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Fair and Sustainable Taxation—From a European Horizon

Åsa Gunnarsson
Umeå University

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Fair and Sustainable Taxation—From a European Horizon

by

*Åsa Gunnarsson**

Abstract

Sustainability has become the key principle for our future, and, in tax policy, sustainability has long been equal to the dominant concept of "taxing for economic growth." However, the concept lacks an idea on justice, tax justice as well as social justice, which inevitably leads to economic inequality gaps. New literature and empirical studies have contributed to a new awareness on how increasing inequalities can undermine economic growth. Based on the European situation, this Article argues for new perspectives on fair and sustainable taxation. Gender equality is one of these new perspectives. Why is explained in this Article.

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* Professor of Tax Law, Umeå University. Former Coordinator of the Horizon2020 project, FairTax. I thank Assistant Professor Yvette Lind for valuable comments on an earlier draft. Email address: asa.gunnarsson@umu.se.

Introduction

Even though tax policies are often considered to exist for the simple purpose of funding government activities, contemporary tax systems are anything but simple. The context for this Article is related to the initiative from the European Commission to put the spotlight on the EU Member State tax systems in the 2020 strategy to reach smart, sustainable, and inclusive growth, connected to the 2030 Agenda.[1] The ambition was a response to the need of moving beyond the financial crisis of 2007/2008 and the Eurozone debt crisis in 2011/2012, and the aim was to protect a sustainable economic and monetary union in Europe.[2] Societal challenges were addressed under the European Union's Horizon 2020 research and innovation programme.[3] A sub-call addressed the question on how to overcome the crisis. Basically, the Commission was concerned about the consequences that globalization, internationalization, and human and corporate mobility would have on national tax systems regarding fiscal sustainability and tax fairness. Another concern was what role the dominant tax policies may have had on forming national tax systems to widening socio-economic and gender inequalities.[4]

The tax research project *Revisioning the 'Fiscal EU': Fair, Sustainable, and Coordinated Tax and Social Policies*, given the acronym FairTax,[5] was granted funding from the sub-call. FairTax brought

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1. *See, e.g.*, *The 2030 Agenda for Sustainable Development and the SDGs*, Eur. Comm'n, https://ec.europa.eu/environment/sustainable-development/SDGs/index_en.htm (last visited May 25, 2020).

2. *Communication from the Commission: Europe 2020: A Strategy for Smart Sustainable and Inclusive Growth*, COM(2010) 2020 final (Mar. 3, 2010).

3. *Horizon 2020*, Eur. Comm'n, https://ec.europa.eu/programmes/horizon2020/en (last visited May 25, 2020).

4. *Resilient and Sustainable Economic and Monetary Union in Europe*, *Sub-call EURO-1-2014*, Eur. Comm'n (Dec. 10, 2013), https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/euro-1-2014;freeTextSearchKeyword=;typeCodes=1;statusCodes=31094501,31094502,31094503;programCode=H2020;programDivisionCode=null;focusAreaCode=null;crossCuttingPriorityCode=null;callCode=H2020-EURO-2014-2015;sortQuery=submissionStatus;orderBy=asc;onlyTenders=false;topicListKey=callTopicSearchTableState.

5. *See FairTax*, Umeå U., https://www.umu.se/en/fairtax/ (last visited May 28, 2020). The research leading to the results presented in the project

together a multitude of disciplinary approaches to respond to the challenging tasks that tax policies should lead to improved economic stability but also play a critical role in promoting economic, social, and environmental sustainability. The project has contributed to new theoretical insights regarding the need for contextualizing tax law from a broad perspective on taxation and sustainability goals.[6]

The Article confronts the narrow concept of taxing for growth policy, by pointing out some of the project's findings on structural problems regarding tax sustainability and tax fairness that the concept has been feeding. The analysis is situated in the emerging tax policy concerns about inequalities that challenge the dominance of the dominant tax design for economic growth. I will particularly highlight how the persisting socio-economic inequalities between men and women are reproduced in tax law and how tax policies during the last decades have contributed to increase the gender inequality gap. Based on the studies in the FairTax-project, performed on the European situation, the conclusions are that we need to rethink and contextualize principles on fair and sustainable taxes. New perspectives in economic research have produced empirical evidence about the negative effects of tax reforms designed to lower tax rates for top incomes, corporations, and wealth.[7]

I. Growth Promotion as a Tax Sustainability Policy in the EU

Fiscal taxation for economic growth, implemented by tax neutrality as a guiding principle, has since the beginning of the 1980s, become a dominant view on tax sustainability. Fiscal is defined as efficiency in relation to optimal tax theory, which basically is to avoid distorting tax regulations that are regarded to cause unwanted excess burdens in the economy. This has been described as an ideological hegemony, which on a global scale has institutionalized a one-path model for taxing for

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received funding from the European Union's Horizon2020 Research and Innovation programme, 2014–2020. *See FairTax: Grant Agreement ID: 649439*, CORDIS, https://cordis.europa.eu/project/id/649439 (last visited May 28, 2020).

6. *Forum: Fair and Sustainable Taxation in the EU*, 54 Intereconomics 132 (2019).

7. Joseph E. Stiglitz, Found. for Eur. Progressive Studies, Rewriting the Rules of the European Economy 96–97 (2019), https://www.feps-europe.eu/attachments/publications/book_stiglitz-rewriting_rules.pdf.

economic growth in tax law design.[8] The main features of these tax reforms can briefly be summarized as follows:

- Broader labour income tax bases but low progressivity;
- A moderate taxation of capital and corporations;
- Uniform tax rates applied on the consumption of goods and services;
- Introduction of in-work tax subsidies;
- A shift from direct taxes to indirect taxes.[9]

Neutral taxation benchmarks taxes that distort the economic efficiency of market processes as little as possible, implying a trade-off between efficiency and equity. Redistributive taxes and transfers are regarded as negatively affecting incentives to work, save, and earn income. The idea of a trade-off between equity and efficiency is at the core of the optimal income tax problem.[10]

The taxing for growth paradigm has been embedded in how the EU Commission has regarded a growth-friendly tax structure as intertwined with the aspect of fiscal sustainability. The EU Commission has used standards for quality indicators for good and

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8. *See* Cedric Sandford, Successful Tax Reform: Lessons from an Analysis of Tax Reform in Six Countries (1993); Matthias Schmelzer, The Hegemony of Growth: The OECD and the Making of the Economic Growth Paradigm (2016).

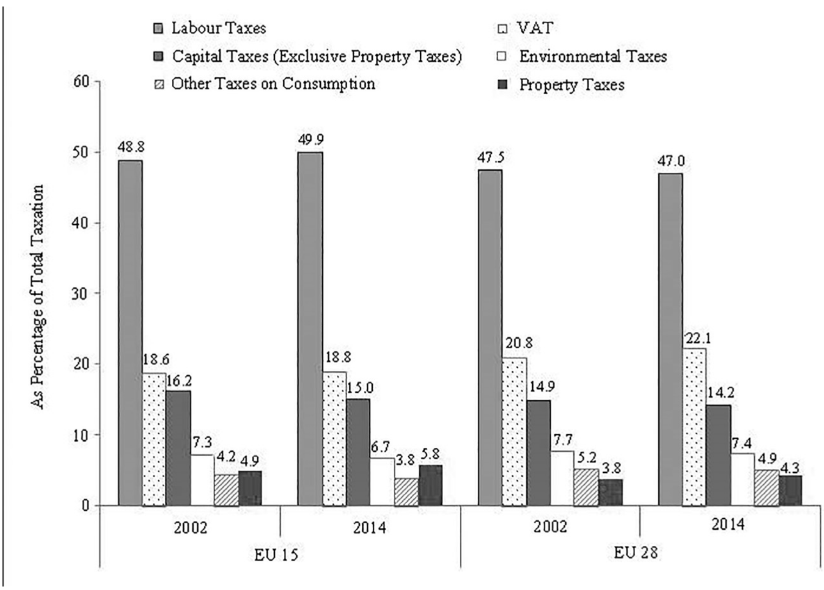
9. Sandford, *supra* note 8; Peter Birch Sørensen, Swedish Tax Policy: Recent Trends and Future Challenges (2010); The Tax System in Industrialized Countries (Ken Messere ed., 1999); Åsa Gunnarsson et al., *Gender Equality and Taxation in the European Union* (2017), https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583138/IPOL_STU(2017)583138_EN.pdf (research paper for European Parliament's Committee on Women's Rights and Gender Equality and commissioned, overseen, and published by the Policy Department for Citizen's Rights and Constitutional Affairs).

10. Peter Diamond & Emmanuel Saez, *The Case for a Progressive Tax: From Basic Research to Policy Recommendations*, J. Econ. Persp., Fall 2011, at 165; J.A. Mirrlees, *An Exploration in the Theory of Optimum Income Taxation*, 38 Rev. Econ. Stud. 175 (1971).

bad performances concerning growth-friendly tax structures. One of the most important quality indicators is to reduce tax distortions to a minimum. EU Member States with income taxes on labour that are above the EU GDP-weighted average have been recommended to reduce the income tax and shift to taxes that are less detrimental to economic growth. Such reforms are believed to improve fiscal sustainability and to be in line with social equity concerns.[11]

The long-term trends on tax structures in the EU show a path specific development in line with the "taxing for growth" and optimal taxation policies promoted by the EU Commission. The figure below presents an image of the tax structures for the average of the EU15 and the EU28 Member States, respectively, for the years 2002 and 2014. It describes the individual shares of the various tax bases in relation to overall tax revenue.

Figure 1: Taxation Structure in the EU, 2002 and 2014[12]



11. Eur. Comm'n, Tax Reforms in EU Member States: Tax Policy Challenges for Economic Growth and Fiscal Sustainability: 2013 Report (2013); Eur. Comm'n, *Tax Reforms in EU Member States 2015. Tax Policy Challenges for Economic Growth and Fiscal Sustainability* (Eur. Econ. Institutional Paper 008, Sept. 2015), https://ec.europa.eu/info/sites/info/files/file_import/ip008_en_2.pdf.

Labour has carried a heavy tax burden. In the figure, labour taxes include both personal income tax and social contributions on labour income. The share of labour taxes amounts to almost half of overall tax revenues. However, it is not related to an increase in a progressive profile of labour taxes. Instead, for several reasons, the general trend is that the overall progressivity has decreased. Seven of the 28 Members States, all of them so-called new Member States and representative of the eastern transformative economies, have replaced progressive income tax systems with flat income rate schedules. Another significant aspect of the fall in progressivity is the drop of top marginal income tax rates for high-income earners since 1995. It is related to both nominal and effective lower tax rates on labour incomes but also to the introduction of dual income tax schemes on capital and labour incomes. Moderate and proportional tax rates on interest, dividends, and capital gains from the labour tax scheme have privileged capital income.

Separating capital income from the comprehensive global income tax concept have also contributed to generally lower effective marginal income tax rates. The decline of the share of taxes on capital income is visualized in the development of a generally lower capital income taxation that is in tandem with lower corporate tax rates. For the EU15 Member States, the nominal corporate income tax rates were reduced from 38% to 25.9% between 1995 and 2016, and the average corporate tax rate fell by 6% between 1998 and 2015. In contrast to income taxes, the share of value added tax has gained in importance, reaching a share of about one-fifth of overall tax revenue. The figure visualizes a longer-term taxation trend in EU Member States, reflecting the focus on optimal taxation and taxing for growth and the policy implications they suggest. Taxes based on labour constitute almost half of overall tax revenues, and the overall progressivity of taxes on labour has fallen. The share of wealth-based taxes remains limited, and increases are mainly driven by real estate taxation. The trend, starting in the beginning of the 1990s, has been to abolish wealth taxes in almost all EU countries. The share of taxes on capital has even declined since

12. Eur. Comm'n, Tax Policies in the European Union: 2016 Survey (2016) [hereinafter Eur. Comm'n, 2016 Survey]; Margit Schratzenstaller et al., *EU Taxes as Genuine Own Resource to Finance the EU Budget—Pros, Cons and Sustainability-Oriented Criteria to Evaluate Potential Tax Candidates* (FairTax Working Paper Series No. 3, 2016), http://umu.diva-portal.org/smash/get/diva2:934128/FULLTEXT01.pdf.

2004, caused by rather moderate flat rates in most Member States. In contrast, the value added tax with its overall regressive impact has gained in importance.[13]

The last update of tax trends in the EU shows no significant change from the dominant path. The level of labour taxation has slightly increased since 2014, but it is not related to any increase of the top personal income tax rates. Revenues from VAT, property taxation, and environmental taxes have remained at almost the same level, with the exception for emissions, which have decreased. The race to the bottom continues regarding corporate taxation. Both statutory and effective corporate taxation decreases and are now below 22% in some Member States.[14]

II. Tax Sustainability Gaps

The tax policy paradigm, based on optimal tax theory, promoting neutrality of taxation under a one-sided, growth-oriented, GDP-based approach as the central indicator of welfare that has influenced the EU Commission's tax policy statements over the last decades, has created several non-sustainable structural problems. When considering the figures presented above, the risk for a long-term increase in income inequality is rather obvious. A sustainability gap, defined by the FairTax project, is the absence of tax measures that tackle inequalities in income and wealth. To increase taxes with an overall regressive impact, such as indirect taxes on consumption, in combination with a reduced progressive profile in income taxation and a limited share of wealth-based taxes will obviously lead to a loss of redistributive power. The high and increasing weight of labour taxes, combined with reduced taxes on capital and corporate income, risks feeding both income inequality and intense tax competition.[15]

13. *See* Gunnarsson et al., *supra* note 9, at 40–44; Alexander Krenek & Margit Schratzenstaller, *Sustainability-Oriented Future EU Funding: A European Net Wealth Tax* (FairTax Working Paper Series No. 10, 2017).

14. *See* Eur. Comm'n, Taxation Trends in the European Union: Data for the EU Member States, Iceland and Norway 36–37 (2019); OECD, *Tax Policy Reforms 2019: OECD and Selected Partner Economies* 57–61 (2019), https://doi.org/10.1787/da56c295-en.

15. *See* Stiglitz, *supra* note 7, at 94–97; Ann Mumford & Åsa Gunnarsson, *Sustainability in EU Tax Law*, 54 Intereconomics 134 (2019).

Fiscal austerity is also part of the policy paradigm, stipulating that taxes should not be used for social investments in the reproductive part of the economy or in maintenance of the welfare state regimes.[16] Yet another element that should be added to the paradigm is de-taxation. The concept aims to capture the systemic removal or reductions of tax rates and tax bases, leading to vaguely justified and non-transparent losses of revenue. The incentives for tax reforms are often passive as the policy goals are non-specific, formulated in general terms such as enhancing growth or stimulating economic activity.[17]

III. New Perspectives on Taxes, Redistribution, Inequality, and Growth

A substantial part of the literature on tax and fiscal policies is related to ideas on tax policy that emerged in the beginning of the 1980s. During this period, politicians gradually abandoned the established political belief that taxes could be used effectively for both redistributive policies and as an instrument for managing the economy. Instead, tax policies were justified with reference to the goal of promoting economic growth and the role of free enterprise in the deregulated markets, leading to a strong emphasis in the tax policy literature on tax efficiency to stimulate growth and the tax effects from growth.[18]

Much of the development from 1980 and forward shows that tax policymakers seem to have captured tax scholarship under a hegemonic ideology. Policymakers and scholars did join in under the same paradigm that there are no other strategies and objectives for tax reforms than *going for growth* through fiscal efficiency, which have outlined all types of social justice considerations. This has resulted in a development with even more narrow theoretical perspectives and an obvious resistance to applying critical and crosscutting approaches in tax studies.[19]

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16. *See* Jane Kelsey, The New Zealand Experiment: A World Model for Structural Adjustment? (2d ed. 1997).

17. *See* Kathleen A. Lahey, *Uncovering Women in Taxation: The Gender Impact of Detaxation, Tax Expenditures, and Joint Tax/Benefit Units*, 52 Osgoode Hall L.J. 427 (2015).

18. *See* Sven Steinmo, *The Evolution of Policy Ideas: Tax Policy in the 20th Century*, 5 Brit. J. Pol. & Int'l Rel. 206 (2013).

19. *See, e.g.*, Challenging Gender Inequality in Tax Policy Making: Comparative Perspectives (Kim Brooks et al. eds., 2011) [hereinafter

By concentrating only on avoiding excess burdens of tax law on the economy, other tax objectives and principles have been downgraded, which in particular is the case for the tax fairness perspectives related to redistributive aspects of taxation. Consequently, the social justice dimension of tax law became a quite underdeveloped competence in both tax policy debate and research, concealing the use of tax systems to carry out social reforms, most commonly in the field of family support.[20]

Although the governmental policy responses to the financial crisis in 2008/2009 and the related prolonged economic crisis in the world economy were conventional, it also resulted in a critical re-evaluation of many established ideas on fiscal policy. Since "the Great Recession," a new type of research with a stronger focus on redistribution and equity has emerged. Global economic crisis and increasing levels of income inequalities in advanced economies have led to both scholarly and political reconsiderations of the taxing for growth paradigm. Distributional, objective-based justice/equality ideas, have become more emphasised and a point of departure for critical analysis. To a large extent, such new ideas have come to the fore because older ideas on growth and investment have been discredited by a new political/economic context.[21]

After Thomas Piketty's book *Capital in the Twenty-First Century*,[22] a new wave of literature on the relation between inequalities and economic growth has emerged, which has raised concerns about the harmfulness of increasing income and wealth inequalities. It seems many economists have shifted perspectives from taxing for growth to a critical perspective on the connections between income inequalities and

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CHALLENGING GENDER INEQUALITY]; Anthony C. Infanti, *Tax Crit Identity Crisis? Or Tax Expenditure Analysis, Deconstruction, and the Rethinking of a Collective Identity*, 26 WHITTIER L. REV. 487 (2005).

20. *See* Martin Eriksson & Åsa Gunnarsson, *Literature Review on Tax and Transfer Policies for a More Equal Distribution of Post-Tax Incomes*, EUR. COMM'N (Aug. 2017), https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5b4ad9d03&appId=PPGMS; Åsa Gunnarsson, *Taxing for Equality—A Re-emerging Tax Policy Trend in Europe*, FAIRTAX POL'Y BRIEF, June 2017, https://umu.diva-portal.org/smash/get/diva2:1114026/FULLTEXT01.pdf [hereinafter Gunnarsson, *Taxing for Equality*].

21. *See* CHALLENGING GENDER INEQUALITY, *supra* note 19.

22. Thomas Piketty, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014).

the dominance globally of a neoliberal tax design. In particular, literature on income inequality has revealed the rise of top incomes over time and has explored options of how top earners can pay more taxes.[23]

An awareness of combining growth-promoting tax reforms with analyses and policies on economic inequalities has also grown in organizations, such as the European Commission (EC), the OECD, and the International Monetary Fund (IMF), that earlier only promoted the one-way message. As part of these developments, studies on the relation between redistribution, inequality, and growth have been published.

The 2016 Survey on Tax Policies in the European Union, published by the European Commission, starts out by stressing the empirically well-founded point that the sheer level of the tax burden is not decisive for growth.[24] It is rather the structure of a tax system that matters. This explicit statement is really to be welcomed, as it is still not recognized by a substantial part of public finance literature or in the tax policy recommendations for the tax burden levels given in EU Member States. The study is an essential step towards a policy that combines growth- and equality-enhancing perspectives, which is a return to a welfare perspective on social justice in taxation. It brings back the objectives of reducing inequalities and fostering social cohesion to the tax policy agenda. This development is in line with European obligations to enhance substantive equalities and the fight against social exclusion anchored in the European Treaties, the Europe 2020 Strategy, as well as the UN Sustainable Development Goals.[25]

A study by IMF researchers took advantage of a cross-country dataset, enabling analysis of both the impacts of redistribution as well as of market inequality.[26] One finding is that economic growth is lower

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23. *See* Peter H. Lindert & Jeffrey G. Williamson, Unequal Gains: American Growth and Inequality Since 1700 (2016); Anthony B. Atkinson & Joseph E. Stiglitz, *The Design of Tax Structure: Direct Versus Indirect Taxation*, 6 J. Pub. Econ. 55 (1976); Michael Förster et al., *Trends in Top Incomes and Their Taxation in OECD Countries* (OECD Soc., Emp't & Migration Working Papers, No. 159, 2014), https://doi.org/10.1787/5jz43jhlz87f-en.

24. Eur. Comm'n, 2016 Survey, *supra* note 12; *see also* Gunnarsson, *Taxing for Equality*, *supra* note 20.

25. *See* Eur. Comm'n, 2016 Survey, *supra* note 12; Gunnarsson, *Taxing for Equality*, *supra* note 20.

26. Jonathan D. Ostry et al., *Redistribution, Inequality, and Growth* (IMF Staff Discussion Note, Feb. 2014, as revised Apr. 2014), https://www.imf.org/external/pubs/ft/sdn/2014/sdn1402.pdf.

and periods of growth are shorter in countries that have high inequality. In the same paper, the researchers show that transfers (redistributions of income from upper to lower income individuals) do not harm economic growth—at least up to a point consistent with policies in other wealthy nations. This work thereby demonstrates that the combined direct and indirect effects of redistribution—including the growth effects of the resulting lower inequality—are on average pro-growth. Notably, this finding applies to both developed and developing countries.[27] OECD researcher Cingano arrives at a similar conclusion. He demonstrates that inequality has a negative impact on economic growth. Furthermore, it appears that the extent of redistribution necessary to achieve a given level of net equality has no negative direct consequences on economic growth. Taken together, his results suggest that inequality in disposable incomes is bad for growth and that redistribution through taxes and transfers is, at worst, neutral for growth.[28]

By contrast, recent years have been characterized by a widening recognition that, if they are well designed, higher taxes and transfers to reduce inequality do not necessarily harm growth. Since taxes and transfers are so powerful in both affecting inequality and growth, the key challenge has become to get them right, rather than to focus on their distortive effects.[29]

The latest example of powerful statements regarding the relation between taxation, justice, and growth can be found in the prestigious report by Joseph E. Stiglitz. Here we can find policy statements such as:

> - "In a society marked by rising inequality, taxation has to be sensitive to impact on wealth and income distribution. We need progressive taxation—taxing those at the top at a higher rate than those with less income."[30]

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27. *Id.* at 6–7.

28. Federico Cingano, *Trends in Income Inequality and Its Impact on Economic Growth* (OECD Soc., Emp't & Migration Working Papers, No. 163, 2014), http://dx.doi.org/10.1787/5jxrjncwxv6j-en.

29. *See* OECD, *In It Together: Why Less Inequality Benefits All* (2015), https://doi.org/10.1787/9789264235120-en.

30. Stiglitz, *supra* note 7, at 94.

- "Ensuring that Europe maintains its high standards of living requires raising large revenues in ways that are efficient and fair."[31]

IV. Time for New Principles on Fair and Sustainable Taxation

In times of new directions in the policy view on the economic relation between tax justice and growth, a rule of law perspective on fair and sustainable tax principles ought to be discussed. Horizontal tax equity and tax neutrality have been the two legal principles that have dominated the tax law discourse during the last decades. These principles have erased all tax policy concerns regarding redistribution and all types of social justice considerations in order to level the field for economic growth. Neutrality also becomes a problematic concept in relation to the dogmatic position in tax law scholarship. Traditionally, the internal logic of normative coherence is to uphold neutrality and equality of treatment under the rule of law. In this effort, the demarcation between internal and external perspectives is a central scientific approach. Perspectives regarded as external are constantly contested by dogmatic tax law scholarship to delimit the influences of normativity from outside the law sphere, such as policies and politics.[32]

The complexity of neutrality principles on several levels and parts of the legal system amplifies the resistance to develop principles based on justice perspectives. Irrespective of these problematic limitations in tax law scholarship, it is obvious, based on historical and comparative studies that we need solid tax principles and well-designed objectives built on a social dimension to tackle inequalities and unfairness sustainability gaps. It is important to recall the existence of an underlying recognition in the doctrine of tax law principles that tax justice is vitally important for democracy, government, and political discourses. One central part of fiscal systems has always been potentially decisive for redistributive policies, and tax reforms have very

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31. *Id.* at 95

32. Åsa Gunnarsson, *The Making of a Critical Tax Policy Framework*, *in* Festskrift till Håkan Hydén 263 (Reza Banakar et al. eds., 2018) [hereinafter Gunnarsson, *Critical Tax Policy*]; Eva-Maria Svensson, *Boundary-Work in Legal Scholarship*, *in* Exploiting the Limits of Law 17 (Åsa Gunnarsson et al. eds., 2007).

often been used as vehicles to promote social and equality policies.[33] Politics of the welfare state draw 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. In fiscal and tax law 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, as social justice has been conceptualized as a responsibility for only social rights and social transfer regulation and not for fiscal obligations and tax regulations.[34]

When the theoretical perspective does not encompass both the income and the expenditure sides of the public budget, we end up with a fragmented picture when defining and systematizing welfare regimes. In my view, all these demarcations—between law and politics, between different fields of law, between theories and practice—reveal huge knowledge gaps. 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.

These knowledge gaps reveal a need to contextualize tax law as a part of the welfare state that recognizes the relation between revenue and benefits, emphasizing the discourse of paying for social rights and embracing the democratically determined reasons to tax. Tax legal scholarship also needs to be a part of the tax policy agenda by contributing to shape the preferences for future tax systems. The nations of the world have signed a comprehensive contract about the economic, social, environmental, cultural, and institutional dimensions for the future of the globe, summarized in the 17 Sustainable Development Goals

33. *See* Åsa Gunnarsson, Skatterättvisa (1995); Gunnarsson, *Critical Tax Policy*, *supra* note 32.

34. Åsa Gunnarsson, *Challenging the Benchmark in Tax Law Theories and Policies from a Gender Perspective—The Swedish Case*, *in* Challenging Gender Inequality, *supra* note 19, at 75.

(SDGs).[35] Raising revenue is one important pillar for development, as considerable resources are required.[36]

V. Gender Equality—An Emerging Trend in Sustainability-Oriented Tax Policies

The European Union was initially founded as the European Economic Community intended to harmonise economic policies between the Member States.[37] Social aspects, including gender equality, played a minor role. Gender equality was largely restricted to particular policy areas, such as employment and occupation. Although social dimensions still lag behind economic policies, the Treaties of Maastricht, Amsterdam, and Lisbon introduced new social values, objectives, and specific obligations, and strengthened gender equality.[38] Today, gender equality is one of the fundamental values and objectives of the European Union. The European Commission also guarantees gender equality through its commitment to implement the United Nations 2030 Sustainable Development Goals.[39] The basic problem, however, is that even though numerous states and global entities guarantee political and economic gender equality, tax policies and tax laws generally do not support those goals.

When designing tax laws, policymakers rarely consider gender inequalities, even though many aspects of taxation have a substantial effect on gender-related socioeconomic inequalities. Although most tax laws apply equally to men and women, tax systems and fiscal policy

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35. *See About the Sustainable Development Goals*, UN (last visited May 30, 2020), https://www.un.org/sustainabledevelopment/sustainable-development-goals/.

36. *See* Vitor Gaspar et al., *Fiscal Policy and Development: Human, Social, and Physical Investment for the SDGs* (IMF Staff Discussion Note, Jan. 2019), https://www.imf.org/~/media/Files/Publications/SDN/2019/SDN1903.ashx.

37. *See The History of the European Union*, Eur. Union, https://europa.eu/european-union/about-eu/history_en (last visited May 30, 2020).

38. *See* Ulrike Spangenberg et al., *Moving Beyond the Narrow Lens of Taxation: The Sustainable Development Goals as an Opportunity for Fair and Sustainable Taxation*, 26 Colum. J. Eur. L. 36 (2019).

39. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions: Next Steps for a Sustainable European Future*, COM(2016) 739 final (Nov. 22, 2016).

decisions affect men and women differently. The persisting gender differences in employment rates and patterns, and gender gaps in unpaid care work, income, old age security, poverty, and wealth are all closely linked to the allocative and distributional outcome of tax regulations.[40]

One striking example is how Member States' tax systems continue to feed and stimulate tax traps for secondary earners. There is ample empirical evidence that female labour supply is more responsive to taxation, particularly for married women with children.[41] National tax systems of EU Member States have fueled inactivity traps for secondary earners, hindering the equal participation of women in the labour market. The inactivity trap is the result of taxes kicking in (including the loss of tax relief from joint taxation provisions aimed at reducing the tax burden for sole earners) when employment is taken up out of inactivity on the one hand and of benefits withdrawn (particularly means-tested social assistance) on the other hand. It can be interpreted as an implicit tax rate on the return to the labour market of inactive persons and reflects the share of the earned gross wage that is taxed away at the take-up of employment, thus measuring the financial incentives to take up employment. The size of the inactivity trap can be increased by joint taxation provisions and other tax provisions alleviating the tax burden for couples where the earnings are distributed unequally among the spouses, as well as by means-tested benefits for the non- or lower earning partner.[42]

A majority of working women in mixed-sex couples, especially those with children, are secondary earners, earning on average about one-third of a couple's joint income. Gender research, based on microsimulation models, demonstrates how the basic design of income tax schedules and social security contributions affects the disposable

40. *See* Miranda Stewart, Tax, Social Policy and Gender: Rethinking Equality and Efficiency (2017); Gunnarsson et al., *supra* note 9.

41. *See* Patricia Apps & Ray Rees, Public Economics and the Household (2009); Olga Rastrigina & Alina Verashchagina, *Secondary Earners and Fiscal Policies in Europe*, Eur. Comm'n (2015), https://ec.europa.eu/info/sites/info/files/150511_secondary_earners_en.pdf; Alastair Thomas & Pierce O'Reilly, *The Impact of Tax and Benefit Systems on the Workforce Participation Incentives of Women* (OECD Tax'n Working Paper 29, 2016), https://doi.org/10.1787/d950acfc-en.

42. Eur. Comm'n, Tax Policies in the European Union: 2018 Survey (2018).

after-tax income and incentives to work. In most EU Member States, the tax wedge and inactivity trap for low income and in particular secondary earners remains one of the main disincentives to women's labour market participation. A large number of economic studies, based on micro-simulation models, prove that work incentives for women are impaired by joint tax provisions in a family or household-based income tax systems. Joint provision was initially only applied to married couples but has been extended to include other forms of partnership. Another reason is the insufficient recognition of childcare costs. Replacing the income splitting system by individual taxation would markedly increase female employment.[43]

The biggest challenge however, is to change the long-term tax policy agenda away from the one-sided "taxing for growth" paradigm. The policy has led to structural discrimination toward women on a large scale. Based on the socio-economic realities of gender equality, these structural changes imply a shift of the tax burden away from men towards women. The over-taxation of labour in relation to corporate profits and capital income, combined with a shift to VAT, represent a shift of the tax burden away from men toward women. These long-term trends in national tax policy tend to disadvantage women due to the very unequal distribution of wealth and corporate assets between men and women, the relatively small share of females among top income earners, women's above-average consumption ratios, the relatively high share of labour income and small share of capital income in women's total income.[44]

Against this background, the European Parliament has called on the Member States to retain progressive income tax systems and to pay attention to the role of taxes on corporations, wealth, and capital, in efforts to reduce income inequalities. Recommended reforms include subjecting all types of income to progressive income tax schedules,

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43. Marian Fink et al., *Policy Recommendations on the Gender Effects of Changes in Tax Bases, Rates and Units. Results of Microsimulation Analyses for Six Selected EU Member States* (FairTax Working Paper Series No. 24, 2019), http://umu.diva-portal.org/smash/get/diva2:1300801/FULLTEXT01.pdf; Gunnarsson et al., *supra* note 9, at 26–32.

44. *See* Challenging Gender Inequality, *supra* note 19; Gunnarsson et al., *supra* note 9; Åsa Gunnarsson & Ulrike Spangenberg, *Gender Equality and Taxation Policies in the EU*, 54 Intereconomics 141 (2019); Lahey, *supra* note 17.

eliminating exemptions to value added taxes not related to basic need, shifting the tax burden from labour incomes towards more growth and employment-friendly taxes, such as immobile property and inheritance tax, and to eliminating all tax breaks, particularly those related to capital and corporate taxation.[45]

A key finding in the FairTax project is that if national tax systems continue to feed and stimulate tax traps for secondary earners, substantial gender equality will never be realised. To date, neither the European Union nor Member States comply with the legal obligations or political commitments, outlined under challenges in this case study. European Institutions and Member States must—within their respective areas of tax competences—implement legal measures to ensure gender equality. Compliance with these obligations requires, at the least, regular impact assessments of all fiscal policies from a gender equality perspective, including proposals for tax legislation and soft law procedures, such as the European Semester. Gender equality is not only a fundamental human right in itself but would contribute to more inclusive and sustainable growth. Gender equality is one important dimension of fair and sustainable taxation, and it is a necessary part of the analysis of how tax systems could be a part of transition to sustainability for Europe.[46]

VI. Conclusions

A first general conclusion is that the social dimensions of taxation is neglected in research as well as policies. A one-sided tax for growth paradigm can, in the end, actually undermine economic sustainability. There seems to be a strong correlation between taxing for growth and the economic efficiency driven reforms over recent decades and the increase of income inequalities. Some quantitative, comparative studies have indicated that tax reforms working in these directions can be counterproductive and affect long-term economic growth negatively

In the ongoing discussion concerning "the social dimension of Europe," it appears that there is much to gain if the tax policy interaction between Member States and the European Union, which currently is taking place within the European Semester, could be extended to

45. European Parliament Resolution of 15 January 2019 on Gender Equality and Taxation Policies in the EU (2018/2095 (INI)).

46. Gunnarsson & Spangenberg, *supra* note 44.

consider that taxes are one of the most efficient instruments to achieve social and welfare policy outcomes. From a perspective of five dimensions—economic, social, environmental, gender, and institutional/cultural—of tax policies for sustainability, Europe faces the following structural problems:

- A prevailing (and therefore socially and environmentally unsustainable) focus on economic growth;
- An absence of tax measures that tackle inequalities in income and wealth;
- High and increasing weight of labour taxes;
- Decreasing importance of corrective Pigouvian taxes on the Member State level, particularly of environmental taxes;
- Intense tax competition, including profit shifting;
- Tax compliance issues and tax fraud;
- Decreasing progressivity of tax systems;
- An inefficient and democratically flawed decision making in EU tax policy, which translates into unused potential to use taxation at the EU level to promote sustainable growth and development in Europe;
- Persisting intragenerational inequalities and lack of coordinated life course approaches in tax and social policies;
- Persisting socio-economic inequalities between men and women and lack of gender equality insights in national tax policies.[47]

47. *See* Mumford & Gunnarsson, *supra* note 15.