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DISPOSITION OF URBAN RENEWAL LAND TO SECTARIAN INSTITUTIONS OF HIGHER LEARNING

David C. Harrison*

I. Introduction: Case Law and Beyond

In the summer of 1962, at a public hearing before the city council, the Urban Redevelopment Authority of Pittsburgh announced "another attempt to encourage the physical expansion and improvement of Pittsburgh's educational facilities by a joint effort on the part of public and private agencies."¹ It was referring to the Bluff Street Renewal Project, the main purpose of which is to "provide Duquesne University with sufficient land upon which to enlarge and integrate its educational facilities."² It is expected to cost approximately \$10 million, two-thirds of which will be provided by the federal government and one-third by the city of Pittsburgh, under the provisions of Title I of the Housing Act of 1949.³ Duquesne University is listed in the 1962 *Official Guide to Catholic Educational Institutions and Religious Communities in the United States* as "a coeducational university . . . conducted by Congregation of the Holy Ghost."⁴ It has been adjudged, by the Court of Common Pleas of Dauphin County,⁵ a sectarian institution under article III, section 18 of the Pennsylvania constitution, which declares: "No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational or sectarian institution, corporation or association." In the course of the public hearing, it was asserted by an attorney representing land-owners in the Bluff Street area that the proposed redevelopment contract with Duquesne was invalid under article III, section 18 of the state constitution and under the establishment clause of the first amendment to the federal constitution. To date, no action has been taken against the Authority, but according to Theodore Hazlett, general counsel for the Authority, "we could be taken to court on this matter tomorrow."⁶

How are redevelopment authorities to treat with church-related institutions? Is the wall between church and state a barrier to urban renewal? Is Title I of the Housing Act, in its effect on the interplay between political and religious institutions, a "law respecting an establishment of religion"? Supposing that it is not, are there considerations of policy which nonetheless require that special precautions be taken, in dealing with religious groups, to avoid jeopardizing the success of redevelopment projects? Except insofar as Local Public Agencies are held to the same rules of procedure and standards of fairness in the acquisition and disposition of land regarding sectarian institutions as others

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1 Urban Redevelopment Authority of Pittsburgh, Annual Report 20 (1962).

2 *Ibid.*

3 63 Stat. 414 (1949), 42 U.S.C. § 1450-62 (1959).

4 1962 OFFICIAL GUIDE TO CATHOLIC EDUCATIONAL INSTITUTIONS AND RELIGIOUS COMMUNITIES IN THE UNITED STATES 64-66 (4th Annual ed. 1962).

5 *Duquesne Univ. v. Lewis*, 26 Dauph. 242, 255 (1923).

6 Conversation with Theodore Hazlett, General Counsel, Urban Redevelopment Authority of Pittsburgh, Feb. 11, 1963.

who may be involved in the slum-clearance process, the courts have made little or nothing of the church-state issue. St. Louis University and Fordham University, both Catholic institutions of higher learning, were permitted to benefit extensively from Title I assistance despite charges in court of unconstitutional grants of public aid to religion. In both cases⁷ the courts rested their decisions essentially on the ground that the benefits of urban renewal to a sectarian redeveloper are proper so long as other redevelopers receive equal treatment. Unless, therefore, it has infringed some procedural rule set forth in the provisions of the Housing Act or the *Urban Renewal Manual*,⁸ or it has acted with measurable prejudice to other redevelopers or landowners, the Redevelopment Authority of Pittsburgh may be fairly sure of its position should the issue ever be raised in a suit over the disposition of property to Duquesne University.

This fails to answer the question, however, as to whether there may be benefits of urban renewal to sectarian institutions at all. It tells nothing about the nature and extent of the benefits, how they differ from other forms of governmental assistance or protection, or whether, once identified and appraised, they are to be encouraged or restricted.

Neither the New York Court of Appeals in *64th St. Residences v. City of New York* (Fordham) nor the Missouri Supreme Court in *Kintzele v. City of St. Louis* (St. Louis University) gave these questions much thought. Justice Desmond, speaking for the New York Court of Appeals, briefly touched on the issue in the following language:

The argument, however, proceeds on an assumption false in fact. . . . [W]hat the city is buying is not the same as what Fordham is buying. The city buys land and buildings. Fordham buys the same property but subject to its agreement to raze the buildings, relocate the tenants and use the cleared land for a collegiate campus and buildings only. What Fordham is paying for is the re-use value of the land. There is in this record no dispute of the fact, found by both courts below, that the \$7 per square foot which Fordham agreed to bid, and did bid, is at least equal to the re-use value as established by several appraisals, all of which reported figures lower than \$7 per square foot. Therefore, there is no substance to the assertion, on which this whole suit depends, that Fordham is getting a gift, grant or subsidy of public property. *It is, of course, getting a benefit in the sense that it is being permitted to acquire valuable and desirable property at a price which is probably lower than it would have to pay if it had to negotiate with all the private owners*, but the private owners are getting from the city the full value of the property in its present condition and use.⁹

There is, in this line of reasoning, a clear admission that Fordham received *some* benefit. But since suit was brought by original property owners in the renewal area and the court found that the benefit to Fordham entailed no loss to them, there was no necessity of determining the exact whereabouts or jus-

7 *Kintzele v. City of St. Louis*, 347 S.W.2d 695 (Mo. 1961), *64th St. Residences v. City of New York*, 4 N.Y.2d 268, 150 N.E.2d 396 (1958).

8 URBAN RENEWAL ADMINISTRATION, HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL MANUAL (3 Vols., loose-leaf).

9 *64th St. Residences v. City of New York*, 4 N.Y.2d 268, 150 N.E.2d 396, 398-99 (1958). (Emphasis added.)

ticiability of the loss. In the *Kintzele* case, Justice Hyde, speaking for the Supreme Court of Missouri, held that the sale of redevelopment property to St. Louis University involved no use of public power and funds in aid of a private sectarian school in violation of the state constitution. Unlike Justice Desmond, he ventured no opinion as to whether or in what sense the University received any aid at all. The gist of plaintiffs' claim, "that [the] University was illegally designated to get the land involved from the inception of the project and that no one else was given an opportunity to acquire it,"¹⁰ made it unnecessary.

These are the only cases that touch on the subject. *Kintzele* barely goes so far as to raise the question. *Fordham* raises the question in half a sentence, but treats it for the purposes of that suit as an essentially irrelevant detail. In view of the fact, however, that urban renewal bodies are entering into an advanced stage of litigation, "where, as functioning agencies, they have become involved in the broad sweep of court proceedings, such as condemnation suits, contract actions, civil service issues, and the variegated expanse of the fields of private and public law,"¹¹ it may be far from irrelevant. Among some eighty renewal cases pending in the spring of 1961 "several involved suits on constitutional issues, . . . the grounds varying from the traditional challenges of lack of public purpose to proposed resale to religious institutions."¹² Moreover, without drawing any distinction between sectarian and nonsectarian private institutions, section 112¹³ of the Housing Act enables colleges, universities and hospitals to meet their expansion needs through direct participation in urban renewal. In the event that groups and individuals who have strenuously opposed government assistance to religion, particularly federal aid to parochial schools, decide to mount a concerted attack on section 112 projects involving sectarian institutions, urban renewal bodies might find it worthwhile to weigh certain factors. These factors are: 1) the extensive, unprecedented assistance to sectarian colleges, universities and hospitals rendered by section 112 of the Housing Act; 2) the philosophy of the establishment clause of the first amendment, its current legal status and its bearing on government relations with institutions of higher learning; and 3) the needs of hospitals and institutions of higher learning in an urban setting.

II. Section 112 of the Housing Act

Section 112 of the Housing Act reads in part:

- (a) In any case where an educational institution or a hospital is located in or near an urban renewal project area and the governing body of the locality determines that . . . the undertaking of an urban renewal project in such area will further promote the public welfare . . . (1) *by making land in such area available for disposition, for uses in accordance with the urban renewal plan, to such educational institution or hospital for redevelopment. . . .* (2) *by providing, through the redevelopment of the area in accord-*

10 *Kintzele v. City of St. Louis*, 347 S.W.2d 695, 699 (Mo. 1961).

11 Weinstein, *Judicial Review in Urban Renewal*, 21 FED. B.J. 318, 332 (1961).

12 *Ibid.*

13 75 Stat. 169 (1961), 42 U.S.C. § 1463 (Supp. V, 1964). (Emphasis added.)

ance with the urban renewal plan, a cohesive neighborhood environment compatible with the functions and needs of such educational institution or hospital, or (3) by any combination of the foregoing, the Administrator is authorized to extend financial assistance under this title for an urban renewal project in such area without regard to the requirements in section 110 hereof with respect to the predominantly residential character or predominantly residential reuse of urban renewal areas. *The aggregate expenditures made by any such institution or hospital . . . for the acquisition . . . of land, buildings, and structures to be redeveloped or rehabilitated by such institution for educational uses . . . and for the demolition of such buildings . . . and for the relocation of occupants from buildings . . . shall be a local grant-in-aid. . . .*

(b) . . .

(c) The aggregate expenditures made by any public authority, established by any State, for acquisition, demolition, and relocation in connection with land, buildings, and structures acquired by such public authority and leased to an educational institution for educational uses or to a hospital for hospital uses shall be deemed a local grant-in-aid to the same extent as if such expenditures had been made directly by such educational institution or hospital.

(d) As used in this section —

(1) the term "educational institution" means any educational institution of higher learning, including any public educational institution or any private educational institution, no part of the net earnings of which inures to the benefit of any private shareholder or individual. . . .¹⁴

Assuming that the Urban Redevelopment Authority of Pittsburgh has applied for a federal grant under this provision to help finance the Duquesne project, to what extent is Duquesne benefited? How may this be construed as governmental aid to a sectarian institution? What public body contributes? What is contributed?

Urban renewal is a highly complicated process if one would trace the funds expended on any given project to their source. The URA of Pittsburgh, for example, is empowered "to borrow from private lenders or from the state or federal government funds, as may be necessary, for the operation and work of the Authority."¹⁵ The beauty of section 112 of the Federal Housing Act, in contrast, is that it opens a clear, unimpeded channel to federal funds. In so doing it works a new twist into the old public-aid-to-education wrangle: education-aid-to-public. Whatever Duquesne would pay for land and buildings would be credited to the city of Pittsburgh's share of the project cost, which, in turn, determines the federal allotment. The more Duquesne pays, the less Pittsburgh pays; and the less Pittsburgh pays, the more the United States Government pays. It appears, therefore, that in the long run Duquesne has benefited by the use of the URA's power of eminent domain and/or the reduced cost of project land after it has been cleared; Pittsburgh has a renewal project which could conceivably be financed entirely by Duquesne and the federal government; and the loss, consisting in the difference between the original acquisition

¹⁴ *Ibid.*

¹⁵ PA. STAT. ANN. tit. 35, § 1709(o) (1964).

price of land and buildings and the proceeds from disposition after the write-down in value, is borne more than two-thirds by the federal government.

Objection to the collaboration between institutions like Duquesne and cities was taken by Senator Bush of Connecticut, who proposed, in a Senate debate on section 112,¹⁶ an amendment to the Housing Act which

would delete provisions from the bill that would permit the local urban renewal agency to obtain noncash, grant-in-aid credit for expenditures made by a college or university for acquiring and clearing land. . . .

The amendment would prevent a local urban renewal agency from receiving what in effect would be a retroactive windfall of noncash, grant-in-aid credit. The college or university would not gain from this credit received by the public agency.

The credit could be large enough to cover more than the local one-third share of project costs. In such case, the excess credit could be used toward the local share of projects in other parts of the locality—in no way connected with the university. . . .

I think this is a completely unwarranted section of the bill, which would permit a university or a college in an area such as one of our large cities to take land and to clear it and then have the locality, which has put nothing into it, take full credit in cash for it, thereby imposing upon the Federal Government the necessity of substituting its own cash for that which should have been provided by the locality. It is an unwarranted subsidy. . . .

It is possible, in the way the bill is written, for an urban renewal project to be so devised that the locality will put up no cash whatever, and the whole cost of the urban renewal project might well be absorbed by the Federal Government in cash.

To these criticisms Senator Douglas replied:

What the present provision does is to permit the money which the universities will themselves pay to be a part of the general urban renewal program, but to do this under the supervision of the city, in accordance with the city plan, and as a part of an approved local program. The universities are not given a hunter's license and allowed to go out and clear any territory they wish to clear. . . .

As I understand, the Senator from Connecticut is saying that if the financial contributions of these public institutions were counted as a part of a city's contribution to urban renewal, there would be more city funds available elsewhere, and hence there would be more land cleared. Would it be a terrible thing to have more slums cleared and removed?

And Senator Clark added:

[T]he present provision in the bill would not require the Federal Government to put up 1 cent of cash that it would not have to put up if the provision were not in the bill, and the net result will be that out of the \$550 million in additional authorization which the bill provides for urban renewal, some small part of it may go for the rehabilitation of institutions of higher learning instead of none.

One of the principal objections to any form of federal aid to parochial schools is that it cannot help but release parochial school funds for other pur-

poses, which may include the teaching of religion. Through the operation of section 112 expenditures by Duquesne University could — and probably do — release federal funds granted to the city of Pittsburgh for whatever other renewal purposes the Pittsburgh URA may designate. If the heart of the whole urban renewal program may be taken to be a partnership between a locality and the federal government, with each contributing a certain share of the cost, the heart of Section 112 may be taken to be a partnership between a university (or a hospital) and a locality, with the federal government contributing most of the cost and the university contributing much less than it would have to pay otherwise.

To one who would object to the URA-Duquesne contract in court the significance of section 112 is twofold: In the first place there is no doubt that public funds are being used to aid a sectarian institution. The funds are strictly federal in origin, and the object is to aid university expansion — a highly conspicuous, if not unconstitutional, form of aid. And second, since no portion of the renewal payments for university purposes can be traced to the city, the possibility of a taxpayer's suit to enjoin the city from carrying out the contract with Duquesne under article III, section 18 of the Pennsylvania constitution is ruled out. The city treasury, if anything, is better rather than worse off as a result of the transaction. The only alternative left is an action against the United States under the establishment clause of the first amendment, to which any federal court's answer is likely to be *De Minimis Non Curat Lex*.¹⁷ Section 112 has, in sum, created a form of public aid to a sectarian institution without precedent in magnitude while at the same time it has virtually taken the issue beyond the scope of justiciability.

What evidence is there that urban universities and hospitals regard section 112 as a valuable instrument in the achievement of their goals? Senator Bush emphasized the loss to the federal government through the operation of section 112. George F. Baughman, vice-president and treasurer of New York University, has emphasized the gain to the university:

Very often in our building programs we have been unable to assemble adequate plottages within an area made up of many small landholdings. At such times the advantage of eminent domain would have saved us many precious months and many (equally precious) thousands of dollars.

Gentlemen, it comes to this: without the right of eminent domain, our institutional planning and development could be totally blocked for the future. We, as a private institution, do not ask for anything but the means to help ourselves meet the tremendous problems of education that we will encounter in the years ahead.¹⁸

Similar statements at various times have been made by Henry C. Meadow, associate dean of Harvard Medical School,¹⁹ J. O. Lindstrom, business man-

¹⁷ Cf. *Massachusetts v. Mellon*, 262 U.S. 447, 487 (1923); Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265 (1961).

¹⁸ Statement before the Senate Subcommittee, in 3 *Hearings on Various Bills to Amend the Housing Act of 1959 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 1st Sess. 517 (1959-60).

¹⁹ Letter to Joseph S. Clark, April 3, 1961, in *Hearings on Housing Legislation of 1961 Before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st Sess. 960 (1961).

ager of the University of Oregon,²⁰ Dr. Karl S. Klicka, of the American Hospital Association,²¹ and Julian Levi, executive director of the Southeast Chicago Commission, the author of section 112, who summed up the testimony concerning the proposed amendment to the Housing Act of 1959 before the Senate Committee on Banking and Currency with the observation:

The experiences of these universities and the testimony offered before the committee made clear that universities could not deal with their neighborhood problems without raising additional funds and that these funds could not be raised unless a leverage effect through the capital grant-in-aid provision was made available.²²

In answer to a comment by Norman Mason, then head of the Housing and Home Finance Agency, that the provisions on section 112 "would not benefit the university in any financial way," Levi added:

Mr. Mason states "these provisions would not benefit the university in any financial way." It is unfortunate that Mr. Mason did not study the testimony offered by the universities in the hearings before the Senate Banking and Currency Committee on S. 57 itself. Among the universities represented were: New York University, University of Pennsylvania, University of Louisville and the University of Seattle as well as the University of Chicago. This testimony, moreover, brought to the committee the experiences of some 20 additional universities, including Columbia University, Harvard University, Massachusetts Institute of Technology, Yale, the University of California, Indiana University. . . .²³

Not only is the fact of federal assistance to urban universities indisputable, the manner in which it is given necessarily entails preferential treatment. Claimants in both the Fordham and St. Louis University cases attempted to invalidate the dispositions partly on the ground that other redevelopers, real or imagined, were given no chance from the inception of the project to compete for the land. The same complaint appears in *Bleecker Luncheonette v. Wagner*,²⁴ where sale of Washington Park project land to New York University was challenged. The court's statement of the complaint and its solution are typical:

Plaintiff's main grievance . . . is the claim that the project involved was so planned as to favor and obtain exclusively for New York University the portions of the land to be devoted to educational purposes, . . . that the plan and project involved was purposely maneuvered so as to obtain for New York University the portion thereof which is intended to be devoted to educational purposes and that by virtue of such allocation to New York University, the proposed sale by the city of New York, at public auction of this portion of the property involved, was merely a sham and that real competitive bidding at the sale was to be stifled. . . .

It was apparent, and we cannot shut our eyes to so patent a factual situation, that New York University, by reason of its proximity (together with its present buildings) to the area in question, would logically and in reasonable likelihood be a bidder at the

20 Letter to Wayne Morse, April 14, 1961, *id.* at 991-92.

21 Statement before the Senate Subcommittee, April 11, 1961, *id.* at 724-29.

22 Memorandum to Lawrence A. Kimpton, July 29, 1959, in *Hearings on President's Message Disapproving S. 57 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 1st Sess. 392 (1959).

23 *Ibid.*

24 141 N.Y.S.2d 293 (Sup. Ct. 1955).

proposed sale of the relevant area. At no point in all of the plans or negotiations is there any proof whatever which tends to substantiate plaintiff's charge that defendant contemplated competitive bidding at the public auction was to be stifled or in any way interfered with.²⁵

Granting the correctness of the decision on its own terms, at what point does "logical and reasonable likelihood" that a university will be a bidder become "necessity"? And at what point does its successful bid become a foregone conclusion? The court in *Kintzele* stated flatly that the "Authority's policy was that it would not seek to acquire property of religious or educational institutions already in the area and that it would accept them as redevelopers if they desired to expand."²⁶ Naturally, the Authority to carry out this policy would have to set aside land for the university, regardless of the bids or intentions of other redevelopers. But the court nevertheless skipped to the conclusion that the "United States Supreme Court recognized this policy as proper in *Berman v. Parker*."²⁷ The Supreme Court recognized nothing of the kind. It said only that

[t]he particular uses to be made of the land in the project were determined with regard to the needs of the particular community. The experts concluded that if the community were to be healthy . . . the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also schools, churches, parks, streets, and shopping centers.²⁸

It did not say that the "experts" might determine at the planning stage of the project which particular church or school or other established land use would be accepted as a redeveloper. The *Kintzele* court could have relied on the same language to sanction the demolition of St. Louis University.

Chapter 14-3-3 of the *Urban Renewal Manual* contains special regulations respecting the disposal of redevelopment land to public and nonprofit institutional uses:

The disposal and redevelopment of land for public and nonprofit institutional uses must be assured *before* HHFA will concur in the obligating of loan funds for land acquisition or before HHFA will pay any grant funds to the LPA [Local Public Agency] under a Capital Grant Contract. . . .

After receiving HHFA concurrence, the LPA shall comply with the public disclosure requirements of Section 14-4-1. When this requirement is met, the LPA may consummate the disposal.²⁹

Having assured the HHFA that portions of redevelopment land will be disposed of for nonprofit institutional uses, would the Authority then be at liberty not to "consummate" the disposal? What likelihood is there, in any case, that competition between redevelopers for land would prevent there being virtual consummation long beforehand?

25 *Id.* at 296-98. (Emphasis added.)

26 *Kintzele v. City of St. Louis*, 347 S.W.2d 695, 702 (Mo. 1961).

27 *Id.* at 702.

28 *Berman v. Parker*, 348 U.S. 26, 34 (1954).

29 URBAN RENEWAL ADMINISTRATION, HOUSING AND HOME FINANCE AGENCY, 1 URBAN RENEWAL MANUAL ¶ 14-3-3 at 1, 4(3 Vols., loose-leaf). (Emphasis added.)

Chapter 14-1-1 of the *Manual* sets forth the public disclosure requirements and also the procedure whereby sale at "fair value" to nonprofit institutional uses is to be guaranteed:

The public interest requires that disposals of project land be consummated in a fair and equitable manner and be open, in one way or another, to public scrutiny. . . . Each disposal of land shall be at a price that is not less than the fair value of the land for uses in accordance with the Urban Renewal Plan. . . .

When land is to be devoted to a public or nonprofit institutional use, the fair value of the land shall be based on its value for the most suitable alternative private use or uses for the land. . . .

A valuation so derived shall always leave the project at least as well off financially as it would be if the land had been designated for private redevelopment.

The LPA shall avail itself of the services and specialized skills of appraisers, market analysts, special legal counsel, and real estate marketing consultants to the extent, and in the manner, reasonably necessary to make informed judgment.

The judgment of appraisers and LPA's as to fair value — if it is the same in both cases — may be subjected to public scrutiny at a public hearing, held either by the Authority or the local governing body, or both. Under Pennsylvania's Urban Redevelopment Law:

In conformity with such redevelopment area plan, the Authority shall prepare a proposal for the redevelopment of all or part of such area. The Authority may, if it deems it desirable, hold public hearings prior to its final determination of the redevelopment proposal. . . .³⁰ [A]t the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known and consider recommendations in writing with reference to the redevelopment proposal.³¹

Persons or agencies interested may find these safeguards somewhat inadequate. In the opinion of one observer:

The public hearing required by redevelopment statutes, unlike the judicial-type hearings conducted by traditional administrative agencies, may pragmatically afford little or no protection to affected property owners. Ordinarily, an agency invests thousands of dollars and man-hours in planning and preparation prior to the public announcement of a project and hearing — expenditures which can produce officials committed to a project before the public has had opportunity to voice opposition. Second, a redevelopment campaign which could resolve the political future of its official advocates does not encourage maximum agency impartiality. Furthermore, the close cooperation between private redevelopers and local agency during the formulative stages of project planning and administrative considerations which demand the rapid and unhindered transition of a project from planning to execution may influence agency open-mindedness when a project comes up for approval. Finally, with perhaps insufficient resources, often short notice, and usually no subpoena power, a protestant may be unable adequately to prepare a challenge at the public hearing.³²

³⁰ PA. STAT. ANN. tit. 35, § 1710(d) (1964).

³¹ PA. STAT. ANN. tit. 35, § 1710(g) (1964).

³² *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L.J. 321, 328-29 (1959).

If the redevelopment authority is often less than open-minded about whom it sells land to, and there is so little chance of preventing a sale once its mind is made up, why should the initiation of redevelopment plans not be turned over, in certain cases, to the developers themselves? The Housing and Home Finance Agency seems to think that in the case of section 112 institutions this would be a desirable alternative. The HHFA's State and Local Relations Division has prepared "draft state legislation to make certain expenditures for hospitals and educational uses eligible as local grants-in-aid to urban renewal," which provides, in part:

The governing body of any municipality is authorized to approve after a public hearing a development plan proposed by an educational institution of higher learning, hospital, private redevelopment corporation, municipal or other public corporation, or authority established by the State for the redevelopment and renewal of an area. . . . An educational institution of higher learning . . . is authorized to prepare a development plan.³³

In the disposal of land generally, and particularly in disposals to nonprofit institutions, redevelopment authorities may abide by legal standards calculated to give them as much leeway as they need to accomplish a task for which standards are extremely indefinite. It is a fact that scarcely requires documentation. More precisely it is a matter of common sense. But the courts in the NYU, Fordham and St. Louis University cases appear all the same to have been reluctant to rationalize preferential treatment of university redevelopers. They conceded nothing to the ideal of free, open competition among private redevelopers for redevelopment land, where in fact a great deal has already been conceded and perhaps even more should be. Certainly neither *Berman v. Parker* nor the formalities of sales at auction under the New York City charter provide a satisfactory explanation.

Urban renewal agencies, when permitted under state law and not restricted by city charters as was the city of New York in the Fordham and NYU cases, prefer disposition by negotiation under other than competitive conditions when dealing with institutions such as universities. The alternative methods, as outlined in the *Urban Renewal Manual*, Chapter 14-3-5, are: (1) negotiated disposal under competitive conditions; (2) sealed bids; (3) public auction; (4) public auction with a guaranteed bid; (5) fixed price with bidding on other than price basis; (6) predetermined price offering; and (7) negotiated disposal under other than competitive conditions. According to one survey of disposition techniques covering 92 LPA's, "almost all of the responses agreed that this method (7) should be selected when the land is of particular value to one redeveloper (more often a church organization or educational institution than a private redeveloper), and when circumstances unique to the community or to the land itself present unusual problems."³⁴ Richard Ratcliff, in

³³ LEVI, MUNICIPAL AND INSTITUTIONAL RELATIONS WITHIN BOSTON — THE BENEFITS OF SECTION 112 OF THE FEDERAL ACT OF 1961, Boston Redevelopment Authority, Appendix S (1962).

³⁴ Scheuer, Godston and Sogg, *Disposition of Urban Renewal Land — A Fundamental Problem in the Rebuilding of our Cities*, 62 COLUM. L. REV. 959, 976 (1962). In a "typical" situation the authors found that LPAs preferred methods 1 and 5.

his study of disposal techniques, suggests that negotiated sale is preferred because it

provides an opportunity to select the redeveloper on the basis of certain important criteria other than price. It is easier to give preference to local developers or to give weight to reputations for good work, financial stability, a superior re-use plan, and probability of prompt action. The LPA can more readily move toward general off-site benefits such as providing housing for the elderly by negotiating a sale with a chosen instrument such as a nonprofit organization.³⁵

Ratcliff notes, however, that among the objections to the sale of public lands by negotiation are "the implications of preferential treatment and the chance that the sale may not bring the highest possible price."³⁶ He notes further that not only are LPA's inclined to extend preferential treatment to nonprofit institutions, but nonprofit institutions themselves expect preferred treatment and the concession requested may be a negotiated purchase, with no chance for competing bids to be entertained and with the possible result that the best price may not be secured. This problem may be particularly difficult when a facility such as a church or a hospital is already in operation in the project area or contiguous to it and is seeking land for expansion, or when an institution, displaced from another project area or evicted by public works such as a freeway needs a new location.³⁷

Between LPA and university there appears to be a minimum of tension on this point. All the pressure is in one direction—toward swift and harmonious agreement as favorable in terms to the university as possible. Beyond the standard of "fair value" set forth in the Housing Act and the Urban Renewal regulations there seems to be nothing to prevent the LPA from putting the university on its re-use map and leaving it there, regardless of the plans or opinions of others and regardless, too, of the university's financial capacity to meet the standard of "fair value" defined above.

Preferential treatment to any redeveloper gives rise to "political and public relations problems," according to Ratcliff,³⁸ even apart from the religious issue. Without going into detail he touches on a central aspect of the problem with a few remarks on the consequences of "public use" designation of portions of renewal projects:

In a real sense, these uses represent a collective investment by the citizens of the community *and are competitive with private uses as alternate use of redevelopment lands*. However, the significant differentiating factor is that *these public uses are not in active market competition for the land when it is put up for sale. At this stage, it has already been determined, as part of the redevelopment plan, that certain public uses will be incorporated*. To the greatest extent permitted under the law, credit toward the local contribution is taken for the public improvements and facilities to be installed, and the conveyance of the cleared land to the appropriate public agency

35 UNIVERSITY OF CALIFORNIA, INSTITUTE OF BUSINESS AND ECONOMIC RESEARCH, PRIVATE INVESTMENT IN URBAN REDEVELOPMENT: A STUDY OF THE DISPOSAL PHASE IN URBAN RENEWAL 23 (1961).

36 *Ibid.*

37 *Id.* at 9-10.

38 *Id.* at 9.

is made at a price representing its value in alternative private use. Thus the disposal of these lands grows out of the project plan and involves no marketing problems for the LPA.³⁹

Ratcliff was speaking not of private institutions of higher learning but of schools, parks and parking facilities, among others. Nevertheless he crystallizes the main issue: universities, loosely classified with public uses in the *Urban Renewal Manual* and allied with the LPA in enabling the LPA to take credit toward the local contribution for their own improvements, through the operation of section 112, are for all practical purposes *treated* as public uses — as though, indeed, they were *publicly supported* — when in fact they are not. Or is that the question: Are they?

If the main objection to federal appropriations for parochial schools is something akin to the philosophy underlying the establishment clause of the first amendment — that the separation between church and state should be absolute — the benefits of section 112 of the Housing Act to a church-related institutional redeveloper may just as easily be viewed as an end-around attainment of the very result sought to be prevented. Whether the antagonists in the main arena of the federal-aid dispute are cognizant of the fact, or inclined to do anything about it, should the various agencies in the administration of urban renewal themselves weigh the arguments? Should the Urban Redevelopment Authority of Pittsburgh pause and examine on its own the possible social and political repercussions of its contract with Duquesne University, because Duquesne is a church-related institution? It is hoped that one reason has been established for which it should: in scope the assistance rendered by section 112 is formidable. Equally important, methods of disposition permitted under urban renewal regulations and the Fordham, St. Louis University and NYU cases preclude the likelihood that opposing interests, either through competition for redevelopment land or court action, will make it any less formidable.

III. The Establishment Clause and Federal Aid to Higher Education

Debates over federal aid to education cover a lot of ground, much of it in the area of policy and little that can be clearly set within legal formulae. Why it should be discussed here is itself an issue well worth debating, considering that by “federal aid to education” no one ever meant disposition of urban renewal land to sectarian institutions of higher learning. Ultimately what is sought is not a rule (that does not exist) governing the entirety of federal government-education relations, but some awareness of the particular niche within these relations occupied by the private, and in many cases sectarian, institution of higher learning. Of more immediate concern is the state of the law respecting federal or state aid to such institutions.

The Department of Health, Education and Welfare prepared a brief in support of the Administration’s education bill (S.B. 1021) in 1961, entitled “Constitutionality of Federal Aid to Education in Its Various Aspects.”⁴⁰ One aspect

³⁹ *Id.* at 8. (Emphasis added.)

⁴⁰ Presented by Wayne Morse to the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, S. Doc. No. 29, 87th Cong., 1st Sess. (1961).

set aside for special consideration is "higher education,"⁴¹ which the Department treats, in light of constitutional principles, rather gingerly. Higher education, it claims, is a "significantly different context" from that of elementary and secondary education; although "the constitutional principles involved are obviously the same whether the subject is elementary and secondary school education . . . the factual circumstances surrounding the application of the principles are dramatically different." The differences may be stated "in terms of history and tradition," which, translated into facts, means that "while from an early date the Federal and some State Governments subsidized state universities and colleges, the bulk of advanced education has until recently been carried out by private institutions, the majority of which have a religious origin." In contrast, 85 per cent of American children are educated in schools supported by government. "The reason for this historically lies both in the public policy perceived in educating children and in the implementation of that policy by making education at the lower levels compulsory."

Compulsory attendance at public elementary and secondary schools is deemed, by HEW, to be a controlling factor in putting higher education off in a class by itself. It is first pointed out that no state requires college attendance, although there are several state-supported institutions of higher learning. The "position" of the college student is then examined:

His attendance is wholly voluntary, not merely a choice between alternate commands of the State. He is mature enough, moreover, to have made the decision to attend college and to select the institution best suited to his career objectives, or at least to have participated intelligently in those decisions. Furthermore, he can better understand the significance of sectarian as compared to secular teaching. At some sectarian institutions he is not required to study religion, but if he chooses to do so, or chooses an institution where religious instruction is mandatory, he is merely asserting his constitutional right to the "free exercise thereof."

Another differentiating factor is the degree of national interest involved:

At the college and graduate levels the public institutions alone could not begin to cope with the number of young men and women already in pursuit of higher education, and expansion of these institutions or the creation of new ones sufficient to meet the expected increase of enrollment is out of the question. . . .

All these considerations indicate that aid to higher education is less likely to encounter constitutional difficulty than aid to primary and secondary schools.

The Department, nevertheless, hesitates over the question of direct governmental assistance to colleges for the construction and expansion of academic facilities—the kind of assistance already provided through section 112 of the Housing Act. The Administration bill to assist higher education authorized loans to institutions whether private, public or sectarian. It provided for college scholarships awarded on a competitive basis that might be used at any accredited college selected by the recipient, and, in addition, payments to the college of a "cost of education" allowance to supplement the scholarship. There was no mention of direct governmental assistance to colleges for construction and ex-

41 *Id.* at 24-26. The following quotations are taken from these pages.

pansion, but the statement appears in the brief that "Governmental assistance directly to colleges for the construction and expansion of academic facilities perhaps raises, in the case of sectarian institutions, a closer constitutional question than scholarships." Perhaps so. The Department's follow-up to this conjecture, however, recalls Judge Desmond's gratuitous affirmation that Fordham saved money in the Lincoln Square urban renewal project without dealing with the question of who paid for it. It says:

Fundamentally the distinction between assistance to sectarian colleges and assistance to sectarian elementary and high schools rests upon differences between the educational system, which exists in the United States at the college and graduate school level and the predominantly free educational system at the elementary and secondary school level. These differences create importantly different factual circumstances against which the criteria previously discussed must be considered to determine the constitutional question.

This is a long-winded way of saying the issue of direct governmental assistance to sectarian institutions for construction and expansion of academic facilities is interesting, troublesome and probably irrelevant. Not that the author of the brief avoids the issue altogether; immediately following the above statement is the assertion:

We are not, at the college level, dealing with a system of universal, free, compulsory education available to all students. The process is more selective, the education more specialized, and the role of private institutions vastly more important. There are obvious limitations upon what the Government can hope to accomplish by way of expanding public or other secular educational facilities. If the public purpose is to be achieved at all, it can only be achieved by a general expansion of private as well as public colleges.

Or, in other words, "expansion" of "private"—no longer "sectarian"—colleges may be justified on the grounds of national interest, because the problem is national in scope.

A discussion elsewhere about alternative forms of public aid to institutions of higher learning brought out certain reasons for which construction grants may not create such a problem. It was conceded that "construction grants, or indeed any direct grant, raise the delicate issue of church-related schools. Any plan for aid to private education will have to contend with this problem." But also pointed out was the fact that

Pennsylvania had some competitive scholarships which involved grants to the schools of the students' choosing. Then recently someone casually remarked that this was unconstitutional—indeed, even grants to *students* attending church-related colleges were claimed to be unconstitutional, although no one has brought the issue to a head.

If this difficulty could be surmounted, one effective form of state (or federal) aid would be a direct grant to all accredited institutions of, say, \$100 per student enrolled in the college. . . .

Others felt that the political objections to this sort of grant were too great. The Murray-Metcalf bill, a similar measure for primary and secondary schools, lacked adequate support in Congress. Construction grants are for a job that can be started and finished, with a tangible result at the end; grants for operations,

on the other hand, enter an impenetrable tangle of administrative and instructional expenditures in which it is often impossible to trace any given revenue to a concrete result. For this reason, perhaps, continuing appropriations for operations are especially likely, in the view of some, to be accompanied by political interference. For example, University X is supposed to have a Communist around, so we cannot give any money to X.⁴²

If higher education is in a field by itself regarding the application of first amendment principles to federal aid, political interference may not even then be forthcoming. Inconsistent policy breeds an inconsistent response, and according to Rep. John Brademas, of the House Committee on Education and Labor,⁴³ the "Government has no inclusive and consistent public policy as to what it should or should not do in the field of education. Whatever particular policies it seems to be pursuing are often inconsistent with each other, sometimes in conflict. They suggest a haphazard development. . . ." Thus, C. Stanley Lowell, associate director of Protestants and Other Americans United for Separation of Church and State (POAU), which supported the three local citizens who attempted to block the St. Louis University expansion in *Kintzele*,⁴⁴ testified at a hearing before the General Subcommittee of the House Committee on Education and Labor that

We construe separation in terms of a "money line" between state and church; we oppose use of public funds or public instrumentalities of any kind for the benefit of any church. . . .

MR. O'HARA. . . . What is the attitude of your organization toward this ROTC program in sectarian colleges, and how would you compare that to the proposals made here today with regard to improving our national defense readiness by providing assistance for science, math, and languages?

MR. LOWELL. I think, Mr. O'Hara, that there is one very substantial and basic difference in these two forms of assistance. In the case of the ROTC program, you are dealing with college students. You are dealing with mature individuals, who, of their own volition, have gone to a college.

Now, when you deal with elementary education, you are dealing with a State's compulsion; because they have to be there. They have to be in school. So here you are using the instrumentalities and the financing of the State for the benefit of a Church education, which, one might say, children are obligated to attend and participate in.⁴⁵

At the same hearings, Dr. Philip A. Johnson, representing the National Lutheran Council, testified:

DR. JOHNSON. We feel that the support by any kind of public funds for an institution which is operated by a religious group does tend to implement and extend the influence of that group.

Therefore, it is in effect tax support for sectarian instruction.

42 HIGHER EDUCATION IN THE UNITED STATES: THE ECONOMIC PROBLEMS 80 (Harris ed. 1960).

43 *Hearings Before the Subcommittee on Education of the House Committee on Education and Labor*, Part II, 87th Cong., 1st Sess. 498-504 (1961), hereinafter referred to as *Hearings on the National Defense Education Act*.

44 See Martin & Schuerman, *Expanding St. Louis University*, in CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT 35-47 (1962).

45 *Hearings on the National Defense Education Act* 491-97.

- MR. BRADEMÁS. . . . Do you receive any Federal funds for research purposes? Do any of your students receive funds under the National Defense Education Act? . . .
- DR. JOHNSON. . . . Yes, it is true that many Lutheran colleges have accepted dormitory loans, for example.
- MR. BRADEMÁS. Would that not, therefore, be in complete violation of the statement that you just so straightforwardly put, that this would be a violation of separation of church and state?
- DR. JOHNSON. We indicate in our resolution that we regard this as a borderline practice and subject to question.
- MR. BRADEMÁS. How can you make a statement that that is just a borderline practice after you have just stated so unequivocally that such a practice would be a violation of the first amendment?
- DR. JOHNSON. Because . . . we believe that there is a distinction which can be legitimately drawn between higher education and primary and secondary education.

The purpose of the latter being primarily indoctrination in a religious point of view when a school is conducted by a religious group.

- MR. BRADEMÁS. Just a minute. Do you seriously expect me to believe that kind of distinction? . . . Do you mean to suggest that indoctrination is something that is solely done if we are going to use your language, at an elementary school and that suddenly when the student leaves the senior class of a high school and enters his freshman year at college, that a new world awaits him so far as that is concerned?
- DR. JOHNSON. . . . I think there is a great deal of difference between the attitude of a third-grade pupil when his teacher tells him something as being a teaching of his particular church and the attitude of a college sophomore who almost by definition doubts everything that a teacher may want to tell him.

Most of our schools of higher education . . . are open to students of all faiths. There is no compulsion upon the student other than a Lutheran persuasion to accept a Lutheran point of view.

This fact, combined with . . . the tendency of the college student to judge for himself rather than simply to accept, does make for a valid distinction. . . .

We recognize our position in regard to higher education is on a lot spongier ground than we think our position on elementary and secondary education is. . . . We would oppose Federal assistance for instructional facilities as opposed to dormitory and student union facilities which are, again, according to this very fine line of distinction, services to the student rather than to the school.⁴⁶

Actually, the distinction between higher education and lower levels of education may be unnecessary. Aside from the nebulous injunction embodied in the establishment clause there seems to be no controlling precedent, statutory or judicial. In the hearings just quoted from, Rep. Pucinski of Illinois summed up the Committee's position with the statement that

If we have been suggesting avenues of relief for a vast segment of our educational plants in this country we have been trying to do this within the framework of the Constitution. We have been guided by Supreme Court decisions. I honestly hope that some day soon

46 *Id.* at 387-95.

we can have an on-the-button case in the Supreme Court on this question. I would like to see the Supreme Court take a case involving this question and hand down a ruling because perhaps then it would clear the air for all of us as Americans. Right now we are all shooting in the dark.⁴⁷

Professor Arthur Sutherland, of the Harvard Law School, came to the same conclusion when called upon by Rep. John W. McCormack of Massachusetts to express his views on the constitutionality of H.R. 4970, a measure providing for certain forms of federal aid to education.⁴⁸ Professor Sutherland confined his remarks to the constitutionality of federal legislation providing long-term loans of public funds alike to public and nonprofit private schools for school purposes generally, even where the private schools aided are in many instances connected with or controlled by a church—a hypothetical measure unlike H.R. 4970, which made no such provision. He found little guidance in the legislative history of the first amendment and scarcely more in the decisions of the Supreme Court. “Judgments on ‘establishment’ are hard to find,” he said. “Justices of the Supreme Court, in the course of opinions, have on various occasions expressed ideas having a general connection with ‘establishment,’ but American lawyers traditionally draw a rather sharp distinction between those things which a court actually decides and those expressions made by the way, obiter dicta, off the immediate issue, not directly involved in the adjudication.” He dispensed with leading Supreme Court cases on the establishment clause—*Everson*, *McCullum* and *Doremus*⁴⁹—with the conclusion that the “Supreme Court of the United States has never held that a loan such as that in the statute which I outline above would be in excess of congressional powers because of the first amendment.”

Turning to congressional and executive action Professor Sutherland found “more precedents concerning Federal aid which included religious schools than can be found in judicial determinations.” He probably found more than he could count. The Department of Health, Education and Welfare appended a list of “Federal Programs Under Which Institutions with Religious Affiliation Receive Federal Funds through Grants or Loans” to its brief on the Administration’s education bill,⁵⁰ wherein it commented that payments to institutions for which the United States receives a quid pro quo in a proprietary sense were outside the scope of the list, but that “Federal programs are so diverse that a clear listing in this respect is not always possible, and many programs, not listed here because the Federal Government receives such a quid pro quo, are frequently of benefit to institutions.” Included in the HEW list are aid programs administered by the Office of Education, Public Health Service, Office of Vocational Rehabilitation, Social Security Administration and Office of Field Administration—all branches of the Department of Health, Education and Welfare—the Atomic Energy Com-

47 *Id.* at 395.

48 Letter to John W. McCormack, March 13, 1961, *Hearings Before the Subcommittee on Education of the House Committee on Education and Labor*, Part I, 87th Cong., 1st Sess. 410-17 (1961).

49 *Everson v. Board of Educ.*, 330 U.S. 1 (1947); *Illinois ex rel. McCollum v. Board of Educ.*, 333 U.S. 203 (1948); *Doremus v. Board of Educ.*, 342 U.S. 429 (1952).

50 S. Doc. No. 29, *supra* note 40, at 37-48.

mission, Veterans Administration, National Science Foundation, State Department, Department of Defense, Small Business Administration, Department of Agriculture, National Aeronautics and Space Administration, Department of the Interior and the Housing and Home Finance Agency. HEW administers the National Defense Education Act⁵¹ aid-to-education provisions, among them the National Defense Student Loan Program,⁵² National Defense Fellowships,⁵³ loans for language and area centers,⁵⁴ language fellowships,⁵⁵ foreign language research,⁵⁶ and research and experimentation in more effective utilization of television, radio, motion pictures and related media.⁵⁷ Higher education is further assisted through the provisions of Title IV of the Housing Act of 1949—the College Housing Loan Program⁵⁸—administered by the HHFA. As originally enacted the act provided for a revolving fund of \$300 million to enable the Housing and Home Finance Administrator to make loans to assist institutions of higher learning in providing housing for students and faculties. Funds could be used for new construction, or for alterations, conversions or improvements of existing structures wherever necessary for the proposed housing use. Overall, according to HEW statistics, the federal government in the years 1956-57 and 1957-58 spent a total of more than \$1 billion on higher education, or 51.7 per cent of all its expenditures for education combined. 32.8 per cent went to elementary and secondary education, while the rest was accounted for by special research projects, adult education and international education. The same source estimates, however, that in those years only 5.6 per cent of the total income of the “regular, formal schools, colleges and universities, public and private” came from Washington. 69.8 per cent came from state and local sources.⁵⁹ Federal aid is fairly well restricted, at least in amount, to the undergraduate and graduate levels of training and, except in the case of payments by the Department of the Interior for the education of Indian children, educational institutions with religious affiliation participate in all the programs listed in the HEW brief on the same basis as do other nonpublic institutions.⁶⁰

This by no means exhausts HEW's or any other accounting of federal aid to higher education. But it does offer enough of a sampling to raise the question whether the United States Government can hand out money to colleges and universities for whatever reasons, on whatever occasion, it deems appropriate. Though it is hard to be sure, there may be certain characteristics common to all this legislation. According to Professor Sutherland:

In the first place it does not make grants or loans to churches, religious missions, etc. The benefits go either to students or to

51 72 Stat. 1580 (1958), 20 U.S.C. §§ 421-589 (1959).

52 *Id.* at §§ 421-29.

53 *Id.* at §§ 461-65.

54 *Id.* at § 511(a).

55 *Id.* at § 511(b).

56 *Id.* at § 512.

57 *Id.* at § 541.

58 64 Stat. 77 (1950), 12 U.S.C. § 1749 (1959).

59 U.S. Dept. of Health, Education and Welfare, Office of Education, FEDERAL FUNDS FOR EDUCATION, 1956-57, AND 1957-58, 10-19 (1958); see also QUATTLEBAUM, FEDERAL EDUCATIONAL POLICIES, PROGRAMS AND PROPOSALS, Part II, at 361 (1960).

60 Presented by Wayne Morse to the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, S. Doc. No. 29, 87th Cong., 1st Sess. 37-48 (1961).

institutions training students; the benefits go to public and private institutions alike; they go to private institutions regardless of their religion or nonreligious affiliation. The religious affiliation of a school or college receiving a loan, or of a school or college to which students resort under scholarships, is therefore incidental and is not singled out by the Federal legislation. In the second place, there is in each of these pieces of legislation an observable end other than the cultivation of religion. Federal funds go to strengthen the Armed Forces, to build up our national scientific or linguistic capabilities or, as in the grants under the Housing Act of 1950, to build up our educational system generally.

The comment might be made that in none of these instances is there a Federal loan or grant of money to an institution to be spent however the institution sees fit, or to be spent as the institution sees fit except for religious instruction.⁶¹

Charles Quattlebaum has noted that a great many federal agencies are carrying out one or more educational programs.⁶² Federal educational activities, he says, cover all levels of education from elementary schooling to graduate training at the Nation's leading colleges and universities. The instruction includes virtually all subject fields known to man. Federal educational activities directly affect a large percentage of the population and indirectly affect the remainder of the population of the United States and its possessions.

But despite their colossal proportions, Quattlebaum adds, many of these activities "are not carried out in formal educational institutions; and most of the Federal programs are not operated for the purpose of promoting education as such. Instead these programs use education or educational institutions for the accomplishment of other major functions of the different Federal agencies." That is to say that educational institutions are conceivably performing more of a service for government than the other way around.

The contention must still be met that, in the words of Professor Sutherland, "the indirect effect on a sectarian school would, however, be to release for general purposes some funds perhaps otherwise used for lay instruction."⁶³ This would be the main objection in fact to a project such as Duquesne University's expansion in Pittsburgh, where the savings from the write-down in land-acquisition price afforded by the use of eminent domain could be translated into purely sectarian uses without a trace of public restriction. If there is any legal preventative Professor Sutherland is unable to find it; he is driven, rather, to the weak conclusion that "this possibility has not in the past inhibited the Congresses which passed such legislation as I have mentioned, or the Presidents who approved it."

Evidence that Congress thought the first amendment insufficient to inhibit appropriations of the type supposed in Sutherland's letter is found in the Blaine Amendment to the Constitution, passed by the House of Representatives in 1886 by a vote of 180 to 7, which proposed that "no public property, and no public

61 Letter to John W. McCormack, March 13, 1961, *Hearings Before the Subcommittee on Education of the House Committee on Education and Labor*, Part I, 87th Cong., 1st Sess. 416 (1961).

62 See QUATTLEBAUM, *op. cit. supra* note 59.

63 Letter to John W. McCormack, March 13, 1961, *Hearings Before the Subcommittee on Education of the House Committee on Education and Labor*, Part I, 87th Cong., 1st Sess. 416 (1961).

revenue of, nor any loan of credit by or under the authority of the United States, or any State, Territory, district or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religion or antireligious sect, organization, or denomination, or wherein the particular creed or tenets of any religion or anti-religious organization or denomination shall be taught. . . ."⁶⁴ The amendment failed to gain the necessary two-thirds vote in the Senate. A similar fate may await a proposed amendment to article III, section 18, of the Pennsylvania constitution, which reads in full:

No appropriations shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association: Provided, that appropriations may be made . . . in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning, except that no scholarship grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.⁶⁵

Since the "General Assembly has been reluctant to approve recommendations for change in the Constitution," and "attempts at a general revision of the present Constitution through constitutional conventions have had no success," the Pennsylvania Commission on Constitutional Revision concluded in its report in 1959 that the "best means of effectuating the advisable changes in the Constitution is by amendment."⁶⁶ Such a procedure, it is thought by one commentator,⁶⁷ "presents almost insuperable difficulties. Even if the commission should accomplish the unbelievable feat of persuading the General Assembly to pass through two successive sessions the bulk of its proposals, it would have before it the far more difficult task of awakening public interest and persuading the voters to cast a vote on a bewildering long list of Amendments." Thus, even aside from whether the proposed amendment to article III, section 18, reflects a trend away from the philosophy of the Blaine amendment, it gives small satisfaction to both sides of the controversy in its present condition.

What about Justice Black's opinion for the Supreme Court in *Everson*, thought by Professor Sutherland to contain a statement, "there dictum, which has become the most influential single announcement of the American law of church and state"?⁶⁸ The Supreme Court Justice wrote:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. . . . *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may*

64 H.R. Res. 1, 44th Cong., 1st Sess. (1876).

65 Pa. J. Res., No. 9 (1961).

66 REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISIONS 10-13 (1959). The Commission on Constitutional Revisions was created by Pa. Laws, No. 400 (1957).

67 BRANNING, PENNSYLVANIA CONSTITUTIONAL DEVELOPMENT 147-56 (1960).

68 Sutherland, *Establishment According to Engel*, 76 HARV. L. REV. 25, 31 (1962).

be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religions by law was intended to erect a "wall of separation between church and state."⁶⁹

Were these words to be taken at face value, the Bluff Street project in Pittsburgh could not exist. Instead, they mean as much—or as little—for our purposes as the requirement that urban renewal land be sold to private re-developers at "fair value."

There is but one legal standard applicable with any degree of consistency to the present issue. In reply to a challenge to an allocation of state funds to private (including sectarian) nonprofit hospitals, the Kentucky Court of Appeals, in *Kentucky Building Commission v. Effron*,⁷⁰ stated:

[T]he governing boards of such hospitals are but the channels through which the funds flow. Courts will look at the use to which these funds are put rather than the conduits through which they run. If that use is a public one and is calculated to aid all people in the State, it will not be held in contravention of s. 5 merely because the hospitals carry the name or are governed by the members of a particular faith.⁷¹

The Court there held that the state statute authorizing the allocation of funds was constitutional. But this principle, too, is less of a solution than it appears to be. The Supreme Court of Pennsylvania in *Collins v. Kephart*,⁷² decided in 1921, took a different position:

The intent of these provisions (Article III, section 18 of the State constitution) was, and therefore still is, to forbid the state from giving, either directly or indirectly, any recognition to a religious sect or denomination, *even in the fields of public charity and education*; they in effect provide that, to serve charitable, educational or benevolent purposes, the money of the people shall not be put under denominational control or distribution, *no matter how worthy the end in view.*

It will be noted, the Constitution does not say merely that no appropriations shall be made for sectarian or denominational purposes, *nor does it confine the limitation against state aid to these [sic] institutions which actually teach sectarian doctrines or promote denominational interests*; what it provides is that "no appropriation shall be made to any denominational or sectarian institution." These words, when taken at their face value, are most comprehensive in scope; they plainly forbid state aid to institutions affiliated with a particular religious sect or denomination, *or which are under the control, domination or governing influence of any religion, sect or denomination*, the ordinary understanding of the phrase "sect or denomination" being a church, or body of persons in some way united for purposes of worship, who profess a common religious faith, *and are distinguished from those composing other such bodies by a name of their own.*⁷³

69 *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947). (Emphasis added.)

70 310 Ky. 355, 220 S.W.2d 836 (1949).

71 *Id.* at 838, citing 51 Am. Jur. *Taxation* § 349 (1944).

72 271 Pa. 428, 117 Atl. 440 (1921).

73 *Id.* at 441-42. (Emphasis added.)

The Court, through Chief Justice Moschzisker, thereupon granted an injunction sought by taxpayer-plaintiffs enjoining payment of state funds appropriated "to certain charitable, benevolent or educational establishments all alleged to be sectarian." Among these was Duquesne University. *Duquesne v. Lewis*,⁷⁴ two years later, was disposed of on the authority of *Collins v. Kephart*.

As has been said, there is no single rule of law governing the entirety of federal government-education relations. It seems now that although higher education may with some legitimacy be viewed apart from elementary and secondary education under church-state law, there is no single rule of law clearly defining its status. The search has led from one ephemeral guideline to the next. Ultimately it leads to the recent church-state Supreme Court decision — *Engel v. Vitale*⁷⁵ — and the question of plaintiff's standing to bring suit under the first amendment. This perhaps more than any other phase of the controversy promises much needed clarification, for nearly every discussion of Supreme Court interpretations of the establishment clause begins with the postulate that standing sufficient to raise the issue is practically unattainable. The Department of Health, Education and Welfare, for example, states in its brief on the constitutionality of federal aid to education that because of the rule in *Massachusetts v. Mellon*⁷⁶ and the fact that federal spending legislation ordinarily carries no provisions for judicial review:

Federal aids to education have presumably been immune to attack in the courts on the ground that they violate the Constitution. There is, therefore, no significance to be attributed to the fact that the existing programs have not been litigated. . . . If Congress wishes to make possible a constitutional test of Federal aid to sectarian schools, it might authorize judicial review in the context of an actual case or controversy between the Federal Government and an institution seeking some form of assistance.⁷⁷

Whether it should do so is, in Professor Jaffe's opinion, scarcely open to question. Either *Massachusetts v. Mellon* or *Everson* should be overruled, he argues, because

the question of standing of citizen or taxpayer is one of great difficulty and importance, particularly in the immediate future. . . . [M]any of the states, and perhaps even the federal government, are or soon will be undertaking expenditures for education which allegedly violate constitutional prohibitions against aid to religious establishments. . . .⁷⁸

We have come to accept, not without protest, the idea that the judiciary is the defender of the constitution at least where . . . the constitution is felt to protect the integrity of the individual, to define his relation to the state. This is roughly the area of so-called "civil liberties."⁷⁹

74 26 Dauph. 242 (1923).

75 370 U.S. 421 (1962).

76 262 U.S. 447 (1923).

77 Presented by Wayne Morse to the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, S. Doc. No. 29, 87th Cong., 1st Sess. 27 (1961).

78 Jaffe, *supra* note 17, at 1266.

79 *Id.* at 1311-12.

The country, I think, will *want* the Court to settle issues of this kind—issues which, though they do not touch the individual as immediately as would a slap on the back, in some way not easy to define are intimately related to the individual's situation and to his ethos.⁸⁰

I find it difficult to accept the conclusion, as I think the country does, that an issue in every other respect apt for judicial determination should be nonjusticiable because there is no possibility of a conventional plaintiff—an issue in short in which everyone has a legitimate interest but only as a citizen.⁸¹

He adds that "Pennsylvania has one of the most restrictive standing doctrines. . . . It interprets strictly the requirement of 'legal right,' making it clear that actual damage as such does not suffice."⁸²

Since the decision in *Engel*, according to Professor Sutherland,⁸³ it is at least arguable that the Supreme Court intends to enable plaintiffs not otherwise "conventional" to raise these issues:

The doctrines of standing to sue are technical ones. Not surprising in a congeries of judge-made case-by-case rules, there are inconsistencies—as in that which finds standing for review of a state judgment in the minimal interest of a state taxpayer, but denies standing to a federal taxpayer who complains of the misuse of public funds. Yet within the aggregate of these technicalities are fundamental concepts as to the political nature of the organs by which we are governed. The Court's opinion in *Engel*, with its rather curious sparseness of mention of the petitioning plaintiffs or of their children, does not tell how far it intends a change in traditional standing. The matter is important enough for explicit judicial statement; the puzzled reader regrets not finding it.⁸⁴

IV. The Needs of Urban Institutions of Higher Learning

Beneath this pall of legal indecision lie a few concrete facts. The state of higher education is a national issue; the improvement of higher education is a national goal; in a great many instances the renewal of urban centers hinges upon the continued thriving of their cultural institutions and especially their facilities for higher education; and expansion is essential to the continued thriving of urban universities. If the law provides inadequate reasons why there should not be assistance to Duquesne University through urban renewal, and unsatisfactory remedies for those who may be aggrieved by it, these would be some of the reasons for which there should be assistance, and why it should take the form that it does.

In 1957, Edward E. Smuts, President of the Regional Industrial Development Corporation of Pittsburgh, at a hearing before the Senate Committee on Banking and Currency, Subcommittee on Housing, gave a rundown of the problems faced by private industry in Pittsburgh:

80 *Id.* at 1312.

81 Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 HARV. L. REV. 255, 305 (1961).

82 *Id.* at 295 n. 124.

83 Sutherland, *Establishment According to Engel*, 76 HARV. L. REV. 25, 35 (1962).

84 *Id.* at 45.

A significant share of existing industry suffers from one or more of the following problems:

- A. Crowded and physically unable to expand or modernize.
- B. Surrounded by an unfavorable community environment and conflicting uses.
- C. Housed in structures which are inefficient or obsolete in relation to modern work flow and other requisites.
- D. Faced with costly access, parking and loading problems.
- E. Unable to buy adjacent properties for expansion at reasonable prices.⁸⁵

That urban universities face similar difficulties was indicated by the testimony of George F. Baughman of New York University at the Senate Banking and Currency Committee hearings in connection with the Housing Act of 1959.⁸⁶ On the same occasion Julian Levi, of the University of Chicago, told the committee:

During the next 10 to 15 years, colleges and universities located in urban centers . . . will be required to nearly double their present facilities in order to fulfill their responsibilities.

Universities, however, do not have the mobility of industry or the residential builder. Most of these colleges and universities are landlocked, having no open campus area available for this required expansion. As a practical matter it is virtually impossible for such institutions to assemble usable construction sites through the acquisition of needed land by negotiation.

In addition, many of these colleges and universities are located in the older areas of our urban centers which have progressively deteriorated so that these great cultural institutions are surrounded by a sea of slums and blight and therefore must attempt to perform their public service in a neighborhood environment wholly incompatible with their purpose and function, and which inevitably curtail the performance of the full range of normal academic activity.⁸⁷

It was largely on these grounds that Levi asked for — and got — his proposed amendment to title I of the Housing Act of 1949. Section 112, he promised, “would merely recognize the value to the community and to the nation of making it possible for colleges and universities to obtain land for the expanded educational plant and facilities required to meet our future educational needs and to provide for more cohesive and healthy college and university areas.” Again, as in the case of industry, technological progress has radically altered space-use requirements for universities. Levi has advised the Boston Redevelopment Authority:

Projected demands upon the universities, colleges, hospitals and medical centers in Boston cannot be appraised solely upon the basis of an increased number of students or patients. Scientific breakthroughs since World War II have created an absolute need for new types of education and medical facilities even apart from

⁸⁵ Subcommittee on Housing of the Senate Committee on Banking and Currency, *Hearings, Urban Renewal in Selected Cities*, 85th Cong., 1st Sess. 572 (1957).

⁸⁶ *3 Hearings on Various Bills to Amend the Housing Act of 1959 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 1st Sess. 517 (1959-60).

⁸⁷ *Id.* at 501-02.

population increases. The nuclear institute, the cold temperature laboratory, sophisticated uses of electronic techniques are only examples of installations and functions now required and not even contemplated a quarter of a century ago.⁸⁸

If anything, the need of urban universities for urban renewal assistance is greater than industry's. A plant can be run from 9 to 5, or in 24-hour shifts, by workers and managers who would not live in or near the plant if they could. But spokesmen for the universities in their fight for section 112 argued persuasively that urban decentralization should not be accompanied by a physical disintegration of the university community:

A university must exist in the kind of neighborhood and community where faculty, with freedom of economic choice to live elsewhere, will, nevertheless, elect to live and raise their children. . . . Many of the proudest universities in our country are today confronted with environments of slums and blight or near slum and blight surrounding them. These conditions drive faculty out of the university communities and turn faculty into commuters. The consequences of this migration are vital to the future of our nation. America cannot survive with punchclock universities, harassed by urban problems.⁸⁹

University of Chicago Chancellor Robert M. Hutchins observes:

Today a university can consider itself fortunate if its members live in the same neighborhood and have frequent social contacts. . . . A university should be an intellectual community in which specialists, discoverers, and experimenters, in addition to their obligation to their specialties, recognize an obligation to talk with and understand one another.⁹⁰

When, in 1961, representatives of urban hospitals asked Congress to extend section 112 to meet their needs as well as those of the universities they used identical logic:

Many urban hospitals are in environments of slum and blight. These conditions affect the ability of hospitals to recruit and keep staff. They have a way of driving off good needed employees. The care of the sick is a full-time, 24-hour-a-day program. Hospital employment does not follow the conventional workday and it is not simply a matter of accommodating to a commuting pattern. Hospital employees must feel that they can reach the hospital in safety, day or night.⁹¹

San Francisco State College was so "harassed" by urban conditions that it was forced to move to the suburbs. The factors that led to its decision to relocate have been described as

the woefully inadequate facilities and the severe space limitations of the former campus, located in downtown San Francisco off upper Market Street. The campus was surrounded by apartment houses

88 LEVI, MUNICIPAL AND INSTITUTIONAL RELATIONS WITHIN BOSTON—THE BENEFITS OF SECTION 112 OF THE FEDERAL ACT OF 1961, 22 (1962).

89 Statement by Julian Levi before the Senate Subcommittee, in 3 *Hearings on Various Bills to Amend the Housing Act of 1959 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 1st Sess. 503-04 (1959-60).

90 Quoted in LEVI, *Expanding the University of Chicago*, CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT 109 (1962).

91 Letter to Joseph S. Clark from Dr. Karl S. Klicka, representing the American Hosp. Ass'n, April 3, 1961, in *Hearings on Housing Legislation of 1961 Before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st Sess. 960 (1961).

and was near the business section of the city. By 1940 the college, with great difficulty, was handling 2500 students on this campus. Ten years later, when the campus was about to start its move to the new site, the post-war flood of college students had complicated the problem of space to an even more serious degree. To meet this crisis the college had rented every available building in the immediate neighborhood. These included an educational annex of a nearby church, the pipe organ and assembly hall of another, the kitchen facilities, auditorium, and offices of a third church that had been condemned for regular purposes but which was being used as a settlement house, similar facilities in a fourth church several blocks away, and limited facilities in still another. The Salvation Army gymnasium was used for physical education classes. Aquatics were taught in the city's Y.M.C.A. pools.⁹²

San Francisco State is mainly supported by public funds. Certain religious organizations also seem to have had a hand in its operations, thus adding yet another dimension to the public-aid-to-sectarian-schools controversy — sectarian aid to public schools.

Total relocation is a drastic alternative from the city's point of view as well as the university's. In the case of San Francisco State this aspect of the problem was regrettably overlooked until it was too late. After the college had tried for more than a year to find accommodations in the few possible sites remaining in the city, including the old county jail site which the city at that time refused to give up, "there was a suddenly awakened desire of San Francisco legislators to keep the college within the city limits."⁹³ Their reasons might have been related to those suggested by the late President Kennedy in his special message on housing and community development of March 9, 1961.⁹⁴ In order to reverse powerful trends that have been "eroding" central cities, he said:

[C]ities must offer better opportunities for those commercial, industrial and residential developments for which their central position is a distinct advantage. They must strengthen their cultural and recreational facilities and thus attract more middle-and-upper income residents. . . . Our urban renewal efforts must be substantially reoriented from slum clearance and slum prevention into positive programs for economic and social regeneration.

For cities like Boston it is an economic necessity:

The colleges, universities, hospitals and medical centers of Boston are basic to the economy of the entire Boston Metropolitan area. Metropolitan Boston institutions provide employment for more than 90,000 persons. This statistic represents over 9 per cent of the total labor force of the metropolitan area. This means that one out of every 11 persons works for an institution, and the estimated payrolls are more than \$250,000,000 per annum. . . .

For the metropolitan area, studies indicate that the institutional payroll is the major source of income for a total of approximately 220,000 persons. . . .

92 See Dumke, Butler & Hall, *Moving San Francisco State College to a New Site*, in CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT 73 (1962).

93 *Id.* at 73. The city jail is now a part of the campus of San Francisco City College.

94 17 CONGRESSIONAL Q. ALMANAC 882 (1961).

To the Boston Metropolitan Area and to the City, then, institutions are big business. In fact, institutional employment is the third largest, outranked only by government and by the retail trades. . . . No single manufacturing industry comes anywhere near the number employed in institutions. . . .

Boston's stake in institutions is high, and every indication is given that institutional employment will grow faster than the local economy as a whole. Additionally, many ancillary businesses depend on the institutional market; as the institutions grow, so must they. . . .

The Boston economy is supported additionally by expenditures of more than 40,000 students for services, for housing, for food, for clothing, and for recreation. . . . [T]he flood of construction will help keep the Boston economy in high gear.

U. S. Government prime contracts for defense and space research . . . totaled \$356.3 million in Massachusetts. The engineering and research activities carried on by institutions in the Boston area are a magnet for millions of dollars of research and development contracts.

The private institutions of higher learning in Massachusetts carry a substantial financial burden which otherwise would be reflected in public expenditures by the Commonwealth.⁹⁵

One obvious objection to the economic argument is the fact that institutions pay no municipal real estate taxes. Levi attempts to meet it with the suggestion that expanding institutions make annual grants to the city, equal to the amount of taxable income taken off the tax roll, for some stated period of time, or that institutions through the development program sponsor and encourage tax-producing investments in their immediate vicinity.⁹⁶

Two years after his housing message President Kennedy dealt indirectly with the urban need for thriving institutions of higher learning. In his January 29, 1963, message to Congress requesting passage of his \$5 billion omnibus education program,⁹⁷ he argued for educational expansion on the grounds that "the opportunity for a college education is severely limited for hundreds of thousands of young people because there is no college in their own community. . . . This absence of college facilities in many communities causes an unfortunate waste of some of our most promising youthful talent." The need is not strictly economic in nature but rather ecological: a community with limited educational resources offers that much less attraction — and satisfaction — to potential inhabitants. City and university are in large measure functionally interdependent. But where Levi stressed the importance of the institution to the city, economist Seymour Harris stresses the importance of the city:

IHL (Institutions of Higher Learning) tend to "pile up" in areas of considerable urban agglomeration. . . . These are areas of particular economic importance through highly developed distributive and service industries and, in many cases, high productive activity. Historically, IHL have always found large markets in these surroundings. This is still true today, and even with the recent growth of

95 LEVI, MUNICIPAL AND INSTITUTIONAL RELATIONS WITHIN BOSTON — THE BENEFITS OF SECTION 112 OF THE FEDERAL ACT OF 1961, Boston Redevelopment Authority 25-29 (1962).

96 *Id.* at 129-30.

97 21 CONGRESSIONAL Q. ALMANAC 975, 977 (1963).

interregional student mobility, the IHL continue to derive benefits from the so-called "tertiary" economic development of very large cities.⁹⁸

Hence, he concludes, "to a considerable degree the attendance at college is determined by the proximity of a college to the potential student. . . . [I]t is important if we are to use our IHL effectively to relate our location to sources of population."⁹⁹

Would a university already established in a central-city location be adequately related to sources of population if it were established, instead, in a suburb? The officers of San Francisco State College may think so, although it took a \$400,000 state appropriation for moving expenses and a grant of 57 acres of land on the shores of Lake Merced, in addition to the difficult conditions in downtown San Francisco already described to force the move.¹⁰⁰ The only reasonable answer to the question seems to be that the question is simply preposterous. A centrally located university needs its locale and its locale needs it. To an urban university "harmonious environment" is precisely the kind of environment cities, through urban renewal and any other means at their disposal, are trying to create. So far as heavy industry is concerned it means almost exactly the opposite. It is, then, no accident that in fact city land is being abandoned by industry and taken up by other expanding land uses, among them institutions of higher learning. Says Harris:

Even a cursory glance through *The College Blue Book* or some similar document will serve to highlight the fact that entry into the field of higher learning is a difficult and expensive feat. The general trend, in line with the practice of the American economy, has been for existing institutions to expand both in terms of creation of new capacity and the addition of new schools and departments.¹⁰¹

Urban universities in this sense are very much tied to a local — as opposed to a regional or national — environment. But it scarcely needs mentioning that education is a concern of the nation as a whole, and that it is but a matter of time before the federal government breaks through most remaining barriers to an extensive federal-aid program. "An educational system on the college level sufficiently financed and equipped to provide every student with adequate physical facilities to meet his instructional, research and residential needs" was thought by President Kennedy to be required by the "national interest."¹⁰² His conviction is reflected in the history of federal activities in education, which consistently "have developed with the increase in the importance of education to the national security and progress."¹⁰³ Beginning with the 79th Congress in 1945 every Congress with the exception of the 82nd and 86th has considered bills providing for extensive federal aid for the operation and main-

98 HARRIS, *HIGHER EDUCATION: RESOURCES AND FINANCE* 616 (1962).

99 *Id.* at 601.

100 DUMKE, BUTLER & HALL, *Moving San Francisco State College to a New Site*, in *CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT* 79-80 (1962).

101 HARRIS, *op. cit. supra* note 98, at 611.

102 17 CONGRESSIONAL Q. ALMANAC 874 (1961).

103 QUATTLEBAUM, *op. cit. supra* note 59, at 361.

tenance of public schools.¹⁰⁴ According to Seymour Harris, a proponent of increased federal aid:

The country is demanding a larger participation by the Federal government in the financing of higher education. Among the reasons is the difficult financial position of state and local governments: they increased their indebtedness by 300 per cent in the ten years ending 1959, or \$3¾ billion a year, and are spending a few billion dollars more each year. Their fear of competitive losses to other states makes them hesitate to raise taxes sufficiently to meet their increased demands. Secondly, the Federal government itself has the most productive forms of revenue. . . . Thirdly, the burden of higher education varies greatly among states. Because some states have per capita income three times as large as the poorest states and because the cost of higher education to states is five times larger (in relation to income) for some of the poorer states than for the richer ones, pressure for Federal equalization increases. Finally, competition with the Russians, and the cold war in general, have quickened interest in Federal leadership.¹⁰⁵

For a more recent exposition of the case for increased federal aid one may refer to President Kennedy's Message on Education of January 29, 1963. His views on the importance to the nation of improved education at all levels are echoed in the statement by Julian Levi, while advocating passage of section 112 and the Housing Act of 1959, that "there ought to be a national policy that when a university needs land for expansion in an otherwise eligible urban renewal situation, that it is just as much in the national interest to let that land go to academic purposes as to put it to housing purposes."¹⁰⁶ George Baughman, of New York University, employed the same line of reasoning: "We are no longer an institution of one area and supported by only one area. We are really institutions at large. For example, my institution, at the present time, has students from every state in the nation. We have students from 90 other nations, 2000 foreign students, and we have had more than half a million students who have passed through our doors at NYU."¹⁰⁷

This insistence that the needs of education transcend all local or sectional limitations is customarily prompted — or accompanied — by statistical calculations of the plight of American education. To begin with, there is the need for facilities to accommodate the rapidly increasing enrollment:

First, buildings wear out and have to be replaced. Assuming a 50-year average life of college buildings and expressing this need for replacement in terms of the number of students accommodated by the facilities needing to be replaced each year, or 2 per cent of the student body in any given year, *instructional* and *general* accommodations should have been completed for 68,046 students (.02 x 3,402,297) in 1958-59 just to "stand still" in facilities. In addition, residential facilities replacements were needed for the 40 per cent of these 68,046 housed on the campus, or 27,218 dormitory student

104 MILLER, *FEDERAL AID FOR EDUCATION: A HISTORY OF PROPOSALS WHICH HAVE RECEIVED CONSIDERATION BY THE CONGRESS OF THE UNITED STATES, (1789-1960)*, (1961).

105 HARRIS, *op. cit. supra* note 98, at 309.

106 Statement before the Senate Subcommittee, in *3 Hearings on Various Bills to Amend the Housing Act of 1959 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 1st Sess. 527 (1959-60).

107 *Ibid.*

stations. At \$2,500 per student for instructional and general facilities and \$4,700 per student for residential accommodations, the total amount of money needed for replacements for that year was \$298,040,000. The increase in enrollment between 1958 and 1959, fall terms, was 143,791, for which, if enrollments had been requiring 100 per cent of the capacity of facilities in 1958, an expenditure of \$629,583,000 would have been required in order to provide instructional, general, and residential accommodations. Thus the total requirement for new buildings and replacement would have amounted to \$927,623,000. Actually the expenditure for that year for new construction and rehabilitation was approximately \$719 million. Presumably not all institutions were full to capacity either in 1958 or 1959, but it is a safe assumption that, based upon this lag of over \$208 million, enrollments are overtaking the practical capacity of the facilities.¹⁰⁸

Specialists in HEW's Division of Higher Education estimate: "Our institutions of higher education in their physical plant development for the 1960's will need, at a minimum, \$18.9 billion. They are now investing approximately \$1 billion a year for these purposes and hope to double it by 1970."¹⁰⁹ College enrollments were expected by the Senate Banking and Currency Committee, at the time it reported out the Housing Act of 1961,¹¹⁰ to increase from 3.6 million in 1960 to over 6 million in 1970. In the words of President Kennedy:

Aid to college students will be to no avail if there are insufficient college classrooms. The long-predicted crisis in higher education facilities is now at hand. For the next 15 years, even without additional student aid, enrollment increases in colleges will average 340,000 each year. If we are to accommodate the projected enrollment of more than 7 million college students by 1970 — a doubling during the decade — \$23 billion of new facilities will be needed, more than 3 times the quantity built during the preceding decade. This means that, unless we are to deny higher education opportunities to our youth, American colleges and universities must expand their academic facilities at a rate much faster than their present resources will permit.¹¹¹

Data gathered by Professor Harris indicate that the situation in Pennsylvania, a rich state by most comparisons, is exceptionally critical. About 31 percent of the total college-age population (18-21) in Pennsylvania in 1957 were enrolled in institutions of higher learning, while in California the corresponding figure was about 50 percent.¹¹² The comparison between the two states takes on added significance when it is considered that out of the total enrollment in all institutions of higher learning in Pennsylvania only 21.9 percent were enrolled during 1957 in public IHL's, while public IHL's in California accounted for 78.6 percent of the total enrollment.¹¹³ Pennsylvania's Senator Joseph S. Clark points out that the State has 109 IHL's, including

108 *A Perspective of Campus Facilities Planning*, in CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT 8 (1962).

109 Hollis & Cornett, *Foreword* to CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT at iii (1962).

110 S. REP. NO. 281, 87th Cong., 1st Sess. 1957 (1961).

111 21 CONGRESSIONAL Q. ALMANAC 975, 977 (1963).

112 HARRIS, *op. cit. supra* note 98, at 338-39.

113 *Ibid.*

no public community colleges, no public liberal arts colleges, only one state university—Penn State—a land grant college receiving federal and state aid which also goes to Temple, Pittsburgh and Pennsylvania, and 14 teachers' colleges entirely state-aided. "Between these extremes are 91 private institutions that defy classification. Some are rich; most are poor. Some are widely renowned; others are so small that they cannot support a strong faculty or a broad curriculum. They are Baptist, Methodist, Lutheran, Catholic, Quaker, and nonsectarian." It is his belief that "if Pennsylvania does not substantially increase its state aid to higher education and get substantial additional help from the Federal Government, we are headed straight for trouble."¹¹⁴

The situation in Pennsylvania appears to be unusually critical not only because facilities are lacking but because students are lacking. The Joint State Government Commission, Committee on Post-High School Education, reported in 1948 that:

It appears all too clear that in view of the increasing demands which modern life makes upon trained intelligence, technical skill, and social understanding far too few of the youth of Pennsylvania are acquiring any part of a college education. This conclusion seems all the more true when the record of educational attainment of the youth of Pennsylvania at the college level is compared with the record of youth in other states. When its educational attainment is measured by the percentage of its population 25 to 29 years of age in 1940 who had completed two or more years of college or four or more years of college, Pennsylvania ranks extremely low in comparison with other states. In the percentage of its total population in the age group that had attended college two or more years Pennsylvania ranked eleventh from the bottom.

In 1940, Pennsylvania ranked lowest among the states for which data are available in the percentage of its white urban population 25 to 29 years of age that had attained two or more years of college education.¹¹⁵

The Commonwealth's efforts to alleviate the crisis since then have met with little success.¹¹⁶ But its methods are unique and perhaps a bit ahead of their time. Three private urban universities receive direct aid through state appropriations—the Universities of Pittsburgh, Pennsylvania and Temple. The Joint State Government Commission reported in 1959:

It would appear that the policy objectives which led to the practice of making legislative appropriations to private institutions in Pennsylvania represent an alternative to the so-called "open-door" policy that led to the establishment of state-owned and state-operated institutions in other states. Again, it would appear that the rationale of the policy under which legislative appropriations are made to private institutions of higher learning in Pennsylvania is to make it possible for these institutions to charge lower fees or lower tuition, with the result that, through lowering the price,

¹¹⁴ Clark, *Higher Education Is a National Problem*, Saturday Review, Feb. 18, 1961, p. 54, 72; reprinted in *Federal Aid to Education*, 33 THE REFERENCE SHELF 147, 150 (1961).

¹¹⁵ Pa. Joint State Government Commission, *Findings and Recommendations of the Committee on Post-High School Education, A Report to the Governor and the General Assembly* (1948).

¹¹⁶ HARRIS, *op. cit. supra* note 98, at 404-05.

higher education will be brought within the reach of more students. . . .

The extent to which students have been able to take advantage of the lowering of tuition cost depends, in large part, upon the distances between their homes and the institutions under review. The evidence suggests that the closer to a state-aided institution a student's residence, the greater the chances that he will be able to take advantage of these state subsidies.¹¹⁷

Direct aid through state appropriations to private universities which happen, not by accident, to be located in urban centers, is justified on two grounds: Pennsylvania has only one state-owned, state-operated university, and urban universities are best situated to make use of state aid. Millard Gladfelter, a participant in a seminar on the economics of higher education, sponsored by the Ford Foundation and conducted at Harvard University in 1959, writes, in reference to state aid for private institutions in Pennsylvania:

To establish residence facilities at distant points for the large college-going population from urban areas would be very costly, but, by maintaining the urban university in the larger cities and providing two-year programs for students in the less populous areas, residence cost for the individual would be reduced, and the likelihood of attendance by many able young men and women who do not now go on to college would be increased. . . .

It would appear . . . that the plan which has been in effect in Pennsylvania for supporting private universities which are dedicated to meet the needs of the people of the Commonwealth in undergraduate, graduate, and project programs is in growing favor.¹¹⁸

He was seconded by the other members of the seminar, who emphasized in their discussion summary that Pittsburgh, Pennsylvania and Temple "are all in concentrated areas of population, where the demand for higher education can be expected to grow most rapidly," and therefore "can be regarded as especially important appendages to the state system for higher education."¹¹⁹ All participants in the seminar were reportedly "impressed by the remarkable success of state aid to private colleges in Pennsylvania."¹²⁰

The question naturally arises as to why Duquesne University may not be brought within the same classification as Pittsburgh, Pennsylvania and Temple. Duquesne is an urban, private institution of higher learning, with a total enrollment of nearly 6,000, located in a state that has an established policy of providing direct state aid to such institutions. It clearly serves a purpose recognized to be in the national interest.

But with the assertion of the "national interest," the discussion comes full tilt to the point of departure—the other side of the coin from the assertion of Duquesne's church affiliation. Duquesne's incorporation in 1882 under the name of "The Pittsburgh Catholic College of the Holy Ghost" had previously placed the burden of proof on those who would support its claim to public assistance.

¹¹⁷ Pa. Joint State Government Commission, *Pennsylvania High School Seniors, 1958; Report to the Governor* 24-25 (1959).

¹¹⁸ Gladfelter, *State Aid for Private Institutions in Pennsylvania*, in *HIGHER EDUCATION IN THE UNITED STATES: THE ECONOMIC PROBLEMS* 91-92 (Harris ed. 1960).

¹¹⁹ *Id.* at 79.

¹²⁰ *Ibid.*

The enactment of section 112 of the Housing Act, however, works toward a shift in the other direction. Which side is to prevail presents a question of fact — which in all probability can be satisfactorily answered only if Duquesne either turns itself into a theological seminary or severs its ties with the Church. Since neither is an eventuality the Redevelopment Authority is faced with what Ratcliff has termed “political and public relations problems.”¹²¹

V. Political and Public Relations Problems

Public relations problems arising from the Bluff Street project should be sizeable, if not critical, judging from its scope and the number of people affected. In terms of area and investment, moreover, Duquesne plays a highly conspicuous part. The exact size of the Bluff Street renewal area is 42.9 acres. Of these, 26.1 acres are to be acquired for clearance, of which 21.23 acres are to be sold to Duquesne. Duquesne occupies 10 structures out of a total of 356 in the project area; a total of 299 structures will be removed and 444 families must be relocated. Duquesne’s estimated investment will come to approximately \$35 million.¹²² The Bluff Street Proposal submitted by the Redevelopment Authority estimates that the gross cost will be \$10,564,524.

The Authority would expect to regain from the sale of properties to redevelopers \$1,303,100, leaving a net cost of \$9,261,424. This net cost of \$9,261,424 will be shared one-third by the City and two-thirds by the Federal Government.

The City’s share will be made up of the following: \$270,291 received as a non-cash grant for donation to the Authority by the City and other taxing bodies of publicly-owned properties in the Project Area; \$519,522 received as a non-cash grant from Duquesne University as a result of the University’s purchase and demolition of creditable properties in the area; tax credits of \$83,900; and \$2,148,629 to be received as direct cash grants from the City of Pittsburgh. . . .¹²³

URA Chairman David L. Lawrence, former Governor of Pennsylvania, summed up the proposal:

[I]f important cities such as Pittsburgh are to continue as the economic, social and institutional centers of our nation, the provision of adequate educational plants are a vital necessity in order to assure that the young people of our community will not be denied their right to receive the benefits of higher education. To this end, the Bluff Citizens Renewal Council joins with the Authority in attempting to achieve this objective.¹²⁴

Duquesne University promises in its master plan that the project “will rid Pittsburgh of a major blot on the renaissance of its downtown area. The added campus acreage will rescue Duquesne from makeshift quarters and pinched facilities constituting a space need so desperate that University administrators

¹²¹ UNIVERSITY OF CALIFORNIA, INSTITUTE OF BUSINESS AND ECONOMIC RESEARCH, PRIVATE INVESTMENT IN URBAN REDEVELOPMENT: A STUDY OF THE DISPOSAL PHASE IN URBAN RENEWAL 9 (1961).

¹²² Urban Redevelopment Authority of Pittsburgh, Fact Sheet, Bluff Street Renewal Project, June 1962 (mimeo).

¹²³ Urban Redevelopment Authority of Pittsburgh, Bluff Street Proposal 6-7, June 1962.

¹²⁴ *Id.* at 8.

had considered abandoning an \$11,000,000 plant investment to move Duquesne to the suburbs.¹²⁵ The plan estimates that currently 87 percent of Duquesne's students come from the Pittsburgh area.

A great many people and presumably the city itself will benefit from Duquesne's expansion. The causes and effects of its expansion fit the pattern developed in the preceding discussion. Aside from the church-state issue most, if not all, of the main issues have already been resolved. But that remaining issue presents a rather large target, and there are those who would be more than willing to take a shot at it. There are, of course, organizations such as Protestants and Other Americans United for Separation of Church and State. Having suffered a defeat under similar circumstances in the *Kintzele* case, it states its current position to be that "[c]hurches and their institutions should certainly not be barred from participation in urban renewal programs. . . . It is the terms upon which they are to participate that constitute the problem."¹²⁶ What the POAU means by "terms" is uncertain, because it is apt to equate unfair terms with "Roman Catholic priests" "plunging with enthusiasm" into urban renewal programs, "grabbing every acre they could get."¹²⁷ Implicit in such an approach is the conviction that terms do not constitute the problem at all.

Then if the URA adheres to the usual legal standards of propriety and fairness, what has it to fear? For one thing, there is the relocation of 444 families and of the commercial and industrial establishments. According to James R. Hornicka and Maurice A. Shapiro, of the Association of Community Councils of Allegheny County:

The effect of the announcement of a redevelopment project on the people who have lived or been in business for many years in the blighted area is often chaotic. From our experience in Pittsburgh, the people are greatly alarmed and frightened. . . .

As a result of not knowing what is planned and what will happen, there develops an anxiety and tension in the area. . . . Worst of all, the people of the project area develop an attitude which is in opposition to the redevelopment authority. They will do everything possible to frustrate the authority, because they feel they've been wronged. While the authority may override this mass antagonism, it has everlasting effect in that future projects are jeopardized. Many areas ripe for redevelopment will tend to fight it at every stage. The ultimate effect, though possibly not defeating a given project, is to delay a project or to generate a sort of massive resistance to the entire program by the people.¹²⁸

Citizen antagonism to a project reputedly had something to do with the downfall of the Cambridge, Massachusetts, Redevelopment Authority in 1963. A Harvard *Crimson* editorial claimed that
the CRA made a naive mistake when in its renewal plans it included

¹²⁵ The Duquesne Design: University Master Plan. (Unpublished copy in URA offices, 200 Ross St., Pittsburgh, Pa.)

¹²⁶ Lowell & Southgate, Position Paper on Church-State Relations Prepared for Consideration by Protestant Groups Studying Problems in this Field 27, Dec. 1961 (mimeo).

¹²⁷ POAU, Urban Takeover: How Taxpayers' Money Is Being Used to Give the Heartland of American Cities to the Roman Catholic Church 6 (1961).

¹²⁸ Subcommittee on Housing of the Senate Committee on Banking and Currency, *Hearings, Urban Renewal in Selected Cities*, 85th Cong., 1st Sess. 698-99 (1957).

refurbishments of the Irish Catholic Church in the area. Although Donnelly Field is almost all Catholic, the CRA did not know (perhaps because it did not take the trouble to find out) that the community is organized around two ethnic groups rather than a single religious one. The Donnelly Field Lithuanians accused the CRA of favoritism when nothing was planned for the Lithuanian Catholic Church. The plans were subsequently changed, but the insensitivity had permanently alienated most of the Lithuanians.¹²⁹

A letter to the editor in a subsequent edition pointed out that other factors were involved, but agreed that "community hostility is a part of the explanation."¹³⁰

Similar difficulties arose in Pittsburgh, though without such disastrous consequences, when the URA elected to demolish one church in the Lower Hill project and leave another standing. In a suit brought by the congregation of St. Peter's Roman Catholic Parish against the URA and the Bishop of the Diocese who purportedly sold the church, the State Supreme Court, through Justice Bok, held for the Authority on the ground that the parishioners lacked standing to sue since title was in the Bishop. Further, certifications of blighted areas and renewal plans are not subject to judicial review where bad faith on the part of the URA, arbitrary action or failure to follow a statutory requirement cannot be shown.¹³¹ In a concurring opinion by Justice Musmanno, the futility of litigation by aggrieved citizens becomes apparent:

The clearing is part of the vast program of Renaissance and rebuilding in Pittsburgh. This program, insofar as it pertains to the Hill Area, has now reached an advanced stage of fulfillment. Any stoppage or major alteration in it would cause confusion and chaos as well as visit irreparable damage on others whose rights have since intervened.¹³²

Leo Pfeffer, in his treatise, *Church, State and Freedom*, finds broadly three reasons for which legal challenges to grants of public funds or property to religious groups generally may be expected to fail: reluctance on the part of would-be litigants to sue, for want of funds and perhaps courage to endure "the communal displeasure frequently incurred by litigants seeking to bar government aid to religion"; insufficient standing to sue; and "judicial reluctance to decide against state aid to religion." "Even if a judge does not himself believe," says Pfeffer, "that a denial of state aid to religion manifests hostility to religion he can hardly fail to be aware that many people will so construe it."¹³³ So persuasive is Pfeffer in his exposition of this point that the conclusion seems unavoidable that between the impotence of suitors and the timidity of courts in church-state cases the URA has nothing at all to fear — except public opinion. This amounts to nothing more than a moral injunction that the Authority refrain from furthering the cause of religion and from antagonizing people.

Under a similar mandate the city fathers of Fayetteville, North Carolina,

129 Uffusa, *Urban Renewal*, The Harvard Crimson (Cambridge), March 6, 1963, p. 3.

130 Letter to The Harvard Crimson, March 13, 1963, p. 3.

131 St. Peter's Roman Catholic Parish v. Urban Redevelopment Authority, 394 Pa. 194, 146 A.2d 724 (1958).

132 *Id.* at 729 (concurring opinion).

133 PFEFFER, *CHURCH, STATE AND FREEDOM* 163-73 (1953).

formally invited the North Carolina Conference of the Methodist Church in 1956 to establish an institution of higher learning in their community.

The Fayetteville Steering Committee proposed to furnish to the church a satisfactory site, water and sewer facilities from the utility lines of the city of Fayetteville, police and fire protection, a capital contribution of \$2 million for buildings, and a sustaining fund contribution of \$50,000 annually in perpetuity. The Fayetteville Steering Committee in a pledge campaign had secured pledges amounting to \$2 million for capital funds and had secured pledges underwriting the annual sustaining fund. . . .

The legal name, Methodist College, was adopted and a charter issued by the State of North Carolina in this name on November 1, 1956. This charter provides for a board of trustees composed of 24 members; 6 of these members must be clerical members of the North Carolina Conference of the Methodist Church. . . .

Requirements for degrees are based upon a broad course of study in the several areas in three related areas: teacher education, business education and training of religious workers.¹³⁴

The federal government, meanwhile, is cautioned in the HEW brief discussed in Chapter III to consider only legislative proposals "honestly designed to serve an otherwise legitimate purpose," though they may incidentally benefit sectarian institutions, and proposals which are not a "mere subterfuge for religious support." The Department suggests four criteria for decisions: 1) How closely the benefit is related to the religious aspects of the institutions aided; 2) Of what economic significance the benefit would be; 3) To what extent the selection of institutions receiving the benefits is determined by the government; and 4) Whether alternate means are available to accomplish the objective of the legislation without resulting in benefits to religious groups and whether these benefits can be avoided or minimized without depriving a specific group of equal treatment under the law.¹³⁵ Undoubtedly the deliberations of the nation's legislature are subject to more stringent public scrutiny than the activities of the Fayetteville steering committee, yet the inference must be drawn that between official pronouncements and the everyday satisfaction of community needs there is an enormous gap.

Chapter III ended with the question whether the Supreme Court had adopted a rule of standing sufficiently liberal to allow litigants to raise the more knotty issues arising under the establishment clause of the first amendment. Unless the courts define what is meant by "separation of church and state" there can be no answer. Similarly, a question of fact terminates this discussion: How sectarian is the sectarian university? Unless the URA knows what manner of evil it is alleged to be perpetuating it will have neither grounds for discretion nor the will to exercise it.

According to the Department of Health, Education and Welfare and the summary report of the seminar on the economics of higher education, the churches do not now play the important role in guiding higher education which

134 Weaver, *Planning and Building Methodist College*, in CASEBOOK ON CAMPUS PLANNING AND INSTITUTIONAL DEVELOPMENT 63-65 (1962).

135 17 CONGRESSIONAL Q. ALMANAC 229 (1961).

they did in the last century.¹³⁶ Nevertheless, Catholic universities, along with urban universities in general, have grown disproportionately in comparison with other institutions of higher learning.¹³⁷ Has the cause of Roman Catholicism grown with them? The 1962 *Official Guide to Catholic Educational Institutions* explains to prospective students "why a Catholic Education?":

All collegiate institutions are concerned with the pursuit of truth and intellectual excellence. This is their reason for being. To help students attain this end, they provide faculty members who possess highly developed minds, specialized knowledge and creativity. They provide libraries, laboratories, and a host of student services. Everything is aimed at stimulating student learning.

But the Catholic College offers this and more. There is a "plus" to Catholic Education. Catholic Colleges have a philosophy which recognizes the nature of God, the nature of man and his dependence on God, the nature of truth—that there is objective truth and man can attain it, and the various agencies which play a part in education.

The first "plus" of Catholic Education is that it can pursue total truth—theological and philosophical as well as scientific, humanistic and social. No part of knowledge—no segment of reality is eliminated from the Catholic College. The study of God and his revelation, instead of being ignored or deliberately omitted, is central in the program of study. Morality based on religion is an integral part of every program. The Catholic Colleges are dedicated to intellectual *and* moral excellence.

A second individuating characteristic of the Catholic College is that through its curricula properly integrated it attempts to give a reasoned Catholic outlook on life and on the world. . . .

Thirdly, the Catholic college provides an environment conducive to the continued growth and flowering of Christian virtues and Catholic practices which were planted by the home and nurtured by the elementary and secondary schools. Pastoral care through provision of mass and devotions, availability of the sacraments, and spiritual counseling are found in all Catholic Colleges. In addition there is the atmosphere of Catholicity which is difficult to describe. It is not pietism nor extrinsic devotionism. It is an awareness of the responsibilities and the opportunities of Catholic living. . . .

A final "plus" of Catholic Education and closely related to the last is the positive attitude toward God. . . . In the Catholic Colleges there is an open acceptance of God and of the teachings of the Church.¹³⁸

If the prospective student had by any chance consulted the 1962 *Official Guide*, however, it might well have turned out to be his first and last contact with the "plus" in Catholic education. It has been claimed that:

The Catholic college, for all its noble aims, becomes merely a place where students take extra courses in religion (usually on a high school level) because they are required. In short, the Catholic college apes the secular one and then, to justify the appellation

136 HIGHER EDUCATION IN THE UNITED STATES: THE ECONOMIC PROBLEMS 78 (Harris ed. 1960).

137 HARRIS, *op. cit. supra* note 98, at 17.

138 1962 OFFICIAL GUIDE TO CATHOLIC EDUCATIONAL, INSTITUTIONAL AND RELIGIOUS COMMUNITIES IN THE UNITED STATES 30-31 (4th Annual ed. 1962).

"Christian," it *adds* courses in religion to the curriculum. There is no depth to the relationship or integration of course material and hence, as an imitation, the school is only second rate because it cannot match the secular college in resources (scholars, teachers, libraries, laboratories, etc.). . . .

It would appear . . . that the spiritual deficiency of the Catholic school is directly traceable to the lack of a real Christian integration of subject matter.¹³⁹

In reply, it has been suggested that:

What is needed . . . is a more thorough-going revision of our curricula so as to make them completely—and not only partially—Catholic. . . .

We are to be the "salt of the earth," always mindful of the curse pronounced upon the salt that has lost its savor. We are a *chosen race*, a race more thoroughly set apart and more absolutely destined for great things than even that of the Jews; indeed, as the Prophets would say, we are a "remnant" of that very Jewish race and, hence, more select. Forsooth, we have all been set apart, commissioned, and sent out "as an army in battle array" to win the world for Christ.¹⁴⁰

The same writer added, however, that "in America Catholics have been too greatly assimilated instead of disturbing others. . . . It is notorious that Catholics do not read the Bible."¹⁴¹ He, in turn, was dismissed by yet another writer as one who would "turn our colleges into factories for saints." This author felt that "we offer our programs simply in order to give a liberal education in terms of Catholic thought and ideals rather than in terms of secularistic thought and ideals."¹⁴² Whether the programs are so received seems to be open to question. The answer here as in so many other stages of the discussion depends on the correlation, if any, between fact and assertion.

139 Blaney, "How 'Christian' Is the Catholic College?" *Catholic World*, Jan. 1957, p. 279.

140 Schneider, "How Christian Can We Make Catholic Colleges?" *Catholic World*, March 1957, pp. 406-08.

141 *Ibid.*

142 Roloff, "Are Our Colleges So Bad?" *Catholic World*, June 1957, pp. 206-08.