

FREE SAMPLE

# The Obligation

*Regulation of Public Duties*

Ricardo Rivero Ortega

These are the first pages of the book. The full edition is on sale on Amazon, in all 17 stores worldwide.

**Kindle eBook · Buy on Amazon**

**4.99 €**

**Paperback · Buy on Amazon**

**11.99 €**

Book page, prices and other stores:

**[amicuscertus.es/en/catalog/the-obligation/](https://amicuscertus.es/en/catalog/the-obligation/)**

**AMICUS CERTUS**

## THE OBLIGATION



# **The Obligation**

*Regulation of Public Duties*

Ricardo Rivero Ortega

Translated from the Spanish

AMICUS CERTUS

*The Obligation: Regulation of Public Duties*

by Ricardo Rivero Ortega

Edited by José Francisco Adserias Vistué

Published by Amicus Certus.

Translated from the Spanish original, *La obligación. Concepto y régimen jurídico de los deberes públicos*, first published by the Agencia Estatal Boletín Oficial del Estado, Madrid, 2025 (Colección Derecho Administrativo, no. 10; ISBN 978-84-340-3028-2).

© Ricardo Rivero Ortega, 2025.

English translation © Ricardo Rivero Ortega, 2026.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the copyright holder, except for brief quotations in critical reviews and certain other noncommercial uses permitted by copyright law.

Quotations from Spanish-language sources have been translated by the translator unless otherwise indicated. Bibliographic references are given in their original language.

# Introduction

## I. The Neglect of Obligations and Public Duties: Causes and Consequences

Contemporary legislators display a fervent enthusiasm for rights, so contagious that it almost makes us forget the importance of obligations and duties; it explains the abandonment of their detailed analysis, the lack of precision in so many technical details, the recurring terminological confusion and, in the end, the nonexistence of a finished category of “public duty.” The causes of the lack of interest in their study and regulation are understandable—in general, obligations are uncomfortable; they tend not to be liked because they limit freedom—but their dogmatic neglect fosters legal uncertainty, an effect that demands an effort of correction on the part of legal science.<sup>1</sup>

The desire to rectify this harmful neglect is the first purpose of the present book. Since no panoramic investigation into the nature and legal regime of duties/obligations is to be found in the literature, and given that each discipline has scarcely considered the question beyond its own (constitutional duties; administrative, tax, labor, and business obligations, etc.), it seems opportune to me to devote a monograph to the study of the historical evolution and present concept of the notions of obligation/duty, their sources, the status of obligated persons, the costs, and the consequences that must be borne for their non-compliance—demands that translate into liabilities.

Not even the philosophy of law offers us an analysis of all the implications of the theory of duty. The most recent books on the topic likewise do not pause to analyze its nature, its holders, its scope, the manner of its perfor-

---

<sup>1</sup>Without freedom, “duty would be a meaningless bond, a debasement of man, incompatible with the dignity of his nature,” entry “Deber” in the *Nueva Enciclopedia Jurídica Seix*, Volume VI, of 1953, an extensive text that reviews the conceptions of duty in the philosophy of law of the nineteenth and twentieth centuries. Its understanding of the norm as based on freedom explains the conditioning circumstances of this category and the reasons for its classical dogmatic treatment.

mance, its costs, or the liabilities it entails, all of which are indeed studied in this work devoted to obligations to act (excluding the obligations of private law, which are the object of a dogmatics of their own). The approaches of scholars of general theory, commendable though they are, do not descend from their understandable abstraction to resolve the concrete problems of the establishment and enforcement of obligations, theoretical questions of outstanding practical significance.<sup>2</sup>

There does exist an abundant literature on specific duties or obligations, derived from the increasingly prolix regulation in sectoral fields: demands of cooperation to prevent money laundering, impositions on the directors of listed companies, tax obligations and duties, due-diligence obligations for sustainability and human rights, requirements of transparency and confidentiality, reporting obligations of every kind, duties of environmental care, and so on. All of these approaches to legal provisions suffer from the weakness of lacking a general theory on which to rely in order to draw conclusions.

The dogmatic imbalance in the respective treatment of obligations and rights is, in my view, a factor of fragility in our legal theory. Studies on rights and liberties exponentially outnumber those devoted to duties, not only from a quantitative perspective but also in their qualitative depth. Given this situation, it is not surprising that the category of public duty stands at a degree of development similar to that of the subjective public right before its formulation by Jellinek.

Such a disappointing state of affairs may, incidentally, explain certain attitudes of disconformity or disagreement with the expansion of rights, which has not been accompanied by parallel reflections on the concomitant duties. Although I consider the emphasis on subjective rights a significant advance as a social contribution of public law, the consequences of the correlative duties are often sidestepped—effects resulting from the multiplication of rights, their successive generations, and the attribution of capacities for procedural reaction to those who consider themselves holders of social rights.

This complaint is a classic one and is usually regarded as a conservative or authoritarian argument, which in itself denotes the already mentioned discomfort produced by obligations. It would seem that pointing out du-

---

<sup>2</sup>The work of Berteau, S., *The Theory of Legal obligation*, Cambridge University Press, 2019, does not provide what we would hope to find along these lines. Nor does the book by Bea, E., *Los deberes en la edad de los derechos*, Dykinson, 2023, enter into matters of detail. Not even a title as promising as that of Carlos E. Alchourrón, *Fundamentos para una teoría general de los deberes* (with an introductory study by José Juan Moreso and José Luis Rodríguez), Marcial Pons, 2010, delivers what it announces. The need for duties in order to realize rights is analyzed in the work edited by Estévez Araujo, J. A. (Ed.), *El libro de los deberes. Las debilidades de la estrategia de los derechos*, Trotta, 2013, with a sectoral focus (environment, human rights, democratic memory).

ties implied a desire to diminish rights—a pessimistic attitude for a legal culture euphoric and proud of its conquests on the paper of the official gazettes, so often diminished by neglecting the corollaries concerning required conduct. The neglect of obligations affects rights negatively, without any doubt.

The fact is that general theory still fails to emphasize sufficiently the necessary connection between obligations and rights, one of the points of attention here. Far from being antithetical, the former and the latter necessarily complement each other, in such a way that there is no possible exercise of a right that does not entail, for the same subject or for others in a legal relationship (public or private), some duty (positive or negative). This correspondence between right and obligation generates numerous consequences that will be analyzed here in order to compensate for the deficits described.<sup>3</sup>

Another consequence of the theoretical neglect of obligations, harmful to the correct interpretation of positive law, is projected onto the attribution of liabilities. If the norms do not delineate with sufficient clarity who must do what and with what implications, the imputation of individual fault becomes complicated, with a twofold paradoxical consequence: sometimes it is impossible to personalize liability, and at other times it is assigned to someone who bears no causal relation attributable to specific instances of non-compliance. A legal system that fails to resolve correctly the individualization or localization of liability will generate economic dysfunctions; it will also send mistaken messages about what is just.

Consider the case of the reporting obligations of companies in regulated sectors, a concrete expression of a generic “duty to cooperate” that translates into the supply of data requested by the regulatory or supervisory authorities.<sup>4</sup> If the scope of this obligation and its contents are not well delineated—specifying who must convey what information to the regulatory entities, when, and to what extent—legal uncertainty is guaranteed and it is very difficult to determine whether or not there has been compliance. The same does not occur when it comes to identifying transgressions of limits (requirements not to act).

We see in this simple example the relevant difference between prohibitions that determine obligations not to act and positive obligations/duties to carry out certain conduct, for identifying causality and proceeding to the

---

<sup>3</sup>An outstanding exception to the lack of theoretical and practical interest is found in the work of Norberto Bobbio, who asserted: “The figure of the right has as its correlative the figure of the obligation. Just as there is no father without a child and vice versa, there is no right without an obligation.” Bobbio, N., *El tiempo de los derechos*, Sistema, Madrid, 1991, p. 124.

<sup>4</sup>Muñoz Machado, S., “Fundamentos e instrumentos jurídicos de la regulación económica,” in *Fundamentos de Regulación económica*, Iustel, 2009. Parejo Alfonso, L., *Estudios sobre supervisión y vigilancia como tareas de la Administración en sectores de referencia*, Tirant lo Blanch, 2017.

imputation of liability to someone who has violated a prohibition (criminal or administrative) requires a simpler legal-logical effort than imputing liability to someone who has failed to do something he was obligated to do—above all if that positive obligation/duty to act has not been delineated in all its details and surrounded by guarantees of predictability in the application of the effects of non-compliance.

The social and economic cost of failing to define positive obligations correctly is very high. A detailed assignment of responsibilities makes it easier for each person to do what he must, whereas their generic formulation fosters situations of institutionalized negligence. In the end, every risk of non-compliance must be secured through complex operations on the organizational chart or through the purchase of insurance, which increases the budgetary demands on public organizations and private companies. These inefficiencies are not justified in those cases in which a specific person has a concrete obligation assigned and fails to fulfill it.

For all these reasons, a broader dogmatic treatment of the regime of obligations is necessary, approached from a practical standpoint, not only from the abstraction proper to the philosophy of law. Of course, the contributions of general theory enrich the analysis, and this investigation would not have been possible without consulting the classic works of the principal philosophers; but at times one perceives that the failure to project theoretical constructions onto the reality of the functioning of the legal system fosters normative deficiencies and interpretive difficulties.

Another of the most plausible explanations for the dogmatic delay in the study of obligations may be the resistance of public law to delineating, down to its ultimate consequences, a technique regarded as oppressive of freedom. Law inevitably starts from individual self-determination, not only or principally for ideological reasons, but because it is the presupposition of the theory of agency (the key to the dignity of the person), of autonomous will, and therefore also of responsibility. If we did not presume the existence of free will and the capacity to choose, a large part of our legal institutions would be unnecessary or would have to be transformed.<sup>5</sup>

Moreover, human beings find it difficult to accept duties and obligations. The history of the construction of this legal category reveals arguments against such concepts, just as so many recurring events express resistance to each new imposition (revolts, protests). Although some classic authors paid attention to duties,<sup>6</sup> others denied their plausibility (Binder);<sup>7</sup> up un-

---

<sup>5</sup>The controversies over free will begin in theology, with the *De arbitriis* polemic in the sixteenth century (the Jesuit Luis de Molina against the Dominicans of his time), and reach our own day by virtue of advances in neuroscience, invoked by Dennett and other philosophers to deny the classical cultural concept of freedom. Dennet, D. C., *La evolución de la libertad*, 2004.

<sup>6</sup>Allen, C. K., "Legal Duties," *Harvard Law Review*, 1931.

<sup>7</sup>Binder, J., "Rechtsnorm und Rechtspflicht," 1913.

til the detailed explanations of their nature in Santi Romano, which we shall review further on, the controversy over the legal scope of the obligation was laid out, with its very existence as such being disputed—something that never happens with rights.<sup>8</sup>

Perhaps this state of affairs protects human freedom, for if the positive public duty were a perfect category, every affected person could demand its fulfillment, at any moment. A subjective public duty would convert objective law into reactive capacities, mechanisms by which obligated subjects would be required to comply always and everywhere, understanding the obligation as a chain or bond whose enforceability is inherent and constant, in the way it functions in private law—whose theory of obligations has not shaped the development of public law, at least not to its ultimate consequences.

Private law offers a correlative explanation of rights and obligations that makes it possible to understand how the exercise of the former entails the performance of the latter. Thus, if the civil subjective right is a situation of personal power that can be exercised (according to De Castro),<sup>9</sup> for Díez Picazo the obligation would be “...a bipolar situation formed by the correlation of a subjective right and a legal duty. In it are bound together the right of the creditor, which is, according to the traditional thesis, a subjective right whose object is the person of the debtor, and a legal duty, the debt, which is a duty to adopt a certain behavior or conduct of performance (*prestación*).”<sup>10</sup>

Obligation or legal duty as a demand of conduct; subjective right as the power to activate such conduct. Two sides of the same coin of exchange in interpersonal relations. One private party imposes on another the requirement to act in a certain way because he can do so by virtue of his position (the archetypal position being that of the creditor, but there are others, such as that of the owner). And all of this, of course, is guaranteed by the State, the ultimate supervisor and enforcer, through the courts and the executive means of objective law.

We already know that civil law lies at the genesis of administrative law and its institutions,<sup>11</sup> but the advances of the one branch of the legal order and the other are not always interchangeable. The general theory of obligations is found in the Civil Code, in its Book Four, Title I, with general provisions,

---

<sup>8</sup>Santi Romano. In reality, we can indeed recall a thesis opposed to declarations of rights, the one formulated by Jeremy Bentham in his *Falacias políticas*, CEPC, Madrid, 1990, where he described human rights as “nonsense upon stilts.”

<sup>9</sup>De Castro, F., *Derecho Civil de España*, IEP, Madrid, 1949, p. 572.

<sup>10</sup>Díez Picazo, L., *Fundamentos del Derecho Civil Patrimonial*, vol. II, *Las relaciones obligatorias*, Madrid, 1996.

<sup>11</sup>Martín-Retortillo, S., *El Derecho civil en la génesis del Derecho administrativo y sus instituciones*, Instituto García Oviedo, Sevilla, 1973.

nature and effects, and various species (pure and conditional; subject to a term; alternative). Can this theory be transferred by analogy to public law? Obviously not: neither do we find a similar construction in the basic norms of administrative law, nor has legal dogmatics built a concept of the public-law obligation as a counterpart to the subjective public right.<sup>12</sup>

At the end of the nineteenth century, Georges Jellinek published *System der subjektiven öffentlichen Rechte* (System of Subjective Public Rights), a work whose enormous significance we can appreciate today. Its emphasis on the capacities for mobilization, to individual benefit, of a legal order understood until then as objective law would herald a change of approach in administrative law and in the relations between the State and persons, who, in addition to seeing their liberties protected thanks to the guarantees of the Constitution, could activate actions and remedies to demand respect for their subjective public rights.

The possibility of demanding the realization of the subjective right is its essence, synthesized in the action. The individual, the person in the community, decides in his free will on the exercise and defense of his subjective rights, now against other private parties, now against the State—a significant novelty derived from the subjection of power to the laws and the recognition of liberties. What the German jurist could not imagine were the consequences of his empowerment of the individual vis-à-vis public authority, because in addition to contributing to the effectiveness of rights, it fostered a side effect that generated new and more intense obligations. The multiplication of duties and liabilities followed the consecration of liberties and rights, in a loop that reaches down to our own day.

The expansion of subjective public rights has thus fostered a progressive substitution of objective law by the reactive capacities of specific subjects, against public authority and other private parties. Thus, for example, equality as a subjective public right entails obligations (not only not to discriminate, but also to integrate disadvantaged groups, by virtue of a real and effective equality; duties to establish protocols to overcome prejudices and biases; and, finally, obligations to overcome barriers to accessibility). This obligation to treat all persons equally—without discrimination—provided for today in laws such as the Spanish anti-discrimination law, also translates into the possibility of demanding liability.

This is a consequence common to the breach of public-law and private-law obligations. One difference, however, is that in the public sphere the individualization of those liabilities is often lacking. Another is the insufficient degree of precision of public-law obligations, so often too general or abstract, in comparison with the much more concrete obligations in the sphere of private contractual relations (although not all of them are, as we

---

<sup>12</sup>Schreiber, L., *Der Begriff der Rechtspflicht — Quellenstudien zu seiner Geschichte*, Berlin, 1966.

shall see in the case of conjugal duties). Such a state of affairs results from the absence of a perfect category of public duty in legal theory, although we do find expressions of this figure in the law in force.

No positive legal order could function correctly without accepting the importance of duties. This explains why, among the various conceptions of law, an exception to the scant interest in obligations is found in the works of the principal legal positivists (Austin, Hart, Kelsen), for their contributions highlight the central character of the obligation. Recalling their theses serves to make clear that a legal theory is not complete unless it incorporates this category and attributes to it the importance it deserves. It is therefore worth recalling the emphasis of legal positivism on obligations.

Its concept of law, separated from morality and religion, includes obligatoriness,<sup>13</sup> although not all of its provisions serve to establish obligations. Hart, in his classic work, distinguished primary rules from secondary ones. The former would be those described by Austin as “primary rules of obligation,” while the secondary rules would be those that confer powers on judges, legislators, or the government over the former. Among the latter would be found the “rule of recognition.”<sup>14</sup>

From this current of legal philosophy we take the treatment most centered on the importance of the obligation, for Austin, Hart, and Kelsen are three of the few authors who take a genuine interest in this aspect when studying law and the nature of legal norms, conceived by J. Austin as commands that establish duties (obligations). The law understood as command and obligations are “correlative terms” and inseparable: “...wherever a duty lies, a command has been signified, and wherever a command is signified, a duty is imposed.”<sup>15</sup>

Hans Kelsen’s pure theory of law also included an analysis of the concept of obligation, in its explanation of the positive and negative regulation effected by the norm (“obligating, empowering, permitting”). His concept of the norm is originally linked to the obligation: “The word ‘norm’ refers to the fact that something ought to be or ought to happen—especially, that a man ought to behave in a certain way.”<sup>16</sup> He later includes within that “ought” being empowered or permitted (p. 19), but in his theory complying with norms is fulfilling obligations.

---

<sup>13</sup>Hart, L. A., *El concepto de Derecho*, Buenos Aires, 1961. From its preface onward it incorporates references to the theory of obligation: “...at many points I have raised problems that may well be said to concern the meaning of terms. Thus, for example, I have considered how ‘being obliged’ differs from ‘having an obligation.’” The term obligation appears no fewer than 254 times in his text.

<sup>14</sup>Hart, *El concepto de Derecho*, cit.

<sup>15</sup>Austin, J., *The Province of Jurisprudence determined*.

<sup>16</sup>Kelsen, H., *Teoría pura del Derecho*, Unam, México, 1982, p. 18.

Kelsen sets down his concept of legal obligation on page 135 of that work: "...the obligation is nothing other than a positive legal norm that commands the conduct of that individual by attaching a sanction to the contrary behavior. And the individual is legally obligated to the conduct thus commanded even if the representation of the legal norm arouses in him no impulse whatsoever to perform the required conduct...."

This concept of obligation is, like the general theory from which it proceeds, pure, essential, and complete. And yet it neither corresponds to the reality of the positive legal order nor finds a perfect fit in reality. Time and again we find in statutes, and in norms generally, the concept of "obligation" without any concrete sanction being defined for its non-compliance (these would then be imperfect obligations). Just as often, statutes resort to the concept of duty, the choice between one and the other being arbitrary. From my point of view, the confusion between duty and obligation, together with the aporia of non-compliance, weakens the plausibility of the legal-positivist explanation.

On the other hand, neither Austin, nor Hart, nor Kelsen distinguishes obligations addressed to private parties from those binding on the public authorities. Nor do they distinguish their sources of origin—statute or contract—or the differences between obligations of public law and those of private law. The principal problem of these theories of law is the difficulty of accommodating a technique so complex and versatile, designed to respond to multiple, heterogeneous social needs. That said, even though they do not offer all the answers we seek, reviewing the works of Austin, Kelsen, or Hart helps us approach the concept of obligation from the idea of the norm, although it is not the only possible perspective.

The concepts of legal relationship, legal situation, and legal position also describe realities that we find in the legal order and that require specific conduct. Norms impose obligations in order to safeguard the legal position of persons—private parties who can demand the corresponding benefit in the exercise of their (subjective) rights. They should also serve to protect public interests, whose safeguarding falls to State powers that must activate mechanisms for demanding their realization (public duties), directed not only at private parties but also, and in many cases as a priority, at the authorities charged with enforcing the law.

In any case, whether from the nature of the norm, as a result of the legal relationship, or as a consequence of a legal situation or position, what is essential about the obligation is that it be fulfilled. In that fact—compliance—it realizes its meaning, a *raison d'être* so often frustrated.

## II. The Aporia and Utility of the Obligation (Public Duty)

The principal aporia in the legal characterization of obligations and public duties is their frequent non-compliance, a circumstance that by itself belies the imperative and sanctionable nature of the "ought." How can the legal order permit generalized situations of ineffectiveness of certain duties? The answer to this question is possible only through an understanding of the process of creating a legal obligation in order to satisfy social needs, in legal cultures based on a certain idea of human freedom and a preference for individual self-determination, such that what a person is obligated to do is not regarded as an absolute rule of conduct.

But do we respect freedom so much that we accept reaching a point at which obligations are systematically breached? In a certain way, such a situation—this book seeks to explain—is owed to the ontogeny and phylogeny of the concepts of obligation and duty, that is, to their evolution over the course of history and within legal theory itself. A process of progressive juridification of prior moral duties, socially recognized as such, positivized in norms of greater or lesser concreteness. Thus, as we shall study in the first chapter of this work, the same command begins as moral or religious, is projected into the law in general terms, or is developed with a greater degree of precision and concrete sanctions for its non-compliance.

How does a moral duty take on legal form? In the first place, the consensus of the persons in a society is necessary in order to derive a rule of behavior, originally ethical or religious, which will become an effective normative command if legal operators accept it in the external forum and also embrace it in the internal forum. The legislator positivizes the requirement in a valid provision, enacted in accordance with the requirements of the legal order, so that the institutionalized powers that enforce the law (authorities, police, judges) may then reinforce compliance with the duty, demanding concrete and individual accountability or imposing sanctions in cases of non-compliance.

We shall set out here a nexus between legal positivism and evaluative factors proper to natural-law conceptions. For obligations to be fulfilled, their incorporation into valid norms is not enough; it is equally necessary to achieve their reasoned acceptance by a community of operators called upon to guarantee their observance. The regard for obligations as duties whose observance is indispensable is, in many cases, the key condition for the legal order's reaction of imposing sanctions. In a certain way, the obligation is perfected upon being recognized as a social "ought," just as such duties are juridified through the recognition of their validity and importance.

Many of the obligations positivized today as such in statutes, from which sanctions derive in cases of non-compliance, were previously conceived as moral duties, socially recognized as the appropriate conduct in certain positions. This happens both in the private sphere (relations among family members, for example) and in the public sphere (ethical codes for senior officials, converted into catalogs of concrete demands of conduct). Such a transmutation is usually gradual in its effects, in such a way that for a time strict legal obligations are treated as if they were mere ethical indications of conduct.<sup>17</sup>

This tendency to perceive as a not entirely binding and sanctionable duty what (sooner or later) constitutes genuine obligations explains much of the resistance and non-compliance of public authority in carrying out unequivocal legal impositions. Consider, for example, the execution of judgments in contentious-administrative proceedings years ago (and even now), or the duties to publish and keep updated the asset declarations of senior officials, as well as other requirements of transparency or good governance. Although bodies now exist that are charged with overseeing compliance with these obligations, even with sanctioning powers, in many cases violations involving conflicts of interest, or reluctant and opaque attitudes, produce no consequence whatsoever. Further on I will illustrate this with the regulation of the principles of good governance.

We private individuals find ourselves more constrained in our conduct. Although each morning when we open our eyes upon waking we may believe ourselves free, there is hardly a day or an instant in which our life is not conditioned by legal rules of behavior, legal duties established by the norms of the law in force.<sup>18</sup> Of course, we retain our freedom of choice between obeying or not obeying those legal determinations, but in most cases we respect them in the face of the threat of sanctions and/or the demand for accountability—although, according to another interpretation, we do so when we consider the laws reasonable.<sup>19</sup>

Both ways of explaining compliance with legal obligations seem plausible. We presuppose the existence of an institutional system suitable for the issuing of norms, one that reflects on their scope, implications, and costs and fosters such reasonableness. When we perceive that this is not so and consider our contractual, tax, bureaucratic, or even family obligations unjust, we find it harder to abide by them. If we do so, it is because we know that

---

<sup>17</sup>This is what has been happening with the response to the challenges of artificial intelligence, first addressed from the standpoint of ethics and later with precise regulations that positivize principles and obligations previously articulated from ethical perspectives such as those of Cortina, A., "Ética de la inteligencia artificial," *Anales de la Real Academia de Ciencias Morales y Políticas*, 2019, and Llano Alonso, F. H., *Homo ex machina. Ética de la inteligencia artificial ante la singularidad tecnológica*, Valencia, 2024.

<sup>18</sup>Recasens Siches, L., *Tratado general de teoría del Derecho*, 2008.

<sup>19</sup>Tyler, Tom R., *Why People obey the Law*, 2006.

the infraction may bring consequences upon us. This, really, is what law consists of: norms must produce concrete and real consequences.<sup>20</sup>

Statutes choose to graduate their conditioning of conduct according to various variables weighed by legislators. The interests protected by the steering of behavior, the prevention of risks, or attention to social values worthy of being realized through concrete actions are, among other factors, motives of the normative power when it establishes strict, clearly sanctionable obligations. The pursuit and sanctioning of non-compliance, for its part, is graduated according to perceptions of harm and risk, to states of social opinion regarding the necessity and importance of certain conduct, and even to the attention (salience) directed at specific phenomena because of their sudden topicality.

This graduation of the effectiveness of obligations, which is a real and constant phenomenon, explains a large part of the terminological and definitional confusion surrounding their nature, as well as the multiple theories that attempt to separate this category from another regarded as moral (duties). For my part, I do not regard that element of morality as the differentiator, for I believe that the degree of concreteness of the conditioning of conduct is the true difference between the various types of obligations and duties. Although statutes and legal theory do not coincide in their alternating use of these concepts, we can indeed distinguish very precise demands of behavior from other, more general ones. The norms display distinctions between “hard” obligations and “soft” ones, conditions that vary in an evolutionary process surely marked by social perception of the need to secure the performance of certain responsible conduct. The synthesis, in short, would be: the more precise, the more legal.

An evolution from the generic and vague to the concrete and specific is shown to us by the new conception of the businessman’s accounting duty in listed companies, which we shall study further on. A contrast between abstract obligations and concrete ones is offered to us, on the one hand, by the duty of spouses to share domestic responsibilities, established in Article 68 of the Civil Code, and on the other by the guardian’s obligation to inform the judge annually about the situation of the minor or incapacitated person and to render an annual account of his administration (Article 268 of the same Civil Code). The first duty is imprecise in its content, not at all detailed either as to the tasks to be distributed or the time to be devoted by each spouse. The second obligation establishes a precise object and a regular frequency. Naturally, the consequences of non-compliance with

---

<sup>20</sup>Kelsen, H., *Teoría general de las normas*, ed. M. A. Rodilla, p. 27: “Insofar as the word ‘norm’ designates a precept, a command, ‘norm’ means that something ought to happen...The act whose meaning is that something is commanded or prescribed is an act of will. That which is commanded or prescribed is in the first place a certain human conduct...—if the norm is a precept, a command—it is in the sense of an act directed at the conduct of another, an act whose meaning is that another (or others) ought to behave in a certain way.”

WANT TO KEEP READING?

# The Obligation

*Regulation of Public Duties*

Ricardo Rivero Ortega

These are the first pages of the book. The full edition is on sale on Amazon, in all 17 stores worldwide.

**Kindle eBook · Buy on Amazon**

**4.99 €**

**Paperback · Buy on Amazon**

**11.99 €**

Book page, prices and other stores:

**[amicuscertus.es/en/catalog/the-obligation/](https://amicuscertus.es/en/catalog/the-obligation/)**

**AMICUS CERTUS**