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Review Essay
Examining Political Change and Presidential Power in the US

JOHN DUMBRELL

H. W. Brands, *The Strange Death of American Liberalism* (New Haven and London: Yale University Press, paperback edition, 2003, £9.95). Pp. 200. ISBN 0 300 098 24 3.

Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Durham NC and London: Duke University Press, revised and expanded paperback edition, 2003, £18.50). Pp. 406. ISBN 0 8223 3199 3.

William G. Howell, *Power without Persuasion: The Politics of Direct Presidential Action* (Princeton NJ and Oxford: Princeton University Press, 2003, cloth £29.95, paper £12.95). Pp. 239. ISBN 0 691 10269, 0 691 10270 8.

Drew Noble Lanier, *Of Time and Judicial Behavior: United States Supreme Court Agenda – Setting and Decision-Making, 1888–1997* (Selinsgrove PA: Susquehanna University Press and London: Associated University Presses, 2003, $42.50). Pp. 276. ISBN 1 57591 067 5.

Byron E. Shafer, *The Two Majorities and the Puzzle of Modern American Politics* (Lawrence: University Press of Kansas, 2003, cloth $35, paper $19.95). Pp. 356. ISBN 0 7006 1235 1, 0 7006 1236 X.

One does not have to be an especially sophisticated philosopher of explanatory method to appreciate that, in explaining change in human affairs, much depends on the situation of and level of analysis adopted by the would-be explainer. Do the dots connect or are they mostly what they appear to be – just dots? Reality, according to Bertrand Russell's famous aphorism, is either a bowl of connected jelly or a bucket of disconnected shot. It all depends on the observer, who, of course, is also part of the reality being considered.

All the books under review attempt to produce some species of connective jelly to describe – even to explain – political change in the United States. Questions of perspective are explicitly raised in Byron Shafer's fine essay collection, *The Two Majorities and the Puzzle of Modern American Politics*. Shafer, currently housed at the University of Wisconsin, describes the collection as the product of his time as Andrew W. Mellon Professor of American Government at Oxford University.

John Dumbrell is Professor of Politics at the University of Leicester, Leicester LE1 7RH.

According to Shafer, his transatlantic sojourn enabled him to discern "patterned relationships" between American political phenomena more clearly: "some things just look different from a distance" (2). He also acknowledges the influence of Oxford political history. Shafer's search is for sociological and comparative approaches to understanding political change, thereby gaining entry to what he describes as "the hallowed land of 'middle-level theory.'"

The book's argument is complex, but may be summarized as follows: the New Deal era persisted until 1968, and was characterized by a national preoccupation with social welfare issues. The social basis for the politics of the period was provided by blue-collar unionism on the Democratic side, and small business on the Republican. By the 1950s, despite President Eisenhower's willingness to continue as a custodian of the New Deal, the system was under severe strain. By 1956, a white-collar, middle-class majority had emerged. Giant corporations were also gaining ground over small business, though Shafer considers "corporate gigantism" – and its political expression, the "Modern," Liberal Republicanism of Senator Hugh Scott (and, indeed, of Senator Prescott Bush) – to have peaked by 1959. By the 1960s, liberal Republicans were losing ground, while the Democratic Party was dominated by graduate activists, concerned with cultural, national and "post-industrial" (not Shafer's term) issues. By 1968, the "era of divided government" had emerged, though the New Deal era party forms endured. The new period saw major intra-party tensions, as issue activists clashed with rank and filers. "At bottom," writes Shafer (59), "there were now two opposing majorities simultaneously present in the mass public: more liberal than the active Republican Party on economics and social welfare, more conservative than the active Democratic Party on culture and foreign affairs." One majority "colonized" Congress, the other the White House. Neither Bill Clinton and the "New Democrats" nor Newt Gingrich and the "Republican revolutionaries" of the mid-1990s could solve the problem of cross-cutting majorities. George W. Bush's rhetorical 2000 "compassionate conservatism" is seen by Shafer as yet another effort to solve the puzzle of the two majorities, as changing social conditions again struggled to express themselves in the "old" New Deal party clothes.

The later essays in Shafer's collection provide extensive, and comparative commentary on the author's underlying "social basis" analysis. One essay is developed as a gloss on Vilfredo Pareto's theory of elite circulation. (Shafer discusses organized labour, "Modern Republicans," the "new politics" Democrats (prosperous "baby boomers"), and evangelical Protestants.) The book concludes by considering parallel social/political shifts in the UK and in the G-7 countries.

Byron's Shafer's prose is lucid – a model of clear political scientific exposition – and his insights many. Weaknesses includes a failure to treat, as an issue of explanatory importance, the rise of the "party of non-voters," as well as a tendency to lay too much expository weight on the rather flimsy shoulders of "Modern Republicanism".

H. W. Brands' *The Strange Death of American Liberalism* inhabits a very different explanatory world. The politics of foreign policy, not the engines of social change, occupy centre stage. Brands sees American liberalism as "indubitably dead" and sets about a hunt for the killer. The culprit – Brands' connective, explanatory jelly – is identified as the ending of the Cold War, or at least the end of the Cold War

consensus associated with the crisis years of the Vietnam conflict. (Brands tends to view the Nixon–Kissinger *detente* as effectively terminating the Cold War. According to Brands, Americans never really accepted the return to Cold War after 1979.)

Brands' argument is provocative and absorbing, even if more than a little overstated. Much hinges, of course, on how "liberalism" is defined. Brands has little time for political philosophy. He defines "liberalism" in terms of public faith in the Federal Government and especially in the Presidency: "whatever else it entails, liberalism is premised on a prevailing confidence in the ability of government – preeminently the Federal Government – to accomplish substantial good on behalf of the American people" (viii). National mobilization for the Cold War caused Americans to abandon their traditional scepticism about the efficacy and desirability of strong governmental activism. Domestic reform and development – the clearest example is President Eisenhower's Federal highway programme – were drawn into the "national security" orbit. (Brands agrees with Shafer that Ike was an entrencher of the New Deal. After 1995, Bill Clinton is seen by Brands as transforming into the Democratic version of Eisenhower.) During the Cold War, progressive domestic reform served the need to present American society as an attractive alternative to communism. There was also a spillover effect for public attitudes: "if government could be trusted on apocalyptic issues like war and peace in the nuclear age, it ought to be able to handle lunches for school kids and health care for old folks" (125). By the 1980s, however, the game was up. Reagan's position – "distrust of government at home, faith in government abroad" – was contradictory, and exposed the excruciating agony of liberalism at near-death. The fall of the Berlin Wall put the ailing patient out of its misery. One of the book's strongest sections involves a discussion of the immediate post-Cold War era, with hopes for a liberal "peace dividend" expiring amid Federal deficits and the rise and rise of anti-governmentalism.

While engaging in its directness, Brands' argument does lead him towards an unsustainable monocausalism, as well as rather cavalier treatment of phenomena which do not readily fit the Cold War template. His historical scheme causes him to downplay the significance of the Progressive era – Progressives, we are told, had no conception of positive government – and indeed of the New Deal. For Brands, the surprising feature of the 1930s was precisely how limited and restrained was the Federal response to the Great Depression. (It is interesting that Aaron Friedberg, *contra* Brands and Michael Sherry, has made exactly the same argument about the federal government in the era of the Cold War.[1]) At times, Brands is forced to concede that he may be bending the explanatory stick a little too far: "By no stretch of the imagination was the Cold War the single, or even the primary, cause of the civil rights movement or the War on Poverty" (68). Some of his generalizations are questionable. Contrary to Brands' opinion, President Johnson was consciously pursuing *detente* before 1968. Did the Carter Presidency really accomplish "little

[1] Aaron L. Friedberg, *In the Shadow of the Garrison State; America's Anti-Statism and its Cold War Grand Strategy* (Princeton NJ: Princeton University Press, 2000); Michael S. Sherry, *In the Shadow of War: the United States since the 1930s* (New Haven and London: Yale University Press, 1995).

beyond allowing conservatives time to regroup" (127)? Brands also blithely ignores the mass of empirical political science literature on public attitudes towards government. He does make the persuasive point, on the book's final page, that the "conservatism" of Americans (defined in terms of scepticism towards government) is "pragmatic rather than ideological"; the problem, however, is that this conclusion tends to undermine much of the preceding argument. Brands conspicuously fails to discuss a key issue raised in the Shafer essays: the rift, in both parties, between ideological activists and pragmatic rank and file. A less important, though (so to speak) strange, omission involves the failure of Brands' *Strange Death* to cite the work of George Dangerfield, who presumably gave the book its title.[2]

The original, hardback edition of *The Strange Death of American Liberalism* was published in 2001, before the 11 September terror attacks. Brands does, however, raise the possibility of a major, new threat to US security causing a revival of the liberal faith. His rather jejune definitions of "liberalism" and "conservatism" prevent him from allowing the possibility of a "conservative authoritarian" response to threat. Brands' book, it must nonetheless be emphasized, is hugely enjoyable and stimulating.

William Howell's *Power without Persuasion* is less concerned to explain political change than to effect a change in how we perceive Presidential power: away from Richard Neustadt's "bargaining" model[3] and towards a paradigm focussed more on unilateral authority. Howell actually begins his book with a reference to President George W. Bush's post-9/11 "flurry of unilateral directives to combat terrorism." Besides dethroning the Neustadt "bargaining" model – Howell argues that consensus views on the Presidency tend to overestimate the importance of personal skills and qualities – *Power without Persuasion* has two other main objectives. Howell seeks to clarify the muddy waters of unilateral authority: the world of executive orders, national security directives and proclamations. He also develops a formal, rational choice model of Presidential direct action. Presidential discretion depends on the ability of Congress, and the inclination of the courts, to challenge the unilateral action. Howell emphasizes that, in the real political world, Congress frequently has neither the time, the information, nor any real incentive to check the President. Here he challenges not merely the Neustadt thesis, but also familiarly comforting notions of executive – legislative mutual balancing over time. Howell nevertheless certainly does see Congress as a key constraint. He notes, for example, the re-emergence of such constraint after the initial period of unilateral White House response to 9/11. He also maintains that judges are only rarely inclined to review instances of unilateral Presidential discretion, and even more rarely inclined to find against Presidents. The 1952 "Steel Seizure" decision was not typical, and in any case, according to Howell, is compatible with some very generous interpretations of the limits of Presidential discretion.

Howell is also concerned with explaining political change – notably with accounting for the vast increase in President direct action since the middle years of the twentieth century. He suggests that the explanation lies in a combination of broadened public expectations, Congressional fragmentation, judicial insouciance

[2] George Dangerfield, *The Strange Death of Liberal England* (London: Constable, 1936).
[3] Richard E. Neustadt, *Presidential Power: the Politics of Leadership* (New York: Wiley, 1960).

and "the steady growth of the administrative state" (180). Many of Howell's points are very convincing. He is emphatically not arguing that Presidents can do, and get away with, whatever they want. It is correct to emphasize that unilateral action – from FDR's internment of Japanese Americans in World War Two to Bill Clinton's use of executive orders partially to circumvent legislative stances on health care and tobacco control – is of great substantive importance. Direct action enables Presidents to seize the initiative, exploiting the informational and collective action problems attaching to Congressional retaliation. Textbooks on the Presidency, which focus to a large extent on legislation, do not accord enough space to direct action.

However, like Brands, Howell has a tendency to overstatement. Unilateral actions – especially, but not entirely, executive orders – have not been ignored by Presidential specialists. As Howell himself shows, direct action has generated its own literature; (oddly, Howell does not cite the work of Charles Tiefer on efforts to bypass Congress under President George H. W. Bush).[4] Howell's eagerness to usurp Neustadt's "power to persuade" model is a little disconcerting. Are reconciliation and mutual adjustment between the two approaches entirely inconceivable, particularly given Howell's repeated assertions that he is still concerned to emphasize constraints on executive authority? At the very least, much further investigation is needed into the association – recently commented on by Richard Pious[5] – between Presidential command and the failure to persuade.

The relatively narrow scope of Howell's empirical survey further calls into question his claim to have achieved Neustadtian regicide. *Power without Persuasion* does not treat issues of implementation or of Federalism. National security directives, probably the most potent of all unilateralist tools available to a President, are deemed too imprecise and shrouded in secrecy to be susceptible to sustained political scientific examination. Howell accurately details the legislature's formidable array of budgetary authority, but – strangely, given his focus on Presidential command – mentions reprogramming of funds by executive fiat only very briefly, and President Nixon's impoundments of appropriated funds not at all. Expanded treatment of such issues would have strengthened Howell's case (although examination of the Nixon impoundments, culminating in the 1974 passage of the Congressional Budget and Impoundment Control Act, might also have given more weight to a more orthodox action/reaction model of executive-legislative relations). Nevertheless, as it stands, Howell's post-Neustadtian paradigm does rest on quite a narrow base of empirical data, mainly on executive orders. It must here be admitted that parts of Howell's exegesis – development of the formal model, pages of algebra – go beyond the intellectual competence of this reviewer. What may be concluded is that this is a work of high academic intelligence. It draws attention to a key facet of Presidential authority, as well as making important empirical discoveries. (Howell finds, for example, that executive orders are more likely to be issued under conditions of unified rather than divided government.)

[4] Charles Tiefer, *The Semi-Sovereign Presidency: the Bush Administration's Strategy for Governing without Congress* (Boulder: Westview Press, 1994).

[5] Richard Pious, "Constitutional Perogatives and Presidential Power," in George C. Edwards III and Philip Davies, eds., *New Challenges for the American Presidency* (New York: Longman, 2004), 211–28.

Drew Noble Lanier's *Of Time and Judicial Behavior* is based on a massive, and largely original, data set of Supreme Court agenda-setting and individual Justices' decisions between 1888 and 1997. Here are buckets and buckets of Russellian shot. The book will be enormously valuable to historians of the Supreme Court, especially for the pre-World War Two era, where such organized data have been scarce. Beyond the diligent accumulation and codification of complex data, Lanier's approach is that of an institutionally oriented rational choicer: "political outcomes result from individual, goal-oriented behavior that is determined by the limitations and opportunities that institutions afford the political actors who function within them" (177). The author's scientistic exposition does not make for lively reading. His explanations for, and discussion of, political change, such as the rise of civil liberties cases, cry out for the historian's understanding of social context and flux. Lanier comments: "the results suggest that the behavior of the Court is not simply a function of the members' unmediated policy views …" Decisions, rather unsurprisingly, are "also dependent on events outside the Court building …" (207). Not all Lanier's conclusions are banal. He demonstrates that "exogenous shocks" – like the Panic of 1893 and the Great Depression – reverberate on judges' decisions for decades. He finds the Fuller, White and Taft Court decisions (1888–1930) more liberal, at least on economic issues, than often presumed. (Interestingly, Lanier takes a more expansive view of "liberalism" than does Brands.[6])

The author already of a major historical and constitutional study of the Federal impeachment process, Michael Gerhardt wears his considerable learning very lightly. His style is lively and often partisan. Though he sees "historical institutionalism" as a way to avoid the common view that "current crises are worse than those experienced at other times," he is clearly out of sympathy with the appointments strategy of the George W. Bush Administration. *The Federal Appointments Process* covers judicial and executive branch nomination and confirmation, set against the dynamics of "historical institutionalist" development. Such development is seen to be affected by factors such as the changing fortunes of political parties and interest groups, and media coverage of the process. Gerhardt also has light to shed on William Howell's "direct action" thesis. Michael Gerhardt shows how Presidents can act as instigative "norm entrepreneurs," effecting change in the conventions of the appointments process. George W. Bush, for example, abandoned the norm of allowing the American Bar Association to pre-screen judicial nominees. Clinton and G. W. Bush also used "recess" or "acting"/"temporary" appointments to subcabinet posts – evoking memories of Richard Nixon's "imperial Presidency" – in order to evade Senatorial "advice and consent." Gerhardt's study, however, is located firmly within a Neustadtian "bargaining" framework. Clinton's "recess" appointments were a response to the intense hostility of key Republican committee chairmen: essentially, "bargaining" by other means. In Gerhardt's world, actions have their reactions, and Presidents share power with interest groups and with Congress. Some of Clinton's non-confirmed figures, notably his six chief White House counsels, were subjected to severe – "frequently unpleasant" – legislative scrutiny, with a consequently high casualty rate.

[6] Lanier follows a definition that includes support for "underdogs" in American society: *Of Time and Judicial Behavior*, 131.

What conclusions should we draw? The best academic work in politics – as distinct from metaphysics – should avoid both excessive amounts of explanatory jelly and too many buckets of empirical shot. Writers should avoid pushing arguments too far. Not every substantial new piece of research should be expected to erect a new paradigm. The best work indicates the best place for political science and political history – together.