PRINCIPLES FOR
HUMAN RIGHTS
IN FISCAL POLICY

Fiscal Policy and Human Rights: Redefining Fiscal Responsability

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SUMMARY

One of the main objectives of the Principles for Human Rights in Fiscal Policy is to ensure that tax policies are designed and implemented with the human rights framework as a guide and foundation.

This document addresses the close relationship between economics, fiscal policy, and human rights. This is because there is an economic dimension to human rights in terms of (i) the resources needed to guarantee them and how they should be socially allocated for this purpose; (ii) the interactions of economic agents in production relations, which may have an impact on the respect, protection, and guarantee of human rights. On the other hand, human rights are, or should be, a moral parameter for the organization of economic activities.

Despite this evident relationship, the paper starts by referring to an apparent dissociation between economics and human rights and ascribes it to a series of conceptual and methodological problems inherent to orthodox economic theories. The reason being that orthodox economics focuses on concepts such as the "maximization of social utility", which are often perfectly compatible with the deprivation of a sector of society–a consequence that is not admissible within the framework of human rights. In this sense, the paper reviews a series of arguments in tension between orthodox trends and the human rights framework, based on divergent positions concerning the object of analysis, social objectives, conceptions of social welfare, and the ideal of social justice.

Moreover, the article shows how human rights, fiscal policy, and inequality are linked to and conditioned by each other. By reflecting on these three elements in an articulated manner, the paper emphasizes both the grounding relationship that human rights have on fiscal policy and the potential that the human rights system has to condemn and combat social and economic inequality.

Finally, the paper suggests reviewing the notions of fiscal responsibility based on a vision of fiscal rules that is appropriate to the human rights system. To this end, it starts from three pillars that should guide these rules: respect for human rights, compliance with the social and environmental missions established by the human rights framework, and the promotion of social stability.

1. INTRODUCTION

Human rights are a topic often neglected among economists which seldom appears as a relevant issue for fiscal policy and that is usually ignored in the design of rules for the management of public budgets. This article seeks to investigate the reasons for this omission and to contribute to thinking about fiscal policy from a human rights perspective.

Until the 1930s, nation-states had few social obligations and did not use the public budget to influence economic growth or reduce unemployment. Fiscal policy emerges in the 1930s as a field of study that evaluates public revenue and expenditure, along with their macroeconomic impacts. An economic paradigm shift was needed to address a historical reality that could not be explained by existing theories and to place the issue of employment at the center of the debate.

Almost one hundred years later the world is hit by a crisis of similar proportions in the midst of an environmental crisis and growing social demands. In order to face the pandemic, governments resorted to fiscal policy to guarantee wages and jobs for formal workers, income for informal workers and the unemployed, resources for businesses, and extraordinary budgets for healthcare. Fiscal policy no longer follows the traditional orthodox prescriptions, and a broad debate is opening on the subject.

The current context is ideal to recover the paradigm created in the 1930s; not only to repeat it, but also to redefine fiscal policy. Unlike the 1930s, nation-states have taken on social responsibilities in guaranteeing human rights that have been threatened by growing social inequality, environmental crisis, unemployment and underemployment, as well as a crisis of sociability. In this sense, rethinking fiscal policy is not only to recover its role in guaranteeing employment and growth, but also in guaranteeing post-war achievements–among them the Universal Declaration of Human Rights–and to advance in the construction of fairer societies.

In this sense, the aim of this paper is to think the issue of human rights and fiscal policy in an articulated manner, and with this perspective in mind, present a conception of fiscal policy and rules that have the progressive guarantee of human rights as their ultimate goal. To this end, the paper is divided into three sections. The first seeks to assess the distance between economic theory and the human rights approach, specifically pointing out incompatibilities between the latter approach and orthodox economics, inspired by methodological individualism, which explains why human rights approach bring issues that are difficult to assimilate among economists. The second part of the paper deals with the relationship between human rights, fiscal policy, and inequality and shows how these three topics are mutually conditioned, which justifies thinking of them in an articulated manner. Finally, the third section reviews the economic debate over fiscal rules and proposes a fiscal policy from a human rights perspective, emphasizing three pillars: respect for human rights principles, social and environmental missions, and social stabilization. In doing so, it seeks to redefine the idea of fiscal responsability and propose considerations for fiscal rules and a fiscal policy focused on guaranteeing human rights.

2.

ECONOMICS AND HUMAN RIGHTS: A BRIEF APPROXIMATION OF DISTANT ISSUES

2.1 Conflicts between economics and human rights

Human rights and economics are inherently connected. There is an important economic dimension to human rights with regard to:

I. The necessary resources to guarantee such rights and how they can be socially allocated for this purpose[01].

II. The interaction of economic agents in productive activities that can have an impact on the respect, protection, and guarantee of human rights.

On the other hand, human rights are, or should be, an important moral parameter in the organization of activities and of the economic system itself. As proposed by Balakrishnan *et al*. (2010), human rights standards and regulations provide economists with a widely accepted ethical language to address economic issues without reducing them to a simple problem of economic calculation.

Despite this relationship, there is an analytical, academic, and political distance between the two fields that implies a lack of understanding and indifference by many professionals in both areas, as well as scarce literature articulating both subjects. At the root of this distance lies a methodological problem that separates the human rights approach from the orthodox economic approach, or the neoclassical school of thought, which dominates mainstream economics today[02].

For Branco (2009), economics and human rights do not share the same language and economic logic has trouble incorporating these rights with some exceptions, such as the right to property. In fact, orthodox economics takes a positive approach to understanding the allocation of scarce resources, the efficiency of which is achieved, with a few exceptions, by the free operation of market mechanisms. In this approach, in an efficient allocation of resources, an unequal distribution is fair from an economic standpoint, since each agent will take possession of the social product according to their contribution to production[03].

The human rights approach, on the other hand, follows normative standards that establish universal rights and assumes equity of access to them. This approach stipulates *a priori* that a part of the economy should be organized in such a way as to allocate resources to guarantee human rights, unlike the positive approach to economics which, in theory, does not involve value judgment.

For Reddy (2011), there is a profound incompatibility between orthodox economics and the normative approach to human rights. Human rights advocate for a large and non-hierarchical set of rights–from civil and political rights to economic, social, and cultural rights–and society should therefore pursue multiple goals and equally guarantee the full body of rights, regardless of other social goals. For orthodox economics, on the other hand, there is a main goal that subordinates the others: the efficient allocation of resources that maximizes welfare or social utility. Thus, trade-offs arising before this major objective must be judged in favor of it (Reddy, 2011). For example, if in a given economic model the government's guarantee of the right to social security reduces the efficiency of the system, this policy should be set aside in favor of a more efficient economy.

01| Even negative human rights like freedom of speech, freedom of religion, and the right to property ultimately depend on institutions that entail costs and resources.

02| The concept of orthodoxy and mainstream is used as outlined by Colander et. al (2004). "Mainstream consists of the ideas that are held by those individuals who are dominant in the leading academic institutions, organizations, and journals at any given time, especially the leading graduate research institutions. (...) Orthodoxy generally refers to what historians of economic thought have classified as the most recently dominant 'school of thought,' which today is 'neoclassical economics.'" (Colander et. al: 2006: 490). There are therefore, within the mainstream, schools of thought that do not share all the neoclassical instruments, for example, there is part of behavioral economics and "new institutional economics" that rejects the utility maximization hypothesis (Dequech, 2007).

03| Although some neoclassical economists admit that once efficiency is achieved, considerations of equity in resource allocation are important, these are considered a secondary criterion involving value judgments and subject to the trade-off between efficiency and equity, as we will see in the next section.

In this context, for orthodox economics, policy alternatives are evaluated according to the purpose they achieve, and there is a certain indifference regarding alternative means to achieve a given result[04]. Social utility maximization may conflict with social rights, and this is not necessarily a problem. For the human rights approach, on the other hand, means are important and, in extreme cases, a right should be guaranteed, regardless of the consequences it may bring about (Reddy, 2011).

For orthodox economics there is, therefore, a hierarchy between the economic and the social dimension, or between the economic efficiency of the system and specific social goals. Moreover, the meaning of the word social refers less to a reality constructed by political action and more to the benefits of an efficient economic system. Social welfare should be a result of efficient economic allocation as opposed to merely a normative claim (Branco, 2009)[05].

Another aspect that marks the difference between human rights approaches and orthodox economics is the contrast between the fundamental objects of analysis: rights vs. utility. For orthodox economics, utility is a subjective measure of satisfaction or preference that is revealed by individuals' choices derived from their endowment of resources. In this language, by maximizing their utility consumers choose the best consumption basket within their budget constraints. In the human rights approach, however, a right must be guaranteed to any citizen, regardless of individual budgetary constraints. It is worth noting that the concept of citizen, with collective rights and responsibilities, which is common in the human rights language, has its parallel in the concept of consumer and entrepreneur, imbued with individual utility maximization objectives[06].

For its part, the maximization of social utility is perfectly compatible with deprivations to individuals since this is an aggregation of utility maximization according to individual budgetary constraints[07]. In this context, this economic perspective can tolerate human rights violations such as "an optimal allocation of the housing market can accept a situation in which part of the population is homeless. Whereas, under the human rights perspective, it is unacceptable for anyone not to have decent housing conditions" (Guidolin, 2019: 8).

In this context, the moral dimension of orthodox economics is emptied of its substance through instruments that seek to quantify the preferences of individuals without judging them. The utilitarian approach can also lead to conflicts with human rights, since the body of rights must, to some extent, be subordinated to welfare maximization and economic calculation[08].

The neoclassical commitment to "utilitarian welfare" precludes the possibility of incorporating rights as intrinsic values in its approach, to the extent that judgment between social situations must be based exclusively on aggregate individual utilities (Sen, 1979). As we will see in the next section, the neoclassical economist may in some cases favor rights-aligned fiscal policies, such as the provision of basic education, resulting in a more productive labor force. But in these cases, the allocation of public resources to areas that guarantee rights is justified on the grounds of efficiency rather than the recognition of rights as intrinsic values.

The neoclassical methodological framework also struggles to incorporate structural aspects related to racism, sexism, and other forms of discrimination (Almeida, 2018). The neoclassical discrimination theory, inspired by Becker (1957), limits the phenomenon to the individual level, exogenous to the economic system, understood as a market failure or a disutility that implies a cost for those who practice it. Thus, from the normative point of view, orthodox economics reinforces the idea of discrimination as an individual problem that can be solved through an "efficient" criminal system that punishes deviant conducts, with educational projects that reform the individual morally, and, at the very limit, with some affirmative action policies[09]. This approach, therefore, hardly interacts with systemic and institutional aspects that naturalize forms of discrimination and reinforce their structural aspect.

04| "Promoting human rights should, therefore, institutionally guarantee that justice of means is equally as important as nobility of ends. This safeguard is crucial when economics is confronted with human rights, since achieving the maximum of social utility–the foundational design of mainstream political economy–may collide with certain individuals' utility, that is to say their rights." (Branco, 2009: 20)
05| The so-called "welfare economics", for example, evaluates social welfare from the aggregation of individuals' preferences and the efficient allocation of resources at the microeconomic level. In this branch of economics, there are attempts to include normative aspects, such as different weights for the utility of individuals according to moral criteria, as in the Rawsian utility function.
06| An example of a basic economic concept that has little dialog with human rights is the demand curve, which represents the relationship between the price of a commodity and the quantity of that commodity that consumers are willing to buy given individual budgetary constraints. This theoretical construction does not consider social needs (or demands) of those who cannot afford to purchase commodities, just as the concept of utility does not differentiate between what is a need and what is a desire or superfluous spending.
07| As Winslow (1993) puts forward, the neoclassical theory uses an "atomistic" ontology in which the behavior of individuals is used to explain social structures and individuals have qualities independent of their interaction with the social environment. Unlike the "organicist" ontology, in which the individual's choices are systematically affected by their relationship with the environment and their social position.
08| "For economists, the utilitarian approach to income distribution comes naturally. After all, utilitarians and economists share an intellectual tradition: early utilitarians, such as John Stuart Mill, were also among the early economists. (...) Indeed, once one adopts the political philosophy of utilitarianism, running a society becomes yet another problem of constrained optimization." (Mankiw, 2013: 27)
09| For Becker (1957) and Friedman (1962) capitalism brings strong incentives for racial non-discrimination and the pursuit of economic self-interest in a free-market environment can eliminate prejudiced behavior.

Thus, the theoretical approach of orthodox economics moves away from the notion of social justice brought by the Universal Declaration of Human Rights. As discussed in Dardot and Laval (2016), it is a theoretical framework that is consistent with a vision of justice that values individualism as a virtue, eliminates social responsibilities, naturalizes inequality as a result of competition, and rewards fairly based on merit[10]. A vision that ultimately delegates social welfare to market mechanisms.

Friedrich Hayek, who had a major influence in the construction of a neoliberal ideology, positioned himself categorically against the Declaration of Human Rights[11], Among his arguments was the fact that positive rights, especially economic and social rights, undermine individual freedom since they give the state the power to expropriate resources from one individual to redistribute them among others (Hayek, 1973). According to Touchie (2005), Hayek's attacks on the United Nations and the ideal of social justice stem from the idea that these rights weaken the liberal theoretical framework that is based on a negative concept of rights, in which the State and other individuals must refrain from interfering in the actions of individuals.

Despite differences between Hayek´s theory and contemporary orthodox economics, both approaches have a greater compatibility with negative rights than with positive rights, with civil and political rights than with economic, social, and cultural rights.

Finally, Table 1 synthesizes the arguments of this section, which, without any pretension of exhausting the subject, is proposed to highlight existing conflicts between human rights and orthodox economics; the object of analysis, the social purpose, the notion of social welfare, and the ideal of social justice.

TABLE 1. Conflicts Between Human Rights and Orthodox Economy

	HUMAN RIGHTS	ORTHODOX ECONOMY
Approach	Normative approach that seeks universal rights requiring access equality.	Starts from a positive approach to understanding allocation of scarce resources.
Social Purpose	Multifold. The economy must be organized so as to equally guarantee the body of rights, regardless of other social objectives	Unique. The economy should be organized so as to maximize social utility.
Object of Analysis	Rights. They are guaranteed to any citizen, regardless of individual budgetary constraints.	Utility. Subjective measure of satisfaction revealed by individuals' choices based on their endowment of resources.
Social Welfare	It is a reality built upon political action and must be guaranteed by the observance of citizens' rights and duties, as well as collective responsibilities.	It is the result of an efficient allocation of resources arising from individual initiatives and not from normative claim.
Ideal of Social Justice	Full guarantee of human rights.	Guarantee of negative rights and distribution of social resources across competitive markets

Source: Elaborated by the author.

10| If the market is efficient in allocating resources and appropriately mediates between winners and losers, poverty may be undesirable, but it is not an injustice. "Poverty and misfortune are evils but not injustices." (Acton (1971) Apud Hayek (1973:177)

11| "This document [*Universal Declaration of Human Rights*] is admittedly an attempt to fuse the rights of the Western liberal tradition with the altogether different conception deriving from the Marxist Russian Revolution." (Hayek, 1998: 103)

2.2 Right to Work and the Presumed Trade-off Between Rights and Efficiency

Among human rights, the right to work is perhaps the most ignored by orthodox economists and by the *modus operandi* of economic policies in most countries. This right, in its quantitative aspect, means full employment for those who are able and willing to work, and the obligation of society, by way of the State, to provide it.

However, in the theoretical framework of orthodox economics there is a tendency towards full employment equilibrium, which is only not achieved due to exceptional situations, such as wage rigidity and market failures. According to Zannoni and McKenna (2014), the right to work is incompatible with the theoretical acceptance of the natural rate of unemployment and the idea that holds that any attempt to reduce the unemployment rate below that established by free market is self-defeating, resulting only in inflation. The theory states that an individual who accepts the market wage will find a job, so unemployment becomes the individual's problem. In this context, a societal obligation to the individual concerning the right to work would be neither necessary nor justifiable (Zannoni and McKenna, 2014)[12].

Consequently, policies aimed directly at securing employment fall outside of the economic policy instruments and give way to policies to reduce institutional rigidities and improve price and wage adjustment (e.g., labor market flexibility) and to correct market failures (information asymmetry, non-competitive markets, etc.)[13].

Even if these policies in the long run would lead the economy to a condition of full employment, it is evident that along the way the right to work would be systematically violated with the existence of involuntary unemployment. There are also qualitative aspects of the right to work–and of labor rights–that are rejected by most economists and by labor reforms that are presented as an instrument to increase efficiency, but can eliminate or relativize rights. Confirming what was discussed in the previous section: the end (increased efficiency) justifies the means (deprivation of labor rights).

At this point, we can highlight the distinction that orthodox economics makes between civil and political rights, and economic, social, and cultural rights. Generally speaking, orthodox (politically liberal) economists do not accept the use of torture to achieve a national security objective. This is because torture is a violation of the right to be free from cruel and inhuman treatment (which deserves no exceptions). On the other hand, it is more acceptable to violate the right to fair pay, or to decent working conditions, presumably to achieve full employment and an efficient allocation of resources. This quote from Hayek–for whom complete flexibility in the labor market is the way to a society at full employment and the right to freedom is not affected by working conditions–illustrates this fact clearly:

> *"(e)ven if the threat of starvation [...] impels me to accept a distasteful job at a very low wage, even if I am 'at the mercy' of the only man willing to employ me, I am not coerced by him or anybody else" (Hayek, 2011: 204).*

With regard to the level of employment, it is worth noting that there are schools of economic thought that reject the tendency to full employment equilibrium. Keynesian and Marxist/Kaleckian approaches ascribe the determination of employment to decentralized spending decisions of agents; so that economy does not tend toward full employment and is subject to recurring cycles and crises. In these approaches, the government plays an important role in evening out economic cycles and ensuring the level of employment. The main instrument for this is fiscal policy, which can interfere in the level of employment through direct and indirect stimuli to private economic activity (public purchases, tax reductions, transfers, etc.) and through public employment programs. There is, therefore, an evident and little explored dialog between some economic currents and the right to work.

Besides the right to work, other economic, social, cultural, and environmental rights may also be at odds with orthodox economics. Not only are these rights usually absent from the methodological apparatus, but their insertion can get in the way, that is, human rights can present themselves as a constraint or an institution that competes against economic efficiency.

Within the field of orthodox economics there are several conceptions about the guarantee of economic and social rights; there is almost a consensus regarding public subvention to basic education–generally justified by positive externalities–and regarding cash transfer policies for the poorest–generally justified by market failures or by a prescriptive view that is external

12| Beyond denying the right to work, the neoclassical theory understands work as a disutility (while consumption brings utility) to be compensated by wages. Here we have another difference from the human rights approach, in which work is a right that everyone should have access to under adequate conditions and with a decent compensation.
13| Similarly, the prevailing macroeconomic policies of the last three decades privilege the goal of price stability over employment and growth, unlike the prevailing view in the three decades following World War II when full employment was an explicit goal of macroeconomic policy in many countries.

to the methodological apparatus. However, as a rule, the discussion about social expenditures to guarantee rights in orthodox economics is surrounded by a presumed trade-off between efficiency and rights.

This trade-off arises when, in a context of scarce resources, the government must choose between interfering in market mechanisms and allocating society's resources to guarantee rights, or letting these mechanisms operate, resulting in a more efficient economy. Two are the main arguments supporting the trade-off; the first is the idea that taxing more productive people and transferring to less productive or unproductive people discourages the overall productivity of the system by interfering with the incentive system[14]. The more the productivity of the individual responds to incentives, the greater the loss to the system. And the second argument points to the State's inefficiency in managing public resources and providing services to society and reaffirms the superiority of the private sector–at least in competitive market environments–in allocating resources and providing the same services.

There is, however, an enormous controversy surrounding the existence of this trade-off and the assumptions that market mechanisms are able to allocate resources more efficiently than the State, especially in social spheres. In other words, the idea that social spending reduces the efficiency of the system is far from being conclusively proven. In this context, Peter Lindert (2004) brings abundant statistical and econometric evidence together with a thorough historical analysis to conclude that social spending does not entail efficiency losses and, on the contrary, may stimulate economic growth. For the author, countries with high social spending have historically fostered a virtuous combination of fiscal policy in which tax policy and social spending have generated positive effects on growth, compensating for any productivity-discouraging effects pointed out in the orthodox literature. At any rate, the debate over the trade-off between social spending and efficiency will not be definitely settled since it involves political disputes over who will benefit from the redistribution of resources and who will be affected by it (Lindert, 2004).

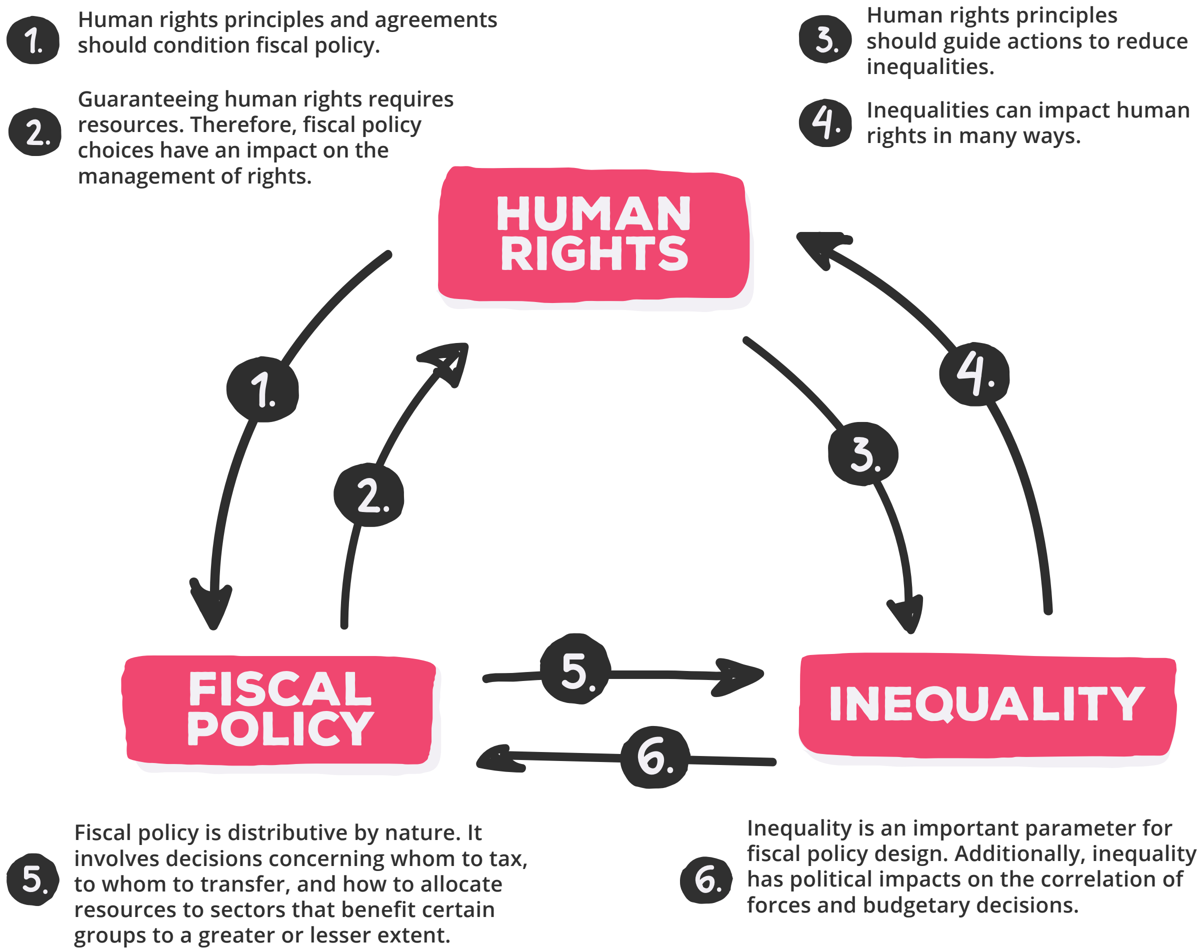
14| For Mankiw (2013) in an article entitled "Defending the 1%", there is no evidence that the rich receive more than their contribution to society, therefore a "forced" redistribution of resources threatens the meritocratic logic and may reduce the efficiency of the system.

3.

FISCAL POLICY, HUMAN RIGHTS, AND INEQUALITY

In addition to the analytical distance between the fields of economics and human rights, there is also a shortage of studies in the economic field that connect fiscal policy with these rights. This relationship is more developed in the academy in the field of law, which offers studies on prescriptive principles and on the adequate management of the public budget to guarantee rights[15]. However, in the economic field the literature found that makes a direct association between human rights and fiscal policy is scarce and not very systematized, with important exceptions such as Chaparro (2014), Balakrishnan *et al*. (2010) and Nolan et. al. (2013). This scarcity of studies contrasts with the growing theoretical and empirical literature on the impacts of fiscal policy on inequality. In light of this, this section seeks to articulate human rights with fiscal policy and inequality; show how these three fields condition each other, and highlight the importance of bringing human rights to the center of the fiscal policy discussion. Figure 1, summarizes the discussion in this section.

Figure 1. Summary of the interrelation between fiscal policy, human rights, and inequality



Source: Elaborated by the author from elements of CESR (2019).

15| CESR (2019), Principles and Guidelines (2020), Uprimny (2019), Corti (2019), Miguens *et al*. (2017), Alston & Reisch (2019), Bohoslavsky (2018), among others.

3.1 How Does Fiscal Policy Impact Human Rights?

Fiscal policy is an important instrument for guaranteeing human rights, given that all of these rights, to a greater or lesser extent, requires resources in order to be guaranteed. Furthermore, various fiscal instruments can impact not only the direct guarantee of rights but can also generate incentives or allocate resources that enable this guarantee. Thus, budgetary choices can be decisive for either the guarantee or the violation of human rights.

The impact of fiscal policy on human rights can be better understood through three classical functions of fiscal policy, as proposed by Musgrave (1973): the allocative function, the distributive function, and the stabilizing function.

The allocative function of fiscal policy is aimed at meeting public needs and arises from a recognition of the inefficiency of the market system in providing certain goods and services. In orthodox economics, this function is justified in the existence of market failures that prevent an efficient allocation of resources. Among these market failures are the existence of "public goods", externalities and natural monopolies that justify the actions of the state according to the neoclassical methodological framework[16].

Beyond market failures, the allocative function must be considered from the perspective of human rights. This is because, as discussed in the previous section, an efficient allocation can, under certain circumstances, be compatible with extreme inequality or human rights violations, without these being considered a "market failure"[17]. In other words, the violation of human rights from this perspective may not be considered an economic problem and may be ignored in the design and execution of fiscal policy.

The use of the allocative function of fiscal policy can contribute to guaranteeingthe DHESCE (economic and social human, cultural and environmental rights) such as health, education, food, basic sanitation, housing, urban infrastructure, environment, among others. Fiscal policy instruments may range from the direct provision of public services to sectorial incentives, subsidized credits, tax deductions, etc. As we shall see in the next section, it is possible to conceive a fiscal policy that is directed toward social missions, based on its allocative function[18].

In turn, the distributive function of fiscal policy is that aimed at redistributing part of society's income in order to achieve a distribution as desired by society itself. It arises from the recognition of the inability of the market to lead society to an income distribution structure that is considered fair or equitable (Oliveira, 2009).

From a human rights perspective, the distributive function of fiscal policy can either promote or hinder the guarantee of rights; since it interferes with people's income, it can also reduce or intensify market inequalities, and it can deprive people of the conditions for a decent life. On the expenditure side, the instruments that perform the distributive function are public cash transfers to people in poverty, the unemployed, the elderly, people unable to work, among others, guaranteeing their access to rights[19].

On the revenue side, the composition of tax burden interferes directly in market income inequality and can be an instrument to reduce it from a progressive structure in accordance with the principles of contributive capacity and material equality in taxation[20]. However, the tax burden, especially when focused on indirect taxes, can also be regressive to the point of increasing income inequality and conditioning access to human rights.

The parameters for applying the distributive function of fiscal policy should be based on the concepts of distributive justice and what society wants in terms of equality. In this context, the neoclassical conception and the neoliberal ideology reserve a limited role for this function, which may distort the incentive system and reduce its efficiency given the unequal allocation of resources by the market.

16| The economic concept of public goods refers to goods and services of which consumption by one individual does not harm the consumption of the same by other individuals, for example, tangible goods– such as street lighting, sidewalks, and traffic signals–and intangible goods–such as justice, security, and national defense.
17| In orthodox economics the existence of market failures does not necessarily imply the need for government intervention due to the costs of such intervention and the so-called "government failures". There are also economic schools of thought that deny the existence of market failures, such as a part of Austrian economics. And Marxist and Keynesian strands usually reject the idea of "market failures" as well as the idea of market efficiency present in neoclassical economics, given that the economic system itself is inherently unstable and subject to cycles and crises. A good part of Ecological Economics makes use of market failures, in particular the need to correct negative externalities of the production system that harm the environment.
18| It is worth noting that this function is greatly influenced by lobby groups. An important example is the seizure of the State by large corporations, influencing public expenditures without evaluating the results and even influencing the drafting of budget laws, often resulting in fewer resources for the realization of human rights through public policies.
19| As we will see further on, an increase in inequality does not necessarily imply the violation of human rights as well as a reduction in income inequality does not implies a guarantee of rights.
20|The principle of equality applied to the tax field is observed through the ideas of formal and material equality. In formal tax equality everyone should be treated equally before the law and within the law. In material tax equality, taxpayers should be guaranteed distinct treatments, to the extent of their inequality and contributory capacity (Kornhauser, 1996).

Finally, the stabilizing function of fiscal policy attempts to influence the level of employment and prices. According to Musgrave (1973), the stabilizing function:

> *"differs profoundly from the other two functions. Its main interest is not in the allocation of resources between public or private needs, or between alternative private needs. Rather, it concentrates its efforts on maintaining a high level of resource utilization and a stable value of currency" (Musgrave, 1973: 45).*

This function of fiscal policy was recognized in the 1930s when facing the effects of the Great Depression on employment and price levels. According to Musgrave (1973), the rationale for this function is simple: when there is involuntary unemployment, the level of public demand should be increased until full employment is achieved. When there is inflationary pressure due to excess demand, the government should adjust its expenditures in order to contribute to stabilize prices.

The stabilizing function is at the heart of Keynes' (1936) contribution on the impact of fiscal policy on employment and income. In exerting this function, fiscal policy should even out cycles and prevent crises in addition to seeking full employment, which, from a human rights perspective, is a condition for the full guarantee of the right to work. And, as we will see in section 3, this function of fiscal policy can be conceived not only as employment and price stabilization, but rather as social stabilization in a broader sense.

By preventing economic crises and acting to reverse them, the stabilizing function of fiscal policy plays an important role in guaranteeing human rights, since an economic crisis tends to violate several rights. As pointed out by Bohoslavsky (UN, 2018): "[...] it is precisely during these periods [of economic and financial crisis] that the population in particular those who are disenfranchised, live in poverty or at high risk of falling into poverty is in greatest need of State compliance with its obligations to respect, protect and fulfil human rights" (UN, 2018, p. 5).

3.2 How Should Human Rights Condition Fiscal Policy?

As pointed out by Chaparro (2014), human rights have a grounding relationship to fiscal policy. Human rights principles and agreements should be considered as a foundation for the design, implementation, monitoring, and evaluation of fiscal policy. Like all public policies, fiscal policy is subject to the principles of international human rights conventions[21], as can be seen in specific human rights principles present in international treaties.

Human rights principles correspond to parameters and guidelines applicable to fiscal policy, notably the principles of ensuring minimum content of rights; maximum use of available resources for the progressive realization of rights; as well as non-regression; non-discrimination; transparency, social participation and accountability, as described below.

According to the provisions of the UN Committee on Economic, Social, and Cultural Rights (ESCR), nation states must ensure the satisfaction of at least the minimum essential levels of each right. This implies that each of the rights recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR) contains a minimum of elements of immediate and mandatory fulfillment by the State that should be a priority in the allocation of public resources. The lack of or dissatisfaction with the most basic levels of rights constitutes strong evidence of non-compliance with the obligations established in the treaties[22].

In the last two decades, important progress has been made in elucidating the content of the principle of maximum use of available resources. This development has been largely context-driven, in particular in response to and in an effort to avoid a repeat of the 2008 global financial crisis, which resulted in the adoption of austerity policies with negative consequences for human rights. There is now broad agreement that this principle includes obligations related to the mobilization of available and potential resources (such as those that could stem from greater regulation against tax abuses and illicit financial flows); the allocation of resources; and the actual spending of resources (CESR and DeJusticia, 2018).

In the progressive realization of rights, the main human rights treaties recognize that, given resource constraints, ESCR can be secured at their full level in a progressive manner, aiming to achieve the full realization of the rights in the Covenant. But they also establish that States must immediately adopt all appropriate measures, to the maximum of available resources and with the mobilization of new revenues, to achieve the full realization of rights. One of the foundations of the

21| General comments and other pronouncements of the UN/CESCR Committee and the Limburg and Maastricht Principles are also serving as guidelines for fiscal policy.
22| Similarly, the UN High Commissioner for Human Rights has noted that meeting minimum obligations "should be the first priority in budgetary and policy decisions" (CESR *et.al.*, 2015).

pillar of progressive realization of rights is the concept of non-regressivity of social rights. This concept implies that the adoption of deliberate and unjustified measures by national states that imply backsliding[23], that is, measures that suppose a deterioration in the level of fulfillment of a right, is not allowed (David, 2018). Thus, these principles guide fiscal policy to sustain existing social achievements and to progressively advance towards the guarantee of human rights.

The ICESCR regulates the principle of non-discrimination in its article 2.2 and the ESCR Committee does so in its General Comment No. 20, by establishing that States must ensure that action plans, policies, and strategies to combat formal and material discrimination[24] in relation to the rights recognized in the Covenant exist, and are applied, in both the public and private sectors. Economic policies, such as budget allocations and measures to stimulate economic growth, must ensure that rights are enjoyed without discrimination of any kind. In addition to not discriminating, states must take concrete, deliberate, and specific measures to ensure the eradication of any kind of discrimination in the exercise of the rights recognized in the Covenant. In many cases, eliminating material discrimination will require devoting more resources to public policies aimed at historically disadvantaged groups, a focal point within the guarantee of a universal right (INESC, 2017). In this context, it should be noted that this principle points to the need for fiscal policy to contribute to achieving material equality among individuals and not just formal equality[25].

The nature of rights implies the existence of mechanisms to demand them and the informed participation of people in decisions that may affect their rights. Hence the importance of the principle of transparency, social participation, and accountability, applicable to fiscal policy. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that the right to freedom of expression includes the freedom to seek, receive, and disseminate information. Similarly, article 13 of the Inter-American Convention on Human Rights protects the right and freedom to seek and receive information. The jurisprudence of the Inter-American Court of Human Rights (IACHR) recognizes that access to information is a universal right and has expressly established the right to "seek and receive information" from the government. With regard to ESCR, economic, social, and cultural rights, it is essential to unite all efforts at the national level to convene the participation of all sectors of society. "Popular participation is required at all stages of the process, including the formulation, implementation, and review of national policies." (CESR *et al*., 2015). This means that fiscal policy, whether in the collection or execution of the public budget, must be transparent, ensure social participation in its formulation and monitoring stages, and rely on effective accountability of governments for the measures adopted, including an assessment of the impact on human rights of fiscal policy (Bohoslavsky, 2018).

Moreover, the public budget, as a forum of dispute between different interests in society, can also be judicially challenged to control the constitutionality of budgetary decisions. On the revenue side, it is possible to judicially challenge regressive tax systems based on the principles of equality, contributive capacity, and material tax equality, when these are present in the constitutions. On the expenditure side, it is possible to judicially challenge the protection of rights against what the State can legally choose to spend or not. For example, in countries where the budget is authorized rather than mandatory, the Executive branch may decide to spend or not the public resource on a budgetary action. However, this discretion has limits: a choice not to execute resources of a public policy that guarantees the minimum content of a constitutional right can be judicially challenged and it is important to have this mechanism to counterbalance the branches of government (Chaparro, 2014).

3.3 The Relationship Between Fiscal Policy and Inequality

Fiscal policy is redistributive in nature as it benefits certain individuals or groups to a greater or lesser extent than others. Who to tax, to whom to transfer, and where to allocate resources are central issues that guide fiscal policy decisions.

There are few fiscal policy decisions with neutral impact on distribution. Vaccination campaigns and national security are some of the rare examples in which public spending benefits the entire population in a relatively similar way. Social welfare spending, for example, tends

23| Fiscal consolidation measures, for example, to be in line with international human rights standards must: be temporary, strictly necessary and proportionate; non-discriminatory; take into account all possible alternatives, including tax measures; protect the minimum human rights content; and be adopted after careful consideration and genuine participation of affected groups and individuals in decision-making processes (DESC Committee, 2016).

24| Formal equality is equality in the law and before the law and refers to equal treatment; and material equality consists in the realization of equality or reduction of inequality and is linked to the idea of equal opportunity.

25| However, material equality in the field of human rights is subject to different interpretations. Concerning the discussion, there is literature on the nature of the concept of implicit equality in human rights principles, whether equality of opportunity or minimum content, or other types, discussed in texts by authors such as Sen (1979), Burchardt, T., & Hick, R. (2018), Buchanan, A. (2005), Nikolaidis, C. (2014) and Burchardt, T., & Vizard, P. (2011).

to benefit a smaller group. A tax on tobacco consumption initially harms the consumers of this product, as well as the businessmen and traders in the field. A public investment in the construction of a bridge particularly benefits the people who travel on it or use the goods and services that are delivered across it.

There is substantial literature on the impact of fiscal policy on social inequality. On the public spending side, Silveira (2013), Lustig (2015), and ECLAC (2015) show the role of social transfers and benefits in reducing inequality and estimate an "extended income" by attaching values to public services, such as health and education, considering them as an indirect income transfer. According to the studies, these services have an enormous potential for reducing inequality since they mainly benefit the poorest segment of the population[26].

On the revenue side, direct taxation (on income and wealth) tends to reduce social inequality through the use of progressive tax rates (Valdés, 2014). Indirect taxation (on the consumption of commodities, goods, and services), on the other hand, tends to increase inequality, since these taxes are regressive and affect the poorest relatively more, as shown by Silveira (2013).

However, apart from income, it is also essential to consider the impact of fiscal policy on horizontal inequality[27], that is, among culturally defined groups by gender, race, ethnicity, religion, region, class, etc., which can occur in political, economic, or social dimensions. Tax laws almost always reflect or even increase any economic disparities between groups of people; they are very likely to reproduce existing inequalities–including in relation to gender-related economic inequalities (Lahey, 2018). A tax system is considered to have an explicit gender bias when tax laws identify and treat men and women differently. An implicit bias, on the other hand, takes place when the regulations set out in tax law have different consequences for men and women, as a result of not taking into account the structural gender inequalities that characterize many societies in the design and implementation of the regulations (Rodríguez and Itriago, 2019)[28].

Concerning the tax side of fiscal policy, there are specific principles that serve as guidelines, such as the principle of vertical equity that states that taxes should be levied in greater proportion on taxpayers with greater contributive capacity and that of horizontal equity that points to an isonomic tax treatment among taxpayers, regardless of differences in income sources (Orair & Gobetti, 2018).

Thus, fiscal policymaking as a whole should aim at reducing inequalities, however, each aspect of fiscal policy does not necessarily need to be redistributive. There are other goals that can guide fiscal policy beyond the mere reduction of inequalities, for example, discouraging the consumption of goods that are harmful to health through taxes on products that can have a negative impact on income distribution, just as taxes on activities that are more harmful to the environment or incentives for less polluting activities can, in isolation, have negative distributional effects.

Beyond the grounding relationship that inequalities should exert on fiscal policy, there is also an important political relationship. Social inequality has an impact on the correlation of forces in the political system and thus on fiscal decisions. The greater the inequality, the more likely we are to move away from democracy and toward plutocracy (Milanovic, 2017). There is, therefore, a risk of the State and the political system being seized by those with more economic resources (Souza, 2018). In this context, fiscal policy practices are conditioned by social interests, class structure, and social inequalities.

3.4 The Relationship Between Human Rights and Inequality

Extreme levels of income and wealth inequality are associated with the prevalence of extreme levels of poverty, in which the vast majority of human rights cannot be realized (Alston, 2015). Inequalities and human rights are two connected dimensions, but they differ substantively. In the economic field, academic studies that articulate inequality and fiscal policy do not always address human rights considerations.

Studies on inequality make use of relative measurements that compare levels of income, wealth, years of education, etc. Human rights, on the other hand, deal with absolute indicators, for example, having or not access to drinking water, food, basic sanitation, or a minimum income level for a decent life[29]. Thus, the violation of a human right is not necessarily captured by inequality indicators.

26| According to ECLAC (2015), for the year 2011, the reduction of inequality through public health and education services measured in Latin America by the Gini index is significant (from 0.48 to 0.42), but still far below the reduction in the European Union (from 0.30 to 0.23) and the OECD (from 0.30 to 0.24).

27| Concept developed in Stewart (2002).

28| In Brazil, black women proportionally pay more taxes, due to the regressive structure of the tax system (Salvador, 2012). A very low and regressive tax burden is also identified as the cause of ethnic inequality in Guatemala: poverty after taxes and cash transfers is higher than market income poverty (Cabrera, Lustig, Morán, 2015).

29| Similarly, poverty and extreme poverty are measured by absolute indicators.

A reduction in income inequality does not necessarily guarantee human rights just as an increase in inequality does not necessarily compromise them[30]. Therefore, human rights principles must guide and be articulated in inequality reduction policies.

Solomon (2011) argues that "the problem of global poverty is not one of scarcity but of unequal distribution." So much so that the human rights community has a pivotal role in articulating human rights norms to challenge extreme inequality as an intrinsic injustice, based on the principle of equality (Sakiko, 2018).

In a different perspective, Moyn (2015) argues that the human rights framework holds a commitment to a floor of social protection rather than a ceiling to inequalities. For him, the realization of human rights may prove effective even in situations of radical inequality.

Considering both lines of argument, Uprimny and Chaparro (2020) propose that while inequality itself is not automatically a violation of human rights norms, strong and undeniable empirical links can be found between high levels of inequality and disfranchisement. This connection makes it not only possible, but also necessary, to build bridges between both fields. For the authors, the big challenge is not in being able to say that income and wealth inequality has an impact on human rights, but in finding the transition point between these levels of inequality, where it can be said that extreme inequality is an intrinsic injustice with implications for human rights (Uprimny and Chaparro: 2020).

As for the opposite relationship, how inequalities affect human rights, Uprimny and Chaparro (2020) have identified four mechanisms by which extreme income and wealth inequalities affect the realization of human rights, particularly ESCR. The first is the weakening of economic growth since inequality affects growth and its sustainability, which reduces low and middle-income countries' opportunities to secure rights (Ostry *et al.*, 2014). The second is the reduction in redistributive policies: spending on social rights tends to fall when the gap between the middle class and the richest 10% widens (Schwabish *et al.*, 2006). The third mechanism is the loss in the enjoyment of ESCR: in developed countries, after a certain level of GDP per capita, the greater the levels of inequality, the greater the loss in the enjoyment of rights, especially ESCR. In other words, in ceteris paribus, the higher the levels of inequality in a central economy country, the lower the guarantee of ESCR (Wilkinson & Pickett, 2010). And finally, low social mobility, which is reflected in reduced equality of opportunity, one of the foundations of human rights. Countries with more inequality at one point in time also experience less income mobility across generations (Corak, 2013).

In addition, income and wealth inequalities produce power inequality, with a consequent loss of the possibility for claiming rights or unequal conditions to do so. In other words, there is tension between the principle of equality with equal rights and political participation and the existence of economic inequality (Souza, 2018).

Highly unequal societies weaken the welfare state, public social security systems, as well as health and education.

> *"With income polarization, the super-rich come to the conclusion that it is better to create their own private systems because sharing a mass system with those who are substantially poorer and face different risks (such as a higher likelihood of unemployment or certain diseases) would lead to considerable income transfers from the rich. Private systems also provide better quality for the rich, per unit of expenditure, because they allow savings for the kinds of risks that the rich do not face. This leads to a system of 'social separatism', reflected on the growing importance of private health plans, private education, and private pensions. Once these private systems are set up, the rich are increasingly reluctant to pay high taxes because they get little benefit from them. This in turn leads to erosion of the tax base. The end result is that a very unequal or polarized society cannot easily maintain an extensive welfare state" (Milanovic, 2019).*

Furthermore, inequality can also increase crime through a number of different mechanisms, from escalating social tensions to increasing economic returns for criminal activity (World Bank, 2014) and reinforcing discriminatory behaviors since more unequal societies have more inequality-reinforcing behaviors (Durante *et al.*, 2013).

30| For example, withdrawing a public policy that benefits middle-income people to extend another public policy that benefits low-income people will potentially reduce the Gini index. But it may expand rights for low-income populations at the expense of reducing the rights of middle-income populations, ignoring the principle of universality of human rights.

4.

HUMAN RIGHTS, FISCAL POLICY, AND FISCAL RULES

We have already seen that human rights must have a grounded relationship to fiscal policy. Fiscal policy should obtain resources and channel them appropriately to give effectiveness to human rights. The public budget should be an instrument for the realization of rights and not an instrument to undermine them (Corti, 2011). In other words, as the Initiative for Human Rights Principles in Fiscal Policy (2021) indicates, fiscal policy must have as its fundamental purpose the realization of human rights. The hierarchy that must exist between human rights and fiscal policy is a hierarchy between objective and instrument, between purpose and means.

In this context, this section aims to briefly revisit the economic debate on the role of fiscalpolicy and fiscal regulations and seek to redefine the idea of "fiscal responsibility" considering that fiscal policy and its regulations should be geared towards guaranteeing human rights.

4.1 The Economic Debate on the Role of Fiscal Policy and Fiscal Rules

The pendulum of the debate about the role of fiscal policy goes from the idea that the government should permanently seek to balance the budget and eliminate deficits to the idea that the government should not seek to balance the budget but the economy, guaranteeing employment and growth. On the one hand, the emphasis on strict fiscal rules and, on the other hand, flexibility and discretion. This debate has repercussions throughout the recent history.

According to Burger and Marinkov (2012) the debate about fiscal rules is not a new phenomenon; the idea of balanced budgets was already in the writings of David Hume as early as the 18th century and fiscal rules already existed before the 1929 crisis. The latter crisis and the economic depression inaugurated a period of appreciation of the role of discretionary fiscal policy, based on Keynesian ideas and functional finance.

For Keynes, the public budget plays a crucial role in evening out the effects of business cycles in the economy by compensating for insufficient private demand in periods of slowdown. Thus, the quest should not be for a balanced budget annually or in each financial year, but to have a balanced economy considering the entire length of the economic cycle (Balassone and Franco, 2001).

The 1950s and 1960s in central countries were marked by the use of discretionary fiscal policy and increased public spending, especially social spending. The Keynesian consensus on fiscal policy management proposed a counter-cyclical management of aggregate demand[31] and had full employment as a policy goal. Besides the intense use of fiscal policy and recurrent budget deficits in many countries, the period is also marked by the reduction of public debts relative to GDP in an environment of economic growth and low interest rates in countries like the U.S. and England. In addition to discretion, public budgets generally contained a strong countercyclical component associated with the distributive and allocative functions of fiscal policy, discussed in section 3. Public transfers and other mandatory social expenditures functioned as automatic stabilizers that regularized the economic cycle[32].

In this context, fiscal rules did not disappear; most governments still followed some kind of golden fiscal rule whereby borrowing was predominantly done to finance infrastructure, while current expenditures were financed by tax revenues (Burger and Marinkov, 2012).

The pendulum begins to swing in the 1970s, and from then on, the discourse that macroeconomic policy action should focus on price stability gains theoretical and political strength. Full employment is no longer among the objectives, in line with orthodox theory which points out that fiscal policy–in trying to reduce the unemployment rate–may cause disturbances and that the reduction of unemployment should be achieved by correcting market failures and reducing rigidities, as discussed

31| Aggregate demand is a macroeconomic term that corresponds to the sum of all the demand of a country, including demand by consumers, firms, government, exporters, and importers. It is composed of consumption, government spending, investment, foreign demand (exports), and domestic demand (imports); these are the components of GDP from the demand standpoint.

32| Automatic fiscal stabilizers are defined as the set of government revenues and expenditures associated with the economic cycle in a counter-cyclical way. By nature, some revenues and expenditures react automatically to changes in economic activity. Thus, they reduce the magnitude of cycles by stimulating economic activity in periods of recession or discouraging it in periods of expansion.

in section I. In this context, the discussion of fiscal rules gains strength to limit discretion and subject the State to an intertemporal constraint. The Keynesian principle of fiscal policy as a tool to manage the business cycle is replaced by the idea of balanced budget through strict fiscal rules (Lopreato, 2006). The fiscal anchor gained the status of a country risk reduction factor, placing itself as a central piece in the effort to gain the confidence of investors (Heller, 1997).

With the global financial crisis of 2008, the pendulum moved back to the center; the previous consensus was challenged and fiscal policy was once again considered a central instrument of macroeconomic policy (Blanchard *et al*., 2010). Lagarde (2019) upon assuming the presidency of the European Central Bank stated, "central banks [or monetary policy] are not the only players on the field, governments must cooperate by adopting fiscal stimulus measures to revive the Eurozone economy and react to the threat of populism." The discussion seems to converge on a common position: the use of fiscal policy should not be limited to automatic stabilizers and can be an effective instrument in particular moments of deep crisis (Lopreato, 2014).

In this context, Eyraud *et al*. (2018) show that there has been a change in the pattern of fiscal rules applied internationally. According to the authors, before the 2008 crisis, the rigidity of fiscal rules made it difficult to enforce them in times of crisis, and recently a "second generation of fiscal rules" has sought to increase flexibility, define escape clauses associated with the economic cycle, and improve their enforceability.

With the Covid-19 pandemic, the year 2020 has accelerated the debate about the role of the State and fiscal policy in particular; it should potentially reinforce the pendulum movement that had been underway since the 2008 global financial crisis. With the socioeconomic effects of this crisis not fully overcome and the climate crisis reaching alarming levels, countries adopted unprecedented fiscal and monetary expansion measures, with recommendations and approval even from international financial institutions. The pandemic reinforced the importance of flexibility in fiscal policy, as countries with very rigid rules lost precious time in saving lives while seeking mechanisms to make the pre-existing legal framework more flexible.

Finally, the economic debate about fiscal rules hardly incorporates the human rights dimension. The vision of rigid fiscal policy rules exclusively subordinated to the vision of debt sustainability and the idea of a minimal State is dangerous for human rights, since it does not adequately recognize the role of fiscal policy in guaranteeing employment and mitigating economic cycles, much less in providing public services essential to a decent life. Austerity programs and fiscal consolidation in response to economic crises have an uneven impact on the population, affecting rights and harming the most vulnerable groups (Bohoslavsky, 2019). Moreover, there is no evidence that this type of policy contributes to economic recovery. Nevertheless, the most widespread Keynesian view does not adequately incorporate the human rights dimension in fiscal policy either, despite conceiving this policy as a tool to reduce the impacts of the cycle and full employment as a legitimate policy goal.

4.2 Redefining Fiscal Responsibility

A fiscal policy promoting human rights should follow three pillars:

I. Respect human rights principles and consider their guidelines.

II. Be guided by well-defined social and environmental missions or social purposes.

III. Promote social stability, which considers employment, income, and ensuring the minimum content of human rights with progressive realization.

A FISCAL POLICY THAT RESPECTS HUMAN RIGHTS PRINCIPLES

With regard to the first pillar, fiscal policy should seek to follow the principles discussed in section 3.2 in accordance with specific guidelines to be considered in the formulation and execution of fiscal policy, such as those developed by the PD|DH|PF Initiative (2020), summarized in Table 2.

TABLE 2. Summary of Human Rights Principles and Guidelines for Fiscal Policy

Kind	Principles	Subprinciples	Guidelines	Principles description
General	1	5	4	Fiscal policy must have the realization of human rights as its ultimate goal.
	2	4	8	National and international human rights obligations set limits on the discretion of states with regard to their fiscal policy.
Cross -sectional	3	4	8	States must ensure that their fiscal policy is socially fair.
	4	3	5	States must ensure that their fiscal policy is environmentally sustainable.
	5	5	4	States should respect the principles of equality and non-discrimination in their fiscal policy and incorporate differential approaches in their design and implementation.
	6	5	3	States should promote substantive gender equality through their fiscal policy.
	7	5	9	Fiscal policy should be transparent, participatory and accountable. People have the right to tax information.
Specific	8	4	5	States should take all necessary financial and fiscal measures to give effect to human rights within a sustainable fiscal framework.
	9	4	3	States must guarantee as a priority the minimum content of economic, social and cultural rights in their fiscal policy.
	10	4	4	States should, through their fiscal policy, mobilize the maximum amount of available resources to progressively achieve the full realization of economic, social, cultural and environmental rights.
	11	2	4	States must ensure that their fiscal policy does not generate unjustified regression in the levels of protection achieved in economic, social and cultural rights, even in contexts of economic crisis.
	12	3	2	States are permitted, and sometimes obliged, to encourage or discourage behaviors and correct externalities in order to guarantee human rights through specific tax policy instruments.
Non-state	13	5	7	States and the international institutions to which they belong should provide international assistance and cooperation on tax issues, and create an adequate global governance environment, in order to achieve the full realization of human rights.
	14	2	4	Non-state actors, including businesses and intermediaries, have human rights responsibilities in relation to their tax behavior.
Remedies	15	3	5	States should establish appropriate remedies for human rights violations related to fiscal policy.
TOTAL	15	58	75	

Source: PD|DH|PF Initiative (2020)

The PD|DH|PF Initiative (2020) comprises 15 principles, 58 supporting principles, and 75 guidelines with the objective of better establishing the relationship between fiscal policy and human rights. The principles interact with the universe of the human rights field and with the supporting principles, specifying them. The guidelines, on the other hand, are in dialog with the policy field, bringing specificity as to how to adopt measures to comply with the principles.

The general principles correspond to the instrumental and grounding relations between human rights and fiscal policy. Cross-cutting principles are those that must be observed by the State in the elaboration and execution of every fiscal policy. Specific principles guide how the functions and steps of fiscal policy should be designed to be aligned with human rights principles and guidelines. Non-state principles address the responsibilities of international institutions, international cooperation, and companies. Finally, the principles linked to reparations guide how the State should proceed in case of human rights violations related to fiscal policy..

FISCAL POLICY GUIDED BY SOCIAL AND ENVIRONMENTAL MISSIONS

A social and environmental mission-oriented fiscal policy is a way of thinking about the use of the distributive and allocative functions of this policy to advance the progressive guarantee of rights and reorient State participation in economic development aiming to achieve social goals desired by society.

As Mazzucato (2018) illustrates, the idea of a mission-oriented public policy originates from the development of technologies aligned with specific goals defined by the State, such as NASA's historic mission that put a man on the moon. This author suggests adapting the idea from old goals associated with defense, nuclear energy, and aerospace technology to new goals, such as environmental technologies and social challenges. More recently, Mazzucato and Skydelsky (2020) propose a "new fiscal constitution" based on the idea of a mission-oriented fiscal policy.

These authors highlight a new way of thinking about targeted fiscal stimuli from concrete policy goals, such as zero net carbon emissions, and point out that the process does not involve choosing winning and losing technologies, companies, and sectors, but rather picking specific problems and enabling solutions to emerge via a bottom-up process of experimentation and innovation (Mazzucato & Skydesky, 2020).

Going beyond the format proposed by Mazzucato and Skydelsky (2020), a mission-driven fiscal policy can highlight the purpose of guaranteeing human rights that fiscal policy holds. This way of thinking about fiscal policy values budget planning and the formulation of specific goals and objectives for different areas that shape the composition of the public budget in a bottom-up process in which social challenges dictate the need to fund public policies that, in turn, determine the management and design of rules for fiscal policy as a whole. This reverses a very common rationale in fiscal policy, which determines from top to bottom the limits for public spending and revenue collection based on macroeconomic diagnoses of debt and fiscal performance.

A fiscal policy guided by human rights missions can be articulated with development agendas such as the UN's 2030 Agenda, which, based on 17 goals and 169 targets, seeks to realize human rights and achieve gender equality (UN, 2015). Moreover, this can be an important component of a growth model that articulates social demands and productive structures, as proposed by Rossi *et al*. (2020). These authors outline a development model in which income distribution and social investment are the drivers of economic growth and modernization of productive structures.

Thinking about fiscal rules in this context means building them from the bottom up, based on the financing needs of each mission. To comply with the principle of guaranteeing the minimum content of rights, the use of minimum floors to ensure funding for social and environmental policies can contribute to achieving their goals. On the other hand, the adoption of pro-cyclical rules can be an obstacle to the extent that they condition the financing precisely at times of greater need to guarantee rights and thus hinder planning and investment plans. Fiscal adjustments that curtail pre-established social resources should be avoided because they subvert the logic of budgetary planning to the extent of subordinating it to short-term objectives, which often have not even proven to be effective in their purposes[33].

33| In this context, it is essential to have a multi-year fiscal planning that is not limited by the idea of an annual balanced budget, but that considers fiscal sustainability based on medium-term social and economic goals and objectives.

FISCAL POLICY AIMED AT SOCIAL STABILITY

The third pillar considers that the stabilizing function of fiscal policy, discussed in section 2.3, should go beyond its traditional Keynesian interpretation related to employment and price level stabilization. It can also incorporate the human rights dimension understood especially from the principle of non-regression and the guarantee of minimum content.

In this way, Musgrave's (1973) original idea of fiscal policy as an element to stabilize a high level of resource utilization and a stable value of money is complemented by the responsibility to avoid backsliding in specific social areas, which frequently happens in times of economic crisis, but can also happen in times of growth, with full capacity utilization.

Economic crises are associated with reduced wages, impoverishment, increased unemployment, and social exclusion, and they constrain access to human rights. Concerning health, it is precisely in times of crisis that the demand for public health services is increased while the demand for private health plans and services contracts. (Guidolin, 2019). Thus, a human rights-based fiscal policy should increase resources for public health and other social areas in times of crisis and avoid fiscal austerity strategies that can contribute to human rights violations and further reinforce systemic discrimination against vulnerable social groups that are more affected by economic crises, while they are generally more benefited by public transfers and services.

Setbacks in the guarantee of rights can also occur outside the context of economic crises; thus, the stabilizing function of fiscal policy must at all times pay attention not only to the macroeconomic level, aggregate demand, employment, and growth, but also to inequality and the guarantee of rights. An economy at full employment that grows unevenly can harbor human rights violations associated with the right to work, difficulties in access to health, education, retirement, sanitation, etc. Similarly, fiscal policy must also react to environmental setbacks by allocating the resources necessary for their remediation.

As argued in CESR (2020), the Covid-19 pandemic is an exceptional moment when governments adopt emergency measures and which also provides an opportunity to rethink the role of fiscal policy in the context of a rights-based social protection system.

Thinking about fiscal rules in this context means ensuring flexibility in fiscal policy by allowing room for discretion and through automatic stabilizers that guarantee more resources for social areas in times of greatest need. To this end, fiscal rules must have well-defined escape clauses, not only for situations of economic crises, natural disasters, or other unexpected events, but also in the face of changes in sentinel indicators of the guarantee of rights, which can trigger when retrogressions or violations of human rights are identified in specific areas. No fiscal rule should override the realization of rights.

Besides countering the effects of the cycle in the short term, the stabilizing function of fiscal policy must also ensure the sustainability of public finances in the long term. The concept of fiscal sustainability does not possess a concerted definition among economists, nor a precise operational application. Chalk and Helmming (2000) show how fiscal sustainability is commonly associated with public debt stabilization in the literature, but they argue that the concept is also used as the ability to continue fiscal policy without affecting the solvency of the State, which does not necessarily depend on stabilizing public debt. The fact is that there is no ideal number, nor a reasonable technical explanation that defines an optimal or maximum level for the public debt. The analysis of international experience shows diverse levels of debt/GDP ratio and widely differing attitudes concerning the treatment given to the problem[34].

Fiscal sustainability will depend, therefore, on the specifics of each country, its collection capability, whether or not it issues debt in its own currency, and the relationship between fiscal policy and external stability[35]. This, however, does not mean a constraint for short-term fiscal stimulus or an impediment to the expansion of the social functions of nation-states.

34| An influential paper by Carmen Reinhart and Kenneth Rogoff (2010) identified a presumed public debt limit of 90% of the GDP, beyond which economic growth would be harmed. The Harvard economists' study was embraced by economic and political analysts as an academic justification for austerity. However, researchers at the University of Massachusetts replicated the research and discovered spreadsheet errors and methodological problems, invalidating the results.

35| On the relationship between tax policy and the external balance, a fiscal stimulus that uses imported goods and services intensively can compromise the sustainability of this policy in case of foreign currency shortages and the need for debt in foreign currency.

Finally, there is no trade-off between fiscal and social responsibility. In fact, assuming the guarantee of human rights as the purpose of fiscal policy, social responsibility is not something external, but a constituent part of fiscal responsibility. Budget balancing, debt stabilization, and reductions in public spending cannot become goals in themselves. When the search for fiscal surpluses conditions the guarantee of human rights, it becomes irresponsible fiscal policy. In this context, responsible fiscal policy must respect human rights, ensure social stabilization, and seek the progressive realization of rights.

BIBLIOGRAPHY

› Acton, H. (1971). The morals of Market: an ethical exploration. Harlow, Longmans, P.71.

› Almeida, S. L. (2018). O que é racismo estrutural? Letramento.

› Alston, P. (2015). Extreme inequality as the antithesis of human rights. Open Democracy. https://www.opendemocracy.net/en/openglobalrights-openpage/extreme-inequality-as-antithesis-of-human-rights/

› Alston, P. & Reisch, N. (2019). Tax, Inequality, and Human Rights. Oxford University Press.

› Balassone, F; Franco, D. (2001). EMU fiscal rules: a new answer to an old question? SRRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2094456

› Balakrishnan R., Elson, D. & Patel, R. (2010). Rethinking macroeconomic strategies from a human rights perspective. Society for International Development, 53(1), págs. 27–36.

› Bauer, A. (2014). Fiscal Rules for Natural Resource Funds: How to Develop and Operationalize an Appropriate Rule. Revenue Watch Institute. https://resourcegovernance.org/sites/default/files/NRF_RWI_BP_Fiscal_EN_fa.pdf

› Becker, G. S. (1957). The economics of discrimination. University of Chicago Press.

› Blanchard, O., Dell'Ariccia, G. & Mauro, P. (2010). Rethinking Macroeconomic Policy. IMF Paper. IMF.

› Bohoslavsky, J.P. (2018). Guiding Principles on Human Rights Impact Assessments of Economic Reforms: report of the Independent Expert on the Effects of Foreign Debt andOther Related International Financial Obligations of States on the Full Enjoyment of Human Rights, Particularly Economic, Social and Cultural Rights. A/HRC/40/57. Consejo de Derechos Humanos de las Naciones Unidas.

› Branco, M. C. (2009). Economics Against Human Rights: The Conflicting Languages of Economics and Human Rights. Capitalism Nature Socialism, 20:1, 88–102.

› Buchanan, A. (2005). Equality and human rights. Politics, philosophy & economics, 4(1), 69–90.

› Burchardt, T. & Hick, R. (2018). Inequality, advantage and the capability approach. Journal of Human Development and Capabilities, 19(1), 38–52.

› Burchardt, T. & Vizard, P. (2011). 'Operationalizing' the capability approach as a basis for equality and human rights monitoring in twentyfirstcentury Britain. Journal of human development and capabilities, 12(1), 91–119.

› Burger, P; Marinkow, M. (2012). Fiscal Rules and Regime Dependent Fiscal Reaction Functions: The South African case. OECD Journal on Budgeting.

› Cabrera, M., Lustig, N. & Morán, H. (2015). Fiscal Policy, Inequality, and the Ethnic Divide in Guatemala. World Development. Elsevier, vol. 76(C), págs. 263–279.

› CEPAL (2015). Desigualdad e informalidad: un análisis de cinco experiencias latinoamericanas. https://www.cepal.org/es/publicaciones/37856-desigualdad-informalidad-un-analisis-cinco-experiencias-latinoamericanas

› CESR. De Justicia. (2018). Developing practical guidance on 'maximum available resources.'

› CESR. (2020). Governments' Obligation to Invest "Maximum Available Resources" in Human Rights. CESR.

› CESR (2019). Resources Restricting Rights: Fiscal Policy, Inequality and Social Rights in Peru. CESR.

› CESR et.al. (2015). Política fiscal y derechos humanos en las Americas. CESR.

› Chalk, N. & Hemming, R. (2000). Assessing fiscal sustainability in theory and practice. Working Paper. IMF.

› Chaparro, S.R.H. (2014). Presupuesto, derechos humanos y control judicial. Una oportunidad para la convergencia entre constitucionalismo y hacienda pública. Tesis de maestría. Universidad Nacional de Colombia.

› Colander et.al. (2004). Changing face of mainstream economics, Review of Political Economy, 16:4, 485-499

› Comite de Derechos Económicos, Sociales y Culturales (DESC) (2016). Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights. UN. Doc. E/C.12/2016/1.

› Corak, M. (2013). Income Inequality, Equality of Opportunity, and Intergenerational Mobility. Journal of economic perspectives. https://www.aeaweb.org/articles?id=10.1257/jep.27.3.79

› Corti, H.G. (2019). Restricciones financieras y derechos humanos: una visión global. Revista Institucional de la Defensa Publica de la Ciudad Autónoma de Buenos Aires.

› Corti, H.G. (2011). Derecho constitucional presupuestario. Abeledo Perrot.

› Dardot, P. & Laval, C. (2016). A nova razão do mundo: ensaio sobre a sociedade neoliberal. Editora Boitempo.

› David, G.C. (2018). Política fiscal e direitos humanos: uma analise a partir dos acordos internacionais. En: Rossi, P.; Dweck, E. & Oliveira, A.L.M. (org.) (2018). Economia para poucos: Impactos sociais da austeridade e alternativas para o Brasil. Autonomia Literaria.

› Dequech, D. (2007). Neoclassical, Mainstream, Orthodox, and Heterodox Economics. Journal of Post Keynesian Economics, 30(2), 279-302. Retrieved June 7, 2021, from *http://www.jstor.org/stable/27746799*

› Durante, F., Fiske, S., Kervyn, N., et. al. (2013). Nations' Income Inequality Predicts Ambivalence in Stereotype Content: How Societies Mind the Gap. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3855559/*

› Eyraud, L., Debrin, X., Hodge, A., et al. (2018). Second-Generation Fiscal Rules: Balancing Simplicity, Flexibility, and Enforceability. IMF Staff Discussion Note. IMF.

› Friedman, M. (1962). Capitalism and Freedom. Chicago University Press.

› Guidolin, A.P. (2019). Crise, austeridade e o financiamento da saúde no Brasil. Monografia. Universidade de Campinas.

› Hayek, F.A. (2011). La fatal arrogancia. Los errores del socialismo. Unión Editorial.

› Hayek, F.A. (1973). Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy. Vol. 1: "Rules and Order." Routledge.

› Heller, P. (1997). Fiscal Policy Management in an Open Capital Regime. IMF. *https://www.cesr.org/sites/default/files/MAR%20Discussion%20Paper%20for%20HRC38.pdf*

› INESC (2017). Metodologia Orçamento e Direitos. INESC.

› Iniciativa PD/DH/PF (2020). Principios y directrices de derechos humanos en la política fiscal. Derechos y Política Fiscal. *www.derechosypoliticafiscal.org*

› Itriago, D. & Rodriguez, C. (2019). Do taxes influence inequality between women and men? Oxfam International.

› Jimenez J.P. & Lopez, I.A. (2012). ¿Disminución de la desigualdad en América Latina? El rol de la política fiscal. Documento de Trabajo. Serie No. 33. desigualdades.net/Freie Universitat Berlin.

› Keynes, J. M. (1936). Teoría general del empleo, el interés y el dinero. Palgrave Macmilan.

› Kornhauser, M. (1996). Equality, Liberty and a Fair income tax. Fordham Urban Law Journal, v. 23, n.3, article 3.

› Lagarde, C. (2019). Committee on Economic and Monetary Affairs Appointment of the President of the European Central Bank Public Hearing with Christine Lagarde, Candidate for the Post of President of ECB. The European Central Bank.

› Lahey, K. (2018). Women's Human Rights and Canadian Tax Policy: From Cedaw to the Beijing Platform and Beyond. Canadian Woman Studies, supl. Special Issue: Women's Human Rights.

› Lerner, M. (1951). The Idea of American Civilization. Journal of Social Issues.

› Lindert, P. H. (2004). Growing Public. University of California.

› Lopreato, F.L.C. (2014). Crise econômica e política fiscal: os desdobramentos recentes da visão. IE/Unicamp.

› Lopreato, F.L.C. (2006). O papel da política fiscal: um exame da visão convencional. IE/Unicamp.

› Lustig, N. (2015). Inequality and fiscal redistribution in middle income countries: Brazil, Chile, Colombia, Indonesia, Mexico, Peru and South Africa. Working paper 410. Center for Global Development.

› Mankiw, N. (2013) Defending the one percent. Journal of Economic Perspectives, Volume 27, Number 3, Pages 21–34.

› Mazzucato, M. (2018). Missions. Mission-Oriented Research & Innovation in the European Union. A problem-solving approach to fuel innovation-led growth. European Commission.

› Mazzucato, M. & Skidelsky (2020). Towards a New Fiscal Constitution. Project Syndicate.

› Milanovic, B. (2017). Global Inequality. A New Approach for the Age of Globalization. Harvard University Press.

› Milanovic, B. (2019). Capitalism, Alone: The Future of the System That Rules the World. Harvard University Press.

› Moyn, S (2015). Do human rights increase inequality? The chronicle of high education. *https://www.chronicle.com/article/do-human-rights-increase-inequality/*

› Musgrave, R. & Musgrave, P. (1973). Public finance in theory and practice. McGraw-Hill Book Co.

› Nikolaidis, C. (2014). The right to equality in European human rights law: The quest for substance in the jurisprudence of the European courts. Routledge.

› Nolan, A., O'Connell, R. & Harvey, C. (2013). Human Rights and Public Finance: Budget and the Promotion of Economic and Social Rights. Hart Publishing.

› Oliveira, F. (2009). Economia e política das finanças públicas no Brasil. Editora Hucitec.

› ONU (2015). Objetivos do desenvolvimento sustentável. https://brasil.un.org/pt-br/sdgs

› Orair, R. & Gobetti, S. (2018). Reforma tributária no brasil: Princípios norteadores e propostas em debate. Novos estud. CEBRAP.

› Ostry, J.D., Berg, A. & Tsangarides, Ch. (2014) Redistribution, inequality and growth. IMF staff discussion note.

› Principios y Directrices de Derechos Humanos en la Politica Fiscal (PD/DH/PF) (2020). ACIJ, CELS, CESR, DEJUSTICIA, FUNDAR, INESC, RJFALC. *https://derechosypoliticafiscal.org/*

› Reddy, S. (2011). Economics and human rights: a non-conversation. Journal of human development and capabilities, v.12.

› Reinhart, C; Rogoff, K. (2010) Growth in a time of debt. American Economic Review: Papers & Proceedings 100: 573–578

› Rodriguez, C. & Itriago, D. (2019). Do taxes influence inequality between women and men? Oxfam. *https://www.oxfam.org/en/research/do-taxes-influence-inequality-between-women-and-men*

› Rossi, P., Rocha, M.A., Dweck, E. et al. (2020). Uma agenda econômica para todos, em Dweck, E.Rossi, P. Oliveira, A. (orgs.) (2020) Economia pós-pandemia: desmontando os mitos da austeridade fiscal e construindo um novo paradigma econômico. Autonomia Literária.

› Sakiko, F. (2018). Leaving no one behind. Journal of globalization and development, Vol. 9 (2).

› Schwabish, J., Smeeding, T. & Osberg, L. (2004). Income distribution and social expenditures. Palgrave Macmillan.

› Sen, A. (1979). Equality of what? Stanford University. In: McMurrin S Tanner Lectures on Human Values, Volume 1. Cambridge: Cambridge University Press ; 1980.

› Silveira, F.G. (2013). Tributação, previdência e assistência social: impactos distributivos. Tesis de doctorado. Unicamp.

› Solomon, M. (2011). Poverty, inequality and the potential of international human rights law. Review of International Studies. Vol. 37(5), págs. 2137–2155.

› Souza, P. (2018). Uma história de desigualdade. Editora Hucitec.

› Stewart, M. (2002). Global Trajectories of Tax Reform: Mapping Tax Reform in Developing and Transition Countries. SSRN.

› Touchie, J. (2005). "Hayek and Human Rights," Books, Edward Elgar Publishing, number 2679.

› Uprimny, R. (2019). Política Fiscal y derecho internacional de los derechos humanos. Revista Institucional de la Defensa Publica de la Ciudad Autónoma de Buenos Aires.

› Uprimny, R. & Chaparro, S. (2020). Inequality, human rights and social rights: tensions and complementaries. Humanity Journal.

› Valdes, M.F. (2014). The Recent Inequality Reduction in Latin America: The Role of Tax Policy. Tesis de maestría. School of Business and Economics of Freie Universitat Berlin.

› Winslow, T. (1993). Atomism and organicism, in Geoffrey et. al. The Elgar Companion to Institutional and Evolutionary Economics, Edward Elgar Pub: New York.

› Wilkinson, R. & Pickett, K. (2010). The Spirit Level: Why Equality is Better for Everyone. Penguin.

› World Bank (2014). Income inequality and violent crime: evidence from Mexico's drug war.

› Zannoni, D. & Mckenna, E. (2014). The right to a job: a post Keynesian perspective. Journal of post Keynesian economics. 29(4), págs. 555–571.

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