

1962

Book Reviews

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 30 Fordham L. Rev. 568 (1962).

Available at: <https://ir.lawnet.fordham.edu/flr/vol30/iss3/12>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

BOOKS REVIEWED

The Impact of Collective Bargaining on Management. Sumner H. Slichter, James J. Healy, and E. Robert Livernash. Washington, D.C.: The Brookings Institution. 1960. Pp. xv, 982. \$8.75.

Management officials handling labor relations as well as union officials and business agents are afforded a great wealth of material, relevant to their work, in the nearly one thousand pages of this book. Since the book treats exhaustively the many facets of a highly specialized subject, my effort here is necessarily confined to giving a "bird's-eye view" of its contents, and to seek by example to indicate its thoroughness, in the hope that this will serve the purpose of alerting those who should become familiar with it.

The work represents the intensive effort of Professor Sumner H. Slichter, formerly of Harvard, now deceased, and two Harvard colleagues, James J. Healy and E. Robert Livernash. The authors had the aid of a field staff of research assistants who for nearly three years gathered information from companies, unions, and other sources. It is not easy reading. If this circumstance is due in any part to a writing style of professors, such circumstance seems inevitable. For it is not likely that any author, other than a professor, working under the auspices of such an organization as the Brookings Institution would or could produce a book on this subject, so wide in scope and exhaustive in treatment as this one. While it may never be a "best seller" because of the limited interest in the subject matter, the work, in my judgment, is an essential tool of the profession of all persons who work directly in the controversial and highly important field of labor-management relations.

The theme is fairly disclosed in a quotation as "an astute and reflective statement" (p. 14) of the problem confronting managements when unions first start to organize their employees:

The company came out of the war with an attitude on the part of second and third line management that you can't go forward and do things as long as you have unions. This raised a matter of delicate balance. Management mustn't try to defeat the unions and throw them out, but at the same time it must stand up for what is right and must sell lower management the idea that management must not pursue a policy of appeasement. (p. 14.)

The authors deal in detail with management decisions that influence policy toward unions and collective bargaining; with problems of adjusting to unions; with the substance, administration, and duration of the union contract; with usurpation of authority by unions; and with the personal relationships between the men of management and the union representatives with whom management must deal.

The relevancy of the text to current problems is revealed in the following comment on the subject of management's communication with employees. Indicating that their views are not shared by all unions, the authors say:

Managements cannot afford to accept as a matter of principle that they will communicate with their people only through the union. Managements should be in direct touch with employees and should not be dependent on intermediaries. But many managements never bothered to give their workers much information about the company and its affairs until unions became important. (p. 24.)

Valuable knowledge for a labor relations director is available on innumerable subjects; among them, those of subcontracting, make-work rules and policies, arbitration, control of hiring, union policies on apprenticeship programs, job tenure, and promotions.

The depth of the treatment given to almost all subjects covered is illustrated by this sketchy summarization of union policies on apprenticeship programs. It is stated that 500,000 additions to the skilled labor force are required each year. There are seven sources of such skilled workers: (1) immigration—21,832 workers in 1950; (2) formal training and vocational schools including perhaps 10,000 people a year who leave school before completion to become journeymen after one or two years on the job; (3) training in the armed services, where perhaps half the men entering service receive some type of technical training but scarcely ever enough to qualify them in a trade; (4) understudy-progression, in which the supply is determined to a degree by the demand; (5) "picking-up-the-trade"—a wasteful method of producing poorly trained workers; (6) upgrading in plants, as in automobile production—a program something like apprenticeship but involving less time; and (7) apprenticeship which, in 1959, yielded 174,252 workers who graduated from registered courses, half as many from unregistered apprenticeship courses, and 70,000 to 80,000 a year who may join the skilled trades after having quit apprenticeship courses before completion.

Union attitudes on these seven sources of skilled labor are then discussed and such attitudes are related in detail to the success or deficiencies of apprenticeship programs. Specific international unions are named with reference to their activities in this field. The Operating Engineers Union, it is pointed out, was spurred on to increased apprenticeship activity by decisions of the National Labor Relations Board denying craft status to the workers this international union represents. The Boilermakers Union engaged in a great expansion because of the increase in their work due to atomic energy development. The Machinists Union has experienced periods of decline in the number of apprentices despite its encouragement of apprenticeship programs. The Plumbers Union established two international committees, one in plumbing and one in pipefitting with elaborate and effective programs, but with no marked increase in the number of apprentices in the craft. The electrical industry has the most highly developed apprenticeship promotion on an industry-wide scale, and the Typographers Union has one of the oldest and most highly developed apprenticeship programs in the United States.

On the subject of apprenticeship programs, the observation is made that a great weakness in the American economy is the failure to meet the increasing need for skilled workers. It is unfortunate that most states, most unions, and most employers show so little concern over this deficiency. Apprenticeship training faces a crisis, producing only one-ninth of the journeymen needed. Any upsurge of effective interests must come from unions and employers. Thus the book, in a most comprehensive way, points up areas of common responsibility of employers and unions in their relationship to the economic system.

Narrower concerns of management, that is, its own welfare in the collective bargaining process, get equally full treatment.

The subject of seniority is illustrative. Here, the authors provide management with important information having a great bearing on the workability of the contract they enter into with the union. There is a most extensive and valuable discussion of the difficult problems involved in "laying-off" help. Other tremendously practical and helpful suggestions are made in connection with seniority and work-sharing, the mobility of workers, the effect of seniority on younger workers, and the conflict between system-wide, plant-wide, and department-wide seniority plans. It is noted that often emphasis on seniority prevents able junior men from advancing according to their full capacity and that the disadvantage management seems to suffer from emphasis on seniority is as much due to management's lack of alertness in the bar-

gaining as to the union's aggressive imposition of a plan that subordinates ability to seniority as a criterion for promotion.

Automation, which is probably as lively a current subject as exists in industrial relations, is dealt with in the volume under the subject of "Union Policies Toward Technical Change." It is noted, perhaps contrary to the general concept, that on much technical change there is no well recognized union policy. Different unions may accept the change, or oppose it, or seek to adjust new methods to the old, as, for instance, by accepting wage cuts under new job classifications. Or unions may encourage technical changes depending on the nature of the union, the condition of the industry, or the nature of the change. The observation is made that the most usual policy toward technical change by unions is willing acceptance, that opposition is not rare, but is pursued by unions in a relatively small percentage of cases. Historically there have been some few cases where unions were destroyed because of an unwillingness or inability to adapt to technical changes.

Also getting extensive treatment are pension plans, health and welfare plans, other employee benefits such as pay for time not worked, premium pay, supplements to legally required benefits, vacations, paid holidays, shifted differential pay, income security, severance pay, wage incentives, and still other troublesome subjects confronting management in arriving at a contract.

The authors, in their appraisal of the collective bargaining process, suggest that few areas of personnel policy have been affected by collective bargaining as much as employee discipline. How to deal with this subject is therefore given lengthy treatment. In doing so, they also discuss the widespread acceptance of arbitration in the matter of adjusting grievances.

Late chapters of the volume provide practical suggestions for negotiation of contracts. Appraisal is made, for example, of single employer bargaining as against bargaining through associations of employers. Consideration is given to the formation of the bargaining unit, and whether management representation should be by company officials, lawyers, or industrial relations specialists. Two most important developments in negotiations are noted: (1) the growing willingness of employers to propose contract changes, and (2) the growing appeal to facts as a basis for defining and resolving issues and finding out what the parties really want.

The book closes on a summation of emerging characteristics of collective bargaining. A principal characteristic is that during the last twenty years, orderly industrial relations have been established gradually throughout most of American industry. Another is that the scope of managerial discretion has been narrowed, not only by the terms of the union contract, but also by its administration. Nine out of ten contracts today provide for arbitration, a circumstance that necessarily involves a limitation on management's discretion through its own agreement to abide by the judgment of neutrals. Noting that the American system of settling labor disputes through collective bargaining has aroused little interest abroad, the authors credit collective bargaining with being one of the most successful economic institutions in the country. A principal concern is voiced: how to diminish the tendency of collective bargaining to produce rising prices, and thus to prevent an adverse impact on the consumer. The problem, however, is characteristic of all economic institutions of our free society. Since collective bargaining often involves compromise, the demands of the public interest are not always fully met.

The Impact of Collective Bargaining on Management reveals that education in the field of industrial relations is a dynamic evolving process. The authors achieve in a most effective way, for those of the management side who will resort to the work, the

very laudable purpose of showing management how to make collective bargaining work to management's advantage—in other words, how to live and get on well with unions.

BOYD LEEDOM*

Ancient Roman Statutes. Allan Chester Johnson, Paul Robinson Coleman-Norton, and Frank Card Bourne. Austin: University of Texas Press. 1961. Pp. xxxi, 290. \$15.00.

At American law schools the teaching and study of Roman law have reached an all time low. One investigator recently reported: "In 1949, there were only ten American law schools offering courses in Roman Law. . . This represented a loss over previous years. . . A brief survey of recent law school catalogs. . . disclosed only six United States schools offering Roman law. . ."¹

"Often has our grace wondered," wrote Valentinian III and Theodosius II in 438 A.D.—though it could be said for 1962—"what cause has brought it about that, in the face of so many proposed prizes by which arts and studies are nourished, those are so few and so rare who are in full possession of a knowledge of the civil law, and that, with so much paleness from nocturnal work, hardly one or the other has received the firmness of perfect learning."²

Perfect learning is perfect culture. It cannot be achieved by the ton-wise importation of Greek goddesses in marble, or of Roman manuscripts and classic books. Learning and culture can be acquired only through labor—never through purchase. In their effort to cater to the useful skills of the market community, many of the great law schools of this country have forgotten the significance of true, and that means classical, culture. If the teaching of Roman law can serve as an index, it follows that only four per cent of our American law schools are cultural institutions while ninety-six per cent are commercial law schools.

But even where Roman law is taught, the yield in published scholarship is frightfully small.³ Major Roman law works have not emanated from any American law school for decades. Only one of the regular Roman law seminars seems

* Member, National Labor Relations Board.

1. Kessler, On the Value of Roman Law for Twentieth-Century American Law Students, 12 J. Legal Ed. 377, n. 6 (1960), relying in part on Coleman-Norton, Why Study Roman Law?, 2 J. Legal Ed. 473 (1950).

2. *Novellae Theodosii* tit. I, § I.

3. Only one American Roman law scholar is a regular contributor to the periodical literature—Professor A. Arthur Schiller of Columbia University. For recent significant contributions see Schiller, *Jurists Law*, 58 *Colum. L. Rev.* 1226 (1958); Schiller, *Provincial Cases in Papinian*, 1958 *Acta Juridica* 221; Schiller, *Senatus Consulta in the Principate*, 33 *Tul. L. Rev.* 491 (1959). Most other mature articles on Roman law in American journals are either by foreign or wholly or partly foreign trained authors. See Pringsheim, *Diocletian in c.4.2.6*, 33 *Tul. L. Rev.* 551 (1959); Wolf, *The "Constitutive" Effect of In Iure Cessio*, 33 *Tul. L. Rev.* 525 (1959); Yiannopoulos, *Common, Public, and Private Things in Louisiana: Civilian Tradition and Modern Practice*, 21 *La. L. Rev.* 697 (1961). Most Roman law scholarship in America is confined to the civil law state of Louisiana, and only two, or perhaps three, law reviews make a determined effort to cater to Roman law, i.e., the *Tulane Law Review*, the *Louisiana Law Review* and the *Jurist* ("A Quarterly Review Published by the School of Canon Law," The Catholic University of America, Washington, D.C.).

to produce term papers good enough for print.⁴ By comparison the situation in England and Scotland is quite a bit better.⁵ The island which provided us with most of our Roman law teaching tools in the English language,⁶ has once again turned to Roman law scholarship.

But the small group of American law school teachers of Roman law stubbornly continues to work against all odds, firmly convinced of the cultural, historical, and juridical messages which the Roman law conveys to those alive today.⁷

Indeed, in America today, law school work in Roman law is easily possible even with groups of students lacking a classical (Latin) education, for we are fortunate enough to have accumulated a significant working collection of original Roman law sources in English translation. Some of these have originated in England,⁸ some in

4. Namely the New York University seminar in Roman Law. For recent term papers in print see Ferguson, *A Day in Court in Justinian's Rome: Some Problems of Evidence, Proof, and Justice in Roman Law*, 46 *Iowa L. Rev.* 732 (1961); Goebel, *Reconstructing the Roman Law of Real Security*, 36 *Tul. L. Rev.* 29 (1961); Kessler, *On the Value of Roman Law for Twentieth-Century American Law Students*, 12 *J. Legal Ed.* 377 (1960); Klein, *Cujus est solum ejus est . . . quousque tandem?* 26 *J. Air L. & Com.* 237 (1959); Klitzke, *Roman Building Ordinances Relating to Fire Protection*, 3 *Am. J. Legal Hist.* 173 (1959).

5. A cross-section of recent periodical publications on Roman law will substantiate the point: see Ashton-Cross, *Liability for Animals in Roman Law*, 1959 *Camb. L.J.* 189; Chloros, *The Hexabiblos*, 1958 *Acta Juridica* 170; Daube, *Implantatio and Satio*, 1958 *Acta Juridica* 181; Honoré, *Condictio and Payment*, 1958 *Acta Juridica* 135; Morrison, *Some Features of the Roman and the English Law of Evidence*, 33 *Tul. L. Rev.* 577 (1959); Powell, *Furtum by a Finder*, 33 *Tul. L. Rev.* 509 (1959); Prichard, *Terminology in Mancipatio*, 76 *L.Q. Rev.* 412 (1960); Watson, *The Construction of Digest Title 17.1*, 33 *Tul. L. Rev.* 555 (1959). In Scotland we find a natural and determined preoccupation with Roman law, dictated by the nature and history of the law of Scotland. See Smith, *A Meditation on Scottish Universities and the Civil Law*, 33 *Tul. L. Rev.* 621 (1959); Smith, *Scots Law and Roman-Dutch Law—A Shared Tradition*, 1961 *Jurid. Rev.* 32, 1959 *Acta Juridica* 36. For recent examples of Scots scholarship in Roman law see Cameron, *Jus Quaesitum Testio: The True Meaning of Stair I.x.5*, 1961 *Jurid. Rev.* 103; Smith, *Pollicitatio-Promise and Offer*, *Stair v. Grotius*, 1958 *Acta Juridica* 141; Thomas, *Venditio Hereditatis and Emptio Spei*, 33 *Tul. L. Rev.* 541 (1959).

6. E.g., Buckland, *A Textbook of Roman Law from Augustus to Justinian* (2d ed. 1932); Buckland & McNair, *Roman Law & Common Law: A Comparison in Outline* (1936); Jolowicz, *Historical Introduction to the Study of Roman Law* (2nd ed. 1939); Lee, *Historical Conspectus of Roman Law* (rev. ed. 1956); Vinogradoff, *Roman Law in Medieval Europe* (2d ed. 1929); see note 8 *infra*.

7. For the profitable use of Roman law in adjudication see the opinion by Blum, C.J., in *Roberts v. Roberts*, 58 *Wyo.* 438, 133 P.2d 492 (1943), in *Wyoming of all places!* See also the concurring opinion of Heher, J., in *State v. Monahan*, 15 *N.J.* 34, 104 A.2d 21, 30 (1954); and in analysis of contemporary problems, e.g., in *Cremona*, *The Doctrine of Entrapment in Theft* (1959); Gormley, *An Analysis of the Future Procedural Status of the Individual Before International Tribunals*, 39 *U. Det. L.J.* 38 (1961); Mueller, *Compensation for Victims of Criminal Violence*, 8 *J. Pub. L.* 218 (1959).

8. E.g., de Zulueta, *The Institutes of Gaius* (2 vols., 1946); Lee, *The Elements of Roman Law* (4th ed. 1956); Moyle, *The Institutes of Justinian* (1st ed. 1883, 5th ed. 1913); Sandars, *The Institutes of Justinian* (new impression 1956).

the Union of South Africa,⁹ and some, indeed, in the United States.¹⁰

Due to the fact that Roman law scholarship has survived at some college classics departments, the English language materials in Roman law have been enriched in recent years by addition of such significant works as Berger's *Encyclopedic Dictionary of Roman Law*,¹¹ and Pharr's translation of the *Theodosian Code*.¹² In mature scholarship, thus, the law schools have lost their lead. Humanistic and classical legal scholarship have found their principal home at the colleges.

Here before us now is the latest evidence of this mature classical scholarship. Under the general editorship of Professor Clyde Pharr, the late Dr. Allan Chester Johnson, and Drs. Coleman-Norton and Bourne, of Princeton University, have produced a monumental volume entitled *Ancient Roman Statutes*. It contains 332¹³ official Roman documents in the nature of statutory law, translated into English from the original Latin or Greek. It is, indeed, a complete collection, from the earliest times to Justinian I in the East, and Romulus Augustus in the West, of all fully preserved and authentic "statute" law not subsequently included in imperial codifications. The arrangement is chronological from the law which later Romans ascribed to their seven earliest monarchs, 753-510 B.C. (Document No. 1, Laws of the Kings, pp. 3-6), to a constitution of Anastasius I on Lybian Administration, 501 A.D. (Document No. 321, pp. 252-255.) The "statutes" here brought together are not only laws in the narrower sense, but include edicts, decrees, letters, and various other official documents. The author collected them from the standard Latin sourcebooks, principally Bruns, *Fontes Iuris Romani Antiqui* (2 vols. 1909-1912), Girard, *Textes de droit romain* (1937), and Riccobono, *Fontes Iuris Romani Antejustiniani* (3 vols. 1940-1943); but hundreds of other sources were perused or consulted, the *Institutes* of Justinian ranking foremost among them. The style of translation is that preferred by modern scholars, namely, the middle course that lies "between servile adherence to a literal version, which would result perhaps in awkward English, and free paraphrase. . . . (p. xv)."¹⁴

Each document is introduced by a brief description and historical note, and extensive footnotes explain the difficult or obscure parts of the text. All these notes together form a superb introduction to the entirety of Roman law, and some are beautiful little treatises by themselves, e.g., the introduction to the Permanent Edict (pp. 182-83), which contains a concise and neat discussion of the evolution of the *ius honorarium*.

In addition to these textual guides, various lists, an index, and a competent glossary ease the labors of the peruser.

The significance of the documents varies widely. Side by side with such fundamental cultural documents as the Twelve Tables of 451-449 B.C. (Document

9. Gane, *The Selective Voet being the Commentary on the Pandects* (7 vols. 1955-1958). See also Huber, *Jurisprudence of My Time* (2 vols. Ganes transl. 1939). From the Union of South Africa we still receive some of the best periodical contributions on Roman law, especially in *Acta Juridica*, by such authors as Beinart, De Vos, Warmelo, Carney, Rubin, Price, and Scholtens.

10. Scott, *The Civil Law* (17 vols. 1932); Sherman, *Epitome of Roman Law* (1937). Sherman's textual work is *Roman Law in the Modern World* (3 vols. 1937).

11. 43 Transactions of the American Philosophical Society (pt. 2, 1953).

12. Pharr, Davidson & Pharr, *The Theodosian Code and Novels and the Sirmiondian Constitution* (1952), constituting volume I of the series *Corpus of Roman Law*.

13. The last document bears number 321 since several documents are designated "a" and "b."

14. Compare Mueller & Moreau, *The French Penal Code XV* (1960).

No. 8, pp. 9-18) and the famous Permanent Edict of Julian—which marked the end of Praetorian case-law development (Document No. 244, pp. 182-204)—we have documents which, even in their time, were of merely local and temporary significance, like the Rescript of a Magistrate on the Erection of a Building of 117-192 A.D., permitting a local citizen to construct houses on sacred land, for the accommodation of athletes. (Document No. 234a, p. 179.) Each document, however, has the historical power of recreating for us the spirit, the culture, and the law of a time long past.

Even the insignificant document—perhaps especially the insignificant document—is a lesson in the true state of the Roman society, for it, as any other society, existed through its little people and the work-a-day solution of little problems much more than through the political events procreated by the great men of the time.¹⁵

Whether it be the loyalty oath of Gangra (Document No. 149, p. 127), which sounds as modern as can be, or the grant of full religious freedom to the Jews by Augustus (Document No. 150, pp. 127-28), each of these Roman documents is not only a lesson in history, but a lesson for contemporary life.

For the Roman law classes and seminars at American law schools, this collection of Roman laws will prove of incalculable value. Historical nooks and crannies heretofore locked to the student are now open to him. With this splendid volume, and others projected in the series "The Corpus of Roman Law," study and teaching in Roman law will become a greater pleasure than it has ever been.

GERHARD O. W. MUELLER*

International Claims. Their Adjudication by National Commissions.

Richard B. Lillich. Syracuse: Syracuse University Press. 1962. Pp. xiv, 140. \$5.00.

The law of international claims is perhaps the most practical area of international law from the professional standpoint. Aside from the problem of recognition of governments,¹ it is also the most controversial area, largely because of the lack of a fundamental agreement on the principles that should regulate it. In addition, the substantive law of international claims, particularly as regards the responsibility of the state for injuries to aliens, has almost exclusively engaged the attention of scholars,² while the procedural aspect of the adjudication of claims has been sorely neglected. It is precisely in this respect that Professor Lillich's book fills a need, and it is in this area that his contribution is most welcome.

Starting with the proposition that the individual espousal of claims before mixed

15. See the Decree of the Senate on an Association of Young Men of 138-160 A.D. (Document No. 252, at 208) by which the most august body of Rome approved a local organization which had probably been created for the conducting of games and plays in a little provincial town in Asia Minor. The decree was contained in an inscription discovered in 1876, in Cyzicus, Asia Minor.

* Professor of Law, New York University.

1. Lauterpacht, *Recognition in International Law* 87-174 (1947).

2. There have been a few recent attempts to codify the law in this regard. See the Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, as discussed in *Proceedings, Am. Soc'y Int'l L.* 102-120 (1960). See also Sohn and Baxter, *Responsibility of States for Injuries to the Economic Interests of Allens*, 55 *Am. J. Int'l L.* 545 (1961).

commissions has been rendered impractical by such factors as the increasing number and complexity of claims,³ Professor Lillich goes on to discuss the apparently better method of adjudicating claims by national commissions. More specifically, his whole book is devoted to the treatment of the national commissions established by the United States. He discusses with admirable clarity and breadth of knowledge such topics as the history and organization of national claims commissions, the law which they are called upon to apply, and their impact upon international law. As these commissions are really domestic tribunals,⁴ problems of constitutional law, such as due process and the right to appeal from decisions rendered, are thoroughly and skillfully treated. The author has certainly presented a scholarly treatise which is not only of great benefit to the student of international law but to the businessman and the lawyer as well.

Delving more deeply into the content of the book, a few matters come to mind that deserve a special mention. It should be said from the outset that national claims commissions are concerned with the distribution of funds which have been the result of a lump sum settlement between the United States and a foreign government.⁵ It is therefore clear that the negotiation of a lump sum settlement precedes the distribution of funds by the commission. Thus, the establishment of national commissions does not relieve the United States Government of any responsibility on the international plane. Perhaps the only advantage of this approach is that instead of presenting individual claims to mixed commissions, with the accompanying delay involved in litigations, a lump sum settlement can be more expeditiously reached. It is, however, a matter of the greatest doubt whether individual claimants fare better under the national commission approach than under the traditional one. This proposition can be instructively illustrated by reference to specific cases. Thus, the agreement of July 19, 1948,⁶ between the United States and Yugoslavia, settled the claims of American nationals for property nationalized. The agreement provided for the payment by Yugoslavia of a lump sum of seventeen million dollars, though the general opinion at the time indicated that the market value of the property was considerably greater.⁷ The question naturally arises whether individual claimants would have been better off by the resort to a mixed claims commission, where legal consideration exclusively would have entered into the determination of the settlement. It is quite relevant to argue, however, that the lump sum settlement approach gives the United States Government more freedom of action, for in demanding compensation from a foreign government, it may take into account such other considerations as the bona fide inability to pay on the part of the government in question, the economic stability of the country involved, and other factors, largely of a political nature, highly important in the negotiation of a settlement.⁸ The author effectively

3. See Bishop, *International Law: Cases and Materials* 554 (1953).

4. This seems to be the general opinion of publicists. The author himself collects opinions to this effect. See pp. 20-23.

5. The Supreme Court has said that these are national funds "to be distributed by Congress as it [sees] fit." *Williams v. Heard*, 140 U.S. 529, 537 (1891).

6. Agreement with Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, July 19, 1948, 62 Stat. 2658, T.I.A.S. No. 1803.

7. Kuhn, *Nationalization of Foreign-Owned Property in Its Impact on International Law*, 45 Am. J. Int'l L. 709, 710 (1951).

8. This is of particular importance in claims dealing with the nationalization of property. See Domke, *Foreign Nationalization: Some Aspects of Contemporary International Law*, 55 Am. J. Int'l L. 585, 609 (1961).

discusses these possibilities (pp. 106—09), and he seems to feel, rightly so, that the settlement with Yugoslavia was highly unfair from the claimants' point of view. Nevertheless, he appears to find comfort in Dr. Domke's words to the effect that the Yugoslavia settlement was reached "under rather strange circumstances . . . which will hardly occur any more."⁹ Persuasive as this argument may be, it still leaves unanswered the vital question whether the negotiation of a lump sum settlement is the best method available for settling individual claims; for experience shows that every settlement is likely to be surrounded by "strange circumstances," which, in practice, may be detrimental to the claimants' interests. Certainly, the previous settlement with Mexico was similarly unsatisfactory, for, by the Claims Convention of November 19, 1941,¹⁰ Mexico agreed to pay the United States \$40,000,000 for the nationalization of property of American nationals causing the latter a reported loss of \$23,995,991.¹¹ In like vein, by the claims agreement of March 30, 1960, between the United States and Rumania, roughly ninety per cent of the claims of American nationals were waived.¹² The author cites many other examples of settlements which can only be justified on the basis of special circumstances. (pp. 107-08.) It is further significant that he discusses these settlements under the heading of "Unfavorable Aspects" of national claims adjudication. In all justice it should be added that the author clearly perceives certain danger in this type of settlement, for he vigorously contends that, "if the United States continues to accede to settlements whereby its claimants receive less than one-third compensation for their adjudicated losses, it should not be surprised if during the course of future negotiations foreign countries raise the doctrine of estoppel to its arguments for just and adequate compensation." (pp. 105-06.) This fear is similarly shared by other writers, and some believe that settlements of the kind here illustrated are actually political compromises which greatly undermine the authority of international law and the consistent policy of the United States.¹³

The foregoing illustrations of lump sum settlements, obviously far below the value of the property of nationals, bring into play the interesting question whether the claimants thus treated have been deprived of property without due process of law in violation of the Constitution.¹⁴ It can be argued persuasively that by agreeing to such settlements the United States has released foreign governments from the payment of a just and adequate compensation to American nationals. And by so acting, the United States is in reality disposing of the property of its nationals without indemnification.¹⁵ While conceding that the state of the law is rather uncertain and that the authorities on this question are inclined to believe that there is no violation of the Constitution (pp. 29-40), Professor Lillich seems to disagree with this position as being wholly unsatisfactory, for in practice it leaves the national in the same unfortunate position he would have been had the foreign government involved refused to pay compensation. The author's treatment

9. See Domke in Proceedings of the Second Summer Conference on International Law, Cornell Law School 120 (1958).

10. 56 Stat. 1347 (1941), T.S. No. 980.

11. Carlston, Concession Agreements and Nationalization, 52 Am. J. Int'l L. 260, 273 (1958).

12. See the remarks of David A. Avram, in Proceedings, Am. Soc'y Int'l L. 114 (1960).

13. See the remarks of John R. Stevenson, in Proceedings, Am. Soc'y Int'l L. 110 (1960).

14. U.S. Const. amend. V.

15. See note 13 supra.

of this matter is lucid and persuasive, and reveals great insight and a high degree of scholarship, as evidenced by the quantity and quality of his citations.

Closely connected with the preceding problem is that of judicial review of the awards given by the national claims commissions. A clue to this question can be found readily by reference to the congressional act that has created the particular commission. Thus, the act which created and gave jurisdiction to the Foreign Claims Commission, makes its awards "final and conclusive on all questions of law and fact and not subject to review . . . by any court by mandamus or otherwise. . . ."¹⁶ (pp. 55, 58-70.) This answer, however, is not as simple as it may seem, for, as the author well observes, certain recent cases have shown a tendency towards granting judicial review in some situations as, for instance, when the claimant "is denied consideration by reason of his race, creed or color."¹⁷ It would appear, therefore, that judicial review is not altogether barred, and anyone familiar with the administrative process will quickly remember that the word "final" in a legislative act does not per se preclude judicial review of administrative action.¹⁸

Finally, Professor Lillich maintains that the commissions, although established by Congress, apply international law. (p. 71.) It is rather difficult to accept this contention, for it is common learning that national claims commissions are domestic tribunals applying domestic law. The author himself seems to find difficulty in reconciling the contentions of the State Department that these commissions apply international law with their actual practice, for the latter clearly reveals that they are restricted by the provisions of congressional acts. (p. 75.) It is here pertinent to quote what J. Reuben Clark, Solicitor of the State Department, said in this regard in 1912 in connection with the *Distribution of Alsop Award* which, incidentally, does not seem to be mentioned by the author: "[T]he distribution of the award among those entitled to receive it, is a matter not of international law, but of municipal law which embodies the rules and principles governing and controlling private, personal and property rights."¹⁹

Indeed, one would seem to detect a slight contradiction in the chapter dealing with the "Jurisprudence of National Claims Commissions," for, while the author subscribes to the view that these commissions administer international law, on the other hand he concedes quite frankly that they have had little impact upon the development of international law on the subject, and significantly adds that this is due to the fact that national commissions "are restricted both by the strait jacket doctrine and the provisions of enabling acts. . . ." (p. 75.)

Clearly, then, national claims commissions can hardly be expected to apply international law in the manner in which mixed claims commissions do.²⁰ They

16. 64 Stat. 16 (1950), 22 U.S.C. § 1623(h) (1958).

17. The author cites, at p. 64, *De Vegvar v. Gilliland*, 228 F.2d 640, 642 (D.C. Cir. 1955), cert. denied, 350 U.S. 994 (1956).

18. See *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955); *Heikkila v. Barber*, 345 U.S. 229 (1953). Contra, *Gentila v. Pace*, 193 F.2d 924 (D.C. Cir. 1951), cert. denied, 342 U.S. 943 (1952).

19. 5 Hackworth, *Digest of International Law* 763 (1943). (Emphasis added.) Of course, one does not expect an author to give an exhaustive list of cases. However, this opinion is here given because it is quite pertinent to the matter under consideration.

20. It is submitted that perhaps the closest analogy to national claims commissions are prize courts, which are also domestic tribunals purporting to apply international law. See *Colombos, A Treatise on The Law of Prize* 21-22 (3d ed. 1949). It should be added,

are the creation of Congress, and while it is very unlikely that the United States Congress would enact legislation inconsistent with international law, the interesting question immediately arises—what would a national commission do if Congress did? There can be no doubt that the commission would be bound by the act and not by international law. It is thus submitted that although national claims commissions apply domestic law, the latter usually incorporates the pertinent international law rules.²¹

The foregoing observations are not in any way intended to detract from the merits of this book. It is a pleasure to say that Professor Lillich has written a highly scholarly book and has developed his thesis with admirable force and conviction. Above all, this is a work of rare originality, and a major contribution to the literature on international claims that no serious student of this subject can safely afford to overlook.

MANUEL R. GARCÍA-MORA*

however, that there is more opportunity for the application of international law in prize courts, for in adjudicating prizes the whole area of belligerency may come into play.

21. This is actually a paraphrase of Professor Julius Stone's remarks upon prize courts. They seem to be quite pertinent in relation to national claims commissions. See Stone, *Legal Controls of International Conflicts* 528 (1954).

* Professor of Law, Fordham University School of Law.