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THE DEATH OF LAW: A CINEMATIC VISION

*Lance McMillian**

I. INTRODUCTION

In *V for Vendetta*, young Evey Hammond offers words that sound quite profound: “Artists use lies to tell the truth while politicians use them to cover the truth up.”¹ She may be right. Art and social criticism oftentimes go hand in hand. Novels may be fictional, but the greatest works of literature force us to assess ourselves and the surrounding world in a new way. Film is no different. Today, *Casablanca* is one of the world’s most beloved movies, and rightly so. But at the time it was also something more. It was a call to action for the world to rise up and resist the rising threat of Nazism.² If Rick could give up Ilsa to fight the Nazis, then contemporary viewers of the film in the 1940s could likewise sacrifice something for the cause.

The artist is also part prophet. In fulfilling this function, film often seeks to warn us what future societies will look like by tracing the logical progression of troubling trends in the status quo. Three recent films—*Children of Men*, *V for Vendetta*, and *Minority Report*—sound such a warning call by painting stark and contrasting visions of life in the United States and Great Britain in the twenty-first century. Central to all three stories is the role of law as enforced by the state. Law’s importance to the narrative of film is nothing new. Because it has the power to both liberate and oppress, law presents a ready well of dramatic potential from which to draw inspiration. The movies studied here mine this potential well. The common fear that animates each of these works of art centers on the use of law as a tool of oppression. By projecting this future, the filmmakers hope to teach us something about ourselves in the present. Do they succeed?

This Article attempts to answer this question by examining the vision of law presented in the three films. Part II tells the story of each movie to provide background and context for the discussion to follow. Part III details the specific worlds each film envisions and the role played by law in realizing these predicted futures. The collective conclusions strike a pessimistic chord: in the future, the law will be dead. Part IV assesses this vision of

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1. *V FOR VENDETTA* (Silver Pictures 2005).

2. Rick’s closing words to Ilsa hammer home this point:

I’ve got a job to do[.] Where I’m going, you can’t follow. What I’ve got to do, you can’t be any part of. Ilsa, I’m no good at being noble, but it doesn’t take much to see that the problems of three little people don’t amount to a hill of beans in this crazy world. Someday you’ll understand that. Now, now... Here’s looking at you kid.

CASABLANCA (Warner Bros. Pictures 1942).

film and seeks to understand the seeds that give rise to it. Are the fears of the filmmakers—which are grounded in their assessments of the status quo—reasonable? I offer critiques and counter-critiques. Still, no matter the reliability of the films' predictions about what lies ahead, the teachings of the films are important in their own right. Criticism need not be accurate to be powerful. Even if darkness is not on the horizon, free societies would do well to periodically remind themselves of what darkness looks like.

II. DISSECTING THE FILMS

A. V for Vendetta

Authoritarian governments typically strike fear into the hearts of their subjects. V—the masked hero of the film *V for Vendetta*—believes this state of affairs to be backwards. His countervailing vision is this: “People should not be afraid of their governments. Governments should be afraid of their people.”³ Consistent with this worldview, V seeks to lead his fellow citizens to revolution. His choice of costume is revealing. V’s muse is Guy Fawkes, who was executed in 1605 for trying to blow up Parliament.⁴ Besides sharing the same face through V’s mask, V and Fawkes share a common belief. Only through violence can England be saved.

But does the country want to be saved? Take Evey. Years ago as a young child, she experienced the oppression of London’s police state firsthand when her activist parents were seized, never to be seen again. Images of her mom escorted away in the middle of the night—with a black bag over her head—continue to haunt Evey. Still, she wants no part in any rising political storm. Even after V rescues her from an attempted rape by the secret police (ominously known as the Fingermen), Evey still resists getting involved. Her docility and the passiveness of the citizens around her are no accident. The government’s campaign of fear has produced its desired result.

Propaganda, too, plays an important role in managing the citizenry. The government, of course, controls all of the channels of communication. As a result, Lewis Prothero—the self-proclaimed Voice of London—provides television commentary to the nation on a nightly basis. His modus operandi centers on comparing the peace and stability of England to the

3. V FOR VENDETTA, *supra* note 1.

4. For general information on Guy Fawkes and his failed attempt at revolution, see ANTONIA FRASER, FAITH AND TREASON: THE STORY OF THE GUNPOWDER PLOT (Anchor Books 1997). Even though Fawkes did not succeed in his mission, his efforts are remembered in the United Kingdom every November 5—the date of Fawkes’ foiled scheme—on Bonfire Night as fireworks and bonfires light up the sky. The date of November 5 has special importance to the plot of *V for Vendetta*.

chaos of the United States, which is ravaged by war and inner turmoil. Where did America go wrong? Prothero's one word answer: "godlessness." America's weakness stands in contrast to England's strength. To this end, Prothero frequently echoes the slogan of the country's authoritarian regime: "Strength through unity, unity through faith."⁵ England is secure, but only at the expense of its freedom.

Against this backdrop of control through fear and propaganda, V arrives like a bolt from a thundercloud. Actually, a shot from a cannon might be a better description as V announces his presence to the world by blowing up the Old Bailey courthouse while Tchaikovsky's 1812 Overture blares from speakers arranged throughout the city. His next daring move is to seize control of the country's television network in order to speak to the people one-on-one. In the first uncensored message to the citizens in years, V urges his listeners to re-take control of both their lives and their nation:

Good evening, London. Allow me first to apologize for this interruption. I do, like many of you, appreciate the comforts of every day routine—the security of the familiar, the tranquility of repetition But in the spirit of commemoration . . . I thought we could mark this November the 5th, a day that is sadly no longer remembered, by taking some time out of our daily lives to sit down and have a little chat.⁶

After this prelude, V explains that fear has been used to suppress speech, and consequently truth, in what is now totalitarian England:

There are of course those who do not want us to speak. I suspect even now, orders are being shouted into telephones, and men with guns will soon be on their way. Why? Because while the truncheon may be used in lieu of conversation, words will always retain their power. Words offer the means to meaning, and for those who will listen, the enunciation of truth. And the truth is, there is something terribly wrong with this country, isn't there? Cruelty and injustice, intolerance and oppression. And where once you had the freedom to object, to think and speak as you saw fit, you now have censors and systems of surveillance coercing your conformity and soliciting your submission.⁷

Next, V places the blame for the current crisis directly at the feet of the people themselves, who sold their freedom to buy a fragile peace:

5. V FOR VENDETTA, *supra* note 1.

6. *Id.*

7. *Id.*

How did this happen? Who's to blame? Well certainly there are those more responsible than others, and they will be held accountable, but again truth be told, if you're looking for the guilty, you need only look into a mirror. I know why you did it. I know you were afraid. Who wouldn't be? War, terror, disease. There were a myriad of problems which conspired to corrupt your reason and rob you of your common sense. Fear got the best of you, and in your panic you turned to the now high chancellor, Adam Sutler. He promised you order, he promised you peace, and all he demanded in return was your silent, obedient consent.⁸

Finally, V concludes with a call to action. In one year's time, he urges the people to join him to take back their government:

Last night I sought to end that silence. Last night I destroyed the Old Bailey, to remind this country of what it has forgotten. More than four hundred years ago a great citizen wished to embed the fifth of November forever in our memory. His hope was to remind the world that fairness, justice, and freedom are more than words, they are perspectives. So if you've seen nothing, if the crimes of this government remain unknown to you then I would suggest you allow the fifth of November to pass unmarked. But if you see what I see, if you feel as I feel, and if you would seek as I seek, then I ask you to stand beside me one year from tonight, outside the gates of Parliament, and together we shall give them a fifth of November that shall never, ever be forgot.⁹

Through this speech to the nation, V plants the seeds for a new revolution.

Yet who is V and what motivates him? Simply put, he is what his government made him. Indeed, V views his transformation as a straightforward application of Newton's Third Law of Motion: "To every action there is an equal and opposite reaction." At a concentration camp for political dissidents, V and others undergo biological testing as part of a series of military experiments. Many die, but the tests make V stronger. Displaying this new strength, V escapes and blows up the detention facility. He suffers horrific burns in the resulting fire, which accounts for his costumed appearance. Explaining this history to Evey, he says, "What was done to me was monstrous." Her response: "And they created a monster."¹⁰

8. *Id.*

9. *Id.*

10. *Id.*

Although its facility is destroyed, the government's biological testing was not without profit. A deadly virus is discovered, which is unleashed on the public. Terrorists are blamed. A solution is demanded, and the people behind the virus in the first place ride the crisis into power. High Chancellor Adam Sutler assumes dictatorial control, with Peter Creedy at his side as the head of Britain's secret police. But now V is out to even the score. As the fifth of November approaches, the government tenses up in anticipation yet finds itself no match for V's cunning. Turning Sutler and Creedy against one another, he orchestrates the deaths of both. He also arranges for the destruction of Parliament by loading a train with explosives in the long-abandoned Underground. V, however, is not long for this world. Mortally wounded in connection with the assassinations of Sutler and Creedy, V leaves the decision to destroy Parliament to Evey because, in V's words, "the future belongs to the living."¹¹ Evey makes her decision, and Parliament is destroyed. Even though V dies, his vision does not. Change is coming to England.

B. Children of Men

Set in 2027, *Children of Men* begins with a terrifying premise: the human race is dying.¹² The cause is simple. Children are no longer being born. At the beginning of the film, the youngest person on earth is Baby Diego—age 18 years, 4 months, 20 days, 16 hours, and 8 minutes. Diego's celebrity status proves to be his undoing, however, when he is assassinated in Brazil for declining an autograph request. The universal reaction of deep sorrow reflects the pathos prevalent everywhere. Diego's youth represented a lifeline to a world that no longer exists. His death moves humanity one step closer to the grave. Not everyone, though, is moved by Diego's demise. Talking to his friend Jasper, Theo Falon complains about "everybody crying" over the tragic news. To Theo, Diego was nothing but a "wanker." Jasper's response: "Yeah, but he was the youngest wanker on Earth!"¹³ Theo, though, is beyond caring and feeling, but not because the human race is soon to be lost. Rather, he mourns for what he has lost personally—his son, Dylan, who died long ago at a young age to a widespread flu virus. Once highly idealistic, Theo now drinks heavily to escape—a shell of his former self.

Meanwhile, life goes on. In England, the people have struck a Faustian bargain with the government. In exchange for dictatorial powers, the government agrees to supply the populace with material pleasures. Drugs,

11. V FOR VENDETTA, *supra* note 1.

12. CHILDREN OF MEN (Universal Pictures 2006).

13. *Id.*

including antidepressants, are state-provided. Even Quietus—the suicide pill—is distributed to those who want to permanently escape. Cosmetic surgery is freely available to keep the people “forever young” and feeling better about themselves. Televisions—a different sort of drug—are ubiquitous. The broadcasts frequently remind the citizens that, while war ravages the rest of the planet, “only Britain soldiers on.”¹⁴

But all is not happiness and sunshine on the way to the grave. Social tension threatens to tear the country apart. Because of Britain’s relative stability, refugees from around the world descend upon the country, which threatens the ability of Britain to provide for its citizens. As a result, the government uses its police power to forcibly transfer the “Fugees” into concentration camps to be deported. The signs of this authoritarian response are everywhere: steel cages filled with Fugees; random prisoner beatings; trains protected by wire to protect those inside from incoming projectiles; identification cards required everywhere; transport papers required for travel; government propaganda encouraging people to spy on one another (“Suspicious: Report All Illegal Immigrants”); and suspected governmental bombings that are blamed on terrorists to keep the populace in line.

Not everyone is pleased with these societal turns. In particular, the Fishes seek equal rights for the Fugees and wage a counter-insurgency campaign against the government. The Fishes are led by Julian, Theo’s ex-wife (and Dylan’s mother). Amidst the chaos, Julian is the gatekeeper of a secret of massive proportions. Kee, a Fugee who has placed her absolute trust in Julian, is pregnant. Julian’s plan is to transport Kee to the Human Project, a mysterious group working on ways to save civilization. To do this, Julian and Kee need to reach the coast, which requires transport papers. Enter Theo. Theo’s cousin is a prominent official in the government, and Julian comes back into Theo’s life in the hope that he will ask his cousin for the papers.

Things do not go as planned, however. When Julian is killed by other Fishes who seek to use Kee and her baby as a political tool, it becomes Theo’s task to safely deliver a very pregnant Kee to the Human Project. The remainder of the film is a race between Theo and the Fishes that will decide Kee’s future. The climax occurs in the city of Bexhill, which is now a lawless concentration camp for Fugees. It is in this depressing surrounding that Theo delivers Kee’s baby and even manages to get mother and child to sea to await the ship from the Human Project. But Theo is mortally wounded in the process. As Theo moves toward death, Kee tells him that

14. *Id.* The film is based on a 1992 novel of the same name by P.D. James. See P.D. JAMES, *CHILDREN OF MEN* (Warner Books 2006). In the book, the government’s aims are explicitly to provide “protection, comfort, and pleasure,” which are also known as “freedom from fear, freedom from want, and freedom from boredom.” *Id.* at 60, 96.

she plans to name her baby girl Dylan, after Theo and Julian's son. His faith and hope finally restored, Theo dies with a smile on his face.¹⁵

C. Minority Report

"Murder."

The first word of *Minority Report* frames all that is to follow: the vision of a utopian world without murder; the protagonist's desperate attempt to uncover the details of the murder he refuses to believe he is about to commit; the cover-up of a long-ago murder by a secret villain.¹⁶ At the heart of the film lies this metaphysical question: what societal trade-offs are acceptable to ensure a world where people cease to kill one another?

In 2054, the Department of Precrime in Washington, D.C. has accomplished the seemingly impossible: it has eliminated murder. The means of this success begin with three "pre-cogs"—Agatha and the twins (Arthur and Dashiell)—who possess a special precognition ability to see the future. The pre-cogs are the damaged children of drug abusers who, perhaps because of the mental damage caused by the use of drugs by their mothers, have the ability to foresee murders before they occur. Held against their will, the world of the pre-cogs consists of floating in water while their minds are hooked to machines that read their dark, predictive thoughts. As visions of murder arise, the officers in precrime work off the visions to capture the guilty before the act. Once captured, the would-be murderers face a depressing fate. They are given a technological halo-like "hat" that shuts down their physical functioning and places them in a mental prison. Their bodies are stored in clear, coffin-like capsules.

As the film opens, a nationwide referendum lies on the horizon to determine whether precrime should be extended to the country as a whole. Slogans tout the virtues of the precrime system to the population at large, including "Precrime: It works" and "Imagine a world without murder."¹⁷ Lamar Burgess—the founder and Director of Precrime—sees precrime as a path to "a time where none of us will have to discharge another firearm ever again."¹⁸ The vision is appealing, and it is hard to argue with the results:

15. Julian is assassinated because while she sees Kee's child as a long-term chance to bring peace by reversing the world's infertility, her rivals in the Fishes see the child as a political weapon to immediately use in their battle against the British government. This divide between seeing the baby as a means to peace or war plays out during a firefight in Bexhill. When combatants hear the baby's cries, the shooting stops and everyone stands amazed. Soon, however, the shots ring again and things go on as before. This episode raises the following question: did the world go bad because of the infertility crisis or was the world always this bad?

16. *MINORITY REPORT* (20th Century Fox 2002).

17. *Id.*

18. *Id.*

zero murders in six years. By all accounts, precrime appears to the perfect system.

But is it? Haunted by the memory of his young son Sean who was kidnapped, Precrime Chief John Anderton counts himself as one of precrime's most enthusiastic supporters. He may not be able to save his son, but he can save others. But Anderton begins to have doubts. First, based on recurring visions from Agatha, Anderton begins to grow suspicious about the circumstances surrounding one of the earliest cases precrime solved—the future murder of Anne Lively. Something does not add up. Second, and much closer to home, Anderton is stunned to learn that he himself is predicted in thirty-six hours to commit the murder of Leo Crow, a man he does not even know.

Now Anderton finds himself on the run, and getting away from the police in Washington, D.C. is no easy matter. Futuristic cars go on security lockdown when directed to do so. Eye scans throughout the city allow the government to know where a person is at all times in public. Electronic spiders go into private homes and apartments to reveal the identities of all inhabitants present, again through the use of eye scans. After a number of chase sequences, Anderton finally escapes the city and visits Dr. Iris Hineman, the mother of precrime. She informs him that sometimes the precogs do not agree on the future, leading to a number of “false positives” in which people are arrested for murders they would not have committed. When this happens, a minority report is created within Agatha, the most gifted of the pre-cogs. Find the minority report for the purported Crow murder, and Anderton can prove his innocence.

But first Anderton needs an eye transplant. Unable to move freely in the city, Anderton opts for the drastic solution of undergoing back-alley, eye replacement surgery. The surgery succeeds, and Anderton uses his old eyeballs to gain admission to precrime headquarters. After a bold escape with Agatha, Anderton probes Agatha's mind to find the minority report. The truth hits him like a ton of bricks: there is no minority report. Anderton is going to kill Leo Crow. But why? The crime is slated to occur in half an hour and Anderton still does not even know who Crow is. As he walks the streets with Agatha, Anderton recognizes the building where the Crow murder is slated to take place. Anderton and Agatha make their way to Crow's room. On the bed are hundreds of pictures of children, including one of Anderton's son Sean.

The implication is plain: Crow murdered Anderton's son. As Crow enters the room, Anderton knows that he is going to kill just as the precogs predicted. Except Agatha pleads with him that because he knows the future, he has a choice. When the alarm for the time of the murder goes off, Crow remains alive. Anderton does not commit the murder. Crow becomes furious and explains that Anderton must kill him for Crow's family to receive a large sum of money. Anderton becomes confused, and Crow admits that

he did not kill Anderton's son. It was all a set-up to frame Anderton. Crow forces Anderton's gun on himself and pulls the trigger. To all appearances, therefore, Anderton did go through with Crow's murder. He is once again on the run.¹⁹

Eventually, Anderton is caught and a "hat" is placed on his head. As Anderton's estranged wife, Lara, talks with Director Burgess, he accidentally lets slip a piece of information that can mean only one thing: Burgess was behind the plot to frame Anderton. Lara frees Anderton who shows a crowded audience a vision from Agatha proving that Burgess did, in fact, kill Anne Lively. His motive? To keep Lively from taking her daughter—Agatha—away from Burgess. Burgess and Anderton face off. The precogs predict that Burgess will murder Anderton, who explains to Burgess:

You see the dilemma don't you. If you don't kill me, precogs were wrong and precrime is over. If you do kill me, you go away, but it proves the system works. The precogs were right. So, what are you going to do now? What's it worth? Just one more murder? You'll rot in hell with a halo, but people will still believe in precrime. All you have to do is kill me like they said you would. Except you know your own future, which means you can change it if you want to. You still have a choice Lamar. Like I did.²⁰

Burgess chooses suicide. Like the Crow murder, when actually allowed to play out, events do not transpire in quite the same way as predicted by the precogs. The system is not perfect at all.

The era of precrime is over. In Anderton's words:

In 2054, the six-year Precrime experiment was abandoned. All prisoners were unconditionally pardoned and released, though police departments kept watch on many of them for years to come. Agatha and the twins were transferred to an undisclosed location,

19. The film raises interesting issues of free will and determinism. One commentator frames the questions this way:

"Is it now?" Agatha repeatedly asks Anderton as they rush to "catch up to the future" and track down Leo Crow, the man Anderton has been accused of murdering in the future. "You can choose," Agatha tells him as he stands, gun in hand, facing his destiny. Would knowing the future provoke us to act any differently than not knowing it? And where do fate and free will intersect?

Cathleen Rountree, *Myth, Shadow Politics, and Perennial Philosophy in Minority Report*, THE JUNG PAGE, Jan. 24, 2004,

http://www.cgjungpage.org/index.php?option=com_content&task=view&id=533&Itemid=40

20. MINORITY REPORT, *supra* note 16.

a place where they could find relief from their gifts. A place where they could live out their lives in peace.²¹

III. FILM AND THE FUTURE

Law does not originate in a vacuum. Rather, law is the product of the society that creates it and collectively reflects the core values of those who comprise that society. These values permeate all aspects of the social order, including the area of popular culture.²² But values are not static. They change over time—often in response to new directions prompted by popular culture. As a result, understanding film’s perceptions—both positive and negative—of a society’s ideals and any corresponding attempt of film to take these ideals in a new direction is an essential part of forecasting law’s future direction. In his seminal article on law and popular culture, Lawrence Friedman explained the important role played by popular culture in constructing social theories of the law:

Popular culture, and popular legal culture, in the first sense, are of fundamental importance in constructing *social* theories of law. By social theories of law, I mean theories of law whose premises deny, altogether or in large part, any notion of legal ‘autonomy.’ That is, these theories try to explain legal phenomena by searching for causes and causal factors ‘outside’ the legal system. They treat law as a dependent variable, and assign a leading role in molding the shape of legal institutions and legal arrangements to systems or subsystems that society defines as ‘non-legal,’ that is, as economic, social, cultural, or political. Social theories assume some sort of meaningful boundary-conceptual or analytical-between law and not-law; between the legal and the social; but these theories also conceive of this boundary as wholly or largely porous, a kind of network or meshwork through which energy easily flows, rather than as a tough, tight skin.²³

This “porous skin” quality to the separation of popular culture and the law means that the character of the former affects the look of the latter.

It is not surprising that social theorists would think in these terms. Popular culture reaches the democratic masses through avenues that the

21. *Id.*

22. See Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. REV. 1339, 1341 (2001) (“Popular culture mirrors, often in an exaggerated and caricatured form, actual popular attitudes and beliefs about the institutions and characters that it describes.”).

23. Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1580 (1989).

court system does not. In many ways, John Grisham is more readily accessible to the person on the street than John Roberts. This broad reach of popular culture inevitably shapes popular opinions about the law.²⁴ And to the extent popular opinion leads to changes in the law through the political process, cultural depictions of the law necessarily play a role on some level. This process accords with Friedman's observation about the symbiotic effect of the interactions between culture and law. Nothing exists in isolation; everything is related.

This impact of popular culture on law can take the form of critiques on the status quo. Film often has a countercultural streak. Being outside the political process affords artists greater flexibility to serve as critics of the way things are. First, there is the creative element. Think back to Evey Hammond's observation that "artists use lies to tell the truth." The license of fiction—"lies"—allows artists to portray the world in new, interesting, and emotionally compelling ways. In this sense, there is real power in the opportunity to create. Second, artists are free from political constraints and may speak the truth in ways politicians—even those sympathetic to a particular artist's message—cannot. The second half of Evey's observation—"politicians use 'lies' to cover the truth up"—resonates here. While politicians must remain in touch with popular values lest they lose their power, artists in large measure need only be accountable to themselves.²⁵ This freedom allows artists to say the things that others may be afraid to say. This is a powerful weapon. Ray Bradbury—author of the literary classic *Fahrenheit 451*—captures the feeling of many artists when he says, "I don't try to describe the future. I try to prevent it."²⁶

What follows in this section is an attempt to delve deeper into how *V for Vendetta*, *Children of Men*, and *Minority Report* portray the world. What are the dominant themes common to all three movies? What exactly will law look like in the future? By understanding these respective visions, greater insight into the grounds underlying the filmmaker's social criticism is gained. For the filmmakers, the stakes are high. In their eyes, the future of law itself rests in the balance.

24. See Michael Asimow, *Bad Lawyers in the Movies*, 24 NOVA L. REV. 533, 550–51 (2000) (explaining impact of popular culture on public opinion).

25. Commercial considerations may be an important caveat here. Studios may apply pressure on some directors to water down a particularly controversial message. The freedom to create, therefore, is not absolute, and some artists are more free than others.

26. ROBERT ANDREWS, *THE COLUMBIA DICTIONARY OF QUOTATIONS* 359 (1993).

A. Dominant Themes from *V for Vendetta*, *Children of Men*, and Minority Report

1. *The Hopelessness of Life*

People need hope. It is a part of the human condition. Hope is what fuels innovation and change. By believing that their actions can make a better world, people are moved to do great things. The Bible puts it in these terms: "Hope deferred makes the heart sick, but desire filled is a tree of life."²⁷ There is a reason that nursing homes make many people uncomfortable. Nursing homes are where people go to die, and as such, they tend to be devoid of any spirit of hopefulness about the future. The same lack of hope pervades prisons. Entering these types of places can be a jolt to the system because a culture of hopelessness creates a different atmosphere in the air.

Of all the films, *Children of Men* best captures what it means for an entire society to give up on life. The world's reaction to the infertility crisis makes perfect sense. Hope only springs eternal when there is a future to look forward to. In the world of *Children of Men*, this type of hope is impossible. Graffiti splashed on the walls of Britain captures the sentiment well: "Last person to die please turn off the lights."²⁸ Without children, the world becomes one large nursing home where everyone awaits death. Theo echoes the feelings of many when he says, "I can't really remember when I last had any hope, and I certainly can't remember when anyone else did either. Because really, since women stopped being able to have babies, what's left to hope for?"²⁹ Children play a fundamental part in the social order, and their absence causes that order to collapse upon itself.

In this environment, the decision by Britain's citizens to turn over political control to a centralized power becomes more understandable. Indifference among the masses allows those motivated by a dictatorial bent to take control, especially when the message being sold by the autocrats is one of providing comfort to the citizens as they live out the rest of their days. Indeed, in the world of *Children of Men*, comfort may be all that is left to hold out hope for. The lasting lesson is this: a hopeless citizenry is fertile soil for would-be dictators to will their way to power.³⁰

27. *Proverbs* 13:12 (NASB).

28. *CHILDREN OF MEN*, *supra* note 12.

29. *Id.*

30. See generally Doni Gewirtzman, *Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture*, 43 U. RICH. L. REV. 623, 677 (2009). ("[D]ictatorial and oppressive legal regimes often employ significant resources to eliminate hope within a population as a means for maintaining power."). Parts of Africa are today flirting with a return to dictatorship in light of the hopelessness of the current situation. See

2. *Fear as Enabler*

Liberty and security stand in tension to one another. A police state may equate to less crime, but it chokes freedom. Similarly, complete liberty—i.e. anarchy—produces a Hobbesian state of nature where no one is safe. The best society is one where an appropriate balance between these two extremes is reached. Defining the dimensions of this liberty versus security tension has attracted vast amounts of academic commentary.

Without exception, the films here stress heavily that rights should not be forfeited for the blanket of greater security. *V for Vendetta* is most blunt in presenting this message. As V tells the citizenry, their fear paved the way for the crackdown on civil rights:

[T]ruth be told, if you're looking for the guilty, you need only look into a mirror. I know why you did it. I know you were afraid. Who wouldn't be? War, terror, disease Fear got the best of you, and in your panic you turned to the now high chancellor, Adam Sutler.³¹

V understands why the citizens turned to Sutler because V understands the human condition. Survival is the first human instinct. As the world falls apart, people become susceptible to the influence of those who promise to put the pieces of civilization back together again. Intellectually, many

Mike Owuor, *The Ill Wind of Dictatorship Mustn't Be Allowed To Blow*, THE STANDARD, March 26, 2009,

<http://www.standardmedia.co.ke/InsidePage.php?id=1144009811&catid=480&a=1>. Hopelessness also represents a threat to liberal democracy because citizens who permanently lack hope have no avenue or incentive to participate in the political process:

Today's reality is, however, that race and poverty together have produced one of the few social developments (the others being, for instance, aristocratic titles and military dictatorship) inconsistent with even a minimal concept of a republican government: a permanent underclass, cut off by walls of discrimination, illiteracy, hopelessness, and, perhaps worst, lack of education for participation in the community.

Linda R. Hirshman, *The Virtue of Liberty in American Communal Life*, 88 MICH. L. REV. 983, 1012 (1990) (footnotes omitted).

31. *V FOR VENDETTA*, *supra* note 1. For those that promote liberty over greater security, giving into fear leads a country to become the very thing that made it afraid in the first instance. In its own way, the *Star Wars* series captures this same message. On a number of occasions in the various movies, young Jedi are taught that "fear is the path to the dark side." See, e.g., *STAR WARS: EPISODE I—THE PHANTOM MENACE* (Lucasfilm 1999). The *Godfather* saga promotes the same idea, too. Michael Corleone rationalizes evil throughout his life for the purpose of protecting his family. The result: one dead wife, one divorced wife, one dead daughter, one estranged son, one aborted child, two dead brothers, and one estranged brother. See *THE GODFATHER* (Paramount Pictures 1972); *THE GODFATHER PART II* (Paramount Pictures 1974); *THE GODFATHER PART III* (Paramount Pictures 1990). By trying to save his family through evil, Michael orchestrates its destruction.

may say that they prefer liberty over security (think of Patrick Henry's rousing "give me liberty, or give me death" speech), but when push comes to shove, the desire to survive wins out and submission to authoritarianism occurs. It is no coincidence that violations of civil liberties rise in wartime. Security concerns always trump. This is not a normative judgment; rather, it is a historical observation.

The fear in *Children of Men* is of a different sort, namely the fear produced by the impending death of human civilization. In this vein, the hopelessness described in the previous section is a first cousin to fear. They are related in that both fear and hopelessness reveal a deep dissatisfaction with the status quo, thereby allowing opportunists who promise change a foot inside the door. In *Children of Men*, these opportunists promise to hoard the nation's resources to make the end of the world as content and pain-free as possible. Having made this choice to pursue comfort as a means of getting through the final days, British citizens feared that the influx of Fugees from around the world would deprive them of the necessary means to survive in the manner that they were promised. Crackdowns on immigration followed.

In contrast to the other films, *Minority Report* presents the best case—at least initially—for sacrificing some rights to reduce crime and provide for greater security. With a murder rate of zero percent in Washington D.C., the successes of the pre-cogs cannot be denied. Juxtaposing the preceding murder crisis (the "fear") with the years following implementation of the D.C. Precrime Unit, it is clear that the precrime program, saves a great number of lives. Only the most myopic of people would contest that the elimination of murder would be a socially positive development. But the problem with the precrime program is that, while capturing all the would-be guilty, it also captures some who are innocent. At this point, the movie picks a definite side in the liberty versus security debate. The chase of protagonist John Anderton for a murder he ultimately chooses not to commit places the audience in the position of sympathizing with the accused perpetrators captured in precrime. Left unshown is the death of a targeted victim whose life would have otherwise been saved through the precrime program. Accordingly, the ultimate message of the film falls down on the liberty side of the scale.³²

The common link among the films is a portrayal of the human costs that follow when a society compromises liberty in the name of security.

32. Another dimension of *Minority Report* in connection with the debate between liberty champions and security defenders is the forced conscription of the pre-cogs in order to take advantage of their special powers. The pre-cogs are essentially slaves of the state. The policy question is this: if someone has the ability to save the lives of potentially millions, can the state force that person to use his talents even if it is against his will to do so? The film answers this question in the negative, favoring the liberty of the individual to control his or her own destiny.

The faces of those who suffer under authoritarian policies are seen constantly. It is one thing to intellectually say that freedom should be curtailed in the name of better protecting the country; it is quite another to see refugees caged like animals as they await deportation. The visual provided by film highlights the moral stakes involved in a way that words cannot. The collective insight of these films is this: choices made in the name of security have real-life, human consequences.

3. *The Choice of Order Over Disorder*

Each society in these three films faces critical choices. In *V for Vendetta*, the choice is whether to submit to authoritarianism in order to ward off terrorism and disease. *Children of Men* asks how to divide up dwindling resources in a world that is slowly dying. *Minority Report* presents a choice between adhering to the basics of due process or placing freedom at the mercy of science and technology. In each instance, the respective societies embrace the choice of order over disorder. Faced with a world of uncertainty and tumult, their choices are not surprising. Fear and hopelessness can be powerful motivators.

While the choice of order over disorder resembles the preference for security over liberty, there are some key differences. A desire for security centers on the immediate concern of physical safety. As the old tort adage goes, "danger invites rescue."³³ The impetus behind this concept is that in emergency situations we want people to act to save others because we recognize that saving lives is very important. No responsible person in the liberty-security debate would contest that security is important. The debate is instead typically over what level of threat rises to the emergency level so as to infringe upon rights in the short-term. While liberty champions and security defenders may disagree on where this line should be drawn, both sides agree that preserving life constitutes a compelling interest.

The yearning for order, conversely, extends beyond the issue of physical safety and is, instead, much more psychologically driven. The world can be safe and still not make any sense. Order, therefore, provides something different than simple security; it provides a reassuring framework for understanding the world. The governments in *V for Vendetta* and *Children of Men* promote order by concentrating on the chaos beyond the British Isles. These regimes simultaneously send two messages that mutually reinforce one another. First, life outside Britain is unregulated, chaotic, and desperate. This is a constant refrain throughout the films. Second, the juxtaposition of Britain's stability with the global unrest elsewhere shows that regimentation and discipline are good for the soul. Messages such as these

33. *Wagner v. Int'l Ry. Co.*, 133 N.E. 437, 437 (1921) (Cardozo, J.).

are vital because they allow the people being governed to rationalize away any disquiet they feel about what is going on in the country. They are the necessary propaganda that a dictatorship needs to survive.

Minority Report approaches the issue differently. The world portrayed is one built on technological order. In contrast to the imagery of the other films, Washington, D.C. really does look futuristic with its emphasis on sleekness and efficiency. Having committed so much to technology and progress already, it would not seem too great a leap for society to embrace the promise of “science” to put an end to murder. This ability merely represents another link in the evolutionary chain of progress.

Here, too, the contrast between *Minority Report* and the other movies grows. Britain in *V for Vendetta* and *Children of Men* is trying to establish order by freezing the world in the past and halting change in its tracks. America in *Minority Report*, on the other hand, is trying to use technology to create order based on something new and revolutionary.³⁴ The choice of the order of precrime over the chaos unleashed by murder very much reflects a faith that the world can be made perfect here on earth. This belief in the perfectibility of man has flowered the seeds of many dictatorships. The Russian Revolution is the prime example. Fear is not the only enabler.

B. The Future of Law

Popular attitudes drive the development of law. The prevalent themes of the movies under discussion here—hopelessness, fear, and a strong preference for order—help to explain the societies depicted in each of these films. What emerges is a dark picture of the future of law. In particular, film’s vision of law is one of government control at the expense of individual freedom. Practically, the message is this: law is dead.

1. *The Specter of the Police State*

In the future, the police, the military, or their equivalents are everywhere. All three films concur on this point. *V for Vendetta* portrays the ominous Fingermen, a group of secret police that oppress and terrorize. The Fingermen come in the middle of the night and take unsuspecting people away forever. Enforcement of a strict curfew ensures that only the police roam at night. Evey’s violation of this curfew and subsequent entrapment by the Fingermen is how she first meets V. Similarly, the world of *Children of Men* features a heavy reliance by the government on the military to con-

34. Whether intentional or not, this dichotomy captures much of the history of the two countries: America the entrepreneurial upstart; Britain the backward-looking, monarchial island of tradition.

trol the country's people, including limiting their internal movements. Transit papers are required to travel. Consistent with many authoritarian regimes, the government seeks to create distrust and suspicion among neighbors. In this vein, citizens are actively encouraged via city billboards to spy on one another. While *Minority Report* lacks the overt authoritarianism of the other films, the power of the police nevertheless lies at the heart of the premise of the movie: the precrime unit arrests people for crimes that they have yet to commit.

Technology also serves as a key means for asserting control over the population. Echoing George Orwell's vision in *1984*, cameras are everywhere. To be in public is to be filmed. Sound trucks also drive through the cities, capturing conversations held in private homes. Indeed, in *Minority Report*, the propaganda that airs on state-controlled television is specifically tailored to respond to the concerns people express in these conversations. Citizen movement is followed through ID cards, ubiquitous eye scans, and tracking devices on vehicles. Mechanical spiders enter houses and buildings unannounced to perform random eye scans in searches for suspects wanted by the law. After their capture, technological hats are placed on the heads of "criminals," thus rendering them physically harmless.

Because the government can literally be everywhere, resisting the state is a futile exercise. At least this is what these governments want their people to think. They want the populace to be afraid, and they have succeeded. The fear that drove the desire for greater security in the first place has been replaced by fear of the very governments that rose to meet that demand.

2. *The Rise of Apartheid*

In the future, people will choose to self-segregate. Or so the cinematic vision contends. *V for Vendetta* and *Children of Men* both portray significant hostility on the part of British citizens toward minorities and foreigners. The treatment of the Fugees in *Children of Men* is the most prominent example. Fugees are literally treated like caged animals as they await transport to the concentration camps. In places like Bexhill, the Fugees are caged in, separated from the rest of Britain because they are a threat to the existing social order.

In *V for Vendetta*, government mouthpiece Lewis Prothero makes a special point to single out the "immigrants, Muslims, homosexuals, [and] terrorists" as causes of the societal decay that necessitated the present government's rise to power.³⁵ His is not a lone voice in the wilderness, as apartheid is state-sanctioned. One moving story arc in the film concerns a les-

35. *V FOR VENDETTA*, *supra* note 1.

bian couple named Valerie and Ruth who are taken away and imprisoned by the new government. Valerie explains how words became tools of political rhetoric to use against homosexuals and create divisiveness, "I remember how the meaning of words began to change. How unfamiliar words like 'collateral' and 'rendition' became frightening, while things like . . . the Articles of Allegiance became powerful. I remember how 'different' became dangerous. I still don't understand it, why they hate us so much."³⁶

By first dehumanizing homosexuals and other disfavored groups with words, the government planted the seeds to subsequently detain and segregate these populations. This progression mirrors the treatment of Jews in Nazi Germany.³⁷ Concentration camps do not arise overnight. The small steps always precede the more draconian measures.

The rise of legal apartheid goes hand in hand with the specter of the police state. By focusing societal ire on minority groups, the government creates an argument for the expansion of its own authority to crack down on these groups. The rhetoric creates a perceived need for action. There are other motives at work, too. If the government can channel hostility toward "immigrants, Muslims, homosexuals, [and] terrorists," then less attention will be paid to analyzing the merits of the government's new policies. Distraction is a timeless political device, and the governments depicted have learned the lesson well.

3. *The Death of Civil Liberties*

As the films demonstrate, the price of order and security does not come cheap. Missing from the societies depicted on screen are the cornerstones of a free society: free speech, due process, privacy, freedom of association, habeas corpus, the right to travel, and the like. The absence of civil liberties is shocking enough, but perhaps more disturbing is the reaction of the people to this state of affairs. Instead of being up in arms, the citizens have become accustomed to having their basic dignitary rights trampled upon. Their passive acceptance of the new realities harkens back to the last line of Orwell's *1984*. Winston Smith—beaten, tortured, and brainwashed—comes to a tragic realization: "he loved Big Brother."³⁸ While the movies do not depict this level of extreme subservience, they do reflect a consistent disinterest on the part of citizens to fight for basic civil rights. From this perspective, authoritarianism can be said to corrupt the desire for liberty. Once

36. *Id.*

37. See WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY* 283 (Ballantine Books 1989).

38. GEORGE ORWELL, *1984* 245 (NAL Penguin 1987) (1949).

people grow accustomed to living without rights, the absence of such rights becomes much less troubling.

What is the future of law then? When many think of the rule of law, they first think of civil liberties protections. The law is king, not the government, and when the government acts against its citizens in ways contrary to law, the law wins out. As civil liberties vanish, however, law ceases to exist as an independent check on state power and instead becomes a blunt instrument used by autocrats, constantly changing to suit the needs of those in charge.³⁹ The concept of law in these settings is illusory. The cinematic vision of the future of law, therefore, is that the law is dead.

IV. ASSESSING THE FILMS' VISIONS

The films under consideration all utilize their artistic license to paint dark visions about the future of the United States, Great Britain, and the world in the twenty-first century. Darkness, however, does not descend at a single moment. It is a gradual process. As a result, the roots of these respective visions are firmly anchored in the present. This section identifies these roots, critiques the visions of the films as overblown, and counter-critiques the critique to identify how the filmmakers' visions could materialize as the years move forward.

A. Present-Day Trends Foreshadowing the Films' Dark Vision of the Future

1. *The War on Terror and the Sacrifice of Rights*

The course of the twenty-first century seemingly changed in a momentous way on the morning of September 11, 2001. In one fell swoop, the liberty versus security dynamic moved from the theoretical to the frontlines of a new and uncertain global conflict. The world of film clearly falls on the side of liberty in this delicate balance. Just as clearly, President George W. Bush and his administration placed a higher premium on ensuring security than protecting rights.⁴⁰

39. See generally THOMAS PAINE, *Common Sense*, in COMMON SENSE AND OTHER POLITICAL WRITINGS 3, 32 (Nelson F. Adkins ed., Liberal Arts Press 1953) (1776) ("For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other.")

40. These characterizations center on the specific policies and threats at issue in the Bush administration's prosecution of the War on Terror. As a result, it is not my contention that liberty champions will always be on the side of rights over security or that security defenders will invariably choose safety over protecting liberty. For each position, I believe that context matters greatly.

For both sides in this intellectual fight, the stakes could not be more important. Liberty champions view the Bush policies as classic examples in the exercise of authoritarian power: denial of the right of habeas corpus; scare propaganda designed to keep citizens fearful (“war on terror,” “axis of evil,” constant heightened security alerts); trumped up grounds for war; torture; and broad claims of unaccountable executive power.⁴¹ Security defenders see things very differently. First, the United States is at war, and civil liberties are traditionally relaxed during wartime. Second, the evolution of technology allows those who are evil to kill on a scale heretofore unimaginable. An abstract commitment to rights that ignores these realities on the ground will only ensure that more innocent people will die. Rights are worthless if one is dead.⁴²

Analyzing in-depth the deep divide between these positions is far beyond the scope of this paper. The purpose here is to note that these varying perceptions are real and shared by many on both sides. It is no coinci-

41. The academic commentary on the Bush administration’s conduct of the War on Terror is voluminous. A general feel of the criticism leveled against Bush comes from Rosemary Foot:

Five or more years on from that terrorist attack, we have all become familiar with persistent US executive branch attempts to circumvent, overturn, or adapt core principles of human rights law, or the laws of war. However, familiarity cannot conceal the sweeping nature of that attack on what have long been regarded as the core legal rights of the person. The Bush administration has circumscribed the meaning of what has come to be regarded as torture, it has denied a proper legal status for detainees and prisoners held at Guantanamo Bay and in Afghanistan, and has undercut another central plank of the Geneva Conventions when in May 2006 it refused to allow the International Committee of the Red Cross (ICRC) to have access to terrorist suspects held in secret locations. In September 2006 we had presidential confirmation that the US Central Intelligence Agency (CIA) had indeed been operating secret prisons in various overseas locations. But even if they have been temporarily emptied, the inmates sent to Guantanamo, and the ICRC at last given access to these prisoners, the prisons themselves have not been closed down. As places of detention, CIA interrogators remain unconstrained in terms of the methods they may adopt, George W. Bush using his executive power to ensure this outcome.

If the examples are themselves shocking, what has also been notable has been the openness with which these issues have been discussed.

Rosemary Foot, *Exceptionalism Again: The Bush Administration, The “Global War on Terror” and Human Rights*, 26 LAW & HIST. REV. 707, 712 (2008) (footnote omitted).

42. See RICHARD POSNER, NOT A SUICIDE PACT: THE CONSTITUTION IN A TIME OF NATIONAL EMERGENCY 158 (2006) (arguing that “one way or another, law must adjust to necessity born of emergency”). Posner closes his book by quoting philosopher David Hume:

The safety of the people is the supreme law: All other particular laws are subordinate to it, and dependent on it: And if, in the *common* course of things, they be followed and regarded; it is only because the public safety and interest *commonly* demand so equal and impartial an administration.

Id.

dence that *V for Vendetta*, *Children of Men*, and *Minority Report*—which were released between 2002 and 2006—conjure the same fears invoked by critics of the Bush years.⁴³ The filmmakers see in the War on Terror the first steps on the slippery slope to tyranny.⁴⁴ By highlighting where this road leads, they hope to influence popular attitudes about the direction of law and public policy.

2. *The Impending Demographic Revolution*

The social fabric of both the United States and Great Britain is changing due to the influx of new immigrants. At least that is the perception. In America, the transformation comes from the south as millions of Mexicans cross the border to pursue greater economic opportunity. The scene in England and Western Europe is similar as vast numbers of immigrants from African and Asian nations are moving in. In both instances, the new immigrants look different than the white majorities. Political unrest has followed.⁴⁵

43. Indeed, director Steven Spielberg specifically analogized the film to the current political situation by observing that “[w]e’re giving up some of our freedom so that the government can protect us.” John Powers, *Majority Report*, LA WEEKLY (June 27, 2002) <http://www.laweekly.com/2002-06-27/columns/majority-report/2>. See also Michael P. Scharf & Gwen Gillespie, *Foreword: Security Detention*, 40 CASE W. RES. J. INT’L L. 315, 316 (2009) (noting “parallels between *Minority Report* and the Bush Administration’s policy of incarcerating hundreds of foreign citizens at the sprawling detention facility in Guantanamo Bay, Cuba . . .”).

44. The Honorable A. Wallace Tashima, a judge on the Ninth Circuit Court of Appeals who was interned by the United States Government during World War II, specifically ties the conduct of the War on Terror with a weakening of the rule of law:

The American legal messenger, so to speak, has been regarded throughout the world as a trusted figure of goodwill, mainly by virtue of close identification with the message borne: that the rule of law is fundamental to a free, open, and pluralistic society; that ours is a government of laws and not of persons; that no one—not even the President—is above the law; and that the government is bound by the Constitution and laws enacted in conformance therewith.

The credibility of this message, however, has been steadily undermined over the last six years since we began the so-called “War on Terror.” Since then, the American rule of law message—as well as its messenger—has been greeted with increasing skepticism and even hostility. The actions we have taken in the War on Terror, especially our detention policies, have belied our commitment to the rule of law and caused this dramatic shift in world opinion.

A. Wallace Tashima, *The War on Terror and The Rule of Law*, 15 ASIAN AM. L.J. 245 (2008).

45. See Ediberto Román, *The Alien Invasion?*, 45 Hous. L. REV. 841, 870–84 (2008) (detailing hostility to Mexican immigration to United States); Martin A. Schain, *The State Strikes Back: Immigration Policy in the European Union*, 20 EUR. J. INT’L L. 93, 104 (2009) (noting a relationship between politicalization of immigration and restrictive immigration policies in Europe).

History shows that uncertainty and nativism go hand in hand.⁴⁶ Blaming minorities for a country's woes provides an odd comfort in that it allows a political majority to escape responsibility for its own problems. In *V for Vendetta*, Valerie wonders, "I still don't understand it, why they hate us so much." The answer: uneasy fears need an identifiable origin lest the real trouble is found to be within.⁴⁷ *Children of Men* and *V for Vendetta* capture what happens when nativism of this sort makes its way into public policy. The filmmakers see the growing unease toward the demographic revolution on the horizon as the foundation for this type of state-sponsored segregation. Regardless of the reasonableness of the filmmakers' fears, they do originate from very real changes—and the fear engendered by those changes—that are afloat in the Western world.⁴⁸

3. *Rapid Resource Depletion*

The earth is changing. Global-warming theorists posit that rising temperatures may cause significant ecological catastrophe, including food shortages.⁴⁹ Oil—one of the world's biggest engines of economic growth—is said to be dwindling.⁵⁰ Adding to these environmental and energy-related strains is continued population growth.⁵¹ The combination of these factors

46. See Rene Galindo & Jami Vigil, *Are Anti-Immigrant Statements Racist or Nativist? What Difference Does It Make?*, 4 *LATINO STUDIES* 419, 423 (2006) ("Nativism becomes especially rampant during times of national stress and fear, and in times of war, economic recession, or demographic shifts stemming from unwanted immigration.").

47. Clint Eastwood's character of the Stranger in *High Plains Drifter* captures this sentiment perfectly when he says, "It's what people know about themselves inside that makes them afraid." *HIGH PLAINS DRIFTER* (Universal Pictures 1973). By focusing their ire externally, people avoid internally confronting hard truths about themselves.

48. Notably, in writing *Children of Men*, P.D. James only tangentially references the issue of immigration. The emphasis on the "Fugees" is a creation of the film version. This greater focus on immigration reflects the increased anxiety about demographic issues in the fourteen years between the writing of the book (1992) and the making of the film (2006).

49. See generally Matthew F. Pawa, *Global Warming: The Ultimate Public Nuisance*, in *CREATIVE COMMON LAW STRATEGIES FOR PROTECTING THE ENVIRONMENT* 107 (Clifford Rechtschaffen & Denise Antolini eds., 2007).

50. See, e.g., JAMES HOWARD KUNSTLER, *THE LONG EMERGENCY: SURVIVING THE CONVERGING CATASTROPHES OF THE TWENTY-FIRST CENTURY* (Atlantic Monthly 2005).

51. The most famous work on population growth remains Paul R. Ehrlich's *The Population Bomb*. While many of his scenarios failed to materialize, in 2004 Ehrlich stressed why population growth remains a problem of global scale:

When I wrote *The Population Bomb* in 1968, there were 3.5 billion people. Since then we've added another 2.8 billion – many more than the total population (2 billion) when I was born in 1932. If that's not a population explosion, what is? My basic claims (and those of the many scientific colleagues who reviewed my work) were that population growth was a major problem. Fifty-eight academies of science said that same thing in 1994, as did the world scientists' warning to humanity in the same year.

produces a calculus of sobering reality. More people plus fewer resources equals scarcity. In *Children of Men*, society responds to the problem of shortages by choosing to aggressively limit the number of people who may share in the country's resources. State-enforced segregation follows, which literally creates two societies: the haves and the have-nots. This drastic solution originates from very real concerns. When scarcity of any shape exists, choices must be made, but by what criteria? Answering this question may well be tasked to the next few generations, with potentially unpleasant results.⁵²

4. *Technological Ubiquity*

In 2002, a poster plastered across London proclaimed: "Secure Beneath the Watchful Eyes." The poster depicts numerous detached eyeballs looking out over all of London. In style and message, the poster clearly evokes the spirit of Stalin and appears at first glance to be a cleverly created parody, designed by civil liberties advocates, to warn of the dangers of government surveillance. Except the poster was not a parody at all. Rather, it was an actual public service message by the government explaining why the people should feel "secure" under the "watchful eyes" of London's ubiquitous street cameras.⁵³ The message: technology can make you safe.

The visionaries behind *V for Vendetta*, *Children of Men*, and *Minority Report* do not seem to share the confidence of London officials that greater state surveillance promotes public safety. But are these fears reasonable in light of present circumstances? Maybe. First, there is the *Minority Report* scenario in which due process rights are forfeited because of confidence in science to make correct judgments about guilt and innocence. Generally, polygraphs are not presently admissible into evidence because the results are not deemed sufficiently reliable.⁵⁴ The new science of truth-telling, however, purports to offer reliable judgments about truth, deception, and other emotions based simply on a person's face.⁵⁵ This science is now used

Paul Ehrlich, Famed Ecologist, Answers Questions, GRIST, August 13, 2004, <http://www.grist.org/article/ehrllich>. Regardless of the accuracy of Ehrlich's scientific conclusions, two points seem unassailable. First, the size of the earth remains constant. Second, the world's population continues to grow at a healthy rate.

52. See Richardson R. Lynn, *It's Not the End of the World, But You Can See It From There: Legal Education in "The Long Emergency,"* 40 U. TOL. L. REV. 377, 378 (2009) (noting that the joining of the energy doomsday scenario "with the unpredictable inputs of global climate change [means] anything can happen, not much of it good").

53. For a news story and visual image of the poster, see Julia Scheeres, *London's Privacy Falling Down*, WIRED, Nov. 2, 2002, available at <http://www.wired.com/politics/security/news/2002/11/56152>.

54. 29A AM. JUR. 2D *Evidence* § 1020 (2008).

55. These judgments are made based on where a person's facial features—even features

by the United States government to identify potential terrorists in airports.⁵⁶ The use of brain fingerprinting—which promises the ability to determine guilt and innocence based on reading the brain—is likewise on the increase.⁵⁷ While allowing evidence of whether people are lying based on scientific analysis of their facial features and/or brain readings would not abolish the jury trial, the effect of such evidence could very well be outcome determinative in most instances. Science would effectively take the case out of the jury's hands.

Second, there is government tracking of citizen movement, which is a concern highlighted in each film. As the “Secure Beneath the Watchful Eyes” anecdote suggests, more and more governments are using street cameras to watch their citizens. Combined with facial recognition software, public cameras could allow the government to know where a particular person is at all times while in public. Listening devices can purportedly record conversations from long distances away. The National Security Agency already possesses a massive database of the telephone records of American citizens used to data mine for potential information concerning terrorist plots.⁵⁸ Eye and fingerprint scans are on the near horizon, too. For frequent travelers upset at waiting in long airport lines, the Transportation Security Administration recently offered a program called “Clear” to allow a bypass

that last only fractions of a second—fall on the Facial Action Coding System (“FACS”). See MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* 189–244 (2005). A recent television drama, *Lie to Me*, tracks the work of scientists who use FACS to investigate bad guys. See *Lie to Me* (Fox Television Broadcast 2009).

56. See generally Lenese Herbert, *Othello Error: Facial Profiling, Privacy, and the Suppression of Dissent*, 5 OHIO ST. J. CRIM. L. 79 (2007) (describing government use of FACS).

57. Brain fingerprinting purportedly allows scientists:

[T]o test a suspect and glean whether or not the suspect's brain contains relevant information garnered by investigators, such as facts about the murder weapon, the victim, the events of the day or night in question, the location of the crime, and any other salient details known only to the investigators, the victim, and the perpetrator.

Alexandra J. Roberts, *Everything New is Old Again: Brain Fingerprinting and Evidentiary Analogy*, 9 YALE J.L. & TECH. 234, 256 (2007). The similarity of this technology to the events in *Minority Report* is obvious. See Barry Steinhardt, *Privacy: Big Brother Is No Longer Fiction*, CHARLESTON GAZETTE, Feb. 9, 2003, at 1. The only difference is that instead of using the brains of the pre-cogs as the source of incriminating evidence, the suspect's own mind makes the case against him. *Id.*

58. See Fred H. Cate, *Government Data Mining: The Need for a Legal Framework*, 43 HARV. C.R.-C.L. L. REV. 435, 449 (2008). One particular effect of technology is the ease with which it allows data collection. In the old days, invading the privacy of citizens required an investment of great time and effort by the government. See *id.* at 435 (“Much of the ‘privacy’ Americans have enjoyed results from the fact that it was simply too expensive or laborious to find out intimate data about them.”). This practical check on the exercise of government power is probably gone forever.

of normal airport security through the use of “biometric (fingerprint and iris image) verification to confirm each member’s identity.”⁵⁹

In many respects, therefore, the future envisioned by the filmmakers is already here. In itself, though, technology is neither good nor bad. The key concern is how it is used. The ability to infringe on civil liberties exists, if there is the political will to do so.

B. Critiquing the Vision of an Apocalyptic Future

The filmmakers see war, demographic changes, resource strain, and technology as the impetuses behind the rise of autocratic rule and the death of law. Is this vision credible? In this Section, I argue no.

1. *The Weakening of Centralized Power*

The vision of film is that the future will see the rise of state power at the expense of individual freedom. This forecast, however, runs directly counter to the present trends that are pushing the world toward greater decentralization on a number of different fronts. The first trend is political liberalization. As the fall of the Soviet Empire and communism shows, the world is moving away from philosophies that center on state-based planning and police state tactics. The tearing down of the Berlin Wall symbolizes this move toward greater freedom and arguably captures the lasting legacy of the twentieth century.⁶⁰ Even China, a culture traditionally hostile to any form of liberalization, now experiments with greater openness in economic affairs.⁶¹ While this movement may be uneven in many parts of the world, the direction of the prevailing winds is away from centralized power.

This movement goes far beyond the political. Business globalization has fundamentally altered the way the corporate world operates. Instead of centralized bureaucracies that are heavy and plodding, the new world of commerce favors the sleek and the flexible. The metaphor that captures this transformation is that of “the flat world.”⁶² Because of a convergence of business and technological factors, the economic playing field has been leveled. As a result, financial power no longer resides in the hands of the

59. Clear: Fly Through Airport Security, <http://www.flyclear.com/how/technology.html> (last visited May 3, 2009). The program proved to be short-lived; on June 22, 2009, Clear ceased all operations. Clear Lanes Are No Longer Available, <http://flyclear.com> (last visited Aug. 18, 2009).

60. See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (The Free Press 1992).

61. See FRANCIS FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY* 350 (1995).

62. See THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (Release 3.0, Picador 2007).

elite few, but instead sits in the potential creativity, industry, and discipline of the many.⁶³

The final trend is one of individual empowerment through technology. Technology gives every individual worldwide reach through a computer. The power of Google is that it allows everyone, not just specialized experts, to have instant access to all manner of information. This is truly a revolutionary development in the history of the world. Google's co-founder, Sergey Brin, explains it this way:

If someone has broadband, dial-up, or access to an Internet café, whether a kid in Cambodia, the university professor, or me who runs this search engine, all have the same basic access to overall research information that anyone has. It is a total equalizer. This is very different than how I grew up. My best access was some library, and it did not have that much stuff, and you either had to hope for a miracle or search for something very simple or something very recent.⁶⁴

This type of technology promotes very real equality in ways that the democratic constitutions of the world cannot. Francis Bacon famously observed, "Knowledge is power." Through technology, knowledge now sits at the hand of every person who has a computer and an Internet connection.

The cumulative effect of these developments is this: we now live in a bottom-up, not a top-down, world. As more and more people experience political, economic, and technological liberty, these types of freedom become encoded in a society's DNA. They become expectations, maybe even entitlements. Successfully moving from liberty to autocracy in cultures accustomed to being free from centralized restraint would seem a daunting task, especially in a society of any meaningful size and sophistication.⁶⁵

63. FUKUYAMA, *supra* note 61, at 353 (detailing greater worldwide economic opportunity).

64. FRIEDMAN, *supra* note 62, at 177–78. This information produces winners and losers. Among the greatest losers are lawyers. By demystifying legal knowledge, the influence of lawyers—as well as their monopoly power in handling legal issues—has waned. See Lance McMillian, *Tortured Souls: Unhappy Lawyers Viewed Through the Medium of Film*, 19 SETON HALL J. SPORTS & ENT. L. 31, 62–66 (2009) (describing the identity crisis felt by today's lawyers as their statuses have changed due to technological innovation). This is what the flat world does: it democratically opens the doors of power and opportunity to the masses.

65. See FUKUYAMA, *supra* note 61, at 353 (observing gravitation of modern societies toward liberal democracy and capitalism).

2. *Not on My Watch: The Power of an Army of Davids*

Controlling dissent is critical for those who desire to assert dictatorial power. The death of free speech in the films provides an example of this fact. Dictatorships are about erecting walls between the captured citizens and the rest of the world. There are three components that underlie a state's ability to control dissent: (1) controlling the flow of information and political speech; (2) making citizens feel isolated from one another; and (3) instilling fear. In a world of Google, however, a state's attempt to achieve these components is severely hamstrung.

First, shutting off the flow of speech and information in this day and age is no easy enterprise. The power of technology works both ways—yes, technology possesses the ability to intrude on the private lives of individuals like never before, but technology is a great leveler by placing the means of dissent in the hands of the many.⁶⁶ This insight is a more particularized application of the effects of the weakening of centralized power. In *An Army of Davids: How Markets and Technology Empower Ordinary People To Beat Big Media, Big Government, and Other Goliaths*, law professor Glenn Reynolds details how technology increases the power of individuals to wage resistance against their would-be oppressors.⁶⁷ The tying of big media with big government in Reynolds's title is telling. In oppressive societies, they are one and the same. That is why V's temporary takeover of London's television station in *V for Vendetta* was so damaging to the regime. For the first time in years, someone not connected with the government had the opportunity to speak to the people unfiltered by state censorship. But with technology now affording so many different outlets of expression, a governmental monopoly on the dissemination of knowledge and information as shown in *V for Vendetta* is long past. Dissent cannot be choked off.

Second, technology connects vast amounts of people together in cyberspace. People need not be close geographically to be close. The relationship between political dissent and the ability to stay connected with other dissenters is self-apparent. Initially, in the context of the fear created by an authoritarian regime, connection provides psychological comfort for those

66. It is no coincidence that the Soviet empire fell as advances in technology allowed for more widespread interpersonal communication. See FRIEDMAN, *supra* note 62, at 55 ("Totalitarian systems depend on a monopoly of information and force, and too much information started to slip through the Iron Curtain, thanks to the spread of fax machines, telephones, and, eventually, the personal computer."). The heavy use of Twitter by Iranian dissidents to transport news to the rest of the world during the recent uprisings in Iran is another example of the power of technology to circumvent authoritarian regimes.

67. GLENN REYNOLDS, *AN ARMY OF DAVIDS: HOW MARKETS AND TECHNOLOGY EMPOWER ORDINARY PEOPLE TO BEAT BIG MEDIA, BIG GOVERNMENT, AND OTHER GOLIATHS* (2006).

that are afraid. The message connection supplies: "You are not alone." There is great power in that knowledge. Next, there is the truth-spreading dimension. Responses to government propaganda can be effectively spread through pre-determined networks, meaning the truth reaches the right hands at a lightning speed. This quick dissemination immediately reduces the intended effects of the government's misinformation campaign. Lastly, connection can also be the impetus for reaching the "tipping point" in creating a rush toward resistance to the state.⁶⁸ Once this critical mass is reached, dissent snowballs and the oppressive regime's days are numbered.

Finally, the fear that authoritarian states try to instill is a product of stifling dissent and making people feel isolated. If people see no signs of opposition and think themselves as alone in their anti-government feelings, they will come to believe that resistance to the government is nothing except suicidal. Creating this climate of intimidation is critical for authoritarian states. In any given dictatorship, the governed vastly outnumber those that govern, meaning that the people can always overthrow the state if they are sufficiently connected. The passengers of United Flight 93 on September 11, 2001 had the same insight: "There are more of us than there are of you." Realizing their power, they were able to overtake their hijackers before the plane could be crashed into another building. When the state's ability to suppress dissent and keep people isolated evaporates, so too does its dictatorial power. The filmmakers' vision fails to account for this dynamic. Indeed, in portraying the ability of government to practice thought control on its citizens, the filmmakers are living in a twentieth century world.

3. *The Evolution of Civil Liberties*

Part and parcel with the move toward political liberation, people in the Western world cherish their civil liberties and rights more than ever before. The vision of the film is that the wide societal consensus on these issues degenerates, leading to a repudiation of these values through state-sanctioned discrimination and crackdowns on liberty. The counterargument here is that the evolution of civil rights has progressed too far in the Western mind to sustain the kind of return to oppression predicted by the filmmakers.

I have already touched upon the deep divide between liberty champions and security defenders concerning the Bush policies in the War on Terror. An interesting feature of this pitched ideological battle is that it

68. Malcolm Gladwell calls the tipping point that "one dramatic moment in an epidemic when everything can change all at once." MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 9 (Little, Brown and Company (2000)). The tipping point is the product of "contagiousness" and "the fact that little causes can have big effects." *Id.* Significantly, technology accelerates both factors.

even took place at all. Historically, presidents have significantly infringed upon civil liberties during wartime in ways seemingly worse than the present-day Bush policies. For example, Abraham Lincoln declared martial law and suspended the writ of habeas corpus.⁶⁹ There is some thought, though disputed by many, that he even came close to arresting Chief Justice Roger Taney after the Supreme Court's decision in *Ex Parte Merryman*.⁷⁰ Even if Lincoln did not consider going this far, he plainly ignored the Court's order in carrying out the Civil War. Why? Because the circumstances demanded it.⁷¹ During World War I, Woodrow Wilson did great damage to First Amendment values through the suppression of the freedom of speech through the Espionage Act of 1917 and the Sedition Act of 1918.⁷² Franklin Delano Roosevelt ("FDR") issued Executive Order 9066, which made it the official policy of the United States government to detain 120,000 ethnic Japanese (sixty-two percent of which were American-born) in internment camps.⁷³ While these presidents had their critics at the time, the criticism they received arose only in certain pockets.⁷⁴ There certainly

69. Lincoln's Proclamation establishing martial law and suspending habeas corpus reads as follows:

Now, therefore, be it ordered, first, that during the existing insurrection and as a necessary measure for suppressing the same, all Rebels and Insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to Rebels against the authority of United States, shall be subject to martial law and liable to trial and punishment by Courts Martial or Military Commission:

Second. That the Writ of Habeas Corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any Court Martial or Military Commission.

Proclamation No. 1, 13 Stat. 730 (1862). Posner, for one, defends Lincoln's actions as a necessary act of civil disobedience. POSNER, *supra* note 42, at 85.

70. See generally Wikipedia, Taney Arrest Warrant, http://en.wikipedia.org/wiki/Taney_Arrest_Warrant (last visited Aug. 6, 2009).

71. POSNER, *supra* note 42, at 85; JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION 191-92* (2007) ("Lincoln invoked public necessity during the Civil War as a justification to stretch the Constitution and laws to meet the crisis.").

72. More than two thousand people were arrested under these acts for speaking out against Wilson and World War I. See Geoffrey R. Stone, *National Security v. Civil Liberties*, 95 CAL. L. REV. 2203, 2203-04 (2007).

73. See Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942). Significantly, a liberal Supreme Court voted six to three to uphold the constitutionality of FDR's actions in *Korematsu v. United States*, 323 U.S. 214 (1944).

74. See, e.g., Sanford Levinson & Jack M. Balkin, *Constitutional Crises*, 157 U. PA. L. REV. 707, 720 (2009) (explaining when FDR authorized the Japanese internment camps "there were few 'respectable' voices objecting to this display of national power").

was no national debate or dialogue on the effect of these wartime policies on civil liberties as there has been during the Bush years.⁷⁵

What accounts for this rather dramatic change? The answer: A greater respect for civil liberties that began in earnest in the latter half of the twentieth century.⁷⁶ Areas such as race relations, criminal procedure, sexual freedom, privacy, free speech, and treatment of prisoners have witnessed profound changes in the way that they are viewed. In each instance, the constitutional baseline has moved solidly toward greater liberalization.⁷⁷ The upshot is that rights matter in ways that they have not before. To be sure, some of these issues remain quite controversial. But there exists now fundamental agreement on the core dimensions of civil rights and other liberties. In the early sixties, Martin Luther King was jailed and beaten for being a black man who dared to speak out for equality. Today, his birthday is a national holiday. Thus, even though the merits of affirmative action still stir debate, the equality of blacks under the law is accepted by all but the lunatic fringes of society. Similarly, while gay marriage remains an issue of national controversy, the *V for Vendetta* scenario in which homosexuals are jailed simply for being homosexual would be uniformly opposed by citizens of all political stripes. While progress may be slow, progress has been made.

C. Counter-Critique: Crisis and the Law

The above critique argues that there is little stomach for the level of state control over social and political life that underlies the stories in *Minority Report*, *V for Vendetta*, and *Children of Men*. While the worries of the filmmakers can be traced to certain aspects of the status quo, there remains

75. Nor has the lack of respect for civil liberties shown by Lincoln or FDR appeared to have done much damage to their historical reputations. Indeed, they are considered two of the greatest presidents. What accounts for the differing treatments of Bush vis-à-vis Lincoln and FDR? For one thing, Lincoln and FDR were much better politicians than President Bush. When they skirted the bounds of the Constitution, they at least pretended to be bothered by it. See GOLDSMITH, *supra* note 71, at 210. Oliver Wendell Holmes's famous adage is apt here: "[E]ven a dog distinguishes between being stumbled over and being kicked." See OLIVER WENDELL HOMLES, JR., *THE COMMON LAW* 3 (Little, Brown and Co. 1923) (1881). Second, the crises on the plates of Lincoln and FDR—the Civil War and World War II—are deemed much bigger threats than the danger posed by terrorism after 9/11. See GOLDSMITH, *supra* note 71, at 191.

76. See GOLDSMITH, *supra* note 71, at 49 (noting that, unlike Bush, FDR acted "in a permissive legal culture that is barely recognizable to us today.").

77. See Symposium, *Symposium on America's Constitution: A Biography*, 59 SYRACUSE L. REV. 31, 57 (2008) (observing scholarly view that "the U.S. Constitution reached maturity in the mid-twentieth century, when the Supreme Court incorporated the Declaration's emancipatory vision by defending civil rights, permitting a regulatory welfare state, and strengthening civil liberties.").

an enormous gap between the uneasiness of the present and the closed worlds envisioned in the future. As the world continues to evolve along decentralized and globalized lines, generations to come will not be moved to descend into the madness predicted by these films.

The counter-critique to this argument emphasizes the role of crisis in effecting massive societal change. The political situations portrayed in the movies did not arise overnight. They were the product of major crises taking place in the world. In *Children of Men*, the lack of fertility completely transformed the purpose behind life and led to chaos throughout the globe. The government in *V for Vendetta* rose to power to combat terrorism and disease said to be responsible for the deaths of thousands upon thousands. The precrime program in *Minority Report* was a reaction to an ever-escalating murder crisis.

These predicates have some merit to them. Invariably, crisis is an avenue for the greater exercise of governmental power. The Civil War, the Great Depression, 9/11, and the recent economic crisis all led to increases in the size and scope of federal intervention in the lives of American citizens. This development is a reflection of practical politics. When harsh realities hit, even most of those who dislike “big” government want their leaders to “do something.” Crisis creates a perceived need, and politicians fill the void by enacting policies in response to this need.⁷⁸ Once enacted, inertia takes over, and the policies become the new reality and resistance to them weakens over time. The response to the crisis becomes the new normal.

With this history as a backdrop, a crisis of sufficient size could serve to trigger the feared tyranny predicted in the films. Survival comes first. In the words of Thomas Jefferson:

A strict observance of the written law is doubtless *one* of the high duties of a good citizen, but it is not the *highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life,

78. The rapid legislative response to 9/11 is a prime example. The political impulse to respond means that civil liberties are at their most vulnerable in the aftermath of a crisis. Posner emphasizes this point:

Civil libertarians neglect a genuine lesson of history: that the greatest danger to American civil liberties would be another terrorist attack on the United States, even if it was on a smaller scale than the 9/11 attacks—but it could be on the same or even a much larger scale. The USA PATRIOT Act, which civil libertarians abhor, was passed within weeks of those attacks; it never would have passed, or in all likelihood even have been proposed, had the attacks been thwarted.

POSNER, *supra* note 42, at 46. In other words, liberty depends upon security.

liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.⁷⁹

Most people agree with Jefferson, which is where the danger lies. If citizens can be convinced that their basic survival is at stake, they may very well agree to anything. In an age where new technologies potentially allow the few to kill the many, the threat of mass destruction cannot be easily dismissed. The unpopularity of the Bush administration arose in a context in which terrorists have yet to strike again on U.S. soil after 9/11. Increase the frequency and severity of terrorist attacks and the public could go from disapproving of the Bush methods to outright demanding them—and more.

V. CONCLUSION

Drama thrives on conflict. In *V for Vendetta*, *Children of Men*, and *Minority Report*, conflict is everywhere. The movies create drama by depicting the struggle between freedom and tyranny in generations to come. The films' collective outlook is bleak. Speech is suppressed. Due process ignored. The ruthless few rule. The unifying vision is this: law is dead.

Are these predictions credible? The root concerns animating the filmmakers' are readily traceable to current events. Terrorism and the reaction to it, anxiety about demographic dynamics, potential resource shortages, and the invasiveness of new technologies all combine to make the future more uncertain. And uncertainty creates opportunity for aspiring autocrats. The counter to this line of thinking is that the world has traveled too far down the path of freedom to retreat to the depths predicted by the films. Decentralization and the advance of technology has revolutionized life at all levels and pushed power downwards to individuals. This fundamental reordering of society severely limits the ability of the state to create the conditions necessary for establishing dictatorial control. Tyranny does not loom on the horizon.

Still, the greatest risks are those completely unexpected. It is human arrogance to think that we can accurately see the world yet to come. Crises may arise and change everything we now believe to be true. Therein might lie the lasting social significance of the films analyzed in this article. These films warn us against rationalizing away our rights in the name of short-term expediency, no matter how grave the immediate harm. In conveying this message, the visionaries behind these films fulfill their calling as artists. The lasting truth they leave us with is this: the future of law will be exactly what we make it.

79. Letter from Thomas Jefferson to John B. Colvin (Sept. 20, 1810), in 4 THE FOUNDERS' CONSTITUTION 127, 127 (Philip B. Kurland & Ralph Lerner eds., 1987).