

Legal Certainty, the Private Sector, and Empirical Studies: A Preliminary Approach

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ABSTRACT

This article revisits the concept of legal certainty as it is currently approached in contemporary continental legal culture. It proposes a broader perspective that relates legal certainty to human development and frames it as a complex normative ideal, sustained not only by the State but also through the active involvement of private actors and key individuals. The discussion includes the illustrative case of private soft law, which reveals how legal certainty is shaped across multiple levels of social and institutional practice. In addressing these dimensions, the paper highlights the growing relevance of empirical studies, particularly those exploring how legal concepts are understood and processed by citizens, as valuable tools for deepening our understanding of how legal certainty functions in real contexts and how it can be efficiently promoted.

Questo articolo riconsidera il concetto di certezza del diritto così come è attualmente affrontato nella cultura giuridica continentale contemporanea. Propone una prospettiva più ampia che collega la certezza del diritto allo sviluppo umano e la inquadra come un ideale normativo complesso, sostenuto non solo dallo Stato ma anche mediante il coinvolgimento attivo di attori privati e di individui chiave. La discussione include il caso esemplificativo della *soft law* privata, che mostra come la certezza del diritto venga plasmata a più livelli della pratica sociale e istituzionale. Affrontando queste dimensioni, il contributo evidenzia la crescente rilevanza degli studi empirici – in particolare quelli che esplorano come i concetti giuridici siano compresi ed elaborati dai cittadini – come strumenti preziosi per approfondire la nostra comprensione del funzionamento della certezza del diritto nei contesti reali e di come essa possa essere promossa in modo efficiente.

KEYWORDS

legal certainty, rule of law, soft law, empirical research

certezza del diritto, stato di diritto, soft law, ricerca empirica

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Legal Certainty, the Private Sector, and Empirical Studies: A Preliminary Approach

JORDI FERRER BELTRÁN, CAROLINA FERNÁNDEZ BLANCO, VÍCTOR GARCÍA YZAGUIRRE, NATALIA SCAVUZZO

1. Introduction – 2. On Legal Certainty – 3. Legal Certainty and the Rule of Law – 4. Actors responsible for the promotion of Legal Certainty – 4.1 Actors within the Rule of Law and Legal Certainty: Horizontal and Vertical Relations – 4.2 Private Actors – 4.2.1 The Private Sector as a Beneficiary of Legal Certainty – 4.2.2 The Private Sector as Responsible for Strengthening Legal Certainty – 5. The case of private soft law – 6. Is Empirical Jurisprudence Relevant to Fostering a Culture of Legal Certainty?

1. Introduction

Legal certainty is a central topic in jurisprudence, closely linked to various widely discussed themes such as legal sources, legal interpretation, legal argumentation, the justification of legal decisions, rational legislation, and so on. However, providing a well-structured analysis of legal certainty is challenging, as it requires a comprehensive understanding of the dynamics involved and how these elements function in practice. This, in turn, demands a deeper study of how legal norms are followed by citizens and applied by legal officials in everyday legal practice – something that meets beyond the capacity and scope of traditional analytic jurisprudence.

This work revisits the basic notions of legal certainty as currently understood within contemporary continental legal culture, highlighting its connection to the rule of law. It proposes a broader perspective that, on the one hand, links legal certainty with human development, and on the other hand, views it as a complex ideal state whose maintenance involves not only the State and its government but also certain key individuals and private organisations. This is clearly shown in the case of *soft law*. The central thesis is that expanding the concept of legal certainty requires a revision of the methodologies used to understand it, measure it, and promote it more effectively. This comprehensive analysis calls for dialogue with the most advanced and empirically grounded studies on the subject, particularly those that, through experimentation, explore how citizens perceive legal institutions and the cognitive load of key legal concepts essential to legal certainty.

The structure of this paper is as follows. Section two presents a conceptualisation of legal certainty and its inherent complexities. Section three explores the distinction between, and the convergence of, two central concepts that have often been used interchangeably: legal certainty and the rule of law. Section four introduces a novel approach to identifying the actors responsible for maintaining and promoting legal certainty, including specific individuals and stakeholders from the private sector. Section five illustrates this perspective through an analysis of the case of *soft law*. Finally, Section Six emphasises the importance of engaging with empirical research as an essential means of addressing the complexities discussed throughout the paper.

2. On Legal Certainty

One of the key characteristics commonly associated with the concept of legal certainty is the ability of individuals to know what the law is. In this way, the cognoscibility of law enables individuals to plan and anticipate the legal consequences of their actions, as well as the ways in which the

state exercises its coercive power¹. It is important to note that the “cognoscibility of law” does not have a univocal meaning². Cognoscibility encompasses various issues related to the knowledge and communication of law, including the material cognoscibility of legal texts or legal sources³, and intellectual cognoscibility, which refers to intelligibility – namely, the understanding of the meaning of normative texts, i.e., the norms derived from these texts through interpretation⁴.

Legal certainty requires the possibility of exercising a «legal-rational control of the reconstructive argumentative structures of general and individual norms»⁵. This means that legal certainty applies not only to the outcomes – namely, the content of a norm, which must be clear, free from problematic ambiguities, and accessible – but also to the processes through which those outcomes are reached, both in the drafting of normative statements and in the formulation of norms through interpretation.

The ability to know the law constitutes only the so-called “static aspect of legal certainty”. However, legal certainty can also be analysed from a broader or “dynamic” perspective. This perspective relates to the problem of action over time and establishes the state of things that must be ensured for the law to protect citizens’ rights retrospectively and prospectively⁶. This ideal includes calculability and reliability. Reliability refers to the law’s ability to secure citizens’ rights over time, ensuring the protection of their past actions. Calculability, on the other hand, entails citizens’ capacity to anticipate and assess the consequences of their actions in the future, as well as the gradual and foreseeable process of legal change⁷.

Calculability is achieved when citizens can estimate the future consequences of their actions, and legal change is neither abrupt nor drastic. This means that legal changes should be predictable and announced in advance, preventing unpleasant surprises for citizens. Furthermore, calculability is enhanced when rational control can be exercised over legal decisions, both in the judicial and administrative spheres. This implies that decisions must be based on logical and coherent reasoning, which creates the need for proper justification and reasoning, especially when judicial precedents are modified. The transparency and accessibility of judicial processes and rulings are also key elements of legal certainty, as they enable individuals to anticipate the legal consequences of their actions⁸.

If we consider both perspectives, we can observe that legal certainty can be defined as a state of affairs that arises when the three branches of government, along with other public entities and certain private actors, fulfil the requirement of carrying out their functions in a manner that provides individuals and legal entities with the ability to know the law (cognoscibility), as well as legal reliability and calculability, thereby enabling the exercise of their rights and the fulfilment of their obligations⁹.

This approach to legal certainty does not directly refer to the qualities of legal norms or the behavioural expectations of state agents or specific individuals. Rather, it concerns a factual situation with these qualities or behavioural expectations as a precondition. In this sense, legal certain-

¹ For an analytical study of legal certainty, see ÁVILA 2012 and FERRER BELTRÁN et al. 2025. For a comprehensive study of legal certainty from various perspectives, see CRUZ MORATONES et al. 2015, and FERRER BELTRÁN, FERNÁNDEZ BLANCO 2018.

² GUASTINI 2017, 399; GUASTINI et al. 1987.

³ Material cognoscibility encompasses normative accessibility, the scope of normative content, and normative identification; see FERNÁNDEZ BLANCO, FERRER 2015 “Proyecto de Indicadores de seguridad jurídica”, *Seguridad Jurídica y democracia en Iberoamérica*, pp. 219-220.

⁴ GUASTINI 2011; SANDRO 2022.

⁵ ÁVILA 2012, 580.

⁶ ÁVILA 2015.

⁷ ÁVILA 2012, 581 ff.

⁸ SEGATTI 2024.

⁹ FERRER BELTRÁN, FERNÁNDEZ BLANCO 2015/2021.

ty is understood as a “state of affairs” – that is, as the reality experienced by citizens in relation to their confidence in the legal system and their ability to foresee the legal consequences of their actions¹⁰. Thus, from this factual approach, asserting that there is a high level of legal certainty means affirming that individuals in a given place and time have the capacity to anticipate the legal consequences of their actions with a certain degree of certainty. This ability to anticipate consequences may be general (for example, knowing whether, upon committing offence X, it is possible, likely, or unlikely that pre-trial detention will be ordered). However, it may also apply to a specific or particular group (for instance, importers of goods may reasonably foresee that the applicable tariffs are predetermined and that they will not be unexpectedly subjected to different tariffs when attempting to finalise the importation into a country). A central aspect of this approach to legal certainty is that it can be seen as a matter of degree and that it is possible to identify legal systems in which this state of affairs is more strongly present, as well as others where its weakness is more pronounced.

The idea of legal certainty as a *state of affairs*¹¹ is compatible with the widespread view that legal certainty is also an *ideal or a normative concept*¹² – an ideal concerning the creation and application of law. In this sense, legal certainty involves a set of requirements and obligations imposed on state and private agents who have the capacity to promote it. These requirements are primarily legal in nature, although they also entail political and institutional preconditions.

The distinction between understanding legal certainty as a *state of affairs* or as an *ideal* thus depends on the subject’s perspective: for the inhabitants and beneficiaries of legal certainty, it constitutes a state of affairs, whereas for state agents and other private actors capable of influencing legal certainty, it represents an ideal to be pursued and promoted.

Beyond its strictly legal implications, legal certainty also plays a pivotal role in broader socio-economic frameworks, particularly in relation to human development. As an ideal, legal certainty has the potential to guarantee the effectiveness of rights and good governance, thereby serving as a fundamental instrument for human development¹³. We argue that legal certainty is a driving force behind development that goes beyond economic growth and concerns, for example, the idea of development as expansion of *human capabilities*¹⁴ or the United Nations, Sustainable Development Goals (SDGs). For a long time, development was primarily regarded as an economic matter, closely linked to the growth of industries, gross domestic product per capita, and other monetary indicators. However, towards the end of the last century, a new idea emerged that changed the direction of analysis: institutions – that is, the “rules of the game” within a society – could be the key to understanding both development and underdevelopment.

This paradigm shift was spearheaded by economic neo-institutionalism, which proposed that institutions, or the rules of the game in a given society, were fundamental to explaining economic phenomena such as growth or stagnation¹⁵. This new approach brought to the forefront the importance of legal certainty and the rule of law in the development of nations. Slightly later, the concept of human development emerged, driven primarily by the economist Amartya Sen. This idea offered a broader vision of development – one that extends beyond economic growth to include dimensions such as health, education, and overall human well-being. For Amartya Sen, development is more than simply material wealth: it is a process of expanding the real freedoms

¹⁰ GOMETZ 2005, 4-5 and 293-295. See also GOMETZ 2015.

¹¹ GOMETZ 2005, 50-51 also FERRER BELTRÁN, FERNÁNDEZ BLANCO 2015, 245.

¹² From this perspective, it has been interpreted as a norm-principle ÁVILA 2012, 94-95; 2015. LIFANTE similarly conceives it as a one of the types of principles described by ATIENZA and RUIZ MANERO 1991, 103-105 (the 4th type of principle): that is, as a norm that expresses one of the fundamental values of the legal system, similarly to equality or freedom LIFANTE 2015, 17.

¹³ See FERRER BELTRÁN et al. 2025.

¹⁴ SEN 2000.

¹⁵ NORTH 1995.

that individuals enjoy¹⁶. This perspective highlights that human development is not reducible to economic figures but consists of the conditions that allow people to lead lives they have reason to value and choose freely¹⁷.

This last aspect is of particular interest to us for a central reason: everything that individuals can do in exercising their capabilities – or in the pursuit of expanding them – critically depends on respect for individual autonomy¹⁸.

Clearly, in a context of fragile legal certainty, individual autonomy is curtailed, and we cannot fully exercise it for two main reasons. First, individual decisions themselves may be constrained by legal uncertainty. For example, a citizen who was unaware that the deadline for submitting a political candidacy had been shortened cannot exercise their right to participate in public life and thus cannot realise the life plan they have reason to value. Secondly, the fragility of legal certainty also manifests in the difficulty of anticipating the consequences of our autonomous decisions¹⁹.

In other words, legal certainty is both a guarantee of autonomy – as the possibility of pursuing the life we have reason to value (a core of human development) – and of the ability to rationally anticipate the consequences of our autonomous decisions. In conclusion, we believe that legal certainty has enormous potential to promote human development and thus to foster a multidimensional model of development that encompasses the physical, intellectual, emotional, and social well-being of individuals throughout their lives, thereby enhancing their welfare and autonomy.

Another important shift in the conception of legal certainty is the growing recognition of the role of individuals, not merely as passive beneficiaries, but as active contributors to, and bearers of responsibility for, its maintenance and strengthening²⁰. Both the role of individuals in its maintenance and its significance for human development make it essential to distinguish legal certainty from other ideals pursued by contemporary Western societies. The study of legal certainty has received less attention than other ideals sought by these societies, such as democracy, respect for human rights, and the rule of law, for example. It is crucial to recognise that legal certainty is, in many cases, a contributing condition for the realisation of these other ideals. At the same time, fulfilling the requirements necessary for legal certainty must take place within the framework of the rule of law.

The means to achieve this state of legal certainty may be reflected in duties or prohibitions imposed on public officials and some private agents, as well as in tools or practices that strengthen trust in the legal system and the respect for law in society. One of the current most central challenges facing legal certainty is promoting a culture of legal certainty, in which adherence to this ideal becomes embedded within the social fabric as a social practice, ensuring that society demands it.

To better grasp the structural conditions under which legal certainty can be preserved and promoted, we now turn to its relationship with the rule of law.

¹⁶ SEN 2000. The influence of this position, promoted by Sen and the Human Development approach, is remarkable, and for several years now, attention has been focused on poverty as a multidimensional problem rather than one solely linked to income.

¹⁷ Although the concept of Human Development has departed from the traditional path that strongly equated development with economic growth, per capita income, or improvements in certain productive aspects of the economy, it still retains some core historical elements of development thinking, which can be identified as follows: a) human development recognises the importance of economic growth; b) it also recognises the crucial role the market plays in contemporary society. It is significant that SEN, when designing the Human Development Index (HDI), included Gross National Product (GNP) per capita as one of the three factors – specifically the one measuring wealth or standard of living – and later also used differences in per capita income (and in education) to assess inequality.

¹⁸ Always bearing in mind that this autonomy has limits, primarily the respect for the autonomy of others and the obligation to assume the consequences of one's autonomous decisions.

¹⁹ It can be observed that legal certainty has a direct impact on the existence of relevant options, which is one of the main conditions for autonomy, alongside rationality and independence. About autonomy and the relevant options and how they are dependent on the contextual and relational environment see ÁLVAREZ 2015.

²⁰ We will address this issue on section 4.

3. Legal Certainty and the Rule of Law

We understand that the three ideals – rule of law, democracy, and legal certainty – intersect continuously and, in some cases, act as preconditions or contributing factors for the realisation of each other²¹. Before addressing these interconnections, we will briefly introduce the concepts we will use to identify such links.

The core of the rule of law may be simply expressed as follows: «The rule of law means that government officials and citizens are bound by and abide by the law»²². This basic core, while directly linked to the efficacy of the law²³, has significant implications regarding how laws should be created and applied: namely, respect for the principle of legality. This entails that all public officials, employees, and agents of the state must respect the law and the Constitution. This also implies the need to respect the separation of powers (for it would make little sense to have a government subject to the laws if it could change those laws at will and without following due process). The central idea, then, is that behaviour must be guided by law, and governments must be *of* the law and *by* the law. Legal certainty relies heavily on the fulfilment of the rule of law to ensure that the legal system is free from tyranny and despotism²⁴.

Meanwhile, we adopt a basic conception of democracy, one that may be universally accepted regardless of ideological orientation. In this context, democracy is defined as a type of regime characterised by a set of rules related to the ownership and exercise of political rights. Thus, democracy is understood as a system in which all individuals subject to the political obligation to obey the legal order and public authorities possess the equal right and power, whether directly or indirectly, to participate in the creation of laws and in the formation of political decision-making bodies²⁵.

For democracy to be fully realised, certain levels of compliance with and respect for the rule of law and legal certainty must be achieved. These elements are essential for guaranteeing an environment in which all individuals can exercise their political rights equitably and predictably. By strengthening the rule of law and legal certainty, we move towards a more robust and representative democracy in which all citizens have the opportunity to contribute to political decision-making processes. Therefore, the realisation of democracy requires a certain degree of compliance with, or respect for, both the rule of law and legal certainty.

We therefore understand that there is a functional relationship between the rule of law, legal certainty, and democracy. This relationship can be described as follows: the rule of Law is necessary for legal certainty to exist without tyranny or despotism, and both the rule of law and legal certainty are, generally, necessary conditions for democracy to be realised.

The relationship among the rule of law, legal certainty, and democracy is multifaceted, and its in-depth study would require a dedicated approach to fully explore its many dimensions. Hence, this section will only present some of the key aspects of this relationship, those which are most relevant for the scope of this work.

²¹ A similar idea can be found in MORESO 2020, where the author argues that the rule of law entails the integration of three interrelated ideals: imperium of the law (procedural rule of law), democratic self-government, and the protection of human rights. Thus, the rule of law would represent the legal form of constitutional democracy.

²² TAMANAHA 2012, 233.

²³ We adopt here the terminology most used by Spanish-speaking legal theorists. In other linguistic traditions – such as the Italian tradition – the terms efficacy and effectiveness are often used with meanings opposite to those employed in this text. Moreover, multiple distinct senses of the term efficacy have been identified within those traditions. Similarly, in the sociology of law, the concept of effectiveness tends to correspond to what we refer to here as efficacy, while efficacy is often understood as the actual attainment of the outcomes intended by the legislator.

²⁴ In this regard, GUASTINI explains that the rule of law stands in opposition to despotic and arbitrary government and is therefore characterised by the principles of liberty and legality, see GUASTINI 2014, 326.

²⁵ BOVERO 2015, 41.

Firstly, as mentioned earlier, neither the rule of law nor legal certainty are all-or-nothing concepts, but rather manifest in degrees²⁶. This gradual nature is partly since both legal certainty and the rule of law are composed of various elements that may be present to a greater or lesser extent²⁷. For instance, at a given moment, a State may struggle to secure or maintain the independence of its judiciary, and still face no significant difficulties in legislative production (i.e. the laws enacted are consistent with the constitution and higher laws). Likewise, in terms of legal certainty, a state may be in a situation where judicial interpretations on a specific issue are inconsistent, yet there may be no problems with excessive legislative production.

As noted earlier, the rule of law is a necessary but not sufficient condition for a model of legal certainty that is incompatible with despotism and tyranny. Moreover, a certain degree of strength in both legal certainty and the rule of law is necessary for democracy to exist.

Let us consider a few examples of these interrelationships:

a) It is conceptually possible – though not desirable – to imagine a scenario in which legal certainty (in terms of reliability and predictability) exists, but some essential mechanisms of the rule of law fail. Consider, for example, the imposition of martial law, where its duration is defined, the grounds for its application are clearly established, and judges apply it consistently. Nevertheless, the law has not been enacted by a body competent to do so and is contrary to a constitutional provision. This would not constitute a government of the laws and by the laws. Therefore, for such a government to exist, legal certainty alone is insufficient; the minimum requirements of the rule of law must also be met to avoid tyranny and despotism.

b) It is also conceivable to imagine a strong rule of law and high levels of legal certainty without these being embedded in a democratic regime. All the formal or procedural features of the rule of law could theoretically exist within an autocratic system, and nothing inherently prevents such a system from providing reliability and predictability to individuals and legal persons.

What is more difficult to imagine, however, is the inverse: the existence of democracy without at least a minimal level of respect for the rule of law and legal certainty. If the democratic process, as previously defined, is constitutionally or legally enshrined, then the proper functioning of the rule of law and legal certainty appears to be both necessary and sufficient for democracy to be realised.

c) The prior existence of the rule of law and legal certainty is essential for safeguarding democracy (when democracy is the system established by the legal framework). Otherwise, political rights could be arbitrarily altered, legislation on political parties could change in ways that prevent predictability for candidates and voters, access to justice for violations of political rights could be denied, or jurisprudence on these matters could vary to such an extent that there would be no reasonable way to foresee judicial outcomes based on prior case law.

4. *Actors Responsible for the Promotion of Legal Certainty*

4.1 *Actors within the Rule of Law and Legal Certainty: Horizontal and Vertical Relations*

The rule of law is a legal-political ideal that governs both horizontal and vertical relationships. Our proposed classification identifies different kinds of relationships that the rule of law structures, emphasizing the critical role of legal certainty.

²⁶ This idea can be seen originally in RAZ 1979.

²⁷ This is why, for example, indexes or indicators can be developed to assess the strength of the rule of law. Similarly, the legal certainty Indicators Project developed by the Cátedra de Cultura Jurídica serves as a useful map to guide us in identifying which aspects of legal certainty are strong or in need of improvement.

Horizontal relations are those that are established between different actors on the condition that none of them is a state entity or a state actor or is acting as a state actor or representative of the state at that time. In other words, horizontal relationships structure the links between natural persons, between natural persons and private legal persons and between private legal persons. The condition is that the natural persons do not act as agents or representatives of the state and that the legal persons are of a private nature. The strength of the rule of law in horizontal relations is of paramount importance, since it is in this type of relations that most private law activities are carried out (contracts, tort liability, corporations, commercial activities, etc.). The proper functioning of the rules of private law is crucial for the possibility of human development and individual autonomy.

Vertical relations, in turn, refer to the interactions between the state (including its authorities, agents acting in an official capacity, state bodies and agencies, and public legal entities) and private natural or legal persons. State-to-state relations are also considered a form of vertical relations structured by the rule of law. Four types of vertical relationships can therefore be distinguished, all of which are characterised by the presence of the state as at least one of the parties involved.

Type one vertical relations: This relationship is a relationship between state and subject (S-S). Most approaches have focused on the limits that the rule of law imposes on the state agents and structures. Although it is not accurate to see it exclusively in this sense, this type of obligation is generally associated with the “abstention” of the state. In this dimension, the rule of law acts as a check on tyranny, a guarantee of the freedom and other rights of citizens. This type of relationship has been associated with what some authors call the “liberal rule of law”²⁸.

Type two vertical relations: Far less attention has been paid to the obligations that individuals owe to the state (subject-to-State, Su-S). These obligations include – but are not limited to – taxes and social security contributions, which are particularly important, as well as many other obligations, such as, for example, those related to the traffic regulations and compliance with environmental regulations. Although these are obligations imposed by the state on individuals and businesses, their fulfilment or breach clearly affects other members of society – citizens, businesses and so on.

Type three vertical relations: The third type of vertical relationship is that which imposes positive duties on the state in favour of natural and legal persons (State to subjects, S-Su relationship). These types of obligations - security, health, education and others - have generally been considered as state obligations aimed at fulfilling other types of rights of inhabitants and citizens, different from those that constitute the typical liberal core. These relations have been labelled as a part of welfare state within the framework of the rule of law. However, it is important to bear in mind that the vertical relations of the third type also have other components that are not only related to social welfare - although they are of course clearly part of it. Thus, type three vertical relations include not only social rights, but also other positive duties of the state that are not necessarily linked to subjective rights of individuals, but to other obligations, such as ensuring internal and external security, promoting infrastructures that contribute to the economic development of the country (roads, railway networks, promoting areas suitable for industries, etc.), establishing relatively efficient systems for preventing natural disasters, ensuring the protection of the environment, and so on.

Type four vertical relationships: The last form of vertical relationship is the one that occurs when the actors involved are exclusively state actors (S-S). This type of relationship is at the heart of the rule of law. Indeed, any definition of the rule of law begins with the most central and indispensable feature of the rule of law: the appropriateness of the behaviour of rulers and inhabitants to what the laws provide. It is obvious that the proper behaviour of rulers is determined by rules

²⁸ FERRAJOLI 1989, 901.

dictated by other organs or by a higher authority of the same organ. Vertical relationships of type four are instrumental to the other types of relationships previously described. For example, an administrative officer must enforce the collection of a fine imposed by their superior for a type-two vertical relationship to be fulfilled; or a judge must rule on a precautionary measure considering certain parameters established by the legislator in order to restore the breach of a horizontal relationship. Furthermore, it is within type-four vertical relationships that accountability mechanisms between the different branches of the State arise.

4.2 *Private Actors*

Private actors are classically recognised as beneficiaries of legal certainty. However, the scale and scope of the impact of certain activities of some private actors make it necessary to reflect on how and to what extent they can influence legal certainty.

By responsible private actors, we mean any legal entity under private law or natural person engaged in a for-profit or non-profit activity that has a high potential impact on legal certainty, i.e. high-impact private actors. High impact private actors are those that have one or more of the following three characteristics: a) they provide a public service; b) they have the power to influence the way in which public policy is designed or implemented²⁹; or c) they are large companies or large individual investors.

The importance of recognising the dual face of private actors, both as recipients and as responsible for legal certainty, allows for a broader view of the concept of legal certainty and its close relationship to human development. Thus, it is important that private actors enjoy the benefits of legal certainty, as they are an important driver of productivity, employment and growth.

At the same time, the activities of private actors can have a major impact on sustainability, climate and the effectiveness of individual rights in general. It is from this perspective that fostering and promoting effective partnerships in the public, public-private and civil society spheres is target 17 of goal 17 of the SDGs.

4.2.1 *The Private Sector as a Beneficiary of Legal Certainty*

Legal certainty is central to the ability of the private sector to develop its activities appropriately. This is important from two points of view. On the one hand, an environment of predictability and trust in institutions is necessary for complex decision-making and increased long-term investment. Therefore, attention to investment and private sector development is central to the growth of various industries and markets. Strengthening legal certainty also indirectly supports economic and human growth and development.

On the other hand, while legal certainty is central to big business and attracting capital, it shows its essential link to human development when we turn to small and medium enterprises. While their investments are lower, they also have fewer resources to deal with the institutional instability that results from legal uncertainty. In this way, strengthening legal certainty supports the effectiveness of fundamental rights such as the right to work and the right to an adequate standard of living. More concretely, legal certainty enables the private sector – especially small and medium-sized enterprises (SMEs) – to operate in an environment of predictable legal rules and stable institutional expectations. This reduces transaction costs, facilitates access to credit, and minimizes the risk of litigation, thereby creating conditions for economic inclusion and job creation. When legal norms are clear, stable, and consistently applied, businesses can plan, engage

²⁹ Important charitable or privately funded public policy funding organisations – e.g. Bill and Melinda Gates Foundation, the Rotary Club or Médecins Sans Frontières (MSF) – may be included in this group.

in long-term investments, and establish secure contractual relationships with employees and suppliers. These dynamics are crucial not only for economic growth but also for safeguarding rights such as the right to work, access to social protection, and a decent standard of living. In contexts of legal uncertainty, SMEs are often the most vulnerable, as they lack the resources to manage regulatory volatility. Therefore, strengthening legal certainty becomes a key enabler of human development by enhancing both individual autonomy and collective economic resilience.

4.2.2 *The Private Sector as Responsible for Strengthening Legal Certainty*

However, the role of private actors in relation to legal certainty is not limited to that of beneficiaries. In fact, they also bear significant responsibilities in its promotion.

We refer to these actors as *high-impact private actors*. The impact of their actions on legal certainty arises primarily to the extent that their participation in the market under the conditions under which they offer a good or provide a service fulfils the requirements of legal certainty (they meet the requirements of accessibility, publicity, stability, predictability and reliability). In this sense, the legal certainty of a community is measured not only by how the state acts in its vertical relations, but also by how the providers of goods and services relate to their customers and beneficiaries (horizontal relations).

Secondly, as providers of goods and services that are indispensable for the satisfaction of the rights of the country's inhabitants, they are a necessary condition for the creation of wealth and development. In this respect, on the one hand, when they act in synergy with States, they are suitable agents to implement public policies and enable the fulfilment of rights. In this sense, private agents play an important role in the implementation of type three vertical relationships, where the State proactively guarantees rights or other functions such as the classic "police power" (*pouvoir de police*). In this type of state obligation, there is necessarily a confluence of obligations on the state to act and obligations to limit the activity of private parties to properly fulfil these obligations³⁰.

On the other hand, they are one of the main actors that could optimise and/or interfere with the way in which individuals can exercise their rights. For example, by owning large amounts of capital, they can influence how a particular market operates (they have type three vertical obligations to avoid monopolistic or oligopolistic practices). They also have a high degree of influence on consensus building and the dissemination of information and are therefore also relevant actors for the creation of a culture of legal certainty. One area in which large companies, for example, have an important responsibility is the verification, completeness and reliability of the information they pass on to their users.

Thirdly, the private sector can also create legal uncertainty in the opposite direction, e.g. when its representatives promote or participate in acts of corruption in which public officials are also involved. In this sense, private actors are responsible for ensuring that anti-corruption rules are complied with and that participation in the market takes place in accordance with the applicable rules.

Fourthly, private actors with great influence have proven that they can create regulatory instruments. According to Katharina Pistor's research³¹, private actors can generate norms, especially

³⁰ In continental European administrative law, the notion of *pouvoir de police* (police power) refers to the general authority of the state to impose restrictions on individual rights to preserve public order, safety, health, morality, and other collective interests. While the term police power also exists in common law systems – most notably in U.S. constitutional law – its scope, legal basis, and holders differ significantly. In the United States, police power is a legislative prerogative of the federated states, whereas in broader common law contexts (such as the United Kingdom), comparable functions are exercised through specific regulatory competences delegated to administrative agencies or local authorities. Consequently, there is no exact equivalent, and the concept should be translated with caution depending on the institutional context.

³¹ PISTOR 2019.

through the creation of new financial instruments that establish privileges, obligations and benefits that did not exist before. In other sense, there are agents who create soft law that has found a high degree of acceptance and thus compliance by various public and private actors in different circumstances. This point will be discussed in more detail below.

In the context of the importance of private actors for the rule of law and legal certainty, the importance of supranational actors that have the *de facto* ability to influence and/or the normative competence to affect the exercise and functions of states and the way in which their inhabitants make decisions is particularly relevant. More specifically, we refer to all those actors that operate in more than one state and that can generate obligations, commitments or influences that affect the way in which the sovereignty of each state and the autonomy of everyone is exercised.

A distinction can be made between public and private supranational actors. Public supranational actors include, on the one hand, states (as subjects of international law) and the international organisations to which they belong. However, there are also supranational private actors, such as multinational companies. These are influential private actors whose activities have an impact on two or more public states. As we have already explained, these high-impact companies (and the international associations to which they may belong) are not only beneficiaries of the legal certainty, but also bear a special responsibility for strengthening legal certainty. Thus, in certain circumstances, when faced with coordination problems or situations of indeterminacy, these companies issue regulations that attempt to resolve them and guide the behaviour of other private and public actors.

A concrete illustration of how private actors influence legal certainty is found in the phenomenon of private soft law, which will be examined in the following section.

5. *The Case of Private Soft Law*

In current practices, private actors, as previously noted, are not merely passive recipients of regulation – that is, recipients and evaluators of the degree of legal certainty and rule of law that a State may offer. They are agents who, through their practices, shape the degree of concretisation of both elements in each context. One of the most relevant practices in this regard involves the creation of norms that are subsequently followed by other private actors as well as public actors.

The specialised literature refers to this type of norm as cases of private soft law. This section will offer a brief characterisation of such practices to clarify the point.

On what soft law is and how to identify it, there are multiple ongoing debates. As a proposal aiming to synthesise the various discussions on the matter, soft law may be understood as norms that guide the behaviour of their addressees and that are characterized by: (a) being created through procedures not provided for in the formal sources of law³²; and (b) their breach does not give rise to formal or public sanctions, nor does their compliance condition the validity of public or private acts. This, of course, is not a new phenomenon; what is relatively new, however, is the technical language that has recently emerged to discuss it. In short, soft law has operated and

³² At the international level, for example, it refers to all instruments issued by subjects of international law that are not listed in Article 38.1 of the Statute of the International Court of Justice. United Nations General Assembly, 2019, paragraph 8.

For a survey of the current discussions on what is and how to identify soft law norms see INIESTA DELGADO, NÚÑEZ VAQUERO 2025 and ELIANTONIO et al. 2023.

will continue to operate as an alternative strategy for regulating behaviour³³, and it will depend on those who exercise power over others to decide whether to adopt it and how to implement it.

Soft law norms are «rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects»³⁴. In this regard, it is important to note that the notion of normative binding force is theoretically complex³⁵. What specialised literature generally refers to when employing this expression is the following:

First, the content of soft law norms does not alter the set of rights and duties of their addressees. More precisely, these norms do not generate new Hohfeldian legal positions, whether favourable or unfavourable; rather, they provide a guide for conduct regarding how to exercise a liberty or competence³⁶. This means that it influences the way a person should act³⁷.

The expression “does not alter” conveys two ideas: (i) Soft law norms, having been issued through processes different from those for the creation of hard law (for example, without following the procedures for creating an international treaty or a constitutional or legislative norm), cannot expressly or tacitly repeal hard law norms³⁸; and (ii) soft law norms do not possess formal or material hierarchical superiority over hard law norms³⁹. The absence of formal hierarchical superiority means that soft law norms do not regulate the procedures by which hard law norms are produced⁴⁰. The absence of material hierarchical superiority means that, in cases of conflict between soft law and hard law norms, the former do not override the latter⁴¹.

Second, specialized literature usually points out that, when institutionally resolving normative problems, the use of soft law norms is not sufficient to justify⁴²: (i) the order to perform or refrain from an action to satisfy a soft law norm; (ii) the imposition of sanctions and/or compensatory duties (such as financial or symbolic reparations) for not complying with a soft law prescription; (iii) the declaration of validity of an institutional act based on its conformity with soft law norms; or (iv) the declaration of invalidity of an institutional act based on its non-conformity with soft law norms. Indeed, recipients of soft law norms may perform actions or create states of affairs incompatible with the standards (whether because they are obeying another mandate or simply exercising their autonomy or sovereignty) without generating negative normative consequences.

³³ CHINKIN summarizes some of the main reasons for using it: to avoid national requirements for treaty ratification; to circumvent international regulations on treaty-making; to create a system for regulating conduct that can be easily modified or abandoned at low cost; and to foster public discussion or gain time for it (or as a possible temporary agreement in the face of stalled negotiating positions). See CHINKIN 2000, 26-27, 41-42. See also SHELTON 2000, 12 ff.

³⁴ SNYDER 1994, 198.

³⁵ For a proposal to clarify the notion of “binding” from the perspective of analytical legal theory, and for an analysis of each meaning as applied to soft law, see ESCUDERO 2012, 132 ff.

³⁶ See CONSEIL D'ÉTAT 2013, 64. ABBOTT et al. 2000, 401.

³⁷ Two clear examples of this point are the 1975 Helsinki Final Act, in which the parties stated that the adopted provisions did not constitute an agreement subject to International Law, and the 1992 Declaration of Principles on Forest Sustainable Management, which explicitly stated that it “did not have binding force.”

³⁸ One aspect that remains to be analyzed in the specialized literature concerns the consequences of redundancy between soft law and hard law norms. Let us suppose that, in a first stage, a prescriptive soft law norm was issued. In a second stage, this norm was reiterated in a hard law norm (thus creating a redundancy problem: two norms regulating the same type of action with the same normative consequence). In a third stage, the hard law norm is repealed. This situation raises several questions: does such a repeal imply a tacit repeal of the soft law norm? If it does not imply such a repeal, does the soft law norm continue to serve as a guide for the exercise of freedom, or does it cease to do so because the course of action it prescribed has been expressly rejected by the legislator? We will address these issues in greater depth in future research.

³⁹ GUASTINI 1997, 463-482.

⁴⁰ This also implies that the relationship between hard law and soft law does not activate the rules of *lex posterior* or *lex superior*.

⁴¹ On the notion of defeat as overcoming, see GARCÍA YZAGUIRRE 2023a. For examples of the material superiority of hard law over soft law, see SENDEN 2004, 243 ff.

⁴² See ABBOTT et al. 2000, 408 ff.

Under these conditions, in what ways are soft law norms used? They can have at least two uses: experimental and para-legislative. Regarding the experimental use, soft law norms can be useful for evaluating the consequences of certain actions without incurring legal costs. Since the development and negotiation of such norms involve lower risks – including political risks – compared to those associated with hard law norms, soft law often functions as a preliminary step toward the establishment of a new normative figure or the modification of existing hard law. In other words, soft law norms act as precursors, allowing for the anticipation of the practical and regulatory effects that could arise if they were transformed into hard law, thus avoiding the immediate imposition of sanctions or invalidities⁴³.

As for the para-legislative use, soft law norms can serve as guidance for behaviour. This guidance can take at least two forms: (i) soft law norms can be employed as normative premises to be adopted, meaning they operate effectively – that is, recipients are aware of their existence and, on the strength of such regulation, decide to act in accordance with the desired state of affairs outlined therein⁴⁴; or (ii) soft law norms can serve, if so decided by a legal interpreter, as argumentative support to strengthen the justification of the chosen normative premise. In other words, they can be used in the external justification of the norm applied in a particular case.

This guidance, depending on the degree of acceptance by its recipients, can be implemented either temporarily or permanently.

As for its temporary nature, this is partly manifested through what we have referred to as its experimental function. Prescriptions proposed through soft law are implemented with the purpose of evaluating their effects and, subsequently, deciding whether to transform them into hard law or let them fall into disuse.

The permanent character is observed in situations where it is not necessary to transform soft law into hard law to increase its degree of compliance. In these cases, the mechanisms used to achieve its effectiveness have been sufficient for behaviour regulation without requiring further adjustment. Here, the experimental function fades, as both issuers and recipients no longer view soft law as a merely transitional proposal but as a behavioural guide that addresses their coordination problems, uncertainties, and conflicts.

This para-legislative use is often accompanied by strategies to incentivise its effectiveness. These strategies are varied but usually focused on implementing external pressure mechanisms that foster compliance with soft law norms, such as actions that generate reputational damage within the relevant community for non-compliance. In this sense, the effectiveness of soft law norms increases the more they are employed, as those wishing to participate in that community must comply in order to interact properly⁴⁵.

Private soft law has had a significant impact on how both public and private agents guide their behaviour. Some examples include:

In international trade, the International Commercial Terms (INCOTERMS) are rules created by the International Chamber of Commerce (ICC), a global private organisation founded in Paris in 1919. INCOTERMS define the distribution of costs, risks, and obligations between seller and buyer. Their objective is to specify the point of delivery of goods, the moment of risk transfer,

⁴³ Soft law norms also facilitate experimentation with how addressees would react to normative changes. An illustrative case is the Open Method of Coordination (OMC) of the European Union. Through the OMC, obligations of communication and reporting were established in various areas, aiming to promote transparency. Member States were required to report on their policies within the framework of multilateral monitoring, allowing the Council to issue recommendations in cases where it considered that the policies were not aligned with its guidelines.

⁴⁴ See HIERRO 2003.

⁴⁵ For a list of possible reasons (to be verified in practice) why an agent might follow a soft law norm, see WEISS BROWN 2000, 538 ff.; GOLDMANN 2008; 1889; STEFAN et al. 2019, 21-24; and SHELTON 2000, 13-14. For an analysis of the different ways in which judges (both national and supranational) have used (and not used) soft law norms, see SENDEN 2004; Conseil d'état, 2013.

and responsibilities concerning transportation, insurance, and customs clearance. For instance, under FOB terms, the seller assumes costs and risks until the goods cross the ship's rail at the port of shipment; under DDP terms, the seller bears costs and risks up to the designated destination, including customs formalities for importation. Although non-binding, INCOTERMS have had – and continue to have – significant practical relevance, often being incorporated into commercial contracts by reference. As such, they represent a successful case of private soft law due to their ability to standardise practices and reduce disputes over contractual obligations.

Similarly, the UNIDROIT Principles of International Commercial Contracts offer a set of rules for the formation, validity, and performance of cross-border agreements. These principles are frequently cited in contractual clauses as interpretative sources that complement obligations derived from INCOTERMS.

The Arbitration Rules of the International Chamber of Commerce also serve as a model for dispute resolution. Although not part of national legal systems, they are incorporated by reference in arbitration agreements and govern proceedings from the filing of the request to the issuance of the award.

In financial regulation, toward the end of the last century, a group of private banks coordinated to issue mutually applicable standards, leading to the creation of the Wolfsberg Group, aimed at combating terrorist financing. This group has issued a set of voluntary principles and guidelines intended to strengthen anti-money laundering and counter-terrorism financing programs.

As for technical standards, the standardised regulation for Financial Reporting Information has been created and maintained by the International Accounting Standards Board (IASB), an independent private body. Its purpose is to provide a set of principles and definitions (such as “asset”, “liability”, and “income”) that guide the preparation, interpretation, and application of International Financial Reporting Standards (IFRS). Although not binding per se and not imposing formal sanctions, IASB decisions serve as authoritative references for issuers of financial information, regulators, and auditors, helping to resolve interpretation issues, experiment with new criteria before formal adoption as IFRS, and ensure consistency and comparability in financial statements globally.

In the technical domain, the International Organisation for Standardisation (ISO) is a private, non-governmental entity composed of national standardisation bodies from over 160 countries. Its objective is to provide a model for quality management systems that organisations can voluntarily adopt to improve processes, ensure customer satisfaction, and facilitate interoperability and international trade. Although lacking direct legal force and not requiring formal transformation into hard law, ISO standards have achieved high compliance levels through accredited certification schemes, external audits, and market recognition that confer prestige and competitive advantage. One of the most impactful standards has been ISO 9001, which has significantly influenced product and institutional design in quality management.

Now, one issue that must be clarified is what private soft law implies regarding the requirements of legal certainty. First, the generation of soft law does not always require democratic deliberation that allows public discussion on the means chosen to solve practical problems. This presents on the one hand, a legitimacy problem concerning the regulatory means, and on the other hand, a form of regulation that remains outside the control of those authorised to issue general norms. This situation poses a risk to democratic and rule of law ideals related to legal certainty, which, as discussed, are essential for its proper promotion⁴⁶.

Second, since soft law is produced through non-formal normative production processes, it carries the risk of failing to ensure adequate accessibility, publicity, and stability. Consequently, it may not enhance the degree of legal certainty in its static dimension (i.e., allowing each addressee to foresee, at a given time and place, what legal reasons will be used to evaluate their actions or

⁴⁶ See CHINKIN 1989, 862-865; KRÖGER 2007; TRUBEK et al. 2005, 2.

omissions). Similarly, it may not guarantee reliability, as legal interpreters (and private entities) are not bound by such norms. These risks are not exclusive to soft law – they also exist in hard law – but they tend to be more pronounced in the soft law context.

Third, notwithstanding the identified risks, soft law has demonstrated an important role in promoting legal certainty, as it responds to the need for adaptability and effective responses to rapid and often unpredictable social and economic changes. It reduces the risks and time needed to implement measures. Soft law enables private organisations to respond more quickly to emerging issues. In a context of constant change, the capacity to implement efficient and adaptive solutions is vital for maintaining legal stability and predictability.

Fourth, soft law allows recipients – whether public or private entities – to propose new principles, explicitly confirm and articulate existing principles, or clearly identify the principles to which they object. In doing so, soft law can play a significant role in the formation and evolution of norm acceptability.

Fifth, soft law constitutes a way for the private sector to participate in solving coordination problems and addressing legal indeterminacy. Through soft law, the private sector actively engages in creating norms that guide both private and public entities, potentially increasing acceptance and effectiveness by offering organised responses to practical needs they themselves identify and manage.

Having analysed the normative and structural dimensions of legal certainty, we now turn to a more methodological concern: how can empirical research enhance our understanding and promotion of this ideal?

6. *Is Empirical Jurisprudence Relevant to Fostering a Culture of Legal Certainty?*

The preceding sections have shown that legal certainty is not only a product of institutional design and the actions of public authorities, but also of the behaviour of private actors and the regulatory practices – formal or otherwise – that emerge in society. From the conceptual framework in section 2, through its link to the rule of law in section 3, to the mapping of actors and the illustrative case of private soft law in sections 4 and 5, a central idea has been emphasised: legal certainty is both a normative ideal and a state of affairs, dependent on multiple agents and deeply connected to human development. This plural and dynamic character of legal certainty demands that our analysis go beyond conceptual and normative theory to consider how it operates in real contexts and how it is perceived by those subject to it.

Therefore, if legal certainty depends on a complex web of state and private actions, as well as on the social acceptance and internalisation of certain practices, then understanding and promoting it requires empirical knowledge of how these elements are experienced and processed by citizens. Empirical jurisprudence offers the methodological tools to complement conceptual analysis, enabling the measurement, observation, and testing of key components such as predictability, accessibility, and reliability. By linking the conceptual and normative foundations explored in the previous sections with concrete evidence about perception and behaviour, empirical research becomes an essential bridge between the theoretical understanding of legal certainty and its practical strengthening in contemporary legal systems.

In this light, legal theory, with its distinctive methodology of conceptual analysis, serves as a crucial space for reviewing and redefining our legal concepts in ways that better illuminate the complexities of our social practices, thereby fostering a sharper understanding of our legal and social reality. However, examining phenomena such as private soft law demonstrates that the role of legal theorists can – and perhaps should – extend further. The reconceptualization of legal certainty opens new avenues of inquiry that go beyond traditional conceptual analysis, it reveals the considerable scope that remains for empirical research in this domain.

There is currently significant debate about the relationship between legal theory and experimental and empirical jurisprudence, particularly regarding methodology and the relevance of empirical studies to topics that have traditionally been the exclusive domain of legal philosophers, largely because they have relied solely on the analytical method⁴⁷. This paper does not aim to offer premature conclusions on the matter. Rather, it seeks to suggest that, for issues such as legal certainty, empirical and experimental studies may usefully complement aspects that conventional methodologies in jurisprudence have tended to overlook or exclude from their domain, considering them at best as part of peripheral disciplines, as sociological studies.

Empirical research in the field of legal certainty is by no means a novel development. On the contrary, one of the most sustained lines of inquiry has focused on the construction of legal certainty indicators, aimed at making visible the extent to which legal certainty is achieved across different jurisdictions⁴⁸. These indicators are designed to measure various dimensions of the concept – from institutional transparency and procedural clarity to the stability and accessibility of legal norms – thus providing a comparative framework for evaluating legal systems. Although such approaches are sometimes criticised for oversimplifying complex legal phenomena, they have played an important role in operationalising legal certainty as a measurable, policy-relevant objective.

In addition to research focused on the development of indicators, a micro-level perspective – particularly that offered by cognitive psychology – provides a complementary approach to understanding how legal certainty is perceived and processed by individuals. In particular, research that investigates the cognitive dimensions involved in the understanding of concepts like “norms”, “contracts”, “rights”, “duties”, “validity”, “liability”, “procedure”, “parliament”, “justice” as well as the cognitive load these carry depending on citizens’ familiarity with such terms – due principally because of their education, their professional formation, and work area – is of great interest⁴⁹. Whilst these studies do not provide redefinitions of legal concepts *per se*, they do offer a more reliable account of how legal language is actually used and understood within particular social groups. In this respect, they support a more grounded analysis of linguistic practices – one based on empirical evidence rather than solely on the theoretical assumptions of legal scholars. In turn, they yield deeper insights into key components of legal certainty – for instance, how citizens perceive the much-theorised principle of predictability, understood as the capacity of individuals to anticipate the legal consequences of their actions.

Moreover, such findings may offer valuable tools for assessing and gauging the extent to which legal certainty is both achieved and perceived by the public. In doing so, they could contribute to the development of more accurate and contextually relevant indicators of legal certainty. These indicators may serve not only as instruments for institutional evaluation – enabling legal actors and policymakers to identify problematic areas within the legal practice – but also as a basis for rethinking legal certainty itself.

This would be, for example, a potential line of development to be explored by those who create, or intend to create, private soft law with a high degree of influence. Indeed, empirical studies may be useful in two ways. First, they can help to better understand the degree of impact such norms have had on a given practice. If private actors seek to address coordination problems more effectively, or to offer more efficient solutions to practical issues, empirical information may be of use in enabling these actors to achieve their aims more effectively. Secondly, it would enable them to devise more effective strategies for the design and implementation of soft law norms. This is because empirical information can be useful in formulating soft law provisions that are acceptable to a large number of addressees. In this sense, it constitutes a means of making their work more efficient.

⁴⁷ On the matter see BROŽEK et. al. 2001.

⁴⁸ FERRER BELTRÁN, FERNÁNDEZ BLANCO 2015.

⁴⁹ ROVERSI et. al. 2023.

Rather than conceiving it solely as a formal or doctrinal principle, this perspective invites an understanding of legal certainty as a socially embedded phenomenon, whose effectiveness is intimately tied to cognitive accessibility and the public's ability to grasp and anticipate the law's application.

As has been mentioned, one of the central challenges that legal certainty faces today is the need to cultivate a culture of legal certainty⁵⁰. It is essential that both public and private actors, including civil society, actively foster and promote this culture. In this context, empirical research such as that conducted by the CLEAR project – which explores the cognitive dimensions and cognitive load associated with concepts like the rule of law and related notions such as rules, decision, rights, separation of powers, impartiality – may be critical both for institutional design and for encouraging a culture of legal certainty within civil society⁵¹. Access to as much information as possible about how people perceive the rule of law, and the terms generally associated with it may prove highly valuable for designing effective strategies to strengthen legal certainty. Particularly if private legal citizens have, as has been argued, a central role in the promotion and maintenance of legal certainty.

From a perspective of legal design and effective legislation aimed at fostering the more static aspects of legal certainty, as well as in the formulation, evaluation, and implementation of public policies directed at improving the ideal state of legal certainty, it is crucial to consider how citizens' perceptions of the law shape their compliance and attitudes. If the rule of law is to be effective, it is essential to understand how citizens represent the norms, the emotional weight they assign to them, and how these perceptions influence their behaviour. In this line, it has been noted that «Behavioural analysis adds a new dimension to policy design. That of the cognitive and decision-making feasibility of the objectives embedded in the policy. Behavioural analysis seeks to test at the psychological level which policy instrument may be more effective in achieving the policy-maker's goal»⁵².

Even if one refrains from taking a definitive stance on the philosophical significance of such empirical approaches for the core and still fundamental method of conceptual analysis, and for legal theory more broadly, their practical relevance is becoming increasingly indisputable. From the perspective of legal certainty, they present a promising avenue for enhancing our understanding and fostering the promotion of legal certainty within contemporary legal practices.

⁵⁰ For a detailed analysis of this challenge, FERRER BELTRÁN et al. 2025.

⁵¹ <https://www.ruleoflawclear.eu/>.

⁵² VIALE 2021, 20 (Translation by the authors).

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