

*PLEASE DON'T WISH ME A MERRY CHRISTMAS: A CRITICAL HISTORY OF THE SEPARATION OF CHURCH AND STATE* by STEPHEN M. FELDMAN, New York University Press, xi + 395 pp (hardback £29.95) ISBN 0-8147-2637-2.

A review by James Behrens, barrister of Lincoln's Inn

The explanation for the title is given in the first sentence of the book: Stephen Feldman is Jewish. The constitutional separation of church and state in the USA is traditionally thought to promote democracy and to protect the religious freedom of all Americans, particularly those of other religions. Feldman argues that Christian domination in American society has continued despite this separation of church and state; and, further, that the separation of church and state in America in fact *reinforces* Christian domination in American society rather than protects followers of other faiths.

Feldman's approach is historical, and written from a Jewish perspective. The book could almost be described as a history of anti-Semitism in Europe and America. He starts by pointing to supposedly anti-Semitic passages in the New Testament: those passages where the Jews are criticised by Jesus; the Passion narratives, where the Jews are blamed for the death of Jesus; and the writings of Paul, where (Feldman argues) Jewish carnality is contrasted with Christian spirituality. When Christianity became the official religion of the Roman empire, he described how Jews were burdened with legal disabilities, and in the later Middle Ages how they were brutally persecuted by Christians (the description in chapter 3 of the horrors of the Crusades is chilling). He summarises the development of political and religious thought at the time of the Reformation and afterwards, on the continent and in England, and links it to writings of Luther and Calvin, which Feldman describes as anti-Semitic. He examines the writings of the great seventeenth-century political thinkers in England—Thomas Hobbes, James Harrington and John Locke—and shows that only Locke would tolerate Jews in England, and he only with the assumption that society nonetheless would remain Christian.

Feldman then leaves Europe and moves to the North American Colonies in the early seventeenth century. Feldman's point here is that North America began as a Protestant nation, and that although different Christian denominations were permitted, Jews were persecuted. He describes the making of the Constitution, and the events leading the Bill of Rights (1791) containing the famous First Amendment: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof'. Feldman argues that the adoption of the First Amendment in no way altered the *de facto* establishment of Protestantism in America. Moving to the nineteenth and twentieth centuries, he describes the overt anti-Semitism in America which existed up to the time of the second world war, and the insidious anti-Semitism which remains there now.

I found Feldman's analysis of the many Supreme Court decisions concerning the separation of church and state very interesting. He complains bitterly when the court did not uphold the cause of Judaism: as in *Goldman v Weinberger* (1986), where the court rejected the claim of an orthodox Jewish air force officer who sought to wear his skull cap in contravention of air force regulations, or *Braunfeld v Brown* (1961), where a Jew failed to challenge the Sunday closing laws. He plays down the cases where Jews won: as in *Lee v Weisman* (1992) which held that public schools violate the establishment clause by having invocation and benediction prayers at graduation ceremonies—even where, to accommodate the Jews, the prayers were to be delivered *by a rabbi*. He gives a very useful list of the cases where the Supreme Court has struck down various government actions concerning religion: examples include voluntary Bible reading and reciting the Lord's Prayer in the public schools; the daily recitation

of a state-created 'non-denominational' prayer in the public schools; a statute that prohibited public schools from teaching the theory of evolution; a statute that required the posting of the Ten Commandments on public classroom walls; and a statute authorising a period of silence for meditation or voluntary prayer in the public schools.

Standing back from the book, I found it useful to compare the effect of the First Amendment on education in America with the position in England under the Education Act 1996. In England there has to be a collective act of worship every day at schools (section 385 of the 1996 Act): in America, a statute in similar terms would be unconstitutional. In America, a provision intended originally not to discriminate between one Protestant denomination and another has been interpreted as a requirement that the state should not discriminate between one religion and another; and this has resulted in the inability of the state to legislate at all in the area of religion. Despite difficulties in working out the English rules in practice, and continuing debate by the Association of Head Teachers as to whether these rules should continue, religious education and worship at schools is governed by law: in America, law is kept separate from religion, with the consequence that Christian education, or any religious education, cannot be governed by statute.

I am not convinced by Feldman's distinction between Jewish carnality and Christian spirituality. He refers to this in several chapters and suggests it as one of the reasons leading to many of the constitutional developments which took place in Europe and America. Although our citizenship is in heaven, Christianity is firmly rooted with its feet on the ground: Christianity is not just 'pie in the sky when we die'. Nor indeed is Judaism not concerned about the after-life: one of the reasons Jews recite the Kaddish—the prayer for the dead—is to enable the departed soul to find its place in the World of Souls.

There are places too where Feldman attributes to events an anti-Semitism intention which I doubt very much existed at the time, for example (at page 211) the American Bar Association's decision of the 1920s to prohibit lawyers advertising their services. Until recently there was a similar prohibition against advertising by both sides of the legal profession in this country: it would never have occurred to me that this has anything to do with anti-Semitism, and I am sceptical that anti-Semitism has anything to do with the American Bar Association's decision of the 1920s.

Sometimes Feldman's language is complex and rather academic. I confess having to look up the word *hegemonic*, which is one of his favourite descriptions of the Christian culture in America. Another example is the title to the last chapter, 'a synchronic analysis of the separation of church and state'. The book has copious footnotes, with reference to many writers, both Jewish and Christian. I found these generally helpful.

Feldman shows a remarkable understanding of Christian events both in Europe and America. He describes, for example, the Second Great Awakening in America (the revival of the first half of the 1800s) in terms which could easily have been written by a Christian. As a historical survey of supposed religious freedom in America written from the perspective of an American Jew Feldman shows convincingly that Christian domination in America has continued despite the First Amendment. And as a warning to us as to what could happen here, especially in the realm of education, as England becomes more pluralist, we Christians must take note.