Liberty and Coercion: The Paradox of American Government from the Founding to the Present

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Reviewer: Thomas Rodgers

Gary Gerstle's *Liberty and Coercion* is a tour de force account of American governance that manages to survey the chronological and geographical breadth of US history with a judicious depth of precise detail and example. The great strength of this book rests on the clarity with which Gerstle unfolds the narrative of the evolution of the American state, in particular that of the federal or central state, illuminating the complex interplay of the different elements of government: legislative, executive, and judicial. Indeed, whilst the thesis of the work is concerned with the potentially abstract theme of the nature of governance, it could equally serve as required reading for undergraduate students of American history. The vital constitutional context in which political events could develop is rendered very clearly and is carefully tied to the evolving debates about how to interpret the framework provided by the Founding Fathers that began with ratification.

The scale of the book's coverage makes this a work of synthesis and its contribution to a better understanding of the nature of American governance consequently derives from the delineation of processes that tend to become more visible from the macro perspective than the more typical focus of regional and periodic specialism. Gerstle's overarching contention rests on the renewed emphasis on the differentiation of the inherent purpose of government enacted by the federal state on the one hand and the individual states on the other. Chapter one deals in a classical manner with the emergence of the prototypical liberal state of the Constitution and Bill of Rights, a government resting on an acknowledgement of the consent of the people and concerned with limiting the powers of the central state. Chapter two rightly asserts the necessity of reinvigorating historical scrutiny of the US state with the role of the states, and particularly with recognition of their 'police power' to regulate the lives of citizens. Gerstle has borrowed the term from 'judicial circles', reflecting the degree to which many portions of the book draw upon court cases for their evidence (p. 56). This ostensibly binary division established in the first part of the book (it is divided into four parts and ten chapters) will prove one of the central animating tensions for the thesis as a whole, the paradox of liberty and coercion in the conception of American governance. The division is not the old chestnut of states' rights, although elements of that struggle inevitably intrude, rather it is the rationale for investigating the mechanisms of struggles for liberty and civil rights. As the book makes clear, over the course of American history the different branches of government have advanced and retarded citizens' claims to equality.

Although there is a strong basis for this oppositional framework Gerstle necessarily undercuts such neatness

with examples of central state coercion, such as Andrew Jackson's campaign against the Red Sticks, the enforcement of Prohibition via the Eighteenth Amendment, and wartime and Cold War suppression of free speech. The growth and reach of the federal state in the post-Second World War context of permanent threat is a sadly unsurprising catalogue of paranoid persecution, but similar powers were exercised in the 1798 Alien and Sedition Acts (p. 128). In sketching such an expansive view of governance clearly, certain elements of complexity are somewhat compressed. Specifically, the paradox of liberty and coercion as intractable but necessary components of the liberal state itself is rather diluted by division into the two different locations of sovereignty.⁽¹⁾ However, this question of emphasis reflects the variations of the US model from the European, suggesting further avenues for exploration and evaluation, and the distinction further erodes in the subsequent chapters.

Chapter three on the 'Strategies of liberal rule' provides the final foundation stone for the subsequent unfolding of government actions in the 20th century and beyond. Again, Gerstle deploys the breadth of vision to identify three different methods by which the federal government operated beyond the limits imposed by the framers of the Constitution. The first, exemption, applied to spaces or during times where the Constitution permitted greater leeway for action by the executive branch of government. Second, surrogacy, was developed to expand governmental oversight by inventive interpretation of existing constitutional provisions. Third, privatization, in which state and commercial enterprises, or eventually voluntary organisations of various stripes, cooperated to achieve either commercial or social ends. Gerstle refers back to these strategies across the ensuing chapters, exploring their appropriation under different guises in response to the difficulties encountered in times of war and economic crisis, or political unrest.

From this foundation, chapters four to ten go on to explore different interactions between state and citizen, sometimes witnessing the entrenchment of liberty, oftentimes its suppression. For those already familiar with particular periods or social movements the detail of some of the highlighted events will probably be reasonably familiar, but it is the aggregation of so many key events which endows the nuanced exploration of government initiatives and actions with analytical purpose. The case study of the American Protective Association during the First World War (pp. 134–6) is a chilling example of mass vigilantism operating under the authority of the state, specifically of the Attorney General. Interrogation and detention of thousands to identify possible draft evaders was undertaken by self-appointed volunteers who paid little heed to notions of due process.

The security threat posed by the First World War was still insufficient to break down, or supersede, the limited state designed by the founders, to the chagrin of those who wanted more active state intervention to improve the lives of citizens, and to those who wanted to improve state security. Following immediately from the episode of vigilante patrols is a brief account of J. Edgar Hoover's early steering of the FBI, which in this period, in spite of its activity against those who were not citizens, was still constrained by congressional alarm at the role of a security apparatus. Later, as discussed in chapter eight, the ideological conflict sown with the Cold War relegated such qualms and expanded the reach of the security services both at home and abroad.

Balanced against the coercive practices of the federal state is an account, particularly in chapter six, of the development of governmental intervention to support the development of 'positive' liberty. This marked the shift in perception from the protections guaranteed by a non-interfering state, to protection offered by an assistive state. Gerstle explores this shifting perspective most fully in relation to the New Deal legislation pertaining to agriculture, but carefully contextualised against the longer history of agrarian protest. Unlike the repressive treatment meted out to industrial worker protests, the political clout of America's farmers was respected, or at least courted by, politicians at state and federal level, which was a legacy of the Jeffersonian ideal. The success of New Deal legislation in this field derived from the extensive penetration of the United States Department of Agriculture into the local administration of rural American from the start of the 20th century. Responding to the crisis of the Great Depression, the Agricultural Adjustment Act of 1933 could build upon the existing framework of the USDA to engage directly with 'millions of citizens' in an unprecedented manner. At the root of this engagement was the transfer of federal funding to individual

farmers, something that Gerstle notes came to be seen 'as a constitutional right' (pp. 203–4).

The penultimate chapter investigates the other great period of central state intervention to protect liberty – this time the constitutionally mandated liberties of the Fourteenth Amendment – by the numerous and far-reaching decisions of the Supreme Court under chief justice Earl Warren. Specifically, the tenor of the Court's decisions was to intervene in the states' police powers, which were coercive of citizens' actions. The racism of segregation which was enforced by state legislation, or in the failure to apply the laws equally, was finally attacked directly by the Court. In these decisions, succinctly summarised throughout the chapter, the Supreme Court gradually ensured that the provisions of the Bill of Rights were uniformly respected at state level. As Gerstle notes, 'The Warren Court broke the power of the state, a near revolution in American governance' (p. 295).

Although the Supreme Court had made some spectacularly bad decisions with the intent of maintaining the limited role of the federal government, restoring the force and extending the applicability of the Bill of Rights and Fourteenth Amendment proved to be constitutionally more controversial and fragile even for the justices themselves. The theoretical principles adopted in the 1960s, those of incorporation and substantive due process, reflected a belief that rights not explicitly clarified by the Constitution or subsequent amendments could still be inferred as congruent with the purpose of those fundamental laws to protect liberty. Yet, as chapter ten reveals, the Conservative backlash against 1960s and 1970s liberalism produced the counter-argument of 'originalism' to the workings of the Court. Restricting the state by advocating a strict interpretation of the Framers' principles and understanding from the end of the eighteenth century was just one aspect of the wider Regan 'revolution'. Gerstle is very good at juxtaposing this ideological assault with the policies extending government expenditure on military projects.

Liberty and Coercion deliberately targets a more public readership and this is most evident in the polemical (but justified) conclusion which brings the evolution of the US state into the present day, with the briefest suggestions for the future. Given the potential fragility of some of the more inventive strategies for reinterpreting the Constitution to expand the federal government's protection of liberty – whether in its negative or positive guises – and the recent deadlock of the extremely partisan Congress, Gerstle aligns himself with calls for a return to constitutional amendment as the safest, albeit extremely difficult, route to preserve liberty.

For American citizens this book is a valuable statement on the historical and constitutional development of the state's reach into their lives. Its connection of the principles and flaws of the Founding Fathers' conception of a 'liberal' government to present-day hostilities over the Affordable Care Act has great explanatory power. At this moment, in the midst of one of the most surprising primary contests for the party nominations for the presidential election, which is producing an alarming rhetoric of coercion, Gerstle's book will provoke debate. Hopefully its examples of the dangers of ill-conceived and ill-regulated coercive power will underpin thoughtful and considered responses.

For historians of the American state the synthesis is equally valuable for bringing together so many different locations in which government and citizen contested the paradoxes of liberty. The emphasis on class as well as of race provides a valuable backdrop to the complex evolution of the purpose of the state and the constant negotiation between the necessity and acceptability of coercion. Gerstle's suggestions for re-thinking the classic periodisation of the growth of the federal government, along with the terminology for federal initiatives to circumvent the constraints of the Constitution, provide important reference points against which to test focussed studies of specific processes or variations. Inevitably in such an expansive work there are aspects of detail and complexity that are compressed, but on the whole the balance of narrative, pace and explanatory detail are judiciously weighed. There are, however, certain aspects which would seem to warrant more expansive treatment, particularly on the issue of coercion. The only coverage of the internment of Japanese civilians during the Second World War is a brief mention of Earl Warren's involvement as the California state governor (p. 286). This choice reflects, perhaps, the work's primary purpose to explore American governance insofar as it relates to its citizens. The full range of coercive practices that the state

could deploy were not to be constrained by constitutional safeguards when applied to those who were portrayed as other. To conclude, this is a fine and satisfying work, but as the range of Gerstle's book makes clear the paradox of liberty and coercion in the American state is one of constant evolution and therefore requires vigilant scrutiny both of its present state and of its historical antecedents.

Notes

1. E. A. Goerner and Walter J. Thompson, 'Politics and coercion', *Political Theory*, 24, 4 (1996), 620–52. [Back to \(1\)](#)

The author is happy to accept this review and does not wish to comment further.

Other reviews:

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