NEGLECT OF THE MARKETPLACE: THE QUESTIONABLE ECONOMICS OF AMERICA'S BISHOPS

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The overwhelming majority of the points made in this assessment of the first draft of the U.S. bishops' pastoral, "Catholic Social Teaching and the U.S. Economy,"[1] shall be critical; indeed, highly critical. It therefore behooves us to begin by considering the positive elements of the bishops' pastoral, before examining its shortcomings.

I. POSITIVE ELEMENTS

A. *Moral Courage*

High on any possible listing of the praiseworthy aspects of the bishops' pastoral is surely the moral courage it took to contemplate this project, research the issues, and publish the first draft. Moral courage, moreover, pervades every nook and cranny of this document. The bishops have a point of view, a strong one, and they do not hesitate to deliver their message in a forthright and even forceful manner.[2]

The bishops had anticipated that this pastoral letter would unleash a torrent of abuse;[3] this expectation was not disappointed. But even they may not have realized the level of vilification that their missive would call forth. A survey of

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1. *See* National Conference of Catholic Bishops, *Catholic Social Teaching and the U.S. Economy* (First Draft 1984), *reprinted in* 14 ORIGINS 337 (1984) [hereinafter cited as *Pastoral Letter*].

2. Several of the bishops' critics have noted this forceful style of presentation and have objected to it, calling for a softer, more muted mode of expression. In particular, they have called upon the bishops to express their findings with more "humility." *See, e.g.*, Krauthammer, *Perils of the Profit Motive*, NEW REPUBLIC, Dec. 24, 1984 at 10, *reprinted in* CHALLENGE AND RESPONSE: CRITIQUES OF THE CATHOLIC BISHOPS' DRAFT LETTER ON THE U.S. ECONOMY 48 (R. Royal ed. 1985) [hereinafter cited as CHALLENGE AND RESPONSE].

3. *See The Church and Capitalism: A Report by Catholic Bishops on the U.S. Economy Will Cause a Furor*, BUS. WEEK, Nov. 12, 1984, at 104 [hereinafter cited as *The Church and Capitalism*].

the reaction reveals the following commentaries: "palpable nonsense,"[4] "moralistic drivel,"[5] and "meddling."[6] "Hypocrisy" was the most popular charge, mentioned on literally dozens of occasions in the literature that is beginning to spring up in response to the bishops' pastoral. The Catholic Church, it appears from this criticism, has not yet put its own house fully in order, and should hold its tongue until it does so—and does so perfectly.[7] For example, the economy pastoral advocates massive income transfers from rich to poor, and yet the Church itself remains a wealthy institution.[8] The bishops are also castigated for hypocrisy on the grounds that they have not applied their views promoting unions, equal pay, and affirmative action to employees of the Catholic church.[9]

There are several ways to refute these charges. First of all, the bishops themselves admit that the Church, too, is an economic actor, albeit an imperfect one, and that as such, it too should struggle[10] to incorporate the teachings of the bishops' pastoral into its own behavior.[11] This includes the recognition of the rights of Church employees to organize for purposes of collective bargaining. The bishops state, "the church would be justly accused of hypocrisy and scandal were any of

4. Seligman, *The View From Up High*, FORTUNE, Dec. 24, 1984, at 149.

5. Bandow, *On Matters of Economics, The Pope is All Too Fallible*, The Register, Oct. 12, 1984, at 52.

6. Bush, *Challenging Consciences: Archbishop Weakland Talks About the Bishops' Pastoral*, 102 CHRISTIAN CENTURY 246 (1985).

7. Robert McAfee Brown very properly states that the charge of hyprocrisy can be successfully refuted by changes in the economic management of the Church (so as to conform with the pastoral letter) that are "simultaneous rather than sequential." Brown, *On Getting Ready for the Bishops' Pastoral Letter*, 101 CHRISTIAN CENTURY 927 (1984).

8. *See* Greeley, *A "Radical" Dissent*, in CHALLENGE AND RESPONSE, *supra* note 2, at 33; Rueda, *The Bishops' Tired Old Solution*, Chicago Tribune, Nov. 27, 1984, at 11.

Tom Bethell has launched what can only be considered an overly harsh—not to say scurrilous—attack on the Catholic bishops for holding a conference in the sumptuous Washington, D.C. Hilton. Bethell, *Hilton Spirituality*, AM. SPECTATOR, Jan. 1985, at 7.

9. *See* Greeley, *supra* note 8, at 44; Goldman, *The Church and the Poor*, N.Y. Times, June 17, 1985, at A15, col. 2.

10. This admission is certainly further evidence of the modesty and humility which can be found in the pastoral letter.

11. *Pastoral Letter, supra* note 1, paras. 143-50. *See* National Conference of Catholic Bishops, *Catholic Social Teaching and the U.S. Economy* paras. 319-28 (Second Draft 1985), *reprinted in* 15 ORIGINS 257 (1985) [hereinafter cited as Second Draft].

its agencies to try to prevent the organization of unions . . . ."[12] And according to Archbishop Weakland, the chairman of the committee which prepared the pastoral, "the letter 'will not be credible' without an examination of the church's role in the economy including its relationships with employees . . . ."[13]

It is perfectly true that people will tend to disbelieve the bishops' pastoral unless the Church's acts begin to conform with its teachings. However, there is a far more basic refutation of the charge of hypocrisy available to the bishops—showing that all such complaints are merely variants of the *ad hominum* argument, an informal *fallacy* in logic.

Let us assume for the sake of argument that the bishops were indeed hypocritical, saying one thing and doing another. Even so, this is all beside the point. Our task here is to evaluate the truth of the bishops' pastoral, and the economic activities of the bishops are entirely irrelevant to the veracity of their letter. Einstein's theories were correct, even though he might not have been able to balance his checkbook. Similarly, the correctness of the bishops' pastoral (or lack of same) is completely independent of the economic actions of its authors.

B. *Free Speech*

1. Expertise

Secondly, the bishops are to be congratulated upon their refusal to bow down to demands that they impose restrictions on their right of free speech. Several reasons were presented to silence the bishops. One common criticism is that the bishops lack economic expertise.[14] This argument is so compelling that even Robert McAfee Brown, an able defender of the bishops' pastoral, accepted it when he conceded that, apart from the fact that the bishops held hearings with experts in all parts of the country, it could be suggested that they were "venturing beyond their depth."[15]

12. *Pastoral Letter, supra* note 1, para. 148. *See* Brown, *Appreciating the Bishops' Letter*, 102 CHRISTIAN CENTURY 129 (1985).

13. Goldman, *supra* note 9, at A15, col. 2.

14. Greeley, *supra* note 8, at 33; Langan, Benestad, Warwick & Novak, *Four Views of the Bishops' Pastoral, the Lay Letter, and the U.S. Economy*, THIS WORLD, Winter 1985, at 99, 102 [hereinafter cited as *Four Views*]; *Special Report on Catholic Bishops and American Economics*, in RELIGION & SOC'Y REP., Mar. 1985; at 5 [hereinafter cited as *Special Report*].

15. *See* Brown, *supra* note 7, at 927.

But this is nonsense. First of all, the argument from lack of expertise, like its colleague, the charge of hypocrisy, is an *argumentum ad hominem*, and therefore fallacious. The bishops may lack expertise, they may even be functionally illiterate, and yet the economy pastoral may still be correct in all its claims. The credentials of the authors are entirely irrelevant to the truth of their product, and this alone is our concern.

Further, it is by no means clear that the bishops lack expertise in economics. True, none of them have a Ph.D. in economics, but when did this become the criterion of expertise? There are numerous renowned economists—such as Adam Smith, John Locke, and John Stuart Mill in the days of yore, and Gordon Tullock and David Friedman in the modern era—who cannot boast of an advanced degree in the discipline. Should we go to the ludicrous extreme of setting up a licensing authority, which would prohibit all but duly "qualified" persons from advancing their opinions on economic matters?[16]

Then, too, there is the fact that the bishops' pastoral closely resembles the works of presumably "expert" economists, such as Robert Heilbroner, Robert Lekachman, and John Kenneth Galbraith. If these writers are economic experts, and the bishops' pastoral is comparable to their publications, on this criterion, we must grant that the bishops have as much expertise as these other laborers in the vineyards of economics.

2. Trespass

Next, we consider the view that the bishops should hold their tongues because they do not have a "mandate" to speak out on economic issues. Peter L. Berger charges as follows: "A common assumption of democracy is that no one has a 'mandate' (prophetic or otherwise) to speak for people who have not elected him as their spokesman; the Catholic bishops of the United States have not been elected by any constituency of poor people."[17] Lawler speaks of "trespass" in this regard: "The Catholic tradition involves a clear division of labor: bishops are to proclaim general moral principles; the political chore of enacting those principles falls to Catholic laymen. So when the bishops endorse specific public policies, they are trespassing on the layman's territory."[18]

16. For a critique of licensing in the health field, see R. HAMOWY, CANADIAN MEDICINE: A STUDY IN RESTRICTED ENTRY (1984).

17. Berger, *Can the Bishops Help the Poor?*, COMMENTARY, Feb. 1985, at 31, 32.

But the bishops have anticipated this objection. In their conclusion, they warn against a "spiritually schizophrenic existence" in which, in effect, people apply their moral and religious precepts on the Sabbath—but not during the rest of the week.[19] Were the bishops to "stick to their knitting," e.g., confine themselves to discussing proper Sabbath behavior, they would only be exacerbating this unfortunate bifurcation. If this is what the division of labor requires, then so much the worse for the division of labor.[20]

3. Harm

But the litany of irrelevant criticism has by no means been exhausted. There is also the widespread claim that the bishops' pastoral will do irreparable harm to this or that goal, and therefore never should have been written. Negative consequences include the "squandering of moral authority,"[21] and "encouraging class conflict" or "divisiveness."[22] With regard to the former, critics must realize that to the extent that the bishops' moral authority exists (and it is formidable in the United States, as evidenced by the attention devoted to the bishops' pastoral), it is the bishops' private property, to do

18. Lawler, *At Issue Is the Prophet Motive*, Wall St. J., Nov. 13, 1984, at 32, col. 1.

19. *Pastoral Letter*, *supra* note 1, para. 330. *See also id.* paras. 321-23, 325; Second Draft, *supra* note 11, para. 330.

20. Brown criticizes the Lawler argument on the ground that "it presupposes a falsely dualistic view of the world, gnostic, docetic or whatever, radically sundering religion and daily life." Brown, *supra* note 7, at 927. Therefore, the bishops should be allowed, nay, encouraged to speak out on economic affairs. Yet Brown's collegiality, curiously enough, does not extend to the publication of the lay letter. *See* Lay Commission on Catholic Social Teaching and the U.S. Economy, *Toward the Future: Catholic Social Thought and the U.S. Economy — A Lay Letter*, CATHOLICISM IN CRISIS, Nov. 1984, at 1 [hereinafter cited as *Lay Letter*]. In a vituperative dismissal of that document, Brown calls it a "spectacle," urges us to "ignore" it, and casts aspersions on the theological expertise of its authors. This comes with particular ill-grace from a person who has severely criticized credentialism when applied to the bishops by their detractors.

21. Von Geusau, *Are the Bishops Squandering Their Authority?*, CATHOLICISM IN CRISIS, Mar. 1985, at 17.

22. Reed, *God Is Not a Socialist*, ANSWERS TO ECON. PROBLEMS, Jan. 1985, at 1. Says Michael Novak, "Is it right to divide the church along political lines? Should not the bishops stand above factions?" Novak, *The Two Catholic Letters on the U.S. Economy*, in CHALLENGE AND RESPONSE, *supra* note 2, at 32.

with as they wish. They earned it; they own it. If the higher Church authorities had so little confidence in the men who presently occupy the U.S. bishophric, as implied by this "friendly" criticism, the bishops presumably would be replaced.[23]

23. It may appear unseemly for a non-Catholic such as the present writer to presume to comment on the appropriateness of the U.S. bishops speaking out on economics. Protocol might indicate discreet silence as the best policy. But to succumb to this temptation would be to violate a canon of social science according to which truth or falsity is the criterion of judgment, and the person or antecedents of the analyst are strictly irrelevant. An interesting interchange on this matter goes as follows:

> Paul Heyne: I hope we can all agree that sociological criticisms of ideas are both useful and dangerous. They are useful because ideas do have causes. And they are dangerous because such criticisms too easily degenerate into ignoring the validity of the ideas and concentrating on *ad hominem* attacks and assumed motives. I think this applies to both sides in the general discussion in which we are engaged. It's easy for defenders of capitalism, such as myself, to ignore the clerical critics, such as Gregory Baum, by claiming that everything they say is a result of status anxiety. And it's easy for the clerical critics of capitalism to dismiss, or heavily discount, the arguments of economists who are, I think, the principal formulators of arguments to defend capitalism. It's much too easy for them to dismiss these arguments on the grounds that, well, all social scientists operate in some kind of value framework.
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> Now, having said that it's both useful and dangerous, what follows from it? I think one thing, maybe, follows from it. *Sociological explanations should only be provided by people for those movements in which they, themselves, participate. Don't do it to your enemies. Do it to yourself.*
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> Milton Friedman: May I just interject that I think that's utterly wrong. I don't want to be in a position where I say, 'I only want a physician to advise me on cancer if he's had cancer.' I think sociologists ought to study whatever sociologists study.

MORALITY OF THE MARKET: RELIGIOUS AND ECONOMIC PERSPECTIVES 387-88 (1985) (emphasis added). In a similar vein, James Schall, states:

> [Consider] the propriety of criticizing Catholic popes and bishops for positions they take on economics or politics. It seems to me that one ought to ask oneself first, to what audience are we talking when we are talking about criticizing a pope or a bishop or even a lowly Jesuit. (laughter) What is the audience? If it is the university audience, if it is an academic audience, the presupposition is intellectual; the presumption is one of integrity and freedom. And the Catholic church, it seems to me, historically, and indeed in practically any document in which this issue is discussed, has always taken the following position: that it is important and vital for people who disagree, whether they be within the church or Protestants, Jews, Muslims, whatever they may be, and this includes total non-believers, to state fairly and correctly and as bluntly as they wish what their problems are with the position of the Catholic church, or with a given individual in the church.
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> To do this, in my view, is not in any sense to insult the dignity or the stature or the status of the person or the author to whom you are addressing yourself. Now it is obviously possible, even for a professor, to be unfair and snide and bitter. We know that happens. But in general, an honest man says, "I have read the position of the Catholic church," it seems to me, and within the tradition of the intellectual integrity of which they ought to be obliged, one should say, "I appreciate very much the honour you do to us, to me, to state what you hold and why you hold it." And in the context of academic freedom and intellectual integrity, one can respond to that.

Schall, *Ethical Reflections on the Economic Crisis*, in THEOLOGY, THIRD WORLD DEVELOPMENT AND ECONOMIC JUSTICE 83-84 (1985).

24. Brown, *supra* note 7, at 928.

But let us suppose for the moment that the critics' fears are well placed (as shall be argued below) and that the bishops' pastoral will tend to compromise the moral authority of the U.S. bishops. Would it really have been better if the bishops' pastoral had not been written? Given that the pastoral is an accurate portrayal of the bishops' thoughts (there is no reason to doubt this), is it not far better that their true thoughts on these matters see the light of day, and be criticized in honest and open dialogue, rather than be suppressed out of fear? In other words, if the moral authority of the bishops is so reduced by the economy pastoral, is it not better, more open and honest (even from the point of view of their loyal opposition) that they lose this benefit, to which they are not entitled in any case? And with regard to the "harm" of divisiveness, Robert McAfee Brown offers two worthwhile responses. First, he points out, reasonably enough, "church unity can be bought at too high a price." Second, he states, "truth emerges in the course of creative exchange."[24]

4. Catholic Economies

Another presumed reason for the bishops to maintain a dignified silence on economic issues is the poor development record of "Catholic" nations. As Charles Krauthammer states, "Catholicism's historical record as a frame for economic development is not particularly encouraging. One has only to compare Protestant North America to Catholic South and Central America, or Quebec (before it declericalized itself in the 1960's) to the rest of Canada, to make the point gently. No one has yet accused the Catholic ethic of being a

source of economic dynamism."[25] Brown's reply to this effrontery is so good it deserves repetition (almost) in full:

> If the premise is correct that the Catholic Church has a bad track record in this regard, that is all the more reason to tackle the subject matter and begin to set things straight, so that errors will not be perpetuated. The bishops surely owe the faithful at least that. The argument also assumes, curiously, that the church in so-called "Catholic nations" determines whether the economic system works efficiently. This will be news to . . . a great many Third World bishops."[26]

5. Motive Mongering

The last group of attacks on the bishops' letter attempts to account for the waywardness of this document in terms of special—and rather peculiar—motivations ascribed to its authors. The pastoral's great reliance on the state, in preference to the marketplace, allegedly springs from the fact that the Catholic Church is organized along hierarchical lines, the ones most conducive to and reminiscent of the public sector.[27] Another "real" reason behind the creation of the bishops' pastoral is the fact that if its policy prescriptions are followed, that is, if the United States moves from capitalism to socialism, the bishops will have a greater role to play in society.[28] The bishops' pastoral is also explained in terms of the monastic background of Archbishop Weakland.[29] And, you had better be sitting down for this one, the bishops' pastoral has taken on a leftish tinge because the conference of bishops is located in Washington, D.C.[30]

25. Krauthammer, *supra* note 2, at 10.

26. Brown, *supra* note 7, at 928.

27. *See The Bishops and Economic Democracy,* RELIGION & SOC'Y REP., Jan. 1985, at 5; Krauthammer, *supra* note 2, at 10; Novak, *Toward Consensus: Suggestions for Revising the First Draft, Part I,* CATHOLICISM IN CRISIS, Mar. 1985, at 7, 13.

28. This view was ascribed to *Fortune* by the *New York Times,* which stated: "socialism gives them [the bishops] a role to play, while capitalism — reliance on imperfect market forces — leaves them out in the cold." Kennedy, *America's Activist Bishops,* N.Y. Times, Aug. 12, 1984, Magazine, at 14, 17.

29. *See id.* at 24.

30. George Will put forth this novel hypothesis quite seriously. Will, *God's Liberal Agenda,* in CHALLENGE AND RESPONSE, *supra* note 2, at 68. Isn't it amazing that the American Enterprise Institute, the Heritage Foundation, the Ethics & Public Policy Center, the Mises Institute, the Cato Institute and hundreds of other organizations have managed to maintain a semblance of support for the marketplace, despite their location in that den of socialist iniquity, Washington, D.C.?

One difficulty with all this motive-mongering is that it is exceedingly difficult to know whether the correct explanation has been reached. How, after all, would one determine whether or not the bishops' letter can best be understood as monasticism, or hierarchy writ large? The major problem, however, is that motivation is irrelevant to the truth or falsity of the pastoral, which must be our main concern.

This section can best be concluded by two polar opposite views on the propriety of the bishops speaking out on economics. According to Archbishop Weakland, "the church's position [is] that no area of life is exempt from moral evaluation and judgment."[31] In contrast, von Geusau, a theologian from the Netherlands, claims, "Only in exceptional circumstances—such as the bishops of Poland encounter—should bishops address themselves to governments with policy recommendations."[32] Little accommodation is possible between these two statements. One pictures the church as an ostrich, with its head in the sand, the other as an eagle, soaring on high, unafraid to look at all beneath it. It is difficult to understand how such different visions could be urged upon the church by two of its sons.

C. *Moral Indignation*

The third positive element of the bishops' pastoral is its sense of outrage; the bishops are not cold and dispassionate in their treatment of the U.S. economy. There is injustice in the business world, there are victims in the economic sphere,[33] and when these problems are recognized in the course of discussion, it is almost incumbent upon any analysis with a strong moral dimension to express at least a measure of indignation.

In this respect, the bishops' pastoral strongly contrasts to the Lay Commission's letter.[34] If the former can be described as passionate or distressed, the latter can be called bloodless, analytical or even unfeeling. Such, at least, is the verdict ren-

31. Bush, *supra* note 6, at 248.

32. Von Geusau, *supra* note 21, at 19.

33. It shall be argued below that the bishops have failed to understand the injustice which exists in the economy, and while they have correctly identified some of the victims, i.e., the poor, they have misconstrued the reason for making this claim.

34. *Lay Letter, supra* note 20.

dered by both supporters and detractors of each document. For example, according to James Hitchcock,

> The bishops' letter does convey a certain sense of moral urgency, insisting that dire poverty and injustice are unacceptable to Christians, and its greatest strength is its unflinching insistence that every kind of public policy must be rigorously scrutinized with regard to its affects [sic] on the poor. By contrast, the lay committee's letter can be regarded as somewhat speculative . . . .[35]

D. *Preferential Option for the Poor*

The bishops are to be congratulated for making the welfare of the poor a bedrock of their moral and economic analysis. In doing so, they redirect public consciousness toward an examination of the causes and cures of poverty, and this can only be for the good. In future studies of society, thanks to the bishops' pastoral, it shall be exceedingly difficult to avoid the perspective of the last, least and lost amongst us; commentators shall be led, by the very visible hand of the bishops, to ask of each proposed policy: What are its implications for the poor?

This doctrine, however, must not be misinterpreted. We must not conclude that justice can be fully satisfied by a fair treatment of the poor. Surely there is more to justice than

35. Hitchcock, *Two Views on the Economy: A Comparison of the Bishops' and Lay Commission's Letters*, CATHOLICISM IN CRISIS, Feb. 1985, at 7, 9. Archbishop Weakland similarly claimed: "The letter by the Lay Commission . . . contains absolutely no urgency . . . ." Bush, *supra* note 6, at 246. And according to Donald Warwick,

> The letter, in my view, shows no great urgency about doing anything different. The lay letter does not seem to be really too worried about the extent of poverty, too worried about the extent of unemployment. It's concerned about the poor, but there is not a sense of urgency in the letter. Indeed, I would argue that there is a sense of complacency, that things are going along pretty well and we shouldn't really do too much to upset too many apple carts too quickly. This is my interpretation. I may be wrong. If I am, I am sure Michael Novak will correct me.

Four Views, *supra* note 14, at 111. Novak's reply to this statement contains no correction, so one can only deduce that even he agrees with the assessment made in the text. Novak only mentions this issue twice. First, he states "probably the most significant difference [between the lay letter and the bishops' pastoral] lies in the tone, attitude . . . of the two treatments." Secondly, he states that the bishops' letter begins in an "accusatory voice." *Id.* at 112. If anything, these utterances support Warwick's claim.

proper treatment for the poverty stricken.

The preferential option for the poor, properly interpreted, may be a necessary condition for justice, but it is hardly a sufficient one.[36] In this regard, the statement of this option in the lay letter is preferable to that in the bishops' pastoral. According to the former, "*one* measure of a good society is how well it cares for the weakest and most vulnerable of its members."[37] In the bishops' view, "the justice of a community is measured by its treatment of the powerless in society."[38]

Another caveat: We cannot interpret the preferential option for the poor as carte blanche for those with low incomes, vis-à-vis the wealthy. For example, only the opposite of justice is served if a person who inhabits territory south of the poverty line robs at gunpoint a rich but honest man.[39]

Consider two other misstatements of this option: "The needs of the poor take priority over the desires of the rich,"[40] and "this principle grants priority to meeting fundamental human needs over the fulfillment of desires for luxury consumer goods or for profits that do not ultimately benefit real common good of the community."[41] Paul Heyne has quite properly criticized these misinterpretations as follows: "This is perilously close to pure demagoguery. Is the government supposed to call a halt to all skiing (surely a luxury) until everyone in the society is receiving a sound education (deemed a necessity by the bishops)? If it doesn't mean something like this, what *does* it mean . . .?"[42]

E. *Exploitation*

One of the most magnificent aspects of the economy pas-

36. Brown, *supra* note 12, at 129. It would appear that Brown has failed to give sufficient weight to this distraction.

37. *Lay Letter*, *supra* note 20 at 58 (emphasis added).

38. *Pastoral Letter*, *supra* note 1, para. 43. *See* Second Draft, *supra* note 11, para. 44.

39. This point was made in a critique of the pastoral letter on the economy written by the Canadian Conference of Catholic Bishops, "Ethical Reflections on the Economic Crisis." W. BLOCK, FOCUS: ON ECONOMICS AND THE CANADIAN BISHOPS 5-6 (1983).

40. *Pastoral Letter*, *supra* note 1, para. 106 (quoting John Paul II, *Address on Christian Unity in a Technological Age*, 14 ORIGINS 248 (1984)). *See* Second Draft, *supra* note 11, para. 95.

41. *Pastoral Letter*, *supra* note 1, para. 103.

42. P. HEYNE, THE U.S. CATHOLIC BISHOPS AND THE PURSUIT OF JUSTICE 11 (Cato Policy Analysis No. 50, 1985).

toral is its keen sense of awareness that the U.S. economy contains numerous instances of exploitation. Even more important, the bishops are cognizant of the fact that where there is economic injustice, there must be, and indeed are, perpetrators of such injustice! This insight is so profound, and the bishops are to be congratulated upon it even more, given that two of their main neo-conservative detractors not only missed it, but took great pains to distance themselves from it.[43]

Of course, the bishops have only touched the tip of the iceberg. In point of fact, there are literally hundreds of programs which subsidize, protect or regulate the rich and upper middle class to their benefit, and to the detriment of the more populous lower middle class and poor. "Corporate welfare bums" is a phrase that neatly summarizes the welter of bailouts, licensing arrangements, guarantees, restrictive entry provisions, tariffs and other protections, union legislation, and minimum wage laws which effectively transfer vast sums of money from the threadbare pockets of the poor to the ermine-wrapped coffers of the rich and relatively well-to-do.

But Michael Novak, for one, is having none of this. In his view, the bishops' use of the term "marginalization" suggests a deliberate policy—people being driven to the margins; or at least an intention to keep people visible or out of sight.[44] "Correlatively, in speaking of the poor, the draft tends to look at the poor as passive victims . . . ."[45] He continues, "But the implied image [in the bishops' pastoral] of the economy is that of a . . . managed economy, whose 'priorities' are set by experts standing outside the system and directing it consciously from above."[46]

Contrary to the claim of Novak, however, these views of the bishops are all correct. Anyone who seriously contends that the poor are not "held back" and "done to" has somehow failed to take into account the work of numerous econo-

43. The two, as we shall see below, are Michael Novak, author of numerous treatises on economics, and Paul Heyne, a professional economist, and author of a best-selling university textbook, *The Economic Way of Thinking*. This is not by a long shot the first time non-economists such as the bishops have eclipsed professional economists, but it certainly gives pause for thought to those who have rejected the pastoral letter on grounds of credentialism.

44. Novak, *supra* note 27, at 12. *See also Four Views, supra* note 14, at 112.

45. Novak, *supra* note 27, at 8.

46. *Id.* at 13.

mists who have shown, in detail, just how a deliberative and interventionist government has chained, despoiled, oppressed and violated the rights of millions of poor people in the United States. In *The State Against Blacks*, for instance, Walter Williams demonstrates how minimum wage and union legislation, taxicab licensing systems, and street vendor laws—passed by legislators with due deliberation—deprive thousands of poor citizens of a livelihood.[47] But we need not seek elsewhere for studies which show the deleterious effects of government intervention in the economy on the poor. The numerous books of Michael Novak brilliantly show this over and over again.[48]

Paul Heyne is another critic of the bishops' letter who, for some inexplicable reason, turns his back on a brilliant career of demonstrating that government interference negatively impacts the poor. Heyne, too, takes the bishops to task for claiming that the poor are suffering from the activities of other, more powerful people:

> [T]he actual unemployment rate is the outcome of a social system rather than anyone's direct goal, it cannot be reduced in the way that we reduce a thermostat setting or the height of the kitchen shelf.
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> . . . .
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> Throughout the [bishops' pastoral], the poor, the unemployed and the 'marginalized' are presented as persons compelled by forces beyond their control.
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> . . . .
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> [I]n an economic system, results are not intended. Or, to put it another way, the results that emerge are not the results that were intended by the people who produced them.[49]

As in the case of Novak, Heyne's other writings contradict the above critique of the bishops' pastoral. For example,

47. W. WILLIAMS, THE STATE AGAINST BLACKS (1982). This book comes especially to mind because Walter Williams is listed as one of those who gave testimony to the Lay Commission on Catholic Social Teaching and the U.S. Economy, in its preparation of the lay letter. *See Lay Letter, supra* note 20, at 88.

48. *See generally* M. NOVAK, THE SPIRIT OF DEMOCRATIC CAPITALISM (1982); M. NOVAK, THE CORPORATION: A THEOLOGICAL INQUIRY (1981); CAPITALISM AND SOCIALISM: A THEOLOGICAL INQUIRY (M. Novak ed. 1979); Novak, *A Theology of Development for Latin America*, in ON LIBERATION THEOLOGY (R. Nash ed. 1984).

49. P. HEYNE, *supra* note 42, at 3-4, 8.

Heyne has elsewhere found that unemployment can be reduced by direct action (by repealing the minimum wage law), which is as deliberate as adjusting a thermostat.[50]

Novak and Heyne make two claims against the bishops. First, the poor are not helpless, or victimized, or compelled by more powerful forces. This, we have seen, must be rejected, based on evidence supplied not only by the economic profession in general, but also by the individual contributions of Novak and Heyne. Their second claim, however, is more difficult to refute. Here, Novak and Heyne deny the charge of the bishops that the destruction visited on the poor by and through government is "intended," "goal-directed," "faultworthy," "deliberate," "consciously directed" and constitutes "positive oppression."

This claim cannot be rejected so easily; neo-classical economics deals mainly with results of human action, not with the internal mind-states of the perpetrators.[51] The issue is a matter of common sense, and here the bishops have it all over their two critics. Let us stipulate, for the sake of argument, that minimum wage laws raise the unemployment rates of teenage black males to astronomical levels, that union legislation discriminates against the downtrodden, that Chrysler-type bailouts benefit the rich at the expense of the poor, that tariffs and other trade interferences victimize those at the bottom of the economic pyramid, and that taxi licensing laws freeze the poor out of ownership positions. Can one seriously contend that all the professional economists and lawyers who nevertheless advocate such policies, the bureaucrats who administer them, and the politicians who enact them, do so in blissful ignorance of their effects? If not, there is at least one person in the United States who intends to harm the poor, and presumably many more. In any case, if economics must remain forever silent on the question of motivation, how is it that Novak and Heyne are so sure that none of these depredations on the poor are "directed," or "deliberate?"

These two critics speak as if the U.S. economy were presently one of *laissez-faire* capitalism. If, and only if, there were a full free market in operation, their claims would be true;

50. P. HEYNE, THE ECONOMIC WAY OF THINKING 229-30 (4th ed. 1983).

51. In contrast, the Austrian school of economics places purposive behavior at center stage of its analysis. *See, e.g.*, L. VON MISES, HUMAN ACTION: A TREATISE ON ECONOMICS (3d ed. 1966); M. ROTHBARD, MAN, ECONOMY & STATE (1970).

then, no one could exploit another (whether purposefully or not) through the apparatus of the state. But it is inexplicable that scholars of the mettle of Novak and Heyne should not be more aware of the activities of the rent-seeking transfer society,[52] which are everywhere around us. The United States is now a mixed welfare state, one from which the rich gain in innumerable ways; it is not the free market ststem advocated by Adam Smith.

F. *How Natural is Wealth?*

Another incisive point made in the economy pastoral concerns the question of how natural—or artificial—is wealth. The bishops take the view that, in the absence of any barriers to the contrary, the natural lot of mankind is one of prosperity.

Michael Novak castigates the bishops for this position:

> [T]he bishops speak . . . as if wealth were the natural condition of human beings . . . . The point of view of the lay letter, by contrast, is that poverty is a common initial condition in human history, and that to create wealth, new causes such as investment, creativity, and entrepreneurship must be put into operation.[53]

The answer to this dispute will of course depend on how to precisely define the natural state of affairs. In order to put the Novak hypothesis in a reasonable light, "nature" must be defined in terms of a full free enterprise system, that is, where no prohibitions of any kind over "capitalist acts between consenting adults"[54] shall be implemented. Under such conditions, what is the likely prosperity level of a group of people lacking all semblance of business sense, economic creativity, investment funds, or entrepreneurship? And the obvious answer is, very high, thank you.

Thanks to the "magic of the marketplace,"[55] such people do very well, even in America, a land which only very imperfectly approaches a free marketplace. There are millions of lower and middle class Americans whose standard of living is

52. *See* T. ANDERSON & P. HILL, THE BIRTH OF A TRANSFER SOCIETY (1980).

53. *Four Views, supra* note 14, at 112-13.

54. This felicitous phrase was coined by Robert Nozick. R. NOZICK, ANARCHY, STATE, AND UTOPIA (1974).

55. To use a phrase coined by the greatest free market rhetorician to have ever become President, Ronald Reagan.

the envy of the rest of the world, yet who have no funds invested in business, display little creativity in the economic sense, and have no personal acquaintance whatever with the entrepreneurial spirit. To be sure, the qualities mentioned by Novak are also important. But it is necessary only that a minority of people have them, and this requirement has been met in virtually every society known to man. The bottleneck is not entrepreneurship, but rather absence of totalitarian government which perverts, distorts and grinds down man's natural inclination toward prosperity and wealth.

G. *Dialogue*

The bishops call for dialogue on the economic and moral questions which face us today. This is most welcome. It is by airing these issues—under the unique perspective offered to us in the bishops' pastoral—that progress can be made.

The process already seems to be bearing fruit in terms of promoting discussion.[56] An immense critical literature has sprung up in the short time since the first draft of the letter. The consultative procedure which will take place before the final draft is published will encourage even more reflection.

Donald Warwick, consultant to the bishops' committee, expresses himself in this matter as follows:

> For in the end, what we want in this debate is an opportunity for intelligent people who may have different points of view on how this country should be organized to express their views, to be understood with respect by others who may disagree with those points of view, so that in the end the Catholic bishops and all the rest of us have an opportunity to issue some intelligent recommendations and to form some intelligent opinions about what the United States economy should look like.[57]

According to Brown,

> The draft is a model of clarity. Its style is both crisp and passionate, its structure is clear and its documentation is extensive, drawn not only from church teaching but from a wide spectrum of contemporary sources. Any notion that the letter is nothing but a collection of left-wing cliches is belied not only by the tone, but by the sources cited to sustain the descriptive material in the text.[58]

56. *See* Bush, *supra* note 6, at 247; Wolfe, *We Must Transform Ourselves First*, CATHOLICISM IN CRISIS, Feb. 1985, at 10.

57. *Four Views*, *supra* note 14, at 111.

The bishops' pastoral does read well, but the widespread representation of its sources and consultants along the political economic spectrum leaves rather much to be desired. Conspicuous by their absence are the following eminent public policy analysts: Martin Anderson, Peter Bauer, Gary Becker, James Buchanan, William F. Buckley, Harold Demsetz, Milton Friedman, George Gilder, Henry Hazlitt, Melvyn Krauss, Irving Kristol, Charles Murray, Robert Nozick, Michael Novak, Murray Rothbard, George Stigler, Thomas Sowell, and Gordon Tullock. Hopefully, these advocates of freer markets will be better represented in the second and third rounds in the ongoing dialogue.

H. *Immorality of Unemployment*

One can read numerous economic treatises without ever once coming across a claim that unemployment is immoral. Perhaps this is as it should be, given the division of labor which restricts the dismal science from normative concerns. Nevertheless, it is like a breath of fresh air to be told in blunt terms that "current levels of unemployment are morally unjustified."[59]

Thanks to the U.S. bishops, we shall henceforth see not only the economic, sociological and psychological tragedies of unemployment, but we shall be able to view this phenomenon through a moral perspective as well.

There is a fly in the ointment, however. It is one thing to condemn present unemployment rates as immoral, and to describe a rate of six to seven percent as "unacceptable,"[60] but it is quite another matter to award a passing ethical grade to unemployment at the three to four percent level.[61] At what point does unemployment pass from "morally unjustified" to morally acceptable? Thus, the bishops' claim appears to be rather arbitrary.

A more appropriate analytical device might be to distinguish between voluntary and involuntary unemployment. How can such a distinction be made?

58. Brown, *supra* note 12, at 129.

59. *Pastoral Letter*, *supra* note 1, outline, para. 163. *See* Second Draft, *supra* note 11, para. 140. Precedence for this claim, however, belongs to the Canadian Conference of Catholic Bishops. *See supra* note 39.

60. *Pastoral Letter*, *supra* note 1, para. 179. *See* Second Draft, *supra* note 11, para. 151.

61. *See* Berger, *supra* note 17, at 32-33.

An employment contract is nothing but a specific type of trade: one in which the employee gives up leisure and obtains money, and the employer pays the money and receives labor services in return. Involuntary or coercive unemployment, then, is the result of any barrier, such as the threat or actual use of force, that prevents the consummation of an employment agreement. Examples include the minimum wage law, labor legislation which physically prevents the employer from hiring a strike breaker ("scab"), or union violence to that same end, as well as taxi and trucking enactments which prohibit contracts for employment. Voluntary unemployment, on the other hand, consists of joblessness in the absence of such constraints. For example, a person may be looking for a job (frictional unemployment), or holding out for a higher salary than presently offered, or taking an extended vacation.

With this characterization in mind, we can more readily distinguish between that unemployment which is morally justified, and that which is not: *any* coercive unemployment is immoral, no matter how low, and any voluntary unemployment, no matter how high, even up to 100% of the labor force, is morally acceptable.

I. *Overpopulation*

The last point upon which to congratulate the bishops pertains to their refusal to be stampeded by the over-populationists, the Malthusians of the day,[62] into a call for birth control, whether by abortion[63] or not, in order to promote economic development.

It has been shown time and time again that there is very little statistical correlation, or causal relation, between dense or high population and poverty. True, India is poor and highly populated, while Kuwait is rich and underpopulated. On the other hand, there are numerous examples of the opposite taking place. For example, there are the "teeming masses" jammed, sardine-like, into their luxurious dwellings in Manhattan, Paris, Rome, London, Tokyo and San Francisco. Alternatively, there are countries where nary a person can ever be seen—which nonetheless wallow in dire poverty.[64]

62. *See* Greeley, *supra* note 8, at 36; *Special Report, supra* note 14, at 2.

63. For the present author's views on abortion, see Block, *Woman and Fetus: Rights in Conflict?*, REASON, April 1978, at 18.

64. Countries with less than 100 people per square mile—and less than $1,000 per capita income in 1981—include Colombia, Algeria, Chile, Guyana, Bolivia, Liberia, Congo, Tanzania, Kenya, Afghanistan and Ethiopia. *See* T. SOWELL, THE ECONOMICS AND POLITICS OF RACE: AN INTERNATIONAL PERSPECTIVE 208-17 (1983).

II. PHILOSOPHY: POSITIVE ECONOMIC RIGHTS

Having noted and duly expounded upon the praiseworthy elements of the bishops' pastoral, this section considers the errors committed by the authors of this document. The bishops have committed many and serious mistakes of commission and omission, of fact and value, of philosophy and economics. To prevent any misinterpretation, however, it must be said that none of these lapses from logic justify a demand that the bishops remain silent. Whose work, after all, is error free . . . on this side of the Garden of Eden? This section begins with the bishops' defense of the doctrine of positive economic rights.

It is no exaggeration to say that positive economic "rights" form one of the basic building blocks of the bishops' entire philosophy. The adherence to this position appears early in the bishops' pastoral, is repeated on numerous occasions, comprises the mainstay of Section II, Ethical Norms for Economic Life, and informs much of the discussion in Part Two, which is devoted to public policy recommendations. For example, the bishops demand that

> [T]he nation must take up the task of framing a new national consensus that all persons have rights in the economic sphere and that society has a moral obligation to take the necessary steps to ensure that no one among us is hungry, homeless, unemployed, or otherwise denied what is necessary to live with dignity.[65]

Several of the bishops' supporters have carried this one step further, explicitly calling for a new "Economic Bill of Rights," to supplement that which is already part of the U.S. Constitution.[66] This concept, however, is deeply flawed, and even mischievous, as demonstrated by a comparison of the traditional view of negative rights with the newer variety urged by the bishops.

In classical philosophy, negative rights or negative liberty

65. *Pastoral Letter, supra* note 1, outline. *See also id.* paras. 74-89, 90-150, 258, 273; Second Draft, *supra* note 11, paras. 67-124, 302, 310-13. Wolfe has called these sections the "real heart of the pastoral." Wolfe, *supra* note 56, at 11.

66. Brown, *supra* note 12, at 129-30; Novak, *supra* note 22, at 32.

consist solely of the right not to have physical force, or the threat thereof, initiated against oneself. Each person, then, has the right not to be murdered, raped, robbed, assaulted, or battered. The doctrine of positive "rights," in contrast, typically holds that people have the right to food, clothing, shelter, and, depending on which variant is under discussion, to a reasonable lifestyle, to non-discriminatory behavior, to meaningful relationships, to psychological well-being, to employment, and to a decent wage.

One basic problem with so-called positive "rights" is that they are not really rights at all. Rather, they are aspects of wealth, or power, or control over the environment. To illustrate the stark differences between the two very dissimilar concepts of rights, they will be contrasted in several dimensions.

A. *Environmental Dependency*

Negative rights are independent of time, space, location and condition. They apply right now, but they were just as appropriate and pertinent ten thousand years ago. They are completely independent of circumstances. It was a rights violation for one caveman to club another over the head in prehistoric times; this will hold true for spacemen ten thousand years in the future.

In contrast, positive "rights" are highly environmentally dependent. If people have a positive "right" to food, there must be food available, otherwise they will be deprived of their rights. And this may be impossible in certain eras (during the seven "lean years" of the Bible), climates (the Arctic), or locations (the Sahara). Comparatively, for negative rights to be respected, people must only refrain from initiatory violence.

B. *Good Will*

Only an act of will on the part of all people is necessary for negative rights to be entrenched. If the earth's entire population suddenly resolved never again to engage in the first use of force, all negative rights violations would come to an end, in one fell swoop.

But this is not the case with positive rights. We may all be of the best will in the world, and yet not succeed in delivering the goods and services required to satisfy all positive human "rights" for the entire population of the world.

C. *Alteration*

Negative rights are unchanging. They have always been precisely the same as they are right now and will always remain so. Positive "rights" are subject to change, depending upon the never stable definition of "decency" or "minimum standards." People began to have "rights" to indoor plumbing, varieties in food, refrigerators, and television sets only after they became available. They have always had the right not to be the target of aggression.

D. *Agency*

Only another human being can violate negative rights—by launching force against an innocent person. Both humans and nature, however, can violate positive "rights." People can do so, of course, by refusing to give of themselves and their property that which is due to others according to this doctrine. But nature can continue to undermine positive "rights" as well. Storms, floods, frosts, avalanches, volcanoes, meteors, fires, and other acts of God can deprive people of the satisfaction of their positive "rights." None of these tragedies are even relevant to negative rights.

E. *Game Theory*

Negative rights are reminiscent of a positive sum game, in that if one person suddenly attains an increase in his negative rights (fewer people for some reason aggress against him, or do so to a lesser degree) there need not necessarily be a diminution in the negative rights enjoyed by anyone else.[67] The economic analogue of the positive sum game is trade, where both parties to a commercial arrangement gain at least in the *ex ante* sense—otherwise they would not have agreed to participate.

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67. Tom Bethell incorrectly applies this insight to voting rights: "Extending the right [to vote] to more people [such as blacks, who were previously disenfranchised] would not take it away from the previously enfranchised. This same reason applies, obviously, to free speech, the freedom to worship, the right to bear arms, etc." AM. SPECTATOR, July 1982, at 14. This argument does apply to free speech, worship, the right to bear arms and other negative liberties (the right to do anything one wishes—except to initiate force) but it does not apply to voting, which is a positive, not a negative right. We can see this when we realize that although the previously enfranchised can still vote, the effectiveness of their ballot has now become diluted. Nor is this a mere academic quibble with no real world implication—as the present South African crisis will attest.

The paradigm case of the zero sum game is poker. Here, unless there is something very strange indeed going on, the winnings and losings of the various players must exactly cancel out one another. Hence, the zero sum game—which is evocative of positive "rights." Thus, if one person's rights to clothing or shelter, for example, are enhanced, then those of some other people are necessarily reduced by the same amount.[68]

F. *Charity*

Under a regime of positive "rights," it is not merely difficult to give charity to the poor, it is logically impossible. Even if the donor intends that his offering be charitable, it cannot be. If this philosophy of the bishops' pastoral is correct, the poor recipient has a right to (part of) the wealth of the rich person who, in turn, has an obligation to hand it over.

The relation between donor and recipient can no longer be one of giver and receiver of charity. The poor recipient now approaches the rich donor not in the stance of making a request, but with the demeanor of a bill collector who is settling a debt. If the rich man refuses to make the payment, the poor one need not plead with him, as for alms; now, armed with positive "rights," he can demand that the wealthy person fulfill his "obligation." In contrast, if only negative rights are operational, then charity is logically legitimate—as common sense indicates it to be.

The bishops cannot have it both ways. They can purchase positive "rights," but only at the cost of charity. But if they opt for the latter, they can no longer ask for tithes—they must present bills.

G. *Occam's Razor*

Several perfectly good phrases convey what positive "rights" are meant to communicate: wealth, power, riches. The additional and complex terminology of positive "rights" only serves to confuse matters. The scientific laws of parsimony known under the rubric "Occam's Razor" are sufficient to rule this out of court.[69]

68. Note that police protection, even though primarily used to enhance negative rights, is itself a resource, an aspect of wealth, and thus an instance of positive "rights." If one person has been accorded more police protection, another person must be given less.

69. Behind the use of positive "rights," of course, is the attempt to wrest from the concept of rights some of its luster, and apply it to the otherwise less savory policy of coercively transferring income from rich to poor.

H. *Incumbency*

Who is responsible for carrying out the obligations imposed on people by the two alternative views under consideration? With negative rights, the answer is clear: everyone must refrain from engaging in physical coercion. There are no exceptions.

Matters are far less clear with positive "rights." Who must share their wealth with the less fortunate—people in the same nation? Do those in the same state, city, county or borough have an obligation to share?

One answer is that everyone is obligated to share with those who are less fortunate. But this is a truly radical idea, and would empower foreigners to present themselves at our shores and not simply request that we divide our wealth with them, but demand it.

I. *Degree*

The degree to which these rights must be respected is yet another dimension upon which the two doctrines widely diverge. In the case of real rights (i.e., negative rights—which is a redundancy), absolute compliance is required. One is forbidden to physically aggress against other people even slightly.[70] One cannot touch even "a hair on their heads."[71] But this has no implication for the distribution of income, because it is irrelevant to the concerns of negative rights.

What about the case of positive rights? How far must the redistribution process go? We are never vouchsafed an answer in the bishops' pastoral; thus, we can only speculate. The only philosophically satisfactory answer to this question

70. Why is only physical aggression proscribed? Why not psychological damage, or "mental cruelty?" The short answer is that violations of law prohibiting physical coercion deserve jail sentences; people who engage in psychological "evasiveness," or meanness, are typically guilty of no more than the exercise of their (negative) rights of free speech in ways to which someone objects. For an account of the dividing line between aggression and non-aggression, and for an explication of the natural rights philosophy, see R. NOZICK, *supra* note 54; M. ROTHBARD, THE ETHICS OF LIBERTY (1982).

71. For an analysis of how rights philosophy is applied to matters of ecology, environmentalism and external diseconomies, see Rothbard, *Law, Property Rights and Air Pollution*, 2 CATO J. 55 (1982).

is that the process must continue until absolute income/wealth equality has been achieved.[72] If the reason for the process itself is inequality, then as long as any vestige of inequality remains, continuation of the process would appear to be justified.[73]

J. *Government*

The implications for the scope of government in the two alternative rights philosophies are also very different. Novak's views on this question are definitive:

> The concept of economic rights undermines the American idea of the limited state. Civil and political rights prevent the state from blocking God-given, inalienable rights. But economic rights empower the state to take positive actions, including the establishment of definitions, conditions, and procedures which beneficiaries must meet, and the seizing of powers over the economy necessary to meet them. This logically takes the form (in China) of population controls; (in the USSR) of mandatory displacement of the unemployed to employment as the state directs (in Siberia, e.g.); and (in Poland) of control over political life by control over all employment. Economic rights inevitably increase the power of the state.[74]

In contrast, negative rights contemplate a very limited government. Indeed, the classical liberals saw the protection of (negative) liberties as the main and most important function of their "night watchman" state.

K. *Punishment*

Violators of (negative) rights are commonly punished by the imposition of fines and, for serious offenses, by jail sentences or even the death penalty. An entire literature exists on the tailoring of punishments to fit the particular crime.[75]

No such thing exists, to say the least, in the case of positive "rights" violations. Indeed, the whole idea is abhorrent. The idea of punishing people for not living up to these so-called obligations is repugnant (especially when it is unclear which specific rich individuals are responsible for giving sustenance to which particular poor people).[76] And yet the concoction of such a theory is a necessary condition for making any sense out of the doctrine of positive "rights." This failure sheds doubt on whether its proponents take their own theory seriously.

L. *Rights Conflicts*

Two different rights can only conflict in the case of positive "rights." Here, one person's boundaries can extend well into those of another. And when rights overlap, there is conflict—and one, the other, or both of the "rights" must be abrogated.

In the case mentioned by the bishops, the "rights" of third world countries to export their goods to the United States are incompatible with the "rights" of domestic workers to keep their jobs and produce the items at a higher cost.[77] One cannot possibly respect both sets of positive "rights." This leads to the conclusion that one, the other, or both may not be rights at all.

In contrast, there is no such possibility of conflict in the realm of negative rights. The right of A not to be a target of aggression cannot conflict with the identical right of B.

M. *Egalitarianism*

Given the presumption of equality in the area of rights (we all have equal rights before the law), the recognition of positive rights leads ineluctably to egalitarianism. If we all

72. *See* Levin, *Negative Liberty*, 2 SOC. PHIL. & POL'Y 84 (1984).

73. The logic of the view put forth in the bishops' pastoral implies a "Brave New World" type of horror as well, given only the availability of the appropriate technology. Suppose there were machines which could transfer intelligence, or beauty, or serenity, or happiness, or even religious appreciation from one person to another. If those who are "rich" in these attributes really have an obligation to share with the less fortunate, they must be grabbed, kicking and screaming if need be, and forced to enter these personality-redistributing machines, no matter how personally shattering the experience might be.

74. Novak, *supra* note 22, at 9.

75. It will do no good to reply that government, through the tax and welfare system, should organize matters so that our positive "rights" obligations are met. For rights violations are an individual matter; specific, individual people presumably should be penalized if they fail to meet their responsibilities.

76. *See Pastoral Letter, supra* note 1, paras. 96, 119, 263, 269. Nor is the lay letter free of this verbiage. *See, e.g., Lay Letter, supra* note 20, at 23, 38, 59.

77. *Pastoral Letter, supra* note 1, paras. 297, 300. *See* Second Draft, *supra* note 11, paras. 263-64.

have equal positive "rights," and positive "rights" are simply synonyms for wealth, then income equality is justified.

Needless to say, no such presumption of egalitarianism applies to negative rights. To be sure, we all have an equal right not to be coerced, but since this has nothing to do with wealth, egalitarianism cannot be deduced from such a system.

In summary, the two concepts of rights are quite different. There is of course no law against couching a demand for wealth redistribution in "rights" language, but this does confuse matters. We can say if we wish that positive "rights" *are* rights, but we must keep in mind that the two versions of rights are greatly at odds with one another; thus this usage can only spread confusion.

III. Economics

In Part Two of the bishops' pastoral, the section devoted to policy applications, the bishops address themselves to numerous issues of economics. This commentary shall deal with employment, poverty and economic justice.

A. *Unions*

It is not difficult to document the fact that the bishops' pastoral champions unionism as commonly practiced in the United States. Indeed, the sections of the letter dealing with this "curious institution" are virtually nothing but paeans of praise.[78] The bishops go so far as to invite unions to organize their own employees.[79] If anything, however, the lay letter is even more vociferous in its flattery of the U.S. union movement. It exults in the fact that the Catholic church has been a long-time and faithful supporter,[80] a dubious distinction indeed.

78. *Pastoral Letter, supra* note 1, paras. 111-14, 181. *See* Second Draft, *supra* note 11, paras. 103-106, 158.

79. *Pastoral Letter, supra* note 1, para. 148. *See* Second Draft, *supra* note 11, para. 323. Have they anticipated the likelihood that this might encourage the picketing of church services? For an instance of this behavior, see *And on the Seventh Day, God Was Picketed,* North Shore News, April 5, 1981, at 1.

80. *See Lay Letter, supra* note 20, at 35-37; Kennedy, *supra* note 28, at 26. Novak, moreover, had the intestinal fortitude to publicize the fact that "Lane Kirkland kindly telephoned us to thank us for our strong support of labor unions, and Monsignor George Higgins of the bishops' staff, to his credit, wrote a column lauding our treatment of unions as one of the best of its sort he had seen in his lifetime." Novak, *The Bishops and the Poor,* COMMENTARY, May 1985, at 20.

The bishops' major reason for their support of American unionism is that "employers frequently possess greater bargaining power than do employees in the negotiation of wage agreements. Such unequal power may press workers into a choice between an inadequate wage and no wage at all."[81] But this rather seriously misconstrues the process of wage determination. In a free labor market, wages are basically set by the marginal revenue productivity[82] of the employee—not on the basis of bargaining power, scale of enterprises, or size of labor units. If bargaining power correctly explained wage rates, remuneration would be negatively correlated with the concentration ratio; that is, industries with fewer employees would pay lower wages than ones with many—and wages would be unrelated to measures of productivity such as educational attainment. Needless to say, no evidence for this contention exists.

The lay letter also articulates "full support for the principle of free and voluntary association in labor unions."[83] But this is disingenuous. It is not even a rough approximation of how organized labor has and still continues to operate in the United States.

There are two kinds of unions possible. First, there are those which do all that they can to raise their members' wages and working conditions—except violate the (negative) rights of other people by initiating violence against them. These can be called "voluntary unions." Second are those unions which do all that they can to promote their members' welfare—up to and including the use of physical brutality aimed at non-aggressing individuals.

With regard to the activity of coercive unions as defined above, Ludwig von Mises has stated:

> In all countries the labor unions have actually acquired the privilege of violent action. The governments have abandoned in their favor the essential attribute of government, the exclusive power and right to resort to violent coercion and compulsion. Of course, the laws which make it a criminal offense for any citizen to resort—except in case of self-

81. *Pastoral Letter, supra* note 1, para. 110. *See* Second Draft, *supra* note 11, para. 102.

82. *See* C. FERGUSON, MICROECONOMIC THEORY 393-425 (1972); J. HICKS, THE THEORY OF WAGES 1-21 (2d ed. 1963); G. STIGLER, THE THEORY OF PRICE 187-203 (1962); A. STONIER & D. HAGUE, A TEXTBOOK OF ECONOMIC THEORY ch. 11 (1964).

83. *Lay Letter, supra* note 20, at 36.

defense—to violent action have not been formally repealed or amended. However, actual labor union violence is tolerated within broad limits. The labor unions are practically free to prevent by force anybody from defying their orders concerning wage rates and other labor conditions. They are free to inflict with impunity bodily evils upon strikebreakers and upon entrepreneurs and mandataries of entrepreneurs who employ strike breakers. They are free to destroy property of such employers and even to injure customers patronizing their shops. The authorities, with the approval of public opinion, condone such acts. The police do not stop such offenders, the state attorneys do not arraign them, and no opportunity is offered to the penal courts to pass judgment on their actions. In excessive cases, if the deeds of violence go too far, some lame and timid attempts at repression and prevention are ventured. But as a rule they fail. Their failure is sometimes due to bureaucratic inefficiency or to the insufficiency of the means at the disposal of the authorities, but more often it is due to the unwillingness of the whole governmental apparatus to interfere successfully.[84]

84. L. VON MISES, *supra* note 51, at 777-78. Von Mises further states:

> what is euphemistically called collective bargaining by union leaders and "pro-labor" legislation is of a quite different character. It is bargaining at the point of a gun. It is bargaining between an armed party, ready to use its weapons, and an unarmed party under duress. It is not a market transaction. It is a dictate forced upon the employer. And its effects do not differ from those of a government decree for the enforcement of which the police power and the penal courts are used. It produces institutional unemployment.
>
> The treatment of the problems involved by public opinion and the vast number of pseudo-economic writings is utterly misleading. The issue is not the right to form associations. It is whether or not any association of private citizens should be granted the privilege of resorting with impunity to violent action. It is the same problem that relates to the activities of the Ku Klux Klan.
>
> Neither is it correct to look upon the matter from the point of view of a "right to strike." The problem is not the right to strike, but the right—by intimidation or violence—to force other people to strike, and the further right to prevent anybody from working in a shop in which a union has called a strike. When the unions invoke the right to strike in justification of such intimidation and deeds of violence, they are on no better ground than a religious group would be in invoking the right of freedom of conscience as a justification of persecuting dissenters.
>
> When in the past the laws of some countries denied to employees the right to form unions, they were guided by the idea that such unions had no objective other than to resort to violent action and intimidation. When the authorities in the past sometimes directed their armed forces to protect the employers, their mandataries, and their property against the onslaught of strikers, they were not guilty of acts hostile to "labor." They simply did what every government considers its main duty. They tried to preserve their exclusive right to resort to violent action.

Id. at 779.

In the view of Friedrich Hayek:

> It cannot be stressed enough that the coercion which unions have been permitted to exercise contrary to all principles of freedom under the law is primarily the coercion of fellow workers. Whatever true coercive power unions may be able to wield over employers is a consequence of this primary power of coercing other workers; the coercion of employers would lose most of its objectionable character if unions were deprived of this power to exact unwilling support. Neither the right of voluntary agreement between workers nor even their right to withhold their services in concert is in question.[85]

Coercive union violence in the United States (and other countries) is directed at the innocent people at the bottom of the employment ladder, the least, last, and lost of us. The bishops, in their principle of the preferential option for the poor, ask us to take particular concern for the welfare of these individuals. These individuals are, in a word, the "scabs."

Now scabs have received very bad press. Even the appellation ascribed to them is one of derogation. But when all the loose and inaccurate verbiage is stripped away, the scab is no more than a poor person, often unskilled, uneducated, unemployed, perhaps a member of a minority group, who seeks only to enter the labor market,[86] and there to offer his ser-

85. F. HAYEK, THE CONSTITUTION OF LIBERTY 269 (1960). *See also* S. PETRO, THE LABOR POLICY OF THE FREE SOCIETY (1957); R. POUND, LEGAL IMMUNITIES OF LABOR UNIONS (1957). According to Morgan O. Reynolds, "Hitting a person over the head with a baseball bat is much less likely to be treated as criminal if the person wielding the bat is an organized (i.e. unionized) worker in a labor dispute." M. REYNOLDS, POWER AND PRIVILEGE: LABOR UNIONS IN AMERICA 50 (1984).

86. It is sometimes alleged that the union is justified in visiting violence upon the scab, since the scab initiates coercion by daring to "steal" the job "owned" by the organized worker in the first place. But this claim cannot withstand analysis. The employed worker no more owns "his" job than does the outsider. An employment contract is simply a contract between two willing parties; neither party can own it. In a free society, a soci-

vices to the highest bidder.

In fact, it is no exaggeration to consider the scab the economic equivalent of the leper. And we all know the treatment of lepers urged upon us by ecclesiastical and biblical authorities.[87]

In their excessively pro (coercive) union stance, the authors of both the bishops' pastoral and the lay letter expose themselves as untrue to the morally axiomatic principle of the preferential option of the poor. The "poor," in this case, are not the princes of labor, organized into gigantic, powerful and coercive unions. Rather, they are the despised, downtrodden and denigrated scabs. But if "poor" in this case is interpreted as referring to coercively unionized workers, not scabs, then the principle of the preferential option for the poor is being seriously misinterpreted.

This commentary does not argue against the legitimacy of voluntary unions, those which restrict themselves to mass walkouts and other non-invasive activity. The only difficulty is that in modern day America, there are no such entities.

B. *Wages*

The muddied waters of wage theory into which the bishops have launched themselves will now be considered. On several occasions, scattered throughout the pastoral letter, they put themselves on record as calling for "just wages,"[88] or "adequate remuneration."[89]

One of the greatest intellectual tragedies of the Church, one from which religious institutions are only now beginning to recover, is the medieval debate concerning the "just price." Evocative of questions such as "how many angels can dance on the tip of a pin," the "just price" controversy is well on the way toward being resolved. And the answer? The just price for an item is any payment agreed upon by any pair of buyers and sellers.

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ety of contract, not of status, each person is free to enter the labor market and compete with all others. The unionized, employed worker is no more justified in utilizing violence to restrict the scab's entry into the job market than the scab would be in employing initiatory force against the organized laborer.

87. *See* Block, *Liberation Theology*, GRAIL, Sept. 1985, at 75. *See also* W. BLOCK, DEFENDING THE UNDEFENDABLE 237-41 (1976).

88. *Pastoral Letter, supra* note 1, para. 110. *See The Church and Capitalism, supra* note 3, at 107.

89. *Pastoral Letter, supra* note 1, outline, para. 77. *See* Second Draft, *supra* note 11, para. 77.

Now that the "just price" wars have been happily consigned to the dustbin of history, a fate they so richly deserve, another equally trivial contention has come along to again threaten the intellectual probity of ecclesiastical organizations, this one over "just wages." Hopefully, this will soon go the way of the other, and we shall be left with the similar result that the just wage is any level of remuneration mutually acceptable to an employer and employee.

But this, unfortunately, will have to overcome the contrary efforts of the bishops. In their view, "Labor is not simply a commodity traded on the open market nor is a just wage determined simply by the level the market will sustain."[90]

This will not do, however. To be sure, labor is not simply a commodity like any other. For one thing, it cannot legally be traded, only rented. The question is, what reason do the bishops put forth to justify their contention that a just wage is not that reached on the open market? The answer is, none. Thus, the epistemological status of labor is a red herring. Given that labor is not a commodity like others, we still have no case against considering the market wage as the just wage.

Another problem is the bishops' failure to precisely define the just wage. They only assert what it is not, namely the market wage—the one agreed upon by two consenting parties. Yet it is obligatory upon the bishops, because they are putting forth a claim, to elucidate what it *is*, not what it is *not*.

Let us assert, for the sake of argument, that the just wage is always 120% of the market wage. That is, all workers are presently being exploited to the tune of twenty percent of their wages. Do not cavil at the arbitrariness of any such proposal; instead, consider this more a fundamental objection to any specification of the just wage (apart from the market wage, whatever it is).

Suppose that someone willingly, happily and voluntarily wants to work for less than the "just wage." Suppose, that is, that a church employee wants to make a contribution to his employer, in effect, in the form of a salary cut. One writer plaintively asks, "whether the dedication of Christians who work for less than a 'just wage' is now to be deemed immoral. That would be a not-so-delicate break from the Christian his-

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90. *Pastoral Letter, supra* note 1, para. 110. *See* Second Draft, *supra* note 11, para. 102.

tory of radical vocation."[91] It would also be equivalent to the claim that charity is immoral—when given by the worker to his boss in the form of a decrease in pay.

C. *Unemployment*

Unfortunately, the bishops do not address the major cause of unemployment, which is legislation that artificially boosts wages above the productivity levels of workers to whom they apply.[92] Examples include the minimum wage law, labor codes which enable unions to "bargain" to this end, and enactments such as the Davis-Bacon Act which also lift wages above free market levels.[93]

It is highly disconcerting that the bishops' analysis of the causes of unemployment never considers government legislation of this sort as the possible culprit. It is not as if the bishops had never heard of the instances of this phenomenon, such as the minimum wage law.[94] This omission is particularly disappointing in view of their statement that, "Among black teenagers aged 16 to 19 who are seeking jobs unemployment reaches the tragic figure of 41.7 percent, while for blacks aged 20 to 24 it is a discouraging 26.3 percent."[95] The bishops are correctly concerned with this state of affairs, since unemployed black youths certainly qualify for coverage under the principle of the preferential option for the poor. But minimum wage legislation strikes particularly at young blacks.

In reply to a question as to whether some groups are more hurt by the minimum wage than others, Milton Friedman stated:

> Yes, indeed. Take Negro teenagers, for example. We all know the terrible social problems being caused, especially in our large cities, by the high rate of unemployment among Negro teenagers. The fact is—it can be demonstrated statistically—the minimum wage rate is a major cause of Negro teenage unemployment. Of all the laws on the statute books of this country, I believe the minimum wage law probably does the Negroes the most harm. It is not intended to be an anti-Negro law but, in fact, it is.[96]

91. *The Bishops and Economic Democracy, supra* note 27, at B8. Our just-wage-as-market-wage hypothesis, it will be appreciated, is immune from this objection. For the market wage is the final level of pay accepted by the person seeking a salary cut. Thus, even in this case, the market and the "just" wage must always be equal.

92. The crux of the bishops' position on unemployment can be found in *Pastoral Letter, supra* note 1, paras. 168-70. *See* Second Draft, *supra* note 11, paras. 143-48.

93. *See* W. WILLIAMS, *supra* note 47.

94. The minimum wage is specifically mentioned, but not in the context of unemployment creation. *Pastoral Letter, supra* note 1, para. 210. *See* Second Draft, *supra* note 11, para. 196.

95. *Pastoral Letter, supra* note 1, para. 162. *See* Second Draft, *supra* note 11, para. 139.

This finding has been reached in literally hundreds, if not thousands, of scholarly books, articles, and Ph.D. theses.[97] Indeed, it is hardly an exaggeration to say that of all economic propositions, the one which states that "A minimum wage increases unemployment among young and unskilled workers" is among those that would receive the most assent from economists.[98]

It is greatly regretted that the bishops did not mention governmental policies which artificially force up wages in connection with the creation of unemployment. This omission is so serious that it casts doubt on the value of much of their work on this subject.

D. *Poverty*

In the passage of the letter which has perhaps been quoted more widely than any other, the bishops state:

> If the United States were a country in which poverty existed amid *relatively equitable* income distribution, one might argue that we do not have the resources to provide everyone with an adequate living. But, in fact, this is a country marked by *glaring disparities of wealth and income*. As noted earlier Catholic social teaching does not suggest that absolute *equality* in the distribution of income and wealth is required. *Some degree of inequality* is not only acceptable, but may be desirable for economic and social reasons. However, *gross inequalities* are morally unjustifiable, particularly when millions lack even the basic necessities of life. In our judgment, the distribution of income and wealth in the United States *is so inequitable* that it violates this minimum standard

96. Y. BROZEN & M. FRIEDMAN, THE MINIMUM WAGE RATE: WHO REALLY PAYS? 10-11 (1966).

97. *See, e.g.*, W. BLOCK, *supra* note 39, at 45-55, 66.

98. This precise question was put to a sample of 211 U.S. economists; 87.7% either "generally agreed" or "agreed with provisions." Grey, Pommerehne, Schneider & Gilbert, *Concensus and Dissension Among Economists: An Empirical Inquiry*, 74 AM. ECON. REV. 986, 991 (1984).

of distributive justice.[99]

There are grave problems with this claim.[100] Note the different descriptions of inequality in the above passage: "relatively equitable," "glaring disparities of . . . equity," "some degree of inequality," "gross inequities," and "so inequitable." One difficulty is that equality is a quantitative measure (e.g., the Gini coefficient) and yet the bishops only describe it in qualitative terms. How could one, even in principle, test the bishops' charge that the U.S. income distribution is inequitable? Suppose the government follows the bishops' advice and implements their proposals. How shall we know when we have reached that "some degree" of inequity which is not only "acceptable," even "desirable?" We shall not. Therefore, the charge as it now stands is operationally meaningless.

This could of course be easily rectified. The bishops only need to specify some numerical measure of inequality, above which is improper, and below which is proper. But in so doing, they may open themselves up to the objection of arbitrariness. Why the specified cut off point or range? How could it be defended that some measured distributions are "immoral" and others "moral?"

But the chief difficulty is that justice (or injustice) does not properly apply to income distributions. Rather, it applies to the process through which incomes are earned and distributed. If this process is just, whatever results is necessarily proper; if the process is unjust, no possible result can be proper.

Robert Nozick eloquently demonstrates the futility of looking for justice among end state theories of income distribution. Let D1 be defined as that distribution of income, whatever it is, which the bishops deem to be just. Nozick

99. *Pastoral Letter, supra* note 1, para. 202 (emphasis added). *See* Second Draft, *supra* note 11, para. 183.

100. A minor shortcoming is that the bishops base their abhorrence of the present income distribution on the understanding that "[i]n 1982 the richest 20 percent of Americans received more income than the bottom 70 percent combined and nearly as much as all other Americans combined. The poorest 20 percent of the people received only about 4 percent of the nation's income while the poorest 40 percent received only 13 percent." *Pastoral Letter, supra* note 1, para. 202. But these calculations ignore the value of non-cash benefits to the poor, thus biasing their figures toward greater inequality. *See* Novak, *Blaming America: A Comment on Paragraphs 202-204 of the First Draft,* CATHOLICISM IN CRISIS, July, 1985, at 12, 13. For a further correction of the bishops' calculations of wealth distribution, see P. HEYNE, *supra* note 42, at 18 n.6.

then asks:

> If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn't D2 also just? . . . [N]o end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferors are entitled to under the favored distributional pattern. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them.[101]

Another objection can be made to the bishops' call for a redistribution of income within the United States. It violates not one but two of the pastoral's principles: the preferential option for the poor, and the idea that we are all God's creatures, regardless of our political and citizenship allegiance.[102]

The important thing to realize is that there are literally no poor people in the United States—poverty line or no poverty line—in the context of poverty elsewhere in the world.[103] The people at the bottom of the economic pyramid in America would be considered middle class—even upper middle class—if they and their economic lifestyles could be transported somehow to the more desperate areas of the world, such as Ethiopia or Bangladesh. Thus, the bishops' call for additional wealth transfers from the rich to the poor in the United States is—in the global context—really a demand

101. R. NOZICK, *supra* note 54, at 160-63. Paul Heyne also makes this vital moral distinction between process and end state: "The justice or injustice of a social system will not be found in the patterns of outcomes it yields — its end states — but in the procedures through which those end states emerge." P. HEYNE, *supra* note 42, at 10. It should be noted, however, that several of the bishops' critics accept their equation of a more equal income distribution with morality. *See, e.g.,* Novak, *supra* note 101, at 13, where the degree of income equality which has been attained in the United States is seen as a "significant achievement."

102. *Pastoral Letter, supra* note 1, para. 273. *See* Second Draft, *supra* note 11, paras. 310, 312.

103. The bishops are well aware of this fact. *See Pastoral Letter, supra* note 1, paras. 274, 276.

that income be shifted from the wealthy to the middle class. Were there a "preferential option for the middle class," this policy might make sense, but it is very difficult, if not impossible, to reconcile it with a preferential option for the poor. Therefore, even on the bishops' own grounds, even if it were not immoral to forcibly transfer funds in the manner advocated by the pastoral letter, this policy still would not be justified.

IV. CONCLUSION

This commentary concludes with a brief venture into the realm of theology, which is sure to be fraught with all sorts of dangers, both spiritual and temporal.

The last sentence of the bishops' pastoral reads as follows: "In this love and friendship God is glorified and God's grandeur revealed."[104] Consider for a moment only the final three words. Where else is "God's grandeur revealed?"

Clerics, ecclesiastics, and religious people have seen the work of the Lord in numerous realms: in mathematics, in biology, in physics, in painting, in sculpture, in sunsets, in the perfection of diamonds. In all of these areas, people have seen great beauty, and much complexity coupled with a simplicity so serene that it appears as if the hand of a Higher Power is at work. In the movie *Amadeus*, Salieri said "If God spoke to man, it would be through the music of Mozart." And in the movie *Chariots of Fire,* one of the protagonists said that the grandeur of God is revealed in foot races.

God, in short, is everywhere, in this view. And this leads to a final criticism of the bishops' pastoral.[105] There is no appreciation, in this document, that the hand of a Greater Being is also at work in the free market. There is no recognition that the "invisible hand," too, is part of God's plan. There is no awe, not even any recognition, of the magical, spiritual dimension, of the pure pristine beauty, of the marketplace.[106] This, perhaps, is the greatest flaw of the bishops' pastoral.

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104. *Id.* para. 333.

105. I owe this point to Dr. Jim Johnston, of Standard Oil and Economic Education for the Clergy, Inc.

106. I trust it will be seen as no more idolatrous to perceive the hand of God in the free enterprise system, than to see it in mathematics, music, or athletics.