1992

Book Notes: Lowering the Wall: Religion and the Supreme Court in the 1980s. by Gregg Ivers.

Rikke A. Dierssen-Morice

> and the historically specific ways in which they manifest themselves and serve as sources of tension and change.

Perhaps Kessler-Harris means that separate spheres should be used only in discussions of comparable worth. Or perhaps she has been toying with the reader and is merely illustrating the point she already made in Chapter 3:

> Suppose we crossed what Linda Kerber called the boundaries of hermeneutics and asked not "What is the meaning of work?" or "What gendered images does it construct?" but "How is work interpreted by those who do it?" or "how have the orientations of observers shaped the boundaries with which we conceive the work of others?" . . . We take our cue, then, from the methods of Foucault who suggests that destabilizing the language with which we describe experience may in fact tell us something of the experience itself. And we attempt to understand difference, not as a single necessary dichotomy, but as a set of intersecting circles of experience that together structure consciousness.

Dianne S. Farber

LOWERING THE WALL: RELIGION AND THE SUPREME COURT IN THE 1980s. By Gregg Ivers. Antidefamation League: New York. 1991. Pp. vii, 108. $14.95.

Convinced that church-state law under the Supreme Court during the 1980s took "a giant—and unwelcome step—backward," Gregg Ivers's book explores the changing relationship between religion and the state. Those looking for a neutral account of this relationship should look elsewhere. This book, commissioned by the Anti-Defamation League of B'nai B'rith, is a liberal's response to use of the courts by "[r]eligious conservatives, encouraged by the election of Ronald Reagan," to create a "broad wave of conservative religious populism" in pursuit of school prayer, financial assistance for parochial institutions and equal access to public school facilities for student religious clubs.

In six short chapters, Ivers examines Supreme Court cases of the past decade seeking to expose the erosion of the first amendment establishment and free exercise clauses. He begins by analyzing political influence over the Court, and what he perceives to be the Court's new respect and tolerance for the will of legislative majorities, as opposed to its prior role of vigorous protector of the rights of religious minorities. Ivers documents the Court's growing dis-

enchantment with the *Lemon* test in recent cases, leading him to predict that the *Lemon* test "is all but set for the constitutional guillotine."

Justice O'Connor's influence on this question through her advocacy of an endorsement test—changing the *Lemon* test's focus from disallowing any statutes possessing a religious purpose to consideration of whether a statute endorses or disapproves of religion—is considered by Ivers to be an indication of where the Court is heading.

O'Connor's various opinions on this question are a central focus of the book. For example, on the issue of government support for religious doctrine and practices in public schools, Ivers discusses the school prayer/moment of silence case, *Wallace v. Jaffree* (1985), finding that although the Supreme Court held the Alabama prayer statute to be unconstitutional, the Court opened the door to allowing "pure" moment of silence laws. For Ivers, states wishing to enact such statutes need only follow the "blueprint" found in O'Connor's *Jaffree* concurrence.

Similarly, Ivers traces the movement from allowing public universities to provide equal access to facilities for religious clubs under a free speech, open forum policy in *Widmar v. Vincent* (1981), to O'Connor's conclusion in *Westside v. Mergens* (1990) that a public high school that provided a limited open forum to noncurricular clubs under the Equal Access Act could not discriminate against religious speech. *Mergens*, according to Ivers, further highlights the beginning of a "more cooperative relationship between religion and public schools on a number of fronts."

On the issue of government's alleged "recognition" of religions by publicly displaying Nativity Scenes or Menorahs and by opening legislative sessions with prayers, Ivers concludes that the Court's decisions send "a disturbing message about the place of religious minorities and nonbelievers in American public life." He also devotes a chapter to analysis of the Court's free exercise decisions, which he finds especially unsettling in light of Justice Scalia's "stunning departure from the settled free exercise jurisprudence" in *Employment Division of Oregon v. Smith* (1990) (the peyote case). After *Smith*, Ivers believes that unorthodox religious conduct is no longer shielded from "the legislative will of intolerant majorities." Despite O'Connor's criticism of the Court's disregard for the *Sherbert* test in her *Smith* concurrence, Ivers finds that "for all the concern Justice O'Connor professes to have for the fair and equal protection of religious minorities, her opinions lead one to believe that she is instead a velvet hammer, reaching the identical conclu-

sions of her conservative colleagues through the guise of a more enlightened means."

A succinct and fairly comprehensive overview of this evolving body of law, *Lowering the Wall* provides readers with a feeling for where the Court's decisions appear to be leading church-state doctrine. Ivers makes clear his desire for an about-face. Readers, regardless of their ideological bent, can appreciate the solid platform he builds from which to watch the Supreme Court's establishment and free exercise clause decisions of the 90s.

Rikke A. Dierssen-Morice

THE URBAN UNDERCLASS. By Christopher Jencks and Paul E. Peterson. Brookings Institution: Washington, D.C. 1991. $14.95 (paper).

This book is a collection of nineteen scholarly papers on poverty in America. We cannot do better to summarize its contents than to quote from the Preface:

> Conventional wisdom tells us that the United States *is* witnessing a significant growth in the size of its urban underclass. Many believe that the percentage of the population persistently poor is large and rapidly increasing, that more and more unmarried teenage girls are bearing children, and that welfare rolls are exploding. It is frequently alleged that crime is on the increase, young people are dropping out of school in record numbers, and higher percentages of the population are withdrawing from the labor force. The poor are also said to be increasingly isolated in ghettos at the cores of our metropolitan areas.
>
> Yet none of these propositions is true.

In short, this book should prompt a startling revision of what many of us think we know about poverty in America.

Those who do not have time to read the entire book should at least read Christopher Jencks' essay, "Is the American Underclass Growing?" Among the interesting facts in this essay are the following:

> —The school dropout rate for blacks decreased dramatically over the past two decades, from 28 percent to 15 percent.
>
> —Reading skills among 17-year-old blacks improved substantially over the same time period. For example, twenty years ago, under 40 percent were rated as having at least "intermediate" reading skills; by 1988, the figure was 76 percent. (Over the