# Summary in English

# The challenges of tax law research

*Legal studies in a Danish a tax law research framework*
*with a view to formulating a different research framework*
*A contribution to tax law research and legal philosophy of science*

The thesis deals with tax law research framework i.e., in short, the special basic assumptions (key concepts, ideas, theories) and the method that certain legal research requires. It deals specifically with the tax law research framework which Danish tax law researchers have primarily used in PhD theses and dissertations from 1999 to 2024 for legal research in tax law at Danish universities. In the thesis this research framework is called "the Modern Paradigm of Law", MPL.

Research frameworks contribute to a certain kind of knowledge is being produced. They contribute to researchers spotting that there is something that needs to be explained, or that there is a problem that needs to be solved. They help to determine what constitutes an acceptable scientific explanation or solution. They influence on which research questions are considered relevant and meaningful. But by designating something as relevant research, they also have an influence on what knowledge is not produced.

With the thesis MPL is put on a scientific model and a critically analyzed. The purpose is to provide access to a deeper knowledge from a scientific theoretical perspective of the capacity of MPL and, on that basis, to outline another and different constructivist legal research framework, which supports a different scientific approach to legal research in tax law than the approach offered by MPL. The thesis thus contains a theoretical, coherent proposal on how MPL can be articulated with Bruno Latour (French philosopher, anthropologist, and sociologist, 1947-2022) from a constructivist science point of view and with the use of Thomas Kuhn's (American philosopher of science and historian 1922-1996), Model of Paradigms. MPL is thus articulated as a paradigm in accordance with Kuhn´s "disciplinary matrix", which consists of "the metaphysical presuppositions", "the symbolic generalizations" used by the community, "the group values" and "the exemplars of practice." And it is shown how MPL is the expression of modern thinking and that thoughts about rule of law (retsstaten) and its ideals are embedded in MPL. The thesis's articulation of MPL using Kuhn's paradigm theory constitutes basic (fundamental) research in tax law and contributes to creating a theoretical basis for a further development of basic research in law.

The metaphysical presuppositions of MPL are constituted by what the thesis calls "the administrative law universe" and consist of seven main presuppositions. 1) The administrative law is the law exercised by the administration whose activity is derived. 2) The derivative activity is related to democratic governance. 3) Democratic governance implies the principle of legality. 4) The principle of legality implies a distinction between written and unwritten hierarchically divided sources of law. 5) The courts control the activities of the administration

by deciding questions submitted to them by applying norms found in the sources of law. 6) The norms that the courts are expected to apply are called applicable valid law. 7) Valid law is found using the method of legal dogmatics. The symbolic generalizations of MPL are constituted by the generally formulated and accepted rules used by tax law researchers without hesitation or derogations to try to establish valid law in relation to legal issues. These rules are formulated directly in legislation, or they are formulated based on an interpretation of a source of law. The group values of MPL are made up of six methodological principles: News value, accuracy, assistance to the jurist, cumulative knowledge development, supporting the administrative law universe and better rules in the future. The exemplars of practice of MPL are exemplified by Thøger Nielsen's (Danish professor of tax law, 1919-1996) main work from 1965-1972 Income tax law 1- 2 and Poul Andersen's (Danish professor of administrative law, 1888-1977) On invalid administrative acts, from 1924.

The thesis analyses MPL and gives an answer to what this paradigm is, what it can do, and what it can't. And answers are given as to what it does; what consequences it has for the research process, the research questions, the research product and for the researcher himself, and on what premises the research takes place. The articulation of the assumptions of MPL have apparently, in a Danish context, not previously been attempted to be explored and analyzed based on an explicit and described model of scientific theories. In the thesis, it is shown that with a clear science-theoretical articulated paradigm, a scientific basis is provided that can be used to analyze and explore the paradigm more closely and deliver a research product about the paradigm, which contributes to a deeper understanding of legal tax dogmatics: the world in which legal tax dogmatics operates, of which it is a co-creator and of which it itself is a product.

It is concluded that MPL is not able to explain and produce knowledge about the perceived reality where law is exercised and that it has little explanatory value and explanatory ability in a contemporary Danish welfare context. The analyzes of MPL shows that MPL does not have a language for the content of the laborious construction process, which leads to something being explicitly found in a judicial context in cases where the legislature and the courts have not been part of it. That is, the question of why an administrative practice arises in an area at all falls outside the questions for which MPL has a language, and the question therefore does not exist within MPL. As a result, a large part of the reasons for the dynamics and development of tax law falls outside the area that MPL can explain. It is shown that MPL's legal ontology has the consequence that studies of the dynamics of tax law are largely excluded because both fact and norm within MPL are considered to have been given in advance as both static and passive units. It is argued that MPL contains various risks associated with maintaining MPL as the virtually only paradigm for research in tax law and it is argued that there are certain risks associated with not developing an alternative research framework for research in tax law. It is thus argued that MPL accommodates a narrow user interest with the risk at the expense of other, significant interests, and that MPL implies that new concepts and therefore significant parts of the legal tax reality cannot be articulated and developed because it is in the blind spot of MPL which is why there is a risk that legal tax research will lose the ability to secure and contribute to the welfare society we know today and to conceive visions for a future society.

Based on the analysis of MPL, the thesis offers a constructivist, coherent proposal for how another, alternative research framework for research in legal tax dogmatics may look; “the Constructivist Research Framework of Law”, CRFL. CRFL has been developed based on a

constructivist position of science theory and the ontology of Kuhn and Latour and the risks associated with not developing an alternative research framework for research in tax law. CRFL regards the question of ontology as the most important in legal research and argues why CRFL can be seen as an expression of an attempt to convey what in the thesis is called “an ontological turn” in legal research. CRFL assumes that the researcher must ask as the initial research question what the thesis calls “the ontological question”. CRFL expresses an attempt to move the starting point of research from the notion that the researcher, just by adhering to established method rules, can ensure that the knowledge produced can be described as solid scientific knowledge. CRFL is to some extent an expression of ontological constructivism in the sense that, within CRFL, it is assumed that all notions, such as, gender, race, poverty, taxation, arm's length principle, taxable income, limited company, financial instrument, are created by their concepts and that they exist as part of reality, which is why reality is conceptually created.

The thesis answers the central research question addressed which reads: How does MPL affect legal research differently than from a scientific theoretical perspective? The thesis reaches the conclusion that questions that presuppose an ontology, according to which everything has ability to act, and nothing exists in advance, are meaningless within MPL but meaningful within CPL. The worlds that exist within MPL and CRFL and the way in which those worlds exist are quite different and this implies, that the research questions that can meaningfully be asked within MPL and CRFL are similarly quite different, just as the method used in answering is different.

MPL and CRFL draw different aspects of law forward, and they presuppose that law exists and is created in quite different ways. From a scientific theoretical point of view, it can be said that both legal research frameworks "in there" create what law is about, and that they create law quite differently; they thus presuppose that law exists in quite different ways. Where MPL presupposes that the world, and things in the world; norm, fact legislates will, the spirit and meaning of law, applicable law, are given in advance, regardless of how the legal scientist approaches them, then CRFL presupposes that everything has agency, and enters relationships with each other and thereby constantly creates, recreates, and changes each other. Within CRFL, it is thus meaningless to claim that anything exists in advance as a passive substance that cannot do anything itself, but which instead depends on some pre-determined mechanical laws. Moreover, MPL and CRFL thematize what the law is about (understood as the thing it regulates) quite differently. Where MPL thematizes what law regulates based on how fact can be recognized or proved, CRFL thematizes what law regulates based on how the actual conditions, which a rule points out to regulate, in the first instance comes to existence in a judicial context at all.

When MPL presupposes that the world exists in advance and that the legal scientist is not a co-creator of the world, then MPL presumably prevents the legal scientist from practicing a scientific meta-reflection and thus taking an explicit position on the basis for the researcher to believe that something should be explored. As a result, MPL, due to its preconditions, excludes problem-oriented research, understood as the researcher practicing scientific meta-reflection which concerns the decision on the basis for something to be shown and the choices that lead to knowledge being formulated in a certain way. CRFL presupposes, quite differently, that it is the researchers own concepts (e.g., norm, fact, the will, spirit and meaning of the legislature, applicable law) that enable the researcher to talk about these things and that make them exist in a legal context. CRFL presupposes, in contrast to MPL, that the legal researcher becomes a

direct participant in the way in which the legal is created and represented, and that the researcher is thus a participant in the world that is thereby created - and therefore has a responsibility for his research. CRFL emphasizes this responsibility as a clearly explicit value in Kuhn's sense and CRFL presupposes, by demanding that the ontological question must be asked, that the researcher take a position on the foundation on which the researcher believes that something should be shown. CRFL presupposes that the researcher transparently problematizes law and society in the light of scientific theoretical positions and clearly presents his method, the preconditions of his method and his values in Kuhn's sense, so that they are communicated to others in a way that is open to scientific criticism and scientific quality assessment. CRFL presupposes, unlike MPL, that we can know nothing about how law is exercised without examining the exercise of law itself; we can therefore not, based on the preconditions contained in MPL, conclude on how law is exercised. And CRFL presupposes that all actants can be involved in a legal investigation, and thus not, as in MPL alone, sources of law.

Thus, unlike CRFL, MPL provides the basis for legal research in which the researcher is entitled to a "modern carefreeness" and "can just get started" exploring an independent world out there that is "ready to embark on", and which is lying clear in front of the researcher, ready to be discovered by neutral and objective measurements, registrations and descriptions, and where the researcher can find norm, fact and applicable law. In direct contrast to MPL, CRFL rejects a "modern carefreeness." In CRFL our perception of how the world and its objects exist, which we assume when we do research, is within CRFL given the most important and crucial importance for the research questions we can ask. The question of ontology thus constitutes the central starting point for legal research within CRFL, where the question of ontology within MPL is not asked explicitly, but where the answer to this is simply assumed; that the world is given in advance.

The ontological turn in law that CRFL contains implies that the notion that behind a legal source's textual appearance lies a valid law that can be reached and discovered and uncovered by using the legal dogmatic method correctly (method faith) is an illusion: Within CRFL there is no valid law within the text, (nor is there a meaning in the text), there is created an idea of a valid law with the text. CRFL is thus an expression of an attempt to turn the research point of departure away from MPL's presupposition that the researcher can simply ensure that the knowledge produced by the researcher can be described as safe, scientific knowledge just by complying with the legal dogmatic method. CRFL requires transparency on many levels; it requires that the research make itself known, that it tries to make explicit in whose interest it is carried out. CRFL does not presuppose a specific perspective on the court, such as MPL's court perspective. But the CRFL presupposes that the perspective chosen is clearly presented. CRFL offers a platform from which legal scientists can ask critical questions of a prevailing state of tax law and, more generally, to the “established”, understood as fixed assumptions or perceptions of obvious contexts.