

# Financial Inclusion, Education, and Human Rights<sup>1</sup>

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Since the promulgation of Hammurabi's Code, in ancient Babylon, no advanced society has survived without banks and bankers. Banks enable people to borrow money...They also play a critical role in channelling savings into productive investments...When the banking system behaves the way it is supposed to...it is akin to a power utility, distributing money (power) to where it is needed and keeping an account of how it is used.<sup>2</sup>

## Introduction

According to economist and Nobel Peace Prize Laureate, Muhammad Yunus, there exists a fundamental human right to *credit*, and specifically a right to microcredit for the poorest people, on the grounds that having access to a loan is a necessary condition for breaking recurring cycles of poverty.<sup>3</sup> In essence, in Yunus's view, the right to credit is derivative of the right to be free from poverty, and the argument for its legitimacy is an instrumental one.<sup>4</sup>

In this chapter, we do not challenge this view, but rather consider a more robust and less restrictive variant of the right, which we shall call a 'right to financial inclusion'. In brief, this putative human right is a right to be accepted within a functioning financial system irrespective of one's financial position, and to have access to legitimate financial services such as a bank account, saving facilities, and borrowing facilities on reasonable terms, all provisions which expand persons' opportunities to shape their own lives. If credible, such a right would be independent of, and distinct from, the right to be free from poverty. The question is: Are basic financial services appropriate objects of human rights protection?

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<sup>2</sup> Cassidy, John (2010), 'What Good is Wall Street: Much of what investment bankers do is socially worthless.' *New Yorker*, 29 November 2010. Retrieved from:

[http://www.newyorker.com/reporting/2010/11/29/101129fa\\_fact\\_cassidy#ixzz1B5yq9bzO](http://www.newyorker.com/reporting/2010/11/29/101129fa_fact_cassidy#ixzz1B5yq9bzO)

<sup>3</sup> Yunus, Muhammad (2006), 'Nobel Lecture'. 10 December 2006. Retrieved from:

[http://nobelprize.org/nobel\\_prizes/peace/laureates/2006/yunus-lecture-en.html](http://nobelprize.org/nobel_prizes/peace/laureates/2006/yunus-lecture-en.html)

<sup>4</sup> In his Nobel Lecture, Yunus states that 'Poverty is the absence of all human rights. The frustrations, hostility and anger generated by abject poverty cannot sustain peace in any society. For building stable peace we must find ways to provide opportunities for people to live decent lives. The creation of opportunities for the majority of people – the poor – is at the heart of the work that we have dedicated ourselves to [at Grameen Bank] during the past 30 years.' He goes on to say that all that is needed to get the poor people out of poverty is 'for us to create an enabling environment for them. Once the poor can unleash their energy and creativity, poverty will disappear very quickly...[P]oor people, and especially poor women, have both the potential and the right to live a decent life, and ...microcredit helps [them] to unleash that potential.' As an aside, it is worth noting that the notion of microcredit has expanded into that of microfinance, whereby the aim is to provide ordinary banking services – bank accounts, savings schemes, loans, and insurance – to very poor people who are typically deemed by the mainstream banking system not to be 'creditworthy' or 'bankable'.

It is not the purpose of this chapter to defend the idea of a human right to financial inclusion as such. The central purpose here is a more modest one. It is to highlight a parallel between the opportunities that would be secured by a right to financial inclusion and those that are secured by a less contentious (though nonetheless debated) human right: the right to basic education. The claim of the chapter is that a proposed right to financial inclusion is relevantly similar to a right to basic education, and that, if a compelling case can be made for a human right to basic education, then, in principle, a comparable case can be made *mutatis mutandis* for a human right to financial inclusion. The underlying aim in identifying this parallel is to make the project of articulating and considering a right to financial inclusion as practically relevant and strategically viable as possible. By demonstrating that a credible analogy holds between a right to education and a (putative) right to financial inclusion, we show that the latter cannot be as easily dismissed as one might suppose.

In developing this argument from analogy, we also pursue a secondary, conceptual purpose in this chapter, which is to highlight an important distinction within the domain of *positive rights* between what we shall call enhancement-rights (or empowerment-rights) and maintenance-rights. Briefly, we argue that, although many, if not all, human rights have positive dimensions in that they generate for duty-bearers positive duties of assistance, nevertheless certain rights - including the right education and the (putative) right to financial inclusion - are positive in a second, more explicit sense: it is part of their aim that they *directly* empower or enhance and improve the conditions of the recipient, something which other rights, such as the right to life and the right against torture, need not aim to do. The latter rights are maintenance-rights, that is, they are rights not to have one's conditions *worsened*.

The structure of our discussion is as follows. First, we elaborate the central features of a human right to basic education and the core arguments for its legitimacy (Section 1). Second, we specify what we take to be the key features of a putative right to financial inclusion, and highlight several dimensions along which it parallels the right to basic education, including its essential function as an empowering mechanism, its distinctive importance for securing the needs of traditionally marginalised groups, most notably women and girls, and its *prima facie* vulnerability to charges of overburdensomeness (Section 2). Finally, we address some possible dissimilarities between a right to financial inclusion and the right to basic education concerning intrinsic and instrumental value and duty-generation. We conclude that such normatively salient dissimilarities as there are do not expose a disanalogy that would undermine an appeal to the human right to basic education in order to begin to defend a human right to basic financial inclusion (Section 3).

## **1. The Right to Basic Education**

The right to basic education figures prominently in many international human rights treaties. For instance, Article 26 of the *Universal Declaration of Human Rights* (UDHR) states that:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.<sup>5</sup>

Article 13 of The *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) reiterates and expands upon the UDHR Article, identifying the need for fundamental education to be encouraged or intensified as far as possible for persons who have not received or completed their primary education; and endorsing both the development of a system of schools at all levels and an adequate fellowship system, and the continuous improvement of the material conditions of teaching staff.<sup>6</sup> Article 13 also makes specific reference to secondary education, stating that, ‘Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.’<sup>7</sup> In this statement, Article 13 of the ICESCR clarifies what is only implicit in the UDHR, that education is a right not just for children, though they are the primary beneficiaries, but for everyone.<sup>7</sup>

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<sup>5</sup> *The Universal Declaration of Human Rights*. Retrieved from: <http://www.un.org/en/documents/udhr/index.shtml>

<sup>6</sup> *The International Covenant of Economic Social and Cultural Rights*. Retrieved from: <http://www2.ohchr.org/english/law/cescr.htm>. Article 14 of the ICESCR also pertains to education: ‘Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.’ Protocol 1, Article 2, of the *European Convention on Human Rights* states that: ‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.’ Article 17.1 of the *African Charter of Human and Peoples’ Rights* states that ‘Every individual shall have the right to education.’ Article 12 of the *American Declaration of the Rights and Duties of Man* states that ‘Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education.’

<sup>7</sup> Douglas Hodgson observes that, in proclaiming that, ‘Everyone has a right to education’, the UDHR recognises that education is a continuous, life-long process Hodgson, Douglas (1996), ‘The International Human Right to Education and Education concerning Human Rights’ in *The International Journal of Children’s Rights*, 4: 237-262. The proposed parallel between the right to education and the right to financial inclusion would be complicated unnecessarily if the right to education were taken to be, as it commonly is, a right of children, while the right to financial inclusion is, presumably, a right of adults (like the human rights to vote and to marry). In this discussion, for the sake of simplicity,

James Nickel summarises the international consensus on the content of the right to basic education as follows:

The right to basic education focuses on literacy, numeracy and preparation for social participation, citizenship and economic activity. It helps to orientate economic and social rights towards action, choice, self-help, mutual aid and social, political and economic participation. The Universal Declaration emphasizes that basic education should be both free and compulsory. Families do not have the liberty to keep children uneducated and illiterate. But they do have regulated liberties to control the kind of education their children receive...<sup>8</sup>

Although a philosophically credible conception of the *human right to basic education* may differ in various ways from the internationally endorsed conception just outlined, it is not the task of this paper to critique the merits of this conception. The conception relies upon a commonsense notion of *basic education* as the formal provision of instruction (extending beyond primary education) in those elemental areas of knowledge that are minimally necessary for social participation, citizenship, and economic activity as well as for minimally adequate self-sufficiency, toleration, understanding, and capacity for mutual aid. As such, the conception is sufficiently open-ended and plausible to be deployed in this discussion without further analysis.

The ensuing discussion proceeds within a traditional moral theoretical account of human rights, and specifically within an interest-based theory of rights. Within this framework, the arguments for the human right to basic education are simple to enumerate. First, basic education of a person, be she a child or an adult, secures and protects certain fundamental interests that are important both for her life in the present and for her life in the future, including, but not restricted to, her interests in social participation, economic activity, and citizenship.

Second, more specifically, basic education is fundamental to the meaningful exercise of many uncontested human rights such as civil and political rights as well as the rights to marry, to try to have children, to raise children, to associate freely with others, to secure and to maintain employment, and to participate in the social and cultural aspects of a community.<sup>9</sup>

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the paradigm example of the person with the right to education is an illiterate (or untrained) adult who lacks education through no fault of her own.

<sup>8</sup> Nickel, James (2005), 'Poverty and Human Rights' in *The Philosophical Quarterly*, 55:220, 385-402.

<sup>9</sup> In a similar vein, James Nickel argues that the human right to basic education forms part of a modest conception of economic and social rights that also includes subsistence and basic health care, and that centres on the idea that, like other human rights, these rights are concerned with the conditions of a minimally good human life. He maintains that this modest conception of social and economic rights eschews the (real or alleged) excesses of recent rights treaties and instead merely requires governments to be able to answer affirmatively not only that conditions allow all people to secure basic subsistence and access to basic healthcare services, but also that available educational resources give people a good chance of learning the skills necessary for survival, health, functioning, citizenship and productivity. Nickel notes that the lack of access to educational opportunities in our contemporary world typically limits (both absolutely and comparatively) people's abilities to participate fully and effectively in political and economic life. C.f. Nickel, (2005); and, Nickel, James (2007), *Making Sense of Human Rights*. Oxford: Blackwell.

Third, basic education, although it is neither necessary nor sufficient to ensure protection of rights such as the right to basic subsistence or the right not to suffer extremely cruel or degrading treatment, is nonetheless intertwined with those rights in the sense that basic education can render a person less vulnerable to such experiences or treatment, and in cases of degrading treatment can make her aware of, and better able to make use of, mechanisms for support and redress.<sup>10</sup>

An additional feature of the right to education, which we noted at the outset, and which is important for our arguments below, is that it is part of the inner logic of *a right to education* that it directly empowers and enhances the conditions of its recipient. Education puts information, knowledge, practical skills and abilities, reasoning skills, judgement, and understanding *directly* into the hands of the student. As such, the right to education does something distinct from many other human rights, including those that nonetheless have positive dimensions (which most, if not all, of them appear to do). For example, the right to life is now generally recognised as having a positive dimension as well as a negative dimension; it is not simply a right not to be killed, it also is a right to be protected from certain conditions and circumstances which put one's life gravely at risk such as starvation or a pervasive threat of extreme violence. However, *ceteris paribus* the purpose of the right to life is not to enhance the conditions of the recipient, even though it may happen to enhance those conditions for someone who is gravely at risk. Rather, the purpose of the right to life is to maintain a person's condition of being alive. By contrast, the purpose of the right to education is to enhance a person's condition; this right fails in its purpose if it does not enhance the right-holder's condition by putting within her grasp at least the set of minimal skills summarised above.

Like other social and economic human rights, the right to basic education is a matter of controversy in international, political debates on the grounds that it is overly burdensome, too unfeasible, and too imperfect (indeterminate)<sup>11</sup> to be granted human rights status. Much has been said recently by defenders of socio-economic human rights to neutralise such objections, including the observation that first-generation civil and political rights also are vulnerable to the charges of burdensomeness, unfeasibility, and imperfection/indeterminacy.<sup>12</sup> Even so, in the case of education, charges of burdensomeness and unfeasibility are pressing due to the demanding set of positive duties and resource-requirements that the provision of adequate basic education generates. If a person has a

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<sup>10</sup> Thomas Pogge states that '...[in his view] human rights (conceptually) entail moral duties – but these are not corresponding duties in any simple way. The human right not to be subjected to cruel or degrading treatment gives me a duty to help ensure that those living in my society need not endure such treatment. Depending on context, this duty may...generate obligations to advocate and support programs to improve literacy and unemployment benefits when such programs are necessary to secure the object of this human right for a class of my compatriots (domestic servants).' Pogge, Thomas (2008), *World Poverty and Human Rights*. Polity, 72. International recognition of the interconnection between education and other human rights issues is reflected in different human rights declarations pertaining the needs of specific groups, such as the *Declaration of the Rights of the Child* (1959), the *Convention on the Elimination of Discrimination against Women* (1979), the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), and the *Convention on the Rights of Persons with Disabilities* (2006).

<sup>11</sup> Ashford, Elizabeth (2006), 'The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights,' *Canadian Journal of Law and Jurisprudence*, 29: 217–35.

<sup>12</sup> See Nickel (2005).

right to basic education, including at least a free primary education, then other parties are under a duty to provide her with that education. Like a right to a fair trial or a right to equal recognition before the law, this presumes either that certain formal structures and institutions are in place to provide that basic education or that state parties are under a duty to bring such formal structures and institutions into existence.

There are other concerns about a human right to basic education, such as the proper scope of parents' prerogative over their children's education and, conversely, the seemingly paternalistic nature of international educational objectives. But such concerns do not undermine the credibility of the right to education as such; rather they speak to its parameters and may be set aside in this discussion. With the above outline of the human right to basic education in hand, let us turn to the proposed human right to financial inclusion.

## **2. The Parallel between Basic Education and Financial Inclusion**

### *Basic Analogy*

It is worthwhile to comment briefly upon the language in which the proposed right to financial inclusion is framed. Two alternative characterisations to our preferred 'right to financial inclusion' are a 'right against financial exclusion' and a 'right against financial deprivation'. The last of these is unnecessarily ambiguous in that it seemingly overlaps with the territory of freedom from poverty, but also implies - and implies only - something more comprehensive than freedom from poverty, since 'financial deprivation' applies to the circumstances not only of people in poverty, but also of at least some people above a credible threshold of poverty. The language of a 'right against financial exclusion' may seem more plausible, particularly as it has fewer controversial implications than does a 'right to financial inclusion', but it gives a slanted view of the kinds of duties that this kind of right may be said to generate. The language of 'exclusion' highlights negative duties not to force people out of financial systems, but downplays or conceals the range of positive duties that this kind of right implies to include people within functioning financial systems. So the choice of the positive description - a 'right to financial inclusion' - not only unambiguously signals that this right goes beyond the right not to suffer poverty, but is also intended to be transparent with regard to the range of duties that correlate with this right. As noted at the outset, the right to financial inclusion is a right to be accepted within a functioning financial system and to have access to legitimate financial services such as a bank account, saving facilities, and borrowing facilities on reasonable terms.

Recall the three initial arguments for the basic education listed above. These apply in a similar fashion to financial inclusion. First, it secures and protects certain fundamental interests including, but not restricted to, people's interests in social participation, economic activity, and citizenship. Second, it is fundamental in the modern society to the meaningful exercise of many uncontested human rights such as civil and political rights as well as the rights to marry, to try to have children, to raise children,

to associate freely with others, to secure and to maintain employment, and to participate in the social and cultural aspects of a community. Third, it can render a person less vulnerable to cruel and degrading treatment, and enable her better to recover from and redress such treatment if it occurs.

A question that might be immediately raised about the right to financial inclusion is whether the right holds even for people who are cash rich. In reply, if the right to financial inclusion is not conceived of strictly as a response to abject, poverty-stricken need and founded upon the potential (instrumental) value of financial inclusion in alleviating that poverty, but rather is additionally founded upon the interest-based claims that persons have as persons to be adequately integrated and accepted within a community, then there is scope within the conceptual space of this right for persons to have claims to meaningful opportunities for financial inclusion irrespective of their financial situation. More modestly put, on this conception, the right to financial inclusion persists even once a person who was in poverty passes a credible threshold of poverty.<sup>13</sup>

Thus conceived, the right to financial inclusion is not just a means of satisfying the more general right to be free from poverty even if, as a matter of fact, meeting the former right - as the microfinance movement is meant to show - can help meet to the latter right.

A second question about this conception is whether the right to financial inclusion can be invoked whenever a person faces unreasonable lending and borrowing terms. This is a question of scope that applies equally to debates about the concept of *basic education*. What level and standard of education is required to satisfy the human right to basic education? (This conceptual difficulty of specifying ‘How much?’ applies also to other social and economic rights such as health and basic subsistence.) In reply, in both the context of education and that of financial inclusion, we are concerned with the conditions for a minimally decent human life, and it is not the case that those conditions are undermined in every instance either of extortionist lending practices or of criticisable education provision. If persons already have, or have had, adequate borrowing opportunities, then lenders are at liberty (within the context of human rights) to offer them extortionist lending options. By contrast, if extortionist lending is persons’ only option for financial services, then their (putative) right to financial inclusion is not met.<sup>14</sup>

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<sup>13</sup> Given the importance of banking to human societies, it is plausible to hold that, denial of such inclusion irrespective of one’s financial situation, just like denial of access to public education irrespective of one’s financial situation, isolates and excludes a person from domains of social, cultural, and political life in which they properly have a claim to participate. To see this, consider a world of blue people and purple people in which it is decided that the central financial services will be denied to the blue people. Such a state of affairs would be reasonably objected to on the grounds of discrimination even if it were the case that all of the blue people were financially very well off. Given that the blue people are well off, they can presumably set up an alternative financial system; so the gut-wrenching need that informs the reflection on the financial exclusion of poor people does not apply here. However, there is still the issue of what claims persons have to access the mainstream financial structures. Of course, it does not follow that the blue people should have access to every financial channel; but to be denied access to all financial channels would be at odds with their claims as members of the community. What matters here is not so much the discrimination against the blue people (though, of course, that matters) but rather the arbitrary withholding of access to financial services.

<sup>14</sup> In his 2006 Nobel Peace Prize Lecture, Muhammad Yunus describes the extortionist lending practices in Bangladesh that prompted him to establish Grameen Bank. ‘In 1974, I found it difficult to teach elegant theories of economics in the

## *Empowering People*

The types of needs and interests that financial inclusion would secure are comparable in form to those secured through education since financial inclusion opens up direct opportunities to better shape one's life. Herein lies the crux of the analogy between education and financial inclusion alluded to at the outset. It is part of the logic and purpose of each of these provisions that they directly empower or enhance the conditions and capacities of the person who accesses them. A right to education is a right to have one's condition improved in a certain way, i.e. it is a right to be given tools necessary not just for survival, but for social cooperation, mutual aid, self-sufficiency, and autonomous choice. It is a right to have one's situation bettered. The same is true of the (putative) right to financial inclusion. As noted above, there is a non-contingent link between financial inclusion and social options, political options, education and training options, marriage and family options, security, access to continued employment, and the capacity to save and to plan for a future. There is a contingent, but non-negligible link between financial inclusion and both self-respect and a meaningful sense of identity. Like education, it too is a right to have one's situation bettered. These are enhancement-rights (or empowerment-rights).

Enhancement rights differ from other rights such as the right to life and the right not to be tortured or to suffer cruel and degrading treatment which, while they impose positive duties to ensure their protection, do not take a positive form in the sense of having the purpose of directly bettering and advancing persons' conditions. Other rights seem to fall along a continuum between these two poles. One example is a right to health care. Protection of this right only constitutes an improvement or enhancement of a person's condition when a person falls below a certain threshold of healthiness. For instance, when a person has a serious, but curable disease, provision of (adequate) health care improves or enhances her condition. But, if, by contrast, the person is healthy throughout her life and never has a need to access health care services, she is not bettered by having health care resources available to her. Certainly, she may have greater peace of mind knowing that those resources are there, and she may consequently be willing and able to take greater risks and to pursue more ambitious life-plans than she could otherwise do because health care would be available if she became ill. But, those are indirect benefits of the protection of the right to health care. And they contrast with the direct benefits and enhancements that education and financial options provide.

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university classroom, in the backdrop of a terrible famine in Bangladesh...I was shocked to discover a woman in the village, borrowing less than a dollar from the money-lender, on the condition that he would have the exclusive right to buy all she produces at the price he decides. This, to me, was a way of recruiting slave labor. I decided to make a list of the victims of this money-lending "business" in the village next door to our campus. When my list was done, it had the names of 42 victims who borrowed a total amount of US \$27. I offered US \$27 from my own pocket to get these victims out of the clutches of those money-lenders. The excitement that was created among the people by this small action got me further involved in it. If I could make so many people so happy with such a tiny amount of money, why not do more of it?



To reiterate the point concerning financial inclusion, simply being able to have a bank account empowers a person to plan for a future; it protects her from immediate pressures to use financial resources, and, if her bank account has an interest rate, it allows her to grow her resources over time. These benefits are important not only for those in financial need, but for those who otherwise would lack control over their resources, such as wives and daughters who are denied independent access to financial services. Being able to make financial choices is an important dimension of, and condition for, autonomy: affluent women whose finances are fully controlled by their husbands are severely disempowered in that they cannot make independent financial decisions.

Since both education and financial inclusion are integral to human life in advanced societies, the life-prospects of a person who is denied either education or access to financial services are directly worsened (or made more vulnerable) both irrespective of her attitude toward the value of education or financial inclusion and irrespective of her general financial condition. That said, *ceteris paribus*, the denial or absence of education or financial inclusion is most grave in the context of poverty and illiteracy (or functional illiteracy), both of which are strongly correlated with social and political exclusion. Poor people and uneducated people (two groups that intersect closely) not only tend to experience social exclusion, but also tend as a result to have this reinforce and worsen their poverty and ignorance.

To further highlight the parallel between education and financial inclusion, consider the substantial evidence of the extent to which both education and financial education significantly improve the status of traditionally marginalised groups, particularly women and girls. There is growing recognition that educating girls and women strongly correlates with both improved economic conditions and a liberalisation of community values. And, there is growing recognition that integrating women into financial systems has wider benefits for families and society in general. Microfinancing in particular, as a strategy for financial inclusion, has focused upon women and their viability as entrepreneurial borrowers. In his Nobel Prize Lecture, Yunus states that ‘ [As of November 2006], Grameen Bank gives loans to nearly 7.0 million poor people, 97 per cent of whom are women, in 73,000 villages in Bangladesh. Grameen Bank gives collateral-free income generating, housing, student and micro-enterprise loans to the poor families and offers a host of attractive savings, pension funds and insurance products for its members. Since it introduced them in 1984, housing loans have been used to construct 640,000 houses. The legal ownership of these houses belongs to the women themselves. We focused on women because we found giving loans to women always brought more benefits to the family.’

### **3. Some Apparent Dissimilarities**

Despite the parallels between education and financial inclusion outlined above, a critic might hold that there are as many dissimilarities as there are similarities between these domains and that, in consequence, the right education does not provide a fruitful starting point from which to consider the

merits of a putative right to financial inclusion. We consider below four possible dissimilarities – conditionality, intrinsic value, a duty to exercise, and the identity of duty-bearers – and argue that none of these is sufficiently compelling to undermine the parallel that we have identified.

### *Conditionality*

A commonsense view might be that basic education and financial inclusion differ with regard to their conditionality. Whereas the right to basic education should be unconditional and thus secured for everyone even criminals (with perhaps some limits to this in face of unusual disruptiveness or recalcitrance), the right to financial inclusion should be conditional on good conduct, so the argument goes, requiring no misuse of borrowed funds (many microfinance borrowers use funds not for stated entrepreneurial purposes, but for consumption purposes), no defaulting on loans, and no over-extending (i.e. taking out more loans than one can repay).

However, there are good reasons to resist the conditionality of the right to financial inclusion and hence to reject this ostensible dissimilarity.

One reason to be wary of conduct-sensitive conditionality in financial inclusion lies in the implications of using character as collateral for a loan (where character is assessed in terms of likeliness to repay a loan). Although the test for demonstrating the presence of such collateral may be a modest one, nevertheless the use of character as collateral raises normative difficulties, given professed commitments to inclusiveness and non-discrimination as core features of responsible (microcredit) lending. The idea of character as collateral is morally troubling because it implies that a person seeking financial inclusion must cultivate a sufficiently 'sympathetic self', i.e. an attractive persona, in order to be viewed as creditworthy. Such a conception of collateral not only can be overly invasive since it asks lenders to seek, however modestly, to pass judgement on the character of the prospective borrower, but also is discriminatory. In its starkest form, it divides poor people into the 'deserving poor' and the 'undeserving poor'.

Given that the present institutional framework is such that a poor credit rating tends to disqualify a person from future access to finance and that this can have serious implications for her life along the lines outlined above, there is reason to hold that, when the burden on lenders and society of a credit-default is not great, there is a duty *not* to inform others that a loan has not been repaid. Undeniably, this may generate seemingly perverse incentive effects for borrowers, but such incentives are perverse only if we view financial services in strictly profit-driven terms. If, however, we understand financial services as social businesses that aim not only to be maximally inclusive and non-discriminatory, but also to make their overall enterprise a no-loss operation rather than to ensure that each individual transaction yields a profit for the company, then the defaulting of some borrowers is not a deal-breaker when that default is prompted by genuine need. In this view, the microfinance system (and possibly the mainstream financial system) is not best thought of as a system of loans, but

as a programme of assistance that offers the option for people to re-pay loans in order to earn increasingly good credit rating. This would neutralise the above concern that, for persons without collateral, creditworthiness is to be determined through an intrusive evaluation of character and likelihood to repay the loan. And, it would allow credit-rating to be used positively (if good) to generate further loans. (One disadvantage of this way of thinking about (micro)finance is that, unless and until there is a shift in our thinking about the purpose and objectives of banking, it may make prospective lenders less willing than they otherwise would be to invest their money or to offer loans.)

### *Intrinsic Value versus Instrumental Value*

Undeniably, the right to education provides something that is valuable in itself. The experience of learning is (typically) an intrinsically valuable experience, and the state of being educated is an intrinsically valuable state. By contrast, it is not clear that financial inclusion provides something valuable in itself. Indeed, at first glance, the state of becoming or being financially secure seems not to be intrinsically valuable, but rather only to make available opportunities to engage in intrinsically valuable activities and projects. However, even if this were true, it would not require us to abandon the analogy between education and financial inclusion because the central argument for securing and enforcing a human right to education concerns not the intrinsic worth of being educated, but the instrumental effects of education upon a person's capacity to lead her life and to contribute meaningfully to her community. The language of the UDHR and other international treaties endorses this instrumental reading of the importance of education. 'Education shall be directed to the full development of the human personality and to the *strengthening of respect* for human rights and fundamental freedoms. It shall *promote* understanding, tolerance and friendship among all nations, racial or religious groups, and shall *further the activities of the United Nations* for the maintenance of peace.'

That said, a purely instrumental reading of the value of education is not plausible. To see this, suppose, for example, that there were three uneducated teenagers trapped in a mine whom we will never be able to reach except through limited one-way forms of electronic media, and suppose that they have adequate supplies for long-term survival but no means of intellectual stimulation or education. Would we say that they have no right to education because they will never be in a position to contribute meaningfully to a community or to promote toleration, understanding, and respect amongst peoples? Surely not.

This conclusion does not, however, lead us to differentiate the right to education from the right to financial inclusion because there is, in fact, intrinsic value for a person in being a decision maker who has funds at her disposal. Being able to make financial choices is one way of expressing and exercising autonomy and is a form of personality development. As noted above, one of the ways in which even rich women whose husbands control their finances are disempowered is that they cannot make such decisions. Therefore, although financial (monetary) resources are themselves only instrumentally

valuable, the decision-making capabilities that they give to people are not.

### *A Duty to Exercise*

Another possible, normatively salient difference between the right to basic education and the proposed right to financial inclusion concerns whether there is a duty to exercise it. Although it is implausible to hold that, in general, people have a duty to exercise their human rights, it is generally held that the right to basic education is one that people do have a duty to exercise both in themselves and on behalf of their children and dependants.<sup>15</sup> The UDHR declares that ‘Elementary education shall be compulsory’. That duty is grounded both in persons’ own interests and in the interests of others; the necessity of education (in the wider sense) for individual and general safety and security, mutual aid, and toleration, are among the most modest reasons to endorse the claim that education is a duty-based right.

The notion of duty-based rights is a subject of disagreement amongst philosophers in part because rights to act are often understood as Hohfeldian liberties or privileges, that is, as acts which persons are *permitted* to take (have no duty not to take). The point of disagreement is whether such liberties are indeed genuine liberties if the act in question is not simply one that persons are permitted to take, but also actually one that they are required to take. Some philosophers argue that such a bare half-liberty is not a liberty; to say that a person has a right to education when she in fact has a duty to receive education is akin to saying that a woman has two children when in fact she has three.<sup>16</sup> However, whether or not the right to education is a liberty, it can nonetheless be understood as a claim right: persons cannot be denied or deprived of the positive benefit of receiving an education.

Concerning financial inclusion, it is not clear that such a right could be a duty-based right. Financial inclusion may seem to be more analogous in this respect to the right to movement or the right to marry than to the right to education because, although certain financial opportunities should be available, there seems to be no plausible duty to take up those opportunities. To say that there is a duty to exercise the right to financial inclusion may stretch the notion of duty-based rights to all rights on the grounds that rights protect persons’ interests and the interests of their dependents and persons have duties to take care of those interests.

However, things are more complex than this concessive comment suggests. Although exercising the right to marry may serve both one’s interests and the interests of others, it is not *those* particular marriage-dependent interests that are protected by the right to marry, but rather the interest in having *control* over a certain central domain of one’s life. The same is true with the right of movement and the right to practice a religion.<sup>17</sup> This differs greatly from the kinds of interests at issue in relation

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<sup>15</sup> See, Shue, Henry (1996), *Basic Rights*. Princeton: Princeton University Press, 73.

<sup>16</sup> Sumner, Wayne (1987), *Foundations of Rights*. Oxford: Oxford University Press, 34. Sumner argues that there is little merit in the idea that a bare (half) liberty is a right. Can any right consist of one liberty without its complementary half?

<sup>17</sup> See Raz, Joseph (1994), *Ethics in the Public Domain*. Oxford: Oxford University Press, ch 3.

to financial inclusion. Yes, the central interest at issue is a person's control over domains of her life, but, in the case of securing a moral minimum for a person, the kind of control at issue is not control over whether or not to be financially included and, if destitute, to break a recurring cycle of poverty, but rather control over all of the domains of life that become meaningfully available to her once she is financially included. As such, given its distinctive importance for the meaningful exercise of many other rights and its importance for meaningful participation in social, cultural, and political life, there may be as much of a duty to exercise this right as there is to exercise the right to basic education.

### *Primary Duty-Bearers*

The issue of 'Who bears the duty?' to ensure that a certain rights-protected provision is secured is a thorny one in relation to many human rights, particularly that of education. But, this is potentially even more complex in the context of financial inclusion than in the context of education because identifying state governments as primary duty-bearers in the provision of education is fairly straightforward; if anyone directly bears that duty, governments do. Identifying the primary duty-bearers in relation to financial inclusion is not so straightforward because, given the nature of financial services, we may ask whether both non-governmental, not-for-profit financial institutions and for-profit, private financial institutions are or must be primary duty-bearers of financial inclusion for such a right to be practicable. If indeed such bodies must be primary duty-bearers for this putative right to be meaningfully available to people, then this may cast doubt on its status as a human right.

This concern may, however, be overstated here. As suggested above, there are good reasons to think about the provision of financial services in terms of a social enterprise rather than a private, for-profit enterprise. Although such an approach would require a radical shift in ethos about financial institutions, such a shift may be desirable, and may be a necessary consequence, if the proposed right to financial inclusion is credible.

Offering a full defence for the legitimacy of this right is a task for another paper. For now we conclude that the analogy between education and financial inclusion is sound and that this shows that the idea of a right to financial inclusion cannot be summarily dismissed.