Piercing The Veil: Using Microfinance Initiatives to Promote Female Entrepreneurship in Muslim Countries

Patrick F. Madden, Temple University
PIERCING THE VEIL: USING MICROFINANCE INITIATIVES TO PROMOTE FEMALE ENTREPRENEURSHIP IN MUSLIM COUNTRIES

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I. Introduction

In 2000, 189 states of the United Nations participated in the Millennium Summit.\(^1\) At the summit, the U.N. created the U.N. Millennium Project\(^2\) to devise and facilitate the Millennium Development Goals\(^3\) which aim to eliminate global poverty.\(^4\) Among those goals are alleviating poverty, hunger, and exclusion.\(^5\) The U.N. Millennium Project seeks to achieve these goals while also promoting gender equality.\(^6\)

In seeking to eliminate global poverty, economic development programs cannot focus only on low-income countries.\(^7\) Some countries that do not fall within the World Bank’s definition of “low-income” nonetheless have more than twenty-five percent of their population living on incomes of less than two dollars a day, making those countries “moderately poor.”\(^8\) The distinction between a country being classified as low income or moderately poor is whether one considers the average income of all citizens in the country, or the number of people who live in extreme poverty. Indeed, the U.N. Millennium Project has recognized that even middle-income countries can have large numbers of extremely poor households because economic development can leave some parts of the economy and some groups in society behind.\(^9\) In many Muslim countries, for example, the oil economy skews the per capita income of the country upward but does not alleviate the poverty endured by large segments of the population.\(^10\) In addition to extensive poverty, many Muslim countries oppress women. While not the same in every Muslim country, the marginalization and sometimes complete exclusion of women from the economy must necessarily be addressed by the international development

\(^{1}\) World Bank, FAQs – Millennium Development Goals, http://www.worldbank.org/ (At the top of the page, Click “FAQs” and follow the link to “Millennium Development Goals.”).

\(^{2}\) See UN Millennium Project 2005, Investing in Development: A Practical Plan to Achieve the Millennium Development Goals, Overview 1 (2005) (defining the Millennium Project as “an independent advisory board commissioned by the UN Secretary-General”).

\(^{3}\) See id. (defining the Millennium Development Goals as “targets for dramatically reducing poverty in its many dimensions by 2015”).

\(^{4}\) See id. (stating that the Millennium Development Goals are targets for reducing the many dimensions of extreme poverty).

\(^{5}\) Id.

\(^{6}\) Id.


\(^{8}\) Compare id. at Map 1: Moderate Poverty and Extreme Poverty (showing, e.g., Mexico, Egypt, and Thailand to be in the “Moderate Poor” category meaning that more than twenty-five percent of the population lives below two dollars per day) with id. at Map 9: Low-Income Countries (showing none of those countries as qualifying for “Low-Income” status meaning that the per capita income in those countries is not below $765).

\(^{9}\) UN Millennium Project 2005, supra note 2, at 22.

\(^{10}\) Cf. e.g., Valentine M. Moghadam, Women’s Economic Participation in the Middle East: What Difference Has the Neoliberal Policy Turn Made?, 1 J. MIDDLE EAST WOMEN’S STUD. 110, 132 (2005) (Noting the structural weakness in the Iranian economy due to its complete oil dependency and lack of foreign direct investment).
community. Providing aid to poor women, as opposed to the poor more generally, creates a “multiplier effect.” Because women spend more of their income on their families which leads to better housing, nutrition, healthcare, and children’s education – especially for female children, the effects of aid given to women are essentially multiplied.

Muslim countries tend to premise their formal laws upon their customary laws known as the Shariah. The Shariah, in turn, has many rules that Western cultures consider to be unreasonably oppressive to women. Neither the Muslim countries nor the women who live in them want developed nations to force broad cultural changes tied to development aid. The international development community is seemingly left with a conundrum when giving aid: it can ignore the desires of both the women they seek to help and the countries in which they live, or it can ignore the needs of women in those countries and even ignore those countries altogether as aid recipients.

Microfinance, however, is a third option and is the specific topic of this note. Microfinance is defined for the purposes of this note as providing to business startups in poor communities small loans and development initiatives with a “backdoor” to promote

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11 Although changing gradually, the treatment of women by both the formal and customary laws of Muslim countries has at some points effectively barred women from participation in the countries’ economies. See, e.g., Ahmed Rashid, Taliban: Militant Islam, Oil and Fundamentalism in Central Asia, 217 (providing examples of the Taliban decrees after the capture of Kabul in 1996 including but not limited to a prohibition of women from working). In Afghanistan, even today, the country struggles with reconciling the customary laws of the Shariah with its formal laws and conforming the result to the international community’s expectations of the treatment of women. See Carlotta Gall & Sangar Rahimi, Karzai Vows to Review Family Law, N.Y. TIMES, April 5, 2009, available at http://www.nytimes.com/2009/04/05/world/asia/05afghan.html?_r=1&emc=eta1.


13 See id.

14 See, e.g., Gall & Rahimi, supra note 11 (discussing Afghanistan’s desire that its family law conform to the dictates of the Shariah); Shahzad Qadri, Islamic Finance: An Alternative, 28 NUMBER 1 BANKING & FIN. SERVICES POL’Y REP. 9, 9-10 (2009) (describing banking laws in Islamic countries as generally conforming to Shariah rules); see also Azizah Yahia al-Hibri, Muslim Women’s Rights in the Global Village: Challenges and Opportunities, 15 J.L. & RELIGION 37, 44-45 (2001) (hereinafter “al-Hibri 2001”) (describing the cultural differences between North American female Muslims and those abroad and how those differences make it difficult for North American Muslims to understand the mindsets of their foreign counterparts).


16 Cf. al-Hibri 2001, supra note 14, at 37-38 (noting that pious Muslim women in Muslim countries believe that the Shariah contains sufficient protections for women and do not want their culture and values changed, rather they want to work within the Shariah’s systems); Jeffrey D. Sachs, Homegrown Aid, N.Y. TIMES, April 9, 2009, available at http://www.nytimes.com/2009/04/09/opinion/09sachs.html (arguing that when Washington decides what is best for a country and spends time and money on report-writing, site visits and professional advice, the resulting aid programs spend much of their money on administration and the benefits for poor countries are too little and too late and advising that recipient countries decide what kind of aid and how that aid shall be allocated).

17 Microfinance began with this definition but has since grown to encompass a great deal of other financial mechanisms.

18 These “microloans” can range from twenty-five dollars to a few thousand dollars.
gender equality in Muslim countries without offending the customary law and without ignoring the desires of the potential aid recipients. Based on the Grameen Bank lending model, microfinance initiatives can be particularly effective in promoting female entrepreneurship in Muslim countries because, unlike some other forms of aid, they do not violate Muslim customary laws.

Moreover, microfinance initiatives target areas that more traditional development strategies tend to overlook. For example, much development aid dispensed by the World Bank runs through developing countries’ governments and large nongovernmental organizations (NGOs), frequently focusing on large-scale, capital-intensive infrastructure projects (e.g. dams and power plants). Microfinance initiatives, by contrast, serve as a mechanism that puts aid directly in the hands of the poor. In the case of Muslim countries, the patriarchal traditions and customs followed by the all-male governments and mainstream economies exclude women. Microfinance initiatives, then, are an attractive anti-poverty strategy that complies with the Millennium Development Goal of promoting gender equality in those countries.

This note analyzes the challenges involved in providing development assistance aimed at promoting gender equality in Islamic countries. The note argues that microfinance initiatives provide a particularly attractive solution to those challenges making such initiatives an essential aspect of a strategic aid plan for those countries. Part II of this note addresses the definition, history, and evolution of microfinance and examines the first, and perhaps the most successful, microfinance enterprise, the Grameen Bank of Bangladesh. This note posits that the Grameen Bank model of a microfinance institution is the most attractive form for Muslim countries because of its success and its compliance with Muslim financial laws. Part III looks at the special challenges faced by female entrepreneurs in Islamic countries. It shows how, under both formal and customary laws of Muslim countries, women face both gender-neutral and gender-specific legal hurdles when starting a business and how those hurdles must be taken into account when designing a microfinance initiative in such countries. Part IV discusses why microfinance is the answer by examining its potential to work within the laws and customs of Muslim countries.

II. Microfinance – Promoting Gender Equality by Supporting Entrepreneurship

a. Microfinance Definition and History

Microfinance is a form of financial development whose primary aim is to alleviate poverty by encouraging entrepreneurship and providing poor households with access to

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19 The Grameen Bank, discussed in Part II(b) infra, is a tremendously successful microfinance initiative based in the Muslim country of Bangladesh. The lending and operational model of the bank is in compliance with Shariah law.

20 See infra, Part III(a).

21 See Kenneth Anderson, Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?, 5 YALE HUM. RTS. & DEV. L.J. 85, 92 (describing reasons for aggressively pursuing microfinance initiatives).

22 Cf. e.g., al-Hibri 1997, supra note 15, at 8 (noting that the all-male judiciary ignores many cases women bring for such matters as divorce even though women technically possess the legal right to commence such proceedings).
credit, savings, insurance, and transactional services. Microfinance is more than simply providing small loans. For the purposes of this note, the term “microfinance” will be used synonymously with “microcredit” to refer solely to the provision of small loans. Microfinance institutions complement the regular banking system by providing credit to borrowers whom banks view as too costly and too risky.

Microfinance lenders use a range of strategies to reduce risks and make the credit they provide to low income borrowers affordable. The primary problem encountered by commercial lenders when dealing with the poor is the lack of collateral available to secure the loan and protect the bank’s interests in the event of default. The lack of collateral combined with the limited availability of information about borrowers contributes to the absence of a commercial lending market in poor communities. Microfinance institutions have developed methods to obtain important information about borrowers in an effort to reduce risks given poor borrowers’ low or nonexistent collateral. Some institutions use “peer lending circles” to serve as pre-screening devices and assist in collecting that information. An example of a peer lending circle mechanism used by microfinance institutions is the joint liability contract among borrowers within groups to enforce payment despite weak legal institutions. Under the joint liability contract, each member of the peer lending circle is responsible for the debts of the group. This responsibility encourages the members of the circle to assert peer pressure on any members in danger of defaulting on loans and provides the institution with dispersed risk without requiring any government action.

Another common mechanism in microfinance is the use of “loan ladders” to create additional incentives to encourage repayment. The ladder system allows borrowers who...

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24 Id. at 278 (defining microcredit as small loans to individuals).

25 Id. at 279.

26 Id.

27 Also known as “solidarity circles” in the Grameen Bank and sometimes referred to as “group lending,” these groups are formed by the borrowers as a pre-condition to receive funding. See infra, Part II (b)(ii) (discussing how the Grameen Bank utilizes solidarity circles). At first, only two members of the group can receive loans, but once the group demonstrates reliable repayment ability, the rest of the members become eligible to receive loans. See Shana Hofstetter, Note, The Interaction of Customary Law and Microfinance: Women’s Entry into the World Economy, 14 WM. & MARY J. WOMEN & L. 337, 350 (2008). Additionally, at all times in the borrowing and repayment cycle, all members of the group are jointly liable for the outstanding loans regardless of whether they personally received the funds. See also Rashmi Dyal-Chand, Reflection in a Distant Mirror: Why the West has Misperceived the Grameen Bank’s Vision of Microcredit, 41 STAN. J. INT’L L. 217, 225 (describing the use of solidarity circles at the Grameen Bank as in part encouraging repayment from the non-borrowing members of the circle because their ability to borrow from the bank is conditioned upon repayment of the circle’s loans as a unit).

28 Barr, supra note 23, at 279.

29 Id.; see also Dyal-Chand, supra note 27, at 225 (describing the use of solidarity circles at the Grameen Bank as in part encouraging repayment from the non-borrowing members of the circle because their ability to borrow from the bank is conditioned upon repayment of the circle’s loans as a unit).

30 While government action would be required to force a member of the group to pay, the primary leverage the bank has is not premised on the contract as enforceable through the legal system but rather by withholding other group members’ ability to receive credit.
demonstrate a history of successful repayment to borrow increasingly large sums of money. The ever-growing credit line serves as an incentive for repayment.31

By creating incentives that boost repayment rates, these mechanisms make microfinance initiatives considerably more self-sustaining, an outcome that encourages proponents of utilizing microfinance to alleviate poverty.32 While some scholars argue that the sustainability of microfinance initiatives is overrated, the discussion centers around whether the initiatives’ reported repayment rates are accurate.33 Even under the worst case scenarios, microfinance initiatives receive some level of repayment meaning that any donations received by the initiative have reflows – i.e. the repaid money can be used for lending after the first loan.

Developed by Professor Muhammad Yunus, microfinance involves small loans made to the rural poor in developing countries to encourage entrepreneurship.34 Professor Yunus founded the Grameen Bank in 1976 during a famine in Bangladesh with the goal of helping people lift themselves out of poverty.35 The bank’s mission was to lend to “those whose needs are not met by commercial lenders” – meaning, at least in Bangladesh, the landless poor.36 Before Yunus, there were nongovernmental organizations (NGOs) that offered microcredit to low-income households.37 However, those NGOs operated with little external information demands, and the information provided to the NGOs’ donors was generally limited to heart-wrenching stories.38 Yunus, by contrast, designed the Grameen Bank to present donors with a business model: an aid mechanism that will leverage donations as opposed to a mere attempt to pull heartstrings. Yunus’ model turned out to be a tremendous success and his Grameen Bank is still functioning today.39

Largely because of Professor Yunus’ work with the Grameen Bank, leading microcredit NGOs began to realize that microlending could potentially become self-sustaining because, if the right mechanisms were used, the rate of repayment from loans to the poor was high. The Grameen Bank was also able to charge sufficient interest rates40 to cover operational

31 Barr, supra note 23, at 279.
32 Even if it is assumed arguendo that Microfinance initiatives are not wholly self-sustaining – an oft-debated point in development circles (See generally, e.g., Dyal-Chand, supra note 27 (denouncing the Grameen Bank’s sustainability as overrated); Anderson, supra note 21 (arguing for the viability of microfinance as a self-sustaining aid mechanism), at the very least, it seems that some middle ground exists where the position that microfinance initiatives leverage the aid funds donated to the initiative to achieve a “multiplier effect” is not only tenable, but compelling.
33 See generally, e.g., Dyal-Chand, supra note 27, (arguing that the Grameen Bank’ sustainability is overrated).
35 Id.
36 Dyal-Chand, supra note 27, at 219.
38 Id.
40 Note, however, that as discussed in Part III(a), infra, the Shariah outlaws collecting interest on loans in Muslim countries unless the poor are the “owners” of the bank as is the case with Grameen.
Despite the possibilities for microfinance, however, in order for microfinance to grow commensurate with its potential, it must also attract private capital. Regardless of whether microfinance is viewed as the future of aid to developing countries or as the future of commercial banking in developing countries, the current capital invested in the initiatives is insufficient to support growth of the industry. The challenge is determining which microfinance institutions reflect the best investment for that private capital.

b. The Grameen Bank Model

The Grameen Bank, founded in the Muslim country of Bangladesh, needed to deal with the legal and customary limitations this note seeks to address including the Shariah requirements with regard to banking. The structure and operations of the bank serve as a model for future initiatives in Islamic countries.

i. Operational Organization and Structure

Grameen’s organizational structure is critical both to its success and to the potential of microfinance initiatives in Muslim countries. Just as Grameen seeks to pull the poor out of poverty from the bottom up, the best way to describe the Grameen organizational structure is also from the bottom up. A bank branch is formed with a branch manager and a number of center managers. Each branch covers fifteen to twenty-two villages, and both the manager and the staff are expected to travel to each village with some regularity so as to get to know the culture, explaining to the prospective clientele how the bank works. Groups of five borrowers organize themselves and seek loans for two among the group for the first stage. Financing is made available to the remaining group members once the loans made to the first two begin to be repaid.

41 Christen, supra note 37, at 5.
42 See id.
43 See id.
44 See generally id. (recognizing the problems associated with individual microfinance institutions and outlining steps to improve institutional transparency).
45 BBC News, supra note 34.
48 Id.
49 Id.
50 Id.
The various branches that make up the Grameen Bank are generally autonomous. By decentralizing control over the bank’s operations, the bank is able to keep decision-making in the hands of those with the most direct and thus superior information regarding the various borrowing circles. Grameen Bank increasingly obtains lendable funds on commercial terms from central banks, financial institutions, the money market, and multilateral aid organizations. The bank charges sixteen percent interest on all loans and has a ninety-five percent repayment rate. Additionally, the borrowers become part owners in the bank, a fact particularly important for compliance with the Shariah’s rules regarding interest.

The Grameen structure is especially important to the success of the endeavor because, given the diverse and small scale clients, microfinance initiatives must be flexible enough to deal with the circumstances of numerous small borrowers at a retail level while also ensuring inclusiveness of the many prospective borrowers. In the case of Grameen and any microfinance initiative in a Muslim country, the organization must be structured to comply with Shariah banking laws.

ii. Group Lending Theory – The Solidarity Circle

The gap in commercial lending that the Grameen Bank seeks to fill is caused by the inability of the poor to provide collateral to commercial banks. The Grameen Bank has devised a mechanism to serve the same purpose as collateral: the “solidarity circle.” The solidarity circle is the primary force alleviating the need to collateralize loans in a microfinance initiative. According to this mechanism, the bank requires prospective borrowers to form groups of five and will, at first, only lend money to two members of that group. However, every member of the group must guarantee the loan. Once the two

51 Id.
52 Credit Delivery System, supra note 47.
53 Id.
55 See Western, supra note 54, at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)) (describing how Grameen avoided running afoul of Shariah banking laws); see generally SYED M. HASHEMI & LAMIYA MORHSED, GRAMEEN BANK: A CASE STUDY, in WHO NEEDS CREDIT: POVERTY AND FINANCE IN BANGLADESH 221 (Geoffrey D. Wood & Iffath Sharif, eds., 1997) (giving a general discussion of the Grameen’s organizational structure).
56 See Dyal-Chand, supra note 27, at 220.
58 Dyal-Chand, supra note 27, at 220 (citing DAVID BORNSTEIN, THE PRICE OF A DREAM 100 (1996); Aminur Rahman, WOMEN AND MICROCREDIT IN RURAL BANGLADESH 78 (1999); Grameen, Breaking the
original loans are repaid, thereby demonstrating a successful repayment record for the group, the Bank will lend to other members of the circle.\(^{59}\) The peer pressure that the solidarity circle creates serves the same purpose as collateral.\(^{60}\) And even if peer pressure fails to elicit repayment and the individual borrower defaults, there are four other guarantors to the loan from whom the bank could receive payment.\(^{61}\)

The solidarity circle provides the bank with more than a substitute for collateral. In commercial lending, the need for collateral is inversely proportional to the level of information available about the borrower.\(^{62}\) Under the Grameen Model, the solidarity circle is delegated the responsibility of collecting information on the creditworthiness of an individual borrower or on the borrower's proposed business venture.\(^{63}\) This practice both farms out the responsibility of assessing credit risk to those who have the best information and encourages the members of the circle to critically analyze the business proposals that the borrowing group puts forth to the bank.

iii. The Sixteen Decisions

In addition to utilizing solidarity circles, the Grameen Bank requires borrowers to comply with a borrower-generated agenda for social development.\(^{64}\) The bank calls this the “Sixteen Decisions.”\(^{65}\) The agenda directs borrowers to refrain from socially unhealthy behaviors such as giving and receiving dowry, defecating in open fields, and having too many children.\(^{66}\)

The bank's goal is to lift people out of poverty,\(^{67}\) but to be effective as an agent of change the bank must be successful at lending and receiving repayment. Thus, the Sixteen Decisions were put in place, in conjunction with the solidarity circle, to increase the likelihood of repayment without requiring any type of collateral. Moreover, many of the


\(^{60}\) Id.

\(^{61}\) Id. at 225.

\(^{62}\) The theory here is that the more information a lender has about a borrower's ability to repay the loan on demand, the less there is a need to securitize the loan. This is how businesses and some individuals receive “signature loans,” and, on a more ubiquitous level, Westerners receive credit cards without having to collateralize the line of credit.

\(^{63}\) Dyal-Chand, supra note 27, at 225.

\(^{64}\) Id. at 220.

\(^{65}\) Id. (citing Grameen, Credit Delivery System, http://www.grameen-info.org/index.php?option=com_content&task=view&id=24&Itemid=127 (last visited Apr. 12, 2009)).


\(^{67}\) See generally Grameen, http://grameen-info.org/ (follow the link from the toolbar “about us”) (describing the goals, methodology, and successes).
Grameen model’s ideals correspond to Millennium Development Goals\(^6\) and/or “Means to a Productive Life” as outlined by the U.N. Millennium Development Project\(^6\). These ideals evidence the bank’s overarching desire to take an all-encompassing approach to alleviating poverty in its community.

iv. Focus on lending to women

In addition to the solidarity circles and commitment to the Sixteen Decisions, the Grameen Bank makes up for the lack of collateral by focusing on women in its lending practices.\(^7\) The bank notes that commercial lending, particularly in developing countries, focuses on lending to men.\(^8\) In serving poor populations, the bank fills voids left by commercial lenders rather than attempting to compete with them elsewhere. This approach remedies the lack of opportunities for women in financial markets.\(^9\) The focus on lending to women also leads to female empowerment,\(^10\) an effect that is connected to gender equality.

At the same time, the focus on women also serves to make the Grameen Bank more effective at lifting poor families from poverty. Women have been found to be more highly motivated to save money and repay loans than their male counterparts.\(^11\) Women are also typically more susceptible to the peer pressure of the solidarity groups. Additionally, the fact that the “multiplier effect”\(^12\) is achieved by providing financial services and aid to women means that by focusing lending efforts on them and lifting them out of poverty, the Grameen Bank is, in effect, leveraging its aid to facilitate bringing borrowers out of poverty.

III. Challenges of Promoting Female Entrepreneurship in Islamic Countries

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\(^6\) See, e.g., UN Millennium Project 2005, supra note 2, at xii, Millennium Development Goals (including achieving gender equality, achieving universal primary education, and improving maternal health among the Millennium Development Goals).

\(^6\) See, e.g., UN Millennium Project 2005, supra note 2, at 13, Box 3: The Means to a Productive Life (including basic nutrition, sexual and reproductive health, and literacy/educational goals among the elements to adequate human capital).

\(^7\) See Grameen, Banking for the Poor – Is the Grameen Bank Different?, http://grameen-info.org/ (Click on “About Us” on the menu bar; then click on “Is the Grameen Bank Different?” in the field on the left).

\(^8\) Id.

\(^9\) See id.

\(^10\) See Cheston, supra note 12, at 24 (finding that the empowerment effects – e.g. increasing the woman’s power over family planning, arranging children’s marriages, buying and selling property, and sending their daughters to school – are especially well documented in so called “credit plus” programs that combine credit with other activities such as education, community problem solving, and business development); see also Dr. Ruth Hope, Gender Equality & the Millennium Development Goals 1, available at http://www.midego.com/docs/GenderMDGs.pdf (defining empowerment for women as recognizing their ability to individually and collectively participate in the decisions that affect their lives).

\(^11\) See Cheston, supra note 12, at 23 (noting that women are “highly motivated savers and repay their loans at a higher rate than men”).

\(^12\) See supra Part I p. 2.
Islamic countries, by and large, impose two primary limitations on the promotion of female entrepreneurship through microfinance. These limitations are not necessarily encountered in non-Islamic countries. First, Islamic banking laws operate differently than those of the Western world. Second, the customary and formal laws of Islamic countries place significant restrictions on the ability of female owned and operated businesses to grow. These limitations are described in more detail below.

a. Islamic Banking Laws

Muslim countries include in their financial laws principles that apply equally to men and women. The influence of these principles over microfinance and entrepreneurship in Muslim countries cannot be understated. Commonly used Islamic legal concepts in Muslim banking are: (i) “profit and loss sharing,” (ii) “safekeeping,” (iii) “joint venture,” (iv) “cost-plus,” and (v) “leasing.” Only the profit and loss sharing – the Islamic substitute for interest-based lending - is relevant to microfinance provisions discussed in this note. With regard to banking, the Shariah also requires that gains be derived from ethically and socially responsible activities. In lieu of interest collection, Islamic banks are entitled to a share of the profits from the financial transactions. As such, the investor bank derives its profits based primarily upon the soundness and profitability of the borrowing enterprise. The tradeoff is that the investor bank also shares in the losses of the businesses underlying a loan. Notwithstanding the clear differences between Western banks and Islamic banks, they have the same purposes: to make money from lending.

Any microfinance program in Islamic countries must be consistent with these rules. The Grameen Bank in Bangladesh considered precisely that issue prior to beginning operations in 1976. The purpose of the injunction against charging interest is to protect the poor, and microfinance initiatives target the poor. However, when the poor own the

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76 Qadri, supra note 14, at 9-10.
77 Id.
78 See id. at 9 (distinguishing the Western financial system where banks make money through their products (e.g. mortgages and personal loans) and lose money through defaults versus the Islamic system where banks make money out of profits derived from the transaction and lose money through failures of the borrowing enterprises).
79 See id. at 10 (noting that instead of basing the operations on the receipt of interest, as Western commercial banks do, Islamic banks are guided by the common principle that depositors, instead of receiving interest, share the risk of investment and take part in profits and losses of the bank).
80 See Western, supra note 54, at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).
81 See id. at 54.
82 BBC News, supra note 34.
83 See Western, supra note 54, at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).
bank, the interest is, in effect, paid to the poor. The Grameen Bank got around the Shariah ban on interest by making borrowers purchase a stake in the bank. The poor thus become owners of the bank, and the model can be replicated by other initiatives in other Islamic countries.

The Grameen system also satisfies the other main Shariah finance requirement that loans be made for ethical purposes. One of Yunus’ advisors told him that nothing in the Qu’ran or in Shariah law necessitates ceasing loans to the poor because making money available to the poor and educating them is ethically sound. Thus, the Grameen Bank’s microfinance model satisfies the rules imposed by Muslim customary law.

b. Islamic Restrictions on Women

Microfinance initiatives as aid mechanisms must do more than merely comply with the Shariah banking rules to operate successfully in Muslim countries. If the ethical requirement of microfinance initiatives were simply to lend money to promote entrepreneurship in poor populations, that goal would always be satisfied, at least by Western standards. But the goal of microfinance initiatives as an aid mechanism is not simply to lend money to the poor. Rather it is usually to promote female entrepreneurship among the poor. Because the Shariah interest ban can be circumvented by structuring the banks similar to the Grameen model, and since lending money to the poor in an effort to alleviate poverty satisfies the ethical requirement of lending, the primary legal issue surrounding microfinance initiatives in Muslim countries is in regards to the targets of the loans: women.

Women’s rights in Muslim countries are frequently debated. Secular feminists criticize the laws in Muslim countries as patriarchal and religiously justified. In doing so, they attack the religious justification behind the laws. Muslim women in Muslim countries, by contrast, defend the laws as consistent with the “ideals of Islam.” Because many Islamic countries are targets for international aid, the manner in which aid is distributed can conflict with the principles and sometimes the black letter law when that aid is directed at women. Microfinance is a distribution mechanism that has demonstrated

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85 See generally Emily Simmons, The Role of Microenterprise Assistance in U.S. Development Policy, 9 ECONOMIC PERSPECTIVES 6, 6-9 (2004) (describing the purpose and process of microfinance initiatives).
86 See Western, supra note 54, at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).
87 See id. (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).
88 See id. (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).
90 Id.
91 Id.
92 Id.
93 See, e.g., SACHS 2005, supra note 7, at Map 1: Moderate Poverty and Extreme Poverty, Map 9: Low-Income Countries (showing, for example, Afghanistan and Yemen as “low-income countries” as classified by the World Bank and Egypt, Turkmenistan, and Uzbekistan being “moderately poor”).
particular effectiveness when the aid targets are women, but that effectiveness can be hindered by Islamic customary law.

Although Muslim countries have developed their customary laws somewhat differently, they generally agree on the basic principles. First, the laws change with the passage of time and changes in places and circumstances. Second, Islamic laws must avoid harm. Third, these laws may be discarded if they are based on an outdated cause. Lastly, the laws must serve the public good. Despite the seemingly plain meaning of these principles, the all-male judiciaries in Muslim countries’ courts tend to apply the principles from male, and often political perspectives. As a result, a gender split in both the economic and social lives of Muslims in Islamic countries developed, although it has been slowly dissolving. In Saudi Arabia, in an attempt to keep women separate from men, the banks introduced branches specifically for the use of women. Implicit in the creation of these banks, however, was Saudi women’s need for access to banks and finance. In Kuwait, women trade stocks on a “women-only” floor. Both cases illustrate the magnitude of the business potential of women in Islamic countries.

The potential for women in Islamic economies, has been limited to only a few sectors. Female-owned businesses deal primarily with apparel, cosmetics, furniture and home décor, foodstuffs, health and fitness products, and educational materials for children. In

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94 See Susy Cheston, supra note 12, at 23 (“Not only is microfinance good for women, but it also turns out that women are good for microfinance”).

95 See e.g., Hofstetter, supra note 27, 342 (noting Islamic customary law restrict women’s micro-businesses in Morocco, inhibiting their growth).

96 See al-Hibri 1997, supra note 15, at 6-7 (describing the development of Islamic laws into five schools of thought).

97 Id. at 7-8 (noting that the five schools of thought generally agree upon four basic principles).

98 Id. (citing Yusuf Hamid al-‘Alim, Al-Makassid al-‘Ammah 123-25). (Herdon, Virginia, International Institute of Islamic Thought, 1991); Subhi Mahmassani, Al-Awda’ al-Tashri’iyah fi al-Duwal al-Arabiya 479 (Beirut, Dar al-‘Ilm li al-Malavin, 3d ed. 1965)).

99 Id. (citing Yusuf Hamid al-‘Alim, Al-Makassid al-‘Ammah 99 (Herdon, Virginia, International Institute of Islamic Thought, 1991); Subhi Mahmassani, Al-Awda’ al-Tashri’iyah fi al-Duwal al-Arabiya 480 (Beirut, Dar al-‘Ilm li al-Malavin, 3d ed. 1965)).

100 Id. at 8.

101 Id. at 54, at 95.

102 See id. (noting that the quasi-apartheid of women in Saudi Arabia led to the female-tailored banks and thus recognized that women had financial assets and business needs).

103 See id. at 96 (describing as an example the wealth of women in the Muslim world, female participation in the Kuwaiti stock trade).

104 See id. at 99 (citing Joe Kaesshaefer, Mission Statement for Saudi Businesswomen Reverse Trade Mission, http://www.ita.doc.gov/doctm.saudibw.html (last visited Jan. 25, 2008)) (describing the limited access that women have to certain industries and noting the concentration of female owned enterprises in a
some cases, women are prohibited from certain industries by law. While it is important to note that progressive changes toward gender equality in Islamic countries began among the Saudi and Kuwaiti elite (relatively rich countries), similar changes are spreading to the poorer families in poorer Islamic countries. Microfinance has the potential to continue to effect progressive changes in female economic development in the Muslim world, but a number of issues must first be addressed, such as the perception that Islamic law is an obstacle to female empowerment. Indeed, scholars debate whether women, as a practical matter, have all the rights customary law implies they have. For example, a woman can own property whether she is married or single, and her husband cannot demand any form of financial support from her. At the same time, the all-male judicial process often ignores such cases in their totality, leaving women with no recourse.

Muslim women, despite the obstacles they face in their legal system, do not want to overthrow the system but rather to work within it for change. Muslim women seek a re-examination of family law and a proper application of all Islamic laws. Some hope is created by male jurists increasingly expressing their concerns over the outcome of the system.

Perhaps the two most effective means of improving female treatment under Islamic law are economic empowerment and re-examining the enforcement of marriage laws. While economic empowerment of women should be effective regardless of whether changes to marriage law enforcement are simultaneously undertaken, the means of economic empowerment are more effective in marriages that are less restrictive. In Saudi Arabia, a Muslim country with massive amounts of wealth concentrated in the female population, a restrictive marriage can preclude a woman from excelling in the workplace. That is not

cf. Hofstetter, supra note 27, at 345 (noting women confine themselves to certain industries traditionally populated by women because their activities reflect on their family through customary laws upon which the formal laws are based).

See, e.g., Western, supra note 54, at 99 (citing Donna Abu-Nasr, The Veiled Life of Saudi Women, WASHINGTON POST, Dec. 08, 2000, at A.59) (noting that a collegiate Saudi woman is not allowed to major in engineering, economics or law).

Id. at 100.

See id. (attributing the expansion of female progress toward gender equality to the rise of microfinance).

Compare id. at 127 (arguing that women have the absolute right to property, contract and divorce under Islamic law); with al-Hibri 2001, supra note 14, at 37-38 (noting that various Shariah protections for women have been ignored by the courts and even the women’s families).

Western, supra note 54, at 127.


Id. at 38.

Id.

See id. (noting several judges who were vocal in their support of women’s rights generally and in certain areas).

Western, supra note 54, at 96.

Id. at 98.
to say, however, that women cannot succeed in business in Saudi Arabia\textsuperscript{119} – only that women are would be more successful when their husbands impose fewer restrictions upon their marriage.

Restrictive marriages hinder female-run business in a few ways. Married women in Muslim countries must follow the principle of ta’ah\textsuperscript{120} which requires wives not to leave the home without the permission of their husband.\textsuperscript{121} Similarly, single women must ask the permission of fathers or brothers if they wish to leave home.\textsuperscript{122} A restrictive husband can significantly inhibit his wife’s ability to conduct a business.

Another obstacle is that the formal laws sometimes do not reflect the practical and social realities of Muslim households. The Mudawana,\textsuperscript{123} for example, states that both parents must provide their children with rights such as protection, healthcare, food and education.\textsuperscript{124} On its face the Mudawana obligation is gender-neutral, but in practice it is considered shameful for men to take on household responsibilities, which are considered part of the wife’s obligations of marriage.\textsuperscript{125}

Husbands, fathers, and brothers monitor the actions of Muslim women in their family because the traditional idea of ird\textsuperscript{126} makes a woman’s actions capable of injuring the honor of the family.\textsuperscript{127} Because women are confined to only a few industries and are limited in their ability to grow, they face high rates of competition and run smaller businesses.\textsuperscript{128} In Morocco, for example, women’s microbusinesses are less likely to grow than those of their male counterparts.\textsuperscript{129} How much of that disparity is due to restrictive marriages versus women’s tendency to be more careful about investing than men\textsuperscript{130} is unknown. To the extent that the latter is the cause of the disparity, some research indicates that even though

\textsuperscript{119} See id. (detailing the successes of Saudi women in amassing wealth).

\textsuperscript{120} See Hofstetter, supra note 27, at 344 (defining “ta’ah” as obedience).

\textsuperscript{121} Id. (citing Azizah al-Hibri, Islam Law and Custom: Redefining Muslim Women’s Rights, 12 Am. U. J. Int’l L. & Pol’y 1, 12 (1997); see also Gall & Rahimi, supra note 11 (describing the new personal status code provisions in Afghanistan).

\textsuperscript{122} Hofstetter, supra note 27, at 344 (citing Inez Murray & Nadira Barkallil, Women’s World Banking, Gender Baseline Survey: Morocco 1 (2005)).

\textsuperscript{123} The Mudawana is the family code of Morocco and is considered to be one of the more progressive Islamic codes. See TAMARA SONN, A BRIEF HISTORY OF ISLAM 579 (2004).

\textsuperscript{124} Hofstetter, supra note 27, at 344 (citing Code du Statut Perrsonnel, art. 54).

\textsuperscript{125} Id. (citing Inez Murray & Nadira Barkallil, Women’s World Banking, Gender Baseline Survey: Morocco 1 (2005)).

\textsuperscript{126} Id. at 345 (citing MOUNIRA M. CHARRAD, STATES AND WOMEN’S RIGHTS: THE MAKING OF POST COLONIAL TUNISIA, ALGERIA, AND MOROCCO 63 (2001)) (referring to “the honor or moral purity of a group, its prestige in the community, and its strength”).

\textsuperscript{127} Id.

\textsuperscript{128} Id.

\textsuperscript{129} See Hofstetter, supra note 27, at 342 (citing Inez Murray & Nadira Barkallil, Women’s World Banking, Gender Baseline Survey: Morocco 1 (2005)).

\textsuperscript{130} See Cheston, supra note 12, at 23 (noting that because poor women focus on managing risks and reducing their vulnerability to emergencies and events such as childbirth, marriage, and their children’s education, they tend to be more careful about investing than men – the result being that their businesses do not grow as quickly).
female owned and operated businesses grow more slowly than male businesses, the female businesses are more likely to survive.\textsuperscript{131}

IV. Why Microfinance is the Answer

Despite the special difficulties associated with lending to female-run micro-businesses in Islamic countries, Muslim banking laws and female successes in microfinance make such aid very attractive. Promoting female entrepreneurship both satisfies an aim of the Millennium Development Goals and works within the cultural limitations that Islam imposed by Islam and desired by aid recipients.

The Grameen Bank designed its operations to conform to the requirements of the Shariah on banking laws in Muslim countries. Thus, the obstacle of the Muslim restrictions on interest and other banking practices has already been addressed. The purpose of the interest prohibition lies in a desire to protect the poor from usury.\textsuperscript{132} Microfinance initiatives target the poor in an effort to assist them out of poverty.\textsuperscript{133} That goal alone does not exempt a microfinance initiative, however, from the prohibition. The Grameen Bank circumvented the interest prohibition by making the borrowers part owners in the bank.\textsuperscript{134} In effect, the interest is paid back to the poor.\textsuperscript{135} The Grameen system also satisfies the other main Shariah finance requirement: that the loans be for ethical purposes. This requirement is satisfied because making credit available to the poor and educating them is ethically sound.\textsuperscript{136} Therefore, the banking laws in Muslim countries are not offended by microfinance initiatives when those initiatives are properly structured.

While the legal rights of women in Muslim countries are being increasingly recognized,\textsuperscript{137} because enforcement of those rights is often difficult for women, the lack of

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\textsuperscript{131} See id. (noting that because poor women focus on managing risks and reducing their vulnerability to emergencies and events such as childbirth, marriage, and their children’s education, they tend to have longer lasting businesses).

\textsuperscript{132} See Western, supra note 54, at 101 (citing Muhammad Yunus, BANKER TO THE POOR 110 (2003)).

\textsuperscript{133} See generally Simmons, supra note 85, at 6-9 (describing the purpose and process of microfinance initiatives).

\textsuperscript{134} See Dowla & Barua, supra note 54, at 23 (noting the Grameen Bank’s borrowers are required to purchase shares of the bank making them owners); Western, supra note 54, at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)) (stating the Grameen Bank did not violate the Muslim prohibition on interest because the borrowers were part owners of the bank and were, in effect, paying themselves interest).

\textsuperscript{135} Cf. Western, supra note 54 at 101 (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)) (stating since borrowers were part owners of the bank, any interest paid benefits the owners who are poor borrowers).

\textsuperscript{136} See id. (citing MUHAMMAD YUNUS, BANKER TO THE POOR 110 (2003)).

\textsuperscript{137} See, e.g., Laura A. Weingartner, Family Law & Reform in Morocco – The Mudawana: Modernist Islam and Women’s Rights in the Code of Personal Status, 82 U. DET. MERCY L. REV. 687, 699 (2005) (noting that although both the old and new Moroccan family law codes provide the right for both men and women to keep property they bring with them to the marriage separate, the 2004 reforms provide for a document that is separate from the marriage contract that specifies exactly how property and assets acquired during the marriage will be managed in the event of separation or divorce); see also al-Hibri 1997, supra note 15, at 10-11 (surveying the laws of Morocco, Jordan, Kuwait, and Algeria finding that the general rule is that women are not entitled to contract their own marriage but that there are increasingly broad exceptions to this general rule). But see, e.g., Gall & Rahimi, supra note 11 (characterizing the new Afghan family law
formality required for microfinance transactions is particularly useful. In countries like Saudi Arabia, the need for microfinance initiatives is less pressing because a commercial banking sector has emerged in recognition of the needs of Saudi women. But in other countries, women can be shut out of the legal system, practically if not actually. As such, microfinance can be effective to provide women in Muslim countries with economic opportunities due to both the lack of formality in its operation and its capacity to operate independent of governmental support.

At the same time, microfinance initiatives do not conflict with Shariah law when structured properly. This is important because women in Muslim countries do not wish to overthrow the patriarchal system in which they live. Rather, they want to work within the system to achieve change, such as that which has taken place in Saudi Arabia. Additionally, the Qur’an states that men and women have a right to their earnings. Women necessarily have the right to work if the Qur’an gives them the right to the fruits of their labor. But women have not always been granted that right under Muslim countries’ patriarchal laws, which are propagated under the guise of protecting women’s morality. Recent economic realities have caused Muslim countries to relax their prohibition on females in the labor force. Microfinance initiatives can facilitate the transition of women into the labor force by creating opportunities to work and thereby promote gender equality in a patriarchal society. The initiatives manage to do so in a manner desired by the aid recipients: within the system.

Restrictive marriages are one remaining obstacle for female-run businesses in Muslim countries. This problem may be addressed in a few ways. First, the superior information that localized institutions can amass allows the initiatives to avoid lending to women whose spouses will potentially enforce customary law limitations in a manner adverse to the

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138 See Barr, supra note 23, at 284 (noting that microfinance institutions thrive in both weak and corrupt governmental institutional settings as well as those settings including formal institutions).

139 See Western, supra note 54, at 95 (Although not arguing that Saudi Arabia has achieved gender equality, Western notes that commercial Saudi banks have introduced branches tailored exclusively for women.).

140 See, e.g., al-Hibri 2001, supra note 14, at 37-38 (noting that women seeking divorces and custody can be trapped within the system for years or even be ignored by the courts altogether).

141 See id. at 38 (noting that women in Muslim countries want only a more just understanding of and adherence to Islamic principles and not an overthrow of the patriarchal system); Western, supra note 54, at 95 (recognizing the considerable but gradual economic progress of women in the country in recent decades).


143 Id. (citing Azizah Y. al-Hibri, Islamic Constitutionalism and the Concept of Democracy, 24 CASE W. RES. J. INT’L L. 1, 12 (1992)).

144 Id.

145 See id. at 38 (noting that women in Muslim countries want only a more just understanding of and adherence to Islamic principles and not an overthrow of the patriarchal system).
wives’ businesses. While denying credit to women in restrictive marriages may not be the best practice from an ethical standpoint – at least by Western standards – doing so could be necessary to protect the viability of the model. Because solidarity circles are self-selecting, and making prudent business decisions is incentivized by all members having joint liability for their loans, even if the bank does not try to avoid lending to women in restrictive marriages, such women may find it difficult to find a solidarity circle willing to have them. One alternative is to provide some sort of incentive to group the women in restrictive marriages with those in more liberal arrangements. That alternative could diversify risks on smaller enterprises and eliminate some of the detrimental effects of the restrictions in cases of joint business ventures.

The question remains as to how to deal with the fact that women whose husbands do not impose customary limitations upon them would not likely want in their solidarity circle women who are so constrained. One solution is to take the formation of the group out of the hands of the women and have the bank form the circles itself. However, that approach could undermine some purposes that self-selected circles achieve. When the members of a circle choose one another, they do so based on personal relationships and therefore have pertinent information on the other members of the group. Those relationships also help to leverage the requisite peer pressure to encourage repayment of loans for the benefit of the group. The fact remains that in the self-selecting circle, women select other women they know and trust, and forming the circle and borrowing funds are discrete parts of the borrowing process. Every member of the circle has a say in how the circle borrows. Thus, the women can form the circle irrespective of marital limitations and may conform their borrowing requests to enterprises that are suited for the women’s needs.

Although in many cases, patriarchal customs and laws are damaging to female business enterprises, not all effects of the customs and laws are negative. In patriarchal societies, women build social capital in their dealings with other women. The relationships they build with other women serve to provide them not only with superior information in determining with whom to associate in a solidarity circle, but also, ultimately, with clients for their enterprise. Because women and men are kept separate in many Islamic countries, women are granted sole access to women in gendered spaces creating the potential to make business connections that are unavailable to males. Essentially, microfinance creates the opportunity to create a female economy in the patriarchal Muslim society.

Many Westerners still remember with strong distaste the “separate but equal” Jim Crow days and may shy away from supporting any initiative that suggests a similar approach in making business opportunities available to Muslim women. However, it is important to note the significant differences between the experience of wealthy women in Kuwait and Saudi Arabia and the far more restricted experiences of women in places like

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146 See Hofstetter, supra note 27, at 352 (describing the benefits of the social capital women develop due to the customary laws in Islamic countries).

147 See, e.g., id. (noting that women’s social capital can provide a client base for new businesses).

148 See, e.g., id. (stating that in Morocco, women are generally confined to public bath houses and ceremonies such as weddings and funerals).

149 See id.

150 Western, supra note 54, at 95-96 (describing the evolution of the Saudi banking practices that created women-only branches and noting that Kuwaiti women trade stocks on a women-only trading floor).
Afghanistan. The first step to real change for these latter women is to put them on the economic ladder that Jeffrey Sachs, head of the U.N. Millennium Development Project, describes as essential to alleviating poverty. The development community could have a different discussion about women’s rights in the Muslim world if a significant portion of the women owned and operated small businesses. Economic participation is only the beginning, even on a small scale; for proof, note the success of the Grameen Bank: http://grameen-info.org.

V. Conclusion

Microfinance offers an aggressive opportunities for the development community to pursue the Millennium Development Goal of gender equality in Muslim countries. While microfinance could theoretically be used to promote male entrepreneurship, it has been most successful in helping women start businesses of their own. In Muslim countries, historically women have been shut out of the economy, but that is changing, even if gradually. Additionally, women are segregated from men in many respects during their daily lives. For example, women attend services separately, have separate social facilities, and are often prohibited from being in public, leaving them largely to their homes and the homes of their friends. The bifurcated social structure has created an opportunity for female-run businesses. Access to gendered spaces and the social capital that only women develop with other women due to societal norms creates a market for female-run businesses.

Microfinance initiatives, however, cannot be the only aid directed at most poor countries. Still, the initiatives as a mechanism should be a part of any aid strategy. While so much development aid goes to big projects, such as clean water facilities and dams, microfinance initiatives provide services directly to the poor and grant them the opportunity to lift themselves from poverty. With specific regard to Muslim countries, due to oil revenues that governments generate many are not “poor” by World Bank standards, yet women in Muslim society do not benefit to the same degree from those revenues to the same degree as men and are therefore not enjoying the gender equality by Western standards. The gender gap in Muslim countries, regardless of whether the country as a whole is a developing country, is a proper target for aid as per the Millennium Development Goals, and as such, microfinance is a particularly attractive aid mechanism.

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151 See generally Gall & Rahimi, supra note 11 (describing the newly enacted personal status code in Afghanistan).