

Alienated from the Tautology: Media Literacy in the Wake of the Mueller Report

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This paper examines the circular reasoning that has been employed in the wake of the completion of the Mueller report. Supporters of President Trump are alienated from his legal defense strategy, in which his innocence is maintained without respect to his actions. Special Counsel Robert Mueller's report was structurally constrained, but his absence of judgment was interpreted by supporters as an absence of evidence and thus, a declaration of innocence. This paper proposes a way to conceptualize the tautology, and to teach critical approaches to media analysis.

In 1977, President Nixon was asked by interviewer David Frost if the president could, in certain situations and with the best interests of the nation in mind, do something illegal. Nixon famously answered, "But when the president does it, that means it's not illegal." The President occupies an undefined space in national discourse of someone who is not "above the law," but, in some legal opinions, cannot be indicted or prosecuted. Nixon's ridiculed conclusion thus seems to be the logical extension of the "innocent until proven guilty" equation, an equation that renders the President innocent in any situation since the President cannot be found guilty. It is a kind of tautology, and an equation that was revived by the Trump administration. This paper examines the circular reasoning in the wake of the completion of the Mueller report, and proposes a way to conceptualize the tautology. For those involved in media literacy instruction, I seek to promote an awareness of the dynamics of tautologies in certain conflict discourses.

The Report on the Investigation into Russian Interference in the 2016 Presidential Election, referred to less formally as the Mueller report, had some structural constraints. Whether a sitting President can be indicted has not been settled by the courts, but Robert Mueller, the

Congressionally appointed Special Counsel who conducted the investigation, accepted the opinion of the Office of Legal Counsel (OLC) at the Department of Justice (DOJ) that a President could not be prosecuted or indicted while in office. He furthermore declined to make a judgment in the absence of the ability to indict. Rather, Mueller reported the results of the investigation for Congress' evaluation and for use in possible future prosecutorial situations. Despite the fact that Mueller was structurally constrained and could not make a judgment, his absence of a judgment was interpreted by supporters of the President as an absence of evidence and thus *as a declaration of innocence*.

The equation that renders the President innocent under any circumstances is as follows: a person is innocent until proven guilty; the President cannot be found guilty; the President is therefore innocent. I refer to this equation as a tautology because the innocence of the President is maintained in any interpretation and *the actions of the President are not relevant* to the equation. A tautology likewise may exist independent of circumstances—not pointing outside of itself, and not subject to anything empirical. The full circularity of the equation, however, is not made clear to supporters, many of whom believe that the President was exonerated since Mueller's investigation was completed without charges. The President's mantra of "no collusion, no obstruction" – sometimes punctuated with "total exoneration" – masked both the tautology and the complexity of the truth. His supporters have thus been alienated from the circularity of his legal defense strategy.

This alienation from the tautology is evident even in well-regarded newspapers that are often critical of the President, such as the Washington Post. Reflecting on Trump's interview with

ABC reporter George Stephanopolous, columnist Marc A. Thiessen argued that Trump was right to claim that Mueller cleared him. In the article, entitled, “On Russia collusion, Trump is right and George Stephanopoulos is wrong,” Thiessen writes that, “In our democracy, we are considered innocent until proven guilty. If a prosecutor not only fails to prove you guilty, but after a lengthy investigation, determines that he cannot even establish that crime has been committed, then guess what? You’ve been cleared.” He goes on to say that any other conclusion is irresponsible, unfair, and “goes against American values” (Thiessen 2019). The argument that the prosecutor’s lack of judgment means that the President has been cleared has repeatedly been raised by the President’s supporters in the aftermath of Mueller’s investigation.

Background

The FBI began investigating Russian interference during the 2016 election. Intelligence assessments stated that the Russian government favored Trump and aimed to harm Hillary Clinton’s electability (Intelligence Community Assessment 2017). Trump was displeased; following his win, he sought assurances from Director James Comey that he was not a subject of the investigation. He also wanted Comey to publicly state that he was not under investigation. Comey did not make a public statement and was thereafter dismissed. Following the firing of the FBI director, Congress established a Special Counsel to oversee the investigation and also to include “any links or coordination between the Russian government and individuals associated with the Trump Campaign” (Mueller 2019a).

After the investigation was completed, the Attorney General William Barr released a letter describing the conclusions of Mueller’s report. The letter was later heavily criticized for

mischaracterizing Mueller's conclusions and Mueller himself wrote to Barr on March 27, 2019, complaining that the letter "did not fully capture the context, nature, and substance of the Office's work and conclusions" and had caused "public confusion." Nevertheless, Barr did make it known that, citing the phrasing of the report itself, "while this report does not conclude that the President committed a crime, it also does not exonerate him" (Barr 2019).

The redacted report was eventually released the following month in two volumes: the first volume detailing Russian interference in the election, and the second volume detailing obstruction of the investigation. The tortured wording Barr cites-- that the report does not conclude that the President committed a crime, but neither does it exonerate him-- comes up in three instances in volume II of the report. In all of these instances, the construction is preceded by another awkwardly phrased point that "if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state" (Mueller 2019b, p. 2, p. 8 and p. 182).

Following the release of the 448-page redacted report, Mueller convened a press conference on May 29, 2019, in which he repeated some of the findings of the report and expressed a desire not to speak or testify further about the matter. Again, he repeated the phrasing from his report, emphasizing that he was not allowed to make a determination, but that he could not exonerate the President:

And as set forth in the report, after that investigation, if we had had confidence that the president clearly did not commit a crime, we would have said so. We did not, however, make a determination as to whether the president did commit a crime... a president cannot

be charged with a federal crime while he is in office. That is unconstitutional. Even if the charge is kept under seal and hidden from public view, that, too, is prohibited.

Mueller explained that he could not even recommend charges under the current OLC opinion. This was because, as he put it, “It would be unfair to potentially accuse somebody of a crime when there can be no court resolution of the actual charge.” He pursued charges for 34 others and three companies; the President is the only individual whose status rendered him immune from charges. The President’s supporters, however, believe that his status has unfairly rendered him *immune from exoneration*. This became clear during exchanges between Republican Representatives and Mueller in his testimonies before Congress.

Mueller, despite his reluctance, testified before the House Judiciary Committee and the House Intelligence Committee on July 24, 2019. In transcriptions of the first hour of each of these hearings, the phrase “above the law” was used a combined 12 times, most commonly in the construction “no one is above the law.” Other variations included “not above the law,” “nobody is above the law,” and “no person is so high as to be above the law.” Nine times Democrats used the phrase during the first hour, emphasizing the importance of oversight of the president and the need to hold him to the standards of the law. The three times that Republican supporters of the President—Representatives Chris Stewart and John Ratcliffe-- referred to this phrase, they acknowledged the truth of the adage, but emphasized that the President should be given the presumption of innocence.

Republican Representative John Ratcliffe, who Trump nominated shortly after the hearings for the position of Director of National Intelligence, commented, “I agree with the chairman this morning, when he said, “Donald Trump is not above the law.” He’s not. But he damn sure shouldn’t be below the law, which is where Volume 2 of this report puts him.” Ratcliffe, a former prosecutor, complained that everyone, even the President, should have the presumption of innocence. He made the point that normally a prosecutor does not conclude that a person is *not* exonerated. He asked, “Which DOJ policy or principle set forth a legal standard that an investigated person is not exonerated if their innocence from criminal conduct is not conclusively determined?” He asked Mueller for an example of any other time when the DOJ “determined that an investigated person was not exonerated.” Mueller responded, “I cannot, but this is a unique situation.”

Mueller was referring to the unique situation of the office of the Presidency. Ratcliffe, however, abruptly cut him off, commented that time was short, and said, “Let’s just leave it at, you can’t find it because—I’ll tell you why: It doesn’t exist.” Democrats inferred that Mueller had spelled out Trump’s corrupt actions in instances of obstruction detailed in the report, but was unable to recommend charges due to the President’s status and was leaving further actions up to Congress; Republicans believed that Mueller had insufficient evidence for charges, but had decided to humiliate Trump by unnecessarily detailing his alleged actions.

The Republican line of questioning incredibly seemed to be that Mueller should have made recommendations for prosecution of the President; without such a recommendation or prosecution, the President was innocent. Republican representative Sensenbrenner compared

Mueller's determination not to make a traditional prosecutorial judgment with Special Counsel Ken Starr's:

Now, you didn't use the word *impeachable conduct*, like Starr did. There was no statute to prevent you from using the word *impeachable conduct*, and I go back to what Mr. Ratcliffe said, and that is, is that even the president is innocent until proven guilty.

Republican Representative Mike Turner, addressing Mueller, commented that exoneration was not a legal term, and said, "You have no more power to declare him exonerated than you have the power to declare him Anderson Cooper."

Republican Representative Ken Buck addressed Mueller, opining, "You made the decision on the Russian interference, you couldn't have indicted the president on that, and you made the decision on that. But when it came to obstruction, you threw a bunch of stuff up against the wall to see what would stick, and that is fundamentally not fair." Mueller protested this characterization.

Buck pressed, "Okay. But could you charge the president with a crime after he left office?"

Mueller responded, "Yes." Buck, taken aback, repeated the question: "You believe that you could charge the President of the United States with obstruction of justice after he left office?"

Mueller again replied, "Yes."

The lack of indictment, in other circumstances, connects to a lack of evidence and to exoneration. Buck's surprise is a realization that this is not the case here. Trump's self-declaration of exoneration bears no relation to the instances of obstruction laid out in the report. Philosopher Ludwig Wittgenstein explained that a tautology "has no truth-conditions, for it is unconditionally true," and juxtaposed it with a contradiction, which "is on no condition true" (Wittgenstein 1922: 53). In other words, a tautology cannot be refuted because it states nothing that can be empirically verified or refuted. Wittgenstein writes that "the conditions of agreement with the world—the presenting relations—cancel one another, so that it stands in no presenting relation to reality" (1922: 53).

The Principal Tautology

In 2009, anthropologist Andrew Arno published *Alarming Reports*, which laid out his ideas about conflict communication in the mass media. He argued that news is rooted in conflict—and in certain interpretations of conflict. He came up with the term "conflict discourse systems" (CDS) to describe discourses that are broad-reaching, have many adherents and take on their own forms of talk and logic. For example, in his book, he described the survivalist anti-government militia movement discourse invoked by Timothy McVeigh. Adherents to the discourse referenced and understood pivotal events (e.g. Waco, Ruby Ridge) in the same way—to affirm their belief in the abuse of power by the government. Ultimately there is a confirmation bias; events which affirm the CDS fold into its interpretive structure, and those which do not are disregarded or viewed as outliers. Thus, the reasoning of the CDS is impervious to doubt.

For adherents to the CDS, a primary source of conflict is identified, and—right or wrong—the interpretation leads to further actions. This bears resonance to what Maoists would call the

“principal contradiction,” the interpretation of the main source of conflict in greater society. In China, the understanding of this principal contradiction is very important, and the current national Chairman Xi Jinping slightly revised in 2017 the official understanding of the principal contradiction (unbalanced and inadequate development versus people’s ever-growing needs for a better life).

Borrowing from Mao Zedong’s use of the “principal contradiction,” I conceptualize the “principal tautology.” Whereas the principal contradiction is the main source of conflict from which other conflicts flow, here I identify the principal tautology as the main digression from empirically-verifiable information. The principal tautology tells us that the President cannot be indicted while in office, and so the President has not been indicted. Wittgenstein further goes on to say, “And from a tautology, only tautologies *follow*” (Wittgenstein 1922: 81). The President’s lack of indictment points to his status, which does not allow for indictment. The lack of indictment does not relate to empirical evidence or to an absence of evidence. The second tautology is that a person is innocent until proven guilty, and a person who cannot be proven guilty retains the presumption of innocence. In this case, the status of the President-- his innocence by virtue of his position of being impossible to indict-- flows from the principal tautology.

Wittgenstein’s notion that tautologies follow from a tautology is instructive; the flow of tautologies from the principal tautology still do not point to empirically verifiable information. Supporters of the President in the committees did not focus on the alleged obstructive actions of the President laid out in the report; their insistence that the President was innocent related to

issues of process and to the tautological flows from the principal tautology. These flows of tautologies are in fact often needed to maintain belief in the primary source of conflict. I offer this example in the wake of the Mueller report to highlight this dynamic.

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