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Wellhausenism Evaluated After A
Century Of Influence..... Raymond F. Surburg 78

Sing a New Song Armand J. Boehme 96

God's Here and
Is Not Silent..... Philip M. Bickel 120

Theological Observer 121

Homiletical Studies..... 124

Book Reviews 157

Books Received..... 177



CONCORDIA THEOLOGICAL SEMINARY

Theological Observer

PRIVATE SCHOOLS, DESEGREGATION, AND THE INTERNAL REVENUE SERVICE

Hearings held before the Internal Revenue Service in Washington, D.C., in early December are of special interest to members of The Lutheran Church-Missouri Synod, largely because they had to do with the tax-exempt status of many non-public schools, particularly those at the secondary level, within the church. The issue, as stated by the Commissioner of Revenue, was whether private schools claiming tax exemption, have a racially nondiscriminatory policy as to students. According to law, schools that engage in discriminatory practices are not entitled to tax benefits according to charities, and those who contribute to such schools may not deduct such contributions as charitable deductions on their income tax returns. What the Internal Revenue Service proposed was some new rules by which it might determine that some private schools were engaged in discriminatory practices, even though these schools publicly disavowed such practices.

What the Internal Revenue Service did not expect was the storm of criticism that swept the country, that led to hearings far more extensive than the Revenue Service had envisioned, that brought members from almost every religious community in the country to testify against the proposed rules, that evoked more than 120,000 letters of protest and criticism. The list of those who submitted written request to testify and were included on the agenda of speakers numbered 247 representatives from every part of the United States. Among them were fifteen congressmen as well as distinguished lawyers and Roman Catholic, Jewish, and Protestant school association representatives. They came from every section of the country. Their collective voice was one of loud dissent. Some spoke in reasoned legal language, others in homely similes. With few exceptions, they made it very clear that they disagreed with the Internal Revenue Services rule proposals. One cannot catalog all of the arguments that were advanced by the speakers during the four days of hearings. Yet certain themes came through repeatedly in the testimony. It is these themes that Lutherans who hold their schools dear to their hearts need to note.

Many speakers regarded the proposed regulations as a subtle attack on private religious education. They perceived the issue, not in terms of discrimination, but as an invasion of the free exercise of religion. They said it again and again: Our schools are an extension of our church. Our Sunday schools convey the

essentials of our faith, and our Monday-Friday schools are no different. Even as government cannot propose quotas for minorities in Sunday Schools, so it has no business doing so in elementary and secondary schools that function on other days of the week. Private religious schools, whether Jewish, Roman Catholic, or Protestant, have not arisen as havens for those who wish to discriminate — although there may be some that do; for the most part, they are a response to secularism in public education, to curriculum components that are objectionable to many people. Indeed, to require that such schools have aggressive recruitment programs for minorities, employ minority teachers, and solicit minority students through scholarships might well constitute efforts to impose religious convictions on those in the community who did not agree with such positions.

What distressed many of the speakers even more was the presumption in the newly-proposed rules that a school would be presumed to be guilty of discrimination unless and until it could prove (through a program of affirmative action that included recruitment, scholarships and employment of minority staff members) that it did not engage in discriminatory practices.

In addition to these major arguments — interference in the religious life and teaching activities of the churches, and the presumption of guilt, there were many other arguments as well. Some argued that the new tests were not necessary — that the Service already had ample authority to test, to investigate and to audit the activities of non-public schools. Some argued that because of the nature of their constituency it would never be possible for them to meet the new standards the Internal Revenue Service was about to establish, no matter what their efforts to do so might be. Some regarded the proposals as a new financial burden that would have a depressing effect on their enrollments, largely because parents were already paying taxes for public education while at the same time bearing the total costs of the education of their children in non-public schools. Some challenged the proposals as action beyond the authority of the Internal Revenue Service, contending that proposals such as those advanced by the Service were properly the domain of the Congress, and that not even the courts had given the Internal Revenue Service any new directions or mandates in this area of public policy.

Apart from all these arguments of lesser significance, far and away the major argument was that government was attempting through one fashion or another to exercise control over private religious education. If the government can establish quotas for minorities, propose standards for hiring, require evidence of

scholarships, demand certain recruitment practices, what would deter it from prescribing curricula, imposing new standards of conduct, dictating fundamental moral philosophies, in short, controverting most of the principles and purposes for which private schools have in recent years been established? Might not the power to tax — or to grant favorable tax status — involve ultimately the power to destroy? Was not the government itself violating a principle laid down by the Supreme Court that prohibited entanglement in religion?

Whether intended or purely accidental, the proposals were perceived as a threat to religious education, and the religious community of the land came to Washington to defend itself against this incursion. Even though Lutherans were not very well represented at these hearings, the range of arguments in defense of religious education should serve to reinforce a long-cherished Lutheran commitment, an objective of the Synod's constitution. That is the commitment to the education in religious values of young Lutherans today who will become the Lutheran church of tomorrow, free from governmental interference, whether from state departments of education or from more subtle quarters such as those couched in the innocent Internal Revenue Service proposals to establish tests to determine whether or not schools are engaging in discrimination. The keen perception of the religious community refused to permit the Internal Revenue Service to define the issue as one of discrimination. Rather it put it in quite another, larger, and perhaps more important perspective — that of religious liberty.

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