
William G. Rice

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 govern-
ment), 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 con-
stitution, theoretically popular, though in fact, as Patterson
recognizes, (p. 153) only remotely so, since all early constitu-
tions 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, ac-
cording 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 sur-
vive. 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 Constitu-
tion, 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 genera-
tion and therefore "a solemn opportunity for doing this every
nineteen or twenty years should be provided by the constitu-
tion" (To Samuel Kercheval, July 12, 1816). Actually such pro-
vision 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 initia-
tion 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 be-
tween states, but he regarded the amendment process as fur-
nishing 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 fer-
tile 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 Cross-
key,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.

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THE MEANING OF INCOME IN THE LAW OF INCOME TAX, by Francis
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 think-
ning 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).
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