

made by a jury but may be made by a judge or entrusted to a commission or other body.⁶⁵⁹ Federal courts may appoint a commission in condemnation actions to resolve the compensation issue.⁶⁶⁰ If a body other than a court is designated to determine just compensation, its decision must be subject to judicial review,⁶⁶¹ although the scope of review may be limited by the legislature.⁶⁶² When the judgment of a state court with regard to the amount of compensation is questioned, the Court's review is restricted. "All that is essential is that in some appropriate way, before some properly constituted tribunal, inquiry shall be made as to the amount of compensation, and when this has been provided there is that due process of law which is required by the Federal Constitution."⁶⁶³ "[T]here must be something more than an ordinary honest mistake of law in the proceedings for compensation before a party can make out that the State has deprived him of his property unconstitutionally."⁶⁶⁴ Unless, by its rulings of law, the state court prevented a complainant from obtaining substantially any compensation, its findings as to the amount of damages will not be overturned on appeal, even though as a consequence of error therein the property owner received less than he was entitled to.⁶⁶⁵

When Property Is Taken

The issue whether one's property has been "taken" with the consequent requirement of just compensation can hardly arise when government institutes condemnation proceedings directed to it. Where, however, physical damage results to property because of government action, or where regulatory action limits activity on the prop-

merly the Claims Court) with jurisdiction over claims against the United States "founded . . . upon the Constitution." See *Eastern Enterprises v. Apfel*, 524 U.S. 498, 520 (1998). Inverse condemnation claims against the United States not in excess of \$10,000 may also be heard in federal district court under the "Little Tucker Act." 28 U.S.C. § 1346(a)(2).

⁶⁵⁹ *Bauman v. Ross*, 167 U.S. 548 (1897). Even when a jury is provided to determine the amount of compensation, it is the rule at least in federal court that the trial judge is to instruct the jury with regard to the criteria and this includes determination of "all issues" other than the precise issue of the amount of compensation, so that the judge decides those matters relating to what is computed in making the calculation. *United States v. Reynolds*, 397 U.S. 14 (1970).

⁶⁶⁰ Rule 71A(h), Fed. R. Civ. P. These commissions have the same powers as a court-appointed master.

⁶⁶¹ *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893).

⁶⁶² *Long Island Water Supply Co. v. Brooklyn*, 166 U.S. 685 (1897). In federal courts, reports of Rule 71A commissions are to be accepted by the court unless "clearly erroneous." Fed. R. Civ. P. 53(e)(2).

⁶⁶³ *Backus v. Fort Street Union Depot Co.*, 169 U.S. 557, 569 (1898).

⁶⁶⁴ *McGovern v. City of New York*, 229 U.S. 363, 370–71 (1913).

⁶⁶⁵ 229 U.S. at 371. See also *Provo Bench Canal Co. v. Tanner*, 239 U.S. 323 (1915); *Appleby v. City of Buffalo*, 221 U.S. 524 (1911).