

Book Review

How Sex Became a Civil Liberty. By Leigh Ann Wheeler. New York: Oxford University Press, 2013. 352 pages. Hardcover, \$34.95; softcover, \$24.95.

In her provocative study of the American Civil Liberties Union (ACLU), historian Leigh Ann Wheeler provides an eye-opening look at the construction of sex as a civil liberty over the course of the twentieth century. Wheeler maneuvers through the complex evolution of sexual civil liberties at the intersection of the ACLU's founding and development, the organization's varying interests, and the changing cultural context in the United States. Wheeler credits the ACLU for shaping the controversies and the language used to discuss sexual civil liberties in legal and political contexts, as well as within the evolving cultural and social milieu of the United States. While other organizations played roles in this change, the ACLU was the most important actor, reframing sexual speech, expression, and behavior as integral to the First Amendment, leading us to the present where "declarations of sexual civil liberties are the order of the day" (3).

Wheeler brings this history to life, grounding the narrative in the experiences of the individuals who helped shift the nation's social and constitutional understanding of privacy, sexuality, and the First Amendment. Moving chronologically, she shows the evolution of civil liberties as a concept, constructed and developed by the ACLU as well as their allies and foes. Wheeler moves through complex legal issues around obscenity, birth control, abortion, sodomy, public solicitation, rape, and sexual harassment. She articulates how the shifting legal concepts of free speech, conduct, and the right to "read, see, and hear" connected these seemingly disparate issues within the legal system. Shortly after its founding in 1920, the ACLU was already making waves, framing controversial issues such as sexuality in terms of free speech and constitutional rights. The ACLU took a unique approach; in the case of birth control, for example, the ACLU focused less on "whether birth control was a social good or a social evil but whether prohibitions on advocating it violated rights of assembly and freedom of speech" (28).

Following their work concerning birth control and nudity, the ACLU began to focus on obscenity laws and censorship. By the 1940s and 1950s the ACLU began to clarify its move towards consumerism as a civil liberty and the rights of individual consumers to "read, see, and hear" (61). This expansion of civil liberties was tied to American capitalism, and the ACLU argued that the First Amendment protected producers *and* consumers of speech. Wheeler highlights

the importance of challenges to postal laws, censorship, and invasion of privacy, as well as the controversy surrounding the US publication of Henry Miller's *Tropic of Cancer* (New York: Grove Press, 1961)—battles that set the stage for the ACLU to argue that the consumer has a “freedom to read” that is a “corollary to the freedom of speech and press” (83). Wheeler rightly notes that the “public arena was increasingly conceived of less as a forum for the exchange of ideas and information among citizens of a polity than as a marketplace of buyers and sellers, consumers and producers” (85).

By the 1960s, sexual civil liberties included not only sexual literature but also sexual practice. While the ACLU did not see victory in many of the cases they brought to the courts during this time period, the organization helped to set the stage for future changes in legal understandings of sexual citizenship and heterosexual marital privacy. The ACLU's goal during this time was to “decriminalize sexual activities between consenting adults” (104). While not always successful—for example, courts refused to recognize sodomy as “constitutionally protected behavior”—the ACLU continued to advocate for gay rights (174). Expanding civil liberties to include conduct, Wheeler notes, exacerbated the complexity of the boundaries concerning what constituted “public” and “private” space and action. While many forms of sexual privacy were expanded, others were eroded as the ACLU privileged sexual expression over “freedom from unwanted sex” (218).

The issue of protection from unwanted sexual expression, in particular rape and sexual harassment, challenged the ACLU. Leaders never presented a unified front regarding the laws surrounding these issues. In fact, while the ACLU was a leader in legal fights for reproductive and gay rights, Wheeler notes that the organization “was often at odds with the movements against rape and sexual harassment” and that this “exposes some of the limits . . . [of] its civil libertarian principles and priorities” (218-9). ACLU leaders were divided among themselves, with some committing themselves wholly to the First Amendment, while others advocated for a balance between equality and civil rights. These conflicts around rape and sexual harassment highlighted for many the idea that “sexual civil liberties were not necessarily the same as sexual freedom” (213).

Ultimately, Wheeler's work unquestionably demonstrates the ACLU's “profound effect on American law, politics, and culture with regard to sexuality” (219). A “common civil liberties idiom” is pervasive and the unquestioned approach to rights speaks “to the exalted status that freedom of speech and sexual privacy achieved in the twentieth century, in large measure as a result of the ACLU's sexual rights odyssey” (224). Appropriate for both graduate and undergraduate courses, this text employs a rigorous historiographical approach to understanding the development and evolution of sexual civil liberties. Furthermore, Wheeler's oral history methodology provides greater detail about the individuals who shaped not only the ACLU as an organization, but the ways in which we

currently understand sexuality in this country. While she does not discuss her own subjectivity or process in relation to conducting these oral histories, the extensive footnotes provide insight and depth into the stories she tells. Pairing the oral histories she conducted with a vast collection of archival material assists Wheeler in presenting a full picture of the social context, the historical debates, and the changing political tides of sexuality throughout the twentieth century.

Liam Lair

Louisiana State University

doi:10.1093/ohr/ohv050