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## The New York Court of Appeals: 150 Years

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## DEDICATION

### THE NEW YORK COURT OF APPEALS: 150 YEARS

*Judge George Bundy Smith*

ON September 5, 1957, Governor Orville Faubus of Arkansas defied the Supreme Court of the United States by declaring that Arkansas would not permit nine African American students to attend Central High School in Little Rock, Arkansas. Approximately one year later, on September 11, 1958, I was fortunate to attend the argument in the Supreme Court of the United States of a case called *Cooper v. Aaron*.<sup>1</sup> The issue was the right of the State of Arkansas to defy the pronouncements of the Supreme Court by excluding those nine students from Central High School. The man who argued the case for the Little Rock Nine was Thurgood Marshall, the Attorney for the NAACP Legal Defense and Educational Fund. With him on the brief were Wiley Branton of Arkansas, William Coleman, Jr., of Pennsylvania, Jack Greenberg of the Legal Defense Fund, and Louis Pollak who was to be my professor in constitutional law at the Yale Law School before he went on the Federal bench in Philadelphia. Their arguments helped to shape the subsequent decision made by the Supreme Court.

On September 29, 1958, the Supreme Court announced its decision in *Cooper v. Aaron*. Breaking with tradition, the opinion was not that of one Justice joined by the other Justices. Instead, each of the nine Justices was listed as an author of the opinion. *Cooper v. Aaron* is important because it represents a view of the role of the Supreme Court and the judiciary as expressed by the highest ranking Justices in America at a time of national crisis. The essence of the decision was that neither the governor nor the legislature of the state could defy the ruling of the Supreme Court. None of the Justices shied away from what they knew to be their duty.

In Federalist Paper No. 78, Alexander Hamilton indicated his view of the role of the judiciary in the new nation which was being formed. He stated that the judiciary would be "the least dangerous" branch of the new government because it would have to depend solely upon the force of its judgments for acceptance and enforcement. Hamilton stated:

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.

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1. 358 U.S. 1 (1958).

The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated.

The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.<sup>2</sup>

It is often stated that the role of the New York State Court of Appeals is to state what the law of the State of New York is. Whether it is considered a separate role or a part of the statement of what the law is, it is my belief that the role of a judge includes the protection of the rights guaranteed to every citizen by the Constitution of the State of New York and the Constitution of the United States. The Justices of the Supreme Court in *Cooper v. Aaron* accepted their role as one of the protection of constitutional rights. Those who are privileged to serve on courts in New York and elsewhere thus have an awesome responsibility. Needless to say, a statement of what the law is can and does engender controversy. Public officials and citizens have the right to analyze and criticize any court decision. But the steadfast devotion to duty which was seen in the Supreme Court in *Cooper v. Aaron* and has been shown in countless decisions by courts throughout our history is a testament to the ongoing vitality of the judiciary.

In dedicating this publication to the New York State Court of Appeals, the Fordham Law Review and the Fordham legal community honor the Court and the Judges who serve on it. Without exception, Chief Judge Kaye and Associate Judges Titone, Bellacosa, Smith, Levine, Ciparick, and Wesley are proud to serve on the Court and to accept the responsibility which goes with such service. In my own case, I have been privileged to serve on the Court of Appeals and at the same time to serve as an Adjunct Professor at Fordham Law School where, under the leadership of Dean Feerick and others, the fertile minds of students, professors and lawyers have helped to shape the law of the State of New York and the law throughout our nation. To all who have had a role in this publication and on behalf of the Judges on the Court of Appeals, let me say thank you.

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2. The Federalist No. 78, at 428 (Alexander Hamilton) (Wiley Book Co. ed., 1901).

## DEDICATION

### THE NEW YORK COURT OF APPEALS: 150 YEARS

*Antonia Giuliana\**

ON behalf of the Fordham Law School community, we are honored to dedicate this issue of the Fordham Law Review to New York's highest state court, the Court of Appeals, on its 150th Anniversary. On September 7, 1847, Chief Judge Freeborn G. Jewett convened the first Court of Appeals in the old Capitol in Albany. Since that historical moment, the Court of Appeals has enjoyed a rich history. High courts from other states frequently turn to the decisions handed down by the New York Court of Appeals when confronting novel and difficult legal issues. While reflecting upon the Court's tradition of precedent, present Chief Judge Judith S. Kaye remarked: "To this day these beacons of the past illuminate the pathways of the law."

On many occasions, we, as students of law, have been enlightened by "these beacons of the past." In our law school classes, we have been introduced to bedrock principles of the common law through the eloquent and well-reasoned opinions of the New York Court of Appeals. As students of law, we have been challenged by the Court's sophisticated statements of legal principles; as human beings, we have been touched by the timeless wisdom espoused by the high Court in its thoughtful and well-versed opinions. We are thus honored to record within the pages of the Fordham Law Review a tribute to the tradition of justice, equity, and fairness embodied by the Court of Appeals of the state of New York.

The Court of Appeals has issued landmark decisions throughout the past 150 years in a number of practice areas including contracts, tort, estates, corporate, and criminal law. We highlight in these pages those decisions in which the Court's analyses of the novel and complicated legal issues before it became foundational rules of the common law.

The Court has contributed to the law of contracts by being among the first in the legal community to recognize detrimental reliance as a basis for contract enforcement. In a pair of famous decisions, *Homer v. Sidway*, 124 N.Y. 538 (1891), and *DeCicco v. Schweizer*, 221 N.Y. 431 (1917), both of which are prominently featured in introductory contracts courses, the Court of Appeals fleshed out the principles of detrimental reliance upon which the modern doctrine of promissory estoppel is based.

The Court of Appeals has contributed to the law of torts as well. Perhaps the most famous torts opinion written in this century is Judge Cardozo's opinion in *Palsgraf v. Long Island Railroad Co.*, 248 N.Y.

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\* Notes and Articles Editor, The *Fordham Law Review*, Volume LXVI.

339 (1928). Law students across the nation are acquainted with Mrs. Palsgraf's story—which involved an unfortunate sequence of events at a train station culminating in her injury—and the lessons of the scope of duty and proximate cause which *Palsgraf* intimates. To this day, the opinion remains a pillar of tort law.

Through a tradition of influential and time-honored precedents, the Court of Appeals has cultivated the legal landscape of New York state with a brilliant scheme of just and equitable principles. The Court's sense of justice has enlightened us as students of law and, no doubt, will serve as the beacons that guide the paths of our legal careers as we approach the third millennium.