

## Libby and Vanunu

On the day Libby's prison sentence was lifted, Mordechai Vanunu was sentenced to prison, again, in Israel

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On the day that Scooter Libby's prison sentence was lifted by President Bush, Mordechai Vanunu was sentenced to prison, again, in Israel. In both cases, the underlying offense was the same: speaking to journalists. In each case, the nominal charges were otherwise. For Libby, lying under oath about the circumstances, thereby obstructing justice. For Vanunu, it was breaking a restriction laid upon him when he emerged from prison three years ago, after serving an earlier full sentence of eighteen years, also for speaking to journalists: he was ordered not to speak, at all, to journalists or foreigners. Like a free man, he did both, openly and repeatedly.



Mordechai Vanunu

But whereas Libby had passed classified information, and Vanunu had served his earlier sentence for doing the same, in this instance Vanunu was not charged with revealing any secrets. The transcripts or published accounts of his conversations being available, it was open knowledge that what he had mainly talked about was the truth of his personal convictions about nuclear weapons: that they should universally be abolished, Israel's among them.

Perjury, with the intent and effect of obstructing justice (successfully, as it happens, in Libby's case) is an ancient, established crime under virtually any system of justice. Vanunu's act of speaking his mind freely is not, under existing international human rights law. Nor is it a domestic crime in other democratic societies. These were not conditions of parole, as frequently misstated. Vanunu was not paroled from prison for his earlier conviction, but served his full sentence of eighteen years, eleven and a half of them in solitary confinement. Therefore, under most systems of criminal justice, he should have been subject to no further restrictions or requirements.

What, then, was the legal status of the restrictions which he has now been sentenced for violating? The answer is that the Israeli law under which his speech and movement are restricted is an unmodified relic of the British Mandate period in Palestine, i.e. a colonial regulation. Nothing like it exists in any other democracy in the world. It is as if the young United States had reenacted the British oppressions and restrictions that lead to the

revolution, and that were condemned in the Declaration of Independence and banned in the Bill of Rights. Vanunu mordantly reflected on hearing his new sentence that perhaps his appeal should be to the Queen of England.

There are other differences between the two cases. The clear purpose of Lewis Libby's conversations with journalists was to discredit someone, Joseph Wilson, who had publicly told truth that contradicted Administration lies. Some of the classified information he had revealed—at the direction of his boss, Vice President Richard Cheney—was itself deliberately misleading about the basis on which the country had been led to war in Iraq. The passage he revealed from a secret National Intelligence Estimate was selectively lifted from a context that included warnings that the estimate in it was uncertain and controversial within the intelligence community. It was, in fact, mistaken. And by the time Libby was authorized to release it by the Vice President (whose authority to do so is very much in question), both Cheney and Libby knew this, that the estimate being shown was false.

The other piece of classified information Libby revealed was the name and job of Joseph Wilson's wife, Valerie Plame, a clandestine CIA operative whose work was to discover patterns of nuclear proliferation in the Middle East. Full disclosure: I do not consider all classified information sacrosanct or properly kept secret, and I myself was put on trial for deliberately copying and revealing classified information, the Pentagon Papers. But I would not have revealed Valerie Plame's name or clandestine status. She was doing work that unquestionably served the national security interests of the United States and for her to do it obviously required and deserved secrecy.

Moreover, that particular secret (unlike anything in the Pentagon Papers) was protected by a law passed by Congress, the Intelligence Identities Protection Act, criminalizing knowing revelation of the identities of covert operatives. (Whether Libby knew her clandestine status remains unknown and unproveable, thanks to his lapses of memory, or perhaps, lies). I don't object to that narrowly-defined act, whereas I would oppose strongly a general Official Secrets Act such as Britain's, criminalizing any and all revelations of classified information, which has so far been precluded from passage by our First Amendment.

There is no question that the information Vanunu revealed to the press in 1986—primarily, that Israel, which has never signed the Non-Proliferation Treaty nor opened its nuclear operations to any international inspection, had been for some time a nuclear weapons state, with an arsenal larger than that of Britain and perhaps larger than France—was regarded as secret in Israel and his revelation as illegal. On the other hand, no other nuclear weapons state had kept this status secret from its own people and the world: again, with the exception of South Africa, which revealed its earlier secret arsenal at the same time as disbanding it along with apartheid. Moreover, by 1986 this program (aside from the scale Vanunu revealed, which was a surprise even to CIA) was a secret almost exclusively from those Israelis and others (including, officially, the American Government) that chose to believe Israel's ambiguous and deliberately deceptive denials.

In any case, it was information that Vanunu's fellow citizens deserved urgently to have had long before, in time to reach an informed, democratic judgment and influence on their country's policy. In my opinion, Mordechai Vanunu did what he should have with the information he acquired. I hope that I would have done the same in his position. His readiness to accept the personal risk that his truth-telling actually entailed—that he would suffer a long prison sentence (and the longest time in solitary confinement known to

Amnesty International, which defined it as a human rights violation)—is deserving of worldwide admiration, and, I hope, emulation. His continued restriction and persecution after serving his sentence, his new return to prison for six months on a pretence of preserving twenty-five-year-old secrets that he has yet to reveal (and which the restrictions do not protect), are illegal and outrageous.

As for Libby, I have no strong opinion on whether his sentence of thirty months in prison was, as President Bush judged in commuting it, excessive. As Bush undoubtedly knows in more detail than we do, Libby was only carrying out, routinely, the wishes and orders—manifestly illegal as they were—of his bosses. If this were confirmed by the Congressional investigation that should be forthcoming on the deceptions and violations of law and the Constitution that led us into war (and may do so again in Iran), it should lead to impeachment and then to criminal prosecution of Richard Cheney and/or George Bush. But a damper on such an effort is the now-certainty that conviction of either Cheney or his superior would be nullified by presidential pardon. It may not be true, as Richard Nixon declared, that “If the president does it, it is not illegal.” But whatever “it” is, if done or ordered by the president or vice president, it appears to be unpunishable. As in Israel, rules suited to an older imperial system, not a republic, are in force.

*Daniel Ellsberg worked on the Top Secret McNamara study of U.S. Decision-making in Vietnam, 1945-68, which later came to be known as the Pentagon Papers. In 1969, he photocopied the 7,000 page study and gave it to the Senate Foreign Relations Committee; in 1971 he gave it to the New York Times, the Washington Post and 17 other newspapers. His trial, on twelve felony counts posing a possible sentence of 115 years, was dismissed in 1973 on grounds of governmental misconduct against him, which led to the convictions of several White House aides and figured in the impeachment proceedings against President Nixon.*

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