1939

Book Review of The Country Lawyer: Essays in Democracy

Theodore S. Cox
William & Mary Law School

Repository Citation
http://scholarship.law.wm.edu/facpubs/1443

Copyright 1939 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
http://scholarship.law.wm.edu/facpubs
THE COUNTRY LAWYER: ESSAYS IN DEMOCRACY—by F. Lyman Windolph†
with foreword by Owen J. Roberts.‡ University of Pennsylvania Press, Phila-

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 "per-
forms 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
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 lawyers 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.

THEODORE S. COX*

*Dean of the School of Jurisprudence, The College of William and Mary.