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THE CONSTITUTIONAL PRINCIPLES OF THOMAS JEFFERSON, by Caleb Perry Patterson. University of Texas Press, Austin, 1953. Pp. xi, 211. $4.00.

William G. Rice

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Professor Patterson more than dedicates himself to the presentation of Jefferson's constitutional principles; he dedicates himself to the principles themselves, as he understands and expounds them. For him, as they were in the beginning, are now, and ever shall be, world without change, so be they. And he grieves that they have been cast aside. "Jefferson, who—seeing farther down the vista of time than any of his contemporaries—could envision the pitfalls to which our constitutional system would be subjected, foresaw the situation which we have faced and face." By Franklin D. Roosevelt's first "election, the American people gave the most overwhelming approval to Jeffersonian principles. . . . They did not foresee that his and his successor's administrations would shamelessly abandon those very principles." (p. ix)

These prefatory words foretell the nature of the book—the good meat of history is corned in dixiecracy. This flavorful dish will offend the taste of many who revere Jefferson as sincerely as Patterson. I submit that the successful pioneer in government, the leader in liberating America from European systems of church and state and caste, the man of marvelous versatility, world-wide sympathy, and outstanding political sagacity, who "rose to his highest peak of statesmanship in his unselfish and sacrificial struggle for the freedom of the mind," (p. 188) preached as the first of all constitutional principles, the principle of change by popular will. But in the view of Mr. Patterson the Constitution of the United States embodies his own rigid Jeffersonianism.

Though the "bitter pill or two" that Jefferson found in the Constitution have been removed by the first eight amendments and the (at present) last, Patterson is pleased by these additions less than he is alarmed, to denunciation, by the judicial interpretations that have supported constantly increasing "government interference" and "collectivism." Hamilton's "dream of a highly centralized bureaucratic socialistic state has been achieved despite the fact that his proposal in the Federal Convention was completely ignored." (p. 106) The growth in internal affairs of national controls at the expense of the states (inevitable, it seems to me, in an industrial society without political barriers to

the movement of goods and people within the national area), the growth of executive leadership at the expense of legislative (even more characteristic of our city and state governments than of our national), and the growth of government regulation at the expense of the individual (a world-wide development due to swifter communication, denser population, and greater physical and moral capacity of one or a few to tyrannize over the rest unless held in a stronger check by the whole people's government), all of them departures from Jefferson's ideal of a farmers' democracy, are conglomerated in Patterson's anathema.

Jefferson was boldly anti-authoritarian; he believed in the freedom of the individual and the creation of government by popular consent. This consent or contract takes form in a constitution, theoretically popular, though in fact, as Patterson recognizes, (p. 153) only remotely so, since all early constitutions were adopted, as well as drafted, by conventions and not submitted to the electorate as is now the prevailing method in our states. Jefferson held that government was proper only as an embodiment of and support for "natural law," which, according to Patterson, meant to Jefferson: "the rights of man, the right of self-government, the contract theory of the state, popular sovereignty, and the doctrines of a limited government, individualism, and man's innate sense of justice." (p. 51) To these Jeffersonian principles "we must return if we are to survive. In them lies our one shred of hope." (p. 66) Natural law thinking "was never so necessary as in these totalitarian days." (p. 68)

Because he believed that change should be made by popular action rather than by governmental stretching of the Constitution, Jefferson supported judicial rejection of unconstitutional laws. He was a strict constructionist. But he believed also—Patterson records this opinion (p. 61) without applying it—that the right to choose one's government belonged to every generation and therefore "a solemn opportunity for doing this every nineteen or twenty years should be provided by the constitution" (To Samuel Kercheval, July 12, 1816). Actually such provision is wanting both in the Constitution of the Union and in those of most states.[1] Jefferson's opposition to judicial adapta-

1. The Constitutions of Maryland, Missouri, New York, Ohio, and Oklahoma require a referendum at 20-year intervals on the holding of a constitutional convention; that of Michigan every 16 years; those of Hawaii and Iowa every 10 years; and that of New Hampshire every 7 years. About as many provide some method, of more or less difficulty, for popular initiation and adoption of state constitutional amendments.

tion of the Constitution was, I think, the complement of his belief in easy amendment. And it is due to the difficulty of the people's expressing themselves through amendment—contrast the facility of amendment of the Swiss Constitution—that the courts have engaged in judicial adaptation and re-adaptation under pressure of the political (the popular) departments of government. Such spurious interpretation is a compromise, a partial realization of, rather than a departure from, the Jeffersonian notion of popular consent as the basis of government, though neither Jefferson (except when he was President) nor Patterson likes judicial flexing of the Constitution.

For, as Patterson fairly says, Jefferson's constitutionalism is "based on both philosophy and experience, in the combination of which he was more of a pragmatist than a doctrinaire." (p. 63) As for the laws of nature—"only by experience could they be discovered and their validity tested in the great human experiment of government." How then can Patterson, a page later, say: "The destruction of natural law and consequently the natural rights of man as a limitation upon the state . . . constitutes . . . one of the most tragic chapters of human history" (with a reference to the late Justice Holmes as the antagonist of natural law and "the father of this revolution," which "amounts to the establishment of a unitary, totalitarian state in place of our constitutionally limited federal system of government")? (p. 64)

The contract theory was, we are told, the basis of federal organization also in a second sense; the consent of the *states* was the origin of the United States. "By compact with his fellows, the citizen establishes a government . . . . He provides a bill of rights to safeguard his reserved rights. Likewise the states, by compact, establish the Union, reserving the rights not delegated." (p. 56)

But is this "likewise" a true sequitur? Not only do the popular origin and the interstate compact origin of the United States government seem incompatible—and Patterson does not reconcile or even recognize the clash—but what the compact theory itself is, is not clear. In expanding it, Patterson quotes first, apparently with approval, what Alexander Johnson ("Kentucky and Virginia Resolutions," in *Cyclopedia of Political Science*) says: "Jefferson's doctrine seems to have been that there were but two parties to the compact, the states of the

one part, and the federal government of the other, and that the former in national convention were to be frequently assembled to decide on the constitutionality of the latter's acts." Then he continues: "Jefferson regarded the compact as exclusively between states, but he regarded the amendment process as furnishing the states the opportunity of being the final arbiters of what the Constitution means." (p. 155)

Jefferson was more an actor and a stimulator of action than a theorist. Mr. Patterson, however, shows us a Jefferson in the study and not a Jefferson in the ring. But this is no distortion; rather it is an aspect of a many-sided man. This Jefferson, the aspect of him justified by the title of the book, is a man of fertile thought and immense energy expressed through a tireless pen. Mr. Patterson selects what deals with the organization of American government from the great fund of his writings, and gives the reader a good summation of these thoughts, sometimes contradictory but generally harmonious. Unlike Professor Crosskey,[2] he has nothing earthshaking to say of the Constitution, or of Jefferson's principles. He has not revealed a new Jefferson. He presents the self-stated evidence.

The chapter on Jefferson the lawyer will be of particular interest to those who, as little expert on Jefferson as I, have failed to appreciate the attainment and promise of Jefferson's few years in the profession before he entered upon his more brilliant career of public service.

*William G. Rice**

THE MEANING OF INCOME IN THE LAW OF INCOME TAX, by Francis Eugene LaBrie. University of Toronto Press, Toronto, 1953. Pp. 380. $15.00.

It is Professor LaBrie's announced intention to present in this treatise "a complete picture of the case law on the meaning of income and then to superimpose on this law the text of the Canadian statutes." (p. vii) This formulation of approach calls to mind Dean Griswold's aphorism that "[t]here is no use thinking great thoughts about a tax problem unless the thoughts are firmly based on the controlling statute." Fortunately Professor

2. CROSSKEY, POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES (1953).

* Professor of Law, University of Wisconsin.