

The History of Michigan Law

Edited by Paul Finkelman & Martin J. Hershock, published by Ohio University Press (2006), hardcover, 290 pages, <http://www.ohio.edu/oupres>

Reviewed by Gary M. Maveal

The *History of Michigan Law* is a welcome compilation that fills a need for accessible coverage of the state's legal heritage. The book's 12 chapters feature essays by a dozen authors, all but one of whom are history or law professors. The essays are arranged in an orderly chronological sequence as the subjects' overlapping coverage allows.

David Chardavoyne's opening essay ably develops one of the collection's themes: that Michigan was influenced heavily by New York and New England legal customs—much more so than were other Midwest states.

Several of the book's surveys span nearly the entire 170 years of statehood. For example, Frank Ravitch examines Michigan's four Constitutions, with a special focus on the evolution of their treatment of legislative apportionment, judicial selection, and religious freedoms. Byron Cooper's history of formal legal education traces the growth of law schools from the 1859 establishment of the University of Michigan's law department to Ave Maria's opening in 2000. (Who knew that the U-M's first competitor was the Sprague Correspondence School of Law in Detroit in 1889?)

In a similar vein, Ronald Bretz offers a primer on the development of criminal practice since Michigan's Territorial era. Beginning with the sources of criminal law from the common law of England, this history examines both substantive criminal law and procedural rights. Bretz addresses the continual problem of funding counsel for indigent defendants as well as innovations in sentencing procedure and protections of victims' rights. His is the only essay that

touches on the controversial history of our current Supreme Court.

Other chapters explore more discrete, but equally interesting, subjects. John Quist gives a colorful account of the temperance and prohibition movements of the mid-nineteenth century and Paul Carrington offers studied insights on Supreme Court Justice Thomas Cooley's legacy.

Additionally, co-editor Martin Hershock explores the conflict between farmers and railroads throughout the same era as courts and legislators sorted out liability for unfenced cattle killed by trains. His reports of trials and legislative battles are enlivened by extensive newspaper and other period sources showing the heated public debate on the question. The story of how the railroads eventually prevailed is a poignant study of the often-painful transition from an agrarian to a mass-market economy.

Most of the book's histories similarly trace legal developments to social needs by showing the context of common law rulings and legislation. Liette Gidlow's chapter traces the many contributions of the Michigan Women's Commission throughout the 1970s.

The most ambitious essays identify conflicts between private property rights and claimed public or individual rights in chapters on Michigan environmental, antebellum civil rights, and labor history.

David Dempsey's "Ruin and Recovery" is a survey of the highs and lows of environmental degradation and protection. Drawing upon his 2001 book of the same name, Dempsey highlights the rapid commercial depletion of our fish and timber resources and the growth of a countervailing conservation movement in the late nineteenth century. He also traces the belated grassroots environmental movement's achievement of legislative consensus for environmental protection in the 1970s.

On civil rights, Roy Finkenbine recounts the growth of the Underground Railroad and organized opposition to Michigan's Black Laws, which restricted residency and prohibited suffrage and military service for blacks. The essay charts Michigan's slow but steady progress on equal rights under law. Segregation was outlawed by statute in public schools in 1867, a reform upheld by our Supreme Court two years later. Exploring our Civil Rights Act of 1885—one of the first state statutes guaranteeing civil rights to blacks—Finkenbine includes case studies showing the important role of Michigan's bench and bar in fulfilling the law's promise.

Co-editor Paul Finkelman's own chapter continues on this theme with a thoughtful review of civil rights developments into the twentieth century and WW II. His essay includes a focus on *Ferguson v Gies*, our

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Supreme Court's 1890 decision upholding a black patron's right—absent an express authorization in the 1885 Act—to recover damages for discriminatory treatment in res-

taurant service. This favorable view of the common law distinguished Michigan law from other states, yet Ferguson's jury awarded him only a nominal sum. This essay again

illustrates the legal system's incremental effect on societal attitudes.

Finally, Elizabeth Faue examines Michigan labor law before the advent of federal legislation. The widespread use of injunctions to stifle labor strikes and boycotts between 1868 and 1940 grew from a climate of concern by employers and some segments of the public. The vitriol and tactics of labor agitators and organizers no doubt persuaded some but repelled others from their cause. Again, cases are used to illustrate the dynamics of trials asking juries to convict or acquit working-class laborers for actions borne of economic necessity.

These and all of the chapters make lively reading by treating legal developments in a full societal relief. While the essays are extensively footnoted, the editors have not produced an exhaustive bibliography of law reviews and historical journals. For example, Professor William Blume's landmark series of *Michigan Law Review* articles on civil frontier jurisprudence and legislation in the territorial era is never mentioned. Insult is added to injury when Blume's six-volume collection, *Transactions of the Supreme Court of the Territory of Michigan, 1805–36*, is misattributed to William Wirt Bloom (p 33, n 26).

The book is the third in a series of similar state collections published by Ohio University Press. At 290 pages, this new Michigan title is substantially thinner than its forerunners on Ohio (two volumes running 915 pages) and Indiana (391 pages). Nonetheless, the collection is an intriguing array of legal surveys that will appeal to Michigan lawyers and the general-interest reader.

The History of Michigan Law includes many eye-opening facts in compelling social and legal histories. Its shortcoming may be that it leaves the reader wanting more; still, it is a sound addition to any library. It has already been recognized by the Library of Michigan (as a 2007 Michigan Notable Book) and the Historical Society of Michigan (with its 2006 State History Award). ■

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