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Book Review of Patterns of American Jurisprudence, by Neil Duxbury

William P. LaPiana

New York Law School, william.lapiana@nyls.edu

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newspapers and struck down Huey Long's advertising tax on free press grounds. By doing so, the Court expanded the previously narrow meaning of constitutional press freedom in the United States. "In a very real sense," Cortner states in his study's broadest conclusion, "the *Grosjean* case marked the beginning of the modern scope of protection afforded freedom of expression in U.S. constitutional law" (p. 181).

An author of several previous works on U.S. constitutional matters, Richard Cortner handles both the substantive and the occasionally complicated procedural aspects of the *Grosjean* case with a sure grasp. He is a conscientious chronicler—so much so, indeed, that in places *The Kingfish and the Constitution* reads more like an extended encyclopedia entry than an analytical historical work (an impression reinforced by Cortner's somewhat tiresome habit of summarizing the obituaries of seemingly all newly introduced characters). Furthermore, Cortner's summary judgment of Huey Long—that he was bad, bad, bad—though understandable given the book's First Amendment focus, drains life from the "Huey Long problem" that has fascinated observers from Robert Penn Warren forward: how to evaluate a leader who used utterly abhorrent means (such as those described in Cortner's book) to achieve occasionally laudable ends (such as improving the services available to the poor people of Louisiana).

The Kingfish and the Constitution is a trustworthy treatment of an interesting and important dispute; collectors of book-length studies of landmark First Amendment cases will want it on their shelves.

JOHN WERTHEIMER
Davidson College

NEIL DUXBURY, *Patterns of American Jurisprudence*. Oxford: Oxford University Press, 1995. viii, 520 pp. \$49.95.

From his vantage point across the water, Neil Duxbury has written an original analysis of the intellectual history of American legal thought, beginning with the rise of legal formalism in the third quarter of the nineteenth century. In six chapters he deals in turn with formalism, realism, the policy science of Lasswell and McDougal, the process tradition, law and economics, and, finally, critical legal studies, feminist theory, and critical race theory. Throughout, he emphasizes continuity and interrelationship between various patterns of thought. "Ideas," he writes, "along with values, attitudes and beliefs—tend to emerge and decline, and sometimes they are revived and refined. But rarely do we see them born or die" (pp. 2-3). This approach leads to important reinterpretations of the received wisdom.

For example, he considers formalism to be composed of two separate strains of thought: an academic formalism begun by Langdell and carried forward by his colleagues that emphasized cases, precedents and principles, and a judicial formalism that was based on laissez-faire economic theories and reflected social Darwinist ideas. Both these ideas exerted influence well into the twentieth century, and Duxbury discusses Holmes, Grey and Pound as transitional figures who criticized both strains of formalism, yet remained loyal to logic and classification of principles as important tools for understanding law. The "revolt against formalism" vanishes as a useful concept, convincingly replaced by a much more nuanced story of gradual intellectual transformation.

Given his analysis of its ambiguous beginnings, it is not surprising that

Duxbury finds legal realism to be neither intellectually nor programatically coherent. It was a "mood" of skepticism and experiment which encouraged but did not guide the lawyers of the New Deal in their creation of the administrative state. The very diffuseness of realism, however, becomes a critical aspect of the story, as Duxbury traces the influence of institutionalist economics and psychology on legal thought. The chapter on realism makes an important contribution to placing American legal thought in the years between the world wars into a broader intellectual context. More important, however, Duxbury makes the strongest possible case for the failure of realism to influence the operation of law in the world. Developed as a critique of "formalist notions about private law doctrine," realism "failed to develop a critical literature devoted either to administrative regulation or to statutory interpretation" (p. 157). "Outstripped by political and legal developments," realism faded as the administrative state—the study of which "remained principally in the hands of Harvard Law School"—grew (pp. 158-159).

From Harvard would come the legal process school, whose roots go back to the Langdellian emphasis on principles, while Yale would produce policy science, built to a great degree on the work of John Dewey, which emphasized democracy as a basic value and the development of a methodology for creating institutions based on that value. Policy science failed to move the mass of American legal academics because it was too mired in methodology and jargon, too full of "theoretical excess" (p. 203). Legal process, on the other hand, provided what the law professors wanted, a jurisprudence which eschewed excess and planted itself firmly on the ground of reason. For Duxbury, process jurisprudence "exemplifies the emergence of *reason* as the dominant ideological and theoretical motif in American legal thought" (p. 206). Once reliance on reason is placed at the heart of the process school, it becomes expressive of a basic theme in American legal thought and gives it importance far beyond a response to the perceived nihilism of realism.

A different sort of reason permeates law and economics, a reason not of moral principles but an instrumental reason designed to lead to the most efficient solutions. Duxbury traces the origins of law and economics back into developments in economic thought, and once again the reader is led to consider relationships and connections more complex than those conventionally associated with the subject. Standing alone, this particular chapter is an important contribution to understanding a controversial aspect of contemporary American legal thought.

Finally, the author deals with the various manifestations of critical legal studies and the criticisms levied at CLS as a movement by critical race theorists and feminists. The discussion of these topics is an excellent introduction to current scholarship and the controversies surrounding it. It also has the fascination inherent in a historical treatment of persons and events which the reader probably considers to be contemporary.

Patterns of American Jurisprudence is a fresh interpretation of familiar territory and one of the first attempts to make sense of the contemporary scene. It will inform and challenge every historian of American legal thought.

WILLIAM P. LAPIANA
The New York Law School