Introduction

Within the legal community at large, law and obligation are widely believed to be intimately connected and ultimately inseparable for a number of reasons. To begin with, paradigmatic legal materials, such as statutes, judicial decisions, and doctrinal commentaries, make reference to obligation either directly, by specifying what one is obligated to do, or indirectly, by attributing rights, powers, and privileges – which positions are intrinsically related to the duties of other individuals. Similarly, in legal proceedings practitioners – judges, prosecutors, lawyers, juries – frequently make claims about which obligations under the law certain parties have in specific circumstances. And so do laypeople in their ordinary lives. This means that the deontic language is pervasive in discourses within and about law. Furthermore, the law is deeply shaped by regulative standards, since an important part of the legal domain has to do with norms prescribing courses of conduct and instructing individuals as to how they ought to behave. The very recognition of the prescriptive structure of law provides support to the thesis that key legal statuses can only be expressed through the use of the notion of obligation along with its opposite number, the notion of a right. Finally, law and obligation are taken to go hand in hand as a consequence of the fact that a legal system is commonly understood to be an authoritative institution. The authoritative dimension of law is of some significance in this context in consideration of the fact that an essential component of what is ordinarily meant by having authority, or claiming authority, in practical matters consists in having, or claiming, the legitimate power to affect the normative standing of others. And one of the paradigmatic ways (though not the only way) in which another person's normative standings can be affected consists in creating obligations for them.

This extensive use of obligation-related constructs and terminologies supports the widespread conviction that law purportedly seeks to impose obligations, and on occasion it does in fact affect the duties of those subject to it. This being the case, law and obligation are regarded as

conceptually connected by a remarkable number of legal theorists, who maintain that an account of obligation constitutes a central element of the philosophical study of the concept of law and other fundamental legal concepts.[1]

This is not to suggest that the relation between law and obligation is regarded by every jurisprude as a necessary connection or is interpreted in the same way by different legal philosophers. Even the minimalist claim that law seeks to create, enforce, modify, and extinguish obligations has proved to be controversial among legal theorists, who have put forward different accounts of the obligations associated with the existence of a legal system: some regard those obligations as purely and distinctively legal in a merely formal sense; others qualify the obligations engendered by the law as social duties; another group instead takes those obligations to be moral. Which suggests that the necessary link obtaining between law and obligation is at once both a broadly accepted tenet, when framed as a general statement about the law, and a deeply controversial thesis, when its nature is analysed in greater detail. Hence the need for a comprehensive study of the kind of obligation specifically arising out of legal practices.

Considering that legal obligation is a widely theorized notion and that different aspects of the obligation-generating capacity the law arguably possesses have been extensively discussed in the literature, one wants to avoid the misunderstandings this kind of situation is likely to give rise to. To this end here I will be careful to clarify the specific question I intend to address in this book, so as to keep it distinct from other questions that similarly concern the obligatory component of the law. The specific

[1] The connection between law and obligation is unambiguously acknowledged in H. L. A. Hart, *Concept of Law* (Oxford, Clarendon, 1994, with a Postscript; or. ed. 1961), p. 82, where it is claimed that 'where there is law, there human conduct is made in some sense non-optional or obligatory'. For more recent statements of this tenor, see, for instance, K. E. Himma, 'Law's Claim of Legitimate Authority', in J. Coleman (ed.), *Hart's Postscript* (Oxford, Oxford University Press, 2001), pp. 271–309; K. E. Himma, 'The Ties That Bind: An Analysis of the Concept of Obligation', *Ratio Juris*, 26 (2013), pp. 16–46; and K. E. Himma, 'Is the Concept of Obligation Moralized?', *Law and Philosophy*, 37 (2018), pp. 203–27; S. Perry, 'Hart's Methodological Positivism', in J. Coleman (ed.), *Hart's Postscript* (Oxford, Oxford University Press, 2001), pp. 311–54; L. Green, 'Law and Obligations', in J. Coleman and S. Shapiro (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford, Oxford University Press, 2002), pp. 514–47; R. Alexy, 'The Nature of Legal Philosophy', *Ratio Juris*, 17 (2004), pp. 156–67; R. Alexy, 'The Dual Nature of Law', *Ratio Juris*, 23 (2010), pp. 167–82; and D. von den Pfordten, *Rechtsphilosophie* (Munich, Verlag Beck, 2013).

object of this work is to construct a *theoretical account* of obligation as it applies to the law, and hence to offer a *conceptualization* of legal obligation. I will thus be primarily concerned with the question: how should legal obligation be distinctively characterized? Or, stated otherwise, how is the kind of obligation engendered by the law best conceived? I accordingly propose to contribute to the debate that has sprung up among those who are interested in systematically framing the fundamental features of legal obligation, understood as a notion with its own distinctive defining traits. Those engaged in this debate seek, for one thing, to identify and explore in detail the essential properties that define legal obligation and, for another thing, to establish what specifically distinguishes the specific sort of *legal* obligation from other kinds of obligation.[2]

Once so defined, the subject matter of this research should be kept distinct from a set of other issues concerning the relation between law and obligation that has also been widely studied and discussed in the literature on legal obligation. Of those issues, at least three bear mention here, not only in view of their theoretical significance but also because of the close conceptual connection they bear to the main questions around which the research project here undertaken revolves. First, traditionally legal philosophers studying legal obligation have shown an interest in

[2] Contributions to this debate can be found, for instance, in H. L. A. Hart, 'Legal and Moral Obligation', in A. Melden (ed.), *Essays in Moral Philosophy* (Seattle, University of Washington Press, 1958), pp. 82–107; H. L. A. Hart, *Essays on Bentham* (Oxford, Clarendon, 1982), pp. 127–61; Hart, *Concept of Law*, pp. 82–91; K. Baier, 'Obligation: Political and Moral', in R. Pennock and J. Chapman (eds.), *Political and Legal Obligation* (New York, Atherton, 1970), pp. 116–41; A. Gewirth, 'Obligation: Political, Legal, Moral', in R. Pennock and J. Chapman (eds.), *Political and Legal Obligation* (New York, Atherton, 1970), pp. 55–88; C. Johnson, 'Moral and Legal Obligation', *Journal of Philosophy*, 72 (1975), pp. 315–33; D. Beyleveld and R. Brownsword, *Law as a Moral Judgement* (London, Sweet & Maxwell, 1986), pp. 325–81; J. Raz, *Ethics in the Public Domain. Essays in the Morality of Law and Politics* (Oxford, Clarendon, 1994), pp. 194–221; W. Waluchow, 'Authority and the Practical Difference Thesis: A Defence of Inclusive Legal Positivism', *Legal Theory*, 6 (2000), pp. 45–81; J. Finnis, *Natural Law and Natural Rights* (Oxford, Oxford University Press, 2011, 2nd ed., with a Postscript; 1st ed. 1980), pp. 297–350; K. E. Himma, 'Conceptual Jurisprudence and the Intelligibility of Law's Claim to Obligate', in M. O'Rourke, J. Keim-Campbell, and D. Shier (eds.), *Topics in Contemporary Philosophy: Law and Social Justice* (Cambridge (MA), MIT Press, 2005), pp. 311–26; Himma, 'Ties That Bind'; Himma, 'Is the Concept of Obligation Moralized?'; M. Greenberg, 'The Moral Impact Theory of Law', *Yale Law Journal*, 123 (2014), pp. 1288–1342; S. Hershovitz, 'The End of Jurisprudence', *Yale Law Journal*, 124 (2015), pp. 1160–1204; and D. Wodak, 'What Does "Legal Obligation" Mean?', *Pacific Philosophical Quarterly*, 99(4) (2018), pp. 1–27.

determining whether the existence of a system of laws is in itself sufficient to provide those subject to law with a (presumptive) duty of obedience.[3] The mere fact that a norm has been issued in accordance with certain procedures, some argue, is no reason to conclude that there is an obligation to conform to it. Others, by contrast, claim that those living in a country have a prima facie general duty to act in conformity with the laws validly passed by the legal institutions governing that country, at least insofar as the resulting system of law is not extremely unjust.

This concern, traditionally designated as 'political obligation', should be kept distinct from another issue, which is nonetheless partly reminiscent of the former: the issue as to whether either individual legal directives or legal systems in their entirety, by virtue of their own nature, *purport* to create certain obligations for officials and citizens alike. This further theoretical interest can be reformulated in the form of the question: does the law intrinsically make claims on us that entail obligations? This question is part of a more comprehensive investigation of the concept of law, since the issue bears directly on the way one conceives of law. On this basis, the question can be characterized as a conceptual, or metaphysical, question.[4]

[3] For some introductory studies of this problem, see R. Wasserstrom, 'The Obligation to Obey the Law', *UCLA Law Review*, 10 (1963), pp. 790–7; M. Smith, 'Is There a Prima Facie Obligation to Obey the Law?', *Yale Law Journal*, 82 (1973), pp. 950–76; J. Simmons, *Moral Principles and Political Obligations* (Princeton, Princeton University Press, 1979); K. Greenawalt, *Conflicts of Law and Morality* (Oxford, Oxford University Press, 1987); J. Horton, *Political Obligation* (Basingstoke, MacMillan, 1992); N. O'Sullivan, *The Problem of Political Obligation* (New York, Gardland, 1987); R. Higgins, *The Moral Limits of Law* (Oxford, Oxford University Press, 2004); and S. Perry, 'Law and Obligation', *American Journal of Jurisprudence*, 50 (2005), pp. 263–95.

[4] The question is treated in J. Raz, *The Authority of Law* (Oxford, Oxford University Press, 2009, 2nd ed.; 1st ed. 1979), pp. 28–33; P. Soper, 'Legal Theory and the Claim of Authority', *Philosophy and Public Affairs*, 18 (1989), pp. 209–37; P. Soper, 'Law's Normative Claims', in R. George (ed.), *The Autonomy of Law* (Oxford, Clarendon, 1996), pp. 215–47; R. Alexy, 'Law and Correctness,' in M. Freeman (ed.), *Legal Theory at the End of the Millennium* (Oxford, Oxford University Press, 1998), pp. 205–21; R. Alexy, *The Argument from Injustice* (Oxford, Clarendon, 2002; or. ed. 1992), pp. 35–9, Himma, 'Law's Claim of Legitimate Authority'; Himma, 'Conceptual Jurisprudence'; S. Bertea, 'On Law's Claim to Authority', *Northern Ireland Legal Quarterly*, 55 (2004), pp. 396–413; S. Bertea, *The Normative Claim of Law* (Oxford, Hart, 2009); C. Heidemann, 'Law's Claim to Correctness', in S. Coyle and G. Pavlakos (eds.), *Jurisprudence or Legal Science?* (Oxford, Hart, 2005), pp. 127–46; N. MacCormick, *Institutions of Law* (Oxford, Oxford University Press, 2007), and J. Gardner, 'How Law Claims, What Law Claims', in M. Klatt (ed.), *Institutionalized Reason* (Oxford, Oxford University Press, 2012), pp. 29–44, among others.

Thirdly, a lively debate has sprung up between those who investigate the conditions under which the law can be considered a legitimate source of obligation and so is justified in imposing its rule over a group of people, in some circumstances even by recourse to coercive force, or the threat of sanctions. This concern leads one to deal directly with the issue as to whether the law has some practical authority over its addressees, and under which conditions the authority of law should be regarded as legitimate and so binding on those subjects.[5]

It is scarcely necessary to add at this point that the different debates on the obligatory dimension of the law just mentioned are closely linked to one another as well as to the distinctive issue this book is specifically devoted to: the issue of how legal obligation ought to be conceptualized. Indeed in dealing with any of the basic questions framing those debates – the conceptualization of legal obligation, the duty to obey the law, law's claim to obligate, and the practical authority of law – we will often have to give at least some consideration to the other questions as well. But this interconnection does not mean that the debates have no distinguishing features and cannot stand on their own. And this is why I have specified the distinctive debate I take up in this study in my effort to argue for a given conception of legal obligation.

In working towards an encompassing conceptualization of legal obligation, I will defend a number of claims which constitute the

[5] See Raz, *Authority of Law*, pp. 3–27; J. Raz, *The Morality of Freedom* (Oxford, Oxford University Press, 1986), pp. 23–105; Hart, *Essays on Bentham*, pp. 243–268; J. Finnis, 'The Authority of Law in the Predicament of Contemporary Social Theory', *Notre Dame Journal of Law, Ethics and Public Policy*, 1 (1984), pp. 115–38; L. Green, 'Authority and Convention', *Philosophical Quarterly*, 35 (1985), pp. 329–46; L. Green, *The Authority of the State* (Oxford, Clarendon, 1988); D. Regan, 'Law's Halo', *Social Philosophy and Policy*, 4 (1987), pp. 15–30; D. Regan, 'Authority and Value', *Southern California Law Review*, 62 (1989), pp. 995–1095; M. Moore, 'Authority, Law and Razian Reasons', *Southern California Law Review*, 62 (1989), pp. 830–96; Soper, 'Legal Theory and the Claim of Authority'; L. Alexander, 'Law and Exclusionary Reasons', *Philosophical Topics*, 18 (1990), pp. 153–70; R. Friedman, 'On the Concept of Authority in Political Philosophy' (1973), now in J. Raz (ed.), *Authority* (Oxford, Basil Blackwell, 1990), pp. 56–91; R. Ladenson, 'In Defense of a Hobbesian Conception of Law', *Philosophy and Public Affairs*, 9 (1980), pp. 134–59; H. Hurd, 'Challenging Authority', *Yale Law Journal*, 100 (1991), 1611–77; J. Cunliffe and A. Reeve, 'Dialogic Authority', *Oxford Journal of Legal Studies*, 19 (1999), pp. 453–65; S. Shapiro, 'Authority', in J. Coleman and S. Shapiro (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law*, (Oxford, Oxford University Press, 2000), pp. 382–439; A. Marmor, 'An Institutional Conception of Authority', *Philosophy and Public Affairs*, 39 (2011), pp. 238–61; A. Marmor, 'The Dilemma of Authority', *Jurisprudence*, 2 (2011), pp. 121–41, just to mention a few.

fundamental steps of the argument I deploy in what follows, and which provide the main contents of this book. In Chapter 1, I set the stage for my substantive inquiry into the obligatory dimension of the law by asserting that a conceptualization of obligation *in general* is the preliminary step for constructing a comprehensive theory of the kind of obligation *engendered by the law*.[6] In a nutshell, thus, the overall strategy I will follow in working towards the objective just set out – putting forward an account of legal obligation – consists in, first, (a) introducing a concept of obligation in wide currency today, and then (b) critically considering a number of different theoretical accounts of legal obligation that have so far been defended in jurisprudence. Accordingly, in Chapter 1 I seek to establish the fundamental characteristics of obligation understood as a conceptual construct with its own distinctive defining traits. In that context, I will defend the view that obligation is best conceived as a practically normative requirement that makes a noticeable and yet resistible claim on us, who in turn are bound to, and accountable for, conforming to it, since acting otherwise would be prima facie wrong. This concept of obligation will also be presented as the essential means enabling us to critically assess the contemporary theories of legal obligation as well as to move beyond the current debate in legal theory and put forward an original conception of legal obligation.

The discussion of existing theories of legal obligation begins in Chapter 2, where I introduce a basic distinction between approaches to legal obligation, or paradigms for an understanding of it: the distinction between the 'empirical model' (with its main variants consisting in the 'predictive account' and 'imperatival account') and the 'normative model'. There I will also defend the view that, without too much oversimplification, the basic conceptions of legal obligation advocated in jurisprudence today can be reduced to those two paradigms. However, I will go on to claim only the normative model offers a presumptively sound interpretation of the kind of obligation engendered by law. The normative model comes in different versions, irreducible one to another,

[6] In turn, the basic insight orienting this line of research on legal obligation is that obligation singles out a general idea used in different realms and takes on different meanings in distinct contexts. This difference is attested, for instance, by the fact that we ordinarily speak not just of obligation per se, but also of moral obligations, social obligations, legal obligations, religious obligations, and natural obligations, just to name a few. The question thus arises as to whether these obligation-invoking phrases refer to altogether disparate notions or whether there is a general overarching idea – the idea of obligation *simpliciter* – to which the specific kinds of obligation can be traced.

the most significant of which are the 'formal account', the 'social practice account', the 'interpretivist account', and the 'reason account'. Not all those accounts can be regarded as having the resources needed to accommodate the general concept of obligation and so as being an apt tool for explaining legal obligation, though. This, it will be argued, is not the case with the formal account, which will accordingly not be of concern in the rest of the study. In this way, the discussion undertaken in this chapter sets the stage for the remaining part of the book, where I will critically evaluate what I take to be the most sophisticated theories of legal obligation.

Chapter 3, which revisits and updates an argument that originally appeared in *Canadian Journal of Law and Jurisprudence*,[7] specifically discusses the social practice account of legal obligation, an account that characterizes legal obligation as a social bond linking together those who are subject to the law. This account is paradigmatically defended by those espousing the so-called conception of law as a shared activity, which accordingly will constitute the main target of the discussion carried out in this chapter. In addressing this theoretical approach, I will contend that the social practice account faces insurmountable difficulties in conceptualizing the obligatory dimension of law and that even the most nuanced versions of the social practice account explain legal obligation in ways that range from incomplete to internally incoherent.

With that done, I will pass in Chapter 4 to present an alternative model for the study of legal obligation: this is the interpretivist account, on which legal obligation is construed as having both a social component and an evaluative one. On the interpretivist account, legal obligations are construed as duties fundamentally determined by the political morality underpinning a given institutional practice. I will argue that in fleshing out this theory interpretivists fail to appreciate the intrinsic connection between legal obligation and the fundamental standards of practical rationality. As a result, they allow for the possibility that legal obligations may be regarded as genuine even if they diverge from practically rational requirements. In this way, they wind up having to subscribe to the twofold view that (a) one may be under a legal obligation to act against the demands of practical rationality, and (b)

[7] See S. Bertea, 'Law, Shared Activities, and Obligation', *Canadian Journal of Law and Jurisprudence*, 27 (2014), pp. 357–81.

legal regimes can make claims on how one ought to act even if the justification for such claims is not fully rational. Neither of those two commitments seems palatable.

The different criticisms I level at the social practice account and interpretivist account can ultimately be reduced to the statement that legal obligation cannot adequately be conceptualized without making practically rational considerations, or reasons for action, a central part of the explanation of the obligations engendered by law. This conclusion should not be taken merely as a negative statement, namely, a claim about what an insightful theory of legal obligation is *not*. For in addition to meaning, in the negative, that the views of legal obligation introduced in Chapters 3 and 4 are fundamentally flawed, it also suggests, in the positive, that a thorough scrutiny of the main standing alternative to the social practice account and the interpretivist account – namely, the reason account – can legitimately be expected to secure a better explanation of legal obligation.

On the reason account, the basic notion we need to appeal to for adequately characterizing legal obligation is that of a practical reason, as opposed to that of a social practice or that of an institutional and evaluative practice. In the literature we can find not just one but several versions of the reason account of legal obligation. I will accordingly devote Chapters 5 and 6 to the critical discussion of two influential variants of this paradigm – the 'conventionalist reason account' and the 'exclusionary reason account' – before (a) building on that critical discussion to introduce my own alternative reason conception of legal obligation (in Chapters 7 and 8) and (b) assessing its relation to a third popular version of reason account – the 'robust reason account' – which I regard as conceptually close to my own theory (in Chapter 9).

More specifically, by building on the positions defended in my critiques of the social practice account, the interpretivist account, the conventionalist reason account, and the exclusionary reason account, I will put forward a different conception of legal obligation. This conception, which is alternative to any other existing theory, I will call the 'revisionary Kantian conception' of legal obligation. Such conception embodies both the features constitutive of the general concept of obligation *simpliciter* (the concept introduced in Chapter 1) and the views on legal obligation theorized in contemporary legal philosophy (the views criticized in the discussion from Chapters 3 to 6), on which it seeks to improve. So, by combining the claims defended in the positive in defining a concept of obligation with the claims made in the negative in

rebutting the main contemporary theories of legal obligation, one gets the materials out of which I construct an alternative theoretical account of legal obligation.

The resulting theory of legal obligation I present as the revisionary Kantian conception can be summarized thus: legal obligation is a reason for carrying out certain courses of conduct, a reason engendered by the law and stating that such conduct is required as a matter of intersubjective considerations. This concise formulation can be more analytically spelled out in the following terms. Firstly, legal obligation, as I conceive it, describes a *normative* kind of necessitation – an ought – *requiring*, as opposed to simply recommending, that those who are subject to law act in the prescribed way. Secondly, fulfilling one's legal obligations should *presumptively* be understood as the *right* thing to do, whereas departing from what a legal obligation prescribes is legitimately regarded as pro tanto wrong. Relatedly, legal obligation holds *categorically*, such that an obligee's subjective states and personal commitments do not affect its bindingness. As a result, for one thing, legal obligations bind us in a *genuine* sense, as opposed to a merely perspectivized one, and, for another, they operate as intrinsically *rational* requirements, rather than as social, institutional, or technical 'oughts'. In addition, the distinctive kind of ought attached to legal obligation has a *defeasible*, or variable, force, as distinct from an exclusionary, or invariant, force. Finally, legal obligations are best understood as reasons addressing the *generality* of legal subjects, namely, the legal community as a whole, rather than just a subclass of it, such as legal officials, meaning those who occupy certain institutional roles or who otherwise commit to, accept, or take an internal point of view to the legal enterprise.

Having so introduced and discussed my substantive conception of legal obligation, I will conclude my argument by introducing and consolidating the specific methodological principles and assumptions that underpin the revisionary Kantian conception. Those principles and assumptions, I will contend in Chapter 10, shape a specific methodology – I will call it the method of 'presuppositional interpretation' – that is akin, but irreducible, to methods traditionally used in legal and political philosophy, such as conceptual analysis, reflective equilibrium, transcendental argument, and Kant's analytic method. As a distinctive method of inquiry, presuppositional interpretation describes a process through which we identify (a) the defining traits of legal obligation and (b) the essential presuppositions that make it possible for us to even conceive of legal obligation, in such a way as to (c) provide a systematic and coherent

scheme for interpreting the fundamental features of legal obligation and its basic conditions of intelligibility.

A comprehensive study of legal obligation of the kind just outlined can be argued to be of both *theoretical* and *practical* significance. Understanding legal obligation is essential to a *theoretical* account of law because obligation is a central notion in the legal domain. Accordingly, the discussion of legal obligation affects a number of overlapping debates that occupy a central position in legal philosophy. An engagement with legal obligation should thus be of interest to theorists with different backgrounds and philosophical orientations. This conclusion applies a fortiori to the argument I will be unpacking in this work, where I flesh out the concept of obligation by proceeding from a perspective that is deeply shaped by broadly philosophical concerns. From this perspective of inquiry, mastering and comprehensively accounting for obligation as such is instrumental to arriving at a better grasp of the legal domain, which is taken to be an inherently complex and multidimensional realm.[8] And by studying legal obligation as part of the general class of which it is part – that is, as issuing from a concept of obligation *simpliciter* – we can make our discussion of legal obligation theoretically significant in both a focused and a broad sense, making it useful in the specific study of law as well as in our reasoning on a broad range of ethical issues at large.

The reason for this being the case can be better appreciated by considering that obligation is commonly regarded as a central normative term, and its analysis is widely seen as an essential component of any project aimed at advancing our knowledge in a vast range of normative and action-related investigations, as in morality, society, religion, politics, and to some extent economics. The notion of obligation is in particular regarded as the fundamental issue in moral theory, at least by those who adhere to the so-called law conception of moral theory, a tradition that has been greatly influential since the post-classic age in Greek

[8] Central to my approach, in other words, is the view that only a broad and interdisciplinary framework can put us in a position to compare and contrast different and yet connected features, properties, and phenomena relating to the obligations generated by the law, which might otherwise be mistakenly perceived as thoroughly heterogeneous. Relatedly, at least insofar as we acknowledge that legal theorists are entrusted not only with *describing* current uses of legal concepts – such as the uses that legal practitioners make of *obligation* – but also with *critically approaching and assessing* those concepts, we should think it of paramount importance to have a general philosophically informed framework of thought that may be used to assess and evaluate particular, context-embedded uses of notions of wider currency.

philosophy.[9] In this tradition, moral principles are regarded as ultimately reducible to principles of duty and obligation. Consequently, the study of obligation is widely regarded as essential to an understanding of morality and of its basic principles. Insofar as obligation is regarded as the central normative concept in moral theory, a study of legal obligation grounded in the recognition of the conceptual connection between legal obligation and obligation *simpliciter* is to be deemed of wide theoretical significance, in that it is instrumental to a thorough treatment of theoretical problems in ethics.[10] Therefore, from the point of view of this influential tradition, the approach to legal obligation taken in this work will be regarded as functional to enhancing our awareness that legal philosophy and moral theory are connected in a number of important respects, and that the study of legal issues is of paramount significance in a number of ethical sub-disciplines, too.

In addition to being of theoretical importance, a study of legal obligation carried out from the broadly philosophical perspective I take in this work should be considered of *practical* significance. Support for this view can be extracted from the argument set out by Ernest Weinrib in his work *The Disintegration of Duty*. Weinrib observes that we are moving away from a general conception of obligation, and he undertakes to work out what this means for the way in which cases in tort are decided. In this context, he criticizes the case-by-case, policy-based approach the courts use as the standard method of adjudication in common law systems, arguing instead for a more systematic approach where the legally correct outcome of a case is arrived at on the basis of some statement of general application about duty. Weinrib's main argument against a piecemeal approach to tort cases is ultimately based on the view that the law is by nature systematic. So even in common law systems, the law, 'by its own internal logic and dynamism, cannot treat the particular instances of duty

[9] As pointed out by Elizabeth Anscombe, the law conception of moral theory marks a break with the classic tradition, and especially with its Aristotelian version. See G. E. M. Anscombe, *Ethics, Religion and Politics: The Collected Philosophical Papers of G. E. M. Anscombe, Vol. 3* (Oxford, Blackwell, 1981), pp. 29–31. This conception can be traced back to Stoic moral theory, but only within Christianity did it find a full statement. It can be argued to still be the dominant view among moral thinkers today, though it certainly is not the generally accepted view.

[10] For further statements of the importance of obligation in normative thought, see W. Quillian, 'The Problem of Moral Obligation', *Ethics*, 60 (1949), p. 40; J. Hems, 'What is Wrong with Obligation', *Philosophy and Phenomenological Research*, 22 (1961), p. 50; and D. Richards, *Reasons for Action* (Oxford, Oxford University Press, 1971), pp. 95–6, among many others.

as a chaotic miscellany of disparate and independent norms'.[11] The coherence of a legal system – a coherence that is not always a reality in actual legal systems but nonetheless should at least be regarded as an ideal – requires specific legal obligations to be thematically unified through one or more common underlying principles. In this view, courts engaged in adjudication need to rely on a general conception of legal obligation in deciding cases – a general conception that in tort law will take the form of an account of the duty of care. In making the case that we should refer to this conception of legal obligation and reject a policy-led approach, fragmenting the notion of legal obligation into separate factors and features, Weinrib thus appeals to the need to preserve and contribute to the systematic nature of law, arguing as well that we ought to implement an ideal of (corrective) justice in legal adjudication.

Although Weinrib's argument is specifically intended to critically assess the case law in Canadian tort law, it can be generalized to show that the systematic nature of law calls for a general conception of legal obligation. Which general conception is demanded as well by the legitimate aspiration to both generality and justice as two characteristic features of legal systems. A general conception of obligation should make it possible to identify those traits which are common to all uses of obligation not only in law but also in the broader practical realm. Different kinds of obligations are, in other terms, systematically related by their own internal logic and dynamics. So, if we conceive of legal obligation as a separate and independent class, we will jeopardize its internal unity and transform it into a loose assemblage of disparate items conceptually incapable of any cohesion. And, as Weinrib has convincingly argued, such fragmentation and disintegration of the notion of legal obligation is not only theoretically unsound but also practically dangerous, for it puts at risk the very possibility of pursuing a coherent and just ordering of society through law. Hence the practical relevance of a comprehensive study of legal obligation of the kind I undertake in this book.

[11] E. Weinrib, 'The Disintegration of Duty', *Advocates' Quarterly*, 31 (2006), p. 213.