Björn Forssén

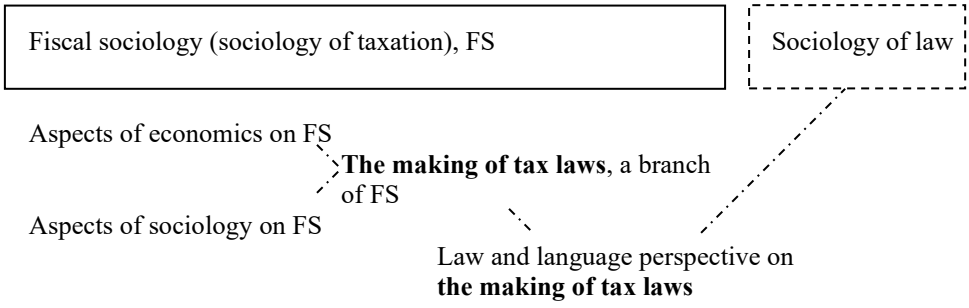
The Entrepreneur and the Making of Tax Laws: An introduction of a new branch of Fiscal Sociology

The topic of this paper is fiscal sociology or, as it is also called, the sociology of taxation. It is restricted to the making of tax laws (not to be confused with the making of tax law). The focus is set on issues regarding tax rules as tools used by the legislator to convey the intended taxation to entrepreneurs. I have published a book titled The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law. In its first edition I mentioned the following main issues in parts A-C, namely:

- how *a communication distortion may occur with respect of the legislator's intention of taxation being able to misconstrue*,
- *what can be done in a systematic sense concerning the making of tax laws to avoid the emergence of such communication distortions*,
- *what consequences may occur if they are not.*

I have completed my fiscal sociology project with further editions of that book, where I firstly have added a Part D with aspects on linguistics and pedagogy to the process of the making of tax laws, and also added a Part E mentioning something about aspects of economics and sociology, and I have secondly added an annex to Part D.

I am presenting a new perspective on the subject of fiscal sociology, i.e. a new branch of fiscal sociology, not a subject in its own right and neither a subfield to fiscal sociology. This figure illustrates my idea of the position of the making of tax laws in relation to fiscal sociology and to sociology of law (or legal sociology):



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Fiscal sociology is a subject in its own right which primarily deals with aspects of economics and sociology regarding it, not necessarily with laws on taxation. Thus, I distinguish fiscal sociology from sociology of law. I deem the making of tax laws *a branch of fiscal sociology which forms a bridge between aspects of economics and of sociology on fiscal sociology in these broader senses. However,* the law and language perspective on the making of tax laws *should also be considered a topic within sociology of law.*

Outline of The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law

In this paper I present the topic of the making of tax laws by giving short overviews of parts A-E in my book: firstly parts A-C and secondly of parts D-E. There is also an Epilogue after parts A-C, where I make some remarks tying the conclusions about the consequences mentioned in Part C together with those in parts A and B. Furthermore, I continuously make suggestions on research efforts. In the INTRODUCTION I thereby refer to: Part A, sections 1.1, 3.2.2, 3.3.1, 3.3.2 and 4.2; Part B, sections 3.2.1 and 4.2; the Epilogue to parts A-C; Part C, section 3.2; Part D, section 4.2; and Part E, Chapter 3.

Parts A-C

Background to the topic of the making of tax laws

The term fiscal sociology was coined by the Austrian economist Rudolf Goldscheid in the course of a controversy with another Austrian economist, Joseph Schumpeter, regarding the treatment of Austrian public debt after World War I and the dissolution of the Austro-Hungarian Empire.[1] Already in 1918 Schumpeter argued that an area he called fiscal sociology had great promise. However, fiscal sociology declined and for much of the twentieth century most historians, sociologists, legal scholars and political scientists did not ask questions about the social or institutional roots or consequences of taxation, since they had surrendered the study of public finance to economists, who neither asked those questions since they had surrendered the study of them to sociologists and other social scientists.[2]

In The New Fiscal Sociology: Taxation in Comparative and Historical Perspective from 2009 fiscal sociology is mentioned as growing rapidly and being on the verge of a renaissance.[3] However, knowingly no

[1] See Wagner 2007, p. 180, and also Martin, Mehrotra & Prasad 2009, p. 2.
[2] See Martin, Mehrotra & Prasad 2009, p. 6, and also Jacobs & Waldman 1983, p. 550.
[3] See Martin, Mehrotra & Prasad 2009, p. 26; and Campbell 2009, p. 256.

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research has been made concerning sociology aspects regarding the making of tax laws, at least not in the meaning of *how* to make a tax rule communicate effectively between the legislator and the individual. By this paper the ambition is to introduce this as a branch of fiscal sociology.

The making of tax laws – a branch of fiscal sociology, not a subject in its own right but neither just a subfield to fiscal sociology

Taxation should in general be appraised as a method of financing government, i.e. a tool of public finance. The modern viewpoint is that the concept of taxation is the inseparable twin of the modern state covering both the sphere of public finance and the sphere of sociology, i.e. the evolvement of the subject of the sociology of taxation.[4] Fiscal sociology is synonymous with the sociology of taxation, and spans over a number of fields, e.g. economics and sociology. It was originally suggested as a science transcending increasingly narrow disciplines and uniting the study of economics with the study of history, politics and society.[5]

The making of tax laws introduced by my book is fiscal sociology restricted to issues regarding tax rules as tools used by the legislator to convey an intended taxation. The focus is set on market-based enterprises.[6] Thus, it is a matter of the legislators transmitting the intended taxation to the entrepreneurs. The making of tax laws could be deemed a subject in its own right, e.g. named sociology of tax laws, but to avoid confusion fiscal sociology or sociology of taxation is used in this paper and then restricted to the mentioned functioning of conveying the Government's intentions of taxation to the entrepreneurs. From that perspective it is a new branch of fiscal sociology and, as mentioned, not a subject in its own right but neither to be considered as just a subfield to fiscal sociology. The making of tax laws should instead be regarded as a bridge between aspects of economics and sociology on the fiscal sociology: In other words, as a certain aspect on fiscal sociology fitting within the subject in the broader senses mentioned, e.g. regarding the use of tax revenues for social spending, which is considered a big deal concerning research efforts.[7]

Thus, further research efforts concerning the restricted aspects on the subject of fiscal sociology introduced by this paper, i.e. the making of tax laws, are of course of interest taken by itself. However, such

[4] See Mann 1943, p. 225.
[5] Martin, Mehrotra & Prasad 2009, p. 2.
[6] See Wagner 2007, p. 19.
[7] See Martin, Mehrotra & Prasad 2009, p. 26.

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research efforts may as well serve as completion of research efforts in the mentioned broader sense of fiscal sociology, i.e. with regard of aspects of economics or sociology. This can become input for researchers or politicians to work on adjustments of e.g. the Swedish tax system or to start on a new footing by revising it altogether.

Issues regarding the making of tax laws

The making of tax laws as a matter of conveying the Government's intended taxation to the entrepreneurs raises a number of issues and the following may be considered main issues in that respect. It is not necessarily a question of interpretation of the tax rules for the purpose of establishing current law, rather a matter of handling communication distortions regarding the taxation intended by the legislator, one main issue concerning the present restricted aspects on fiscal sociology is *how* such a communication distortion in the meaning of possible misinterpretation may occur. Other main issues in the present sense of fiscal sociology are, for instance, these questions: What can be done in a systematic sense concerning the making of tax laws to avoid the emergence of such communication distortions? What consequences may occur if they are not?

A suggestion for developing the topic of the making of tax laws

For the benefit of developing the making of tax laws as a bridge between aspects of economics and sociology on the fiscal sociology my book contains the three parts mentioned, i.e. issues (A) regarding systematic imperfections concerning the making of tax laws for entrepreneurs, (B) communication distortions in that respect between the legislator's intention and the perception of the tax laws and (C) consequences thereof for the entrepreneur.

Each one of the parts A-C are introduced by a history or background review and together they form a logical continuity on the topic of the making of tax laws. Part B and Part C are to a large extent based on the conclusions in my licentiate's dissertation in 2011[8] and doctor's thesis in 2013[9] at Örebro University, where I analyzed some differences between the Swedish Value Added Tax Act 1994 and the EU's VAT Directive (2006/112/EC) regarding current law on the determination of the tax subject and the right to deduct input tax etc. and presented a couple of models – tools – to deal with such differences in practice. Thus, I had established in my theses differences concerning the legislator's making of some of the basic rules in the Value Added Tax

[8] See Forssén 2011.
[9] See Forssén 2013.

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Act 1994 compared to the intentions by the VAT Directive (2006/112). Those differences may also be looked upon as communication distortions caused by the legislator failing to transmit properly the intended taxation to the entrepreneurs as tax subjects. Therefore, I'm making the fiscal sociology reasoning on *how* such differences occur, why I in that respect name them communication distortions. However, concerning the issue on *how* a communication distortion in the present meaning may occur, it is, as mentioned, not necessarily a question of establishing current law by interpretation of case law. Communication distortions as such may be indicated by a number of other sources, e.g. by newspapers, various organizations' periodicals or the media at large etc.

The main thread in parts A-C

I am making as mentioned, on the topic of the making of tax laws, the fiscal sociology reasoning on *how* the communication distortions may occur. The main thread of parts A-C is to examine that issue with focus set on the entrepreneur's situation:

- In Part A, I am arguing for systematic changes regarding the making of tax laws specifically concerning the entrepreneurs: In short I am presenting arguments for a system where the texts in the tax laws are made from the ground up by involvement of the entrepreneur and his organizations, instead of the making of tax laws being imposed on him from the top-down by politicians.

- In Part B, I am giving some examples from the Value Added Tax Act 1994 of communication distortions with regard of the use of the concept tax liable, whereas taxable person is used in the VAT Directive (2006/112). By such distortions I mean distortions of a taxation intended by the directive. I am suggesting models – tools – to handle those communication distortions, where I, as mentioned, refer to models from my theses of 2011 and 2013. Thereby, I am also influenced by pedagogy and so-called problem-based learning.[10]

- In Part C, I am reviewing the consequences that may occur if the tax authority and the courts cannot deal with the communication distortions mentioned, where I set focus on charges of tax surcharge and tax fraud as consequences that the entrepreneur may suffer.

[10] See Ramsden 2003, p. 141; Stigmar & Lundberg 2009, p. 248; and Schyberg 2009, p. 52. See also Sandgren 2009, pp. 64-66; Gunnarsson & Svensson 2009, p. 94; and Brusling & Strömqvist 2007, p. 8.

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Suggestions for research efforts

I am giving, as mentioned, a review of the use in the Value Added Tax Act 1994 of the concept tax liable causing communication distortions in relation to the VAT Directive (2006/112), where instead taxable person is used in the directive. However, there are more issues to deal with regarding the use of the concept tax liable and already my theses of 2011 and 2013 showed that there is a need of a more holistic reform of the Value Added Tax Act 1994 in that respect, which I have also pointed out in the fifth edition of my doctor's thesis.[11] In Part C I am setting that focus concerning future issues on the Swedish tax system's relationship to the EU law on VAT on the following questions:

- Would a combination of efforts consisting of the EU introducing a separate taxation procedure for taxes comprised by the EU's competence, e.g. concerning the VAT, and an increased VAT control by the Swedish tax authority already at the registration stage promote the principle of legal certainty? I am raising this question with regard of the individual's rights, and the principles of neutrality of taxation and efficient tax collection, including control.

- Would research on tax laws as tools of effective communication between the legislator and the individual be of importance to avoid unnecessary difficulties for a future introduction of an EU-tax?

Regardless of different political opinions on the latter topic, I argue for research to make the existing system work. As long as the principle of the EU law's supremacy over national law is not codified in an EU Constitution which comes into force,[12] communication distortions between the Value Added Tax Act 1994 and the VAT Directive (2006/112) may cause undesired consequences such as charges of tax fraud due to the legal system not properly recognizing the individual's rights established by e.g. the EU law in the field of VAT.

Anyhow, I aim to continue to work with my project, assuming that the work must carry on making the Swedish tax system under existing EU law as legally certain as possible. In my opinion there is no other way to relate to the EU law and at the same time ensuring the individual's legal rights, whether or not the future brings an EU Constitution or an EU tax or both. Comparative studies, including countries outside the EU,

[11] See Forssén 2019.
[12] See Nergelius 2009, p. 58.

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should also be of interest concerning problems regarding the legislator conveying the intentions behind a tax rule. Russia is one example of interest in that respect, since the 89 Russian Republics have tremendous difficulty to introduce a Financial Constitution and to raise taxes.[13]

Parts D-E

Communication Distortions within tax rules and Use of language in law

In Part D, I am reasoning from the linguistic law and language perspective about *why* a text containing a tax rule may make a poor tool to convey the intention of the legislator to the tax subject, e.g. to an entrepreneur. A resulting question is whether there is any pedagogy to support a decrease of a risk of communication distortions between the legislator's intentions with a tax rule and how it is perceived. Part D concerns linguistics and pedagogy with respect of the topic *law and language* and mainly connects to Part B, where I mention experiences of *how* such communication distortions may occur. In Part D, I am mainly leaving out systematic imperfections concerning the making of tax laws and consequences of communication distortions, which instead are dealt with in parts A and C.

Ideas about fiscal sociology studies by aspects on economics or sociology that may be influenced by the experiences from parts A-D

In Part E, I make some reflections on fiscal sociology in the broader senses, i.e. with regard of aspects of economics or sociology. Thereby I will analyse such issues as *the use of tax revenues*. I have also some ideas about how to go further with fiscal sociology studies by research on economics or sociology that may be influenced by the experiences regarding categories A-D of above. Concerning the above mentioned category D, I have already moved on during 2016 with empirical studies of the law and language perspective on The Making of Tax Laws, by the edition of that year of my book *Ord och kontext i EU-skatterätten*, i.e. words and context in the EU tax law. I translated the summary and the concluding viewpoints of that book into English and added this as an annex to Part D in *The Entrepreneur and the Making of Tax Laws – A Swedish Experience of the EU law*.

In conclusion, by my presentation of The Making of Tax Laws I instigate to research on the tax system in a broader sense, i.e. the big picture. I illustrate this view on the tax system as a flow by this figure:

[13] See Backhaus 2013, p. 337.

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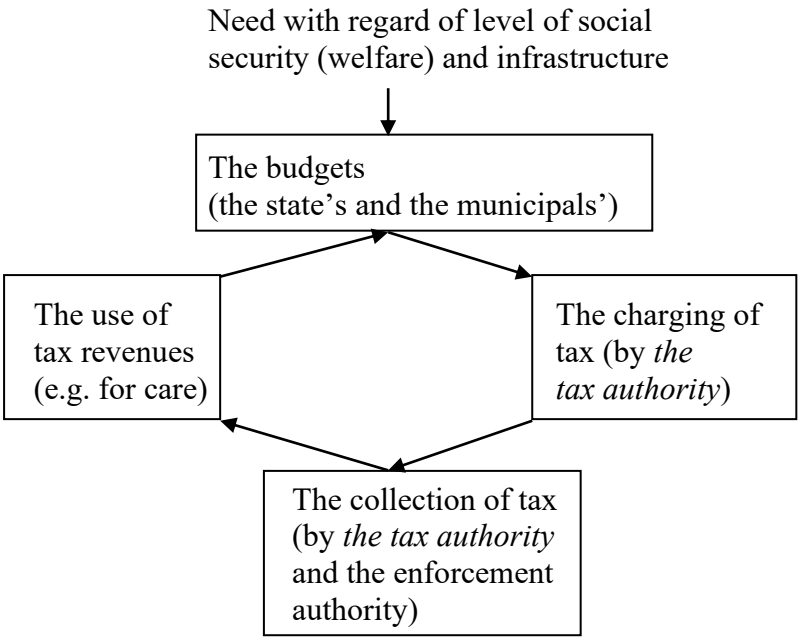

Thus, the big picture of the tax system, subject to the research I suggest, goes beyond the traditional approaching of the tax subject by merely regarding the charging and collection of tax by *the tax authority*.

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