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THE RIGHT TO JUDICIAL PROTECTION: "AMPARO" AND OTHER LATIN AMERICAN REMEDIES FOR THE PROTECTION OF HUMAN RIGHTS

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INTRODUCTION

The American Convention on Human Rights, signed by twelve American States at the closing session of the Inter-American Specialized Conference on Human Rights, held in San José, Costa Rica, November 7 to 22, 1969, recognizes the right to judicial protection.¹

Article 25 of this Convention provides:

"Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

Forms of judicial protection in the American States include the *amparo*, writ of *habeas corpus*, *mandado de segurança* and other judicial devices specially designed to protect human rights.

This paper describes how the right to judicial protection is recognized in the legal systems of Latin America. Reference is made not only to the *amparo* of Mexico—also adopted by some twelve Latin American countries²—but also to other Latin American legal devices which specifically protect human rights, such as the writ of *habeas corpus*, the *mandado de segurança*, the judicial review, and the people's action against unconstitutional laws, among others.

It appears opportune to describe the characteristics of the Mexican or Latin American *amparo* now that the American States are attempting

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to establish an international machinery to protect human rights similar to that found in Western Europe among the Member States of the Council of Europe¹. The word *amparo* is roughly translated as protection, but because of its special legal significance, it is used in its Spanish form in this study.

The *amparo* is a legal device which, in the author's view, best fulfills the provisions of Article 8 of the Universal Declaration of Human Rights. This article states:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Moreover, the author believes that it would be useful for jurists of other legal systems to become familiar with Latin American legal devices specifically designed to protect human rights. This is important in order to establish some comparisons with similar legal devices in the United States of America, such as judicial review, writ of *habeas corpus*, writ of *certiorari*, *mandamus* and *injunction*.⁴

SOME PROCEDURAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA

It is unquestionable that the American and French Revolutions, by proclaiming the equality of all men and the existence of some fundamental human rights and liberties, initiated an era of legal recognition of civil and political rights. Following the liberal principle that the purpose of the state is to protect individual liberties, modern constitutional law in the Western Hemisphere has adopted various judicial devices for safeguarding such liberties.⁵

The Universal Declaration of Human Rights, in the third paragraph of its preamble, expresses that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."⁶

Professor Grant stated the problem in this manner: "History has shown that a mere right without the support of law is no more than a declaration on paper. The main problem of Constitutional Law is to find a practical way to assure the individual of a complete and effective protection against arbitrary excess of government."⁷

Thus, since the beginning of their existence as independent nations, the Latin American countries, inspired by the liberal constitutional exam-

ples of France and the United States, embodied in their own constitutions similar bills of civil and political rights.⁸ Also, they consecrated some constitutional guarantees in order that these rights would be legally protected.

In Mexico, for instance, the term "individual guarantees," to designate constitutional civil rights, appeared in the Yucatán State Constitution of 1841, and these guarantees were definitely recognized in the Federal Constitutions of 1857 and 1917.⁹

In spite of the above, the introduction of "guarantees" to protect civil rights and liberties was a gradual victory of constitutional law in Latin America. The legal protection of human rights was at first limited to the Anglo-American writ of *habeas corpus* to protect individual freedom against arbitrary arrest. Eventually, other constitutional instruments were adopted, such as the judicial review, the judicial responsibility of public authorities, and the *amparo*. All of these remedies at present make up what the Italian jurist, Mauro Capelletti, has called "the constitutional jurisdiction of liberty."¹⁰

In the Seminar of Amparo, Habeas Corpus and Other Similar Remedies, held in Mexico in August 1961, sponsored by the United Nations, it was recognized that the American countries which inherited the English juridical traditions use the writ of *habeas corpus* to protect individual liberty and freedom of movement, but also employ a series of special recourses, such as *certiorari*, *mandamus*, *prohibition*, and *injunction*, among others. On the other hand, the countries which base their institutions on Roman Law, are divided into three general groups: 1) Those utilizing *amparo*: this recourse protects not only individual liberty and freedom movement, but also all the other fundamental civil rights; 2) those utilizing a broadened *habeas corpus*; this recourse, broader than the U.S. *habeas corpus*, protects not only individual liberty and freedom of movement, but is extended to include other civil rights as well; and, 3) those utilizing both the *amparo* and the *habeas corpus*: these countries protect individual liberty and freedom of movement by means of *habeas corpus* and protect other civil rights by means of other remedies, such as *amparo* in Mexico and *mandado de segurança* in Brazil.¹¹

The Mexican jurist, Hector Fix Zamudio, considers that, even though it is true that all judicial means are useful for the protection of human rights, nevertheless, it is necessary to give priority "to those which have proved their efficacy in the rapid and sure protection of human liberty."¹² In the opinion of this jurist, only the following should be considered as "adequate means" for protecting the fundamental rights and liberties in

Latin America: the writ of *habeas corpus*, *amparo* in Mexico and other countries, *mandado de segurança* in Brazil, and judicial review of the constitutionality of law violating fundamental rights.

Before considering *amparo*, it is useful to analyze briefly the principal constitutional remedies for the protection of civil rights existing in the constitutional regimes of Latin America.

A. Habeas Corpus

The writ of *habeas corpus* is one of the traditional and inherent remedies for the direct protection of fundamental rights and liberties. This is a customary device in the common law system. It was codified by the *Habeas Corpus* of Great Britain as early as 1640. This institution was embodied in the Constitution of the United States, in the second paragraph of Section 9 of Article I, which states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it."

The writ of *habeas corpus*, conceived as a remedy to protect individual liberty against arbitrary arrest, was incorporated gradually in Latin American constitutions. Sanchez Viamonte says that practically all the Latin American constitutions in force contain this instrument.¹³ Colombia was the last country to adopt an Act of Habeas Corpus.¹⁴

In spite of the fact that *habeas corpus* (also called writ of "personal presence" or *amparo-libertad*) is recognized in all Latin American constitutions,¹⁵ this instrument does not have the same legal significance in each country. The commonality lies in that it is a brief, simple and rapid procedure for safeguarding individual liberty against arbitrary arrest. In the United States the writ of *habeas corpus* was, until a few years ago, an effective remedy only to protect individual liberty against administrative authorities.¹⁶ But, at present, the writ of *habeas corpus* has been converted into a broader recourse — practically an *amparo* — in criminal law, when no other adequate recourse exists, such as an appeal.¹⁷

Mexico, in effect, embodied the writ of *habeas corpus*, but under the name of *amparo*, in the "Amendment Act" of 1847, in Article 25.¹⁸ This recourse is called *amparo-libertad*.

In Peru, the *habeas corpus* has a broader meaning: it is used not only to protect individual liberty against arbitrary detention, but also to protect other civil and social rights.

B. The Brazilian "Mandado de Segurança"

In order to broaden the writ of *habeas corpus* protecting individual liberty against arbitrary arrest, the Brazilian Constitution of 1934 created the writ called "*mandado de segurança*" (mandamus of protection), for the purpose of jurisdictionally protecting the other fundamental rights and guarantees recognized by the Constitution (Article 113, paragraph 33). This instrument, however, was only an ordinary legal remedy while the Civil Procedure Code of 1939 was in force.

This device was definitely consolidated in the Brazilian Constitution of 1946 (Article 141, paragraph 24). In Article 150, the new Constitution of 1967 ratified the *mandado de segurança* in the following terms:

The mandamus of protection will be granted to protect individual rights purely and simply, which are not covered by *habeas corpus*, regardless of who the authority responsible for the illegality or abuse of powers might be.

The *mandado de segurança* is intended to protect the inviolability of civil rights concerning life, liberty, individual safety and property recognized in the Brazilian Constitution.

The *mandado de segurança* may be invoked against acts of administrative authorities. But, in exceptional cases, it has been used to impugn judicial decisions when there is no other adequate remedy. It has also been used in a preventive way against so-called "pressure groups", such as labor unions, which have legal status.

Professor Fix Zamudio maintains that the *mandado de segurança* is "an extraordinary procedure for the rapid and efficient protection of human rights against illegality or abuse of power of any authority, but especially administrative authorities."¹⁹

C. Judicial Review in Latin America

Judicial control of the constitutionality of laws "developed in Latin America due to the influx of United States doctrines and jurisprudence."²⁰ Its legal basis is paragraph 2 of Article 6 of the U.S. Constitution:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.²¹

The basic rule of the "American system" is that there is no special system to determine constitutionality, such as there is, for example, in

Austria (European system). The question of the constitutionality of a law or decree is decided as cases arise. Any judge has not only the power, but also the duty, to apply the Constitution over and above any other law or decree. There is no specific tribunal that initially decides on the constitutionality of laws. Thus, the courts have the power to consider as null and void any law, regulation, decree or act which is contrary to the Constitution.

The U.S. Supreme Court is not simply a constitutional tribunal such as the *Verfassungsrichtshof* or Constitutional Court of Austria. However, it does have the power, as the supreme tribunal of the Union, to resolve, either as a result of appeal or through *certiorari*, fundamental constitutional questions derived from a *litis* presented to it by the interested parties. Since the enactment of the Declaratory Judgment Act of 1934, the U.S. Supreme Court has admitted the declaratory action by which the parties may solicit a decision from the highest tribunal concerning the constitutionality of a law which as yet has not been applied to them, but which affects their legal interests.

Beginning with their first constitutions, the Latin American countries have adopted the system of *judicial review* from the United States,²² and have placed such jurisdiction in the hands of the judges or their Supreme Courts.²³

The general procedure consists of a declaration *a posteriori* requested by the involved party in a specific suit; but this declaration of unconstitutionality does not derogate the law attacked with effects *erga omnes*. An exceptional procedure, existing in Colombia, declares the unconstitutionality not only with effects *erga omnes*, but also produces the derogation of the law.

Judicial review, however, has varied in the Latin American countries. Cuba, Ecuador and Guatemala, at various times, modified their legislation in order to create special tribunals — such as in the system introduced by Kelsen in the Austrian Constitution of 1920 — to determine constitutionality.²⁴

Cuba created in its Constitution of 1940 the Tribunal of Social and Constitutional Guarantees, which had jurisdiction to pass on the unconstitutionality of laws (Article 182, paragraph a) and to give advisory opinions as requested by judges and tribunals concerning unconstitutionality (Article 182, paragraph b). This system was taken from the Spanish Republican Constitution of 1931. Furthermore, Cuba adopted from Colombia the people's action against unconstitutional laws. This action could be invoked not only by those in jeopardy but also by any 25 citizens signing

a petition. In Cuba the declaration of the unconstitutionality of a law by the above mentioned tribunal, implied the derogation of that law.

The Fundamental Law of the Republic of Cuba of 1959 partially retained this system and gave jurisdiction to the above mentioned tribunal to pass judgment "on the recourses of unconstitutionality of laws, decree-laws, decrees, resolutions or acts which deny, lessen, restrict or diminish the rights and guarantees stated in this Fundamental Law or which impede the free functioning of the state organs."²⁵

In its Constitution of 1967, Ecuador re-established the Tribunal of Constitutional Guarantees, which had been created by the Constitution of 1945 and abolished in 1946. However, the Ecuadoran Constitution of 1967 has been abrogated.²⁶

Finally, the Constitution of Guatemala of 1965 created a Court of Constitutionality, made up of twelve magistrates, five of whom are members of the Supreme Court. This court has jurisdiction over actions designed to test laws or general government regulations which may be unconstitutional wholly, or in part. The proceeding may be initiated by the Council of State, the Bar Association, the Public Attorney at the request of the President of the Republic, or by any person or legal entity, as long as the unconstitutionality of the law or governmental measure affects the person or entity directly. The decision of the Court has general effects, so that the unconstitutional dispositions are invalidated. This procedure, which is covered by Articles 262, 263 and 264 of the Guatemalan Constitution, has been set forth in detail in the "Constitutional Law of Amparo, Habeas Corpus and Constitutionality" of May 4, 1964 (Chapter X, The Recourse of Unconstitutionality).

In summary, judicial review in Latin America, whether or not it is based on the "American system" or the "European system" (Austrian Constitutional Court), is a means for the protection of human rights against laws or decrees that may be contrary to the constitutions.

D. The People's Action Against Unconstitutionality of Laws

The People's Action consists of the privilege enjoyed by every citizen to appear before the Supreme Court of Justice to impugn the unconstitutionality of a law, even though he may not be directly affected by such a law. This procedure originated in Colombia, and is fundamentally an institution used in the countries which previously formed "Great Colombia" (Colombia, Ecuador, Panama and Venezuela).

In this procedure, when the Supreme Court declares a law to be unconstitutional, it produces effects *erga omnes*, resulting in the derogation

of the law. Furthermore, this procedure incorporates an *a priori* determination of the constitutionality of legislative bills rejected by the executive branch.²⁷

The Political Constitution of New Granada (Colombia) of May 21, 1853, empowered the Supreme Court to decide the validity of municipal ordinances *vis-à-vis* the Constitution or the laws of the Republic. Any citizen was entitled to present the claim before the Supreme Court. The Colombian Constitution of 1858 gave power to the Supreme Court to suspend the execution of acts of the state legislatures whenever they were contrary to the Constitution or the laws of the Confederation; the Supreme Court gave notice of the suspension to the Senate so that it could decide definitely on the validity or nullity of such acts (Article 51). The Colombian Constitution of 1863 gave powers to the Supreme Court to suspend, upon appropriate request from the Attorney General or any citizen, the execution of legislative acts of the state assemblies (Article 72).

Amendment Act No. 3 of 1910, which reformed the Constitution of 1886 — presently in force — introduced the People's Action to test the constitutionality of laws.

Article 214 of the Colombian Constitution states:

The Supreme Court of Justice is charged with safeguarding the integrity of the Constitution. Consequently, besides the powers given to it by this Constitution and the laws, it will have the following power: to decide definitely on the compatibility of the legislative bills which have been objected to by the Government as unconstitutional, or on all the laws or decrees promulgated by the Government in the performance of the duties stated in paragraphs 11 and 12 of Article 76 and Article 121 of the Constitution when any citizen impugns such unconstitutionality.²⁸

The People's Action to test the constitutionality of laws was introduced in the Venezuelan Constitution of 1853. The Venezuelan Constitution of 1961 gives power to the Supreme Court to declare that a law or any other act of the legislative body is unconstitutional wholly or in part, and to decide on the validity of state laws, municipal ordinances and other acts of municipal deliberating bodies (Article 215, paragraphs 3 and 4). A Court declaration of unconstitutionality results in the derogation of such dispositions.

In 1869, Ecuador adopted the same system. However, the Constitution of 1967 transferred the power to test the validity of laws in a people's action from the Supreme Court to the Tribunal of Constitutional Guarant-

tees. But, since the Ecuadoran Constitution of 1967 has been abrogated, the above mentioned tribunal does not have jurisdiction "to pass judgment on the complaints of violation of the Constitution or laws presented by any real or artificial person" (Article 220, paragraph 3).

The People's Action has also become popular in other Latin American countries.

In 1904, Panama adopted this proceeding. The constitutions of 1941 and 1946 (Article 167, paragraph 1 of the latter) reaffirmed the system. The "Law of Constitutional Recourses and Guarantees", of November 24, 1956, sets forth in detail the various devices of constitutional control: *habeas corpus*, the *amparo* of constitutional guarantees (to protect other individual rights), the "objection of incompatibility" (against bills and constitutional amendments), the "advisory opinion on constitutionality", and the "recourse of unconstitutionality".

Peru's Constitution of 1933 also established the People's Action, not to test the validity of laws, but rather to test the validity of regulations and other general governmental resolutions or decrees which could infringe the Constitution or the laws (Article 133). The Organic Law of the Judicial Branch of July 25, 1963 provided for judicial review, so that judges or tribunals could give preference to constitutional dispositions over and above other legal dispositions (Article 8).

In Cuba, beginning with the Constitution of 1931, the People's Action was permitted; such an action could be undertaken, not only by those affected, but also by any group of 25 citizens signing a petition (Article 194, paragraph b). The Tribunal of Constitutional and Social Guarantees had the power to derogate unconstitutional laws. But the Fundamental Law of Cuba of February 7, 1959, suppressed the People's Action, since an action to test constitutionality was granted exclusively to "any real or artificial person who has been affected by an act or disposition which he may consider unconstitutional" (Article 160).

The Constitution of El Salvador of 1962 gives power to the Supreme Court to declare a law, decree or regulation unconstitutional "in its form and content, in a general and obligatory manner, and can do so at the petition of any citizen" (Article 96). This system was incorporated in the Constitution of 1950.

E. The Amparo as a Means of Control of the Constitutionality of Laws

This institution appeared in Article 25 of the Amendment Act of 1847 of the Mexican Federal Constitution of 1824, and is known by the name

"Otero's formula." This legal device permits the challenge, by means of *amparo*, of any law considered to be unconstitutional. This action can only be taken by the aggrieved party, and the effects of the decision of unconstitutionality are not *erga omnes*, but rather apply to the specific case and are for the benefit of the party involved. Besides, the declaration of unconstitutionality does not derogate the law.

In the beginning, this system influenced several Central American countries, although recently it has been discarded. Only three countries retain this method of judicial review: Honduras, Nicaragua and Guatemala.

F. Le Contentieux-Administratif

Another legal instrument for the protection of human rights against public administrative acts, is the administrative jurisdiction (*contentieux administratif*), giving the power to annul, suspend or amend such acts.²⁹

There are three systems of administrative jurisdiction: The first, which is typically jurisdictional, consists of giving to ordinary judicial tribunals the administrative jurisdiction as a means of controlling public administrative acts which injure the rights of private persons. Argentina, Boliva, Brazil, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic and Venezuela have adopted this system, following the early practice of the United States (especially prior to the adoption of the Administrative Procedure Act), but with variants and adaptations peculiar to each country.

The second consists of giving administrative jurisdiction to an administrative body which has jurisdictional functions. The *Conseil d'Etat* and the administrative tribunals do so in France. This system, however, has not had many followers in Latin America. Only Colombia has a State Council, which besides being the supreme tribunal in administrative jurisdiction is the highest consultative body of the state in administrative matters.

The third, called the mixed system, consists of giving administrative jurisdiction to jurisdictional bodies which are not only independent from the Judicial Branch but also from the Public Administration. In Latin America the following countries have this system: Uruguay and Ecuador with their *Tribunales de lo Contencioso-Administrativo*; and Chile, with its administrative tribunals.

G. The "Action of Guarantees"

This is a new judicial recourse to protect human rights recognized by some of the constitutions. In general, it consists of a public action available

to anyone to prosecute officials accused of violating constitutional rights and guarantees.

This is a typical action in Guatemala. The Guatemalan Constitution of 1965, provides:

The action to prosecute those responsible for violations of rights and guarantees included in this part of the Constitution, is public and may be initiated by simple denunciation, without any bond or other special formality (Article 78).

The Constitution of Honduras of 1965 reproduces in similar wording the Guatemalan provision.

ACTION, RECOURSE AND CLAIM OF *AMPARO* IN MEXICO

Several Mexican authors, when they refer to the *amparo*, affirm—and this is understandable—that this institution is “the most efficient and adequate procedural instrument for the specific protection of human rights stipulated in the Constitution.”³⁰

This opinion is theoretically valid if two factors are taken into consideration:

First, the Mexican *amparo*—initially conceived as a recourse to protect “individual guarantees” only—has also had to be used to fill in some constitutional gaps. Certainly, the Mexican *amparo* has had to be used as a writ of *habeas corpus*, as an indirect means of judicial review, as an extraordinary recourse of legality (due process of law), as a recourse of cassation, and even as a special recourse of administrative jurisdiction (*contentieux administratif*). Perhaps because of this, Professor Ignacio Burgoa has said that this institution has become “denaturalized.”³¹

Second, the Mexican *amparo* is at present the legal device which serves, in some degree, as a barrier against abuses, prevarications and corruptions in the administration of justice. It is said that the “claim of *amparo*” is the last bastion of the administration of justice in Mexico. However, the Mexican *amparo* is not, in practice, as quick and efficient as it has been claimed to be. For instance, the Supreme Court and the Circuit Tribunals are at present delayed by a large backlog of cases.

The Mexican Constitutional Law Professor, Felipe Tena Ramirez, has stated that *amparo*, aside from its normal function of protecting human rights, has the following additional objectives.³²

1. To defend the Federal system against the interference of state sovereignties in the federal sphere and vice versa, when such interference results in detriment to any private interest.

2. To defend the integrity of the Federal Constitution when its violation concurrently implies violation of an "individual guarantee."

3. To defend the correct application of the law in civil, criminal, administrative and labor suits, according to Article 14 of the Mexican Constitution.

4. To defend the "individual guarantees" which the Constitution expressly sets forth in criminal matters.

5. To defend private persons against the illegal acts of the Public Administration.

In summary, the Mexican *amparo*, takes the form of a claim before the federal tribunals.³³ The claimant is always a person, i.e., the victim or potential victim of violations of constitutional rights and fundamental liberties, whether or not such violation has already been perpetrated or is likely to be perpetrated at some time in the future. The defendant is always a "responsible authority", defined as one who "dictates, orders, executes or intends to execute the law or the act impugned" (Article 11 of the Law of Amparo). There is no public hearing, but rather the case is reviewed by the Supreme Court or the Circuit Tribunals. Decisions are designed to prevent or correct the specific infraction impugned, exclusively in favor or against the person who has presented the claim. The decision is binding only on the parties involved in the litigation.

With these basic concepts in mind, we may begin the study of the Mexican *amparo*:

A. *Origin*

The plea of *amparo* appeared for the first time in the Mexican Federal Constitution of February 5, 1857, and its objective was to protect the individual in federal tribunals against legislative, administrative or jurisdictional acts in violation of individual rights included in the first 29 articles of the Constitution.³⁴

Nevertheless, the historical background of the *amparo* dates back to the Draft Constitution of the State of Yucatan prepared in 1840 by Manuel Crescencio Rejon, who proposed the *amparo* in order to protect human rights against laws, decrees, or acts of legislative and executive bodies which were contrary to the Constitution.³⁵ This device was included in the Yucatan State Constitution of 1841.³⁶

Subsequent to the Yucatan State Constitution, the "Amendment Act" to the Mexican Federal Constitution of 1824, as promulgated in 1847, included the *amparo* in Article 25, drafted by Mariano Otero as follows:

The Federal Tribunal will protect any person in the exercise and conservation of the rights which are given to him by this Constitution and by constitutional laws, against any attack from the legislative or executive branches, either Federal or State; but these Tribunals will be limited to providing protection only in the specific case under consideration, without making any general declaration on the law or act impugned.³⁷

In this way, the *amparo* attained its definite status as a constitutional institution and its scope of action was broadened, since it was no longer used solely as a device for the protection of civil rights embodied in the first 29 Articles of the Constitution, but also as a means of preventing federal interference with State sovereignty and vice versa.

However, the actual use of the *amparo* started after the Mexican Republic had been consolidated following the episodes of the French intervention and civil strife. The First Law of Amparo passed in 1861, had limited application. In practice, it was not until 1867 that the *amparo* was used as a remedy analogous to that of the writ of *habeas corpus* against illegal arrest and confiscation.

Furthermore, the Supreme Court started to use the *amparo* to review "due process of law", as a result of its broad interpretation of Article 14 of the Constitution,³⁸ taken almost verbatim from the Fifth Amendment to the Constitution of the United States.³⁹ That is to say, *amparo* was also converted into a system of "control of legality and constitutionality." Professor Vallarta considered that Article 14 of the Mexican Constitution should only be applied to criminal cases. But the Supreme Court was to "give in to the temptation of extending its power and succeeded in broadening the meaning of Article 14."⁴⁰ The Federal Constitution of February 5, 1917, adopted this judicial "*amparo*" with all its effects as stated in Article 14.⁴¹

In accordance with this historical precedent in the Mexican Constitution of 1917 (whose Article 103 is almost identical to Article 101 of the Mexican Constitution of 1857), the Law of Amparo of 1919 was promulgated, establishing the principles of relativity of decisions and "personal damage" as characteristic elements of this legal device. The Supreme Court and the District Judges shared jurisdiction in such cases.

The Law of Amparo of December 30, 1935 (amended in 1951, 1963 and 1968) sets forth the characteristics of this institution:

1. The federal tribunals shall take cognizance of: a) all controversies arising out of laws or acts of public authorities which violate any personal guarantee; b) all controversies arising out of laws or acts of the federal authorities which limit or encroach upon sovereignty of the states; and, c) all controversies arising out of laws or acts of state authorities which invade the sphere of action of the federal authorities.

2. An action of *amparo* may only be brought by a party who is injured by a law, act or decision which is claimed to be invalid. When *amparo* is used as a final appeal to impugn a decision made in a suit between two private parties, the parties in the *amparo* proceeding are three: 1) the *agraviado*: party injured by the lower court decision; 2) the "responsible authority": the defendant judge who rendered the decision; and, 3) the *tercero perjudicado*: the party favored by the lower court decision.

3. The proceedings are entirely in writing without oral presentations. The decision is final and obligatory only for the parties involved in the litigation and does not decide with effects *erga omnes* the validity of the law, only the specific case. However, the final decision may be attacked only by means of revision, complaint or protest.⁴² The *amparo* may not be used against government-subsidized independent enterprises,⁴³ corporations in which the states participate, or the National Autonomous University of Mexico.

B. *The Five Aspects of the Mexican Amparo*

The Mexican *amparo* is not only broad, but also complex in structure. Professor Fix Zamudio, maintains that this institution has five separate variants: *amparo-libertad*, the *amparo* against laws, *amparo-casación*, *amparo administrativo*, and the agrarian *amparo*.⁴⁴ In practice, however, the *amparo* is only one instrument.

Let us examine briefly these five aspects:

1. *Amparo-libertad* (writ of *habeas corpus*)

As already mentioned, the writ of *habeas corpus* was embodied in the Mexican Constitutional system under the name of *amparo* in the *Amendment Act* of 1847, to protect individual freedom against arbitrary arrest. Even though the *amparo* is a device to protect all the civil rights contained in the Mexican Constitution, when it fulfills functions analogous to the writ of *habeas corpus*, in legal terminology it is called *amparo-libertad*.⁴⁵ Theoretically, it consists of a special, simple and rapid procedure, different therefore from the *amparo* procedures established to protect other civil

rights. In practice, however, it is not such a quick and effective procedure as might be expected.

Some Mexican authors have established a parallel between the *amparo-libertad* and the writ of *habeas corpus* of Anglo-American law.⁴⁵ Other authors, on the contrary, have said that *amparo-libertad* was inspired by Spanish Law.⁴⁶ The writer believes, however, that *amparo-libertad* was taken from the Anglo-American *habeas corpus*, since the Spanish Aragonian *amparo* was not included in the Spanish Law of the Indies.⁴⁷ In the writer's view, *amparo-libertad* is, in theory, the same as the writ of *habeas corpus*, but the terminology and practices are different.

After the *amparo* was included in the Mexican Federal Constitution of 1857, the procedure was divided into two main branches: first, the *amparo-libertad* as a remedy against "acts which signify danger or loss of life, attacks against individual liberty outside judicial procedures, deportation or exile, or one of the acts prohibited by Article 22 of the Constitution"⁴⁸ and, second, the *amparo* as an original procedure for protecting the other individual guarantees set forth in the Constitution, besides personal liberty and integrity.

The *amparo-libertad* consists theoretically of a simple and quick procedure. This recourse may be had at any hour of the day or night. In emergencies, it may be transmitted by telegraph to an ordinary judge within whose jurisdictional area the impugned act has been perpetrated or is intended to be perpetrated. When the victim is incapacitated and hence incapable of personally seeking an *amparo-libertad*, another person may do so in his behalf, on condition that the victim ratify the petition within three days. In practice, however, *amparo-libertad* is not a quick and effective legal remedy against arbitrary arrest, as was seen in the general arrests made during the student uprisings in Mexico in 1968.

An ordinary judge has the power to order the "provisional suspension" of the "impugned act", but he must send the proceedings to a District Judge so that he may start the trial formally (Articles 38, 39 and 40 of the Law of Amparo).

The "responsible authority" in the "impugned act" must answer the charges presented by the injured party by means of a "justified report". With or without such report, however, the hearing of facts and allegations is carried out. Generally, the decision is to present a recourse of review against the decision before the Circuit Tribunals, and, in exceptional cases, before the Supreme Court when violations of Article 22 of the Constitution are alleged.

It may be seen, therefore, that *amparo-libertad* is much broader than the writ of *habeas corpus* in the United States, since it may be utilized, not only in cases of arbitrary arrest or threat of detention, but also when there has been a violation of Article 22 of the Mexican Constitution, which reads as follows:

Punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or overwhelming penalties are prohibited.

Attachment proceeding covering the whole or part of the property of a person made under judicial authority to cover payment of civil liability arising out of the commission of an offense or to meet taxes or fines shall not be deemed a confiscation of property.

Capital punishment for political offenses is likewise forbidden; as regards other offenses, it can only be imposed for high treason committed during a foreign war, parricide, murder with malice aforethought, arson, abduction, highway robbery, piracy, and grave military offenses.

2) *The Amparo Against Laws*

Previously, reference was made to judicial review which developed in Latin America under the influence of American doctrine and jurisprudence. The principle of constitutional supremacy in the United States, undoubtedly inspired the Mexican system of indirect control of the constitutionality of laws. The Amendment Act of 1847 introduced the "Otero Formula", according to which the *amparo* is used to test the validity of laws and regulations (Article 25 of the Mexican Constitution).

The Law of Amparo now in force regulates two constitutional statutory reviews — the *action* and the *recourse* of unconstitutionality:

a) The *action*: the petitioner may impugn directly ordinary legislative measures (laws, decrees, regulations, etc.) when he considers that they are contrary to the Constitution. This action, however, is only valid in the case of a person directly or indirectly injured by a law or by the initial application of the law. The parties to this action are: the *agraviado* (claimant), the body which has passed the law (the Congress) or the administrative authority which executes or intends to execute the law in a "specific case." Decisions may be challenged before the Supreme Court.

b) The *recourse* of unconstitutionality: this takes the form of a direct *amparo* and is applicable against specific rulings or ordinary judges.

This recourse is available, without the right to further appeal, before the Supreme Court directly, or before the Circuit Tribunals.

The recourse originally appeared in the jurisprudence of the Supreme Court to harmonize Article 103 of the Constitution (giving the federal judges exclusive powers in matters related to unconstitutional laws or acts), with Article 133 (taken almost verbatim from the second paragraph of Article 6 of the United States Constitution), which obligates ordinary judges to recognize the supremacy of the Federal Constitution over State constitutions.

The Supreme Court has concentrated the judicial review of laws in the Federal Judicial Branch, without affecting the duty of local judges to apply the provisions of the Mexican Federal Constitution over the provisions of State constitutions in contradiction to the supreme law of the land.⁴⁹

The recourse of unconstitutionality consists of an analysis of the validity of the claim and may order measures to satisfy valid claims. The proceeding may develop into a declaration of the unconstitutionality of the law impugned, or in the rejection of an invalid claim.

The decision in each case (action and recourse) does not result in an *in abstracto* declaration of the unconstitutionality of the law impugned, with effects *erga omnes*, but rather is limited to ordering that the law impugned not be applied in detriment of the claimant. The law impugned, at any rate, will continue in force since the Mexican Federal Judicial Branch does not have powers to abrogate or derogate a law; these powers are exclusively reserved to the Federal Congress. In the United States the case is somewhat different because a Supreme Court decision declaring the unconstitutionality of a law has virtually the same effect as abrogation. In Mexico, five similar cases are required to suspend the application of a law (this is called mandatory jurisprudence of the Supreme Court).

Therefore, the *amparo* against laws is an indirect means of judicial review of ordinary legislative measures, not a direct means with *erga omnes* effects to abrogate a law challenged as unconstitutional, as is the case in Colombia.

3) *Amparo-casación*

This is a separate claim to impugn decisions in civil, criminal and administrative suits and in labor arbitrations, when such decisions are considered to be in violation of the rules of procedure of the "individual

guarantees" of the appellant. This action is taken before the Supreme Court or the Circuit Tribunals.

This last appeal, also called judicial *amparo*, is a result of mandatory Supreme Court jurisprudence which broadened the interpretation of Article 14 of the Mexican Constitution of 1857. The Mexican Constitution of 1917, now in force, recognizes it expressly in Article 14:

No law shall be given retroactive effect to the detriment of any person whatsoever.

No person shall be deprived of life, liberty, property, possessions, or rights without a trial by a duly created court in which the essential elements of procedure are observed and in accordance with laws issued prior to the act.

In criminal cases no penalty shall be imposed by mere analogy or by *a priori* evidence. The penalty must be decreed in a law in every respect applicable to the crime in question.

In civil suits the final sentence shall be according to the letter or the judicial interpretation of the law; in absence of the latter it shall be based on general principles of law.

The judicial *amparo* — based on the principle of "control of legality" or "due process of law" — has come to replace the ordinary cassation recourse,⁵⁰ which exists in the other Latin American countries. The cassation recourse in civil cases existed in Mexico until 1908. In Mexico the judicial *amparo* (*amparo-casación*) was established to remedy the lack of "trust in the unbiased action of the local tribunals."⁵¹ At present, this "amparo-casación" is the most effective Mexican device to stop corruption and prevarication by ordinary judges.

The Mexican "*amparo-casación*" is similar to the procedure in the French cassation system, since it has also adopted the procedure of re-expedition, as follows: if *amparo* is granted, the judge in the original suit is obliged to promulgate a new decision in accordance with the guidelines established by the Supreme Court or by the Circuit Tribunals. In the Spanish system, on the contrary, only the cassation tribunal reviews or modifies an earlier decision.

4) *The Administrative Amparo*

This recourse is available for the protection of the interests of private parties against acts of the Public Administration and also to impugn final

decisions of the Federal Fiscal Tribunal, which, as an administrative body of delegated jurisdiction, is empowered to decide cases challenging final rulings in fiscal and administrative matters (Article 22 of the Organic Law of the Federal Judicial Branch).

The administrative *amparo* has two variations:

a. This recourse is used against acts or resolutions of the public administration, with the exception of acts of decentralized bodies or corporations in which the state is a participant. Here the *amparo* has litigious-administrative jurisdiction not expressly attributed to judicial bodies or to a mixed body, as in the French State Council. b. But, if an *amparo* is obtained against final decisions of the Federal Fiscal Tribunal, this *amparo* then takes the form of an administrative cassation, in accordance with Article 158 of the Law of Amparo in force.

5) *The Agrarian Amparo*

This recourse is in reality a variation of the administrative *amparo*. It has evolved from the amendment to the Law of Amparo of January 1, 1963. It was created for the purpose of establishing special rules to protect groups of organized peasants in accordance with the Mexican system of communal agrarian property. It consists of an exceptional procedure, under the supposition that "they are people who lack legal knowledge and even the economic means to obtain adequate counseling."⁵²

AMPARO IN OTHER LATIN AMERICAN CONSTITUTIONS

The Mexican *amparo* has influenced other legal regimes in Latin America, which have introduced this institution as a means of protecting human rights. No uniformity exists, however, since the institution has variations peculiar to each country.⁵³

Following Mexico, the first country to adopt the *amparo* was Guatemala in its Constitution of 1879. Subsequently, the following Central American countries adopted it: Honduras, in 1894; El Salvador, in 1886; Nicaragua, in 1911; Panama, in 1941; and Costa Rica, in 1946.

In Argentina, the *amparo* was first included in Article 17 of the Constitution of the Province of Santa Fe on August 13, 1921. But, in the national sphere, the creation of the *acción de amparo* is a recent development in the jurisprudence of the Supreme Court, initiated in the famous cases of "Angel Siri" (December 17, 1957) and "Samuel Kot" (Septem-

ber 5, 1958).⁵⁴ On October 16, 1966, National Law No. 16,986 covering *Acción de Amparo* was promulgated.⁵⁵

In Chile, the writ of *habeas corpus*, guaranteed by Article 16 of the Constitution of 1925, is called recourse of *amparo* in doctrine as well as in jurisprudence.

Venezuela, in its Constitution of 1961, instituted *amparo* as a recourse to protect, before the tribunals, any person in the enjoyment and exercise of his constitutional rights and guarantees (Article 49).

In its Constitution of 1967, Ecuador adopted the jurisdictional *amparo* to protect persons "against any violations of constitutional guarantees" (Article 28, paragraph 15).

The process of incorporation of *amparo* in Latin American Constitutions reached its high point in the constitutions of Bolivia and Paraguay of 1967, since they introduce the recourse of *amparo*, independently of the writ of *habeas corpus*, against illegal acts not only of *public authorities*, but also of *individuals*. However, Nicaragua, in its Law of Amparo of 1950, admitted the *amparo* against "private persons who restrict personal liberties" (Article 4).

After more than a century, the Mexican *amparo* — an institution for the defense of civil rights against the arbitrary acts of public authorities (executive, legislative and judicial) — now has been developed in Nicaragua, Bolivia and Paraguay into an instrument to protect human rights against the illegal acts not only of public authorities but also of private individuals. The same has taken place in connection with the Brazilian *mandado de segurança*, the Argentine *acción de amparo* and the writ of *habeas corpus* in several other countries.

In practice, *amparo* takes three different forms, as follows:

- a) *amparo* as a synonym for *habeas corpus*; b) *amparo* as a means of protection of the civil rights recognized by a national constitution, and c) *amparo* as a general means of protection of human rights and as a device for testing the constitutionality of laws.

A. *Amparo as a Synonym for Habeas Corpus*

In Argentina, the recourse of *amparo* is analogous to the writ of *habeas corpus* and is used exclusively against arbitrary arrest and irregularities in criminal procedures. In Chile, the writ of *habeas corpus* is called recourse of *amparo* and is applied against arbitrary arrest by the

authorities.⁵⁶ In Mexico the *amparo-libertad* is synonymous with *habeas corpus* as already shown.

B. *Amparo as a Means of Protection of Human Rights Recognized by the Constitution*

Independently of the writ of *habeas corpus*, the constitutions of Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela give to the *amparo* the character of an instrument for the protection of human rights recognized by the constitutions, similarly to Mexico with the *juicio de amparo* and in Brazil with the *mandado de segurança*.

The following is an analysis of the *amparo* in the eleven countries previously mentioned:

1. *Argentina*: the Argentine *acción de amparo*, since its first appearance in the Constitution of the Province of Santa Fe, of 1921 (Article 17), has found its way into the other provincial constitutions of Argentina.⁵⁷

In the national sphere, the *acción de amparo*, as stated earlier, is a development of Supreme Court jurisprudence. This court has affirmed the existence of fundamental rights and that these afford protection to all persons by virtue of being included in the Constitution.⁵⁸

According to Professor Fix Zamudio, the "*acción de amparo*", has the following characteristics:

a) It is available when there is a present or imminent attack against fundamental rights found in the Constitution, independent of the recourse of *habeas corpus* to protect individual liberty against arbitrary arrest; b) when the attack, coming from authorities or private persons, constitutes "an arbitrary act in manifested form"; and, c) it is also available when there is no other legal means to defend the violated right, or if irreparable damage would be caused by submitting the case to ordinary procedures.⁵⁹

In summary, the action of *amparo* consists of a recourse granted to all persons "against all acts or omissions of public authorities which, in a present or imminent form, injure, restrict, alter or threaten, with arbitrariness or manifest illegality, the rights or guarantees explicitly or implicitly recognized by the Constitution."⁶⁰ This action is also available against the so-called "pressure groups" (labor unions, for example), in compliance with the Supreme Court jurisprudence in the "Kot case."⁶¹

The *acción de amparo* may be requested by any real or artificial person, directly or by proxy, before the ordinary judge who has jurisdiction in the area where the execution of the alleged "arbitrary or illegal manifest act" took place. The claim must be presented in writing. Once the claim has been accepted, the judge will request a "circumstantial report" from responsible authority. Within three days, the judge will rule regarding the existence or non-existence of the injury, restriction, alteration or arbitrary threat which jeopardizes the constitutional rights or guarantees of a person. The decision is final. Court costs are paid by the losing party.

The Argentine *acción de amparo* is similar to the Anglo-Saxon *injunction*, in the sense that it is not available when "there are recourses or administrative remedies which permit obtaining the protection of the constitutional right or guarantees in question."⁶²

2. *Bolivia*: The Constitution of 1967, besides reaffirming the traditional writ of *habeas corpus* against arbitrary arrest, has also instituted the recourse of *amparo*, which is available "against the illegal acts or the forbidden omissions of officials or private persons which restrict, suppress or threaten to restrict or suppress the rights and guarantees of persons which are recognized by this Constitution and the Laws" (Article 19). This recourse may be sought by a person who considers himself "injured", or by any other person representing him, before the superior courts of the capitals of the departments and before municipal judges in the provinces. The State Attorney has the power to exercise this recourse *ex officio* when the injured person has not already done so or could not do so. The general procedure for the recourse is extremely summary.

3. *Costa Rica*: The Constitution of 1949 not only ratified the recourse of *habeas corpus* to protect individual liberty (Article 48, paragraph 1), but also for the first time introduced the recourse of *amparo*, the purpose of which is "to maintain or reestablish the exercise of the other rights established in this Constitution" (Article 48, paragraph 2). This recourse may be requested by any person, not only in defense of his fundamental rights and liberties, but also in defense of the social rights recognized by the constitution.⁶³

4. *Ecuador*: The Constitution of 1967 instituted, for the first time, as one of the human rights, "the right to the jurisdictional *amparo* against any violation of the constitutional guarantees, without affecting the duty incumbent upon the Public Powers to safeguard the observance of the Constitution and laws" (Article 28, number 15). The *amparo jurisdictional* is not only independent of the recourse of *habeas corpus* against arbitrary arrest (paragraph h, sub-paragraph 18, Article 18), but also

independent of the recourse which is granted to any real or artificial person to appear before the Tribunal of Constitutional Guarantees to question the legality of any action (Article 219, paragraph 3). Unfortunately, the Constitution of 1967 was abrogated in July, 1970 by President Velasco Ibarra.

5. *El Salvador*: In its Constitution of 1886, this country introduced the *juicio de amparo* (*amparo* by direct claim), which, similar to the Mexican *amparo*, fulfills a triple mission: as an instrument to protect civil rights recognized in the Constitution; as a writ of *habeas corpus* against arbitrary arrest, and as a device for testing the constitutionality of laws. In the Constitution of 1950, however, this triple mission of the Salvadoran *amparo* was discontinued.

The Constitution of 1962 grants to persons the recourse of *amparo* before the Supreme Court to impugn "the violation of the rights given to them in the present Constitution" (Article 221).⁶⁴ Moreover, this particular constitution again instituted the writ of *habeas corpus* "when any authority or individual illegally restricts individual liberty" (Article 164); this recourse is brought before the Supreme Court or before *Cámaras de Segunda Instancia*.

6. *Guatemala*: This country introduced the Mexican *amparo* in its Constitution of 1879 and confirmed it in the constitutional amendments of 1921 and 1927.⁶⁵ In the Constitution of 1945, the *amparo* had three functions: to protect constitutional human rights; to act as a writ of *habeas corpus* against arbitrary arrest, and as a means of testing the constitutionality of laws, regulations and other acts. In the Constitution of 1965, *amparo* had as a key function, the maintenance of individual guarantees and the invulnerability of constitutional precepts (Article 79).

The Constitution of 1965 has definitely separated the three institutions: first, an *amparo* may be requested by any person in order to "maintain or to have restored to him the exercise of the rights and guarantees established by the Constitution" (Article 80); second, the writ of *habeas corpus* known as "recourse of personal presence", is available against arbitrary arrest; and, third, the "recourse of unconstitutionality", which is available, before the Court of Unconstitutionality, "against laws or Government measures of a general nature which are partially or totally unconstitutional."⁶⁶

According to the terms of the Constitutional Law of Amparo, Habeas Corpus and Unconstitutionality, *amparo* may be pressed by a person under the following conditions, among others: a) to maintain or restore the exercise of the rights and guarantees established in the Constitution

and the laws of the Republic of Guatemala; b) to declare in specific cases that a law, regulation, resolution or act of a public authority is not binding on the petitioner since such a measure contravenes or restricts rights guaranteed by the Constitution or laws; c) to impugn acts, not merely legislative, of the Congress which violate constitutional rights, and, d) to impugn acts of a public authority which are manifestly abusive or illegal.⁶⁷

7. *Honduras*: Beginning in 1894 this country adopted *amparo* by direct claim similar to Mexico. The Constitution of 1965, similarly to that of Guatemala, separates the recourse of *habeas corpus* — against arbitrary arrest — from the recourse of *amparo*. According to the Constitution, any injured person, or anyone representing him, has the right to seek the recourse of *amparo* to maintain or regain the exercise of his constitutional rights and guarantees. (Article 58, paragraph 1).

8. *Nicaragua*: The *amparo* was adopted by the Constitution of 1911. The Constitution of 1950, now in force, also separates the writ of *habeas corpus* — against arbitrary arrest — from *amparo* (Article 41). The Law of Amparo of 1950, which has the category of a constitutional law, established the legal means to exercise the right of *amparo* for the purpose of maintaining and re-establishing the supremacy of the Constitution and constitutional laws.

The “right of *amparo*” is available in the following cases:

a) Against violations of the Constitution and constitutional laws, by laws, decrees, resolutions, orders, mandates or acts of any official authority, public corporations or their agents; b) to test the constitutionality of a law or decree referring to matters not properly before tribunals or judges and which, when applied in specific cases, injure the rights of any person; c) against arrest or threat of arrest by order of any public official or authority; d) against acts of private persons restricting individual liberty, and, e) against orders of arrest of a person who, although not yet arrested, attempts to escape the effects of such order.⁶⁸

9. *Panama*: The *amparo de las garantías individuales* (*amparo* of individual guarantees) appeared in the Constitution of 1941, in a special chapter called “Institutions of Guarantee”, which also included the people’s action to test the constitutionality of laws, and litigious-administrative jurisdiction.⁶⁹

The Constitution of 1946 provides five different institutions: 1) The *habeas corpus*, which protects physical liberty against arbitrary arrest; 2) *amparo* of constitutional guarantees, which protects the remaining civil rights stipulated in the Constitution; 3) the *objeción de inexecutableidad*

(Executive veto) against unconstitutional laws; 4) the "advisory opinions on constitutionality", and, 5) the "recourse of unconstitutionality."⁷⁰

Article 51 of the Panamanian Constitution states that any person is entitled to impugn an order of any public official which violates constitutional rights and guarantees.⁷¹

10. *Paraguay*: The Constitution of 1967 not only reaffirms the recourse of *habeas corpus* against illegal arrest (Article 78), but also has instituted the recourse of *amparo* for the first time. Article 77 establishes that any person, who cannot obtain legal relief by ordinary means due to the urgency of the case, is entitled to appear before any ordinary judge to seek an *amparo* against an illegal act or omission, when he considers himself in serious jeopardy or in imminent danger thereof, in violation of a constitutional or of a legal right or guarantee.

According to the Constitution, the procedure will be brief, summary, free and public, and the judge will have the power to safeguard the right or guarantee, or to immediately re-establish the legal situation infringed. The Paraguayan recourse of *amparo* appears as an extraordinary or emergency recourse to protect fundamental constitutional rights and guarantees. But, in addition, this recourse of *amparo* is not only available against acts of public authorities, but also against acts of private persons, in the same way as the Bolivian and Nicaraguan *amparo*.

11. *Venezuela*: The recourse, action or claim of *amparo* was first instituted in the Constitution of 1961, which states (Article 49) that "the Tribunal will protect all persons in the enjoyment and exercise of the rights and guarantees which the Constitution establishes in conformity with the law. The procedure will be brief and summary, and the competent judge will have the power to re-establish immediately the legal situation infringed."⁷²

The Venezuelan *amparo* is, therefore, an institution to protect fundamental constitutional rights and guarantees. This is a recourse independent of the writ of *habeas corpus* to protect individual liberty against arbitrary arrest. The writ of *habeas corpus*, incidentally, was reaffirmed by the fifth transitory provision of the Venezuelan Constitution of 1961, which states: "any person who is deprived or restricted of his liberty in violation of the constitutional guarantees has the right to appear before the ordinary criminal judges to obtain a writ of *habeas corpus*."

The Venezuelan *amparo* is available against any act which violates a constitutional right, be it either of a public authority (national, state or municipal), or of a legislative or judicial body. The purpose of the *amparo* is mainly to reestablish immediately the legal situation infringed.⁷³

C. *Amparo as a Device for Protecting Human Rights and Questioning the Constitutionality of Laws*

In addition to Mexico there are only three other Latin American countries which have *amparo* against unconstitutional laws: Guatemala, Honduras and Nicaragua. In these countries the *amparo* is used not only as an instrument for protection of constitutional civil rights, but also as a means of impugning unconstitutional laws.

In the Guatemala Constitution of 1965 (Article 80), any person has the right to petition an *amparo* not only to retain or restore the exercise of his constitutional rights and guarantees, but also to obtain a declaration that, "in specific suits, a law, regulation, resolution or act of any public authority does not bind the petitioner, if it contravenes or restricts any of the rights guaranteed by the Constitution."⁷⁴

The Honduran Constitution of 1965, in the same way as the Guatemalan Constitution, grants the right to any "aggrieved person" to seek the recourse of *amparo*, not only "to maintain or restore the exercise of the rights and guarantees that the Constitution establishes," but also to obtain a declaration that, "in specific cases, a law, resolution or act of a public authority does not bind the petitioner, if it contravenes or restricts any of the rights guaranteed by the Constitution" (Article 58).

Finally, the Nicaraguan Constitution of 1950 establishes the principle that the laws which regulate the exercise of constitutional guarantees and rights will be null if they diminish, restrict or adulterate such guarantees and rights (Article 325, paragraph 2). The Law of Amparo, which is considered a constitutional law, admits that *amparo* is available against "the violation of the Constitution or of constitutional laws resulting from laws, decrees, resolutions, orders, mandates or acts of any official authority, public corporation or their agents" (Article 1, paragraph 2).

TOWARDS A LATIN AMERICAN AMPARO

Since the Mexican *amparo* has spread considerably throughout Latin America, as evidenced by its adoption in the constitutions of twelve countries (Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela), the establishment of a common Latin American *amparo* has been proposed as an essential device for the protection of constitutional human rights.

Since the first Symposium on Comparative Law, held in Montevideo, August 15-17, 1962, discussions have been held concerning the necessity

of establishing a common basis for procedures in actions of *amparo* and similar recourses.⁷⁵ The Third Latin American Symposium on Procedural Law, held at São Paulo, Brazil, in September 1962, recommended the preparation of a draft containing adequate uniform bases to regulate, in all Latin American countries, the jurisdictional protection of human rights, according to the Mexican pattern of *amparo* and the Brazilian *mandado de segurança*.⁷⁶

The Fourth Latin American Symposium on Procedural Law, held at Caracas, Venezuela, March 27 to April 2, 1967, approved two important propositions: one, presented by the Ecuadoran jurist Isaac Lovato, suggested that the Latin American Institute of Procedural Law prepare a draft that "could serve as a basis for legislative promotion in the Latin American countries to establish a specific legal device to protect fundamental human rights," and, two, suggesting that "fundamental human rights should be protected judicially by a legal remedy especially created for this purpose."⁷⁷ In addition, several Latin American jurists have frankly advocated the establishment of a fundamental legal device to protect human rights in its region.

The Argentinian jurist, Carlos Sanchez Viamonte, has favored the acceptance of an American *habeas corpus*, as broad as that existing in Brazil, that is one to protect all constitutional human rights.⁷⁸

The Brazilian jurist, J. M. Othon Sidou, prepared a draft of a uniform regulatory law for an American and universal *amparo*, in order to make effective Article 8 of the Universal Declaration of Human Rights.⁷⁹

The Mexican jurist, Hector Fix Zamudio, presented a proposal on March 28, 1967, before the Fourth Latin American Symposium on Procedural Law, which was approved as Proposal VI, in the following terms: "The action, recourse or claim of *amparo*, as found in numerous Latin American Constitutions (similar to the Brazilian *mandado de segurança*, with which it has many points in common), constitutes the most effective and direct means of protecting all the fundamental constitutional rights not covered by *habeas corpus*. Therefore, it would be advisable to adopt it in those legal systems in which it does not exist, since it cannot be advantageously substituted by other procedural remedies" . . .⁸⁰

Thus the question is whether or not there is a necessity to establish a Latin American *amparo* to protect constitutional human rights, independently of the writ of *habeas corpus* and other ordinary procedural recourses.

The participants in the Seminar on Amparo, Habeas Corpus and Other Similar Remedies (which took place in Mexico, August 15-18, 1961, spon-

sored by the United Nations), recognized that "the full exercise of fundamental human rights is a basic requirement for human peace and brotherhood." They likewise pointed out that *amparo*, the writ of *habeas corpus*, the *mandado de segurança*, and the other means of defending and safeguarding human rights "are legal institutions, eternal and essential, for the survival of any civilized community."⁸¹

If the above has been recognized by distinguished jurists, why, then, would it not be useful to establish a common Latin American *amparo*?

Three main reasons may be advanced in favor of the establishment of a common Latin American *amparo*:

1. The *amparo* in Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela, and the *mandado de segurança* in Brazil, are complete legal remedies for the protection of fundamental human rights recognized in the constitutions. This system of protection of human rights is complemented by the writ of *habeas corpus* to defend individual liberty against arbitrary arrest. In Mexico, not only *amparo-libertad* (equivalent to *habeas corpus*), but also the claim of *amparo*, are good devices for the protection of civil rights.

But, unfortunately, in Colombia, Cuba, Chile, Haiti, Peru, Dominican Republic and Uruguay, the procedural and constitutional recourses to protect civil rights do not have the broad application of *amparo* or "*mandado de segurança*".

Possibly for these reasons the Codification Division of the Legal Department of the Organization of American States (OAS), concluded in 1960 that "the recourse of *amparo* is really the only procedural institution which fully reflects the idea expressed" in Article XVIII of the American Declaration of the Rights and Duties of Man of 1948.⁸²

2. At this time, when the American countries are attempting to establish an Inter-American regime for the protection of human rights similar to that established by the Council of Europe in 1950, it appears advisable that Latin American countries advance more towards uniformity in their national procedural devices for the protection of human rights included in the American Convention on Human Rights.⁸³

In the Ninth International American Conference held in Bogota in 1948, Article XVIII was included in the American Declaration of the Rights and Duties of Man, at the suggestion of Mexico. The suggestion was adopted by the American States as Resolution XXX, as follows:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief

procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Similarly, "*amparo*" was included in Article 8 of the Universal Declaration of Human Rights, approved and proclaimed by the General Assembly of the United Nations in Paris on December 10, 1948, as follows:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Subsequently, the "Declaration of Santiago, Chile" (approved by the Fifth Meeting of Consultation of Foreign Ministers of the American Republics, of 1959), affirmed that "the human rights incorporated in the legislations of the American States should be protected by effective judicial means."⁸⁴

The Inter-American Commission of Jurists in its fourth meeting held in Santiago, Chile, in 1959, included in its Draft of the American Convention of Human Rights the following Article XXVIII: "any person is entitled to an effective, simple and rapid remedy before the competent national tribunals, to protect him against acts violating his fundamental rights as recognized by the constitution or by the laws."⁸⁵ This article was included in the Draft of the Inter-American Convention on Protection of Human Rights, approved by the Inter-American Commission on Human Rights in its Ninth Session held July 10, 1968.⁸⁶

Also, on December 16, 1966, the American countries approved, at the United Nations General Assembly, the International Covenant on Civil and Political Rights. Consequently, they agreed to: a) "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;" b) "ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy," and, c) "ensure that the competent authorities shall enforce such remedies when granted."⁸⁷

Finally, the American Convention on Human Rights, as approved by some Member States of the OAS, the 22nd of November, 1969, recognized the right to judicial protection, which includes the *amparo*, the writ of *habeas corpus*, the *mandado de segurança*, and other judicial recourses to protect specific human rights.

Latin American countries could better comply with their moral and legal obligations if they adopted a harmonious and uniform system of *amparo*, which would embody the history and practical applications of the remedy. This, of course, could be attained by the adoption of a model *amparo* system which could be gradually accepted by the legislatures in Latin American countries without the necessity of a treaty on the matter.

The work of the Inter-American entities to protect human rights—the Commission and the Court—would thus be facilitated if a common Latin American *amparo* existed instead of multiple legal devices.

3. The Latin American countries have begun a period, although delayed and slow, of economic integration. This process demands, as one of its requirements *sine qua non*, harmony and uniformity in the legislation of the participating States. Accordingly, the Latin American *amparo* and the other devices for the judicial protection of human rights should be, as soon as possible, harmonized and made uniform as indicated above.

CONCLUSIONS

1. Inspired by the liberal constitutional examples of France and the United States, the Latin American countries have, since the beginning of their independence, embodied bills of civil and political rights in their constitutions.

However, the introduction of “guarantees” to protect civil rights and liberties was a gradual development of constitutional law in Latin America. The legal protection of human rights was at first limited to the Anglo-American writ of *habeas corpus* to protect individual freedom against arbitrary arrest. Eventually, other constitutional devices were adopted, such as the judicial review, the judicial action against public authorities and the *amparo*, among others.

2. Even though all judicial recourses are useful instruments for the protection of human rights, it is necessary to give priority “to those which have proven their efficacy in the prompt and sure protection of human liberty.” These judicial devices are: the writ of *habeas corpus*, the *amparo* in Mexico and other Latin American countries, the *mandado de segurança* in Brazil, the judicial review, the people’s action against unconstitutionality of laws, and the “action of guarantees.”

3. The writ of *habeas corpus* is one of the traditional and inherent remedies to protect individual liberty against arbitrary arrest. This Anglo-American device was embodied gradually in Latin American constitutions.

4. In order to broaden the writ of *habeas corpus* so as to protect individual liberty against arbitrary arrest, the Brazilian Constitution of 1934 created the writ called "*mandado de segurança*" for the purpose of judicially protecting the other fundamental rights and guarantees recognized by the Constitution. In theory, this device is an extraordinary procedure for the prompt and efficient protection of civil rights against illegality, or abuse of power by any public official.

5. In their first constitutions, the Latin American countries adopted the U. S. system of judicial review to test the constitutionality of laws. The general procedure consists of a declaration *a posteriori* requested by the party involved in any specific suit; a declaration of unconstitutionality, however, does not derogate the law challenged with effects *erga omnes*. As an exception, several Latin American countries (Cuba, Ecuador and Guatemala) adopted the "European system" creating special constitutional tribunals.

6. The People's Action consists of the privilege given to any citizen to appear before the Supreme Court of Justice to impugn the unconstitutionality of a law, even though he may not be directly affected by the particular law. This procedure, originating in Colombia, has been adopted by the countries which previously constituted "Great Colombia" (Colombia, Ecuador, Panama and Venezuela). In this procedure, when the Supreme Court declares a law to be unconstitutional, it produces effects *erga omnes*, resulting in the abrogation of the law.

7. The *amparo* as a means of testing the constitutionality of laws (judicial review), was introduced in Mexico in 1847. In accordance with this procedure, only interested parties may press the remedy. However, the declaration of unconstitutionality of a law by judicial bodies, only results in the non-application of the impugned law in a specific case. Besides Mexico, only three countries follow this method instead of U. S. judicial review: Honduras, Nicaragua and Guatemala.

8. In Latin America, litigious-administrative jurisdiction (*contentieux-administratif*) is another legal device to protect human rights against public administrative jurisdiction of ordinary judicial tribunals. In some special instances, litigious administrative jurisdiction is conferred upon special entities which are independent of both the administrative and the judicial branches.

9. The "Action of Guarantees" is a new judicial recourse to protect human rights recognized by some constitutions. In general, it consists of a public action by anyone to prosecute officials accused of vio-

lating constitutional rights and guarantees. This is a typical device in Guatemala and Honduras.

10. In Mexico, federal constitutional protection of "individual guarantees" started in 1847, when the "Amendment Act" to the Constitution of 1824 was promulgated. Nevertheless, the historical background of the *amparo* dates back to the Yucatan State Draft Constitution drafted in 1840 by Manuel Crescencio Rejon, who proposed the remedy to protect human rights against acts by legislative and executive bodies contrary to the Constitution.

The *amparo* as a procedural device was reaffirmed in the Mexican Federal Constitution of 1857 and 1917, the latter still in force. Its purpose is to protect any person, before the federal tribunals, against legislative and administrative acts and judicial acts of lower courts which violate the individual guarantees set forth in the first 29 articles of the Constitution.

The Mexican *amparo*—initially conceived as a recourse to protect "individual guarantees" only—has also been used to fill in some constitutional gaps. Certainly, the Mexican *amparo* has had to be used as a writ of *habeas corpus* (*amparo-libertad*), as a means of judicial review (the *amparo* against law), as an extraordinary recourse of legality (due process of law), as a recourse of cassation (*amparo-casación*), as a special recourse of administrative jurisdiction (*amparo-administrativo*), and even as an agrarian appeal (*amparo agrario*).

11. The Mexican *amparo* has influenced other legal systems in Latin America, which have introduced this institution as a means of protecting human rights. No uniformity exists, however, since the institution has variations peculiar to each country.

Taking into account its field of action, the *amparo* in Latin America has three distinct applications:

a) *Amparo* as a synonym of *habeas corpus*: Argentina, Chile and Mexico.

b) *Amparo* as a means of protecting human rights recognized by the Constitution: Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela, and

c) *Amparo* as a device for protecting human rights and questioning the constitutionality of laws: Guatemala, Honduras, Mexico and Nicaragua.

12. After more than a century, the Mexican *amparo* protecting constitutional human rights against the arbitrary acts of public authorities,

has been broadened in Nicaragua, Bolivia and Paraguay. In these countries the *amparo* is used not only against illegal acts of public authorities, but also against those of private persons. This has also occurred with the Brazilian *mandado de segurança*, the Argentine *acción de amparo* and the writ of *habeas corpus* in several other countries.

13. Since the Mexican *amparo* has been embodied in the constitutional systems of Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela, the establishment of a common Latin American *amparo* has been proposed as an essential device for the protection of constitutional human rights.

Thus the question is whether or not there is a real necessity to establish a common Latin American *amparo* to protect constitutional human rights, independently of the writ of *habeas corpus* and other ordinary procedural remedies.

Three main reasons may be presented in favor of this idea:

a) The *amparo* is really the only complete procedural device which, together with the *mandado de segurança*, fully reflects the essence of Article 8 of the Universal Declaration of Human Rights and Article XVIII of the American Declaration of the Rights and Duties of Man of 1948. In other words, the *amparo* and the *mandado de segurança*, are the most complete judicial remedies for the protection of fundamental human rights recognized in the constitutions of Latin America.

b) At this time, when the American countries are attempting to establish an Inter-American regime for the protection of human rights similar to that established by the Council of Europe in 1950, it seems advisable that Latin American countries move forward toward uniformity with regard to the local procedural devices for the protection of human rights.

The American Convention on Human Rights, approved by some Member States of the Organization of American States, the 22nd of November, 1969, recognizes the right to judicial protection, which includes the *amparo*, the writ of *habeas corpus*, the *mandado de segurança*, and other judicial recourses to protect specific human rights.

c) Latin American countries could better comply with their moral and legal obligations if they adopted a harmonious and uniform system of *amparo*, which would embody the history and practical applications of the remedy. This, of course, could be attained by the adoption of a

model *amparo* system which could be gradually accepted by the legislature of Latin American countries, without the necessity of a treaty on the matter.

FOOTNOTES

¹American Convention on Human Rights, OAS Official Records, OEA/Ser.K/XVI/1.1 (English), Doc. 65, Rev. 1, Corr. 2, January 7, 1970. This Convention was originally signed by Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay and Venezuela. The treaty has not been signed by Argentina, Brazil, United States, Mexico, Peru, Dominican Republic and Trinidad and Tobago, but they may adhere to it later. This Convention shall enter into force as soon as eleven states have deposited their instruments of ratification or adherence.

²Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela.

³Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. This European Convention entered into force on September 3, 1953, after ratification by ten states. At present the following Member States of the Council of Europe have ratified the treaty: Austria, Belgium, Cyprus, Denmark, Federal Republic of Germany, Greece, Iceland, Italy, Luxemburg, Malta, Netherlands, Norway, Turkey and the United Kingdom. See The European Convention on Human Rights, Directorate of Information, Council of Europe, Strasbourg, 1968.

⁴Grant, J. A. C., *El Control Jurisdiccional de la Constitucionalidad de las Leyes: Una Contribución de las Américas a la Ciencia Política*, Universidad Nacional Autónoma de México, México, D.F., 1963.

⁵Camargo, P. P., *L'Amparo au Mexique et en Amérique Latine Comme Instrument de Protection des Droits de l'Homme*, "in Human Rights", *Journal of International and Comparative Law*, Vol. I, No. 3, Paris, September 1968, pp. 332-362.

⁶U. N. Official Records, OPI/15-63-29349- Feb. 1964-100M.

⁷*El Control Jurisdiccional de la Constitucionalidad de las Leyes*, op. cit. p. 24.

⁸1. Constitution of Argentina of 1853: "declarations, rights and guarantees" (only chapter, First Part); 2. Constitution of Boliva of 1967: "person's guarantees" (Second Title); 3. Constitution of Brazil of 1967: "Dos Dereitos e Garantias Individuais" (Chapter IV); 4. Constitution of Colombia of 1886: "the civil rights and social guarantees" (Title III); 5. Constitution of Costa Rica of 1949: "rights and social guarantees" (Title V); 6. Fundamental Law of the Republic of Cuba of 1959: "the individual rights" (Section I, Title IV); 7. Constitution of Chile of 1925: "constitutional guarantees (Chapter III); 8. Constitution of Ecuador of 1967: "the person's rights" (Chapter II); 9. Constitution of El Salvador of 1962: "regime of individual rights" (Title X); 10. Constitution of Guatemala of 1965: "individual guarantees and rights" (Chapter I, Title II); 11. Constitution of Haiti of 1964: "public rights" (Chapter IV), 12. Constitution of Honduras of 1965: "declarations, rights and gaurantees" (Title III); 13. Constitution of Nicaragua of 1950: "rights and guarantees" (Title IV); 14. Constitution of Panama of 1946: "individual and social rights and duties" (Title III); 15. Constitution of Paraguay of 1967: "rights, guarantees and obligations" (Chapter V); 16. Constitution of Peru of 1933: "individual guarantees" (Chapter II, Title II); 17. Constitution of the Dominican

Republic of 1966: "the individual and social rights" (Title II, Section I); 18. Constitution of Uruguay of 1967: "rights, duties and guarantees" (Section II); 19. Constitution of Venezuela of 1961: "rights, duties and guarantees" (Title III).

⁹Mexican Federal Constitution of 1917: "individual guarantees" (Chapter I, Title I, Articles 1-29).—See *Las Garantías Individuales*, by Ignacio Burgoa, 4th edition, Mexico City, 1965.

¹⁰*La Jurisdicción Constitucional de la Libertad*, article translated from Italian into Spanish by Hector Fix Zamudio, Mexico City, 1961, pp. 11 et ss.

¹¹U. N. Official Records, ST/TAO/HR/12.

¹²*La Protección Procesal de las Garantías Individuales en América Latina*, in *Revista Iberoamericana de Derecho Procesal*, No. 3, Madrid, 1967, pp. 21-22.

¹³*El Habeas Corpus, Garantía de la Libertad*, 2nd edition, Buenos Aires, 1956.

¹⁴Decree No. 1358, June 10, 1964.

¹⁵1. *Argentina*: even though the Constitution of 1853 does not include the writ of *habeas corpus*, this is recognized as an implicit guarantee; 2. *Bolivia*: Article 18, Constitution of 1967; 3. *Brazil*: Article 150, paragraph 20, Constitution of 1967; 4. *Colombia*: Habeas Corpus Decree No. 1358, June 10, 1964; 5. *Costa Rica*: Article 48, Constitution of 1949; 6. *Cuba*: Article 29, Fundamental Law of 1959; 7. *Chile*: Article 16, Constitution of 1925; 8. *Ecuador*: Article 28, paragraph h, Constitution of 1967; 9. *El Salvador*: Article 164, Constitution of 1962; 10. *Guatemala*: Article 79, Constitution of 1965; 11. *Haiti*: Article 17, Constitution of 1964; 12. *Honduras*: Article 58, paragraph 2, Constitution of 1965; 13. *Nicaragua*: Article 41, Constitution of 1950; 14. *Panama*: Article 24, Constitution of 1946; 15. *Paraguay*: Article 78, Constitution of 1967; 16. *Peru*: Article 69, Constitution of 1933; 17. *Puerto Rico*: Section 13, Article II, Constitution of 1952; 18. *Dominican Republic*: Article 8, paragraph g, Constitution of 1966; 19. *Uruguay*: Article 17, Constitution of 1967; 20. *Venezuela*: fifth temporary disposition, Constitution of 1961.

¹⁶Church, Wm. S., *Habeas Corpus*, 2nd. edition, 1853.

¹⁷At the present time the writ of *habeas corpus* has been converted in the United States into a more effective remedy than the appeal, since the Supreme Court has power to review the proceeding of an ordinary criminal tribunal and can consider points and facts not previously presented. The writ of *habeas corpus* has, among others, the following applications: 1. To obtain a new trial when the first was held under threat of violence by a crowd (*Moore v. Dempsey*, 261 U.S. 83, 1923); 2. To put in doubt the admissibility of evidence presented to obtain a legal verdict of guilty (*Mooney v. Holohan*, 294 U.S. 103, 1935); 3. To invalidate a confession of guilty obtained by police pressure (*Waley v. Johnston*, 316 U.S. 101, 1942); 4. To enforce the right of a poor or needy person to be given, by the judicial administration, a lawyer or defense in his case (*Chewing v. Cunningham*, 368, U.S. 443, 1962).

¹⁸Article 25 states that the federal tribunals will protect any inhabitant of the Mexican Republic in the exercise and preservation of the rights granted to him by the Constitution and constitutional laws against any attack of the legislative and executive branches, either federal or state. These tribunals, however, may only provide protection in specific cases, and they do not have the power to issue a general declaration in connection with the law or act impugned.

¹⁹*Veinticinco Años de Evolución de la Justicia Constitucional (1940-1965)*, Institute of Legal Research, National Autonomous University of Mexico, Mexico City, 1968. Other bibliographical references: Agricola Barbi, *Do mandado de segurança*, Bello Horizonte, Brazil, 1960; Sidou, *Do mandado de segurança*, 2nd

edition, Rio de Janeiro, 1957; Buzaid, Juicio de Amparo e Mandado de Segurança, Mexico City, 1960; Wald, O Mandado de Segurança na Practica Judiciaria, Rio de Janeiro, 1959.

²⁰Vescovi, E., La Protección Procesal de las Garantías Individuales en América Latina, in Revista Iberoamericana de Derecho Procesal, No. 3, Madrid, 1967.

²¹Literal print of the U. S. Constitution. Judicial review means control of constitutionality of laws. See the following publications: Mayers, El Sistema Legal de los Estados Unidos (Spanish version), Buenos Aires, 1958; Corwin, The Constitution and What It Means Today, New York, 1964; Grant, El Control Jurisdiccional de la Constitucionalidad de las Leyes, op. cit.; Eder, Judicial Review in Latin America, Ohio State Law Review, Vol. 21, No. 4, 1960, pp. 570-615.

²²Eder, P., states that judicial review was adopted by the following Latin American countries: Haiti, 1843; Bolivia, 1851; Argentina, 1853; Venezuela, 1858; Colombia, 1886; El Salvador, 1886; Costa Rica, 1871; Brazil, 1891; Nicaragua, 1893; United States of Central America, 1898; Cuba, 1901; Panama and Honduras, 1904; Guatemala, 1911; Chile, 1925; Uruguay, 1934. In judicial Review in Latin America, op. cit.

²³The following Latin American countries have judicial review: 1. Argentina: Article 100, Constitution of 1853; 2. Bolivia: Article 228, Constitution of 1967; 3. Brazil: Article 114, paragraph III, sub-paragraph a, Constitution of 1967; 4. Colombia: Article 214, Constitution of 1886; 5. Costa Rica: Article 10, Constitution of 1949; 6. Chile: Article 86, Constitution of 1925; 7. El Salvador: Articles 220 and 221, Constitution of 1962; 8. Honduras: Articles 235, 236 and 237, Constitution of 1965; 9. Nicaragua: Articles 229 and 234, Constitution of 1950; 10. Panama: Article 167, Constitution of 1946; 11. Paraguay: Article 220, Constitution of 1967; 12. Peru: Article 133, Constitution of 1933; 13. Uruguay: Articles 256-261, Constitution of 1967; 14. Venezuela: Article 215, Constitution of 1961.

²⁴There is in Austria a Constitutional Court called *Verfassungsrichtshof*.

²⁵Theoretically the following may appear before the Tribunal: the President of Cuba, the members of the Ministers Council, the members of the Fiscal Tribunal, judges and tribunals, the Attorney General, universities, autonomous corporations and "any individual or collective person who has been injured by an act or disposition which may appear unconstitutional" (Article 160, Fundamental Law of Cuba, 1959).

²⁶Articles 219-222.

²⁷Grant, J.A.C. Judicial Control of the Constitutionality of Statutes and Administrative Legislation in Colombia: Nature and Evolution of the System, in Southern California Law Review, Tome 23, 1950.

²⁸Law No. 96, 1936.

²⁹Giorgi, El Contencioso-Administrativo de Anulación, Montevideo, 1958, and Humberto Briseño Sierra: El Proceso Administrativo en Iberoamérica, Mexico, 1968.

³⁰Fix Z., H., La Protección Procesal de las Garantías Individuales en América Latina, op. cit.

³¹El Juicio de Amparo, 4th edition, Mexico City, 1957, p. 142.

³²El Amparo, Medio de Protección de los Derechos Humanos, Boletín de Información Judicial, Asociación Nacional de Funcionarios Judiciales, No. 169, Mexico City, September 2, 1961, pp. 533-576.

³³In the United States every judge, including a justice of the peace, is not only authorized, but also legally bound, to refuse to apply a law, federal or state, when such law is contrary to the Constitution.

³⁴Article 101 granted powers to the federal tribunals to take cognizance of: 1. All controversies arising out of laws or acts of public authorities which violate

any individual guarantee; 2. All controversies arising out of laws or acts of the federal authorities which limit or encroach on the sovereignty of the states; and, 3. All controversies arising out of laws or acts of the state authorities which invade the sphere of the federal authorities.

³⁵Article 35 instituted *amparo* to protect the exercise of the "rights of those who request protection (before the Supreme Court), against laws and decrees of the legislature which are contrary to the Constitution; or against the acts of the Governor or the Government Cabinet, when such acts infringe the Fundamental Code or the laws." See: Homenaje a don Manuel Crescencio Rejón, Mexican Supreme Court, Mexico City, 1960.

³⁶Article gave power to the Supreme Court: 1. To protect those who request its protection in the exercise of their rights against laws or decrees of the legislature which were contrary to the Constitution or against the acts of the Governor, when they had infringed the Fundamental Code. But the Court was limited in both cases to repair the damage in the part in which the Constitution had been violated.

³⁷Gaxiola, J., Mariano Otero, Creador del Juicio de Amparo, Mexico City, 1937.

³⁸Professor Grant says that the lack of familiarity in Mexico concerning the U. S. constitutional due process of law, permitted "the creation of a new legal institution to protect, against any arbitrary action, the individual rights which have been guaranteed to all men by the Constitution," in *El Control Jurisdiccional de la Constitucionalidad de las Leyes*, op. cit.

³⁹"No person shall . . . be deprived of life, liberty, or property, without due process of law." The draft presented to the Constitutional Congress in 1856 stated: "No one may be deprived of life, liberty or property except by sentence rendered by a competent judge in accordance with the forms expressly stated in the law and exactly applicable to the case." Article 14, as included in the Constitution of 1857, expressed: "No retroactive law may be applied. No one may be judged or sentenced except in accordance with laws passed previous to the fact and exactly applicable to it, by tribunals that have previously established the law." See Rabasa: *El Artículo 14 El Juicio Constitucional*, 2nd edition, Mexico City, 1955.

⁴⁰Rabasa, E., *La Constitución y la Dictadura*, 3rd. edition, Mexico City, 1956, p. 219.

⁴¹Article 14: "No law shall be given retroactive effect to the detriment of any person whatsoever No person shall be deprived of life, liberty, property, possessions, or rights without a trial by a duly created court in which the essential elements of procedure are observed and in accordance with laws issued prior to the act In criminal . . . cases no penalty shall be imposed by mere analogy or by *a priori* evidence. The penalty must be decreed in a law in every respect applicable to the crime in question In civil suits the final sentence shall be according to the letter or the judicial interpretation of the law; in the absence of the latter it shall be based on the general principles of law."

⁴²Review is available against decisions of District Judges and exceptionally against decision of Circuit Tribunals in cases of direct *amparo*. Complaint is available against District Judges decisions in which notoriously improper claims are admitted and against Circuit Tribunals decisions when they result in excesses or defects of compliance or execution of the respective constitutional decision. Inconformity is available against the order of process of the President of the Supreme Court or the presidents of any of the Court chambers in matters of *amparo* provided there are well founded reasons. Ignacio Burgoa, *El Juicio de Amparo*, op. cit., Chapter 17.

⁴³The Mexican law defines the government-subsidized independent enterprises as "those established through laws passed by the Congress or by the Federal Executive Branch in the exercise of their administrative powers, regardless of the legal status these may adopt and provided that, in addition, they fulfill some of the following

requirements: a) that their economic resources have been or are supplied in total or in part by the Federal Government, either by virtue of sharing in the capital structure through the supply of goods, concessions or rights, budgetary grants, subsidies or the privilege of a specific tax, b) that their very objectives and functions suggest a specialized technical faculty for the adequate provision of a public or social service, the exploration of natural resources or the obtainment of resources for social welfare purposes."

⁴⁴Diversos Significados Jurídicos del Amparo en el Derecho Iberoamericano, in *Revista de Derecho Agrario*, Milan, 1967, p. 528.

⁴⁵Vallarta, L.L., *El Juicio de Amparo y el Writ of Habeas Corpus*, Mexico City, 1881, pp. 22 et ss.

⁴⁶Fairen G., V., Consideraciones sobre el Proceso Aragonés de "Manifestación de Personas" en Relación con el Habeas Corpus Británico, in *Revista de Derecho Procesal*, Madrid, 1963, No. 1, p. 14.

⁴⁷In Spanish Law the word *amparo* was employed as a possessor's interdiction, as a recourse against judicial decisions and as a simple remedy to protect individual liberty. However, Phanor Eder states that, since the Law of the Indies followed the pattern of the Law of Castille, the Aragonian legal procedures—among these, that of the "personal presence"—were not passed on to the Law of the Indies. In *Habeas Corpus Disembodied. The Latin American Experience, XXth Century Comparative and Conflicts of Law*, Leyden, 1961, p. 464.

⁴⁸This Article prohibits punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscations of property and any other unusual or overwhelming penalties.

⁴⁹Burgoa, I., *El Juicio de Amparo*, Mexico 1950, 3rd edition, p. 128.

⁵⁰Rabasa, E., *El Artículo 14. El Juicio Constitucional*, op. cit. p. 313.

⁵¹Fix Z., H., *Diversos Significados Jurídicos del "Amparo" en el Derecho Iberoamericano*, op. cit. pp. 536-537.

⁵²Burgoa, I., *El Amparo en Materia Agraria*, Mexico City, 1964, and Héctor Fix Zamudio: *Lineamientos Fundamentales del Proceso Social Agrario en el Derecho Mexicano*, in *Atti della Seconda Assemblée, Instituto di Diritto Agrario Internazionale e Comparato*, Milan, 1964, Vol. I., p. 402.

⁵³Diversos Significados Jurídicos del "Amparo" en el Derecho Iberoamericano, op. cit. pp. 119-152.

⁵⁴Linares Q., S.V., *Derecho Constitucional de las Provincias*, Buenos Aires, 1962; Carrio, G. R., *Algunos Aspectos del Recurso de Amparo*, Buenos Aires, 1961; Houssay, A., *Amparo Judicial. El Caso Kot y su influencia en la Jurisprudencia*, Buenos Aires, 1961. Some authors claim that the *amparo*, as the English injunction, constitutes an extraordinary recourse which is available to protect legally a litigious right, when there is no other adequate procedure.

⁵⁵Article 1 stipulates that "the action of *amparo* will be admitted against any act or omission of a public official which injures, restricts, alters or threatens, with arbitrariness or manifest illegality, the rights or guarantees explicitly or implicitly recognized by the Constitution, with the exception of individual liberty protected by *habeas corpus*."

⁵⁶Bernashina G. M., *Manual de Derecho Constitucional*, 3rd. edition, Santiago, Chile, 1958, Tome II, p. 161.

⁵⁷Article 17 of the Constitution of the Province of Santa Fe states: "When an official or an administrative entity impedes the exercise of a right which is among those expressly recognized by the national or provincial constitutions, the party injured in his rights will be entitled to legally demand, by summary procedure, the immediate cessation of unconstitutional acts." The *acción de amparo* has been

adopted by the following provinces: Corrientes, 1960 (Article 145, paragraph 13); Chaco, 1957 (Article 16); Chabut, 1957 (Article 34); Formosa, 1957 (Article 20); Pampa, 1960 (Article 16); Misiones, 1958 (Articles 16, 17 and 18); Neuquén, 1957 (Article 44), and Santa Cruz, 1957 (Article 15).

⁵⁸Bidart C., G., *Derecho de Amparo*, Buenos Aires, 1961; Carrio, *Algunos Aspectos del Recurso de Amparo*, Buenos Aires, 1959, and *Recurso de Amparo y Técnica Judicial*, Buenos Aires, 1960; Sánchez V., C., *El Juicio de Amparo*, Buenos Aires, 1963, and Orgaz, A., *El Recurso de Amparo*, Buenos Aires, 1961.

⁵⁹*Veinticinco Años de Evolución de la Justicia Constitucional*, op. cit. pp. 25-32.

⁶⁰Ley Nacional de Acción de Amparo No. 16,986, October 18, 1966. Fiorini, B.A., *Acción de Amparo. Graves Limitaciones e Inconsecuencias que la Desnaturalizan*, in *La Ley*, Buenos Aires, Nov. 24, 1966.

⁶¹Gil, F. G., *Perspectivas para el Estudio de los Grupos de Presión en la América Latina*, in *Revista Jurídica de Buenos Aires*, Vol. II, Buenos Aires, April-June 1959, pp. 39-57.

⁶²The injunction consists of a restrictive order which prevents a person or an authority from committing or executing an act contrary to equity or conscience. It is also an order by means of which a person or an authority is compelled to execute or undo an act.

⁶³Law of Amparo No. 1161, June 2, 1952, amended by Decree of August 9, 1952 to extend the protection of the recourse of *amparo* to constitutional social rights.

⁶⁴Ley de Procedimientos Constitucionales, January 14, 1960.

⁶⁵*Las Constituciones de Guatemala*, by Luis Mariñas Otero, Madrid, 1958.

⁶⁶Ley Constitucional de Amparo, Habeas Corpus y de Constitucionalidad, April 20, 1966. *El Guatemalteco*, Government official newspaper, No. 55, May 4, 1966.

⁶⁷Article 1 of the Constitutional Law of Amparo, Habeas Corpus and Constitutionality.

⁶⁸González P., J., *El Proceso de Amparo en México y Nicaragua*, in *Revista de Administración Pública*, No. 14, May-August, 1954, Managua, pp. 297-321.

⁶⁹Moscote, J. D., *Derecho Constitucional Panameño*, Panama, 1943; and Bolívar P., C., *El Pensamiento Constitucional del Doctor Moscote*, Panama, 1959.

⁷⁰Ley Sobre Recursos Constitucionales y de Garantía, No. 46, Nov. 24, 1956.

⁷¹The *amparo* of constitutional guarantees has the true character of an instrument to protect constitutional human rights.

⁷²Andueza, G., *Amparo, Habeas Corpus y Remedios Similares de Protección Judicial contra la Violación de los Derechos Humanos*, in *Boletín de Información Judicial*, No. 171, Mexico City, Nov. 3, 1961, and de Miguel, J. A., *Amparo y Habeas Corpus en la Constitución de 1961*, in *Revista del Colegio de Abogados del Distrito Federal*, Caracas, July-December, 1965.

⁷³*Amparo, Habeas Corpus y Remedios Similares de Protección Judicial contra la Violación de los Derechos Humanos*, op. cit. p. 691.

⁷⁴Paragraph 2, Article 1, Constitutional Law of Amparo, Habeas Corpus and Unconstitutionality, May 4, 1966.

⁷⁵Leal, R. A., *La Acción de Amparo en la Jurisprudencia Argentina y en el Derecho Uruguayo*, in *Revista de la Facultad de Derecho y Ciencias Sociales*, Montevideo, January-March, 1963, p. 146.

⁷⁶Introdução a coletanea de estudos sobre o mandado de segurança, Rio de Janeiro, 1963, pp. 24-25.

⁷⁷Crónica de las Cuartas Jornadas Latinoamericanas de Derecho Procesal, Madrid, 1967, No. 2, p. 133.

⁷⁸El Habeas Corpus, Garantía de Libertad, Buenos Aires, 1966, 2nd. edition, p. 66.

⁷⁹A Tutela Judicial dos Direitos Fundamentais in Estudos sobre o Mandado de Segurança, Rio de Janeiro, 1965.

⁸⁰Veinticinco Años de Evolución de la Justicia Constitucional (1940-1965), op. cit. pp. 157-158.

⁸¹U. N. Official Records, ST/TAO/HR/12.

⁸²Derechos Humanos en los Estados Americanos, OAS Official Records, Pan American Union, Washington, D. C., 1960, p. 30.

⁸³OAS Official Records, OEA/SER.K/XVI/1.1, Doc. 65 (English) Rev. 1, Corr. 2, Jan. 7, 1970.

⁸⁴Final Act, paragraph 5, OAS, Official Records, Doc. 89, Pan American Union, Washington, D. C., Oct. 12, 1959, p. 5.

⁸⁵OAS Official Records, Final Act, CIJ-43, Pan American Union, Sept. 1959.

⁸⁶Official Records, Inter-American Commission on Human Rights, OEA/Ser. L/V/II.19, Doc. 48 (Spanish), July 11, 1968.

⁸⁷U. N. Official Records A/RES/2200 (xxi). The United Nations and Human Rights, Eighteenth Report of the Commission to Study the Organization of Peace, Oceana Publications, Inc., New York, 1968.