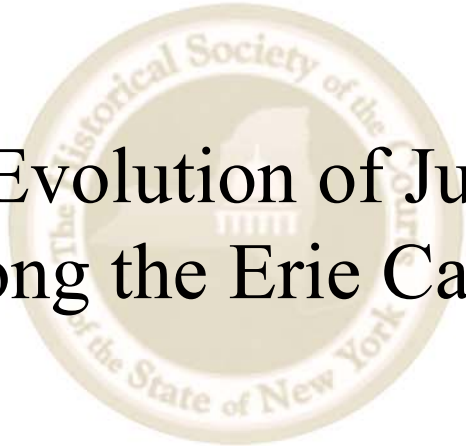


Leah Marie Reino  
2010 Winner  
The David A. Garfinkel Essay Prize

The Historical Society of the Courts of the State of New York annually sponsors the David A. Garfinkel Essay Competition. The Society launched this essay competition in 2008 with the generous funding of Gloria and Barry Garfinkel. SUNY and CUNY Community College students from around the State are invited to write an original essay on a specified topic of legal history. This year, the topic is The Evolution of Justice along the Erie Canal.

The Society was launched in 2003 by its Founder, former Chief Judge Judith S. Kaye, with the mission of preserving the legal and judicial history of New York. It seeks to foster public appreciation and a better understanding of the rich legacy of the New York courts, the legal profession, and their contributions to the State and the nation.



The Evolution of Justice  
Along the Erie Canal

Faculty: Professor Michael Weston

College: Genesee Community College

## More Than a Canal: Erie's Role in Changing the Law

The year is 1817. Construction has just begun on the greatest project New York State has ever undertaken: "Clinton's Ditch" or the Erie Canal. The sound of shovels, men shouting and swearing, horses neighing and working resounds through the valley. Most of the men are lower-class immigrants struggling to make their way in the young nation, all of them working and sweating alongside each other.

The Erie Canal was one of the greatest undertakings in the history of the young nation, something that would be remembered long after its completion. It linked the Great Lakes to the Atlantic Ocean, and transported not only goods but also ideas, information and culture. It was the "Gateway to the West" that permitted pioneers to venture forth and allowed farmers to build homesteads farther and farther away from the densely populated eastern coast. Grains and farm products that would have had to be taken by trains could now be transported through the Great Lakes into the Erie Canal and out to New York and the Atlantic on paddleboats and ships in only a fraction of the time.

But one very important role, if not the most, that the Erie Canal played in America's history was how it irrevocably changed the laws that governed the state and ultimately the nation.

### Eminent Domain

In order for the Erie Canal to be built, many laws previously put in place by the founding fathers had to be re-examined, changed, even eradicated. One issue that quickly arose when the canal was first being constructed was the issue of eminent domain--the state's right to take

private property from individuals for the greater good of the population of the state.

The changes to the state's view of "private property" and individual holdings dramatically changed in a comparatively short span of time, and in many ways. New laws were formed, among them the condemnation theory. The creation of this important concept allowed private companies, which had been contracted by the state to build the canal, to legally take private property to continue construction. The state expanded further on this idea, broadening the meaning of terms such as "just compensation" and "public use and domain," as well as restricting an individual's right to sue for lost property.

One case that illustrates the changes that occurred during this period is Jerome vs. Ross, which came before the Chancery Court of New York very shortly after construction of the canal had commenced. The defendant, a private construction company hired by the state, took stones and rocks from the plaintiff's property to use in the construction of the canal. Although the plaintiff sought an injunction, Chancellor James Kent found that the land owner was eligible to receive only monetary compensation. Furthermore, he ruled that since the defendant was under the jurisdiction of the state, the state was completely justified to enter and take what was needed from the plaintiff's property. The plaintiff was denied any compensation and the injunction he sought.

Going back to the Constitution of the United States, created only thirty years before, we see a clear contradiction. A primary focus of this document was the protection of private property: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law." The interpretation of "due process of law" was altered dramatically by the Erie Canal court cases, meaning that, should they

need to, states could seize a person's property with little or no time spent in court. The changes that occurred during the Erie Canal era were among the first of a long series of modifications that have dramatically altered the way we interpret the Constitution today.

Chancellor Kent, backed by New York State statutes, reasoned that, since the individual in question had suffered no damage to himself or his property, the good that the canal would do to the private citizen far outweighed any minimal injury the plaintiff might have sustained. He realized that a balance must be struck between private interest and property rights and works in the public interest such as the Erie Canal. While the plaintiff would leave the court without compensation, there was no damage actually done to him or to the canal. Chancellor Kent reasoned that the dam constructed from the stones would benefit hundreds, if not thousands of people, and thus he concluded that he would deny the injunction the plaintiff sought. His reasoning illustrates how lawmakers and judges of the time were in a groundbreaking new era, in which every decision they made had a vital impact on the future of law in our state.

Another example of the erosion of property rights of individuals during the construction of the Erie Canal is detailed in two cases that occurred only several years apart. They both dealt with issues regarding the term "public use." In the first case, it was determined that land condemned by the state, if it were no longer useful to the state for the purpose it had been appropriated, would then be returned to its original owner. However, the second case's ruling was completely different. The court ruled that land, once taken by the state through eminent domain, would be held regardless of whether it was still serving the purpose for which it had been taken.

These two cases highlight, yet again, the shifting landscape of law from 1817 on, as new laws were created and original laws were dramatically changed, if not in letter then in interpretation. The Erie Canal was something that the courts and government of New York were bound and determined was going to be built, even if it meant sacrificing private interests at the time. Just a few years separated the two cases that concerned the meaning of “public use,” but, in that short period of time, the views of the courts had changed completely. They had decided that should something be for the good of all the people, then sacrifices would have to be made.

#### Tort Law

Another area of law that was monumentally changed by the Erie Canal legal issues was tort law. In this instance, in contradiction to the eminent domain cases, the courts did not change to a wider interpretation of the pre-existing laws and terms. On the contrary, they narrowed their definitions, severely restricting the compensation an individual who had been hurt by the canal could seek.

One of the best examples of the new changes in tort law was Fish vs. Dodge. The government had hired a canal commissioner, who in turn hired an independent contractor, the defendant, who was supposed to repair a section of the canal. When he failed to do so, the plaintiff suffered considerable property damage--one of his horses died, and others were severely injured.

The court’s decision was almost extreme. They stated that the commissioner wasn’t liable for the contractor’s actions, which was a fairly well established precedent at the time. However, they argued that the contractor was also blameless in this instance. The contractor was a

private entity, not a public servant, and could only be held for breach of contract by the state, not by the plaintiff. The plaintiff was thus left without compensation, and the commissioner and the contractor were both unscathed.

This, perhaps more than the eminent domain laws that emerged at the same time, shows how far the state was willing to go to protect the interests of the canal. They denied a man whose property was directly hurt by the canal any relief whatsoever, and also completely blocked action against the responsible parties.

However, that being said, such a radical position was necessary in order for the canal to be constructed without constant delay. It can be said with certainty that many cases similar to Fish vs. Dodge were never even brought to trial. If the guilty commissioner and contractors were constantly being brought to justice, the construction of the canal would have been laborious and slow, and the court system would be flooded with these types of cases. The ruling of Fish vs. Dodge discouraged countless others with similar cases from bringing their issues to court, and the construction of the canal and the execution of justice were expedited. So we can see that it was certainly advantageous, and perhaps critical, that the interpretation of tort law be drastically changed in order to facilitate the smooth and swift construction of this great public work.

#### A New Twist on Tort Law

Fast forwarding the clock to the year 2010, we again face a similar issue as to the interpretation of tort law. This time, however, the interpretation does not need to be narrowed, but rather broadened. This new threat that the American public now faces often slips through

loopholes in traditional tort law, and the culprits are nefariously hard to locate, let alone hold responsible. What are these new monstrosities? Cyber criminals. Online fraud, “phishing,” and identity theft, which jumped in incidence by 66% from 2003 to 2004, are steadily becoming more and more of an issue that courts are struggling to handle. A drastic change must take place as to how to handle the thorny issues of cyber torts, and the path is long and treacherous.

The author of “Civil Liability On the Internet” suggests pursuing a negligence claim to regain lost property from Internet Service Providers (ISPs). Demanding that service providers keep a closer watch on the websites that they host in their domains is an important step in catching online criminals. The authors also suggest aggressively pursuing Duty of Care and Standard of Care. This could be, for example, a case of a credit card company, entrusted with a plaintiff’s personal information, “allowing” confidential data to be stolen. In other words, there must be a certain standard that the company promises to uphold, and a clear failing of the company to uphold that standard.

One of the most outstanding problems is that in order to prove negligence, an actual injury must have occurred *beyond that of economic harm*. No matter how much money was lost by the plaintiff, they must show personal or property injury. This is often impossible in the case of online fraud. However, this problem can be overcome by trying to prove a breach of contract by the ISP instead.

But yet another barrier exists in this direction. Once a plaintiff agrees to a number of contracts by clicking the “I Agree” button on a webpage, they have probably forsaken any ability to pursue a breach of contract claim. It is usually impossible to use an ISP without agreeing to these kind of online contracts.

We can see now that it is extremely difficult for a plaintiff who lost a significant amount of money from identity theft to receive any sort of compensation. So do a brand new set of laws need to be designed to deal with the menace of cybercrime? I would argue yes. Expanding existing laws would be treacherous and difficult to do without compromising traditional tort law cases. Creating a brand new set of laws and regulation for those cases which can be classified as “online” might be difficult, but whether we want it or not, our world is now entering a digital age. More and more people are using the Internet as a tool to do everything from Christmas shopping to car rental to banking and, as a result, cybercrime is becoming a major threat. With more and more people online, identity theft is only going to become more and more of a problem, and we must attack it with as much vehemence as those cases which occur in the physical world.

Again examining how law has evolved from the time of the Erie Canal to modern day, we see that the rights of private citizens who have been wronged by the state or a state agency have changed dramatically. A court exists to handle these specific cases, namely, the New York State Court of Claims. The New York State Thruway Authority, the City University of New York, and the Power Authority of the State of New York (for appropriations claims only) are all under its jurisdiction.

Eminent domain law has changed since the time of the Erie Canal, as shown in a particular case from the New York State Court of Claims. In Universal vs. The State of New York, the claimant, Universal Instruments, owned a considerable amount of land that was damaged economically by the appropriation of .77 acres by the state. The taking of the claimant’s land cut off any access to the property and its industrial facilities from surrounding streets and roads. Because of



this, the claimant had to construct a semi-circular driveway in order to access its factory. Universal sought economic compensation for this inconvenience and harm to the value of their industrial property. Total damages were estimated at \$1,627,337, and the claimant was awarded \$504,155 in temporary easements and fees.

Comparing this to the cases during the Erie Canal time, such as Jerome vs. Ross, we can see that eminent domain law has changed. While nothing was awarded to the plaintiff in the earlier cases, in Universal vs. The State of New York, there was a settlement that did include payment to the injured party. Even though the state was fully justified under eminent domain, it acknowledged that it had damaged the economic status of the claimant's property, and consequently provided compensation. Still, the principle of eminent domain remains the same, in that, should a public work by the state benefit more people than it harms, the state has every right to take an individual's property for the construction of said public work.

Another example of the evolution of eminent domain law is the case of the Atlantic Yards. The defendant, the Empire State Development Corporation (ESDC), stated that it intended to take a dilapidated part of Brooklyn and turn it into a luxury living area, complete with new housing, an expanded rail yard, and a sports arena. In its brief, the defendant stated that the building project would “. . . eradicate blight at a central, transit-accessible location in Brooklyn and redevelop the area with the construction of civic facilities . . .” (an undertaking henceforth referred to as the Project).

However, the plaintiff argues that the Project proposed by the ESDC is unconstitutional and goes against all precedent of eminent domain law in New York State. In the public use clause of the New

York State Constitution, it is stated that “private property shall not be taken for public use without just compensation.” The appellants argue that one must read the term “public use” strictly--that is, something is public use if all can access it, without fee or requirement on the part of those who wish to access it. The new housing would charge rent, and the new arena would charge admission, and therefore be selective in who could make use of them. This, the appellant argues, goes against the New York State public use eminent domain laws. The appellant also cites a second instance of unconstitutional use of eminent domain. According to Article XVIII, section 6 of the New York State Constitution, any state-funded housing project whose objective is to remove blight “must be restricted to displaced low-income residents.”

Reviewing this case, however, I find that the appellants are more at fault than the defendants. The two arguments that the appellants rely on are heavily flawed, as the respondent’s brief states. First and foremost, the term “public use” has been changed and modified throughout the years, but the interpretation that the appellants are using was not even applicable in the Erie Canal era. There were taxes to use the Erie Canal; therefore, according to the appellant’s brief it was not “public use.” However, eminent domain was still employed for the acquisition of the property for the Canal. No precedent exists for their interpretation, and indeed, all precedent states to the contrary.

Secondly, while the appellant did quote Article XVIII, Section 6 correctly, they did not quote it nor apply it in its entirety. The entire section from which they were quoting hinges on the fact that a project eliminating blight would be solely a low-income housing project. The Project is not solely a low-income housing project; rather, it is merely a piece of a larger whole. Thus, the appellant’s arguments are invalid.

I can conclude from the Atlantic Yards cases that eminent domain has changed over the years, but the core concepts realized at the time of the Erie Canal are still in place today. They still guide the hand of the court system and the laws of New York State.

The Erie Canal was the anvil upon which the hammer of the courts changed the shape of the laws of New York State and the nation forever, setting precedents that still stand in our court systems today. The Erie Canal had to be constructed, and *would* be constructed. Laws were created, destroyed and bent in the forge of the controversy that swirled through our state, laws that are still upholding justice in our state today. Through the sweat of the immigrant and the deliberation of the courts, we created a shining example, proud and more prosperous than ever, that would march through much of the 19<sup>th</sup> century as the envy and wonder of all.

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