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]
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> - Muhammad Yunus

Introduction

Muhammad Yunus, the winner of the 2006 Nobel Peace Prize, is the most visible leader of the 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

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[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.

urges that we add such credit to the list of human rights. We argue that, on empirical grounds, the case for doing so is weak.

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 should also be committed to providing access to the tools that are most likely to deliver those basic elements of life. The idea that access to adequate food, shelter, and health are basic human rights was put forward as Article 25(1) of the Universal Declaration of Human Rights, adopted by the United Nations in December 1948 and codified in international treaty law in the International Covenant on Economic, Social, and Cultural Rights as well as other treaties and human rights mechanisms. Yunus can be interpreted as saying: access to credit is so powerful in reducing poverty, that access to credit should be a right itself.

The logic for Yunus's argument flows from an empirical assertion. Microcredit advocates argue that when credit is directed toward the poor in developing countries, especially women, the access to capital allows them to expand small, informal-sector businesses. Yunus asserts that borrowers have energy, motivation, and knowledge, but their productivity is held back by the lack of financial resources. Microcredit provides the missing ingredient. The chain of logic begins with the assertion that microcredit overcomes failures in capital markets which restrict the businesses of the poor to very low levels of efficiency. Access to capital, Yunus argues, can then be transformative by dramatically boosting levels of productivity. The promise of microcredit is thus that the expansion of businesses raises profit levels, which in turn provides more income, increases household consumption, reduces poverty, and can improve health and education for children.[2]

We approach the question of whether credit should be a right from our positions as social scientists, drawing on our fieldwork and scholarship in political science and economics. The first part of the chapter describes 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. Yunus's claim for the power of credit access has yet to be widely verified, and most studies find microcredit impacts that fall far short of the kinds of empirical assertions above. Access to finance may be a positive and important part of the lives of many poor households, but there is little evidence of its transformative power.[3] 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 second part of the chapter turns to a different concern. We describe 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

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[2] Yunus's arguments can be found in many places, but the clearest vision is described in Muhammad Yunus (1999) *Banker to the Poor: Micro-Lending and the Battle Against World Poverty* (New York: PublicAffairs).

[3] Reviews of the empirical literature on the impact of microcredit include Robert Cull, Tilman Ehrbeck, and Nina Holle (2014) *Financial Inclusion and development: Recent Impact Evidence* (Washington, DC: Consultative Group to Assist the Poor); Beatriz Armendáriz and Jonathan Morduch (2010), *The Economics of Microfinance* (Cambridge, MA: MIT Press); and Jonathan Bauchet, Cristobal Marshall, Laura Starita, Jeanette Thomas, Anna Yalouris (2011), *Latest Findings from Randomized Evaluations of Microfinance* (Washington, DC: Consultative Group to Assist the Poor).

giving access to public hand-outs, facilitating transfers between family members, being permitted unfettered migration, reducing inflation, and promoting GDP growth that generates better jobs. Given the empirical uncertainties attached to the impact of microcredit, elevating microcredit to the status of a right risks diluting the urgency of attention given to other interventions which may turn out to have greater claim on our attention empirically. As students of public policy, we take seriously that such "negative spillovers" from "rights creep" should be part of the conversation.

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? This is less a question of principle than a practical concern. If accountability of non-state actors cannot be established, is it useful to adopt the rights framework in practice?

If nothing else, there is a compelling claim to non-discrimination in credit access. The conclusion describes steps to combat the lack of access to credit due to discrimination along gender, economic, ethnic, religious, and social lines.

1. Assessing Empirical Claims

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 204 million customers by the end of 2012.[4]

[4] The figure is from Larry Reed (2014). *State of the Microcredit Summit Campaign Report* 2014. Available at http://stateofthecampaign.org/.

Muhammad Yunus asserts that microcredit fuels businesses and lifts households from poverty. Still, neither of Yunus's specific claims is well-established. First, microcredit loans are put to many uses beyond business investment, even if they are nominally business loans. A study of household loans in Indonesia shows that 29-42 percent were used for non-business purposes, for example. A smaller study in Bangladesh reveals that roughly half of Grameen Bank loans went to non-business purposes.[5] Similarly, a study in Mongolia found that only half of loan uses were for business.[6] A village study in India finds that just 5 percent of loans went to business. These facts are not necessarily disheartening: alternative purposes for loans include paying for healthcare, education, and smoothing consumption. Moreover, since money is fungible, using loans for non-business purposes may free up other resources for business investment. But it remains that the demand and use of microcredit is more complicated than that described in the standard (business-focused) microcredit narrative.

The use of loans for non-business purposes matters in part because it raises concerns about over-indebtedness. Debt crises among microfinance borrowers have been seen in countries as diverse as Bangladesh, Bolivia, Ghana, Morocco, Nicaragua, Bosnia Herzogovina, and Pakistan.[7] The debt crises suggest that while access to credit can be

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[5] 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).

[6] Attanasio, Orazio, Britta Augsburg, Ralph De Haas, Emla Fitzsimons, Heike Harmgart (2013). "Group lending or individual lending? Evidence from a randomised field experiment in Mongolia." CentER Discussion Paper Series No. 2013-074.

[7] Greg Chen, Stephen Rasmussen, and Xavier Reille (2010), "Growth and Vulnerabilities in Microfinance." Focus Note 61. (Washington, DC: Consultative Group to Assist the Poor). Vivien Kappel, Annette Krauss, and Laura Lontzek (2010). "Over-Indebtedness and Microfinance – Constructing an Early Warning Index." (Zurich: Center for Microfinance,

beneficial to many, access to credit can harm others. In principle, steps can be taken to lessen the risk of over-indebting borrowers by carefully screening both customers and financial providers; such steps have been developed, for example, by the "Smart Campaign" (www.smartcampaign.org). These are important evolutions but they are in early stages, and they only go so far.

Harm need not be caused by over-indebtedness. It may simply occur when borrowers prove unable to reap positive financial returns to their investments. One randomized trial from Sri Lanka attempts to quantify this part of the basic microcredit logic (though not to evaluate microcredit itself). Researchers show that in a study after the tsunami of 2004, the average small businesses run by men profited substantially when given greater access to capital (through a randomized allocation process), but not those of women. Some women profited, but half of women entrepreneurs in the sample experienced *negative* financial returns when given extra capital (again, through a randomized process). The findings counter the idea access to finance is generally beneficial, and that low-income women are, as a group, well-positioned to take advantage of credit.[8] This is just one study, of course, but it provides an important cautionary note, especially given the strong methodological approach.

Putting aside the question of the distribution of impacts, there is still much debate as to whether, on average, households are helped substantially by access to microcredit.

University of Zurich). Jessica Schicks (2010), "Microfinance Over-Indebtedness: Understanding its drivers and challenging the common myths." CEB Discussion Paper 10-048, Université Libre de Bruxelles - Solvay Brussels School of Economics and Management, Centre Emile Bernheim.

[8] The study is de Mel, McKenzie, and Woodruff (2008). "Returns to capital in microenterprises: evidence from a field experiment." *Quarterly Journal of Economics* 123 (4): 1329–1372.

Measuring the average impact of microcredit is made difficult by what statisticians call selection bias. Measured impacts will be over-stated, for example, if outcomes for microcredit borrowers are compared to outcomes for non-borrowers without fully accounting for the ways that borrowers have advantages from the outset. Borrowers may be more energetic, better connected to market networks, more savvy, etc – and many of the key differentiators may be impossible to quantify with confidence. There are cases too, when measured impacts could be under-stated – when, for example, a microfinance institution especially targets the most disadvantaged members of a community.[9]

The ubiquity of selection bias has led researchers to turn to randomized controlled trials in which access to microcredit depends on a randomized procedure. One way this can work is to work with lenders to determine which communities the lender should expand to next, among a wide set of possibilities. Lenders then select some communities (treatment) and not others (control) on the basis of a random number generator. Researchers then compare how treatment and control communities fare after a few years.[10]

Randomized studies of microcredit are only starting to emerge, but six new studies have recently been accepted for publication after peer-review by a leading economics journal (*American Economic Journal: Applied Economics* 2014). The studies are from India,

[9] For a review of the statistical issues, see Beatriz Armendáriz and Jonathan Morduch (2010) , *The Economics of Microfinance*, 2nd edition. (Cambridge, MA: The MIT Press).
[10] Earlier papers addressed selection bias through other methods. One of the most careful is Mark M. Pitt 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. Pitt and Khandker find large, positive impacts of microcredit, especially for women. A replication and critique of the paper can be found in David Roodman and Jonathan Morduch. 2014. "The Impact of Microcredit on the Poor in Bangladesh: Revisiting the Evidence." *Journal of Development Studies* 50 (4), April: 583-604.

Ethiopia, Bosnia-Herzegovina, Mexico, Morocco, and Mongolia. As a whole, the papers show mixed and muted findings. There are signs of positive impacts, but nothing so abundantly clear that the case for making credit a right is buttressed on empirical grounds.[11]

The paper from India by Banerjee et al. investigates an urban microcredit program in the south. Researchers found that small business investment and profits of existing businesses increased, but not average consumption by households. No significant impacts were found on health, education, or women's empowerment. A follow-up two years later (after the area had been more widely covered by microcredit) found very few significant differences between the original treatment and control groups.

In Mexico, Angelucci et al. tracked the expansion of the country's largest microlender (one that uses established microcredit lending methods and targets low-income women but which charges very high interest rates). After an average of two years of microcredit access, the researchers "find no evidence of transformative impacts on 37 outcomes (although some estimates have large confidence intervals)." The outcomes

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[11] The six studies forthcoming in the *American Economic Journal: Applied Economics* are: Banerjee, Abhijit V., Esther Duflo, Rachel Glennerster, and Cynthia Kinnan: "The Miracle of Microfinance? Evidence from a Randomized Evaluation"; Angelucci, Manuela; Karlan, Dean and Zinman, Jonathan: "Microcredit Impacts: Evidence from a Randomized Microcredit Program Placement Experiment by Compartamos Banco"; Orazio Attanasio, Britta Augsburg, Ralph De Haas, Emla Fitzsimons and Heike Harmgart: "The Impacts of Microfinance: Evidence from Joint-Liability Lending in Mongolia"; Britta Augsburg, Ralph De Haas, Heike Harmgart and Costas Meghir: "The Impacts of Microcredit: Evidence from Bosnia and Herzegovina"; Bruno Crépon, Florencia Devoto, Esther Duflo, and William Pariente: "Estimating the Impact of Microcredit on Those who Take It Up: Evidence from a Randomized Experiment in Morocco"; and Alessandro Tarozzi, Jaikishan Desai, and Kristin Johnson: "The Impacts of Microcredit: Evidence from Ethiopia."

considered include microentrepreneurship, income, labor supply, expenditures, social status, and subjective well-being.

In rural Mongolia, Attanasio et al. find positive impacts on the entrepreneurship of women and on food consumption by their households, but not on total working hours or household income. In Bosnia, with a better-off sample of customers, Augsberg et al. find positive impacts on self-employment and inventories, and, with that, a drop in wage work. While the researchers find "some evidence of increases in profits" they also find that consumption and savings fall, and no impact on average household income. In Morocco, Crépon et al. also find an increase in self-employment coupled with a drop in other forms of labor. The increase in business profit was thus offset by falling income from other labor, leaving no net gain in average household income and consumption. In rural Ethiopia, Tarozzi et al. investigated impacts on income from agriculture, animal husbandry, nonfarm self-employment, labor supply, schooling, and indicators of women's empowerment. They find that "despite substantial increases in borrowing in areas assigned to treatment the null of no impact cannot be rejected for a large majority of outcomes."

We cannot generalize to all cases from just these six studies, but they align with results from a wider set of studies surveyed by Armendáriz and Morduch.[12] The summary view is that, in terms of studies that pass muster with academic economists, the empirical case that credit has a strong role in reducing measured poverty is weak. The studies show a few bright spots, and they show that microcredit generally helps businesses. But the

[12] Beatriz Armendáriz and Jonathan Morduch (2010), *The Economics of Microfinance* (Cambridge, MA: MIT Press).

studies show that the links are not strong from business investment to the broader measures of welfare that are of most concern here.

An alternative view suggests that microcredit may help the poor in ways outside the scope of these studies. Specifically, even if microcredit does not raise income, it may help households cope with the ups and downs of incomes and needs that arise through the year. Even if poverty rates (defined by a given level of average income) are not noticeably affected by microcredit access, some of the consequences of being poor – such as having difficulty finding funds to meet health crises -- may be ameliorated by having access to extra money when needed.[13] Such access may be vital during emergencies (and are due more attention from policymakers and researchers), but it is a very different story from the standard microcredit narrative upon which Professor Yunus's claims for "credit as a right" are based. A rights-based view might emerge from the evidence on improved money management, but that is outside the scope of this essay.

2. The Right to Credit: In Principle and in Effect

We turn next to questions around the practical implementation of "credit as a right". This could entail a broader discussion of what rights are in principle 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

[13] This view is advanced in 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).

"goal right" as suggested by Hudon)? Or an ethical pronouncement in a sense considered by Sen.[14] Or is it 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. Is it enough, say, to guarantee access to microcredit but at a 100% annualized interest rate? Or do households have a right to cheaper credit? For clarity our focus will be on basic access, although questions of quality are likely 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

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[14] 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.

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 and 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 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 .[15] Second is a sense that rights represent in some way a trump card in the policy debate in Dworkin's sense.[16] 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

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[15] 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; and 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.
[16] Ronald Dworkin (1984), "Rights as Trumps" in Jeremy Waldron (ed) *Theories of Rights.* Oxford: Oxford University Press, pp. 153-167.

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.”[17] 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.[18]

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.”[19]

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

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[17] James Griffin. (2008). *On Human Rights.* Oxford: Oxford University Press, p. 199.
[18] Amartya Sen, *The Idea of Justice* (Cambridge: MA: Harvard University Press, 2009).
[19] Philip Alston, “Conjuring up New Human Rights: A Proposal for Quality Control, “ *American Journal of International Law* Vol. 78, No. 3 (Jul., 1984), pp. 607-621, cite p. 617.

environment where political and financial resources are scarce) means reducing the space available to respect, protect, 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 and the progressive realization of rights

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.[20]

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

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

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?

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 respect, protect, 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.

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 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.[21] 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.[22]

The issue here is one of the virtue of specifying obligations without identifying an explicit duty bearer.[23] 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

[21] See, for example, Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, 2006) and the work of the Global Initiative for Economic, Social, and Cultural Rights (www.globalinitiative-escr.org) and the International Network for Economic, Social, and Cultural Rights (www.escr-net).

[22] See her discussion in Onora O'Neill, "Agents of Justice," *Metaphilosophy* 32(1/2) January 2001, pp. 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.

[23] See, inter alia, Alston (1984).

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.[24] In principle, something can be conceived as a right even if it is not "justiciable," and arguments can end there. In practice, though, the distinctions matter.

4. Concluding thoughts: toward a right to non-discrimination

The argument for credit as a human right is, ultimately, based on an empirical assertion. That assertion is clearly and strongly-stated by Muhammad Yunus: that microcredit deserves to be a human right based on its strong role in reducing poverty. We have argued, also on empirical grounds, that the assertion is in fact weak and not sustained by the best available evidence.

Instead, efforts should go in other directions. 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.[25]

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

[25] For discussion of these areas see among others Diana Fletschner and Lisa Kenney, *Rural women's access to financial services: credit, savings and insurance*, ESA Working Paper 07-11, Agricultural Economics Division, FAO, (March 2011) 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.

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.

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.

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.[26]

As empirically-minded academics, the questions we raise emerge from practical concerns. We question whether a rights-based approach to microcredit will in fact be effective in achieving the goal of substantial global poverty reduction. But a right

[26] Philip Alston, "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 (2005) 755–829, cite at p. 826.

to non-discrimination with regard to financial access has appeal on its own terms.