

UNIVERSIDAD DE SALAMANCA
FACULTAD DE DERECHO
PROGRAMA DE DOCTORADO
«ADMINISTRACIÓN, HACIENDA Y JUSTICIA EN EL ESTADO SOCIAL»



**VNiVERSIDAD
D SALAMANCA**

***Nudging Compliance: Empowering Public Employees to Uphold
Regulations and Safeguard Against Corruption***

***Nudging Compliance: Acicatear a los empleados públicos para que
cumplan la normativa y prevengan la corrupción***

EDÉRSON DOS SANTOS ALVES

TESIS DOCTORAL

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Salamanca | 2023

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ABREVIATURAS UTILIZADAS

AAPP Administraciones Públicas
AGE Administración General del Estado
APT Administración Pública Tradicional
art./arts. Artículo, artículos
BOE Boletín Oficial del Estado
Cap. Capítulo
CC Código Civil
CCAA Comunidades Autónomas
CE Constitución Española
CEDH Convenio Europeo de Derechos Humanos
Cfr. Confróntese
CGPJ Consejo General del Poder Judicial
cit. citado, citada
CP Código Penal
DGP Dirección General de la Policía
DRAE Diccionario de la Real Academia Española
EBEP Estatuto Básico del Empleado Público, Ley 7/2007, de 12 de abril, y Texto Refundido,
Real Decreto Legislativo 5/2015, de 30 de octubre.
et al. Y otros
FCS Fuerzas y Cuerpos de Seguridad
FGE Fiscalía General del Estado
FJ Fundamento Jurídico
GPI Gobernanza Pública Inteligente
GRECO- Grupo de Estados contra la Corrupción
INAP Instituto Nacional de Administración Pública
Ib. Ibídem. En el mismo lugar.
íd. Idem.
LCSP Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público
LFCE Ley articulada de Funcionarios Civiles del Estado, Decreto de la Presidencia del Gobierno nº 315/1964, de 7 de febrero
LMRFP Ley 30/1984, de 2 de agosto, de medidas para la reforma de la Función Pública.
LO Ley Orgánica
LOFAGE Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado
LOFCS Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad
LORD Ley Orgánica 4/2010, de 20 de mayo, del Régimen disciplinario del Cuerpo Nacional de Policía
LORD-GC Ley Orgánica 12/2007, de 22 de octubre, del régimen disciplinario de la Guardia Civil
LOPPN Ley Orgánica 9/2015, de 28 de julio, de Régimen de Personal de la Policía Nacional
LPA Ley de Procedimiento administrativo, de 17 de julio de 1958.
OLAF-Oficina Europea de Lucha contra el Fraude
STC Sentencia del Tribunal Constitucional
STS Sentencia del Tribunal Supremo
TREBEP Texto refundido de la Ley del Estatuto Básico del Empleado Público

Introduction

The aim of this doctoral thesis is to critically assess, from a theoretical standpoint, the employment of *Nudge* and *Compliance* techniques in the public sector as a conduit for enhancing adherence to regulations by public servants, and thereby averting corrupt practices within the public administration environment. With this, the intention is to contribute to the development of policies and practices that enhance integrity and efficiency in public management.

In the first chapter, an exhaustive analysis of corruption will be undertaken; looking at its multi-faceted nature and the myriad of forms it assumes. Moreover, a keen examination of the diverse typologies and measuring¹ corruption, the quantification thereof – underlining its complexity – and its repercussions in the political sphere, in public procurement, and on human rights will be conducted. Additionally, the importance of *Agenda 2030* and international treaties in the battle against corruption will be discussed in detail.

Since the beginning of human civilisation, corruption has been an evil, which is subject to a process of continuous transformation and redefinition.² Notably in recent years, the COVID-19 pandemic has catalysed a heightened likelihood of corruption.³ As the OECD⁴ observed, the world has become a "corruption paradise" due to rush procurement.

¹ Vid. April K Clark, 'Measuring Corruption: Transparency International's "Corruption Perceptions Index"', *Corruption, Accountability and Discretion*, vol 29 (Emerald Publishing Limited 2017) <<https://www.emerald.com/insight/content/doi/10.1108/S2053-769720170000029001/full/html>> accessed 15 May 2023; Gissur Ó Erlingsson, 'Measuring Corruption: Whose Perceptions Should We Rely On?: Evidence from Iceland' (2016) 12 *Stjornmal Og Stjornsysla/The Icelandic Review of Politics & Administration* 215; S Sequeira, 'Advances in Measuring Corruption in the Field' in D Serra and L Wantchekon (eds), *New Advances in Experimental Research on Corruption (Research in Experimental Economics)* (Emerald Group Publishing 2012); Arthur Shacklock and Fredrik Galtung, *Measuring Corruption* (Routledge 2016); Angela Hawken and Gerardo L Munck, 'Measuring Corruption: A Critical Assessment and a Proposal' [2009] *Perspectives on Corruption and Human Development*, Macmillan <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2480847> accessed 19 May 2023; Erlingsson; Fredrik Galtung, 'Measuring the Immeasurable: Boundaries and Functions of (Macro) Corruption Indices', *Measuring Corruption* (Routledge 2006).

² Ulrich Von Alemann, 'The Unknown Depths of Political Theory: The Case for a Multidimensional Concept of Corruption' (2004) 42 *Crime L. & Soc. Change* 25.

³ Martin Loosemore and others, 'The Role of Construction Corruption in Worsening the Human Impact of Natural Disasters: A Systematic Literature Review', *Proceedings of the 37th Annual ARCOM Conference, ARCOM 2021* (2021).

⁴ OECD, 'Anti-Corruption Compliance in Times of Crisis: Building Resilience and Seizing Opportunities', vol 19 (2022) *OECD Business and Finance Policy Papers* 19 <https://www.oecd-ilibrary.org/finance-and-investment/anti-corruption-compliance-in-times-of-crisis_467cf791-en> accessed 20 May 2023.

Experts claim that corruption negatively impacts social well-being, economic development, and individuals⁵, quality of life. It distorts public policy decisions, curbs investment, and erodes Gross Domestic Product growth⁶. Given these repercussions have significantly impaired the progression of states, the fight against corruption has been a central objective of diverse research in recent decades.⁷ In essence, social research has been preoccupied with the classification of corruption into various types and subtypes such as large-scale corruption, structural corruption, systemic or endemic corruption, petty corruption⁸, and rent-seeking. Regardless, a broad definition that has gained the widest acceptance is one proffered by Transparency International and the World Bank- characterising corruption as “the abuse of entrusted power for private gain”.

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⁵ Sanjeev Gupta, Hamid Davoodi and Rosa Alonso-Terme, ‘Does Corruption Affect Income Inequality and Poverty?’ (2002) 3 *Economics of governance* 23; Democratic Governance Group Bureau for Development Policy United Nations Development Programme, ‘Corruption and Development Anti-Corruptions for Poverty Reduction, Realization of the MDGs and Promoting Sustainable Development’ [2008] United Nations Development Programme 1 <www.undp.org/governance>; Jens Chr Andvig and Odd-Helge Fjeldstad, ‘Crime, Poverty and Police Corruption in Developing Countries’ [2008] CMI Working Paper.

⁶ Rodrigo R LEDERMAN, Daniel; LOAYZA, Norman V.; SOARES, ‘Accountability and Corruption: Political Institutions Matter.’ (2005) 17 *Economics & Politics*. Blackwell Publishing Ltd. 1; Johann Lambsdorff, ‘Chapter 10 Behavioral and Experimental Economics as a Guidance to Anticorruption’ in Daniela Serra and Leonard Wantchekon (eds), *New Advances in Experimental Research on Corruption*, vol 15 (Emerald Group Publishing Limited 2012); Johann Lambsdorff, ‘Preventing Corruption by Promoting Trust – Insights from Behavioral Science’ (2015); Khalid Sekkat and Pierre-Guillaume Méon, ‘Does Corruption Grease or Sand the Wheels of Growth?’ (2005) 122 *Public Choice* 69; Daniel Kaufmann, Aart Kraay and Pablo Zoido, ‘Governance Matters’ (1999) WPS 2196 World Bank Policy Research Working Paper; Paolo Mauro, ‘Corruption and Growth’ (1995) 110–3 *Quarterly Journal of Economics* 681; Paolo Mauro, ‘The Persistence of Corruption and Slow Economic Growth’ (2002).

⁷ John Brademas and Fritz Heimann, ‘Tackling International Corruption: No Longer Taboo’ (1998) 77 *Foreign Affairs* 17; Jennifer L McCoy, ‘The Emergence of a Global Anti-Corruption Norm’ (2001) 38 *International Politics* 65 <<https://doi.org/10.1057/palgrave.ip.8892613>>; Hongying Wang and James Rosenau, ‘Transparency International and Corruption as an Issue of Global Governance’ (2001) 7 *Global Governance* 25; Jose Ángel Camisón Yagüe, ‘El Informe Anticorrupción de La UE’ [2013] *Teoría y realidad constitucional* 373; R Cantone and E Carloni, *Corruzione e Anticorruzione. Dieci Lezioni* (Feltrinelli 2018); Ronald Kroeze, André Vitória and G Geltner, ‘Anti-Corruption in History: From Antiquity to the Modern Era’ [2017] *Anti-Corruption in History: From Antiquity to the Modern Era* 1; ‘Anti-Corruption Training for Development Practitioners’; Bo Rothstein, ‘Anti-Corruption: The Indirect “big Bang” Approach’ (2011) 18 *Review of International Political Economy* 228; D Smilov, ‘Anticorruption Agencies: Expressive, Constructivist and Strategic Uses’ (2010) 53 *Crime Law Soc Chang* <<https://doi.org/10.1007/s10611-009-9215-z>>; ONU, ‘Engaging on Anti-Bribery and Corruption’ (Principles for Responsible Investment -PRI; Naciones Unidas Pacto Global - UNODC 2016) <https://www.unpri.org/download_report/18553>; E Carloni, ‘Fighting Corruption through Administrative Measures. The Italian Anti-Corruption Policy’ (2017) 9 *Italian Journal of Public Law*.

⁸ Jens Chr Andvig and others, *Corruption. A Review of Contemporary Research* (Chr Michelsen Institute 2001).

⁹ Transparencia Internacional, ‘El Índice de Percepción de La Corrupción Muestra Un Estancamiento de La Lucha Contra La Corrupción En La Mayoría de Los Países’ <https://www.transparency.org/news/pressrelease/el_indice_de_percepcion_de_la_corrupcion_2018>.

According to Villoria & Jiménez, in Spain the level of perceived corruption actually surpasses the extent corroborated by empirical data. Political corruption emerges as the predominant and most severe form of corruption in the country. It is noted here that, although these are objective data, there are problems associated with their measurement and definition. In any case, although political corruption may not be as rampant as perceived, it is decidedly more prevalent and severe than corruption in administrative circles, as is evident in media coverage. Administrative corruption is relatively high; however, perhaps in part due to discrepancies in policies aimed at reining in the government.¹⁰

It is paramount to recognise that a United Nations report maintains that it is exceedingly difficult to identify a human right that cannot be violated through corruption.¹¹ Nash Rojas conveys a similar sentiment, affirming that the nexus between corruption and human rights violations is highly complex.¹² As such, it is crucial to discern the extent to which a corrupt act infringes upon or engenders violations of human rights- acts readily encompass an array of elements that are not readily discernible in their entirety, as emphasised by the International Council on Human Rights Policy (ICHRP).¹³ Thus, the harm caused to human beings on an individual and global basis must be discerned. Furthermore, according to Davis' assertion, corruption of public officials can hinder access to human rights for all citizens. Corrupt conduct by those who make decisions that affect life, liberty, privacy or the administration of justice should be seen as inherently damaging to human rights.¹⁴

Evidently, 'Compliance' is integral to the struggle against corruption, as highlighted in the OECD's report titled 'Anti-corruption compliance in times of crisis'. 'Compliance' pertains to the practice of ensuring that an organisation or entity operates within the bounds of applicable laws and regulations, as well as internal rules and policies. Its role in preventing, detecting, and responding to corruption, while promoting a culture of integrity and legality within institutions is vital.¹⁵

¹⁰ Manuel Villoria and Fernando Jiménez, 'La Corrupción En España (2004-2010): Datos, Percepción y Efectos' (2012) 138 *Revista Española de Investigaciones Sociológicas* (REIS) 109 <<https://www.ingentaconnect.com/content/cis/reis/2012/00000138/00000001/art00007>> accessed 13 January 2023.

¹¹ ONU, 'Research-Based Progress Report on the Negative Impact of Corruption on the Enjoyment of Human Rights' (2014).

¹² Claudio Nash Rojas, Pedro Aguiló Bascuñán and Matías Meza-Lopehandía, 'Corrupción y Derechos Humanos: Una Mirada Desde La Jurisprudencia de La Corte Interamericana de Derechos Humanos' 26–27.

¹³ CIPDH, 'La Corrupción y Los Derechos Humanos Estableciendo El Vínculo' (2009).

¹⁴ Kevin Davis, 'Corruption as a Violation of International Human Rights: A Reply to Anne Peters' (2018) 29 *European Journal of International Law* 1289.

¹⁵ En este sentido Vid. Thorben Klopp, *Der Compliance-Beauftragte* (DUNCKER UND HUMBLOT 2012) <<https://elibrary.duncker-humblot.com/book/32900/der-compliance-beauftragte>> accessed 17 May 2023; Concepción CAMPOS ACUÑA, 'Compliance En La Administración

Subsequently, in the second chapter, the concept of Compliance and its application in the public sector will be addressed. An analysis of its definition, origins, evolution, as well as the European legal framework and pertinent regulations in Spain, will be carried out. Existing mechanisms to prevent corruption and promote regulatory compliance, such as ethical codes, audits, and disciplinary measures, will be examined.

Thus, the implementation of anti-corruption regulations in a country can significantly curb corruption, thereby safeguarding human rights.¹⁶ These regulations can incorporate transparency measures¹⁷, accountability and citizen participation initiatives¹⁸, and effective penalties for acts of corruption, among others.

Corruption is an incessant issue in the public sector in numerous countries¹⁹. Spain is no exception, with several high-profile corruption cases coming to light in recent years.²⁰

The implementation of effective compliance programmes in the public sector offers an

Pública: Dificultades y Propuestas' (2017) 102 Colección: Temas de Administración Local; Sergio Martín Esquivel, 'Ética Pública y Compliance Del Sector Público' [2018] La Buena Administración y la Ética 245 <https://www.academia.edu/download/67506757/Libro_Gabardo_Salgado_Colombia_V_2.pdf#page=245> accessed 3 May 2023; Elena GUTIERREZ, 'Corrupción Pública: Concepto y Mediciones. Hacia El Public Compliance Como Herramienta de Prevención de Riesgos Penales' (2018) 13 Política criminal 104 <<http://politcrim.com/wp-content/uploads/2019/04/Vol13N25A3.pdf>>; Frederico De Lacerda Da Costa Pinto and others, 'Compliance y Lucha Contra La Corrupción En España, Portugal e Iberoamérica' [2021] Compliance y lucha contra la corrupción en España, Portugal e Iberoamérica 1.

¹⁶ Vid. Anne Peters, 'La Corrupción Como Una Violación de Derechos Humanos' (2020) 6 Revista del Centro de Estudios Constitucionales 123; Luz Ángela Cardona, Horacio Ortiz and Luis Daniel Vázquez, 'Violación de Derechos Humanos En México. Un Costo Poco Advertido de La Corrupción' (2018) 25 Política y gobierno 153; Angélica Sofía Clavijo Castañeda, 'Actos de Corrupción Como Violación a Los Derechos Humanos' (2012) 7 Saber, Ciencia y Libertad 35; Max Silva Abbott, 'El Deber de Prevenir Violaciones a Los Derechos Humanos y Algunas Posibles Consecuencias' (2016) 22 Revista de Derecho de la Universidad San Sebastian 45; Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29 European Journal of International Law 1251.

¹⁷ En este sentido Vid. Alina Mungiu-Pippidi, 'Transparency and Corruption: Measuring Real Transparency by a New Index' n/a Regulation & Governance <<https://onlinelibrary.wiley.com/doi/abs/10.1111/rego.12502>> accessed 9 February 2023; Manuel Villoria and Jesus Lizcano, 'Corrupción y Transparencia: Aspectos Contextuales, Metodológicos y Empíricos.' (2013) 14 Revista de Responsabilidad Social de la Empresa 13; Marianne González and others, *Transparencia, Lucha Contra La Corrupcion y El Sistema Interamericano de Derechos Humanos.* (2011) <<http://repositorio.uchile.cl/bitstream/handle/2250/122732/Transparencia-lucha-contra-la-corrupcion.pdf?sequence=2>>; Martínez Fernández, José Manuel, 'Transparencia Versus Corrupción En La Contratación Pública. Medidas de Transparencia En Todas Las Fases de La Contratación Pública Como Antídoto Contra La Corrupción' (Tesis, UNIVERSIDAD DE LEÓN 2015) <https://buleria.unileon.es/bitstream/handle/10612/7261/TESIS_DE_JOSÉ_MANUEL_MARTÍNEZ_FERNÁNDEZ.pdf?sequence=1>.

¹⁸ Ramón Soriano, 'La corrupción política: Tipos, causas y remedios' (2011) 45 Anales de la Cátedra Francisco Suárez 383 <<https://revistaseug.ugr.es/index.php/acfs/article/view/538>> accessed 22 May 2023.

¹⁹ Transparencia Internacional, 'Transparency.Org - CPI 2020: Resumen Global - News' <<https://www.transparency.org/es/news/cpi-2020-global-highlights>> accessed 7 April 2021.

²⁰ Villoria and Jiménez (n 12).

invaluable tool in mitigating such problems by establishing a clear framework for acceptable conduct and furnishing mechanisms to detect and prevent non-compliance. The US compliance model, as explained by Amoretti Navarro, is based on a triad of organisational penalties, guilty plea agreements, and compliance responsibilities.²¹

In the context of Spain, as per Bacigalupo, the notion of compliance materialised in the legal landscape following the introduction of the penal liability of legal entities in the 2010 Penal Code. Subsequently, in 2015, compliance programs to absolve legal entities of penal responsibility were established.²²

Author Rodríguez-Arana's study is crucial to understanding how compliance can strengthen transparency and accountability in public administration in Spain.²³ Compliance emerges and is utilised in the context of "self-regulation" and the liberty to determine the internal organisation of private law-trading companies, oriented towards the prevention of risks emanating from their business activities.²⁴

The benefits of public Compliance are extremely substantial, as it directly impacts a wide array of individuals ranging from employees to citizens who are the beneficiaries of public services. An efficient public Compliance system not only fosters adherence to rules and regulations but also inhibits corrupt activities and enhances trust in public institutions²⁵.

Research has found that control systems that efficient control systems have already been implemented in the realm of Public Administration. However, in light of the agreements of the European Union concerning the Next Generation funds²⁶, it has been demonstrated that the control entities hitherto existing have failed to tackle corruption in the Administration or political parties - two areas where Penal Law may not exert effective preventative control prior to the execution of the offence.²⁷

²¹ Mario Fabricio Amoretti Navarro, *Strafrecht und Criminal Compliance in philosophischer Perspektive: eine Kritik des postmodernen Zeitgeists im Strafrecht und seiner Wissenschaft* (Duncker & Humblot GmbH, Berlin) 29.

²² Silvina Bacigalupo, 'Compliance' [2021] EUNOMÍA. Revista en Cultura de la Legalidad 260 <<https://e-revistas.uc3m.es/index.php/EUNOM/article/view/6348>> accessed 31 March 2023.

²³ *ibid* 260–261.

²⁴ *ibid*.

²⁵ Suzanne J Piotrowski and Gregg G Van Ryzin, 'Citizen Attitudes toward Transparency in Local Government' (2007) 37 *The American review of public administration* 306.

²⁶ Manuel Hidalgo-Pérez, Juan Luis Manfredi Sánchez and Enrique Benítez Palma, 'Capacidad administrativa y absorción de los fondos Next-Generation' [2022] *Gestión y Análisis de Políticas Públicas* 72 <<https://revistasonline.inap.es/index.php/GAPP/article/view/11078>> accessed 13 February 2023.

²⁷ María Cristina Fernández González, 'Public compliance, Next-Generation y entorno rural: retos de la nueva modernidad', *Rural renaissance: acción, promoción y resiliencia, 2022*, ISBN 9788413907475, págs. 637-651 (Thomson Reuters Aranzadi 2022) <<https://dialnet.unirioja.es/servlet/articulo?codigo=8631502>> accessed 16 May 2023.

In the third chapter of this thesis, the role of the Basic Statute of the Public Employee²⁸ and its relation to professional career development and performance evaluation in the public sector will be explored. The rights linked to career development, existing legal loopholes, and the role of the Statute in combating corruption will be analysed. Performance evaluation and disciplinary mechanisms, both within the scope of administrative punitive law and criminal law, will also be addressed. The importance of ethical codes, whistleblowers, and reporting channels will be emphasised.

The judicious structuring of career-progression in employment serves as a conduit for encouraging adherence to norms among public employees and discouraging the growth of corruption.²⁹ Notably, horizontal career progression stands as a salient systema in this regard, as it enables public employees to enhance their training and acquire new skills, whilst ensuring equal opportunity and impartiality.

The public employment framework in Spain is characterised by three categories of public employees: civil servants, labour employees, and contractors, each abiding by a specific legal regime.³⁰ The Consolidated Text of the Basic Statute of the Public Employee (TREBEP)³¹ safeguards job stability and the protection of public employees' rights, in addition to the right to equal opportunities and non-discrimination in public employment. It must be stressed that the ethical and behavioural principles delineated in the Code of Conduct for public employees are integral in fostering norm compliance, for thwarting non-compliance and corruption in public services. Their implementation must undergo scrupulous analysis to ensure coherent and harmonious adherence.

One must discern how imperative motivating public employees to comply with laws actually are. Carretero Sánchez argues that, three categories of principles governing public function can be discerned: inspiring, ethical, and behavioural.³²

Likewise, Arias Martínez contends that the Spanish Constitution dictates the public administration and its employees must operate with objectivity, impartiality, and neutrality in the service of mutual interest. Behavioural principles are manifested in the Code of

²⁸ Antonio García Jiménez, 'El Empleado Público Como Epicentro Del Buen Gobierno' (2018) 49 *Revista General de Derecho Administrativo* <<http://laadministraciondiala.inap.es/usuarios/noticia.asp?id=1509043#comentar>>.

²⁹ Lourdes Romero Alonso, 'Las Situaciones Administrativas Del Personal al Servicio de La Administración Local Tras El Estatuto Básico Del Empleado Público' 1464.

³⁰ There are more. España, 'Tipos de Empleados Públicos En España' (2023) <https://funcionpublica.hacienda.gob.es/funcion-publica/ep-pp/empleo_publico/tipos.html> accessed 23 June 2023.

³¹ Federico Amador Castillo Blanco, 'Un Sistema de Empleo Público Distópico:?' Sería Preciso Reformar El EBEP?' [2020] *Documentación Administrativa* 8.

³² Santiago Carretero Sánchez, 'Corrupción, Funcionarios Públicos y El Papel de La Deontología' [2010] *Revista telemática de Filosofía del Derecho* 16, 24–26 <<http://rtfd.es/numero13/01-13.pdf>>.

Conduct of the Basic Statute of the Public Employee (TREBEP).³³ The paramount objective of this code is to establish the duties and principles which public employees must regard and respect in the discharge of their functions. Despite the existence of TREBEP, the GRECO recommendation continues to stress the necessity for an independent and user-friendly code in lieu of dispersed legislative provisions.³⁴ This would ostensibly be an incremental step in bringing public employees closer to norm compliance.

It is critical for policymakers to persist in evaluating and refining existing systems and mechanisms to guarantee their efficacy in the prevention of corruption and the fostering of norm compliance. This encompasses the enforcement of European regulations and policies, such as the Recovery, Transformation and Resilience Plan and Order HFP/1031/2021, aimed at augmenting anti-fraud and anti-corruption measures at every level of administration.

Simultaneously, the prevention of corruption and fraud in Spanish Public Administration is a collaborative endeavour between public employees and the norms and tools stipulated by the legal framework. TREBEP, the Code of Conduct, the Annual Audit and Financial Control Plan, and LTAIPBG are examples of norms and tools that promote transparency, integrity, and accountability in Spanish Public Administration, enabling public employees to comply with norms and prevent corruption and fraud.

We must take heed that the function of combating corruption is also entrenched in administrative law, in the event of non-compliance with norms by public employees, they can be penalised under administrative punitive law. Criminal law is a last resort, or *ultima ratio*³⁵ only to be used after all other initiatives have failed. The principle of last resort ensures that the punitive power of the State is not exercised in an excessive or arbitrary manner. In this vein, authors Crespo³⁶ and Greco³⁷ argue that minimal Criminal Law is also the maximum permitted by the Constitution, and the use of Criminal Law must be truly constitutional. By necessitating that criminal law be used as a last resort, it

³³ María Antonia Arias Martínez, 'El Principio de Objetividad En El Empleo Público: La Objetividad Como Deber de Los Empleados Públicos' [2013] Documentación Administrativa 183, 207.

³⁴ GRECO, 'Informe de Cumplimiento: Quinta Ronda de Evaluación. Prevención de La Corrupción y Promoción de La Integridad En Gobiernos Centrales (Altas Funciones Ejecutivas) y Las Fuerzas y Cuerpos de Seguridad' (2021) 05 <<https://rm.coe.int/quinta-ronda-de-evaluacion-prevencion-de-la-corrupcion-y-promocion-de-/1680a5f3c2>> accessed 14 June 2023.

³⁵ Lisandro Ozafrain, 'El Principio de Ultima Ratio' (PhD Thesis, Universidad Nacional de La Plata 2017).

³⁶ Eduardo Demetrio Crespo, *El Derecho Penal Del Estado de Derecho Entre El Espíritu de Nuestro Tiempo y La Constitución* (Editorial Reus 2021) <https://www.editorialreus.es/media/pdf/primeraspaginas_9788429023152el-derecho-penal-y-constitucion-reus.pdf> accessed 3 February 2023.

³⁷ Luís Greco, 'Verfassungskonformes Oder Legitimes Strafrecht? Zu Den Grenzen Einer Verfassungsrechtlichen Orientierung Der Strafrechtswissenschaft', *Strafrecht und Verfassung* (Nomos Verlagsgesellschaft mbH & Co KG 2013).

encourages the pursuit of other preventative and corrective measures, potentially more efficacious and less costly, to address corruption.

Considering that administrative law, specifically in TREBEP, has measures to penalise the employee who commits a violation. Parejo Alfonso explicates that the disciplinary procedure is based on general principles and rules. Primarily, very serious or serious faults cannot be sanctioned without following the established procedure. However, sanctions for minor faults can be imposed through a summary procedure, provided the right to a hearing for the interested party is assured.³⁸ The disciplinary procedure is structured in concurrence with the principles of efficacy, speed and procedural economy, whilst always guaranteeing the rights and guarantees of defence of the alleged offender. As stated in article 98 of TREBEP, it is necessary to separate the instructive and sanctioning phases, assigning them to different organs. Provisional measures can be taken to ensure that the final resolution is effective. For instance, a precautionary suspension can be imposed for a period not exceeding six months.³⁹

In the final chapter of this thesis, an investigation shall be conducted into the application of nudge techniques in averting corruption within public administration. The author of the theory, Thaler, defines a nudge as "any aspect of the decision architecture that modifies people's behaviour in a predictable way without prohibiting any choice or significantly changing their economic incentives".⁴⁰

An analytical examination of case studies and the related empirical evidence pertaining to the deployment of nudge, as well as its amalgamation with the compliance approach, will be undertaken.

Deliberations will be made on the implications of these for the ethical education of public employees, organisational culture, good governance, and civic participation. The chapter also addresses the ramifications of nudge and compliance on human rights, their implementation within the framework of the Basic Statute of the Public Employee, and identifies the challenges and future prospects for their application.

It should be noted that there have been successful implementations within the private sector, especially in countries such as the United States and the United Kingdom, where compliance models have been promulgated within private enterprises. In such accounts authorities have transposed these models to the public domain, thus giving rise to what is termed "Public Compliance". It is imperative to note that compliance is anchored in

³⁸ Luciano Parejo Alfonso, 'Lecciones de Derecho Administrativo 12ª Edición Revisada, Actualizada y Ampliada' 1418 <<https://biblioteca.tirant.com/cloudLibrary/ebook/info/9788411470810>> accessed 14 May 2023.

³⁹ *ibid* 1418.

⁴⁰ Richard Thaler and C Sunstein, *NUDGE: Improving Decisions About Health, Wealth, and Happiness*, vol 47 (2009) 20.

ethics, seeking to ensure adherence to current norms for both organisations and their employees, as well as identifying and sanctioning infringements, as posited by Heywood⁴¹. Despite the proliferation of research on acts of corruption over recent decades, there is scant evidence of effective policy intervention or a significant diminution in their scope and magnitude. However, a strategy that has gained traction in combating corruption is the application of behavioural economics, and specifically, the utilisation of nudges.

Behavioural economics, serving as the theoretical bedrock of this study, amalgamates various disciplinary strands, including psychology, anthropology, economics, and neuroscience, with the goal of deciphering the decisions made by individuals. Grounded in meticulous diagnostic analysis and an iterative process of trial and error, this approach facilitates the design of more pragmatic and efficacious public policies. The Nudge, as a tool for contextual modification, alters behaviours without proscribing options or necessitating substantial investment in economic incentives.

Nudge, a term coined by Thaler and Sunstein⁴², it is employed both in economics and politics to influence decisions, achieving wellbeing and long-term benefits, culminating in Thaler being honoured with the Nobel Prize in Economics in 2017.⁴³

It is noteworthy that behavioural economics is being leveraged in various parts of the world to enhance public policies in areas such as education⁴⁴, health⁴⁵, road safety,

⁴¹ Paul M Heywood, 'Rethinking Corruption: Hocus-Pocus, Locus and Focus' (2017) 95 *The Slavonic and East European Review* 21, 01.

⁴² Richard Thaler and C Sunstein, *Nudge* (2008).

⁴³ Edérson Dos Santos Alves, 'La Aplicación de Nudge En La Formación de Los Empleados Públicos En España, Ayuda a Prevenir La Corrupción', *Administración, Hacienda y Justicia en el Estado Social* (Tirant lo Blanch 2021).

⁴⁴ La *Startup* está trabajando con economía conductual en Brasil, Estados Unidos, Costa de Marfil, República Dominicana y Alemania, <https://movva.tech/clientes/>

⁴⁵ Cass R Sunstein, 'Nudges.Gov: Behavioral Economics and Regulation' [2013] *SSRN Electronic Journal*.

employment⁴⁶, consumer protection⁴⁷, finance⁴⁸, misinformation⁴⁹, environment⁵⁰, discrimination, and anti-corruption strategies⁵¹. This final item will be specifically developed in the section on nudge strategies for the prevention of corruption.

⁴⁶ Organización de Cooperación y Desarrollo Económicos - OCDE, 'Use of Behavioural Insights in Consumer Policy. Organisation for Economic Co-Operation and Development Science, Technology and Innovation Policy' (2017) 36.

⁴⁷ BIT., 'The Behavioural Insights Team. Update Report 2016-17' (2016).

⁴⁸ Armenak Antinyan, Zareh Asatryan and Zareh Asatryan, 'Nudging for Tax Compliance: A Meta-Analysis' [2019] Social Science Research Network; Mpumi Monageng, 'The Effect Of Reciprocity And Social Norm Nudges On Tax Compliance' <<https://www.business.unsw.edu.au/About-Site/Schools-Site/Taxation-Business-Law-Site/Documents/MONAGENG%20Mpumi%20%20THE%20EFFECT%20OF%20RECIPROCITY%20AND%20SOCIAL%20NORM%20NUDGES%20ON%20TAX%20COMPLIANCE.pdf>> accessed 5 May 2023; Maris Vainre and others, 'Nudging towards Tax Compliance: A Fieldwork Informed Randomised Controlled Trial' (2020) 3; Colin C Williams, 'Evaluating Public Administration Approaches towards Tax Non-Compliance in Europe' (2020) 10 Administrative Sciences 43.

⁴⁹ Xiangyu Wang and others, 'Understanding the Spread of COVID-19 Misinformation on Social Media: The Effects of Topics and a Political Leader's Nudge' (2022) 73 Journal of the Association for Information Science and Technology 726; David G Rand, 'Understanding and Reducing the Spread of Misinformation Online' (2021) 2890 CEUR Workshop Proceedings; Elmie Nekmat, 'Nudge Effect of Fact-Check Alerts: Source Influence and Media Skepticism on Sharing of News Misinformation in Social Media' (2020) 6 Social Media and Society; Gordon Pennycook and others, 'Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention' (2020) 31 Psychological science 770.

⁵⁰ Banco Mundial, 'Informe Sobre El Desarrollo Mundial 2015 Aborda Los Temas de La Mente, La Sociedad y La Conducta' (2014) 22.

⁵¹ Tobias H Stark, 'Adopting a Peer-Led Approach to Disseminate Anti-Corruption Messages: Results of the Network Survey' (Basel Institute on Governance 2022) <https://baselgovernance.org/sites/default/files/2022-09/220908_tz_report_2_network_survey.pdf> accessed 10 June 2023; Nils Kobis and others, *Bribery across Nations* (2022); C Sunstein and Lucia Reisch, *The Economics of Nudge* (2016); C Baez Camargo and others, 'Using Behavioural Insights to Reduce Gift-Giving in a Tanzanian Public Hospital: Findings from a Mixed-Methods Evaluation. Basel Institute on Governance' (Basel Institute on Governance 2022) <<https://baselgovernance.org/publications/TZ-giftgiving>> accessed 10 June 2023; Jean-Benoit Falisse and others, 'Do Anti-Corruption Messages Improve Public Service Delivery? Insights from a Lab-in-the-Field Experiment in Burundi' [2021] Journal of Development Studies 1; Banco Mundial, 'When Corruption Is the Norm' [2015] World Development Report 2015: Mind, Society, and Behavior. <<http://pubdocs.worldbank.org/en/193141482349924845/Spotlight-1.pdf>>; Johann Lambsdorff, 'Preventing Corruption by Promoting Trust – Insights from Behavioral Science'; Noore Alam Siddiquee, Noore Alam Siddiquee and Habib Zafarullah, 'Absolute Power, Absolute Venality: The Politics of Corruption and Anti-Corruption in Malaysia' [2020] Public Integrity 1; BIT. (n 54); Mogens K Justesen and Christian Bjørnskov, 'Exploiting the Poor: Bureaucratic Corruption and Poverty in Africa' (2014) 58 World Development 106 <<https://www.sciencedirect.com/science/article/pii/S0305750X14000035>> accessed 7 June 2023; Eric Avis, Claudio Ferraz and Frederico Finan, 'Do Government Audits Reduce Corruption? Estimating the Impacts of Exposing Corrupt Politicians' (2018) 126 Journal of Political Economy 1912 <<https://www.journals.uchicago.edu/doi/full/10.1086/699209>> accessed 20 May 2023; Kendra Dupuy and Siri Neset, 'The Cognitive Psychology of Corruption' (U4 Anti-Corruption Resource Centre, Chr Michelsen Institute 2018) <<https://www.u4.no/publications/the-cognitive-psychology-of-corruption.pdf>> accessed 11 June 2023; Margarita Gómez-García and Pablo Ignacio Soto-Mota, 'Applying Behavioral Science to Increase Compliance and Reports of Gifts Received by Public Servants in Mexico', *International Research Society for Public Management Conference, Budapest, Hungary* (2017) <<https://oecd-opsi.org/innovations/using-behavioral-science-to-reduce-corruption-within-mexicos-public-service-an-innovative-way-to-fight>

Touching upon the subject of corruption, it poses an impediment in the attainment of our objectives for a robust democracy. Given that the majority of corruption is entrenched in public administration and its liaison with private entities, it is not frequent for the ethical principles of public officials to be a potent tool in preventing corruption. Article 103 of the Constitution mandates that the public sector should objectively bolster public interest, that is, the interest of the populace, and operate under the principles of efficiency, coordination, and decentralisation. Consequently, public servants must not only be well-versed in the law to which they are subjected, but also act in accordance with principles that adhere to their role.

The fifth-round evaluation report by the Group of States against Corruption (GRECO) on Spain emphasises the importance of adopting and making a code of conduct for personnel holding high executive functions easily accessible to the public, complemented with practical measures such as written guidelines, confidential advice, and specific training.

Within this context, Spain has made notable strides in strategic planning and risk evaluation in the combat against corruption, yet it is incumbent to reinforce these measures to bolster normative compliance within public administration. The Fourth Open Government Plan (2020-2024) is anticipated to catalyse the adoption of novel conduct codes and foster the development of supportive measures for their implementation.⁵² To address these concerns, researchers such as Lorenz-Spreen et al., and Popova, Maynard and Munafò⁵³, have posited that the deployment of nudges in decision-making environments can influence individual behaviour and stimulate adherence to ethical codes. These techniques may be harnessed to highlight ethical values and foster integrity amongst public officials.

In relation to GRECO's⁵⁴ recommendation concerning the necessity for a unified conduct code for all public employees, Spain has been urged to devise an independent and easily accessible code as opposed to disparate legislative provisions. The fifth-round evaluation report underlines that this segment of the recommendation remains unfulfilled. To address this recommendation, Spain must craft a unique code that facilitates compliance with norms, providing public employees with clear guidelines concerning

corruption/> accessed 6 June 2023; On Amir and Orly Lobel, 'Stumble, Predict, Nudge: How Behavioral Economics Informs Law and Policy' [2008] Columbia Law Review 2098.

⁵² *ibid.*

⁵³ Philipp Lorenz-Spreen and others, 'How Behavioural Sciences Can Promote Truth, Autonomy and Democratic Discourse Online' (2020) 4 *Nature Human Behaviour* 1102; Olivia M Maynard and Marcus R Munafò, 'Nudging Transparent Behavioural Science and Policy.' (2018) 2 *Behavioural Public Policy* 198; Maria Popova, 'How Can the EU Help Ukraine Build the Rule of Law and Fight Corruption? Romania and Bulgaria as Guideposts' [2017] PonarsEurasia - Policy Memos.

⁵⁴ GRECO (n 37) 05.

appropriate conduct. With the implementation of nudges, following the approach proposed by Opoku et al.⁵⁵ in Ghana, as well as Siddiquee and Zafarullah⁵⁶ in Malaysia and other researchers⁵⁷, ethical codes could be strengthened amongst public officials in the fight against corruption within Spanish public administrations.

Public employees form the backbone of services delivered by public administration and are key to its proper function.⁵⁸ Moreover, it has been asserted that the training of employees is a pivotal determinant of the success of public institutions, as averred by Mutege & King'oriah, although constrained resources may bear implications for training costs and impede the maintenance and enhancement of service quality.⁵⁹ Consequently, employee management and leadership have been regarded as some of the most important aspects of government organisation administration.⁶⁰ Heuristic influences on decision-making by citizens and public officials⁶¹ have been identified, and it has been demonstrated that citizens can be 'nudged'⁶² towards desirable behaviours, such as increasing vaccination rates.⁶³ Other examples include studies concerning local public managers' preferences for different policy instruments.⁶⁴

The management and leadership of employees have evolved into a pivotal facet of the administration of government organisations. Additionally, heuristic influences have been discerned in the decision-making processes of both citizens and public officials. Furthermore, studies have been conducted regarding the preferences of local public managers in relation to various policy instruments.

⁵⁵ Prince Opoku, Mark Amankwa and Gershon Dagba, 'Institutionalizing Nudge to Fight Corruption and Promote Economic Growth in Developing Countries. The Case of Ghana' [2018] Social Science Research Network.

⁵⁶ Siddiquee, Siddiquee and Zafarullah (n 58).

⁵⁷ Lorenz-Spreen and others (n 61); Maynard and Munafò (n 61); Popova (n 61).

⁵⁸ Peter LM Leisink, Eva Knies and Nina van Loon, 'Does Public Service Motivation Matter? A Study of Participation in Various Volunteering Domains' (2021) 24 International Public Management Journal 865.

⁵⁹ Faith Mwendu Mutege, Susan Nzioki, and George King'oriah, 'Employee Training and Public Service Delivery of Huduma Centres in Kenya' (2021) 9 The International Journal of Business and Management.

⁶⁰ Laurence J O'Toole and Kenneth J Meier, 'The Human Side of Public Organizations: Contributions to Organizational Performance' (2009) 39 The American Review of Public Administration 499 <<https://doi.org/10.1177/0275074008323805>> accessed 13 June 2023.

⁶¹ Stefano DellaVigna and Elizabeth Linos, 'RCTs to Scale: Comprehensive Evidence from Two Nudge Units' (2022) 90 Econometrica 81.

⁶² Sobre acicate Vid. Ponce Solé Juli, *Acicates (nudges), buen gobierno y buena administración: Aportaciones de las ciencias conductuales, nudging y sector público y privado* (Marcial Pons 2022).

⁶³ Katherine L Milkman and others, 'A 500,000-Person Experiment Evaluating the Impact of Geographically-Targeted, High-Payoff Vaccine Lotteries' [2021] Social Science Research Network.

⁶⁴ Koen Migchelbrink and Pieter Raymaekers, 'Public Managers' Trust in Citizens and Their Preferences for Behavioral Policy Instruments: Evidence from a Mixed-Methods Study' [2022] Behavioural Public Policy 1.

As Kantorowicz-Reznichenko posits, different types of nudges have been identified that promote normative compliance in diverse areas. These include prominent nudges, which highlight certain aspects of a choice to make individuals focus on them; moral persuasion nudges, which make the moral consequences of people's decisions more visible; and nudges based on descriptive or injunctive social norms, which inform individuals about what others are doing or what is considered ought to be done.⁶⁵

In this vein, existing literature has been examined, underscoring the importance of conducting academic work and experiments in the field of behavioural economics (*behavioral compliance*⁶⁶, *behavioral law*⁶⁷, y *behavioral public administration*⁶⁸). These

⁶⁵ Elena, Kantorowicz-Reznichenko and Liam Wells, 'Nudging Compliance', *The Cambridge Handbook of Compliance* (2021) <<https://www.cambridge.org/core/books/abs/cambridge-handbook-of-compliance/nudging-compliance/080F9566A69D2B7098F51078C7174D31>> accessed 5 May 2023.

⁶⁶ Vid. James T Tedeschi and others, 'Power, Influence, and Behavioral Compliance' (1970) 4 *Law & Society Review* 521; Angela Biaggio and Aroldo Rodrigues, 'Behavioral Compliance and Devaluation of the Forbidden Object as a Function of Probability of Detection and Severity of Threat.' (1971) 4 *Developmental Psychology* 320; Donald C. Langevoort, 'Global Behavioral Compliance' [2022] *Corporate Compliance on a Global Scale* 217; Curt C. Braun and others, 'Differences in Behavioral Compliance as a Function of Warning Color' (1994) 38 *379*; Eugene Y Chan, 'Moral Foundations Underlying Behavioral Compliance during the COVID-19 Pandemic.' (2020) 171 *Personality and Individual Differences* 110463; Firas AlOmari, 'How to Improve Patient Satisfaction Behavioral Compliance and Hospital Image through Nurse Caring: Strategizing for Healthcare during COVID-19.' [2021] *Health Marketing Quarterly* 1; Gómez-García and Soto-Mota (n 58).

⁶⁷ Vid. Julio Ponce Solé, Estrella Montolío Durán and José Andrés Rozás Valdés, 'Derecho Conductual y Nudges: Implicaciones Jurídicas y Lingüísticas' [2021] *Gestión y Análisis de Políticas Públicas* 58; Cass Sunstein, 'Análisis Conductual Del Derecho' [2012] *Themis Revista de Derecho* 53; Juli Ponce Solé, 'Derecho Administrativo, Ciencias Conductuales y Nudging En La Gestión Pública - Dialnet' (2018) 15 *Revista Vasca de Gestión de Personas y Organizaciones Públicas* 8 <<https://dialnet.unirioja.es/servlet/articulo?codigo=6748829>>; Thomas S Ulen, 'La Importancia Del Derecho Conductual' (2015) 2 *Revista de Teoría del Derecho de la Universidad de Palermo* 25; Daniel Kahneman, Jack L Knetsch and Richard H Thaler, 'Behavioral Law and Economics Experimental Tests of the Endowment Effect and the Coase Theorem'; José María Abellán-Perpiñán, César Cierco Seira, and David Jimenez-Gomez, 'Nudges y La Pandemia: Un Análisis Desde La Economía y El Derecho Conductual. Informe SESPAS 2022' (2022) 36 *Gaceta sanitaria* S93; 'Promoting Compliance , Rule of Law and Anti-Corruption Using Behavioral Science and Nudge'.

⁶⁸ Vid. Stephan Grimmelikhuisen and others, 'Behavioral Public Administration: Combining Insights from Public Administration and Psychology' (2017) 77 *Public Administration Review* 45; Lars Tummors, 'Behavioral Public Administration', *Oxford Research Encyclopedia of Politics* (2020) <<https://>> accessed 19 May 2023; Rosanna Nagtegaal, 'Handling Heuristics: How Behavioral Sciences Can Support Decision-Making in the Public Sector' (PhD Thesis, Utrecht University 2022) <<https://dspace.library.uu.nl/handle/1874/416553>>; Asmus Leth Olsen and others, 'Behavioral Public Administration: Connecting Psychology with European Public Administration Research' [2018] *The Palgrave handbook of public administration and management in Europe* 1121; Asmus Leth Olsen and others, 'Behavioral Dishonesty in the Public Sector' (2019) 29 *Journal of Public Administration Research and Theory* 572 <<https://doi.org/10.1093/jopart/muy058>> accessed 11 June 2023; R Paul Battaglio Jr and others, 'Behavioral Public Administration Ad Fontes: A Synthesis of Research on Bounded Rationality, Cognitive Biases, and Nudging in Public Organizations' (2019) 79 *Public Administration Review* 304; Syon P Bhanot and Elizabeth Linos, 'Behavioral Public Administration: Past, Present, and Future' (2020) 80 *Public Administration Review* 168.

disciplines offer tools that can promote normative compliance by public employees and combat corruption.

In addition, the concepts of 'Behavioural Compliance', 'Behavioural Law' and 'Behavioural Public Administration' are discussed. These are interconnected yet distinct approaches within the realm of Behavioural study in the public domain. While 'Behavioural Compliance' centres on achieving compliance with existing laws and regulations, 'Behavioural Law'⁶⁹ explores the interplay between law and behavioural sciences to influence socially desirable behaviours. Meanwhile, 'Behavioural Public Administration' aims to enhance public administration by analysing the behaviour and attitudes of individuals in the public sector. These approaches can collaboratively contribute to the fight against corruption and the normative compliance by public employees.

It is essential to note that these areas of study are interconnected and work in conjunction with other disciplines, such as psychology and economics, to enhance the integrity and quality of the services offered in public administration.

In line with Villagrasa y Ponce Solé's discussion about the use of anti-corruption and anti-fraud tools, there is often a recognition of the potential of behavioural sciences to improve and fortify the prevention of behaviours that violate public ethics and the normative framework. It is rather surprising that these contributions are not considered more frequently, given the growing interest they are garnering in the design of public policies.⁷⁰

In conclusion, this doctoral thesis aims to analyse comprehensive strategies based on Nudge and Compliance techniques to improve norm compliance among public employees and prevent corrupt practices within the realm of public administration. The field of compliance nudging has the potential to develop rapidly, according to Kantorowicz-Reznichenko, as technological advancements make it feasible to monitor compliance and implement automated nudging.⁷¹ Therefore, theoretical and empirical studies will be combined, leveraging the existing legal framework and seeking synergies with other disciplines. However, a greater volume of studies concerning this matter is needed, as thus far no correlated studies have been conducted in all four areas (behavioural compliance, behavioural law, behavioural public administration and nudge) for anti-corruption, with the aim of mitigating corruption in public administration. This research is anticipated to stimulate further research that propose the conduct of

⁶⁹ Vid.Ulen (n 74).

⁷⁰ Oscar Capdeferro Villagrasa and Juli Ponce Solé, 'Nudging e Inteligencia Artificial Contra La Corrupción En El Sector Público: Posibilidades y Riesgos' [2022] Revista Digital de Derecho Administrativo 225, 228.

⁷¹ Elena, Kantorowicz-Reznichenko and Liam Wells (n 72).

empirical studies and practical applications of these areas in public administration globally, particularly in the Spanish context.

This study aims to expand knowledge in the field of corruption prevention, to strengthen integrity and transparency in public administration, and to foster an ethical culture and good governance. In this way, it is hoped that norm compliance will improve and that corrupt practices in the realm of public administration will be reduced.

This doctoral thesis was based on a research methodology employing a descriptive legal⁷² approach and deductive analysis. It is important to highlight that the scope of this work was limited to analysing legal issues and emphasising the main aspects, without delving into exhaustive explanations of their roots. In order to address this issue, a qualitative methodology will be used, through an exhaustive analysis of Spanish laws, treaties, doctrine and jurisprudence and that of the European Court of Human Rights.

The deductive method was used to conduct this research, which is grounded in the analysis of universally applicable laws and principles. Secondary sources were consulted and a thorough collection of relevant articles was conducted to substantiate the arguments presented. As for the methodology utilised, documental research was employed, which involved the analysis of data and documents relevant to the legal sphere. Special attention was given to the dogmatic legal⁷³, approach, which necessitated investigating Spanish and European laws and jurisprudence related to the topic under study.

⁷² Reynaldo Mario Tantaleán Odar, 'El Alcance de Las Investigaciones Jurídicas' (2015) 12 *Derecho y cambio social* 20, 06.

⁷³ Manuel Sánchez Zorrilla, 'La Metodología En La Investigación Jurídica: Características Peculiares y Pautas Generales Para Investigar En El Derecho' [2011] *Revista telemática de Filosofía del Derecho* 317, 336.

General Conclusions

This doctoral thesis has primarily focused on the implementation of Nudge and Compliance techniques to promote rule adherence amongst public employees, thereby curbing corrupt practices within the realm of public administration. Acknowledging that suitable training for public employees could be a motivational factor in achieving sound public administration services, as the incorporation of nudge approaches could stimulate employees' participation in such training.⁷⁴ It is pivotal to underline that public employees play an instrumental role in the fight against corruption, and various studies reveal that nudge techniques can influence their rule compliance, thereby preventing corrupt practices. Consequently, it is apparent that integrating these strategies with Compliance and adapting them to the Spanish context could contribute to aiding public employees in rule adherence and corruption prevention. Throughout this thesis, a descriptive and analytical examination of political corruption, the significance of norm compliance, and the potential of Nudge and Compliance strategies in corruption prevention has been conducted.

In conclusion, this doctoral thesis has theoretically analysed the use of Nudge and Compliance techniques in public administration with the aim of improving norm compliance among public employees and preventing corrupt practices. The research is grounded on existing literature and underscored the importance of conducting academic studies and experiments in the fields of behavioural compliance, behavioural law, and behavioural public administration.

The findings of this research reveals that the implementation of nudge in decision-making environments could influence individual behaviour and promote adherence to ethical codes. Moreover, the importance of having a unique and accessible code of conduct for all public employees is demonstrated, along with the crucial role of leadership in corruption prevention

I. Corruption and Its Contexts

The corruption is an intricate web with endless multi-faceted contexts and repercussions upon society. In Spain's case, corruption is predominantly of a political nature, frequently permeating local government and closely intertwined with the construction boom. This

⁷⁴ Quesada Lumbreras (n 904).

brand of corruption severely undermines trust in institutions and engenders detrimental consequences for society at large.

Corruption is an endemic phenomenon that is historically intertwined with power, characterised principally by the misuse of public office for personal gains. Apart from the egregious erosion of trust in governments and public institutions, corruption is closely correlated with other negative phenomena, such as organised crime and terrorism. Rigorous combat against corruption is an indispensable component in ensuring the integrity of public administration and thwarting impunity.

In Spain, while political corruption is a significant issue, the levels of corruption amongst public officials are relatively modest. Nonetheless, it is indispensable to reinforce and safeguard the meritocratic model within public administration, especially at the local level and in state-owned enterprises, as a cornerstone strategy in the battle against corruption. Spain has embarked on diverse measures to combat corruption and foster transparency. These include the establishment of the Independent Office for Regulation and Supervision of Procurement, the Transparency Law, and the inception of the Special Prosecutor's Office against Corruption and Organized Crime. Notwithstanding these strides, challenges persist in the effective implementation of these measures, such as the need to enhance oversight of public procurement and ensure rigorous monitoring both pre and post-procurement.⁷⁵

Therefore, it is essential to reevaluate corruption control strategies, adapt legislation to emergent forms of corruption, and guarantee effective sanctioning. The fight against corruption must remain a top priority for public administration since it bears directly upon collective interest and the seamless functioning of society.

Additionally, the Spanish Penal Code stipulates laws and regulations to penalise offences perpetrated by public employees in the exercise of their duties. These offences encompass various corrupt behaviours in the public sphere, such as urban planning prevarication, administrative prevarication, infidelity in the custody of documents, violation of secrets, and bribery. These offences are punished with imprisonment, fines, and disqualifications, commensurate with the severity of the conduct and the legal goods affected.

In the case of prevarication, the protection of the proper exercise of public power and the prevention of its arbitrary use are sought. Offences such as urban planning prevarication and administrative prevarication aim to safeguard territorial planning and the rational use of natural resources. Moreover, bribery penalises the giving or receiving of bribes by public officials or private individuals.

⁷⁵ Quesada Lumbreras (n 904).

As for infidelity in the custody of documents and the violation of secrets, these laws aim to protect the integrity of information and public and private interests. Penalties are set proportionate to the severity of the behaviours, for both authorities and public officials as well as private individuals in charge of the dispatch or custody of documents.

Additionally, the misappropriation of public funds is examined, which involves the misuse of public monies by public employees. Frauds and illegal exactions are also covered, referring to the demands for undue amounts by public officials.

On the other hand, crimes of negotiations and activities prohibited to public officials are mentioned, relating to the carrying out of private activities that could interfere with the performance of their public duties. Furthermore, corruption in international business transactions is discussed, both by private individuals and public officials, with penalties and sanctions established for these acts.

It is important to highlight that these crimes carry various penalties and sanctions, and their gravity varies according to the specific circumstances of each case. Other legal provisions and laws related to the fight against corruption in Spain are also discussed, as well as international conventions and recommendations to combat this problem.

In general, the importance of addressing corruption from different perspectives is put forth, including preventive measures, more effective sanctions, and the liability of legal entities. The need to focus on systems and structures that promote corruption, besides the individuals who practise it, is underscored, and the application of behavioural economics techniques to prevent it is suggested. Ultimately, the aim is to promote a more effective fight against corruption in all its spheres.

In summary, the Spanish Penal Code contemplates a range of crimes related to corruption, aiming to ensure legality, ethics, and transparency in the performance of public duties. These norms seek to preserve citizens' trust in institutions and promote good governance for the benefit of society.

Furthermore, the topic of political corruption and public procurement is tackled from various perspectives. The importance of conducting empirical studies to evaluate the real scope of political corruption in Spain, as well as its impact on society and institutions, is highlighted. It is acknowledged that political corruption is a transversal and multidimensional problem, which undermines trust in institutions and has significant consequences on the political and economic system.

Likewise, the need for a precise definition of political corruption, encompassing a broad range of reprehensible behaviours from a criminal-legal standpoint, is underscored. The importance of addressing corruption at all stages of the public procurement process, identifying the different manifestations of corruption in each of them, is emphasised.

The importance of having entities and agencies in charge of preventing and combating corruption in the field of public procurement is also pointed out. The need to promote the professionalisation of public agents involved in procurement processes, ensuring high ethical standards and a thorough mastery of relevant legislation, is highlighted.

Regarding measures to combat corruption, legal provisions such as the Transparency and Good Government Act, the Whistleblower Protection Act, and the Corruption Prevention Act are mentioned, which establish mechanisms for transparency, accountability, and protection for those who report cases of corruption.

In the context of the European Union, the EU's Anti-Corruption Strategy and Action is highlighted, which seeks to strengthen cooperation between Member States in the fight against corruption.

In conclusion, the importance of addressing political corruption and public procurement from different perspectives is emphasised, promoting professionalisation, training, and knowledge in the public sector, as well as citizen participation and the improvement of public ethics.

In this regard, the precise level of corrupt activities will never be known.⁷⁶ Corruption, due to its highly systemic nature, has demonstrated that traditional theoretical and technical frameworks for its study are insufficient. To effectively address corruption, empirical, interdisciplinary, and innovative scientific approaches are required. The goal of these new approaches should be to deepen our understanding of our natural, social, and technological environments, leading to the transformation and advancement of legal practices.

Moreover, adequate definitions of corruption would allow for objective and precise measurements, which would facilitate prediction and, consequently, provide the necessary intelligence for its control. Despite significant progress in the fight against corruption, all these initiatives are affected by the limitations inherent to the methodologies that underpin them. The formulation of accurate models of the causes, circumstances, mechanisms, effects, and consequences of a corruption event remains a great scientific challenge. Undoubtedly, we know much more about corruption than 20 years ago, but we still don't know how to systematically measure and standardise it, or how to control it within existing models. It is clear that this problem requires new conceptual, methodological, and analytical frameworks that allow the integration of all elements that, in one way or another, determine the complexity of the phenomenon.⁷⁷

The measurement of corruption is fundamental to identify the areas where public resources are being diverted and affecting essential services, such as health and

⁷⁶ Clark (n 2) 06–07.

⁷⁷ Luna-Pla and Nicolás-Carlock (n 118).

education, which can result in violations of human rights. As Persson mentions, countries with solid governance and less corruption usually face fewer disasters and, therefore, have a greater capacity to protect the fundamental human rights of their citizens. Therefore, the fight against corruption is not only crucial for the proper functioning of institutions and the economy, but also to ensure and safeguard the human rights of individuals.⁷⁸

II- Compliance and its Application in Public Service

This chapter delves into the concept and application of compliance or regulatory compliance in public service, especially in Spain, but with references to other international contexts. Originally from the private sector and Anglo-Saxon tradition, compliance has transcended into public administration, giving rise to "public compliance", which aims to foster compliance with norms and prevent corruption.

This concept goes beyond observance of the law, including internal rules, corporate statutes, contractual guidelines, and quality standards. The application of compliance systems in the public sector can be an effective tool against corruption, as long as it is accompanied by legal reforms and preventive actions. However, there are obstacles in its implementation, such as the lack of an approach adapted to the public sector.

In the context of public service, compliance stands as a shield against non-compliance and corruption. However, for compliance to be effective in this area, it is imperative that it adapts to the singularities of the public sector. This implies the adoption of preventive policies, legal reforms, and a genuine commitment to transparency and integrity.

In a more specific analysis, the chapter breaks down the European legal framework in relation to public compliance, comparing systems from several countries, and highlighting the synergies and challenges in harmonising national laws with international regulations. In this sense, the chapter underscores the need for robust cooperation between different actors and the promulgation of a dynamic and adaptable approach.

Focusing on public service in Spain, control mechanisms are explored, the role of the Public Compliance Officer, and the importance of codes of ethics within the compliance framework. Additionally, the crucial role of compliance programs in promoting good governance, public ethics, and transparency is addressed, pointing out future challenges and prospects.

⁷⁸ Persson and Povitkina (n 149).

Moreover, the relevance of the United Nations' Agenda 2030 and its focus on the fight against corruption as an element contributing to the strengthening of compliance in public service is highlighted. In addition, the importance of having a solid regulation, as well as the commitment and participation of public employees to ensure the effectiveness of compliance, is emphasised.

To conclude, this chapter highlights the paramount importance of addressing compliance within the public sector, not merely as a perfunctory requirement but as a genuine commitment to transparency, integrity, and accountability. Furthermore, it can also be concluded that compliance must evolve in tandem with technological innovations and developments in behavioural sciences- in doing so future corruption will be prevented and integrity within the public sector will be bolstered. Compliance in public service is depicted as an ever-evolving discipline that holds immense potential in fostering normative compliance and corruption averted. It is anticipated that compliance will invariably assume an increasingly prominent role in the endeavours to counteract corruption within public service, both in Spain and internationally.

III. The Regulation of Public Employment in Spain

The Basic Statute for Public Employment (TREBEP) demonstrates a compendium of ethical principles and duties incumbent upon public employees, as well as proffers prohibitions and disciplinary measures in instances of non-compliance. These articles can help public employees to comply with regulations and prevent corruption in public administration by establishing a clear and demanding regulatory framework for their performance.

For example, Article 53 mandates public employees to act with impartiality and in the interest of the common good, thereby obliging them to eschew any conflict of interest or undue influence. Article 54 emphasises the importance of respecting fundamental rights and avoiding discrimination, thereby necessitating sensitivity and respect towards diversity and equal opportunities. Additionally, Article 55 enumerates prohibitions designed to thwart the misappropriation of public resources or undue influence, and Article 56 establishes disciplinary liabilities in cases of violation of the aforementioned norms and ethical principles.

Consequently, the TREBEP is instrumental in aiding public employees in adhering to regulations and circumventing corruption within public administration, by establishing a lucid and exacting normative framework for their conduct. It is of critical importance that public employees are conversant with and adhere to these ethical principles and duties,

and that efficacious mechanisms of oversight and supervision are instituted to ensure compliance.

In essence, the TREBEP is posited as an essential mechanism in combating corruption within public administration, particularly by establishing a clear and demanding regulatory framework for the performance of public employees, establishing disciplinary procedures to prevent and sanction breaches of ethical rules and principles, and establishing control and supervision mechanisms to guarantee transparency and the protection of personal data in the performance of the public administration.

In addition, the TREBEP establishes the obligation of public employees to act with integrity and responsibility in the performance of their duties, and to avoid any actions that may lead to discrimination or corruption. These ethical principles and duties can help to prevent corruption in public administration by establishing a clear and demanding regulatory framework for the performance of public employees.

In this sense, the TREBEP can be considered as an important mechanism for the fight against corruption in public administration in Spain, by establishing a clear and demanding regulatory framework for the performance of public employees, and by establishing disciplinary procedures and control and supervision mechanisms to ensure transparency and protection of personal data in the performance of public administration. It is important that public employees are aware of and comply with these ethical principles and duties, and that effective control and oversight mechanisms are in place to ensure compliance.

IV. Compliance and Nudge in Public Administration

“Nudge” theory is propounded as an efficient tool for positively shaping individuals’ decision-making. Collectively, these insights proffer a more holistic and nuanced understanding of human behaviour within the public context, thereby enhancing the effectiveness of governmental policies and practices.

In light of these deliberations, researchers such as Lorenz-Spreen et al., Popova, Maynard, and Munafò⁷⁹ have posited that the deployment of nudges in decision-making environments can precipitate a shift in individual behaviour and foster adherence to ethical codes. These strategies may be employed to accentuate ethical values and promote integrity amongst public officials. In connection to the Council of Europe’s Group of States against Corruption (GRECO)⁸⁰ recommendations pertaining to the necessity of

⁷⁹ Lorenz-Spreen and others (n 61); Maynard and Munafò (n 61); Popova (n 61).

⁸⁰ GRECO (n 37) 05.

a single code of conduct for all public employees, Spain has been encouraged to adopt an autonomous, easily accessible code as opposed to disparate legislative provisions. GRECO's fifth-round evaluation report emphasised that this aspect of the recommendation has not been fulfilled. To address this, Spain is urged to develop a unified code that facilitates compliance by providing public employees with clear guidance on expected conduct. With the implementation of nudges, following the approach proposed by Opoku et al.⁸¹ in Ghana, Siddiquee and Zafarullah⁸² in Malaysia and other researchers⁸³, ethical codes could be reinforced amongst public officials in the fight against corruption within Spanish public administrations.

In relation to the Tanzania⁸⁴ and Mexico⁸⁵ nudge cases, which are discussed above, Nudge messages aimed at encouraging public employees to not receive gifts and not accept bribes have been successful for public employees. The above cases fit with the Burundi⁸⁶ case, as this case evoked the moral values of honesty and equality associated with public service to the civil servant participants, leading them to adopt more egalitarian and fair behaviour towards the participating citizens. All three cases could easily be replicated in the context of the Spanish public administration, which has a more consolidated democracy and is a more developed country than the other locations where the experiments were carried out.

Furthermore, the efficacy of nudge can vary across different groups and situations. Bellé & Cantarelli pointed out that factors such as greed, egocentrism, and time pressure can amplify unethical behaviour. On the other hand, employee supervision, moral reminders, and the desire to maintain a positive image can attenuate unethical conduct. It is crucial to understand the characteristics and needs of target groups in order to design effective and context-specific nudges.⁸⁷

The importance of addressing corruption and lack of integrity at both individual and institutional levels has also been stressed. Studies by Olsen et al., Denisova-Schmidt⁸⁸, and Gingerich⁸⁹ have substantiated the connection between individual dishonesty and corruption at the organisational and country levels. Therefore, nudges must address both individual factors that spur unethical conduct and institutional shortcomings that enable and encourage corruption.

⁸¹ Prince Opoku, Amankwa and Dagba (n 63).

⁸² Siddiquee, Siddiquee and Zafarullah (n 58).

⁸³ Lorenz-Spreen and others (n 61); Maynard and Munafò (n 61); Popova (n 61).

⁸⁴ Baez Camargo and others (n 58) 11.

⁸⁵ Gómez-García and Soto-Mota (n 58) 15–18.

⁸⁶ Falisse and others (n 58).

⁸⁷ Bellé and Cantarelli (n 1035).

⁸⁸ Denisova-Schmidt, Huber and Prytula (n 1058).

⁸⁹ Gingerich and others (n 1057).

On the one hand, Camargo asserts that anti-corruption reforms in Mexico, Russia, and Tanzania have faltered due to a lack of enforcement power and the politicisation of law enforcement agencies. While legal frameworks designed to combat corruption have been implemented, their effectiveness has been undermined by a lack of political will and vested interests. Furthermore, the author suggests that anti-corruption normative rhetoric can be used as a façade to veil redistributive practices associated with co-optation.⁹⁰ This supports De Benedetto's argument that the traditional idea of preventing corruption by the law that incriminates corrupt politicians could be a product of the poisoned tree, given that laws in themselves can be a source of corruption as public officials and regulators contribute to corruption through their creation.⁹¹

In response to the problems raised above, nudge could contribute to solving this issue, particularly in the case of Siddiquee and Zafarullah, highlighting that with nudge they can push citizens and public officials to comply with anti-corruption rules, thus strengthening transparency and integrity in the public sphere.⁹² This will contribute to anti-corruption reforms, so that public employees can comply with the law.

Equally, Dorrough et al. assert that the results reveal that in order to avoid the failure of anti-corruption efforts, it is necessary to have an accurate behavioural model of the type of corruption in question.⁹³ They emphasise that individuals' preferences for bribery are not fixed, but rather dynamically change according to the person in question.⁹⁴

It is crucial to note that studies by Olsen et al.⁹⁵, Denisova-Schmidt⁹⁶ y Gingerich⁹⁷, Siddiquee, and Zafarullah⁹⁸ regarding the application of 'nudge' in anti-corruption measures to curb corruption and foster transparent governance could potentially be employed in the Spanish context. Furthermore, if 'Nudge Units' are established within public institutions, this strategy could serve as a reference for Europe and Latin America. In the same vein, anti-corruption studies using 'nudge' from Ukraine⁹⁹ and Costa Rica¹⁰⁰ underline the importance of considering the information provided to citizens about acts of corruption, as they can lead to an increase in corruption; in other words, corruption corrupts. For this reason, Stahl deems it vital to have an intervention design with anti-corruption approaches that focus on corruption patterns significant to the context. In this

⁹⁰ Siddiquee, Siddiquee and Zafarullah (n 58).

⁹¹ De Benedetto (n 1024).

⁹² Siddiquee, Siddiquee and Zafarullah (n 58).

⁹³ Siddiquee, Siddiquee and Zafarullah (n 58).

⁹⁴ Kobis and others (n 58) 10.

⁹⁵ Olsen and others, 'Behavioral Dishonesty in the Public Sector' (n 1121).

⁹⁶ Denisova-Schmidt, Huber and Prytula (n 1058).

⁹⁷ Gingerich and others (n 1057).

⁹⁸ Siddiquee, Siddiquee and Zafarullah (n 58).

⁹⁹ Denisova-Schmidt, Huber and Prytula (n 1058) 18–19.

¹⁰⁰ Gingerich and others (n 1057).

way, solid evidence can be built about what works in addressing entrenched patterns of corruption.¹⁰¹

V- Contribution to legal science: Recommendations on the implementation of nudges and compliance in the Spanish public administration.

It is important to consider that corruption is multi-faceted and its impacts are multi-disciplinary, requiring solutions on the same scale. After examining existing literature, it is clear that further academic work and experiments involving all areas of behavioural science (behavioural compliance, behavioural law, behavioural public administration and 'nudge') are needed to create tools that foster compliance with the rules of public employees and prevent corruption. It is key to understand that these areas are interconnected and although they have different approaches, all work to enhance compliance with the aid of other fields of knowledge, such as psychology and economics. In this way, corruption in public administration can be curbed and the services it offers can be improved.

In conclusion, the fields of behavioural law, behavioural public administration, and behavioural compliance are noteworthy for their focus on human behaviour and their application in the public sphere. While behavioural law aims to shape behaviour in accordance with social good, behavioural compliance focuses on the design of compliance based on behavioural predictions. Behavioural public administration examines individual behaviour and attitudes to improve public administration. These approaches complement each other and can collaborate to achieve a more effective public administration and improve compliance with rules. Ideally, Spanish legislators should base their laws and public policies on the contributions of behavioural economics. After analysing the laws and authors of 'nudge', it is recommended that 'nudge' and compliance be used to enhance application in the context of Order HFP/1031/2021. Additional measures could be considered, such as: Identifying the main corruption risks and bad practices in public administration and designing specific compliance programs to prevent them. Another point is to help remind employees of the importance of, and stimulate, effective communication channels for feedback on the effectiveness of the compliance program and its impact on behaviour. Lastly, regularly evaluate the effectiveness of the compliance program and adjust it based on the results obtained.

¹⁰¹ Stahl (n 1022) 17–18.

Moreover, compliance programs and 'nudge' can be useful tools in helping public employees adhere to EBEP standards and avoid corrupt practices in public administration. However, it is crucial that these approaches are applied ethically and transparently, respecting the fundamental rights and freedoms of public employees. In addition, robust organisation and a strong commitment from public administration authorities and leaders are required to ensure the effective implementation of these approaches.

This doctoral thesis contributes to legal science by exploring the application of nudge and compliance in the context of public administration. Interrelated yet distinct areas of behavioural compliance, behavioural law, and behavioural public administration are identified, and their potential to combat corruption and promote compliance in Spain are highlighted.

The primary innovations of this research lie in the proposal for comprehensive strategies based on nudge and compliance, as well as the call for more empirical studies and practical applications in public administration at a global level. The importance of training public employees and the role of ethics in building an ethical organisation are emphasised.

Further research, it is recommended to conduct correlated research in the four mentioned areas (behavioural compliance, behavioural law, behavioural public administration, and nudge) to deepen the fight against corruption in public administration. Furthermore, collaboration with other disciplines such as psychology and economics is suggested to improve integrity and the quality of offered services.

In summary, this doctoral thesis contributes significant knowledge about the use of nudge and compliance in public administration to promote norm compliance and prevent corruption in Spain. Its theoretical approach and practical recommendations can serve as a starting point for future research and applications in the legal and administrative realm.

In conclusion, the doctoral thesis has offered an integral and analytical view on corruption prevention in public administration, by combining Nudge and Compliance techniques. The importance of having a robust normative framework, the promotion of ethics and transparency, the implementation of control and evaluation mechanisms, and the fostering of an organisational culture oriented to norm compliance were made evident. These strategies, based on gentle persuasion and voluntary compliance, can contribute to enhancing efficacy in corruption prevention and strengthening citizens' trust in public institutions. However, the need to overcome challenges and continue research in this matter to perfect and adapt strategies to the ever-changing administrative and social context was emphasised.

In recent years, Spain has undertaken various of measures aimed at bolstering the fight against corruption, whilst simultaneously fostering transparency and integrity within public administration. These initiatives encompass the establishment of novel institutions and the enactment of contemporary laws and regulations. These endeavours are quintessentially geared towards precluding corruption and ensuring the efficient and transparent utilisation of public resources.

One proposal for the Spanish government would be to invest in behavioural nudges and facilitate the inception of Nudge Units within public administrations. As highlighted by Rivero, these units have been instrumental in bettering governmental efficiency and fostering exemplary administration through nudge-based interventions. Cases with positive results can be found in the United Kingdom with the Behavioural Insights Team (BIT)¹⁰², as well as in the United States and Australia. Despite Spain's proclivity for adopting comparable solutions through imitation, the country has yet to experiment with such units.¹⁰³

¹⁰² BIT, 'The Behavioural Insights Team' (n 1021).

¹⁰³ Rivero-Ortega (n 1020) 18.

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