HUMAN RIGHTS IMPACT ASSESSMENTS AND THE POLITICS OF EVIDENCE IN ECONOMIC POLICYMAKING

08 JULY 2020

by
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KEYWORDS:

economic theory, evidence-based policymaking, heterodox economics, human rights, human rights impact assessment, neoclassical economics

RECOMMENDED CITATION

Corkery, A. & Isaacs, G. (2020). Human Rights Impact Assessments and the Politics of Evidence in Economic Policymaking. Institute for Economic Justice Working Paper Series, No 5.

ISBN

This is an Accepted Manuscript of an article published by Taylor & Francis in The International Journal of Human Rights on 14 October 2020. Available online: https://doi.org/10.1080/13642987.2020.1804372

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ABSTRACT

The Guiding Principles on human rights impact assessments of economic reforms envision a policymaking process based on sound empirical evidence, so that the proportionality and legitimacy of reforms can be 'properly' assessed. Implicit in this vision is that methodological tools from economics should be drawn on, and adapted, to project or assess human rights impact. This article argues that biases inherent to these tools must be fully understood and addressed in order to meaningfully assess the human rights impacts of economic policy choices. First, it reviews relevant literature on human rights impact assessment, to give context to some of the methodological issues raised in the Guiding Principles. It then interrogates the claim that impact assessments can advance evidence-based policymaking, unpacking this idea with reference to a frame for advancing a more "politically informed" approach to understanding evidentiary bias. Second, it explores bias in neoclassical economics. It does this by unpacking dominant styles of reasoning and policy devices, concluding that meaningful assessment of rights realisation does not easily fit within this cognitive infrastructure. Finally, it outlines a number of strategies that would help advocates of human rights impact assessments to better navigate the politics of evidence, and contest economic orthodoxies.

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> *'It must, of course, be admitted straightaway that moral rights or freedom are not, in fact, concepts for which modern economics has much time. In fact, in economic analysis rights are seen typically as purely legal entities with instrumental use rather than any intrinsic value.'* – Amartya Sen[1]

1 INTRODUCTION

The Guiding principles on human rights impact assessments of economic reforms reflect an ideal type of economic policymaking. They paint an aspirational picture of a process that can 'democratise' the economic policy arena by providing a 'clear and specific framework and process' for generating 'empirical evidence'. This, in turn, can generate public debate on how the 'proportionality and legitimacy' of economic reforms should be 'properly' assessed.[2] Implicit and explicit in the Guiding Principles is a call that human rights impact assessments incorporate 'well developed approaches' from the field of economics.[3] These approaches will be particularly relevant for ex ante assessments to predict the future consequences of a proposed policy and 'thereby provide the opportunity to improve it—or abandon it—before it is adopted and implemented'.[4]

Our central argument is that the ability of the Guiding Principles to be successfully deployed towards achieving these objectives is constrained by inherited limitations—from both the field of human rights impact assessments and from the field of economics. These limitations are likely to be exacerbated when the two fields are brought together, given the dominance of economics across a range of public policy areas—including those addressed by the Guiding Principles. As Richard Boele and Christine Crispin highlight, if an established discipline dominates a new area of practice, like human rights impact assessments, then 'it is more likely that their established

[1] Amartya Sen, *On Ethics and Economics* (Wiley, 1991), 71.

[2] This and the preceding quotations are from Juan Pablo Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments of Economic Reforms: Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations on the Full Enjoyment of Human Rights, Particularly Economic, Social and Cultural Rights', Report to the Human Rights Council, December 2018 paras 6, 7, 17.2.

[3] Ibid, para 20.4.

[4] Gillian MacNaughton, 'Human Rights Impact Assessment: A Method for Healthy Policymaking', *Health and Human Rights* 17, no. 1 (2015): 64.

methodologies and norms will have the greatest influence' on the direction such assessments take.[5]

The way that evidentiary challenges are addressed in the emerging field of human rights impact assessments pays limited attention to the political dynamics at play in shaping the methodologies through which evidence is created, selected and interpreted. The Guiding Principles do stress the importance of utilising 'a wide range of economic theory and evidence, expressed in language accessible to the public' and employing 'a diverse range of both quantitively and qualitative data'.[6] These injunctions are fully supported. Nevertheless, as described further below, "mainstream" approaches to economic analysis narrow the range of theory, evidence and data considered "scientifically" suitable—at times subtly so. Without a more politically informed perspective on evidence, there is a risk that impact assessments carried out in line with the Guiding Principles will be limited in their capacity to 'alter or subvert' powerful interests, as Jeremy Perelman cautions; such assessments may 'operate as process-oriented breaks on a largely unchanged, if chastened approach',[7] in this case, to economic reform.

As governments around the world scramble to respond to the economic fallout of COVID-19, contesting powerful interests could not be more urgent. There is considerable uncertainty about what the economic landscape will look like when we emerge from the pandemic. On the one hand, this presents an important opening for challenging economic orthodoxies. As the world faces the worst recession since the Great Depression, governments are debating large scale stimulus packages to provide unprecedented support to households and businesses. On the other, a short-term surge in spending—while vital—could lead to an even greater concentration of wealth. How packages are designed—and the values and priorities that underpin them—will determine how rights fair in post COVID-19 economies.

Part one of the article begins by reviewing relevant literature on human rights impact assessment, to give context to some of the methodological issues raised in the Guiding Principles. It then interrogates the claim that impact assessments can advance evidence-based policymaking, unpacking this idea with reference to a frame for advancing a more "politically informed" approach to understanding evidentiary bias,

[5] Richard Boele and Christine Crispin, 'What Direction for Human Rights Impact Assessments?', *Impact Assessment and Project Appraisal* 31, no. 2 (2013): 133.

[6] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para 11.6 and Principle 20.

[7] This and previous quotation from Jeremy Perelman, 'Human Rights, Investment and the Rights-Ification of Development', in *The Future of Economic and Social Rights*, ed. Katherine G. Young, 2019, 467, 446.

which differentiates between issue bias and technical bias. Part two explores technical bias in neoclassical economics. It does this by unpacking dominant styles of reasoning and policy devices, concluding that meaningful assessment of rights realisation does not easily fit within this cognitive infrastructure. Part three outlines a number of strategies that would help advocates of human rights impact assessments to better navigate the politics of evidence, as well as take advantage of the space for contesting economic orthodoxies opened up by the imperative to audit economic reforms according to human rights standards.

2 THE GUIDING PRINCIPLES, HUMAN RIGHTS IMPACT ASSESSMENTS AND THE POLITICS OF EVIDENCE-BASED POLICYMAKING

The Guiding Principles extend the emerging field of human rights impact assessments to address economic reforms. This is an important step in terms of insisting that governments consider the implications of economic policy decisions for the rights of ordinary people. The Guiding Principles do this in an effort to shift the political dynamics around fiscal consolidation measures. Juan Pablo Bohoslavsky, who led the development of the Guiding Principles in his capacity as the United Nations Independent Expert on the effects of foreign debt on human rights, explains in an interview:[8]

> Austerity policies are often justified by an overly simplified or misleading diagnosis… Policy decisions are frequently taken without sufficient consideration of less harmful policy options and reliable analysis of foreseeable outcomes… Those who typically shoulder a disproportionate part of the cost of adjustments are the most disadvantaged groups who have marginal voice and political power, which makes their situation and the impact on their rights invisible.

This section focuses on how the Guiding Principles are constrained in achieving these objectives by inherited limitations in terms of how human rights impact assessments understand evidence-based policymaking.

Nora Götzmann provides a helpful grouping of literature on human rights impact assessments. This includes scholarly literature that identifies and elaborates the 'essential or original elements' of human rights impact assessment that distinguish it from other types of impact assessment; a broader body of literature on human rights-

[8] Oliver Hudson and Jefferson Nascimento, 'Human Rights Impact Assessments Must Be Part of Economic Reforms: Interview with Juan Pablo Bohoslavsky', *Sur International Journal on Human Rights* 15, no. 27 (2018): 165.

based approaches, against which these elements can be mapped; normative guidance from United Nations bodies, which, we would argue, is the category where the Guiding Principles fits; practical "how to" guidance that outlines the stages or steps of human rights impact assessment; and actual examples of human rights impact assessments, as well as the scholarly literature reflecting on them.[9] To those categories we could add a sixth: literature that elaborates on the purpose of human rights impact assessment and seeks to "make the case" in terms of what it can achieve and how it can benefit policymaking.[10]

A brief review of the literature covered in these categories reveals a strong focus on setting out the "ideal type" of assessment. As Paul Cairney points out, setting out an ideal type can serve an analytical, as well as an aspirational, purpose. It 'helps us compare an artificial situation with the real world', in order to 'better explain reality'.[11] This, in turn, also allows us to assess how the ideal type is likely to be affected when applied in the world as it is. However, and notably from the perspective of this article, this last element has not featured in existing literature on human rights impact assessment.

While there is recognition of the gap between the ideal type of impact assessment and the reality of their application in practice, the reason for that gap remains largely unexplored. Implied in much of the literature, is that what is needed to move closer to the ideal is a better understanding of, and increased capacity to address, the methodological challenges of human rights impact assessments. In arguing this, the authors remove human rights impact assessments from a political context and pose their weaknesses as simply methodological and not political. Simon Walker advocates for 'greater professionalization' of human rights impact assessments, for example.[12] The World Bank concludes that more work is needed to 'enhance the quality' of human rights impact assessments. James Harrison makes this argument more explicitly, warning that the nomenclature of human rights impact assessment 'will lose its status as representing a robust evidence-based process' without 'shared normative understandings' of what that process 'should' involve.[13]

[9] Nora Götzmann, 'Human Rights Impact Assessment of Business Activities: Key Criteria for Establishing a Meaningful Practice', *Business and Human Rights Journal* 2, no. 1 (2017): 92–93.
[10] See e.g. Center for Economic and Social Rights, 'Assessing Austerity: Monitoring the Human Rights Impacts of Fiscal Consolidation', February 2018.
[11] Paul Cairney, *The Politics of Evidence-Based Policy Making* (Springer, 2016), 5.
[12] Simon Walker, 'Human Rights in the Trade and Sustainability Impact Assessment of the EU–Tunisia Free Trade Agreement', *Journal of Human Rights Practice* 10, no. 1 (2018): 121.
[13] James Harrison, 'Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment', *Journal of Human Rights Practice* 3, no. 2 (2011): 172.

This suggests an overconfidence in the ideal type. It results in limited interrogation of the gap between the ideal and real world, as well as the implications of this for the effectiveness of human rights impact assessments. Two underexplored areas in the literature are worth noting, in particular. First, methodological challenges are only partially addressed. Second, the links between methodological challenges and political challenges are not made. There appears to be limited recognition that methodology is itself political, which forecloses interrogation of the political dynamics at play in shaping methodology. This is critical, because it is these dynamics that so often challenge the ideal.

In terms of methodological challenges, the difficulty of identifying appropriate quantitative and qualitative indicators is commonly highlighted. Scholars and practitioners 'unanimously agree' on the importance of using indicators in human rights impact assessment.[14] Reasons for this include that they 'heighten the objectivity and thus credibility of any assessment'.[15] They can also serve to 'make casual connections' between the policy assessed and the enjoyment of human rights.[16]

Selecting indicators for human rights impact assessment is a complex task that requires careful thought. However, there is little detail in either the Guiding Principles or the broader literature about how this should be done in practice. The Guiding Principles stress that that indicators used should provide information 'disaggregated by gender, disability, age group, region, ethnicity, income segment and any other grounds considered relevant, based on a contextual, country-level identification of groups at risk of marginalization'. They also suggest that the indicators included in the Sustainable Development Goals (SDGs) 'could serve as a source of useful *complementary* information to those working in a human rights impact assessment context' (emphasis added).[17] The literature stresses that indicators should be 'verifiable', 'specific', and 'relevant'.[18] What these qualifiers mean, particularly the last, is contestable.

A further methodological challenge is that of collecting and analysing data on selected indicators. The Guiding Principles note that assessment standards 'need to be adaptable to potentially different levels of data availability and overall capacity' and calls on

[14] Fabiane Baxewanos and Werner Raza, 'Human Rights Impact Assessments as a New Tool for Development Policy?' (ÖFSE, January 2013), 17.
[15] Ibid.
[16] World Bank, 'Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development', 1 February 2013, 30, citing Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements* (Intersentia, 2009).
[17] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', paras 20.3 and 20.5.
[18] Baxewanos and Raza, 'Human Rights Impact Assessments as a New Tool for Development Policy?', 17.

governments to build strong information systems during "good times" so that they are equipped for human rights impact assessments when necessary.[19] While cooperation between national statistical offices and human rights actors appears to be growing in in the context of measuring progress on the SDGs, there is still a long way to go to agree on concepts, definitions and methodologies.[20]

Unsurprisingly, then, many of the human rights impact assessments examined in the literature have focused almost exclusively on the use of qualitative indicators. Some have even reconceptualised indicators as 'key questions' regarding human rights conditions, developing checklists of varying scope and focus.[21] However, the ability of such approaches to provide information persuasive to economic policymakers is limited. Systematising thinking on what quantitative indicators will be relevant is therefore critical.[22]

Harrison places these methodological challenges within 'broader worries' about exercises in human rights measurement.[23]

> For instance, do we have sufficiently sophisticated methodologies for meaningful evaluation to be possible? Will the measurement of human rights privilege simple answers to straightforward questions over more complex and long-term problems and solutions? Will human rights maintain their transformational potential when utilized in technical measurement exercises?

He concludes that much of these concerns refer primarily to inwardly-focused evaluation (i.e. assessments of projects specifically aimed at promoting human rights). For the most part, he fails to consider its implications for outwardly-focused assessments (i.e. assessments of policies and practice in other fields). This reflects a general weakness across the categories of literature identified above in terms of how the wider policymaking context in which a human rights impact assessment is being designed and implemented affects its methodology.

Second, the links between methodological challenges and political challenges are generally not elaborated in the literature reviewed. Political 'pre-conditioning' is a

[19] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', paras 20.4 and 18.6.
[20] See e.g. Carmel Williams and Paul Hunt, 'Neglecting Human Rights: Accountability, Data and Sustainable Development Goal 3', in *The Sustainable Development Goals and Human Rights: A Critical Early Review*, ed. Carmel Williams and Inga Winkler (Routledge, 2018).
[21] World Bank, 'Human Rights Impact Assessments', 31.
[22] For a proposed framework for identifying indicators related to the normative standards and principles underpinning states' obligations regarding fiscal consolidation see Center for Economic and Social Rights, 'Assessing Austerity'.
[23] Harrison, 'Human Rights Measurement', 167.

'perennial problem' affecting practice of impact assessment because it restricts the scope of policies and their impacts to be reviewed, notes the Center for Economic and Social Rights.[24] This problem has significant methodological implications, as well. However, these implications get little attention, beyond cautioning against the most extreme cases where the process is purposely 'manipulated' to result in particular findings.[25]

Two examples reveal how politics is embedded in methodologies for defining indicators and collecting data—beyond the kind of extreme cases of purposeful manipulation flagged above. The first is introduction of an "improved" methodology for counting hunger, introduced by the United Nations Food and Agriculture Organization at the end of 2012. As Jason Hickel explains, the effect of the change was that calorie thresholds 'were adjusted downwards significantly'. This, he argues, allowed for a 'good news narrative' about progress on the Millennium Development Goals.[26] The second example is the politically-motivated failure to collect data on particular individuals and groups, which Alex Cobham terms the 'uncounted'. [27] This takes two main forms. Those at the bottom of income and wealth distributions are absent from statistics that underpin political representation and also inform policy prioritisation, and those at the top of distributions are further empowered by being able to hide income and wealth from taxation and regulation. This means that 'the uncounted at the bottom are excluded' and 'the uncounted at the top are escaping'. Cobham's conclusions make explicit what remains implicit in the Guiding Principles: improving data collection is not just a matter of dealing with technical difficulties facing government information systems. Rather, a 'radical and deeply political challenge to the power structures that lie behind the uncounted' is essential.[28]

Another area where politics and methodology intersect is in how the findings of an assessment influence policy decisions. The Guiding Principles stress, multiple times, that human rights impact assessment contributes to evidence-based policymaking.[29] As Bond and Pope highlight, the theory underpinning impact assessments reflects an 'information provision model', which assumes 'better information leads to better decisions'. However, this is a poor representation of how decision-making actually

[24] Center for Economic and Social Rights, 'Assessing Austerity', 35.
[25] World Bank, 'Human Rights Impact Assessments', 34.
[26] Jason Hickel, 'The True Extent of Global Poverty and Hunger: Questioning the Good News Narrative of the Millennium Development Goals', *Third World Quarterly* 37, no. 5 (2016): 758.
[27] Alex Cobham, *The Uncounted* (Cambridge, UK: Polity, 2020), 49.
[28] Ibid, 58.
[29] See e.g. Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments' paras 7, 17.1, 18.3.

works, they argue.[30] Even an 'optimized' methodology 'will fall short of hard science and significant further effort is likely to be required to persuade decision-makers to change policy'.[31] Nevertheless, there is little systemic inquiry into how human rights impact assessment processes interact with policymaking processes.

These two gaps in the human rights impact assessment literature – an insufficient grappling with methodological challenges and the absence of a recognition of the political nature of methodologies employed in human rights impact assessments – have corollaries in the broader literature on evidence-based policy making. The assumption underpinning calls for "evidence-based" policymaking is that there is a gap between research and policy and that this gap can be bridged by addressing barriers to 'knowledge transfer' between researchers and policymakers. This has 'given rise to a veritable cottage industry of work' dedicated to knowledge transfer, in order to increase the use of evidence in policymaking, argues Justin Parkhurst.[32] This focus on scientific evidence (i.e. evidence arising from research) suggest a fairly narrow view of what should inform policymaking and a fairly simplistic understanding of how evidence is 'used'.[33]

To advance the debate among supporters and critics of evidence-based policymaking, Parkhurst advocates for a more 'politically informed' perspective on the use of evidence in policymaking. This perspective stresses that policies typically involve multiple competing social values and concerns and there can be different evidence bases relevant to each one.[34] Recognising this, two potential types of evidentiary bias can be identified. The first is 'issue bias', which he argues 'reflects the ways in which the invocation of particular forms of evidence can obscure the political nature of decisions'. It arises through practice or norms that routinely privilege certain types of evidence in a way that marginalises particular social concerns; this can be understood 'as an exercise in political power'. The second is 'technical bias', which he defines as the 'problematic use of evidence from the perspective of scientific best practice'.[35] Both types of biases can occur in the creation, selection and interpretation of evidence. Parkhurst also distinguishes between the 'overt' and 'subtle' politicisation of evidence. The former refers to deliberate strategies taken in pursuit of political interests,

[30] This and the preceding two quotations are from Alan Bond and Jenny Pope, 'The State of the Art of Impact Assessment in 2012', *Impact Assessment and Project Appraisal* 30, no. 1 (2012): 2.
[31] Harrison, 'Human Rights Measurement', 183.
[32] Justin Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence* (Routledge, 2017), 23.
[33] Ibid, 24.
[34] Ibid, 6.
[35] Ibid, 42-43.

whereas subtle politicisation refers to cognitive mental processes or simplifying heuristics linked to existing values or beliefs.

These distinctions offer a useful lens for examining the potential of the Guiding Principles to advance evidence-based policymaking. To an extent, the Guiding Principle's *raison d'être* is overcoming overt issue bias in that they demand consideration of evidence on social concerns that have been traditionally marginalised in economic policy decisions. The applicable human rights standards set out in Part III of the Guiding Principles make a compelling case for widening the set of concerns take into account—from narrow understandings of growth, debt sustainability, or financial stability, to concerns for the human rights impact of different policy choices. Principle 18 states this explicitly:[36]

> 'Throughout the policy cycle, economic reform programmes should be evaluated in accordance with whether they have ensured a fair and equitable distribution of social adjustment burdens, and not only whether they have reduced budget deficits and restored debt sustainability or economic growth.'

The Guiding Principles also address the issue of technical bias, but to a much lesser degree. Principle 20, for example, calls for 'a diverse range of both quantitative and qualitative data' to be used in such an evaluation. But unless impact assessments are undertaken with a strong appreciation of how technical bias shapes such data, their capacity to meaningfully influence policy making in the economic arena will be undermined. This is particularly the case given that the Guiding Principles presume a role for economic methodologies in assessing human rights impact of economic reforms; these, we argue, are riddled with technical biases—both overt and subtle.

3 THE POLITICS OF EVIDENCE IN THE CONTEXT OF ECONOMIC POLICYMAKING

Assessing the human rights impact of economic reforms in a way that can influence policy decisions necessitates engagement with economic methodologies—and the overt and subtle technical biases embedded in them. In the case of mainstream or "orthodox" economics, these biases are pronounced. In fact, they are so pronounced, we argue, they may skew the objectives of an assessment back to a narrower and more traditional range of concerns, which would end up reinforcing issue biases that the Guiding Principles seek to move away from. This section explains how economics and

[36] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para 18.4.

economists have come to play a prominent, and often dominant, role in policymaking and introduces a frame for unpacking how technical bias plays out in the context of economic policymaking. Key methodological elements of neoclassical economics are then explained using this frame.

While economics is not homogenous, particular schools of thought have come to dominate economic theory, teaching and practice. The mainstream of economics today is underpinned by the neoclassical school of thought, although it has partially incorporated (some argue bastardised) other schools, most notably Keynesian economics. This theoretical basis has, to varying degrees, underpinned free-market economic reforms. As James Curtis notes, following a series of interviews with Ha-Joon Chang,[37] Radhika Balakrishnan,[38] and Margaret Summers,[39] 'for the last three decades this body of theory has dominated the economic field, while this field has in turn dominated society; systematically privileging markets, finance and abstruse mathematical conceptions of human life over social values of solidarity, distributive justice, substantive equity and democracy.'[40]

There is a substantial body of mostly sociological literature concerned with the 'increasing authority granted to economists' in debates about how to organise economies and societies.[41] Daniel Hirschman and Elizabeth Popp Berman describe how economics has come to shape the 'cognitive infrastructure' of policymaking, for example. They identify two ways through which this occurs. The first is through spreading an *economic style of reasoning.* That is, by teaching policymakers to think about problems as economists do. The second is by helping them establish economic *policy devices.* These are the sociotechnical tools that allow policymakers to see the world in certain ways (like GDP, or the unemployment rate) or that assist them in

[37] Ha-Joon Chang in Conversation with Joshua Curtis, 'History, Law and the Myth of Economic Neutrality', Series on Economics and Law in Conversation (Laboratory for Advanced Research on the Global Economy, Centre for the Study of Human Rights, LSE, July 2016), http://www.lse.ac.uk/sociology/assets/documents/human-rights/HR-SO-3.pdf.

[38] Radhika Balakrishnan in Conversation with Joshua Curtis, 'Advancing Human Rights through Economics', Series on Economics and Law in Conversation (Laboratory for Advanced Research on the Global Economy, Centre for the Study of Human Rights, LSE, January 2016), http://www.lse.ac.uk/sociology/assets/documents/human-rights/HR-SO-5.pdf.

[39] Margaret Somers in Conversation with Joshua Curtis, 'Socially Embedding the Market and the Role of Law', Series on Economics and Law in Conversation (Laboratory for Advanced Research on the Global Economy, Centre for the Study of Human Rights, LSE, March 2016), http://www.lse.ac.uk/sociology/assets/documents/human-rights/HR-SO-4.pdf.

[40] Joshua Curtis, 'Merging Socio-Economic Rights and Heterodox Economics: Emancipatory and Transformative Potentials', Series on Economics and Law in Conversation (Laboratory for Advanced Research on the Global Economy, Centre for the Study of Human Rights, LSE, October 2016), 2.

[41] Johan Christensen, 'Economic Knowledge and the Scientization of Policy Advice', *Policy Sciences* 51, no. 3 (2018): 293.

making decisions (like cost-benefit analysis).[42] In other words, through the spread of ideas and the spread of tools, economics reshapes how non-economists understand an issue – what others have referred to as 'economics imperialism'.[43]

This framing casts new light on Parkhurst's idea of technical bias, highlighting how it plays out in the context of economic policymaking. Indeed, a classic example of subtle technical bias shared by Parkhurst is a popular case study from the early 1990s. The study compared original data sources to a World Bank assessment of Lesotho's economy. It concluded that mistakes made by the Bank's analysts in their assessment 'were always of a particular kind', which reflected 'a stereotypical idea of a "less developed" country' and 'fit within the World Bank's existing models' of African development.[44]

Given their influence on how reforms are understood and analysed, economic styles of reasoning and policy devices must be addressed by those advancing human rights impact assessments. As discussed further below, both have particular assumptions embedded within them about how economies work, which, once they solidify, tend to obscure their own partiality. Further, both styles of reasoning and policy devices 'restructure the political relations around them',[45] circumscribing what are seen as legitimate ways of evaluating economic policies. Assessments of the impact of a particular economic reform will be influenced by these realities.

3.1 ECONOMIC STYLES OF REASONING – WELFARE, UTILITY AND EFFICIENCY

The bedrock of mainstream economic reasoning is *homo economicus*. This concept describes the individual who, behaving rationally, seeks to maximises his "utility" given the constraints he faces.[46] This entails a commitment to methodological individualism and to rationality. Only the preferences of the individual matter and the individual anticipates the consequences of all his possible actions, makes internally consistent choices, and maximises self-interest. Within this paradigm, the atomistic individual is

[42] Daniel Hirschman and Elizabeth Popp Berman, 'Do Economists Make Policies? On the Political Effects of Economics', *Socio-Economic Review* 12, no. 4 (2014): 790, https://doi.org/10.1093/ser/mwu017 emphasis in original.
[43] Ben Fine and Dimitris Milonakis, *From Economics Imperialism to Freakonomics*, 1 edition (London ; New York: Routledge, 2009).
[44] Parkhurst, *The Politics of Evidence*, 90.
[45] Hirschman and Berman, 'Do Economists Make Policies?', 799.
[46] As feminist economists have stressed, homo economicus is very much a he. See e.g. Martha Fineman and Terence Dougherty, eds., *Feminism Confronts Homo Economicus: Gender, Law, and Society*, 1 edition (Ithaca, N.Y: Cornell University Press, 2005).

socially disembedded, described without reference to social characteristics, relations, or how personal preferences may be shaped by society.[47]

On the collective level, mainstream economics evaluates economic decisions by reference to human "welfare". The most prevalent notion is that welfare is maximised by reaching a 'situation in which no one can be made better off without making anyone else worse off – irrespective of who would be affected or to what extent'.[48] This is known as a state of "Pareto efficiency" or "Pareto optimality". This means that welfare is maximised by making people "better off" without causing harm to anyone else in the process. The most immediate problem with this is that finding a common measure of "better off" or "worse off," across a disembedded set of individuals, is a 'prerequisite to coherent policy assessment'.[49]

The "solution" to this measurement problem is to equate welfare with "utility". Within neoclassical economics, utility has been distanced from its original usage as a measure of satisfaction or pleasure. Now, utility is linked to individual preferences and is maximised when individual preferences are satisfied.[50] However, determining preferences is also difficult, as is judging their relative intensity. Economists could, in theory, rely on some form of survey data in which individuals report their preferences. Instead, they have opted to equate preferences with "revealed preferences". In other words, simply the choices that individuals make in reality (to the extent that these can be systematically measured). This proxy for welfare is three steps removed from the original concept:[51]

welfare ⇔ utility ⇔ preferences ⇔ choices

This string of assumptions is riddled with problems and does not provide any viable measures for comparing the actual welfare effects of policies on different individuals. What results is 'nothing more than an ordinal ranking of each individual's preferences',[52] which are exogenously given and unrelated to the social environment within which the

[47] John B. Davis, 'Individualism', in *Handbook of Economics and Ethics*, ed. Jan Peil and Irene van Staveren (Edward Elgar Publishing, 2009).
[48] Irene van Staveren, 'Efficiency', in *Handbook of Economics and Ethics*, ed. Jan Peil and Irene van Staveren (Edward Elgar Publishing, 2009), 107; See also Sen, *On Ethics and Economics*.
[49] Louis Kaplow and Steven Shavell, 'Fairness versus Welfare', *Harvard Law Review* 114, no. 4 (2001): 1368, https://doi.org/10.2307/1342642.
[50] Daniel M. Hausman and Michael S. McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 2 edition (New York: Cambridge University Press, 2006).
[51] Philip Harvey, 'Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously', *Columbia Human Rights Law Review* 33 (1 January 2002): 421.
[52] Ibid.

individual is embedded.[53] Further, it does not account for the fact that such preferences can be based on imperfect information or cognitive limitations, and may themselves have been shaped by existing public policy, changed over time, or be in conflict with one another.[54] In response to this, it is sometimes argued that policies should maximise "actual" welfare of individuals, rather than their revealed choices. In this case, actual preferences means those that are "rational", "self-interested", and "well-informed".[55] This does not solve the problem of determining these. Further, it embeds normative assumptions into what actual preferences are, or should be.

Returning to the definition of Pareto efficiency—a situation that is "optimal" because no one can be made better off without making anyone else worse off—we spot other problems. In particular, Pareto efficiency assumes distributional neutrality—maintaining or increasing utility matters, not its distribution.[56] A policy in which the wealthy are made worse off through high taxation but the poor better off through public spending would not be a "Pareto improvement". Equity is therefore portrayed as a trade-off with efficiency.

This alleged trade-off features regularly in assessments of economic reforms. The IMF, for example, notes that the 'conventional belief' has been 'that taxing income entails a higher welfare (efficiency) cost than taxing consumption',[57] despite the fact that consumption taxes make tax systems less progressive. That is, it shifts a greater share of taxation onto poor and low-income earners. This approach reinforces the status quo distribution of resources, irrespective of actual efficiency,[58] not to mention equity, in the real word. Further, an economic reform that made some worse off would not be Pareto efficient, even if the policy leads to the economy expanding in a way that its capacity to satisfy preferences increased; that is, if it made the "pie" larger.[59]

In an attempt to overcome this narrowness, welfare economists argue that a Pareto improvement would still occur if it was possible for the "winners" to compensate the

[53] Carlos Rodriquez-Sickert, 'Homo Economicus', in *Handbook of Economics and Ethics*, ed. Jan Peil and Irene van Staveren (Edward Elgar Publishing, 2009), 226.
[54] Harvey, 'Human Rights and Economic Policy Discourse'; Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*.
[55] Kaplow and Shavell, 'Fairness versus Welfare'; Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 128–29.
[56] Sen, *On Ethics and Economics*, 33; van Staveren, 'Efficiency', 107.
[57] Vito Tanzi and Howell Zee, 'Tax Policy for Emerging MarketsDeveloping Countries', *National Tax Journal* 53 (1 March 2000): 305.
[58] As van Staveren notes 'This leads to the conclusion that Pareto efficiency is not really about maximum efficiency, but rather about relative maximum utility, that is total utility constrained by a strong no-harm principle. In other words, Pareto efficiency allows for the wage of resources - land, food or health care - by the affluent. van Staveren, 'Efficiency'.
[59] Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 144.

"losers" in a way that left the losers no worse off than at the outset, and the winners better off.[60] This allows one to argue that welfare can be enhanced by pursuing a situation of maximising total utility.[61] This is the theoretical basis of widely used cost-benefit analysis.[62]

But, a focus on total utility ignores distribution even further. First, how an individual's relative position in society affects their preferences is not considered. It is irrelevant whether the worse off are the wealthiest or the poorest. As Amartya Sen notes:

> 'The utility calculus can be deeply unfair to those who are persistently deprived […] The deprived people tend to come to terms with their deprivation because of sheer necessity of survival, and they may, as a result, lack the courage to demand any radical change, and may even adjust their desires and expectations to what they unambitiously see as feasible. The mental metric of pleasure or desire is just too malleable to be a firm guide to deprivation and disadvantage.'[63]

Second, there is no imperative that compensation actually occur. This means that a policy is a Pareto improvement if it is *possible* for the winners to sufficiently compensate the losers.

These understandings of welfare feature in how economics understands desired states of the economy. In general, economics aims for situations of "equilibrium". A classic depiction of supply and demand in economics would show that when the price goes up for fish, the demand falls (and vice versa). The point at which demand equals supply is the "equilibrium". This is an example of "partial equilibrium" analysis, as it refers to only one market: the market for fish. "General equilibrium" analysis refers to attempts to depict the economy as a whole, to establish points—equilibria—at which supply and demand balance in all markets. This informs how economists think of optimal economic conditions.

In general equilibrium theory, the first and second "fundamental theorems of welfare economics" state, respectively, that market equilibria are Pareto efficient and that there are a set of market prices at which every Pareto efficient allocation of resources is also an equilibrium. Under these assumptions, markets are *de facto* efficient and, given some redistribution of initial resources, the market can be left alone to do its work. Any

[60] Ibid.
[61] van Staveren, 'Efficiency'.
[62] Such empirical welfare analysis relies on monetary measures of welfare, using incomes and prices. This has its own shortcomings: income is a poor indicator of well-being across different income classes; some valued subjective goods cannot be measured in monetary terms; and monetary compensation is not always possible.
[63] Amartya Sen, *Development as Freedom* (OUP Oxford, 2001), 62.

insufficiencies that arise are not due to the market system, but to market failures or imperfections. The manner in which this theoretical position underpins structural adjustment programmes and the Washington Consensus—policy prescripts that present the market as a paragon of efficiency—is clear in the Lesotho example above.

These theorems rely on highly restrictive—even patently absurd—assumptions. These include, but are not limited to: perfectly competitive markets with no externalities (all economic costs, even things like pollution, are reflected in prices); no economies of scales (products don't get cheaper the more of them that are produced); preferences taken as fixed; no uncertainty; and goods exchanged directly, with no role for money.[64] Even accepting these assumptions, the volumes of ink that has been spilled by neoclassical economists has failed to mathematically prove the existence, uniqueness or stability of such equilibria.[65] This indicates how, while economics' legitimacy rests of its claims of scientific rigour, it is, in the words of Somers 'a radically anti-empirical project', which 'expresses itself as a disdain for the epistemic validity of dis-confirming evidence'.[66] What matters most is whether the theory—or policy assessment—conforms to predetermined theoretical premises and views of the economy.

The consequence is that these styles of reasoning have embedded a pro-market bias that may run counter to rights claims. Humans are conceptualised as competing, selfish, individuals with competition the expression of individuals pursuing their own interests. Perfectly competitive markets are therefore considered "good" institutions because the outcomes of interactions therein are Pareto efficient.[67] Adherence to these mainstream economic approaches therefore implies that prioritising human rights could reduce, rather than enhance, welfare.[68] This is because doing so would demand policies that interfere with market operations and are therefore likely to introduce inefficiencies.

These theoretical premises shape mainstream economics' *a priori* outlook on policy choices and therefore how mainstream economists would assess the impact of

[64] Fine and Milonakis, *From Economics Imperialism to Freakonomics*, 280; Sen, *On Ethics and Economics*, 34.
[65] Alan Kirman, 'General Equilibrium: Problems, Prospects, and Alternatives', in *General Equilibrium, Capital and Macroeconomics: A Key to Recent Controversies in Equilibrium Theory*, ed. Fabio Petri and Carl H. Hahn (Edward Elgar Publishing, 2004); Carl H. Hahn, 'On the Notion of Equilibrium in Economics', *Recherches Économiques de Louvain/ Louvain Economic Review* 40, no. 4 (ed 1974): 468–468; Frank Ackerman, 'Still Dead After All These Years: Interpreting the Failure of General Equilibrium Theory', *Working Papers*, Working Papers (Tufts University, Global Development and Environment Institute, 2000).
[66] Margaret Somers in Conversation with Joshua Curtis, 'Socially Embedding the Market and the Role of Law', 3.
[67] Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 139.
[68] An argument made by Kaplow and Shavell, 'Fairness versus Welfare' for example.

particular economic reforms. Take for example, an assessment of whether a government should directly provide healthcare or provide a cash transfer with which healthcare can be purchased. Standard economic practice would present this choice as a trade-off between the quantity of healthcare, and the quantity of everything else that an individual would be able to purchase given a particular budget. The direct provision of healthcare would relieve some constraint on her budget, but, on the basis of standard utility calculations (using "indifference curves"), the cash payment satisfies her preferences 'at least as well as the in-kind health-care benefit, and will typically satisfy her preferences better'. Further, the cash payment is regarded as Pareto superior, because, within this framework, it is shown that 'no one will prefer the in-kind provision and many will prefer the cash payment'.[69] Daniel Hausman and Michael McPherson note:

> 'Although the value of freedom lurks within the standard argument for cash benefits, the argument remains within the terms set by orthodox economic theory. There is no mention of needs, of the presuppositions of individual dignity, of opportunity, of rights, or of fairness. There is no concern with the moral reasons that make individuals willing to pay taxes to provide such benefits.'[70]

3.2 ECONOMIC POLICY DEVICES – SEEING AND TAKING DECISIONS IN THE ECONOMIC WORLD

Economic styles of reasoning have shaped commonly used policy devices—both for perceiving the world and for making decisions. The dominant economic perception of the world is one which reduces social and economic reality to a series of numbers and uses mathematical formulas to make decisions. Incorporating these devices helps assess the economic reforms discussed in the Guiding Principles. But, if these policy devices are reliant on unsustainable assumptions, then, in the words of Parkhust, they may result in 'problematic use of evidence from the perspective of scientific best practice',[71] that is, a technical bias.

While numbers and mathematical formulas can be of value, in many instances, they have become an end in itself. As Paul Krugman contended, in the wake of the 2007/8 global financial crisis, 'the economics profession went astray because economists, as a group, mistook beauty, clad in impressive-looking mathematics, for truth'.[72] This has

[69] Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 142, see pages 141-143 for a lengthier and more technical explanation.
[70] Hausman and McPherson, 143.
[71] Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence*, 42–43.
[72] Paul Krugman, 'How Did Economists Get It So Wrong?', *The New York Times*, 6 September 2009, sec. Magazine, 1, http://www.nytimes.com/2009/09/06/magazine/06Economic-t.html.

been aptly labelled by Ben Fine and Dimitris Milonakis as 'the triumph of form over substance'.[73] Unfortunately, as Sen notes, such a narrow basis of analysis has considerably undermined the predictive power of economics.[74] This results, as we see below, in policy devices producing predictions out of sync with empirical reality.

In mainstream economics, mathematical formulae which result from the styles of reasoning discussed above, regularly produce pro-market, pro-business, or pro-elite policy recommendations, irrespective of historical evidence to the contrary. Examples include: the so-called Laffer Curve, which purports to demonstrate that cuts in tax rates will increase overall revenue; the "natural rate of unemployment" literature, which supports contractionary monetary policy when unemployment becomes "too low"; and the "efficient market hypothesis", which posits that asset prices reflect all available information. While the latter hypothesis is both untested and untestable, it is part of the reason why mainstream economic models not only failed to predict the 2007/8 global financial crisis but considered it to be *a priori* impossible.

Devices for making decisions would also need to be deployed to assess economic reforms. One we have already mentioned is cost-benefit analysis. This is a widely used policy device. It gives preference to policies with the lowest cost-benefit ratio (those that that minimise costs and maximise benefits) because these would be regarded as a Pareto improving. The US government, for example, requires a cost-benefit analysis to be conducted when it issues regulations over product safety or environmental protection. Introducing a rights-based lens to this device conflicts with its basic assumptions. As Irene van Staveren notes, 'even if cost-benefit analysis is applied at the aggregate level, including a wide variety of social costs and benefits for a large group of people, its outcome may have very unequal distributional effects […] A net benefit accruing to one group may jeopardize human rights […] for another group.'[75] Hausman and McPherson note poignantly that economists 'have managed to salvage a practical method of evaluation – cost–benefit analysis – but it rests on shaky foundations precisely because the fundamental evaluative apparatus of contemporary normative economics is so narrow'.[76]

Turning back to the Guiding Principles, a particular policy device proposed therein is economic modelling.[77] Macroeconomic models are particularly relevant to the policy

[73] Ben Fine and Dimitris Milonakis, '"Useless but True": Economic Crisis and the Peculiarities of Economic Science', *Historical Materialism* 19, no. 2 (2011): 13.
[74] Sen, *On Ethics and Economics*, 79.
[75] van Staveren, 'Efficiency', 111.
[76] Hausman and McPherson, *Economic Analysis, Moral Philosophy and Public Policy*, 152–53.
[77] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para. 20.

concerns of the Guiding Principles. These are essentially a series of mathematical equations representing relationships within the economy. To model the impact of economic reforms you change one variable (e.g. level of wages) and watch how this impacts the other variables in the model (e.g. employment levels). The Guiding Principles' encouragement to make use of such models reflects the broader literature on human rights impact assessments, which encourages the use of predictive modelling and other forms of econometric analysis in *ex ante* assessments. It does this because these methods 'can provide important information towards determining the direction of change of human rights in a particular country',[78] which, in turn, takes the debate further 'in a more empirical way'.[79] Despite the Guiding Principles urging that 'contingencies in the use of quantitative models are recognized and, if possible, avoided',[80] and other commentators cautioning that 'it is essential to bear in mind the underlying assumptions and heuristic limitations of the models used',[81] these assumptions and limitations remain unexplored within the Guiding Principles and broader literature.

The use of these models has important consequences for assessing the human rights impact of economic policy reforms. A recent example from South Africa illustrates this. The predictions of such models played a prominent role in debate over whether to move from a system of sectorally-differentiated minimum wages (i.e. different minimum wages in agriculture, retail, mining, clothing, domestic work, etc.) to a unitary national minimum wage. During this debate, which raged between 2015 and 2018, the South African National Treasury made use of a Computable General Equilibrium (CGE) model to estimate the impact of implementing this policy at different wage levels. This type of model, together with Dynamic Stochastic General Equilibrium (DSGE) models, are the most common macroeconomic modelling tools. They're used by National Treasuries; by multilateral institutions, such as the IMF, World Bank, and OECD; and by central banks world over.[82] They rely on some, but not all, of the general equilibrium theory outlined above.

In practice, like in general equilibrium theory, the mechanisms through which these models reach equilibria are adjustments in prices; equilibrium for the demand and

[78] Baxewanos and Raza, 'Human Rights Impact Assessments as a New Tool for Development Policy?', 18.
[79] Edward Anderson and Marta Foresti, 'Assessing Compliance: The Challenges for Economic and Social Rights', *Journal of Human Rights Practice* 1, no. 3 (2009): 471.
[80] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para 20.7.
[81] Baxewanos and Raza, 'Human Rights Impact Assessments as a New Tool for Development Policy?', 18.
[82] For a history, see Lance Taylor, 'CGE Applications in Development Economics', SCEPA Working Paper (Schwartz Center for Economic Policy Analysis (SCEPA), The New School, 2011), https://ideas.repec.org/p/epa/cepawp/2011-1.html.

supply of fish will only be reached through an adjustment in the price of fish, for example. Giving price adjustments this role determines how results that the model spits out are interpreted. The example of wages is instructive. In neoclassical theory, the implementation of statutory minimum wages lifts the "price of labour" (wages) above its equilibrium point. This means the demand for labour falls. The results of this in the model—together with other neoclassical assumptions commonly made—is that a rise in wages causes a contraction in investment, a fall in GDP, rising unemployment and general economic deterioration.

This is precisely the prediction South Africa's National Treasury made. Their CGE model showed that even minimum wages as low as $90 per month (an amount one-third *below* the lowest sectoral minimum wage at the time) would result in significant job losses and economic deterioration.[83] Such dire projections are ubiquitous prior to the implementation of, or significant increase, in minimum wages.[84] This is despite the empirical evidence that has amassed over the last three decades showing that the impact of minimum wages on employment is negligible, and that raising wages can have positive macroeconomic effects through increasing demand in the economy.[85] In the South African case, this international evidence was marshalled; the architecture of these models was challenged; and alternative models presented,[86] in order to debunk these claims.[87] This latter evidential base prevailed and the national minimum wage

[83] Catherine MacLeod, 'Measuring the Impact of a National Minimum Wage'; Servaas Storm and Gilad Isaacs, 'Modelling the Impact of a National Minimum Wage in South Africa: Are General Equilibrium Models Fit for Purpose?', Research Brief, National Minimum Wage Research Initiative (University of the Witwatersrand, Johannesburg: CSID, 2016).

[84] Storm and Isaacs, 'Modelling the Impact of a National Minimum Wage in South Africa: Are General Equilibrium Models Fit for Purpose?'

[85] Hansjorg Herr, Milka Kazandziska, and Silke Mahnkopf-Praprotnik, 'The Theoretical Debate About Minimum Wages', Working Papers (Global Labour University, February 2009), http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.6.pdf; Bernhard Boockmann, 'The Combined Employment Effects of Minimum Wages and Labor Market Regulation – A Meta-Analysis', IAW Discussion Paper (Institut für Angewandte Wirtschaftsforschung (IAW), 2010), https://ideas.repec.org/p/iaw/iawdip/65.html; Arindrajit Dube, 'Minimum Wages', *Journal of Economic Literature* 49, no. 3 (September 2011): 762–66; John Schmitt, 'Why Does the Minimum Wage Have No Discernible Effect on Employment?' (Center for Economic and Policy Research, 2013), Availability Note: Information provided in collaboration with the RePEc Project: http://repec.org; Dale Belman and Paul Wolfson, *What Does the Minimum Wage Do?* (Kalamazoo, Michigan: W.E. Upjohn Institute, 2014); Megan Linde Leonard, T. D. Stanley, and Hristos Doucouliagos, 'Does the UK Minimum Wage Reduce Employment? A Meta-Regression Analysis', *British Journal of Industrial Relations* 52, no. 3 (2014): 499–520; Stijn Broecke, Marieke Vandeweyer, and Alessia Forti, 'The Effect of Minimum Wage on Employment in Emerging Economies: A Literature Review', OECD Social, Employment and Migration Working Papers (OECD Publishing, 2015); Gilad Isaacs, 'A National Minimum Wage for South Africa', Summary Report, National Minimum Wage Research Initiative (University of the Witwatersrand, 2016).

[86] Asghar Adelzadeh and Cynthia Alvillar, 'The Impact of a National Minimum Wage on the South Africa Economy', Working Paper Series, National Minimum Wage Research Initiative (University of the Witwatersrand, 2016).

[87] Isaacs, 'A National Minimum Wage for South Africa'.

was implemented at a level that would lift wages for approximately 30% of the formal sector workforce.

Such neoclassical CGE models are commonly used in other spheres of policy analysis. A few examples of the results derived therefrom—particularly relevant to the economic reforms addressed in the Guiding Principles—are worth highlighting.[88] These include that consumption taxes are less distortionary and more efficient than income taxes or taxes on capital;[89] that fiscal consolidation can have limited growth impacts; that trade liberalisation de facto leads to welfare gains,[90] as well as poverty reduction;[91] and that structural adjustment programmes should be beneficial.[92] This is a poignant caution that in mainstream macroeconomic models—underpinned by the assumption of efficient markets and the potential for Pareto efficient equilibria—it is market adjustments that are seen as leading to efficient outcomes.

4 ADDRESSING BIAS AND CONTESTING ECONOMIC ORTHODOXIES

These neoclassical styles of reasoning and policy devices dominant in mainstream economics systematically produce technical biases. But they also circumscribe what questions are asked, answered, and answerable. This may very well skew concerns

[88] CGE models do not unanimously have these conclusions and there is variation over the types of models, the assumptions made, and time and location. Nevertheless, given that we know that these outcomes seldom hold, it is illustrative that a substantial number of CGE models would yield these results.

[89] B. Douglas Bernheim, John Karl Scholz, and John B. Shoven, 'Consumption Taxation in a General Equilibrium Model: How Reliable Are Simulation Results?', in *National Saving and Economic Performance*, ed. B. Douglas Bernheim and John B. Shoven (University of Chicago Press, 1991), 131–62, https://www.nber.org/chapters/c5990; Keshab Bhattarai, Jonathan Haughton, and David G. Tuerck, 'The Economic Effects of the Fair Tax: Analysis of Results of a Dynamic CGE Model of the US Economy', *International Economics and Economic Policy* 13, no. 3 (1 July 2016): 451–66, https://doi.org/10.1007/s10368-016-0352-4; Dale W. Jorgenson and Kun-Young Yun, 'Chapter 10 - Taxation, Efficiency and Economic Growth', in *Handbook of Computable General Equilibrium Modeling*, ed. Peter B. Dixon and Dale W. Jorgenson, vol. 1, Handbook of Computable General Equilibrium Modeling SET, Vols. 1A and 1B (Elsevier, 2013), 659–741, https://doi.org/10.1016/B978-0-444-59568-3.00010-9.

[90] Lance Taylor and Rudiger von Amin, 'Modelling the Impact of Trade Liberalisation: A Critique of Computable General Equilibrium Models', *Policy & Practice*, 1 July 2006, http://policy-practice.oxfam.org.uk/publications/modelling-the-impact-of-trade-liberalisation-a-critique-of-computable-general-e-112547.

[91] Asian Development Bank, *Using Macroeconomic Computable General Equilibrium Models for Assessing Poverty Impact of Structural Adjustment Policies* (Asian Development Bank, 2004), https://www.adb.org/publications/using-macroeconomic-computable-general-equilibrium-models-assessing-poverty-impact.

[92] Lorenzo Maio, Frances Stewart, and Rolph Hoeven, 'Computable General Equilibrium Models, Adjustment and the Poor in Africa', *World Development* 27 (1 February 1999): 453–70, https://doi.org/10.1016/S0305-750X(98)00143-0; Shantayanan Devarajan et al., 'Simple General Equilibrium Modeling', in *Applied Methods for Trade Policy Analysis: A Handbook*, ed. Joseph F. Francois and Kenneth A. Reinert (Cambridge University Press, 1997).

towards a narrow range of issues, reinforcing the issue biases that the Guiding Principles try to move away from.

This is because mainstream economics overwhelmingly views rights as instrumental to achieving other ends, in particular the maximisation of utility. As Sen argued almost 30 years ago, it is 'fair to say that the view that rights cannot be intrinsically important is fairly ingrained in the economic tradition now established'.[93] Little has changed. The realisation of rights is neither seen by mainstream economists as a legitimate outcome to seek to achieve, nor a motivating factor to human behaviour. For this reason, neoclassical economists either exclude human rights from their analysis or limit their inclusion to a narrow set of "market friendly" rights.[94] Chang goes further and argues that 'the division between civil and political rights on the one hand and socio-economic rights on the other […] buys into the neoclassical world'.[95] Where rights do feature in mainstream economics, property rights are uncritically centred—predominately as a means to ensure initial ownership of resources and thereby facilitate market exchange. More substantive rights may fall foul of being welfare enhancing. This is because '[s]ecuring these entitlements is likely to require either increased government expenditures or increased governmental regulation of the economy, measures that generally run counter to the existing preferences of some portion of the population for lower taxes and limited government'.[96]

How does deepening understanding of these biases help strengthen human rights impact assessments of economic reforms? In answering this question, it is useful to return to Parkhurst. He concludes that having a deeper appreciation of 'the origins and manifestations of bias' makes it 'more understandable and, indeed, predicable'; this, in turn, 'enables reflection on where to target strategies to reduce or mitigate the bias that is expected to arise'.[97] We argue that biases like those unpacked in the preceding part can only meaningfully be mitigated if human rights impact assessments are embedded in a broader project to contest the political and ideological exclusion of human rights in the economic policy arena in the first place.

Human rights impact assessment should be seen as being about political prioritisation as much as, if not more than, they are about evidence. In other words, the purpose of

[93] Sen, *On Ethics and Economics*, 49.
[94] See Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019).
[95] Ha-Joon Chang in Conversation with Joshua Curtis, 'History, Law and the Myth of Economic Neutrality', 8.
[96] Harvey, 'Human Rights and Economic Policy Discourse', 368.
[97] Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence*, 76.

economic reforms must be contested, not just the way in which such reforms are evaluated. The Guiding Principles do this to an extent, stressing that 'the economy should serve the people, not vice versa' and calling for policy coherence to protect all human rights.[98] Impact assessments are presented as the means of achieving policy coherence. But if impact assessments are approached in a technocratic manner, a danger arises that 'a fundamentally normative debate over social values' becomes conflated with 'an evaluation of evidence'.[99] To avoid this, contestation is needed in three areas.

To begin with, how the relationship between human rights and the economy is conceptualised needs to be deepened. A number of paragraphs in the Guiding Principles suggest that human rights may conflict with other economic policy goals.[100] As Perelman argues, this 'trade-off consciousness' is problematic because it absorbs human rights into a risk assessment framework decided upon according to existing priorities, as opposed to interrogating the legitimacy of those priorities.[101] To genuinely transcend this consciousness, a more precise reframing of economic questions in human rights terms and vice versa is necessary.

Reframing economic questions in human rights terms challenges the manner in which mainstream economics has attempted to define itself as a "neutral science", devoid of imprecise and inherently subjective ethical reasoning. This gives us a broader perspective about the purpose of the economy 'whereby the market is repositioned as just one institution among many in society, including a number of others deserving equal or greater power in many contexts'.[102] Similarly, reframing human rights questions in economic terms, expands the traditionally state-centric lens, to better see the interrelated social processes concerned with the generation and distribution of resources that facilitates the fulfilment of rights.

This expanded perspective on the economy and on human rights calls for interdisciplinary methodologies that can generate evidence, which, in turn, should be judged on its 'appropriateness', rather than relying on hierarchies of evidentiary

[98] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para 2.
[99] Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence*, 71.
[100] They note, for example, that efforts directed at trying to stabilise the economcy comes with the 'risk of disregarding' human rights obligations, that states need to 'balance competing priorities and make approriate trade-offs'. Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments' paras 2.3, 17.6.
[101] Perelman, 'Human Rights, Investment and the Rights-Ification of Development', 467–68.
[102] Curtis, 'Merging Socio-Economic Rights and Heterodox Economics: Emancipatory and Transformative Potentials', 5–6.

"quality".[103] This approach recognises that evidence can be constructed in a number of different ways that would be considered technically valid. The Guiding Principles endorses this kind of methodological pluralism—noting the need for 'a diverse range of both quantitative and qualitative data' as well as 'a wide range of economic theory and evidence'.[104]

As discussed above in part one, however, what constitutes 'relevant' evidence for assessing the human rights impact of economic reform has yet to be systematised. Caution is necessary when drawing on mainstream economic theory, economic tools, and economists themselves for such systematisation. Economic knowledge production 'is organized according to a clearly perceived hierarchy', of which neoclassical styles of reasoning and policy devices sit at the top.[105] Efforts to "professionalise" assessment through more "rigorous" methodology risk reinforcing this hierarchy if they rely on particular policy devices because they are considered influential. As Hirschman and Berman explain, as policy devices solidify, the political choices in them get hidden.[106] For example, a number of human rights treaty bodies have adopted the official development assistance target of 0.7 percent of GDP as a benchmark to define the obligation of international assistance. This target is a political commitment from the 1970s that has been reaffirmed in subsequent international declarations. However, how that figure is calculated continues to be controversial.[107]

The manner in which various heterodox, alternative, or non-mainstream schools of thought, such as, post-Keynesian, Marxist, and feminist, have come to see rights as instructive and beneficial to economic theory shows what disrupting evidentiary hierarchies and working across disciplines can look like. Some within these schools have come to recognise the relevance and importance of the positive obligations that rights—especially socioeconomic rights—place on states and markets.[108] These are the schools of thought that, as Chang notes, have 'the greatest affinity to progressive human rights lawyers' as they 'see the individual as a product of society, rather than something that fell from the sky in a complete form'.[109] As Balakrishnan notes, 'the norms and standards of human rights offer heterodox economists a widely accepted

[103] Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence*, 108.
[104] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', para 11.6 and Principle 20.
[105] Christensen, 'Economic Knowledge and the Scientization of Policy Advice', 294.
[106] Hirschman and Berman, 'Do Economists Make Policies?', 798–99.
[107] Olivier De Schutter, 'Public Budget Analysis for the Realization of Economic, Social and Cultural Rights: Conceptual Framework and Practical Implementation', in *The Future of Economic and Social Rights*, ed. Katherine G. Young (Cambridge University Press, 2019), 585–86.
[108] Harvey, 'Human Rights and Economic Policy Discourse'.
[109] Ha-Joon Chang in Conversation with Joshua Curtis, 'History, Law and the Myth of Economic Neutrality', 8.

ethical language in which to pose economic questions without reducing them to simple questions of economic calculus'.[110]

A promising example of working across disciplines is research commissioned by the Equality and Human Rights Commission in the United Kingdom, which assessed the cumulative distributional impacts of tax and spending decisions on people sharing different characteristics protected under the Commission's mandate. The research used relative income poverty measures and the Minimum Income Standard as proxy indicators to examine the impact of government policy on the right to an adequate standard of living. It also used a microsimulation tool called the tax-transfer model (TTM) to simulate changes in disposable income after a series of policy changes affecting taxation and social security transfers have been considered. Importantly, this produced results at the individual level, which enabled a more detailed focus on gendered impacts of these changes. The modelling revealed that changes have a disproportionately negative impact on several protected groups, including disabled people, certain ethnic groups, and women.[111]

Finally, it is important to understand the institutions through which competing interests, as well as competing evidence, are mediated in the economic policy arena. The Guiding Principles call for the 'engagement of affected communities' in conducting assessments, as well as for 'genuine public debate' in the consideration of policy options, facilitated through the dissemination of evidence 'expressed in language accessible to the public'.[112] Achieving this would necessitate a major shift in the status quo of 'policy advisory systems', meaning the networks of actors and organisations 'that provide decision-makers with policy advice'.[113]

Economists often play a central role in such networks—becoming policymakers themselves, staffing international financial institutions, and providing policy advice from think tanks or consultancy firms. The construction of such systems as 'ostensibly depoliticized' has been an important channel for sustaining 'the rise of economic knowledge to power around the world'.[114] As Dena Freeman argues, this move to de-politicise policymaking has been accompanied by an emphasis on the constitutional component of democracy—ensuring appropriate checks and balances across

[110] Radhika Balakrishnan in Conversation with Joshua Curtis, 'Advancing Human Rights through Economics', 3.
[111] Jonathan Portes and Howard Reed, 'The Cumulative Impact of Tax and Welfare Reforms' (Equality and Human Rights Commission, 2018).
[112] Bohoslavsky, 'Guiding Principles on Human Rights Impact Assessments', paras 22.2 and 11.6.
[113] Ibid, paras 22.2 and 11.6.
[114] Marion Fourcade, 'Economics: The View from Below', *Swiss Journal of Economics and Statistics* 154, no. 1 (2018): 5.

institutions and role for courts. But the popular component—namely accountability to the people—has been de-emphasised. Economic policy decisions are increasingly made in multi-stakeholder networks, in which government officials participate alongside representatives from the private sector and civil society.[115] Power asymmetries in such networks are immense. While it is important to see impact assessments as one tool that can be leveraged to address such asymmetries, complementary efforts will also be needed.

A joint assessment on the impact of potential electricity price rises on children's rights in Bosnia and Herzegovina led by UNICEF in 2007—often cited as good practice—is a good example of the way power asymmetries affect the success of a human rights impact assessment. An evaluation of the assessment notes that while it was 'well appreciated' by gatekeepers within the energy sector, it had 'no influence on the electricity sector reform'.[116] A key factor affecting policymaking was the process of accession to the European Union, which 'determined' socio-economic reform priorities. In this context, the 'influence and leverage' of the government directorate leading the assessment was 'limited'.[117]

5 CONCLUSION

Relying on economic ways of thinking and economic policy devices to shape the cognitive infrastructure for evaluating economic reforms in human rights terms is double-edged. On the one hand, it provides an opening for collaboration, one which spurs us to 'reformulate the whole debate, through a basic refusal to accept some evidently false premises', without which 'we will never win it'.[118] As Chang concludes, '[i]n this reformulation the combination of economic discourse with legal discourse is essential, and, within this combination, the merging of certain heterodox economic viewpoints and progressive strands of human rights will similarly be crucial'.[119] On the other, it risks allowing room for a series of propositional assumptions and evaluative tools, riddled with bias that systematically disregard the value of rights and produce policy recommendations that undermine rights concerns.

[115] Dena Freeman, 'De-Democratisation and Rising Inequality: The Underlying Cause of a Worrying Trend' (International Inequalities Institute, May 2017), 19–20.
[116] Yulia Privalova Krieger and Erna Ribar, 'Child Rights Impact Assessment of Economic Policies: A Case Study from Bosnia and Herzegovina', 2008, 32.
[117] Ibid, 40–41.
[118] Ha-Joon Chang in Conversation with Joshua Curtis, 'History, Law and the Myth of Economic Neutrality', 9.
[119] Ibid.

The way evidentiary challenges are addressed in the emerging field of human rights impact assessments remains limited. Assessments are seen as a way to improve evidence-based policymaking. But, as Parkhurst cautions, evidence-based policymaking is an 'extremely malleable' term that gives 'no obvious indication of which evidence is the right evidence upon which to base particular policies'.[120] For impact assessments to advance the goals of the Guiding Principles, closer attention needs to be paid to the political dynamics at play in shaping the methodologies through which evidence is created, selected and interpreted. If it is not, neoclassical economics could easily come to dominate, with the result that assessments get co-opted and narrowed into a technocratic box ticking exercise, stripping out political context and local concerns or justifying policies which limit rights as "welfare enhancing".

In certain respects, heterodox economists and socioeconomic rights activists and scholars have fought similar battles. For human rights scholars and activists, the Guiding Principles challenge them to articulate economic harms in human rights terms that can then be used to shape economic policy. For heterodox economists, the imperative to audit economic reforms according to human rights standards opens up space for contesting economic orthodoxies. The orthodoxy of efficiency, in particular, has had devastating consequences—as COVID-19 has laid bare. A rights-based approach, which values resilience over efficiency, means explicitly designing economics that can protect everyone in worst-case scenarios.

As the economic fallout of the global coronavirus pandemic unfolds, conversation between economics and human rights is more important than ever and the Guiding Principles advance this considerably. This conversation pushes the disciplines of economics and human rights in positive directions. Despite all its pretence, economics is not ethically neutral and the avowed absence of any normative foundation serves to reinforce the economic status quo. But human rights should not strive to be economically neutral either. While a range of economic policies may allow for rights fulfilment, this is not true of all possible policy choices. Importantly, not all forms of economic analysis will assess these policies in the same way.

[120] Parkhurst, *The Politics of Evidence: From Evidence-Based Policy to the Good Governance of Evidence*, 76.