

The Evolution of Professional Expertise in Moral Damage Assessment

La evolución de la experiencia profesional en la evaluación de daños morales

Diana Rocío González Vázquez

 <https://orcid.org/0000-0001-6723-6526>

Universidad Autónoma de Nuevo León. México

E-mail address: lic.dianargonzalez@gmail.com

Yeyetsy Guadalupe Ordóñez Azuara

 <https://orcid.org/0000-0002-4425-8770>

Universidad Autónoma de Nuevo León. México

E-mail address: yeyeazuara@gmail.com

Raúl Fernando Gutiérrez Herrera

 <https://orcid.org/0000-0002-1320-6214>

Universidad Autónoma de Nuevo León. México

E-mail address: raulgeronte@gmail.com

Jesús Manuel Medina Méndez

 <https://orcid.org/0009-0008-6046-7792>

Colegio de Peritos del Norte. México

E-mail address: valutec_77@yahoo.com

Fabiola Doracely Yépez Rincón

 <https://orcid.org/0000-0001-5025-9967>

Universidad Autónoma de Nuevo León. México

E-mail address: fabiola.yepzrn@uanl.edu.mx

Received: June 15th, 2025

Accepted: August 22nd, 2025

Published: November 28th, 2025

DOI: <https://doi.org/10.22201/ijj.24485306e.2026.2.20257>

Abstract: This article addresses the use of experts in the assessment of moral damage. It analyzes several different systems used to quantify compensation for moral damage: the subjective system, the scale-based system, the scale system with an algorithm, and the mixed expert-judicial system. The article reveals that the complexities involved in the quantification of moral damage and the lack of uniformity and objectivity in the application of these various systems demonstrate the need for standardized methodologies. While the use of experts has become increasingly accepted, this practice faces challenges in calculating complete and equitable compensation. The article concludes by suggesting

that a robust mixed expert-judicial system would be the most advantageous, as judicial decisions are based on objective criteria provided by experts who specialize in the disciplines most relevant to a particular case, such as psychology, medicine, criminology, social work, dentistry, bioethics, engineering, and accounting. Using this system would allow for a more individualized and equitable assessment of moral damages, thereby overcoming both the limitations inherent in a system that uses judicial discretion alone and the rigidity of systems that utilize fixed scales.

Keywords: expert assessment; valuation; moral damage; reparation of moral damage.

Resumen: Este documento trata sobre la participación de especialistas en la valoración del daño moral. Analiza diferentes sistemas para cuantificar la compensación por daño moral: el sistema subjetivo, el sistema basado en baremos, el sistema de baremos con algoritmo y el sistema mixto pericial-judicial. El estudio revela que la cuantificación del daño moral es compleja y su falta de uniformidad y objetividad en la aplicación de estos sistemas demuestra la necesidad de metodologías estandarizadas. Se argumenta que, si bien la participación de expertos es cada vez más aceptada, aún enfrenta desafíos para lograr una compensación justa y completa. Las conclusiones del estudio proponen que un sistema mixto pericial-judicial robusto es el más ventajoso, ya que las decisiones judiciales se basarían en criterios objetivos proporcionados por expertos especializados en diversas disciplinas como psicología, medicina, criminología, trabajo social, odontología, bioética, ingeniería y contabilidad. Esto permitiría una evaluación más personalizada y equitativa del daño moral, superando las limitaciones de la discrecionalidad judicial pura y la rigidez de los sistemas que emplean baremos.

Palabras clave: peritaje; valuación; daño moral; reparación del daño moral.

Summary: I. *Introduction*. II. *Methodology*. III. *Results*. IV. *Discussion*. V. *Conclusions*. VI. *References*.

I. Introduction

A person's obligation to compensate another for damage caused by his actions, whether lawful or unlawful, is a legal concept that has evolved from notions of private revenge embodied in the Law of Talion, which demanded "an eye for an eye and a tooth for a tooth", to modern debates addressing the restorative and compensatory aspects of damage which provide a more comprehensive perspective.¹ Historically, the concept of damage had been limited to actual in-

¹ Juliana Nanclares Márquez & Ariel Humberto Gómez Gómez, *La reparación: una aproximación a su historia, presente y prospectivas*, 33 CIVILIZAR 59, 60-63 (2017), <https://doi.org/10.22518/16578953.899>

jury to one's physical body or the loss of one's assets resulting from crime, such as theft or killing a slave, or wrongdoing, such as breaking a fence. These were damages that had to be compensated for. In 286 B.C., the Roman *Lex Aquilia* contemplated aspects of damage beyond those that were immediate and objectively quantifiable.² These included harm to individuals that was less direct or evident, even encompassing long-term damage. This would later become known as loss of profits, that is, the profits no longer enjoyed as a direct consequence of the damage, or as consequential loss, damages which are an indirect result of the initial damage.

At that time, the criteria used for compensating damage was based on what we would identify today as Mommsen's difference theory, or a counterfactual premise, which proposes evaluating the damage caused by comparing the value of the assets before the event that caused it to the value of the assets after the event that caused it.³ This proposition, based on the concept of breach of contract, sought to return things to the state they were in before the damage occurred, but did not contemplate reparation for non-patrimonial damage.

The concept of moral damage began to take shape in 19th-century French and German legislation which recognized the concept referred to as *pretium doloris* ("the price of pain"), known in German as Schmerzensgeld ("pain money"), because it was primarily claimed for pain suffered as a consequence of physical harm caused to a person.⁴ But it was not until the 20th century, when various countries around the world began to legislate on the subject, that an attempt was made to include not only the physical suffering of a human being, but subjective aspects of damage, such as damage to one's image or reputation. This concept even extended to damage suffered by a legal entity such as a corporation.

Various dramatic cases highlighted the need to legislate on moral damage. One such case was the sinking of the British ship, the *Lusitania*, by a German submarine during World War I. The United Nations' compilation of rulings on the case highlighted the issue of moral damage and how to approach the issue of compensation for the loss of life resulting from that attack. Those rulings affirmed the proposition that in civil liability cases it is "impossible to compute mathematically or with any degree of accuracy or by the use of any precise formula the damages sustained, involving such inquiries as how long the deceased would probably have lived but for the fatal injury; the amount he would have

² Armando José Torrent Ruiz, *Pretium affectionis o daños morales en la aestimatio damni ex lege Aquilia*, in 6 FUNDAMENTOS ROMANÍSTICOS DEL DERECHO CONTEMPORÁNEO 1245 (Justo García Sánchez dir. & Margarita Fuenteseca Degeneffe coord., 2021).

³ FRIEDRICH MOMMSEN, BEITRÄGE ZUM OBLIGATIONENRECHT. 2 ZUR LEHRE VOM INTERESSE 27 (Braunschweig, Schwetschke & Sohn, 1855).

⁴ Andrey T. Tabunshikov et al., *Compensation for Moral Harm in Foreign Law and Order*, 27 OPCIÓN 2090, 2082-2098 (2020).

earned... and many other inquiries concerning elements universally recognized as constituting recoverable damages”.⁵

The rulings also emphasized a principle attributed to Grotius positing that damages must be measured by pecuniary standards because “money is the common measure of valuable things.”⁶ This pragmatic, though not universally accepted, assertion helped establish the precedent for considering monetary payment as the appropriate method for compensating moral damages.

Even today, there are no uniform criteria for the assessment of moral damage and this can lead to discrimination against certain sectors of the population. A study by the University of Chicago⁷ found that average tort awards increase as the population rates of black and hispanic people in counties increase, and especially as poverty rates in those counties increase. In contrast, average tort awards decrease with rising poverty rates among the white population.

Legal discourse encompasses debates on the foundational question of the legality of compensating for moral damage or any type of non-patrimonial damage, questioning why an individual’s financial assets should be supplemented when the harm suffered was not related to their assets. These debates extend to the methodologies used for determining the monetary sums that might constitute adequate compensation for such damage. Today, a growing number of jurisdictions now recognize the necessity of providing compensation beyond purely economic losses in order to ensure more equitable reparation of the damage caused.

Indeed, even the definition of moral damage is evolving. The Inter-American Court of Human Rights notes that non-pecuniary damage “may include both the suffering and distress caused by the violation, as well as the impairment of values that are very significant to individuals, and any alteration of a non-pecuniary nature in the victim’s living conditions”.⁸ Currently, the most widely used term is non-patrimonial damage or moral damage.

In Mexico, the Código Civil Federal (Federal Civil Code) states that “moral damage is understood as the effect a person suffers in their feelings, affections, beliefs, dignity, honor, reputation, private life, physical appearance, or the way others view them”.⁹ In Mexico, as in other countries, the damage is quantified by the judge or magistrate hearing the case based on the evidence presented of the existence of damage. But the question as to exactly how the judge is to calculate a monetary amount that can repair damages to a person’s feelings or honor, for the loss of a loved one, or for the deprivation of a human right has been left unanswered, leading to disparate and often arbitrary results.

⁵ *Lusitania Cases*, 7 U.N. Rep. Int’l Arb. Awards 32 (Mixed Claims Comm’n 1923).

⁶ *Id.*

⁷ Eric Helland & Alexander Tabarrok, *Race, Poverty, and American Tort Awards: Evidence from Three Data Sets*, 32 J. LEGAL STUD. 27 (2003), <https://doi.org/10.1086/344560>

⁸ *Muelle Flores v. Perú*, No. 375 (Mar. 6, 2019), *Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R.* (ser. C), https://www.corteidh.or.cr/docs/casos/articulos/seriec_375_esp.pdf

⁹ CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, CÓDIGO CIVIL FEDERAL (D.O.F., 2024).

In contrast to economic damages, which may be quantified with relative facility by an expert assessing repair costs, replacement value, loss of profits, or consequential damages, the determination of moral damages is a subject of considerable debate. This challenge arises because moral damages involve remedying harms that are not readily quantifiable or do not have a direct monetary equivalent.

The question also arises as to who is the appropriate professional to quantify the damage and express it in monetary terms. Forensic accountants can perform the rigorous task of adding up amounts, while a person with a post-graduate degree in valuation might have access to the more advanced tools necessary to make a more comprehensive calculation, considering relevant economic and market factors. In practice, experts try to provide moral damage valuation reports that are viewed positively by judges. However, they face rigid obstacles imposed by the more familiar and convenient system employing judicial discretion.¹⁰

Few attempts have been made to create scientific, standardized methodologies which permit a more objective calculation of damage that is essentially subjective, with the aim of attaining a more equitable administration of justice by ensuring that when an order for the reparation of damage is issued, its determination was done in a well-grounded and equitable manner.

The objective of this overview is to identify the various systems used in the valuation of moral damage and the mechanisms used for its measurement, particularly highlighting the role played by experts. To this end, we carry out an analysis of the legal procedures employed and the methodological approaches proposed, focusing primarily on those used in the judicial field.

II. Methodology

This is an exploratory and descriptive qualitative study. We conducted a literature review of various sources of information, including the use of search engines and databases such as Google Scholar, SciELO, and ScienceDirect. We also included reviews, research articles, and book chapters. Subsequently, we did a content analysis, detected patterns and classified the results into categories.

We obtained information from the following countries: Argentina, Bolivia, Chile, Costa Rica, the United States of America, Mexico, Nicaragua, Germany, Spain, Holland, England, Iran, North Macedonia, Kazakhstan, Russia, and Ukraine.

Knowledge of the resources currently available for the quantification of moral damage, as well as familiarity with the problems with their use, will allow for the construction of a guide document containing the methodological

¹⁰ COLEGIO DE PERITOS DEL NORTE, INFORME DE LAS ASAMBLEAS DE TRABAJO SOBRE RETOS DE LOS PERITOS VALUADORES (2024).

options for the valuation of moral damage. In the future, this guide may assist researchers attempting to develop a standardized methodology for the quantification of moral damage.

III. Results

The Mexican association, Colegio de Peritos del Norte, which monitors the forensic practices of experts across various disciplines, has reported in its working assemblies on the challenges faced by valuation experts. Analyzing texts from various countries, we found abundant information regarding the theoretical aspect of moral damage —its existence, definition, and composition— but very little information which contributes to the topic of how to calculate compensation for moral damage.

After the literature review, certain observations common to all authors stand out. It is consistently recognized that moral damage is both difficult to define and to compensate for; that there is a lack of uniformity and objectivity in compensation determinations; and, that a standardized methodology is required to provide certainty to victims as well as to the offending parties.

The only classification system found was that of Margarita Zhuravlyova who classified various ways of valuing moral damage both qualitatively and by means of a formula.¹¹ Hers is a simpler version of the categories we have identified in this article. We refer to them as systems because they employ a set of rationally linked principles that contribute to a specific object of inquiry. We identified four distinct systems: the subjective system, the baremo-based system, the baremo with an algorithm system, and the mixed expert-judicial system.

1. *The Subjective System*

In the subjective system, the judge determines whether or not moral damage is present based on subjective factors and quantifies the damage using his or her own discretion. Moral damage is presumed to exist, its existence does not need to be proven, only its magnitude. That is, if some offense or wrongdoing has been committed and moral damage is claimed, then moral damage is presumed to exist, as if it were an inevitable consequence of the improper conduct. The judge may make minor use of expert reports and scales, but it is mainly through the exercise of judicial discretion that a final quantification of moral damage will be arrived at.

In Kazakhstan, in translating the amount of compensation for moral damage into monetary terms, the Supreme Court of the Republic takes into account a subjective evaluation by the victim of their right to life, their right to

¹¹ Margarita Zhuravlyova, *Validez del uso de la presunción de daño moral por parte de psicólogos expertos*, 32 SLOVO OF THE NATIONAL SCHOOL OF JUDGES OF UKRAINE 170 (2020).

health, as well as other considerations such as their right to privacy, their entitlement to a certain degree of personal or family honor, etc. The Court also evaluates the severity of both physical or moral suffering, the existence or absence of malice, as well as other objective data that can be supported by evidence.¹²

The quantification of moral damage is not conducted in the conventional manner as is done with economic damage. For example, already existing schedules not designed for the specific purpose of quantifying moral damage may nevertheless be used, such as the table for disability payments from social security institutions, life expectancy tables, or schedules used by insurance companies for the payment of claims against their insurance policies. However, these are not binding on the judge.

In Germany, France, Mexico, and some other countries, previous judicial rulings in comparable cases create informal jurisprudential norms that can guide quantification. In the Netherlands, although court decisions do not establish a judicial precedent, in practice they have persuasive force and are usually followed, thus constituting the most important authority on the matter. In Dutch law, an attempt is made to achieve some uniformity by using the index of judicial decisions on compensation for moral damages, initiated in 1964 by the lawyer Van der Veen and published every three years, which is generally accepted by courts and experts as a guide for evaluations.¹³

There is, however, no standardized way to calculate or assign a monetary amount to something that is not an economic asset or valuable in terms of money.¹⁴ Therefore, technically, damage is not calculated in money terms. Rather, a calculation is made as to how much money is necessary to compensate an individual for the damage they have suffered, because moral damage cannot be repaired, but it must be compensated.¹⁵

The American Convention on Human Rights establishes that the reparation of damage must integrate all related claims by guaranteeing the victim full restitution, that is, by returning them as completely as possible to their situation prior to the damage. They must be indemnified for all material, physical, and moral damage through economic compensation. They must be completely rehabilitated physically, medically, psychologically, and socially. Measures of satisfaction must also be considered, such as the right to truth and punishment of

¹² S. M. Vorobiev, *Moral damage as one of the consequences of property crimes*, 9 LAWYER (2004), quoted in M. A. Akimbekova et al., *Matters on Compensation of Moral Damage: Practical Aspects*, 17 INT'L J. ENVTL. & SCI. EDUC. 9733 (2016).

¹³ Frans J. A. Van Der Velden, *The Dutch law of pretium doloris*, in NETHERLANDS REPORTS TO THE ELEVENTH INTERNATIONAL CONGRESS OF COMPARATIVE LAW (Hans Ulrich & Jessurun D'oliveira eds., 1982).

¹⁴ Jesús Abraham Martínez Montoya, *La indeterminación económica de daño moral*, 6 HEURÍSTICA JURÍDICA 59 (2013), <https://erevistas.uacj.mx/ojs/index.php/heuristica/article/view/1201>

¹⁵ Ramón Maciá Gómez, *La dualidad del daño patrimonial y del daño moral*, REV. DE RESPONSABILIDAD CIVIL Y SEGURO 21, 32 (2010), <https://www.asociacionabogadosrcs.org/doctrina/rc-36doctrina2.pdf>

offending parties. The non-recurrence of the damage must be guaranteed.¹⁶ These parameters are grounded in the case law resulting from established through citizen lawsuits brought by citizens against the state alleging human rights violations and demanding comprehensive legal safeguards.

There are various methods used to compensate for moral damages, based both on monetary terms as well as on non-monetary remedies¹⁷ such as publication of the judgment,¹⁸ public apologies, the provision of scholarships, the creation of trusts, adequate medical and psychological assistance, etc.¹⁹

The subjective quantification system is used in Spain for cases not involving traffic accidents, which has its own specific set of regulations. It is also the system adopted by most countries, including Mexico. In this regard, the Supreme Court of Justice of Mexico recently established various guidelines for the quantification of moral damage that supersede all previously used procedures.

Under this system, compensation for damage suffered must be comprehensive, equitable, and just, that is, not limited to material damages, and there must be no limitation on its imposition. It establishes that damages should not be confused with their quantification. The elements of quantification of an indemnification are only indicative factors. Compensation may vary in cases of strict liability, that is, when the damage is not caused by malice or fault. It also emphasizes that overcompensation should be avoided, and that compensation may be reduced when it is to be paid by a natural person with limited resources.²⁰

Although these various rules or guidelines have been established, the way damages are quantified remains within the discretion of the judge, and equity is not guaranteed, nor is there even consensus as to what is equitable. Under such a system one might legitimately ask: whether the quantification of moral damage would be different if a person were run over by a company's employee-driver versus a private driver; whether there will be an impact on the compensation award based on the fact that the victim was in charge of minor children or if they were a retired elderly adult; or whether a person with a higher income should pay more in compensation than one with a lower income, even though he caused the same damage.

¹⁶ Convención Americana sobre Derechos Humanos, 22 de nov. de 1969, 1144 U.N.T.S. 123. https://www.oas.org/dil/esp/1969_Convenci%C3%B3n_Americana_sobre_Derechos_Humanos.pdf

¹⁷ Abbas Mirshkari & Fatemeh Sadat Hosseini, *A Comparative Study of the Method of Compensating Moral Damages with an Emphasis on the Approach of Iranian Judicial Practice*, 121 JUDICIARY'S L.J. 351, 378 (2023), <https://doi.org/10.22106/jlj.2022.544179.4557>

¹⁸ Mohammad Eshaghi et al., *A Comparative Study of Compensation for Moral Damages in the Legal System of Iran and England* International, 6 J. ETHICS & SOC. 38, 31-40 (2024).

¹⁹ LUCÍA ALEJANDRA MENDOZA MARTÍNEZ, *LA ACCIÓN CIVIL DEL DAÑO MORAL* 136 (Instituto de Investigaciones Jurídicas UNAM, 2014). <https://archivos.juridicas.unam.mx/www/bjv/libros/8/3636/10.pdf>

²⁰ Alfonso Curiel Valtierra, Carlos Alberto Vela Treviño & Arturo Lara-Hernández, *Mexico: Mexican Supreme Court issues guidelines to calculate compensation for moral damage*, LEXOLOGY, (Sept. 13, 2023), <https://www.lexology.com/library/detail.aspx?g=3c402ff6-c56a-4adf-9930-7452248bbe26>

To understand what judges mean by moral damage, Lazcano Maturana and Toro Cáceres conducted a study of 141 judgments that resulted in compensation awards for moral damage in Chile to determine what elements were considered in reaching the results of each case. They observed that even in different courts and with different judges, similar expressions were repeated without any justification for their use. These expressions were classified into five categories: annoyance or discomfort; suffering or psychological affliction; physical pain; harm to dignity and honor; alteration of normal life and loss of time.²¹ These categories exceed the classic definition of *pretium doloris* and are more in line with modern conceptions of moral damage.

The absence of a uniform standard, common across many diverse jurisdictions and apparent in the disparate rulings of individual judges within the same legal system, constitutes a fundamental impediment to the quantification of moral damage and the reliable and effective determination of equitable compensation.

2. The Baremo-based System

The first baremos (standardized compensation schedules) were developed for the purpose of quantifying, in a standardized manner, damages sustained by individuals resulting from a crime or other illicit act. A baremo is a scale that associates an amount or percentage with a specific type or instance of damage, allowing compensation to be established simply by summing these amounts or percentages and then translating the result into money terms.

A baremo allows for the consolidation of quantification criteria so that similar cases are valued equally. It also facilitates alternative dispute resolution mechanisms which can enable parties to reach agreement on damage compensation that are satisfactory both to them as well as to insurance companies whose business it is to make provision for such costs.²²

In France, a case comparison system is used for damage compensation. Under this system, insurers' offers are published, allowing individuals to review them and decide whether or not to accept a proposed settlement. However, a key aspect of this approach is that the compensation offers are made exclusively by the insurance companies. Additionally, there are capitalization tables used for calculating future damages using two variables: the interest rate and life expectancy. Currently, judicial practice incorporates several different capi-

²¹ Magdalena Lazcano Maturana & Javiera Toro Cáceres, *Estudio cuantitativo de la indemnización de perjuicios extrapatrimoniales por infracciones a los derechos de los consumidores*, 245 REV. DE DERECHO 110, 99-131 (2019), <http://dx.doi.org/10.4067/S0718-591X2019000100099>

²² F. BANDRÉS MOYA, S. DELGADO BUENO & J. SÁNCHEZ-CARO, CUADERNOS DEL MÁSTER EN DERECHO SANITARIO VOL. III (Universidad Complutense de Madrid, Facultad de Medicina, Departamento de Toxicología y Legislación Sanitaria 2004) quoted in Luis Corpas Pastor, *La (In)suficiencia del Baremo de Tráfico en la Valoración del Daño Dental*, 18 ACTUALIDAD JURÍDICA IBEROAMERICANA 856 (2023). See *infra* note 24.

talization scales proposed and published in the *Gazette du Palais*. However, some view use of these scales as subordinating the judge to the expert, whereas under French law, an expert's conclusions should be used merely as an aid to the judge's decision.²³

In Spain, there is a system for the valuation of damages caused to people involved in traffic accidents based on objective criteria related to personal injury, such as age; particular circumstances, such as being the sole breadwinner; and economic damage, which includes consequential damage and loss of profit, not only to the victim, but also to any affected family members.²⁴

In this system, degrees of damage are assessed and assigned percentages, and tables then indicate the monetary amount for individual cases considering such specific characteristics as the age of the surviving spouse or the duration of their marriage, or for sequelae affecting the victim's psychophysical well-being, quality of life, or aesthetics. In the same vein, there is a compensation schedule for damages arising from healthcare activities. However, that schedule covers psychophysical and functional damage, but does not encompass the entire range of moral damage.²⁵

Quantification through the use of schedules is a method primarily used by insurance companies, especially in cases of physical injury and death. Tables are constructed that determine the amount to be paid by the insurer according to the injuries suffered, the degree the injuries affect the person's movement, aesthetics, or functionality, without going into further detail.

In the case of damages resulting from crimes in the Russian Federation, Erdelevsky constructed a table to compensate affected persons for the moral damage caused by the criminal, based on medical condition, statistics, and other data. He suggested taking a certain number of minimum wages as a base and then awarding different compensation amounts for harm caused by different types of crimes. He used a three-level assessment tool to measure the degree of suffering as either "weak", "strong", or "unbearable", depending on the individual experience of the victim.²⁶

In Erdelevsky's proposed method, however, the attempt to quantify not only the physical damage but also the moral damage stands out. This author's system was heavily criticized for its lack of a clear basis on which to establish those

²³ ÉCOLE NATIONALE DE LA MAGISTRATURE, RÉFÉRENTIEL INDICATIF DE L'INDEMNISATION DU PRÉJUDICE CORPOREL DES COURS D'APPEL, 7 (2024).

²⁴ Luis Corpas Pastor, *La (In)suficiencia del Baremo de Tráfico en la Valoración del Daño Dental*, 18 ACTUALIDAD JURÍDICA IBEROAMERICANA 856 (2023), https://revista-aji.com/articulos/2023/18/AJI18_31.pdf

²⁵ Manuel Clavero Terner, *Daños Morales: una visión multidisciplinar*, ECONOMIST & JURIST 18, 18-29 (2011), https://www.economistjurist.es/wp-content/uploads/sites/2/2014/02/doc_id_483.pdf

²⁶ ALEKSANDR M. ERDELEVSKY, MORAL DAMAGE: ANALYSIS AND COMMENTARY OF LEGISLATION AND JUDICIAL PRACTICE 103 (3d ed., 2004), quoted in M. A. Akimbekova et al., *Matters on Compensation of Moral Damage: Practical Aspects*, 17 INT'L J. ENVTL. & SCI. EDUC. 9733 (2016).

amounts and percentages. In a structured compensation system, while the goal is to standardize how compensation is calculated, if the mechanism used for its construction is not known, it can be perceived as arbitrary.

Erdelevsky's structured compensation system consisted of a formula that assumed one person's suffering was the same as another's and therefore the quantification of such damage should be the same. This presumption was made by the author based on his interpretation of the criminal code's use of different degrees of punishment for different crimes and an indemnification scheme based on presumptive damage, which he was unable to justify.²⁷ A review by experts in psychology revealed the lack of scientific rigor of his procedure and the inadequacy of attempts to measure psychological damage by people not versed in that science.

By contrast, in Europe, the Parliament commissioned the preparation of a draft report with recommendations to the Commission on a European Disability Rating Scale. This scale, which serves as a guide for the assessment of physical and psychological injuries, proposes a percentage-based system for medically verifiable physical and psychological injuries. The guide is intended to be used by medical experts and not by the judge.²⁸ The guide does not quantify damage in monetary terms. It specifically states that it is not a pseudo-mathematical formula. Rather, it is based on the compendium of a group of experts who have established damage percentages based on their experience. It also assumes that a medical expert in charge of an evaluation, in addition to their own experience, obtains reports from other specialists when particular sequelae are involved, thus constituting an interdisciplinary mechanism that seeks to ensure that damage to the same organs and the same functions are compensated by equivalent amounts.

In Chile and Mexico, there are similar schedules but these are oriented towards determining the degree of work-related disability. In Mexico, this schedule serves social security institutions in the granting of disability pensions. While this schedule can be considered by a judge in a legal process involving a matter other than labor law, it does not purport to claim that its criteria regulate the quantifying of moral damage.

Although the proposal of schedules that quantify the total amount of moral damage may appear to be a systematic, standardized, equitable, and just option, it currently does not find significant support among legislators or judges in most countries.

3. *The Baremo with Algorithm System*

²⁷ Zhuravlyova, *supra* note 11.

²⁸ COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET OF THE EUROPEAN PARLIAMENT, DRAFT REPORT WITH RECOMMENDATIONS TO THE COMMISSION ON A EUROPEAN DISABILITY RATING SCALE 2003/2130 (2003), <https://www.europarl.europa.eu/meetdocs/committees/juri/20040223/505310EN.pdf>

Given the complexity of comprehensively addressing issues of compensation for moral damage and the rigidity of the various scales that have evolved from mere general tables to attempts to standardize aspects as subjective as the psychological suffering of individuals, the creation of scales that include an algorithm to obtain a more comprehensive assessment of compensation has been opted for. Unlike those mentioned in the previous system, which are usually based on expert opinion, these scales are founded on statistics and the construction of databases that can be used for consultation.

They have been applied in the United States, United Kingdom, and Australia in the form of software that tallies the specific characteristics of the injury and triangulates these with specific characteristics of the person. For instance, the software Colossus is utilized for the calculation of bodily injury claims, while Xactimate is employed for estimating repair and rebuilding costs in property claims. However, detailed information regarding its operational methodology is limited as it is proprietary. What we know primarily consists of disclosures by legal firms offering their services in challenging its use.

The algorithm used is confidential. It is based on creating databases of previous cases to form statistics. These statistics could be used to predict life expectancy, career success, whether one will have a family, whether or not someone might survive a particular medical treatment based on their race, sex, age, etc., all without anyone being able to objectively evaluate or assess the multitude of correlations the software might generate.

The baremo-based system is the most specific mechanism by which one might attempt to standardize amounts of compensation for different types of moral damage. This is why it is the preferred method of insurance companies. However, its utility in judicial proceedings would be significantly limited, as it incorporates elements susceptible to challenge for violating certain fundamental human rights, specifically, the right to non-discrimination on the grounds of age, gender, social status, and other protected classes.

4. The Mixed Expert-Judicial System

The judiciary increasingly recognizes the need for tools to standardize its damage assessment criteria. In the meanwhile, it increasingly relies on expert evidence, at least to determine the existence of damage, the degree and scope of damage, and for estimates of compensation for specific types of damage, although not for the determination of the final judgment which is a power they continue to reserve for themselves. This sharing of responsibilities is why we have named this system the mixed expert-judicial system. It is the direction in which the subjective system is evolving.

A survey conducted among civil and commercial judges in Bolivia revealed that 70 % of respondents held the view that, concerning the quantification of moral damage, equitable and reasonable judicial discretion by itself is not suf-

ficient. Rather, it necessitates the use of specific instruments to inform and support judicial reasoning.²⁹

Expert evidence, complemented by circumstantial evidence, constitutes a set of non-binding instruments available to the court for its consideration. At the same time, various methodological proposals advanced by professionals in medicine, psychology, dentistry, and economics have sought to contribute to the understanding and quantification of moral damages, to the extent permissible by legislative provisions.

The initial methodologies for the valuation of non-pecuniary damages originated from proposals by economists who focused on the themes of quality of life and the effects of injuries on an individual's life project, often by contrasting factors that contribute to joy with those that induce suffering. These economists achieved their valuation by adapting standard asset valuation and decision-making methods. Specifically, the technique involves valuing analogous goods, subtracting the claimant's lost income, and combining these results with decision-making models to assess moral damages.

Among these methodologies are the contingent valuation method of Ciriacy-Wantrup of 1947; Rotman's methodology for valuing moral damage based on the cost of reversal of 1981; Ghersi's structural model of 2006; the multi-criteria analytical valuation by Aznar, Estruch, and Aragonés-Beltrán of 2011; and the valuation of the life project using a combination of the analytic hierarchy process and the net present value of income developed by Alanís López of 2023.

The contingent valuation method, which focuses on environmental issues, is based on the idea that some aesthetic or caregiving actions generate benefits for which people are willing to pay more, and that these can be detected and measured through surveys.³⁰ This method implies there are certain qualities of life that are highly valued (like traveling, living near the sea, living far from noise) that do not necessarily have a high cost, but whose deprivation affects the intensity of the moral damage suffered, because their absence decreases one's quality of life. Therefore, by calculating the value of intangible qualities of life the victim has been deprived of, the value of the moral damage can be monetized.

Following the same criteria, Rotman, in his methodology of valuing moral damage by its cost of reversal, proposes that quantification consider the value of real estate, vehicles, academic activities, as well as travel, as valuable qualities of life that should be considered when monetizing the value of moral damage.³¹

²⁹ Paola Karen León Gutiérrez, *Reparación del daño moral con base en los lineamientos de la Corte Interamericana de Derechos Humanos*, 8 REV. LEX 116 (2020), <https://doi.org/10.33996/revistalex.v3i8.509%20>

³⁰ Siegfried von Ciriacy-Wantrup, *Capital Returns from Soil-Conservation Practices*, 29 AMER. JOUR. OF AGRI. ECON. 1181 (1947), <https://doi.org/10.2307/1232747>

³¹ Rodolfo B. Rotman, *Valuación del daño moral por su costo de reversión*, LA LEY (1981), quoted in M. G. BURGUEÑO IBARGUREN, DOSIER DOCTRINARIO, (2020).

Gherzi proposes a structural model to measure and quantify moral damage. He identifies three crucial variables: *a)* the victim's age, specifically focusing on key periods of her life; *b)* the victim's status within the economic, social, and cultural spheres, particularly their ascribed and perceived social class; and *c)* the measurement of the intensity of the moral damage based on actual, observed symptoms. These characteristics would be assessed by a psychological evaluation, which highlights the distinction between moral damage which falls under the purview of the psychologist, and psychic and psychological damage which are regarded as a separate category of damage falling under the purview of a psychiatrist.³²

These opposing variables are to be identified and combined: pain or suffering versus pleasure or joy. Subsequently, the author proposes tourism as one method to combat pain and suffering, establishing it as one tool that can be used to assist in the quantification of damage necessary to achieve complete reparation.

Thus, this structural model implies the quantification be carried out by an expert psychologist who begins by standardizing qualities of life that are not typically standardized by the general population. He asserts that there is a base of suffering which is greater to the degree an individual is more cultured. This base eventually reaches a maximum and then decreases in old age. Old age, combined with low social status, implies limited resources for tourism, which leads to the conclusion that reparations should be lower for elderly people with limited resources. He even suggests that any award of compensation be distributed as an annuity, the intention being to facilitate an ongoing pursuit of activities that might bring the victim pleasure.

The author presents a practical vision of moral damage, but does not consider the special circumstances of particular individuals. It implies that to eliminate a person's suffering, he must be compensated with joy. He fails to acknowledge, however, that the suffering resulting from losing a leg, for example, cannot be erased by taking a trip. Therefore, although this methodology could provide a means of objective quantification, it is not conceived of in a way that repairs the actual damage. Nor does it take into account other factors that the author leaves for a separate valuation, such as the psychological or psychic damage mentioned above, which for him is distinct from moral damage and should be quantified separately.

We consider Álvarez Vigaray to be correct when he refers to compensatory satisfaction, that receiving a sum of money does provide joy to most people, but does not annul or make suffering disappear, since "it would be contrary to logic and sentiment to say that money is capable of procuring pleasures capable of canceling out and neutralizing pain".³³

³² CARLOS ALBERTO GHERSI, CUANTIFICACIÓN ECONÓMICA, DAÑO MORAL Y PSICOLÓGICO. DAÑO A LA PSIQUIS (Astrea, 3a ed., 2006).

³³ Rafael Álvarez Vigaray, *La responsabilidad por daño moral*, 19 ANUARIO DE DERECHO CIVIL 81

Regarding the concept of assessing damage to the life project or personal fulfillment, the Inter-American Court of Human Rights says this approach “focuses on the comprehensive development of the affected person, taking into account their vocation, aptitudes, circumstances, potential, and aspirations, which enable them to set reasonable expectations and achieve them” (Loayza Tamayo v. Perú, Sentencia de Reparaciones y Costas, Inter-Am. C.H.R (Nov. 27, 1998)).

The multi-criteria analytical valuation method (AMUVAM) consists of a combination of the analytic hierarchy process (AHP) and the net present value of income, in order to quantify expectations regarding the life project. To apply this method, various economic values are assigned to goods that are not necessarily available for sale on the market, but nevertheless have a social value or provide some personal benefit. The sum of these values is called the Total Economic Value (TEV). However, of these values, the only one that can be expressed in monetary terms is the Direct Use Value (DUV), which is considered the pivot value from which the monetary valuations of the remaining components are estimated.³⁴

The valuation specialist Alanís López, in his search for a standardized methodology for valuation of the life project, revisits the previous method, and identifies five “indispensable variables in every human being’s project: health, family life, professional life (cash flow), social life, spiritual life, and recreation”.³⁵ Through a survey of five professionals, he concludes that these variables constitute the life project and calculates the corresponding weight that each represents within that project. An expert calculates the net present value of current earnings over a period of time (which is referred to as the pivot value), adjusts this value taking country-specific risks and the individual’s probability of mortality into consideration. Once this monetary amount has been calculated and the variables have been assigned their appropriate weight, it can then be applied to the various other spheres of the life project to determine each component’s value. Finally, these individual values are aggregated to yield the total overall value of the life project.

Based on an analysis of his proposal, the selection of variables is notably limited in scope. The method only involved five experts whose professional backgrounds were undisclosed. It also overlooks numerous proposals presented by other authors on the subject, the different ways these proposals can be grouped or classified, and the diverse impact each might have when applied to different individuals.

(1966), <https://revistas.mjusticia.gob.es/index.php/ADC/article/view/3469/3469>

³⁴ Jerónimo Aznar, Vicente Estruch & Pablo Aragonés-Beltrán, *Environmental assets valuation method using AMUVAM application to the assessment of the Natural Park of Ebro River Delta*, in PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON THE ANALYTIC HIERARCHY PROCESS (2011).

³⁵ Oscar Andrés Alanís López, *Avalúo de Proyecto de Vida*, LVIII Congreso Internacional de Valuación (Veracruz, 2023).

The Analytic Hierarchy Process to which the author refers is a system developed by Thomas L. Saaty³⁶ and had been primarily designed to evaluate decision-making and the solving of complex problems by comparing prioritized criteria at different levels of a hierarchy to determine possible alternatives. Therefore, using this system to determine the criteria that constitute moral damage, while allowing for a quantification, is nevertheless limited and even controversial.

This methodology also discards the psychological aspect of suffering resulting from the damage. It does not, for example, allow for resolving cases affecting one's honor. Nor does it consider what Palyuk emphasized, that establishing a minimum or maximum amount of moral damage violates the victim's rights, as there will be those who do not want monetary compensation, but something else, such as an apology from the person who caused the damage.³⁷ Therefore, calculating compensation for moral damage without considering the victim's point of view constitutes an injustice.

These methods from the field of economics offer an effective solution for quantifying subjective losses. However, they do not address specific issues related to the victims' subjective perception of the damage, the suffering it has caused them, or the long-term impact it will have on their lives. Nevertheless, authors like Burgueño Ibarguren have concluded that this approach represents a reasonable method which aligns with economic realities. It ensures the damage amount is calculated by weighing the substitutive and compensatory satisfactions that the awarded sums could provide. In contrast, relying on expert testimony inflates the cost and prolongs the judicial process. This is particularly true since, in most instances, *in re ipsa* the loss is evident. This fact, coupled with the complexity of the calculations, may deter legal professionals from selecting this method".³⁸

It is worth noting that the quantification methods proposed by experts mainly come from professionals hoping to use their particular scientific perspective to contribute to the objective quantification of moral damages. However, these proposals typically originate from private practice where it is easier for an expert to objectively observe a system's deficiencies compared with an expert who is dependent on a public institution, whose fees are paid by the state, and whose mission is not to highlight deficiencies.

Among other proposed methods, Bermúdez in Argentina stands out. He proposes aesthetic damage be estimated by a physician via the application of three methodologies: the description of alterations, both static and dynamic,

³⁶ THOMAS L. SAATY & LUIS G. VARGAS, *MODELS, METHODS, CONCEPTS & APPLICATIONS OF THE ANALYTIC HIERARCHY PROCESS* (Springer, 2nd ed., 2012).

³⁷ V. P. Palyuk, *Indemnización por daños morales (no patrimoniales)*, monograph 272 (2nd ed., 2000) quoted in Margarita Zhuravlyova, *Validity Of The Use Of Presumptive Moral Damage By Expert Psychologists*, 32 *SLOVO OF THE NATIONAL SCHOOL OF JUDGES OF UKRAINE* 170 (2020).

³⁸ MANUEL GONZALO BURGUEÑO IBARGUREN, *DOSIER DOCTRINARIO* (Poder Judicial Provincia del Chubut, 2020).

that diminish the injured person's attractiveness; the qualitative measurement of the degree of aesthetic damage utilizing a specific rating scale; and the quantitative measurement of the subject's functional deficit percentage, based on the use of established percentage-based schedules, such as those in the Work-Related Risks Laws.³⁹

This proposal, which is similar to the European guide, allows the medical expert to provide not only a report with a percentage of damage to be repaired, but to substantiate how that determination was reached, which requires enlightening the judge regarding particular characteristics or circumstances of the victim that are not always contemplated by a schedule. Affording judges the opportunity to hear directly from the expert would allow them to understand these aspects more deeply and make more just decisions.

In Spain, the traffic accident fee schedule serves as a non-binding guideline for cases involving liability for dental malpractice. However, its use is complicated by the fact that although the evaluating expert is a medical professional, he is not necessarily an expert regarding dental practices. For this reason, the damage schedule of the Consejo General de Colegios Oficiales de Dentistas de España (General Council of Official Colleges of Dentists of Spain) was created, in order to have its own specialized schedule.⁴⁰ Surprisingly, however, it is not required that this schedule be applied by an expert in dental matters, or even a dentist.

Some professionals approach the problem of quantifying moral damage by first determining its existence and degree of intensity, while others return to general principles, hoping to establish some type of standardized nomenclature.⁴¹

Psychologists evaluate moral damage from the perspective of its consequences on the individual, identifying a syndrome or establishing a set of symptoms characteristic of a specific disease or condition. In doing so, they contribute to the effort to define moral damage in a systematic and scientific manner.⁴² Additionally, they have contributed to the creation of scales, such as the Moral Injury Symptom Scale-Military (MISS-M), which measures 45 symptoms of moral injury in veterans and active-duty military suffering from post-traumatic stress disorder,⁴³ and addresses factors such as guilt, shame, loss of faith, and others that are often overlooked in legal contexts.

³⁹ Jorge Bermúdez, *Valoración del daño estético por cicatrices*, PERITAJEMEDICOFORENSE.COM, (last visited June 7, 2025), <https://www.peritajemedicoforense.com/Bermudez.htm>

⁴⁰ See *supra* note 24.

⁴¹ COUR DE CASSATION, RAPPORT DU GROUPE DE TRAVAIL CHARGÉ D'ÉLABORER UNE NOMENCLATURE DES PRÉJUDICES CORPORELS (Jean-Pierre Dintilhac ed., 2005).

⁴² Brett T. Litz et al., *Defining and Assessing the Syndrome of Moral Injury: Initial Findings of the Moral Injury Outcome Scale Consortium*, 13 FRONTIERS IN PSYCHIATRY 13, 1-16 (2022), <https://doi.org/10.3389/fpsyt.2022.923928>

⁴³ Harold G. Koenig, *Measuring symptoms of moral injury in Veterans and Active Duty Military with PTSD*, 9 RELIGIONS 86 (2018), <https://doi.org/10.3390/rel9030086>

In Costa Rica, an actuarial expert is responsible for taking the percentage calculated by the medical expert who performed the damage assessment and transforming it into monetary terms to determine the victim's economic compensation. The actuarial expert is an expert in subjects such as "calculations of premiums, reserves, and guaranteed values in life insurance operations, quantitative analysis of actuarial systems in collective and social insurance and pension plans, the study of pricing problems and technical reserves in non-life insurance".⁴⁴

The use of medical, psychological, dental, and accounting experts in each individual case allows a more personalized assessment guaranteeing that decision-making on compensation for moral damage is in harmony with the actual needs of the particular victim. It allows the damage award valuation to be both well-founded and falsifiable.

5. *The Actors in the Quantification of Moral Damages*

Based on the quantification systems analyzed above, a clear pattern emerges in the process employed by the various actors involved in the quantification of moral damage. This process consists of seven fundamental stages that form a comprehensive framework for identifying, evaluating, and quantifying moral damage. This framework consists of three main phases:

1. **Identifying Damages:** This phase involves two stages, establishing the existence of moral damage and identifying the specific harms suffered by the claimant.

2. **Evaluating Damages:** The second phase requires determining causation, intentionality, the degree and intensity of the harm, and then outlining potential methods of reparation.

3. **Quantifying Damages:** The final phase focuses on quantifying the amounts needed to repair each distinct harm and establishing a total monetary value for all moral damages.

In each of these phases, various actors contribute to quantifying moral damage: the judge or judicial authority, the victim or offended party, witnesses, experts or technicians, and the standardized compensation schedules. These elements may vary depending on whether the particular context is a hearing, court trial, jury trial, arbitration proceeding, or insurance settlement.

⁴⁴ Mario Herrera Flores, *Cálculo de Indemnizaciones por daño corporal y moral y su relación con los dictámenes médico legales*, 25 MED. LEGAL DE COSTA RICA 47 (2008).

Table 1. Key Actors in the Process of Quantifying Moral Damages Compensation

Phases	Subjective System	Baremo and Baremo with Algorithm Systems	Mixed Expert-Judicial System
Existence	Judge	Judge, expert or baremo	Experts and Judge
Damages	Victim, offended party, witness and judge	Expert or baremo	Victim, offended party, witness, and experts
Modes	Victim, offended party, witness, or expert	Baremo or not applicable	Experts
Degree of Reparation	Judge, Victim, offended party, and judge	Baremo	Experts, Victim, offended party, and experts
Quantification	Judge	Baremo	Judge

Source: Author's own elaboration.

A. *The Existence of Damage*

Each country's legislation will define the parameters required to establish the existence of damage. These will typically include identifying the occurrence of the harmful event, identifying the party responsible for the damage, and evaluating the legitimacy of the injured party's claims. In the subjective valuation system, the judge determines whether damage exists. In some cases, damage is presumed to exist. In the mixed system, as well as in the baremo-based systems, experts may participate, but not necessarily to prove the existence of moral damage, but rather to prove that the harmful action occurred.

The risk of delegating the determination of the damage's existence to a judge's discretion is that the decision may be influenced by personal bias if no binding laws or protocols constrain the action. This has occurred in cases involving violence against women and cases involving forced disappearances by the state,⁴⁵ where misogynistic criteria or political loyalties can interfere with the victim's right to justice.

For example, thanks to advances in many countries regarding the right of women to be free from violence, judges have been prevented from denying compensation to a woman raped by her husband. In the past, some judges con-

⁴⁵ Amparo en revisión 554/2013, Suprema Corte de Justicia de la Nación [S.C.J.N.], (Mex. Mar 25, 2015).

sidered that such an act could not result in moral damage, whereas others did not even regard such conduct as a crime.

Another possible problem is that judicial discretion allows the judge to presume the legitimacy of the victim's moral damage claims without requiring sufficient proof. The mere existence of kinship does not, however prove the existence of a caring or dependent relationship,⁴⁶ which creates opportunities for fraud.⁴⁷ An individual lacking an affective relationship with the victim may thus establish standing as an aggrieved party to seek compensation. Moreover, an offender can leverage this vulnerability by securing a relative, for financial consideration, to execute reparatory agreements and grant judicial pardons that ultimately allow the offender to avoid a custodial sentence.

B. *The Damages Caused*

Damages can include all direct or indirect losses or injuries caused by the wrongful act of another. These need not be legally protected rights. They can include physical health, mobility, freedom of transit, mental health, emotional stability, work capacity, public fame, spirituality, and aesthetics, each of which are subjective and no consensus exists on how the deprivation of these qualities of life constitute moral damage.

There is no approach from philosophy, ethics, or bioethics that exhaustively determines what elements constitute morality, what acts can damage it, and in what ways. In Mexican jurisprudence, moral damage has been divided into damage to honor, aesthetic damage, and damage to feelings,⁴⁸ providing categories in which to frame each particular case.

There is a tendency to ensure that the reparation of moral damage is comprehensive, which is why researchers seek to break down and define each category. However, excessive classification has been criticized as impractical,⁴⁹ and often avoids distinctions that exist between bodily injury, pecuniary damage, and moral damage.

In the subjective system, the judge determines which of the person's rights have been damaged, but this determination can extend to losses that are not legally defined. For example, the right to health is not the same as the loss of a leg or the loss of one's self-esteem; freedom of worship is not the same as the

⁴⁶ Benjamin Musso Arratia, *Sobre la prueba de los daños extrapatrimoniales*, 42 ACTUALIDAD JURÍDICA 581 (2020), <https://derecho.udd.cl/actualidad-juridica/files/2021/01/AJ42-P581.pdf>

⁴⁷ Cristián Eduardo Aedo Barrena & Renzo Munita Marambio, *La vinculación entre el concepto y la prueba del daño moral. Un análisis jurisprudencial*, 30 REV. DE DERECHO (COQUIMBO) 10 (2023), <http://dx.doi.org/10.22199/issn.0718-9753-4824>

⁴⁸ Amparo Directo 30/2013, Primera Sala, Suprema Corte de Justicia de la Nación [S.C.J.N.] (Mex. Feb. 26, 2014), <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2022-02/AD%2030-2013.pdf>

⁴⁹ German Antonio Orozco Gadea, *Concepto de daño moral*, 28 REVISTA DE DERECHO 3 (2020), <https://doi.org/10.5377/derecho.v0i28.10142>.

hopelessness that results from being deprived of a place of prayer; the right to freedom of movement is not the same as being unable to leave your home. To develop a deeper understanding in order to make an appropriate assessment of losses in a particular case, the judge may consider the testimony of victims or other witnesses.

In the other systems mentioned above, experts are used, though often in a limited capacity. For instance, medical experts can assess dental and even psychological damage and offer opinions on matters outside their specific area of expertise. However, in any system, entrusting the determination of psychological damage to a person who is not an expert in psychology risks injustice.

C. Modes of Damage Causation

The modes of damage causation include intentionality, negligence, and the degree of responsibility of the person who caused the damage. The victim's own responsibility must also be considered. In the subjective system, the judge must listen to the testimony of the victim and other witnesses to ascertain the existence of malice or negligence; any provocation or contributory involvement by the victim in the events; the presence of any justifying circumstances; and the perpetrator's capacity to discern right from wrong.

In the latter case, both in the subjective and mixed systems, if it is suspected that the offender cannot be held responsible for his actions, an expert psychologist and a medical expert are required, depending on the possible origin of the disability. In the baremo-based systems, on the other hand, this issue might invite a superficial or null approach, as these systems have been designed to simplify and standardize resolutions, not individualize them.

In the mixed system, there is increasing expert specialization. These experts play a crucial role in determining how damage originated and shedding light on whether negligence or criminal intent was involved. For example, a civil engineering expert could assist in a determination of negligence by identifying the lack of maintenance of a structure that had collapsed. It is even possible for a criminologist to assist in gathering evidence related to intentionality, or for a criminalist to analyze the unfolding of events. However, prosecutors frequently do not request these types of expert reports.

D. The Degree of Damage

The evaluation of the degree of damage refers to the long-term impact on a person's overall quality of life and life project. This assessment must distinguish whether the damage is correctable in the short, medium, or long term, or if it is altogether irreparable.

In the subjective system, the judge listens to all of the participants' statements and analyzes the established facts. Using principles of logic, prudent

assessment, and common knowledge, the judge makes a determination, categorizing the damage as mild, moderate, or severe.

In the baremo-based systems, the assessment is highly standardized. The percentages that gauge the severity of the damage are determined by predetermined categories that directly correlate with a specific compensation amount.

The mixed system employs an expert to evaluate the degree of damage. The expert considers various factors —such as age, sex, social condition, life history, and religiosity— to ensure their opinion is scientifically supported. This method exhaustively addresses the severity, extent, and intensity of the damage by attending to its specific effects on the individual.

E. *Reparation*

The ideal objective of compensation is *restitutio in integrum*: providing actual reparation for all damage caused and restoring the injured party to their pre-damage state. Where this is not feasible, monetary compensation must be substituted. Present and future expenses resulting from the damage must be included. The judge in the subjective system awards a monetary sum. However, he could also accept, at the victim's request, that compensation be made in a different form, such as an apology or a publication in a newspaper or on social media. On the other hand, in the baremo-based systems, the exact amount of compensation is already established as well as any compensation for optional factors the schedule allows for that might be applicable to the case.

In the mixed system, experts may identify the short and long-term effects victims face as well as how these effects will impact their life project. Thus, they might propose both monetary compensation and medical or psychological treatment. Or they may suggest the victim be compensated in additional ways. For example, restorative justice provides mechanisms that allow the victim to regain security and control of their lives by meeting with their offender in a controlled environment and giving them the opportunity to offer an apology. Sometimes, the offender's acknowledgment of the harm he caused and the public disclosure provides a mechanism preventing similar situations from recurring. In some cases, this can be one of the most significant remedies for the victim, such as in cases involving crimes committed by the state against private individuals.

F. *Quantification*

The process of determining the monetary value for repairing or compensating specific damages involves calculating the financial cost of each necessary action required for restoration. Alternatively, it may involve establishing a monetary sum that can temporarily address the loss, negative impact, or reduction in the quality of life experienced by the victim.

Judges operating in the subjective and mixed systems determine monetary amounts by assessing the type of damage, the right violated, the degree of victim impact, and the offender's intent, but they are not required to clarify their precise methodology. Although expert opinions may contain compensation proposals supported by substantiated studies, these serve only as a non-binding reference for the court.

In contrast, the baremo-based system establishes the exact compensation amount—and any optional, supplementary compensation—upfront. However, the parameters used to construct the schedule are often unjustified or unstated. This lack of transparency makes it impossible to discern why one concept of damage receives a high monetary value while another, potentially more critical to the victim, receives a lower one.

G. Total Compensation

The total quantum of the moral damage, is the sum of the economic amounts required for full reparation and compensation for each identified injury, or, as the case may be, any in-kind ways to do so. In this phase, the judge in the subjective and mixed systems may consider, before making a final calculation, any particular conditions or characteristics of the offender and the victim, both economic and those related to their support networks. Therefore, the final amount of compensation for moral damage can be very different even in similar cases.

In judicial proceedings, the judge typically determines the total amount of reparation required, as does the arbitrator in arbitration cases. This differs from the systems where a standardized compensation schedule, or baremo, by itself dictates the amount. This is especially common in cases resolved by insurance companies.

No single expert is responsible for quantifying total moral damage. Although expert reports may have been presented in court that assess a person's life project and propose a monetary value for the moral damage, judges consider these as just one piece of evidence among others, which they may or may not take into account in their final ruling.

IV. Discussion

We identified four systems used for the quantification of moral damage, each of which is imbued with subjectivity, although with the aim of avoiding arbitrariness. The very concept of moral damage, with the difficulties regarding its definition and the standardization of the various aspects of damage it covers, carries the risk of injustice when awarding excessively high or low compensation. Some attempts to provide objectivity seek to mix these systems, creating

scales combined with expert evidence to assist in the prudent exercise of discretion by the judge.

The subjective system is the most common, although not in its pure form, as it may make use of experts or even some schedules. However, the judge's decisions based on logic, sound judgment, and maxims of experience predominate—a method also called judicial discretion—which, although it compels use of a certain jurisprudential method of analysis in valuation determinations, still provides room for subjectivity and arbitrariness. The result is that awards for moral damage can be very dissimilar from one court to another, or even from one case to another involving the same judge.

Baremo-based systems aim to standardize decision-making regarding the assessment of moral damage. However, the development of these systems has not always involved professionals from relevant fields, such as physicians, dentists, psychologists, priests, accountants, or others whose expertise might be pertinent to a specific case. The baremo that utilizes algorithms—essentially, one based on statistical data—offers a more standardized approach and can be seen as more objective and fair. Nevertheless, it also faces criticism for failing to consider individual subjective factors, such as people's individual expectations. When these expectations are unmet, they can lead to depressive emotional states that affect one's quality of life and future opportunities. Additionally, this approach can be perceived as somewhat discriminatory against certain groups based on gender, age, ethnicity, race, or place of residence.

The mixed expert-judicial system is, in our opinion, a more objective way to approach the quantification of moral damage, as it makes greater use of the opinions of experts in various branches who could support the judge's decision-making, and provides them with a scientific basis for their final judgments. This system is progressively replacing the subjective one, thanks to international jurisprudence that has been encouraging the consolidation of a system of integral reparation, especially when it concerns damages caused by the state to its citizens. Therefore, the standards of reparation have become increasingly broad, and the need for a system based on scientific principles is more imperative.

However, the impact of experts who propose a total quantification of moral damage, whether in a multidisciplinary or individual manner, is still low. Although the psychology expert's report typically specifies the required number of weekly sessions and the average cost per session, it does not necessarily conclude that the total treatment cost can be determined simply by multiplying these two figures. The medical expert can refer to the cost of prosthesis or present or future medical expenses; an accountant or actuary can calculate the amounts the victim would cease to earn by being unable to work. In fact, with the partial contributions from each expert, the judge can make decisions based on objective criteria.

Currently, expert reports on the valuation of a victim's life project have been submitted in courts, which include a quantification of the moral damages suffered. These reports are issued by expert witnesses who represent one of the

parties in the lawsuit, but they are not typically challenged by similar expert testimony from experts appointed by the court. This is in part because if the judge were to request such a report from official experts, it would legitimize these reports as a valid means of quantifying moral damages.

The proposal for a permanent panel of court-remunerated expert witnesses, along with the alternative that the public exchequer bear the fees for any report they issue, has met with resistance. Although requiring the parties to absorb the costs of numerous such reports can be prohibitively expensive, no expense should be spared to ensure a top-tier justice system, a standard the state is obligated to guarantee its citizens.

Claims for non-pecuniary damages in civil actions and compensation for damages imposed in criminal cases are similar in their need to establish clear and equitable procedures to quantify the amounts of compensation and restitution. When it comes to criminal cases, determining the existence of a crime sometimes requires the participation of various experts in different scientific fields who contribute not only to determining if the act actually occurred, but also how it happened, and whether there was intent or negligence that aggravated it, or any justification that mitigated it.

These expert opinions can be used in subsequent phases of the case when there is a need to quantify any non-pecuniary damage suffered, especially if they include information regarding economic expenses an individual will need to incur in the future. They can also establish, for example, the existence of damage to a person's physical or mental health, the intensity of the harm suffered, and whether its impact on the individual will be over the short, medium, or long term. Following these examples, experts in each specialty should determine the form, intensity, and lifelong impact of the harm, and then make proposals for economic or symbolic compensation.

However, the creation of a system where experts determine the existence of damage, its effects and characteristics, causation, degree, forms of reparation and quantification, remains distant. It faces significant practical and institutional barriers, as well as detractors among lawyers who find the use of experts costly, and among judges who refuse to abandon the stance of considering themselves *peritus peritorum*, or the expert of experts.

While the use of judicial discretion is unavoidable, it must not be arbitrary.⁵⁰ Its effects can be restrained when effective jurisprudential parameters are in place. However, the emotional dimension of moral damage determination necessitates specialized instruments to ensure sound decision-making.

⁵⁰ Juan B. Etcheverry, *Discrecionalidad Judicial*, in 2 ENCICLOPEDIA DE FILOSOFÍA Y TEORÍA DEL DERECHO 1389, 1389-1418 (Jorge Luis Rodríguez Blanco & Verónica Fabra Zamora eds., 2015). <https://dialnet.unirioja.es/servlet/articulo?codigo=6346062>

V. Conclusions

The moral damage compensation systems in the countries analyzed for this article fall into four categories: subjective, baremo-based, baremo-with-algorithms, and a mixed expert-judicial system that is currently consolidating.

Procedures for calculating moral damage are often not standardized and sometimes lead to inconsistent judgments in similar cases. While this lack of standardization might permit more personalized and fair compensation through the prudent use of judicial discretion, it also creates uncertainty for both the victim and the offender regarding the minimum or maximum amount of compensation. This situation emphasizes the need to establish objective criteria in order to limit judicial discretion or to implement techniques and tools to make the process of quantifying damage more objective.

Current legislation emphasizes the goal of comprehensive compensation for moral damage. However, this does not imply that monetary awards should always be higher or that they are the only form of reparation. To fully understand how actions impact individuals and how to compensate them appropriately, judges must rely on experts in the relevant fields.

The main limitation of this article is that each country faces unique circumstances based on its own legal framework, justice system, and available resources. As a result, creating a single proposal applicable to all countries presents a significant challenge. However, the overall proposal of establishing standardized mechanisms to quantify non-pecuniary damages that ensure fair decisions for both the victim and the offender is one which addresses common issues faced by all countries.

The goal is not to create a “moral damage expert” who performs the final quantification. Rather, it is to provide judges with objective parameters for their determinations that are based on multidisciplinary contributions. We advocate greater involvement of experts from various fields, including psychology, medicine, criminology, social work, dentistry, bioethics, engineering, and accounting, tailored to the needs of each specific case.

Some professionals could assist in the initial phases by identifying and evaluating moral damage through discussions with both the victim and the offender. Others could participate in the later stages of the moral damages claim, determining methods for quantifying the harm and proposing a comprehensive assessment.

This approach seeks to standardize an equitable and personalized procedure for assessing and quantifying moral damage, transcending a simple pecuniary award. It would require experts involved in the judicial process to include a section in their reports that presents a proposal the judge could use to justify their decisions in non-pecuniary damage claims.

The objection to expert involvement, often based on cost rather than their qualifications, presents an obstacle that can be overcome. For instance, state-

funded panels of experts could ensure independence and impartiality. Although funding such panels may be a burden on the state, an effective and fair judicial system is one of the guarantees that the state is obligated to provide to its citizens.

We contend that a robust, hybrid expert-judicial system offers the greatest advantage for achieving just outcomes in non-pecuniary damages cases, since it grounds judicial decisions in objective, expert-provided criteria. We hope this article guides researchers in standardizing methodologies within their fields.

VI. References

- Abbas Mirshkari & Fatemeh Sadat Hosseini, *A Comparative Study of the Method of Compensating Moral Damages with an Emphasis on the Approach of Iranian Judicial Practice*, 121 JUDICIARY'S L. J. 351, 378 (2023). <https://doi.org/10.22106/rlj.2022.544179.4557>
- Alfonso Curiel Valtierra, Carlos Alberto Vela Treviño & Arturo Lara-Hernández, *Mexico: Mexican Supreme Court issues guidelines to calculate compensation for moral damage*, LEXOLOGY, (Sept. 13, 2023), <https://www.lexology.com/library/detail.aspx?g=3c402ff6-c56a-4adf-9930-7452248bbe26>
- Amparo Directo 30/2013, Primera Sala, Suprema Corte de Justicia de la Nación [S.C.J.N.] (Mex. Feb. 26, 2014), <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2022-02/AD%2030-2013.pdf>
- Amparo en revisión 554/2013, Suprema Corte de Justicia de la Nación [S.C.J.N.], (Mex. Mar 25, 2015).
- Andrey T. Tabunshikov et al., *Compensation for Moral Harm in Foreign Law and Order*, 27 OPCIÓN 2090, 2082-2098 (2020).
- Armando José Torrent Ruiz, *Pretium affectionis o daños morales en la aestimatio damni ex lege Aquilia*, in 6 FUNDAMENTOS ROMANÍSTICOS DEL DERECHO CONTEMPORÁNEO 1245 (Justo García Sánchez dir. & Margarita Fuenteseca Degeneffe coord., 2021).
- Benjamin Musso Arratia, *Sobre la prueba de los daños extrapatrimoniales*, 42 ACTUALIDAD JURÍDICA 581 (2020). <https://derecho.udd.cl/actualidad-juridica/files/2021/01/AJ42-P581.pdf>
- Brett T. Litz et al., *Defining and Assessing the Syndrome of Moral Injury: Initial Findings of the Moral Injury Outcome Scale Consortium*, 13 FRONTIERS IN PSYCHIATRY 13, 1-16 (2022). <https://doi.org/10.3389/fpsyt.2022.923928>
- CÁMARA DE DIPUTADOS DEL CONGRESO DE LA UNIÓN, CÓDIGO CIVIL FEDERAL (D.O.F., 2024).
- CARLOS ALBERTO GHERSI, CUANTIFICACIÓN ECONÓMICA, DAÑO MORAL Y PSICOLÓGICO. DAÑO A LA PSÍQUIS (Astrea, 3a ed., 2006).

- COLEGIO DE PERITOS DEL NORTE, INFORME DE LAS ASAMBLEAS DE TRABAJO SOBRE RETOS DE LOS PERITOS VALUADORES (2024).
- COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET OF THE EUROPEAN PARLIAMENT, DRAFT REPORT WITH RECOMMENDATIONS TO THE COMMISSION ON A EUROPEAN DISABILITY RATING SCALE 2003/2130 (2003), <https://www.europarl.europa.eu/meetdocs/committees/juri/20040223/505310EN.pdf>
- COUR DE CASSATION, RAPPORT DU GROUPE DE TRAVAIL CHARGÉ D'ÉLABORER UNE NOMENCLATURE DES PRÉJUDICES CORPORELS (Jean-Pierre Dintilhac ed., 2005).
- Cristián Eduardo Aedo Barrena & Renzo Munita Marambio, *La vinculación entre el concepto y la prueba del daño moral. Un análisis jurisprudencial*, 30 REV. DE DERECHO (COQUIMBO) 10 (2023). <http://dx.doi.org/10.22199/issn.0718-9753-4824>
- ÉCOLE NATIONALE DE LA MAGISTRATURE, RÉFÉRENTIEL INDICATIF DE L'INDEMNISATION DU PRÉJUDICE CORPOREL DES COURS D'APPEL, 7 (2024).
- Eric Helland & Alexander Tabarrok, *Race, Poverty, and American Tort Awards: Evidence from Three Data Sets*, 32 J. LEGAL STUD. 27 (2003). <https://doi.org/10.1086/344560>
- Frans J. A. Van Der Velden, *The Dutch law of pretium doloris*, in NETHERLANDS REPORTS TO THE ELEVENTH INTERNATIONAL CONGRESS OF COMPARATIVE LAW (Hans Ulrich & Jessurun D'oliveira eds., 1982).
- FRIEDRICH MOMMSEN, BEITRÄGE ZUM OBLIGATIONENRECHT. 2 ZUR LEHRE VOM INTERESSE 27 (Braunschweig, Schwetschke & Sohn, 1855).
- German Antonio Orozco Gadea, *Concepto de daño moral*, 28 REVISTA DE DERECHO 3 (2020). <https://doi.org/10.5377/derecho.v0i28.10142>.
- Harold G. Koenig, *Measuring symptoms of moral injury in Veterans and Active Duty Military with PTSD*, 9 RELIGIONS 86 (2018). <https://doi.org/10.3390/rel9030086>
- Jerónimo Aznar, Vicente Estruch & Pablo Aragonés-Beltrán, *Environmental assets valuation method using AMUVAM application to the assessment of the Natural Park of Ebro River Delta*, in PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON THE ANALYTIC HIERARCHY PROCESS (2011).
- Jesús Abraham Martínez Montoya, *La indeterminación económica de daño moral*, 6 HEURÍSTICA JURÍDICA 59 (2013). <https://erevistas.uacj.mx/ojs/index.php/heuristica/article/view/1201>
- Jorge Bermúdez, *Valoración del daño estético por cicatrices*, PERITAJEMEDICOFORENSE.COM, (last visited June 7, 2025), <https://www.peritajemedicoforense.com/Bermudez.htm>
- Juan B. Etcheverry, *Discrecionalidad Judicial*, in 2 ENCICLOPEDIA DE FILOSOFÍA Y TEORÍA DEL DERECHO 1389, 1389-1418 (Jorge Luis Rodríguez Blanco & Verónica Fabra Zamora eds., 2015). <https://dialnet.unirioja.es/servlet/articulo?codigo=6346062>
- Juliana Nanclares Márquez & Ariel Humberto Gómez Gómez, *La reparación: una aproximación a su historia, presente y prospectivas*, 33 CIVILIZAR 60-63 (2017). <https://doi.org/10.22518/16578953.899>

- Loayza Tamayo v. Perú*, Sentencia de Reparaciones y Costas, Inter-Am. C.H.R. (Nov. 27, 1998). https://www.corteidh.or.cr/docs/casos/articulos/seriec_42_esp.pdf
- LUCÍA ALEJANDRA MENDOZA MARTÍNEZ, *LA ACCIÓN CIVIL DEL DAÑO MORAL* 136 (Instituto de Investigaciones Jurídicas UNAM, 2014). <https://archivos.juridicas.unam.mx/www/bjv/libros/8/3636/10.pdf>
- Luis Corpas Pastor, *La (In)suficiencia del Baremo de Tráfico en la Valoración del Daño Dental*, 18 ACTUALIDAD JURÍDICA IBEROAMERICANA 856 (2023). https://revista-aji.com/articulos/2023/18/AJI18_31.pdf
- Lusitania Cases*, 7 U.N. Rep. Int'l Arb. Awards 32 (Mixed Claims Comm'n 1923).
- M. A. Akimbekova et al., *Matters on Compensation of Moral Damage: Practical Aspects*, 17 INT'L J. ENVTL. & SCI. EDUC. 9733 (2016).
- Magdalena Lazcano Maturana & Javiera Toro Cáceres, *Estudio cuantitativo de la indemnización de perjuicios extrapatrimoniales por infracciones a los derechos de los consumidores*, 245 REV. DE DERECHO 110, 99-131 (2019). <http://dx.doi.org/10.4067/S0718-591X2019000100099>
- Manuel Clavero Ternero, *Daños Morales: una visión multidisciplinar*, ECONOMIST & JURIST 18, 18-29 (2011). https://www.economistjurist.es/wp-content/uploads/sites/2/2014/02/doc_id_483.pdf
- MANUEL GONZALO BURGUEÑO IBARGÜEN, *DOSIER DOCTRINARIO* (Poder Judicial Provincia del Chubut, 2020).
- Margarita Zhuravlyova, *Validez del uso de la presunción de daño moral por parte de psicólogos expertos*, 32 SLOVO OF THE NATIONAL SCHOOL OF JUDGES OF UKRAINE 170 (2020).
- Mario Herrera Flores, *Cálculo de Indemnizaciones por daño corporal y moral y su relación con los dictámenes médico legales*, 25 MED. LEGAL DE COSTA RICA 47 (2008).
- M. G. BURGUEÑO IBARGÜEN, *DOSIER DOCTRINARIO*, (2020).
- Mohammad Eshaghi et al., *A Comparative Study of Compensation for Moral Damages in the Legal System of Iran and England International*, 6 J. ETHICS & SOC. 38, 31-40 (2024).
- Muelle Flores v. Perú*, No. 375 (Mar. 6, 2019), *Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_375_esp.pdf
- Oscar Andrés Alanís López, *Avalúo de Proyecto de Vida*, LVIII Congreso Internacional de Valuación (Veracruz, 2023).
- Paola Karen León Gutiérrez, *Reparación del daño moral con base en los lineamientos de la Corte Interamericana de Derechos Humanos*, 8 REV. LEX 116 (2020). <https://doi.org/10.33996/revistalex.v3i8.50%20>
- Rafael Álvarez Vigaray, *La responsabilidad por daño moral*, 19 ANUARIO DE DERECHO CIVIL 81 (1966). <https://revistas.mjjusticia.gob.es/index.php/ADC/article/view/3469/3469>
- Ramón Maciá Gómez, *La dualidad del daño patrimonial y del daño moral*, REV. DE RESPONSABILIDAD CIVIL Y SEGURO 21, 32 (2010). <https://www.asociacionabogadosrcs.org/doctrina/rc36doctrina2.pdf>

Siegfried von Ciriacy-Wantrup, *Capital Returns from Soil-Conservation Practices*, 29
AMER. JOUR. OF AGRI. ECON. 1181 (1947). <https://doi.org/10.2307/1232747>
THOMAS L. SAATY & LUIS G. VARGAS, *MODELS, METHODS, CONCEPTS & APPLICATIONS OF THE ANALYTIC HIERARCHY PROCESS* (Springer, 2nd ed., 2012).