



# PROFESSORS STRANGELOVE

*Alice Ristroph*

Reviewing

ERIC POSNER & ADRIAN VERMEULE,

TERROR IN THE BALANCE: SECURITY, LIBERTY, AND THE COURTS  
(Oxford 2007)

## I. Comedy

**B**EFORE THERE WAS COMEDY, there was tragedy. Haunted by the spectacle of America's nuclear attack on Japan and alarmed at the subsequent arms race, Stanley Kubrick set out to make a film that explored the possibility of all-out nuclear war.<sup>1</sup> He bought rights to a novel in which a delusional Air Force general orders nuclear attacks on the Soviet Union. It was a serious book about a serious topic, and Kubrick meant to make a serious movie. But after months of work, Kubrick decided that the rhetorical and strategic machinations of the Cold War played better

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<sup>1</sup> These facts and the subsequent details about Kubrick's project are taken from the documentary INSIDE THE MAKING OF DR. STRANGELOVE (Columbia TriStar 2000), currently available online in five segments, with the first at [youtube.com/?v=Ih3hQwTfRHE](http://youtube.com/?v=Ih3hQwTfRHE).

as comedy than as drama. He rewrote the script, and the result, of course, is the 1964 classic *Dr. Strangelove, or: How I Learned to Stop Worrying and Love the Bomb*.<sup>2</sup>

The film features several unforgettable characters, including General Jack D. Ripper, who orders the clearly unauthorized initial attack (“War is too important to be left to the politicians.”); General Buck Turgidson, who advocates additional preemptive strikes to minimize the Russian capacity to retaliate (“I’m not saying we wouldn’t get our hair mussed, but I do say no more than 10 to 20 million killed, tops . . .”); and Major T.J. “King” Kong, who pilots the B-52 that ultimately delivers a hydrogen bomb to the Russkies, offering avuncular advice to his crew along the way (“If this thing turns out to be half as important as I figure it just might be, I’d say that you’re all in line for some important promotions and personal citations.”). Most memorable of all, perhaps, is Dr. Strangelove himself, a former Nazi who directs scientific research for the American military, accidentally addresses the President as “Mein Führer,” and assures the President that survivors need not be morally burdened by the atrocity of apocalyptic war: “The prevailing emotion will be one of nostalgia for those left behind, combined with a spirit of bold curiosity for the adventure ahead!”

And after comedy, there is farce. With no discernible comedic intent, a number of lawyers and law professors have reprised roles from Kubrick’s famous film. Insisting that the war on terror is too important to be left to anyone other than the President, scorning opponents of torture as sissies afraid to muss their hair, and rapidly collecting promotions and personal citations, these lawyers are teaching America to stop worrying and love the waterboard – and the wiretap, and the ethnic profiling, and the indefinite detention, and all the other strategies of our new war that might be funny if they weren’t so deadly serious.

In the academy, the distinguished professors who advocate torture, executive absolutism, and other departures from the rule of law have been met with respectful, and inconsequential, disagree-

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<sup>2</sup> Columbia Pictures 1964.

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ment. Indeed, if law professors such as John Yoo, Eric Posner, and Adrian Vermeule are today's Ripper, Turgidson, and Kong, others in the legal academy are more akin to President Merkin Muffley. The balding, bespectacled Muffley is the only character in *Dr. Strangelove* who fully appreciates the moral implications of nuclear war, but his hesitancy and unfailing politeness render him a mostly ineffective counterweight to his war-mongering colleagues. He is the voice of reason, but that voice is timid and faltering. Today, academic counterparts to Merkin Muffley take exception to the bellicose program of the Professors Strangelove. But "debates" over national security in the American legal academy are choreographed events among gentlemen, usually featuring excellent sportsmanship all around.<sup>3</sup> Neither side wins or loses; everyone shakes hands at the end; and everyone keeps his job, his viewpoint, and his dignity.

It is unlikely that the apologists for torture and executive absolutism will persuade many others in the legal academy to join their cause. But that is not the point. The Professors Strangelove play to an audience beyond the academy. They provide a degree of intellectual legitimacy to an ideology and a political program that has been developed, for the most part, outside the ivory tower.

Eric Posner and Adrian Vermeule have recently published *Terror in the Balance*, a new defense of executive power.<sup>4</sup> That is, the book is new. Its central argument is the familiar claim that in times of emergency, the executive must curtail liberty to ensure security, and the courts should not interfere. Posner and Vermeule recognize the German jurist Carl Schmitt as the most widely cited theorist of emergency, and they promise to "deploy" Schmitt's "useful points": emergencies are hard to define ex ante; emergencies must be gov-

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<sup>3</sup> For example, the book reviewed here is the subject of a mostly laudatory discussion in an online symposium hosted by Opinio Juris, at [www.opiniojuris.org/posts/chain\\_1187565405.shtml](http://www.opiniojuris.org/posts/chain_1187565405.shtml). The only symposium participants to have challenged Posner and Vermeule seriously are Louis Fisher, who is not a law professor, and Kevin Jon Heller, who teaches in New Zealand.

<sup>4</sup> ERIC A. POSNER & ADRIAN VERMEULE, *TERROR IN THE BALANCE: SECURITY, LIBERTY, AND THE COURTS* (2007). Subsequent references to this work are indicated in the text with parenthetical page number references.

erned by ex post standards instead of ex ante rules; and “liberal legalists are addicted to process but tend to ignore or to underestimate the costs of process” (38-39). Schmitt is acknowledged to have been a “Nazi fellow-traveler,” but those political sympathies do not undermine his theory of emergency power. Posner and Vermeule dismiss “[t]he conceptual analysis within which Schmitt embroiders” his theory of emergency as “largely unhelpful” (39). Or again, using a metaphor that is probably not the best image with which to invoke a theorist associated with the Third Reich, Posner and Vermeule promise to “extract the marrow from Schmitt and then throw away the bones” (38).

They borrow from Schmitt; they mimic Kubrick. Posner and Vermeule suggest that opponents to torture are guilty of “self-absorbed moral preciosity” (205), recalling Turgidson’s response to President Muffley’s moral objections to nuclear war: “Perhaps it might be better, Mr. President, if you were more concerned with the American people, than with your image in the history books.” Elsewhere, Posner and Vermeule note as a weakness of the laws of war the fact that they prevent credible threats of inhumane warfare and thus thwart a deterrence strategy based on threats of atrocity (262). Dr. Strangelove is also a proponent of the atrocity-is-the-best-deterrant school. He chortles with glee at the Doomsday machine, designed to respond to nuclear attack by automatically unleashing bombs sufficient to destroy all human life. Were Posner and Vermeule any less earnest, we might wonder whether it is just coincidence that their title – *Terror in the Balance* – so closely echoes one of Kubrick’s early names for his film: *The Delicate Balance of Terror*.

But the professors are earnest, and their very earnestness brings to mind one more detail of Kubrick’s project. In one of the most famous scenes from *Dr. Strangelove*, Major Kong is perched on the nuclear warhead, trying to repair damage to the plane, when the doors suddenly open and the weapon is released. Major Kong rides toward the Russian target astride the bomb, whooping joyously and waving his ten-gallon hat. The scene is all the more incredible given its back story: a former rodeo clown known as Slim Pickens was a

last-minute replacement to play Major Kong, and reportedly Kubrick believed the tall, blustery cowboy was so perfect for the role that he chose not to tell Pickens that the film was a satire. Like Slim Pickens, Posner and Vermeule play it straight; they are latecomers to a Kubrickian party who just don't get the joke.

## II. “Realism”

Perhaps it wouldn't make a difference if they *did* get the joke. As Stanley Kubrick was to learn, we Americans have a remarkable capacity to laugh at our folly in one instant and pursue it with renewed zeal in the next. *Dr. Strangelove* was a commercial success, delighting audiences, garnering four Academy Award nominations, and producing novelty gags such as pocket radiation half-life calculators. But it did not have much effect on the gamesmanship of the Cold War. Nobody in charge was laughing. And nobody in charge is laughing now. The war on terror is serious business. The arguments for a torture prerogative, and for a general jurisprudence of emergency that replaces the rule of law with the rule of the executive, are serious claims made by serious scholars. So, let's be serious.

Taken seriously, *Terror in the Balance* advances the simple and forceful claims that we must give up some liberty to get more security (“the tradeoff thesis”), that the executive is the branch of government best suited to strike the right balance between security and liberty, and that courts should defer to executive decisions (“the deference thesis”). To support these claims, Posner and Vermeule develop an account of institutional competence and buttress it with references to selected historical precedents, advancing a descriptive claim they call “the cyclical thesis”: “When national emergencies strike, the executive acts, Congress acquiesces, and courts defer. When emergencies decay, judges become bolder, and soul searching begins .... Then, another emergency strikes, and the cycle repeats itself” (3). Deference to the executive is historical fact, political necessity, and national salvation (e.g., 56, 129, 208). In other words, in times of emergency courts have always deferred, they have no

choice to do otherwise, and it's a good thing, too.

Given this claim that American courts have always functioned during emergencies just as they should, and given the further claim that they couldn't function any differently, one wonders why the book is necessary. Posner and Vermeule identify as their "principal target" civil libertarian arguments for restrictions on executive power, such as those made by more than 700 law professor signatories to a December 2001 letter that criticized the President's plan for military tribunals (44). Being, apparently, somewhat less gentlemanly than their interlocutors in the legal academy, Posner and Vermeule explain that civil libertarians engage in "wishful thinking" (197), become "obsessed" with the specter of dictatorship (53), endorse "gimmicky" policies (274), and fall prey to "crude" and "mystifying" theories (256). Of course, if the cyclical thesis is right – if deference to the executive in times of emergency is "inevitable," efforts to restrict executive power are "whistling in the wind" (129). This book is a response to those whistles.

A single word – *expertise* – plays two crucial functions in the book. First, it provides the key to the claim that judges (and Congress) should defer to the executive branch, and second, it serves as the sword with which Posner and Vermeule defend against an array of counterarguments. The institutional competence claim is simple: security policy is within the expertise of the executive branch, and not within the expertise of the judiciary or legislature (e.g., 273-74). Enough said. (Literally, enough said; Posner and Vermeule explicitly refuse to provide empirical proof that the executive branch actually chooses wise security policies, and they assert rather than demonstrate that the executive branch has superior expertise (29, 31-32).) In addition, the authors swat away a range of objections to their argument by asserting that the objectors lack the necessary intellectual expertise. Jeremy Waldron criticizes the tradeoff thesis, but Posner and Vermeule find his claims to rest on "institutional and causal hypotheses" that are beyond Waldron's "expertise ... in jurisprudence and political theory" (37).<sup>5</sup> Moral philosophers who

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<sup>5</sup> Posner and Vermeule are responding to Jeremy Waldron, *Security and Liberty: The*

have argued that torture is an unreliable investigative technique, or that torture cannot be regulated effectively, are dismissed as advancing empirical claims outside of “the philosopher’s distinctive expertise” (186). The book’s conclusion reiterates that “the merits of emergency policies” are beyond lawyers’ competence, and further, “[o]ur emphasis on the limits of lawyers’ expertise does not entail that some other discipline can stand in” (274). Occasionally, Posner and Vermeule even use expertise as shield rather than sword, declining to supply “a full historical treatment” to support their descriptive claims since history is, well, beyond their expertise (77).

Following their rule that academics should stick to their areas of expertise, Posner and Vermeule (known for applying economic analysis and institutionalist theories to law) rely heavily on the welfare economist’s model of the “Pareto frontier.” We see a Pareto frontier when we want two goods and cannot have as much as we want of each one. The frontier represents the “range of points at which no win-win improvements are possible” – that is, points at which any increase in one good requires a decrease in the other (26). As depicted here, security and liberty are such competing goods. Maximum liberty means zero security, maximum security means zero liberty, and at a range of points between these extremes, the only way to get more security is to sacrifice some liberty. Democracies, Posner and Vermeule claim, tend to choose policies at the frontier (33), and so the only way to increase security after an emergency is to decrease liberty.

Security and liberty are competing goods with a Pareto frontier only if they are independent variables – that is, only if our definition of liberty does not include some degree of security, and only if our definition of security does not include some degree of liberty. Posner and Vermeule define security as “risk of harm” (22), and they assume that liberty and security are indeed independent of each other. According to their model, we are most secure when we have no liberty and we are most free when we have no security. Though liberty and security can be enjoyed simultaneously if we will settle

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*Image of Balance*, 11 J. POL. PHIL. 191 (2003).

for a reduced measure of each, the maximization of one requires complete sacrifice of the other (26-27).

If security is understood in this way, what does the life of a maximally secure human being look like? He has no liberty at all. He is physically confined. He eats, sleeps, exercises, bathes, and engages in any other activity at his keepers' discretion. He must not even be allowed liberty of thought, so perhaps loud noises or flashing lights are used to prevent him from thinking. He is denied all contact with the outside world. His cage is in an impenetrable facility – a U.S. Navy base might do. No one can harm him, and he cannot harm himself. He is completely secure.

Let's call this understanding of security – the one that Posner and Vermeule rely upon – Gitmo Security, after the place that may come closest to providing this good. Upon reflection, many Americans might decide that Gitmo Security is not exactly what they want for themselves. Indeed, many would argue that Gitmo Security is not "security" after all. It may not even satisfy Posner and Vermeule's initial definition – minimal risk of harm – since one's keepers are themselves a very significant source of potential harm. In any event, the point is that security is more complex than the mere minimization of risk. For humans (as opposed to sheep or jewels or other things we might keep secure), security is simply inconsistent with complete dependence. Security requires some ability to be an agent of one's own preservation. But that means that security requires at least some liberty, and liberty and security are not completely independent variables after all. If we reject Gitmo Security as the correct understanding of security, the Pareto frontier is fiction and the tradeoff thesis fails.

Of course, one should not conclude that all of the post-9/11 talk of "balancing" liberty and security is nonsensical. There are certainly circumstances in which restrictions of particular liberties are likely to increase overall levels of security. Security and liberty remain *different* variables, even if they are not defined completely independently of one another. Posner and Vermeule's mistake is to take loose rhetoric of "balancing" liberty and security as inspiration for a model inspired by economic theory and dependent on rigid – and

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inaccurate — assumptions. A stale old joke puts an economist on a remote island with an engineer, a mathematician, and one can of food. The engineer devises a complicated plan to open the can with rocks; the mathematician works out the theory on paper. The economist proposes a much more elegant solution: “First, assume a can-opener.” No one should minimize the dangers and volatility of the contemporary world or the importance of preventing terrorist attacks. Nor should we respond to these dangers by assuming a can-opener.

As methodologies for academic lawyers, both “law and economics” and “empirical legal studies” enjoy favored status as ostensibly rigorous scholarly approaches that eschew the mushy imprecision of normative theory. Such methodologies seem especially attractive to those who want to engage in hard-nosed, tough-minded analysis of national security. The facts are the facts; we must face them without fear and plan our policies accordingly. Be serious, be realistic: torture *works*; terrorists are *out there*; this is a *war* and we must protect ourselves by any means necessary.

But if we look past the rhetoric of seriousness, we will find a surprise. Now that law professors are being realistic, what do they actually say? They make assumptions, as we’ve seen. They pose hypotheticals. They stipulate to counterfactuals. The intellectual defense of legal *realpolitik* rests on conjecture, speculation, and outright fiction.

As national security tough talk that is actually grounded on the flimsiest empirical claims, *Terror in the Balance* is in good company. Most well-known in this genre is the ticking bomb hypothetical that has so overdetermined our discussions of torture. It’s a well-rehearsed story: officials are *certain* that a terrorist in their custody knows the location of a deadly bomb and the code to disarm it; the bomb *will* kill scores of innocent civilians if it explodes; torture *will* cause the terrorist to talk in time to disable the bomb and save the city. Never mind that none of the epistemic certainties of this hypothetical are ever available to us in the real world. The rhetorical strategy is to secure an admission that torture is sometimes morally justifiable. From there, it’s just a matter of working out the opera-

tional details, which for Posner and Vermeule is of course a task for experts rather than ordinary civilians or – heaven forbid – lawyers. Who will select the targets for torture? (Security experts within the executive or military.) What methods will be used? (Those determined by the experts to be effective.) How do we know that the experts identify the right targets, those who actually have critical information? (They’re experts, stupid. They’ll use their expertise.)

But if we actually seek a serious, realistic evaluation of torture, it is difficult to see any reason to begin with the fantastical ticking bomb hypothetical. It is not as if we lack empirical information about torture. The unfortunate truth is that torture is a practice with which the human race has extensive historical experience.

Admittedly, I have no expertise as a historian. But I can read, and for others with expertise in reading, there are several historical studies of torture available, most undertaken before September 11, 2001, at a time when our interest in the subject was somewhat less selfishly partisan.<sup>6</sup> The studies are rich in detail, and often depressing, but they, and not a fantasy hypothetical, should be the starting point for discussions of torture today. Among the many lessons we might learn from histories of torture:

1. Though we have argued in recent years about ticking bombs as though we have discovered a new moral puzzle, the necessity of torture to avert imminent catastrophe has been the favorite argument of most of history’s torturers. The promise to limit torture to the most urgent cases is also standard fare.<sup>7</sup>

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<sup>6</sup> The best historical overview is EDWARD PETERS, TORTURE (expanded ed. 1996). See also JOHN H. LANGBEIN, TORTURE AND THE LAW OF PROOF: EUROPE AND ENGLAND IN THE ANCIEN RÉGIME (1977); GEORGE RYLEY SCOTT, A HISTORY OF TORTURE (1940).

<sup>7</sup> See PETERS at 6-7. In 1804, Jeremy Bentham apparently developed a similar hypothetical to consider the permissibility of torture in extreme emergency. Bentham’s manuscript is not published, but it is excerpted in W. L. Twining & P. E. Twining, *Bentham on Torture*, 24 N. IRELAND LEGAL Q. 305, 347 n. 3 (1973), and discussed in ALAN DERSHOWITZ, WHY TERRORISM WORKS 142-43 (2003).

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2. Torture has never been a consistently reliable source of information – but this observation has never dissuaded torture’s proponents.<sup>8</sup>

3. States continue to torture even when torture fails to produce information, suggesting that the practice is usually driven by something other than the need for information.<sup>9</sup> Torture is routinely used against members of detested groups, and it is routinely used in punitive ways.<sup>10</sup>

4. Torture has long been enmeshed with law, and law has not limited the scope of torture.<sup>11</sup> History offers a wide array of examples of judicial supervision of torture – and abundant evidence that such supervision has not limited the practice to extraordinary cases.<sup>12</sup>

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<sup>8</sup> See, e.g., LANGBEIN at 8-9; PETERS at 71.

<sup>9</sup> A scene in *Dr. Strangelove* is illustrative though obviously not authoritative: General Ripper asks the British officer Group Captain Mandrake whether he was tortured, and whether he talked. Mandrake replies, “I don’t think they wanted me to talk, really. They were just having a bit of fun, the swine.”

<sup>10</sup> For example, Langbein initially defines torture as strictly interrogational violence – “physical coercion by officers of the state in order to gather evidence” – and states that “[n]o punishment, no matter how gruesome, should be called torture.” LANGBEIN at 3. Later, however, he explains that torture was used for “primarily evidentiary” purposes only in cases of “ordinary crime,” such as murder or burglary. For offenders accused of political or religious offenses, torture was used for “more diffuse” purposes that certainly extended beyond evidence-gathering. *Id.* at 88-90.

<sup>11</sup> See, e.g., PETERS at 4-8 (describing torture as a practice regulated by law, and arguing that judicially supervised torture is in fact the only torture properly so called); *id.* at 67-69 (describing the regularization of torture from the 13th to the 18th century, and noting that during this time torture was applied to “an ever-widening circle, first of defendants, but later of witnesses as well”).

<sup>12</sup> Alan Dershowitz, the contemporary scholar most associated with a proposal for torture warrants, does not himself claim that the torture warrant is a new idea. He interprets Langbein’s research to suggest (without establishing definitively) that “there would be less torture if it were done as part of the legal system.” DERSHOWITZ at 158. But Langbein himself makes no such claim, and in fact argues that “[t]he system of judicial torture … did not prevent, and indeed probably helped inspire, some other uses of torture.” LANGBEIN at 16.

5. Human cruelty, including torture, appears to reach its highest levels when it is normalized and legitimated by official institutions.

Contemporary defenses of torture rely on claims of exceptionalism: we do not relinquish our past condemnations of torture, but we claim to use torture differently, properly, in morally justifiable ways. A little history reveals that in our apologies for torture today, and in our very claims of exceptionalism, we are entirely unexceptional.

Like other torture proponents, Posner and Vermeule prefer the term “coercive interrogation,” though with surprising candor they acknowledge that they use this term to describe the practices formerly known as torture or cruel, inhuman, and degrading treatment (184). Their substantive conclusions on coercive interrogation are simple: *it's not morally impermissible, it works, let the experts do it.* The claim that torture is a good source of information is supported first with a silly rational actor argument – if torture didn't work, why would so many people have done it? (195) – and then with “anecdotal or impressionistic” evidence from Israel (196). The arguments are weak, and one wonders why this chapter was written at all, given Posner and Vermeule’s own ground rules that evaluations of substantive policy choices are beyond lawyers’ competence. Compare the modest claims of their introduction (“[A]s lawyers, we do not have any expertise regarding optimal security policy, and so we do not try to argue for or against any particular policy .... We call [policy evaluation] a first-order question and bracket such questions to the extent possible” (6, 10)) with the chapter on torture (“We will argue that first-order balancing permits coercive interrogation under a range of emergency circumstances” (183)). For these Professors Strangelove, the temptation to endorse torture was apparently irresistible.

### III.

### Tragedy

**N**otwithstanding all the similarities between the arguments of *Terror in the Balance* and the views parodied in *Dr. Strangelove*, it is clear that Posner and Vermeule want to prevent the slaughter of

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innocents rather than facilitate such horrors. As I have noted, they are unashamed to adopt “the marrow” of Schmitt’s theory, but this is because they consider the possibility of another Hitler to be remote (39). This prediction is probably right. It is unlikely that Schmittean defenses of executive unilateralism in the United States today will lead to a dictator who orchestrates genocide. But genocide is not the only tragedy worth avoiding, and it is not the likelihood of genocide or dictatorship that drives criticisms of Schmittean theory. We criticize it because it is a bad argument. It was a bad argument in 1932, and it is a bad argument today. And we criticize contemporary executive absolutism not (or not only) for what it might lead to, but for what it already is.

In locating all decisionmaking authority in the executive, Schmitt’s theory of emergency – and now Posner and Vermeule’s – disallows the exercise of independent judgment by public officials in other branches. These authors first assert the inevitable necessity of a single decisionmaker in times of crisis, and then go on to suggest that policies selected by the executive alone will be as good as, if not better than, policies produced by a more democratic process that involve multiple branches of government. To legislatures and judges, Posner and Vermeule say, you cannot add value here. Stop interfering, stop judging. Stop thinking.

Indeed, through the notion of *expertise* Posner and Vermeule exclude from national security policy formation not only courts and legislatures, but also all academics. Remember their assertion that “the limits of lawyers’ expertise does not entail that some other discipline can stand in.” Philosophers – and presumably social scientists, historians, and other academics – also lack the necessary expertise to answer “hard questions about national security policy” (274). With respect to this critical policy area, professors like judges are told to stop thinking.

At one point, the authors claim that lawyers and philosophers have no more claim to participate in security policy formation than “any person in the street” (274). Is this a glimmer of democracy? Maybe persons in the street still have a role! Could lawyers and philosophers claim that they advance arguments as citizens and as per-

sons – persons shaped by particular disciplinary training, to be sure, but persons nonetheless? Unfortunately, it turns out that the person in the street doesn't get to have a say either. In times of emergency, the then-executive makes policy decisions, and persons in the street have no opportunity to challenge his decisions or even to know any more about those decisions than the executive wishes to disclose. And if persons in the street start grumbling, Posner and Vermeule claim that censorship and criminal prosecutions for dissenters are within the executive's power (219). Indeed, Gitmo Security requires this approach. Gitmo Security, at its highest levels, is a good delivered by some people to others. The recipients must accept security passively, like sheep in a pen. Those to whom security is provided must not critically evaluate the manner in which it is provided, or at any rate they must not voice objections. Persons in the street, too, are encouraged to stop thinking.

In the view of those still thinking, in the view of critics of the current administration and its policies of torture, detention, secrecy, and surveillance, the tragedy lies in the current state of affairs. This is not a slippery slope argument about dangers to come; it is an objection to existing practices. Of course, there is much disagreement over which policies to implement, and Posner and Vermeule have every right to argue in defense of current policies. But they focus their efforts on the slightly different project of denying everyone other than the executive a right to judge policy or a voice in its formation. And this project is a travesty insofar as it comes from professors – from persons ostensibly professionally committed to encouraging and facilitating thought.

Obviously, many policy decisions need to be made in the executive branch, and some of those decisions will be made without consultation, outside of public view. But the delegation of considerable discretion is not a promise not to review that discretion. In December 2001, 700-plus law professors spoke against the President's plan for military tribunals. Just over six years later, as the administration refines its defense of waterboarding and other dubious policies, the legal academy is much too quiet – save for the hawkish cries of Professors Strangelove.

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You – yes, reader, you, whatever your academic or professional credentials – have the freedom and perhaps the responsibility to reason, to make political and moral judgments, to learn history and to learn from history, and to evaluate the actions and policies of every branch of government. Criticize torture, if you judge it to be wrong; learn its history to help you make that judgment; defend the rule of law if it seems a value worth defending. You need not be a national security expert, or a historian, or a lawyer to explore these questions. You need only be more human than sheep. Should you be inclined to use your freedoms in pursuit of a distinctively human form of security, let no Professor Strangelove tell you that doing so is not within your expertise.

