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The Mueller Report:
What it Includes, What it Omits, and What it Teaches
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On April 18, 2019, the US Department of Justice released a redacted version of the full report (448 pages) submitted by Special Counsel Robert Mueller about Russia's interference in the 2016 US presidential elections. The report consists of two parts: the first presents the outcome of the investigation into Russia's involvement in the election and draws conclusions regarding the presence or absence of a conspiracy or illegal coordination between the Russians and the Trump campaign; the second part deals with President Trump's possible obstruction of justice regarding the FBI investigation into the Russian intervention and the investigation by the Special Counsel himself. This essay deals with the first part, i.e., the results of the investigation into the connection between the Russians and Trump for the purpose of influencing the election results. The report reflects accurately the US criminal law that deals with conspiracy and illegal coordination regarding elections. At the same time, it exposes a gap in the nation's conceptual, organizational, legal, and technological preparedness to confront the possibilities that the digital space provides to undermine – internally and externally – the democratic process. Israel suffers from the same gap, and it is therefore imperative that the state confront it before the next Knesset election.

The Mueller Report provides a broad factual basis for analyzing the 2016 US presidential elections, thus adding to the data already made public by in the three indictments handed down during the investigation naming Russian officers, citizens, and institutions; research institute publications; and books written by former senior members of the US intelligence and security establishment. Together, the data paint a stark picture: acting on direct orders from President Vladimir Putin, Russian intelligence agencies conducted an organized campaign to influence the presidential election. The campaign had two goals: first, to exploit American social divides to further polarize the electorate and make the public lose its trust in the election process and democratic system; and second, to harm the campaign of Democratic candidate Hillary Clinton and thereby encourage the victory of Donald Trump.

To this end, the Russians adopted a multi-faceted approach: organized, systematic activity by their intelligence agencies (led by the GRU), which included hacking computers belonging to individuals and institutions connected to the Democratic Party and the Clinton campaign; leaks of obtained information through websites and media financed by the Russian government, e.g., the *Russia Today* TV network and the *Sputnik* news agency; and dissemination of that information on social media using a massive army of trolls constructed by the Internet Research Agency over the course of several years and maintained via stolen profile pictures and fictitious biographies.

The Russians focused on spreading information about a series of scandals attributed to Clinton, including the “email affair,” the “Benghazi attack failure scandal,” the “Clinton Family Foundation contribution scandal,” and her “support for the Iraq war.” The media generated material about the scandals and the trolls spread them on Facebook, Twitter, YouTube, and Instagram. The messages were uniform and matched those of Trump’s campaign: Hillary was corrupt, suffered from mental and physical ailments, and was connected to radical Islamic elements. At the same time, certain population segments were targeted for voter suppression. Some of this activity came to light thanks to the Cambridge Analytica affair.

The Russian activities violated a long list of federal laws (on computer intrusion, foreign involvement, identity theft, hacking into computers, and trafficking stolen property), but Trump’s own behavior during the campaign did not, in and of itself, constitute a crime. On the contrary, one major remaining unanswered question is whether there was a conspiracy or illegal coordination between Trump / the Trump camp and the Russians.

The primary new finding revealed by the Mueller Report has to do with Trump’s own conduct and his associates. Mueller explicitly states that Trump’s campaign welcomed Russia’s involvement in the election, based on the assumption that it would help Trump and harm Clinton. Mueller also describes a series of meetings and messages between Trump’s associates and Russian government parties and WikiLeaks, including coordination to plant damaging information about the Democratic candidate. People involved in the Trump campaign, including Trump himself, did in fact do their best to spread dozens of the Russian messages via Tweets, re-Tweets, Facebook posts, and other means. During a press conference, Trump even called on the Russians to find and publicize Clinton’s email correspondence.

Nonetheless, Mueller determines that regarding the allegation of Conspiracy to Defraud the United States (18 U.S.C. §371), there was no conspiracy or illegal coordination, because the stringent criteria that constitute a criminal threshold were not met: an explicit or implied agreement between Trump and his associates on the one hand, and Russian

regime representatives on the other, to intentionally influence the election outcome. Mueller looked for connections that would constitute a clear agreement to engage in a conspiracy or coordination. The report provides an extensive survey of the contacts and messages exchanged, but nonetheless explains why they do not prove conspiracy or coordination. It explicitly states that to establish illegal conspiracy and coordination, it is not enough to demonstrate that two sides operate whereby each one was aware of the other's actions and/or responded to it. There has to be explicit coordination in the physical world.

In many respects, Special Counsel Mueller adopted a correct approach. He understood his mandate as examining whether the conditions constituting the criminal offense were met, i.e., had the law clearly been violated and was there evidence that could support a conviction. When an election campaign, the core of political expression, and the President himself and his closest advisers are at stake, judicial activism and an expansive interpretation of the law are not warranted. At the same time, it seems that there is a significant lacuna resulting from a lack of correspondence between existing legislation and the new world of digital interference in elections. Interestingly, even Mark Zuckerberg understood this: in a recent *Washington Post* column, he wrote that it is necessary to formulate new rules on political propaganda through social media.

The Applicability of the Mueller Report in a World of Digital Influence

The major problem is that currently, in cyberspace, there is no need to sign an agreement or enter a closed room and sit around the same table in order to sway public opinion. This is the revolution that the current digital world has made possible: the ability to affect election results, mostly by means of social media. Such "virtual conspiracies" to affect elections can be made between two sides that never meet physically or even online (such as in chats or emails) and are not connected in the usual meaning of the word. Activities occurring in various locations and at various times can simply stem from shared interests and serve similar goals. It is enough that each side is aware of the other's existence and their shared interests, and then echoes the messages coming from the other.

Such reverberations can be direct, by making message contents go viral via sharing to accounts with many followers or through networks of interconnected accounts, re-Tweeting, and sharing to groups using private messaging programs (WhatsApp, Telegram Messenger). But it can also be indirect, such as one side using inflammatory information about the other for a scheme that "coincidentally" blows up on the same day embarrassing information is released on one's partner so as to divert public attention away from the partner's humiliation.

Joint influence by means of a “virtual conspiracy” can be realized both when a foreign campaign and a local campaign work toward the same goal, and when a partisan campaign and ancillary entities (NGOs or super PACs) do so. The ability to forge virtual conspiracies between various players – domestic and foreign – is thus a new and major feature of today’s world. If the Mueller Report states that there was no criminal influence by Trump on the election, it is not that such influence wasn’t exerted, but because it cannot be labeled criminal by current legislation. The problem is that the lacuna in legislation reflects a much broader matter related to conceptual, organizational, and technological gaps.

Lessons for Israel

One conclusion from the Mueller Report is that the world needs new patterns of thinking and new tools to describe, define, and confront current election influence methods. This gap is evident in Israel too, as was made clear in the 2019 election campaign. Early in the campaign, head of the Israel Security Agency Nadav Argaman issued a warning about foreign powers attempting to affect the campaign. The hacked phone of Lt. Gen. (ret.) Benny Gantz by the Iranians amplified the sense of threat. Based on the Cyber Unit in the State Attorney’s office, thousands of fake foreign Facebook accounts were closed in Israel too. Supreme Court Justice Hanan Melcer, Chairman of the Central Elections Committee, issued two important decisions – requiring the labeling of election propaganda as such in digital media and banning the use of unlabeled text messages – based on the understanding that in the absence of explicit legislation it is necessary to employ other democratic tools to defend the system and not allow players, whether foreign or domestic, to exploit the legislative vacuum to harm the principles of equality and fairness in the election process.

When the *Yediot Ahronot* and the *New York Times* investigative reports broke on the use of bots and fake accounts operating on behalf of Likud on Twitter and an appeal on the matter was submitted to the Central Elections Committee, the Chairman decided not to intervene. But his decision was not based on a conclusion that there was no conspiracy or illegal coordination. On the contrary, he quoted from the Book of Amos – “Will two walk together unless they have agreed?” – to describe the events, noting that he simply lacked the tools to address the issue, and that it would have to be handled by the police and the State Comptroller at a later stage.

The Question of Influence

The significant question left unanswered by the Mueller Report is to what extent the Russian campaign actually affected the outcome, or more generally, in practice, what sort of impact can such operations seeking to influence elections have. Clinton was a problematic candidate, regardless of the Russian campaign. Her conduct gave the

impression that she was arrogant, elitist, cut off from reality, and corrupt, and that she had little regard for the rule of law and was willing to do whatever it took to win the presidency, which she felt was her due. Nonetheless, she managed to win the popular vote. Trump won a majority of the Electoral College thanks to a 70,000-vote margin in some key states. However, it cannot be inferred how many electoral votes were earned by the votes of those who were influenced by the Russian campaign.

Even Kathleen Hall Jamieson, the scholar who presented the most far reaching thesis on the issue, saying that the Russians did indeed influence the voting, could not demonstrate a direct influence and would only say that it was “very likely” that it happened. Other studies claim that digital efforts to exert influence had no real impact, changing neither political attitudes nor decisions on what candidate to support at the ballot box. Rather, the contention is that influence can generate voter suppression among some population segments or encourage greater turnout among others, but that actual influence is generated only by institutionalized media such as television.

The question of influence is the elephant in the room. If this is a case of actions that sway election results or affect voter positions, consciously or not, it may be time to look at changes to existing paradigms and consider legislative amendments. If, however, influence is negligible, over-involving the security services and enacting more restrictive laws can limit legitimate freedom of political expression in the critical months before an election. The question of influence, then, must be addressed among the community of researchers, who must study it in order to provide a sound foundation for a discussion on appropriate policies.

Conclusion

The Russian campaign in the 2016 US presidential election came as a strategic surprise to the Americans. The US intelligence community identified Russia’s involvement and apparently had a fairly accurate picture both of Putin’s own involvement and most of the tactical means used. However, the US intelligence community did not understand the essence of Russian’s activity, its goal, and its broader implications. The Americans did not grasp the idea of a campaign of influence in cyberspace, both because they themselves had no intention of operating that way and because the platforms used to spread the messages, i.e., social media, were all American, identified with the American ethos of freedom of expression and information. In their defense, senior figures in the US intelligence community say that the ban on gathering information about US citizens made it impossible to understand the overall picture of Russia’s actions and their ramifications. But the problem seems to have been more extensive: today, it is very clear that there was no one in the United States who saw himself as responsible for foiling the Russian

campaign or had the organizational, conceptual, and technological qualifications to operate such an effort.

In advance of the 2019 Knesset election, it became clear that in Israel too there is no one whose job it is to comprehend, in real time, the bigger picture of foreign and local influence, connect the dots between an email or phone hack and the information echoing in the media, measure the precise impact of disinformation or fake accounts that must be handled, and decide what tools to use – when to use foiling and attack methods and when to make do with informing the public and increasing awareness and literacy.

Western liberal democracy abhors government censorship of political expression. But the conclusion from the Mueller Report is that handling conspiracies to influence on elections requires the creation of a new conceptual framework. One can no longer make do with counting the number of bots removed or exposing the real person behind a fake account. It is necessary to clarify what is new and different in cyberspace's ability to exert influence compared to what was possible in the past, to distinguish among the types of players, both local and foreign, to investigate the strategy and motivation of each one, and to see who is echoing whom. Amendments are needed that make it possible to hold a democratic discourse fairly and equally, along with tools that enable real-time confrontation with illegitimate attempts to influence the outcome of an election.

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