

BOOKS

[*The Prosecution of George W. Bush for Murder*, Vincent Bugliosi, Vanguard Press, 352 pages]

Error by Trial

By Brendan O'Neill

ALTHOUGH I WAS IMPLACABLY, on occasion almost violently, opposed to President George W. Bush's war in Iraq, I have never subscribed to the idea that he should be prosecuted for it. Something about the demand for Bush to be impeached or tried, either in an international criminal court or in the United States, left me cold. It didn't feel right.

Now, after reading Vincent Bugliosi's spectacularly self-aggrandizing book, I know why. The call to try Bush is built on lawyerly arrogance. It is informed by a deep disdain for the democratic process and the people who vote in it. It is powered by a conviction that politicians should be held to account in the court of experts rather than in the court of public opinion. And its central argument—that Bush's invasion of Iraq is “the most serious crime ever committed in American history”—leads to the excusing, even the whitewashing, of the foreign-policy crimes of earlier presidents.

The legalistic case against Bush is elitist, undemocratic, histrionic, and historically simple, and it ought to be rejected by anyone who wants to have a proper—or even, political—debate about American military interventionism and how we might bring it to an end.

Bugliosi has had a colorful career as a lawyer and author. At the LA County district attorney's office, he has successfully prosecuted 105 out of 106 felony jury trials, including 21 murder convictions. He has, he proudly tells us, secured capital punishment for eight murder defendants—which I admit is eight more people than I have ever condemned to death. He put Charles

Manson behind bars and wrote about it in *Helter Skelter*, “the biggest selling true-crime book in publishing history.” Yet none of these achievements excuses Bugliosi's continual and cloying self-congratulation. He must suffer from repetitive strain injury as a result of patting himself on the back so much.

His new book, it seems, aims to deliver two messages—the Bush administration is ghastly and Vincent Bugliosi is wonderful: “I seem to naturally see what's in front of me completely uninfluenced by the clothing—reputation, hoopla, conventional wisdom, etc.—put on it by others.”

Bizarrely, Bugliosi spends two pages of the first chapter telling us that he was the only person who immediately noticed that, in the U.S. Open tennis final of 1983, Ivan Lendl simply “gave up” against Jimmy Connors. A month later, Bugliosi was vindicated when two “tennis greats” said that they, too, were “disgusted by Lendl's performance.” If, like me, you find yourself bamboozled as to why a 25-year-old tennis match should be discussed in detail on pages seven and eight of a book about the “hell on earth that is Iraq,” Bugliosi quickly explains: his perspicacious judgment of Lendl's performance shows “this tendency of mine to see what is in front of me in its pristine condition.” Others are “blindingly patriotic,” which is “not a mindset that is conducive to critical thinking.”

At times, Bugliosi tries to be humble, but it's a false humility, actually designed to boost his claim to be the most farsighted defender of American values on earth. “I am not, as the *Los Angeles Times* said of me, an ‘American master of common sense,’” he writes, but simply someone who doesn't fall “into the same unthinking trap that so many humans do.” This is masterful: he lets us know that the *LA Times* thinks he is a “master of common sense” while disavowing the idea, thus proving himself both brilliant and modest, just the kind of aloof figure who could hold a presidential account.

Having established in his first chapter that he is always right (on O.J. Simpson,

on Paula Jones and Bill Clinton, and, of course, on Ivan Lendl), Bugliosi moves on to his argument for allowing wise lawyers to prosecute Bush. At first, he seems solid on the basics of the Iraqi debacle. He demonstrates that Bush tricked America into war by claiming that Saddam Hussein had weapons of mass destruction. He is also right, of course, that the war has been an unmitigated disaster for the people of Iraq. Yet it doesn't follow that Bush should be tried for murder in an American court of law—what Bugliosi describes as his “revolutionary proposal.”

Indeed, for all of his radical pretensions, in singling out Bush for prosecution, Bugliosi lets vast numbers of other politicians, Republican and Democrat, off the hook. Moreover, in describing Iraq as “the worst crime ever,” he provides what can only be described as an idiot's guide—naïve, apologetic, over-forgiving—to the last 40 years of American foreign policy. The brave warrior against that “spoiled, callous brat” Dubya ends up as an apologist for broader American imperialism.

Bugliosi uses moral condemnation to discourage critical thinking. He says that anyone who agrees that Bush lied but doesn't think he should be prosecuted for murder is “a very bad human being.” The reason for his issuing such pre-emptive assaults—against his own readers—soon becomes clear: anyone who asks even the most basic questions about Bugliosi's desire to prosecute Bush can easily demolish his case.

Why, for example, focus on Bush alone? Yes, Bush spearheaded the invasion, but he could not have done it without the enthusiastic backing of his advisers and of Congress, too. In the Senate and the House of Representatives, 263 Republicans and 111 Democrats voted “aye” to Bush's Authorization for Use of Military Force Against Iraq resolution. Should the vast majority of Congress be tried for murder, too, or at least for aiding and abetting a rampaging killer? No, says Bugliosi, on the insanely flimsy basis that they were duped by Bush's lies: “The consent that Congress gave Bush is nullified

by the deliberate misrepresentations he made to Congress in inducing it to give him its consent." Here, continuing with the legal theme, Congress is treated as a child or a mentally disturbed entity, *non compos mentis* therefore not responsible. This is the most craven apology I have come across for Congress's shameful record on Iraq. In 2002, there was plenty of evidence that the case against Saddam had been exaggerated. Yet Bugliosi excludes congressmen for their poor judgment by depicting them as victims of Bush's allegedly awesome powers of persuasion.

Even more ominously, in order to convince us that Bush's invasion of Iraq is "the most serious crime ever committed in American history," Bugliosi is forced to rewrite actual history. He plays down the horrors unleashed by other presidents lest they undermine his hyperbolic case against the evil Bush. In response to those (like me) who would argue that Clinton's bombing of

Yugoslavia in 1999 was also "illegal"—since it, too, did not win United Nations approval—Bugliosi effectively says: so what? He writes, "So maybe the US (in the Clinton Administration) was also in violation of Article 2 [of the UN Charter]." The key point, he says, is that, unlike with Bush, "there is no evidence that President Clinton and his people engaged in lies, deliberate distortions, and hence criminality leading up to our bombing of Kosovo."

Yes, there is. Oodles of it. Both the Clinton administration and Tony Blair's British government continually claimed that the Yugoslav regime was carrying out "Hitler-style genocide" in Kosovo, in which at least 100,000 ethnic Albanians were dying. In truth, according to studies and excavations carried out after the Kosovo campaign, the body count of civilians killed between 1997 and 1999 was around 3,000, including some 600 victims of the U.S.-led bombing campaign. Clinton's talk of genocide in Kosovo was as brazen a fib as Bush's WMD story.

Elsewhere, Bugliosi even seems to defend the Vietnam War, a conflict in which some 2 million Vietnamese and 47,244 Americans lost their lives. He does so in order to shoot down that obvious question: if we are to prosecute Bush for Iraq, then why not LBJ or Nixon for Vietnam? Again, Bugliosi insists, the key difference is that these presidents did not lie, thus their obliteration of entire towns and villages in Vietnam and Cambodia was fine and dandy. In truth, Vietnam was built on the Gulf of Tonkin lie, when, in August 1964, American officials invented untruths about the actions of the North Vietnamese in order to justify an American intervention. Embarrassingly, Bugliosi offers a revisionist history of the incident, defending the shameful actions of American military strategists so as to achieve his glorious goal of proving that George W. Bush is exceptional in American history, and thus deserves to have an exceptional trial (carried out by an exceptional man: Bugliosi, perhaps).

Bugliosi contrasts the current president with his father, arguing that George

H.W. Bush was one of America's "fine leaders of the past century." This is the same Bush whose first Gulf War of 1991 (180,000 Iraqis dead) was also launched with a fusillade of insane propaganda claims, including the concocted story that Iraqi soldiers in Kuwait were taking babies from incubators and leaving them to die on hospital floors. It was Bush senior's war that paved the way for the carve-up and occupation of Iraq by American, British, and French forces; the UN sanctions regime that caused so much hardship for Iraqis; the sporadic bombing campaigns of the 1990s (including Clinton's Operation Desert Fox in 1998); and eventually his son's war. Yet Bugliosi, blinded by his seemingly personal hatred for Bush junior and by a stinging legalistic outlook, is incapable of seeing the political events that led to the 2003 war, the continuum between Gulf War I and Gulf War II. He celebrates earlier wars that may not have been "illegal"—at least by the UN's understanding—but which were unquestionably immoral, destructive, and shot through with myth and fabrication.

This book shows what drives today's demand to prosecute Bush (an idea which, despite Bugliosi's claims of revolutionary originality, is becoming more and more popular): first, a simple-minded view of Bush, which obfuscates serious debate, and second, a feeling of exhaustion with democracy and the public. Bugliosi says America is "abysmally and profoundly stupid" and that Americans are possessed of a "grinding stupidity." No wonder he thinks only brilliant people like himself should decide what becomes of lying presidents.

On Nov. 4, the American people effectively exercised judgment on the Bush II administration by removing the Republicans from power. American democracy is far from perfect, but I would far rather take my chances with that raucous arena of discussion and vote casting than further empower mythmaking lawyers like Vincent Bugliosi. ■

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[*The Tyranny of Liberalism: Understanding and Overcoming Administered Freedom, Inquisitorial Tolerance, and Equality by Command*, James Kalb, ISI Books, 308 pages]

Liberal Paradox

By David Gordon

JAMES KALB calls attention in his very thoughtful book to a disturbing development in contemporary America and Western Europe. People who affirm traditional moral beliefs, or who dissent from the Left's egalitarian dogmas, often are subject to harsh repression.

In 2004, Kalb notes, "the High Court in Britain upheld the conviction and firing of an elderly preacher who held up a sign in a town square calling for an end to homosexuality, lesbianism, and immorality and was thrown to the ground and pelted with dirt and water by an angry crowd." Two years later, the president of Harvard, Lawrence Summers, was forced to resign after an outcry over his "rational and cautious remarks suggesting some innate basis for the lesser representation of women in the sciences made at a closed academic conference." Unfortunately, these are not isolated incidents: political correctness is ubiquitous.

If we lived under a Communist regime, all this would be understandable. The Communists disdained "bourgeois" liberties. But of course the dominant ideology today is not Communism but liberalism. Kalb thinks that the pattern of repression under the rule of liberalism presents us with a paradox. Contemporary liberals claim to champion individual freedom—if, for example, you burn an American flag or spew out obscenities in public, the ACLU will combat all efforts to interfere with you. But if liberals officially support freedom, why have they created a climate of opinion so hostile to dissent from liberalism itself?

Kalb argues that the liberals' stress on certain kinds of freedom is not at all inconsistent with a propensity toward

tyranny. Indeed, the same pattern of thought explains both their theory of toleration and their practice of intolerance. "How people think affects what they do," he explains, "and ways of thinking are no less systematic than languages. Each has its own 'grammar,' its own system of fundamental abstract principles that determine what makes sense and how particulars are to be classified. Such principles have consequences independent of the goals of those who live by them."

Liberalism's key tenet, Kalb thinks, is that values are purely subjective: "The ultimate basis of liberalism is rejection of moral authorities that transcend human purposes." From this fundamental mistake, malign results follow.

If values are subjective, then whatever goals you choose to pursue are as good as any others; no objective standard can establish a hierarchy of what is good or right. There is no way, then, for you to figure out through reasoning what you ought to want—reason cannot discover absolute, outside values, it can only tell you how the values or desires you already have might best be obtained. If, for example, we want to live in an economically prosperous society, we should support a free market rather than government intervention. (Unfortunately, this is an objective truth that contemporary liberals neglect.) But whether we want a prosperous economy depends on our desires. As David Hume classically put this view, "Reason is, and ought only to be, the slave of the passions."

If this is the way you look at values, what follows for public policy? Since reason cannot say that one goal is objectively better than another—in Bentham's famous phrase "pushpin [a children's game] is as good as poetry"—our only basis for action is the actual desires that people have. Our aim then should be to promote the maximum possible satisfaction of these desires. This is Kalb's understanding of liberalism, according to which equal freedom for all becomes the highest principle of politics.

Liberalism thus has a technocratic notion of reason. It supports social institutions that accord with its confinement of reason to the efficient procurement of arbitrary ends. "Market, bureaucratic, and industrial forms of organization abolish durable ties and treat everything as interchangeable," writes Kalb. Institutions cease to be ends and become means. People and organizations that reject this account must, if necessary, be forcibly suppressed.

Why is this so? Suppose you think that, contrary to liberal wisdom, the traditional family is morally better than its fashionable alternatives. Should not liberals treat what you believe as a preference entitled to the same consideration as any other personal value? Why should liberals try to shut you up?

Two reasons suggest themselves. To liberals, the fact that you hold this opinion manifests your irrationality. If you deny that ultimate ends are arbitrary, then you aren't being "reasonable." You mistakenly ascribe to values an objective status that they do not have. And people with irrational views should not be accorded the same tolerance as those who adhere to correct doctrine—that is, the instrumental, purely technocratic account of reason. Further, you might threaten the equal freedom of others. Because you think the traditional family is morally mandated, you may attempt to force others to conform to your medieval prejudices. You are therefore irrational and possibly dangerous, doubly an obstacle to the reign of enlightened reason.

Kalb's dialectic shows how freedom, in the hands of its ostensible advocates, transforms itself into its opposite. Liberals, he argues, really only believe in freedom for those who agree with them.

His analysis illuminates contemporary liberal political theory as well. By far the most influential political philosopher in American and British universities is John Rawls, whose concept of "public reason" fits Kalb's schema exactly. In *Political Liberalism*, Rawls argues that people must abandon their "comprehensive views" of the good, or