

BOOK REVIEW

Causal and Normative Underpinnings of Legal Controversies: The Constrained Vision of Thomas Sowell

A Conflict of Visions: Ideological Origins of Political Struggles. By Thomas Sowell.* New York: William Morrow and Company, Inc., 1987. Pp. 273. \$15.95

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Thomas Sowell, economist and conservative political theorist, has written a book that promises to expand the influence of political philosophy on legal scholarship.¹ *A Conflict of Visions* offers a perspective from which many of the principal debates in modern legal thought — the role of the courts and judicial review,² theories of private property and freedom of contract,³ tensions between the police power and civil liberties⁴ — are seen as manifestations of competing visions of the social mechanisms of cause-and-effect. Sowell alleges that these competing visions derive from conflicting assessments of the seriousness of inherent

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¹ T. SOWELL, *A CONFLICT OF VISIONS: IDEOLOGICAL ORIGINS OF POLITICAL STRUGGLES* 13-17 (1987). For a discussion of how the transition from abstract political philosophy to concrete legal application might work, see Wonnell, *Problems in the Application of Political Philosophy to Law*, 86 MICH. L. REV. 123, 143-49 (1987).

² See T. SOWELL, *supra* note 1, at 53-55, 77-79, 229-30.

³ *Id.* at 164-65, 188-91, 217-18.

⁴ *Id.* at 140-71.

limits on the moral and intellectual capacities of the individual human mind.⁵

This review consists of three parts. Part I sets forth Sowell's position and notes an apparent anomaly between the message that Sowell attempts to present and the medium through which he communicates that message. Part II offers a way of resolving this anomaly while preserving the essential character of Sowell's insights into the source of legal and political controversies. Part III then assesses the merits of the resulting vision. It argues that the coherent causal theory defended in Part II can represent an important step forward in legal understanding if one has a clearer account of its underlying normative commitments.

I. SOWELL'S ANOMALOUS VISION

A Conflict of Visions is Sowell's attempt to identify a common thread that permeates his ideas on a variety of topics. Sowell is probably best known for his controversial works on race and ethnicity. In these works, he has criticized what he calls the "civil rights vision," which is the unshakable faith that the principal causal explanation for the present income disparities among ethnic groups must be present discrimination by the dominant society against those groups.⁶ Sowell also has criticized the "intellectual vision," which depicts a world in which rival elites such as business people and the military are causally and morally responsible for the suffering of the helpless and despairing masses, and in which intellectuals, employing the tool of consciously articulated reason, must save the masses from exploitative powers.⁷ Finally, Sowell has written a book on the "Marxist vision," arguing that it has blinded its adherents to both contrary empirical evidence and moral atrocities committed in its name.⁸

In *A Conflict of Visions*, Sowell identifies two highly abstract, competing "visions." These visions are intuitive senses of the way the world works, and they have inspired ideological conflicts on a wide variety of issues throughout the centuries.⁹ Sowell calls these the "constrained" and "unconstrained" visions. The constrained vision is characterized by the acceptance of inherent, unchangeable limits on the moral and rational capacities of an individual mind. The unconstrained vision does

⁵ *Id.* at 18-39.

⁶ T. SOWELL, CIVIL RIGHTS: RHETORIC OR REALITY? 139-40 (1984); T. SOWELL, THE ECONOMICS AND POLITICS OF RACE (1983); T. SOWELL, ETHNIC AMERICA (1981); T. SOWELL, MARKETS AND MINORITIES (1981).

⁷ T. SOWELL, KNOWLEDGE AND DECISIONS 352-68 (1980).

⁸ T. SOWELL, MARXISM: PHILOSOPHY AND ECONOMICS 221 (1985).

⁹ T. SOWELL, *supra* note 1, at 13-17.

not emphasize the importance of such limits.¹⁰

The two visions differ on a wide variety of possible constraints or limitations. The constrained vision generally accepts the proposition that self-preference and preference for one's family are immutable human characteristics. It holds that society can best tap the modest moral sentiments that are possible toward strangers with artificial cultural expedients that tie these sentiments to self-esteem and self-respect. The unconstrained vision does not deny the prevalence of such moral narrowness, but denies its inevitability. It regards the artificial expedients as unnecessary trade-offs and impediments to the true solution, which is the fully moral person who loves her neighbor as herself.¹¹ This categorization closely parallels the distinction between "individualism" and "altruism" which Duncan Kennedy has argued is the essential difference between mainstream and critical legal studies.¹²

The constrained vision accepts the proposition that one individual or small group cannot possibly have enough knowledge to plan a society consciously. Thus, it has associated itself with the legal institutions of private property and freedom of contract that draw upon the decentralized knowledge of millions. The unconstrained vision has emphasized the importance of the specialized knowledge presently available only to an elite, and thus has tended to regard planning and an extensive police power with greater favor.¹³

The constrained vision stresses the idea that conscious knowledge alone is not what helps people get along in the world. Greater benefit may be gained from accumulated skills, experience, and know-how, or the ability to perceive mores, traditions, and rules that enable the group to survive and prosper without anyone's conscious awareness of the rules' utility. Friedrich Hayek's account of the common law's evolution, which identifies norms that were regarded as obligatory long before the advent of legislation or law making, is a good example of this perspective.¹⁴ The unconstrained vision emphasizes the possibility of making all knowledge of causal links a part of the articulate observer's conscious awareness. It rejects as superstition any knowledge that cannot be so rationalized.

The constrained vision has treated sympathetically the moral codes

¹⁰ *Id.* at 18-39.

¹¹ *Id.* at 19-25.

¹² See Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1713 (1976).

¹³ T. SOWELL, *supra* note 1, at 40-66.

¹⁴ See generally F. HAYEK, 1 LAW, LEGISLATION, AND LIBERTY (1973).

and legal rules that encourage fidelity to limited roles. According to this view, individuals should not take advantage of their power to consciously pursue what they perceive to be the good, but should regard their task as more limited. For example, corporations should benefit stockholders, not follow their social conscience; and judges should interpret the law, not make policy. The unconstrained vision tends to prize sincerity of commitment over fidelity to role, and its supporters are more grudging in conceding sincerity to opponents than are adherents of the constrained vision.¹⁵

Finally, the constrained vision defines its ideals — liberty, justice, equality — as process characteristics rather than as characteristics of outcomes. It has been more concerned with inequalities of power and control than with inequalities of wealth, and more concerned with the authority to coerce than with other restraints on the ability to achieve one's aims. The unconstrained vision has leaned toward the opposite commitments, seeing no insuperable barrier to the direct implementation of results, and little reason to compromise such knowable results in favor of abstract and indeterminate processes.

Sowell presents *A Conflict of Visions* in a curiously agnostic fashion. He refrains from any explicit commitment to either of the competing visions. Yet we know from his other works, especially *Knowledge and Decisions*, that he is committed to the constrained vision on most important issues.¹⁶ For this reason, it is important to explore the apparent contradiction between medium and message in Sowell's works.

The constrained vision emphasizes the immutability of self-preference and the impossibility of acting with a neutral commitment to the common good. Yet surely Sowell intends his books to benefit the broader society. Presumably one would regard it as somewhat embarrassing to discover that Sowell's commitment to the common good had been compromised by considerations of self-enrichment or self-aggrandizement.

The constrained vision stresses the limitations on a single human being's knowledge and urges each person to stay within his special area of expertise. However, Sowell's book is incredibly far-reaching in its scope, discussing with great competence work in constitutional law, political philosophy, microeconomics, criminology, social theory, and the history of thought.

The constrained vision downplays the importance of conscious, ar-

¹⁵ T. SOWELL, *supra* note 1, at 58-62.

¹⁶ See T. SOWELL, *supra* note 7, at 3-20 (constrained vision of knowledge), 214-17 (constrained vision of articulation), 229-304 (constrained vision of legal process).

ticated knowledge, and holds that intellectuals as a class have far less to contribute to the making of public policy than generally is believed. Yet, Sowell is clearly an intellectual and his book reflects articulated knowledge rather than accumulation of hands-on experience. He offers a great deal of advice to policy makers on such diverse matters as race and affirmative action, war and peace, crime control, and constitutional jurisprudence.¹⁷

The constrained vision emphasizes the importance of process-based rather than result-based policy development, but Sowell's first commitment is quite obviously to results rather than processes. His desire to alleviate human suffering is evident in all of his works. He has no apparent commitment to any process -- including free speech, democracy, private property, capitalism, the rule of law, or constitutional rights — that is not based on consciously articulated results and explicitly limited by concern for those results.¹⁸

Finally, the constrained vision de-emphasizes the notion of an elite with vastly greater insight into the world than the ordinary person possesses. Yet, Sowell repeatedly cites to the same few intellectual giants of the constrained vision, such as Adam Smith, Burke, Holmes, and Hayek,¹⁹ to which list one might wish to add Sowell himself.

Of course, the problem is to reconcile the content of Sowell's message with the apparent contradiction of the presentation of that message. Part II argues that both Sowell's presentation and the message presented are consistent with his commitment to a particular theory of the sphere of competence of the intellectual role and process.

II. THE CONSISTENT ROLE OF THE INTELLECTUAL IN SOWELL'S VISION

Sowell's works persistently ridicule the notion that "the best and the brightest" of the intellectual class possess great knowledge unavailable to the lowly masses.²⁰ He also indicates in no uncertain terms — and

¹⁷ *Id.* at 249-60 (affirmative action), 371-77 (military balance), 269-88 (crime control), 289-99 (constitutional law).

¹⁸ See T. SOWELL, *supra* note 1, at 225. "Both constrained and unconstrained visions are ultimately concerned with social results." *Id.*

¹⁹ See, e.g., *id.* at 28, 38, 90, 114, 127, 132. Much the same critique can of course be made of many other writers with expansive world views, i.e., Marx, Freud, B.F. Skinner, Sartre, and others with particular views of human nature that they somehow must transcend in order to articulate their theory. This review ultimately concludes that Sowell's vision can be made internally consistent, but takes no position on the applicability of that method of harmonizing medium and message for other visions.

²⁰ T. SOWELL, *supra* note 7, at 352-68.

with mountains of empirical evidence — the harm that this elite has inflicted on the ordinary person while acting as a “surrogate decision maker” in the latter’s name.²¹ Yet, to read Sowell as rejecting any significant role for the detached intellectual would be wrong. His message can be best interpreted as a statement of the comparative advantage (to use economic terminology with which Sowell would surely be comfortable) of the best and the brightest.

Sowell’s message would indeed be inconsistent if he were trying to deny the possibility that conscious articulation of social policy among an intelligent class of disinterested thinkers could contribute to progress in the law or in society more generally. Nor is it accurate to say that Sowell wishes to use articulation for the same purpose that the early Wittgenstein said he used his philosophy — as a ladder which could be used to reach a position from which it could then be safely kicked away.²² That view would be inconsistent with Sowell’s defense of continuing freedom of speech under the first amendment as essential for the pursuit of truth.²³ Rather, his aim — or, in any event, his contribution — is to show where the disinterested, intelligent, and articulate, but also empirically insulated elite can employ their unique constellation of traits with maximum effectiveness and minimum potential for serious harm.

Sowell’s plea to the intellectual class is that it should concern itself with the identification of abstract processes that are likely to generate normatively important concrete truths.²⁴ His criticism concerns the use of the intellectual role to attempt to perceive those concrete truths directly.

The importance of abstraction can be seen by using as an example the difference between the theoretical sciences and technology. Theoretical science is surely one of the major accomplishments of the intellectual class. It is obvious that scientific progress has required the intellectuals’ skills of intelligence and articulation. The disinterested posture of intellectuals has also been a vast advantage in the pursuit of basic re-

²¹ *Id.* See also T. SOWELL, *supra* note 8, at 203-04, 220-21.

²² See L. WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* (1958).

²³ See T. SOWELL, *supra* note 1, at 186-87 (citing with approval Justice Holmes’ dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919)). I have discussed the implications of Sowell’s views for the marketplace of ideas thesis in Wonnell, *Truth and the Marketplace of Ideas*, 19 U.C. DAVIS L. REV. 669, 704-06 (1986).

²⁴ See T. SOWELL, *supra* note 1, at 226. “Results matter — they are the ultimate justification of processes — but it is only the *general* effectiveness of particular processes (competitive markets, constitutional government) that can be gauged by man, not each individual result in isolation.” *Id.* (emphasis in original).

search that has only long-run “pay-offs” that primarily benefit persons other than the scientific pioneers. However, a subtler advantage for intellectuals can be identified in the case of theoretical science.

The great achievements of the theoretical sciences — say, the theory of relativity, quantum physics, or modern chemistry — are concerned with features of the world that remain the same over space and time (or space-time). Two ores found in different places may differ in thousands of ways, but chemistry might identify a chemical structure that they share such as zinc. Modern students or researchers may casually say that the ores are the “same thing,” but that “sameness” is present only after abstracting from numerous differences deemed irrelevant for purposes of classification.

The process of abstraction neutralizes many of the disadvantages of the intellectual role. Passionate attention to the ever changing and geographically particularized features of the real world, a passion extraordinarily difficult to simulate for the disinterested or empirically isolated, becomes less necessary. The scientist can study fifty samples of zinc compounds and identify causal laws that are true for millions of other compounds that the scientist will never see.

According to Sowell, however, it is essential to remember that this powerful abstract knowledge hides a vast realm of ignorance about particulars of time and place, particulars that have proven critically important in the efficient use of zinc²⁵ and most other resources.²⁶ In matters of technology, it is the incentive structures of individuals, rather than the details of technique, which abstractly cut across and impact upon each special technology in the same basic way. Therefore, the study of such incentive structures is the proper function of a constrained intellectual inquiry into matters of technology.

The apparent inconsistency in Sowell’s account arises from a sense

²⁵ See 29 *ENCYCLOPEDIA AMERICANA* 779-81 (1984).

The zinc content of ores mined has decreased steadily over the years, but improved mining and ore treatment methods have tended to compensate economically for this drop in zinc content. The fact that one or more other metals such as lead, copper, gold, silver, cadmium, and even germanium are almost always associated with zinc has permitted the exploitation of lower grade ores, although separation of these various metals has posed problems. . . . Slab zinc is available in six standard grades, varying from about 98.3 percent . . . to 99.99 percent [zinc]. . . . The price of zinc varies from about 10 cents to 15 cents per pound, depending upon the grade and conditions of the metal market.

Id. at 779-80

²⁶ See Hayek, *The Use of Knowledge in Society*, 35 *AM. ECON. REV.* 519, 521-26 (1945).

that the book trades on standard intellectual virtues, such as rational articulation of premises and suppression of narrow self-interest, while he seems to articulate a theory of human nature that would render such an effort impossible. However, Sowell's differences with the unconstrained vision are not disagreements about the *nature* of the intellectual role or process. Instead, they are differences about its *scope* vis-a-vis other processes.

For example, consider the suppression of narrow self-interest that is thought to be important for the intellectual role as well as for institutional structures such as life tenure for judges. For Sowell, the problem is not that it is impossible to structure an institution so as to make it essentially impossible for an individual to advance her own narrow self-interest. Rather, the difficulty is that this structure removes the passion that self-interest provides, a passion that has proven capable of keeping people endlessly alert to the ever-changing truths of their specific environment.

Much the same can be said about intellectuals' commitment to logical reasoning and the explicit articulation of premises. Again, Sowell's vision is constrained not because he believes this process to be beyond human capacity, but because in a defined sphere of activities logical reasoning has a comparative advantage over alternative processes. Yet, the customs, morals, and traditions that evolve among a people have had to survive volumes of life experiences to which no single thinker could be exposed. Rational articulation is needed to identify the parameters within which these aspects of society should be presumed to have functional utility.

Stated another way, the intellectual elite whom Sowell admires are those who have sought to articulate the general conditions under which traditions might tend to be functional or dysfunctional from the point of view of the broader society. The unconstrained vision, of which the most prominent statement to date has probably been the French Revolution, is eager to supplant each particular tradition until its functional justification is made explicit. Sowell does not oppose the unconstrained vision because it praises reason and articulated logic. He finds it objectionable only because it presumptuously denies the possibility of spheres within which alternative processes might have superior epistemological methods for uncovering important truths.

Seen in this light, the contradiction between Sowell's message and his method of presenting and defending that message becomes more apparent than real. Ultimately, Sowell does not deny the importance of consciously articulated reason on the part of independent thinkers, so it is quite consistent that both he and his intended readers may be such

thinkers. He does believe, however, that pursuers of reason must be able to distinguish the spheres of their own competence from the spheres in which the most rational approach is to accept the results of alternative processes like experience and tradition.²⁷ A world of concrete and ever-changing facts is not a world that disinterested reason can reach directly.²⁸ Instead, abstract features that transcend particularities of time and place, but whose study promises no direct pay-off to self-interested investigators, are the routes to intellectual progress in Sowell's vision. The natural sciences have progressed by focusing upon these timeless abstractions. But the world of technological truths that satisfy present human needs requires that a different set of abstractions be tapped: those pertaining to individuals' incentives to seek needed pragmatic information and the creation of such incentive structures.

Of course, it is one thing to say that Sowell's analysis is internally consistent; it is another to say that it is defensible. The internal coherence of such an analysis is a necessary but not sufficient condition for its acceptance. Assessing the merit of Sowell's vision is difficult because it obviously will not do to say that it is overly simplistic. Sowell's competing visions are intended to serve as simplifying "road maps," and strategic omissions are thus necessary if they are to be useful.²⁹ The question nevertheless remains whether Sowell's omissions are merely peripheral or sufficiently central to deprive his analysis of descriptive power.

III. SOWELL'S VISION ON THE MERITS

As Part I observed, Sowell presents *A Conflict of Visions* agnostically, describing two visions that have been with us for centuries without presenting any sustained defense of one vision over the other.³⁰ Yet, because *A Conflict of Visions* is concerned with the same conflicts on which Sowell's previous books took a firm stand, it is appropriate to assess the merits as well as the conceptual consistency of Sowell's constrained vision.

²⁷ See T. SOWELL, *supra* note 1, at 47-48. "The central danger, as seen by those with the constrained vision, is the intellectuals' narrow conception of what constitutes knowledge and wisdom." *Id.* at 47.

²⁸ *Id.* at 48. "The superiority of experts within a narrow slice of the vast spectrum of human understanding was not denied [by adherents of the constrained vision]. What was denied was that this expertise conferred a general superiority which should supercede more widely dispersed kinds of knowledge." *Id.*

²⁹ *Id.* at 13-15.

³⁰ See *supra* notes 13-17 and accompanying text.

Sowell is undoubtedly on his strongest footing in calling attention to the microeconomic constraints that the market process imposes. It is reassuring that Sowell agrees³¹ that the Austrian School of Economics has presented the most penetrating insights into these constraints.³² Sowell correctly observes that increased familiarity on the part of the legal profession with Austrian economics would improve markedly the modern constitutional jurisprudence of economic liberties, whether under the takings, contracts, and due process clauses,³³ or under the state action doctrine.³⁴

However, Sowell assumes rather than demonstrates the constraint of irremediable self-preference or preference for one's genetic relatives. To my knowledge, Sowell has taken no position on the controversial science of sociobiology. That science purports to show that a biological basis for much of human behavior exists, including differential sympathies grounded in degrees of genetic relatedness.³⁵ Yet, despite Sowell's lack of proof, it seems fair to say that if a method of cleansing an entire society of these differential sympathies exists, the twentieth century has not yet discovered it. Even the centrally planned cultures of the modern totalitarian state, grounded in ideologies of self-denial and fraternity, have failed to do much more than add layers of hypocrisy and rationalization to a wide variety of self-interested endeavors.³⁶

Perhaps the constraint with the weakest degree of present scientific support concerns the alleged beneficence of tradition and evolved culture. Curiously, anthropologists have amassed considerable evidence of the functional justification for seemingly irrational traditions (such as rain dances) among "primitive" societies,³⁷ but very little in the way of sympathetic study of our own traditions exists. The best work in articulating and bringing to consciousness the traditional practices and as-

³¹ See T. SOWELL, *supra* note 1, at 50-51.

³² See Wonnell, *Contract Law and the Austrian School of Economics*, 54 *FORDHAM L. REV.* 507 (1986).

³³ *Id.* at 188-90. I have attempted to use Sowell's views and the views of other writers of the Austrian School to construct a case for constitutional scrutiny of monopoly legislation under the Due Process Clause. See Wonnell, *Economic Due Process and the Preservation of Competition*, 11 *HASTINGS CONST. L.Q.* 91, 95-111 (1983).

³⁴ See T. SOWELL, *supra* note 1, at 162-68.

³⁵ See, e.g., D. FREEDMAN, *HUMAN SOCIOBIOLOGY: A HOLISTIC APPROACH* (1979).

³⁶ See, e.g., R. KAISER, *RUSSIA: THE PEOPLE AND THE POWER* 130 (1976). "As a general rule, the Soviet bureaucracy answers to *itself*, not to its public." *Id.* (emphasis in original).

³⁷ See, e.g., V. BARNOUW, 2 *AN INTRODUCTION TO ANTHROPOLOGY: ETHNOLOGY* 41-42 (1971).

sumptions of our own culture has been undertaken by those with a passionate hatred for those traditions, such as the penetrating empirical studies done by feminist sociologists on the multilayered texture of gender roles.³⁸ The principal exception that comes to mind is the discipline of ordinary language philosophy, which purports to reach philosophical conclusions by respecting and clarifying traditions that are embodied in an evolved and unplanned language.³⁹

Sowell's vision can be criticized for failing to indicate any principled stance for rationality to take regarding limits on tradition. Uncritical deference toward tradition would have stopped Galileo and his successors and would have enshrined slavery and the divine right of kings. Still other traditions may have had a compelling functional justification only in an earlier time, such as the mores of sexuality that evolved in a period without effective birth control devices.

Ultimately, there seems to be no choice but to assess intellectually the functional rationality of traditions. Charitable interpretation of Sowell's message suggests that one should read him not as indicting the legitimacy of all traditions, but as stressing the need to consider seriously the hypothesis that any given tradition has an unseen functional justification.⁴⁰ For example, the modern epidemic of sexually transmitted diseases might stand as a warning against assumptions that cultural inhibitions have no continuing justification. Sowell might suggest that analysis of our traditions should track the best anthropological visions of the traditions of "primitive" cultures, viewing them sympathetically but nevertheless critically.⁴¹

A much more serious problem with Sowell's book relates not to the realm of cause-and-effect and inherent constraints, but to the realm of values and value conflicts. It is maddening that a book discussing issues of rights and social justice, freedom of speech and economic liberties, should be so vague in identifying the difficult value choices that underlie these issues. Sowell even offers a justification of sorts for his own

³⁸ See, e.g., J. CHAFETZ, *SEX AND ADVANTAGE* (1984).

³⁹ See, e.g., J. SEARLE, *THE PHILOSOPHY OF LANGUAGE* 1-2 (1971) (noting the difference between "linguistic theory" and "the philosophy of language," but arguing that practice of the latter — the "ordinary language method" — often depends upon the results of the former).

⁴⁰ See T. SOWELL, *supra* note 1, at 179-80. "Like Holmes later in the law, or like his contemporary Burke in politics, Blackstone did not advocate an unchanging law or society. What distinguished his position was the mode of change and the caution about change." *Id.* at 179.

⁴¹ See generally V. BARNOUW, *supra* note 37 (warning that a functional role of a tradition does not establish the indispensability of such a role).

vagueness on these matters:

The much-vaunted need to make our "value premises" explicit is irrelevant in this context. Thinkers with identical moral values and social preferences must nevertheless reach opposing conclusions if their initial senses of reality and causation — their visions — are different Just as travelers seeking the same destination must head in opposite directions if one believes it to be to the east and the other believes it to be to the west, so those seeking "the greatest good for the greatest number" (or any other similarly general moral precept) must favor opposite kinds of societies if opposite kinds of human beings are assumed to inhabit those societies, leading to opposite kinds of social causation.⁴²

This position, correct as far as it goes, nevertheless reveals an unnecessary conflict between people who ought to be allies in the struggle of ideas against common adversaries. Sowell repeatedly attacks such moral and legal philosophers as Ronald Dworkin,⁴³ John Rawls,⁴⁴ and Laurence Tribe⁴⁵ for their "unconstrained" views. In one sense, this is not surprising since these writers do tend to reach opposite policy conclusions from Sowell on a broad range of issues, and these authors can be exasperatingly coy regarding their factual assumptions about human nature and potential. In another sense, however, Sowell's attempt to divide liberal academic opinion into warring camps is more a tragicomic reflection on the institution of academic specialization than a genuine conflict of visions.

Viewing the Friedman/Hayek/Sowell vs. Dworkin/Rawls/Tribe debates within the framework of the respective world views of the economist and the moral philosopher can be illuminating. Economics trains a person in the subtleties of cause-and-effect, while questions of moral choice are treated as exogenous. Economists start with assumptions about moral choice, a particular mix of efficiency and equality for example, then proceed. Moral philosophizing about optimal social policy trains a person in the subtleties of value choices, while tending to make assumptions *arguendo* about various causal matters. Thus, for example, moral philosophers ask whether maximum utility would be desirable *if* some people derived enormous pleasure from restricting the religious liberty of others. Over time, economists, who are attuned to causal links, view most policy disputes as the result of unintended effects created by divergent policies and ignored by adherents of these

⁴² T. SOWELL, *supra* note 1, at 216-17.

⁴³ *Id.* at 37, 53, 56, 154, 163-64, 188.

⁴⁴ *Id.* at 103-04, 172-73, 191.

⁴⁵ *Id.* at 116, 164-68, 183-84, 188-90.

policies. Moral philosophers are more inclined to see the same disputes as a product of others' failure to live consistently by the implications of a general normative vision that both sides share at some level of abstraction.

These differences of professional method and aspiration carry over into conflicting assessments of the source of ideological controversies. Yet, in these conflicts the two camps often talk past each other as they describe the source of the disputes so differently. Those whose principal training is in microeconomic fields believe that alleged value conflicts really reflect different causal assumptions about the current state of affairs, conflicts that can be resolved through patient scientific study. In contrast, moral philosophers are predisposed to believe that conflicting causal claims really reflect divergent moral positions. For example, moral philosophers might say that people who believe that *X* causes some highly desirable *Y* probably favor *X* for independent reasons, while those who deny that *X* causes the same *Y* tend to oppose *X* for independent reasons.

In this regard, there is no more fascinating exercise than to read *A Conflict of Visions* in close juxtaposition with Ronald Dworkin's short essay entitled *Liberalism*.⁴⁶ Both works seek to answer the same question, that is, why people tend to line up consistently on the same side (dubbed "liberal" or "conservative") of seemingly diverse issues. Predictably, Dworkin answers that conservatives and liberals hold different moral conceptions about what it means to treat people equally. Does treating people equally mean treating all in accordance with a common standard of virtue and vice or does it mean giving respect to their different conceptions of the good?⁴⁷ Sowell, of course, argues that the deepest divisions are at the causal level, holding that conservatives tend to believe while liberals tend not to believe that certain virtues have demonstrable instrumental utility.

This form of intellectual imperialism, with both sides seeking to define a broad range of policy choices as peculiarly within their own expertise, is inevitable to some degree. But it will not do to say, with Sowell, that the *same* policy choices are indicated by a utilitarian posture as would be indicated by "any similarly general moral precept." Rawls' theory of justice, for example, cannot be said to have the same implications for policy as utilitarianism.⁴⁸ One can entertain causal beliefs about the deterrent effect of punishment, for instance, but no such

⁴⁶ Dworkin, *Liberalism*, in *LIBERALISM AND ITS CRITICS* 60 (M. Sandel ed. 1984).

⁴⁷ *Id.* at 63-75.

⁴⁸ See J. RAWLS, *A THEORY OF JUSTICE* 161-75 (1971).

beliefs remove the need for a moral judgment about the relative importance of crime control and civil liberties.

Still less is it acceptable to say, with Dworkin, that the only real source of genuine ideological conflict is some deep moral division. That paradigm does great violence to a conservative thinker such as Sowell. For Sowell seems implicitly to make roughly the same normative commitments that Dworkin and Rawls have made and defended explicitly. Sowell also values facilitating the ability of people to live well by their own standards of the good life, and improving the opportunities of the poor even at the cost of a sizeable reduction in the statistical average of the utilities of the citizenry. The truly competing vision is one that would place some alternative value -- whether fidelity to a religious tradition, commitment to the aggrandizement of the state, nation, or class, or some overly abstract and inhumane conception of such concepts as equality, liberty, and fraternity — categorically higher than the “mere” advancement of the welfare of the poor and the humble. Enough of these visions are present in the world that it is time for those who reject such visions to close ranks.

Yet, such a closing of ranks will occur only after considerable motion by both Sowell’s supporters and his liberal critics. His critics would be well-advised to swallow their justified frustration at Sowell’s moral vagueness and to read *A Conflict of Visions*, as well as Sowell’s earlier works, for their causal insights into the ubiquitous constraints that have persistently frustrated legal actions taken in ignorance of those constraints. Sowell’s supporters should reread such books as *A Theory of Justice* and *Taking Rights Seriously*, not with an eye toward exposing flaws in their causal claims, but with a view toward seeing how much they agree with these philosophers’ basic value choices. In this area, motion is not concession, since no contradiction exists between causal visions and moral visions, and no hope can be held out for handling Sowell’s broad range of concerns with a vision that is coy about either causality or moral choice.