Paving the Way to Religious Acceptance (Review of Please Don't Wish Me a Merry Christmas, by Stephen M. Feldman)

Lindsay L. Welch

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Paving the Way to Religious Acceptance

Please Don’t Wish Me a Merry Christmas: A Critical History of the Separation of Church and State
by Stephen M. Feldman

I. INTRODUCTION

America has long been known as a “melting pot,” referring to the diversity found within American culture. Nowhere is this diversity more evident than in the many different religions Americans profess. Undoubtedly, religion can play a large part in any person’s life; religious views help shape a believer’s self-identity and the way he views the world around him. As a result, society—and to a large extent, the law, which is shaped by society—is viewed and formed through the prism of the various religious perspectives present in America. Stephen Feldman’s book, Please Don’t Wish Me a Merry Christmas, is a good start to awakening the conscience—to seeing the law and its progeny from various religious perspectives. However, Feldman’s inability to view the problem from a perspective other than his own undermines his potentially significant contribution.

Feldman argues that the Christian majority in America has condemned “the Jews,” the “prototypical religious outgroup” or religious “other,” and thereby deprived them of their religious freedom. Central to American Christianity, according to Feldman, is the opposition of Jewish carnality and Christian spirituality: “the New Testament emphasized a dualism” by “characteriz[ing] and revil[ing] the Jews as carnal, while Christians were revered as spiritual.” Feldman concludes that this

2. Id. at 7.
3. Id. at 14.
central tenet has, in turn, been the basis for the development of an anti-Semitic church and state jurisprudence in America. Based on this conclusion, Feldman argues that religion should be eliminated from the American social and political arenas.

This Book Review critiques Feldman's thesis from the perspective of a Mormon Christian, recognizing that Mormonism is a distinct and minority denomination within Feldman's generalization of a Christian America. Not only are Feldman's generalizations unfair, they are offensive to those Christians who are not considered part of the Christian majority. In effect, through his narrative, Feldman personifies what he so despises in the status of religion in America: the intolerance of the "other." Instead of completely eliminating religious discussion or belief from the political sphere, as Feldman urges, I argue that the recent Supreme Court trend of government neutrality towards religion is a better proposal. By treating religion or nonreligion in a neutral matter, neither endorsing nor disfavoring one over the other, Americans can more readily enjoy the inalienable right of their freedom to worship according to their conscience, whatever that may personally mean.

II. Feldman's Dominant Story of the Separation of Church and State

Feldman begins his critical social narrative by instructing his reader that "nearly all discussions of the religion clauses build upon one dominant or standard story of the separation of church and state." Feldman believes that this almost universally accepted story is the assumption "that at some point in the history of the United States, religious freedom and equality triumphed over persecution, oppression, and injustice."

According to the author, this dominant story, which has been perpetuated since the founding of the United States, stands on two faulty propositions. The first proposition is the popular belief that the separation of church and state doctrine equally protects the religious majority and minority. Feldman argues that rather than creating religious equality, the separa-
The principle has largely permitted the majority religion in America—Christianity—to develop a hegemonic hold over both American political and social discourse. As a result, religious “outgroups,” namely Judaism, suffer at the hands of a powerful majority.

Feldman’s second erroneous proposition is that this principle of separation, which many mistakenly believe arose for the first time in the American experience, created religious freedom and equality for the oppressed. Feldman argues that “the dominant story appears in different guises only because writers disagree about when (and not whether) religious liberty ascended to victory.” Thus, scholars fail to consider whether religious freedom has truly triumphed over persecution and inequality, thereby rendering their subsequent analyses incomplete. According to Feldman, these two faulty propositions work together to reinforce American Christianity’s hegemonic hold over all other religious outgroups.

After describing these two flaws of the dominant story of church and state, Feldman sets out to dispel the theories by explaining the “development of Christian social power vis-à-vis the state and religious outgroups.” Feldman begins his analysis with the emergence of Christianity in Israel, contending that the New Testament “decidedly condemned (and still condemns) Judaism as a religion and Jews as a people.” The author then traces the interplay between Christianity and the state throughout history, culminating in his discussion of modern Supreme Court cases. While the Court, legal scholars, and historians praise the Court’s decisions for “fulfill[ing] the American principle of religious liberty,” Feldman contests this viewpoint. Instead, Feldman asserts that the Court “conceptualizes religion in distinctly Christian terms,” and by so doing, continues to relegate America’s religious outgroups to the realm of “other.”

9. Throughout Feldman’s work, the author refers to non-Christian religions as “religious outgroups.” In keeping with Feldman’s vocabulary, this Book Review will also use “religious outgroups” to refer to non-Christian and minority religions.
10. See Feldman, supra note 1, at 4.
11. Id.
12. Id.
13. Id. at 10.
14. See id. at 246.
15. Id.
16. Id.
III. CRITIQUE THROUGH A MORMON CHRISTIAN’S PERSPECTIVE

A. Is Christianity Truly Based on Anti-Semitic Rhetoric?

To be sure, providing a brief synopsis of the separation of church and state is an overwhelming feat, and Feldman makes a good attempt at synthesizing history, political theory, philosophy, theology, and sociology. However noble Feldman’s intentions, he largely undermines his work’s validity by continually, and at times somewhat tediously, premising a historical analysis on his belief that Christianity is based on anti-Semitic sentiments. “[T]he peculiar condemnation of ‘the Jews,’ ” he claims, “not only has been the root source of antisemitism but also has been enormously important to the development of Christianity and the state.”

Furthermore, Feldman fails to account for the seemingly anti-Semitic language found replete throughout the Old Testament. The Old Testament traces the history of the Jewish people, describing their fall from grace when Adam and Eve first partook of the forbidden fruit in the Garden of Eden, and man’s subsequent experiences and offerings in the carnal world. One would be hard-pressed to turn more than five pages in any version of the Old Testament and not find an angry God or ancient prophet chastising the people for their wickedness and inherently evil nature.

Admittedly, the New Testament is different from the Old Testament in that it recounts a history of the Christians in addition to the Jews. However, both Testaments contain what could be characterized as anti-Semitic rhetoric. When the language of the two Testaments is compared, Feldman’s argument that the New Testament is uniquely anti-Semitic loses much of its luster because similar negative passages can be found in both Testaments. For example, from the very first book of the Old Testament, man is described as carnal and evil: “And God saw that the wickedness of man was great in the earth, and that every imagination of the thoughts of his heart was only

17. Id. at 7.
19. See, e.g., Genesis 8:21 (King James) (stating that the “imagination of man’s heart is evil”); 2 Kings 17:17 (King James) (observing that the people “sold themselves to do evil”); Isaiah 59:7 (King James) (commenting that “man’s feet run to evil”).
A similar statement, referring to man’s inherently evil nature, can be found in the New Testament: “For from within, out of the heart of men, proceed evil thoughts, adulteries, fornications, murders, [t]hefts, covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness: All these evil things come from within, and defile the man.” Importantly, this passage speaks of all men—not just the Jews in particular, as Feldman would propose.

By relentlessly reiterating his theme of the anti-Semitic basis of Christianity, Feldman robs his arguments of much of their force. There is no question that when various religious beliefs are posed against one another, differences in doctrine and interpretation emerge. Because of this, it is frustrating and unproductive to debate the merits of one’s religious beliefs by merely repeatedly dismissing the beliefs of another. For example, irrespective of the number of times Feldman reiterates his belief that Christianity is based on anti-Semitic rhetoric, he will hardly convince his Christian reader of this fact. Rather, Feldman’s resentment resonates throughout the work, causing his reader to distrust the validity and objectivity of his academic assertions. Further, it is questionable for Feldman to assume he knows what is taught in each Christian sect.

B. A Missing Solution

This presumption that Feldman knows and understands the teachings of the various sects within the Christian religion underscores an even larger problem with his analysis: after chronicling the infinite instances of Jewish subjugation at the hands of the Christian majority, Feldman fails to provide any realistic solutions to rectify the problems he sees in the dominant story of the separation of church and state. Instead of offering solutions, Feldman’s book demonstrates that as the religious “other,” he is not willing to reach a compromise with the religious majority.

For example, in the concluding section of his book, entitled “Final Thoughts: A Political Statement,” Feldman chronicles examples of “attitudes and actions toward Jews” that demonstrate his assertion of the consistent intrusion of Christian be-

20. Genesis 6:5 (King James).
21. Mark 7:21-23 (King James).
22. Feldman, supra note 1, at 282.
liefs and ideals on religious outgroups. This list of examples of Christian domination is helpful in demonstrating how pervasive Christian attitudes are in American society. For example, Feldman notes that when his daughter, who is Jewish, wanted to order a Thanksgiving book from a scholastic book club, she could not do so without ordering a Christmas book as well.23 Seemingly innocuous examples such as this highlight the validity of portions of Feldman’s assertions.

While Feldman’s examples of daily Christian domination are poignant, he goes too far in proposing a complete divorce from religion in the social context. Rather than propounding a workable compromise, Feldman reasons that references to religion should be eliminated from all social discourse. For example, Feldman encourages his readers not to wish one another a “Merry Christmas,” because doing so only further promotes the subjugation of the religious minority.24 This goal of completely removing religious references from the public and social sector is not only of questionable value but is unrealistic. The very nature of religious belief presupposes that religious values and teachings will carry over into a follower’s daily activities. To require a believer to keep his religious beliefs only in the realm of “religion,” in effect, is to undermine many religionists’ ultimate goal of incorporating religious values and beliefs into every aspect of their lives. Perhaps a better, more effective solution is to continue to pursue a neutral perspective vis-à-vis religious and nonreligious groups, whether or not they compose a majority or minority of the American population. By so doing, Americans can properly claim their inalienable right to follow a particular faith or to refrain from doing so altogether.

C. The Supreme Court and a Vision of Neutrality

A good place to start in establishing this neutrality is by turning to the example of the United States Supreme Court. In recent years, there has been a noticeable shift in the Court’s church-state jurisprudence from accommodation to neutrality.25

23. See id. at 283.
24. See id. at 286.
25. See, e.g., Board of Educ. v. Grumet, 512 U.S. 687 (1994) (holding that establishing a separate school for Jewish handicapped children only was an unconstitutional establishment of religion); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 792-93 (1973) (holding that “[a] proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of ‘neutrality’ to-
Ideally, a neutral perspective provides for “a government that reflects interdenominational non-favoritism.” This shift to a formal neutrality can effectively safeguard the balance of the separation of church and state. Rather than requiring complete elimination or total endorsement of religion in the public sphere, a neutral perspective protects individual religious freedom while simultaneously preventing excessive government entanglement in the religious arena.

Two main principles are involved in the Court’s recent neutral approach to church-state jurisprudence. First, government action will be considered neutral if it grants benefits, such as tax exemptions, access to public facilities, and special accommodations, even-handedly to all religions, large or small. By so doing, the government does not favor or discriminate against any one religion. Second, religious activity must be given the same treatment—no more, no less—than non-religious activity. Thus, for example, in Rosenberger v. Rector of the University of Virginia, the Supreme Court decided under this neutral approach that the University of Virginia had to subsidize a student publication that was religious and evangelical in nature if the university subsidized all other student-run publications. The overriding theme of this neutral approach is equality and parity, two concepts central to First Amendment jurisprudence.

Under this definition of neutrality, there will be times when, as a result of government legislation or judicial reasoning, religion will benefit at the expense of nonreligion, or a minority religion at the expense of the majority. However, the
converse of both situations will also inevitably be true: a completely neutral perspective disregards religion and, therefore, applies evenhandedly to all groups. Neutrality does not inherently mean that minority religions or nonreligious people will be discriminated against. Rather, neutrality prevents the government from favoring one religion over another, or religion over nonreligion—exactly what the First Amendment requires.

D. A Good Beginning

Feldman’s work has merit because it awakens the reader to the discrimination that followers of non-Christian religions (and minority sects within the Christian religion) encounter. Precisely because religion can be so encompassing in every aspect of a believer’s life, whether it be morally, politically, culturally, or theologically, it is important to understand the views of others. As Professor Balkin states:

If we do not investigate the relationship between our social situation and our perspectives, we may confuse our conception of what is reasonable with Reason itself. If we do not see how our reason is both enabled and limited by our position, we may think our judgments positionless and universal. We may find the perspectives of those differently situated unreasonable, bizarre, and even dangerous, or we may not even recognize the possibility of another way of looking at things.32

Because of the undeniable tendency to make decisions and form social policy in accordance with one’s own beliefs, there is no question that the Christian majority in America often imposes its beliefs into the political system. The courts today, particularly the United States Supreme Court, need to protect and defend minority religious groups against the majority’s usurpation of their rights. Feldman’s work begins to awaken readers to the existence of these issues.

Despite the usefulness of this book as an awakening mechanism, Feldman’s work can only be used in a limited

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manner. Perhaps what is most unsettling about Feldman’s critique is that he largely views history and the development of the separation of church and state from his perspective only. In effect, he adopts the position that he criticizes throughout his book. Rather than describing or analyzing the current state of religious freedom in America from various perspectives, Feldman remains behind the lens of what he calls the religious “outgroup.”

While the Christian majority needs to rethink its views regarding whether the Constitution truly protects the rights of non-mainstream religionists, or those that do not follow any religion altogether, the minority religionists may also need to rethink their view of the Christian majority. Feldman’s attempt to lump all Christian religions into the “majority” is an unfair generalization that leads to inaccuracies. The assertion that Christianity is based on anti-Semitic rhetoric is particularly questionable. Further, by failing to view diversity within the Christian religion itself, Feldman misses an important point: religious diversity is not necessarily controlled by one majority group. Rather, there are differences among the various Christian denominations, which ultimately view the separation of church and state from a variety of perspectives. These differences, in turn, help prevent the government from favoring one religion over another, or religion over nonreligion. By failing to take these differences into account, Feldman demonstrates how everyone, even followers of “outgroup” religions, needs to view religion from the “other’s” perspective.

IV. CONCLUSION

In a society such as America, where differences in all aspects of life abound, it is more effective to recognize such differences than suppress them. Rather than divorcing religion from all dialogue, including among believers of the same faith, we should learn to embrace and protect all religions. Rather than asking me not to wish a fellow Christian a “Merry Christmas,” we should address, respect, and protect religious differences, whether they are found in religious “outgroups” or within the Christian majority. Finally, rather than delineating all that is wrong with the separation of church and state, writers, academics, and citizens should develop solutions to the problem of religious hegemony. Perhaps the best means of maintaining a proper separation of church and state, without completely
eliminating religion from political and social spheres, is to follow the Supreme Court's neutral treatment of religion and non-religion. By so doing, he who wishes to practice a faith according to his conscience may do so, irrespective of the denomination or sect involved. That way, America truly can become a principled nation where religious diversity is not only protected but encouraged.

Lindsay L. Welch