

Rights and Remedies in the Federal District Courts of Mexico and the United States

By CARL E. SCHWARZ*

The federal judicial power of Mexico is . . . the custodian of the constitution by way of the writ of Amparo, as much in matters of legality as in the constitutionality of the acts of all authorities, state and federal, thus making possible the State of law in which we live.

—Speech delivered by the president of the Mexican Supreme Court (October 9, 1974)

The Amparo Must Not Be Used As A Screen To Violate The Law

—Headline in *El Mexicano* (San Luis, Sonora, Mexico, June 17, 1975)

Introduction

As the intermediaries between pure constitutionalism and raw politics, the federal courts of both Mexico and the United States struggle to protect individual constitutional rights and to maintain their own independence. In both countries, the federal district courts are in the forefront of that struggle. In the United States it has been said that federal district courts are the “decisional building blocks”¹ and “the basic points of input”² for the federal judicial system; the judges of some of these courts have been dubbed the “fifty-eight lonely men,”³ and their composite, “the loneliest man in

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1. R. RICHARDSON & K. VINES, *POLITICS OF THE FEDERAL COURTS* 80 (1970) [hereinafter cited as RICHARDSON & VINES].

2. S. GOLDMAN & T. JAHNIGE, *THE FEDERAL COURTS AS A POLITICAL SYSTEM* 25 (1971) [hereinafter cited as GOLDMAN & JAHNIGE].

3. J. PELTASON, *FIFTY-EIGHT LONELY MEN* (1961) [hereinafter cited as PELTASON].

town.”⁴ On the other hand, in the towns and outlying areas of Mexico, the locations of the district courts—usually near the bustle of the market plazas—prevent the loneliness that many judges might prefer after abrasive contacts with politics. Moreover, Mexican district judges, unlike their counterparts in the United States, tend to have more intense legal, social, and physical contact with the populace. They not only hear all ordinary civil and criminal cases triable under federal law, but they also must dispose of constitutional grievances.

Located in the federal capital and in forty-one other cities and towns throughout the country, the sixty-three district judges in Mexico decide the vast majority of all citizen complaints concerning official abuses of authority brought under the federal constitution. This is done almost exclusively through their jurisdiction under the all-purpose constitutional writ, the *amparo*.⁵ Mexican district judges are the first to receive petitions attacking the constitutionality of statutes, administrative regulations, and decrees of the President of the Republic.⁶ The broad jurisdiction and diverse remedies available to these judges make possible not only a great deal of judicial intervention in the national political process, but also the consideration and perhaps resolution of national political questions “within the local environments in which they are generated.”⁷ In the vast majority of the cases these judges decide, however, they serve as judicial ombudsmen, interceding on behalf of the common citizen against the daily, almost anonymous abuse and harrassment of these citizens at the hands of officialdom.

Comparative political scientists, historians, lawyers, and other scholars have generally ignored or scanted the political role of national constitutional courts in developing and transitional societies.⁸ This neglect is particularly

4. Grafton, *Lonesomest Man in Town*, COLLIER'S, April 29, 1950, at 20.

5. Meaning “protection,” “refuge,” or “sequestration.” CASSELL'S SPANISH DICTIONARY 61 (1960).

6. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS (Constitution) arts. 103, 104, 107 (Mexico) [hereinafter cited as MEX. CONST.]; LAW OF AMPARO arts. 114(I), 73 (VI).

7. RICHARDSON & VINES, *supra* note 1, at 83.

8. See, e.g., H. ABRAHAM, *THE JUDICIAL PROCESS* 438-52 (1975) [hereinafter cited as ABRAHAM]. Abraham's otherwise excellent fifteen-page bibliography on “comparative constitutional and administrative law” contains barely two dozen titles devoted in whole or in substantial part to the legal systems of Latin America, Africa, the Middle East or southern Asia; still fewer of these are thorough comparative studies.

On the other hand, some scholars, in the United States and elsewhere, have begun to penetrate this void. See, e.g., A. BOZEMAN, *THE FUTURE OF LAW IN A MULTICULTURAL WORLD* (1971); M. CAPPELLETTI, *JUDICIAL REVIEW IN THE CONTEMPORARY WORLD* (1971); Kommers, *The Value of Comparative Constitutional Law*, 9 J. MAR. J. PRAC. & PROC. 685 (1976); Kommers, *Political Impact of Constitutional Courts*, 49 NOTRE DAME LAW. 953 (1974).

lamentable in view of the variety of Latin American legal systems and judicial processes, which in many cases antedate those of the United States and Canada.⁹ Too often, Anglo-American and European scholars assume that the personal style of leadership prevalent in Latin America precludes an independent and libertarian judiciary. It is assumed that no judge can either thwart a course of action to which the regime is committed, or effectively intervene when politically sensitive issues are at stake. In sum, the argument goes, the Latin American judiciary must be a farce.

Though Anglo-American literature seldom refers to the higher courts of Latin America, it even less frequently mentions the functions of the Latin American trial courts. This comes as no surprise to those acquainted with the relative dearth, until recently, of scholarship on the lower federal and state courts of industrialized nations, including the United States.¹⁰

This article attempts to estimate the success of federal district judges in Mexico in protecting the constitutional rights of individual litigants. The comparative reference for evaluating this success is the performance of district court judges in the United States. This format necessitates a preliminary consideration of the role and performance of these trial courts as part of their respective overall constitutional rights systems. Thus, the first section of this article consists of a comparison of the entire *amparo* process and the structure of the Mexican federal judiciary with their United States counterparts. The focus is on the jurisdiction, procedure, and effects of selected remedies at the trial and appellate levels.

Judicial performance in federal constitutional rights cases is comparatively measured and analyzed in the last two sections by two criteria: (1) the

9. A list of textbooks on Latin American politics and government having only a brief mention of courts, key legal factors, and constitutional law would be too numerous to list here. Most of the textbooks reviewed by this writer, some twenty in all, contained scattered references to legal or judicial topics, but no systematic treatment either topically or on a country-by-country basis. *But see* T. BECKER, *COMPARATIVE JUDICIAL POLITICS: THE POLITICAL FUNCTIONINGS OF COURTS* (1970) [hereinafter cited as BECKER]. This is an analysis of the dearth of proper methodology and coverage in the area of comparative judicial processes, with frequent reference to Latin America and developing areas. *See also* K. KARST & K. ROSENN, *LAW AND DEVELOPMENT IN LATIN AMERICA* (1974); Wiarda, *Law and Political Development in Latin America*, 19 *AM. J. COMP. L.* 434 (1971).

10. With respect to United States federal trial and appellate courts, see GOLDMAN & JAHNIGE, *supra* note 2; PELTASON, *supra* note 3; RICHARDSON & VINES, *supra* note 1. I would thus echo the statement of Theodore Becker (only with particular reference to the lower courts) that "what must be measured is the relationship between comparable actions of judicial independence and judicial review over time and across cultures There are definite signs that there is greater exercise in some of those [Latin American] countries than the more pessimistic might lead us to believe." BECKER, *supra* note 9, at 215-16.

extent to which the federal trial courts in each country are accessible to those with complaints against government officials, and (2) how often the judges actually decide in favor of those claims. These twin standards of judicial effectiveness can be partially tested by referring to (1) the litigation rate—the number of filings per 100,000 population; (2) the types of constitutional rights petitions processed through the federal district courts; (3) the socio-economic backgrounds of the petitioners; and (4) the percentage, number, and subject matter of district court decisions against the government. The latter measurement involves plaintiff win-loss ratios in all *amparo* subject matter areas—criminal, civil, labor, and administrative—as compared to equivalent ratios in United States federal habeas corpus and Civil Rights Act proceedings.¹¹ Another variable, procedural economy in the processing of complaints, is discussed as a function of judicial accessibility in sections II and III.

I. The Uniqueness of the Mexican Amparo Writ and Constitutional Rights Remedies in the United States: Jurisdiction, Procedure, and Effects

A. The Mexican Court System

Mexico, like the United States, has a two-tiered judicial system. The federal courts hear cases arising under the Constitution, statutes, and treaties of the nation, while state tribunals entertain cases and controversies involving local law and constitutional provisions.¹² Both constitutions also enunciate essentially the same criteria of eligibility for federal judicial review: cases involving foreign diplomats, the federal government and its subdivisions, citizens from different states¹³ and foreign nations, and governments of different states as parties to the litigation.¹⁴

In civil law disputes the Mexican federal trial courts share jurisdiction with state tribunals. Article 104(I) of the Mexican Constitution grants concurrent review in cases involving enforcement of federal statutes and international treaties affecting the legal interests of private persons. Questions of constitutional rights are brought almost exclusively under the *amparo* writ.

11. By Civil Rights Act proceedings, I refer to those actions brought under 42 U.S.C. § 1983 (1970).

12. U.S. CONST. art. III; MEX. CONST., *supra* note 6, art. 104.

13. The United States further limits federal jurisdiction in most civil actions between citizens of different states to cases where the amount in controversy is more than \$10,000. 28 U.S.C. § 1332 (1970).

14. U.S. CONST. art. III; MEX. CONST., *supra* note 6, art. 104.

Thus, a separate appellate process to handle *amparo* cases has developed out of the federal judicial monopoly over such proceedings. At the base of this hierarchy are the sixty-three federal district courts possessing original jurisdiction over ordinary controversies involving federal law as well as violations of constitutional rights challenged through the indirect *amparo*. In the latter case, the petitioner may appeal unfavorable district court judgments either to one of the seventeen collegiate circuit courts throughout the major cities of the nation, or to the appropriate five-member chamber of the Supreme Court; that is, to the penal, administrative, civil, or labor chamber. Those failing to win the ordinary appeal available in the state or federal judicial systems may bring a direct *amparo* to either of the two *amparo* appellate courts just mentioned. The jurisdictional dividing line between the collegiate tribunals and the Supreme Court is determined by criteria contained in the 1968 *amparo* reforms, such as the type and length of sentence (criminal cases), amounts in controversy (civil and administrative cases), the degree of "public" or "collective" interest at stake (administrative, civil, and labor cases) and whether the offending official or agency is federal or state (all four subject matter areas). The Supreme Court as a whole (plenary Supreme Court) meets once a week to decide on "constitutionality *amparos*."

The unitary circuit courts, on the other hand, exist exclusively for handling appeals from judgments of the district courts in ordinary civil and criminal controversies involving federal regulations and statutes. There are ten such circuit courts, and like the collegiate circuit tribunals they are strategically located in major cities throughout the country.

B. General Characteristics of the Amparo Writ

The all-purpose writ of *amparo* is widely regarded by Mexicans and foreign legal scholars as Mexico's most effective deterrent to abuse at all levels of government. Issuance of the writ is the exclusive province of the federal judiciary with the exception of certain emergency situations in which a state judge may be called on a temporary and very limited basis.¹⁵

First adopted by the national Congress in 1849, the *amparo* has antecedents in both the civil codes of the Roman Empire, France, and Spain, and the Anglo-American common law injunction and writs of habeas corpus and certiorari.¹⁶ At the turn of the century, in fact, a great debate raged

15. LAW OF AMPARO arts. 38-40, 144; H. FIX ZAMUDIO, EL JUICIO DE AMPARO 386 (1964) [hereinafter cited as ZAMUDIO, EL JUICIO DE AMPARO].

16. See I. BURGOA, EL JUICIO DE AMPARO 41-92 (6th ed. 1968) [hereinafter cited as BURGOA]; Speech by Margain, *Antecedentes Historicos de la Libertad Constitu-*

between renowned *amparo* scholars Ignacio Vallarta and Emilio Rabasa over the degree to which the writ of habeas corpus in the United States inspired the authority of the *amparo* to challenge inexact applications of statutory law by judges.¹⁷ The *amparo* has become the primary instrument for attacking unconstitutional official acts and laws at both the federal and state levels. Its modern scope is spelled out in the detailed provisions of the Mexican Constitution,¹⁸ the *Law of Amparo*, and the *Organic Law of the Federal Judiciary*.

The *amparo* operates formally to protect the individual and social rights guaranteed by the first twenty-nine articles of the Mexican Constitution, the "Bill of Rights."¹⁹ But because of modern statutory and judicial interpretations of articles fourteen and sixteen of the constitution, the writ may extend to violations of other constitutional limits on governmental activity as well. Article fourteen permits district courts to enjoin officials who fail to follow essential formalities of procedure and statutes issued prior to the controversy.²⁰ Article sixteen requires officials to demonstrate the competency of their authority and the legal basis and justification for the action taken.²¹ These requirements are similar to the expansion of federal judicial power in the United States under the due process clauses of the Fifth and Fourteenth Amendments and the equal protection clause of the latter.²²

Mexican and Anglo-American scholars see few formal limits on the reach of the *amparo* because of the incorporation effect of articles fourteen and sixteen.²³ For example, should the Mexican Congress enact a tax not

cional Mexicana, delivered at San Antonio, Texas (November 16, 1966) (available from Mexican Embassy, Washington, D.C.).

17. Judge Vallarta contended that the "Great Writ," habeas corpus, was the primary basis for expanding and centralizing judicial power in England and the United States. I. VALLARTA, *EL JUICIO DE AMPARO Y EL WRIT OF HABEAS CORPUS* 1 (1881). Rabasa rejected this argument as historically inaccurate in that the centralizing instrument of the Marshall Court was the writ of error, not habeas corpus. E. RABASA, *EL JUICIO CONSTITUCIONAL* 260-63 (1955) [hereinafter cited as RABASA].

18. MEX. CONST., *supra* note 6, arts. 103, 107.

19. See *LAW OF AMPARO* arts. 1, 4.

20. MEX. CONST., *supra* note 6, art. 14.

21. MEX. CONST., *supra* note 6, art. 16.

22. See, e.g., E. CORWIN, *LIBERTY AGAINST GOVERNMENT* 127 (1948); McClosky, *Economic Due Process and the Supreme Court: An Exhumation and Reburial*, 1961 SUP. CT. REV. 34.

23. See R. BAKER, *JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT* 19-31 (1971) [hereinafter cited as BAKER]; BURGOA, *supra* note 16, at 166-76; H. SIERRA, *EL AMPARO MEXICANO* 126-28 (1974) [hereinafter cited as SIERRA]; Cabrera & Headrick, *Notes on Judicial Review in Mexico and the United States*, 5 INTER-AMERICAN L. REV. 253 (1963) [hereinafter cited as Cabrera & Headrick]; Zamudio, *Al-*

authorized by article seventy-three of its constitution, the Supreme Court could enjoin collection of that tax through its *amparo* powers. The Court has infrequently but dramatically done precisely that; but more often it has cited article seventy-three in voiding *state* intrusions into taxing powers constitutionally reserved to the Mexican Congress.²⁴

The *amparo* may also be used to curb the acts of administrative tribunals such as the Fiscal Court, the labor boards, police officers, prosecutors, judges, legislatures, and even the President of the Republic. Under articles fourteen and sixteen, they are the "responsible authorities" named by the *amparo* plaintiff and can be held accountable for the incorrect applications of laws as well as for violations of procedural due process.

Laws that by their mere promulgation cause immediate injury likewise may be challenged as constitutionally defective before the Mexican Supreme Court sitting en banc. This is accomplished through a separate proceeding known as the *amparo contra leyes*, or constitutionality *amparo*.²⁵ Parties eligible to bring such actions include individual citizens, juveniles, aliens, labor unions, business corporations, agrarian communities, and, when their "patrimonial" or public employer interests are threatened, certain governmental agencies.²⁶ In contrast to the usual procedure in the United States, plaintiffs incur no filing fees or court costs in initiating *amparo* proceedings.²⁷

The requirement that *amparo* judges must follow the principle of "strict law" when deciding cases reflects Mexico's respect for the European emphasis on the written code. "Strict law" means that a judge must affirm or deny a petition solely on the basis of the statutory or constitutional points raised by parties to the action.²⁸ Appellate judges, however, may review the entire trial record and, if the district judge has mistakenly denied relief on a procedural ground, the points raised in the original pleadings are studied without any formality of repleading.²⁹ The *amparo* exempts a number of litigants and causes of action from the strict law requirement. In cases where the plaintiff is in imminent danger of losing his life, physical well-being, personal liberty, or privacy, the federal judge may grant the Mexican equiv-

gunos aspectos comparativos del derecho de amparo en Mexico y Venezuela, in 2 LIBRO HOMENAJE A LA MEMORIA DE LORENZO HERRERA MENDOZA 334, 344-56 (1970).

24. See BAKER, *supra* note 23, at 124-25 and cases cited therein.

25. See LAW OF AMPARO art. 114(1); BURGOA, *supra* note 16, at 604-05.

26. See LAW OF AMPARO arts. 4-19.

27. MEX CONST., *supra* note 6, art. 17.

28. LAW OF AMPARO art. 79; see BURGOA, *supra* note 16, at 298.

29. LAW OF AMPARO art. 91.

alent of a temporary restraining order or preliminary injunction on the basis of a description of the offending act, the official involved, and the location of the threat.³⁰ Though subject to verification in writing within three days, such preliminary petitions may be communicated orally through a friend or relative.³¹ The law of *amparo* also permits the judge to correct defects in petitions submitted by those he perceives to be unable to hire adequate legal counsel, including defendants in felony cases, individual workers in labor disputes, communal farmers threatened with land seizures, juvenile defendants, and those challenging laws already declared unconstitutional by the Supreme Court.³²

In the United States, of course, there is no direct parallel to the strict law principle in judicial decisionmaking. The Anglo-American judge considers the legal arguments of plaintiffs, respondents, and amici curiae, but is not restricted to the points raised therein in formulating his decision.³³ But petitioners in United States courts confront rules for appeals and extraordinary writs that are more complex and confining than the open procedure allowed in Mexico in emergency and other *amparo* cases.³⁴

Amparo judgments affect only the individual parties to the case without "making any general declaration as to the law or act upon which the complaint is based."³⁵ Thus the relativity of *amparo* decisions contrasts with the rule of stare decisis in United States courts. This aspect of the law of *amparo* demonstrates again how the influence of the European civil law tradition

30. *Id.* art. 117. See also MEX. CONST., *supra* note 6, art. 22.

31. LAW OF AMPARO arts. 117-18.

32. MEX. CONST., *supra* note 6, art. 107(II). For a discussion of the additional exemption of communal farms in the revisions of the *Law of Amparo* in 1963, see I. BURGOA, *EL AMPARO EN MATERIA AGRARIA* 123-25 (1964). In May 1976 the federal Congress consolidated all the special procedural protections for communal farmers in articles 212-34 of the revised *Law of Amparo*.

33. FED. R. CIV. P. 54(c); see C. WRIGHT, *LAW OF FEDERAL COURTS* § 98, at 487 (3d ed. 1976) [hereinafter cited as WRIGHT].

34. See FED. R. CIV. P. 65(a)-(d). See also Krause, *A Lawyer Looks at Writ Writing*, 56 CALIF. L. REV. 371 (1968). One should also consider that "in a study of writs prepared and filed by the inmates of the Florida Division of Corrections without the help of counsel, it was found . . . that every writ in the sample of 170 contained one or more misconceptions of the law." Jacob & Sharma, *Justice after Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 18 KAN. L. REV. 493, 511 (1970).

The in forma pauperis petition available to indigent plaintiffs since the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458 (1938), however, does compare favorably with the *amparo* procedure. Even in cases before the Supreme Court the only significant requirement is an affidavit establishing the petitioner's indigency. SUP. CT. R. 53. See also 28 U.S.C. § 1915 (1970).

35. MEX. CONST., *supra* note 6, art. 107(II).

formally limits judicial decisionmaking in Mexico. "Relativity" means that each person challenging the same abusive official act—or the same plaintiff aggrieved by subsequent acts of the same official—must litigate his claim separately before the *amparo* court.³⁶ The only exception arises when the Supreme Court, either en banc or through one of its four specialized chambers, or a circuit appeals court establishes *jurisprudencia* by handing down five consecutive identical decisions on the same point of law. Such *jurisprudencia* then binds all inferior courts (state and federal), labor mediation boards, and administrative tribunals in a manner similar to the rule of stare decisis.³⁷ Nonjudicial actors in the legal system are not so bound, however, and prospective litigants must still challenge them in original *amparo* proceedings. Similarly, aggrieved citizens not wishing to pursue such a course of action can only hope that hundreds and even thousands of successful *amparo* petitions will force the bureaucrats to change their ways or the legislature to change the laws. This "political barometer" function of the *amparo* does work effectively in certain policy areas.³⁸

Having explored some of the general characteristics of the *amparo* system, it is now necessary to outline the three major forms of the *amparo*: (1) the "direct *amparo*"—used to attack the judgments of other courts, usually after the exhaustion of at least one ordinary appeal; (2) the "indirect *amparo*," which lies against the administrative acts of authorities not finalized in judicial decisions; and (3) the "constitutionality *amparo*," which, as mentioned previously, is the sole method available to invalidate statutes, regulations, or presidential decrees deemed to inflict self-executing harm. Special attention shall be given to the indirect *amparo* because that proceeding is the exclusive concern of the federal district courts, and, more importantly, comprises the vast majority of all *amparo* actions brought in Mexico. The following organizational chart depicts the relationship of the *amparo* process to the jurisdictions of the United States federal judiciary.

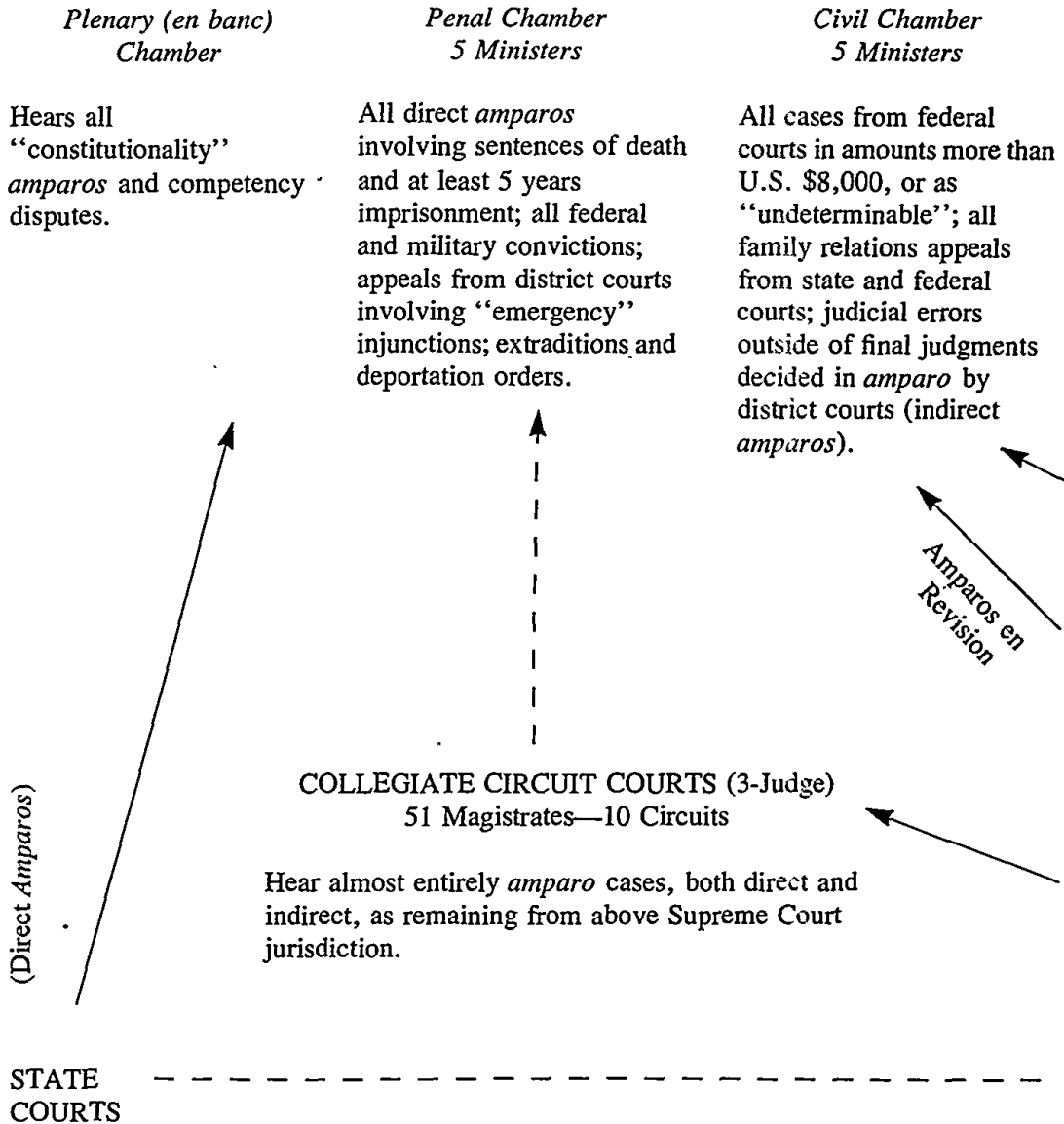
36. See BURGOA, *supra* note 16, at 280-82.

37. LAW OF AMPARO arts. 192-93.

38. See Schwarz, *Judges under the Shadow: Judicial Independence in the United States and Mexico*, 3 CAL. W. INT'L L.J. 260, 302-13 (1973) [hereinafter cited as Schwarz]. The impact of *amparo* litigation on official discretion has been most effective in these policy areas: state and federal taxation of income and real property; military control over pensions, housing, and non-service-connected crimes by soldiers; denials to aliens of professional licenses and due process in certain deportation actions; expropriation of real property for public uses; and government taking of lands under the agrarian reform laws. The latter, in fact, have produced the greatest controversy over the *amparo* decisions of the federal district judges and administrative chamber of the Supreme Court. *Id.* at 296-302.

TABLE I: ORGANIZATION OF MEXICAN FEDERAL COURTS AND THE AMPARO PROCESS

MEXICO SUPREME COURT President—20 ministers



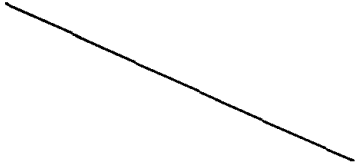
—————→ Direct Appeal
 - - - - -→ Direct Appeal (Infrequently)

Administrative Chamber
5 Ministers

All direct *amparos* wherein amount exceeds U.S. \$40,000 if involving a federal administrative tribunal (e.g., Fiscal Court as a party); absent determinable amount, any "issue of transcending importance for the national interest"; Federal Treasury appeals from Fiscal Court rulings; all agrarian rights complaints as appealed from district courts (indirect *amparos*).

Labor Chamber
5 Ministers

All direct *amparos* involving awards of federal or state mediation boards relating to "collectives" (e.g., unions); all awards of federal boards affecting public employees; indirect *amparos* against board errors outside final awards.



UNITARY CIRCUIT COURTS (Single Judge)
9 Magistrates—8 Circuits

Hears exclusively appeals from ordinary civil and criminal judgments in federal district and territories.



Ordinary
Appeals



FEDERAL DISTRICT COURTS

63 Judges—42 Districts

Hears ordinary civil and criminal cases in federal district and territories and all *amparo* suits (penal, civil, administrative, and labor) except those brought under direct *amparo*.

C. The Direct Amparo and Appellate Remedies in the United States

The direct *amparo* initially is brought before the penal, administrative, civil, or labor chambers of the Mexican Supreme Court (depending on the subject matter of the petition), or the collegiate circuit courts.³⁹ It has become the ultimate remedy for challenging any final judgment of a state or federal appeals court, labor mediation board, or administrative tribunal—most often the highly respected and influential Federal Fiscal Tribunal, or tax court. The ability of the Supreme Court and the collegiate courts to reinforce their judgments through the doctrine of *jurisprudencia* facilitates unity of jurisprudence and judicial centralization.⁴⁰ The direct *amparo* dominates the caseloads of both the Supreme Court and, to a lesser extent, the collegiate courts.⁴¹ The largest single category of such filings in the Supreme Court relates to complaints of those convicted of state and federal crimes.⁴²

The direct *amparo* procedure requires the exhaustion of at least one ordinary appeal, either judicial or administrative, before the challenged judgment can be considered sufficiently final.⁴³ The direct *amparo* is available to litigants as a matter of right.⁴⁴ Grounds for reversal on direct *amparo* are that the challenged court denied the plaintiff due process during the trial or on appeal⁴⁵ or misapplied the substantive law to the facts of the case contrary to article fourteen of the Mexican Constitution.⁴⁶ Thus, the direct *amparo* performs the function of “cassation” in the system. Courts of cassation in the civil law systems of France, Austria, Switzerland, and Germany have the function of “ensuring the uniform interpretation of the law; consequently, although in theory their decisions are not binding on themselves or on lower courts, theirs is the final voice on the meaning to be given to provisions of law throughout the ordinary courts.”⁴⁷ The Mexi-

39. See Table I *supra*.

40. ZAMUDIO, *EL JUICIO DE AMPARO*, *supra* note 15, at 130-31.

41. More than 74% of the Supreme Court's 6,800 new filings and about half of the circuit courts' input of 17,400 petitions during 1973 comprised direct *amparos*. INFORME DEL PRESIDENTE DE LA SUPREMA CORTE DE LA NACION 1973, annexes 9, 11 [hereinafter cited as INFORME . . .].

42. *Id.* annex 11.

43. See MEX. CONST., *supra* note 6, art. 107(III)(a); BURGOA, *supra* note 16, at 284.

44. See BURGOA, *supra* note 16, at 284.

45. In Mexican parlance, errors “in the proceeding.” See MEX. CONST., *supra* note 6, art. 107(III); LAW OF AMPARO art. 158.

46. MEX. CONST., *supra* note 6, art. 107(III); LAW OF AMPARO arts. 158-60; BURGOA, *supra* note 16, at 651-52.

47. J. MERRYMAN, *THE CIVIL LAW TRADITION* 128-29 (1969).

can direct *amparo* court not only reviews alleged due process violations, but concurrently “may transform all mistaken interpretations of state and federal laws into violations of the Constitution.”⁴⁸

The jurisdiction and procedure of United States federal courts resemble the direct *amparo* in that the Supreme Court’s review of direct appeals on federal question grounds from state courts of last resort is one of its largest categories of cases.⁴⁹ The two judicial systems’ methods for reviewing lower court decisions differ strikingly, however.

First, federal courts in the United States, including the Supreme Court, rarely review decisions of state courts that have at least in part relied on their own state constitutions in arriving at a given decision.⁵⁰ In diversity of citizenship cases, the Rules of Decision Act⁵¹ and the Supreme Court’s decision in *Erie Railroad Co. v. Tompkins*⁵² require the federal courts to apply state substantive law. Furthermore, the general anti-injunction statute⁵³ and general principles of federalism ordinarily prohibit federal court intervention in state judicial and administrative proceedings until state remedies are exhausted.⁵⁴ Such respect for the principle of judicial restraint, however, does not apply to civil rights specifically guaranteed by constitutional provisions or federal statutes. In those cases, petitioners are not required to exhaust state remedies before invoking the jurisdiction of federal courts.⁵⁵

48. Cabrera & Headrick, *supra* note 23, at 259.

49. Compare 28 U.S.C. § 1257 (1970) with ORGANIC LAW OF THE FEDERAL JUDICIARY arts. 24-27 (statutory jurisdiction of the four chambers of the Mexican Court on direct *amparo* matters). With regard to caseloads, see *The Supreme Court, 1962 Term*, 77 HARV. L. REV. 62, 90-91 (1963) (the last year when the *Harvard Law Review* specified such data in detail), and recent volumes of the monthly *Seminario Judicial de la Federacion*.

50. See *Williams v. Georgia*, 345 U.S. 375; 399 (1955) (Clark, J., dissenting).

51. 28 U.S.C. § 1652 (1970).

52. 304 U.S. 64 (1938).

53. 28 U.S.C. § 2283 (1970). See generally Kanowitz, *Deciding Federal Law Issues in Civil Proceedings: State Versus Federal Trial Courts*, 3 HASTINGS CONST. L.Q. 141 (1976).

54. Although the abstention doctrine strongly reinforces the exhaustion rule, it nonetheless allows a right of return to the federal court once state remedies have been pursued.” See Annot., 20 L. Ed. 2d 1623, 1659 (1969). The federal doctrine of deferral, on the other hand, requires dismissal for lack of jurisdiction, and “return to federal court could occur in narrowly restricted circumstances only.” Note, *Limiting the Section 1983 Action in the Wake of Monroe v. Pape*, 82 HARV. L. REV. 1486, 1499 (1969).

55. *Zwickler v. Koota*, 390 U.S. 611 (1967); *Dombrowski v. Pfister*, 380 U.S. 479 (1965) (both enjoining state criminal proceedings). See also *Steffel v. Thompson*, 415 U.S. 452 (1974) (issuing a declaratory judgment against a “facially invalid” state criminal trespass law); *Damico v. California*, 389 U.S. 416 (1967); *McNeese v. Board of Educ.*, 373 U.S. 668 (1963).

In Mexico, by contrast, the direct *amparo* grants the federal appellate courts the power of cassation over all matters of substantive law. The important distinction between the two systems is that the federal appellate courts in the United States cannot issue comprehensive "writs of error" in curing substantive law defects of state judgments. Furthermore, the Supreme Court exercises broad discretion with respect to issuing writs of certiorari.⁵⁶ Not even death sentences involving federal questions require review by the United States Supreme Court as a matter of right; conversely, such extreme sentences must be reviewed by the penal chamber of the Mexican Court.⁵⁷

A second major difference between the United States procedure and the direct *amparo* is the power of Anglo-American trial and appellate courts to cure violations of constitutional rights along with strictly legal errors. During pretrial stages, the judge rules on various motions that may involve such issues as unconstitutional search and seizure and the effect of excessive pretrial publicity on a defendant's right to a fair trial. Appellate judges frequently are asked to decide whether proper constitutional procedure has been followed at trial. Moreover, in contrast to Mexican practice, there are multiple state remedies available to litigants under state law including, in most states, review by at least two tiers of appellate courts. Mexicans disappointed with trial judgments ordinarily have only one appeal to the state supreme courts or, in federal cases, to the unitary circuit courts.⁵⁸ Finally, it must be remembered that Anglo-American litigants in state courts may raise both federal and state constitutional questions in conjunction with issues of state substantive law. Such concurrent jurisdiction is prohibited only when the United States is a party to the suit or when Congress grants exclusive jurisdiction to the federal judiciary.⁵⁹ In Mexico, the federal judiciary has exclusive control over the *amparo*.

Third, the United States Supreme Court frequently hears cases on certiorari from the federal courts of appeals, whereas the Mexican Supreme Court rarely reviews judgments of the collegiate circuit courts.⁶⁰ This

56. SUP. CT. R. 19.

57. The penal chamber must review by direct *amparo* all capital sentences and all sentences resulting in five or more years of incarceration. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 24(III).

58. See Table I *supra*.

59. See 28 U.S.C. § 1333 (1970) (admiralty jurisdiction); *id.* § 1334 (bankruptcy); *id.* § 1338 (patents); *id.* § 1345 (government as plaintiff); *id.* § 1346 (government as defendant) (1970).

60. During the 1962-1963 term, the last year for which data is available in the *Harvard Law Review* on the sources of cases disposed of by the Supreme Court, more than 40% of the high Court's appellate caseload came from challenges to courts of appeals decisions. *The Supreme Court, 1962 Term*, 77 HARV. L. REV. 1, 90-91 (1963). In

bottleneck function of the collegiate courts in Mexico is attributable to the legislative intent behind the 1968 *amparo* reforms, which apparently was to bifurcate the jurisdiction of the two highest court levels and thus reduce the flood of less important *amparo* cases reaching the Supreme Court.

Fourth, appellate review of the actions of administrative tribunals in the United States is more cumbersome than under the direct *amparo* proceeding. In the United States there are agencies and specialized courts with powers comparable to the Mexican Boards of Conciliation and Arbitration and the Federal Fiscal Tribunal. These include the National Labor Relations Board, the federal Tax Court, and the so-called independent regulatory agencies established with special quasi-judicial and rule-making authority, such as the Federal Trade Commission. In contrast to Mexican *amparo* procedure, regulations promulgated by administrative tribunals are attacked first in federal district courts,⁶¹ or the courts of appeals,⁶² depending on the agency named as defendant in the case. If defeated in these lower courts, the United States litigant then must seek discretionary review by the Supreme Court. Appealing decisions of administrative tribunals to the federal courts involves a route more closely resembling the procedure of the Mexican indirect *amparo*.

D. Constitutionality Amparos and Judicial Review in the United States

The constitutionality *amparo* is the only Mexican judicial vehicle for directly questioning the inherent constitutionality of statutes, executive regulations, or presidential decrees. It most closely approximates the United States remedies of declaratory judgment and injunctive relief because it permits the plaintiff to clarify his constitutional rights before a statute may be enforced against him.⁶³ In Mexico, those statutes or regulations vulnera-

Mexico a decision of the circuit court cannot be reviewed unless a "constitutionality" question is involved that has no applicable *jurisprudencia* defined by the Supreme Court en banc. Even here the constitutionality issue must have been raised through a direct *amparo* complaint, which is extremely rare. See Ramírez, *La reforma de 1968 en materia administrativa, al poder judicial de la federación*, 10 EL FORO 55, 67 (1968) [hereinafter cited as Ramírez]. See also LAW OF AMPARO arts. 83(V), 84(II).

61. See, e.g., 5 U.S.C. § 703 (1970).

62. See, e.g., 28 U.S.C. § 2342(1) (Supp. V 1975).

63. See 28 U.S.C. §§2201-02 (1970). The Supreme Court has given varying interpretations of the Declaratory Judgment Act. In one case, it stated: "[T]he Declaratory Judgment Act . . . 'is an enabling act, which confers a discretion on the court rather than an absolute right for the litigant' . . . [Thus] if we are to avoid rendering a series of advisory opinions, adjudication of the reach and constitutionality [of the statute] must await a concrete fact situation." *Zemel v. Rusk*, 381 U.S. 1, 19-20 (1965). On the other hand, nine years later the Court declared: "That Congress plainly intended declaratory relief to act as an alternative to the strong medicine of the injunction and to be utilized to

ble to the constitutionality *amparo* are called self-executing, because by their promulgation they require immediate and possibly harmful compliance with their rules.⁶⁴ This self-executing concept finds more subtle expression in United States cases where the devices of habeas corpus, injunction, declaratory judgment, and removal to federal courts are used to thwart enforcement of statutes that by their very terms threaten the free exercise of a specific constitutional or statutory civil right.⁶⁵ Both removal and injunction, however, are tied to the manner of enforcement or prosecution under the statute.⁶⁶

Like the indirect *amparo* against illegal actions, cases involving the constitutionality *amparo* are filed first in district court. Unlike other *amparos*, however, the plenary Supreme Court has exclusive appellate jurisdiction over constitutionality *amparos*.⁶⁷ This means that if, for example, the

test the constitutionality of state criminal statutes in cases where injunctive relief would be unavailable is amply evidenced by the legislative history of the [Declaratory Judgment Act] 'A state statute may be declared unconstitutional *in toto*—that is, incapable of having constitutional applications If a declaration of total unconstitutionality is affirmed by this Court, it follows that this Court stands ready to reverse any conviction under the statute.' ” *Steffel v. Thompson*, 415 U.S. 452, 466, 469-70 (1974) (quoting *Perez v. Ledesma*, 401 U.S. 82, 124-25 (1971) (Brennan, J., concurring in part and dissenting in part)).

64. LAW OF AMPARO art. 114(I); BURGOA, *supra* note 16, at 604-05. The constitutionality thus vindicates the theory of the eminent scholar on the writ, Emilio Rabasa, who stated that if a law “personified” itself in an immediate and thus concrete injury, it became subject to *amparo* review. His classic example was the unconstitutionally derived death sentence: “Until the sentence is carried out, no act is required other than that of the execution itself, nor would any violation be committed but by the platoon shooting the defendant.” RABASA, *supra* note 7, at 288.

65. See 28 U.S.C. §§ 1442-43 (1970) (federal removal petition); *id.* §§ 2201-02 (declaratory judgment); 42 U.S.C. § 1983 (1970) (the general injunction statute for civil rights cases); 28 U.S.C. §§ 2241-54 (1970) (federal habeas corpus). All of these devices have had an active recent history in the area of civil rights litigation. For such use of the federal injunction statute, see cases cited in note 55 *supra*; Comment, *Federal Removal and Injunction to Protect Political Expression and Racial Equality: A Proposed Change*, 57 CALIF. L. REV. 694 (1969).

66. Regarding the federal injunction, the Supreme Court in recent years has required that there be bad faith prosecution under statutes unclear in their meaning and thus “chilling” of particular federal rights. See *Younger v. Harris*, 401 U.S. 37 (1971); *Cameron v. Johnson*, 390 U.S. 611 (1968). The Court has required deference to state tribunals when, barring a clear showing of harassment and bad faith, state prosecutions or proceedings are pending. *Hicks v. Miranda*, 422 U.S. 332 (1975); *Younger v. Harris*, 401 U.S. 37 (1971).

Removal of state criminal prosecutions under section 1443 of title 28 is available only in “the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.” *City of Greenwood v. Peacock*, 384 U.S. 808, 828 (1966). See WRIGHT, *supra* note 33, § 38, at 151.

67. ORGANIC LAW OF THE FEDERAL JUDICIARY art. 11(IV bis, a).

amparo petition presents a grievance against the allegedly illegal enforcement of a business licensing law as well as one against the discriminatory provisions of the law itself, the trial judge transfers the whole matter to the plenary Court. All twenty-one ministers of the Court must then decide on the validity of the law itself, before remanding the case to the trial court for an interpretation of the statute or its execution.⁶⁸

The constitutionality *amparo* has two procedural advantages over the means of judicially testing the constitutionality of a statute used in the United States. First, the plaintiff need not exhaust his ordinary administrative or judicial remedies beforehand; in fact, if he does, he is considered to have tacitly consented to the offending law.⁶⁹ At that point, he can challenge only the means used to administer the law rather than the law itself.⁷⁰ Second, the constitutionality *amparo* proceeding is theoretically rapid. It allows the Supreme Court to decide the fundamental question of constitutionality en banc, or to remand the case to the appropriate chamber or circuit court. It further permits the district court to waive the strict law and fifteen day filing limits required for other *amparo* petitions.⁷¹

On the other hand, the *amparo* procedure in practice obstructs both speedy and flexible constitutional interpretation because it forces the Supreme Court to validate or invalidate the entire statute before considering whether there has been faulty application of the law. Further, fourteen of the twenty-one ministers of the Court must hand down five identical consecutive decisions to establish *jurisprudencia* regarding the challenged law.⁷² This exacerbates the inherent disorganization of the Mexican Supreme Court that is caused by its division into four chambers dealing with highly disparate subject matter whose members demonstrate little formal interaction.⁷³

The result of this jurisdiction and procedure is that the constitutionality *amparo* is an awkward and rarely successful remedy. One minister could remember only six *jurisprudencial* declarations invalidating laws, regulations, or decrees out of more than a thousand *amparo* petitions processed during the period from 1958 to 1966.⁷⁴ The Mexican Congress enacted the

68. LAW OF AMPARO art. 92.

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

70. The 1968 reforms liberalized this requirement by providing that a petitioner can still attack a statute even after asserting his rights through an administrative or judicial appeal as long as he brings the first action within fifteen days of the enforcement notice and the constitutionality *amparo* within thirty days after the failure of that recourse. LAW OF AMPARO arts. 22(I), 73(XII).

71. See text accompanying notes 28-31 *supra*, for discussion of the strict law principle.

72. LAW OF AMPARO art. 192.

73. Schwarz, *supra* note 38, at 314.

74. Ramírez, *supra* note 60, at 68; see INFORME . . . 1958-1966, *supra* note 41, annexes 11.

constitutionality *amparo* in order to limit the growing independence of the administrative chamber, particularly in tax, licensing, and agrarian law cases.⁷⁵ In responding to the great backlog in the plenary Court's docket created by this reform, however, the Congress in 1968 expressly permitted each of the four chambers to apply existing *jurisprudencia* of the plenary Court to all types of *amparos* coming before them.⁷⁶ The average delay before the plenary Court is the longest of any chamber of the Court. A survey of fifty-seven decisions in 1968 revealed that the average plaintiff waited more than six years from the date of filing in the plenary Court until final judgment.⁷⁷ Twelve cases had languished eleven or more years before a decision was eventually handed down.⁷⁸

In the United States courts, by contrast, issues of the highest constitutional significance can be raised and resolved in connection with relatively minor cases.⁷⁹ Moreover, such a mixture of legal and constitutional claims may be decided by state as well as federal courts. State and federal courts in the United States also demonstrate great creativity in narrowing constitutionally offensive statutes to avoid nullifying them completely.⁸⁰ Finally, United States Supreme Court invalidation of a law carries with it an *ergo omnes* effect, at least as that law becomes unenforceable through the operation of *stare decisis*.

The advantage of the Mexican Court's clarification of precedent through the procedure of *jurisprudencia* is more than offset by the disadvantages of the relative rarity with which it is invoked, and the necessity for each litigant separately to attack laws already declared unconstitutional. The political results of the two countries' methods of review are strikingly different. Compared to only six Mexican instances of abrogation through *jurisprudencia* during the period 1958 to 1966, the United States Supreme Court struck down twelve acts of Congress during the brief period of 1969 to 1974.⁸¹

75. See Schwarz, *supra* note 38, at 260.

76. LAW OF AMPARO arts. 192-93.

77. See INFORME . . . 1968, *supra* note 41, annex 10 (plenary).

78. *Id.*

79. *E.g.*, Thompson v. City of Louisville, 362 U.S. 199 (1960) (criminal due process complaint involving a fine of ten dollars); see ABRAHAM, *supra* note 8, at 176-77.

80. This point is amply illustrated in the frequent adherence to the famous "Ashwander Rules." Ashwander v. T.V.A., 297 U.S. 288, 346 (1936) (Brandeis, J., concurring). For an example of tortuous reasoning to save the statute as well as the plaintiff, see Welsh v. United States, 398 U.S. 333 (1970) (regarding a provision of the Selective Service Act defining "conscientious objectors").

81. ABRAHAM, *supra* note 8, at 279-93.

E. The Indirect Amparo, Parallel Remedies in the United States and the Primary Role of the Federal District Courts

The indirect *amparo* petition is brought before a federal district judge, usually the one closest to where the alleged violation occurred. There were more than 63,600 district court rulings on indirect *amparo* petitions in 1974, comprising seventy-eight percent of all *amparo* decisions by the federal judiciary during that year.⁸² The volume of indirect *amparo* decisions and that of direct *amparo* rulings have increased at similar rates—more than twenty percent since 1968—compared to a twenty-four percent increase in the number of cases terminated in the Mexican Supreme Court and collegiate circuit courts.⁸³ Filings increased proportionately, indicating that the district judges continue to serve as the first line of defense for controlling official abuse in the cities and countryside.⁸⁴

Federal district courts in both the United States and Mexico are the general courts of original jurisdiction⁸⁵ and theirs is the final word for the vast majority of litigants. Relatively few cases are appealed to the next highest tier in the federal judiciary in either country. This holds true for both constitutional rights cases and civil and criminal cases brought under federal statutes.⁸⁶ Even fewer district court judgments are reversed on appeal. In 1973, for example, the United States courts of appeals reversed trial decisions in only twelve and one-half percent of the criminal cases before them and twenty-one percent of the civil cases.⁸⁷ A typical Mexican circuit court, observed in 1972, exhibited a more critical attitude toward *amparo* judgments of the district judges, but still reversed in less than twenty-five percent of the cases.⁸⁸

The indirect *amparo* is, in fact, a narrowly confined and frequently

82. INFORME . . . 1974, *supra* note 41, annexes 1, 2, 10-11. These figures exclude "competency" disputes and complaints about the enforcement of *amparo* judgments and executive decrees as well as other non-*amparo* dispositions.

83. *Id.*

84. See text accompanying notes 117-30 *infra*, for an analysis of accessibility as compared to United States district courts.

85. See WRIGHT, *supra* note 33, § 2, at 7.

86. While 143,832 criminal and civil cases of all kinds were terminated in the United States district courts between 1971 and 1972, in only 12,379 was an appeal filed in the courts of appeals. M. HINDELANG, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 296, 314 (1973). During 1974, the Mexican district courts decided 62,600 *amparos*, while only 8,000 appeals from such judgments were filed in the circuit courts (7,000) and Supreme Court (1,000). See INFORME . . . 1974, *supra* note 41, annexes 9, 11.

87. ANNUAL REPORT, ADMINISTRATIVE OFFICE, UNITED STATES COURTS 301 (1973).

88. See Schwarz, *supra* note 38, at 326-27.

unsuccessful method for correcting all forms of judicial error in comparison to the system of extraordinary writs and statutory remedies available in United States district courts. It can lie against acts of judges and members of labor boards and administrative tribunals only when the judicial officer has (1) committed an abuse outside of the trial or hearing, such as issuance of an unfounded arrest warrant or confinement order; (2) irreparably damaged the *amparo* plaintiff's opportunity to defend his interests, such as by denial of an opportunity to appeal in either criminal or civil cases "for lack of an expressed injury"; or (3) decided a civil, labor, or administrative case against a third party who was absent during the proceeding.⁸⁹

In the United States a litigant aggrieved by the arbitrary actions of a judge before the trial or appeal is completed has a number of alternative means of relief, both in state and federal courts. He may petition for a writ of mandamus (*e.g.*, to initiate a speedy trial when a prior demand to do so has not been met⁹⁰); a writ of prohibition (*e.g.*, to prevent a trial that threatens the defendant with double jeopardy⁹¹); habeas corpus (*e.g.*, to challenge an allegedly involuntary plea of guilty⁹²); or a writ of error coram nobis (to correct erroneous sentences in the sentencing court⁹³). Or he may seek removal from a state trial court to a federal district court (*e.g.*, when petitioner is "denied or cannot enforce in the courts of such a state a right under any law providing for the equal civil rights of citizens of the United States").⁹⁴

It is in regard to abuses by public administrators and police that the

89. LAW OF AMPARO art. 114(III-V).

90. *Fowler v. Hunter*, 114 F.2d 668 (10th Cir. 1947), *cert. denied*, 333 U.S. 868 (1948).

91. *Paulson v. Superior Court*, 58 Cal. 2d 1, 372 P.2d 641, 22 Cal. Rptr. 649 (1962).

92. *Sessions v. Wilson*, 372 F.2d 366, 369 (9th Cir. 1966). *See generally* 28 U.S.C. §§ 2241-55 (1970). It should be noted that the scope and extent of habeas corpus proceedings have been undercut by certain recent decisions. For example, decisions by the Warren Court had significantly expanded the discretion of federal district court judges to entertain collateral attacks on prior state and federal judgments. *See, e.g.*, *Kauffman v. United States*, 394 U.S. 217 (1969); *Townsend v. Sain*, 372 U.S. 293 (1963). A recent opinion by the United States Supreme Court, however, held that "where the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 482 (1976). Thus at least in petitions brought under 28 U.S.C. § 2234 (1970), alleging state violations of the exclusionary rules of evidence, the Court may have placed significant limits on the power of intervention by federal district court judges similar to those extant in the indirect *amparo* system.

93. *Sanders v. United States*, 373 U.S. 1 (1963). *See* 28 U.S.C. § 2255 (1970).

94. 28 U.S.C. § 1443(1) (1970). *See Georgia v. Rachel*, 384 U.S. 780 (1966).

indirect *amparo* offers the most viable remedy to an aggrieved party. Here the *amparo* possesses a number of attractive jurisdictional and procedural features. A litigant threatened with imminent danger has available to him a simple, speedy, and effective procedure. Imminent dangers are probable injuries to a detained person's personal liberty, privacy, and physical well-being. The most serious of these dangers, according to the law of *amparo* and Supreme Court *jurisprudencia*, involve official acts threatening unlawful deportation, capital punishment, and other abuses prohibited by article twenty-two of the Constitution (*e.g.*, flogging, beating, torture). Less acute emergencies may arise when the judge, jailer, policeman, or mayor violates any of the individual rights guaranteed under articles sixteen (unwarranted searches and seizures), nineteen (formal orders of confinement, based on specific facts and charges, and freedom from mistreatment under detention), and twenty. Article twenty covers a host of pretrial and trial guarantees, including guarantees of arraignment, speedy trial, and adequate counsel. One of the most frequent complaints against the criminal justice system in Mexico concerns local detentions for more than three days without formal arraignment or confinement orders.⁹⁵

The *amparo* judge's first act on hearing such complaints may be to order the offending practice temporarily suspended,⁹⁶ and to call for the responsible authority to answer to the complaint within twenty-four hours of notification. He then will order a constitutional hearing at which plaintiffs, responsible authorities, and third parties can submit further responses, amendments, or depositions.⁹⁷ During this full hearing, oral testimony is limited to one half hour for each party and witness.⁹⁸ These emergency cases and those involving communal agrarian land claims are the only *amparo* proceedings wherein oral testimony or arguments at the bar are expressly granted. Thus far the Mexican indirect *amparo* proceedings resemble those required prior to the issuance of a temporary restraining order in the United States. These proceedings produce no decision on the merits. The challenged conduct is at most suspended until facts are produced to support the same judge's modification, revocation, or permanent extension of the origi-

95. This is popularly known as the *sabatazo*, or "weekend bust," enabling the jailers to hold persons *incommunicado* and extract payments until the judges' offices open the following week.

96. The *suspensión de oficio* is particularly responsive to the imminent dangers cited above because it enjoins the official action on the barest of preliminary information from the plaintiff. LAW OF AMPARO arts. 123-24. See SIERRA, *supra* note 23, at 494-504.

97. LAW OF AMPARO art. 131.

98. *Id.* art. 78.

nal order.⁹⁹ If the judge then applies the *amparo*'s protection through a "final suspension," the responsible agency must cease the abusive action within twenty-four hours of notice.¹⁰⁰ At the initiative of the trial judge, the Supreme Court may remove from office and punish any official failing to comply with final *amparo* decisions.¹⁰¹

The final suspension by the *amparo* judge, subject to appeal, combines the effects of several extraordinary writs and other remedies in United States courts. These include (1) the permanent, mandatory, or preliminary injunction;¹⁰² (2) the writ of mandamus, used "to compel performance of [un]performed 'legal duty' ";¹⁰³ (3) the writ of habeas corpus, used "to give a person whose liberty is restrained an immediate hearing to . . . determine the legality of the detention";¹⁰⁴ (4) the writ of prohibition, which prevents a threatened exercise of judicial power in excess of the jurisdiction of a tribunal, corporation, board, or person exercising judicial functions;¹⁰⁵ (5) the declaratory judgment, providing "a speedy remedy, in cases of actual controversy, for determining issues and adjudicating legal rights, duties, or status of the respective parties, before . . . the invasion of rights and commission of wrongs";¹⁰⁶ and (6) the ancient writ of quo warranto, by which the holder of a franchise or office can be ousted if his claim to that office is without legal foundation.¹⁰⁷

Essentially the same scope, procedures, and effects of the indirect *amparo* would obtain where a ministerial or other administrative act in a

99. See FED. R. CIV. P. 65 (b), (d) (temporary restraining order); BURGOA, *supra* note 16, at 511.

100. LAW OF AMPARO art. 105.

101. *Id.* art 108; *Compilación de la jurisprudencia de la Suprema Corte*, 1917-1965, in 105 MARTERIA GENERAL THESES 207 (1966).

102. See FED. R. CIV. P. 65; 43 C.J.S. *Injunctions* §§ 1-5 (1945). The preliminary injunction, like the indirect *amparo*'s final suspension, is subject to immediate appeal, but it is reviewed in a final hearing by the issuing court, in contrast to the *amparo* suspension, which is appealable as a matter of right to either the Supreme or circuit courts. LAW OF AMPARO art. 86.

103. 14 C.J.S. *Certiorari* § 4(d) (1939); see *Maine v. Superior Court*, 68 Cal. 2d 375, 438 P.2d 372, 66 Cal. Rptr. 724 (1968).

104. 39 C.J.S. *Habeas Corpus* § 2 (1976); see *Fay v. Noia*, 372 U.S. 391 (1963).

105. See *Aronoff v. Franci-hise Tax Bd.*, 60 Cal. 2d 177, 383 P.2d 409, 32 Cal. Rptr. 1 (1963); CAL. CIV. PROC. CODE § 1102 (West 1973).

106. 26 C.J.S. *Declaratory Judgments* § 8 (1956). See also 28 U.S.C. §§ 2201-02 (1970) and CAL. CIV. PROC. CODE § 1094.5 (West 1973) for parallels between the "constitutionality *amparo*" and declaratory judgment.

107. 74 C.J.S. *Quo Warranto* § 1 (1951); see *Bohannon v. Arizona ex. rel. Smith*, 389 U.S. 1 (1968). Such a removal sanction might be compared to the process under article 108 of the Law of Amparo and the Mexican federal penal code directed against an official found in consistent noncompliance with *amparo* judgments.

noncriminal matter is brought under attack. It is in this context that the *amparo* offers the most apparent advantage over judicial remedies and processes in the United States.

The Mexican federal judiciary, beginning with the district judges, possesses sweeping power to review administrative acts that are either in excess of the agency's statutory jurisdiction or are simply arbitrary. It may do so through the uniform, familiar, and relatively simple procedure of the indirect *amparo*. Article fourteen's mandate of legality in official decision making, so important to the broad reach of the direct *amparo*, is also supportive here:

No law shall be given retroactive effect to the detriment of any person. No person shall be deprived of life, liberty, possessions, or rights without a trial by a duly created court in which the essential formalities of procedure are observed and in accordance with laws issued prior to the act.¹⁰⁸

The *Law of Amparo* specifically permits indirect *amparo* actions against proceedings following the form of a trial; thus the legality principle of article fourteen may apply to administrative agencies that are statutorily empowered to carry out an adjudicative function exercised through an established hearing procedure.¹⁰⁹ Through this device, the administrator can be held accountable for violating the rules and procedures of his own governing statute.¹¹⁰

Article sixteen of the Mexican Constitution provides an even broader basis of judicial scrutiny because, by its terms, the agency is required not only to defend its statutory jurisdiction but also to state its reasons for applying a particular statute or regulation in search and seizure cases. Administrative acts violating judicial standards of fairness and due process may be enjoined even where the governing statute requires no specific hearing procedure.¹¹¹ This is another major reason why plaintiffs need not exhaust

108. MEX. CONST., *supra* note 6, art. 14.

109. In California such "adjudicatory" actions, *e.g.*, denial of a professional license by the Board of Medical Examiners, are singularly enjoinable through an all-purpose writ called the administrative mandamus. *See* CAL. CIV. PROC. CODE § 1094.5 (West Cum. Supp. 1977). *See generally* CALIFORNIA ADMINISTRATIVE MANDAMUS (California Continuing Education of the Bar, No. 31, 1967); E. FRANK, CALIFORNIA CIVIL WRITS 24-27 (California Continuing Education of the Bar, No. 47, 1970).

110. *See, e.g.*, The Dietine Co., 106 *Semanario 6a epoca*, 3a parte, 54 (Administrative) (April 13, 1966), in which the Mexican Supreme Court's administrative chamber upheld a final suspension against the "excessive" discretion exercised by an official who voided a trademark without a hearing and without the authorization of the Secretary of Industrial Property.

111. MEX. CONST., *supra* note 6, art. 107(IV); Antonio García Michel, 108 *Semanario 6a época*, 3a parte, 99 (Administrative) (June 13, 1966).

certain administrative remedies before bringing their complaints to a federal district judge.¹¹²

In summary, perhaps the major advantage of the indirect *amparo* over existing judicial remedies for administrative abuses in the United States is that it affords an easier method for challenging unfairness committed in a perfectly lawful manner. The judge in an indirect *amparo* proceeding does not, in theory, defer to rules of substantial evidence, administrative discretion, informal official deliberation, or conclusive presumptions of the agency when the petitioner has been neither informed about the charges against him nor allowed free access to the decisional process before a final and potentially injurious determination is made.¹¹³ Through the indirect *amparo*, the aggrieved party may halt or void proceedings effectively leaving him without a defense, and compel the production or airing of evidence material to his case.

II. The Mexican Amparo and Constitutional Rights Remedies in the United States Evaluated: Accessibility of the Federal District Courts

The best features of the *amparo* system, as compared to federal constitutional rights remedies in the United States, are its procedural economy and accessibility. This is particularly true of the indirect *amparo* in Mexican federal district courts.

Accessibility to the courts is encouraged by certain procedural aspects of the indirect *amparo* already discussed: the imminent danger concept of legal injury, the numerous but clearly stated exceptions to the exhaustion of remedies rule in administrative law cases, and the simplicity of the *amparo* hearing. There are other reasons why the indirect *amparo* is widely perceived as creating judicial ombudsmen in the cities and countryside.¹¹⁴ These include the absence of formal filing fees and court costs, the standing

112. For the Mexican version of the exhaustion requirement, and exceptions thereto, as compared to both federal and California applications, see 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).

113. For a general discussion of the rules governing federal judicial review of decisions by administrative agencies in the United States, see M. SHAPIRO, *THE SUPREME COURT AND THE ADMINISTRATIVE AGENCIES* 116-31 (1968).

114. For a brief comparison of the *amparo* generally with the ombudsman-citizen grievance agency concept, see Schwarz, *Mexican Writ of Amparo: Extraordinary Remedy against Official Abuse of Individual Rights: I*, 10 PUB. AFF. REP. 1-2 (1969).

accorded to aliens and juveniles, the ability of the federal judge unilaterally to correct deficiencies of a complaint, the opportunity for the parties to avoid technical prerequisites such as the fifteen-day filing deadline and the need to renew petitions within three hundred days after filing, and the availability of federal public defenders in *amparo* cases arising from criminal prosecutions.

But what makes the *amparo* process truly accessible is its familiarity to the people throughout Mexico. As one attorney practicing in Guanajuato stated:

Why do I think the majority of our people are careful to be informed about their constitutional guarantees and the *amparo*? It is this: A man in a state of nature looks for a cave; a sick man seeks a doctor and medicine, and in the political world man looks for someone to protect him. That "someone" in Mexico is the federal judge and the remedy of *amparo*.¹¹⁵

In a recent comparative study of litigation rates in three countries, Professors Grossman and Sarat reminded us that American courts "may, in a sense, invite litigation by the way they handle certain kinds of issues, but they must await the development of real 'cases and controversies'; and, more importantly, they must await private choices which may or may not bring these cases and controversies to court."¹¹⁶ These authors go on to speculate that "sheer accessibility of courts in a physical and psychological sense is an important determinant of litigation."¹¹⁷ They attempt to explain why the litigation rate in the federal courts of the United States (number of cases filed in the federal district courts per 100,000 population) has increased at a steady rate, but has fluctuated widely from region to region in a way that could not be positively correlated with the socio-economic development of the various states. For our purposes, their most important finding was the spectacular increase in the federal litigation rates of civil cases from 29.1 cases to 43.9 per 100,000 between 1962 and 1972.¹¹⁸ By contrast, studies of Spain and England showed that in both countries the litigation rate increased in the early stages of their development, but that with industrial maturity the litigation rate levels decreased even though the number of legal transactions may have continued to increase dramatically.¹¹⁹

Mexico's litigation rate in *amparo* filings before the federal district courts resembles the recent United States experience far more than it does that of Spain or England. But that rate differs from the United States litigation rates in its modest yet consistent rate of increase. Compared to the total

115. Interview with Lic. Pastor Yañez Pérez (July 23, 1968).

116. Grossman & Sarat, *Litigation in the Federal Courts: A Comparative Perspective*, 9 L. & SOC. REV. 321 (1975) [hereinafter cited as Grossman & Sarat].

117. *Id.* at 344.

118. *Id.* at 336.

119. *Id.* at 323-24.

litigation rate of 43.9 per 100,000 population in the United States federal district courts during 1972, Mexican district judges received more than 115 *amparo* filings (by definition, constitutional rights cases alone) per 100,000 people in 1974. This represents only a four percent increase over the litigation rate of 110 per 100,000 in 1968.¹²⁰ The district courts in 1974 registered an almost twenty percent increase in the absolute number of *amparo* cases over 1968¹²¹ compared to an increase of more than seventy percent for all civil cases filed in the United States during the period 1962 to 1972.¹²²

The steady increase in *amparo* litigation commenced in the federal courts could be attributed to the fact that Mexico is a developing nation, as well as to the peculiarly attractive features of the *amparo* proceeding itself. It would be mere conjecture to suggest that Mexicans are more litigious or oriented toward constitutional rights than citizens in the United States. The difference between federal civil litigation rates in Mexico and the United States perhaps can be explained by the numerous other recourses open to the potential litigant in the United States as compared to Mexico; for example, the heavier use of state courts and ombudsman-like functions performed by legislators and administrators in the United States. Although no reliable litigation data are presently available for all fifty states, California demonstrates the judicial alternatives sought vis-à-vis the federal courts. Total filings in the state's superior courts numbered 562,100 in the 1973-1974 fiscal year, representing a litigation rate of 2,676 cases per 100,000 population.¹²³ Data on filings and dispositions in the Mexican state courts are sparse. But it is safe to assume that because of the federal judicial monopoly over all significant constitutional rights adjudication via the *amparo* and related recourses and the lesser reputation of state judges generally, state filings in Mexico would be far lower than their United States counterparts. To this explanation must be added the broad scope of the *amparo* writ; that is, the *amparo* as a general "writ of error," transforming mistaken interpretations of state law into constitutional or "federal" questions. Federal courts

120. Based on a comparison of 52,000 *amparos* filed before the Mexican district courts with a population in 1969 of 47,200,000, to 64,000 *amparos* with a population of 56,200,000 as of mid-1974. 2 EUROPA YEARBOOK: A WORLD SURVEY 941 (1969 ed.); *id.* at 1034 (1975 ed.). For *amparo* filings in federal district courts, see INFORME . . . 1968 & 1974, *supra* note 41, annexes 1, 2.

121. INFORME . . . 1968 & 1974, *supra* note 41, annexes 1, 2.

122. Grossman & Sarat, *supra* note 16, at 336. This comparison is somewhat misleading in that one type of case in the Mexican system is being compared with the aggregate of all types of cases in the American system, but I believe the general proposition is accurate.

123. 1975 CAL. JUDICIAL COUNCIL REP. 82. The method for determining litigation rate is the same employed in note 120 *supra*.

in the United States possess no such legal authority over state courts. But Anglo-American state judges do rule on federal constitutional rights questions, whereas Mexican state courts are expressly forbidden to do so.

Some have suggested that the *amparo* remedy is either the tool of the upper classes against "revolutionary" and "antiproperty" government policies, or so heavily concentrated in the urban areas that it is effectively removed from popular usage.¹²⁴ Neither of these assertions, however, can be substantiated. The first I have dealt with elsewhere¹²⁵ and the latter will be examined in the next section. But for now, surely the fact that criminal suspects and prisoners filed more than 41,515 of the 64,500 *amparo* actions commenced during 1974 in the district courts and that 1,670, or thirteen percent, of all 1973 *amparo* complaints brought in the high Court against administrative abuse came from communal farmers in land rights cases indicates the accessibility of that proceeding to the "little man" or economically disadvantaged in Mexico.¹²⁶ The second criticism can be rebutted by perusal of the federal judiciary's annual report. It shows a remarkably even spread in the number of cases filed and disposed of throughout all fifty-six of the district judgeships, in both urban and rural areas of the country, including the eight in the heavily populated federal district.¹²⁷

The above analysis purports only to demonstrate the openness, accessibility, and general popularity of the federal district courts as a major source for controlling official violations of individual constitutional rights in Mexico. Such accessibility is a reflection of the growing involvement of the Mexican federal courts in individual rights cases.

The increasingly heavy use of the federal district courts and the *amparo*, however, has placed severe stress on the resources of these courts. In 1974 the backlog of cases pending in the district courts reached a new high of 7,405 in criminal and civil matters, and 4,700 in administrative and labor cases, out of 63,640 decided, a total residuum of more than 12,000 *amparo* cases.¹²⁸ This represents a twenty-one percent increase from 1969. There

124. Both suggestions have been made publicly in Mexico. See, e.g., P. GONZALEZ CASANOVA, *LA DEMOCRACIA EN MEXICO* 29-31 (2d ed. 1967) (primarily criticizing the Supreme Court's provision of a haven to the propertied elite in agrarian confiscation cases brought under the indirect *amparo* process).

125. See Schwarz, *supra* note 38, at 316-18.

126. See INFORME . . . 1974, *supra* note 41, annexes 1, 2; *id.* 1973, annex 2 bis.

127. Although beyond the time and space limitations of this article, future analysis of such dispersion could incorporate Grossman and Sarat's method of statistically correlating federal litigation rates with levels of socio-economic and "political culture" development of the various states in the United States. See Grossman & Sarat, *supra* note 116, at 328-42.

128. INFORME . . . 1974, *supra* note 41, annexes 1, 2.

were 1,151 *amparo* cases filed, 1,136 terminated, and 216 pending per each federal district judicial position (fifty-six in 1974). Similarly, the backlog of civil cases in the United States district courts increased by just under twenty-three percent between 1968 and 1973; but there were 253 pending civil cases for every 246 filed and 246 terminated per authorized judgeship by 1973.¹²⁹

Professors Goldman and Jahnige suggest that the United States federal courts and their allies in the legal and political systems prevent or inhibit such "demand-input overload" through two important mechanisms: (1) rules regulating the content and processing of litigation, and (2) structural inhibitors, or "systemic gatekeepers," controlling such input by discretionary application of their official prerogatives.¹³⁰

Examples of the first mechanism at the federal trial level are rules restricting jurisdiction, justiciability, and standing of the parties. The second controlling mechanism, or "gatekeeper," includes lawyers for potential litigants, law enforcement officials—especially the United States attorneys—and judges. They all, according to the authors, "conspire" to control the federal system's demand input by deciding which cases will be heard. The most glaring example of how successful this collusion can be is the huge proportion of civil cases (ninety percent) and criminal cases (eighty-six percent) settled without trial.¹³¹ The Supreme Court has given full sanction to this means of avoiding the judicial process, as well as providing the ultimate gatekeeping function through its discretionary writ of certiorari.¹³²

This model of controlling "demand-input overload" is at least partially applicable to the Mexican *amparo* system. Both mechanisms are used, although in ways peculiar to the substantive provisions of the *amparo* law and basic code of the federal judiciary. They also differ in their application according to the idiosyncracies of the Mexican legal profession. Mexican *amparo* judges at all levels have looked increasingly to the various grounds for dismissing petitions, such as "inadmissibility," which may include several reasons relating to improper procedure spelled out in the *amparo*

129. ANNUAL REPORT, ADMINISTRATIVE OFFICE, UNITED STATES COURTS 117, Table 14 (1973).

130. GOLDMAN & JAHNIGE, *supra* note 2, at 108, 131.

131. *Id.* at 114-15.

132. *Id.* In *Santobello v. New York*, 404 U.S. 257 (1971), the Supreme Court gave its firmest support to the plea-bargaining system by reversing and remanding a conviction in which a new district attorney had failed to comply with prior sentencing recommendations made by agreement between the former prosecuting attorney and defendant's counsel.

code.¹³³ Examples are the failure to state a clear cause of action, lack of jurisdiction, blatantly incorrect procedure, and the lack of sufficient copies of legal documents. Except for the last, all such causes are subject to broad judicial discretion. Other bases for dismissal prior to a decision on the merits are generally grouped with the former under the term "discontinuance"; here, however, the judge discovers some egregious error in the process of considering the petition.¹³⁴ The most common ground is "expiration by procedural inactivity" or failure to renew one's petition at three hundred-day intervals after filing.¹³⁵ Long delays at the federal appellate level produced by case backlogs have made this ground for dismissal highly unpopular with the Mexican bar. The hostility of attorneys persuaded the Congress to extend the renewal period in 1968, but resentment of even this rule continues.

Increasing use of such rules in Mexico thus parallels the first part of Goldman and Jahnige's model of how the United States federal courts control their demand overloads. Seventy-eight percent of the 63,640 cases terminated in the Mexican federal district courts during 1974 were without a decision on the substantive arguments presented; this compares with a seventy-six percent rejection rate on such grounds in 1971.¹³⁶ More than 33,000 of the 49,000 dismissals in 1974 occurred in response to petitions from criminal suspects and convicts.¹³⁷ When Minister Ramón Cañedo Aldrete of the Supreme Court recently tried to justify such practices, he referred to alleged abuses of the *amparo* by the legal profession and advised the bar associations to take up the problem as a matter of professional ethics.¹³⁸

Whenever lawyers advising their clients might actually respond to such urging, their actions could be compared to the gatekeeping conspiracy suggested by Goldman and Jahnige, but there is little empirical evidence to support allegations of widespread collusion. The fact that *amparo* filings continue to increase, especially in the district courts, demonstrates the persistent saliency of the remedy for lawyers and clients alike. On the other

133. See LAW OF AMPARO art. 73.

134. *Id.* art. 74.

135. *Id.* art. 74(V) (as amended in 1968). My conclusions are based on interviews with some forty attorneys in Mexico during the years 1968 through 1976.

136. Computed from figures in INFORME . . . 1971 & 1974, *supra* note 41, annexes 1, 2.

137. INFORME . . . 1974, *supra* note 41, annex 1.

138. Speech of September 18, 1973 (reported in INFORME . . . 1973, *supra* note 41, at 116-17, 119-20). In all fairness to the bar, Minister Cañedo Aldrete also referred to the increasing popularity of the *amparo* and the continued difficulties of the courts to process incoming caseloads.

hand, the parallel increase in dismissals may generate the ultimate pressure on lawyers to bow before judicial demands for more careful scrutiny of the complaints they receive.

Such practices mostly affect prospective litigants with grievances against the system. In Mexico, further attempts to constrict caseloads through esoteric and unpredictable procedures could drastically compound inequities and obstacles already present for litigants in the legal system as a whole. For example, good lawyers for any cause are expensive, and public defenders in penal cases are atrociously paid and often lacking in ability. Mexico has few counterparts to the nationwide resources and organizational skills of the American Civil Liberties Union, the NAACP, The National Welfare Rights Organization, the United Jewish Relief Fund, and more localized but federally funded and well staffed pro bono units such as California Rural Legal Assistance, the San Francisco Neighborhood Legal Assistance Foundation, and the Western Center on Law and Poverty. Together, these groups have been instrumental in producing public interest case law and administrative reform.¹³⁹ Nor does the enterprising pro bono lawyer in Mexico, because of the relativity effect of *amparo* judgments,¹⁴⁰ have any technical tool comparable to the frequently used class action suit in the United States to right mass wrongs.¹⁴¹

Mexico, nonetheless, has made impressive official efforts to cope with problems of inadequate legal counsel for the poor and unorganized. The national penal, civil, labor, and agrarian codes provide special consideration for the illiterate, indigent, or those ignorant of their legal rights in court.¹⁴² The Law of Amparo itself, as pointed out previously, establishes several exceptions to technical rules of filing and petition content. These include the power of the judge to supply the deficiency of the complaint for particular classes of plaintiffs as well as to enable the same kinds of petitioners to

139. See, e.g., *NAACP v. Button*, 371 U.S. 415 (1963); Carlin, *Store Front Lawyers in San Francisco*, in *BEFORE THE LAW*, 194-204 (J. Bonsignore ed. 1974).

140. See text accompanying notes 35-37 *supra*.

141. Such suits have proliferated especially in the past ten years to settle the rights and claims of literally thousands of "invisible litigants" in areas of civil rights, consumer protection, protection of welfare recipients, and environmental quality. See Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968). But see *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (greatly restricting monetary class actions by imposing notice costs on petitioner).

142. See, e.g., MEX. CIV. CODE arts. 17, 21. The latter provides: "Judges, considering the evident intellectual backwardness, remoteness from means of communication, or miserable economic situation of some individuals, can, with approval of the Public Minister, suspend the sanctions which these individuals might have incurred . . . or, if possible, . . . concede them a period of time in which they may comply with the law" Boris Kozolchyk claims, however, that article 17 is seldom employed by

avoid a number of technical filing requirements.¹⁴³ In addition, local bar associations and university law faculties provide limited free services to indigents through organized programs, usually in the larger cities. Most lawyers interviewed in Mexico felt that the two principal components of the labor and agrarian sectors of the dominant political party, the Party of Revolutionary Institutions (the National Confederation of Farmers and the Mexican Confederation of Laborers) provided the most effective legal assistance. The thousands of *amparo* cases litigated by workers, unions, and communal and small farmers within the labor and administrative chambers of the Supreme Court seem to confirm this perception.

The *amparo* process in the federal district courts, then, appears to have drawn a large and socially representative entourage. Social demands continue to increase despite some strenuous efforts by the federal judiciary and Congress to inhibit the rate of litigation. The last section of this paper evaluates the extent to which such widespread faith in the system is justified by the actual dispositions of indirect *amparo* cases.

III. Decisional Independence and Libertarianism in the Federal Trial Courts of the United States and Mexico

A. Variants of Judicial Independence

Judicial independence and libertarianism will further the propensity of courts to decide cases against the government in response to valid constitutional claims. There are, to be sure, several indicators or variables of judicial independence and libertarianism that present fertile fields for further research. The preceding section of this article, for example, comprised a review of the general accessibility of *amparo* courts and the willingness of a vast number of individuals to seek such forums when aggrieved by official action.

There are many other indicators as well. First, it would be useful to determine the extent to which lower courts and nonjudicial agencies actually enforce politically significant or unpopular constitutional rights decisions. Evidence of compliance problems abounds in the Mexican *amparo* courts. For example, a hundred or so allegations of noncompliance are filed in the Supreme Court each year by victorious plaintiffs frustrated by target au-

Mexico's appellate courts. Kozolchyk, *Trends in Comparative Legal Research: Appropos Dainaw's The Role of Judicial Decisions and Doctrine in Civil Law and in Mixed Jurisdictions*, 24 AM. J. COMP. L. 100, 107 (1976).

143. See notes 29-32 *supra*.

thorities' unwillingness to comply fully with the terms of the judgment.¹⁴⁴

Second, a general theory of judicial impact more appropriate to cross-national comparison¹⁴⁵ could also help determine the degree to which libertarian decisions and the Supreme Courts themselves are accepted and followed by a separate, "pro-Court" constituency. Such a following might include key politicians, bar associations, other judges and judicial conferences, law faculties, journalists, and public opinion in general. There is evidence to support both sides of the question as it relates to the public image of the Mexican federal courts.¹⁴⁶

Third, an examination of the budgetary process and allotments to the national court systems might help to explain the hidden linkages between the judiciary and the political branches of government. Examination of the budgetary process could reveal the extent to which the key groups mentioned above actually lobby or influence the budgetary process on behalf of an independent judiciary. It might also indicate to what extent courts are in effect rewarded for service to national executive policy. Such scrutiny would have particular utility in analyzing the political ties of judges to other elite groups in the developing or transitional societies of Latin America and Africa. It would be interesting to explore further, for example, the fact that in 1973 the Mexican federal courts received .0081 per cent of the total budget, while the United States federal judiciary accounted for .0007 per cent.¹⁴⁷ Furthermore, the President of the Mexican Court rejoiced over a thirty-six percent annual increase in the 1975 budget allocations for the federal courts.¹⁴⁸

144. See INFORME . . . 1973 & 1974, *supra* note 41, annexes 10.

145. For studies representative of the rapidly developing literature on Anglo-American "judicial impact," see, *e.g.*, COMPLIANCE AND THE LAW: A MULTI-DISCIPLINARY APPROACH (S. Kirsolv ed. 1972); K. DOLBEARE & P. HAMMOND, THE SCHOOL PRAYER DECISIONS: FROM COURT POLICY TO LOCAL PRACTICE (1971); THE IMPACT OF SUPREME COURT DECISIONS (2d ed. T. Becker & M. Feely eds. 1973); N. MILNER, THE COURT AND LAW ENFORCEMENT: IMPACT OF MIRANDA (1971); S. WASBY, THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES (1970); Levine & Becker, *Toward and Beyond a Theory of Supreme Court Impact*, 13 AM. BEHAV. SCIENTIST 485, 561 (1970); Levine, *An Empirical Approach to Civil Liberties: The Bookseller and Obscenity Law*, 1969 WIS. L. REV. 153.

Except for suggestions in the Levine & Becker article, none of the above sources attempts to apply impact analysis to comparative studies. See Clark, *The Impact Study: A Friendly Evaluation of the State of the Art* (paper delivered at Midwest Political Science Association Conference in Chicago, May 30, 1973).

146. See Schwarz, *supra* note 38, at 329 n.335.

147. INFORME . . . 1973, *supra* note 41, at 29-30; U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 233 (1974).

148. INFORME . . . 1974, *supra* note 41, at 31.

Fourth, it would be profitable to examine the frequency and intensity with which legislatures or chief executives react, if at all, against particular courts or judicial decisions. There has been insufficient study of the extent of attempts to curb court jurisdiction through constitutional amendment, legislative enactment or, particularly in Latin America, executive declarations of states of siege and other kinds of national emergencies.¹⁴⁹

A fifth variable affecting judicial independence would be judges' socio-economic and political backgrounds as they correlate with the kinds of decisions judges make and their individual attitudes toward the role of the courts and constitutional law generally. Professor H. Fix Zamudio calls this aspect of independence "the dignity of the judicial career," particularly as confirmed through the actions and tenure laws of the other governing branches.¹⁵⁰ In a recent seminal work on the comparative consequences of elective as opposed to appointive judicial selection methods in two states,¹⁵¹ the authors concluded by stressing "the implications of these data [on the backgrounds of appellate court judges in California and Iowa] for decision-making propensities, for differential judicial role conceptions, and for broader conceptions of regime or system stability."¹⁵²

B. Measurements of Decisional Independence: United States Habeas Corpus and Section 1983 Actions v. Indirect Amparo Decisions

A final and admittedly more easily measurable criterion of judicial independence, given sufficient official data, can be found in the number and proportion of actual decisions judges make or fail to make on individual rights complaints filed against the government. This decisional approach will now be applied to the constitutional rights dispositions of the federal district courts of the United States and Mexico.¹⁵³

149. See, e.g., Fouts, *Policy-Making in the Supreme Court of Canada, 1950-1960*, in *COMPARATIVE JUDICIAL BEHAVIOR* 257, 286-87 (G. Schubert & D. Danelski eds. 1969) (regarding the need for research into various "external influences on the Supreme Court"). See also BAKER, *supra* note 23, on the potentially great but rarely exercised power of Congress to restrict the Mexican Court's jurisdiction or reverse established decisions under the amending clause (article 135) of the Constitution.

150. H. FIX ZAMUDIO, *CONSTITUCION Y PROCESO CIVIL EN LATINOAMERICA* 41-43 (1974).

151. Berg, Green, Schmidhauser & Schneider, *The Consequences of Judicial Reform: A Comparative Analysis of the California and Iowa Appellate Systems*, 28 *W. POL. Q.* 263 (1975).

152. *Id.* at 278.

153. See Schwarz, *supra* note 38, at 286. This analysis has certain inherent shortcomings that should be noted at the outset: (1) My comparisons will not consider

To provide some correlative measure of judicial independence in the two nations' federal trial courts, I have chosen to compare the dispositions of habeas corpus petitions¹⁵⁴ and complaints under section 1983 of the Civil Rights Act¹⁵⁵ with the decisions of the Mexican district judges on indirect *amparos* brought in penal and administrative cases. The indirect *amparo* in criminal matters approximates the United States habeas corpus proceeding in that both are employed mainly by criminal suspects, defendants, and convicts seeking relief while under some form of detention. Both, in addition, must address specific violations of constitutional rights. The writ of habeas corpus at the district court level, however, is dissimilar to its *amparo* counterpart in that it primarily provides a means of post-conviction relief for state and federal prisoners. Pursuant to the Mexican *amparo* law, as has been noted,¹⁵⁶ federal trial courts intervene in such trial and appellate proceedings only under emergency or imminent danger circumstances. Constitutional challenges to sentences and convictions as finalized on appeal occur almost exclusively through the direct *amparo* brought in the circuit courts or the Supreme Court.

The following comparative data nonetheless point to the common denominators of federal habeas corpus and indirect *amparo* petitions. Both writs rest on alleged violations of the most fundamental of constitutional rights, freedom from arbitrary confinement. Further, it is this category of constitutional rights litigation that recently has generated explosive increases in the judicial caseloads in both countries. Finally, they both involve expeditious, simplified, and inexpensive evidentiary proceedings relative to other extraordinary or appellate remedies in criminal cases and are sought primarily for those reasons.

A more accurate cross-national comparison with the indirect *amparo* in both penal and administrative law cases can be gained by quantifying the proportion of cases won and lost by plaintiffs seeking injunctive relief, monetary damages, or both under section 1983 of the Civil Rights Act.

differences in judicial style between the Mexican and Anglo-American legal systems that arise from preferences for certain types of constitutional claims or from deference to the institutions being challenged; (2) The win-loss scheme utilized in the course of this analysis is incapable of weighting individual decisions on the basis of either speed of disposition or relative political significance; (3) As will be noted elsewhere, the sources for my data are both incomplete and inadequate. One result of this analysis is that it graphically illustrates the pressing need for fuller and more accessible compilation and tabulation of accurate information and dispositions of cases by lower national courts both in the United States and throughout the world.

154. 28 U.S.C. ch. 153 (1970).

155. 42 U.S.C. § 1983 (1970).

156. See text accompanying notes 82-113 *supra*.

Judging from the selectively reported district court opinions in the *Federal Supplement*, section 1983 actions outnumbered the habeas corpus cases by roughly three to one in 1974. Furthermore, section 1983 litigation encompasses a much greater range of official abuses against constitutionally protected civil rights. These include everything from prisoner complaints about the conditions of confinement to zoning and election code inequalities, police harassment of political demonstrators, bureaucratic abuses of eligible welfare recipients, and racial discrimination by school boards and other public employers. The wording of section 1983 indicates the breadth of its protective coverage:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.¹⁵⁷

My own sample of 374 actions under section 1983 reported in the *Federal Supplement* for 1974 revealed that fewer than twenty-three percent (eighty-seven) were brought by state or federal prisoners; a much smaller number (twenty-eight cases) dealt with complaints and damage suits against law enforcement officials in other criminal related matters. Furthermore, unlike standing requirements in habeas corpus litigation, section 1983 actions are not limited to those detained in some way. Nor is there a requirement of any prior exhaustion of administrative remedies, not even if the governing statute provides adequate recourse for the civil rights complaint.¹⁵⁸ In these respects, then, section 1983 is closer than the federal habeas corpus statute to the indirect *amparo* injunction against irreparable injury suffered at the hands of either the abusive bureaucrat or the criminal law enforcement official.¹⁵⁹

The main limitation in comparing the section 1983 action to the indirect *amparo* is its singular application to state criminal and administrative ac-

157. 42 U.S.C. § 1983 (1970).

158. For section 1983 cases where exhaustion of state judicial remedies prior to the filing of a federal suit was not required, see *Zwickler v. Koota*, 390 U.S. 611 (1967); *Dombrowski v. Pfister*, 380 U.S. 479 (1965). In *Monroe v. Pape*, 393 U.S. 167 (1961), no exhaustion was required, even where these remedies were "adequate" but possibly not "available." *Id.* at 174. State administrative remedies were held not to require exhaustion in *Damico v. California*, 389 U.S. 416 (1967) and *McNeese v. Board of Educ.*, 373 U.S. 668 (1963).

159. See text accompanying notes 89-107 *supra* for a general comparison of the indirect *amparo* with the federal writ of habeas corpus.

TABLE II: DISPOSITION OF MEXICAN AMPAROS V. UNITED STATES FEDERAL HABEAS CORPUS
AND SECTION 1983 ACTIONS BY FINAL JUDGMENT IN FEDERAL DISTRICT COURTS, BY SUBJECT MATTER, 1974

	Mexican District Courts			United States District Courts			
	Total Decided	Won ¹	Lost	Dismissed, Accumulated Remanded, etc.	Total Decided	Won ¹	Lost
Amparos in Penal-Civil Cases	47,287 (74%) (40,576 = Penal)	5,035 (10.6%) ²	4,672 (9.1%)	37,580 Federal Habeas Corpus—State & Federal Prisoners	9,000 (estimated total) ³	450 (5%) ⁴	8,550 (95%)
				1983 (Civil Rights) Actions—Convicted State Prisoners	5,700 (estimated total) ⁵	2,200 (38%) ⁶	3,500 (62%)
				1983 (Civil Rights) Actions—Other Criminal Matters (Sample from 1974 Federal Supplements = 28 of 374 cases surveyed) ⁷	----- (no data)	50% (14)	50% (14)
Amparos in Administrative- Labor Cases	16,353 (16%) (14,889 = Administrative)	2,388 (14.5%) ²	1,500 (9.2%)	1983 (Civil Rights) Actions—Less Those from State Prisoners = 287 Sample Total	9,600 (estimated total) ⁸	4,320 (45%) ⁶	5,280 (55%)
				1983 Actions—Less All Relating to Criminal Matters = 259 Sample Total ⁹	----- (no data)	45% (117) ¹⁰	55% (142)

All Areas: Penal, Civil, Administrative, and Labor 63,640 7,423 (10.9%) 6,172 (9%) 50,045 (79%)

1. A case is "won" when the court decided against the government or defendant position; "government" is any official state, local, or federal agency or individual acting in an official capacity. A case is counted as "won" if the plaintiff prevails in whole or in part.
2. INFORME DEL PRESIDENTE DE LA SUPREMA CORTE DE LA NACION 1974, annexes 1, 2. The *Informe* does not break down the concessions and denials of *amparo* petitions as to administrative, labor, civil, and criminal categories, although it does give the total number of cases decided in all four categories. Because of the disproportionately large number of administrative and criminal *amparos*, however, one can reasonably assume that the percentages given for each sub-set (administrative-labor, criminal-civil) approximate the percentages assigned to the main categories.
3. ANNUAL REPORT, ADMINISTRATIVE OFFICE, UNITED STATES COURTS 130 (1973). Filings of federal-state prisoner petitions on habeas corpus in federal district courts totalled 9,078 in 1973 (7,784 from state prisoners, 1,294 from federal). This figure represents a decline from 1972 totals of about 2.5%. Thus the "9,000 estimated total" for 1974 represents a projection of 1973 figures into the following year.
4. See [1975] U.S. CODE CONG. & AD. NEWS 3663-64, 3667; telephone conversations with Dr. James McCafferty, Assistant Chief, Administrative Information Systems, Administrative Office of United States Courts (June 1975), Mr. James Murphy, Director of Courtroom Operations, United States District Court for the Eastern District of California (June 1975), and Mr. William Eldridge, Federal Judicial Center, Washington, D.C. (June 1975). All of these officials confirmed the lack of dispositional data summaries regarding the federal district courts, but when asked to estimate the percentage of prevailing habeas petitioners, agreed to the approximate figure of five percent or below.
5. Projected for 1974, based on the annual report for the United States courts. Civil rights petitions commenced by state and territorial prisoners increased by 25% in 1973 over 1972 figures (to 4,588). Thus, $4,588 + (.25 \times 4,588) = 5,700$ (approx.)
6. Percentage extrapolated from survey of *Federal Supplement*, vols. 370-85 (cases reported for 1974), in which 87 of 374 section 1983 cases were deemed "convicted state prisoner" petitions; 38% of these 87 sample cases were won in whole or in part by plaintiffs. This percentage was then applied to the total volume of 5,700 cited in note 5, *supra* to arrive at 2,200. The same method applied to computing percentages in nonprisoner-related 1983 cases, as compared to the *amparos* in "administrative-labor" matters; *i.e.*, $374 \text{ minus } 87 = \text{sample of } 287$, in which 45 percent of section 1983 plaintiffs won; then, $.45 \times \text{total volume of } 9,600 = 4,320$ cases won.
7. Neither the annual report for the United States courts nor any other data source reviewed distinguished between section 1983 prisoner cases and those arising out of some contact of a private citizen with the criminal law system; *e.g.*, damage and injunctive actions against police abuse and harassment, wrongful death actions against police, challenges to pretrial juvenile detention, and abuse during confinement. Thus a survey of the 1974 cases reported in the *Federal Supplement* revealed 28 examples of such criminal related section 1983 actions wherein the plaintiff was no longer under confinement; the plaintiff won in half of these cases.
8. ANNUAL REPORT, ADMINISTRATIVE OFFICE UNITED STATES COURTS 128 (1973). The "estimated total" figure is based on the same projection method explained above, but here the 1973 base total represents all section 1983 cases except for prisoner petitions.
9. As indicated in note 7 *supra*, there is no official United States court data on section 1983 actions in criminal-related matters as distinguished from prisoner petitions. Thus the survey sample from the 1974 *Federal Supplement* criminal related cases (28 total) was added to the 87 prisoner cases and both were deducted from the total sample of section 1983 actions to arrive at 259.
10. The percentage results from deducting "win-loss" figures in all prisoner and criminal related cases pursuant to note 9 *supra*, then computing the percentage of those prevailing and losing in the remainder; *e.g.*, $.45 \times 259 = 117$ won by plaintiffs.

tions.¹⁶⁰ Thus the need arises to incorporate the federal habeas corpus proceeding into the comparative reference. As the only extraordinary writ expressly designated by the Constitution, habeas corpus applies to both state and federal authorities.¹⁶¹

Based on these considerations, the foregoing table renders a composite portrait of win-loss ratios for constitutional rights claimants challenging similar kinds of official abuses in the Mexican and United States federal district courts.

The foregoing data prevent wholly accurate comparisons because of the following deficiencies. As the notes to the table indicate, there is little systematic, centralized information on the disposition of cases by subject matter in the United States district courts or courts of appeals. My own reliance on the *Federal Supplement*, of course, presents its own problems of distortion. The *Federal Supplement* reports only those cases deemed important by the judges of each district. It also primarily records decisions on the merits and omits an unknown number of petitions dismissed as frivolous or procedurally and technically defective. Thus, absent evidence to the contrary, one might assume that United States district courts dismiss constitutional rights petitions at a rate similar to or even greater than rejections of *amparo* complaints by the Mexican trial courts. To help neutralize these data in comparing win-loss ratios, Table III eliminates the eighty percent of the cases dismissed by the Mexican district courts and compares wins and losses in both national trial court systems exclusively in terms of decisions on the merits. This represents a broad sample of section 1983 cases from the 1974 volumes of the *Federal Supplement* as contrasted with *amparo* cases duly recorded as conceded or denied to the plaintiffs in both the administrative and criminal law areas.

C. A General Evaluation of Decisional Independence Data

The data outlined opposite are still very inadequate as a rigorous statistical method for quantifying judicial independence and libertarian decision making. The data on United States lower court dispositions continue to be incomplete or practically inaccessible. The Mexican annual summaries of *amparo* dispositions in the Supreme Court's *Informe* do not specify the kinds of penal and administrative constitutional rights cases decided in the federal district courts. Nor does the annual report weigh those cases accord-

160. But it also applies to all United States territories. See the wording of section 1983 quoted in the text accompanying note 157 *supra*.

161. U.S. CONST. art. 1 § 9. For a sweeping reaffirmation of habeas corpus as "both the symbol and guardian of individual liberty" in England and the United States, see *Peyton v. Rowe*, 391 U.S. 54, 58 (1968).

TABLE III: DISPOSITION ON THE MERITS AND BY SUBJECT MATTER,
MEXICAN AMPAROS AND UNITED STATES SECTION 1983 ACTIONS, IN
FEDERAL DISTRICT COURTS, 1974

	Mexican District Courts		United States District Courts	
	<i>Total Decided on merits</i>	<i>Won¹ Lost</i>	<i>Total Sample on merits</i>	<i>Won¹ Lost</i>
Amparos in Penal -Civil cases ²	9,707 (20% of total dispositions)	5,035 (52%) 4,672 (48%)	115 (out of 374 total)	47 (38%) 68 (62%)
Amparos in Administrative-Labor Cases ²	3,888 (23% of total dispositions)	2,388 (61%) 1,500 (39%)	259 (out of 374)	117 (45%) 142 (55%)
<i>Total—All Areas</i>	13,595 (21% of total dispositions)	7,423 (55%) 6,172 (45%)	374	164 (44%) 210 (56%)

1. See Table II, note 1 *supra*, for definitions of "won" and "lost."

2. See Table II, note 2 *supra*, for explanation of considering percentages in Penal-Civil category as essentially the same for penal *amparos* taken alone, and in the Administrative-Labor category the same as those for administrative *amparos* taken alone.

3. See Table II, notes 6, 7 *supra*, for survey method regarding state prisoner and criminal related Section 1983 petitions as taken from *Federal Supplement*, vols. 370-85 (1974).

4. See Table II, note 9 *supra*, for method reducing noncriminal Section 1983 cases to a total sample of 259.

ing to any degree of quantitative (*e.g.*, time-consuming) or qualitative (policy-content) importance. Furthermore, Mexico provides no common reporter for lower court decisions or opinions as a counterpart to the admittedly incomplete and selective *Federal Supplement* in the United States.

A more fundamental question presents itself: even if systematic, reliable figures were readily obtainable, what would they show? Summaries of judicial output may reflect the *formal* response of individual judges to individual constitutional rights claims. But they cannot fully reveal the alternative, yet substantive, efforts those same judges and other officials might make to address the human problems represented by the petitions against government abuse. Three examples should suffice. Reacting to the high influx of prisoners petitions in Iowa, the United States district court in Des Moines has begun to refer a large number of such complaints about prison conditions to the state Citizens' Aid Office "because it is felt that the Deputy for Corrections might solve some of the problems more expeditiously."¹⁶² Thus, ombudsmen, legal aid societies, complaint-oriented administrators, legislators, and other agencies, both private and public, may well be closely linked to the judge's perception of the individual petitioner's problem and its eventual, nonjudicial solution.

The actions of Chief Judge John Oliver in the remarkable section 1983 case of *Glenn v. Wilkinson*¹⁶³ provides another example. A state prisoner in Missouri challenged the "filthy" and "pig-sty" conditions of his segregated confinement in a death row cell. He asserted that his jail environment, without running water, religious contacts, or the barest of living and medical necessities, constituted cruel and unusual punishment prohibited by the Eighth Amendment.¹⁶⁴ Though eventually dismissing the complaint as not involving a federally protected right, Judge Oliver nonetheless instructed the defendant correctional officers to respond to the complaint at a separate evidentiary hearing, with a view toward the issues.¹⁶⁵ Accordingly, most of the problems related in Glenn's brief eventually were corrected. To dramatize his point, Judge Oliver appended to his opinion a long comparative survey of prison conditions for death sentence prisoners in thirty-four jurisdictions.¹⁶⁶ The survey, prepared by his clerk and Glenn's defense

162. THE IOWA CITIZENS' AIDE, REPORT TO THE GOVERNOR OF IOWA AND THE 65TH GENERAL ASSEMBLY (January 1—December 31, 1973). I am grateful to Professor Stanley Anderson at the University of California, Santa Barbara, for contributing this information and for his ideas on "alternative complaint handling procedures" for constitutional rights cases.

163. 309 F. Supp. 411 (1970).

164. *Id.* at 412.

165. *Id.* at 415.

166. *Id.* at 418-20.

counsel, indicated the widely variant quality of prison conditions throughout the country.

A third example is the recent and successful effort to settle out of court thousands of pending agrarian rights cases in Mexico. A coordinating commission comprised jointly of representatives from the Secretariat of Agrarian Reform and the Supreme Court, and aided by a Technical Agency of Conciliators, has resolved almost 2,000 claims by some 195,000 small farmers against confiscatory actions of the national government. The Secretariat of Agrarian Reform estimates that such a procedure has effectively eliminated about seventy-five percent of the backlog of land rights *amparo* petitions pending in the federal judiciary.¹⁶⁷

Thus the denial of Mr. Glenn's petition, the district court's referral of prisoner petitions to the Iowa Citizens' Aid Office, and the Mexican Supreme Court's eventual "dismissal" of agrarian *amparo* cases resolved through extra-judicial means in no way indicated the eventual results of the cases. Federal judges often deny petitions on the merits, while still retaining jurisdiction until the matter is resolved by another agency or court. Dispositional data, then, can only provide a clue, though an important one, about one of the major ways judges may respond to particular sets of circumstances surrounding constitutional rights issues.

Nevertheless, the preceding statistical exposition does provide one startling conclusion: coupled with a high degree of accessibility, the Mexican district courts exhibit a distinct pattern of independence against challenged government abuse. It will require much more investigation of the content of those anti-government judgments and their subsequent enforcement before their full political import can be determined with precision. But one point seems clear: the thousands of cases won by *amparo* plaintiffs and the great volume of litigated cases each year indicate that the Mexican trial courts and their Anglo-American counterparts are important institutions for allocating values, scarce resources, and sanctions in the national political system. Certainly, their primary roles in deciding constitutional rights cases can no longer be ignored by scholars in the United States.

167. See *Excelsior* (Mexico City), Nov. 11, 1975, at 22-A. Mexico has several other nonjudicial institutions for resolving various kinds of citizen complaints, including: (1) The Federal Boards of Conciliation and Arbitration in labor-management conflicts (*Juntas Federales de Conciliación y Arbitraje*); (2) Federal Fiscal Tribunal (*Tribunal Fiscal de la Federación*); (3) State fiscal tribunals in Veracruz and Mexico; (4) Administrative Tribunal for the Federal District (*Tribunal de lo Contencioso-Administrativo del Distrito Federal*); (5) The Coordinative Commission of the Secretariat of Agrarian Reform-Supreme Court of Justice; (6) The Committee and then Commission for Regulating Land Tenancy (*Comité Comisión para la Regularización de la Tenancia de la Tierra*); (7) The

Federal Agency for the Consumer and the National Consumer Institute (*Procuraduría Federal del Consumidor y el Instituto Nacional del Consumidor*). See Schwarz, *Recursos no-judiciales contra abusos administrativos: la experiencia mexicana*, BOLETIN DEL IDUR No. 7, at 31-53 (Instituto de Desarrollo Urbano y Regional 1976).