Summary of the dissertation

The doctoral dissertation entitled *"Nudge as an Instrument of Legal Regulation"* undertakes an analysis of the concept of nudge as a regulatory tool, situating it at the intersection of behavioral economics and jurisprudence. Its central thesis holds that while nudge originates from an economic-psychological framework, it can only be fully understood and legitimized once it is reconceptualized within legal theory as a legal instrument, subject to the same normative standards as traditional forms of state intervention. The analysis demonstrates that the evolution within economics—questioning the adequacy of the neoclassical *homo oeconomicus* model and recognizing the bounded rationality of economic agents—finds a parallel in legal theory and legislative practice. The emergence of experimental jurisprudence and the increasing presence of behavioral insights in law reflect this intellectual trajectory.

The dissertation consists of six chapters. Chapter I reconstructs the intellectual background of behavioral economics, tracing its roots from the dominance of neoclassical rational choice theory to the rise of bounded rationality, and the discovery and study of heuristics and cognitive biases. It describes the paradigmatic shift represented by the doctrine of libertarian paternalism, which provides the theoretical foundation for nudges as regulatory instruments. Chapter II deconstructs the very definition of nudge. Based on a critical review of several hundred scholarly works, the author identifies both constitutive and contested elements—such as transparency, non-coercion, orientation toward individual welfare, and the distinction between nudges and other behavioral interventions. On this basis, she formulates a new definition particularly useful from the perspective of legal scholarship and legislative practice. Drawing on the theory of legal addressees, the author demonstrates that nudges entail obligations or prohibitions for certain actors ("choice architects"), while for "end-users" they function merely as non-coercive prompts or choice options. This proposal challenges the central premise of nudge philosophy—its non-coercive character.

Chapter III shows that representatives of jurisprudence, doctrine, and judicial practice also rely on rationalist assumptions when constructing the model of the legal subject, which serves as the benchmark for determining compliance with legal norms. Similar to neoclassical economists, legal theorists assume that legal agents are rational and capable of cost–benefit assessment. Classical compliance theory posits that adherence to legal norms depends on cognitive and motivational processes, including conscious recall of the norm, its comprehension, and evaluation. Decisions to comply may arise from moral judgment, respect for authority, fear of sanctions, the desire for social approval, or calculation of personal benefits. However, empirical research shows that such motives are insufficient to fully account for actual decision-making processes. Chapters I and III reveal a deep structural analogy: the conceptual evolution from rationalist to behavioral models in economics finds its counterpart in the development of jurisprudence and compliance theory.

The analyses in Chapters I–III lay the groundwork for Chapter IV. Having established that the rationalist model of the legal subject is often inadequate, the subsequent chapter turns to behavioral compliance theory and new models of legal agents—such as the risk-prone consumer, *homo myopicus*, the overly optimistic borrower, the boundedly rational agent, or *homo heuristicus*. Each of these models highlights predictable deviations from rational choice theory and carries implications for legal design. Chapter IV thus completes the analogy with

economics, demonstrating that law—like economics—has shifted from the abstract rational agent to empirically grounded models of human behavior. Moreover, the analysis of the limits of traditional regulation reinforces this argument: the classical "carrot-and-stick" structure proves too simplistic, costly, and often ineffective to address actual behavior of legal subjects. Behavioral interventions do not replace traditional instruments but complement them, offering lawmakers a more diversified, empirically informed toolkit. Accordingly, the author argues that jurisprudence should not only recognize the cognitive limitations of legal subjects but also incorporate behavioral instruments—nudges, boosts, salience cues, default options—into the legislative toolbox.

Chapter V critically evaluates nudges from two complementary perspectives: ethics and effectiveness. Ethically, the key question is whether nudges, by shaping behavior without formally restricting choice, infringe upon fundamental legal values such as autonomy, freedom, and respect for individual agency. Critics argue that some nudges—particularly non-transparent defaults or heuristic triggers—bypass reflective cognition, exploit cognitive limitations, and risk infantilizing legal subjects rather than enhancing their capacities. The second axis of critique concerns effectiveness. Increasingly, the literature emphasizes the limited efficiency of nudges, their short-lived impact, and strong context dependence. Failed behavioral interventions manifest in various ways: from spill-over and self-licensing effects, through boomerang effects and reactance, to long-term ineffectiveness once individuals habituate to the intervention. Critics contend that nudges may shift responsibility for social risks onto citizens, thereby undermining the very values of freedom and dignity that legal systems are meant to protect.

These findings expose a fundamental paradox: the very features that make nudges attractive—subtlety, non-coercion, and relatively low cost of implementation—are also those that invite ethical and effectiveness-related criticism. This duality necessitates the development of more rigorous normative frameworks. If nudges are to be employed under the rule of law, they must not only be tested for effectiveness but also subjected to the principles of legality, transparency, and proportionality.

This recognition leads directly to Chapter VI, which offers a systematic legal and political critique of nudges. It analyzes the risks of government overreach and technocratic abuse, whereby policy-making is increasingly shaped by "nudge units" composed of experts, at the expense of public debate and democratic participation by diverse social groups and institutions. Critics further highlight the danger of nudges being used as superficial solutions—masking the lack of political will to address underlying problems while simultaneously shifting responsibility for regulatory failures onto citizens. Chapter VI raises questions about whether nudges as regulatory instruments are consistent with constitutional principles of legality, foreseeability, equality, and justice; whether their application undermines democratic deliberation and transparency; and whether the current lack of legal safeguards constitutes a dangerous circumvention of the rule of law. In this context, the chapter examines whether nudges can be reconciled with the principle of the rule of law through the introduction of appropriate safeguards. Drawing on analogies from the case law of the European Court of Human Rights, it considers proposals to distinguish between interventions of a trivial nature and those with serious implications for autonomy, dignity, and

fundamental rights—thus ensuring that behavioral regulation remains subject to legality, proportionality, and democratic control.

The overarching conclusion of the dissertation is twofold. First, the use of behavioral tools requires lawmakers to abandon assumptions of full rationality of legal agents and to acknowledge that citizens—like Thaler's "Humans"—make decisions under cognitive and contextual constraints. This recognition marks a milestone in the evolution of legal doctrine and legislative practice. Second, nudges cannot be reduced to neutral technical tools or so-called soft regulation; they serve as regulatory instruments and must be subjected to the same normative standards as other forms of state intervention. Properly designed and embedded within constitutional safeguards, they can complement traditional regulatory instruments and contribute to social welfare. Yet if nudges remain beyond institutional control, they may endanger transparency, justice, autonomy, and democratic legitimacy.

By integrating behavioral insights into jurisprudence while subjecting them to constitutional and legal scrutiny, this dissertation contributes to bridging the gap between economics, psychology, and law. It demonstrates that the future of nudges lies in recognizing them as fully-fledged legal instruments—an innovation which, if appropriately constrained, can enrich both the theory and practice of contemporary lawmaking.