

In new and previously unperformed functions, there is an absence of settled case law and only vaguely applicable common law. Few people, most of all the underprivileged, know what their rights or obligations are. In the absence of progressive state legislation or good case law, there often exists inadequate or inappropriate mechanisms for appeal against real or alleged grievances. There is thus not only an "institutional lag" referred to by Speaker Unruh and Chancellor Alexander Heard, but what we call a "grievance gap" particularly as applied to the newer functions of urban government.

Under today's urban conditions, large masses of our population cannot obtain redress for many of their grievances (real or imagined) from the "three great writs" of American jurisprudence or traditional redress mechanisms. These are complicated, time and money consuming procedures. "Too often, the poor man sees the law only as something which garnishees his salary; which reposses his refrigerator; which evicts him from his house; which cancels his welfare; which binds him to usury; or which deprives him of his liberty because he cannot afford bail."⁷

The "complaint window" found in some city halls is perhaps more suited to matters such as holes in the street or infrequency of garbage collection. It is doubtful if it is appropriate to the nature of many current citizen grievances in urban areas. The "complaintmobile" mentality no longer fits modern urban life. Essentially, the system for redressing citizen grievances and handling complaints needs to be updated "offering the individual citizen protection against the bigness that has swollen executive and administration functions."⁸

We may be so blinded by the virtues of our system of common law that we have not perceived the appearance of novel forms of injustice for which existing jurisdictions and procedures of adjudication are inadequate. Urban governments operate complex governmental programs based on legal machinery more appropriate to the simple agrarian society of old England from which we inherited our common law base.

The current cry for non-judicial civilian "review boards" over police authorities is symptomatic of the condition, *but only that*. An official or a process with capability of examining the whole range of administrative decisions holds more hope for the future "than does a special tribunal for trying citizens' complaints against individual policemen."⁹

Senator Edward V. Long summing up 1642 pages of evidence gathered by a Senate Judiciary subcommittee said: "It is terrible to contemplate, but we are permitting practices by the bureaucracy which, left unchecked, have resulted in police states in other countries."

More temperately, perhaps, Professor William A. Robson of the London School of Economics has said that the faults of bureaucracy which give rise to citizen grievances and which are of most frequent occurrence are:

"... excessive sense of self-importance on the part of individuals or an undue idea of the importance of their offices; an indifference toward the feelings or the convenience of individual citizens; an obsession with the binding and inflexible authority of departmental decisions, precedence, arrangements or forms, irrespective of how badly or with what injustice or hardship they may work in individual cases; a mania for regulations and formal procedure; a preoccupation with particular units of administration and an inability to consider the government as a whole; a failure to recognize the relations between the governors and the governed as an essential part of the democratic process."

The Mexican Amparo as a supplemental remedy for the redress of citizen grievances in California and the Southwest is not without relevance to the search for simple, inexpensive, orderly, well-known, widely-available, easily understood and widely applicable citizen grievance procedures.

Amparo is, in fact, within the tradition and history of California and was known and used here prior to the Constitution of 1849. Much of California law continues to be based on the laws of Mexico. The Supreme Court of the United States has repeatedly held that the laws of a prior country or sovereign are part of those of the United States and of which judicial notice can be taken. The laws of Mexico prior to the Treaty of Guadalupe Hidalgo in 1848, therefore, and until

⁷ Katzenbach, Nicholas deB., remarks, National Conference on Law and Poverty, Washington, D.C., June 1965.

⁸ New York Times, Editorial, November 10, 1966.

⁹ Gellhorn, Walter, "Police Review Boards: Hoax or Hope," *Columbia University Quarterly*, Summer, 1966, Columbia University, New York City, p. 10.