

The perspective of temporal republicanism, Weiner explains, “is lateral rather than vertical. The issue is not whether, but rather when, the majority should rule. If the point of decision could be deferred until passions had cooled and immediate appetites had ebbed, the interested majority was likelier to rule in accordance with both justice and the public good” (p. 85). Thus we have bicameralism, checks and balances, an independent president and judiciary, and various impediments to quick majority action. The idea is to force the majority to act with circumspection rather than be driven by passion. This can only be accomplished by slowing down the pace; thus Weiner’s comparison of the Constitution to a metronome, setting the pace for a polity that might otherwise always operate at a brisk allegro.

The American political system, as understood by Madison, ultimately rests on the patience of majorities. The idea is to “compel majorities to cohere for an interval sufficient to dispel passions” (p. 130). The need for majorities to slow down creates the impression that minorities are winning out over majorities, but this is misleading because in the long run any coherent majority will prevail. Patience, concludes Weiner, has become the “central constitutional virtue” in Madison’s system, but unfortunately, it seems to be a lost virtue (p. 137). The pace of politics has sped up, but the pace of constitutional change remains ponderous, which has led to substantial displeasure with Madison’s metronome. On this point Weiner appears to be on the mark; patience as a political virtue has never been widely practiced. As a nation we remain impatient, and thus we are often displeased with the temporal republican system. Nonetheless, throughout American history we see examples of major policy changes adopted after a long and arduous process, through the agency of patient leaders willing to persevere.

Weiner is diligent in his efforts to apply Madison’s majoritarianism to as much of his thought as possible. Madison proposed a national veto power over state laws at the Philadelphia Convention, for example, in order “to ensure an issue was decided by the largest majority that shared an interest in it” (p. 93). In other words, national majorities were to trump state majorities. This is perfectly reasonable on national issues, but the congressional veto over states was to extend to “*all cases whatsoever*.” Thus, national majorities might overrule state majorities on *state* issues. Madison did not believe that Congress would do so, but he wanted to make sure that Congress had the power.

This is not an especially strong point for Madison as majoritarian. Weiner argues that the Bill of Rights, which was passed by Congress largely through Madison’s efforts, was not intended to protect rights against majorities but merely to slow the majority down and make it think twice. The mere fact that Madison introduced amendments in response to public demand, in fact, is reflective of his majoritarianism (p. 112). This argument goes a bit too far.

By the time Madison was proposing amendments in the House, the clamor for amendments had become decidedly muted. The Federalists had won a decisive victory in the first federal elections over the opposition Anti-Federalists, who ran essentially on a pro-amendment platform. Some Federalists, including Madison, had been elected by promising amendments, but there was no reason to believe that there was still a national majority in favor of such. In fact, the clamor for amendments, and even for a bill of rights, seems to be reflective of just the sort of transient majority that Madison wanted to *prevent* from enacting policy. Furthermore, several of Madison’s proposals, especially a clause preventing states from infringing on certain rights, had not only not emerged as significant objections during the ratification debates but, in fact, ran counter to the general tendency of the amendments suggested during those debates.

Although Madison as a consistent majoritarian is a more sympathetic and perhaps admirable figure, Weiner is clearly swimming against the current here. That he does so effectively is doubtful; Madison’s own words are used to great effect in this book. But one gets the sense that there is something selective in any analysis of Madison, who seems to show many different sides at different times and places. Madison described as a sort of procedural democrat does not fit at every point of his impressive and lengthy career. It is remarkable, though, how much of that career can be explained through temporal republicanism; in this, Greg Weiner has made a noteworthy contribution to our understanding of Madison and the Constitution.

How Sex Became a Civil Liberty. By Leigh Ann Wheeler. New York: Oxford University Press, 2012. 327p. \$34.95. doi:10.1017/S1537592714000449

— Karen L. Baird, *Purchase College, State University of New York*

The “sex” in in the book title is not what one might first think; it is not referring to gender or one’s biologically assigned, or reassigned, status. “Sex” is referring to the physical act of having sex (of all sorts): reading, learning, and speaking about sex; nudity; watching sex; and reproduction. *How Sex Became a Civil Liberty* traces the fascinating history of the ways in which sexual behavior and sexual expression became matters of civil liberties, legally, socially, and culturally. It starts when sexuality was immaterial to rights and liberties granted in the U.S. Constitution and continues to the present period in which the Constitution protects a wide range of sexual expression. The American Civil Liberties Union (ACLU), Leigh Ann Wheeler contends, was pivotal in this transformation. The work also exposes the controversial nature of many sexual rights, even among liberals.

This is not a typical political science book. Indeed, the author is a historian, and her research covers the ACLU from

its formation in the early part of the twentieth century to the 1990s. Some parts more than others will interest political scientists; the early sexual forays of the founding men and a few women, while interesting, are not so relevant. The description of different ACLU staff personalities would also not commonly be found in political science research. But the gradual incorporation of sexuality into constitutionally protected civil liberties through carefully chosen lawsuits, well-argued legal briefs, grassroots activism, coalition building, media, public education campaigns, and lobbying public officials—all in effort to change public discourse and legal interpretation—will be of great interest. The book reveals how legal conceptions of rights and liberties are historically flexible and subject to persuasive discourse.

Wheeler weaves together a richly detailed history of the ACLU with other formative historical episodes, such as Margaret Sanger's birth control movement, Alfred Kinsey's seminal reports on human sexuality, the sexual revolution and women's rights movement of the 1960s–70s, the gay rights movement, the pro-life movement, and the general culture wars over sexuality. "Cross pollination" of many groups and movements enhanced the ACLU's work and is one important factor as to how and why sex became a civil liberty, though coalition building was not always easy.

The breadth of the book is remarkable. It covers, in great detail, nearly a hundred years and the gradual incorporation of varied components of sexual rights. The ACLU history starts with the defense of birth control rights and Margaret Sanger, as well as nudity, from 1910 to 1930. The ACLU's next move proves to be pivotal. Labeling it "Are you Free to Read, See, and Hear," Wheeler details how First Amendment rights began to be claimed as consumer rights in the 1940s–50s. Consumer rights—the rights of individuals to have access to information and images, that is, anti-censorship—brought the ACLU into partnership with commercial, for-profit producers such as *Playboy* magazine. These consumer rights are something we now take for granted, but this claim had to be conceived, articulated, and defended, and the conception of such rights was made possible by the culture of consumption that permeated the United States after World War II.

The ACLU teamed with Hugh Hefner to defend sexual imagery and with Henry Miller to defend his "blockbuster sex-capade" (p. 81) *Tropic of Cancer* (1961). The success of these lawsuits was due to the argument that the value of the First Amendment lies not in protecting the right of the publisher to earn a profit but in the "public's right to read" and to have "free access to ideas and publications" (p. 84). The marketplace of ideas deserves constitutional protection, the ACLU argued, and the Courts agreed.

Wheeler covers familiar territory in her chapters on the establishment of the right to privacy, contraception, and abortion and on the anti-sterilization and anti-sodomy movements, but she specifies and clarifies the important role played by the ACLU. Because ACLU leaders were

involved in a "constellation of organizations" (p. 117), their thinking was expanded, and the ACLU leaders and various organizations together developed the concept of a constitutional right to sexual privacy that protected sexual conduct. In turn, various organizations learned to frame their concerns in civil liberties terms. The author rightfully points out that timing mattered; the earlier consumer-oriented right to access, the Kinsey reports on sexuality, and the sexual revolution of the 1960s, to name only a few items, had changed sexual mores. The Supreme Court ultimately agreed and granted a constitutional right to privacy in *Griswold v. Connecticut* (1965). We are still debating the parameters that bound this notion of right to privacy, but it is presently being constricted in terms of women's reproductive rights.

"I have been deceived by a bait and switch technique," Wheeler quotes Andrea Dworkin as stating (p. 179). In the 1970s, feminists and women's rights advocates wanted sexual freedom but also wanted to be protected from unwanted sexual advances, that is, sexual harassment and rape. The ACLU did not take the lead in these areas, and internal disagreement prevented them from speaking in a strong voice. The quandary of liberty versus equality, women's rights versus rights for "all," and how some rights inevitably conflict with other rights is known to most political scholars, but Wheeler acutely details how the "issues of rape and sexual harassment pulled civil libertarians out of their comfort zone" (p. 211). Her book also reveals the complexity of fighting for racial justice and women's rights, as sometimes strategies supporting one effort sabotage another. For example, the author concludes that the ACLU's involvement in defending black men falsely accused of rape by white women initially prevented it from supporting feminist "rape shield laws," rules that disallow the use of a complainant's sexual history as evidence at trial. When such sexual history was provided in some interracial rape cases, it provided the needed ammunition to show probable consent and hence the false accusation of rape. As opposed to earlier eras in which issues centered on *freedom to*, played a more minor role regarding fights that centered on *freedom from*.

The importance of interactions, experiences, and the values and desires of the ACLU leadership cannot be overstated, Wheeler notes. The ACLU's agenda was not born in some rational, legal analysis of the Constitution. It was born from lived experience. Thus, the author includes much personal detail about the ACLU leadership throughout the years. As this is a history book, I wonder how a political scientist writing on this subject would incorporate such important material; I fear it might be left out. As historians often do, the story is told in a chronological order, noting the differences in the eras and how earlier eras influenced later ones. A political scientist would probably categorize and present the information in a different format (by "variables" or conceptually), but some of

the richness of the details might be lost. A political analysis might also offer some comparison of the different arenas of “sex” that have been deemed a civil liberty. For example, why have we witnessed a broadening and acceptance of gay rights but a restriction on reproductive rights? How has acceptance of the freedom to “read, see, and hear” about sex been applied in newer technological forms, such as the Internet? How has the consumer-oriented focus of the First Amendment’s freedom of speech fared throughout our history: Has it been broadened or restricted? Has it remained stable?

How Sex Became a Civil Liberty would be useful in many types of political science classes—women’s policy, gay

rights, law and society, and constitutional law, to name a few. But its breadth of coverage is also its potential pitfall. For any particular class, there might be material only tangentially related to the course’s main focus, but in defense of the book, it would show how any particular sexual right is interrelated with the attainment of other sexual rights. This is a great read and provides a crucial and rich historical background for our present-day debates around sexuality and sexual rights. It chronicles the sometimes forgotten struggle that led to the present consensus on the sanctity of freedom of speech and sexual privacy, as well as the important role that the ACLU played in that achievement.

COMPARATIVE POLITICS

Regimes of Ethnicity and Nationhood in Germany, Russia, and Turkey. By Şener Aktürk. New York: Cambridge University Press, 2012. 321p. \$90.00 cloth, \$29.99 paper. doi:10.1017/S1537592714000450

— Raymond Taras, *Tulane University*

This ambitious work in comparative politics promises a lot and delivers a lot. The question is whether what it in fact delivers makes good on the promise made at the start, which is this: “The tripartite typology of ethnicity regimes developed in this book is . . . an exhaustive and coherent typology that is theoretically applicable to every country in the world. Most importantly, it is superior to classical typologies based on ethnic, civic, territorial, and other similar designations of nation-states because these previous categorizations were neither precise nor exhaustive” (p. 43).

At the heart of Şener Aktürk’s typology of ethnicity regime change—in practice, of state policy on immigrant-based diversity and historic minorities—are three independent variables. One is the presence of *counterelites* representing constituencies with ethnically specific grievances. A second is the existence of *new discourse* on ethnicity and nationality articulated by counterelites. The third is counterelites’ establishment of a *hegemonic majority* allowing them to overhaul prevailing state policy on ethnicity. These three factors “are separately necessary and jointly sufficient for change” (p. 5). What is left out of the explanatory framework is arguably the greatest catalyst of ethnic regime change today—the unprecedented demographic transformations of contemporary states mainly as a result of migration processes.

Aktürk faces a measurement problem. What set of indicators can tell us that a group of politicians standing in opposition to an incumbent coalition has become a counterelite? When is a discourse new? And what is the

measure of a hegemonic majority? Setting aside metrics, to assert that an outsider group disposing of a new program and assuming a near monopoly on power will effect change in an ethnicity regime appears tautological.

Three ideal-type ethnicity regimes based on extent of membership and expression of ethnic differences are identified: 1) monoethnic (involving segregation); 2) antiethnic (involving assimilation); and 3) multiethnic (involving consociation). Aktürk recognizes that many states have hybrid regimes shifting between these ideal types.

An impressive feature of *Regimes of Ethnicity and Nationhood in Germany, Russia, and Turkey* is the richly documented, parsimonious account of each of the three countries. The author skillfully parses German, Turkish, and Russian primary sources. The footnotes themselves constitute a wealth of information. If his *Fingerspitzengefühl* for the countries may be uneven, he is hardly alone, and it does not affect his scholarship anyway.

The measurement problem becomes stark when the ethnicity regime-change model is operationalized. The author deserves credit for anticipating such criticism by presenting his narrative in clear tabular form (see Table 8, p. 40). In Germany, “the assimilationist hegemony established by the SPD [Social Democratic Party] in 1999/2000” (p. 108) and supported by the Free Democratic Party (FDP) and some Green Party members made possible the enactment of the 1999 Citizenship Law on Naturalization. Paradoxically, what Aktürk terms assimilationist hegemony actually opened the gates to German citizenship for millions of longtime nonethnic German residents. Instead of viewing this historic shift from the century-old *jus sanguinis* principle as liberalizing Germany’s citizenship policy, the author depicts it as a move from a monoethnic regime (a kind of *Volksstaat*) toward an antiethnic one (where assimilationist policy supposedly makes ethnicity irrelevant).

Let me return to the measurement problem. What metrics make the SPD-FDP a counterelite in 1999? What