

Article

Swedish (Tax) Constitutionalism. Through the Lens of Equality and Fairness



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Received 12 January 2022, Accepted 20 March 2022

KEYWORDS:

political constitution;
tax system; tax
principles; taxpayer
rights; tax justice

ABSTRACT:

Like any other country, Sweden has constitutional rules that affect the tax system. According to the authors, said constitutional norms focus on a certain tradition that must be evaluated on the basis of a new understanding of the function of tax constitutional law, and the formal and legal aspects of the constitution must be studied in the context of the political and economic objectives of these regulations. For the authors, this approach is particularly important since modern tax systems seem to increase the structural problems of fair and sustainable taxation. Likewise, they emphasize the relevance of human rights to frame tax policies and how they can serve as a bridge between tax policies and issues related to social and economic justice.

PALABRAS CLAVES:

constitución política;
sistema tributario;
principios tributarios;
derechos de los
contribuyentes; justicia
tributaria.

RESUMEN:

Como cualquier otro país, Suecia posee unas normas constitucionales que inciden en el sistema tributario. De acuerdo a los autores, dichas normas constitucionales se enfocan en una cierta tradición que debe ser evaluada sobre la base de una nueva comprensión de la función del derecho constitucional tributario, y deben estudiarse los aspectos formal y legal de la constitución en el contexto de los objetivos políticos y económicos de estas regulaciones. Para las autoras, este enfoque es particularmente importante ya que los sistemas tributarios modernos parecen aumentar los problemas estructurales de una tributación justa y sostenible. Asimismo, enfatizan la relevancia de los derechos humanos para enmarcar las políticas tributarias y cómo pueden servir de puente entre las políticas tributarias y las cuestiones relativas a la justicia social y económica.

MOTS CLES :

constitution politique ;
régime fiscal; principes
fiscaux; droits des
contribuables; justice
fiscale.

RESUME :

Comme tout autre pays, la Suède a des règles constitutionnelles qui affectent le système fiscal. Selon les auteurs, lesdites normes constitutionnelles se concentrent sur une certaine tradition qui doit être évaluée sur la base d'une nouvelle compréhension de la fonction du droit constitutionnel fiscal, et les aspects formels et juridiques de la constitution doivent être étudiés dans le contexte du contexte politique. et les objectifs économiques de ces réglementations. Pour les auteurs, cette approche est d'autant plus importante que les systèmes fiscaux modernes semblent accroître les problèmes structurels d'une fiscalité juste et durable. De même, ils soulignent la pertinence des droits de l'homme pour encadrer les politiques fiscales et comment ils peuvent servir de pont entre les politiques fiscales et les questions liées à la justice sociale et économique..

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1 INTRODUCTION

1 INTRODUCTION

Since many decades, the dominant international tax reform pattern has neither been fair nor sustainable. Institutionalized on a global scale, a certain form of tax law reform design has emerged, following a pattern in which efficiency-oriented tax policies are introduced as a one-path model, promoting the idea of “taxing for economic growth” (Gunnarsson, 2021; Schmelzer, 2016). This type of international influence over national tax jurisdictions collides with the strongly rooted idea, within tax law scholarship, of the formal (de jure) tax sovereignty of nation states.(Emblad, 2021)

In this paper, we approach this development with a critical eye, questioning this often-constricted view on how to carry out the compulsory transfer of resources among members of society. When doing so we rely on common tax principles which are firmly entrenched in most constitutions. This is done through the stance that tax systems and tax laws need to, directly or indirectly, connect to constitutional law that regulates the structure and functions of government institutions and their relationship with the citizens. And when doing so, consider more broader goals linked to the human rights dimension, such as equality and fairness. Our ambition is to capture the ongoing change to tax policy discourses that are of importance when understanding the role and impact of constitutionalism in relation to the fiscal role of the state. The empirical basis for this study is the Swedish constitution.¹

This study is premised on those existing constitutional concepts related to taxation and tax policies should not be taken for granted. Inspired by Kaarlo Tuori, we base our approach on the view that the constitutional function of tax laws is a relational concept. As Tuori, we want to study the formal, legal side of the constitution in the context of the political and economic objects of these regulations (Tuori, 2015). This approach is particularly important as modern tax systems seems to increase structural problems on fair and sustainable taxation.² We also agree with Philip Alston and Nikki Riesch that important task is to show how human rights ought to frame tax policies and how it can make a bridge between tax policies and issues regarding social and economic justice. Revenue, redistribution, regulation, and representation all affect the realization of human rights, and serve well as a starting point for incorporating tax issues into the study of human rights and poverty (Alston & Reisch, 2019; Avi-Yonah, 2006).

In response to their view, we will discuss directions for how to advance tax reforms to mobilize resources and redistributive mechanisms that are regarded as a human right approach. The relational concept approach allows us to discuss the structural taxation problems that are contra-productive to the resource mobilization and redistribution that are necessary for the realization of human rights.

2 A RIGHT-BASED APPROACH TO TAX CONSTITUTIONALISM AS A WAY OF INTEGRATING THE HUMAN RIGHTS DIMENSION

There exist several theories on the fundamental functions of tax laws. Taxes are relevant when considering the funding of a state. Joseph Schumpeter claimed revenue as fundamental to the establishment of a state, but once established as law and an ordinary instrumental part of the legal system, taxes become subordinated to constitutional restrictions (Schumpeter, Joseph, A, 1991). This is a central part of the discussions of this paper. To what extent are we

¹ For support of the role of the constitution and taxes when considering state-building see for instance: de Cogan, Dominic. 2020. *Tax Law, State-building and the Constitution*. Oxford: Hart Publishing.

² The European Union’s Horizon 2020 research and innovation programme 2014-2020. “Revisioning the ‘Fiscal EU’: Fair and Sustainable, and Coordinated Tax and Social Policies, given the acronym FairTax, (649439).

capable to fulfill human rights goals, for instance to enact equal and fair taxes, when considering these constitutional restrictions?

Inspired by feminist scholarship on how to pursue human rights ambitions when examining the outcome of tax laws and policies from a gender perspective, we employ a right-based approach. This is an approach that examines the impact of taxation beyond the taken-for-granted neutrality of tax laws and the economic theory claiming that different tax payment patterns result from preferences based on free choices. Instead, such a gender perspective on taxation shows that formally gender-neutral systems and the allocative impact of taxation is closely linked to socioeconomic realities of inequalities between men and women. Learning from feminist tax scholars, a way of criticizing the discriminatory practices of national tax laws is to apply a critical approach, based on right-based tax policies. It opens up for connecting the reality of inequality outcomes of tax laws to the formal neutrality of tax policies, tax law and economic theories (Gunnarsson et al., 2017; Hodgson & Sadiq, 2017)

A condensed description of this approach is that equality under the law is not always sufficient to create equity or fair outcomes beyond the law. Jane Stotsky was one of the first to make a distinction between explicit and implicit forms of gender bias in tax provisions. The distinction corresponds basically to the legal concept direct and indirect discrimination, stipulated in national and international law (Stotsky, 1996). Indirect discrimination is a legal concept about equality in substance. For substantial and transformative gender equality the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), implemented and ratified by many jurisdictions, has been an important driver. It is generally understood as a “bill of rights” for women, and as explained by UN Women³, the concept of substantive equality considers the applications of laws and subsequent results and outcome of these laws (Hodgson & Sadiq, 2017; UN Women, 2015). Therefore, a consolidated concept of fair and sustainable tax bases is a key issue in a human rights-driven transformation of society to end poverty.

3 SWEDISH CONSTITUTIONALISM

In general, the constitutional tradition in Sweden is weak. It is only in the last decades that an increased interest in constitutional issues has become visible among scholars and the media (Nergelius, 2015).

Swedish tax law is a part of public law, governed by the 1974 Instrument of Government (IG)⁴, which is the most important one of the constitutional acts. The act contains the central provisions of the administration of justice and general administration, primarily aimed at protecting the independence of judicial and administrative bodies. According to these provisions, the public power emanates from the law.⁵ No public authority, including the Riksdag (the Swedish Parliament), may determine how a court of law is to adjudicate an individual case or otherwise apply a rule of law in a particular case. Nor may any public authority decide how judicial responsibilities are to be distributed amongst the judges of a court of law. Similarly, no public authority may determine how an administrative authority is to decide in a particular case involving the exercise of public authority vis-à-vis a private subject or a local authority, or the application of law.

The Swedish way of separating power constitutes the legality principle which is similar to the widely accepted and in many constitutions worldwide enshrined principle of “nullum

³ United Nations entity dedicated to gender equality and the empowerment of women.

⁴ Sweden has not just one constitutional law but four pieces of constitutional legislation. The other three are; 1810 Act of Succession, the 1949 Freedom of the Press Act, and the 1991 Fundamental Law on Freedom of Expression.

⁵ Chapter 1 para 1 Instrument of Government.

tributum sine lege". What should be regarded as legal norms sanctioned by the constitution is defined in Chapter 8 of the Instrument of Government. The chapter also provides a hierarchy of norms. Laws are decided by Parliament, regulations by the Government. Additive to the hierarchy of norms is the generality principle. Law should be general (universal). The motive to the Instrument of Government, argue that a state under the rule of law is characterized by the generality principle, including all citizens, of the legal rule.⁶

The principle of legality is justified by the parliaments' ultimate sovereignty of legislative power. From the sovereignty follows that the executive branches of government should merely clarify tax laws enacted by the parliament and only when the parliament recognizes the need to grant it the authority to do so.⁷ The legality principle finds support in constitutional praxis and has since long been applied in Swedish tax law.⁸ Closely associated with the legality principle is the foreseeability demand, which means that taxpayers should be allowed to predict the consequences of their actions with the help of law and court judgements.(Dourado, 2010b, pp. 969–970)

In addition to the principle of legality the demand for equal treatment is regarded as an important part of the rule of law. Chapter 8 of the Instrument of Government stipulates that Swedish courts and administrative authorities shall respect everyone's equality before the law and exercise objectivity and impartiality. It should be noted that the principle of equality before the law can in certain cases be circumvented by the Parliament (Riksdag). For instance, the implementation of discrimination laws to improve or protect the situation for vulnerable groups.

A number of important basic human rights are covered both by the Instrument of Government and by the European Convention of Human Rights (ECHR). ECHR was signed in 1952, but not implemented in Swedish domestic law until 1995 (SFS 1994:1219). Under chapter 2, section 19 of the IG, law or other provisions cannot be prescribed in violation of the ECHR. The ECHR shall apply in the same way as Swedish law. The proportionality principle in article 5.4 of the Treaty on European Union (TEU) entails that the legislation and measures used by the EU institutions may not be more burdensome than what is considered necessary for achieving the desired goal. This EU constitutional principle has its counterpart in Swedish Tax Procedure Act.⁹ In chapter 2 section 5 of the Act the Tax Agency is always obligated to choose the measure of least infringement to achieve the intended result.

The convention has had a quite significant influence on Swedish tax laws, that particularly has been manifested in the administrative sanction constituted as a tax surcharge. Chapter 6 of the convention convert the penalty to fall under criminal law, which applies more strict criteria on the legal process.¹⁰

4 SWEDISH (TAX) CONSTITUTIONALISM

The concept tax constitutionalism defines the separation of powers in Swedish tax law. The concept defines who decides on tax regulations, the demarcations of the content of tax laws, the relations between tax regulations and the way they should be interpreted and applied.¹¹ In line with the principle of legality, taxes and tax payer obligations must be based in law and should be regulated by statutes (Dourado, 2010a; Popović & Kostić, 2018) . The principle is closely related to what has been described as a slogan for the American Revolution "No

⁶ Prop. 1973:90, s. 203.

⁷ Pålsson, Robert. 2012. *Konstitutionell skatterätt*. Uppsala: Iustus Förlag.

⁸ Hultqvist, Anders. 1995. *Legalitetsprincipen vid inkomstbeskattningen*. Stockholm: Juristförlaget.

⁹ Skatteförfarandelagen 2011:1244 (SFL).

¹⁰ Pålsson. 2018.

¹¹ Pålsson, 2012, s. 15.

taxation without representation”.¹² to call it a founding principle for the constitutional setting of the rule state-building, as it points out the separation of powers and the democratic protection of the taxpayer versus the state. A couple of specific regulations concerning taxation are stipulated in the IG. The first concerns a limitation of the Parliaments right to authorize the Government to issue tax regulations, except for custom on import of goods.¹³ The second is a prohibition on the issuing of retroactive tax regulations.¹⁴ This retroactivity-prohibition has been highly debated, which we will discuss in relation to the doctrine of tax principles and policies.

The Tax Agency must comply with the principles of equal treatment and objectivity, both in the application of law in individual cases and regarding general statements. The demand for equal treatment and objectivity is assumed to be constitutionally subordinated to the demand of legality.¹⁵ A consequence of the right to access official documents, some personal information about taxpayers, that in many other jurisdictions normally are secrecy information, are accessible for the public in Sweden.

Scholars have long debated the twilight zone between legal and tax policy normativity. In the dogmatic position, policy normativity has long been regarded as outside the scope of law. To incorporate the policy background, tax principles have served as important instruments in the drafting of tax law and have played a central role in the long history of a broad political representation in Government committees, which have carried out the most important part of the preparatory work for a proposed law reform. Preparatory work is published and well elaborated and recognized in doctrine as a source of interpretation for legal practice. Courts and public administration frequently use preparatory works as sources for interpretation.¹⁶ Even though domestic Swedish tax doctrines are challenged by the influences of globalization and supranational treaties; the self-image and the history of tax law drafting should be understood in the light of the influence of preparatory work in Swedish legal culture

In the Swedish doctrine of tax law, four legal principles have become central and have, as a result, been given a particularly dominant influence in the design of Swedish tax law:

1. the ability to pay
2. the principle of legality
3. tax neutrality
4. tax uniformity

The ability to pay principle has historically had the longest and strongest position. It has two interpretations. One is an equality-oriented interpretation, implying horizontal equality of treatment. The other is an interpretation oriented towards the welfare state, using the concept of ability to pay for the purpose of levelling incomes and net wealth. The basic idea is that the measurement of the individual taxpaying capacity should be equal to the amount or degree of private needs satisfaction that the taxpaying citizen can achieve. The ability to pay is the funding principle of the modern Swedish income tax system in the function of defining the sustainability of income sources and the income tax base. In tax theory, it is generally accepted that income is practically the best indicator of what represents a person’s opportunities for private needs satisfaction. The best method of assessing the real satisfaction of needs, however, is to measure

¹² The slogan first appeared some years before the beginning of the American Revolutionary War (1775–1783) and was used in regard to the introduction of the 1765 Stamp Act (repealed by the British Parliament after much protest in the American Colonies, in 1766).

¹³ Chapter 8, §2 Instrument of Government

¹⁴ Chapter 2, §10, para. 2 Instrument of Government

¹⁵ Höglund. 2010, 970.

¹⁶ Persson Österman, Roger.1997. *Kontinuitetsprincipen i den svenska inkomstbeskattningen*. Juristförlaget, 65; Gunnarsson 1999; Lindencrona, Gustaf. 2007. 164–167.

the individual's consumption of monetary and other resources. In a Swedish context, the individual is the preferred unit for measuring observed income representing the capacity to pay. The ability to pay principle has also influenced the tax base for the wealth tax, given the interpretation that accumulation of wealth contains an untaxed resource (Gunnarsson, 1995, pp. 115-124,215). This principle has been important for the compliance of principle of legality as it advocates for both for equity/fairness and equality in taxation.

Swedish tax law relies on the principle "no taxation without legislation" (nullum tributum sine lege), an outcome of *the principle of legality*. The principle of legality therefore states, expressly through the constitution, that the collection of taxes must be based on a legal act, i.e. every form of taxation must have legal support. The legislative power in the area must therefore remain with the Parliament and cannot be delegated to any other body other than the Parliament, such as the tax authority or the government. Furthermore, Courts and other official authorities are required to base their decisions on legal rules in accordance with the principle. Clarification through case law is generally not recommended yet not expressively forbidden. A legal tradition which is in line with Sweden belonging to the civil law tradition and not the common law tradition. The principle arguably comprises four aspects: (1) taxation based upon legislation (*lex scripta*), (2) a prohibition against interpretation or ruling by analogy, (3) a prohibition against retroactivity (*lex praevia*) and (4) a prohibition against uncertainty, or as it can also be viewed – a certainty criterion. The principle is considered a cornerstone for taxpayer protection. However, it does not have the potential to uphold or enforce social justice unlike some other tax principles such as the ability to pay principle.¹⁷

A *principle of tax neutrality*, both formal and substantial, has shaped the Swedish tax system. Formal neutrality should not be mixed up with the formal, constitutional principle of equality should be treated equally, as it has not the same theoretical origin. Neutrality is aiming for a non-intervening function of taxes in the economy. In Sweden, tax neutrality was crucial when introducing the value-added tax in the end of the 1960s. The principle assisted in upholding competition neutrality. Uniform tax rates and broad tax bases on goods and services were regarded as the optimal VAT design when attempting to avoid market distortions. Redistributive neutrality and revenues are two other directions of the principle, based on optimal tax theory. Economic interventions, such as tax regulations with redistributive and social justice motives, are regarded to create excess burdens or welfare losses, which can be restricting for economic growth. The idea of a neutral taxation supports taxes that are in the risk of distorting the economic efficiency of market processes to a minimum, implying a trade-off between efficiency and equity. Taxes that deviate from assumption are defined as tax expenditures. By making a distinction between fiscal and non-fiscal taxation, a normative standard for a good tax system is constituted. The neoliberal aspect of the ideology of fiscal taxation, preserving distributional neutrality and status quo, is that it does not provide any incentive for social justice. Hereby, a line between fiscal purposes and social justice has been drawn, meaning that tax regulations with redistributive intentions are seen as political interventions in the market economy.¹⁸

When the Swedish income tax system was comprehensively restructured in 1991, the *uniformity principle* replaced the vertical-oriented part of the ability-to-pay principle and also complemented the neutrality principle. Uniform taxation refers to a concept that equal income

¹⁷ For a more extensive elaboration of the principle see Lind, Yvette. 2017. *Crossing a Border - a Comparative Tax Law Study on Consequences of Cross-Border Work in the Öresund- and the Meuse-Rhine Regions*. Jure.

¹⁸ Gunnarsson, Åsa. 2009. *The Use of Taxation for Non-fiscal Purposes*. In Bolander, Jane (ed.). *The non-fiscal purposes of taxation*. Yearbook for Nordic tax research, Copenhagen: DJÖF, 2009; Gunnarsson, Åsa. 2013. *Tax Law Directions for Erasing the Public/Private Divide in Everyday-Life Economy*. In Gunnarsson, Åsa (ed.). *Tracing the women-friendly welfare state: gendered politics of everyday life in Sweden*. Göteborg: Makadam Förlag.

should be taxed equally. The principle has also been applied on the VAT, with the definition that various types of consumption should be taxed at the same tax rate. The principle is also used both as a benchmark in defining tax expenditures in the Government budget, and in auditing reports performed by the Swedish National Audit Office. The ambition, both in the budget work and in the auditing control, has been to keep the deviations from the principle of uniform taxation to a minimum. However, this ambition has failed. The level of tax expenditures, defined as deviations from the uniformity principle, have increased significantly and eroded the tax bases for personal income taxes, particularly on capital, corporate taxation and the VAT.¹⁹

5 THE DOCTRINE OF TAX PRINCIPLES AS BOTH AN INHIBITOR AND A VEHICLE FOR EQUALITY AND FAIRNESS

The theoretical base for tax law is mainly expressed by hierarchies of principles with various functions and origins. A traditional way of defining these principles is to subordinate the analysis under legal and economic tax doctrines that separate tax law from underlying values and a political-economic discourses. The theoretical argument is that these principles should have the function of upholding an internal normative coherence in order to protect the legality and autonomy of tax law. The internal logic is to keep the normative coherence constrained.²⁰ Still, even though the internal logic is to make a firm demarcation between what is a doctrine of principles and politics, tax policies have to be taken seriously.

An equitable distribution of the tax burden is a fundamental value in the justification of the tax law. That's the reason why fundamental principles of justice operate as guiding principles in the tax system. The position and importance of this types of legal principles raise the question of what the properties of a legal system are. On a global scale, much contemporary tax law research still defines its theoretical base against the first set of tax principles formulated by Adam Smith in the 18th century, in which he sets out guidelines on what should constitute a good tax system in a liberal political economy (Boucoyannis, 2013).²¹ Even though these canons were written in the context of a society totally different from our own, they are still influential because they present a normative statement about the justification of the tax burden in the relation between the state and its citizens, of which the first canon is the tax equity principle. Nevertheless, this position gives argument for the existence of an underlying recognition in tax law research, that principles on tax justice are vitally important for democracy, government and political discourse.

After Smith, liberalism and utilitarianism have produced tax theories based on the idea of a voluntary exchange and an individualistic view of the relation to the state. A fair distribution of a tax is regarded as the equitable exchange between the tax paid by the individual taxpayer and the public performance of the state. Two Swedish scholars, Knut Wicksell and Lars Lindahl, became widely recognized for their view that a decisive factor in the willingness of the individual taxpayer to pay, when weighing private against public consumption, is that the marginal tax for each individual citizen must not exceed his or her marginal benefit from government expenditure. The equitable exchange theory was given concrete form in the so-called Lindahl solution, which defines the willingness to pay for public services and goods in a way similar to market pricing (Lindahl, 1919; Musgrave & Peacock, 1967; Wicksell, Knut, 1896).

A tax fairness principle, called the benefit principle, was developed on the basis of this theoretical thinking, but it never played a directly significant role in the development of the modern income tax system in the 20th century. Instead, the ability to pay principle, which

¹⁹ Prop. 2020/21:1, Budgetpropositionen för 2021; Riksdagen. 2010. Enhetlig beskattning? RiR 2010:11.

²⁰ Gunnarsson, Åsa. 2019.

²¹ A Smith and J R McCulloch, *An Inquiry into the Nature and Causes of the Wealth of Nations* (A. and C. Black and W. Tait, 1838).

originally emerged from the philosophical idea of the state as a social organism built on a mutual dependency between state and individual, was afforded a position of strong general validity. It is regarded as the best expression of the ethical idea of distributive equity in tax law, particularly in the definition of income. The so-called Haig-Simons theoretical concept of income as the net accretion of a spending-unit power to consume over some period of time without distinctions as to source or use, is one theoretical element in the substance of the ability to pay principle. (Gunnarsson, 1995) Later, the ability to pay principle was used to express an egalitarian fiscal tax policy, which was in line with the aim of levelling incomes and net wealth, during the first stages of welfare state reforms. A weak spot, however, is that the egalitarian fiscal tax policy lacks a theory about social justice in the context of rights and obligations in a welfare state. Instead, it has been designed and legitimized under solidarity principles, to fulfil welfare state ideals concerning social justice, which is expressed in vertical equity (Gunnarsson, 2013). This is probably the reason why tax equity has been transformed into a concept under the paradigm “taxing for economic growth – there is no other way”, and given the meaning of horizontal equity.

Politics of the welfare state draws on social justice to legitimize state intervention for the common good within the welfare state. The structures of revenue and social transfers are obviously intertwined in welfare state policies. However, in welfare state research, in which law scholarship has had very little, if any, influence, not much attention has been paid to the financing of welfare states as a whole (Sainsbury, 1999). In fiscal research on the other hand, the expenditure side of the public budget regarding social transfers has not been a concern. Consequently, the social dimension of taxation is a quite underdeveloped field of research. By detaching tax law from the politics of welfare state law and from a social dimension, tax law research seems to be captured in denial regarding political realities. One central part of fiscal systems has always been potentially decisive for redistributive policies, and tax reforms have very often been used as vehicles to promote social and equality policies.

This knowledge gap reveals a need for a context regarding tax principles for a fair distribution of the tax burden. One point of departure in arguing for a relation between social rights and the underlying fiscal structure, is recognizing that the income side and the expenditure side of public budgets are blueprints of a government’s political priorities. The analysis adheres to the idea that fiscal needs constitute fiscal citizenships characterized by styles of national governance, levels of tax compliance and differing concepts of the obligations, which in a way constitute national states and identities (Levi, 1989). Social contract theory has a long tradition in moral and political philosophy. Liberal philosophers such as John Rawls have recognized this approach by placing tax justice in a quasi-constitutional setting of a social contract theory (Rawls, 1990).

The manifestation of distributive principles through law is based on the dominant political conception of social justice. From a theoretical standpoint, these principles are the main source of social constructions in welfare-state law. Legal concepts are reflections of these assumptions, but the underlying values and modes of life shaping the assumptions are removed in the dogmatic position. This illusion of neutrality in tax laws makes it difficult to see the links between the levels of equality achieved through welfare-state arrangements and the discriminatory boundaries of normality in the politics of social justice. Contextualizing tax fairness, tax equity, and tax justice principles is not a positivist approach, instead the approach recognizes the social power of tax law, with the ambition of questioning hegemonic tax policy discourses and producing a more inclusive and useful set of tax principles.

One way of contesting traditional and dogmatic perspectives on tax policies is provided by the political interpretive approach applied as a methodological concept. This approach is partly based on an interpretation of Ronald Dworkin made by the tax scholar Edward McCaffrey. McCaffrey wants to open for broader theoretical considerations of the normative justification of tax laws than that normally provided by a judge-centric distinction between law and politics.

His frame consists of a mixture of liberal, social contract theory about what would form a shared idea of what constitutes a good tax system; jurisprudence views on the politics and principles of tax law; and finally, democratic ideals of equality (McCaffery, 1996) .

From a Swedish perspective a social contract model needs to be more rooted in the Swedish context of a comprehensive welfare state. It also gives a socio-legal recognition of how tax systems are shaped in competition or co-operation between political actors and organized interests, with historical and comparative ambitions, to study institutional contexts, deep layers of legal cultures and path-dependent large-scale processes that have accompanied changes in fiscal regimes (Gunnarsson, 2013) . Using this perspective, makes it possible to ask tax law questions that recognize the power dimensions of tax politics, and the potential sources of inequalities and injustice in the design of tax law. One such interesting question could be why the tax policy lobby, tax scholars and ministries of finance, worldwide adopted a” there is no other way” tax policy that promoted economic growth by creating an efficient tax system that had no redistributive elements or social dimensions.

In order to discuss tax fairness and tax equity principles it is necessary to have a platform for an impartial perspective. Impartiality is an essential feature in the quasi-constitutional setting of thinking in contracts with the aim to elaborate on the nature of the relationship between the state and its citizen. For me the social contract model serves to target the historical phases of large-scale, institutional processes that explain both welfare state regulations governing how resources should be distributed and agency between capital and labour. Social justice is a basic political issue for every welfare state, incorporating democratic issues and the interest of social stability in welfare capitalism. Instead of making tax law into a technical, de-humanized issue, detached from moral or welfare state responsibilities, we adhere to those few scholars who highlight the recognition of citizens’ social rights and the protection against social risks ought to correlate with an obligatory common responsibility to generate the public funding needed to pay for them. In that way, the obligation of the citizens is based on the legitimate demand that they support certain social needs. From this perspective social justice, on an aggregated collective level, is related to a fair and just connection between social burdens and benefits (Head, John G., 1993; Lacey, 1998; Sjöberg, Ola, 2001; Young, 2000).

In conclusion, the interpretation of tax laws should embrace the democratically determined reasons to tax, which is what most tax systems have in common (Hilling & Ostas, 2017) .

A right-based approach to taxation pinpoints a basic ethical precondition for mobilizing revenue. In theory, the recognition of citizens’ social rights and the protection against social risks ought to correlate with the obligatory common responsibility to generate the public funding needed to pay for them. In that way, the obligation of the citizen is based on the legitimate demand that they support certain social needs. By detaching tax law from the politics of the well-being of the citizens and from a social dimension, present tax law research seems to be captured in denial regarding political realities. One central part of fiscal systems has always been potentially decisive for redistributive policies, and tax reforms have very often been used as vehicles to promote social and equality policies. Tax fairness is also an important precondition for fiscal sustainability.

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