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Book Review of The Country Lawyer: Essays in Democracy

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THE COUNTRY LAWYER: ESSAYS IN DEMOCRACY—by F. Lyman Windolph† with foreword by Owen J. Roberts.‡ University of Pennsylvania Press, Philadelphia, 1938. Pp. vii, 159. \$1.50.

In this small volume of twelve chapters the author, who has engaged in the general practice of law in Lancaster, Pennsylvania, for more than twenty-five years, presents in essay form his thoughts and observations on democracy and the law. He chooses to call them those of a country lawyer. While Mr. Windolph may be a country lawyer in that he is not of the great metropolis, it is likely that he will be considered distinctly urban by many of his readers who live in regions where a city of 60,000 population, like Tarsus is "no mean city". But as he has defined the term, one who "performs every sort of legal service for every sort of client", the author *is* a country lawyer and "no arbitrary distinction based on density of population or the like can make him anything else". In delineating the setting in which he has practiced, Mr. Windolph creates for his readers a gentle nostalgia akin to that which is awakened by Stephen Vincent Benét's description of the Pennsylvania towns and countryside in his immortal *John Brown's Body*, and Hervey Allen's *Action at Aquila*. The chapters entitled The Country Lawyer, King Street, and Country Justice, present with understanding the character of the country lawyer's practice; its simplicity, directness, and general wholesomeness. If a skeptic points to a travesty enacted in the country court house at Flemington, New Jersey, the author replies with truth that the lawyers in that case were not country lawyers. From the writing of deeds, wills, and other legal documents to trying every sort of civil and criminal action, the country lawyer's practice throughout remains a profession. Whether or not the training of the country lawyer "has made him learned, his experience ought to make him wise and good".

In discussing the jury system, Mr. Windolph presents a strong case in its favor. He points out that "*the function of a jury is not to vote. Its*

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function is to deliberate—and thus to come to a general opinion in the way in which Quakers are said to arrive at ‘the sense of the meeting’”. It is the author’s belief that the usual verdict which results is both “well grounded and conscientious”. He aptly says that “trial by jury does not presuppose a tribunal composed of twelve persons altogether devoid of ideas or even of prejudices. It does presuppose a tribunal of sufficient intelligence and courage to arrive in spite of prejudice at a just determination of the issue submitted to it”.

In other chapters the author discusses the age old question of defending a bad cause, the sanctity of law, and the Fourteenth Amendment. He believes that democracy “is not fundamentally concerned with majorities or minorities at all. What democracy assumes is unanimity—that is to say a common mind”. In his chapter entitled *Two Sins Against Tolerance*, which he designates skepticism and bigotry, the author reaches the paradoxical conclusion that “Americans are simultaneously in danger of becoming skeptics as a matter of philosophy and bigots as a matter of fact”. It is the belief of this reviewer that the author’s condemnation as a detestable heresy of the doctrine that “truth and error are subjective matters which rest on nothing more enduring than personal opinion and which have no relation to objective reality” is too sweeping. Certainly as to things which can be proved factually, one thing is true and another is false. But as to things which cannot be proved, right or wrong is a matter of opinion. While as to many of these things the value of opinion varies in accordance with the capacity of the particular person to form a competent opinion. When one reaches pure speculation, anyone’s opinion is as good as anybody else’s. When Mr. Windolph discusses that other sin against tolerance, bigotry, his position is unimpeachable, for as he says “the menace of bigotry is chiefly to be found in (a) . . . a dangerous perversion of conservative conduct and leadership”. From here, by natural transition, he arrives at his chapter entitled *An Open Letter to the Conservative Majority*, a chapter which should be read by every American, conservative, progressive, reactionary, or radical. For here is the country lawyer speaking at his best, he, who apart from the highly specialized practice of the metropolis, has had the leisure and the will to think calmly, wisely, and well about the significance of democracy. “We must protect free institutions at the peril of everything else, because free institutions are the fundamentals of our own case in chief. . . . To compass or permit their abridgment in the name of saving democracy is suicidal, because it cuts away the foundation on which democracy stands. It is, politically speaking, the sin against the Holy Ghost—democracy denying itself. A Fascist and a Communist ought to be liberals, perhaps, but a democrat must be one.” The closing chapter is entitled *A Letter to My Father*, an intelligent,

judicial, yet reverent tribute to him whose blessing descended to the son. Spiritually akin to the first chapter, it helps explain the author.

In the opinion of this reviewer two chapters—one on Hamlet and the other on the religious sects of Pennsylvania, while interesting, seem extraneous and out of place, and readily might have been omitted for the sake of unity. In matters of specific detail one may find fault with the author's statement that study in a law office was "the way in which all the lawers of America received their legal education up to comparatively recent times". This ignores the fact that the teaching of law began at the College of William and Mary in 1779, that the Litchfield Law School produced brilliant practitioners during its comparatively brief life, and that the Harvard Law School was founded in 1817. *The Country Lawyer* forms valuable and delightful reading for lawyer and layman alike, while its political philosophy should give hope to those who believe in the American Dream.

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