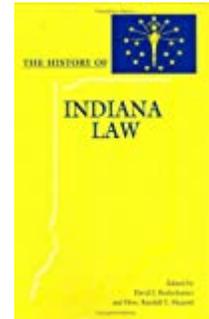




David J. Bodenhamer, Hon. Randall T. Shepard, eds. *The History of Indiana Law*. Athens: Ohio University Press, 2006. ix + 391 pp. \$49.95 (cloth), ISBN 978-0-8214-1637-2.



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Moderation Is the Indiana Way

Too often histories of the individual states of the United States descend into civic boosterism and regional narrowness. Aimed at general audiences or lower division students, general state histories often over-emphasize the uniqueness of their particular geographical and political entity and de-emphasize the continuities any particular state possesses with its neighbors or other states across the continent. With this concern in mind, readers might approach a history of a state's legal and state constitutional development with some hesitancy. This understandable concern is magnified if the state law and state constitutional significance under investigation do not derive from one of the states that legal scholars generally understand to be on the cutting edge of importance through United States history: states such as Massachusetts, New York, California, and perhaps Wisconsin and Texas. Heartland Midwestern states (variously defined), known more for their social, cultural, and legal uniformity, might not constitute places that attract scholars and legal history interpreters. Yet, as *The History of Indiana Law* suggests, the potential pitfalls and shortcomings of this genre of scholarship can be avoided while contributing (or starting to contribute really) to the

history of state law and state constitutionalism parallel to the much studied federal level of laws and constitutionalism. Thus, for showing the way on how to proceed with such studies and for prudently demonstrating the strengths and weaknesses of this approach, these editors and authors must be given high marks.

Composed of fifteen articles divided into five separate sections, this work starts in part 1, "Constituting The Framework," with an overview piece penned by the editors, David J. Bodenhamer (Professor of History and Executive Director of the Polis Center at Indiana University-Purdue University Indianapolis) and the Honorable Randall T. Shepard (the longest-serving Chief Justice of the Indiana Supreme Court), entitled, "The Narratives and Counternarratives of Indiana Legal History." Bodenhamer and Shepard sketch out the general history of law in one of the most Midwestern of states and divide their subject into three "cultural moments": "its birth in an age of revolutionary republicanism, its growth in a democratic and entrepreneurial society, and its maturity in an environment of corporate and national power" (p. 5). After assessing and filling in this structure, Boden-

hamer and Shepard conclude that “Indiana legal culture will continue to reflect the larger social and political culture of the state itself” and that its legal and state constitutional history suggests that “moderation is the Indiana way” (p. 19). While not a world-changing insight, what Bodenhamer and Shepard and the other contributors to this volume accomplish is supporting and demonstrating how this particular Midwestern commonwealth has followed (and at times tinkered with and deflected) the larger social, cultural, and economic forces at work in the nation. As such, this case study of how one state’s laws and constitutionalism reflect the larger national trends is useful as an interpretative approach in law and society studies. Completing part 1 of this volume is Patrick Baude’s contribution, “Indiana’s Constitution in a Nation of Constitutions,” which compares and contrasts Indiana’s Constitution with other state constitutions.

Arranged topically, the other sections of the book are, “The Law of Personal Status,” “Law and Crime,” “Rights,” and “Bench and Bar.” In “The Law of Personal Status,” James H. Madison provides an overview of race and race relations within the Hoosier state pointing out the mixed picture of the region as a free, yet highly race-conscious, state. Michael Grossberg and Amy Elson review the law of domestic relations in Indiana and conclude “the history of family law in Indiana is an apt illustration of the power of policy consensus in the American republic” (p. 81). In the last article in this section, Sheila Suess Kennedy assesses Indiana’s social welfare policies through the years and finds them wanting by the early twenty-first century. While participating in the rise of the bureaucratic welfare state of the twentieth century, Hoosiers have not embraced the welfare state as an engine of economic development to an extent preferred by Kennedy.

Criminal law history and juvenile issues constitute the two articles making up part 3, “Law and Crime.” Susan Carpenter relates the quip by a member of the 1850 state constitutional convention, John B. Howe of La-Grange County, who suggested that the state’s maxim regarding criminal law and criminal procedural issues should be “politically conservative, and socially progressive” (p. 135), while Margaret G. Robb and Nancy Gettinger highlight the strengths of juvenile justice in the Hoosier state.

The following authors, respectively, examine a number of issues in part 4, “Rights”: Virginia Dill McCarty on women’s rights in Indiana; Rebecca S. Shoemaker on the history and interpretation of the state bill of rights; and,

Martha McCarthy and Ran Zhang on public education issues. All of these authors emphasize the gradualism of change that marks Indiana’s legal history and how this gradualism reflected the social and political moderation of the population.

Five articles constitute the largest section of the book, part 5, “Bench and Bar.” Elizabeth R. Osborn surveys and assesses the history of Indiana courts and lawyers from 1816 to 2004, while the recently deceased Robert J. Maley, and his son, John R. Maley, review the “legal culture” of Indiana through an assessment of the influence and rules of the Indiana Supreme Court. Judicial biography constitutes the topic of the article written by John G. Baker who assesses the influence of a variety of the most important men and women who have served on the bench in Indiana. To them, Baker attributes both a history of distinguished service, but, more importantly, stability in law and rule-making necessary for the success of the state. In a review of substantive areas of the law in Indiana such as “Slavery,” “The Exclusionary Rule,” “Judicial Review,” and “Fair Redistricting, Fair Elections,” George T. Patton Jr. reviews some of the leading cases of the Indiana Supreme Court. Sticking to the theme of moderation, Patton concludes that “although some of the decisions rest respectively within larger national trends, in hindsight they mostly look like good, practical, common sense” (p. 339). Finally, the volume’s articles conclude with a piece by Allen Sharp reviewing the work of and the U.S. Supreme Court justices themselves who worked in Indiana in “The U.S. Supreme Court on Circuit in Indiana, 1837-1891.” An appendix, “History of Official Indiana Statutes,” completes this volume of essays. This volume, then, is recommended for all public, undergraduate, and law libraries.

What unites these fifteen articles is the theme stated by Bodenhamer and Shepard: “moderation is the Indiana way.” While rarely first in the nation to adopt new legal, social, cultural, or economic reform, neither has Indiana been last in keeping pace with the sweeping changes affecting the nation as a whole. As such, the editors see Indiana as an “every-state,” a case study of a typical state neither ahead nor behind; rather it has been pulled and gone along with the changes and continuities of U.S. history. As such, this volume succeeds. What are needed now are more such volumes in the surprisingly sparse field of state legal and state constitutional histories. This volume is part of the Ohio University Press series on Law, Society, and Politics in the Midwest, edited by Paul Finkelman of the Albany School of Law, so perhaps *The History of Indiana Law* will constitute a template for other

studies of other under-studied states in the future. Such work will enrich the field of U.S. legal history and this approach of law and society studies. These authors and editors have shown the way; let parallel work on other states begin.

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