

## NOT THE BISHOPS' FINEST HOUR: ECONOMIC JUSTICE WITH CERBERUS UNCHAINED?

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### I. THEIR FINER HOUR—1986

Ah, one can be forgiven, in part, for yearning for the good old days! Pope John Paul II made Catholic social teaching on the rights of workers a central theme of his pontificate, with the magnificent labor encyclicals *Laborem Exercens*, *Sollicitudo Rei Socialis*, and *Centesimus Annus*. More than any other Pope, John Paul II made so very timely the timeless message of the Church's rich social teaching on the rights of workers.<sup>1</sup>

With the dramatic inspiration of Pope John Paul II's *Laborem Exercens* in 1981, coupled with his unequivocal support for the Solidarity movement in his native Poland, there is no doubt that Pope John Paul II was critically important in catalyzing the convergence of factors leading shortly thereafter to the collapse of the Soviet Union.<sup>2</sup>

In 1986, at the rough midpoint in this John Paul II labor encyclical chronology, the United States bishops eloquently rose to the occasion with their courageous pastoral letter, *Economic Justice for All* ("*Economic Justice*").<sup>3</sup> Regardless of where one may stand on the political spectrum, even the critics must concede that *Economic Justice* reflects a certain authenticity and

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<sup>1</sup> I have written extensively on Catholic Social Teaching on workers' rights including, most recently, *Some Reflections on Labor and Employment Ramifications of Diocesan Bankruptcy Filings*, 47 J. CATH. LEGAL STUD. 97 (2008).

<sup>2</sup> See GEORGE WEIGEL, WITNESS TO HOPE: THE BIOGRAPHY OF POPE JOHN PAUL II 421, 586–88, 609–10 (1999).

<sup>3</sup> UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Economic Justice for All* (1986) [hereinafter *Economic Justice for All*].

a genuine pastoral voice. Although written by committee, *Economic Justice* does not seem ensnared in the infinite parsing and exquisite calibration that usually afflicts such letters. The bishops seem to speak genuinely from the heart—*cor ad cor loquitur*—although, bishops being bishops, they certainly did not rashly cast political prudence indiscriminately and completely to the winds. Rather, *Economic Justice* reflects an openness to the Pentecostal winds of the Holy Spirit.<sup>4</sup>

Coming in the middle of the second term of the Reagan administration, and amid the administration's "return to work or you're fired" policy developed during the PATCO strike, *Economic Justice* was an unequivocal and express challenge to the pernicious ramifications of the anti-labor, neo-liberal economic policies of the Reagan regime. "No one may deny the right to organize without attacking human dignity itself. Therefore, we firmly oppose organized efforts, such as those regrettably now seen in this country, to break existing unions and prevent workers from organizing."<sup>5</sup>

## II. CERBERUS, UNCHAINED

As you have probably guessed by now, I am coming at, and critiquing, *Forming Consciences for Faithful Citizenship* ("*Forming Consciences*")<sup>6</sup> from my perspective as a Catholic labor law professor. Issued near the end of the radically anti-labor Bush 43 regime, *Forming Consciences*' language regarding the "Dignity of Work and the Rights of Workers" not only says little new, it fails utterly to articulate any challenge to the moral bankruptcy of private sector predators' and governmental elites' transparent disdain for workers' rights.<sup>7</sup> *Forming Consciences*, regrettably, does not squarely and centrally situate workers' rights as part of the foundationally just political structure. While the bishops certainly do not trivialize workers' rights issues, the language of *Forming Consciences* seems tired. Most remarkably, *Forming Consciences* does not convincingly build upon the much

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<sup>4</sup> See generally *id.*

<sup>5</sup> *Id.* at 23.

<sup>6</sup> UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility from the Catholic Bishops of the United States* (2007) [hereinafter *Forming Consciences*], available at <http://www.usccb.org/faithfulcitizenship/FCStatement.pdf>.

<sup>7</sup> See *id.* ¶ 52.

stronger and more impressive *Economic Justice*, but rather squanders the momentum of *Economic Justice*'s courageous vision.

Meanwhile, Cerberus, unchained and unchallenged, pillages the ruins of the economic landscape. With exquisite irony, the secretive private equity firm that bought Chrysler last year, chaired by a former Secretary of the Treasury of the current Bush administration, proudly flaunts Cerberus—the three-headed monstrous dog of Greek mythology that fiercely guards the gates of Hades—as its corporate name.<sup>8</sup> With Cerberus loose, unchained, on the prowl and off the proverbial porch, the direct challenges of *Economic Justice* are all the more imperative, and the bishops' relative quiescence in *Forming Consciences* is all the more problematic.

### III. MISSED OPPORTUNITIES

What would Pope John Paul II have thought about *Forming Consciences*' passing language about workers' rights as part of the political equation?<sup>9</sup> For starters, he would be nonplussed as to whether the bishops continued to take to heart the wisdom of his labor encyclicals. And, whatever happened to *Economic Justice*?

*Economic Justice* expressly situated *Laborem Exercens*' insights at the core of Catholic social teaching, summarizing:

The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions. This is a specific application of the more general right to associate. In the words of Pope John Paul II, "The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrial societies." Unions may also legitimately resort to strikes where this is the only available means to the justice owed to workers. No one may deny the right to organize without attacking human dignity itself. Therefore, we firmly oppose organized efforts, such as those regrettably now seen in this country, to break existing unions and prevent workers from organizing.<sup>10</sup>

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<sup>8</sup> See Andrew Ross Sorkin, *A Savior for Chrysler? Read On*, N.Y. TIMES, Feb. 19, 2008, at C1.

<sup>9</sup> See *Forming Consciences*, *supra* note 6, ¶ 52.

<sup>10</sup> *Economic Justice for All*, *supra* note 3, at 23 (quoting JOHN PAUL II,

*Forming Consciences* is quite bland by comparison and says nothing referential to the great labor encyclicals. Instead, *Forming Consciences* summarizes, in less than inspirational terms, familiar axioms of Catholic social teaching, but without advancing the message or, equally important, challenging the pernicious dominant mores of the secular, materialist culture. *Forming Consciences* summarizes:

The economy must serve people, not the other way around. Work is more than a way to make a living; it is a form of continuing participation in God's creation. Employers contribute to the common good through the services or products they provide and by creating jobs that uphold the dignity and rights of workers—to productive work, to decent and just wages, to adequate benefits and security in their old age, to the choice of whether to organize and join unions, to the opportunity for legal status for immigrant workers, to private property, and to economic initiative. Workers also have responsibilities—to provide a fair day's work for a fair day's pay, to treat employers and co-workers with respect, and to carry out their work in ways that contribute to the common good. Workers, employers, and unions should not only advance their own interests, but also work together to advance economic justice and the well-being of all.<sup>11</sup>

Compare the courageous and inspirational language of *Economic Justice*, expressly grounded on Pope John Paul II's labor encyclicals, with the passing and largely insipid language of *Forming Consciences*. In bold language, *Economic Justice* strongly advocates the three moral concerns of work, stating that work is intrinsic to society, as it provides a capacity for the self-expression and self-realization of workers, an avenue to fulfill workers' material needs, and a route for workers to contribute to the common good.<sup>12</sup> Now, the bishops simply enjoin workers to behave, especially when they receive just wages and adequate employment and are afforded the choice of whether to unionize.<sup>13</sup> At the same time, *Forming Consciences* is glaringly silent, and manifestly fails to challenge the unbridled and unprecedented corporate greed and exorbitant executive compensation in our age of pathologically gross and shameless materialism. *Forming*

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ENCYCLICAL LETTER *LABOREM EXERCENS* ¶ 20 (1981).

<sup>11</sup> *Forming Consciences*, *supra* note 6, ¶ 52.

<sup>12</sup> See *Economic Justice for All*, *supra* note 3, at 22.

<sup>13</sup> See *Forming Consciences*, *supra* note 6, ¶ 52.

*Consciences* could have said much; sadly, it says relatively little, compared to *Economic Justice*, about the imperative of the centrality of dignified work in the human condition. Part II of *Forming Consciences* concludes its regrettably brief summary of the “major issue” of Social Justice with a rather naïve and threadbare participatory, cooperative theme in this age of Cerberus unchained. Catholic social teaching “affirms economic freedom, initiative, and the right to private property. Workers, owners, employers, and unions should work together to create decent jobs, build a more just economy, and advance the common good.”<sup>14</sup>

And yet, there would have been less written, and even less to be left unsaid, if most of the bishops could have somehow vetoed Bishops Sheridan, Burke, Chaput, et al. In *Forming Consciences*, the supermajority of the bishops fastidiously walk in lockstep squarely down the middle of the road, forgetting, apparently, that the middle of the road can often be inconveniently littered with dead armadillos, yellow lines, and, as Jesus says of the lukewarm middle, vomit from God’s mouth.<sup>15</sup> To be sure, the middle of the road has its devotees, themselves just a bit to the left of the middle of the road, gingerly stepping around the occasional wounded, if not quite dead, armadillo and pool of vomit and otherwise towing to the yellow lines. R. Scott Appleby, a professor of history and a director of the Kroc Institute for International Peace Studies at the University of Notre Dame, is a prominent Catholic intellectual who, from his centrist elitist perch, synthesizes the 2004 scenario, describing the surreal parallel universe inhabited by the supermajority of bishops:

Nor were the [Democratic] party elites terribly distraught when their 2004 presidential nominee, John Kerry, a serious Catholic who mumbled and stumbled around that potentially appealing fact early in the campaign, landed in hot water with a handful of ultra-aggressive Catholic bishops. Although this minority’s heavy-handed threats to deny Communion to a pro-choice Catholic candidate were met with quiet disdain—episcopal omerta—by a majority of their fellow bishops, who hate abortion but resist politicizing the Eucharist, the Kerry campaign mounted no effective response.<sup>16</sup>

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<sup>14</sup> *Id.* ¶ 76.

<sup>15</sup> See *Revelation* 3:16 (New American).

<sup>16</sup> R. Scott Appleby, *Left Wing and a Prayer*, N.Y. TIMES, Feb. 10, 2008, at BR16

Appleby's vertigo-inducing characterizations bounce wildly between the theologically hallucinogenic and, well, the truth. John Kerry, a "serious" Catholic? Mumbling and stumbling, no doubt; consider Kerry and Obama, for example, on the same stage. Bishops Sheridan, et al., "ultra aggressive" and "heavy handed"—well, compared to the silent majority of their brother bishops, and to whom else? "Pro-choice Catholic" (reader: fill in the name of any of a long perverse litany here)—an exquisitely painful oxymoron. But, amid the adjectival debris, Appleby turns a few apt phrases—Bishops Sheridan, et al. were certainly met with "quiet disdain, an episcopal omerta" from the same who now present us with the pragmatic political minuet of *Forming Consciences*.

Understandably, *Forming Consciences* does not inspire deep confidence. The bishops seem to have traded the authenticity of *Economic Justice* for a measured middle-of-the-road pragmatism. With most of the bishops silent in 2004, how genuine and deep is their voice in *Forming Consciences*? *Economic Justice* was congruent and harmonious with the great labor encyclicals of Pope John Paul II. Perhaps our bishops should concentrate their next statements on seeking similar congruence with the first two stunningly rich encyclicals of Pope Benedict XVI. *God is Love; Charity and Hope*; or, political pragmatism carefully measured after the bishops' glaringly loud silence in 2004? No contest.<sup>17</sup>

#### IV. HOLY COMMUNION—2004 REVISITED

With the collapse of the presidential ambitions of Rudy Giuliani in the 2008 Republican primary season, it is now unlikely that there will be a Catholic among the presidential and vice presidential candidates for the Democrats and Republicans in 2008. The bishops' enormous collective sigh of relief is *res ipsa*, since they will not be faced with making the decision to deny the Eucharist—the real Body and Blood of Jesus Christ under the appearance of bread and wine—to abortion-rights champions aspiring to the most important secular office on this earth. The 2004 John Kerry challenge is unlikely to recur quite

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(reviewing AMY SULLIVAN, *THE PARTY FAITHFUL: HOW AND WHY DEMOCRATS ARE CLOSING THE GOD GAP* (2008) and E.J. DIONNE, JR., *SOULED OUT: RECLAIMING FAITH AND POLITICS AFTER THE RELIGIOUS RIGHT* (2008)).

<sup>17</sup> See *id.*

so directly and prominently in 2008. For the moment, the heat of the presidential race is elsewhere than on the bishops.

Of course, in 2004, a handful of courageous bishops did the essential work of a bishop qua bishop.<sup>18</sup> To the obvious chagrin of their many brother bishops who remained shamefully silent, Archbishops Chaput of Denver and Burke of St. Louis, and Bishop Sheridan of Colorado Springs, unequivocally and eloquently emphasized that Catholic moral teaching requires anyone who has committed mortal sin to refrain from reception of the Eucharist until receiving the sacrament of Reconciliation. This obviously applies to abortion-rights politicians, and to those who, also championing abortion, would deliberately vote for them for their pro-abortion agenda.

Bishop Michael J. Sheridan of the Diocese of Colorado Springs put it perhaps the most directly in his pastoral letter of May 1, 2004, *On the Duties of Catholic Politicians and Voters*:

There must be no confusion in these matters. Any Catholic politicians who advocate for abortion, for illicit stem cell research or for any form of euthanasia *ipso facto* place themselves outside full communion with the Church and so jeopardize their salvation. Any Catholics who vote for candidates who stand for abortion, illicit stem cell research or euthanasia suffer the same fateful consequences. It is for this reason that these Catholics, whether candidates for office or those who would vote for them, may not receive Holy Communion until they have recanted their positions and been reconciled with God and the Church in the Sacrament of Penance.

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...As in the matter of abortion, any Catholic politician who would promote so-called "same-sex marriage" and any Catholic who would vote for that political candidate place themselves outside the full communion of the Church and may not receive Holy Communion until they have recanted their positions and been reconciled by the Sacrament of Penance.<sup>19</sup>

The letter, in contrast to more diminutive contemporary proclamations by the bishops, perhaps, provides the most

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<sup>18</sup> See David D. Kirkpatrick & Laurie Goodstein, *Group of Bishops Using Influence to Oppose Kerry*, N.Y. TIMES, Oct. 12, 2004, at A1.

<sup>19</sup> BISHOP MICHAEL J. SHERIDAN, PASTORAL LETTER ON THE DUTIES OF CATHOLIC POLITICIANS AND VOTERS (Diocese of Colorado Springs, May 1, 2004).

definitive and uncompromising bright-line rule for American Catholics when they approach the ballot box.

#### V. CATHOLICS, PRUDENCE, AND POLITICS, 2008

Hmmmmmm. Could it be that *Forming Consciences* is, at least indirectly, a bit of a pastoral labor letter after all? A pronounced pragmatism—a hallmark quality of labor-management relations in our political economy—pervades *Forming Consciences*. Despite the pronouncements of moral absolutes regarding questions of life—“[t]here are some things we must never do, as individuals or as a society, because they are always incompatible with love of God and neighbor . . . [t]hese are called ‘intrinsically evil’ ”<sup>20</sup>—there is little risk that, at least insofar as *Forming Consciences* is concerned, the perfect will be the enemy of the good.

The third sentence of *Forming Consciences* expressly states: “We are a nation founded on ‘life, liberty, and the pursuit of happiness,’ but the right to life itself is not fully protected, especially for unborn children, the most vulnerable members of the American family.”<sup>21</sup> The bishops recognize that conscientious Catholics can be “politically disenfranchised, sensing that no party and too few candidates fully share the Church’s comprehensive commitment to the life and dignity of every human being from conception to natural death.”<sup>22</sup>

To slice through this Gordian knot, of sorts, without sliding into the despicable “I am personally opposed to abortion, but as an elected politician in the pluralist liberal state” formula which endlessly prattles on for bloody volumes about respecting and facilitating the “choice” for abortion, the bishops remind us to “develop the virtue of prudence.”<sup>23</sup> Prudence is perhaps the most Americanized of the four cardinal virtues, calling to the minds of most Americans Abraham Lincoln rather than Aristotle. In the contemporary political realm of the United States, prudence may be the icing on the cake of pragmatism. “Prudence enables us ‘to discern our true good in every circumstance and to choose the right means of achieving it.’ ”<sup>24</sup>

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<sup>20</sup> *Forming Consciences*, *supra* note 6, ¶ 22.

<sup>21</sup> *Id.* ¶ 2.

<sup>22</sup> *Id.* ¶ 16.

<sup>23</sup> *Id.* ¶ 19.

<sup>24</sup> *Id.* (quoting CATECHISM OF THE CATHOLIC CHURCH ¶ 1806 (2d ed. 1997)).

The bishops continue to elucidate the considerable merits of prudence: “Prudence shapes and informs our ability to deliberate over available alternatives, to determine what is most fitting to a specific context, and to act decisively.”<sup>25</sup> For Catholics, the moral teaching of the Church, assisted by, inter alia, the cardinal virtue of prudential judgment, can help us facilitate steps toward justice by engagement in “the art of the possible,” such as achieving incremental amelioration of unjust laws, rather than their summary repeal.<sup>26</sup>

The bishops summarize the real-world political dynamics:

At times this process may restore justice only partially or gradually. For example, Pope John Paul II taught that when a government official who fully opposes abortion cannot succeed in completely overturning a pro-abortion law, he or she may work to improve protection for unborn human life, “limiting the harm done by such a law” and lessening its negative impact as much as possible. Such incremental improvements in the law are acceptable as steps toward the full restoration of justice.<sup>27</sup>

Those who vote for candidates for elected office, as well as the candidates themselves, must avoid “formal cooperation in grave evil.”<sup>28</sup> The bishops recognize that “Catholics often face difficult choices about how to vote. This is why it is so important to vote according to a well-formed conscience that perceives the proper relationship among moral goods.”<sup>29</sup>

And so, finally, we come to the hopefully-chadless ballot box or voting machine on Election Day. What to do, what to do?

A Catholic cannot vote for a candidate who takes a position in favor of an intrinsic evil, such as abortion or racism, if the voter’s intent is to support that position. In such cases a Catholic would be guilty of formal cooperation in grave evil. At the same time, a voter should not use a candidate’s opposition to an intrinsic evil to justify indifference or inattentiveness to other important moral issues involving human life and dignity.<sup>30</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *See id.* ¶ 32.

<sup>27</sup> *Id.* (citation omitted) (quoting JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* ¶ 73 (1995)).

<sup>28</sup> *Id.* ¶ 34.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

When all candidates hold a position in favor of an intrinsic evil, the conscientious voter faces a dilemma. The voter may decide to take the extraordinary step of not voting for any candidate or, after careful deliberation, may decide to vote for the candidate deemed less likely to advance such a morally flawed position and more likely to pursue other authentic human goods.<sup>31</sup>

One must take heart, in that the last words of *Forming Consciences'* litany of goals for political life and challenges for citizens, candidates, and public officials state the bishops' hope that "Catholics will ask candidates how they intend to help our nation pursue these important goals . . . and advance economic justice and care for creation."<sup>32</sup>

For starters, who is going to rechain Cerberus? It is very difficult to imagine any meaningful prospects for economic justice as long as Cerberus is unchained.

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<sup>31</sup> *Id.* ¶ 36 .

<sup>32</sup> *See id.* ¶ 90.