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Woodford: A Life of Justice Woodward

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

A LIFE OF JUSTICE WOODWARD. By *Frank B. Woodford*. East Lansing, Michigan: The Michigan State College Press. 1953. Pp. viii, 200. \$3.75.

Augustus Elias Brevoort Woodward was appointed a judge "in and over" the territory of Michigan on March 2, 1805, and occupied this office until it became vacant on February 1, 1824. He and two other judges holding similar commissions formed the Supreme Court of the territory, and with the governor adopted for the territory such laws of the original states as were deemed necessary and best suited to the needs of the territory. Accepting Mr. Woodford's view that Judge Griffin was dominated by Judge Woodward and always voted with him, it appears that Woodward controlled the Supreme Court, and could, in the legislative board, block any legislation he did not approve.

It would seem that a man in Woodward's position, and with his education, energy, and imagination, would have taken a great interest in establishing a system of law for a growing frontier community. But we are told very little of his activities in this direction which means either that he made no real contribution to the law of the territory, or that Mr. Woodford has failed to recognize it. The truth is, Woodward left no outstanding legal monument. The "Woodward Code," referred to by Mr. Woodford, was merely a compilation of the laws adopted during the first months of the territorial government. The "Code of 1820" which, for the first time, provided the territory with an adequate body of statute law, was, in the main, the work of Governor Cass and Judge Witherell. It should be noted, however, that Woodward did produce a Digest of Court Rules which was published in 1821. Containing sixty-six rules adopted by the Supreme Court, the Digest was the beginning of the Michigan practice of regulating procedure by rules of court.

Why Woodward contributed so little to the law of the territory is not explained, but it seems clear that lack of interest or of ability is not the answer. In 1808 he laid before the governor and judges sitting as a legislative board the following resolution: "*Resolved*, That it is expedient to revise all the laws which have successively been in force in the Territory, and re-enact such of them as may be found necessary and suitable to its present circumstances, and that after such revision fully made, it will be expedient to provide that the coutume, or common law of France, the ordinances of the government of France, the common law of England, or such parts thereof as have been found inexpedient, acts of the British parliament, the laws of the late Territory of the United States north-west of the river Ohio, and the laws of the Territory of Indiana, excepting so far as it will be found desirable to re-enact them under the authority of this

government, ought to cease to have operation." This proposal was on a par with his celebrated plan for the city of Detroit; with his System of Universal Science; and with his plan for a great university in which all branches of his universal science would be taught.

In proposing that a body of statutory law supplant the common law of England, Woodward was, in effect, advocating a codification of the parts of the common law that were useful to the territory. According to Woodford, Woodward also "proposed a plan to substitute a legal code for the common law in the District of Columbia." These proposals were not made without a realization of the difficulties that would be involved. In an opinion delivered in 1809 he declared: "The United States of America derive So much of their government and jurisprudence from the Celebrated and potent island on the western Coast of Europe, by Whose enterprise and perseverance the Northern part of this hemisphere has been principally Colonized, that it is difficult, even at this day, to decide ordinary Cases, without a reference to the laws and policy of Britain." He believed, however, that much of the English common law was unsuited to the needs of the territory, saying: "In moulding the jurisprudence of the maternal Kingdom to this adolescent republic, it ought to be the primary object to discern the use of every part, avoiding its abuse; and pretermittting all that is obsolete, inapplicable, or excrescent. While the Solid and Valuable trunk of english jurisprudence is sustained; it's Superfluous and incongruous appendages, ought to be Subjected to a bold, but happy excision." In an opinion delivered in 1818 he declared: "That system of regulations and enactments, which bears the grand and widely circulated, appellation of 'THE COMMON LAW,' receives its date from the third day of September, in the year 1189. On that day, being the epoch of the coronation of RICHARD Coeur de Lion; and the first monarch by the name of RICHARD on the English throne; the 'COMMON LAW' became complete, and insusceptible of any additions. The Common Law is composed of the *unwritten*, and of the *written*, law of England, anterior to that aera." By this approach to his problem, Woodward was not only excising the "superfluous and incongruous appendages" of the common law, but was attempting to dig it up by the roots—or, more accurately perhaps, was attempting to cut down the "solid and valuable trunk" leaving only the roots. If the common law should be rendered useless in the territory, there would be no choice but to adopt statutes adequate for every purpose.

That Woodward's rule-making activity in 1819 was a part of his plan to supplant the common law is a reasonable supposition. Of the 168 rules adopted at that time more than half were adopted at sessions of the Supreme Court held by Woodward alone. The proposed digest of the rules was referred to by Governor Cass as Woodward's "favourite plan." According to a contemporary critic, "a multitude of rules of court were entered of record—some of which annul rights at common law; others are palpably legislative acts, and one, at least, going to alter an act of Congress." In 1820 the governor and judges as a legislature undertook to regulate by statute many of the matters which had been covered by the rules of the Supreme Court in 1819. Although Woodward did not have

much part in the preparation of the Code of 1820, he promptly rescinded his rules which dealt with matters included in the Code. A law adopted in 1810, which had "repealed" all English statutes and the custom of Paris in the territory, but which had left the English common law in force, was continued in force by the Code of 1820. Woodward did not sign the provision of 1820 which may mean that he did not wish to participate in the final rejection of his proposal of 1808.

If, at the time of his original proposal, Woodward had demonstrated the feasibility of dispensing with the English common law in the territory, his scheme might have had some chance of success. But there is no evidence that he ever drafted a code of the type that he had in mind. He left the territory soon after his proposal was made, and upon his return found that Governor Hull, taking advantage of his absence, had promulgated 45 legislative acts drafted by Judge Witherell, sometimes referred to as the "Witherell Code." In a series of decisions Woodward declared these laws invalid, and forced their repeal, but in doing so alienated both Hull and Witherell, making further legislation difficult, if not impossible. Then came the War of 1812, and the occupation of Detroit. After the War, Woodward's mind was fully occupied with his System of Universal Science, which not only involved a classification of human knowledge, but the development of scientific terms that would be useful in all languages. At the same time he was working on a second edition of his book on "electron"—The Substance of the Sun. After these projects were completed it was too late for him to revive his plan for a code that would supplant the common law. Initiative in legislation had passed to Cass and Witherell, leaving Woodward only his rules of court.

At the conclusion of his book on Universal Science, Woodward suggested that a university be established, preferably at the nation's capital, that would teach all subjects included in the book. A year later he proposed that such a university be established in Detroit, and, while Cass was absent from the territory, obtained the adoption of a statute creating the University of Michigan. In the list of "didaxim," or departments, was "Ethica" which included philosophy, law, and political science. Though it cannot be said that the law school of the University of Michigan had its origin in Woodward's plan, it seems clear that he had a vision of a great university in which law would be taught in connection with philosophy and political science.

Much of what is written above will be found in Mr. Woodford's book, and a great deal more. He has given us a clear, readable account of Woodward's life, bringing together most of the available material. Emphasis is placed on Woodward's services to the community during the War of 1812; his plan for the city of Detroit; his System of Universal Science; and his statute creating the University of Michigan. His work as judge and legislator is dealt with less fully, but is not neglected. If Woodward does not quite come to life it is because we are not given a chance to read some of his writings for ourselves, and are not made sufficiently acquainted with the persons who worked with him and against him. His judicial decisions and court rules can be seen in the printed "Transactions"

of the territorial Supreme Court, but what about his "note book" to which Mr. Woodford refers, but does not quote? It is especially regrettable that Mr. Woodford, who is an authority on Governor Cass, does not tell us more concerning Woodward's relation with Cass. On what matters were Woodward and Cass in agreement, and on what did they disagree? And what about Jefferson? Did his "disciple" get his views of the common law from him or elsewhere? These and many other questions remain unanswered, and there are many documents that should be made accessible in printed form. But, though there may be need of further study of Woodward's place in territorial legal history, Mr. Woodford has given us a fair and accurate account of Woodward's life—one that is entertaining and easy to read, and which should be read by all interested in the social, political, and legal affairs of Michigan in the territorial period.

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