt the rights framework?

The fourth part of the chapter turns instead to the right to non-discrimination in credit access. Here, we see a stronger claim to attention. We put a focus on combating the lack of access to credit due to discrimination along gender, economic, ethnic, religious, and social lines.

We suggest that Philip Alston's point about a rights-based approach to development applies as well to the proposal to regard credit as a human right:

> Despite the importance of the many versions of a human rights based approach to development suggested by a variety of actors, too many of them have tended to gloss over the complexities, to idealize the characteristics of the human rights mechanisms, to be excessively optimistic as to the extent of fundamental changes that may realistically be expected, and to be poorly attuned to the need to set operational priorities.[2]

While we are academics, the questions we raise emerge from practical concerns. We ask whether a rights-based approach to microcredit will in fact be effective in making quality, affordable credit more available to poor families. More importantly, we question whether it is a constructive step in terms of the broader goal of global poverty reduction.

2. Philip Alston. 2005. "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals." *Human Rights Quarterly* 27: 755–829, cite at p. 826.

1. The Right to Credit: In Principle & in Effect

The first question is what does a right to credit mean? If we were to assume a right to credit exists, what evidence or indicators would determine whether the right had been effectively been protected, promoted, and fulfilled, or conversely, that violations of the right existed?

This could entail a broader discussion of what rights are and where they come from, a debate that philosophers and legal scholars have yet to resolve. More immediately for our purposes is the issue of whether a "right to credit" is an aspirational statement (a "goal right" as suggested by Hudon)? Or an ethical pronouncement in a sense considered by Sen.[3] Or if it is presented explicitly as a legally binding right?

We might plausibly think about a right to credit as involving two dimensions. The first would be a basic dimension of universal access, in the way that access to services such as education and health are routinely understood. The second dimension goes beyond access to involve a question associated with fair treatment or the quality of services, as in the description of the "highest level attainable" with respect to enjoying a right. In the context of credit this could include questions of price, duration, and scale of access. For clarity our focus will be on basic access, although questions of quality are perhaps even more contentious.

With regard to basic access, there are two components as well. The first is removing legal obstacles, eliminating discrimination, or fixing other actions that legally exclude certain classes of people from gaining access, which is often understood as dealing with the failure to respect the right in question.

The second component involves the question of positive actions on the part of agents (typically the state), to insure the *promotion* and *fulfillment* of that right, typically to overcome economic or cultural barriers. This could include, for example, programs aimed at providing identity documents or removing regulations that unjustifiably inhibit people from accessing credit, and it could extend to direct provision of financial services.

Credit & the Rights Revolution

Yunus' proposal takes place in the context of a broader "rights revolution" in development. That context helps in evaluating the proposal's usefulness

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3. Marek Hudon. 2009. "Credit as a Right." *Journal of Business Ethics* 84; Amartya Sen. 2009. *The Idea of Justice*. Cambridge, MA: Belknap Press of Harvard University Press.
One of the few specific mentions of access to credit in international human rights instruments is in Articles 13 and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which emphasizes the equality of access of women and men to credit.

as a political strategy for raising the sense of urgency (and the profile of microcredit) in the development policy debate.

The context of rapidly expanding the domain of what constitute rights reflects two currents in the broader development policy debate, especially in the aftermath of the collapse of the Soviet Union. First is the growing "rightsification" of the development discourse and partial convergence of the human rights and development communities.[4] Second is a sense that rights represent in some way a trump card in the policy debate in Dworkin's sense.[5] In principle, if you can establish a right for credit, any kind of other argument on efficiency or cost-benefit/effectiveness grounds is over-ruled due to the presumably unchallengeable privilege granted by a right.

If rights are trumps, then for strategic purposes alone it makes sense to frame policy demands in a rights discourse. But whatever the short-term tactical benefits of such an approach, more often assumed rather than demonstrated, we suggest that such efforts may in the long-term weaken the currency of "rights talk."

Demeaning Rights

As James Griffin argues, "It is a great mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a right."[6] Amartya Sen also notes that to be meaningful rights must meet "threshold conditions" of "sufficient social importance to be included as a part of the human rights of that person and correspondingly to generate obligations for others.[7]

There are at least two issues here. One is the debasing of human rights language, with a consonant reduction in the moral and political force that it entails. If everything we think is morally correct or just becomes a right, then rights cease to be exceptional categories deserving of unusual political and economic effort to achieve.

The concern about the potential negative effects that a more unconstrained view of human rights might have on human rights is not new, nor is it confined to human rights skeptics. Philip Alston, writing in 1984 argued with respect to the pressure for the UN to pronounce new human rights that "such a proliferation of new rights would be much more likely to contribute to a serious devaluation of the human rights currency than to enrich significantly the overall coverage provided by existing rights."[8]

4. See among others:
Paul Nelson and Ellen Dorsey. 2008. *New Rights Advocacy: Changing Strategies of Development and Human Rights NGOs*, Washington, DC: Georgetown University Press;
Clifford Bob (ed). 2009. *The International Struggle for New Human Rights*, Philadelphia: University of Pennsylvania Press;
Daniel P.L. Chong. 2010. *Freedom from Poverty: NGOs and Human Rights Praxis*, Philadelphia: University of Pennsylvania Press.
Many NGOs such as Oxfam GB, ActionAid, and CARE have chronicled their own efforts at pursuing rights-based approaches to development.

5. Ronald Dworkin. 1984. "Rights as Trumps" in Jeremy Waldron (ed) *Theories of Rights*. Oxford: Oxford University Press, pp. 153-167.

6. James Griffin. 2008. *On Human Rights*. Oxford: Oxford University Press, p. 199.

7. Amartya Sen. 2009. *The Idea of Justice*. Cambridge, MA: Harvard University Press.

8. Philip Alston. 1984. "Conjuring up New Human Rights: A Proposal for Quality Control." *American Journal of International Law* 78 (3): 607-621, cite p. 617.

In this way, one can conceptualize the unqualified expansion of rights discourse as creating negative externalities. Expanding the domain of what constitutes rights (in an environment where political and financial resources are scarce) means reducing the space available to protect, promote, and fulfill other rights. Such an expansion, if it involves rights that do not enhance the indivisibility of rights claims, therefore, weakens rather than strengthens rights talk.

Trade-offs & Half-steps

The proclamation of a right to credit provides no clear guidance to policymakers or practitioners with respect to how to make trade-offs, either between credit and other objectives, or priorities within the sphere of credit itself. This is not something unique to credit *per se*, but reveals a broader challenge associated with the rights-based approach to development in general, a topic worthy of much more space than we can give here.[9]

Whether in the sphere of civil and political rights, or in the domain of economic, social and cultural rights, there are more or less explicit trade-offs and constraints that shape the implementation of that right. This trade-off in the face of resource constraints is more explicitly acknowledged in the domain of economic, social, and cultural (ESC) rights, under the provision of "progressive realization," which acknowledges that in the face of resource constraints states may not be able to achieve the equitable or universal protection, promotion, or fulfillment of economic, social, and cultural rights.

Even civil and political rights, (often constructed as "negative rights") are also constrained by their fulfillment on resources and trade-offs. For example, insuring that the police are trained to respect the rules of due process require expenditures on training programs and the development of organizational norms and sanctions. Insuring equal access to justice requires state subsidies for legal aid services. The level and quality of legal aid services is dependent in part on the resources allocated, and the availability of these services is unevenly distributed, across geography, and reduced in times of fiscal crisis.

In the context of credit, we might plausibly start with the idea that all adults would have the right to credit, as Yunus asserts in the quote that starts this essay. But is that reasonable? Are there legitimate reasons that some people should not qualify for credit? Those who are already highly indebted? Or who could not make effective use of that credit?

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9. For one effort in this regard, see: Dan Seymour and Jonathan Pincus. 2008. "Human Rights and Economics: The Conceptual Basis for their Complementarity," *Development Policy Review* 26 (4): 387-405.

Are there groups of individuals who are so expensive to reach that the cost to reach them should disqualify them from being guaranteed access, given the opportunity cost associated with such expenditures?

The fundamental principle underlying the obligation of progressive realization is that states must strive to protect, promote, and fulfill the economic and social rights of their citizens to the maximum extent possible in the face of economic resource constraints and that people have the right to the "highest level attainable" of certain rights under the qualification of the progressive realization of those rights. This leaves much room to wiggle. Without urgency attached to the right, and with the right expressed as a broad goal, it's unclear what the right to credit would ultimately mean in practice. There's a real risk that the notion of "credit as a human right" ends up as empty language—and in this sense also diminishes rights discourse.

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2. Assessing the Empirical Claim

Muhammad Yunus asserts that most microcredit fuels businesses and lifts households from poverty. The rapid growth of microcredit around the world testifies to the value that customers see in it. The latest figures show that microcredit providers reached over 190 million customers by the end of 2009.[10]

Still, neither of Yunus's specific claims is well-established. First, loans are taken for many uses beyond business investment. A study of household loans in Indonesia shows that 29-42 percent were used for non-business purposes.[11] A smaller study in Bangladesh reveals that roughly half of Grameen Bank loans went to non-business purposes. This fact should not necessarily be disheartening: alternative purposes include paying for healthcare, education, and smoothing consumption. But some households do take on too much debt and end up falling backward.

Evidence on social and economic impacts is also mixed. In a study of Sri Lanka after the tsunami of 2004, the average small business run by a man profited substantially when given greater access to capital, but not that of a woman. Some women profited, but half of women entrepreneurs in the sample experienced negative financial returns when given extra capital. The finding counters the idea that low-income women are, as a group, well-positioned to take advantage of credit.

Randomized studies in India and the Philippines also yield mixed an muted

10. The figure is from Larry Reed's *State of the Microcredit Summit Campaign Report 2011*. Available at http://www.microcreditsummit.org/SOCR_2011_EN_web.pdf.

11. Donald Johnston and Jonathan Morduch. 2008. "The Unbanked: Evidence from Indonesia." *World Bank Economic Review* 22 (3): 517-537.
Daryl Collins, Jonathan Morduch, Stuart Rutherford, and Orlanda Ruthven. 2009. *Portfolios of the Poor: How the World's Poor Live on $2 a Day.* Princeton, NJ: Princeton University Press.

findings. There are signs of positive impacts, but nothing so abundantly clear that the case for making credit a right is secured on empirical grounds.[12] We cannot generalize to all cases from a handful of new studies, but it remains that, in terms of studies that pass muster with academic economists, the empirical case that credit has a strong role in reducing poverty is far from settled.

3. Who Is Obligated?

When Yunus imagines the elimination of mass poverty through credit, the achievement is secured by actions taken by the poor themselves, not via direct wealth redistribution. When it comes to credit, intervention is needed to help remove the constraints that fetter earning power, not to make grants. The government's role is mainly to stay out: progress is made by unleashing millions of acts of decentralized exchange.

This matters, because if rights have any meaning, it is most often in placing a responsibility on governments. Declaring freedom of speech to be a human right imposes on government the ultimate responsibility for vigilance in protecting loudmouths. Declaring healthcare to be a human right imposes on government the responsibility to provide public hospitals when private markets and charities fail to fill gaps. When it comes to credit, the government, it follows, should become the lender of last resort for the poor.

Yet, for Yunus, credit—by which he implies credit provided by NGOs and private financial institutions like Grameen Bank—is powerful *because* the reach of government is in practice limited. Moreover, the premise of microcredit has been that the state, when it does attempt to directly provide credit, is generally a failed provider, diverted by political exigencies and inefficiencies, a waster of resources and an underminer of good intentions.

The language of credit as a human right, even as shorthand, thus puts us in a corner. Even if Yunus's intention is merely to spur greater attention and passion for spreading access to privately-provided microcredit, his invocation of rights (and thus the responsibilities of the state) risks bringing us to a position that undermines the very ideal of privately-provided microcredit that he espouses.

So Yunus implicitly argues that *non-state* actors should be obligated to make the right to credit meaningful because of the state's incapacity to

12. Beatriz Armendáriz and Jonathan Morduch reviewed recent studies of the impact of microcredit. See: Armendáriz de Aghion, Beatriz, and Jonathan Morduch. 2010. *The Economics of Microfinance*, 2nd edition. Cambridge, MA: The MIT Press.
See also:
de Mel, McKenzie, and Woodruff. 2008. "Returns to Capital in Microenterprises: Evidence from a Field Experiment." *Quarterly Journal of Economics* 123 (4): 1329–1372.
Banerjee, Abhijit V., Esther Duflo, Rachel Glennerster, and Cynthia Kinnan. 2009. "The Miracle of Microfinance? Evidence from a Randomized Evaluation" Working Paper. Cambridge, MA: MIT Department of Economics and Abdul Latif Jameel Poverty Action Lab.
Pitt, Mark M., and Shahidur R. Khandker. 1998. "The Impact of Group-Based Credit on Poor Households in Bangladesh: Does the Gender of Participants Matter?" *Journal of Political Economy* 106 (5), pp. 958–96.
Roodman, David and Jonathan Morduch. 2010. "The Impact of Microcredit on the Poor in Bangladesh: Revisiting the Evidence." Center for Global Development and New York University.

fulfill the right. In practice this seems far too broad, and could undermine accountability. If many diverse entities have the duty to fulfill the right, and there is no mechanism to insure the fulfillment of that duty, then there's no accountability.

The relationship between human rights obligations and non-state actors is a broad and complex issue that can't be effectively addressed here.[13] This is a growing area of focus for human rights, both in the areas of international humanitarian law as well as in the domain of economic and social rights. Onora O'Neil, for example, argues that it is a mistake to think of states as the only entities with obligations, but argues that for rights to be meaningful, the obligations of the duty bearer need to be clear and explicit and the identity of that duty bearer clear.[14]

The issue here is one of the virtue of specifying obligations without identifying an explicit duty bearer.[15] If one understands the right to credit as a "goal right" or an articulation of imperfect obligations, then such an issue may not be as important. Sen and others argue that it's okay to have imperfect obligations, where the duty bearer is not clearly specified, and that it is the case for civil and political rights as well as ESC rights. But it remains unclear what the benefit is to have such imperfect obligations involving a broad host of non-state actors.[16]

4. Non-discrimination

The easiest, narrowest, and most direct way of understanding a right to credit would be as the elimination of legal obstacles to providing access to credit, with all other parameters held constant. This would include eliminating formal rules that discriminate against women owning property or rules that require a wife to obtain a husband's signature for a bank account or a loan. There are still a number of countries where legal obstacles are significant.[17]

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A slightly broader reading would address issues that require the state or microcredit providers to take active steps to promote or fulfill rights, rather than just eliminating legal barriers. But the step would fall short of direct provision of credit. Here, steps would involve programs or interventions to change cultural norms, or for example, in countries where a birth certificate or other type of identity document is required to obtain a loan, pursuing programs that insure that everyone has access to such documents, accept some other kind of documentation, or lift the requirement. Also in this list could include making collateral rules more flexible.

13. See, for example, Andrew Clapham's *Human Rights Obligations of Non-State Actors* (Oxford, 2006).

14. See her discussion in:
Onora O'Neill. 2001. "Agents of Justice," *Metaphilosophy* 32 (1/2): 180-195.
In particular she argues that "a proclamation of rights will be indeterminate and ineffective unless obligations to respect and secure those rights are assigned to specific, identifiable agents and agencies which are able to discharge those obligations." (p. 185). In a similar vein she notes that "Rights to goods and services are easy to proclaim, but until there are effective institutions their proclamation may seem bitter mockery to those who most need them."
Onora O'Neill. 2000. *Bounds of Justice.* Cambridge: Cambridge University Press, p. 105.

15. See, inter alia, Alston (1984).

16. Mark Hannam makes a similar set of points in http://oecdinsights.org/2010/06/25/life-liberty-and-access-to-credit.

17. For discussion of these areas see among others:
Diana Fletschner and Lisa Kenney. 2011. "Rural Women's Access to Financial Services: Credit, Savings and Insurance," ESA Working Paper 07-11, Agricultural Economics Division, FAO;
as well as the OECD's Gender, Institutions, and Development Database http://www.oecd.org/document/16/0,3343,en_2649_33935_39323280_1_1_1_1,00.html.

These efforts can be understood to fit under access to credit as a right that is part of the existing rights against discrimination, a core dimension of the human rights regime. It is not clear that expanding the rights discourse to explicitly include a right to credit adds anything substantial or desirable to this agenda.