
State patrimonial liability: foundations, evolution and contemporary challenges

Responsabilidad patrimonial del Estado: fundamentos, evolución y desafíos contemporáneos

Responsabilidade patrimonial do Estado: fundamentos, evolução e desafios contemporâneos

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Abstract

The objective of this study was to analyze the foundations, evolution and contemporary challenges of State patrimonial liability as a legal mechanism aimed at guaranteeing the protection of citizens' rights against administrative actions. The research was conducted using a qualitative approach through doctrinal, normative and jurisprudential analysis with a descriptive, explanatory and comparative scope. Information was collected through a bibliographic review of scientific articles, specialized books and legal documents indexed in databases such as Scopus, Web of Science and SciELO. The results showed that State patrimonial liability evolved from traditional models of State irresponsibility toward legal systems based on unlawful damage, full reparation and the effective protection of fundamental rights. Likewise, it was identified that the main constitutive elements of State liability correspond to imputable administrative conduct, the existence of certain damage and the causal relationship. Finally, it was concluded that contemporary challenges are related to the need to balance the protection of citizens' rights with administrative efficiency, legal certainty and institutional sustainability, in accordance with international standards on human rights and full reparation.

Keywords: State liability; unlawful damage; full reparation; public administration.

Resumen

El presente estudio tuvo como objetivo analizar los fundamentos, evolución y desafíos contemporáneos de la responsabilidad patrimonial del Estado como mecanismo jurídico orientado a garantizar la protección de los derechos de los ciudadanos frente a la actuación administrativa. La investigación se desarrolló bajo un enfoque cualitativo, mediante un análisis doctrinal, normativo y jurisprudencial con alcance descriptivo, explicativo y comparado. Para la recolección de información se realizó una revisión bibliográfica de artículos científicos, libros especializados y documentos jurídicos indexados en bases de datos como Scopus, Web of Science y SciELO. Los resultados evidenciaron que la

responsabilidad patrimonial del Estado evolucionó desde modelos tradicionales de irresponsabilidad estatal hacia sistemas jurídicos fundamentados en el daño antijurídico, la reparación integral y la tutela efectiva de los derechos fundamentales. Asimismo, se identificó que los principales elementos constitutivos de la responsabilidad estatal corresponden a la conducta imputable a la administración, la existencia de un daño cierto y la relación de causalidad. Finalmente, se concluyó que los desafíos contemporáneos se relacionan con la necesidad de equilibrar la protección de los derechos ciudadanos con la eficiencia administrativa, la seguridad jurídica y la sostenibilidad institucional, en concordancia con los estándares internacionales de derechos humanos y reparación integral.

Palabras clave: Responsabilidad estatal; daño antijurídico; reparación integral; administración pública.

RESUMO

O presente estudo teve como objetivo analisar os fundamentos, a evolução e os desafios contemporâneos da responsabilidade patrimonial do Estado como mecanismo jurídico destinado a garantir a proteção dos direitos dos cidadãos diante da atuação administrativa. A pesquisa foi desenvolvida sob uma abordagem qualitativa, mediante análise doutrinária, normativa e jurisprudencial com alcance descritivo, explicativo e comparado. Para a coleta de informações, realizou-se uma revisão bibliográfica de artigos científicos, livros especializados e documentos jurídicos indexados em bases de dados como Scopus, Web of Science e SciELO. Os resultados evidenciaram que a responsabilidade patrimonial do Estado evoluiu de modelos tradicionais de irresponsabilidade estatal para sistemas jurídicos fundamentados no dano antijurídico, na reparação integral e na tutela efetiva dos direitos fundamentais. Da mesma forma, identificou-se que os principais elementos constitutivos da responsabilidade estatal correspondem à conduta imputável à administração, à existência de dano certo e à relação de causalidade. Finalmente, concluiu-se que os desafios contemporâneos estão relacionados à necessidade de equilibrar a proteção dos direitos dos cidadãos com a eficiência administrativa, a segurança jurídica e a sustentabilidade institucional, em conformidade com os padrões internacionais de direitos humanos e reparação integral.

Palavras-chave: Responsabilidade estatal; dano antijurídico; reparação integral; administração pública.

Introduction

State liability constitutes one of the most significant legal institutions within contemporary public law, as it guarantees the protection of individuals against damages caused by the actions of public administration. Its development responds to the need to limit governmental power and ensure that any unlawful harm arising from the conduct of public authorities is subject to compensation. In this regard, the evolution of this legal institution reflects the transition from doctrines of sovereign immunity toward legal systems grounded in the effective protection of fundamental rights and the consolidation of the constitutional rule of law. According to Becerra (2018), State liability represents an essential mechanism for balancing the relationship between public administration and individuals, thereby preventing institutional arbitrariness.

Historically, State liability emerged as a consequence of profound political and legal transformations that challenged the traditional doctrine of governmental immunity. For a considerable period, the principle of absolute sovereignty prevailed, under which the State could not be held financially accountable for damages resulting from its actions. However, the strengthening of citizens' rights and the expansion of administrative functions fostered the development of legal frameworks recognizing the State's obligation to compensate for unlawful injuries. In this context, Dayán (2005) argues that the consolidation of this

institution is closely linked to the development of modern administrative law and the progressive constitutionalization of individual rights and guarantees.

In Latin America, State liability has acquired particular importance due to the strengthening of democratic systems and the constitutional recognition of human rights. Countries such as Colombia, Chile, and Spain have achieved significant jurisprudential and doctrinal advances in this field by incorporating increasingly comprehensive standards for protecting individuals against governmental action. Armenta Ariza (2009) emphasizes that the Colombian legal regime has evolved substantially through the adoption of the concept of *unlawful damage* (*daño antijurídico*) as the central basis for attributing State liability, thereby moving beyond rigid schemes founded exclusively on administrative fault. This transformation has broadened the possibilities for compensation and reinforced effective judicial protection.

Furthermore, State liability is not confined to traditional administrative acts but also extends to legislative, judicial, and even constitutional actions. Agudelo Ibáñez and Calderón Ortega (2016) examine how the State may incur liability arising from constitutional amendments that infringe fundamental rights, illustrating the contemporary breadth of this legal institution. Likewise, Ahumada Ruiz (2001) argues that the enactment of unconstitutional legislation may give rise to compensable damages, thereby reinforcing the principle that no branch of government is exempt from the duty to redress harm inflicted upon private individuals.

The expansion of the circumstances giving rise to State liability has generated significant doctrinal debates concerning the standards of attribution and the limits of compensation. Across various legal systems, scholars continue to debate whether liability should be based on fault, on the risks created by administrative activity, or solely on the occurrence of an unlawful injury. Doménech Pascual (2022) observes that contemporary legal systems face the challenge of balancing the protection of individuals with the financial and institutional sustainability of the State, ensuring that liability regimes do not become obstacles to the efficient performance of public functions.

Another relevant issue concerns liability arising from judicial error and judicial decisions. The increasing demand for procedural guarantees has promoted the recognition of compensation mechanisms for damages caused by defective judicial actions or decisions contrary to the legal order. Doménech Pascual (2016) argues that State liability for judicial error constitutes one of the most complex areas of public law because it requires reconciling judicial independence with individuals' right to obtain compensation for unjustified harm. This issue illustrates the enduring tension between institutional autonomy and the effective protection of rights.

Currently, State liability faces new challenges arising from globalization, increasing administrative complexity, and the growing judicialization of the relationship between citizens and public administration. Ferrada Bórquez (2020) notes that jurisprudential developments in Chile reveal a trend toward expanding the circumstances under which compensation may be awarded, particularly in matters involving the protection of fundamental rights and judicial review of administrative action. Nevertheless, significant challenges remain concerning the determination of damages, the applicable standards of causation, and the effectiveness of mechanisms for full reparation. Consequently, further analysis of the foundations, evolution, and contemporary challenges of State liability is necessary to better understand its significance within modern legal systems and its essential role in strengthening the constitutional rule of law.

Methodology

This study was conducted using a qualitative research approach, as it enabled the interpretation and analysis of the doctrinal, normative, and jurisprudential foundations of State liability. This approach was particularly appropriate for examining the different legal conceptions underpinning this institution and its evolution within contemporary constitutional systems. According to Antar (2016), qualitative legal research facilitates the critical examination of legal norms and legal phenomena from an interpretative and

reflective perspective. Likewise, Estupiñán Ricardo, Leyva Vázquez, and Batista Hernández (2022) argue that this methodological approach promotes a comprehensive analysis of complex social and legal issues, particularly in contexts of institutional transformation and the protection of fundamental rights.

The study adopted a descriptive and explanatory design with a comparative scope, aiming to identify the principal characteristics of State liability as well as the causes and effects associated with its application across different legal systems. Accordingly, the theoretical foundations of State liability were described, and the standards of attribution employed in various jurisdictions—particularly in Latin American and European legal systems—were analyzed. Carrillo (2024) maintains that methodological pluralism in legal research makes it possible to integrate descriptive and comparative approaches, thereby providing a broader understanding of the dynamics of contemporary law. Furthermore, the explanatory dimension of the research facilitated an examination of current challenges related to full reparation and legal certainty.

Data were collected through a bibliographic and documentary review, involving the analysis of peer-reviewed journal articles, specialized legal treatises, statutory provisions, and judicial decisions concerning State liability. The sources were retrieved from internationally recognized academic databases, including Scopus, Web of Science, and SciELO, thereby ensuring the quality, reliability, and relevance of the materials analyzed. In addition, a normative and jurisprudential analysis was undertaken to identify significant doctrinal criteria and emerging interpretative trends in the field of State liability. Botero Bernal (2016) emphasizes that the rigorous use of scholarly literature constitutes a fundamental component of legal research, as it strengthens both the scientific rigor of legal argumentation and the validity of the analytical findings.

Theoretical Framework

Foundations of State Liability

State liability constitutes one of the fundamental pillars of contemporary administrative law, as it establishes the State's obligation to compensate individuals for damages resulting from unlawful or harmful administrative actions. Its legal foundation is closely linked to the need to uphold the principle of legality, ensure oversight of the exercise of public power, and provide effective protection of fundamental rights. This legal institution reflects the evolution of modern legal systems toward models of public administration fully subject to the rule of law and judicial oversight. In this regard, Garrido Falla (1989) argues that the constitutionalization of State liability represented a decisive step in consolidating the balance between public authority and the protection of individuals against administrative action.

The principle of legality constitutes an essential foundation of State liability, as every administrative action must be carried out in accordance with the applicable legal framework. Public administration cannot act arbitrarily or exceed the powers conferred upon it by law; rather, its actions must comply with standards of reasonableness, proportionality, and respect for individual rights. Guardáis Ondarza (2002) maintains that judicial review of legality enables the assessment of the efficiency and effectiveness of public administration, ensuring that the exercise of governmental authority remains subject to objective legal standards. Consequently, State liability arises as a direct consequence of violations of these fundamental principles of administrative law.

Likewise, the protection of public assets and collective interests has reinforced the need to establish effective mechanisms for supervising governmental action. Bermúdez Soto (2007) argues that administrative instruments designed to safeguard public assets constitute essential tools for ensuring transparency and legitimacy in public governance. Within this context, State liability performs not only a compensatory function by providing redress for damages suffered by individuals but also a preventive function aimed at promoting diligent and lawful administrative conduct. This demonstrates that State liability

extends beyond its indemnificatory purpose and operates as a structural guarantee of the rule of law.

Moreover, the rational management of public assets is closely associated with the State's duty to act efficiently and prudently in the administration of public resources and decision-making processes. Mayer Lux and Toso Milos (2025) emphasize that administrative rationality requires the adoption of legal and technical criteria capable of preventing harm and ensuring the adequate protection of the public interest. From this perspective, State liability functions as a corrective mechanism against unlawful administrative conduct affecting individual or collective rights. Accordingly, recognition of the State's duty to provide compensation for damages reflects the consolidation of a model of public administration governed by standards of legal accountability and social responsibility.

One of the most significant foundations of contemporary State liability is the doctrine of *unlawful injury* (*daño antijurídico*), which has broadened the scope of legal protection afforded to individuals against governmental action. According to this doctrine, the obligation to compensate arises whenever an individual suffers harm that he or she has no legal duty to bear, regardless of whether administrative fault can be established. Carrillo (2022) explains that the concept of unlawful injury constitutes the central element of the State's non-contractual liability, shifting the focus from the subjective conduct of public authorities to the unlawful infringement of legally protected rights and interests.

The concept of pecuniary damage also occupies a central position within the theory of State liability because it determines the extent and scope of the corresponding compensation. Caro Vidal (2019) argues that pecuniary damage encompasses any economically assessable loss resulting from unlawful or harmful governmental action. This includes both material losses and infringements upon legitimate economic interests. Identifying the existence and extent of pecuniary damage is essential to ensuring the principle of full reparation and guaranteeing that victims receive adequate compensation for the adverse consequences of irregular administrative conduct.

The historical evolution of State liability demonstrates a gradual transition from doctrines of absolute governmental immunity toward systems of full legal accountability. Historically, the prevailing view held that the sovereign could not be held financially liable for damages caused in the exercise of governmental functions. However, the strengthening of individual rights and the emergence of modern constitutionalism transformed this traditional conception. Jiménez Benítez (2013) explains that the evolution of theories of State liability was influenced by the expansion of administrative functions and the growing need to impose legal constraints on the exercise of public power.

In Latin America, the doctrine of State liability has undergone significant doctrinal and jurisprudential developments over recent decades. López (2000) notes that Latin American legal systems progressively recognized the State's obligation to compensate for damages arising from administrative, judicial, and legislative actions. This evolution was driven by the increasing influence of international human rights standards and the constitutional consolidation of principles related to human dignity and effective judicial protection. As a result, individuals acquired broader legal mechanisms through which to seek redress for injuries caused by unlawful governmental conduct.

Similarly, State liability has evolved toward broader approaches aimed not only at providing financial compensation but also at ensuring comprehensive reparation for the consequences of unlawful governmental action. Jiménez Salazar and Orozco Jara (2024) argue that contemporary models seek to move beyond traditional compensation schemes by incorporating more comprehensive and effective mechanisms of redress. This evolution demonstrates that State liability is no longer limited to compensating pecuniary losses but also seeks to restore violated rights and strengthen public confidence in governmental institutions.

Constituent Elements of State Liability

The legal establishment of State liability requires the concurrence of certain essential elements that justify attributing to the State the obligation to compensate an individual for harm suffered. These elements include conduct attributable to the public administration, the existence of actual and quantifiable damage, and a causal link between the governmental conduct and the injury sustained. Together, these components form the fundamental framework of the contemporary theory of administrative liability and determine the circumstances under which financial compensation may be awarded.

Conduct attributable to the public administration refers to any act or omission by State authorities that produces harmful consequences for individuals. Such conduct may arise from unlawful administrative actions, negligence, or behavior inconsistent with the fundamental principles of the legal system. Pastor Muñoz (2016) explains that the legal construction of injury requires an analysis of how specific administrative decisions affect rights and interests protected by law. Consequently, attribution constitutes an indispensable element in determining whether the harm can effectively be ascribed to the functioning of the public administration.

Across different legal systems, a significant doctrinal debate exists regarding whether State liability should be understood as objective or fault-based. Some jurisdictions consider the existence of an unlawful injury sufficient to give rise to the State's duty to compensate, whereas others require proof of administrative fault or negligence. Baca Oneto (2010) argues that the liability of the public administration cannot be understood exclusively from an objective perspective because certain cases require an assessment of the conduct of public authorities and the specific circumstances surrounding each case. This debate reflects the doctrinal complexity associated with the standards governing the attribution of administrative liability.

Likewise, the protection of public assets and collective interests has encouraged the recognition of new forms of liability arising from the negligent conduct of public officials and administrators. Acosta Bohórquez and Barrera Rueda (2019) maintain that negligent public administration may produce serious economic and social consequences, thereby justifying the strengthening of legal oversight and accountability mechanisms. Within this context, State liability performs a preventive function by promoting diligent, transparent, and accountable administrative conduct. This demonstrates that administrative liability possesses not only a compensatory dimension but also an important disciplinary and preventive function.

Another indispensable element is the existence of actual damage capable of economic assessment. State liability does not arise from hypothetical or speculative harm but only from real, demonstrable injuries. Araujo-Juárez (2024) argues that the principle of full compensation requires that the damage be susceptible to economic valuation in order to ensure appropriate and proportionate reparation. This requirement seeks to prevent unfounded claims while ensuring that compensation effectively corresponds to the consequences resulting from governmental action.

Compensable damage may encompass both pecuniary losses and non-pecuniary harm. Maciá Gómez (2010) emphasizes that the distinction between pecuniary and non-pecuniary damage reflects the broad range of consequences that may arise from unlawful governmental conduct. Whereas pecuniary damage concerns measurable economic losses, non-pecuniary damage includes injuries to the victim's dignity, psychological integrity, and personal rights. This distinction is essential for determining the scope of full reparation and ensuring the effective protection of infringed rights.

The concept of patrimony occupies a central position within the theory of State liability because compensation is intended to restore the legal and economic balance disrupted by the injury. Roca Sastre (1926) defines patrimony as the aggregate of rights, assets, and legally protected interests belonging to an individual. From this perspective, any unlawful interference with a person's patrimony gives rise to the need for compensation. This understanding has broadened the scope of State liability to include not only economic interests but also fundamental rights and intangible legal interests.

With regard to the doctrine of *unlawful injury* (*daño antijurídico*), Martínez Pulido (2024) argues that this concept performs a structural function within the State's non-contractual liability because it justifies the obligation to compensate even when the administrative conduct was not unlawful in the strict legal sense. The decisive factor is that the injured party had no legal duty to bear the harm suffered. This interpretation has strengthened the protection afforded to individuals against lawful governmental activities that nevertheless produce disproportionate or unjust consequences.

The third essential element is the causal relationship between the administrative conduct and the resulting damage. Causation makes it possible to determine whether a direct connection exists between governmental action and the injury sustained by the affected individual. Guajardo-Fajardo (1999) explains that causation constitutes a fundamental criterion for attributing legal consequences within systems of State liability. In the absence of such a causal nexus, it is impossible to attribute to the State the obligation to compensate for the claimed injury.

Determining causation represents one of the most complex issues in contemporary State liability, particularly in situations involving multiple contributing factors. Olivares Torres (2023) argues that causation in State liability requires a rigorous analysis of the factual circumstances of each case and of the actual contribution of the administrative conduct to the occurrence of the damage. This complexity has led to the development of different theories of causation aimed at defining the scope of State liability while avoiding interpretations that are either excessively broad or unduly restrictive.

Contemporary Models and Emerging Trends

Contemporary models of State liability are characterized by the ongoing debate between strict liability and fault-based liability. Under the strict liability model, the mere existence of an unlawful injury is sufficient to give rise to the State's duty to provide compensation, without the need to establish administrative fault. By contrast, fault-based liability requires proof of intent, negligence, or imprudence on the part of the public administration. Fernández (2017) explains that fault-based civil liability continues to play a significant role in several legal systems because of the importance attached to evaluating the specific conduct of public authorities.

The debate between strict and fault-based liability reflects differing conceptions regarding the role of the State and the protection of individual rights. Doral García (1983) argues that patrimony constitutes a legal-technical institution whose protection requires appropriate mechanisms for attributing liability. Consequently, some legal systems adopt strict liability models to provide broader protection for victims, whereas others retain fault-based standards in order to prevent an excessive expansion of governmental obligations. This diversity illustrates the existence of different doctrinal approaches to administrative liability.

Significant differences can be observed between Latin American and European legal systems concerning the regulation of State liability, although important converging trends also exist with respect to the protection of fundamental rights and the principle of full reparation. Barreix, Bès, González de Frutos, Roca, and Velayos (2023) note that Latin American jurisdictions have progressively strengthened mechanisms for the protection of patrimonial rights in parallel with the development of modern constitutionalism. Similarly, López Román (2017) emphasizes that European legal models have exerted considerable influence on the doctrinal and jurisprudential development of administrative liability throughout Latin America.

Comparative legal systems also reveal a growing commitment to incorporating international standards relating to human rights and comprehensive reparation. Conti (2009) argues that the protection of historical, cultural, and urban heritage in Latin America has fostered new forms of State liability associated with collective interests and cultural assets. This development demonstrates that contemporary State liability is no longer confined to individual injuries but also encompasses harm affecting broader social and community interests.

At present, one of the most significant trends is the incorporation of a human rights-based approach into the doctrine of State liability. Álvarez García Júnior (2023) argues that the comprehensive protection of rights and legally protected interests requires the implementation of remedial mechanisms consistent with international human rights standards. From this perspective, reparation should not be limited to financial compensation alone but should also include measures designed to restore the dignity of victims and prevent future violations.

Finally, the principle of full reparation has become one of the fundamental pillars of contemporary State liability. Sandoval Garrido (2013) maintains that full reparation seeks to restore the injured party, as far as possible, to the position that existed prior to the occurrence of the injury. Consistent with this approach, Camacho Vinueza (2025) proposes a reconceptualization of non-pecuniary harm based on international human rights standards and the broad protection of fundamental rights. These developments illustrate the evolution of State liability toward more human rights-oriented, rights-protective, and victim-centered models that seek to ensure effective protection for individuals against the exercise of public power.

Discussion

State liability has become an indispensable legal institution for maintaining the balance between the exercise of public power and the protection of individual rights. The doctrinal analysis demonstrates that the evolution of this institution reflects the progressive consolidation of the constitutional rule of law and the recognition of effective mechanisms for supervising administrative action. In this regard, Garrido Falla (1989) argues that the constitutionalization of State liability represented a fundamental transformation by overcoming the traditional doctrine of sovereign immunity. This development illustrates that public administration is no longer regarded as standing above the legal order but is instead fully subject to the principles of legality, compensation, and effective judicial protection.

One of the most debated issues in contemporary State liability concerns the application of the doctrine of *unlawful injury* (*daño antijurídico*) as the principal basis for attributing State responsibility. Carrillo (2022) argues that this doctrine displaced traditional models centered exclusively on administrative fault by prioritizing the protection of individuals who suffer harm that they have no legal duty to bear. This approach has broadened the scope of compensatory mechanisms and strengthened the protection of fundamental rights against harmful governmental action. Nevertheless, some scholars caution that an excessively broad application of strict liability may pose risks to the financial sustainability of the State and may unduly constrain the efficient functioning of public administration.

The distinction between strict liability and fault-based liability remains one of the principal doctrinal debates in the field of State liability. While some legal systems consider the existence of an unlawful injury sufficient to establish the State's duty to compensate, others continue to require proof of administrative fault or negligence. Baca Oneto (2010) contends that the liability of the public administration cannot be constructed exclusively on objective criteria because certain situations require an assessment of the specific conduct of the public authority involved. This debate highlights the need to strike an appropriate balance between the effective protection of individual rights and the preservation of the operational capacity of public administration.

Another significant issue within contemporary scholarship concerns the constituent elements of State liability, particularly with respect to causation and the assessment of damage. Olivares Torres (2023) emphasizes that causation represents one of the most complex aspects of State liability because of the inherent difficulty in establishing the direct contribution of governmental action to the occurrence of the injury. Likewise, Araujo-Juárez (2024) argues that compensable damage must be actual, capable of economic assessment, and susceptible to full reparation. These requirements are intended to prevent

unfounded claims while ensuring that compensation remains proportionate to the actual consequences resulting from administrative conduct.

From a comparative perspective, European and Latin American legal systems have achieved significant advances in the development of State liability, although important differences remain regarding the standards of attribution and the scope of compensation. López Román (2017) notes that European administrative law has exerted a substantial influence on the modernization of Latin American models of State liability. Similarly, Jiménez Salazar and Orozco Jara (2024) argue that current developments favor broader mechanisms of governmental redress, incorporating not only financial compensation but also restitution measures and guarantees of non-repetition. These developments demonstrate that contemporary State liability has evolved toward a more comprehensive and rights-protective framework.

Furthermore, the incorporation of a human rights-based approach has profoundly transformed the traditional understanding of State liability. Sandoval Garrido (2013) maintains that the principle of full reparation requires restoring the injured party, as far as possible, to the position existing prior to the occurrence of the injury through economic, symbolic, and restorative measures. Consistent with this approach, Camacho Vinuesa (2025) proposes a reinterpretation of non-pecuniary harm grounded in international human rights standards and the broad protection of fundamental rights. This perspective expands the scope of State liability and reinforces the obligation of States to ensure effective remedies for violations resulting from administrative, legislative, or judicial action.

Finally, the contemporary challenges facing State liability lie in reconciling the protection of individual rights with administrative efficiency and legal certainty. Doménech Pascual (2022) warns that modern legal systems face the risk of expanding State liability to such an extent that it may impair the effective functioning of public administration and generate substantial institutional costs. Conversely, disproportionately restricting mechanisms of compensation could weaken public confidence in governmental institutions and diminish the effectiveness of constitutional guarantees. Accordingly, current scholarly debate is directed toward the development of balanced models capable of providing effective protection for victims while preserving the efficient operation of the State and safeguarding the public interest.

Conclusions

State liability has become established as an essential legal institution within contemporary legal systems because of its fundamental role in protecting individuals against harm caused by administrative action. The present analysis demonstrates that its historical evolution has been characterized by the transition from doctrines of governmental immunity to legal systems founded upon the principles of legality, effective judicial protection, and the safeguarding of fundamental rights. Garrido Falla (1989) argues that the constitutionalization of State liability strengthened judicial oversight of public power and consolidated mechanisms of redress for injuries resulting from unlawful administrative conduct.

The study also confirms that the doctrine of *unlawful injury* (*daño antijurídico*) has become one of the principal foundations of contemporary State liability by prioritizing the protection of individuals against harm that they have no legal duty to bear. Carrillo (2022) emphasizes that this approach has broadened the standards for attributing State liability while strengthening mechanisms of full reparation. Likewise, the findings indicate that conduct attributable to the public administration, the existence of actual and compensable damage, and the presence of a causal relationship constitute indispensable requirements for establishing the State's obligation to provide compensation. These elements enhance legal certainty and define the appropriate scope of administrative liability.

Finally, the study concludes that the contemporary challenges facing State liability lie in reconciling the protection of fundamental rights with administrative efficiency and institutional sustainability. Sandoval Garrido (2013) argues that the principle of full reparation should aim not only to provide financial compensation to victims but also to

restore fully the rights that have been violated. In this context, current developments demonstrate a clear evolution toward more rights-protective and human rights-oriented models, influenced by international human rights standards and by the growing demand for transparency, accountability, and responsibility in the exercise of public power.

Study Limitations

This study was limited to a comparative doctrinal, normative, and jurisprudential analysis of State liability and did not incorporate empirical research or fieldwork involving specific case studies. Furthermore, the breadth and diversity of the legal systems examined limited the possibility of conducting an exhaustive analysis of particular national experiences.

Future Research

Future research should include empirical studies examining specific judicial decisions concerning State liability across different national jurisdictions. Likewise, further investigations could explore in greater depth the influence of international human rights standards on contemporary mechanisms of full reparation and effective judicial protection.

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Declaration of Conflict of Interest

The author declares that there are no financial, academic, institutional, or personal conflicts of interest related to the preparation, development, or publication of this study.

Referencias

- Acosta Bohórquez, A. F., & Barrera Rueda, S. J. (2019). De la necesidad de tipificar la administración culposa frente al patrimonio social. [Tesis de grado, Universidad Libre de Colombia]. URI: <https://hdl.handle.net/10901/19605>
- Agudelo Ibáñez, S. J., & Calderón Ortega, M. A. (2016). Responsabilidad patrimonial del Estado colombiano por actos de reforma constitucional. *Justicia*, (29), 99-118.
- Ahumada Ruiz, M. Á. (2001). Responsabilidad patrimonial del Estado por las leyes inconstitucionales (o el derecho a no ser perjudicado por una ley inconstitucional). *Revista española de derecho constitucional*, (62), 301-350.
- Álvarez García Júnior, A. (2023). Un enfoque integrador para la protección del patrimonio histórico, artístico y cultural y los derechos humanos en el ámbito del Derecho Internacional Privado. *Bitácora Millennium DIPr: Derecho Internacional Privado*, (18), 3.
- Antar, R. (2016). Metodología de la investigación jurídica. *Ciencias Jurídicas (Investigación Científica)*, 1-15.
- Araujo-Juárez, J. (2024). Lo importante es, pues, que sea evaluable económicamente (principio de la integralidad del patrimonio o de la reparación integral del daño). *Manual de Derecho Administrativo*, 534.
- Armenta Ariza, A. M. (2009). El régimen de la responsabilidad patrimonial del Estado en Colombia: El título jurídico de la imputación. *Revista vía iuris*, (6), 88-112.
- Baca Oneto, V. S. (2010). ¿Es objetiva la responsabilidad patrimonial de la Administración pública en el Derecho peruano? Razones para una respuesta negativa. *Revista de Derecho Administrativo*, (9), 233-248.

- Baca Oneto, V. S. (2010). ¿Es objetiva la responsabilidad patrimonial de la Administración pública en el Derecho peruano? Razones para una respuesta negativa. *Revista de Derecho Administrativo*, (9), 233-248.
- Barreix, A., Bès, M., González de Frutos, U., Roca, J., & Velayos, F. (2023). El estado actual del impuesto al patrimonio en América Latina. *UdiMundus*. URI: <http://hdl.handle.net/20.500.12226/3300>
- Becerra, R. S. (2018). *De la responsabilidad patrimonial del Estado*. Grupo Editorial Ibáñez.
- Bermúdez Soto, J. (2007). La protección del patrimonio público a través de instrumentos administrativos. *Revista de Derecho-Universidad Católica del Norte*, 14(1), 21-41.
- Botero Bernal, A. (2016). Sobre el uso de la bibliografía en la investigación jurídica. *Pensamiento Jurídico*, (43).
- Camacho Vinuesa, D. (2025). Reconceptualización del daño extrapatrimonial a partir del enfoque convencional en la reparación integral de bienes y derechos convencionalmente protegidos. *Revista Derecho del Estado*, (62), 229-263.
- Caro Vidal, M. A. (2019). Aproximación al concepto de perjuicio patrimonial. *Revista De Estudios De La Justicia*, (30), 111-149. <https://doi.org/10.5354/0718-4735.2019.51927>
- Carrillo, J. R. P. (2024). La pluralidad metodológica de la investigación jurídica y la orientación dimensional de sus tipologías. *NULLIUS: Revista de pensamiento crítico en el ámbito del Derecho*, 5(2), 38-52.
- Carrillo, S. M. (2022). Daño y daño antijurídico en la responsabilidad extracontractual del Estado a partir de la noción de derecho subjetivo. *Rev. Digital de Derecho Admin.*, 28, 319.
- Conti, A. (2009). Ciudades históricas patrimonio mundial en América Latina y El Caribe. *El paisaje histórico urbano en las ciudades históricas patrimonio mundial. Indicadores para su conservación y gestión*, 67-81.
- Dayán, A. (2005). La responsabilidad patrimonial del Estado. *Revista del Instituto de la Judicatura Federal*, (20).
- Doménech Pascual, G. (2016). El error de la responsabilidad patrimonial del Estado por error judicial. *Revista de Administración Pública*, (199), 171-212.
- Doménech Pascual, G. (2022). Repensar la responsabilidad patrimonial del Estado por normas contrarias a Derecho. *InDret*, 2022, núm. 4, doi:10.31009/InDret.2022.i4.06.
- Doménech Pascual, G., & Medina Alcoz, L. (2025). La responsabilidad patrimonial de las Administraciones públicas. *Manual de Derecho administrativo Revista de Derecho Público: Teoría y Método* pp. 809-840
- Doral García, J. A. (1983). El patrimonio como instrumento técnico jurídico. *Anuario de derecho civil*, 36(4), 1269-1282.
- Estupiñán Ricardo, J., Leyva Vázquez, M. Y., & Batista Hernández, N., (2022). Impacto de la investigación jurídica a los problemas sociales postpandemia en Ecuador. *Revista Universidad y Sociedad*, 14(S5), 542-551.
- Fernández, A. (2017). La responsabilidad civil subjetiva. *Homenaje al Doctor Othón Pérez Fernández del Castillo por el Colegio de Profesores de Derecho Civil Facultad de Derecho-UNAM, México, Colegio de Profesores de Derecho Civil Facultad de Derecho-UNAM*.
- Ferrada Bórquez, J. C. (2020). La responsabilidad patrimonial del Estado de Chile: una revisión panorámica después de casi 20 años de jurisprudencia de la Corte Suprema. *Revista de Administración Pública*, (211), 373-405.

- Garrido Falla, F. G. (1989). La constitucionalización de la responsabilidad patrimonial del Estado. *Revista de Administración Pública*, (119), 7-48.
- Guajardo-Fajardo, J. L. A. (1999). *La causa y su operatividad en tema de atribuciones patrimoniales* (Vol. 82). Universidad de Sevilla.
- Guardáis Ondarza, G. (2002). El control de legalidad y la eficiencia y eficacia como principios jurídicos fiscalizables. *Pro Jure Revista de Derecho-Pontificia Universidad Católica de Valparaíso*, (23).
- Jiménez Benítez, W. G. (2013). Origen y Evolución de las Teorías sobre la Responsabilidad Estatal. *Diálogos de saberes: investigaciones y ciencias sociales*, (38), 63-78.
- Jiménez Salazar, P., & Orozco Jara, R. A. (2024). Breves reflexiones sobre la Responsabilidad Patrimonial del Estado en México y la propuesta de su evolución a la Remediación de la Actividad Irregular Estatal. *Revista Digital de Direito Administrativo*, 11(1), 85-101.
- López Román, F. (2017, April). El patrimonio cultural en Europa y Latinoamérica. INAP. *Impresión, Ulzama Digital*.
- López, M. P. (2000). Responsabilidad patrimonial del Estado. *Revista Alegatos*, (44), 231-233.
- Maciá Gómez, R. I. (2010). La dualidad del daño patrimonial y del daño moral. *Revista de la Asociación Española de Abogados Especializados en Responsabilidad Civil y Seguro*, (36), 21.
- Maldonado, M. L. (2009). Responsabilidad patrimonial del estado en temas urbanos. *Revista Trabajos del Centro Segunda Serie*, (6/7).
- Martínez Pulido, J. E. (2024). La función y utilidad de la noción del daño antijurídico en los elementos que estructuran la responsabilidad patrimonial extracontractual del estado. [tesis de master. Universidad Externado de Colombia]. DOI. 10.57998/bdigital/handle.001.2750
- Mayer Lux, L., & Toso Milos, A. (2025). Administración racional del patrimonio. Análisis comparado y aplicación extensiva del estándar contenido en materia de criminalidad concursal. *Derecho & Sociedad*, (64), 1-12.
- Olivares Torres, F. Y. (2023). La causalidad en la responsabilidad patrimonial del Estado. [tesis de Doctor, Universidad Carlos III, España]. <https://e-archivo.uc3m.es/rest/api/core/bitstreams/1b16410f-1e8f-4ff8-bbe5-d3a1841a27c7/content>
- Pastor Muñoz, N. (2016). La construcción del perjuicio en el delito de administración desleal. *InDret*.
- Roca Sastre, R. M. (1926). El patrimonio. *Revista Crítica de Derecho Inmobiliario*, (15), 171-a.
- Sandoval Garrido, D. A. (2013). Reparación integral y responsabilidad civil: el concepto de reparación integral y su vigencia en los daños extrapatrimoniales a la persona como garantía de los derechos de las víctimas. *Revista de derecho privado*, (25), 237-271.