A BRIEF INTRODUCTION TO THE MEXICAN WRIT OF *AMPARO**

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The writ of *amparo* is considered to be the most important procedural device in the Mexican legal system; it thus attracts a substantial body of literature, including works by commentators from Spain,[1] Italy,[2] Germany,[3] the United States,[4] Mex-

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1. *See* N. ALCALÁ-ZAMORA Y CASTILLO, ENSAYOS DE DERECHO PROCESAL CIVIL, PENAL, Y CONSTITUCIONAL 524-26 (Argentina 1944); J. GONZALEZ PEREZ, 1 DERECHO PROCESAL ADMINISTRATIVO 240-70 (Spain 2d ed. 1963); Gonzalez Perez, *El Proceso de Amparo en México y Nicaragua*, [1954] REVISTA DE ADMINISTRACIÓN PÚBLICA 297 (Spain); Gómez de Baquero, *El Amparo del Derecho: Jurisdicción o Recurso?*, [1928] REVISTA GENERAL DE LEGISLACIÓN Y JURISPRUDENCIA 114 (Spain); A. ALVARADO, EL RECURSO CONTRA LA INCONSTITUCIONALIDAD DE LAS LEYES 72-73 (Spain 1920); R. REYES, LA DEFENSA CONSTITUCIONAL: RECURSOS DE INCONSTITUCIONALIDAD Y AMPARO (Spain 1934); Reyes, *Para España: Motivos Constituyentes*, [1931] REVISTA GENERAL DE LEGISLACIÓN Y JURISPRUDENCIA 571 (Spain).

2. Italian commentators have shown a remarkable interest in the study of the Mexican *amparo*. *See* M. CAPPELLETTI, LA JURISDICCIÓN CONSTITUCIONAL DE LA LIBERTAD (H. Fix Zamudio trans. 1961); M. CAPPELLETTI, EL CONTROL JUDICIAL DE LA CONSTITUCIONALIDAD DE LAS LEYES EN EL DERECHO COMPARADO (C. Gómez Lara & H. Fix Zamudio trans. 1966); Secci, *Profili Costituzionali e Processuali del "Juicio de Amparo" Messicano*, [1967] REVISTA ITALIANA DI DIRITTO E PROCEDURA ITALIANA DI DIRITTO E PROCEDURA PENALE 209 (published in Spanish as *Lineamientos Constitucionales y Procesales del Juicio de Amparo Mexicano*, [1967] BOLETÍN DEL INSTITUTO DE DERECHO COMPARADO DE MEXICO 461 (H. Fix Zamudio trans. 1967)); Esposito, *Amparo: Il Giudizio di Legittimità Costituzionali Negli Stati Uniti del Messico*, [1967] TEMI ROMANA 362; DE FRANCO, Il Giudizio di Amparo Messicano e il Sindicato de Legittimità Costituzionale Delle Leggi in Italia (1967-68) (unpublished thesis available at the Faculty of Law, University of Rome).

3. *See, e.g.*, Horn, *Das Amparo-Verfahren in Mexiko*, in VERFASSUNG UND RECHT IN ÜBERSEE 162 (Germany 1968); Barberis, *Verfassungsgerichtsbarkeit in Mexiko*, in VERFASSUNGSGERICHTSBARKEIT IN DER GEGENWART 392-416 (Germany 1962).

4. For the most complete study published in the United States, *see* R. BAKER, JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT (1971). *See also* Clagett, *The Mexican Suit of "Amparo"*, 33 GEO. L.J. 418 (1945); Eder, *Judicial Review in Latin America*, 21 OHIO ST. L.J. 570 (1960); K. KARST, LATIN AMERICAN LEGAL INSTITUTIONS: PROBLEMS FOR COMPARATIVE STUDY 614-46 (1966); K. KARST & K. ROSENN, LAW AND DEVELOP-

ico,[5] and Latin America.[6] In spite of the *amparo's* international

MENT IN LATIN AMERICA: A CASE BOOK 127-60 (1975) [hereinafter cited as LAW AND DEVELOPMENT]; Schwarz, *The Mexican Writ of Amparo: Extraordinary Remedy Against Official Abuse of Individual Rights*, [1969-1970] PUBLIC-AFFAIRS REPORT 10-11; Schwarz, *Exceptions to the Exhaustion of Administrative Remedies Under the Mexican Writ of Amparo: Some Possible Applications to Judicial Review in the United States*, 7 CAL. W. L. REV. 331 (1971); Schwarz, *Judges Under the Shadow: Judicial Independence in the United States and Mexico*, 3 CALIF. W. INT'L L.J. 260 (1973) [hereinafter cited as Schwarz, *Judicial Independence*]; Schwarz, *Rights and Remedies in the Federal Trial Courts of Mexico and the United States*, 4 HASTINGS CONST. L.Q. (1977); Schwarz, The Mexican Writ of Amparo and Extraordinary Judicial Remedies Against Official Abuse in the United States (1971) (unpublished thesis available in the University of California, Santa Barbara, Library) [hereinafter cited as Schwarz Thesis]. Anglo-American authors writing in Spanish are J. GRANT, EL CONTROL JURISDICCIONAL DE LA CONSTITUCIONALIDAD DE LAS LEYES (1963); Headrick, *El Control Judicial de Las Leyes*, XVI REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 437 (1966).

5. Because the Mexican bibliography on the writ of *amparo* is so substantial, only the most significant works will be noted. *See* I. VALLARTA, EL JUICIO DE AMPARO Y EL WRIT DE HABEAS CORPUS (Mexico City 1881); I. VALLARTA, I-IV CUSTIONES CONSTITUCIONALES: VOTOS DEL C. IGNACIO L. VALLARTA, PRESIDENTE DE LA SUPREMA CORTE DE JUSTICIA EN LOS NEGOCIOS MÁS NOTABLES (Mexico City 1879-1883); E. RABASA, EL ARTÍCLO 14: ESTUDIO CONSTITUCIONAL (Mexico City 2d ed. 1955); E. RABASA, EL JUICIO CONSTITUCIONAL: ORÍGENES, TEORÍA, Y EXTENSÍON (Mexico City 2d ed. 1955); J. LOZANO, ESTUDIO DEL DERECHO CONSTITUCIONAL PATRIO EN LO RELATIVO A LOS DERECHOS DEL HOMBRE (Mexico 2d ed. 1972); S. MORENO CORA, TRATADO DEL JUICIO DE AMPARO CONFORME A LAS SENTENCIAS DE LOS TRIBUNALES FEDERALES (Mexico 1902). Among the more recent studies are I. BURGOA, EL JUICIO DE AMPARO (Mexico 1977); J. PALACIOS, INSTITUCIONES DE AMPARO (Mexico 1959); R. LEÓN ORANTES, EL JUICIO DE AMPARO (Mexico 3d ed. 1957); H. BRISEÑO SIERRA, EL AMPARO MEXICANO (Mexico 1971); J. TRUEBA BARRERA, EL JUICIO DE AMPARO EN MATERIA DE TRABAJO (Mexico 1963). *See also* the very current and extensive A. NORIEGA, LECCIONES DE AMPARO (Mexico 1975); O. HERNANDEZ, CURSO DE AMPARO (Mexico 1966); L. BAZDRESCH, CURSO ELEMENTAL DEL JUICIO DE AMPARO (Mexico 1971); A. GONZALEZ COSIO, EL JUICIO DE AMPARO (Mexico 1973); A. TRUEBA, DERECHO DE AMPARO (Mexico 1974).

6. Argentinian authors include R. BIELSA, EL RECURSO DE AMPARO 279-88 (Argentina 1965); R. BIELSA, III ESTUDIOS DE DERECHO PÚBLICO (Argentina 1952); S. Linares Quintana, *Tratado de la Ciencia del Derecho Constitucional Argentino y Comparado*, in 5 LA LIBERTAD CONSTITUCIONAL LIBERTADOS PARTICULARES 381 (Argentina 1956); S. LINARES QUINTANA, ACCION DE AMPARO: ESTUDIO COMPARADO CON EL JUICIO DE AMPARO DE MEXICO Y EL MANDATO DE SERGURIDAD DE BRASIL 39-56 (Argentina 1960); G. BIDART CAMPOS, DERECHO DE AMPARO (Argentina 1961); G. BIDART CAMPOS, RÉGIMEN LEGAL Y JURISPRUDENCIAL DEL AMPARO (Argentina 1968); C. SÁNCHEZ VIAMONTE, EL HABEAS CORPUS: GARANTÍA DE LIBERTAD (Argentina 2d ed. 1956); C. SÁNCHEZ VIAMONTE, JUICIO DE AMPARO (Argentina 1967); Fonrouge, *Facultad de Declarar la Inconstitucionalidad de la Leyes*, 31 REVISTA JURIDICA ARGENTINA LA LEY 966 (Argentina 1943). Brazilian authors include Buzaid, *Juicio de Amparo e Mandado de Segurança*, in PRIMER CONGRESO MEXICANO Y SEGUNDAS JORNADAS LATINOAMERICANAS DE DERECHO PROCESAL 107 (Mexico 1960); J. OTHON SIDOU, O "JUICIO DE AMPARO" (Brazil 1958); J. OTHON SIDOU, DO MANDADO DE SEGURANÇA 131-62 (Brazil 3d ed. 1969); J. CASTRO NUNES, DO MANDADO DE SEGURANÇA 52 (Brazil 6th ed. 1961); A. WALD, DO MANDADO DE SEGURANÇA NA PRÁTICA-JURICIÁRIA 68-76 (Brazil 3d ed. 1968); T. BRANDÃO CAVALCANTI, DO MANDADO DE SEGURANÇA 33-40 (Brazil 4th ed. 1957). Other outstanding Latin American writers include the Uraguayans Bidard, *El Amparo y el Sistema de Garantías Jurisdiccionales del Derecho*

fame as legal doctrine, foreigners unfamiliar with the writ in operation find it complex and difficult to comprehend. It is therefore the purpose of this article to provide Anglo-American lawyers with an overview of an institution that has become extremely complex through its origins, juridical evolution, practical operation, and procedural development. References to Spanish language studies will be condensed to the most fundamental and stress placed instead on sources in English and other idioms more readily available and comprehensible to Anglo-American lawyers.[7]

It is important to note at the outset the lack of a principle in the Mexican legal system comparable to *stare decisis*. Decisions of the Mexican Supreme Court of Justice and collegiate circuit courts are only considered binding on the lower courts when, in similar factual contexts, their decisions hold the same point of law in five consecutive cases. Moreover, the *jurisprudencia*, or system of precedents, of the Mexican courts has not acquired the importance of the principle of *stare decisis* established by the Anglo-American legal system. Thus, references to Mexican decisional law will be limited to decisions of fundamental importance to an understanding of the *amparo* and its national impact.[8]

I. HISTORICAL DEVELOPMENT

The Mexican writ of *amparo* is the result of a slow and painful

Uruguayo, in PRIMER CONGRESO MEXICANO Y SEGUNDAS JORNADAS LATINOAMERICANAS DE DERECHO PROCESAL 169 (Mexico 1960); E. VESCOVI, EL PROCESO DE INCONSTITUCIONALIDAD DE LA LEY 32-33 (Uruguay 1967); Vescovi, *La Protección Procesal de las Garantías Individuales en América Latina*, [1967] REVISTA IBEROAMERICANA DE DERECHO PROCESAL 478; E. OBLITAS POBLETE, RECURSO DE AMPARO 11-19 (Bolivia 1967); A. BOREA ODRIA, LA DEFENSA CONSTITUCIONAL: EL AMPARO (Peru 1977).

7. For works by Mexican commentators in other languages, *see* Vidal, *Mexican Amparo Proceedings*, in AMERICAN BAR ASSOCIATION OF INTERNATIONAL AND COMPARATIVE LAW: SELECTED PAPERS AND REPORTS 82 (1941); Cabrera & Headrick, *Notes on Judicial Review in Mexico and the United States*, 5 INTER-AMERICAN L. REV. 253 (1963); Fix Zamudio, *Judicial Protection of the Individual Against the Executive in Mexico*, II GERICHTSSCHUTZ GEGEN DIE EXEKUTIVE 713 (1970); Alcalá-Zamora y Castillo, *id.* at 771; F. BERMÚDEZ, LA PROCÉDURE D'AMPARO CONTRE LES ACTES ET LES LOIS CONTRAIRES À LA CONSTITUTION DU MÉXIQUE (France 1914); Eschánove Trujillo, *La Procédure Mexicaine d'Amparo*, [1949] REVUE INTERNATIONALE DE DROIT COMPARÉ 229 (France); Escalante, *Le Contentieux de la Legalité des Actes Administratives*, [1952] REVUE INTERNATIONALE DE DROIT COMPARÉ 285 (France); Escalante, *Le Contentieux de la Légalité des Actes Administratives*, [1952] REVUE INTERNATIONALE DE DROIT COMPARÉ 596-611 (France); Camargo, *The claim of "Amparo" in Mexico: Constitutional Protection of Human Rights*, 6 CAL. W. L. REV. 201 (1970).

8. For Mexican Supreme Court decisions, *see* KARST, *supra* note 4, at 632-46; LAW AND DEVELOPMENT, *supra* note 4, at 13-48.

evolution which combines both foreign and national influences.[9] Foreign contributions can be divided into three main currents.

A. United States Influence

The first, and most obvious, influence derives from the public law of the United States, just as the latter influenced the majority of Latin American countries in the first years after independence from Spain.[10] Through the Anglo-American example, the creators of the Mexican *amparo* tried to introduce the basic principles of judicial review of the constitutionality of laws. However, this concept of judicial review was revealed to the *amparo's* creators primarily through the classic work of the French publicist Alexis de Tocqueville in his *La Démocratie en Amérique*,[11] the first edition of which was published in Paris in 1836. De Tocqueville's work became known in Mexico the following year. It was translated into Spanish in 1855,[12] the same year that the Constituent Congress produced the Federal Constitution of 1857, Mexico's first "constitutionalization" of the writ of *amparo*.

Due attention must also be given to the influence of the classic Anglo-American writ of *habeas corpus* which was incorporated into the *amparo* proceeding, although without the traditional name by which it is known throughout the rest of Latin America.[13] The public law of the United States also influenced the adoption of the Mexican federal system, the protection of which was later entrusted to the writ of *amparo* and the federal courts.[14]

B. Spanish Influence

The Spanish influence was less evident than that of the United States, but it was inevitable after three centuries of political and

9. For information on the origins of the writ of *amparo, see* BAKER, *supra* note 4, at 3-45; Clagett, *supra* note 4, at 420-22.

10. *See generally* Eder, *supra* note 4.

11. The first edition was published in French by Charles Gosslein (1835), and in English as DEMOCRACY IN AMERICA (H. Reeve trans. 1835).

12. A. DE TOCQUEVILLE, DE LA DEMOCRACIA EN LA AMÉRICA DEL NORTE (D.A. Sánchez de Bustamante trans. 1855).

13. *See* Eder, *Habeas Corpus Disembodied: The Latin American Experience*, XX CENTURY COMPARATIVE AND CONFLICTS LAW—LEGAL ESSAYS IN HONOR OF HESSEL E. YNTEMA 473 (K. Nadelmann, A. von Mehrens & J. Hazard eds. 1961).

14. In fact, the first Constitution of the independence period was called The Federal Constitution of the United Mexican States. Article 123 of this fundamental charter established that "[t]he Federal Judicial Power shall reside in the Supreme Court of Justice, in the circuit courts, and in the district courts," obviously reflecting United States influence.

cultural domination in New Spain. The name "*amparo*" derives from its antecedents in the provinces of Castille and Aragon.[15] To the Spanish influence is also owed the judicial centralism established during the Colonial Period which determined the subsequent concentration of judicial review in the federal courts *via* the writ of *amparo* and thus detracted from a truly federal structure of governmental power which, as noted above, was taken from the United States Constitution of 1787.[16]

C. French Influence

The influx of French law must also be credited with influencing the evolution of the writ of *amparo*. The French influence came from: (1) the declarations of the rights of man, known as "individual guarantees"[17] in the constitutions of Mexico and which in principle were considered to be the real basis of the protective reach of the *amparo*;[18] (2) the attempt to emulate the Conservative Senate of the French Constitution of Year VIII, by the creation of a Supreme Conservative Power in the constitutional provisions of 1816;[19] and (3) the most far-reaching — the influence of various elements of French "cassation" power.[20]

D. National Influence

In addition to the above three main currents of foreign influence, national influence on the writ of *amparo* reflected the need

15. Much has been written on the Hispanic origins of the *amparo* writ; however, citations will be limited to those works treating the influence of the Aragonese royal courts *(fueros aragoneses)* as documented by the Spanish historian and lawyer Víctor Fairen Guillén. *See* V. FAIREN GUILLÉN, ANTECEDENTES ARAGONESES DE LOS JUICIOS DE AMPARO (Mexico 1971). For an account of the contributions of the law of Castille, which directly influenced the Spanish colonies in America, *see* A. LIRA GONZÁLEZ, EL AMPARO COLONIAL Y EL JUICIO DE AMPARO MEXICANO (Mexico 1972); *see also* Coy, *Justice for the Indian in Eighteenth Century Mexico*, 12 AM. J. LEGAL HIST. 41 (1968).

16. *See* Noriega, *El Origen Nacional y los Antecedentes Hispánicos del Juicio de Amparo*, IX REVISTA DE DERECHO Y CIENCIAS SOCIALES 151 (No. 50, 1942).

17. *But see* I. Burgoa, LAS GARANTÍAS INDIVIDUALES 108-48 (10th ed. Mexico 1977).

18. The Constitution of 1857 established that the *amparo* will lie only against violations of individual rights. *See* CONSTITUCIÓN POLITICAS DE LOS ESTADOS UNIDOS MÉXICANOS (Mex. 1857) art. 101 [hereinafter cited as 1857 CONST.].

19. This institution is referred to specifically as The Organization of a Supreme Conservative Power. *See* SECOND CONST. LAW OF Dec. 20, 1836, arts. 1-23.

20. *See* text accompanying notes 82-87 *infra*. This influence was broadly recognized in Mexican legal commentary, especially by Fernando Vega. *See* Vega, *El Juicio de Amparo y el Recurso de Casacion Frances*, in 2 REVISTA DE LEGISLACION Y JURISPRUDENCIA 68 (E. Rabasa & V. Costillo eds. 1889) and in 8 REVISTA DE LA ESCUELA NACIONAL DE JURISPRUDENCIA 231 (No. 31, 1946).

felt by government leaders and jurists for an effective procedural instrument to protect against official acts, those fundamental rights of the citizenry, including the right to challenge laws of dubious constitutionality. The formation of this political awareness occurred rather slowly and on occasions imprecisely. However, the following salient stages are particularly noteworthy.

First, two institutional protections of constitutional principles were introduced — without a full understanding of their effects — in the Federal Constitution of the United Mexican States on October 4, 1824. The first empowered the federal Congress to repress constitutional violations, a power which derived from the Spanish Constitution of Cadiz of 1812;[21] the second conferred upon the federal Supreme Court authority to decide violations of the Constitution and federal statutes, a power which reflected the influence of the United States Constitution.[22] The first of these was by far the most important in light of the fact that Congress struct down various state statutes as in conflict with the federal Constitution.[23]

Second, the "Seven Constitutional Laws" of 1836, a centralist unitary governing document, established a Supreme Conservative Power for the primary purpose of protecting the constitutional-political order. As noted earlier, the Supreme Conservative Power was inspired by a similar system adopted in the French Constitution of 22 *Frimaire* of the Year VIII (December 3, 1799), which owed much to the ideas of Abbé Sièves. However, the haphazard organization and ingenuous authority of the Supreme Conservative

21. According to articles 372 and 373 of the Spanish Constitution of Cádiz of 1812:

> The Courts in their initial examinations will take in consideration constitutional violations made sufficiently manifest to be enjoinable by the appropriate remedy and to carry out the official responsibility of those who committed the violations . . . . All Spaniards have the right to petition the Courts or the King to secure observance of the Constitution.

Articles 164 and 165 of the Mexican Constitution of 1824 established:

> The Congress will define all laws and decrees governing the exercise of authority of those violating this Constitution or the enabling legislation . . . . Only the Congress can interpret ambiguities arising over the intent of the articles of this Constitution or the enabling statutes.

22. The 1824 Constitution established that the Supreme Court of Justice could review "violations of the Constitution and general laws, in a manner to be prescribed by statute." CONSTITUCIÓN POLITICAS DE LOS ESTADOS UNIDOS MEXICANOS (Mexico 1824) art. 137 (V)(b) [hereinafter cited as 1824 CONST.]. This provision was evidently modeled after article III(2) of the United States Constitution, which provides that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the laws of the United States . . . ."

23. Various congressional declarations annulled laws of the states as unconstitutional, especially during the year 1829. *See* II LEGISLACION MEXICANA 89-223 (M. Dublan & J. Lozano eds. 1876).

Power determined its eventual failure.[24]

Finally, an instrument known as *reclamo* (demand, or claim) replaced the Supreme Conservative Power in 1841. This was one of the many reforms of the 1836 Constitution instituted between the years 1840-1842. The *reclamo* was to be exercised through the federal courts, particularly in the Supreme Court. Its object was twofold: first, to protect the "general rules" of the Constitution; and second, and more specifically, to protect the "individual guarantees" or rights of man.[25] Although these proposals never received congressional approval, they prepared the way for implementing a few years later the writ of *amparo* at the national level.[26]

II. BIRTH AND EVOLUTION OF THE *AMPARO*

A. Early Stage

The Mexican *amparo* was created slowly, in three successive stages — each serving to refine and perfect the institution. In the initial stage, the *amparo* appeared with its current title in the state constitution of Yucatán, promulgated on March 31, 1841, following a proposal drafted in December 1840 by the illustrious Mexican jurist and native of that state, Manuel Crescencio Rejón. Rejón is properly considered to be one of the founders of the writ of *amparo* as well as the first Latin American to define judicial review of the constitutionality of laws as a legally sacred principle.[27]

The Mexican *amparo* first appeared in the province of Yucatán because of civil strife between the liberal party, which sought to reestablish a federal system, and the conservatives, who sought to retain the unitary regime created by the aforementioned Seven Constitutional Laws of 1836. The *amparo* was instituted by the temporarily dominant governing faction of the liberal, or federalist, party as a product of victory and a means to protect its gains.[28]

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24. On the French institution, *see* A. BLONDEL, LE CONTRÔLE JURISDICTIONNEL DE LA CONSTITUTIONALITÉ DES LOIS 173 *et seq* (Paris 1928). On the Supreme Conservative Power in Mexico, *see* BAKER , *supra* note 4. *See also* authorities cited at note 5 *supra*.

25. *See* Gaxiola, *Los Tres Proyectos de Constitucion de* 1842, in I DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVES DE SUS CONSTITUCIONES 639 (Mexico 1967); *see also* BAKER, *supra* note 4, at 9-12.

26. *See* Gaxiola, *supra* note 25, at 654-86; BAKER, *supra* note 4, at 18-21.

27. *See* Eder, *supra* note 4, at 571-72.

28. *See* SUPREMA CORTE DE JUSTICIA DE LA NACION, HOMENAJE A DON MANUEL CRESCENCIO REJÓN (Mexico 1960); *see also* BAKER, *supra* note 4, at 12-17; Clagett, *supra* note 4, at 421.

In the second stage of the evolution of the *amparo*, the writ was established at the national level in the Act of Reforms of May 8, 1847 which revised the Federal Constitution of 1824, the latter having replaced the old conservative order. The Act of Reforms undoubtedly derived from a proposal drafted by another distinguished Mexican jurist and politician, Mariano Otero, who is considered to be the second Father of the *amparo*. Article 25 of the new constitutional document contained a provision known as the "Otero Formula" which provided that the protection granted by the *amparo* judgment should contain no general declarations about the law or act complained of; that is, an *amparo* judgment holding a law unconstitutional shall have no effect beyond preventing the application of the constitutionally defective law to the immediate party complainant.[29] This aspect of the *amparo* proceeding persists to the present day.

Finally, recognizing the above developments, members of the Constituent Congress of 1856-1857, the most outstanding of whom were Ponciano Arriaga Melchor Ocampo and Leon Guzmán, established the fundamental contours of the *amparo* writ in articles 101 and 102 of the Federal Constitution of 1857. Some of these provisions persist to the present day. Thus, the 1857 Constitution marks the final step in the birth of the *amparo* and a point of departure from the earlier phase. At this point, the *amparo* advanced to the high degree of complexity which characterizes it today.[30]

B. Further Extensions of the Amparo

The protective shield of the *amparo* has been slowly extended since the Constitution of 1857 despite the *amparo's* exclusive origin as a procedural instrument designed to protect "individual rights." The *amparo* was perfected in various implementing statutes promulgated pursuant to articles 101 and 102 of the 1857 Constitu-

29. On the legal and political writings of Mariano Otero, *see* J. REYES HEROLES, I-II MARIANO OTERO: OBRAS 74-82 (Mexico 1967). The 1824 Constitution provides:

> The Federal Courts will protect whatever inhabitant of the Republic in the exercise and conservation of those rights granted to him by this Constitution and constitutional laws, against any attacks from the Legislative and Executive Powers in both the Federal and State Governments, limiting themselves to granting such protection in the specific case at litigation and making no general declaration respecting the law or act that motivated the violation.

1824 CONST., *supra* note 22, art. 25 (as amended 1847). *See also* BAKER, *supra* note 4, at 22-27; Clagett, *supra* note 4, at 421-22.

30. *See* F. ZARCO, HISTORIA DEL CONGRESO EXTRAORDINARIO CONSTITUYENTE [1856-1857] 988-99 (Mexico 1956); *see also* BAKER, *supra* note 4, at 36-42.

tion; these were the Laws of *Amparo* of 1861, 1869 and 1882. These laws were subsequently incorporated into the Federal Codes of Civil Procedure of 1897 and 1908 which reflected the jurisprudence of the Supreme Court. The writ of *amparo* was thus transformed from an instrument lacking precise contours to a true proceeding directed against violative official acts, with particular emphasis placed on the protection of life and liberty of the citizens. Frequently, indeed, did the *amparo* rescue from firing squads those condemned to death for political crimes and prevent, although with some limitations, forced conscription or improper detentions. The result was a great popular esteem that the *amparo* still retains today.[31]

In accordance with these governing statutes and code provisions, the *amparo* acquired two important aspects: (1) the emergence of the indirect, or "double instance," *amparo* which is tried in the first instance before the federal district, or trial, court and which is subject to appeal to the Supreme Court; and (2) the introduction of the direct, or "single instance," *amparo* against violations committed in definitive judgments which is tried in a single instance directly in the Supreme Court. The latter aspect of the *amparo* proceeding occurred because of a complex of social and political factors pressuring the Supreme Court to accept an extremely controversial interpretation of article 14 of the 1857 Constitution.

Three centuries of judicial centralism in the Spanish Colonial Period produced a concentration of lawyers in Mexico City and Guadalajara, both cities containing two unique appellate courts called *Audiencias* (hearing bodies). After Independence, untrained judges staffed the various state supreme courts and remained subject to the political influence of the state governors. The aforementioned lawyers therefore sought any means — including a liberal interpretation of article 14 of the Constitution — to diminish the jurisdiction of local courts and reduce the number of important cases handled by them. They thus attempted to limit the interpretation of state law by state tribunals and to transfer this power to the federal courts.[32] The means chosen was the writ of *amparo*.

Bowing to this irrepressible movement, the Supreme Court undertook the review of all judicial decisions in the country, declaring

31. *See* I. BURGOA, EL JUICIO DE AMPARO 132-42 (11th ed. Mexico 1977).

32. *See* H. FIX ZAMUDIO, EL JUICIO DE AMPARO 122-28 (Mexico 1964); Noriega, *supra* note 16, at 151-74.

unconstitutional article 8 of the 1869 Law of *Amparo* which prohibited the *amparo* proceeding from challenging final judgments of lower courts.[33]

The 1917 Constitution recognized these developments and established the essential outline of the writ of *amparo* in articles 103 and 107. Article 107 especially regulates the operation of the writ, and occasionally does so in great detail. After heated debates, the Constitutional Assembly gave expression to the propriety of the direct *amparo* proceeding against definitive judgments in article 14 of the current federal Constitution (1917).[34] Moreover, the Constitutional Assembly placed the principle of "legality" in article 16[35] and finalized the evolution of the protective scope of the *amparo*; now, the protective scope of the *amparo* would embrace the entire range of legal norms in the nation, from the highest constitutional precepts to the most remote municipal regulations. The only exceptions to this broad jurisdictional range would be expressly provided for in the Constitution and implementing statutes. The development of such a jurisdictional range explains the present complexity of the *amparo*.[36]

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33. *See* FIX ZAMUDIO, *supra* note 32, at 122-28; Noriega, *supra* note 16, at 151-74.

34. The relevant portion of Article 14 of the constitution provides:

> In criminal cases no penalty shall be imposed by mere analogy or by a prior evidence. The penalty must be decreed in a law in every respect applicable to the crime in question.
>
> In civil suits the final judgment shall be according to the letter or the juridical interpretation of the law; in the absence of the latter it shall be based on the general principles of law.

CONSTITUCIÓN POLITÍCA DE LOS ESTADOS UNIDOS MEXICANOS (Mexico 1917) [hereinafter cited as MEX. CONST.].

35. The guarantee of "legality" is derived from the following language:

> No one shall be molested in his person, family, domicile, papers, or possessions except by virtue of a written order of the competent authority stating the legal grounds and justification for the action taken.

Id. art. 16.

36. In effect, the writ of *amparo* protects the entire system of legal rights in the country, but certain acts of government, either constitutionally or by virtue of the Law of *Amparo*, cannot be impugned through the writ. These constitute the exception, however, and can be specifically listed: for example, refusals to authorize the operation of particular kinds of private educational institutions. *Id.* art. 3 (as amended, Official Daily of Mexico (*Diario Oficial*), Dec. 30, 1946); limiting judicial attacks on presidential decisions granting or reinstating lands to farmers — or those not so entitled to bring suit by being certified as small property holders. *Id.* art. 27; the expulsion of undesirable foreigners by order of the Federal Executive. *Id.* art. 33; congressional enactments relating to declaring the results of elections for members of Congress and the President of the Republic. *Id.* arts. 60 & 74(I); official dispositions relating to all electoral matters. LAW OF AMPARO art. 73 (VII) & (VIII); and resolutions of the Congress on the responsibility of high officials of federal and state governments for crimes and misdeeds committed under their authority. MEX. CONST., *supra* note

This newly acquired breadth of the *amparo* writ caused one basic problem in the federal judicial system: the tremendous influx of *amparo* proceedings into the federal courts, particularly into the Supreme Court.[37] Thus, the most important legislative reforms in the *amparo* between 1951 and 1968 were directed toward reducing the backlog of cases before the Supreme Court.

The 1951 reforms in the Law of *Amparo* created the collegiate circuit courts, which were patterned after the circuit courts of appeals in the United States.[38] The express object of the collegiate tribunals was to assist the Supreme Court in its jurisdiction over *amparo* proceedings. The 1968 revisions in the Law of *Amparo*, in addition to increasing the number of collegiate courts,[39] redistributed the *amparo* jurisdiction between the latter and the Supreme Court. The Congress, taking into account social, economic, and public interests, accorded to the highest court only those *amparo* cases deemed to be of "major importance."[40]

III. CURRENT OPERATION: DIVERGENT COMPONENTS OF THE *AMPARO*

The *amparo* writ has become a complex legal structure which, despite its apparent unity and common principles, is comprised of various procedural instruments — each possessing a peculiar autonomy. This diversity is understandable in view of the various unique ways that other Latin American countries with legal systems closest to the Mexican system administer their own *amparo* proceedings.[41] The Mexican *amparo* is a combination of procedural instruments or remedies, each with a specific protective function. It can be described as having five diverse functions: (1) protection of individual guarantees; (2) testing allegedly unconstitutional laws; (3) contesting judicial decisions; (4) petitioning against official administrative acts and resolutions; and (5) protec-

34, art. III. For analyses of these non-reviewable areas, *see* I. BURGOA, *supra* note 31, at 447-92; BAKER, *supra* note 4, at 131-40; Schwarz, *Judicial Independence*, *supra* note 3, at 280-81.

37. In his classic work, *El artículo 14: Estudio Constitucional*, the eminent Mexican jurist Emilio Rabasa took note of this congestion and called the centralization of review of all judicial decisions in the country the impossible job of the court. *See* E. RABASA, EL ARTÍCULO 14: ESTUDIO CONSTITUCIONAL 103-10 (Mexico 1906).

38. *See* H. ABRAHAM, THE JUDICIAL PROCESS 150-55 (1962).

39. The legislative reforms of 1968 increased the number of collegiate circuit courts from the five established in 1951 to seventeen.

40. *See* BAKER, *supra* note 4, at 76-78.

41. *See* Fix Zamudio, *Latin American Procedures for the Protection of the Individual*, IX J. INT'L COMM'N JURISTS 60, 77-86 (1968).

tion of the social rights of farmers subject to the agrarian reform laws.[42]

A. Protection of Individual Liberties

As a device to protect individual rights, the *amparo* performs functions similar to the English writ of *habeas corpus* as construed by statute and decisional law in the United States. For this reason the Mexican *amparo* differs from the *amparo* in other Latin American countries that have also adopted the *amparo* as a means of protecting individual freedoms.[43]

Under the current Law of *Amparo*, any act which threatens deprivation of life, personal liberty, deportations, or banishment, as well as any official actions prohibited by article 22 of the federal Constitution,[44] may be suspended by way of the indirect *amparo*. The *amparo* petition is filed in the district court in first instance by the injured party, or in proxy by an individual in the name of any petitioner unable to file the petition personally, even though the petitioner's representative may be a juvenile or spouse. In such cases, the court is vested with the authority to investigate and direct the process of the petition, including any means necessary to respond to the proxy petition.[45] This process may result in a decision to "suspend the act complained of" (*suspensión del acto reclamado*). If the petitioner or his representative has been threatened with loss of liberty, he must expressly solicit the court from such a danger.[46] Initiation of the *amparo* proceeding is not

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42. In addition to the Mexican authors considering the multi-functional nature of the *amparo*, foreign writers have also expressed understanding of the various characteristics of the writ. *See, e.g.*, BAKER, *supra* note 4, at 111-63; Secci, *Profili Consituzionali e Procesuali del Juicio de Amparo Messiano*, 10 REVISTA ITALIANA DI DIRITTO E PROCEDURA PENALE 209, 215-36 (1967); Camargo, *supra* note 7, at 207-12.

43. *See* Fix Zamudio, *supra* note 41, at 67-70.

44. These rights protect against:

> Punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties . . . .
>
> Attachment proceedings covering the whole or part of the property of a person made under judicial authority to cover payment of civil liability arising out of the commission of an offense or for the payment of taxes or fines . . . .
>
> Capital punishment for political offenses . . . ; as regards other offenses, it can only be imposed for high treason committed during a foreign war, parricide, murder that is treacherous, premeditated, or committed for profit, arson, abduction, highway robbery, piracy, and grave military offenses.

MEX. CONST., *supra* note 34, art. 22.

45. LAW OF AMPARO arts. 17 & 18.

46. *Id.* art. 123.

subject to a specific time limit[47] and may be initiated by the petitioner at any hour of the day or night.[48]

The *amparo* petition may be brought orally (*comparecencia*) in urgent cases[49] or even by telegram so long as the latter is verified by the petitioner within three days of its transmission.[50] Moreover, the petition may be filed not only with the nearest federal district court — which is usually located in the state capital — but also with any local tribunal; absent both of these judicial authorities, the *amparo* petition may be delivered to any functionary of the local or federal court.[51] State judges are thus empowered to suspend acts threatening the freedom or physical well-being of the petitioner.[52] At the earliest opportunity, the state judge must transmit the case to the appropriate federal court.[53]

B. Challenging Unconstitutional Laws

The most important use of the *amparo* relates to testing allegedly unconstitutional laws, called "*amparo* against laws" (*amparo contra leyes*). As noted earlier, the *amparo contra leyes* was inspired by the practice of judicial review in the United States.[54] In Mexico, however, it has assumed its own peculiar aspects.

It is noteworthy that in the early years of applying articles 101 and 102 of the 1857 Constitution, and in accordance with the views of the distinguished Mexican jurists and Supreme Court members Jose Mariá Lozano and Ignacio Luis Vallarta,[55] the sole means of testing a law of dubious constitutionality was to prevent the application of the law against specific individuals; only the official executing the law could be named as respondent. This was based on the rationale that any "non-executed" law was considered "a dead

47. *Id.* art. 22(II).
48. *Id.* art. 23.
49. *Id.* art. 117.
50. *Id.* arts. 18 & 19.
51. *Id.* art. 40.
52. *Id.* art. 39.
53. *Id.* art. 38.
54. Countries with judicial review of the constitutionality of laws most resembling the system practiced in the United States have been Argentina and Brazil, through their "extraordinary remedies." *See* Fix Zamudio, *supra* note 41, at 76-77.
55. José María Lozano was a member of the Supreme Court for the first time in 1873, then again from 1888 to 1893. Ignacio Luis Vallarta served from 1877 to 1882, discharging his duty as President of the Court with such brilliance, even for this short period, that he has been compared to the illustrious John Marshall, Chief Justice of the United States Supreme Court for more than 30 years.

letter and causing damage to no one."[56] However, the 1936 Law of *Amparo* provides that the unconstitutionality of a law may be attacked by pointing to the passage and promulgation of the law itself as the act complained of (*actos reclamados*) and by naming the promulgating authorities as respondents.[57] This innovation is a recognition of what the distinguished Italian commentator Francisco Carnelutti called *processo al legislatore*.[58]

The "relative" or "individual" effects of the *amparo* judgment is a fundamental principle of the *amparo contra leyes* in Mexican law. This follows the "Otero Formula" and is embodied in both the Constitution[59] and the Law of *Amparo*. The latter provides in part that

> [j]udgments pronounced in *amparo* proceedings only apply to the private individuals or to the moral,[60] private, and official persons soliciting the writ limiting the effects to their protection and securing, where appropriate, in the special case covered by the petition, without making any general declaration respecting the law or act motivating it.[61]

Presently, the *amparo contra leyes* assumes a double configura-

56. J. MARÍA LOZANO, ESTUDIO DEL DERECHO CONSTITUCIONAL PATRIO EN LO RELATIVO A LOS DERECHOS DEL HOMBRE, in TRATADO DE LOS DERECHOS DEL HOMBRE 439 (Mexico 1876). This language influenced considerably the *jurisprudencia* of the Supreme Court and was later used by Ignacio Luis Vallarta. *See* I. VALLARTA, EL JUICIO DE AMPARO Y EL WRIT DE HABEAS CORPUS 119 (Mexico 1896).

57. The Mexican constitutional system vests the law making power in both state and federal legislative bodies: at the federal level, the Congress — including the Chamber of Deputies and the Senate — passes law which is then instituted by the President of the Republic; the corollary law-making function at the state level is vested in the local, single-chambered legislature and the Governor. *See generally* F. TENA RAMÍREZ, DERECHO CONSTITUCIONAL MEXICANO 265-326 (Mexico 15th ed. 1977).

58. Carnelutti, *Aspetti Problematici del Processo al Legislatore*, 14 REVISTA DI DIRRITTO PROCESSUALE 1 (Italy 1959).

59. The judgment shall always be such that it affects only private individuals, being limited to affording them redress and protection in the special case to which the complaint refers, without making any general declaration as to the law or act on which the complaint is based.

MEX. CONST., *supra* note 34, art. 107(II) (as amended, Official Daily of Mexico (*Diario Oficial*), Dec. 30, 1950).

60. "Moral person" means any person or entity other than private individuals or government agencies and officials: *e.g.*, business corporations and farm collectives.

61. LAW OF AMPARO art. 76(I). These particularistic effects of judgments declaring a law unconstitutional, taken from judicial review in the United States, have been accepted by the majority of Latin American constitutional systems. It is thus known as "the American system," as distinguished from the "Austrian system" established in the Austrian Constitution of 1920. The latter implies the nullification of an unconstitutional law with general effects, or *ergo omnes*. Regarding this increasingly attenuated difference, *see* M. CAPPELLETTI, JUDICIAL REVIEW IN A CONTEMPORARY WORLD 85-100 (1971); Cappelletti, *Judicial Review in Comparative Perspective*, 58 CAL. L. REV. 1017, 1033-53 (1970).

tion.[62]

1. *Unconstitutionality of the Law.* Through what is called an action of "unconstitutionality of the law," or frontal attack, the unconstitutionality of a law may be attacked in an adversary proceeding in which the complainants are opposed by the state officials responsible for the passage and implementation of the law in question. These officials may include the federal or state legislatures that pass the law as well as the President of the Republic or state governors who implement it. In some instances, cabinet ministers may also be named as respondent authorities for implementing and publishing the law.

This form of *amparo contra leyes* is brought in the first instance in the nearest federal district court.[63] Either party may appeal the district court ruling to the Supreme Court sitting *en banc*[64] (plenary Supreme Court) by a procedural device known as *recurso de revisión* (review). However, cases *en revisión* invoking Supreme Court *jurisprudencia* pass to the individual chamber (*Sala*) having subject-matter jurisdiction.[65] That chamber must apply the *jurisprudencia* to the case at hand. In some cases, however, a chamber of the Court may request the plenary Court to modify its jurisprudential thesis and hence establish new *jurisprudencia*, or confirm the existing precedent. If the plenary Court establishes new *jurisprudencia*, it must reaffirm that departure in five consecutive decisions before the individual chambers of the Court will be bound on the new point of law.[66]

The 1951 legislative revisions of the Law of *Amparo* recognized two contexts in which laws of dubious constitutionality could be challenged by way of adjudication. The first pertains to self-executing (*autoaplicativos*)[67] statutes or regulations which, by definition, effect the legal interests of the complainant immediately

62. *See* FIX ZAMUDIO, *supra* note 33, at 175-88.

63. MEX. CONST., *supra* note 34, art. 107(VII); LAW OF AMPARO art. 114(I) & (II); ORGANIC LAW OF THE FEDERAL JUDICIARY art. 42(III) & (IV).

64. Before the 1957 reforms, the appeal from the district court went directly to the chamber (*sala*) with subject-matter jurisdiction. After 1957, however, jurisdiction over appeals challenging the constitutionality of laws was vested exclusively in the plenary Supreme Court. The 1968 legislative reforms of the Law of *Amparo* again redistributed jurisdiction over these appeals between the plenary Supreme Court and its four specialized chambers.

65. *See* text accompanying notes 128-135 *infra*.

66. *See* MEX. CONST., *supra* note 34, art. 107(VIII)(a); LAW OF AMPARO art. 84(I)(a); ORGANIC LAW OF THE FEDERAL JUDICIARY art. 2 (IV bis. a).

67. This is the term established by the jurisprudence of the Supreme Court. *See* BAKER, *supra* note 4, at 170-71.

upon taking effect. In these cases, the *amparo* petition must be filed within thirty days from the effective date of the statute.[68] The second was created by article 73(XII) of the Law of *Amparo* and refers to all other types of legal dispositions; i.e., where the law or regulation is self-executing but is not challenged within thirty days of the effective date and where the law is non-self-executing and hence requires implementing legislation. In both instances, the *amparo* petition must be filed within a period of fifteen days[69] from the date the petitioner first becomes aware that his interests are affected by execution of the law.

Prior to the 1968 reforms of the Law of *Amparo*, the *jurisprudencia* of the Supreme Court had established that ordinary remedies need not be exhausted when challenging the constitutionality of a law — a requirement ordinarily present according to the principle of finality.[70] At the same time, however, the Supreme Court introduced the notion that exhaustion of ordinary remedies did not affect the time limit for filing the *amparo* proceeding. This was based on the rationale that ordinary remedial measures were concerned only with the "legality" of the acts and not the "constitutionality" of the law or regulation upon which the Act complained of was based.[71]

These two conflicting rulings provoked a number of problems. Thus, the 1968 reforms introduced a new paragraph to article 73(XII) of the Law of *Amparo* which provides that:

> [w]hen against the first act of execution some recourse or means of legal defense is brought by which the offending act may be modified, revoked, or nullified, it will benefit the petitioner to attack the law by way of the *amparo* proceeding. The petitioner will not be considered to have consented to the law if filing *amparo* within the fixed period starting from the date of being notified that the ordinary remedy has failed, even though application for that ordinary remedy may have been based on the illegality (*contra* constitutionality) of the offending act.[72]

2. *Recourse of Unconstitutionality*. This second means of challenging the constitutionality of a law finds its support in article 133 of the Constitution which was modelled after article VI of the

68. LAW OF AMPARO art. 22(I).

69. *Id.* art. 21.

70. *See id.* art. 73(XV); *see also* Azuela, *Aportación al Estudio del Amparo Contra Leyes*, VIII REVISTA JURÍDICA VERACRUZANA 7 (No. 1, 1957).

71. *See* BURGOA, *supra* note 31, at 229-32.

72. LAW OF AMPARO art. 73(XII).

United States Constitution.[73] It is called "recourse" because it does not directly challenge the constitutionality of the law; rather, it places in issue the "legality" of the judgment that invokes the statute or regulation in question. In effect, the petitioner requests the reviewing court to determine whether the trial or ordinary appellate court decision was based on a constitutionally defective law and hence was in violation of the federal supremacy clause of article 133.

This direct *amparo* proceeding, which requires that the lower court decision be "finalized" by one ordinary appeal, is filed directly with the Supreme Court or nearest collegiate tribunal, depending on the subject-matter and the amount in controversy. The Supreme Court has long upheld the principle that only federal courts are empowered to review constitutional questions pursuant to the grant of authority in article 103[74] of the Constitution. However, the Supreme Court finally recognized the need to balance the obligation of *state* courts under article 133 with article 103's implied "monopoly" jurisdiction of the federal tribunals.[75] Thus, when constitutional issues are raised in *amparo*, state and federal tribunals possess concurrent jurisdiction to suspend the application of unconstitutional laws.

Some legal commentators believe that all constitutional issues must be raised by the petitioner at trial or in the ordinary appellate process. However, it is the duty of the trial court to determine the constitutionality of the law before reaching the substantive issues of

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73. This Constitution, the laws of the Congress of the Union that emanate therefrom and all treaties that have been made and shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union. The judges of each State shall conform to the said Constitution, the laws, and treaties, in spite of any contrary provisions that may appear in the constitutions or laws of the States.

MEX. CONST., *supra* note 34, art. 133. The relevant portion of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI.

74. This article provides:

The federal courts shall decide all controversies that arise:

I. Out of law or Acts of the authorities that violate individual guarantees.
II. Because of laws or acts of the federal authority restricting or encroaching on the sovereignty of the States.
III. Because of laws or Acts of State authorities that invade the sphere of federal authority.

MEX. CONST., *supra* note 34, art. 103.

75. *See* TENA RAMÍREZ, *supra* note 57, at 563-64.

the case. Thus, this obligation should be considered "incidental" or "pre-judicial" inquiry of constitutional issues.[76] This differs from the United States practice of ruling on motions containing such challenges[77]only to the extent that the trial court considers alleged constitutional defects in the applicable statute before the formal adjudication stage and as limited exclusively to the case at hand. Formally, Mexican state courts are still systematically denied authority to decide constitutional questions presented at trial or in ordinary appeals. Only the Supreme Court and collegiate tribunals have that power under *amparo*, with the further understanding that decisions of the collegiate tribunals are subject to review by the high court.[78]

Finally, there is current doctrine seeking an end to the "Otero Formula" as having outlived its historic usefulness. This view calls for declarations of unconstitutionality to have "general effect" rather than being limited to preventing the application of the law to the parties successfully challenging it. The reformists rely not only on the model of European constitutional courts[79] but more specifically on the "popular action of unconstitutionality" initiated in Columbia and Venezuela during the Nineteenth Century. More recently, these Latin American efforts have taken place in El Salvador and Panama.[80] The rationale for imposing general declaratory effect (*ergo omnes*) lies in the principle of equality under the law as well as in more practical considerations: simply put, the present "relative" or "individual" effects of *amparo* against law judgments have created a painfully slow and inefficient system of judicial review.[81]

C. The Judicial or "Cassation" Amparo

The judicial or "cassation"[82] *amparo* was imposed during the

76. On the concept of pre-judicial questions in problems of statutory constitutionality, *see* M. CAPPELLETTI, LA PREGIUDIZIALITÀ CONSTITUZIONALE NEL PROCESSO CIVILE 4-68 (Italy 1957).

77. See CAPPELLETTI, *supra* note 61, at 46-68.

78. MEX. CONST., *supra* note 34, art. 107(IX); LAW OF AMPARO arts. 83(V) & 84(II).

79. *See* CAPPELLETTI, *supra* note 61, at 69-84.

80. *See* Fix Zamudio, *supra* note 41, at 76.

81. *See* Fix Zamudio, *La Declaración General de Inconstitucionalidad y el Juicio de Amparo*, in [1971] BOLETÍN MEXICANO DE DERECHO COMPARADO 53; Headrick, *El Control Judicial de las Leyes*, XVI REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 463 (1966).

82. The designation "cassation *amparo*" has also been accepted by foreign scholars. *See* BAKER, *supra* note 4, at 175-96 (utilizing the phrase "*amparo* as cassation"); KARST,

past century for social and political reasons. It is of major importance because in practice it accounts for more than eighty percent of *amparo* cases before the federal courts. The judicial *amparo* bears direct similarities to the French remedy of cassation (*casación*) in that it allows review and annulment of appellate decisions from all jurisdictions in the country that are inconsistent with the Constitution. The judicial *amparo* has its constitutional foundation in article 14[83] and may be brought against judicial and quasi-judicial judgments in criminal, civil — including all mercantile controversies — administrative, and labor cases. This form of the *amparo* is tried in original jurisdiction and single instance either with the appropriate chamber of the Supreme Court or with the collegiate tribunals, depending on some rather complex jurisdictional rules outlined in the 1967 reforms of the Law of *Amparo*. In general, however, the Supreme Court reviews only those cases considered to be of major social, economic, and political importance, with the remainder of cases reviewed by the collegiate courts.

The judicial *amparo*, following classic rules of cassation, may be directed against two classes of alleged violations: (1) those committed during the course of the trial which deprive the complainant of legally available defenses — procedural errors (*error en procedando*); and (2) substantive flaws in the judgments themselves (*error en judicando*). Procedural errors can be appealed only if the deprivation effects the final decision of the court (*sentencia definitiva*).[84] Exceptions to this last requirement are few; for example, when judicial error, either at trial or in an ordinary appeal, is so highly prejudicial as to cause irreparable injury to the complainant or to an absent third party similarly affected. In this case, the *amparo* suit is tried in the first instance in the federal district court, from which an adverse ruling may be appealed in the second instance to the collegiate tribunals.[85] This substantive-procedural dichotomy served as the basis for the division of jurisdiction between the Supreme Court and collegiate tribunals in the 1951 revisions of the Law of *Amparo*. In the case of the judicial *amparo*, this dichotomy caused several problems of overlapping jurisdiction. These conflicts were eliminated by the 1968 reforms.

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supra note 4, at 627-29 ("*amparo* and cassation in Mexico"); Secci, *supra* note 42, at 226-28 ("cassation *amparo*"); Camargo, *supra* note 7, at 210-11 ("the cassation *amparo*").

83. *See* BAKER, *supra* note 4, at 176-80. *See also* note 33 *supra*.

84. LAW OF AMPARO art. 158.

85. *Id.* art. 114(IV) & (V).

Classic rules of cassation also provide that *amparo* review of lower court decisions must be strictly limited to reviewing questions of law; that is, whether the trial court correctly applied the applicable law. Thus, in a judicial *amparo* proceeding, *de novo* review is disallowed.[86]

Finally, the influence of liberal individualism in the Nineteenth Century persists in the *amparo* principle of "strict law" (*amparo de estricto derecho*) applicable to judgments of the civil courts. The Law of *Amparo* provides that the *amparo* court must confine its opinion to questions raised in the petition or brief; the court may not revise or amplify any point of law. It is the author's view that the principle of "strict law" constitutes an unacceptable formalism in modern jurisprudence.[87] It is also submitted that the Supreme Court has improperly applied this principle to *amparo* challenges of administrative abuses.

D. Administrative Amparo

Because there is no uniform system in Mexican law for challenging administrative actions and decisions, the position of those injured by administrative abuse is uncertain. Some hold that the injured party can find relief before an administrative tribunal, while others perceive his only recourse as being before the same administrative authority. In any case, the *amparo* is always available as a final remedy. It may be used to test administrative actions of both state and federal officials. This additional dimension of the *amparo* was inspired by the lack of an administrative tribunal with general jurisdiction, with the single exception of the Administrative Tribunal for the Federal District created in 1971. Thus, the *amparo* has assumed the role of an administrative review proceeding.[88]

Judicial review of administrative acts in Mexican law has passed through various stages.[89] The first — the long period from Independence to 1936 — developed from the influence of Spanish colonial traditions as well as from the public law of the United States. It mandated a system of questioning administrative acts and decisions before both federal and state courts. However, since

86. *Id.* art. 78.

87. *Accord*, BURGOA, *supra* note 31, at 294-96.

88. *See* Fix Zamudio, *supra* note 7, at 721-32; CARRILLO FLORES, LA JUSTICIA FEDERAL Y LA ADMINISTRACIÓN PÚBLICA 207-50 (1973).

89. *See* Fix Zamudio, *supra* note 7, at 733-41; D. HEDUÁN VIRUÉS, CUARTA DÉCADA DEL TRIBUNAL FISCAL DE LA FEDERACIÓN (Mexico 1971).

1936, elements of the French system have been introduced with the establishment of the Federal Fiscal Tribunal (*Tribunal Fiscal de la Federación*) which was created in the image of the French *Conseil d'Etat* (Council of State). The Fiscal Tribunal assumed review of financial decisions made by the federal bureaucracy. Its limited competency over strictly fiscal matters gradually expanded to the point where, with the Organic Law of 1967, it now reviews a much broader subject matter and possesses complete autonomy in rendering decisions. Thus, it must be considered as an agency of administrative justice much closer to the German system than to the French.[90] In addition to the Fiscal Tribunal, the Administrative Court of the Federal District (1971), as well as some local tribunals fashioned after the Fiscal Tribunal, such as those in the states of Mexico, Veracruz, and Sinoloa, exist for airing complaints of administrative acts.[91] *Amparo* review of decisions from these tribunals is similar to the procedures for the judicial, or "cassation," *amparo*; that is, it is tried in the first instance before the Supreme Court or collegiate tribunals, depending on the amount in controversy. In those instances where bureaucratic decisions are not reviewable by an administrative tribunal, the *amparo* will lie only after the complainant has exhausted ordinary administrative remedies.[92] In the latter case, *amparo* is tried in the first instance in the district court with the opportunity to seek review of adverse judgments in either the Supreme Court or the collegiate tribunals, depending on the amount in controversy. In both direct and indirect *amparo* proceedings, Supreme Court jurisdiction extends to all cases in excess of $20,000 (U.S.). If the amount in controversy is indeterminable, or the issue is considered to be "of national importance," the Supreme Court may exercise jurisdiction. In this respect the 1968 legislative reforms which introduced this discretionary criterion followed the model of the writ of *certiorari*

90. *See* K. Vogel, *Der Gerichtliche Rechtsschutz des Einzelnen Gegenüber der Vollziehenden Gewalt in der Bundesrepublik Deutschland*, in I GERICHTSSCHUTZ GEGEN DIE EXEKUTIVE 127-83 (1969); G. Winkler, *Der Gerichtliche Rechtsschutz Gegenüber der Vollziehenden Gewalt in Österreich*, in II GERICHTSSCHUTZ GEGEN DIE EXEKUTIVE 835-86 (1969).

91. In addition to these, fiscal tribunals patterned after the Mexican Federal Fiscal Tribunal have been attempted in the states of Colima, Guanajuato, and Tamaulipas. However, the latter have failed due to a lack of practical efficiency. *See* Fix Zamudio, *supra* note 7, at 719-20.

92. LAW OF AMPARO art. 73(XV).

in the United States Supreme Court.[93] Current opinion favors extending this discretionary power to other than administrative matters.[94]

E. The Agrarian Amparo

The fifth and final function of the Mexican writ of *amparo* was authorized by the *amparo* law reform of February 5, 1963 and provides special protection to farmers subject to the agrarian reform laws. Culminating in the 1976 revision of the Law of *Amparo*, all protective provisions relative to the "agrarian *amparo*" were condensed into one section of the Law of *Amparo*.[95]

These changes are based on the division of real property into two major categories in the Mexican legal system: (1) private holdings not exceeding a fixed acreage, with the excess expropriable to the benefit of farmers without land; and (2) social property divided into two subcategories: (i) communal lands of indigenous (Indian) villages stemming from pre-Hispanic claims which were reinstated after a showing of illegal dispossession; and (ii) "*ejidal*," or land granted to farmers previously lacking any landholdings and taken from private owners exceeding the aforementioned limits of farms classified as "small property" (*pequeña propiedad*).[96] Title to the communal and *ejidal* lands belongs only to those villages and their inhabitants with claims to *usufruct* based on inheritance. Even when their titles are validated, however, the holders cannot sell or rent their lands, and all such holdings are regulated by the 1971 Federal Law of Agrarian Reform.

The 1963 revisions of the Law of *Amparo* expressly benefitted

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93. The body of North American literature on *certiorari* is vast. For present purposes, *see* Comment, *The Procedural Acts of Certiorari*, 4 MIAMI L.Q. 367 (1950).

94. *See* A. FLORES, REFLEXIONES DEL SESQUICENTENARIO 99-100 (Mexico 1975).

95. *See* LAW OF AMPARO arts. 212-234.

96. The concept of expropriating private land for the benefit of those not possessing land is based on the Law of Agrarian Reform of January 6, 1915, which has been incorporated into the Mexican Constitution.

> The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible of appropriation, in order to conserve them and to ensure a more equitable distribution of public wealth. With this view in mind, necessary measures shall be taken to divide up large landed estates . . . .

MEX. CONST., *supra* note 34, art. 27. Both the Agrarian Reform Law and article 27 must be viewed as expressing the fundamental social goal of the 1910 Mexican Revolution.

Pequeña propiedad is defined by the constitution as property which "does not exceed one hundred hectares of first-class moist or irrigated land or its equivalent in other classes of land under cultivation." *Id.* *See also* KARST, *supra* note 4, at 460-72.

farmers of those communal villages singled out by the agrarian reform. The revisions were motivated by the inability of farming families in *amparo* proceedings to secure adequate legal counsel, especially in complaints against the federal bureacracy filed with the Secretariat of Agrarian Reform. Previously, these farmers had been subjected, through Supreme Court *jurisprudencia*, to an administrative rule equivalent to what was earlier called "strict law."[97] It was justifiably assumed that the farmers in the communal and *ejidal* communities were disadvantaged relative to industrial workers. The latter could effectively assert their rights through mediative bodies called Boards of Conciliation and Arbitration which were modelled after similar institutions in Australia and New Zealand.[98] The urban workers enjoyed procedural advantages over the businessmen-employers which derived from a new current of doctrine termed "social procedural law." The latter sought to establish balance and equality, with compensation to the weakest party in the dispute.[99] It has been urged that agrarian courts be established in which the farmers can argue their rights more effectively. This proposal finds support from trends in other parts of the world,[100] including trends in various Latin American countries which have attempted agrarian reforms similar to those in Mexico; for example, those in Bolivia (1953), Chile (1967), Peru (1969), and Venezuela (1976).[101]

The new provisions that benefit the farmer-complainants include subsidiary representation where the petition for *amparo* is not filed within the normal period of fifteen days; in such a case, the Communal or *Ejidal* Commisariat is empowered to intervene on behalf of any member of the farming community in defense of his or their collective agrarian rights.[102] The reforms also reduced the formal requirements for the agrarian *amparo* petition, holding that

97. For the Supreme Court's rationale for extending the *amparo* proceeding to agrarian matters, *see Apéndice al Semanario Judicial de la Federación*, in SEGUNDA SALA (Administrative), Thesis 50, at 105-06.

98. *See, e.g.*, J. PORTUS, AUSTRALIAN COMPULSORY ARBITRATION, 1900-1970 (Sydney 1971); D. MATHIESON, INDUSTRIAL LAW IN NEW ZEALAND 239-303 (Wellington 1970).

99. *See* Fix Zamudio, *Introducción al Estudio del Derecho Procesal*, in REVISTA IBEROAMERICANA DE DERECHO PROCESAL 9 (Madrid 1965); Cappelletti, *Per una Nueva "Giustizia del Lavoro,"* in GIUSTIZIA E SOCIETÀ 305 (Milan 1972); Rodríguez Piñero, *Droit du Travail et Procès du Travail*, in PROBLÈMES D'ACTUALITÉ EN DROIT DU TRAVAIL 125 (Padova 1973).

100. *See* A. GERMANÒ, IL PROCESSO AGRAGIO: STUDIO COMPARATIVO SUL DIRITTO EUROPEO OCCIDENTALE (Milan 1973).

101. *See* J. MASREVERY, DERECHO AGRARIO Y JUSTICIA AGRARIA 35-66 (Rome 1974).

102. LAW OF AMPARO art. 213(II).

as long as it contains the basic information, the court may correct or fill in any omissions; this practice is called "supplying the deficiency of the complaint" (*suplencia de la queja deficiente*).[103] This exception to the principle of "strict law" directs the court to correct errors or deficiencies in the petition as well as to obtain necessary evidence not provided by the petitioners or respondents.[104] The reforms also modify the filing periods for the *amparo* writ from fifteen to thirty days from the moment the petitioner is informed or becomes aware of the violation.[105] Finally, there is no longer a time limit for petitions involving *collective* agrarian rights.[106] In these cases, the farmer-petitioners may petition the nearest state trial judge (*juez de primera instancia*) who is empowered to suspend the alledged violative conduct pending a final determination of the issue in a full *amparo* hearing before the appropriate federal court.[107]

Finally, two new and important provisions should also be noted. The first prohibits judicial discontinuance due to lapse of time in collective or communal agrarian rights cases.[108] The only exception to this provision is when the farmers collectively vote to discontinue the *amparo* proceeding. The second innovation provides that the *amparo* judge must suspend *any* administrative abuses revealed in the evidentiary hearings, again on the assumption that the farmer-petitioners lack access to adequate legal counsel.[109]

IV. PROCEDURE

A. Indirect Amparo

The indirect, or double instance, *amparo* is tried in first instance before a federal district judge employing a simple procedure; the proceeding is characterized by oral communication, brevity, and procedural economy. Once the petition is filed, the judge es-

103. *Id.* art. 227; MEX. CONST., *supra* note 34, art. 107(II).
104. LAW OF AMPARO art. 223.
105. *Id.* art. 218.
106. *Id.* art. 217.
107. *Id.* arts. 38, 40, 220 & 233.
108. *Id.* art. 231(I).
109. *Id.* art. 78. In the revisions of the Law of *Amparo* of May 28, 1976, this provision was incorporated into article 225 as follows:

> The reviewing authority in *amparo* suits will resolve whether the challenged acts are unconstitutional, so and as they may be proven, even when the facts differ from those alleged in the petition where the petitioners are *comunal* population centres (*núcleos de población*) or individual *ejidatarios* or *comuneros*.

tablishes *in limine* that it has been filed properly before soliciting an answer from the respondent authorities.[110] The answer, along with supporting documentation, must be filed within five days. This answer resembles a defense in a common law trial because failure to respond constitutes an admission of the act complained of. Moreover, a fine may be assessed against respondents who fail to file the answer.[111] In addition, all interested third parties must be notified of the complaint and answer.[112] Once the petition is filed, the judge sets a date for a public hearing[113] in which both parties submit evidence and written briefs. In some instances, an opinion by the Federal Public Minister (public prosecutor) will also be submitted.[114] At the conclusion of this proceeding, the court enters its final judgment which may be appealed to the Supreme Court or appropriate collegiate tribunal.

Once the appeal is filed, the presiding judge examines the petition for its admissibility and regularity of form. If the petition for review is granted, each party, as well as the Public Minister, is given ten days to submit written briefs.[115] If reviewed by the Supreme Court, the case is assigned to a judge, or minister (*ministro*), who drafts an opinion (*ponencia* or *proyecto de sentencia*) within a postponable period of thirty days.[116] This draft opinion is circulated among members of that chamber or the plenary Court, depending on the issue under review. The draft opinion is then discussed and voted on in a public hearing.[117] If the opinion is not accepted unanimously, a justice for the majority writes an opinion accordingly[118] with dissenting opinions (*votos particulares*) invited to accompany the court's final disposition of the case.[119] In the collegiate tribunals, appeals are received in the same manner, except that the period for writing the *ponencia* is

110. *Id.* arts. 146 & 147.
111. *Id.* art. 149.
112. *Id.* art. 147.
113. *Id.* art. 154.
114. *Id.* art. 155.
115. *Id.* art. 90.
116. *Id.* art. 182.
117. *Id.* art. 186. This practice, which is peculiar to the Mexican Supreme Court, has attracted the attention of foreign scholars who find it strange that the hearing excludes the litigants from participation in the final deliberations, and leaves only debate among the judges. *See, e.g.*, Calamandrei, *Prologue*, in PROCESSO E DEMOCRAZIA 10-11 (Padova 1954).
118. LAW OF AMPARO art. 188.
119. On dissenting supreme court opinions, *see* LE OPINIONI DISSENZIENTI DEI GIUDICI CONSTITUZIONALI ED INTERNAZIONALI (Scritti Raccolti a Cura di Constantino Mortati, Milano 1964). This work includes articles by Vittorio Denti and other authors.

much shorter (15 days) and there is no public discussion of the draft opinion or final judgment.[120]

B. Direct Amparo

The direct, or single instance, *amparo* must be brought directly before the Supreme Court or nearest collegiate tribunal, and the court rendering the contested judgment notified in writing as the respondent. In all cases, copies of the petition must be served on all interested parties summoning them to defend their legal rights. Service of the petition is handled through the respondent court.[121]

Like the indirect *amparo*, the presiding judge of the reviewing court examines the petition for its admissibility and conformity with form and content requirements.[122] If granted, the Federal Minister is invited to present a written brief. Third parties,[123] or those acting as accusers in a criminal trial, can submit written allegations to the Supreme Court or collegiate tribunals within ten days after being served.[124] Drafting the *ponencia*, or preliminary opinion, as well as the discussion, approval, or rejection all follow procedures similar to those in the indirect *amparo* proceeding.

C. Procedural Inactivity

Amparo proceedings are generally conducted in writing. Mexico lacks the Anglo-American tradition of oral argument despite the national legislature's attempt to secure a place for such a procedure within the legal system. Although the principle of judicial supervision (*impulso oficial*) dominates *amparo* proceedings, the backlog of *amparo* suits contesting lower courts judgments, administrative abuses, and, more recently, the constitutionality of laws, has led to the introduction of a sanction called "procedural inactivity" which is imposed on petitioners who fail periodically to renew their claims; imposition of the sanction results in "termination" without adjudication on the merits. Article 74(V) of the Law of *Amparo* directs that *amparo* suits in civil — including cases in commercial law — and administrative matters will be "discontinued" if, in the first instance in an indirect *amparo* suit or in direct

120. LAW OF AMPARO art. 184.
121. *Id.* art. 168.
122. *Id.* arts. 177 & 178.
123. For a discussion of third party status in *amparo* proceedings, *see* text accompanying notes 146-161 *infra*.
124. LAW OF AMPARO art. 180.

amparo proceedings, the petitioner fails to reactivate his case within 300 days of any prior request or, if no prior request has been made, within 300 days of the initial filing. On appeal (*revisión*) of the indirect *amparo*, the petitioner should carefully supervise the progress of his case in the latter stages to avoid "discontinuance" (*sobreseimiento*) because of "caducity," or lapse of the case (*caducidad de la instancia*, roughly equivalent to the Anglo-American doctrine of laches)[125] after expiration of the 300-day period.

Discontinuance differs from termination for improperly brought actions (*improcedencia*) in that the former invalidates the entire proceeding as if the complainant had never brought the action. Termination, on the other hand, operates explicitly to affirm the lower court judgment. Both discontinuance and termination are prohibited in *amparos* involving labor and penal cases as well as in agrarian *amparo* suits. On the other hand, private landowners bringing *amparo* actions against agrarian authorities are subject to the above requirements and sanctions. Until 1975, *amparo* complainants challenging the constitutionality of laws were exempted from these rules, but the impressive backlog of cases in the Supreme Court prompted a constitutional amendment repealing this exception. The sanctions of discontinuance and termination in *amparo* cases have been severly criticized.[126] However, the fact that these sanctions have been applied with such frequency is an indication that an excessive number of *amparo* suits is indeed impeding the work of the federal courts, on the one hand, and that litigants often abandon their suits and thus fail to comply with the requirements of article 74(V). The latter article also requires parties to an *amparo* proceeding to notify the court when the proceeding is abandoned voluntarily.[127]

V. *AMPARO* COURTS

The Mexican Supreme Court, collegiate tribunals, and federal district courts serve as the principle tribunals for reviewing *amparo*

125. Translator's note.

126. *See* BURGOA, *supra* note 31, at 507-15.

127. Article 74(V) of the Law of *Amparo* provides in part:

> When the effects of the challenged act have ceased or when other notorious blatant reasons for dismissal have arisen, the complainant and the authority or authorities responsible are required to indicate accordingly. If they do not comply with this requirement, the court can impose a fine . . . .

These fines have been applied sporadically, and the amounts that can be imposed are incredulously small, even though they were not *de minimus* at the time they went into effect on January 10, 1936.

suits; state tribunals may act as auxillaries to the federal courts in certain types of emergency cases.

A. The Supreme Court

The Supreme Court is the supreme reviewing authority in the federal judicial hierarchy. Its jurisdiction is two-fold: first, it reviews ordinary appeals involving questions of federal law; and second, it reviews *amparo* cases. The Court is divided into four chambers (*salas*), each with a particular subject-matter jurisdiction. These include penal, administrative, civil, and labor. Each chamber has five judges (*ministros*), with four constituting a quorum for each chamber.[128] There are also five auxillary judges (*ministros supernumerarios*) whose principal purpose is to replace absent judges. In addition, the auxillary judges serve on the Auxiliary Chamber which hears *amparo* cases referred to it by the plenary Court (*tribunal en pleno*).[129] The plenary, or *en banc*, session is comprised of the President (Chief Justice) and all other justices except the auxillaries. The Court sitting *en banc* requires a quorum of fifteen justices.[130]

Supreme Court justices are appointed by the President of the Republic and approved by the federal Congress.[131] Once appointed, they may not be removed except for cause. Removal must be initiated by petition of the President which is followed by a trial conducted by a joint session of Congress.[132] Members of the Court may also be forcibly retired on reaching seventy years of age. Although Supreme Court justices must be formally confirmed by the Congress, in practice the Mexican system differs fundamentally from the system of confirmation in the United States. The Mexican Congress has consistently given automatic approval to presidential nominees, primarily because it lacks a strong, influential screening group like the United States' Senate Judiciary Committee.[133] Legislative deference to the President, however, has not prevented the Court from exercising its responsibilities independently from the influence of the Executive Branch.[134]

128. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 15.
129. MEX. CONST., *supra* note 34, arts. 94 & 98.
130. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 3.
131. MEX. CONST., *supra* note 34, art. 96.
132. *Id.* arts. 94 & 111.
133. On the selection of Supreme Court justices in the United States, *see* Kurland, *The Appointment and Disappointment of Supreme Court Justices*, [1972] ARIZ. ST. L.J. 183.
134. *See* Schwarz, *Judicial Independence*, *supra* note 4.

The plenary Court is also charged with the supervision and coordination of all federal tribunals. Mexico, unlike France for example, lacks a Ministry of Justice to accomplish this task. Such a Ministry was prohibited by article 14 of the 1917 Constitution because it was believed that it would diminish the independence of the federal judiciary.[135]

B. Collegiate Circuit Courts (Collegiate Tribunals)

The collegiate tribunals were created by the 1951 legislative revisions of the Law of *Amparo* for the express purpose of assisting the Supreme Court in the review of *amparo* cases. According to article 97 of the Constitution, the circuit judges (*magistrados*) are appointed by the Supreme Court for four-year terms, subject to reappointment. Once reappointed, *magistrados* acquire life tenure and cannot be removed except in the same manner as members of the Supreme Court; that is, after a trial by joint session of Congress.

The twelve *amparo* circuits are comprised of twenty-two circuit tribunals, each having three judges. Nine of these courts embrace the first circuit which sits in Mexico City: three courts for administrative *amparo* cases, three for civil *amparo* matters, one for criminal cases, and two for labor-management disputes. The remaining circuits are located in the cities of Toluca, Puebla, Monterrey, Guadalajara (two), Hermosillo, Veracruz, Torreon, San Luis Potosi, Villahermosa, Morelia, and Mazatlan.

All circuits have general *amparo* jurisdiction[136] and hear both direct and indirect *amparo* cases. Subject-matter jurisdiction is limited to issues considered to be of minor national importance although specific jurisdictional guidelines exist. Only in administrative cases do these tribunals exercise discretionary powers with respect to matters of "national importance" which normally proceed directly to the Supreme Court. In administrative cases, this discretion may be exercised even if the amount in controversy is in excess of $20,000 (U.S.), the ordinary limit of collegiate court jurisdiction.[137] In both direct and indirect *amparo* suits, decisions of the collegiate tribunals are non-reviewable as *res judicata* (*cosa juzgada*) unless the decision holds on the constitutionality of a law or directly interprets a constitutional provision. In these cases, the

135. *See* ORGANIC LAW OF THE FEDERAL JUDICIARY art. 12.

136. By contrast, in 1951, when the collegiate circuit courts were introduced, circuits existed only in the cities of Mexico, Puebla, Monterrey, Guadalajara, and Veracruz.

137. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 7 bis.

intermediate court's decision may be reviewed by the Supreme Court.[138]

C. Federal District Courts

The district courts, with one judge presiding, exercise jurisdiction over both *amparo* cases and ordinary cases involving federal law, most frequently in criminal matters. They also hear civil cases and administrative law disputes. However, the district courts share concurrent jurisdiction with state tribunals to enforce federal laws or international treaties which affect the legal interests of private citizens.[139] In such cases, the district courts acquire jurisdiction only at the initiative of the petitioners.[140]

District court judges have a constitutional function resembling their counterparts in the United States, continuing a practice which began with their creation in the Mexican Constitution of 1824. They review indirect *amparo* cases questioning administrative acts of state and national authorities which cannot be remedied through administrative procedures. They also hear initial challenges of unconstitutional laws, procedural errors (*errores en procedando*), and violations of the constitutional separation of powers between the state and federal governments.[141]

Like the collegiate tribunal judges, district court judges are appointed by the Supreme Court to four-year terms, subject to reappointment for life and dismissal only for cause.[142] In total there are sixty-five district judges throughout the main population centers of the country, generally in the state capitals: ten reside in Mexico City — four devoted to criminal cases, four to administrative cases, and two to civil and labor cases. The remainder have general competency. All such tribunals are hierarchically dependent on the collegiate tribunals embracing their respective districts.[143]

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138. LAW OF AMPARO arts. 83(V) & 84(II).

139. MEX. CONST., *supra* note 34, art. 104(I).

140. Note that ordinary appeals of federal court decisions — as opposed to *amparo* appeals — are brought from the district courts to a separate system of appellate courts called the unitary circuit courts. These were established long before the appeals courts for *amparo* cases — the collegiate circuit courts — by the constitution of 1824. Presently, there exist eleven such unitary circuits, in the cities of Mexico (2), Hermosillo (2), Toluca, Guadalajara, Monterrey, Puebla, Mérida, Torreòn, and Mazatlán.

141. LAW OF AMPARO art. 114.

142. MEX. CONST., *supra* note 34, art. 97.

143. ORGANIC LAW OF THE FEDERAL JUDICIARY arts. 37-51.

D. State Courts

State judges serve as auxiliaries to the federal judiciary in *amparo* proceedings under two special circumstances: (1) when the petition alleges acts threatening life, personal liberty outside a judicial proceeding, or physical well-being, and when collective agrarian land rights are at issue if, in both cases, a federal district judge is unavailable;[144] and (2) where certain actions in criminal matters are challenged, such as an invalid arrest warrant or service of process, in which case the aggrieved party may select *amparo* relief in a district court or in the state court of appeal immediately superior to the court rendering the judgment. If the state court takes jurisdiction in *amparo*, it proceeds in the same manner as would a federal district court.[145]

VI. PARTIES TO *AMPARO* SUITS

Parties to the *amparo* proceeding consist of the petitioner, respondent authorities, interested third parties, and the Federal Public Minister.[146]

The *amparo* petitioner is termed the "injured party"[147] (*agraviado*) and is always an individual or collective "person" suffering a personal, immediate, and direct injury through an act of a public authority.[148] In principle, the *amparo* can be brought only by private persons, although under exceptional circumstances it may be brought by public agencies; for example, to defend their propertied interests.[149] In addition, Supreme Court *jurisprudencia* has established that directors of public agencies at the national or federal district governing levels, as well as federal decentralized agencies or boards (*organismos descentralizados federales*), may challenge by way of the direct *amparo* those decisions of the Federal Tribunal of Conciliation and Arbitration relating to conflicts between the agencies or boards and their government employees.[150]

144. LAW OF AMPARO arts. 38, 40 & 220.

145. *Id.* art. 37.

146. *Id.* art. 5.

147. *Id.* art. 5(I).

148. *Id.* art. 4. Thus, the *amparo* cannot be sought for "indirect" injuries. For controlling Supreme Court precedent on this point, *see Apéndice al Semanario Judicial de la Federación*, in TRIBUNAL EN PLENO Y LAS SALAS DE LA SUPREMA CORTE DE JUSTICIA, Thesis 26, at 47 (1975).

149. LAW OF AMPARO art. 9.

150. This jurisprudential thesis can be found in *Apéndice al Semanario Judicial de la Federación*, in CUARTA SALA (Laboral), Thesis 92, at 99-100 (1975).

Respondent authorities (*autoridades demandadas*) are those accused of violating the petitioner's legal or constitutional rights. They are called "those responsible" (*responsables*)[151] because they not only execute, but may order, the action contested in the *amparo* proceeding.[152] *Jurisprudencia* of the Supreme Court has established a classical concept of authority which includes any agency or official who disposes of public power and thus exercises public acts. The same concept of authority, however, does not embrace the decentralized public agencies which have become increasingly numerous and which, on occasion, reflect greater power than agencies more highly dependent on the chief executives of the state and federal governments.[153] This *jurisprudencia* holds, however, that the exception in the case of decentralized agencies does not operate to immunize the Mexican Institute of Social Security and the Institute of the National Fund for the Worker's Lodging (INFONAVIT) from *amparo* suits when these bodies allocate worker-owner quotas for tax revenue purposes. In the latter capacity, the Institutes act as autonomous fiscal agencies (*organismos fiscales autónomos*) and hence possess the requisite authority to be subject to *amparo*;[154] otherwise, they are not subject to *amparo* challenge because they supposedly lack the requisite "authority" in the distribution of social services entrusted to them.[155]

The injured third party (*tercero perjudicado*), or interested person (*interesado*), is one who has an interest in preserving and perpetrating the act complained of. The Law of *Amparo* distinguishes three, and possibly four, categories of injured third parties.[156]

In civil law matters — broadly defined to include commercial and employment disputes — the injured third party is the original adversary of the *amparo* plaintiff. Thus, this judicial *amparo*, or what was earlier termed a cassation *amparo*, interposes third parties as direct adversaries of the *amparo* petitioner; it is only artificially that the legislature interposed the titular authority of the appellate court under review. The latter lacks this character *de facto* because

151. LAW OF AMPARO art. 5(II).

152. *See id.* art. 11.

153. *Apéndice al Semanario Judicial de la Federación*, in TRIBUNAL EN PLENO Y LAS SALAS DE LAS SUPREMA CORTE DE JUSTICIA, Thesis 53, at 98.

154. *See* [1972] MEX. LAB. & SOC. SEC. LAW, labor arts. 267 & 268; LAW OF THE INSTITUTE OF THE NATIONAL FUND FOR THE WORKER'S LODGING art. 30.

155. *See Apéndice al Semanario Judicial de la Federación*, in SEGUNDA SALA (Administrative), Thesis 291, at 492 (1975).

156. *See* LAW OF AMPARO art. 5(III).

it acts only as a transmittal agent for the disposition of the trial judgment or, in exceptional cases, by attaching an explanatory opinion.[157]

In criminal cases, the Law of *Amparo* affords third party status to persons entitled to indemnity for civil liability arising from the commission of the crime. This status is not necessarily limited to the victim, for the victim has no guaranteed role in the penal process according to federal and state criminal codes. Thus, when a convicted criminal contests the conviction or sentence, it is the public minister who is most prominent in opposing the *amparo*. Third party status accrues only to persons injured by the commission of the crime who intervened in the criminal proceeding to claim indemnity for civil liability assessed as part of the final sentence or who asserted civil liability on the part of those with custodial or supervisory responsibilities over the accused.[158] Implicitly then, in criminal cases the Law of *Amparo* leaves to the state or federal public minister who prosecuted the original case the responsibility of invoking all other third party interests in the *amparo* hearing.[159]

In administrative *amparo* cases, third party status is accorded to the person or persons who solicit the execution of the administrative act complained of. In cases involving the general public good, it is virtually impossible to admit all parties into the *amparo* proceeding. Thus, *bona fide* third party status is limited to those who registered their "support" prior to initiation of the *amparo* suit.[160]

Finally, the legislature accords to the Federal Public Minister the status of "third party" even though his intervention is limited to the submission of a brief in cases involving the "public interest." However, neither the Law of *Amparo* nor Supreme Court decisions authorize him to introduce evidence, to bring appeals, or other actions which may be brought by "genuine parties" to the proceedings. Thus, the Federal Public Minister cannot be categorized as an "equal party" as the term is defined by Supreme Court *jurisprudencia*, even though his agent initiated the original prosecution in criminal cases. The minister is best viewed as an auxiliary

157. *Id.* arts. 163 & 169.

158. *See id.* art. 5(III)(b). In *Apéndice al Semanario Judicial de la Federación*, in PRIMERA SALA (Penal), Thesis 203, at 421 (1975), the Penal Chamber affirmed that victims of crimes lack legal standing to litigate *amparo* suits against criminal court judgments acquitting the defendant.

159. *See* LAW OF AMPARO art. 180.

160. *See Apéndice al Semanario Judicial de la Federación*, in CUARTA SALA (Laboral), Thesis 536, at 888-89 (1975).

to the *amparo* judge in his role of submitting briefs and as overseer of the progress of the proceedings.[161] Nevertheless, the 1976 revisions in the Law of *Amparo* conferred upon the public minister the right of appeal in cases in which he has intervened. It appears, however, that this power is purely formal because the same reforms provided no concrete procedural means to exploit this opportunity.

VII. PREVENTIVE (INJUNCTIVE) MEASURES

The *amparo* process contains a remedy called "suspension of the act complained of (*suspensión de los actos reclamados*) which enjoins or suspends the actions of the respondent authority. The purpose of this injunctive proceeding is to preserve the rights of the petitioner until a final judgment is reached and to avoid the infliction of irreparable harm. Supreme Court and collegiate tribunal precedent has evolved guidelines to improve the effectiveness of these measures, which have gradually become part of the governing statutes of the *amparo*.[162]

Currently, injunctive measures can be divided into two broad categories: the first consists of suspensions sought by way of the indirect *amparo*, while the second is brought directly to the court that is being challenged.

In the first, the request for injunctive relief is filed in the first instance in the district court; the concession or denial of suspension may be reviewed by the collegiate tribunals.[163] Two subcategories of this form of relief are possible. First, an action comparable to the temporary restraining order and injunctive relief sought by way of writ of *habeas corpus* in the United States is available — called "official suspension" (*suspensión de oficio*). This suspension may be issued by order of the judge without an adversary hearing on the preliminary showing of the plaintiff, or a friend or relative, that the act complained of threatens death, deportation, or other acts proscribed by article 22 of the Constitution.[164] Official suspension may also be ordered under more general circumstances when the act complained of threatens "irreparable injury,"[165] or where some confiscatory action is threatened against farmers subject to the

161. *See* LAW OF AMPARO art. 5(IV). *See also* BURGOA, *supra* note 31, at 324-28; A. NORIEGA, LECCIONES DE AMPARO 341-55 (Mexico 1975).

162. *See* BAKER, *supra* note 4, at 233-38.

163. Prior to the 1951 reforms of the Law of *Amparo*, all appeals from district court *suspensiónes* of official acts went exclusively to the Supreme Court of Justice.

164. LAW OF AMPARO art. 123(I).

165. *Id.* art. 123(II).

agrarian reform laws.[166] In each instance, the order to suspend the act complained of may be by way of telegram under emergency situations.[167] A second version of the *suspensión* may be granted only after the injured party directly petitions the judge and specifies all responsible parties. After the answer is filed, a finding on the facts is made in a full evidentiary hearing. This form of the *suspensión* may not be granted until the conclusion of the evidentiary hearing.[168]

Neither form of the *suspensión* may be conceded if it would threaten the "social interest" or "public order," which are defined in rather broad terms;[169] for example, when *suspensión* would tend to perpetrate centers of vice, drug trafficking, or the commission of other crimes. *Suspensión* will also be denied if it would tend to cause irreparable injury. In the event *suspensión* threatens the rights or interests of third parties, the petitioner is required to post a bond (*garantía*) in an amount sufficient to cover potential injury in the event the petitioner does not prevail in the final decision.[170] Likewise, petitions involving property rights may require the third party to post a bond as well (*contragarantía*), which may be remitted to the *amparo* petitioner on a showing that the latter should recover his legitimate legal costs and proprietary damages incurred while bringing suit.[171] The federal *amparo* judge fixes the amount of all such bonds.[172] Finally, to guarantee the flow of public revenue, a petitioner who attempts to suspend a decision involving fiscal or tax matters must deposit the amount in controversy if he has otherwise made no prior payment.[173]

This *suspensión* may be issued in two steps. It may be granted provisionally when commission of the act complained of is imminent and when the damages will likely be irreparable. In this instance, the court has the discretion to "paralyze" (*paralización*) the act by provisional suspension *(suspensión provisional)*. This counterpart to the preliminary injunction in the United States may continue in effect until a full evidentiary hearing determines whether

166. *Id.* art. 233.
167. *Id.* art. 123.
168. *See id.* arts. 131 & 134.
169. *See id.* art. 124.
170. *Id.* art. 125.
171. *See id.* arts. 125-127.
172. *Id.* art. 128.
173. *See id.* art. 135.

the *suspensión* should be granted permanently (*suspensión definitiva*) or dissolved.

In effect, these injunctive measures are of major importance in the *amparo* process because they seek to preserve the rights and interests claimed by the plaintiff and to avoid further injury to the parties. They always apply according to the principle of *rebus sic stantibus* — that is, the court may alter the remedy at any time to fit the particular circumstances, even if an appellate court has already affirmed the first judgment on appeal.[174] Legislation also permits the remedy to be invoked even though it was not initially prayed for nor considered by the trial court.[175] All *suspensiónes* issued may be appealed to the collegiate tribunals.[176]

The second type of injunctive relief seeks to stay the execution of a judgment and is filed directly with the judge rendering the decision. In the case of a criminal conviction, the writ is granted *de oficio* and without remand.[177] *Suspensión* of civil judgments follows procedures governing indirect *amparos*; concession of the *suspensión* must await the outcome of the *amparo* appeal.[178] In the case of labor tribunal awards favoring the worker, the *amparo* may only suspend the issuance of the award in an amount in excess of that required for the subsistence of the worker-litigant.[179] The ruling on the request for *suspensión* can be appealed to the Supreme Court or nearest collegiate tribunal through the recourse of "complaint" *(queja)*, itself a part of the *amparo* network of remedies.[180] Petitioning the "offending" judge for relief bears a likeness to the ancient English writ of error *coram nobis*.[181]

Some legal opinions in Mexico,[182] as well as Supreme Court *jurisprudencia*,[183] view the effect of *suspensión* as merely conforming to the original meaning of *amparo* — protection. That is,

174. *See id.* art. 140.
175. *See id.* art. 141.
176. *Id.* art. 139.
177. *See id.* art. 171.
178. *See id.* art. 173.
179. *Id.* art. 174. Injunctive measures cannot be granted against labor tribunal awards for the worker unless the amount in controversy exceeds six months wages at present worker rates. Six months is the period considered necessary for the disposition of *amparos* on the merits. *See Apéndice al Semanario Judicial de la Federación*, in CUARTA SALA (Laboral), Thesis 253, at 238 (1975).
180. *See* LAW OF AMPARO art. 95(VIII).
181. Translator's note.
182. *See, e.g.*, BURGOA, *supra* note 31, at 701-05.
183. *See, e.g., Apéndice al Semanario Judicial de la Federación*, in TRIBUNAL EN PLENO Y LAS SALAS DE LA SUPREMA CORTE DE JUSTICIA, Thesis 196, at 324.

maintaining the *status quo* rather than restoring the complainant to a pre-injury status. But the Law of *Amparo* and some judicial opinions confirm that, although this may be the general rule, some cases warrant constitutive and even restitutive relief.[184] Such exceptions would seem particularly appropriate where the act complained of threatens loss of liberty outside the judicial process. In this case, the *suspensión* would have to remove further obstacles to rectifying the damage on the merits presented by petitioner. This school of thought thus perceives the need to provide greater flexibility in exercising *suspensiónes*. Too often, it holds, do judges grant or deny mechanically petitions for provisional *suspensiónes* without carefully examining the peculiar facts of each case.[185]

VIII. APPEALS

The Law of *Amparo* provides three means of appealing *amparo* judgments: "review" (*revisión*), "complaint" (*queja*), and "reclamation" (*reclamación*).

The term *revisión* derives from the *amparo* statutes of 1869 and 1882 and the accompanying Codes of Civil Procedure which established a mandatory review of *amparo* trial judgments before the Supreme Court — the latter decision being final.

The most important appeal by *revisión* is made from decisions of first instance. In these cases, the Supreme Court acquires jurisdiction when the petition contests the constitutionality of a law or federal regulation issued by the President of the Republic; when, in agrarian rights cases, collective claims are made under the agrarian reform statutes, or when similar rights are invoked by private farmers (*pequeña propiedad*); and when the responsible authority is a federal administrator as long as the amount in controversy exceeds $20,000 (U.S.). At the court's discretion, jurisdiction may be asserted over any case involving the "national interest" regardless of the amount in controversy. The appeal *en revisión* also lies against "crucial" decisions on *amparo* petitions, such as the rejection of the petition or dismissal of the action without a hearing.[186] The Supreme Court may also review appeals *en revisión* in criminal cases involving acts violative of the fundamental protections of arti-

184. *See* LAW OF AMPARO art. 136.

185. Particularly outstanding on this point is R. COUTO, TRATADO TEÓRICO-PRÁCTICO DE LA SUSPENSION EN EL AMPARO 218-60 (Mexico 1957).

186. LAW OF AMPARO art. 83.

cle 22 of the Constitution.[187] Finally, the Supreme Court has jurisdiction over collegiate tribunal decisions on *amparo* contests of lower court decisions if the latter involve constitutional questions unless the intermediate court's decision was based on its own controlling *jurisprudencia* or that of the Supreme Court.[188] All *amparo* appeals not heard by the Supreme Court are heard by the collegiate tribunals.[189]

The *queja*, or complaint, lies against judicial error not ordinarily subject to *revisión*. These include procedural errors made during the course of trial which are not reflected in the final judgment granting or denying *amparo*; when judicial error occurs during the course of *revisión*; or when a court of first instance has failed to comply with cease and desist orders of the Supreme Court or collegiate tribunals.[190] Other responsible authorities may be made to account for failure to comply with provisional or definitive suspensions issued by the federal district courts.[191] The *queja* may also be used to contest judgments of the latter courts in *amparo* cases.[192]

The "reclamation" may be brought against the President (chief justice) of the Supreme Court or of any of the individual chambers or collegiate tribunals for errors in the processing and assignment of *amparo* cases and is heard either before the plenary Court or the judicial department immediately superior to the court in question.[193]

IX. DECISIONS AND EXECUTION

The *amparo* may grant or deny protection, or dismiss the action as legally or materially lacking sufficient substance to be decided on the merits. Judgments on the merits are purely declaratory. Rejection means that the act complained of was legal or constitutional, while dismissal certifies only that the petition cannot be resolved on the basis of the arguments or facts presented.[194] A decision granting relief to the petitioner constitutes a decision of nullity (*fallo de nulidad*). It thus comports with the French princi-

187. *Id.* art. 84. The text of article 22 is reproduced at note 44 *supra*.
188. LAW OF AMPARO arts. 83(V) & 84(II).
189. *Id.* art. 85(II).
190. *Id.* art. 95(VI) & (VIII).
191. *See id.* art. 95(II), (IV) & (IX).
192. *Id.* art. 95(V).
193. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 13(VII) (9 bis); LAW OF AMPARO art. 103.
194. *See* BAKER, *supra* note 4, at 232-33.

ples of cassation by directing the respondent authority to restore the petitioner to the full enjoyment of his legal or constitutional rights. The judgment, again, is strictly limited to the immediate parties to the action.[195]

In addition to the effect of nullity, the grant of *amparo* has the quality of a *mandamus*. In the case of positive acts, it directs the respondent official to restore the state of affairs existing before the violation.[196] If the act complained of is negative in nature, *amparo* directs the respondent officials to comply with the statutory, regulatory, or constitutional requirements of due process. In this respect, the *amparo* order is similar to the mandatory injunction and the writ of *mandamus* in Anglo-American law.[197]

Another aspect of the *amparo* which bears directly on the decision is the concept of supplying the deficiency of the complaint (*suplencia de la deficiencia de la queja*). If deficiencies are discovered, the *amparo* judge has the power, and at times the duty, to correct any such omissions. In the case of farmers subject to the agrarian reform laws, defects in the presentation of evidence must also be remedied. This aspect of the writ of *amparo* is peculiar to the Mexican *amparo*.

The judicial obligation to correct deficiencies in the pleadings was introduced in the 1917 Constitution. Originally, it applied exclusively in criminal matters before the Supreme Court.[198] However, the 1951 legislative reforms extended the obligation to embrace worker-litigants in labor disputes. This extension effectively upheld various statutes which the Supreme Court had declared unconstitutional in its *jurisprudencia*, and the practice is now expressly authorized by the Constitution[199] and the *Amparo* Law.[200] The 1936 and 1976 revisions went even further and extended this protection to the collective and individual rights of farmers subject to the agrarian reforms in almost every aspect of litigation.[201] In 1974, juveniles and the mentally ill were also granted this protection.[202]

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195. On the general effects of decisions by cassation tribunals, *see* Ancel, *Réflexions sur l'Etude Comparative des Cours Suprêmes et le Recours en Cassation*, [1938] ANNALES DE L'INSTITUT DE DROIT COMPARÉ DE L'UNIVERSITÉ DE PARIS 286.

196. LAW OF AMPARO art. 80.

197. *See* Clagett, *supra* note 4, at 431-37; Schwarz Thesis, *supra* note 4.

198. MEX. CONST., *supra* note 34, art. 107(II).

199. *See id.*

200. *See* LAW OF AMPARO art. 76.

201. *See id.* art. 225.

202. *Id.* art. 78.

In some instances, however, *amparo* courts have not rigidly applied the principle of "strict law" and hence have informally expanded the practice of judicial remedies for defective pleadings. It would be preferable, as advocated by one current of legal opinion, that the practice of "strict law" be abandoned as incompatible with modern jurisprudence. This view maintains that judicial remedies for defective pleadings are no more than practicing the ancient Latin principle *juris novit curia* — that the judge knows the law and must apply it even though the parties have failed to properly invoke it.[203]

The Law of *Amparo* establishes very strict requirements for enforcing *amparo* judgments which are binding on all responsible authorities. The *amparo* judge must supervise compliance with the decree within twenty-four hours of notice, although the nature of the act complained of or the inability of the official to comply immediately may prolong that deadline.[204] The *amparo* court is empowered to request compliance with the order from the immediate superiors of the respondent authorities if the latter refuse to execute the decree.[205] When an *amparo* judgment by the Supreme Court decrees a law unconstitutional, the petitioner or co-petitioner alone is protected against the application of the impugned law by the respondent officials named in the complaint.[206]

Judicial *amparo* judgments, whether by the Supreme Court or collegiate tribunals, direct the respondent judge to reinstate any procedural safeguards violated or to issue another judgment consistent with the *amparo* ruling.[207] According to Supreme Court precedent, authorities directly involved in the act complained of, as well as all other individuals who, by virtue of their official capacity, participate in the execution of the act, must comply.[208] Continued failure to comply, obstruction of compliance, or repetition of the act complained of authorizes the petitioner or the *amparo* court in first instance to file a complaint before the plenary Supreme Court *en*

203. On the obligation of the judge to apply the law even when it may be improperly argued by the parties, *see* Jolowicz, *The Active Role of the Court in Civil Litigation*, in PUBLIC INTEREST PARTIES AND THE ACTIVE ROLE OF THE JUDGE IN CIVIL LITIGATION 167-277 (1975).

204. LAW OF AMPARO arts. 104 & 105.

205. *Id.* art. 105.

206. *See* Rupp-v. Brünneck, Vigoriti & Linde, *Admonitory Functions of Courts*, 20 AM. J. COMP. L. 387 (1972). The three authors represent West Germany, Italy, and the United States, respectively. The essay deals generally with the problem of executing decisions which declare statutes of provincial or national legislatures unconstitutional.

207. LAW OF AMPARO art. 106.

208. *See* NORIEGA, *supra* note 161, at 750-53.

banc. The latter studies the complaint and, if meritorious, may impose the sanctions provided by article 107(XVI) of the Constitution: that the official execute the court order under penalty of dismissal and criminal prosecution.[209] If the non-complying official is a constitutional officer (*de fuero constitucional*), he may only be dismissed after a trial of impeachment before a joint session of Congress.[210] The plenary Court, however, must communicate the charges to Congress before any such proceeding may be initiated.[211]

Finally, the Law of *Amparo* provides that the *amparo* judge, or circuit judge appointed by the appropriate circuit tribunal, may direct the execution of the judgment. He may directly supervise the execution of the order if the *amparo* has ordered the immediate release of a petitioner incarcerated on criminal charges. If the order is not executed within three days, the judge may order not only the respondent authority but *all* prison officials to comply forthwith.[212]

X. BINDING PRECEDENT (*Jurisprudencia*)

It was noted earlier that there exists no Mexican counterpart to the Anglo-American rule of *stare decisis*. Both the Supreme Court and collegiate tribunals, however, are authorized to issue *jurisprudencia* which applies to all state and federal courts and administrative tribunals. The concept of *jurisprudencia* is unique to Mexican law and originated in the Federal Code of Civil Procedure of 1908.[213] Subsequently, the concept of *jurisprudencia* was promoted to constitutional status with the 1951 legislative amendments.[214]

Until 1968, only the Supreme Court was authorized to establish *jurisprudencia*, and this power was limited to *amparo* cases interpreting the Constitution, federal laws, and international agreements. Although formal respect was accorded state tribunals,

209. LAW OF AMPARO arts. 105 & 106.

210. MEX. CONST., *supra* note 34, art. 111. *See also* TENA RAMÍREZ, *supra* note 57, at 583-603 for an analysis of the responsibilities of high federal and state officials, which relates in part to the grounds and procedures for impeachment under the United States Constitution.

211. MEX. CONST., *supra* note 34, art. 109.

212. LAW OF AMPARO art. 111.

213. [1908] MEX. CODE CIV. P. arts. 785-788.

214. *See* MEX. CONST., *supra* note 34, art. 107(XIII). *See also* BAKER, *supra* note 4, at 251-66; Cabrera & Headrick, *Notes on Judicial Review in Mexico and the United States*, 5 INTER-AMERICAN L. REV. 253, 264-65 (1963).

in practice the latter followed Supreme Court *jurisprudencia*. The 1968 legislative reforms of the Law of *Amparo*, eventually incorporated into constitutional article 107, broadened the scope of *jurisprudencia* to include all cases which come before the federal courts.[215] Currently, both the Supreme Court and collegiate tribunals issue *jurisprudencia* by holding the same point of law in five consecutive judgments or "*theses*." In the Supreme Court, these decisions require a majority of fourteen justices of the plenary session or four justices in each of the four specialized chambers. In the collegiate courts, all three judges (*magistrados*) must join the decision.[216] *Jurisprudencia* may subsequently be construed by the same majorities holding a contrary point of law with an accompanying explanatory opinion.[217]

All precedent and other important decisions are published in the main federal court reporter, the *Semanario Judicial de la Federación*, which originated in 1870. The Supreme Court publishes an *Apéndice* to the *Semanario* approximately every ten years which contains the major points of *jurisprudencia* and other fundamental *theses* of case law. The most recent *Apéndice* appeared in 1975 and contains a compilation of *jurisprudencia* and other important decisions from the 1917 Constitution forward. In January, 1974, the Supreme Court initiated the monthly *Boletín* which updates important decisions of that Court as well as those of the circuit tribunals. This *Boletín* is an attempt to compensate for the delays in publishing the *Semanario*, but publication of the *Boletín* was interrupted in 1976.

There also exist some valuable but unofficial compendiums which contain noteworthy precedent and decisions. Since 1972, the Institute of Legal Research at the National University of Mexico has published, in quarterly editions, significant opinions of all adjudicatory organs, such as the Federal Fiscal Tribunal and the Administrative Court of the Federal District.

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215. The relevant part of article 107 of the Constitution, following the 1968 reform, provides that

> [t]he law shall specify the terms and cases in which the precedents of the courts of the federal judicial branch are binding, as well as the requirements for their modification.

MEX. CONST., *supra* note 34, art. 107(XIII).

216. LAW OF AMPARO arts. 192-194; ORGANIC LAW OF THE FEDERAL JUDICIARY art. 95.

217. LAW OF AMPARO art. 194.

XI. CONCLUSION

The writ of *amparo* is a procedural institution of significant proportions. Its evolution has been shaped by foreign as well as national developments, both attempting to impart to the *amparo* a scheme of constitutional controls on official acts — borrowed from the United States Constitution of 1787. The *amparo*, however, has acquired its own peculiar characteristics despite these influences. After a slow but inexorable development, the *amparo* has become an extremely complex institution. In addition to its original role of protecting individual guarantees and the separation of federal and state powers, social and historical events have served to broaden its protective scope. These developments have made the Mexican *amparo* unique compared to other Latin American versions of the *amparo*. In addition to protecting individual liberties in a manner similar to the writ of *habeas corpus*, the *amparo contra leyes* is a means of contesting laws and regulations of dubious constitutionality. The judicial, or "cassation," *amparo* provides the petitioner the means to challenge the legal basis of both federal and state tribunals in a manner similar to the French remedy of cassation. Official acts of the federal, state, and local administrations which are not subject to adequate review in administrative tribunals or through ordinary non-judicial administrative remedies may be contested by way of the *amparo*. Thus, the *amparo* has acquired the role of an administrative review proceeding (*proceso contencioso-administrativo*). Finally, the *amparo* has evolved into a crucial instrument for the protection of collective and individual agrarian rights — the writ of *amparo* in *ejidal* and agrarian matters.

In sum, the Mexican *amparo* is among the most comprehensive procedural instruments of our time. It constitutes the final stage in the Mexican legal process as demonstrated by the quantity and diversity of legal disputes which culminate in the federal courts as *amparo* litigation. Thus, the *amparo* now serves as the guardian of the entire Mexican judicial order, from the highest constitutional precepts to the most modest ordinances of municipal government.