

REVIEWS

History of Indiana Law

By David J. Bodenhamer and Hon. Randall T. Shepard

(Athens: Ohio University Press, 2006. Pp. xi, 391. Appendix, index. \$49.95.)

On a snowy January day, I read this collection of essays on Indiana law from cover to cover. Written by two judges of the Indiana Court of Appeals, one member of the Indiana Supreme Court staff, one federal district judge, six professors (three of them historians), and six practicing attorneys, the articles provide broad overviews of major topics in legal history (civil liberties, crime, family law, women's rights, race, and courts) as well as some less expected topics such as poor law and education. The volume also includes a section on the Indiana bench and bar and an appendix entitled "History of Official Indiana Statutes," a gem of an essay by the Indiana Legislative Council never mentioned in the text but very useful to all who cite Indiana statutes.

Readers of this journal will have seen the "teaser" article, "Indiana's Legal History," by editors Bodenhamer (a professor of history at IUPUI) and Shepard (Chief Justice of

the Indiana Supreme Court) in the December 2005 *IMH*. That article, like the revised version of it that serves as the book's introduction, deals well, albeit briefly, with the broad strokes of law and economics not addressed elsewhere in the book. The introduction also establishes the theme of "narrative and counter-narrative" in Indiana legal history, a theme that the editors see as being at times in step with and at other times isolated from national legal culture. Several essays adopt this thematic style; other chapters are narrative; and two, filled with bulleted paragraphs and ubiquitous acronyms, consist largely of policy analysis.

As to the articles themselves, some pruning is in order. For example, the reader encounters the creation of the Indiana Juvenile Court Act of 1903 in three chapters (pp. 73, 119, 152). The right of paupers to counsel is also addressed three times (pp. 114, 203, 328), as is *In re Leach*,

which admitted women to the bar (pp. 183, 281, 331). Near the end of the book two subsections, "Admission to Practice Law" (p. 265) and "Admission to the Bar" (p. 279), cover roughly the same ground with-in twelve pages of one another.

Admittedly many readers will not read every essay, but if they pick and choose topics, they may miss relevant materials buried in unexpected chapters or expect to find discussions that have been overlooked. James Madison's "Race, Law, and the Burdens of Indiana History" deals with African Americans, but neither here nor in any other chapter do Native Americans appear. Madison covers major pre-Civil War slave/servant cases, including *State v. Lasselle*, involving the right of a slave woman, Polly, to freedom (p. 42). Yet Polly's circumstances receive fuller treatment in chapters titled "Indiana Judges" (p. 306) and "Political Pragmatism and Common Sense" (p. 326), hardly the places where most readers would look. And while the volume includes an index, neither Polly nor Mary Clark, an African American litigant in another well-known freedom suit (p. 42) appears in it (*Lasselle* is indexed to pp. 42 and 326, but not 306). The indexer has also left out district court (territorial), circuit courts (local and federal), and the U.S. Supreme Court, although an entire chapter treats the "U.S. Supreme Court on Circuit in Indiana" and another covers Indiana courts and lawyers.

The volume contains very few textual errors, but two deserve mention. Alexander Hamilton did not defend John Peter Zenger in 1735 (p. 133), because he wasn't born until 1755. And the Indiana Supreme Court, not that of Ohio, heard *Bayh v. Sonnenburg* (p. 208).

Despite minor flaws, the book also warrants compliments. Every state should have a book like this, and the authors and editors deserve a great deal of credit for adding this one to the four existing volumes in the Law, Society and Politics in the Midwest series. Many of the essay writers have searched extensively for materials, developing their chapters despite the scarcity of modern legal historical research.

With the exception of David Bodenhamer's works on the grand jury and on antebellum crime, few Indiana legal historians have attempted such "new legal history," born in the 1970s and practiced extensively elsewhere. The authors of similar state studies on the East and West coasts could cite multiple local analyses of order books, probate records, trial court records, and loose papers—the stuff of modern studies of how law affected everyday people. Indiana, however, is isolated from this national trend in research methods. The editors and authors of this volume have presented the current state of the field by dint of extensive research in available legislative, appellate, and secondary materials. They have identified and explained the

constitutional framework, policy choices, legislative arrangements, and major judicial turning points. It is now up to the next generation of legal historians to dig deeper and discover how Indiana law worked.

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The Irish Peopling Indiana

By William W. Giffin

(Indianapolis: Indiana Historical Society Press, 2006. Pp. ix, 127. Maps, illustrations, notes, select bibliography, index. Paperbound, \$13.95.)

When you think of Irish America, Indiana is not the first place that comes to mind. The vast majority of Irish immigrants chose to settle in the urban centers of the industrial Northeast and Midwest, bypassing largely rural Indiana for Chicago, St. Louis, Detroit, and St. Paul. William Giffin's book, an updated edition of the essay he wrote for *Peopling Indiana: The Ethnic Experience* (1996), is an informative history of those Irish who did choose the Hoosier state as their home.

What is striking about this story is its similarity to the larger narrative of Irish American history. In the colonial period, Irish fur traders wandered the New York and Pennsylvania frontier, trading with Native Americans and acting as mediators in conflicts between the Indians and their white neighbors. Indiana's most notable Irish trader was Dublin-born George Croghan, whose mid-eighteenth-century trade network extended from Pennsylvania to the Great Lakes

region. During the period of mass immigration in the nineteenth century, Irish began to settle Indiana in increasing numbers, attracted by the opportunity for work—first, the building of roads, then canals, and finally the railroad. Like most Irish immigrants at this time (1830-1860), they were unskilled laborers who were in search of work.

Canal-building fever had gripped the nation in the 1830s and 40s, sparked by the success of New York's Erie Canal. It was the Irish laborers who built the canals in New York, Pennsylvania, and Ohio, as well as in Indiana. Mostly migrant workers who went from job to job, a number of them settled in Marion County, where they became the founding generation of the Indiana Irish. By 1860 about 24,495 foreign-born Irish were living in the state, less than two percent of Indiana's total population. This was also the era when the Catholic church began to establish itself in Indiana, organizing parishes in Indianapolis,