

Debt as Fairness: Evaluating Access to Credit as a Social Justice Measure

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I. INTRODUCTION

The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.

— John Rawls, *A Theory of Justice* (1999)¹

Almost two years since the lockdowns due to the COVID-19 pandemic were first imposed, employment rates in the Philippines still paint a grim picture of the country's current labor situation. As of October 2021, the unemployment rate in the country is 7.4%, down from 8.7% a year before during the height of the pandemic.² The single-digit figure may not seem much and the drop in the rate might excite some, but 7.4% still translates to around 3.50 million members of the labor force³ who are without work though available and seeking for one.⁴ This rate is also lower than most of the country's neighbors

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1. JOHN RAWLS, *A THEORY OF JUSTICE* 87 (1999).
 2. Philippine Statistics Authority, Unemployment Rate in October 2021 Is Estimated at 8.9 Percent, *available at* <https://psa.gov.ph/content/unemployment-rate-october-2021-estimated-74-percent> (last accessed Apr. 30, 2023) [<https://perma.cc/DX6U-ZTDT>].
 3. Philippine Statistics Authority, Technical Notes: October 2021 Labor Force Survey, *available at* <https://psa.gov.ph/statistics/labor-force-survey/technical-notes> (last accessed Apr. 30, 2023) [<https://perma.cc/6FHT-S7LS>]. “‘In the Labor Force or Economically Active Population’ [] refers to persons 15 years old and above who are either employed or unemployed [...].” *Id.*
 4. *Id.*

“Unemployed” persons include all those who, during the reference period, are 15 years old and over as of their last birthday and reported as persons:

 - (a) Without work, i.e., had no job or business during the reference period;
 - (b) Currently available for work, i.e., were available and willing to take up work in paid employment or self-employment during the reference period, and/or would be available and willing to take up work in paid employment or self-employment within two weeks after the interview date; and
 - (c) Seeking work, i.e., had taken specific steps to look for a job or establish a business during the reference period, or Not seeking

in the ASEAN Region — with the exception of Brunei.⁵ To make matters worse, of those employed in the month of October, 16.1% or around 7.06 million are considered underemployed.⁶ This rate is up from 14.4% last year, which may mean that although unemployment went down, a significant portion of those newly employed accepted jobs that did not employ them full-time.

This labor situation may also not improve in the next few years. Citing a phenomenon called hysteresis in employment,⁷ economists from the Asian Development Bank (ADB) note the potential long-lasting effects of the pandemic on employment.⁸ In particular, researchers fear that as the pandemic wiped around 1.7 million wage and salary jobs in 2020, this large shock to the economy “might produce a persistently lower employment rate even after the economy has started to grow again.”⁹

work due to the following reasons: (1) fatigued or believed no work available, i.e., discouraged workers; (2) awaiting results of previous job application; (3) temporary illness or disability; (4) bad weather; and/or (5) waiting for rehire or job recall.

Id.

5. Trading Economics, Unemployment Rate: Asia, *available at* <https://tradingeconomics.com/country-list/unemployment-rate?continent=asia> (last accessed Apr. 30, 2023) [<https://perma.cc/E2JU-HRWQ>].
6. Philippine Statistics Authority, *supra* note 2. “Underemployed persons include all employed persons who express the desire to have additional hours of work in their present job, or an additional job, or to have a new job with longer working hours.” *Id.*
7. Will Kenton, Hysteresis: Definition in Economics, Types, and Example, *available at* <https://www.investopedia.com/terms/h/hysteresis.asp> (last accessed Apr. 30, 2023) [<https://perma.cc/S8AY-EDV3>]. “Hysteresis in the field of economics refers to an event in the economy that persists even after the factors that led to that event have been removed or otherwise run their course.” *Id.*
8. Kelly Bird, et al., Philippines’ COVID-19 Employment Challenge: Labor Market Programs to the Rescue, *available at* <https://blogs.adb.org/blog/philippines-covid-19-employment-challenge-labor-market-programs-to-rescue> (last accessed Apr. 30, 2023) [<https://perma.cc/VEG3-MDFF>].
9. *Id.*

On this note, self-employment could actually serve as a path forward for the unemployed and the underemployed.¹⁰ In fact, during the pandemic, employment rose by about 435,000 in the informal sector, which is defined as “consisting of independent, self-employed small-scale producers and distributors of goods and services.”¹¹ Of course, this increase is not necessarily a good thing considering how those belonging in the informal sector are not protected by any labor laws or regulations and are therefore more vulnerable than their employed counterparts, but the situation is also a testament to the Filipino people’s resilience and resourcefulness in turning to alternative modes of employment in times of crisis. In fact, even before the pandemic, research has found that “informal entrepreneurship can be a viable, and even a desirable, alternative to formal sector salaried work.”¹²

Unfortunately, there is the problem of capitalization for anyone venturing to start a business, especially for the poor.¹³ In the Philippines, most Filipino entrepreneurs turn to family (77.6%) and friends (38.4%) for investments, while only a minority source it from more formal sources like banks (5.9%), private investors (10.3%), and government programs or grants (5.9%).¹⁴ In the case of

10. See Rakesh Kochnar, *The Self-Employed Are Back at Work in Pre-COVID-19 Numbers, But Their Businesses Have Smaller Payrolls*, available at <https://www.pewresearch.org/fact-tank/2021/11/03/the-self-employed-are-back-at-work-in-pre-covid-19-numbers-but-their-businesses-have-smaller-payrolls> (last accessed Apr. 30, 2023) [<https://perma.cc/CFN9-T4RH>].

11. Louise Maureen Simeon, *Prioritize Informal Workers in Economic Recovery*, PHIL. STAR, Aug. 16, 2021, available at <https://www.philstar.com/business/2021/08/16/2120161/prioritize-informal-workers-economic-recovery> (last accessed Apr. 30, 2023) [<https://perma.cc/NL4H-U9ST>].

12. William F. Maloney, *Informal Self-Employment: Poverty Trap Or Decent Alternative?*, in *PATHWAYS OUT OF POVERTY* 80 (Gary S. Fields & Guy Pfeffermann eds., 2003).

13. See Britta Augsborg, et al., *The Impacts of Microcredit: Evidence from Bosnia and Herzegovina*, 7 AM. ECON. J. APPLIED ECON. 183, 183 (2015) (citing DARYL COLLINS, ET AL., *PORTFOLIOS OF THE POOR: HOW THE WORLD’S POOR LIVE ON \$2 A DAY* 9 (2010)).

14. AIDA LICAROS VELASCO, ET AL., *PHILIPPINE ENTREPRENEURSHIP REPORT 2015-2016* 34 (2017). See also Charles Harvie, *Framework Chapter: SME Access to Finance in Selected East Asian Economies*, in *SMALL AND MEDIUM ENTERPRISES*

poor Filipino entrepreneurs, the options are even more limited given how their circle of family and friends are most likely cash-strapped as well.¹⁵ Neither could they reach out to conventional banks, which require some showing of property and/or other source of income for collateral and credit rating purposes.¹⁶ Even in Landbank, which is supposed to be the bank that is most accessible to the poor given its public mandate to promote countryside development,¹⁷ there are a slew of documentary requirements for acquiring even the most basic business loan — including, among others, projected financial statements that are surely enough to discourage a poor person yet to start his or her own business.¹⁸ As a result, a number of poor entrepreneurs turn to other informal sources of credit, such as their neighbors or local loan sharks.¹⁹ The problem with these, however, is the usurious interest rates that they charge, usually at a rate of 20%, thus, the colloquial term “five-six” to describe the practice of obtaining a ₱5 loan but being obligated to repay ₱6 over a certain period of time.²⁰ This lack of access to formal credit then not only results in the frustration of entrepreneurship, but also contributes to a

(SMEs) ACCESS TO FINANCE IN SELECTED EAST ASIAN ECONOMIES, at 291 (2010).

15. See Pamela G. Combinido, *Social Capital Beyond the “Capital”: Understanding Poverty and Social Capital in Barangay Tatalon, Quezon City*, 66 PHIL. SOCIOLOGICAL REV. 5, 8–9 (2018) (citing Raju J. Das, *Social Capital and Poverty of the Wage-Labour Class: Problems with the Social Capital Theory*, 29 TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS 27 (2004)).
16. See MUHAMMAD YUNUS, A WORLD OF THREE ZEROS: THE NEW ECONOMICS OF ZERO POVERTY, ZERO UNEMPLOYMENT, AND ZERO NET CARBON EMISSIONS 17 (2017).
17. Landbank, Corporate Profile, *available at* <https://www.landbank.com/about-us/about-landbank/corporate-profile> (last accessed Apr. 30, 2023) [<https://perma.cc/6D7F-KN35>].
18. Landbank, Term Loan Facility, *available at* <https://www.landbank.com/loans/business-loan/general-small-medium-enterprises/term-loan-facility> (last accessed Apr. 30, 2023) [<https://perma.cc/SP5B-YC5J>].
19. COLLINS, ET AL., *supra* note 13, at 14.
20. John Paul Flaminiano & Jamil Paolo Francisco, *Firm Characteristics and Credit Constraints Among SMEs in the Philippines*, 5 SMALL BUS. INT’L REV. 1, 9 (2021).

never-ending cycle of poverty when the poor turn to opportunistic loan sharks and are unable to pay.²¹

To remedy this problem, microfinance institutions (MFIs) have emerged in the past few decades to cater specifically to the world's poor, especially in developing countries like the Philippines.²² In essence, microfinance is defined as the giving out of "small working capital loans" to the working poor, usually coursed through MFIs given the reluctance of conventional banks to engage in the business.²³ This reluctance stems from two primary reasons: first, the high operational costs associated with handing out small loans; and second, the poor's lack of collateral and credit history, which makes lending to them particularly risky.²⁴ Muhammad Yunus, a Professor of Economics, perceived this problem, expressly declaring that "banks have imposed a financial apartheid and gotten away with it."²⁵ Thus, when his home country Bangladesh was ravaged by a deadly famine in the 1970s, he founded Grameen Bank, a "collateral-free and lawyer-free ... banking system based completely on trust" where the poor, especially poor women, could borrow to start a business or expand their existing ones.²⁶

The theory is simple: "Every poor person must be allowed a fair chance to improve his/her economic condition. This can be done by ensuring his/her

21. Augsburg, et al., *supra* note 13, at 183.

22. See Ira W. Lieberman, *The Growth and Commercial Evolution of Microfinance*, in THE FUTURE OF MICROFINANCE 9-36 (Ira Lieberman, et al. eds., 2020).

23. *Id.* at 10.

24. See Oksan Bayulgen, *Giving Credit Where Credit Is Due: Can Access to Credit Be Justified as a New Economic Right?*, 12 J. HUM. RTS. 491, 492 (2013).

25. *Id.* (citing MUHAMMAD YUNUS, *BANKER TO THE POOR: MICROLENDING AND THE BATTLE AGAINST POVERTY* 150 (2003)).

26. YUNUS, *supra* note 16, at 24.

right to credit.”²⁷ And it worked. Today, Grameen has 2,568 branches,²⁸ with a consistent loan recovery rate of over 95%,²⁹ and reported positive impacts not only on the economic and social well-being of its client-members but also on the overall income and poverty levels in the communities it catered to.³⁰ As a matter of fact, in 2006, Yunus and Grameen Bank were awarded the prestigious Nobel Peace Prize in recognition of their work “to create economic and social development from below.”³¹

That being said, this Article will argue that access to credit for self-employment is a social justice measure given its potential to reduce social and economic inequalities by providing the poor opportunities based on freedom of initiative and self-reliance that would improve their situation. In so doing, this Article will be divided into four sections: the first section will focus on the subject of access to credit — how is it defined, what is its purpose, and how are its champions arguing for its possible recognition as a human right; the second section will then turn to social justice in the Philippine context, tracking its evolution and expounding on its two tracks of implementation under the Constitution, as well as its link to the attainment of human rights; then the third section, which expounds on the main argument of the Article, will synthesize the findings from the first two sections on how access to credit can be considered as a social justice measure; finally, the fourth section will offer the Author’s conclusion and possible recommendations in light of the findings.

27. John Gershman & Jonathan Morduch, *Credit Is Not a Right* (Financial Access Initiative Research Framing Note April 2011) at 1, *available at* <https://wagner.nyu.edu/files/faculty/publications/Credit20is20not20a20right.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/RF79-3ZUN>] (citing MUHAMMAD YUNUS, *CREDIT FOR SELF-EMPLOYMENT: A FUNDAMENTAL HUMAN RIGHT* (1986)).

28. Grameen Bank, *Grameen Bank Now*, *available at* <https://grameenbank.org>. (last accessed Apr. 30, 2023) [<https://perma.cc/C365-Y55Y>].

29. YUNUS, *supra* note 16, at 12–13.

30. Shahidur R. Khandker, *Grameen Bank: Impact, Costs, and Program Sustainability*, 14 *ASIAN DEV. REV.* 65–85 (1996).

31. The Nobel Prize, Press Release, Oct. 13, 2006, *available at* <https://www.nobelprize.org/prizes/peace/2006/press-release> (last accessed Apr. 30, 2023) [<https://perma.cc/MUS8-5NPE>].

II. ACCESS TO CREDIT

A. *What Is Access to Credit?*

That credit is indispensable in today's world is a view rarely disputed nowadays. It is used not only by individuals to start and expand their businesses, send themselves to school, purchase cars and finance their homes, but also by corporations and governments to fund trades, investments and the like. For some, credit is even a means for survival — the money obtained used to buy day-to-day essentials such as food, or to pay for life threatening emergencies. In fact, it is hard to imagine an adult today who has never in his or her life taken advantage of credit — generally defined as “a contract agreement in which a borrower receives a sum of money or something of value and repays the lender at a later date, generally with interest.”³²

But what exactly does access to credit mean? For Yunus, it is simply “the right to affordable (micro)credit in terms of interest rates.”³³ As to how affordable is “affordable,” Yunus does not peg an exact price, but he considers charging more than the costs of funds plus a 15% margin as already a money-making venture.³⁴ In the case of Grameen Bank, for instance, the basic interest rate is pegged at 20% on a declining basis with no compounding,³⁵ which is equivalent to 10% at the flat rate, just enough according to Yunus, to cover the costs of administration and to keep the operations of the bank sustainable.³⁶ This means that when someone borrows ₱10,000, the interest is fixed at

32. Thomas Brock, *Credit: What It Is and How It Works*, available at <https://www.investopedia.com/terms/c/credit.asp> (last accessed Apr. 30, 2023) [<https://perma.cc/RN6B-G2JB>].

33. Marek Hudon, *Should Access to Credit Be a Right?*, 84 J. BUS. ETHICS 18, 22 (2009).

34. *Id.*

35. YUNUS, *supra* note 16, at 233.

36. Grameen Bank, *Credit Delivery System*, available at <https://web.archive.org/web/20220124214752/https://grameenbank.org/credit-delivery-system>. This is also below the government-fixed microfinance rate of 27% in Bangladesh. See YUNUS, *supra* note 16, at 233.

₱1,000 whether he or she pays in monthly or weekly installments.³⁷ Furthermore, since there is no compounding, the danger of over indebtedness from additional interest due to unpaid accumulated interests is also avoided. Apart from these basic loans, Grameen has also offered special interest- and time limit-free loans to its so-called “struggling members” (i.e., beggars) — the purpose of which is “... to encourage [them] to cease begging and become regular savers and borrowers.”³⁸

In addition to affordability, authors point to another aspect of access to credit: availability.³⁹ After all, what use is an affordable credit if it does not reach or is not made available to those who need it. In the Philippines, only 68.8% of Local Government Units (LGUs) have banking presence — determined by the availability of access points such as banks, ATMs, and pawnshops among others.⁴⁰ But perhaps more important than geographical availability is the material availability of banks and other financial institutions like Non-Governmental Organizations (NGOs) or Cooperatives which offer loans to the poor in the form of microfinance.⁴¹ On this point, the Bangko

37. David Roodman, Quick: What’s the Grameen Bank’s Interest Rate?, *available at* <https://www.cgdev.org/blog/quick-whats-grameen-banks-interest-rate> (last accessed Apr. 30, 2023) [<https://perma.cc/B8FP-UHBP>].

38. YUNUS, *supra* note 16, at 233.

39. Hudon, *supra* note 33 (citing Anjali Kumar, et al., *Measuring Financial Access*, in *BUILDING INCLUSIVE FINANCIAL SYSTEMS: A FRAMEWORK FOR FINANCIAL ACCESS II* (Michael S. Barr, et al. eds., (2007))).

40. Bangko Sentral ng Pilipinas, 2020 Financial Inclusion Initiatives, Year-End Reports on BSP Financial Inclusion Initiatives, 2020, *available at* <https://www.bsp.gov.ph/Pages/MediaAndResearch/YearEndReportsOnBSPFinancialInclusionInitiatives.aspx?ID=1073> (last accessed Apr. 30, 2023).

41. In the Philippines, Microfinance is defined as the “viable and sustainable provision of a broad range of financial services to poor and low-income individuals engaged in livelihood and microenterprise activities. It uses nontraditional and innovative methodologies and approaches, namely: the extension of small loans, simplified loan application procedures, group character loans, collateral-free arrangements, cash flow-based lending, alternative loan repayments, minimum requirements for CBU/minimum balance retention, and small denominated savers’ instruments aimed to improve their asset base and expand their access to capital and savings.” *See Implementing Rules and Regulations of Microfinance NGOs Act*, Republic Act No. 10693, rule 2 (q) (2016).

Sentral ng Pilipinas (BSP) lists only 149 banks offering microfinance in the country, which is 10 units lower from a year ago despite the increase in the number of borrowers.⁴² Similarly, with respect to microfinance NGOs (MF-NGOs), their total account penetration in the country remains low at 12% for both rural and urban areas.⁴³

In short, access to credit as presently understood in literature has two aspects: (1) affordability in the sense that the interest rates imposed are reasonably priced for the poor, preferably without compounding; and (2) availability in the sense that if they wish, the poor can get credit without any discrimination as to their background and credit history, which can be achieved by ensuring that financial institutions exist that would cater to them. As a matter of fact, access to credit is part of the broader move towards financial inclusion, which is generally referred to as the “right to have effective access to a full suite of high-quality basic financial services — including credit, savings, insurance, and payment services — at an affordable cost, without being discriminated on grounds of financial situation, race, religion, ethnicity, or gender.”⁴⁴

This formulation is acceptable, but it is not enough. Apart from being affordable and available, credit must also be adaptable for the poor — that is, packaged and delivered in a way that works for them, taking into account the borrowers’ unique circumstances. If one were to look at the credit delivery system of Grameen Bank, for instance, a huge part of its process of lending to the poor is continuous client training and monitoring.⁴⁵ To make this possible, Grameen actually operates on some form of a group support system:

42. Bangko Sentral ng Pilipinas, Financial Inclusion in the Philippines (Dashboard as of First Quarter 2020), *available at* https://www.bsp.gov.ph/Media_And_Research/Financial%20Inclusion%20Dashboard/2020/FIDashboard_1Q2020.pdf (last accessed Apr. 30, 2023).

43. Bangko Sentral ng Pilipinas, *supra* note 40.

44. Jahel Queralto, *A Human Right to Financial Inclusion*, in *ETHICAL ISSUES IN POVERTY ALLEVIATION* 82 (Helmut P. Gaisbauer, et al. eds., 2016).

45. See Mohammad Nurul Alam & Mike Getubig, Guidelines for Establishing and Operating Grameen-Style Microcredit Programs Based on the Practices of Grameen Bank and the Experiences of Grameen Trust and Grameen Foundation

A bank branch is set up with a branch manager and a number of center managers and covers an area of about 15 to 22 villages. The manager and the workers start by visiting villages to familiarize themselves with the local milieu in which they will be operating and identify the prospective clientele, as well as explain the purpose, the functions, and the mode of operation of the bank to the local population. Groups of five prospective borrowers are formed; in the first stage, only two of them are eligible for, and receive, a loan. The group is observed for a month to see if the members are conforming to the rules of the bank. Only if the first two borrowers begin to repay the principal plus interest over a period of six weeks, do the other members of the group become eligible themselves for a loan. Because of these restrictions, there is substantial group pressure to keep individual records clear. In this sense, the collective responsibility of the group serves as the collateral on the loan.⁴⁶

This set-up of positive incentives and client support to ensure loan repayments is not only important but necessary for the program's success, according to its founder.⁴⁷ On the part of the borrowers, all the continuous training and peer monitoring prepares and empowers them to use credit wisely — that is, for income-producing activities or other essential matters such as housing or education.⁴⁸ After all, one of the obstacles contributing to financial exclusion is financial illiteracy,⁴⁹ such that despite the availability of formal credit the poor still don't take advantage of it due to lack of information, or they do but misuse the funds due to lack of proper business support or training.⁵⁰ Then on the part of the bank, some of the institutional innovations

Partners (2010), *available at* <https://grameenfoundation.org/documents/GrameennGuidelines.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/P7PS-BHCE>].

46. Grameen Bank, *supra* note 36.

47. YUNUS, *supra* note 16, at 233.

48. *Id.*

49. Queral, *supra* note 44. (The four barriers noted in the study include: (1) high cost barrier; (2) bureaucratic barrier; (3) discrimination barrier; and (4) financial illiteracy.)

50. Kumar, et al., *supra* note 39, at 9. This phenomenon is referred to as “voluntary exclusion,” which includes “those who lack awareness of the products available or who believe that services are too expensive or that they may not be treated well by formal financial institutions. This is not the same as opting out of using known and affordable services.” The authors contrast it to “involuntary exclusion,” which may include “not only those who have a poor credit history

which Grameen introduced — i.e., peer monitoring, contingent renewal, and sequential lending and repayment — actually taps into an information pool that may not be accessible to outsiders like conventional banks, thus reducing risks on their part.⁵¹ This makes the effort a success not only for the borrowers but also for the banks.

To reiterate, providing access to credit should not stop at making credit affordable and available for the poor; it must also be *adaptable* to them, and this can be achieved by providing support to prepare and empower the borrowers through proper consultations, training and feedback. Mere access is not enough. That access, as correctly qualified by the definition of financial inclusion above, must also be “effective.” Fortunately, we have the example of Grameen Bank for what “effective access” to credit can look like, which it achieved at a time of economic uncertainty and sustained up to the present day even through major economic crises. This could only suggest that it can also be achieved elsewhere at any point in time with the right processes, structures, and intentions.

B. Why Access to Credit Matters?

Apart from its practical usage in day-to-day economic life, the case for establishing access to credit abounds in literature. Foremost of which is the economic aspect: that access to credit has a positive impact on growth and poverty.⁵² As to how this happens, economists and political philosophers, in their endorsement of access to credit, provide some insight. Amartya Sen, who won the Nobel Prize in Economics in 1988, considers access to credit as having a “crucial influence” on the economic entitlements that people in society may secure, including the poor.⁵³ This is not at all surprising, considering the many uses for which credit can be deployed, such as education, housing, and investments. It can even augment the capacity of the poor to fend for

and who would rationally be excluded by informed financial institutions but also those who are irrationally discriminated against because they are perceived to pose greater risk.” *Id.*

51. Indrani Roy Chowdhury, *Understanding the Grameen Miracle: Information and Organisational Innovation*, 45 *ECON. & POL. WEEKLY* 66, 66-72 (2010).

52. See Xavier Gine, *Why Does Access Matter? Impact on Growth and Poverty*, in *BUILDING INCLUSIVE FINANCIAL SYSTEMS: A FRAMEWORK FOR FINANCIAL ACCESS* 33-56 (Michael S. Barr, et al. eds., 2007).

53. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 37 (1999).

themselves; thus, Thomas Pogge, a professor of Philosophy and International Affairs at Yale, includes microcredit in the list of projects that according to his research played “an important role in the eradication of poverty in the (now) developed world.”⁵⁴

This link between access to credit and economic development is reinforced further by its emphasis on women,⁵⁵ who are more likely to suffer from patriarchal gender roles at home and discrimination in the workplace. In the case of Grameen Bank, a majority of its borrowers are women by design — the intention of which is to “empower them to become entrepreneurs and to lift their families out of poverty.”⁵⁶

Then there is a moral dimension to this as well. Yunus, in particular, notes that “credit is also a moral right because of its power to correct an injustice in the world.”⁵⁷ In so arguing, Yunus laments how the banks have traditionally been exclusionary with respect to the poor for so long, denying them access because of their lack of credit history and available collateral. This coupled with the fact that access to credit is actually essential for development — both at the micro and macro-level — leads Yunus to argue that guaranteeing access to credit is a moral responsibility.⁵⁸ In his own words,

[i]f 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.⁵⁹

54. Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 19 *ETHICS & INTERNATIONAL AFFAIRS* 1, 1 (2002).

55. Hudon, *supra* note 33, at 19. See generally Thi Minh-Puong Ngo & Zaki Wahhaj, Microfinance and Gender Empowerment (December 2009), available at https://eprints.soas.ac.uk/8175/1/gender_and_microfinance_paper_dec_2009f.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/D68S-DDZ4>].

56. YUNUS, *supra* note 16, at 23.

57. Oksan Bayulgen, *supra* note 24, at 492.

58. Hudon, *supra* note 33.

59. YUNUS, *supra* note 16.

As law professor and legal scholar John Linarelli puts it — “[d]ebt is often what social scientists and philosophers describe as a social good, the distribution of which determines the life chances of individuals, children, and entire families.”⁶⁰ Such is a bold claim, of course, but so is the claim that “credit is indispensable for economic growth,” which is now widely accepted in academic and policy circles today.⁶¹ This point, including the link between access to credit and development, will be examined further in Chapter IV of this Article. But suffice it to say that champions of access to credit point both to economic and moral reasons why access to credit matters and should therefore be granted for all, especially the poor.

C. Access to Credit as a Human Right?

For the reasons mentioned above, Muhammad Yunus actually refers to credit as a “human right.” As it stands, however, there is no formal recognition of credit as a human right.⁶² The closest, perhaps, would be the United Nations Declaration on the Rights of Indigenous Peoples, which provides that “[i]ndigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in [the] Declaration.”⁶³ But, this provision has a couple of qualifiers: (1) it only pertains to “financial and technical assistance” and not necessarily to financial services such as credit; and (2) the instrument’s application is limited (i.e., to Indigenous Peoples) and might not necessarily serve as a basis for a universal right to credit.

This lack of recognition, has not discouraged scholars and groups from championing access to credit as a human right. Adopting the principle of inter-relatedness of human rights,⁶⁴ scholars link or subsume access to credit with

60. John Linarelli, *Equality and Access to Credit: A Social Contract Framework*, 84 LAW & CONTEMP. PROBS. 165, 165 (2021).

61. Bayulgen, *supra* note 24, at 491.

62. Njaramba Gichuki, *Access to Financial Services: A Human Rights Perspective*, 2015 E. AFR. L. J. 165, 172 (2015).

63. *Id.* at 177 (citing Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 39, U.N. A/RES/61/295 (Sept. 13, 2007)).

64. Usually packaged with terms such as “indivisibility” and “interdependency,” the principle of inter-relatedness of human rights simply means that “one set of rights cannot be enjoyed fully without the other.” See United Nations Office of the

other existing rights mentioned in various international instruments and conventions. Among the rights invoked on this topic are the following:

- (1) Right to Adequate Standard of Living.⁶⁵ — Explicitly provided for in the Universal Declaration of Human Rights (UDHR)⁶⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶⁷ this includes the enjoyment of things necessary for one's subsistence, including "adequate food and nutrition, clothing, housing and the necessary conditions of

High Commissioner (OHCHR), *What Are Human Rights?*, available at <https://web.archive.org/web/20220120063412/https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>. More specifically, however, human rights are interrelated in the sense that they are "brought into a situation of mutual relationship or connectedness (indeed, early UN resolutions used the term "interconnected" instead of "interrelated"). As one author puts it: "Relatedness suggests familiarity; thus, the grand categories of human rights may be thought of as interrelated insofar as their legal foundations (like the Covenants) are similar." See Daniel J. Whelan, *Indivisible, Interdependent, and Interrelated Human Rights*, in *INDIVISIBLE HUMAN RIGHTS: A HISTORY* 4 (2010).

65. See Bayulgen, *supra* note 24, at 491-510. See also Hudon, *supra* note 33, at 17-28 & Queralt, *supra* note 44, at 77-79. But see Tom Sorrell, *Is There a Human Right to Microfinance?*, in *MICROFINANCE, RIGHTS AND GLOBAL JUSTICE* 27-46 (Tom Sorrell & Luis Cabrera eds., 2015).

66. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 25 (1), U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter UDHR].

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. *Id.*

67. International Covenant on Economic, Social and Cultural Rights art. 11 (1), *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. *Id.*

care when required.”⁶⁸ As one scholar has summarized the argument based on this ground: “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.”⁶⁹ One of those tools, as shown by the experiences of history, is credit.

- (2) Right to Work.⁷⁰ — Similarly, this is also provided for in the UDHR⁷¹ and the ICESCR,⁷² and is widely argued to include in its formulation of “work” both wage employment and self-employment.⁷³ Yunus believes, for instance, that access to credit

68. Queral, *supra* note 44, at 86. See also Icelandic Human Rights Centre, The Right to an Adequate Standard of Living, available at <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living> (last accessed Apr. 30, 2023) [<https://perma.cc/YP3D-58D9>].

69. John Gershman & Jonathan Morduch, *Credit Is Not a Right*, Financial Access Initiative Research Framing Note 1 (2011), available at <https://wagner.nyu.edu/files/faculty/publications/Credit20is20not20a20right.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/SM5D-7LV5>].

70. See Bayulgen, *supra* note 24, at 492.

71. UDHR, *supra* note 66, art. 23.

(a) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. [...] *Id.*

72. ICESCR, *supra* note 72, art. 6.

(a) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(b) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. *Id.*

73. University of Minnesota Human Rights Resource Center, *The Right to Work and Rights at Work*, <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modul>

for self-employment can reduce if not outright solve the problem of unemployment given the fact “that not everyone can find wage employment, especially women living in traditional societies.”⁷⁴

- (3) Right to Development.⁷⁵ — Recently recognized under the United Nations Declaration on the Right to Development (1986)⁷⁶ as well as the Vienna Declaration of 1993,⁷⁷ this right pertains to the “incremental realization of all human rights, which is grounded in claims to the material resources and conditions that are necessary for the fulfillment of those

es/module10.htm (last accessed Apr. 30, 2023) [<https://perma.cc/3PU7-3UC6>].

74. Bayulgen, *supra* note 24, at 494 (citing Public Broadcasting Service, Q&A with Muhammad Yunus, Enterprising Ideas, *available at* <https://web.archive.org/web/20120714030408/http://www.pbs.org/now/enterprisingideas/Muhammad-Yunus.html>).

75. See Queral, *supra* note 44, at 77–92.

76. Declaration on the Right to Development, G.A. Res. 41/128, art. 1, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

- (1) The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
- (2) The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. *Id.*

77. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 10, U.N. Doc. A/CONF.157/23 (July 12, 1993) [hereinafter Vienna Declaration of 1993].

The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. *Id.*

rights.”⁷⁸ Put differently, authors see “development and human rights as pursuing the same objectives,” thus the term “rights-based approach” to development.⁷⁹ As to what that entails, scholars and legal commentators agree that it requires at least the adoption and implementation of “a policy of economic growth that lessens constraints and adjusts institutions that facilitate the recognition of all or most [human] rights.”⁸⁰ Certainly, access to credit fits that standard as a policy measure.

Thus, scholars argue for the recognition of credit as a human right on the basis of its intimate relation with other recognized human rights.⁸¹ In fact, in General Comment No. 23 (2016) which elucidates on the right to just and favorable conditions of work, the Committee on Economic, Social and Cultural Rights has included loans and credits in their enumeration of “measures to improve working conditions” for agricultural workers — especially women agricultural workers — and reminded State parties of their obligation under the ICESCR⁸² to “enact laws and policies to ensure that agricultural workers enjoy treatment no less favorable than other categories of workers.”⁸³ This supports the contention that indeed the recognition of access

78. See Queral, *supra* note 44, at 87.

79. Bayulgen, *supra* note 24, at 493.

80. Queral, *supra* note 44, at 88 (citing A. Sengupta, Poverty Eradication and Human Rights, in *FREEDOM FROM POVERTY AND HUMAN RIGHTS* (Thomas Pogge ed., 2007)).

81. Hudon, *supra* note 33, at 18 (citing Public Broadcasting Service, *supra* note 74 (2007)).

82. See ICESCR, *supra* note 67, art. 2 (1).

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. *Id.*

83. Committee on Economic, Social and Cultural Rights, *General Comment No. 23 (2016) on the Right to Just and Favorable Conditions of Work*, ¶ 47 (h), U.N. Doc. E/C.12/GC/23 (Apr. 27, 2016).

to credit is part and parcel of the realization of other human rights, such as the right to work among others.

But apart from human rights, is there another way for access to credit to be recognized and guaranteed, especially in the Philippines?

III. SOCIAL JUSTICE IN THE PHILIPPINES

A. Evolution of Social Justice in the Philippines

Social justice, which is closely related to the creation and enforcement of social rights, was not always at the forefront of the Philippine legal system.⁸⁴ In the 1899 Malolos Constitution, the first of its kind in the Philippines and the first Republican Constitution in Asia, there was no explicit mention of social justice nor of social rights, apart from a brief allusion to the right to education when it declared that “public education shall be free and obligatory in all schools of the nation.”⁸⁵ It seems that the drafters from the First Philippine Republic were more concerned with “civil and political rights,”⁸⁶ which received a fair amount of attention in the document.⁸⁷ This led to the adoption of *laissez faire*⁸⁸ in some decisions of the Philippine Supreme Court involving social issues at that time. In the 1924 case of *People v. Pomar*, for instance, the Court struck down a statute prescribing “a [30]-day vacation with pay both

84. See Ngina Teresa Chan-Gonzaga, *The Constitutional Basis of Social Rights in the Philippines*, 66 ESTUDIOS DE DEUSTO 88 (2018).

85. MALOLOS CONST. art. 23 (superseded in 1935).

86. MALOLOS CONST. art. 19 (superseded in 1935).

87. The Malolos Constitution, for instance, included provisions on the right not to be “imprisoned except by virtue of an order by competent court” (art. 9), the right to be free from unreasonable searches and seizures (art. 10); the right not to be “deprived of his property by expropriation except on grounds of public necessity and benefit, previously declared and justified by proper authority, and indemnifying the owner thereof prior to expropriation (art. 17); and the right to freedom of speech, the press, and of association (art. 20).

88. In Economics, *laissez-faire* is defined as a policy of “abstention by governments from interfering in the workings of the free market.” The Federalist Society, *Laissez-Faire*, available at <https://fedsoc.org/ttd-topics/laissez-faire> (last accessed Apr. 30, 2023) [<https://perma.cc/BJC6-SBNC>].

before and after confinement arising from pregnancy.”⁸⁹ In so doing, the Court cited American cases embodying the doctrine of laissez-faire and ruled that “the right to contract about one’s affairs is a part of the liberty of the individual guaranteed by [the due process] clause.”⁹⁰ Thus, the Court gave primacy to the right of parties to contract rather than the promotion of public welfare through a social legislation that sought to protect a marginalized and disadvantaged subset of the population, i.e. pregnant women.

This regime, however, changed with the adoption of the 1935 Constitution, which expressly provided in its declaration of principles that “[t]he promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.”⁹¹ As a matter of fact, in the drafting of the 1935 Constitution, the *Pomar* decision came up and was criticized by the delegates, with Commissioner Laurel expressly announcing that the doctrine adopted therein should no longer be the case in light of the new “social provisions” of the 1935 Constitution.⁹² As such, in a landmark case subsequent to the then new Constitution and *Pomar*, the Court (speaking through Justice Laurel himself) expressly declared that “[t]he policy of laissez faire has to some extent given way to the assumption by the government of the right of intervention even in contractual relations affected with public interests.”⁹³

What “social justice” means as a concept also came up in the discussion of the 1934 Constitutional Convention, with Commissioner Locsin proffering his own idea based on U.S. President Roosevelt’s New Deal Program;

Justice to the common *tao*, ‘little man’ so-called. It means justice to him, his wife, and children in relation to their employers in the factories, in the farms,

89. JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 76 (2009) (citing *People v. Pomar*, 446 Phil. 440 (1924)).

90. *Id.*

91. 1935 PHIL. CONST. art. II, § 5 (superseded in 1973).

92. Chan-Gonzaga, *supra* note 84 (citing BERNAS, *supra* note 89, at 45 (2009) (citing 3 JOURNAL OF THE 1935 CONSTITUTIONAL CONVENTION 1073 (Francisco ed.))).

93. BERNAS *supra* note 89, at 78 (citing *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 341 (1940)).

in the mines, and in other employment's. It means justice to him in the education of his children in the schools, in his dealings with the different offices of government, including the courts of justice.⁹⁴

Consistent with this, the 1935 Constitution also contained specific provisions on public education,⁹⁵ labor and land reform.⁹⁶ These insertions, as Commissioner Fr. Joaquin Bernas noted in his commentary of the Constitution, clearly recognized that the Government is "equipped with sufficient power to push forward a land reform and labor program designed to ameliorate the conditions of the masses."⁹⁷

This understanding of social justice was continued by the 1943 Constitution,⁹⁸ which adopted word per word the social justice provisions

94. BERNAS *supra* note 89, at 77 (citing JOSE MAMINTA ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 147 (1936)).

95. 1935 PHIL. CONST. art. XIII, § 5 (superseded in 1973).

All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens. *Id.*

96. 1935 PHIL. CONST. art. XIII, § 6 (superseded in 1973).

The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration. *Id.*

97. BERNAS *supra* note 89, at 76.

98. Note that the 1943 Constitution was adopted and used by the Second Republic of the Philippines during the occupancy of the Japanese in the country during World War II. After the liberation of the country in 1945, the 1935 Constitution came back into full effect. See Official Gazette, Constitution Day, available at <https://www.officialgazette.gov.ph/constitutions/constitution-day> (last accessed Apr. 30, 2023).

found in the 1935 Constitution.⁹⁹ But it was not until the 1973 Constitution when the principles on social justice espoused by jurisprudence were actually codified and preserved in the fundamental law of the land. Not only did it expand the provisions pertaining to social rights — particularly on social services,¹⁰⁰ labor,¹⁰¹ and agrarian reform¹⁰² — but it also contained a weightier declaration of policy on social justice, as follows:

The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.¹⁰³

In particular, whereas the promotion of social justice was only a “concern” of the State under the 1935 Constitution, it now seemed under the 1973 Constitution that it was a duty or obligation of the State to do so. The drafters even provided the way for the promotion of social justice — that is, through the regulation of private property.

99. Except for a slight change in the provision pertaining to public education: from “public education” to “national education.” See Chan-Gonzaga, *supra* note 84, at 89.

100. 1973 PHIL. CONST. art. II, § 7 (superseded in 1987). “The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.” *Id.*

101. 1973 PHIL. CONST. art. II, § 9 (superseded in 1987).

The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

Id.

102. 1973 PHIL. CONST. art. XIV, § 12 (superseded in 1987). “The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.” *Id.*

103. 1973 PHIL. CONST. art. II, § 6 (superseded in 1987).

Unfortunately, the ideal situation envisioned by the 1973 Constitution is not at all what happened during the Marcos regime when it was in force. As regards the very strong wording on agrarian reform, for instance, Fr. Bernas notes that these were “marred not just by decrees which curtailed other rights of laborers and tenants but also by the preferential treatment government gave to the acquisitive tendency of large multi-national (sic) corporations.”¹⁰⁴ Ngina Teresa Chan-Gonzaga, a Professor of Law in the Philippines, even gave a disclaimer through a footnote in her article on the evolution of social justice in the Philippines that “the farmers and peasants were amongst the most disenfranchised during martial law.”¹⁰⁵

This paved the way for the more significant developments on social justice in the 1987 Constitution after the toppling of the Marcos dictatorship. In fact, it was precisely the sentiment in 1986 during the drafting of the Constitution that “past administrations and legislatures had come up short in effecting meaningful mechanisms to promote and evolve social justice for the ordinary Filipino.”¹⁰⁶ To meet this challenge, the Committee on Social Justice, among all the Committees in the 1986 Constitutional Convention, actually had the most number of consultations with various sectors of its constituency in order to come up with a comprehensive framework on social justice.¹⁰⁷ The result, of course, is not only a modification of the existing state policy on social justice in the Constitution, as the 1973 Constitution did, but the creation of an entire Article for it — Article XIII — generating a number of novel provisions along the way and identifying seven key areas of prioritization: labor;¹⁰⁸ agrarian and natural resources reform;¹⁰⁹ urban land reform and housing;¹¹⁰ health;¹¹¹

104. BERNAS, *supra* note 89 at 81.

105. Chan-Gonzaga, *supra* note 84, at 90.

106. Chan-Gonzaga, *supra* note 84, at 91. (citing JOAQUIN G. BERNAS, A LIVING CONSTITUTION: THE CORY AQUINO PRESIDENCY 55–56 (2000)).

107. 2 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 46, at 616 (1986).

108. PHIL. CONST. art. XIII, § 3.

109. PHIL. CONST. art. XIII, §§ 4–8.

110. PHIL. CONST. art. XIII, §§ 9, 10.

111. PHIL. CONST. art. XIII, §§ 11–13.

women;¹¹² people's organizations;¹¹³ and structures for human rights protection and promotion.¹¹⁴ This is also in line with the new state policy of promoting social justice "in all phases of national development."¹¹⁵ Rightly so, scholars have observed that the 1987 constitution was not only anti-authoritarian, but also social-justice driven because of the representation of civic organizations in its drafting.¹¹⁶ As a matter of fact, in Commissioner Nieva's sponsorship speech of the draft Article XIII, she intimated how her Committee hopes that social justice becomes the "centerpiece" of the new (1987) Constitution.¹¹⁷

Apart from introducing a number of novel provisions, Section 1 of the new Article on Social Justice is also worded in such a way that it mandates Congress to promote social justice above all else (i.e., "give highest priority"). This is an important development from the previous Constitutions, mainly due to the drafters' recognition of the fact that "rights, dignity and participation remain illusory without social justice."¹¹⁸ Thus, the drafters really intended to include the formation of "material and social infrastructure"¹¹⁹ for social justice — i.e., "for the realization of basic human rights, the enhancement of human dignity and effective participation in democratic processes,"¹²⁰ which includes the creation of a Commission on Human Rights.¹²¹ As Professor Agustin Martin G. Rodriguez has observed, the 1987 Constitution is not only more articulate about social justice itself, but it also

112. PHIL. CONST. art. XIII, § 14.

113. PHIL. CONST. art. XIII, §§ 15, 16.

114. PHIL. CONST. art. XIII, §§ 17-19.

115. PHIL. CONST. art. II, § 10.

116. Surabhi Chopra, *The Constitution of the Philippines and Transformative Constitutionalism*, 10 GLOBAL CONSTITUTIONALISM 307, 312 (2021).

117. 5 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 106, at 926 (1986).

118. 2 RECORD, PHIL. CONST., NO. 46, at 606 (1986).

119. *Id.*

120. *Id.*

121. PHIL. CONST. art. XIII, § 17.

“offers reformers a basis from which to demand action or protection from the government.”¹²²

Then perhaps for the first time, the new Constitution attempted to express what social justice means. By mandating under Section 1 of Article XIII that “Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good,”¹²³ social justice is essentially defined as the (1) protection and enhancement of human dignity; (2) reduction of social, economic and political inequalities; and (3) removal of cultural inequities in all phases of national development through the diffusion of wealth for the common good.¹²⁴ This definition covers not only social justice in the economic sphere, but also in the political and social spheres.¹²⁵ Indeed, in providing such a definition, the drafters considered principles of the concept as articulated in jurisprudence, cases such as: *Calalang v. Williams* (1940);¹²⁶ *Guido v. Rural Progress Administration* (1949);¹²⁷ *Samantilla*

122. AGUSTIN MARTIN. G. RODRIGUEZ, *RETHINKING FEDERALISM IN THE LIGHT OF SOCIAL JUSTICE* 7 (2007).

123. PHIL. CONST. art. XIII, § 1.

124. PHIL. CONST. art. XIII, § 1 & art. II, § 10.

125. BERNAS, *supra* note 89, at 1238.

126. *Calalang v. Williams*, 70 Phil. 726 (1940).

Social justice is neither communism nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively circular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the government of measures calculated to insure economic stability of all the component elements of society through the maintenance of proper economic and social equilibrium in the interrelations of the members of the community, constitutionally through the adoption of measures legally justifiable or extraconstitutionally through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Id. at 734-35.

127. *Guido v. Rural Progress Administration*, 84 Phil. 847 (1949).

v. Cruz (1947);¹²⁸ and *Astudillo v. Board of Directors of PHHC* (1976).¹²⁹ But perhaps the most complete articulation of social justice considered by the drafters is that by Atty. Jose W. Diokno,¹³⁰ to wit,

Social justice for us Filipinos means a coherent, intelligible system of law made known to us, enacted by a legitimate government freely chosen by us and enforced fairly and equitably by a courageous, honest, impartial and competent police force, legal profession and judiciary that: First, respect our rights and our freedoms both as individuals and as a people; second, seek to repair the injustices that society has inflicted on the poor by eliminating poverty as our resources and our ingenuity permit; third, develop a self-directed and self-sustaining economy that distributes its benefit to meet firstly, the basic material needs of all, to provide an improving standard of living for all, but particularly for the lower income groups, with enough time and space to allow them to take part in and to enjoy our cultures; fourth, change institutions and structures, our ways of doing things and relating to each other so that whatever inequalities remain are not caused by those

Social justice does not champion the decision of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, equitable sharing of the social and material goods on the basis of efforts exerted in their production as applied to metropolitan centers, especially in relation to housing problems. It is a command to devise ways and means for the elimination of slums, shambles, shacks and houses that are dilapidated, overcrowded, without ventilation, light and sanitation facilities and for the construction in their places of decent dwellings for the poor and the destitute. Condemnation of blighted areas bears direct relation to public safety, health and/or morals and is legal.

Id. at 852.

128.2 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 47 (1986) (citing *Samanilla v. Cruz*, CA-G.R. No. 598 (CA 1947) (unreported)). “Charity and social justice cannot be properly resorted to trample upon the rights of others nor to shield illegal acts prejudicial to the rights of property owners who, under the Constitution, are also entitled to protection.” *Id.*

129. *Astudillo v. Board of Directors of PHHC*, G.R. No. L-28066, 73 SCRA 15 (1976). “The State is committed to promote social justice and to maintain adequate social services in the field of housing, but the State solicitude for the destitute and the have-nots does not mean that it should tolerate usurpations of property, public or private.” *Id.* at 20.

130.2 RECORD, PHIL. CONST., NO. 46, at 659.

institutions or structures, unless inequality is needed temporarily to favor the least favored among us and its cost is borne by the most favored; and, fifth, adopt means and processes that are capable of attaining these objectives.¹³¹

In sum, the touchstone of social justice is the principle that “those who have less in life should have more in the law.”¹³² This is the concept of social justice that the drafters aimed to distill, after years of experience under authoritarian rule, in the definition it provided under Article XIII, Section 1. In so doing, social justice today is no longer just “a mere philosophical or rhetorical concept.”¹³³ It is more specific and clear — or at least when compared to the earlier Constitutions — and to a certain extent even demandable.

B. Two Tracks of Social Justice under the 1987 Philippine Constitution

Under the 1987 Constitution, there are two tracks for the attainment of social justice in the country: first by “regulating the acquisition, ownership, use, and disposition of property and its increments,”¹³⁴ and second by “creating economic opportunities based on freedom of initiative and self-reliance.”¹³⁵ This is another development from the previous Constitution, which only provided the first track as the path forward.¹³⁶

1. First Track: Regulation of Private Property

The first track is essentially a recognition of the perception that “poverty and inequality in the Philippines have been [...] largely caused by the inequitable

¹³¹ *Id.* at 660.

¹³² *Id.* at 617.

¹³³ *Id.* at 639.

¹³⁴ PHIL. CONST. art. XIII, § 1 (2).

¹³⁵ PHIL. CONST. art. XIII, § 2.

¹³⁶ *See* 1973 PHIL. CONST. art. II, § 6. “The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.” *Id.*

distribution of resources and persistence of semi-feudal/oligarchic politics.”¹³⁷ Thus, Article XIII, Sec. 1 empowers the State to step in and regulate the ownership and use of private property whenever it becomes excessive in order to make sure that it is being “used properly for the common good.”¹³⁸ This finds further support in the new Constitution’s declaration in another Article that “[t]he use of property bears a social function, and all economic agents shall contribute to the common good.”¹³⁹ Thus, although one has the right to own, establish, and operate economic enterprises, this is now “subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.”¹⁴⁰

As a matter of fact, this first track is used to justify the State’s agrarian reform program¹⁴¹ found under Section 4 of Article XIII.”¹⁴² Even prior to the 1987 Constitution, the Supreme Court has affirmed the power of the State

137. Tanya Karina A. Lat, *Philippine Democracy and Its Discontents: The Failed Promise of Social Justice Under the 1987 People Power Constitution*, 66 ESTUDIOS DE DEUSTO 133, 147 (2018) (citing Gerard Clarke & Marties Sison, *Voices from the Top of the Pile: Elite Perceptions of Poverty and the Poor in the Philippines*, 34 INT’L INST. SOC. STUD. 215, 67 (2003)).

138.2 RECORD, PHIL. CONST., NO. 46, at 639.

139. PHIL. CONST. art. XII, § 6.

140. PHIL. CONST. art. XII, § 6.

141. An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes [Comprehensive Agrarian Reform Law of 1988], Republic Act No. 6657, § 3 (1988). Agrarian Reform is defined by Republic Act No. 6657, Sec. 3(a) as —

the redistribution of lands, regardless of crops or fruits produced to farmers and regular farmworkers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.

Id.

142.2 RECORD, PHIL. CONST., NO. 46, at 626.

to expropriate private lands so that they can be subdivided and be sold to the landless.¹⁴³ The reason for this, according to the Court in an earlier case, is that

[t]he framers of the Constitution were seriously concerned with the grave problems of inequality of wealth, [...] resulting in the generous scope accorded the police power and eminent domain prerogatives of the state, even if the exercise thereof would cover terrain of property right previously thought of as beyond state control, to promote social justice and the general welfare.¹⁴⁴

In any case, this power of the State to regulate the acquisition and use of property is “always limited by the Bill of Rights and due process and subject to legislative acts.”¹⁴⁵ For instance, under the State’s Comprehensive Agrarian Reform Program (CARP), the distribution of land is explicitly made subject to “the rights of landowners to just compensation and to the ecological needs of the nation.”¹⁴⁶

2. Second Track: Creation of Opportunities Based on Freedom of Initiative and Self-Reliance

As opposed to the first, the second track is a novel addition to the 1987 Constitution. The idea, as Commissioner Garcia explains, stems from the fact that “[t]o bring about social justice, it is not simply sufficient to try to reduce and to try to diffuse wealth and power. It is also important to create the structures that in themselves will enable and encourage people to create wealth to be able to make decisions.”¹⁴⁷

The phraseology of the second track, however, has not always been the same, and an examination of its development during the deliberations of the 1986 Constitutional Commission provides interesting insights on its actual purpose and intent. Originally, Section 2 of Article XIII reads —

143. *J.M Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. L-21064, 31 SCRA 413, 447 (1970).

144. *Id.*

145. 2 RECORD, PHIL. CONST., NO. 46, at 639.

146. Comprehensive Agrarian Reform Law of 1988, § 6.

147. 2 RECORD, PHIL. CONST., NO. 46, at 744.

Section 2. Towards these ends, the State shall regulate the acquisition, ownership, use and disposition of property and its fruits, promote the establishment of self-reliant, socio-political and economic structures determined by the people themselves, protect labor, rationalize the use and disposition of land, and ensure the satisfaction of the basic material needs of all.¹⁴⁸

In other words, the original draft pertained only to the obligation of the state to “promote the establishment of self-reliant socio-political and economic structures.” The term self-reliant is there to stress the fact that “social justice is not only the State’s responsibility but the citizens’ [as well].”¹⁴⁹ As Commissioner Bennagen explains more fully, “... there are two major actors in the attainment of social justice. On the one hand, we have the State and on the other, the people.”¹⁵⁰ Or, to take the analogy provided by Commissioner Villacorta: “we are for teaching the poor to fish but not giving them fish.”¹⁵¹ Self-reliance, after all, is generally defined as “the social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity.”¹⁵² Thus, the obligation of the State under the original provision is really to create “structures or political processes that will enable people to bring about changes by themselves or through their communal or collective efforts.”¹⁵³ As Commissioner Nieva in her sponsorship speech of the draft Article XIII reminds, “it is not the intent ... that the State will take away the initiative from the people and will do everything [as] this is against the principle of enhancing human dignity.”¹⁵⁴

Following this, Commissioner Villegas also moved to insert the term “private initiative” in the provision, explaining it this way —

148. *Id.* at 605.

149. *Id.* at 748.

150. *Id.* at 744.

151. *Id.* at 623.

152. REINTEGRATION AND LOCAL SETTLEMENT SECTION (DIVISION OF OPERATIONAL SUPPORT), HANDBOOK FOR SELF-RELIANCE 1 (2005).

153. 2 RECORD, PHIL. CONST., NO. 46, at 744.

154. *Id.* at 606.

I think quite a number of Commissioners have expressed the apprehension that we have overly concentrated on distributing the pie, and we have not concentrated on making the pie grow. There are a lot of injustices that have been committed in the past which have prevented millions upon millions of small and medium-scale entrepreneurs from growing. Crony capitalism or state capitalism have inflicted untold injustices not on workers, not on farmers, but on the millions of self-employed entrepreneurs whom I am afraid the entire Article seems to have forgotten, because we have dichotomized the economic underprivileged into farmers and workers. What about the millions of people who are neither workers nor farmers—the people who operate tricycles, who own sari-sari stores, who are eking out a living trying to sell cigarettes or all types of goods? They are not employees and they are not subject to exploitation by employers but by specific policies of the State and of other large businesses that stifle their private initiative. That is why it is very important in this Article on Social Justice to give recognition to millions of self-employed entrepreneurs. Hence, that is the reason I would like to insert this expression: *to promote private initiative in economic activity*.

[...] Remember, justice is defined as trying to give everyone his due, and from our analysis of Philippine economic history, a lot of small- and medium- scale entrepreneurs have been systematically prejudiced by State policies, as well as by the practices of private monopolies whether multinational or national.¹⁵⁵

In other words, the inclusion of the term “freedom of initiative” in the provision is supposed to recognize the essential participation of entrepreneurs in the attainment of the goals of social justice in the country. For Commissioner Villegas, this recognition is important because it compels the State to also prioritize creating opportunities that would allow them to flourish, especially with respect to small and medium-scale enterprises.¹⁵⁶ As a matter of fact, during the deliberations there had been moves to explicitly include “small and medium-scale entrepreneurs” in the formulation of the provision, but this was rejected out of fear that it would give the impression that the drafters are giving “singular attention and privilege to that sector.”¹⁵⁷ Nevertheless, the intent that comes with the insertion of the phrase “freedom

155. *Id.* at 684–85 (emphasis supplied).

156.2 RECORD, PHIL. CONST., NO. 46, at 744.

157. *Id.* at 747. “Ms. Nieva: The view of the Committee is that if we mention ‘small- and medium-scale entrepreneurs,’ specifically singling out that sector and putting this in the definition, it would look like we are giving singular attention and privilege to that sector.” *Id.*

of initiative” is clear. That is, to create opportunities for self-employed small and medium-scale entrepreneurs, which according to Commissioner Villegas have been “systematically prejudiced by State policies, as well as by the practices of private monopolies whether multinational or national.”¹⁵⁸

As currently formulated, therefore, the second track is focused with the creation of opportunities that would help attain social justice. As Commissioner Bernas summarizes during the deliberations, whereas the first track deals with the diffusion of wealth, the second track deals with the creation of wealth.¹⁵⁹

C. Nexus of Social Justice and Social Rights

Indispensable in the discussion of social justice is its relation to human rights. In Commissioner Nieva’s sponsorship of the new and separate Article on Social Justice, she opens by underscoring the link between the two concepts;

Our Committee hopes that social justice will be the centerpiece of the 1986 Constitution. The rationale for this is that social justice provides the material and social infrastructure for the realization of basic human rights the enhancement of human dignity and effective participation in democratic processes. Rights, dignity and participation remain illusory without social justice.

Our February 1986 Revolution was not merely against the dictatorship nor was it merely a fight for the restoration of human rights; rather, this popular revolution was also a clamor for a more equitable share of the nation’s resources and power, a clamor which reverberated in the many public hearings which the Constitutional Commission conducted throughout the country.

If our 1986 Constitution would enshrine the people’s aspirations as dramatically expressed in the revolution and ensure the stability, peace and progress of our nation, it must provide for social justice in a stronger and more comprehensive manner than did the previous Constitutions.¹⁶⁰

Thus, Article XIII of the 1987 Constitution is aptly titled “Social Justice and Human Rights” — albeit only eventually, from simply being titled as “Social Justice” in the draft Article XIII presented by the Committee chaired

¹⁵⁸2 RECORD, PHIL. CONST., NO. 46, at 684.

¹⁵⁹*Id.* at 747.

¹⁶⁰*Id.* at 606.

by Commissioner Nieva.¹⁶¹ To emphasize this link further, the framers later into the deliberations also added a sub-section¹⁶² on the formation of the Commission on Human Rights, with Commissioner Garcia explaining the reason for doing so in this way —

The entire scope of human rights precisely is more on the political, civil, economic and social rights. I agree with Commissioner Aquino that the sources of many of these violations of political rights are in themselves social and economic in nature—poverty, hunger, lack of employment, lack of land, powerlessness, lack of participation in political power. We all realize these in our experience with the people. These are the basic and root causes of many of their malaise. We are not at all safe in advocating a human rights commission if these are not the root causes. In fact, the Article on Social Justice precisely tries to address the structural, social, historical and political imbalances in our society.¹⁶³

This should not be surprising. If indeed social justice as a concept is concerned with the creation of a more just and equal society, then it also necessarily includes the assurance “that people are treated with dignity and respect by those with public power, also the main goal of human rights.”¹⁶⁴ In fact, going back to the definition of social justice under Section 1 of Article XIII, social justice is first and foremost concerned with the protection and enhancement of “human dignity” even before it goes into the two other aspects of social justice, which are (1) the reduction of social, economic and political inequalities, and (2) the removal of cultural inequities.¹⁶⁵ This intention to make human dignity the primary focus of social justice is even more evident from this exchange by Commissioners Romulo and Bacani in the formulation of said provision, to wit —

161. *Id.* at 606. (The draft Article presented in Commissioner Nieves’ sponsorship speech was only titled as “Social Justice”, and was only re-titled upon motion of Commissioner Foz after consultations with Commissioners Monson, Azcuna and Aquino a day before the Constitutional Commission formally voted for the adoption of Article XIII of the 1987 Constitution.).

162. PHIL. CONST. art. II, §§ 17–19.

163. 3 RECORD OF THE CONSTITUTIONAL COMMISSION, No. 66, at 732 (1986).

164. Eilidh Turnbull (The British Institute of Human Rights), *Social Justice and Human Rights*, available at <https://web.archive.org/web/20220517042354/https://www.bihhr.org.uk/blog/social-justice-and-human-rights>.

165. PHIL. CONST. art. II, §§ 17–19.

Mr. Romulo: This is, I believe, subject to corrections. My proposed amendment, as amended, will now read: *the state shall pursue social justice in all phases of national development. In pursuit thereof, congress shall give highest priority to the enactment of measures to promote private initiative in economic activities and to enhance human dignity by reducing social, economic and political inequities and by equitably diffusing wealth, profit and power for the common good.*

Bishop Bacani: May I ask whether Commissioner Romulo would be agreeable to say, “*shall give the highest priority to the enactment of measures to enhance human dignity by promoting initiatives in economic activity and by reducing social, economic and political inequities,*” so that the centerpiece is human dignity — the ‘*enhancement of human dignity?*’

Mr. Romulo: I have no objection to that; we accept the transposition. Thank you.¹⁶⁶

This shows that it has been the intention since the very beginning to consider “human dignity” as the “centerpiece” of social justice in the country, especially with its focus for the common *tao* or the little man. This principal concern with human dignity is likewise shared by human rights. As explained by Christopher McCrudden, a Professor of Human Rights Law at Oxford University, “the concept of ‘human dignity’ now plays a central role in human rights discourse,”¹⁶⁷ citing among others the International Covenant on Civil and Political Rights (ICCPR)’s and the ICESCR’s individual preambles, which explicitly recognize the fact that the rights stated therein “derive from the inherent dignity of the human person.”

Apart from this common interest in human dignity, another link between the two concepts hinges on the fact that the realization of human rights also addresses a milieu of social injustices in this world, and vice versa (i.e., that social justice also leads to the attainment of human rights for all). As Professor Marta Caminero-Santangelo concludes in an article on the subject, “a literature of social justice is a literature of human rights,”¹⁶⁸ which she explained further in this guise —

166.2 RECORD, PHIL. CONST., NO. 46, at 684–85 (emphases supplied).

167. Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. OF INT’L L. 655, 656 (2008).

168. Marta Caminero-Santangelo, *Bridge Essay: From Human Rights to Social Justice: Literature and the Struggle for a Better World*, in A COMPANION TO WORLD LITERATURE 5 (Ken Seignurie ed., 2019).

In dwelling on the comparative frameworks of human rights and social justice, I mean to suggest, of course, that there is no difference. The pervasive and systemic forms of disparity with which social justice is concerned were in fact recognized and written into the Universal Declaration of Human Rights [—] rights to earn a fair and sufficient wage, to an education, to leisure time, to dignity, to fully develop one's human potential. But to consider works of literature as engaged in an ongoing struggle for social justice is to move beyond 'event'-based human rights violations and beyond a dependence on the recognition of only the most gross violations, and toward an examination of the root causes and operations of injustice. It is to seek far beyond redress or reparations and toward an altogether different vision of what a just society would look like.¹⁶⁹

Even the ILO, through its first ever Director-General Albert Thomas, considers social justice as “much more than the removal of social injustice.” Rather, it is a way in which “the individual might attain his political, economic, and moral rights.”¹⁷⁰

Undoubtedly, the realization of human rights is innately and intimately linked with the attainment of social justice: innately because of their common fundamental concern with human dignity; and intimately considering their interdependent effects on the attainment/realization of the other.

IV. ACCESS TO CREDIT AS A SOCIAL JUSTICE MEASURE?

A. Assessment of the Empirical Evidence

Having discussed what access to credit is and how social justice is defined and interpreted under the Constitution, the question now becomes: Is there sufficient link between the two such that access to credit can be considered as a social justice measure in the Philippines?

Looking at the evidence on the economic development aspect, especially with the experience of Grameen Bank in Bangladesh, it would appear that providing access to credit really has the potential to reduce economic inequalities experienced by the poor. In Shahidur R. Khandker's widely cited evaluation of the impact, costs, and program sustainability of Grameen Bank,

¹⁶⁹*Id.* at 5.

¹⁷⁰ Janice R. Bellace, *Achieving Social Justice: The Nexus Between the ILO's Fundamental Rights and Decent Work*, 15 EMPLOYEE R. EMPLOYMENT POL'Y J. 24 (2011) (citing N. VALTICOS & G. VON POTOBsky, INTERNATIONAL LABOUR LAW 26 (2d ed. 1995)).

he reported the “noticeable positive impacts on participants’ economic and social well-being, and on the overall income growth and poverty reduction in the village level.”¹⁷¹ In particular, Khandker notes access to credit’s potential to lift the borrowers out of poverty in this way —

Because of its antipoverty role, Grameen Bank lending has helped reduce poverty among its participants. Moderate poverty is 10 percent and extreme poverty is [seven] percent lower among program participants than among nonparticipants in Grameen villages. Similarly, although indebtedness is higher among program participants, their household net worth is 46 percent higher than that of nonparticipants. The data analysis suggests that it takes 9–10 years for an average Grameen Bank household to free itself from poverty by borrowing from and being a member of Grameen Bank.

On the subject of women, Khandker also finds that the positive effects of access to credit is more pronounced in the case of female borrowers than male borrowers, which only affirms the theory that access to credit can benefit and empower poor women.¹⁷² Not only is the increase in per capita expenditure higher for female borrowing as opposed to male borrowing, which is a good indicator of spending power, the impact on schooling, cash income, nonland asset holding, and even contraception use are also significantly higher if it’s the woman in the household who borrowed compared to when it is their male counterpart in the household who did.¹⁷³

These findings by Khandker are also supported by other studies evaluating the impact and performance of MFIs in other countries. In Bosnia and Herzegovina, researchers report “evidence of higher self-employment, increases in inventory, a reduction in the incidence of wage work,” as well as a positive and significant effect on profits once outliers are trimmed out.¹⁷⁴ This is a promising indication that providing access to credit for self-employment can actually provide a good alternative to wage employment. Then in Mongolia, evidence suggests that “it is the poorer part of the targeted population that benefits more from the microcredit intervention, independent

171. Khandker, *supra* note 30, at 77.

172. YUNUS, *supra* note 16.

173. Khandker, *supra* note 30, at 77.

174. Augsburger, et al., *supra* note 21, at 1.

of how it is being delivered,”¹⁷⁵ which gives good prospects about the capacity of credit to reduce economic inequalities experienced by the poor. Finally, in Vietnam, a study conducted by Hao Man Quach reports that “access to credit has a positive and significant long-term impact on household welfare in terms of per capita expenditure, per capita food expenditure and per capita non-food expenditure.”¹⁷⁶ Similar to the study in Bosnia and Herzegovina, these indicators speak a lot about the economic impacts of access to credit on the poor’s standard of living. In fact, it is Quach’s conclusion that “providing credit to the poor has a positive impact on household poverty reduction,” similar to the finding of Khandker in Bangladesh.¹⁷⁷

Amidst all these promising conclusions, however, are also recent studies painting a less rosy picture of the impacts of providing access to credit to the poor, specifically on the economic development and poverty reduction aspects. In India, for example, Nobel Prize laureates Abhijit Banerjee and Esther Duflo et al. conclude in their years-long study that—

... while microcredit ‘succeeds’ in leading some of them to expand their businesses (or choose to start a female-owned business), it does not appear to fuel an escape from poverty based on those small businesses. Monthly consumption, a good indicator of overall welfare, does not increase for those who had early access to microfinance, neither in the short run (when we may have foreseen that it would not increase, or perhaps even expected it to decrease, as borrowers finance the acquisition of household or business durable goods), nor in the longer run, after this crop of households have access to microcredit for a while, and those in the former control group should be the ones tightening their belts.¹⁷⁸

Neither did providing access to microcredit, the researchers continue, appear to have any “discernible effect on education, health, or women’s

175. Orazio Attanasio, et al., *Group Lending or Individual Lending? Evidence from a Randomized Field Experiment in Mongolia* (IFS Working Papers No. W11/20, Institute for Fiscal Studies (IFS), London, 2011), at 40, available at <https://www.ebrd.com/downloads/research/economics/workingpapers/wp0136.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/2BF2-RCES>].

176. Hao Manh Quach, *Does Access to Credit Improve Household Welfare in the Long-Run?*, 51 J. OF DEVELOPING AREAS 129 (2017).

177. *Id.* at 141.

178. Abhijit Banerjee, et al., *The Miracle of Microfinance? Evidence from a Randomized Evaluation*, 7 AM. ECON. J. L: APPLIED ECON. 22, 51 (2015).

empowerment” both in the short and longer run.¹⁷⁹ These findings questioning the transformational effects of access to credit are also consistent in other recent studies conducted in various countries, which have been consolidated and reported by the Consultative Group to Assist the Poor (CGAP), a global partnership of more than 30 development organizations including the World Bank and the United Nations Development Programme.¹⁸⁰ As a matter of fact, the 2021 presentation by CGAP on the matter of financial inclusion and access to credit could be seen as a turnaround from their previous findings in 2003¹⁸¹ and 2014¹⁸² that seemed to strongly endorse providing access to credit. Now, CGAP’s main finding out of the recent evidence is that “[microfinance] only has modest effects on the average borrower. It does not meaningfully increase their business profits, household incomes or consumption; or help poor people escape poverty.”¹⁸³ That being said, a few qualifiers have to be noted on these studies painting a negative picture of access to credit before completely ruling out its capacity to reduce poverty and improve individual welfare.

First is the methodology used in the various studies. For instance, Banerjee et. al.’s evaluation of microfinance’s impacts in India is in the short and medium-term only (up to three to 3.5 years), whereas Quach’s study in Vietnam which paints a more positive picture evaluates impacts in the longer term (five years).¹⁸⁴ This could mean that access to credit’s immediate effects on poverty levels cannot yet be seen. In fact, in Banerjee et. al.’s study, the authors report that they indeed expected a drop in consumption in the first

179. *Id.*

180. See Sai Krishna Kumaraswamy, Micro and Small Enterprise (MSE) Finance: Examining the Impact Narrative (March 2021) available at <https://www.cgap.org/research/reading-deck/micro-and-small-enterprise-finance-examining-impact-narrative> (last accessed Apr. 30, 2023) [<https://perma.cc/W7GB-VAAE>].

181. Elizabeth Littlefield, et al., *Is Microfinance an Effective Strategy to Reach the Millenium Development Goals?*, CGAP FOCUS NOTE, 2021.

182. Robert Cull, et al., *Financial Inclusion and Development: Recent Impact Evidence*, CGAP FOCUS NOTE, 2014, at 92.

183. Kumaraswamy, *supra* note 180.

184. Banerjee, et al., *supra* note 178, at 25 & Hao Manh Quach, *supra* note 176.

few years as borrowers tighten their belts and reinvest income on their businesses.¹⁸⁵ This is also consistent with Khandker's forecast in Bangladesh that it would take 9–10 years for an average household to free itself from poverty after borrowing.¹⁸⁶ Finally, statistical computations from which economic conclusions and inferences are drawn out also differ per study, which makes comparing the conclusions less straightforward than it seems.

Second, which is perhaps the more important difference, is the institutional structures of the various MFIs studied. Since there is no homogeneity in the practices of various MFIs, then it would also be expected that the results and successes of these programs would differ in context. For instance, some MFIs like those studied in India have no use restriction on its loans and offer no form of client support, while others like in Bangladesh limit borrowing for income-generating activities only and also offer client training and education. As a matter of fact, in Banerjee et. al.'s widely-cited study, a few important caveats were noted by the researches, as follows —

[] Second, the evaluation was run in a context of very high economic growth, which could have either decreased or increased the impact of microfinance. Third, this is the evaluation of a for-profit microfinance model, and not-for-profit microfinance lenders may have larger positive effects if their interest rates are kept low. Fourth, as the MFI we study does not provide any complementary services such as business training or sensitivity education, we are studying the pure impact of providing loans to women who may or may not use them for their own businesses (though Spandana does believe that this is what the money will be used for eventually), and we do find an expansion in women-owned businesses).¹⁸⁷

Thus, it can be said that the negative findings in India is not universal considering that the MFI studied there was a for-profit venture and is not in the same league as, say, Grameen Bank in Bangladesh, a non-profit venture, where positive impacts were observed. Neither were there any reports of complementary support or business training on the borrowers, which as explained in Chapter II is actually an integral part of Grameen Bank's business model. This does not even take into account the various cultural and political differences that may exist among the countries where studies were conducted.

185. Banerjee, et al., *supra* note 178, at 25.

186. Khandker, *supra* note 30, at 77.

187. Banerjee, et al., *supra* note 178, at 25.

As such, despite other studies challenging the economic promises of providing access to credit, it shouldn't be discarded just yet. As a matter of fact, CGAP in their Focus Note in 2019 welcomed this "heterogeneity in the effects of the traditional microcredit model" as it can provide a basis to tweak various MFIs' business models for the best practice possible.¹⁸⁸ As Banerjee and Duflo put it in their seminal book *Poor Economics* themselves, "[t]he only mistake that the microcredit enthusiasts may have made is to overestimate the potential of businesses for the poor, both as a source of revenue and as a means of empowerment for their female owners."¹⁸⁹ Put differently, while there is evidence showing little to no transformational effects for the poor of providing access to credit, neither is there evidence to support its harshest critics.¹⁹⁰

Couple this with the consistent sentiment in the studies that there are ways in which access to credit can be configured to work in certain contexts to alleviate the poverty experienced by the poor, then one must not give up on recognizing access to credit as a social justice measure just yet. One need not even look further than the example of Grameen Bank, the institutional framework of which other countries and MFIs can emulate to make their lending to the poor a success not only for borrowers but also for financial institutions. As a matter of fact, Khandker in his study concludes that Grameen's financial model — of incorporating group-based lending, mandatory savings and insurance, and repayment rescheduling in case of disaster — can indeed be replicated even with modifications "as long as it is social-conscience-driven and its operations are transparent."¹⁹¹ This has been

188. Mayada El-Zoghbi, et al., *Emerging Evidence on Financial Inclusion: Moving from Black and White to Color*, CGAP FOCUS NOTE, July 2019, https://www.cgap.org/sites/default/files/publications/2019_07_FocusNote_Emerging_Evidence.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/2RCA-W5CN>].

189. Abhijit Banerjee, et al., *Can Microfinance Unlock a Poverty Trap for Some Entrepreneurs?*, NBER Working Paper Series (2019), https://www.nber.org/system/files/working_papers/w26346/w26346.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/DZN8-S87V>].

190. *Id.* ("While these reluctant entrepreneurs and consumption borrowers do not experience benefits from microcredit access, neither do they appear to experience harm.").

191. Khandker, *supra* note 30, at 65.

affirmed by subsequent studies, with one author demonstrating how “innovative features like joint liability lending, sequential lending, contingent renewal [and the like]” can make an MFI institution succeed.¹⁹²

In line with this, recent studies are actually coming up on what other lending innovations and practices can help contribute to the success of lending to the poor. A couple of which are:

...

- (4) Group loans. — Consistent with the findings in Bangladesh, a study in Mongolia has found that group-lending as opposed to individual lending has more significant positive impacts on profits, food consumption, and the likelihood of owning an enterprise.¹⁹³ ‘These results,’ the researchers continue, ‘are in line with theories that stress the disciplining effect of group lending: joint liability may deter borrowers from using loans for non-investment purposes.’¹⁹⁴
- (5) ‘Gung-ho’ entrepreneurs. — Recent findings from Banerjee et. al. in India suggest the potential of tapping what they refer to as ‘gung-ho’ entrepreneurs or those ‘with a growth mindset who had enterprises even before they gained access to finance accrue large and enduring benefits from microcredit, compared to ‘reluctant entrepreneurs’ or borrowers who start a microenterprise for sustenance only after they gained access to microcredit.’¹⁹⁵ As they conclude in one study, ‘Microfinance has meaningful, potentially transformative impacts for some entrepreneurs – especially those who, without microfinance, were stuck in a poverty trap. [...] This suggests that microlenders

192. Indrani Roy Chowdhury, *Understanding the Grameen Miracle: Information and Organisational Information*, 45 ECON. & POL. WEEKLY 66, 66 (2010).

193. Attanasio, *supra* note 175.

194. *Id.*

195. Kumaraswamy, *supra* note 180 (citing ABHIJIT BANERJEE, ET AL., CAN MICROFINANCE UNLOCK A POVERTY TRAP FOR SOME ENTREPRENEURS? (2019)).

should consider more screening of households in order to provide some larger loans.’¹⁹⁶

These findings, taken together with the nuances pointed out in the other studies, present an optimistic view that access to credit can work if done right in certain contexts.

196. Abhijit Banerjee, et al., How Microfinance can Help Entrepreneurs Escape the Poverty Trap (2020), *available at* <https://cepr.org/voxeu/columns/how-microfinance-can-help-entrepreneurs-escape-poverty-trap> (last accessed Apr. 30, 2023) [<https://perma.cc/FP32-WWDX>].

B. Assessment Beyond Numbers: Human Dignity as an Unquantifiable Aspect of Social Justice

As discussed in Chapter III, social justice is a broad concept. It is not limited to freedom from economic inequality.¹⁹⁷ In fact, the primary concern of social justice under the Constitution is the protection and enhancement of human dignity, which is not necessarily quantifiable by any economic indicator that any empirical study could measure and interpret as human rights lawyer and scholar Andrew Clapham has usefully suggested —

[C]oncern for human dignity has at least four aspects: (1) the prohibition of all types of inhuman treatment, humiliation, or degradation by one person over another; (2) the assurance of the possibility for individual choice and the conditions for ‘each individual’s self-fulfillment’, autonomy, or self-realization; (3) the recognition that the protection of group identity and culture may be essential for the protection of personal dignity; [and] (4) the creation of the necessary conditions for each individual to have their essential needs satisfied.¹⁹⁸

Certainly, guaranteeing access to credit satisfies the first, second, and fourth aspects indicated above. For one, it removes discrimination against the poor in terms of access to affordable financial services, thereby removing some form of “humiliation or degradation” levied against them by conventional banks and loan sharks (first aspect). Then, by providing them an opportunity for self-employment, it also gives them an opportunity to meet and satisfy their essential needs (fourth aspect). Finally, because credit for self-employment is premised on personal choice, it also allows the poor to achieve their own self-fulfillment, autonomy, and self-realization (third aspect).

On this note, the moral justification provided by Yunus regarding the recognition of access to credit as a right because the poor have long suffered injustice through financial exclusion holds true under a social justice framework as well. Providing them access to credit for self-employment would correct that injustice, and at the same time protect and enhance their dignity as human beings considering that the very reason they are financially excluded in the first place is their economic situations.

197. BERNAS, *supra* note 89, at 1238.

198. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. OF INT’L L. 686 (2008) (citing ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 545–46 (2006)).

This is further supported by the promising effects of providing access to credit to women. Although the impacts on women empowerment are quite mixed,¹⁹⁹ some studies have shown that if done right it could be a very good tool for empowerment as it “improves their household bargaining power and labor outcomes.”²⁰⁰ As a matter of fact, even the ILO has recognized the “critical role” of microcredit in empowering women by helping deliver “newfound respect, independence, and participation for [them] in their communities and in their households.”²⁰¹ Thus, as mentioned earlier the Committee on Economic, Social and Cultural Rights has included loans and credits in their enumeration of “measures to improve working conditions” for agricultural workers, especially women agricultural workers.²⁰²

It is important to note, however, that CGAP’s endorsement of access to credit in relation to its positive impacts on women empowerment comes with a caveat: privacy by design.²⁰³ This is to counter the usual practice of women borrowing funds only to fund their husband’s enterprises, which does very little to improve their situation and bargaining power in the household. In fact, one way of ensuring privacy is through the use of digital accounts, which has been found in Tanzania as enabling greater access to credit.²⁰⁴

C. Other Challenges Against Access to Credit’s Efficacy as a Tool for Social Justice

Apart from the challenges to its ability to actually reduce poverty and improve individual welfare, other concerns raised against providing access to credit for self-employment is its potential to bring about (1) over indebtedness on the part of the borrowers, entrenching them even further into poverty; and (2) human rights abuses through coercive actions practiced by various MFIs.

199. Banerjee, et al., *supra* note 178, at 22. See also El-Zoghbi, et al., *supra* note 188.

200. El-Zoghbi, et al., *supra* note 188, at 9.

201. International Labour Office (Geneva), Small Change, Big Changes: Women and Microfinance, available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/meetingdocument/wcms_091581.pdf. (last accessed Apr. 30, 2023).

202. ICESCR, *supra* note 67, art. 2 (1).

203. El-Zoghbi, *supra* note 188, at 9.

204. *Id.*

In microfinance, a borrower is “over-indebted if he/she is continuously struggling to meet repayment deadlines and structurally has to make unduly high sacrifices related to his/her loan obligations.”²⁰⁵ Put differently from an impact-based perspective, “[i]f loans make borrowers suffer more, and leave them worse off because the sacrifices exceed the benefits, then these loans cause over- indebtedness.”²⁰⁶ Certainly, this causes a slew of problems not only for the borrower but also for the lending institution and the industry as a whole. As CGAP research fellow Jessica Schicks succinctly summarizes the problem —

Over-indebtedness is currently one of the most serious risks in microfinance, endangering both its social impact and the industry’s stability. It can push customers further into poverty, in addition to the material, psychological and sociological consequences of debt. It puts MFIs, their portfolio quality and institutional stability at risk. The consequences can spill over to investors, donors and the industry as a whole. Several countries such as Bosnia, Morocco, Nicaragua, Pakistan and India have already experienced an over-indebtedness crisis among microfinance clients.²⁰⁷

In the Philippines, for instance, a study of the performance of an MFI operating in the National Capital Region, Cavite and Rizal actually found that “delinquency and default rates were substantial” among its borrowers — about one-third being paid late, while 7.4% were never paid at all.²⁰⁸ This leads to fears about over-indebtedness as interests accumulate through compounding, which negatively impacts not only the borrowers’ ability to pay but also MFI’s sustainability. As a matter of fact, in that same study researchers actually found that “subjective well-being [of the borrowers] declined slightly,”²⁰⁹ which further challenges the efficacy of access to credit in terms of alleviating poverty and improving individual welfare.

In relation to this, the second major issue about lending to the poor is how MFIs usually employ exploitative harassment measures just to be able to

205. Jessica Schicks, *The Definition and Cause of Microfinance Over-Indebtedness: A Customer Protection Point of View*, 41 OXFORD DEV. STUD. S95, S100 (2013).

206. *Id.*

207. *Id.* at 2.

208. Dean Karlan & Jonathan Zinman, *Microcredit in Theory and Practice: Using Randomized Credit Scoring for Impact Evaluation*, 332 SCIENCE 1278, 1279 (2011).

209. *Id.* at 1278.

get back their loans. As Marek Hudon and Joaquim Sandberg have found, two of the most prominent researchers on the subject, “much of the recent negative media coverage of microfinance has concerned allegations of MFIs using coercive lending techniques and forceful loan recovery practices,”²¹⁰ which to a certain extent is also a human rights issue.²¹¹ Indeed, exploitation and harassment is harder to define and measure than say over-indebtedness, but Hudon and Sandberg have made a useful characterization drawn from a vast literature on the subject;

First, exploitation is often considered to involve one party taking unfair advantage of another, in the sense that they lay their hands on an unreasonable proportion of the benefits produced by the mutual transaction. ‘Unreasonable’ may be understood in relation either to some fixed baseline or to a ‘hypothetical competitive market’. Alternatively or additionally, exploitation is often taken to mean that the exploited party is under some condition of impaired voluntariness or consent, i.e., that he or she is being coerced or duped into accepting the transaction. So, for example, Zwolinski argues that the answer to the question of whether using third-world sweatshops is illicitly exploitative ultimately depends on the consent of the workers involved. There is also a third dimension, which we will return to later: Exploitation may also refer to the rationale behind the acting agent’s behavior, for example, whether or not he or she aims to deal with the other person merely as a means to an end. Buchanan, for example, suggests that exploitation of a person occurs ‘with the harmful, merely instrumental utilization of him or his capacities.’²¹²

In the well-documented Andhra Pradesh (AP) microfinance crisis in India,²¹³ for instance, MFIs were considered to be making “hyper[-]profits off

210. Marek Hudon & Joaquim Sandberg, *The Ethical Crisis in Microfinance: Issues, Findings, and Implications*, 23 BUS. ETHICS Q. 561, 573 (2013).

211. See Juan Pablo Bohoslavsky, *The Explosion of Household Debt: Curse Or Blessing for Human Rights?*, 43 HUM. RTS. Q. 1 (2021).

212. Hudon & Sandberg, *supra* note 210, at 570.

213. See Anurag Priyadarshie & Asad K. Ghalib, *Over-Indebtedness, Coercion, and Default: Causes of the Andhra Pradesh Microfinance Crisis and Regulatory Implications*, 23 ENTERPRISE DEV. & MICROFIN. 197 (2012). See also Antara Haldar & Joseph E. Stiglitz, *The Indian Microfinance Crisis: The Role of Social Capital, the Shift to For-Profit Lending and Implications for Microfinance Theory and Practice*, available at <https://cgt.columbia.edu/wp-content/uploads/2014/01/The-Indian->

the poor” just like the “widely despised loan sharks [they] intended to replace,” and one of them was even accused of causing the “rash of reported suicides linked to over-indebtedness” due to its coercive collection practices.²¹⁴ This has led some scholars to point out an “ethical crisis” in microfinance,²¹⁵ with one even noting how it could either be a curse or a blessing for human rights.²¹⁶ These questions are even more pronounced considering the initial praise for microfinance and access to credit in general—how they are a tool not only for economic development but also for correcting social injustice in this world.

D. Paving the Path Forward: Addressing the Concerns on Access to Credit

The concerns regarding over-indebtedness and human rights abuses discussed above are no doubt valid and important, and it is true that perhaps more research is needed on the matter (i.e., figuring out the best balance between the social and financial aims of an MFI).²¹⁷ However, much like the challenges to access to credit’s economic promises that have been presented earlier, there are ways on how these two concerns can be addressed and be used as a challenge in the formulation of the best path moving forward.

I. What MFIs Can Do

As indicated above, over-indebtedness is not a singular problem; if left unaddressed, it can also give rise to human rights abuses when MFIs employ coercive measures in order to collect back on their loans. Fortunately, there is now literature studying the causes of over-indebtedness and establishing a framework of best practices in order that crises like that in India can be avoided. In Schick’s comprehensive study on the subject, she concludes that

Microfinance-Crisis.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/8LEX-PG54>].

214. A. Banerjee et al., *supra* note 175 (citing Lydia Polgreen & Vikas Bajaj, India Microcredit Faces Collapse from Defaults, *NY TIMES*, Nov. 18, 2010, *available at* <https://www.nytimes.com/2010/11/18/world/asia/18micro.html> (last accessed Apr. 30, 2023) [<https://perma.cc/D9CB-KFP9>]).

215. Hudon & Sandberg, *supra* note 210, at 561–689.

216. Bohoslavsky, *supra* note 211.

217. Hudon & Sandberg, *supra* note 203, at 580–81.

By analyzing the causes of over-indebtedness, we provide the basis for designing appropriate customer protection mechanisms to address the phenomenon at its roots. Only with an understanding of the different factors can regulators, MFIs and other parties craft effective protection measures for the microfinance market. This framework reveals the breadth of the potential solutions to the challenge of over-indebtedness and shows that reduction in over-indebtedness does not only imply a reduction of access to credit. There are many possible solutions such as improvements to product design and lending policies, borrower training, or appropriate marketing and communications. Often, borrowers do not need less credit but better credit.

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Clearly, Schicks is optimistic when she says that “borrowers do not need less credit but rather better credit,” despite also acknowledging that over-indebtedness is “currently one of the most serious risks in microfinance.”²¹⁹ Some of the recommendations that Schicks made, for instance, are “improvements to product design and lending policies, borrower training, or appropriate marketing and communications,”²²⁰ which are also consistent with the recommendations made earlier to make access to credit work on the economic aspect.

This same optimism is shared by two other economists — one of whom is Nobel Prize Winner Joseph E. Stiglitz — when they concluded, after studying the same Indian Microfinance Crisis, that reverting back to the example set by Grameen Bank in Bangladesh as an institution based on trust and social capital can restore the positive impacts of access to credit for the poor —

We have argued that the current crisis in microfinance is rooted in a fundamental misinterpretation of the institution itself — both in analytical terms (much of the literature — focused on joint liability as the key enforcement mechanism — saw microfinance as a fundamentally ‘economic’ rather than ‘social’ institution, thereby trivializing the replication process) and with respect to its impact (its main contribution was considered to be directly in the economic domain of poverty-alleviation rather than the social domain of trust-building and the economic leverage that this process would allow).

[...] The challenge for microfinance, then, is fundamentally to regain what it once built itself on — trust. It is unlikely that this can be achieved without a

218. Schicks, *supra* note 205, at 17.

219. *Id.*

220. *Id.*

reversion to the not-for-profit model and the careful cultivation of social capital – but this will place inherent limits on the speed at which microfinance can be scaled up.²²¹

Put differently, what MFIs can do is to adapt their business model — integrate group lending, contingent renewal, and borrower training, among other innovative lending practices that have been shown to work — and to a certain extent also re-orient their mindset: from a for-profit towards a not-for-profit model, or if that’s too much to ask, towards a model that puts its clients and borrowers first while also ensuring business sustainability like in the case of Grameen Bank. This may seem impossible to some, but as Grameen’s founder Muhammad Yunus proudly and defiantly recalls in his book *A World of Three Zeros* —

In fact, the entire system of Grameen Bank was regarded as impossible. [] Yet today, Grameen Bank lends out over US\$2.5 billion a year to 9 million poor women on the basis of trust only. It enjoys a repayment rate (as of 2016) of 98.96%. And microcredit banks that run on the same principles are operating successfully in many other countries, including the United States. For example, Grameen America has nineteen branches in twelve US cities with 86,000 borrowers, all women, who receive business startup loans averaging around US\$1,000. As of 2017, the loans disbursed by Grameen America total over US\$600 million, and the repayment rate is over [99%].²²²

2. What State Intervention Can Do

As earlier mentioned, there are two actors in the attainment of social justice: the state and the people, though perhaps the responsibility weighs more heavily on the former given its obligation under the Constitution to enact measures that would promote social justice. Certainly, this obligation includes the enactment of measures that would not only “promote” social justice but also address the concerns surrounding said measures, like over-indebtedness and human rights abuses in the case of access to credit for the poor.

For instance, the documented response of the Indian government in addressing the AP microfinance crisis lends some illumination as to what client protection and regulatory measures can be taken by the government in order to ensure that the practices of MFIs are “not detrimental to the interest of the

221. Haldar & Stiglitz, *supra* note 213, at 41.

222. YUNUS, *supra* note 16, at 12–13.

clients.”²²³ Specifically, one regulatory measure undertaken by the AP government is the capping of microcredit margin and interest rates — 12% and 26% respectively — after it was found that “if there is no regulation on the rate of interest charged by the MFIs, they tend to charge exploitative interest [which then leads to over-indebtedness].”²²⁴ Not only that, investigations also found that under the fine print of the various loan agreements in question, borrowers who fail to pay on time are penalized at two to three times the interest rate.²²⁵ This resulted in an effective interest rate of “[50% to 84%] per annum if all the hidden charges are duly accounted for,”²²⁶ which is a far cry from the 10% annual flat interest rate that is being charged by Grameen Bank in Bangladesh.²²⁷ Moreover, to specifically combat the reported “coercive methods for recovery of loans” employed by the MFIs, it was also recommended that sanctions be imposed on any MFI found guilty of such practices.²²⁸

This experience shows one important aspect of addressing the concerns surrounding access to credit: state intervention. This may include first learning from the mistakes of MFIs that have come before then lobbying for preventive measures in order to address or fill the gaps contributing to the concerns. As Indian economists Anurag Priyadarshree and Asad K. Ghalib have put it —

Literature on the subject indicates that the state has a major role to play in terms of providing and managing the infrastructural support for financial services to be available to a large majority of people including those living in poverty in a particular area. Besley (1994) opines that it may be a better idea for the state to intervene in credit markets to support poor borrowers rather than adopting measures aimed at asset-redistribution. According to Lapenu

223. Priyadarshree & Ghalib, *supra* note 213.

224. *Id.* at 195.

225. *Id.* at 190 (citing Infochange, MFIs Lay Small-Debt Trap in Andhra, *available at* <https://web.archive.org/web/20110524191827/http://infochangeindia.org/micro-credit/news/mfis-lay-small-debt-trap-in-andhra.html>).

226. *Id.* (citing Pratima Singh, Andhra Pradesh Microfinance Institutions Ordinance 2010 Comes into Force, *available at* <https://web.archive.org/web/20210620080056/https://moneymint.com/andhra-pradesh-mfi-ordinance-2010>).

227. Grameen Bank, *supra* note 36.

228. Priyadarshree & Ghalib, *supra* note 213, at 195.

(2002), financial systems require state interventions to correct market failures. [...]

The state thus needs to intervene to correct the existing situation of microfinance delivery that is leaving a majority of the poor out of its ambit in most states in India. Such intervention may include providing more enabling legislative and regulatory frameworks. It may also take the form of involving suitably located and relevant state institutions in the delivery of microfinance as ‘the presence of a publicly owned banking structure can enhance the breadth of microfinance outreach’. An example of such state intervention is the highly successful state- owned Bank of Agriculture and Agricultural Cooperatives (BAAC), which reaches 80[%] of the 5.6 million rural households in Thailand (Yaron et al., 1997).²²⁹

In addition to a learn-from-the-mistakes-of-others approach to state intervention, however, one can also look at successful measures undertaken by other governments in countries where microfinance has flourished, like Vietnam. As economist Raquel Marbán-Flores puts it, “[t]he microfinance sector in Vietnam is appealing for study, due both to the type of institutions operating in it and its impressive growth rates.”²³⁰

Indeed, one important feature to point out regarding Vietnam’s microfinance industry is that the major players are banks that have been supported to a certain extent (if not totally initiated) by the government. For example, the Vietnam Bank for Social Policies (VBSP), a non-profit bank that “lends directly to the poor based on a ‘loan application list’ provided by saving groups or by local government authorities,” was established in 1995 as part of the Government Program for Poverty Alleviation.²³¹ Today, VBSP “accounts [for] about 1,000 offices located in 56 provinces of the country and serves over one million households.”²³² Similarly, another important microfinance

229. *Id.* at 193 (citing Lapenu Cecile & Benoit-Cattin Michel, *The Microfinance Revolution: Implications for the Role of the State*, in *THE TRIANGLE OF MICROFINANCE: FINANCIAL SUSTAINABILITY, OUTREACH, AND IMPACT* 309 (Manfred Zeller & Richard Meyer eds., 2002) & JACOB YARON, ET AL., *RURAL FINANCE: ISSUES, DESIGN, AND BEST PRACTICES* 121 (1997)).

230. Raquel Marbán-Flores, *The Microfinance Overview of Its Present State and Future Prospects*, 29 *LOCAL ECONOMY: THE J. OF THE LOCAL ECONOMY POL’Y UNIT* 213 (2014).

231. *Id.* at 215.

232. *Id.*

provider, the Vietnam Bank for Agriculture and Rural Development (VBARD) established in 1990, was likewise “driven by the government with the aim of providing access to cheap credit to the rural population.”²³³ This detail is significant since being supported by the government has allowed these banks to “[provide] loans at very low interest rates” and therefore avoid the issue of over-indebtedness.²³⁴

This observation is also consistent with the findings of Hao Manh Quach in his study on Access to Credit and Household Poverty Reduction in Rural Vietnam, stating that “[o]ne of the most important areas of banking sector reform affecting rural credit is interest rate policy.”²³⁵ This is because in Vietnam, the interest rates imposed by banking institutions are actually determined by law,²³⁶ something which the AP government in India have eventually adopted as a response to the microfinance crisis in its turf in 2010.

To emphasize, while it may be said that what primarily contributed to the success of Grameen Bank in Bangladesh is the institutional non-profit system based on trust and social capital established by its founder Muhamad Yunus,²³⁷ there is evidence to believe that it is state intervention that did the trick for microfinance in Vietnam.²³⁸ Indeed, there is no one perfect model of microfinance that MFIs can adopt. As Hudon and Sandberg have argued: “what is needed is a mix of the consequentialist approach that maximizes overall utility — through a balance of efficiency, transparency, subsidy,

²³³. *Id.*

²³⁴. *Id.*

²³⁵. M.H. Quach, et al., Access to Credit and Household Poverty Reduction in Rural Vietnam: A Cross-Sectional Study (Working Paper), at 6 *available at* <https://web.archive.org/web/20220309052829/https://www.grips.ac.jp/vietnam/VDFTokyo/Doc/1stConf18Juno5/OPP01QuachPPR.pdf> (It is important to note that the author of the study also cautions that interest rate ceilings are a double-edged sword in the sense that “banks and credit institutions operating in the rural market [can] regard the rates to be too low to permit them to be financially sustainable.” Nevertheless, the inference based on the observation is that microfinance in Vietnam has relatively succeeded and not resulted in massive over-indebtedness because of state intervention.).

²³⁶. *Id.*

²³⁷. See YUNUS, *supra* note 16, at 12–13.

²³⁸. See Marbán-Flores, *supra* note 230. See also M.H. Quach, et al., *supra* note 235.

sustainability — and a concern for justice that recognizes the rights of the poor to finance as a necessity.”²³⁹ But equally important in using credit as a tool for social justice is government or state intervention. As Professor Juan Pablo Bohoslavsky succinctly puts it —

Private debt should not be contracted by individuals and households as a substitute for the state’s obligations to protect, promote, and fulfill human rights. Personal or household financial and other costs associated with the repayment of debt should be at such a level that the attainment and satisfaction of human rights are not threatened or compromised. Contracting and repaying debt or defaulting on repayment should not entail human rights violations.²⁴⁰

On this point, the Philippine government is already on the right track when Congress recognized microfinance as one of the central strategies for poverty reduction under the Social Reform and Poverty Alleviation Act,²⁴¹ and established the People’s Credit and Finance Corporation (PCFC), a government-owned and controlled corporation (GOCC) that extends support through loans to accredited MFIs such as rural banks, cooperative banks, and NGOs.²⁴² More recently in 2016, Congress also passed the Microfinance NGOs Act, which provides tax incentives for MFI-NGOs in order to

239. Asian Development Bank (ADB), *Impact of Restrictions on Interest Rates in Microfinance*, ADB Sustainable Development Working Paper Series No. 45 (2016), available at <https://www.adb.org/sites/default/files/publication/200141/sdwp-045.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/8G39-LL25>] (citing M. Hudon & J. Sandberg, *Towards a Theory of Fair Interest Rates on Cicrocredit* (Working Paper for Brussels: Centre Emile Bernheim)).

240. Bohoslavsky, *supra* note 211, at 26.

241. An Act Institutionalizing the Social Reform and Poverty Alleviation Program, Creating for the Purpose the National Anti-Poverty Commission, Defining Its Powers and Functions, and for Other Purposes [Social Reform and Poverty Alleviation Act], Republic Act No. 8425, § 13 (1998).

242. *See, e.g.*, Office of the President, Creating the Task Force on Credit for the Poor of the Presidential Commission to Fight Poverty, Administrative Order No. 147, Series of 1994 [A.O. No. 147, s 1994] (Sept. 8, 1994) & Presidential Commission to Fight Poverty, Directing the Presidential Commission to Fight Poverty and the Land Bank of the Philippines to Review the Legal Requirements for the Creation of the People’s Credit and Finance Corporation (PCFC), Memorandum Order No. 261, Series of 1995 [PCFC Memo Circ No. 261, s. 1995] (Feb. 9, 1995).

encourage their establishment and continued operations.²⁴³ Certainly, empirical studies will have to be undertaken to confirm the effectiveness of these state interventions. But based on the data coming from the BSP (presented in Chapter II (A)), a lot of work still needs to be done to expand the microfinance industry in the country and to make it more effective at achieving its goals. Part of that is recognizing access to credit, first and foremost, as a social justice measure.

V. CONCLUSION AND RECOMMENDATION

Access to credit, with its promise of economic and social development for the poor, can be considered as a social justice measure under the second track of social justice under the Constitution. It provides the poor with opportunities based on freedom of initiative and self-reliance that would improve their situation.

Recent studies might challenge the “transformational” effects of microfinance and of providing access to credit for the poor in general, but the fact remains that credit provides an opportunity for one to improve his or her condition in life, especially when credit is used for purposes of self-employment. As Nobel Prize laureates Abhijit Banerjee and Esther Duflo conclude in one of the chapters of their book *Poor Economics*, which consolidates their research on radical ways to fight global poverty —

As economists, we were quite pleased with these results: The main objective of microfinance seemed to have been achieved. It was not miraculous, but it was working. There needed to be more studies to make sure that this was not some fluke, and it would be important to see how things panned out in the long run, but so far, so good. In our minds, microcredit has earned its rightful place as one of the key instruments in the fight against poverty.²⁴⁴

Besides, social justice is more than just economic development. Under the Philippine Constitution, it is first and foremost concerned with the protection and enhancement of the dignity of all persons. Thus, even the mere fact of providing access to credit for the poor who have long been excluded in the financial system already serves them justice by recognizing that they are credit-

243. See An Act Strengthening Nongovernment Organizations (NGOs) Engaged in Microfinance Operations for the Poor [Microfinance NGOs Act], Republic Act No. 10693 (2015).

244. ABHIJIT BANERJEE & ESTHER DUFLO, *POOR ECONOMICS: A RADICAL RETHINKING OF THE WAY TO FIGHT GLOBAL POVERTY* 20 (2011).

worthy and that they possess the ability to improve their lots through self-employment.

After all, it could be that all it takes is one opportunity for a poor person to turn his or her life around. Access to credit for self-employment could very well be that opportunity, as shown by the promising effects of microfinance in the remote rural communities of Bangladesh and Vietnam, two developing countries in Asia like our own. For this reason, it is time that credit is recognized as a tool not only for the rich but also for the poor — a tool that bears a social function — and that guaranteeing access to it is a measure towards social justice.