

UNCONSTRAINED IDEOLOGY: A POLEMICAL REVIEW OF THOMAS SOWELL'S *A CONFLICT OF VISIONS*

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INTRODUCTION

There's an established verity in Rhetoric and in Law: the one who defines the question wins the argument. In his latest work, economist and social critic Thomas Sowell offers a bold and imaginative definition of the terms of current political debate. This is a book about political matters, and Sowell is well known as an articulate and forceful proponent of assorted neo-conservative political views. Yet the author professes to be on a neutral mission. His purported aim, an ambitious one, is to think about the "silent shapers of our [social and political] thoughts."¹ The result is too good to be true. My questions in this review are: (1) How has the author defined the question? and (2) Should we accept his definition?

I. SOWELLIAN VISIONS

The key to Sowell's ambitious project is his conviction that what really divides the various warring political camps is neither their differing interests, nor their factual and valuative premises, nor the conscious reasoning processes by which they arrive at their political prescriptions. Rather, at bottom, these disputes result from different "visions," that is, varying sets of assumptions about social reality that are mostly taken for granted and not objects of our reflection.

In the first part of the book, "Patterns," Sowell tells us what a vision is and characterizes what he considers the two most pervasive visions of the contemporary political scene. A vision is not a theory or doctrine, not a set of values, not a position that one takes on a controversial issue; rather, a vision is a "pre-analytic cognitive act."² A vision "is what we sense or feel before we have constructed any systematic reasoning that could be called a theory, much less deduced any specific consequences as hypotheses to be tested against evidence."³ Additionally,

[a] vision, as the term is used here, is not a dream, a hope, a prophecy, or a moral imperative, though any of these things may ultimately derive from some particular vision. Here a vision is a sense of causation. It is more like a

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1. T. SOWELL, *A CONFLICT OF VISIONS* 8 (1987).

2. *Id.* at 14.

3. *Id.*

hunch or a 'gut feeling' than it is like an exercise in logic or factual verification.⁴

Furthermore, visions are important because (a) policies are based on them and these policies have wide-ranging social effects; and (b) they "fill in the necessarily large gaps in individual knowledge."⁵

Thus, a Sowellian vision appears to have these salient characteristics. First, a vision is not arrived at through a process of conscious deliberation. Second, though not the object of one's thought, a vision plays a formative role in one's thinking on social issues. Third, a vision affects our thinking (and our actions as well—in Sowell's words, a vision "set[s] the agenda for both thought and action"⁶) because it guides the way in which we link things together causally.

What is the cash value of Sowell's insistence that a vision is "cognitive" and not to be identified with a set of values? One consequence is that visions are conceptually prior to values, that is, visions and not values are the primary "shapers" of our social thought and practice. Opposing values are effects rather than causes of conflicting visions. A second consequence is that visions are subject to rational criticism because they are not irreducible value preferences. This second point will guide my inquiry below. In discussing the visions characterized by Sowell, I shall subject them to the same sort of rational criticism one would use in sizing up a theory or policy.

For Sowell, two conflicting social visions "have shaped our times and may well shape times to come."⁷ The "constrained vision," was exemplified, to varying extents, by Thomas Hobbes, Adam Smith, Edmund Burke, Friedrich Hayek, Oliver Wendell Holmes, and Milton Friedman. This vision corresponds roughly with the right-conservative side of political debates. The "unconstrained vision," is the vision more closely associated with Jean-Jacques Rousseau, William Godwin, Karl Marx, John Stuart Mill, John Kenneth Galbraith and Laurence Tribe. It corresponds to the left-liberal range of the political spectrum.⁸ In summarizing the differences between the two visions, Sowell emphasizes two key distinguishing criteria: the locus of discretion and the mode of discretion.

Each vision distributes decision-making power in a distinctive fashion. The constrained vision features "self-interested individual decision-makers" while the unconstrained vision features "collective surrogate decision-makers. . ."⁹ One imagines as a prime example of the constrained vision's prescribed locus of discretion an economic market in which consumers, as the saying goes, "vote" with their dollars. Rather than having some group of surrogates dictate what is to be produced in the next phase of economic activity, consumers decide what they want now and thereby unintentionally determine in the aggregate what shall be produced in the next phase of the economy. If

4. *Id.* at 15-16.

5. *Id.* at 16.

6. *Id.* at 16.

7. *Id.* at 17.

8. Sowell actually categorizes Marxism and Utilitarianisms as "hybrid visions" but since both viewpoints share the critical premise that social institutions can and should be shaped by rational human activity, they would seem to fall more comfortably on the unconstrained side.

9. *Id.* at 104.

this sounds like the difference between elitist autocracy and populist democracy, hold that point.

The differing loci of discretion correspond to the respective "modes" of discretion prescribed by each vision.

Man, as conceived in the constrained vision, could never have planned and achieved even the current level of material and psychic well-being, which is seen as the product of evolved systemic interactions drawing on the experiences and adjusting to the preferences (revealed in behavior rather than words) of vast numbers of people over vast regions of time. The constrained vision sees future progress as a continuation of such systemic interactions—and as threatened by attempts to substitute individually excogitated social schemes for these evolved patterns.¹⁰

The key terms in this passage are "systemic," "experiences," and "evolved." According to the constrained vision, individuals must not try to devise and implement rational schemes aimed at improving existing social practices; rather, individuals must make decisions within the boundary lines of roles assigned to them by the social *system* they have inherited. This system is legitimate because it has *evolved* over generations of human social interaction, incorporating the wisdom of the collective experiences of these earlier generations. If this sounds a wee bit like Social Darwinism, hold that point. The unconstrained vision, on the other hand, urges that certain individuals (of exceptionally high intelligence and moral character) devise rational schemes for the rest of us to follow because the rational cogitations of a contemporary few can stand up to the experiential wisdom of untold numbers of our predecessors.¹¹

I break down Sowell's lengthy characterization of the conflicting visions into three critical areas of difference. First, the constrained vision prefers accumulated experience to articulated reason. The constrained vision is not against knowledge and reason but favors particular conceptions of both.

Knowledge is thus the social experience of the many, as embodied in behavior, sentiments, and habits, rather than the specifically articulated *reason* of the few, however talented or gifted those few might be.¹²

Because knowledge is a common fund distilled from the uncountable trials and errors of past generations, and not a product of the deliberate conscious activity of a few talented contemporary thinkers, "the best social decisions are to be made . . . by systemic processes that mobilize and coordinate knowledge scattered among the many, in individually unimpressive amounts."¹³ Correspondingly, the constrained vision conceives of reason in what Sowell calls its "cause-and-effect" sense. In this sense, there is a "reason why water expands when it freezes into ice"¹⁴ and this reason exists independent of human cognition.¹⁵ The second sense of reason, cherished by the unconstrained vision, is

10. *Id.* at 100.

11. "Those with the unconstrained vision, favoring articulated rationality, see the issue as one between two sets of contemporaries, x and y, while those with a constrained vision, favoring systemic processes, see the issue as being between the experience of successive generations, represented by group x in today's generation, versus the articulated rationality of their contemporary opponents, group y." *Id.* at 54.

12. *Id.* at 42.

13. *Id.* at 49.

14. *Id.* at 50.

15. Shifting from the physical to the social world, Sowell suggests that classical and neo-classical economics exemplify this sense of reason in ascribing a rationality to a market not controlled by

"articulated specification of causation or logic. . ." ¹⁶ The constrained vision, in contrast to its competitor, holds that the entire social process can be rational even though individuals may not grasp the reasons underlying its operation. Thus, the constrained vision merges into one the notions of accumulated or inherited wisdom and systemic rationality: the way things operate now manifests both notions.

Second, the two visions take distinctive approaches to the social system inherited from past generations:

The unconstrained vision speaks directly in terms of desired results, the constrained vision in terms of process characteristics considered conducive to desired results, but not directly or without many unhappy side effects, which are accepted as part of a trade-off. ¹⁷

I will have more to say about Sowell's use of the now fashionable dichotomy between process-oriented and result-oriented approaches below. ¹⁸ For now, note the connection between the constrained vision's focus on process and its preference for *trade-offs*. Whereas the unconstrained vision reacts to social problems by attempting to fashion rational *resolutions*, the constrained vision countenances social problems as the costs (or trade-offs) necessary to reap the benefits of the inherited social system.

Finally, the constrained vision's conceptions of human nature and the genealogy of various social evils differ markedly from the conceptions of its competitor. Sowell, reviving the old debate over the perfectibility of humankind, tells us:

Those who see the potentialities of human nature as extending far beyond what is currently manifested have a social vision quite different from those who see human beings as tragically limited creatures whose selfish and dangerous impulses can be contained only by social contrivances which themselves produce unhappy side effects. ¹⁹

In other words, according to the constrained vision, absent external constraints, humans will act like selfish aggressive brutes. As a corollary, the constrained vision has a "the cup is half full" view of social evils. That is, poverty, war, and the other fugitives from Pandora's box result from inherent human imperfections; things are as grand as they are only because our social institutions have effectively constrained these tragic human proclivities and rechanneled them toward lawful productive activities. As opposed to this view, the unconstrained vision pretty much adopts Rousseau's inversion of the Christian heritage: humans are born "good" and social evils arise due to the corrupting influence of counterproductive and needlessly oppressive institutions.

The various elements of each vision appear at first blush to fit together quite nicely. If, according to the constrained vision, humans are inherently self-serving, and if articulated rationality is far inferior to accumulated experience as a guide to behavior, then we must distrust "good intentions," that is, the professions of allegedly superior actors, if empowered, to achieve collec-

deliberate human engineering efforts. The "reason" of the market is located in the system itself. See *id.* at 50-51.

16. *Id.* at 50.

17. *Id.* at 37.

18. See *infra* text accompanying notes 31-35.

19. *Id.* at 35.

tively beneficial results through the use of ad hoc methods. Rather, we must place our reliance on the inherited social process whose tried and true system of rules and roles imposes external constraints (incentives and disincentives) that allow selfish individuals to interact productively over the long run. Thus, "[f]idelity to roles is central to the constrained vision, for in carrying out defined roles the individual is relying on the experiential capital of nations and of ages. . . ."²⁰

The unconstrained vision, with its faith in the inherent goodness of humankind and the powers of individual human reason, is willing to rely on "wise and conscientious" individuals to devise and implement rational schemes. These intellectually and morally advanced individuals can improve the social order because they have been able to overcome the corrupting and stultifying effects of inherited social institutions. The unhappy side-effects of the social process can be avoided and desired results attained by careful revision of existing practices and institutions.

Now it is reckoning time for these visions. Do these visions actually do the job Sowell assigns to them? If visions are supposed to "fill in the necessarily large gaps in individual knowledge,"²¹ then we can expect a vision to provide at least some guidance in answering two questions: (1) How did we, as a collective, arrive at the present social system? and (2) How should I, as an individual, regard the various rules and role assignments of that social system?

The constrained vision includes the assumption that the present constellation of social practices and institutions first emerged and continue to operate because they are the most *functional* for the collective:

[T]he competition of institutions and whole societies leads to a general survival of more effective collections of cultural traits. . .

Values which may be effective at the tribal level will tend to be overwhelmed by values that permit or promote the functioning of larger aggregations of people.²²

Let's call this assumption "evolutionary functionalism" and note its two components: first, any pervasive social form is functional for the collective; and second, a form comes to be pervasive if it is more functional for the collective than existing alternative forms and the form ceases to be pervasive when an existing alternative form proves to be more functional.

There is a vicious circle here. The social forms now pervasive are the fittest (i.e., most functional) because they have survived; these social forms have survived (triumphed over alternative forms) because they are the fittest. In other words, for a social form to be pervasive it must be functional; but to be functional it must be pervasive. The constrained vision cannot offer us the slightest clue as to why certain social forms and not others came to be pervasive, i.e., how we arrived at the present social system.

Sowell might defend the constrained vision as follows. Every social system operates under a certain set of external conditions, its environment. At time (T1) a particular environment (E1), the social system (S1) is the most functional collection of practices and institutions. At a later time (T2), however, there may be substantial changes in the system's external conditions.

20. *Id.* at 60 (quoting E. BURKE, 8 CORRESPONDENCE OF EDMUND BURKE 138 (1969)).

21. *Id.* at 14.

22. *Id.* at 41.

Hence, because E2 is substantially different from E1, a new system, (S2), emerges as the most functional system for the external conditions existing at T2. Significant changes create a new environment for the collective and the social forms most functional for this environment come to be pervasive. While individual actors pursue their selfish ends, the latent consequences of their activity is an optimally functional and adaptive social system.

There is a problem with this response. Visions, like theories, should be falsifiable (or so Sowell implies²³) and this element of the constrained vision can never be falsified. If one is asked why a substantially different S2 has emerged, one replies that there is a correspondingly novel environment E2. But this sort of explanation comes *after the fact* and does no more than say that a certain social form came to be pervasive as the result of the system's adaptive response to changes in its environment. How would one ever falsify such a claim? After all, whenever a new social form is deemed to have "won out" over its alternatives, its victory is the cause for its victory: that is, it has become pervasive because it is functional but it is deemed functional only because it has become pervasive. Such an approach makes no predictions as to what social forms will arise; it only observes what is and places its imprimatur of functionality upon it. The upshot is this: someone of the constrained vision has no basis for Panglossian confidence in the present system as the optimal system for our present environment.

In addition to its circularity, there is a certain incoherence to the constrained vision's evolutionary functionalism that derives from transposing a biological theory to the sphere of social relations. Sowell himself concedes an all-important difference between applying Darwinian ideas to nature and to society: "[The constrained vision's theory] is not, however, a theory of the survival of the fittest *individuals* but of the fittest social processes."²⁴ Note, however, that the basic unit in biological evolutionary theory is a type of organism and there are no problems in distinguishing the organism from other organisms competing for the same resources and from its environment. But social evolutionary theory, the basic unit of evolution is the social form, a practice or institution, and drawing lines between this "organism," the larger system of which it is a part, and the environment is quite a bit more complicated. Where, for example, does one place technological innovations such as the invention of the stirrup in Medieval Europe? Are such inventions part of the system or part of the environment? And what about social technologies such as bureaucratic organization? The problem is that what is functional depends upon how one draws these lines because a form is functional only with respect to a specified system interacting with its environment. And the constrained vision justifies inherited social processes because they are functional. Thus, everything hangs on how these lines are drawn—and one looking to justify the current system has unconstrained discretion in drawing the lines.

The vicious circularity of evolutionary functionalism as both a justification for and an historical explanation of the existing social system becomes clearer by examining one of Sowell's analogies. He draws an analogy between an inherited social system and language. Both exemplify an "evolution of

23. See *id.* at 16.

24. *Id.* at 71.

circumstances."²⁵

Language is thus the epitome of an evolved complex order, with its own systemic characteristics, inner logic, and external social consequences—but without having been deliberately designed by an individual or council. Its rationality is systemic, not individual—an evolved pattern rather than an excogitated blueprint.²⁶

Sowell goes on to note two important features of language: languages are more effective when evolved than when artificially created; and, language as an evolved social process “serves a greater multiplicity of purposes than any given individual or council may be able to enumerate, much less weigh.”²⁷ Additionally, even though the rules of language have been written down, the resulting rules are a codification of already existing practices.

What happens, however, when a social unit (nation-state or smaller organization) consists of two groups who speak different languages? Or what happens when two groups speaking roughly the same language disagree as to whether certain sentences are grammatically correct.

Such situations reveal the differences between the linguist’s study of language and the constrained vision’s conception of the social system. A modern linguist is able to set out a system of rules, a grammar, for a language only because the linguist heuristically curtains off a specific group of language users and charts their linguistic interactions. In doing this charting, the linguist assumes that the interactions serve the purpose of communication between these users. The linguist uses past experience to decide which features of these interactions are linguistic in nature, that is, functional for the purpose of communication. The linguist would never assert that the resulting set of rules (a) is the most functional set of rules for this community of users or (b) has evolved as the most adaptive response to the conditions in which these language users live and interact.

Thus, the claims made by the constrained vision regarding the existing social practices and institutions are far removed from claims that a modern linguist would make about the grammatical rules that describe a language. The linguist indulges in functionalism as a heuristic device in order to distill a grammar from an enormous set of transactions; the proponent of the constrained vision proposes that the current “grammar” of society not only describes social interactions but also is the best possible set of rules for such interactions because it has won a competition with alternative forms. No modern linguist would ever make such claims about the conventions that constitute a language.²⁸

Legal scholars sometimes talk about “the normative power of the actual”—that is, the way things are tends to look like the right way. Sowell’s

25. *Id.* at 68.

26. *Id.* at 69.

27. *Id.*

28. A more fitting analogy but one that the constrained vision might not want to accept is the parallel between such social processes as the market economy and language *as conceived by* the traditional grammarians. These grammarians were prescriptive; when they set out the rules of a language, they were imposing these rules upon the speakers of that language, whether or not these speakers had actually followed these rules or not in their previous use of the language. Ironically, radicals would then agree with Sowell that language offers a very good analogue to a social system. Alluding to the history of prescriptive grammar, they would go on to say that the analogy is based on hegemonic imposition of standards by an elite class on the masses.

constrained vision falls into a similar Panglossian rut, adopting one side of the notorious Hegelian equation: the real is rational. The conceptual laxity of the constrained vision comes into sharp focus when we try to comprehend a society such as contemporary South Africa. What is functional about the present system and for whom? The constrained vision appears to obscure rather than clarify social settings involving serious conflicts.

All this is very bad news for an individual to consider regarding the various rules and role arrangements of the social system. The constrained vision prescribes that I follow rules and faithfully play my roles because such rules and roles are part of a social system that is better than any alternative we could devise. Hence, it is in my interest *over the long run* to pay attention and be obedient. This prescription does not make much sense.

In a modern industrial society, an individual will play a variety of roles and many of these roles will be quite complex. Being faithful to one's role is often problematic. For example, there will be times when one role conflicts with another role or when there is confusion or dispute as to whether a certain role includes or excludes a certain type of behavior. Relying on the constrained vision's admonition to follow the accumulated wisdom of past generations is difficult when one doesn't know whether such wisdom addresses a particular situation at all or if it does address the particular situation, what course of action is dictated.

The inevitable consequence of such interpretation problems is a special class of interpreters who shall tell us what the accumulated wisdom dictates. In a large society there is likely to develop an hierarchy of such interpreters. For convenience, there will be a need for a great number of lower-level interpreters but for uniformity and finality there will have to be an interpreter of last resort. Yes, this does sound like a modern legal system. More importantly, this sounds very much like the unconstrained vision: an intellectually and morally advanced elite will tell the rest of us what to do and how society should run.

Sowell might reply that there is an important difference. In the constrained vision, the text these interpreters read from is the accumulated wisdom, not the ad hoc machinations of their own minds. This is rather uncritical. Compare these two cases. In Case 1, the interpreters are told that any disputes concerning current local practices must be settled by appeal to the accumulated wisdom. In Case 2, the interpreters are told that any disputes must be settled by appeal to an actual text framed by a bunch of intellectually and morally superior individuals from a few generations back and containing a blueprint of a rational society. The constrained vision appeals to accumulated wisdom presumably to avoid the ad hoc results of fallible articulated rationality. Yet Case 1 appears to threaten greater risk of ad hoc activity by an elite than Case 2. Maybe the problem with the constrained vision's reliance on the past, on tradition, on the systemic rationality of an evolved social process, can be put this way: the fund of wisdom does not speak in unambiguous terms—in fact, it does not speak at all.

Thus, the constrained vision falls apart because (a) it doesn't suggest the slightest basis for its confidence in the inherited scheme of things; and (b) even if such confidence were justified, it is not clear in a wide range of cases that we could know with any amount of confidence when we are following and when

we are deviating from the inherited scheme of things.²⁹ Recall Sowell's claims about the constrained vision. First, its locus of discretion was the self-interested individual. Not so—inevitably a body of interpreters will emerge with potentially unlimited discretion. Second, its mode of discretion was inherited wisdom or systemic rationality, as opposed to articulated rationality. But quite a bit of articulated rationality is likely to go into "accessing" this accumulated wisdom.

Does the unconstrained vision fare any better under scrutiny? Not likely. In a nutshell, the unconstrained vision says, "A few extra-smart and well-intentioned people can make this whole thing work." The efforts of these people, if the collective allows them discretion, will benefit all of us. But the unconstrained vision, much like Rousseau himself, has a "problem of evil" problem: if we are all so good, how did things get so bad? And when an explanation is proffered, will it be consistent with an optimistic view of the future?

In addition, when I look for guidance in deciding upon particular courses of action, the unconstrained vision gives me little comfort. The power of human reason will save us, so we are told, but in the case of competition among would-be saviors, whose rational schemes do I follow? And if force is required to implement one rational scheme rather than its alternatives, then one is left to question the morality and intelligence of such a scheme.

But it is too easy to criticize the unconstrained vision; so much so that it seems like a "straw vision." Sowell tells us:

What is at the heart of the difference between them is the question as to whether human capabilities or potential permit social decisions to be made collectively through the articulated rationality of surrogates, so as to produce the specific social results desired.³⁰

Why does Sowell make *elitist imposition of standards* an essential characteristic of the unconstrained vision? By contrast, the constrained vision comes out sounding like some sort of populist gospel with its emphasis on evolved social processes to which the common folk of generations past have contributed. Since the constrained vision is more or less associated with the right side of the political spectrum and the unconstrained vision with the left side, it looks as though leftists elevate themselves above the masses and imperially hand down the scheme of things while rightists join the masses in following the inherited wisdom.

If Sowell is really advocating the superiority of the constrained vision

29. Perhaps I can place my finger on the source of the difficulties in the constrained vision. In concocting this "unhappy" vision, Sowell has used ingredients from the traditional conservatism epitomized by Burke and the libertarian conservatism epitomized to varying extents by Adam Smith and more recently, Robert Nozick. Burke defends a system that condones the triumph of inherited privilege over merit and emphasizes duties over rights. Smith urges adoption of a market economy with a systemic rationality promoting self-interested individual behavior that redounds to the common good over the long run. Sowell brings together in the constrained vision the systemic rationality that Smith cherishes with the conventional wisdom that Burke so favors. The marriage is not a happy one. For example, as free market economies emerged in Europe and the United States, the force of tradition was decimated. A Burkean would object to the wholesale changes brought about by the new economic order. A Smithian, however, would applaud the inexorable triumph of a new systemic rationality. In the constrained vision Sowell wants it both ways: the free market system embodies both traditional wisdom and systemic rationality.

30. *Id.* at 112.

over the unconstrained, and I am convinced that he is doing just this, then criticizing the latter is a waste of time. Instead, critical attention should be focused exclusively on the constrained vision. So far I have concluded that the constrained vision does not succeed in filling in the gaps or providing a foundation for one's political beliefs and prescriptions. In the next section I shall examine the theoretical consequences of the constrained vision and consider alternative theoretical positions that are more viable than the "straw vision" construed by Sowell.

II. THE WORLD ACCORDING TO SOWELL: EQUALITY, POWER, AND RIGHTS

The second part of Sowell's book, "Applications," discusses various consequences of seeing social matters by way of one vision or the other. I shall take a close look at three of these consequences, namely, the conceptions of equality, power, and rights, especially property rights, that derive from or that at least are consistent with the constrained vision.

Equality

The constrained vision sees equality as a process, not a result. For this reason it opts for *equality of discretion*, while the unconstrained vision favors *equality of condition*.³¹ In the rush of Sowell's words, however, his use of "condition" in the sense synonymous with "result" obscures the role played by the second sense of "condition" as a basic requirement for the successful operation of a process.

Let's take Sowell's favorite example of an evolved (and therefore admirable) social institution, the free market economy. The constrained vision is concerned about discretion: that each individual participant in the market economy should have equal liberty to compete for the rewards distributed by the market. But the unconstrained vision is more concerned about the result. Hence, after the process has run for a certain time and certain people have done so poorly in the competition as to not have anything to eat or anywhere to sleep, those of the unconstrained vision will step into the marketplace, mandate transfers of wealth from winners to losers, and thereby deprive the winners of their discretion. By focusing on results, those of the unconstrained vision disrupt and distort a social process that has benefited society as a whole.

This account is a bit too simple. Actually, certain luminaries of the constrained vision such as Adam Smith and Milton Friedman have supported schemes to ameliorate the suffering of the poor even though such schemes run counter to the operation of the free market. But "neither was prepared to make fundamental changes in the social processes in hopes of greater equalization."³² Sowell quotes Friedman:

Wherever the free market has been permitted to operate, wherever anything approaching equality of opportunity has existed, the ordinary man has been able to attain levels of living never dreamed of before.³³

31. *Id.* at 139.

32. *Id.* at 127.

33. *Id.* (quoting A. MILTON and R. FRIEDMAN, *FREE TO CHOOSE* 146 (1980)).

Friedman's caveat, "wherever anything approaching equality of opportunity has existed," completely slips by Sowell.

For Sowell, any transfer payments from rich to poor in a market economy are result-oriented. Such payments can only derive from a definition of equality that insists that people who participate in a system of production take from that system rewards in roughly equal amounts. But it is perfectly consistent to support a free market economy and still advocate transfer payments. In fact, taking Friedman's caveat seriously, such transfer payments are necessary.

What Sowell misses is the distinction between the tools required to compete in the market and the actual competitive efforts a person makes. During one's minority, one gathers by way of the tutelage of significant others a set of tools for competing in the marketplace. As an adult, one then proceeds to utilize such tools in competing for the benefits offered by the market. Where transfer payments are made so that all children and not just the children of the rich can enter the market with the basic skills needed to compete, such payments are required to maintain the integrity of the process, not to achieve desired ends. The constrained vision's process-orientation and equality of discretion are a sham where the basic conditions for a competitive market are not provided. There is an essential distinction between the results or ends of a process and the conditions required for the integrity of the process.³⁴ Sowell's constrained vision conflates results and conditions and thereby dismisses a notion of central importance to any competitive process, namely, giving each competitor a fair opportunity. Another way of making this point: to say that the impoverished circumstances of a 6-year-old child is a result of the economic system is not to distinguish between (a) a result of one's participation in the economic system; and (b) a causal result of the economic system. Ignoring the poverty of one who has had a fair chance to compete in the system is one thing; ignoring the poverty of one whose poverty virtually excludes the possibility that the person will have a fair chance is quite another thing.

One prominent issue at stake in this battle over conceptions of equality is affirmative action. The constrained vision's conception of equality can be used to justify the conservative opposition to affirmative action programs. For instance, if X is a Black, who grows up in impoverished circumstances in a racially and culturally isolated ghetto neighborhood, and leaves school at 16 to seek his destiny in the economic marketplace. His destiny is one of instant employment, performing menial work at low wages. Finally, he manages to obtain a union job at a factory across town. In contrast, Y, a White, grows up in a middle-class suburb, finishes high school and, choosing to forego college, gets a highly sought-after job at the same factory as X (but a decade earlier) as a result of the influence of friends and relatives. Consider an affirmative action program that would take from Y (e.g., his job, some benefits of his seniority ranking) and give to X. According to the constrained vision, X's circumstances and comparative disadvantage with respect to Y are not

34. The term "condition" has (at least) two distinct meanings. First, one's condition is one's circumstances; in this sense, "condition" is roughly synonymous with "result." When one seeks to ameliorate the condition of the poor, Sowell can rightly say that one is trying to change the distributive result of the economic process. But the second meaning of "condition," a set of circumstances required for something to work or function, is the meaning I apply in criticizing the constrained vision.

due to any "coercive" influence (i.e. exercise of power) of any specific individual or group over X; certainly Y has not coerced X in any way. No individual or group now in existence can be ascribed responsibility. And if we attempt to trace X's disadvantage back to earlier racist institutions and practices, the constrained vision might tell us that the causal links between these historical matters and X's present circumstances are too attenuated. Once deliberate exercises of power are eschewed, what remains is this picture: Y has not caused X's disadvantage because the destinies of both have been subject to the forces of an impersonal master, the market system. And the unconstrained vision's prescription of an affirmative action program is an unjustified and inexpedient exercise of power by a government elite over Y (and presumably over X as well). For the constrained vision, X's disadvantage is unfortunate but an acceptable trade-off for an overall system that benefits us all.

Even without disputing the causation of racial disadvantage, shouldn't we all be offended by the unfair advantage Y has over X in the market system? Instead of a trade-off, isn't this really an aberration from a competitive market system? Even if we do not assign blame to specific individuals or institutions, it is very clear that X's choices have been severely restricted. The example of X and Y provides a clue as to what is wrong with the constrained vision's conception of equality. This vision places the focus on the question whether some specific person or group has deprived an individual of choices. But this notion of deprivation makes little sense if an individual, due to background circumstances effected by the system operating over time, has few if any choices. Quite simply, to be deprived of choices requires that one actually have significant choices. And having choices means being able to exercise power over one's actions. Affirmative action programs are meant to create some choices, not dictate results.

Sowell has a fallback position. He suggests at several places in his book that interfering politically in the economic process is dangerous because the benefit of greater fairness from such interference will not outweigh the cost of government intrusion.³⁵ But this is an old and worn out argument between leftists and rightists. For rightists, whatever the problems from large aggregations of economic power, to suggest schemes to solve such problems is to raise the sceptre of political power that can destroy the economic process. For leftists, those with vested economic interests cannot only skew the market process toward their own ends (so that the market is no longer competitive) but can also gain undue influence over the political process. Dick Gregory used to explain the different brands of racism in this way: White Southerners don't care how close blacks get as long as they don't get any power; White Northerners don't care how much power Blacks get as long as they don't get too close. Those of the constrained vision seem to feel that it doesn't matter how rich you get, because they are all still okay, i.e. still free, if you don't gain political power. This is nonsense but the point need not be argued here. All that need be said in suggesting an alternative to the constrained vision is that the goal of fair opportunity does not require placing into the hands of some political elite license enough to deprive market participants of their liberty.

35. See, *id.* at 56; *Id.* at 128 ("In short, attempts to equalize economic results lead to greater—and more dangerous—inequality of political power.").

The task of equalizing opportunities doesn't call for or necessarily give rise to a Lenin.

Power

Sowell ascribes to luminaries of the unconstrained vision such as John Kenneth Galbraith, Gunnar Myrdal, and Laurence Tribe, the view that whenever "one individual or group can change the behavior of another, then the former has power over the latter."³⁶ This expansive conception of power gives a bleeding heart liberal much to bleed about. For the constrained vision, power is conceived as "the ability to reduce someone's preexisting options."³⁷

The conception of power ascribed to the unconstrained vision is silly and patently indefensible. If I slip and inadvertently shove you, I have power over you according to this conception because I have influenced your behavior. (Or: If I tell you what I heard on the news, that the surf is out, and you go surfing as a result, I have exercised power over you.) To make this conception even slightly more tenable, one has to add some requirement that Y acts intentionally when influencing X's behavior. But this element of intention is not enough for if X tells Y to shove Z or else (e.g. X has a gun and is threatening to shoot Y), then Y will influence Z's behavior and acts intentionally in shoving Z, but it does not seem that Y has power over Z. So there would also appear to be some element of voluntariness required in exercising power.

The constrained vision's conception of power is much narrower. For the constrained vision,

[p]ower lies at the end of a spectrum of causal factors which include influence, individual discretion, and systemic interactions whose actual outcomes were not planned or controlled by anyone.³⁸

Though one person may influence another person's behavior in important ways, such influence does not count as an exercise of power unless the effect of the influence is to actually extinguish one choice that the other person previously had.

The battle of these two conceptions of power has implications for the important domain of contractual relations within a capitalist market society. For Sowell's constrained vision, as long as there is some consideration or quid pro quo for the services X provides to Y, the deal X and Y has made cannot be coercive (that is, cannot be a situation in which Y is exercising power over X). Some law professors, eager to debunk any antiquated bit of conventional legal wisdom, like to say that there is no such thing as "unequal bargaining power." As long as X has bargained, as long as X has a choice to accept or reject the terms of the deal offered to X by Y, then X is not being coerced by Y. So says the constrained vision.

But if X's choices are starving to death or accepting an employment contract with Y at subsistence wages, it seems intuitively implausible to say that Y does not have any power over X because Y did not deprive X of any choices. Does anyone seriously believe, for example, that the company management in a one-company town does not have a good deal of power over not only its employees but also their families and any local independent contractors?

36. *Id.* at 170.

37. *Id.*

38. *Id.* at 151.

Behind Sowell's discussion of the constrained vision's conception of power is a message: leftists should stop blaming society's ills on the economic power of rich families or large corporations. The fate of all the competitors in the market is in the hands of the process itself and not in the hands of specific persons or groups. But this is more of Sowell's conservative refrain concerning economic and political power. I just find it curious that Sowell (or his constrained vision) can be very concerned that, for example, the IRS will accumulate and exercise power malevolently and at the same time be not the least concerned that EXXON will do the same.

Justice

For the constrained vision, justice is a matter of a "conscious trade-off" and periodic unfair results must be countenanced as a result of an overall process that serves "the interest of the society as a whole."³⁹ The certainty provided by a *uniform* framework of rules outweighs any number of miscarriages of justice in individual cases that result when the framework is slavishly applied. As might be expected, those of the unconstrained vision seek to "individualize" the system of justice so as to avoid egregious results; each case presents a unique set of circumstances calling for a custom-tailored resolution. The difference between the two visions goes even deeper, though: for the constrained vision, justice is merely for the sake of order while the unconstrained vision, represented for example by John Rawls' theory, views justice as the primary good of a society.

These differing conceptions of justice involve contrasting notions of what a right is. For the constrained vision, rights are "zones of immunity from public authority" providing individuals "the legal ability . . . to carry on certain processes without regard to the desirability of the particular results, as judged by others."⁴⁰ Oddly enough, this sounds very much like what Dworkin has in mind when he speaks of rights as "trumps." For the constrained vision, however, these immunities are not absolute because "[i]ndividual rights originate, take their meaning, and find their limits in the needs of social processes."⁴¹

This brings us to property rights. Property rights, according to the constrained vision, have emerged and persisted because such rights have benefited "the population at large" over the long run.⁴² Because rights such as property rights are part of the inherited social process, these rights cannot be expanded or contracted in *ad hoc* fashion.

All this is rather simple-minded. Rights do not define themselves—legislatures and courts define rights. For example, the Supreme Court in 1985 held that the copyright included a right to first publication.⁴³ The Copyright Act of 1976 did not specifically provide for such a component right and prior judicial authority did not clearly establish whether copyright included this incident. By most accounts, the Supreme Court carved out a new incident to the copyright. And this new incident resulted from the Court's attempt to square

39. *Id.* at 176.

40. *Id.* at 186.

41. *Id.* at 202.

42. *Id.* at 186.

43. *See Harper & Row Publishers v. Nation Enterprises*, 471 U.S. 539 (1985).

one party's First Amendment rights with the opposing party's copyright. Hard cases invariably address conflicts of rights and call for a court to craft a result in which the dictates and demands of previous case law—constitutional and statutory—the interests and circumstances of the parties involved and the community at large are brought together into a coherent scheme.

Sowell's conception of the law brings to mind an algorithm or recipe: gather the ingredients, follow the directions, and get the result. He not only minimizes the judge's role; he also seeks to suppress the activity of legislatures. On the one hand, he tells us that "judicial activism" violates the separation of powers; presumably, if the judiciary is infringing the legislature's sphere of authority, then the legislature does have the power to change the law. But then, on the other hand, in the name of the constrained vision, he challenges "legislative activism": political leaders as well are not authorized to "expand or contract [individual] rights in *ad hoc* fashion."⁴⁴ But what makes a legislature's decision to contract or expand a right "*ad hoc*?" In the United States, with our constitutional form of government, aren't we paying all too much deference to the rational schemes of an elite group whenever we minimize the role of current government in shaping social practices and institutions? Sowell might respond that property rights go back before the Constitution; that document merely reflects the order of things at the time it was drafted. But Native Americans, here long before European settlers, had a very different conception of the property right. Even in England, the conception of a property right as a right to exclusive use was not dominant until the Enclosure Movement. That movement, one should recall, was not an "evolution" but quite clearly a new order imposed upon a society by an elite group. Why does the constrained vision consider one conception more "natural" than another, so natural in fact that a democratically empowered legislature should not alter that conception?

Sowell's answer is this: "The assessment of *long-run* social expediency is already implicit in that exemption,"⁴⁵ that is, in the existing conception of a property right or a right to free speech. This answer won't do for two reasons: first, rights do not speak for themselves and are notions requiring constant and careful demarcations in hard cases; second, even when rights are more or less clearly demarcated, Sowell's attempt to designate one set of existing rights as the optimal scheme of rights and as virtually immune to judicial or political alteration leaves one baffled as to how changes ever occur in a society's scheme of rights.

III. THE WAGES OF CONSTRAINT

Sowell tries to cover the entire playing field with his two conflicting visions. I have had much to say in criticism of these visions, especially the constrained vision and its consequences. Why is it that Sowell's twofold scheme obfuscates rather than comprehends the arena of political debate? I suggest that there is something amiss in Sowell's own vision, a central blindness, and I shall spend this section articulating just what is amiss.

Some of Sowell's dichotomies will serve as clues to this central blindness. These dichotomies are prime examples of the fallacy of bifurcation. For one,

44. *Id.* at 202.

45. *Id.*

Sowell's counterposing of systemic rationality/inherited wisdom to articulated rationality ignores a conception of human intelligence, knowledge, and rationality as a process of inquiry undertaken by a community. Sowell's conception of articulated rationality forces the individual to either take orders or give orders; his conception of systemic rationality/inherited wisdom consigns the individual to following rules and playing roles, the meaning and applications of which are problematic. The alternative to Sowell's dichotomy is a conception of deliberate social inquiry and experimentation by a community as a way of responding to special social problems within a larger context of shared norms.

Sowell's dichotomy of process-orientation versus result-orientation also obscures a viable alternative conception. As I have suggested above, any legitimate social process will depend upon certain conditions for its successful operation. Sowell can ignore conditions of equal competitive opportunity while lauding market economies presumably because he believes that the process results in overall welfare (i.e., gains in utility for the entire society). This concern for the good of all allows Sowell to dismiss claims of relative deprivation not only in regard to distributive results but also in regard to initial opportunities. Sowell's failure to distinguish between opportunities and results betrays a preference for conceptualizing an individual as a set of determinate ends or preferences rather than as an actor whose various projects and interactions with other actors create a meaningful social existence.

Finally, there is Sowell's dichotomy of those who view human nature as malevolent or egotistical and those with a benevolent or altruistic conception. This bifurcation is the most stultifying of all. When a mother risks her life to save her child, she is acting selfishly, not altruistically, because the "self" that is acting includes the child. That is, the mother is not simply playing a role as one does in a TV drama. Rather, being a mother means to this particular individual belonging to a group of (at least) two, a self consisting of parent and child.

The boundaries of our selves are fixed not by the biologically given needs and functions of individual organisms but rather by a process of self-definition that is a central constituent of human agency. Human thought and action are fundamentally processes of interpretation. One aspect of that interpretive activity is self-awareness, the actor/interpreter's conception of the acting and interpreting subject. At the foundation of one's vision, therefore, is a process of self-definition in which boundary lines are continually drawn and redrawn between "we" and "them." To fully understand any human thought or any human action requires comprehension of the subject of that thought or action. Language, one central social form, allows me to effectively communicate, one indispensable social end, because I belong to a community of language users. In following the rules of my language I am defining myself as belonging to this particular community. But the status of my membership can be taken for granted only in unproblematic or routine communicative situations. Whenever difficulties arise in communicating, speaker and audience have to re-negotiate to some extent the terms of their co-membership in the same language community by reaching agreements on the meanings of their terms.

Communication even in problematic situations succeeds as often as it does because of a background of shared rules and roles. But Sowell's vision,

because he seems to focus exclusively on the non-problematic social interactions, ignores this active process by which individuals define the boundaries of their collective membership and thereby negotiate their common social reality. For Sowell, the individual is not a process but a result, a *fait accompli*, a ready-made set of preferences or ends.

Thus we come to a surprising irony: while Sowell champions a process-orientation, he views the individual social actor as a result, rather than as an active process whose self-definition affects and is affected by social practices and institutions. Moral and political questions are rooted fundamentally in reflections on this active process by which the individual constitutes self and other. This point escapes Sowell as he discusses some of the views of his political opponents:

In this [the unconstrained] vision, the rights of individuals are to taken 'seriously' as essential recognitions of their humanity, and social expediency is to yield when basic human rights such as free speech or the right of the accused to constitutional protection are at issue. In conflicts between rights, those which define the human being as a subject rather than an object are to have categorical preference over other rights, such as rights to property, and all rights are to trump all interests, such as a general interest in social peace, or economic efficiency.⁴⁶

Sowell's myopia causes him to skirt around the suggestion of a plausible vision contrary to his own.

Rights take preference over interests in this alternative vision because rights go to the very process by which individuals come to have interests. Rights mark out the framework within which social practices and institutions create and maintain rules and roles. Sowell takes the individual as a pre-determined set of interests who enters into a completely ordered marketplace seeking profit (i.e. to further the ready-made package of interests) through exchange at arm's length with other individuals. But Sowell refuses to recognize that there are preconditions to any fruitful exchange. Rights, unstable and indeterminate as they are, represent less-than-perfect vehicles designed to secure these preconditions. Rights are much like certain universal grammatical concepts such as agent, object, speaker, and audience. Speakers of diverse languages can eventually shape vehicles by which to communicate only because they share these fundamental concepts. Actors can only profit from exchanges and other forms of interactions (involving convergent sets of interests) because or as long as fundamental rights are recognized.

Sowell's vision sees only interests, not rights,⁴⁷ because Sowell's conception of the individual human actor includes only results, not the process that shapes those results. A much more compelling "constrained vision" would recognize that society is not a *natural order* because the rules and roles of a social order are always subject to the interpretive dimension of human agency. Rather, humans are "condemned" to live in a social setting of their own making.

46. *Id.* at 199.

47. That is to say, it appears that for Sowell rights are just a species of interests. Rights are those interests that have become very deeply entrenched in a social order.

CONCLUSION

Although Sowell purports to be impartial between his two conflicting visions, this is an ideological book, not simply a book about ideology. Once the facade of neutrality is stripped away and the constrained vision is identified as Sowell's own ideological stance, the task becomes a critical assessment of this stance. I have found that Sowell's ideological argumentation goes awry in many ways.

In my view the book's moral is:

Individuals should accept assigned roles and follow recognized rules rather than looking for rational alternatives to the inherited social process.

Sowell's constrained vision arrives at this conclusion by two related routes. The first route is:

The existing social practices and institutions of a given society constitute a quasi-natural order that is optimal for that society.

The ground of this claim is what I have called evolutionary functionalism. I have argued that evolutionary functionalism is nothing more than an elaborate expression of preference for things as they are. Additionally, in ascertaining how things are, this approach ignores or dismisses the diversity of a modern society and the amount of conflict to be found in such a society.

The second route is:

Human beings are incapable of conceiving and carrying out rational schemes that benefit the society to which they belong.

I have argued that Sowell conceives of the individual as a passive set of ends, preferences or interests (or a quasi-automaton designed to achieve certain goals). An alternative vision conceives of humans as essentially interpretive creatures who actively constitute a social environment that constantly requires re-definition. On this view, the debate between those who view humans as altruistic versus those who view humans as egotistic becomes ancillary to the question of how actors define themselves.

I conclude by commenting on a recurrent thesis in this book: that at bottom political debates and disputes are not a matter of differences in value but rather differences in cognitive assumptions about human nature and social causation.⁴⁸ Sowell is wrong: one's conception of human nature and one's own moral values are not so easily separated. Using Sowell's own example, consider Adam Smith's hypothetical: were an earthquake to occur in China, a "dreadful calamity," Europeans hearing of the misery of the Chinese would pause for a moment to express sorrow and then return to their own business.⁴⁹ Smith's point is that a European would be more concerned about a "frivolous disaster" affecting him than about the utter horror faced by the people of a distant land. In such a situation, however, the difference between a European who acted to ameliorate the suffering of the Chinese and a European who could have so acted but chose not to would be a difference of moral values, not

48. *Id.* at 117 ("In short, it is not a moral value premise' which divides them but their different empirical assumptions as to human nature and social cause and effect."); *id.* at 131 ("Although the two visions reach very different moral conclusions, they do so not on the basis of fundamentally different moral principles but rather because of their differences in analysis of causes and effects."); *id.* at 216 ("Both constrained and unconstrained visions are fundamentally and essentially visions of causation. Only derivatively do they involve clashes of moral principles or differing hierarchies of social values.").

49. *Id.* at 20-21 (citing A. SMITH, *THE THEORY OF MORAL SENTIMENTS* 233-34 (1976)).

simply a difference in conceptions of human nature. It would be rather feeble for the apathetic European to say that he did not act because by nature he is selfish. Yes, we are all selfish, but the boundaries of our selves are the boundaries of our moral vision and these boundaries are of our making.