Input for the UNGPs 10+ project

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1. Introduction

This submission explains that the effectiveness of the UNGPs is currently stalling, despite their wide endorsement, because they attempt to reconcile human rights with the market-based approaches of economic science. The problem is that the latter assumes, as a scientific premise, that free ('liberalised') *markets are a pre-political foundation* for social and political structures. This 'market fundamentalism' cannot help but place the fulfilment of social and political rights in a secondary position relative to the attainment of competitive market dynamics. The consequence is that *a political economy based on free markets is predetermined to subordinate human rights to matters of economic performance*, and cannot be transformed, by due diligence or otherwise, so that respect for human rights (or the environment) becomes a robust precondition for economic activities.

2. Markets as a pre-political foundation for social and political structures

The idea that markets are a pre-political foundation for social and political structures is an inherited consequence of political premises underpinning the work of Adam Smith and the other classical political economists. These premises have, unfortunately, become scientifically legitimated as economics has become increasingly mathematical. This becomes clear when we examine the historical relationship between economics and liberalism, and the theories and methods of economic analysis.

2.1. Economics and liberalism

Adam Smith posited, in his 1776 opus on the *Wealth of Nations*, that the aggregate wealth of a nation could be maximised if exchange possibilities are liberalised and people are allowed to maximise their personal wealth, in accordance with their natural propensity to "truck, barter and exchange" (Smith, p. 22, p. 572, pp. 827-824). The invisible hand, *a metaphor for self-regulating dynamics between supply and demand*, would ensure that these self-interested transactions result in the greatest possible number of economically desirable transactions, thereby maximising the public good.

Later political economists, such as Ricardo (1818) and Mill (1848), adopted these *premises of a liberalised economy* (free trade), individual maximising behaviour, competition between individuals, and equilibration between supply and demand, in order to *deduce and describe a homeostatic economy with maximised, i.e. optimal, exchange dynamics* (Landreth and Colander, 2002, p. 113. Mill, 2009, p. 127). The deduction of an ideal economy from *political* premises is a key issue in economics, one we will return to throughout this submission.

For now we can identify that the *economic* premise of liberal exchange was, of course, derived from 17th and 18th century liberal discussions on the social, political, and economic rights and freedoms of individuals. It is important, in this regard, to relate Smith's utopia to the explanation that liberalism provides for the emergence of state structures, i.e. the socio-political institutions that we rely on to protect human rights. The work of Thomas Hobbes provides a useful opening.

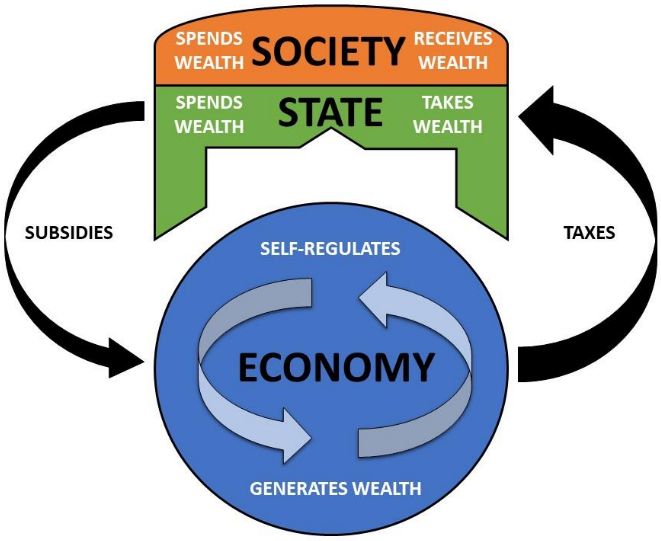
Hobbes, an early liberal, is famous for arguing that the lives of people, when they lived in the *state of nature* before the rise of states, was "solitary, poor, nasty, brutish and short" (Hobbes, 1998, p. 84). It is, however, less well-known that his 1651 book *Leviathan* also provided the first European, post-Christian account on the origin of states (Russell, 1961, p. 540). His state of nature model can be interpreted, in many ways, as a pessimistic, secular version of the garden of Eden which he posited to have existed before the rise of states. First there were individuals, their lives were miserable, and then they agreed on a *social contract* to restrain the worst human tendencies and, using the state, to end the "war of all against all" (Russell, p. 535).

Hobbes is, of course, only one perspective. Many liberal theorists, ranging historically from Locke, Montesquieu, and Rousseau to the more recent works by Rawls and Nozick, have provided their own formulations of the state of nature and the social contract. Their political perspectives are diverse, and they are as likely as not to support Hobbes' unhappy view of our distant past. The content of these perspectives is not important for us. We are, instead, interested in the premise which underpins their debates on the state of nature and the social contract, namely that individuals are analytically prior to states: *first individuals, then states*.

This individualist premise dovetails beautifully with Smith's utopian vision. We can imagine that a butcher, baker, and brewer, who are *freely exchanging goods in the state of nature*, enter into a social contract to produce the first state, i.e. social and political structures. The exchange relations of their original 'free' conditions can be described using the invisible hand, and the wealth generated by these exchanges can be taxed in accordance with the social contract to fund social and political structures.

On this account, *individual exchange provides the resources for social and political structures*, implying that liberalised markets are a 'pre-political' foundation and precondition for social and political institutions and prosperity. These relationships are captured in figure 1:

Figure 1: The market fundamentalist model of society and the economy

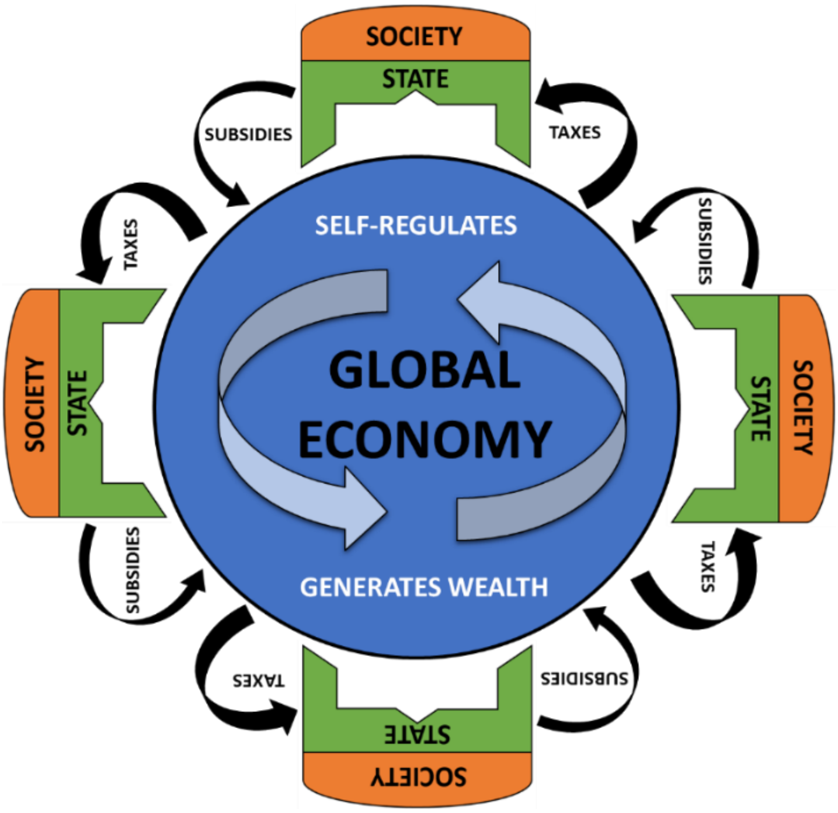


Another consequence of Smith's liberal economic model is that it suggests that *the economy can be studied separately from the rest of society* (Foley, p. 1). If individuals are free to trade, as in the hypothetical state of nature, then their interactions can be described solely using the self-regulatory dynamics of the invisible hand. This implies that there is *no need to integrate the influence of socio-political structures and institutions* (law, culture, media, etc.) directly into economic analysis, except insofar as they have a (negative) impact on economic dynamics.

Liberalised dynamics subject only to the invisible hand are, in fact, the ideal type of pre-political economy that is proposed by Smith and has been *promoted by economics as an ideal benchmark for economic conditions and performance*. It is this ideal, pre-political economic dynamic which economists claim is being affected by 'market interventions', and which they try to create through corrections for market failure. It is also why economists often argue that there is no need for regulation which goes beyond corrections for market failure.

The wealthiest and most competitive societies are the ones which follow economic science and organise their markets in accordance with the 'scientific' principles of the invisible hand. They are encouraged to promote individual competition and economic behaviour because this results in the richest possible kind of society, which has the most resources available for social institutions, political structures, etc. It is unwise to 'intervene' too much in the economy or you will kill the goose that lays the golden eggs. This model has been extrapolated to the global level:

Figure 2: The market fundamentalist model of a global economy and society



Nation states compete for the largest possible share of a (liberalised) global economy. This maximises the size of the economy and promotes innovation and the efficient allocation of resources. It also gives scientific legitimacy to imperialist tendencies, because a failure to open markets in one country undermines the performance of the global economy as a whole.

This approach does not produce a perfect global society, but if we all liberalise or 'open' our economies, then this is said to result in the most efficient use of scarce resources, labour skills and limited technologies. There is little else we can do except optimise within this system (read: address market failures) because it generates, as per Smith's utopian blueprint, the best possible kind of global economies and societies that we can sustain with our current levels of technology.

Capitalism is the idea that this system is inevitable, and that the economic policies of states and the economic behaviour of individuals must be aligned as closely as possible with the scientific laws of the invisible hand, as described by economic theory. The scientific legitimation of this political economy warns us that deviation from this system is like trying to ignore the laws of gravity. Economists believe, and tell us, that deviation is impossible, which is why it has become "easier to imagine the end of the world than the end of capitalism" (Fisher, 2009, Chapter 1).

Economists are not ill-intentioned, but, as we will see in the next section, many of them misunderstand the nature of their scientific practice, and are (mis)educated to disregard the political foundation and limitations of their theories and methods.

2.2. Political bias in the theories and methods of economics

Political bias is evident in two of the dominant techniques for economic modelling, Walrasian *General Equilibrium* (GE) models and the *Arrow-Debreu* model, as well as in the ongoing distinction between positive and normative economics. Examining these topics may seem like a detour from the UNGPs, but they are necessary to demonstrate the difficulties that economics creates for the reconciliation of human rights and free markets.

2.2.1. General equilibrium (GE) modelling

GE models are a product of the 1870s application of differential calculus to equilibrium theories of the economy (Starr, 2011. Hausman, 2008). They aggregate the supply-demand interactions of various markets to represent the 'whole' economy, and attempt to articulate the self-regulating dynamics of the invisible hand in mathematical form. These models are used to predict the effects of price changes, regulation and other natural disasters on the economy by modelling them as 'shocks' to an original homeostatic system. GE models have had an "enormous impact on the economic profession" (Landreth and Colander, p. 305), so much so that "Most… economists agree that economic theory should be grounded in a Walrasian general equilibrium approach founded on optimization by individual economic agents" (Hausman, p. 304).

It is well-known that GE models rely on a range of implausible assumptions: perfect information, no externalities, homogeneous goods, no technological differences, etc. It is, however, not common knowledge that these models also assume that there is *no negotiation between market participants*. Individuals are modelled as price takers who passively accept the prices and goods which are allocated to them by the market mechanism (the tâtonnement problem (Dardi)); *market participants are modelled as passive automatons, who do not interact*.

GE models, which are used by economists to represent the economy-wide dynamics of free market competition, *do not actually provide a scientific explanation of market exchange* because they presume that perfect free market outcomes emerge 'naturally' under liberalised conditions. Stated differently: GE models do not describe economic exchange, but are mathematically deduced from the political premise that liberalised conditions will, by virtue of the invisible hand, lead to efficient outcomes. They say little about how markets actually work, but reveal much about the political economic bias which underpins economic modelling.

Various economists might object at this stage, and argue that economics has transcended the flaws of this basic GE model by adopting techniques from game theory from the 1950s onwards. They would, unfortunately, be wrong.

2.2.2. Game theory and the Arrow-Debreu model

The invisible hand's equilibrating dynamics were reborn in the form of the famous 'Nash equilibrium' (Móczár, 2017, p. 153), which demonstrates in game theoretic terms how selfish competition between individuals can lead to equilibrium outcomes. This is "game theory's main concept" (Hargraves-Heap and Varoufakis, 2004, p. 2), and it also assumes away the negotiating process and postulates axioms for rational behaviour in its stead (Varoufakis, 2009, p. 17).

A constrained form of Nash equilibrium, based on perfect information assumptions about prices, has been used to create the Arrow-Debreu model for perfect competition (Geanakoplos, 1989, p. 59). This model also assumes that individuals are price takers and provided, by *assuming away the existence of money* (Geanakoplos, p. 57), the *first mathematical proof* for the existence of a calculable equilibrium outcome in large-scale GE modelling (Bryant, 2009, p. 19).

The Arrow-Debreu model, which does not look anything like market exchange that has ever occurred anywhere, is the game theoretic foundation for GE analysis throughout contemporary macroeconomic research (Raworth, 2017, p. 134-135). A Nobel prize in economics was awarded for inventing this pie in the sky.

The political nature of GE and Arrow-Debreu models, and of economic science more generally, is obscured from common knowledge because economists are trained at an early stage to believe in a distinction between positive and normative economics.

2.2.3. The distinction between positive and normative economics

The idea of this distinction is an old one (early 19th century), and it remains a standard part of contemporary economic education. The basic theory is that *positive economics* "concerns the forces that govern economic activity" (i.e. the dynamics of the invisible hand (Landreth and Colander, p. 10.)), whereas *normative economics* involves value judgments and asks what the world ought to be like.

Consider, for example, the standard post-World War II textbook by Samuelson and Nordhaus, *Economics*. The 19th edition of this book, from 2009, draws the following distinction:

> "When considering economic issues, we must carefully distinguish questions of fact from questions of fairness. **Positive economics** describes the *facts of an economy*, while **normative economics** involves value judgments." [emphasis added] (Samuelson and Nordhaus, p. 6)

Another standard text for economics students, Mankiw's 2017 *Principles of Economics*, also explains that we need to distinguish between positive and normative analysis:

> "**Positive statements** are descriptive. They make a claim about how the world *is*... **Normative statements** are prescriptive. They make a claim about how the world *ought to be*.
>
> A key difference between positive and normative statements is how we judge their validity. We can, in principle, confirm or refute positive statements by examining evidence…By contrast, evaluating normative statements involves values as well as facts." (Mankiw, p. 28)

The distinction can also be found in a 2015 textbook co-written by influential heterodox economist Paul Krugman:

> "Analysis that tries to answer questions about the way the world works, which have *definite right and wrong answers*, is known as **positive economics.** In contrast, analysis that involves saying how the world *should* work is known as **normative economics.** To put it another way, *positive economics is about description*; normative economics is about prescription. Positive economics occupies most of the time and effort of the economics profession. And models play a crucial role in almost all positive economics. As we mentioned earlier, the U.S. government uses a computer model to assess proposed changes in national tax policy, and many state governments have similar models to assess the effects of their own tax policy." [emphasis added] (Krugman and Wells, p. 40)

It is also a key component of "the most influential work on economic methodology of this century" (Hausman, p. 145), 'The Methodology of Positive Economics', written by Milton Friedman in 1953:

> "Positive economics is in principle independent of any particular ethical position or normative judgments. As Keynes says, it deals with "what is," not with "what ought to be." Its task is to provide a system of generalizations that can be used to make correct predictions about the consequences of any change in circumstances. Its performance is to be judged by the precision, scope, and conformity with experience of the predictions it yields [i.e. shocks to the ideal, homeostatic system]. In short, positive economics is, or can be, an "objective" science, in precisely the same sense as any of the physical sciences." (Friedman, 2008, p. 146)

There is, given the fact that *economic theories and mathematics have been deduced from idealised assumptions about a liberalised political economy*, no scientific foundation for the standard economic claim that positive economics is a neutral and objective approach to studying market exchange.

The distinction fails, moreover, to recognise that *the predictions and models of economic science are only valid within the confines of a single kind of political economy* which is liberalised and compels individuals to compete to maximise their wealth/utility. This was already recognised by John Stuart Mill in 1848, who wrote that:

> "… *only through the principle of competition has political economy any pretension to the character of a science*. So far as rents, profits, wages, prices, are determined by competition, laws may be assigned for them. *Assume competition to be their exclusive regulator, and principles of broad generality and scientific precision may be laid down, according to which they will be regulated*" [emphasis added] (Mill, p. 89).

It is only within a free market economy, where individuals are free to compete and exchange for the pursuit of their self-interest, that key mathematical models in economics are able to generate (ostensibly) meaningful predictions. These models were never designed for, or with reference to, any other kind of political economic system.

It is worrying, in this regard, that GE theory and Arrow-Debreu models, which are central to economic modelling, have assumed away the exchange process itself in favour of a magical presumption that competition 'simply' occurs in an ideal fashion under liberal conditions. The predictive validity of these models is inconsequential, no matter what Friedman says, because they are *methodologically predetermined* to promote Smith's liberal utopia, and because they are *not equipped to assess whether the ideal results of this utopia are actually obtained*. They provide little more than a self-fulfilling prophecy, expressed in mathematical terms.

2.2.4. Political bias in economics

Economics, for all its exhortation of competition, has replaced the exchange process in many of its central models with an assumption that people are submissive automatons, and that perfectly competitive outcomes arise under liberalised conditions. It *does not explain exchange dynamics*, but promotes a single kind of political economy which is presumed to generate perfect results.

Economics is therefore not a science which impartially evaluates market arrangements in accordance with neutral standards of efficiency. Nor does it simply examine how scarce resources can be most efficiently allocated. It is, instead, a biased scientific practice which has assumed that a liberal political economy is the best type of political economy, and subsequently judges the extent to which a given market or regulatory situation matches the idealised economic description of these political premises. It is the scientific legitimation of these political premises, i.e. the notion that economics is objective, which results in the subordination of human rights to economic concerns.

3. The subordination of human rights to the invisible hand

The idea that free markets are pre-political, and that their effective functioning is a precondition for generating resources to sustain socio-political structures, creates an essential tension between human rights and the economy. This tension emerges because the effective protection of human rights, through social and political institutions, costs money and does not generate wealth; the taxation that this entails is viewed by the market fundamentalist model as an inherent distortion to economic dynamics.

This tension can only be resolved when it is demonstrated, according to the idealised standards of economics, that human rights are good for competitiveness. The issue is, of course, that this is only possible under a narrow set of circumstances, such as when market participants gain a competitive edge for engaging in human rights best practices (as advised by CSR). Conceptually, this solution requires that the separation between the economy and society is maintained, i.e. that human rights 'work with' and do not disturb the dynamics of the invisible hand, and are thus are subordinated to it.

Any other approach to promoting human rights requires either volunteering, or that resources are granted to social and political institutions to protect human rights. The first, for all its good intentions, can enjoy no more than limited effectiveness. And the latter is, following the market fundamentalist model in figure 1, interpreted by economics as a political decision to tax market participants and fund socio-political structures. It is presumed, a priori, that these *political decisions* undermine economic prosperity and create distortions in the *pre-political* market. Other approaches to human rights are, in other words, viewed by economics as contrary to the scientific principles on which our economic and social prosperity depends.

We find, in this regard, that *conflicts between human rights and free markets are conceptualised by economic science as a tension between an objective science (i.e. positive economics) and a normative position*. To elaborate using an analogy: it makes as much sense to argue that economic arrangements under globalisation are unfair, as it does to argue that the dimensions of an engineer's 3mm screw are undemocratic. There will never be a level playing field between business and human rights so long as the liberal economy is legitimised as a perfect and objective scientific fact, and human rights standards are modelled as a merely subjective and political choice.

Human rights can never be more than an accessory to free markets because economics can only conceive of them as a benefit, or a threat, to the optimising dynamics of the invisible hand; in the first case, they can be scientifically and 'objectively' promoted as beneficial to competition, and in the second, they are decried as an unwise, political deviation from economic principles. The result, in either case, is that economic science is methodologically predetermined to subordinate human rights to the idealised dynamics of the invisible hand. It is, in consequence, *not possible to embed a free market economy within a human rights framework because economic science has already framed almost all of these rights as a socio-political deviation from objective market principles.*

4. UNGPs 10+: The way forward

There is, fortunately, no scientific reason to adhere to the market fundamentalism of economic science because *markets are not pre-political, and there is no conceptual separation between the economy and society*. Markets and exchange have always been co-determined by legal, political, social, environmental, and cultural interactions (Polanyi, 2001). The invisible hand does not exist in a vacuum, and prices cannot exist without the currencies created by our governments (Wray, 2019), or the meaning that our culture ascribes to particular goods and services. Nor is it possible to trade information, land, labour, or currency without the property rights and legal arrangements of our social and political institutions (Pistor, 2019).

Anthropologists have clearly demonstrated that a state of nature, based on individual competition for material gain, has never existed, and that there are no pre-state societies which use free market exchange as an organising principle (Graeber, 2014, p. 22). We were, already from the time of *homo erectus* at least 400'000 years ago, using tools and living in groups (Mania and Mania, 2005). Individual and collective structures have always co-existed, and markets have never been, and cannot be, the foundation of human civilisation.

We are, therefore, *free to deviate from the principles of economic science to promote human rights*. Such a deviation will be necessary to ensure that market exchange is socially embedded and that there is an adequate protection for human rights over the next decade. It is *only by confronting the market* *fundamentalist reasoning which underpins the framework for international trade that we can close the governance gaps* that create space for unaccountable economic exploitation and abuse.

The UNGPs are lauded for their unanimous endorsement and status as a globally recognised and authoritative framework for human rights. As desirable and expedient as this harmony may be, it must be admitted that it was purchased at the price of peaceful coexistence with the liberalised framework for global trade; history has shown that nothing less than tacit acceptance of free market principles will bring business and powerful governments on board.

This submission shows, however, that any attempt to work within the business- and government-advocated logic of free markets is compelled, by virtue of the theories and methods of economic science, to subordinate the effective protection of human rights to the idealised dynamics of the invisible hand. *It will never be possible, if we defer to economic theories, to achieve more than a partial, suboptimal level of human rights protection* (Van Aartsen, 2020, Chapter 6).

There is, unfortunately, little reason to suspect that the Working Group's current roadmap for the next decade will result in a much greater level of human rights protection than has currently been achieved. It may even be counter-productive to the extent that it legitimises, and draws attention away from, the liberalised framework for global trade and relies on market-based approaches to promote human rights protection.

An adequate level of international protection for human rights can only be achieved when the UNGPs and the Working Group on Business and Human Rights *speak out and adopt an active stance against the political bias that is embedded in the methods and theories of economic science*. My recommendation is to search for, and promote, alternative scientific approaches to studying markets and exchange which make it possible to ensure that adequate human rights protection is a precondition for, and not an appendage to, international trade.

I hope that this submission helps the Working Group, and that it provides useful insights for improving the UNGPs and human rights protections over the coming decades. I would have preferred to submit something less theoretical and to have provided more specific reform ideas, but I felt that it was more important to draw your attention to deep-seated issues with economic science which are presently undermining human rights and sustainable development.

Please do not hesitate to contact me if you are interested in further elaboration, or would like to discuss more concrete recommendations for improving the UNGPs.

Best wishes and lots of success,

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I provide this submission in a private capacity, as a reflection of my personal research and views. It does not represent the views of my research institute and employer.

I consent to publication of this submission by the Working Group for the UNGPs 10+ project.

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