The king's justice: The rhetoric of executive clemency

by

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Abstract

Towards the end of his term, President Donald Trump issued a series of pardons to political allies that strained democratic norms of executive accountability. Drawing on psychoanalytic theories of rhetoric, this thesis takes the position that Trump's use of rhetoric in defense of his pardons constitutes a compensatory effort to obscure the contradictions between justice and Trump's self-serving distortions. Trump's pardons are rhetorical rituals that use tropes and metaphors to persuade audiences to support clemency in ways that are complicit with structural violence and detrimental to democracy. Three rhetorical strategies are identified: first, manipulation of the spheres of argument to alter audience expectations and evaluative criteria, second, counter-allegation to perform a ritual of masculine victimhood that coopts the voice and position of marginalized social groups, and third, subject construction under the trope of whiteness in the service of narratives of racial insecurity.

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Dedication

This thesis is dedicated to Sunset Shimmer, best pony.

Chapter 1 - Introduction

Preface

In January of 1999, Pope John Paul II visited St. Louis, Missouri. While there, he made a personal appeal to Southern Baptist governor Mel Carnahan to spare the life of Darrell Mease, who was scheduled to be executed for murder. Governor Carnahan was moved by the Pope's concern for Mease and commuted his death sentence, one of the few instances of successful religious intervention in capital punishment cases in the United States. A *New York Times* article published shortly afterwards cites Richard Dieter, executive director of the Death Penalty Information Center, who said that such instances were unusual, considering that only one or two clemencies were being granted per year in that period of time (Niebuhr, 1999). One can alternatively be impressed or discouraged by the seeming randomness of Carnahan's commutation. The particular facts of a state governor's psychology may elude clear explanation, but they are indicative of a much larger tension in the criminal justice system. There sits atop our mass of rules, regulations, and institutions a peculiar release valve which, if triggered, serves to revise or even invalidate the actions of a system we depend upon to maintain order and the rule of law. The scope and exercise of the power of executive pardon strikes directly at the heart of our understanding of criminal justice. And this is not merely an exercise in arcane legal disambiguation. The daily operation of the judicial determination of guilt and the execution of punishment puts the abstract logics of social organization into direct contact with the messy and complicated facts of social existence, inevitably producing holes and tensions as varying principles compete and clash. Those tensions constitute the scene of, and the force behind, the use of rhetoric by agents in the criminal justice system.

The tensions of executive clemency were clearly on display in the final days of the Trump administration. Whereas we might provisionally assume the Pope's benevolent intentions, the case for President Trump is significantly more mixed. President Trump displayed a marked tendency to use the pardon power to rescue political allies from legal liability. Trump's first pardon was issued to Sheriff Joe Arpaio, who had been charged with criminal contempt of court for failing to comply with court orders in *Melendres v Arpaio*, a civil lawsuit alleging Arpaio had overseen racially discriminatory policing practices against undocumented people. A news report from NPR noted that Arpaio had garnered a reputation for "harsh" and "cruel" treatment, and had directed his deputies to continue unlawful detentions for 18 months after the judge order was issued (Kelly, 2017). During his term President Trump continued to issue pardons to allies, most notably those involved in the impeachment and counter-intelligence investigations initiated against him, such as Michael Flynn, George Papadopoulos, Roger Stone, and others. This culminated on the final day of Trump's term, on which he issued pardons to 143 people, with a notable preference for "loyalists" (Walsh and Solender, 2021). *New York Times* journalists covering the pardons described Trump's approach to justice as "ad hoc" and "somewhat capricious," saying it "often required special access and was motivated by optics and political expediency" (Eligon and Karney, 2021). This pattern of favoritism constitutes a weaponization of the pardon power against the principles of equal treatment and executive accountability.

It is the purpose of this project to investigate this turbulent episode in the history of executive clemency from a rhetorical perspective, to shed greater light on the use and abuse of the pardon power by the Trump administration. Drawing on psychoanalytic theories of rhetoric, this thesis takes the position that Trump's use of rhetoric in defense of his pardons constitutes a compensatory effort to obscure the contradictions between justice and Trump's self-serving

distortions. Trump's pardons are rhetorical rituals that use tropes and metaphors to persuade audiences to support clemency in ways that are complicit with structural violence and detrimental to democracy.

This chapter will begin by introducing the specific questions that will guide the project, then it will survey the relevant literature on executive clemency, next it will clarify the method of rhetorical investigation, and finally it will conclude with an overview of chapters.

When studying executive clemency, scholars frequently investigate the conditions under which pardons are granted. For example, Jacobs and Kent (2007) use a longitudinal time-series approach to derive statistical correlations between nonelite perceptions of racial and economic threat, extant civil rights protests, and partisan membership and the amount of executions committed by the United States as a whole. Ulrich (2020) connects use of executive clemency with the political situation at the time a president is elected, arguing that higher public support emboldens presidents to increase use of pardons. However, while these models may be effective, they are insufficiently attentive to rhetorical context. Acts of pardon are frequently highly contextualized and result from the complicated interaction of personal conscience, political pressure, partisan and religious ideology, the unique facts of the case under consideration, and so forth. Because the pardon power is discretionary it necessarily involves subjective determination and argumentative justification. Executives make the decision over whether to grant clemency as the arbiters of many compelling narratives and pieces of data. Just like a judge in a trial, the executive receives a petition for clemency from the defendant which will highlight various aggravating or mitigating circumstances unique to the defendant. She will have to evaluate whether the punishment is justly deserved by the defendant, or whether the court has erred in going too far with the punishment. Executives in this position are clearly communicative agents

at the nexus of persuasive messages, and they are open to being persuaded as the Carnahan example demonstrates. The highly controversial nature of many pardons places greater emphasis on the rhetoricity of Trump's pardons, because Trump's departure from standard procedure requires an explanation distinct from the structural position of the President in general. The observation that Trump's pardons serve political ends suggests that they may spring from political causes.

Presidential pardons and commutations are frequently criticized by opponents on the grounds that such actions are lawless and even capricious disruptions of an otherwise functioning system. Henry Weinhofen cites eminent thinkers such as Immanuel Kant and Jeremy Bentham to this effect, arguing that the pardon power is at best unnecessary and at worst abusive of public confidence in the justice system (1940). The position of the pardon power in relation to the Constitutional framework has always been uncertain as many scholars emphasize, but its defenders are quick to argue that executive clemency has a legitimate and important role to play. It is in fact true that presidential pardon power is enumerated in Article II of the United States Constitution, and also in many state constitutions. Furthermore, governors who have made use of pardons use this language in defense of their actions. Winthrop Rockefeller, former governor of Arkansas who commuted 15 death sentences near the end of his term in 1970, argues that clemency is simply one of many discretionary powers embedded in the justice system, and that the governor's power to pardon serves as an instance of moral leadership in keeping with their official duties (1971). On the one hand is a narrative which suggests that pardons are an aberration from an otherwise functioning system, and on the other hand is a narrative which suggests pardons are a necessary corrective to a system prone to mistakes. The salient question is

not which narrative is "true" in a legal sense, but rather how both of these narratives take on rhetorical force when invoked by different speakers.

The first question this project will address is: how do Trump's pardons engage with the rhetoric of legality? Contemporary observers seem univocal that President Trump's use of the pardon power is singular, but what explains this singularity, and how is it expressed? President Trump was able to use the sovereign privileges of his office to subvert the normal course of justice when it was in his personal interest to do so, with practically zero accountability. This is a reflection of the ongoing anxiety in the legal sphere over the appropriate scope of the pardon power. The criminal justice system's legitimacy is predicated on the rhetorical edifice which equates process with justice. Taken together, the rules serve as a metaphor which stand in to represent society's reasoned judgement on issues of criminal liability. A pardon, by intervening from an external position, produces a moment of crisis in the legitimacy of the system by asserting that the process failed to produce a just result. Typically, pardon arguments attempt to operate within the coordinates of the criminal justice framework, for example by claiming to consider some forms of mitigating circumstance that were either unavailable or procedurally barred at a sentencing hearing. President Trump's pardons accelerate the tension between executive privilege and legal process by discarding the appearance of legality altogether. Trump's pardons go beyond executing a surgical intervention into the system but work to cast doubt on the legitimacy of the system as a whole, replacing justice with alternative metaphors such as patriotism. Trump's unique relationship to the pardon power constitutes a novel innovation in the broader use of executive power, which compels renewed scholarly attention to the potential of executive clemency to be used for good or ill. The norms and expectations which

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exercised a proprietary limit on pardons have been radically altered, and the resulting constellation of legal powers and rhetorical justifications remains woefully undertheorized.

The second question this project will address is: How do Trump's pardons engage with the rhetoric of responsibility? By claiming the right to issue a pardon, the executive asserts authority over the social attribution of guilt and forgiveness. John Milbank (2003) considers who possesses the right to forgive and writes "one signpost at the divided way reads 'the victim', while the other reads 'sovereign authority'" (pg. 50). He notes that we are caught in an irreducible paradox. On the one hand, we insist that only the victim of an act can forgive it, since only the victim experienced the harms of the act. However, ultimately every crime has victims far beyond just one person or group. Milbank uses the example of rape; in that case, clearly the woman who was raped is a victim of the act, but the negative consequences extend far beyond her, to include making all women less secure and all men less trusted. A crime is an act that harms not just a private victim but society as a whole, which is why we generally accept the prerogative of the state to prosecute criminal wrongdoing even without a specific victim. But the sovereign authority answer cannot resolve the issue either, since absent the act of private forgiveness those who are victims of a criminal's act have an ongoing grievance against the person which the sovereign is not able to resolve. This context represents a gap in our shared understanding of justice. Pardons can only be understood as the sovereign extending forgiveness to the violator if it is assumed that the pardon reflects the will of the victims. However, since that is rarely the case, the act of pardon absorbs the specific victims into the broader category of society that the sovereign claims to represent, which is a rhetorical move. It is rhetorical because it attempts to present a contradiction as consistent by redefining the elements of the situation in a

way that benefits the speaker. For Trump's pardons, the themes of guilt and the victim are crucial to the operation of that rhetorical maneuver.

Literature Review

Overview

The literature on executive clemency is primarily concerned with the problematic relationship between the pardon power and the rule of law. Scholars tend to fall into one of two camps. The first I will refer to as *exceptionalists*: they contend that the issuance of a pardon is an interruption in the normal course of justice which is prone to abuse and requires regulation. The second I will refer to as the *integrationists*: they contend that justice requires the ability to suspend the rule of law in particular cases, and thus see the issuance of pardons as necessary and desirable. Scholars on both sides are primarily lawyers, meaning their arguments tend to make recourse to the division of powers within a Constitutional system, with the intent to define the limits of permissible behavior in all cases. There are correspondingly relatively few scholars who put executive clemency into a broader social context, or who consider the unique demands a particular executive must overcome to justify a pardon.

This literature review will begin by reviewing the legal scholarship on executive clemency historically. Then it will consider the place of executive clemency in contemporary rhetorical theory. Lastly it will survey the existing tropes of argument in an executive clemency context.

Origins of Executive Clemency

Tracing the history of a political concept like executive clemency is always an uncertainty. Antecedent concepts, parallels, and progenitors abound in diverse legal traditions throughout history. Abramowitz and Paget (1964) find hints of executive clemency in Mosaic,

Greek, Norman, and Germanic law prior to its appearance in the American legal tradition. William F. Duker's analysis of the history of the pardoning power is one of the most comprehensive and well-regarded histories on the subject, and he identifies the statutory form of executive clemency as beginning in British common law. Many scholars, including Rapaport (2003) and Kobil (1991) concur with this. Like many of the powers accorded to the executive, it began as a narrow provision, covering only offenses against the king's safety within his house, but gradually expanding to include all serious crimes. Far from being a peripheral or creeping power, the pardoning authority of the king rapidly became "disproportionately overemployed" (Duker, 1977) due to the benefits a sovereign could gain trading pardons for money or military conscription, as well as penal codes which assigned extremely punitive sentences for even minor crimes.

The continued exercise of this power drew the attention of other political forces. The British Parliament attempted many times over a period of almost 400 years to place limits on the power, with little success. A political scandal involving Thomas Osborne, the Earl of Danby, as well as the 1700 Act of Settlement, was required to prevent instances of pardon power to prevent impeachment proceedings against executive officials. Despite the closing of the impeachment loophole, the power of executive pardon remained largely unregulated in the common law. In fact, as Duker notes, the only legal constraint on the power was the right of third person remedy, so that the pardoning power couldn't "deprive a private individual of his remedy at law" (Duker, 1977). It was only be extrapolating this right to private remedy onto the House of Commons that Parliament was able to legally justify its limitation on clemency power.

As agents of the crown, the colonial governments in the Americas inherited the power of pardon from the king without additional restraint. Despite some states undertaking to severely

limit the power during the Articles of Confederation, the power of the President to pardon offenses was included in Article II of the Constitution in 1787. According to Duker, "the power of the English monarch of the eighteenth century and the power of the President of the United States are essentially equivalent." Elizabeth Rapaport agrees, writing "Institutional constraints upon the governor or other clemency authority are all but nonexistent" (2003). Given the American political environment's deep-seated concern with preserving liberty through regulation of federal powers, the appearance of a monarchical legal provision is somewhat surprising. However, when one considers the structural logic of executive power, this apparent contradiction comes into focus.

Clemency, Law, and the Constitutional Order

Dorne and Gewerth (1999) begin their analysis by distinguishing between two theories of pardon power. The first considers the pardon as an act of grace derived from the sovereign's private power of mercy, affirmed by the Supreme Court *in United States v. Wilson* (1833). The second considers pardons as a discretionary decision tied to reasonable expectations of public good and deliberation, affirmed by the Supreme Court in *Biddle v Perovich* (1927). This distinction matters because it determines the types of arguments an executive must use to justify their exercise of clemency, as well as the sorts of criticisms which might be offered by the public in response.

Roger Abshire (2019) considers these competing narratives and their relation to attempts to regulate the pardon power's potential abuses in a constitutional system. He concludes in favor of seeing the pardon power as extra-constitutional on the basis that this will expose possible abuses of the power to greater legal scrutiny. "Though the more informal extraconstitutional understanding of prerogative may be more liable to abuse, it also may be more likely to provide a

remedy for that abuse" (Abshire, 2019). Other scholars do not draw such a strong distinction between clemency and the Constitutional scheme. Elizabeth Rapaport (2003) argues that the clemency power is intrinsically connected to three legitimate functions of the executive. First, the ability of the executive to suspend punishment in cases where doing so would threaten the national interest, such as when President Carter issued a pardon for all draft evasion charges in the Vietnam War. Second, correcting miscarriages of justice in cases where the criminal law is insufficiently flexible to account for the unique circumstances of the defendant. Third, to issue pardons as a corrective to malfeasance by criminal justice system agents, such as when Governor Ryan of Illinois issued pardons on the basis that confessions had been coerced by police. For Rapaport the clemency power is part of the checks and balances system, such that it "allows the executive to act as a check on lawmakers and judges" (Rapaport, 2003) with the executive being constrained by the political consequences of exercising the power. Jalila Jefferson-Bullock (2019) warns that the perception of presidential character has a significant effect on public confidence in government, so that controversial or unjustified acts of presidential pardon may be construed as abusive even if they do not rise to the formally-prescribed level of impeachment.

The State of Exception

The clemency power is a natural logical extension of the penal authority vested in a sovereign. Insofar as the offense can be said to have been committed against the law itself, as opposed to a private person in a civil suit, it is the prerogative of the sovereign to punish or pardon as it sees fit. Regulating this type of discretion from within the coordinates of a juridical landscape is at best a conundrum. Giorgio Agamben's project goes into great historical and theoretical depth to articulate the mechanics and paradoxes invoked by the presence of the exception within the law. For Agamben, the legal form of exception does not abolish the law but rather "a particular case is

released from the obligation to observe the law" (2005). The collision between reality and the law proceeds through necessities, or emergencies, which threaten the continued coherence and application of law. In such situations "the state of exception appears as the opening of a fictitious lacuna in the order for the purpose of safeguarding the existence of the norm and its applicability to the normal situation" (Agamben, 2005). The lacuna is described as "fictitious," or one might say rhetorical, to emphasize the point that suspending the normal function of the law is not necessarily a faithful representation of material reality, but instead is itself a political judgement the sovereign applies to the situation.

Executive clemency is a paradigmatic case of exception. In issuing a pardon, the executive declares that the law insufficiently accounts for the unique facts of a particular case and preserves the norm of just punishment by suspending it. Perceptions of excessive cruelty perhaps do not rise to the level of the national security emergencies Agamben considers in his work (such as civil war or the rise of fascist dictatorships), but within the criminal justice system the continued operation and justification of punishment relies on the belief that the sentences assigned to convicts are proportional to the severity of the offense.

Sarat and Hussain (2004) also take note of this connection, and while they do not analyze the exercise of clemency power in the context of necessity, they do strongly conclude that "the ambivalence and instability that clemency introduces in the legal fabric" cannot be resolved through juridical means and that it "precipitates anxiety in the face of its exercise." For them the instability intrinsic to the uncomfortable position of the executive produces the rhetoricity of an executive's communication as a symptom of that prior anxiety. Sarat and Hussain (2004) identify the tension between the legal authority to grant clemency and the accountability to democratic shareholders as a "structural aporia" which must be overcome because "the political and

ideological claims of representative democracy and the rule of law seem to demand both an explanation and justification of the act." The rhetoric deployed to accomplish this task of justification will be contextual and informed by the discourses which situate the speaker as a subject as well as the speaker's capacity for creative invention. Reference to the legal framework is never enough because the specificity of a given case "*can never be exhaustively anticipated or codified in advance*, and thus the suspension of law that it requires has to be the result of a conscious decision" (Sarat, 2005, italics in original).

Clemency Arguments

By its nature, the justification for an act of executive clemency will always be contextualized to the facts of the case at hand. However, patterns emerge over the course of the power's usage which give some shape to the genre of clemency argument. Notably there is considerable overlap between issuance of executive clemency and the death penalty in the United States. A significant proportion of pardons are for convicts on death row, and arguments against the death penalty have generally been involved in the process. Stephen Hartnett and John Larson (2006) are activists against the death penalty, and from their experience they have categorized arguments into three tropes: the search for closure or redemption as a trope of time, the narrative of horrible acts as a trope of causality, and the evocation of systemic error as a trope of process.

These tropes form the backbone of the retributivist case for the death penalty, and retributivism as a philosophy of criminal justice is the background against which these various arguments are formed, either in support or opposition. Rapaport (2000) explains retributivism, writing "The root idea or metaphor of retributivism is that transgression creates an imbalance that must be restored by the like suffering or privation of the wrongdoer." Therefore the focus of the criminal justice system is on whether the individual offender receives their just desserts for

whatever crime they have committed. Opponents of retributivism, such as Rapaport, argue that this eschews considerations of community welfare or rehabilitation, which they claim executive clemency is able to account for.

Hartnett and Larson (2006) criticize a rhetoric of closure which positions the execution of a convicted criminal as providing a "public service" to grieving family and friends of the victims of the crime. They distinguish this approach from a rhetoric of redemption which sees the loss as an opportunity to rethink the self and our relation to others. They claim the operative element is time because in the rhetoric of closure a victim is trapped in their immediate grief and makes recourse to rules "rules meant to apply regardless of particular historical conditions or political exigencies" (Hartnett and Larson, 2006).

Sarat and Hussain (2004) acknowledge the force that the rhetoric of closure has on the justification of clemency. In their analysis of Governor Ryan's *I Must Act* speech they note that the grounding for Ryan's defense of clemency was the "need to pay homage to suffering" (Sarat and Hussain, 2004). Nancy Berns (2009) confirms the rhetorical significance of closure for both supporters and abolitionists of the death penalty. In her analysis, references to closure rhetoric are a means for advocates to expand the emotional domain of their arguments. However, highly emotional language does not necessarily transfer apply to all acts of executive clemency. Acker, Harmon, and Rivera (2010) conducted a study of death penalty commutations in the state of New York between 1920 and 1970 and found that the reason of mercy was rare in comparison to the other consideration of a given case. They warn against "romanticizing the past" with attributions of merciful feeling which are not accurate to reality.

The second trope isolated by Hartnett and Larson is the rhetoric of horrible acts. This rhetoric suggests that the death penalty and other harsh sentences are causally necessitated by the

heinous nature of the crime committed. They describe this as approaching religious "expiation" along the lines described by Rene Girard's theory of ritual cleansing through sacrifice. They criticize this rhetoric for closing off the agency of decision-makers and positioning the punishment as inevitable or natural when it is anything but.

It is necessary to pay attention to how themes of responsibility are managed rhetorically. Victoria Palacios (1996) argues that the death penalty regime distributes responsibility for the final outcome across a wide range of different decision-makers, so that "no one takes sole, personal responsibility for the decision." This fuels the perception that the justice system is immune to bias since that assumption can only be overcome in instances where the executive positions itself as personally responsible in issuing a pardon. Palacios describes this as the "commutation fantasy" which is the flawed belief that clemency is a catch-all solution to any imperfections in the system. Margaret Jane Radin (1980) offers a similar critique of the rhetoric of "super due process," arguing that recourse to the already-existing procedural constraints on death penalty cases serves as a smokescreen to avoid assuming responsibility for a particular case.

The third trope Hartnett and Larson describe is the rhetoric of systemic error, where supporters of the death penalty claim that inefficiencies at various levels of the criminal justice system are too lenient and allow real criminals to escape punishment. In this logic, the risk of possibly executing an innocent person is outweighed by the necessity of maintaining law and order through punishment. They describe this rhetoric as a trope of process because both death penalty supporters and abolitionists would agree on the fact that there is error in criminal justice, but the argument asserts that the errors skew in a particular direction.

In Hartnett and Larson's model, a primary rhetorical hurdle executive clemency must overcome is justifying why a particular case requires pardon as a remedy, in light of the risk that saving a certain convict from their sentence, but failing to save another, constitutes a violation of the principle of equal treatment. Abramowitz and Paget (1964) describe the canonically accepted legal justifications for pardon and note that 13 of the 14 arguments emphasize the individual facts of the case and not a more general state interest or moral rule. Acker, Harmon, and Rivera (2010) confirm that this argumentative strategy constitutes the bulk of executive clemency cases. However, Radin (1980) explains that every move towards the uniqueness of the defendant increases the risk of violating the norm of punitive consistency, which is well-established in the law as being a necessary feature of just sentences. For Radin, resolving this paradox is not possible within the coordinates of the death penalty, leading her to call for its abolition.

The rhetoric of systemic error that Hartnett and Larson describe is not necessarily as monolithic and powerful as they describe it. Dardis et al (2008) have found that the use of the innocence frame, or the argument that there is a clear systemic risk of executing innocent people with a death penalty, has a significant effect in influencing public opinion when received through the New York Times. Fan, Keltner, and Wyatt (2002) replicate the finding that media attention to the punishment of innocents has reduced support for the death penalty. Mira Sotirovic (2001) offers a potentially explanatory variable for these results in cognitive complexity, arguing that increased nuance in consideration of the death penalty decreases support for it. What these studies suggest is that there are available resources for rhetors to interact with the tropes of the death penalty.

Theory and Method

Overview

This project aims to understand the role that rhetoric plays in controversies over the role of executive power in the criminal justice system. This section will begin by overviewing the contributions of psychoanalytic theory to rhetorical analysis. Then it will cover the unique intersection of rhetorical practice and the American Presidency. Third it will outline the procedure for undertaking the study. Lastly it will discuss the application of the Lacanian method to the texts in question.

Towards a Psychoanalytic Rhetoric

In the wake of rhetorical studies' encounter with progressive critiques in the form of Marxism, feminism, critical race studies, etc. the field has been left with what Christian Lundberg (2012) describes as a "vexing collective indecision" (pg. 24) regarding how to precisely define rhetoric. One particular difficulty stems for the complex interaction between a text and its context. What is the appropriate amount of emphasis that should be placed on either term? If a text doesn't work to alter its context then it is not rhetoric, but context is potentially infinite, so it has to be limited with some brightline for what contextual elements really matter. There are compelling arguments that a rhetorical act cannot be separated from its discursive context, which extends beyond the immediate rhetorical situation of audience, genre, and predisposition to include the sociological analysis of power.

For example, Raymie McKerrow (1989) argues that rhetoric produces discourses which account for the fabric of social power. These discourses are anchored in relation to particular subjects, which serve to produce and constrain the forms that life may take. McKerrow is concerned that existing discourses can become rhetorical resources that are "mobilized to

legitimate the sectional interests of hegemonic groups" (1989, pg. 93). For McKerrow, discourse is responsible for the shifting nature and historical variance of the operations of power. "Discourse is the tactical dimension of the operation of power in its manifold relations at all levels of society, within and between its institutions, groups and individuals" (1989, pg. 98).

However, while McKerrow emphasizes the contingency and invention involved in rhetoric, other scholars have criticized that view for being unable to explain the structural elements of subjectivity. Christian Lundberg (2012), approaches the question of subjectivity from the perspective of psychoanalytic theory and argues that the formation of discourses, which he refers to as tropological economies, is driven by a psychological process of imperfect meaning-making. In psychoanalysis, the subject is not given in advance, but is rather an attempt to respond to the anxiety of existence in ways which are incoherent and yet persist through time. Lundberg repeatedly describes this rhetorical process as "feigned unicity in the context of failed unicity" to emphasize the structuring condition that our distance from the other imposes on all communication.

Psychoanalytic rhetoric, drawing from the work of Jacques Lacan, makes reference to a three-fold division of the world, comprised of the Real, the Imaginary, and the Symbolic. The Real refers to the gap between world outside of our experience of it. The primary feature of the Real is what Lundberg describes as "failed unicity," (2012, pg. xii) meaning that our mental models for understanding the Real never totally match up with the objects we are trying to describe. The Imaginary encompasses the mental models we create to try and understand the Real. What is notable about the Imaginary is that it is a product of labor. We have to build up our worldviews to make sense of our experiences, and there are always alternatives to the ones we invest in. Investing in a worldview is what Lundberg calls "feigned unicity" (2012, pg. xii)

because even though it isn't perfect, we still try to make world coherent. The Symbolic describes the stable patterns of meaning-making that an Imaginary worldview has to navigate in order to succeed in bringing coherence to the Real. In this way the Symbolic structures the ways that an Imaginary frame can be articulated at any given moment.

For Lundberg, metonymy is the capacity for a word or image to represent an object. In this sense, a metonym is a condensation of meaning, where reference becomes stabilized and fixed to a particular object, even when that object can't be said to exist independently from the metonym. In political communication the meaning of any given signifier can only be read in relation to a network of stable metonyms. Lundberg refers to this as the "economy of trope" (2012, pg. 74), choosing the word "economy" to demonstrate the dialectical tension between the structuring laws of interaction as well as the contingent or random elements present in the system.

Metaphors are distinct from metonyms. A metaphor is when a certain metonym exceeds mere representation and begins to organize the relations of other metonyms around them. "When specific metonymic connections become particularly significant points of investment, organizing a set of subsidiary metonymic connections around them, such connections become metaphors" (Lundberg, 2012, pg. 78). Metaphors constitute the backbone of a tropological economy and do the rhetorical work of a text by influencing the process of signification for all terms in its orbit. Therefore metaphors rely on the metonymic functions of language but surpasses them also.

Lundberg develops this theory of tropological economy in contradistinction to traditional rhetorical criticism, which he sees as exemplified by McKerrow's (1989) critical rhetoric and Lloyd Bitzer's (1968) rhetorical situation. Both of these views are bound up in an elevation of the contextual, or Imaginary, register and thus create a "radical structural indeterminacy in the

field of discourse, bounded only by the limitations of historical habit and contingency" (Lundberg, 2012, pg. 20). They assume that intersubjective negotiations account for the dynamics of the situation without possible recourse to the Symbolic. Their accounts leave us wondering why some metaphors succeed and have rhetorical force where others don't. The answer that the difference comes down to purely situational factors is unsatisfying because it can't really explain why a certain metaphor would resonate with a certain audience. Because psychoanalysis can provide a description of the interaction between humans and language through the Symbolic, it provides greater explanatory power than competing theories.

We might conditionally derive from Lundberg's incisive critique the necessity of producing explanatory frameworks which see the incidence of discursive constructions as more than merely accidental fluctuations. That means attending to the psychoanalytic conditions which allow a particular discourse to become articulated in the first place. This may be accomplished in the realm of executive clemency by not taking the context of exception, what Sarat and Hussain (2004) call "lawful lawlessness," for granted. Instead we must take up Lundberg's (2012) challenge to explain "why the agents in a given circumstance are affectively invested in understanding and relating to the context as they do" (pg. 23). That means understanding Trump's arguments for pardon not as purely rational, but also as vehicles for drawing in the emotional energy of the Imaginary worldviews he is invoking rhetorically.

In psychoanalysis the term "affect" describes the feelings that words, ideas, and images can produce in an audience or a speaker. These feelings are not necessarily emotional, although they often do produce emotions. For example, a recruitment poster might make somebody "feel" a deep sense of obligation, but the exact emotions that person experiences due to that feeling will be different based on that person's personality and context. Affect is important because it is

central to the concepts of enjoyment and ritual, which work together to constitute the Symbolic. As Lundberg (2012) explains, "Enjoyment organizes affect… enjoyment signals both an affectively charged state and a ritually repeated habit or compulsion…" Applying the Symbolic to a rhetorical situation means understanding the significance of collective ritual practices in the production of meaning.

"Collective ritual" summons mental images of bonfires and drums, but that is only part of the story. Rituals can be much more mundane. For example, a city council meeting can function as a ritual. The thing that makes something a ritual, at least for our purposes in rhetorical analysis, is its ability to set the stage for a rhetorical context by giving the various people involved their roles. For example, when a judge bangs a gavel in a courtroom they are enacting a ritual of silencing. Their position at the bench, their title, their clothing, and their possession of the gavel are all features of their role. The role of the other people in the room is to fall silent, in order to restore order to the court. If a person were to ignore the gavel, they would be subverting the authority of the judge figure, and by extension subverting the judicial process. It is the existence of this ritual that would justify charging the offending person with a contempt of court charge, if the judge felt the violation was sufficiently severe. What this example should highlight is that rituals are a crucial piece of social organization, and that they can function rhetorically by justifying other actions.

For executive clemency, the ritual which prefigures the rhetoric is the ritual of public execution. Mark Brewin (2012), drawing on the anthropological work of Rene Girard, argues that the function of public execution rituals is to channel violence into accepted pathways. This task is accomplished by arbitrarily selecting a scapegoat which will be invested with the collective guilt of the community and then sacrificed to purge the imperfection. This sacrifice is

then repeatedly reenacted as a way of "recalling the original moment of redemption" (Brewin, 2012). This ritual shows that the motivation behind an act of punishment can be to purge the affect of guilt from broader society by investing those feelings in a chosen scapegoat and then removing them. Executive clemency goes in the opposite direction, by trying to undo that investment of guilt.

Mark Moore (2006) applies the logic of scapegoating and mortification, derived from Burke's theory of dramatism, to executive clemency rhetoric. He argues that George Ryan, a former governor of Illinois who commuted all extant death sentences in his state shortly before the end of his term, was able to use "key symbolic acts of mortification and factional scapegoating" to rhetorically defend his actions. For Moore, Ryan's rhetoric was a two-step process of first condemning his past support of the death penalty to cleanse his inner guilt and then assigning blame to the criminal justice system for not doing likewise. It is critical to note that these dramatic performances are being carried out due to the "need for forgiveness and the restoration of order" (Moore, 2006). This is consonant with the understanding derived from Agamben and others that the suspension of punishment is primarily motivated by a desire to rescue the law from conditions of emergency which threaten the otherwise presumptive equivalency between law and justice.

All the elements of a psychoanalytic rhetoric are powerfully expressed in the act of executive clemency. Pardons are a site of the feigned and failed unicity of justice because the connection between due process and just outcomes is denied by the executive, who argues that a lawful punishment for a crime should be voided. In order to do that, the executive feigns an alternative unicity, or principle, to make sparing the person in question a coherent and justified thing to do. In particular, the executive has to interact with the two rhetorics that spring from the

background ritual of punishment, those being the rhetoric of legality and the rhetoric of responsibility. Studying rhetoric from a psychoanalytic perspective enables an analysis that can track how those two rhetorics are constructed and altered in arguments for presidential pardon, which provides a Symbolic explanation for the rhetorical choices made by President Trump. That Symbolic explanation allows a critical understanding of Trump's pardon rhetoric in relation to systems of power and domination, and it exposes the rhetorical nature of executive power and the law.

The Rhetorical Presidency

If criminal punishment has a ritual character, the President has a role to play in staging it. The Presidency has come to rely upon its ability to make paeans to the public directly, without Congress or the press as mediators. There are many historical examples of presidents known for their unique rhetorical style, for example Franklin Roosevelt's fireside chats or Lincoln's many famous speeches, but the exercise of Presidential rhetoric has passed from an individual to an institutional project. "The problem is thus not one simply of individual rhetorics, but is rather an institutional dilemma for the modern presidency" (Ceaser, Thurow, Tullis, and Bessette, 1981). The dilemma here referred to is the increasing tendency for the office of the President to be concerned with rhetorical performances of justification that eventually serve as the criteria of their evaluation, as opposed to the actual task of governance.

Mary Stuckey, even while critiquing the main line of rhetorical presidency research for having become "stale" (2010) cites this institutional focus with approval. She writes that any study of presidential rhetoric must keep "an eye toward the requirements, limitations and opportunities provided by the executive as an institution" (Stuckey, 2010). For such a legally complicated institution like the Presidency, the limitations and opportunities here referred to are

likely to be variegated and contextual. However, a common thread to executive authority is the ability for the spoken words of Presidents to constitute reality. The president can, for example, consolidate a national consensus on an issue, or use a rhetorical frame to impact the public discourse on an issue of policy, or direct national attention towards some issues and away from others by defining which costs are acceptable and which are not (Zarefsky, 2004).

The President operates within the enumerated duties in Article II, but also outside the Constitutional framework in articulated states of exception. Writing in the context of Presidential signing statements during the War on Terror, Alexander Hiland argues that presidential sovereignty has an extra-Constitutional aspect which allows the exercise of executive authority to produce new forms of government without recourse to the legislative process. He writes "presidential rhetoric has shifted from traditional forms of public address toward the use of presidential powers that function in an illocutionary manner that derive their power from the social norms surrounding the genre of presidential power" (Hiland, 2017). This suggests that the rhetorics of executive clemency will derive from but also exceed the exact legal status of presidential pardons.

While there is ample evidence for Presidents attempting the aforementioned maneuver, some scholars criticize rhetorical studies for assuming an effect where none is present. In particular, George C. Edwards (2003) argues that no good evidence has yet been produced for significant effect sizes caused by presidential rhetoric. David Zarefsky (2004) was aware of Edwards' argument and responds to it by arguing that the President does not seek to directly influence public opinion but rather that they seek to use their power to define social reality. As Zarefsky explains,

> The definition of the situation affects what counts as data for or against a proposal, highlights certain elements of the situation for use in arguments and obscures others,

influences whether people will notice the situation and how they will handle it, describes causes and identifies remedies, and invites moral judgments about circumstances or individuals (Zarefsky, 2004).

Zarefsky's account is strongly reliant on a theory of attention as constituting social reality. His use of terms such as "counts as data," "highlights," "obscures," "notice," and "identifies" speak towards the presence of an economy of attention as producing social reality. A psychoanalytic account of rhetoric is necessary to explain how presidential rhetoric influences attention, as well as to explain why the President or the public would be invested in seeing a particular way.

This project will be heavily indebted to rhetorical presidency scholarship, and will seek to add to the existing literature by placing these texts into conversation with a broader psychoanalytic account of presidential rhetoric. This project will generate a reading of executive clemency that is attentive to affect, ritual, and the symbolic economy. In order to generate an account of the transcontextual features of social discourse responsible for executive clemency rhetoric, the identity of President will need to be interrogated with an eye towards the rhetorical labor that produces it.

Method

The traditional method of rhetorical criticism is not sufficient to generate a compelling account of the psychoanalytic dynamics of a rhetorical artifact. The tropological economies of the Symbolic are necessary to make sense of the meaning, or lack thereof, in a given text. The neoclassical school of rhetorical criticism is necessarily bound up in the productive agency of the interpreter, who uses "reading" as a strategy to produce the meaning of the text. The object of a close reading, following Michael Leff, is to preserve the dynamic and fluid interaction between the agency of the orator and of the interpreter, without dissolving the artifact into a purely theoretical metadiscourse or reifying an overly heroic conception of the orator. Leff (1993)

argues that if rhetoric is to retain its historical commitment to practical action, to avoid being consumed by critical social theory without dismissing it out of hand, we must "adopt an interpretive stance that allows a more fluid relationship between the agency of the critic and the agency represented in the texts studied by the critic." Dilip Gaonkar (1990) appears to concur that Leff's strategy of close reading rescues the object of rhetorical criticism, noting how it avoids prefiguring the object in favor of "refiguring it through a disciplined act of reading," which recognizes the "continuing dialectic" between object and interpreter.

The original meaning and audience of the text is not recoverable except insofar as it is constructed through the act of reading itself. The "refiguration" Gaonkar refers to is an act of rhetorical work to produce the audience. As Lundberg describes, "even the most assiduously imaginary framings of rhetoric rely on a barely latent logic of trope to create an image of an audience that bounds the application of neoclassical critical artifice" (2012, pg. 40). What this implies for the work of rhetorical criticism is that the critic must retain a humility regarding their own agency. This does not mean that productive insights into the Imaginary register of rhetoric are impossible; it means that critics must attend to "the symbolic preconditions that organize an imaginary rhetoric" (Lundberg, 2012, pg. 41). In his defense of neoclassical criticism, Leff says, "we can locate a rhetorically active antecedent context for the production of texts, and this greatly aids our understanding of how and why a text takes the form it does" (2001). The Lacanian approach favored by Lundberg insists that this antecedent context include the tropological economy of the Symbolic, else the entire edifice collapse into meaninglessness.

Considering President Trump's relation to the Symbolic raises questions of agency. How should we understand the uniqueness of Trump's rhetorical style and moments of innovation in relation to a structural framework for meaning? I propose the following interpretation: The

Symbolic describes the limits of what is possible through language, and Trump as a rhetor moves within those constraints. This directs our attention toward the language choices, primarily metaphor, as indicators of how the Symbolic framework is present in shaping the character of rhetoric and its consequences. The Real indicates that because the coherence of a subject is unstable and the product of ongoing rhetorical labor, feigned unicity in the context of failed unicity, this produces an imperative for the rhetoric of pardons to construct or reaffirm the subjectivities of its Imaginary context (such as victim and audience). The rhetoric succeeds or fails based on how well the chosen metaphors Symbolically produce enough meaning to overpower the chaos of the Real, at least until enough contradictions surface to destabilize the metaphors and the process begins anew.

What this means in practical terms for my project is that I will be focused on examining the affective dimensions of particular metaphors which do the rhetorical work of justification. One salient example would be the metaphor of a "witch hunt" frequently summoned by President Trump and others to characterize criminal investigations into those pardoned by Trump as arbitrary or motivated by irrational intolerance. The associated imagery of public execution by fire, the persecution of women, and New England Puritanism each inflect the metaphor with Symbolic implication that influence how the public ritual of guilt and punishment is carried out. The affective dimensions of metaphor also include the tropological exchanges that produce audience subjectivities. An example would be the trope of guilt, which emphasizes the emotional response of the person being pardoned and situates the audience as an intimate community with a shared concern in the moral purity of that person. The method will also pay close attention to Trump's practices of rhetorical enjoyment that attempt to invest the social world with durability, which means looking for affectively charged metaphors connected to collective rituals. One

example of this would be Trump's usage of the term "patriot" to defend Arpaio. By defending Arpaio's honor with the title of patriot, Trump is consecrating the moral integrity of the state and thereby legitimizing identities and rituals undertaken to support it.

Procedure

This study provides additional insight into executive clemency rhetoric through a close reading of texts related to pardons issued by President Trump during his term in office. In order to best address the tensions of legality and responsibility, this study will analyze pardons issued to political allies of President Trump. Political allyship refers either to a personal relationship to President Trump motivating the issuance of pardon, or to the pardons signaling a political position. For example, pardons issued to former Border Patrol officers signal political support for stricter immigration control, and thereby fall into the category of political allies.

The texts under consideration will be the official White House Press Statements released to accompany each issuance of pardon. Press statements are the best way to analyze pardon rhetoric because they are the only formal document connected to a pardon which undertakes justificatory labor for the pardon. The order for pardon submitted to the Justice Department does not provide a defense of the pardon, and clemency application documents are not a part of the public record. As far as the actual issuance of a pardon is concerned, the press statement is the first and only word. This is reflected in news coverage of pardons, which frequently cite the press statement as the official justification. For example, in the pardon of Slatten and others, news reports cited the pardon's claim that clemency was "supported by the broader public" (Gordon, 2021). Finally, because the press statements are the aspects of executive pardon justification which are circulated and subjected to discussion, they serve as the basis for the relevant publics to whom the rhetoric is addressed.

It is generally understood that of the 144 pardons issued during President Trump's term, 45 of those were given to those with a "close link to Trump" (Helderman et al 2021). This study breaks that set down into three sub-categories: those granted pardons for political connections, those granted pardons because of connection with the Mueller investigation, and those granted pardons because of the political issues involved in their case. This study addressed five pardons in the first category (Conrad Black, Elliott Broidy, Chris Collins, Duncan Hunter, Stephen Bannon), five pardons in the second category (Michael Flynn, Paul Manafort, Roger Stone, George Papadopoulos, Alex van der Zwaan), which encompasses all the pardons of that category, and seven pardons in the third category (Paul Slough, Ethan Liberty, Dustin Heard, Nicholas Slatten, Ignacio Ramos, Jose Compean, Philip Lyman). Because of the limited time of the project, some pardons had to be excluded. Pardons were selected for inclusion in the project based on whether the arguments substantially interacted with the themes of legality and responsibility.

This method of analysis is subject to limitations. First, this method is less concerned with the pragmatic intentions of the rhetors. For example, some pardons may have been motivated purely as a favor to political allies without consideration of the details of a given case. Second, this method groups disparate agents together under the umbrella of the President's executive authority. The person who writes the press statements is not Trump himself, those comments are delivered by the Press Secretary and not Trump himself, and many of the arguments in the pardon statements are likely pulled from the clemency application that the people would have filed, and were not originally imagined by the parties. The first two discrepancies do not pose a significant challenge to the aims of this project, since those subsidiary authors and orators are speaking on behalf of the President and the comments are attributed to the White House as

official policy, meaning the authority which underwrites and animates the comments is the President's. Drawing from an understanding of ritual, this means that the role of pardoner is the President, and the rhetoric operates as if he was the speaker. Unfortunately, the role that clemency applications play in producing pardon argument cannot be analyzed in this study because clemency applications are not included in the public record.

Chapter Map

Chapter two will analyze pardons issued to political allies who possess significant political connections. Chapter three will analyze pardons connected to the Mueller investigation. Chapter four will analyze pardons for cases with notable political issues connected to them, for example the pardon issued to Philip Lyman involved a political controversy over federal control of public land in the American west. The thesis concludes with a summary of findings and a discussion of the implications of the project.

Chapter 2 - Political Insiders

Overview

During Trump's administration, he issued a number of pardons to Republican political insiders. That included people who had traded political favors with the President, such as endorsing him during his 2016 and 2020 campaigns. Chapter two covers pardons to political allies granted as a function of the person's political connections. In these instances, the person either had a direct connection to Trump, or had connections to people who had connections to Trump. This chapter analyzes the White House press statements which accompanied the issuance of the pardon to examine the arguments offered to justify the pardon. This chapter will argue that the rhetoric of executive clemency facilitates that justification by manipulating the criteria by which the criminals are judged away from legal questions of wrongdoing and toward moral and political considerations. This shift in criteria has important implications for the rhetorics of legality and responsibility because it changes the expectation and attention of the audience. First the concepts of argument spheres and the accusatory audience are introduced to provide greater insight into the tropological economy of criminal punishment, which forms the backdrop and context for many of the rhetorical moves in Trump's pardons. Then each pardon statement will be closely analyzed. Finally the chapter will conclude with a summary of findings.

The rhetoric in these pardons reflect an ongoing tension between competing spheres of argument. Goodnight (2012) describes spheres as "branches of activity" that ground particular arguments and form the basis for the authority of speakers. In this sense they are analogous to tropological economies which situate the various subjects and publics in the imaginary according to Symbolic logics. The psychoanalytic approach can explain the social durability of a given sphere by describing the processes of attachment and enjoyment that underwrite a subject's

participation in that structure. For example, a psychoanalytic rhetorician might argue that the durability of the technical sphere of argument derives from the feigned unicity of mastery through precise description, which shores up the constitutive uncertainties of engaging with the world by sublating them entirely. Because uncertainty poses a threat to the stability of our subject-positions, we develop an ever-increasing array of technical knowledge systems to ward off the primordial fear of chaos.

The sphere which has a controlling influence on a rhetorical moment exerts a great deal of influence on the character of that rhetoric. First, it determines the set of value metaphors that hold persuasive force. It does this by constructing audience subjectivities with constitutive desires. For example, the legal sphere constructs the audience as judge, with a desire to arbiter and apply rules from a depersonalized and neutral perspective. Second, it creates a set of operative rules for understanding the agency of subjects. For example, the moral sphere places an emphasis on the virtues and intentions of subjects as the primary expression of their agency, as opposed to the consequences of their actions. Third, the sphere regulates the victim response imperative. In the context of the criminal justice system, every case is motivated by an ongoing need to resolve, or bring justice to, and outstanding complaint or harm. The system accomplishes that resolution by awarding punishments or relief to the concerned parties. However, the exact nature of the tension, and the types of remedy which are required, can only be articulated through the language of the relevant sphere. In the case of pardons that means that the victim response imperative can be reduced or negated entirely if the rhetoric shifts the sphere to make expressing the victim's claim of grievance impossible.

Corresponding to the tension of the victim response imperative is the social reality of guilt and blame. These are affective responses to the trauma of social conflict that have to

managed rhetorically. They drive the necessity of resolving the victim's claim. Pardons have a unique interaction with these affects because they actively manipulate the normal machinery of guilt and blame. Pardons declare that some guilts can be erased, and that some blames can be removed. This possibility raises uncertainty that the rhetoric of executive clemency uses to stage its reversals. The pardon declares and constructs a state of emergency in the normal course of justice and redefines it around a new set of rules governing guilt and blame. These new rules have to be sustained through the rhetorical labor of publics.

Warner (2002) describes publics as three things, either a concrete audience, the social totality, or as a self-organized discursive relation to circulating texts among strangers. This work uses the term in the third sense. From a Lacanian perspective, we can understand the formation of publics through discourse as a process of the imaginary, where particular kinds of attachments and enjoyments are explained through the Symbolic. For example, one of the relevant publics in the criminal justice system I refer to as the accusatory audience. This refers to a public that has been exposed to texts documenting the trauma of a victim seeking justice, and who are invested in attaching guilt and blame to a discrete perpetrator. The accusatory audience is acting out the victim response imperative and it is in relation to this audience that pardon rhetoric operates. The accusatory audience doesn't refer to the concrete audience of people who read the pardon statement, but rather refers to the imaginary subject who would endorse the prescribed punishment for a given person. We can understand presidential pardon statements to be in opposition to the accusatory audience even if that viewpoint has never actually been expressed textually.

This chapter applies the themes of spheres, agency, publics, guilt, and the accusatory audience to a series of arguments for pardon.

Conrad Black

The Lord Black of Crossharbour is a Canadian-born member of the British House of Lords and former owner of Hollinger International, a global newspaper publishing company. In 2007, Black was convicted of fraud connected to charges that he and co-conspirators had stolen about 32 million dollars from the company under the cover of salary bonuses (Green, 2019). Considering that Conrad Black is a foreign national and a member of the British parliament, one might be surprised to consider him an insider to the American political system. He is placed here because he is the proud author of the book *Donald J. Trump: A President Like No Other* published in 2018. On May 15, 2019, he was granted by a pardon by President Trump (Green, 2019).

The pardon granted to Conrad Black presents many of the normal tropes of the pardon genre. First, it makes note of a mitigating circumstance in the legal status of the case. Second, it presents the public contributions of the convicted person. Third, it elevates the character of the convicted person through testimony and praise for charitable behavior. The first move is present because it adds external perspective to the legal process. Criminal liability statutes don't have provisions for altering sentences based on the fate of other charges. In Black's pardon, the statement notes that "almost all charges" (White House, 2020)[1] brought against him had been overturned on appeal. This is not exactly true, but it is correct that the Supreme Court overturned the conviction for honest-services fraud because of a mistake in jury instructions, which should have instructed the jury to be more clear on which kind of fraud they were pronouncing Black guilty of. The three years Black spent in jail, which the passage suggests were erroneous, were a

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[1] Hereafter, unattributed quotations are from the pardon statement.

result of the charge of obstruction of justice. However, even if the conviction was lawful, the trope of added perspective can alter public interest in pursuing the punishment because the significance of an obstruction charge is logically reduced if the action being obstructed (which in this case was charging Black and others for fraud) no longer exists.

The second trope of public contributions functions to replace the narrow question of legal guilt on a single charge to a broad question of moral worth. This changes the sphere of the rhetoric and thereby opens access to other discursive resources. In Black's case, it allowed the pardon to refer to his scholarly work. The pardon describes his work as "notable" (White House, 2020) and claims he has made "tremendous contributions…to political and historical thought" and lists several of the projects Black has worked on. The unstated assumption animating this argument is that it is unjust to punish those who have made a positive impact on society even if they are guilty of a crime. This enforces a hierarchy of values that subordinates the logic of the criminal justice system to a calculus of social utility. The substitution of justice for utility is a change in the relevant sphere that correspondingly alters the expectations and investments of the audience. The ritual of legal punishment is replaced by the ritual of public moral evaluation.

The third trope of moral character completes the triad by valorizing the convicted person, which accomplishes the end goal of eliminating guilt. While the first two tropes serve to mute the force of grievance by shifting the calculation of public interest, the third trope engages squarely in the moral sphere to eradicate any traces of blame. The trope attempts this through two methods. First it makes use of character witnesses. While for some pardons this list is short, for others it is very long. The rhetorical significance of the witnesses is how they construct a binary opposition of narrative. The accusatory audience is presented with the voice of accusation as a structural condition, but in this case is also presented with the competing voice of people

who oppose the moral conclusion. In that case, the only way to pick between the competing narratives in a moral register is a comparison of social capital. The side that has more power and a better reputation will win out. Since the accusatory voice tends to be that of the victim, which is often a single person or a marginalized group, and political allies of the President tend to have powerful friends, this competition is skewed in favor of the powerful convict. The Black pardon makes use of this discrepancy by citing figures such as Henry Kissinger, Elton John, Rush Limbaugh, and William F. Buckley in support of the pardon. These names are performing the function of metonym. Each one indexes a certain relation to conservative causes and represents that meaning. For example, Buckley was the founder of the conservative magazine National Review and was a prominent public intellectual. Referring to him stabilizes the trope of moral character by allowing the metaphor to anchor itself in relation to a particular signifier. The company victimized by fraud can summon no such figures, and therefore cannot contest the rhetorical constructions of the pardon rhetoric.

The second way the trope of moral character plays out is in relation to acts of post-conviction service. For Black, this meant his act of tutoring other prisoners. This trope operates by suggesting that the subject worthy of guilt has passed away, and that a new subject has taken its place, redeemed from guilt through charity towards others, metaphorically balancing the scales and removing the acceptable target for accusation.

Mitigating circumstances, public contributions, and moral character work together to engage with the rhetorics of legality and responsibility. The rhetoric of legality is called into question by the first trope and then replaced by the subsequent two, which insist that there is a higher principle of deservingness that extends beyond the law. The rhetoric of responsibility is neutralized by opposing the accusatory audience against a group of supporters with a

counteravailing narrative, and then valorizing the convicted person's moral character through other means.

Elliott Broidy

Elliott Broidy is the former deputy finance chairman of the Republican National Committee. He was forced to resign from that position after it became known he had participated in an extramarital affair with a Playboy model (Jarvis, 2021). Broidy also happened to have been vice chairman of the Trump Victory Committee in 2016 and also was vice-chairman of Trump's Presidential Inauguration Committee. In 2020 Broidy pleaded guilty to charges that he had illegally lobbied the US government on behalf of Malaysia in an attempt to convince the US Department of Justice to drop its investigation of an embezzlement scheme. On January 20, 2021, Elliott Broidy received a presidential pardon (White House, 2021).

The Broidy pardon relies heavily on the moral character trope, in particular on the character witness tactic. No less than 21 different individuals are named in the pardon as endorsers, many of them being notable public figures (White House, 2021). Whereas in most cases the endorser is a supplementary piece of the pardon argument, in Broidy's case the endorsers constitute the bulk of the pardon. This is a function of Broidy's high level of political connectedness, having served in an important post in the Republican National Committee. The list tactic is rhetorically interesting because while some names may be recognizable on first instance, since many of the names of political insiders, the public audience of the pardon would likely not know who each person was without independent research. For example, Saul Fox, who is cited in the pardon, is one of the founders of Fox Paine and Company, which is a private equity firm worth over a billion dollars. Despite that, only certain members of the audience of the pardon would be aware of the significance of his name in the list. This suggests the list has two

parallel functions: the first, to index the greatest amount of social capital, and second, to be visually impressive. There is something rhetorically gained by amassing a sufficient number of things, whether they be arguments or people, that a potential adversary could not feasibly rebut each individually. Forcing the audience to consider the group of character witnesses as a collective prevents critical inquiry into the particular motives or position of the people in the list. For example, there are several Congressional representatives on the list. Perhaps those people might have a material incentive to rescue their political party's fundraiser from criminal consequences? The pardon wards off these kinds of queries by raising the costs for a critical observer to sort through the many conflicting interests and conflicts of interest present in the list.

The passage also attempts to advance the moral character trope by referring to acts of charity. For Broidy, those include philanthropic donations to causes described as "law enforcement, the military and veterans programs, and the Jewish community" (White House, 2021)[2]. These three terms each summon an imaginary public which is ventriloquized to speak against the force of the accusatory audience. This replicates the binary narrative opposition of the character witnesses at a broader level, by appropriating the social capital of law enforcement, the military, veterans, and Jewish people each to support the pardon. This maneuver can only be done because of the sphere shift. In the legal sphere, the social capital of these groups is irrelevant, but in the moral sphere the presumptive equivocation of these groups with various social values. Law enforcement, the military, and veterans imply values of security, heroism, and sacrifice. The dynamics of referencing Jewish people is more complicated but Jewish people are generally considered a protected group, and the history of the Holocaust serves to grant them an authentic grammar of suffering. Michael Staub (2019) discusses the construction of Holocaust

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[2] Hereafter, unattributed quotations are from the pardon statement.

memory discourses in an American political context and writes that it began shortly after the end of World War II, and was significantly intertwined with the racial politics of the Civil Rights movement. The philanthropy towards Jewish people cited in the pardon statement accrues social capital because it taps into the presumptive equivocation between pro-Semitism and anti-anti-Semitism, which renders Broidy somewhat of a heroic figure against Nazism. That is a bold claim, but the pardon cites four different Rabbis as endorses and explicitly highlights that Broidy is involved in the Jewish community, and the rhetorical significance of those connotations hold some force.

Chris Collins

Chris Collins was a Republican elected to the House of Representatives in the state of New York in 2013, and he held that position until 2019. He left public office in disgrace after being charged and convicted of insider trading and lying to the FBI. Although he had no contact with President Trump following his indictment in 2018, Chris Collins is noteworthy for being the first member of Congress to officially endorse Trump's presidential candidacy (McCarthy, 2020). Trump pardoned him on December 22, 2020 (White House, 2020).

The pardon statement operationalizes the trope of moral character by stating that Collins "devoted his life to public service" (White House, 2020)[3]. First, this is forwarded as a break away from his prior trajectory. Public service is not continuous with his career is business but begins at the time Collins became a government worker. Second, use of the word "devotion" obviates any other sources of motivation or behavior during his tenure. It supplies the facts with a sentimental quality, where the politician's work is seen through the lens of sacrifice or virtue

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[3] Hereafter, unattributed quotations are from the pardon statement.

instead of as self-interest or ideological fervor. The frame of nobility is supposedly grounded on Collins' reputation for being an advocate connected to laudable causes, listed as "small businesses, agriculture, and sciences." These categories serve a metonymic function because they serve to anchor the metaphor of sacrifice in relation to certain causes which represent the common good. They are sufficiently vague that whatever positive associations a reader might have towards the topic will surface in the reading, but they still create a chain of signification that underwrites the tropological economy. Furthermore, the interpretation of one term is inflected by its neighbors. What is imagined when reading "agriculture" shades towards mental images of small family farms due to the prior invocation of "small business" which is itself a mythological ideograph. Likewise the "sciences" are inflected by "agriculture," bringing to mind animal and plant sciences, which are presumptively virtuous because of the unproblematized assumptions connecting food production to human welfare more generally. It is framed as if merely by being associated with these causes, Collins is purified of guilt.

Public service is another term worth attention. The public being served is not well-defined. In context, used as a term delimiting Collins' political work from his prior career in business, the term seems to suggest that in contrast to business efforts, the primary intended beneficiary is no longer Collins himself, but an undifferentiated field of others. In this way, the "public" is standing in as the metaphor for the generic moral desire to help other people. This is supplemented by the use of "service" which conditions the relation between Collins and the public, constituting Collins as subject to the will of the public. As a subject, Collins the politician acts not of his own accord but in deference to the public, an act of devotion regulated not by legal obligation but rather a deeply felt sense of personal obligation.

There are two rhetorical moves in this passage. The first is the subtle replacement of Collins' actual public with an abstract one. The passage describes Collins' political positions as being tied to Erie County and the 27th Congressional District of New York but supplants those ties by contextualizing Collins' legitimacy in terms of his involvement with the vague causes of small businesses, agriculture, and sciences. This is a shift of rhetorical location. Whereas in the first instance the claims against Collins appear in the language of a specific relation, that of a political representative and the duties of his office, in the second instance the strict ethical rubric has vanished and instead the favorable mental predispositions of the audience fill in a positive narrative for Collins as a politician.

This leads to the second rhetorical move, where Collins' political persona rescues him. I use the term persona to emphasize the constructed character of this identity. Heather Woods (2018) writes "Donning a persona is a communicative strategy for imagining the self and the audience as connected in a particular, shared way" (pg. 336). The passage constructs Collins as a subject "devoted to public service" as a way asserting a common essence shared by Collins and the accusing audience. By controlling the arrangement of subjects through rhetoric, the passage is able to obscure valid questions concerning Collins' motivations underneath a structural logic that equates political duties with selfless altruism, thereby rendering the accusatory force of the securities fraud charges inoperative.

Duncan Hunter

Duncan Hunter is a Republican who was elected to the House of Representatives in the state of California in 2008, where he served until 2020. Duncan Hunter was convicted of campaign finance violations, including usage of campaign funds for personal travel and expensive dinners (Booker, 2020). Hunter, like Collins, was an early supporter of Trump in Congress. During his

tenure, Hunter was a vocal advocate for leniency for military veterans. Hunter pushed for and defended Trump's decision to reinstate Navy SEAL Edward Gallagher's rank after he was demoted for posing with an enemy fighter's corpse in a photograph (Fox 5 San Diego, 2019). Hunter also publicly called for President Trump to pardon Mathew Goldsteyn, an Army veteran who was charged but not convicted of murdering an Afghan civilian he suspected of being a bombmaker for the Taliban (BBC, 2018). President Trump acceded to Hunter's request and signed a pardon for Goldsteyn prior to his trial, which resulted in the charges being dropped. Overall, Duncan Hunter was a staunch Republican Congressman with a record of defending conservative viewpoints on issues connected to the military. President Trump issued a pardon to him on December 22, 2020 (White House, 2020).

Hunter's pardon statement repeats the narrative of "dedication" to "public service" (White House, 2020)[4] used for Chris Collins but to a different effect. Whereas for Collins the function of the clause was to create a distinction between his life as a businessman and a politician, in this case the function is to construct a unicity around Hunter's purity of motivation. The phrase "public service" establishes a continuity between the two positions of Congressperson and military veteran which the passage uses to define Hunter's past by attempting to name the shared essence. The extent to which these behaviors truly constitute "public service" is beside the point. There is no objective essence or meaning to this term which escapes its invocation as a rhetorical trope. The significance of the term is that it sets a horizon on critical inquiry into Hunter's actions by defining his subject purely in terms of intention. As far as the passage is concerned, all that is required to validate this subject as coherent is reference to Hunter's motives. This is confirmed by the later use of the phrase "Inspired to enlist after the

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[4] Hereafter, unattributed quotations are from the pardon statement.

September 11, 2001 attacks" as a way to capture some kind of authentic patriotic feeling behind Hunter's decisions.

Insofar as Hunter can be seen to be a representative for the shared trauma of 9/11, his military service takes on a heroic and noble cast. The pardon rhetoric situates a public affectively invested in practices of mourning, and what Barbara Biesecker describes as a "melancholic citizen-subject" (2007). The use of melancholy here should not be taken to be a linear reflection of a historical loss. Rather, from Biesecker's perspective, the rhetorical function of melancholy is "the loss of an impossible object, ideal, or relation that the subject has never had" (2007, pg. 154). She notes that the rhetorical upside to this maneuver is to allow the appropriation of an object which had perhaps never existed. In this case Hunter is represented as the melancholic soldier-subject, whose military participation is a function of a mythical and primordial quality of "public service" which justifies and rescues his subsequent actions, serving as an argument for pardon.

Stephen Bannon

Stephen Bannon is the former chairman of Breitbart News, and he had significant personal and professional involvement with the Trump campaign. Bannon was the chief executive officer of Trump's 2016 presidential campaign, and he was appointed Chief Strategist and Senior Counselor to the President following Trump's inauguration. Bannon was fired from that position following an interview he gave in which he contradicted Trump on North Korea and suggested that he could make personnel changes in the State Department (Diamond, Collins, and Landers, 2017). Given that Bannon had played a pivotal role in getting Trump elected, there did not appear to be personal animus between Bannon and Trump. However, in early 2018 Bannon made a series of highly negative comments about senior White House officials and members of

Trump's family which were quoted in the book *Fire and Fury: Inside the Trump White House* by Michael Wolff (Relman, 2018). Trump responded to those comments by denigrating Bannon's character and minimizing his role in the 2016 campaign and in the White House, saying he "was rarely in a one-on-one meeting with me" (Relman, 2018). Despite his ouster from the President's orbit, Bannon continued his involvement with conservative political projects, including serving as chairman of the board for the We Build the Wall nonprofit organization which solicited donations to privately build sections of the wall along the southern U.S. border which Trump had championed during his campaign. In 2020, Bannon and several others were charged with fraud for allegedly using hundreds of thousands of dollars in donations for personal luxury. Because of the public fracture of the relationship between Trump and Bannon, speculation abounded as to whether Bannon would receive a pardon at all, including in the White House, where Trump himself was unsure about whether to pardon Bannon until the final moments (Brown, LeBlanc, and Collins, 2021). Trump did issue a pardon to Bannon on January 20, 2021 (White House, 2021).

The Bannon pardon is notable for what it doesn't say. Compared to many of the other pardons, the arguments presented in favor of his pardon are sparse, which is saying something. There is no defense of Bannon's moral character, no reference to legal complications, nor any implication of innocence in this or any other accusation. Given the history of personal animus between Trump and Bannon, this pardon might be read as a begrudging concession, perhaps as a concession to a former loyalty no longer felt so keenly. Regardless of Trump's motive, the pardon statement fails completely to justify executive intervention. The implication of this is not that the pardon is neutral with respect towards the rhetoric of legality. Rather, the casual indifference towards any concern with legal procedure is itself a rhetorical gesture. The passage

feigns a unicity that there is no cause for concern nor any need for justification. As far as the passage is concerned, Bannon's only redeeming quality is his "political acumen" (White House, 2021)[5] which sets an incredibly low bar for pardon eligibility. Political skill being referenced in this way is suggestive. The passage is changing the relevant sphere from the legal to the political. The political sphere grounds argumentative claims not in relation to process but in relation to outcomes. Bannon is judged worthy of pardon because he is good enough at his job to be useful to those in power. Because the centrality of power is the primary assumption of the political sphere, there is no need to conceal the real reason he was pardoned, which is why there is no attempt to do so in the passage.

The Bannon pardon speaks on the crime only enough to deflect. Passages typically include a description of the crimes which are being pardoned. This can pose an issue for a pardon in cases where the pardon does not intend to either dismiss those charges or rehabilitate the character of the offender, as is the case with Bannon. If the weight of the offense is given rhetorical force through description, and there is no resolution for the guilt produced by that act, that would create a barrier to the rhetoric's success. To avoid that, the passage minimizes Bannon's crime to the greatest extent possible. It says that Bannon's charges are "related to fraud" because of his "involvement in a political project." The passage avoids naming what Bannon's crime actually was, preferring to say it was merely related to fraud, and declines to explain what the nature of the political project was. An audience unfamiliar with the specifics of his case would be unable to even guess who the victims of Bannon's crime were, given this information, which is exactly the point.

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[5]Hereafter, unattributed quotations are from the pardon statement.

A critical reader might conclude from the sparse comments offered in Bannon's defense that the rhetoric of executive clemency is not actually very important. This would be a mistake. While it is true that the rhetoric is not connected to the executive's legal ability to issue pardons, the content of those pardons is still relevant for two reasons: first, it provides evidence for how Trump's use of the pardon power is rhetorically constructed, and second, it shows how the President's rhetoric is interacting with broader social discourses which comes to define the social reality that Americans experience in the realm of criminal justice.

Conclusion

The pardons issued by Trump to political allies demonstrate a pattern of arguing for pardon by shifting the expectations of the audience and the evaluation of the pardoned person within moral and political rubrics, as opposed to a legal one. This distinction matters rhetorically because it shows how the rhetorics of legality and responsibility which typically hold force in a criminal justice context become thwarted. The rhetoric of legality, which is based on the unicity between legal process and just outcomes, is interrupted by the executive's intervention. Trump casts doubt on the ability for the justice system to identify and punish guilt by suggesting that the determination of guilt is not purely legal. For example, with Chris Collins the pardon acknowledges that he is guilty of the crime, but still holds that he deserves pardon due to his otherwise positive contributions to society. The rhetoric of responsibility, which is based on the ritual of acknowledging and providing recompense for the victim, is interrupted by the executive's intervention as well. Trump reorganizes the affects of the ritual away from concern for the victim and towards a celebration of the pardoned person. For example, Conrad Black's pardon obscures the affect of concern for the victims of fraud and instead lionizes his academic contributions.

The reason these rhetorical moves are concerning is due to their relationship with power. The claim is not that it is intrinsically wrong for Trump to invoke his executive privilege by issuing a pardon. The claim is that Trump is subverting public accountability for his usage of that power by appropriating metaphors and applying them where they do not belong. The symbolic economy provides the structure of the social production of meaning, and by interacting with it in this way Trump is effectively warping that structure to suit his own convenience. In these cases, Trump's convenience meant allowing rich and powerful men to get away with criminal behavior without consequence. The rhetorical tactics mobilized to enable the abuse of executive privilege and the acceleration of injustice deserve to identified and condemned. The psychoanalytic approach used here illuminates the ways that Trump's pardon rhetoric is indebted to larger systems of meaning-making that are implicated in ongoing oppression. Situating executive clemency rhetoric as occurring within the progressive decomposition of the past unicity of state legitimacy assists rhetorical scholars in connecting the use of the pardon power to executive authority more broadly.

Chapter 3 - Mueller Pardons

Overview

In July of 2016, the FBI began an investigation into possible Russian interference in the United States election when it discovered that George Papadopoulos had made claims that Russia possessed damaging information about Presidential candidate Hillary Clinton. That counter-intelligence investigation was concerned with whether there might be evidence of collusion between the Trump campaign and Russian government. That investigation continued into 2017, after Trump had been elected and inaugurated. President Trump was not himself a subject of the investigation until May of 2017 when he fired then Director of FBI James Comey (Tucker, 2020). At that point, because of the possibility that Trump's removal of Comey was an instance of obstruction of justice, Robert Mueller was appointed as a special prosecutor to take over the FBI investigation. Mueller's investigation lasted from May 2017 until March 2019, and resulted in criminal indictments for 13 Russian nationals, Paul Manafort and his former business partner Rick Gates, Konstantin Kilimnik, George Papadopoulos, Michael Flynn, Alex van der Zwaan, Richard Pinedo, Michael Cohen, and Roger Stone. However, the Mueller report could not legally charge a sitting President with a crime, so the report documented evidence that Trump may have corruptly abused his power and indicated that only Congress could decide whether they amounted to a criminal offense (Johnston and Miller, 2019). The effect of the Mueller investigation on Trump's administration was not due to the legal consequences, of which there were relatively few for Trump himself. Rather, the existence of the investigation cast a pall of suspicion over Trump's motives and was frequently cited by his critics as a way to delegitimize his presidency. For example, in 2018 Democratic Representative Adam Schiff publicly voiced open speculation, and indeed accusation, that the President had been aware of, approved of, and

directed collusion efforts with Russia during the 2016 campaign (Helmore, 2018). Trump vociferously attacked the validity of the investigation as a politically motivated witch hunt and the issue dominated news headlines for a significant portion of his tenure in office.

This chapter will analyze the press releases of pardons granted to those indicted by the Mueller investigation. This chapter will argue that the pardons rely on a counter-allegation against the justice system itself as a way of deflecting suspicion against Trump and justifying executive intervention. This strategy relies on a performance of masculine victimhood that appropriates the affective ritual of communal attention towards marginalized communities in a way that greater amounts of social power to those who are already privileged. Each pardon is analyzed individually and then conclusions are drawn.

President Trump's pardons issued in the context of the Mueller investigation combine the structural element of the accusatory audience with an additional level of accusation against President Trump himself. Because Trump was also a subject in the investigation, public fears of pardons being used as weapons to halt the investigation were extant at the time. For example, David Frum (2020) wrote that the Flynn pardon was part of an attempt on Trump's part to "buy silence with his pardons of others." This double accusation destabilizes the position of the pardon and requires two defenses, both of the convicted person and of Trump himself. That instability produces an anxiety which motivates the rhetorical decisions made by Trump in the pardon statements.

Michael Flynn

Michael Flynn is the former head of the Defense Intelligence Agency and former National Security Adviser in the Trump administration. Flynn was forced to resign that position less than a month into his tenure because he misled Trump and others about the nature of his conversation

with Russian ambassador Sergey Kislyak in late 2016 (Lucas, 2020). Flynn initially plead guilty to charges of lying to the FBI, but during the trial he sought to retract that guilty plea and accused both his former lawyer and the FBI agents of malfeasance against him. Flynn's case was relevant to Trump because Flynn was the only actual member of the Trump administration to be charged in connection with the Mueller investigation, and he was therefore the closest link critics could establish between Trump and the criminal activity. President Trump pardoned Michael Flynn on November 25, 2020 (White House, 2020).

Trump's rhetoric of executive clemency is at its most strident and controversial in the pardon for Michael Flynn. The pardon begins by insisting that Flynn should never have been targeted for prosecution, which is conceptually distinct from his innocence, although the pardon does assert that as well. The pardon claims that Flynn's prosecution was a consequence of "partisan government officials engaged in a coordinated attempt to subvert the election of 2016" (White House, 2020)[6]. These "individuals in the outgoing administration" were motivated by refusal to "accept the choice the American people at the ballot box." The pardon alleges that these individuals were engaged in a long-term conspiracy to prevent Trump's election and inauguration, had conspired to organize the impeachment process, and were frustrating the policy goals of the administration. These accusations are extremely serious. The pardon does not attempt to directly prove them, but rather asserts them as the only coherent explanation for the facts of Flynn's case. As it says, "the prosecution of Flynn is another reminder" that this deep-state conspiracy is in motion. I use the term conspiracy here because the rhetoric of the pardon is reliant on the conspiracy construction to void the guilt aimed at Flynn. The pardon needs to shift agency in a way that renders Flynn a victim of grander forces, since the facts of the case

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[6] Hereafter, unattributed quotations are from the pardon statement.

establish that Flynn pled guilty to the charges against him and testified in court to the accuracy of the guilty plea on two separate occasions. The guilty plea cannot be brought into alignment with the pardon's claim of innocence unless the failed unicity is resolved. The conspiracy accusation accomplishes this by imaging Flynn as having been extorted and targeted by a cabal of secret and unnamed government officials.

G. Thomas Goodnight and John Poulakos (1981) describe conspiracy rhetoric as a "struggle to define social reality" (pg. 306) where both sides "compete for the public's belief" (pg. 306) through argument. In their view, the victor of the struggle is decided by whatever side is better able to marshal evidence, credibility, and emotion to support their side. The Flynn pardon includes these three rhetorical proofs. The "independent review of General Flynn's case by the Department of Justice" is mentioned to substantiate the claim that Flynn should never have been prosecuted. The review being referred to was conducted by Jeffrey Jensen, who had been appointed by Trump to a prominent position in St. Louis. Jensen supported the pardon's claim that the prosecution should not have taken place by arguing that the interview in which Flynn lied to investigators was not material to the goals of the FBI counter-intelligence probe. However, the Department of Justice had maintained for years prior to this that the investigation into Flynn "went to the heart" of the probe's purpose (Philips and Johnson, 2020). The presiding judge in the case noted that the unusual about-face on the part of the DOJ was highly unusual and was likely just a pretext to show favoritism towards Flynn because of his connection to the President. The pardon's reference to the Department of Justice in this context is designed to appropriate the institutional credibility of the department to support its position, when in fact the review actually reduced that same credibility by being clearly motivated for political and not legal reasons.

The second piece of evidence referred to in the pardon is the claim that the agents who interviewed Flynn did not think he was lying at the time. This claim derives from the publication of some internal FBI documents and notes during the court case. Attempting to use this claim as evidence demonstrates a common theme of conspiracy rhetoric, which is appeal to convenient authority. Conspiracy theorists will frequently cherry-pick when to listen to experts and when to ignore them, based on its convenience for supporting their view (Bricker, 2014; Douglas et al 2019). This is because conspiracy theorists are affectively invested in the truth of their conspiracy as a metanarrative that explains the world. Invoking testimonial evidence from supposed or real experts is a form of ritual enjoyment that allows the conspiracist to simultaneously enjoy the credibility of authority and the subversive appeal of their anti-authority position.

The pardon replicates that pattern by citing the beliefs of the FBI investigators as authoritative in one instance, while rejecting their final conclusion that Flynn did indeed lie in the interview. In fact, the claim that the FBI agents did not believe Flynn lied is directly contrary to the legal argument for his innocence, which was the argument that the FBI agents had deliberately manipulated Flynn into lying on purpose to get political payback against Trump. That aside, the claim is not true, as evidenced by an in-depth review of the published documents by Jurecic and Wattes (2020). The rhetorical move of citing the FBI agents' beliefs aims to alter the usual assumption of credibility in legal contexts. In a trial, it is understood that an investigator's beliefs and opinions are secondary to the sober analysis of the collected evidence. That is why Judge Sullivan noted in the case that the issue of whether the FBI believed Flynn had lied was "irrelevant" to the case, since no evidence of his honesty had been presented

(Philips and Johnson, 2020). The pardon statement attempts to invert that understanding through the metaphor of personal experience.

The unstated assumption of privileging the investigators is that personal experience of an event is the ideal epistemic process for arriving at truth. Even though new evidence surfaced after the initial interview, and the trial process had multiple years to analyze the relevant documents, the pardon suggests that the oldest possible evidence was best, because it is mythically closer to the object in question. This metaphor of experience as truth is also connected to the conspiratorial rhetoric, since it collapses issues of authority into a reductive binary he-said/she-said where the conspiracy is positioned as equally valid to its opponents.

The pardon claims that "multiple investigations" have proven that Flynn's prosecution was a function of political motives. It is not clear what investigations these are, or how they would have proven this. This section lays out clearly a dynamic present throughout the pardon, which is that the President sees himself as sufficient authority to dictate social reality. From his perspective, additional evidence and explanation is not required; the burden of proof is on the accused to demonstrate that his narrative is incorrect. Affect, or pre-emotional feeling, is driving the rhetorical choices of the passage. In particular, the pardon reflects an affect of absolute certainty. The president's subjectivity is deeply invested in his authority to dictate social reality, and asserting that authority is a form of enjoyment which ritually exercises his illocutionary power.

Trump's supporters are similarly invested in his ability to dictate reality. For them, Trump's power and status signals that they, and not their enemies, have the upper hand in the culture war (Fuchsman, 2017; Gorski, 2017). This helps to explain accusations in the pardon which lack evidence entirely, for example the claim that the media was complicit with the

conspiracy by willfully publishing falsehoods. That accusation serves to bolster the President's claim to authority by delegitimizing the alternative source of facts to his own word, which is another trope of conspiracy rhetoric.

The pardon concludes by pivoting away from its counter-allegations in the Flynn case and making a case for the public to hold powerful officials accountable. This makes reference to the powerful metaphor of "the people" which animated Trump's populist sentiments during his political career (Rowland, 2019). The pardon says that federal officials hold "tremendous power" and that citizens must "scrutinize their actions" in order to "uphold the rule of law." This statement comes in a document designed to rescue a powerful official from accountability to charges that he abused his tremendous power, where its author, the most powerful official in the world, who personally appointed all the other powerful officials for the last 3 years, deployed copious amounts of conspiracy rhetoric to obscure the facts and denigrated the rule of law. From the conspiratorial worldview, the pardon's statement is consonant with warnings against the deep-state, but from any other perspective it is obviously incoherent. But even incoherent statements can have rhetorical value. Appropriating the rhetoric and vocabulary of the opponent allows Trump to save face by situating himself as the one with access to all routes of grievance. Both within the counter-allegation of conspiracy and within the institutional rhetoric of democracy Trump claims to hold legitimacy. Mary Stuckey connects this action to presidential performance. About Trump she writes "He is unwilling to admit failure or weakness, and he cannot admit lapses in judgment or mistakes" (2020, pg. 384) and she cites prior comments Trump had made about Flynn as an example. The inconsistent meaning of important terms like "rule of law" and their connection to performance highlight their status as metaphors subject to the rhetorical movements of a particular moment. What the rule of law is, and how it is

applied, derives from the affective investments of the public and the way that rhetoric and ritual direct those affects.

Paul Manafort

Paul Manafort is a prominent lobbyist and member of the Republican party who served as the chair of Trump's presidential campaign from June to August of 2016. The FBI's criminal investigation of Manafort actually began in 2014 connected to business dealings between Manafort and recently deposed Ukrainian President Victor Yanukovich (Porter, 2017). Because of Yanukovich's connections with the Russian government, and Manafort's prominent position in the Trump campaign, the Mueller investigation took over the FBI case in 2017. Manafort's conviction was one of the very first delivered by the Mueller investigation. Donald Trump pardoned Paul Manafort on December 23, 2020 (White House, 2020).

Paul Manafort's pardon approaches the counter-allegation strategy much less aggressively than Flynn's pardon. Manafort's pardon still describes the investigation as a "hoax" (White House, 2020)[7] and names Mueller as the instigator, but it lacks the same accusatory stance up-front. For example, it does not accuse government officials of undermining his administration. The substance of the rhetorical counter-allegation comes from the invocation of the powerful metaphor "witch hunt" and the identification of Manafort as a victim thereof. Witch hunt is a powerful metaphor because it mobilizes powerful affects of innocence, persecution, and the oppression of women in a way that constructs clear identities of oppressor and victim, and inflects those subjects with descriptions, for example the oppressor is Puritanical and male, while the victim is ostracized and female. The gendered connotations of the metaphor are unavoidable.

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[7] Hereafter, unattributed quotations are from the pardon statement.

Kaitlyn Grube (2020) provides a thorough overview of the history of the witch hunt and concludes "even scholarship discussing men who were accused of witchcraft acknowledges the gendered assumptions of witchcraft and the original witch trials" (pg. 20). According to her, modern uses of the metaphor are designed to appropriate the collective suffering of women by claiming the victimhood of the women who died as a result of witch trials.

The appearance of this gendered metaphor to describe an investigation in which precisely zero of the targets were women is initially surprising. Considering the emphasis that Trump placed on masculine performance in other contexts, his choice to construct himself and his associates as feminine subjects in this case seems odd. However, in light of the relevant affective rituals, it is not surprising at all. A rhetor's choices are limited by the landscape of the rhetorical field, which is defined by the Symbolic. We can understand the appearance of this metaphor through two related affective investments: purity and vulnerability, both of which appear in the Manafort pardon.

The purity defense functions by identifying the accused person as not a witch. Witch hunts were targeted against women outside the social control of men as an expression of patriarchal anxiety, and the purity defense displaces that anxiety by reconstructing the accused as submissive. The vulnerability defense functions by inverting the social threat narrative. Witch trials were premised on the belief that the women posed an immediate existential threat to the coherence of the community at the level of meaning (Reed, 2015). What that means is that the rhetoric of the witch trials elevated the fears of witch activity past a discrete set of individuals and into metanarrative, or "cosmic story" (Reed, 2015, pg. 84). Emphasis of vulnerability reverses that narrative by counter-alleging the threat, so that the aggression of the community is exposed. This presents a moment of crisis for the community, since it claims that their actions

against a vulnerable person subvert the ideals they were attempting to defend. When feigned unicity is exposed as feigned, a suitable replacement unicity must be generated, and the simplest way to accomplish that would be cease whatever activity generated the contradiction in the first place. The pardon steps in to accomplish that act.

The vulnerability defense aims to expose the violence of the community by appropriating the affective performances of marginalized people. That act of appropriation, when undertaken by white men in positions of power, is part of the structural extension of that very power. Paul Johnson, drawing on Claire Sisco King's theory of abject hegemony, writes:

> Far from seeming forthrightly illogical, claims of White, masculine victimhood encourage objectively well-off members of society to interpret the presence of difference and uncertainty as threatening the subject with unjust marginalization, coding a "diverse and diffuse range of experiences"—or in the case of Trump, political topoi ranging from immigration to terrorism to trade—as part of a single trauma: the subject's exile from politics (Washed 5). (Johnson, 2017, pg. 3)

Trump's rhetoric situates a white male subject that is affectively invested in the melodramatic attachment to his own feigned victimhood as a way of responding to anxiety over the threat that difference poses to his social power.

Purity is defined not by the presence of some virtue, but by the lack of negatives which would sully or dirty it. You cannot attain purity; once it is lost, it is gone. This is reflected in the way the pardon discusses Manafort's innocence. Manafort is described as "one of the most prominent victims" of the witch hunt, the investigation is referred to as a "hoax" with no real basis in fact, and the crimes for which Manafort was convicted are not listed in any way. Some pardons contain minimization of the offense but any descriptive features of the crime are completely absent, placing this pardon on the more extreme end of that particular register. Furthermore, the pardon does not attempt to rehabilitate the moral character of the accused person through acts of service or a post-conviction change of heart. Instead, the passage quotes a

judge involved in Manafort's trial to say that his life prior to the conviction was "otherwise blameless." This is another way of saying that without the Mueller conviction, Manafort would be pure. This sets up the ritual aspect of the pardon. The attachment to lost purity is restored through the act of pardon.

The defense of vulnerability is also present in Manafort's pardon. The pardon mentions that he has spent two years in prison, including a time in solitary confinement. The passage is not content with merely reporting this fact but adds on that solitary confinement is "treatment worse than what many of the most violent criminals receive." This adds to the counter-allegation narrative and emphasizes Manafort's violated person. It has rhetorical force because Manafort's subject is clearly distinguished from a "violent criminal." The pardon is attempting to cast shame against those who punished Manafort for having broken a social expectation, by putting Manafort into a category in which he did not belong. Violence, and violent criminal, are categories primarily ascribed to men, and among men, particularly men of color (Alexander, 2010). In the internal logic of the pardon statement, Manafort is neither of those things, which is why the solitary confinement report receives the extra highlighting of an appended phrase.

The passage also positions Manafort as vulnerable and needing protection by accusing prosecutors of "blatant overreach." This sets all the agency on the prosecutors and denies that Manafort had any role to play in producing the situation he is in. Manafort is pictured as entirely reactive to the activity of Mueller and the prosecution team. The passage compounds this by mentioning that he was released to home arrest due to Covid-19 concerns. It is a small detail and in most contexts I would dismiss it as inconsequential but given the other movements of the text, it should be noted that the text positions Manafort as trapped in the home for his personal safety. This kind of patriarchal feminization makes use of the vulnerability defense to void out the

question of responsibility, since a feminine subject without agency doesn't bear responsibility for crime within the patriarchal logic.

The use of the witch trial metaphor in Manafort's pardon signals a broader rhetorical move by Trump to appropriate the affect of victimization and purity in the service of white male anxiety. This form of counter-allegation which places the affects of loss and fear of difference at the center of the performance trades within a tropological economy of deservingness. The pardon suggests that Manafort deserves pardon because he is the type of subject whose pain demands recognition and resolution. The way that recognition takes place is through the witch trial metaphor, turning the rhetoric of responsibility on its head by claiming that the real violators are the community. That move is pernicious when those with social power use it to accrue ever more of it, to the ends that they escape legal accountability altogether.

Roger Stone

Roger Stone is a central figure in American conservatism owing to his role in Republican presidential campaigns including Nixon, Reagan, Bob Dole, George W. Bush, and Donald Trump on multiple occasions (Labash, 2007). Like Manafort, Roger Stone is a lobbyist, and he worked as a lobbyist for Donald Trump's casino business for quite some time, which cemented a friendship between the two men. The exact details of Stone's departure from the campaign are disputed by the parties involved (Caputo 2015). Stone claims that he quit over disagreements with Trump about their messaging style in the wake of the Presidential debate moderated by Megyn Kelly. Trump claimed that he fired Stone. Despite this and other confrontations between them, such as Stone's involvement in surfacing a prostitution scandal implicating one of Trump's friends, New York Governor Eliot Spitzer, Stone continued to support Trump publicly and Trump did not pursue revenge against Stone like he did with Steve Bannon. That Stone's pardon

would surface the rhetorical themes it does is poetic, given that Stone is known for his

catchphrase "Admit nothing, deny everything, launch counterattack" (Toobin, 2008). Trump

granted to full pardon to Roger Stone on December 23, 2020 (White House, 2020).

Roger Stone's pardon is a rather straightforward application of the central themes of the

counter-allegation approach. The text imagines Stone as a victim by referring to his age, his

health conditions, and allegations of political bias (White House, 2020)[8]. The text then indexes

the central themes of the conspiracy mindset by combining prosecutorial overreach with an

intimation of press complicity, when it states that the photos taken of his house's search were

"conveniently captured." The most interesting element of this pardon is the way it positions the

pardon as a form of redress for the harms attributed to the convicted person. The Flynn pardon

contained this element as well. Picturing a pardon as a remedy is a rhetorical move because in

purely legal terms, the pardon does not do very much to actually right a wrong, so to speak. The

pardon ends the legal consequences of the conviction but it does not provide any form of

restitution, and the person who accepts the pardon waives any ability to bring suit against their

prosecutors, since the pardon implies accepting the validity of the initial conviction.

The explanation for this is that even though the pardon does not accomplish redress

legally, it does provide a form of vindication for the convicted person which extends beyond

their legal status. The public subject is based on a shared understanding of lawfulness which is

interrupted in the case of a convicted criminal. That status brings with it suspicion and exclusion

from many in society regardless of the particular details of the crime. The label of criminal exerts

powerful influence on social relations. Even though the pardon cannot contest the legal validity

of the initial conviction, it can restore to the person a sense of legitimacy as a public subject,

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[8] Hereafter, unattributed quotations are from the pardon statement.

which explains why the rhetoric of clemency is invested in seeing the provision of a pardon as itself a form of restitution despite the legal reality lagging behind. What the Stone pardon demonstrates is that Trump's rhetoric positions the pardon as a salve, and has an affective investment in the provision of the pardon as a ritual of cleansing guilt which exceeds the purely legal aspects of the power. The victimhood performance is completed by a return to wholeness symbolized by the pardon.

George Papadopoulos

George Papadopoulos served as a foreign policy advisor to the Trump campaign in 2016. During that time, Papadopoulos had a conversation with Josef Mifsud, an overseas academic who claimed to have connections to the Kremlin. After hearing from Mifsud that the Russians possessed compromising information about Hillary Clinton, Papadopoulos began a series of attempts to organize a meeting between the Trump campaign and Russia (Herb and Cohen, 2017). This connection between Papadopoulos and Mifsud was discovered because Papadopolous told Greek foreign minister Nikos Kotzias and Australian diplomat Alexander Downer that he believed Russia possessed the incriminating emails (National Herald, 2018). The Australians informed the FBI about the admission, which triggered the counter-intelligence probe. Papadopoulos was charged and convicted of making false statements in that investigation. President Trump issued a full pardon to him on December 22, 2020 (White House, 2020).

This pardon twice describes the charge of lying to the FBI during the course of the Mueller investigation as a "process-related crime" (White House, 2020)[9] intended to distinguish the action from putatively real crimes. The passage notes that the Mueller investigation did not

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[9] Hereafter, unattributed quotations are from the pardon statement.

conclude with definitive evidence of Russian collaboration and draws a contrast between that lack of guilt with the decision to still prosecute Papadopoulos for false statements. The operative term is "Nonetheless" which signals that the purpose of charging Papadopoulos is void absent a charge on the central matter of the investigation. The reasoning goes like this: why would you bother to prosecute him if there was nothing to find in the first place? The argument offered by the prosecutors is that failure to comply with the investigation poses a harm to the collective interest in the administration of justice. Mueller's sentencing recommendation affirms this line of reasoning where it says "The defendant's crime was serious and caused damage to the government's investigation into Russian interference in the 2016 presidential election" (Reuters, 2020).

The use of the term "process-related crime" does the rhetorical work of answering Mueller's argument. The invocation of this particular term is unique to the press statement. It is not contained in the indictment, sentencing memo, or any criminal statute. It is selected because it brings with it a set of assumptions and narratives which function as arguments for pardon. Erin Murphy (2009) writes that while the core of process crimes is a desire to defend the collective interest in a functioning justice system, the use of process crimes is frequently tied to pretextual prosecution and what she describes as the "obstinacy offense." Pretextual prosecution is when the defendant is charged with a different crime than the one which motivated the suspicion. The classic example of this is when Al Capone was charged with tax fraud, when he was under suspicion of murder. Murphy describes the obstinacy offense as:

> the processes of investigation and adjudication are no longer simply the machinery for achieving justice but instead become themselves the subjects or sites of victimization… The government's pursuit of the offense is neither about rectifying the perversion of a governmental function nor about using a pretext to achieve a particular end-it is instead about the insult to the performance of the state's authoritarian role. (Murphy, 2009, p.1449,1450).

Papadopoulos' case is clearly an instance of pretext since he was under investigation for collusion with Russia but was charged with making false statements. What the press statement's use of the term "process-related crime" ultimately accomplishes is suggesting that the charge against Papadopoulos is an instance of obstinacy offense not connected to legitimate justice-serving ends.

As Murphy's description suggests, the defining feature of an obstinacy offense is situating the investigating agents or the state itself as the subject of victimization. Framing the Mueller investigation this way would tap into latent American resentments toward government authority and trigger many supporters' fear of arbitrary power. The passage constructs this insinuation through its contrast of "no evidence for collusion" with a prosecution team that "still" charged Papadopoulos. However, much of the rhetorical work Trump undertook to identify the Mueller investigation as driven by questionable motives is not present in this passage, but instead appears elsewhere. The remarkable similarity between Papadopoulos' case and the charges raised against Mike Flynn and Roger Stone mean that much of the rhetorical context of those cases would carry over to this one. One example of personal motive that was frequently referenced by Trump and others in his political circle was the discovery of text messages sent between Peter Strzok and Lisa Page that contained information biased against Trump and his supporters. Because of the central role Strzok held in the Mueller investigation, right-wing critics of the investigation were able to use the texts to try and discredit the credibility of the findings despite the relatively small number of those texts. Trump himself wrote a tweet in 2018 which said:

> Biggest outrage yet in the long, winding and highly conflicted Mueller Witch Hunt is the fact that 19,000 demanded Text messages between Peter Strzok and his FBI lover, Lisa Page, were purposely & illegally deleted. Would have explained whole Hoax, which is now under protest! (Trump, December 2018).

There are some factual errors with these statements, but the part which is most relevant to this analysis is the final sentence, which states that the texts "would have explained whole hoax." This claim situates the entire investigation as a product of political motivation, thereby placing the charges into the category of obstinacy offense.

These category distinctions matter because they set the rhetorical landscape for the arguments for pardon. The justification for executive intervention relies on the characterization of the normal course of justice as being flawed. It is important to emphasize that the concept of "process crime" itself is a rhetorical artifact, not expressing a legal designation but rather gathering various prosecutorial behaviors, criminal statutes, and ethical questions together, the same way the term "corporate law" functions. Designating the charge of false statements as a process crime metaphorically signals that the crime is victimless, which functions rhetorically to exclude consideration of the negative consequences of the act. If the criminal charge is defined purely internally to the investigation's success or failure, then there is no ground from which to condemn Papadopoulos. The absence of a victim short-circuits the affective pathways of retributivism because there is no coherent subject to voice the harm. That matters because the image or voice of the victim provides a metaphor or anchor that the sentiments of retributivism can latch on to.

Once the passage has rhetorically neutralized the condemnation of Papadopoulos, it accuses the Mueller investigation of malfeasance. The pardon asserts that "Today's pardon helps correct the wrong that Mueller's inflicted on so many people." Here the rhetorical move is to transfer the restorative effect of pardon from Papadopoulos the individual into the indefinite sphere of the public. The harm committed by Mueller is not well-defined and indexes whatever assumptions the audience might have regarding the negative consequences of the investigation.

More importantly the metaphor of correction serves as a form of enjoyment, which is when affect, or feeling, coincides with a ritual in a way that produces durable social forms. The concept of correcting a wrong metaphorically represents the symbolic domination of the subject over the other, such that their presence is erased from recognition. This metaphor engenders feelings of victory and superiority because the ability to correct and pass judgement on the actions of another reaffirms the powerful subject. The pardon stands in as the ritual form that directs this affect. By removing the charge against Papadopoulos the pardon performatively accomplishes the ritual cleansing of the other, which explains the magical jump from correcting a harm to Papadopoulos individually to correcting a harm broadly.

Alex van der Zwaan

Alex van der Zwaan is an attorney and the son-in-law to the Russian billionaire German Khan. Van der Zwaan was one of a number of attorneys who worked on a report, commissioned by Manafort on behalf of Ukrainian president Yanukovych, intended to demonstrate that the imprisonment of former president Tymoshenko was legal. Van der Zwaan lied about his contacts with Rick Gates and Konstantin Kilimnik, who were former business partners of Manafort (Kim, 2019). He pleaded guilty to a charge of making false statements. Alex van der Zwaan received a full pardon from Trump on December 22, 2020 (White House, 2020).

The pardon statement repeats the process-related crime metaphor of the Papadopoulos pardon, and substantiates the division by claiming that van der Zwaan's "underlying conduct" (White House, 2020)[10] was not unlawful. This passage, like the Papadopoulos pardon, presents evidence of compliance with the Mueller investigation as a mitigating factor. This feeds the

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[10] Hereafter, unattributed quotations are from the pardon statement.

narrative that the motivation for the indictment was spite or interpersonal malice, and not a legitimate concern for justice. This passage also repeats a maneuver in the Papadopoulos pardon as well, which is minimizing the agency of the person being pardoned. With Papadopoulos, the passage stated he was "not represented by counsel," and with van der Zwaan it states he "surrendered his passport upon entry." Both of these statements present the men as vulnerable by removing their symbolic protections. With Papadopoulos, the lack of counsel means his legal agency is significantly diminished. Subjecthood in legal spheres is premised on a logic of presumptive competence which the presence of lawyer metaphorically resolves. By noting the missing lawyer, the passage casts doubt upon the competence of the testimony and sets the stage for a reverse victimhood claim of Papadopoulos against the prosecutors. That victimhood claim is derived from the symbolic economy of masculine victimhood discussed previously. The pardon appropriates the social position of those who have been victimized by the criminal justice system as a rhetorical resource for resignifying van der Zwaan as a helpless victim, which is a denial of his ability to be held responsible.

Framing van der Zwaan as a compliant subject creates a rubric wherein punishments against him are hypocritical by the Mueller team. If van der Zwaan was always cooperating, punishing him is a violation of the Mueller team's own principles. This allows the pardon to rhetorically function as a restoration of that original orientation, where cooperation is rewarded, not punished. The pardon constructs a context of failed unicity for the Mueller team, and ventriloquizes that rhetorical crisis as resulting in arbitrary punishment of a cooperating witness. The pardon intervenes and restores order by redefining the van der Zwaan as a compliant subject, and not a liar. The pardon evaporates the contradiction posed by this redefinition through its legal effect; the act of false statements is erased and the only remaining reality is the one of the

pardon. Like with Papadopoulos, this is an act of enjoyment based on the ritualistic overcoming of an opponent's reality.

Conclusion

The pardon statements issued for those convicted in connection with the Mueller investigation consistently feature the rhetorical strategy of counter-allegation. Trump's pardons attempt to replace the scrutiny on himself and the convicted person by placing scrutiny on the justice system which produced the convictions in the first place. This strategy engages with the rhetoric of legality by delegitimizing the entire process through allegations of bias. This attacks the equivocation of process and justice and undermines the reasoned social judgement expressed therein. That creates the necessary opening for the pardon rhetoric to substitute not just an alternative criteria of evaluation, but an alternative social reality altogether, with new facts and new subjectivities. Altering the tropological economy creates a cascade effect on the other elements of meaning-making in the discursive system. A new feigned unicity forces all the other elements of language to adapt in order to retain coherence.

The counter-allegation strategy engages with the rhetoric of responsibility by transmuting the convicted person into the victim. It dramatizes the conflict between the convicted person and the prosecutors, who are blamed for fabricating charges and working to undermine the common good. The counter-allegation does not have to be proven true to succeed. The strategy aims to make the validity of the pardon unresolvable without first resolving the dispute over possible conspiracy on the part of the prosecutors. If society cannot reach a judgement on the responsibility of the convicted person, then social sanction cannot be levied, which has the same effect of removing it. Counter-allegation manages to delay the application of blame by obstructing its process through entangling core issues of the process with accusations of bias.

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Like with the pardon for Papadopoulos, the accusation of bias does not actually need to possess legal ramifications. Its role is to serve as a prop to the victimhood performance, by lending the appearance of persecution.

The counter-allegation strategy is premised on the misappropriation of tropes of victimhood on behalf of white male privilege. These acts of appropriation are part of an affective investment in the precarity of white male identity that Trump's pardons use to rhetorically defer the voice of the victim. In taking the position of victim through counter-allegation, Trump's pardons serve as a form of enjoyment by performing the ritual of victimhood and coopting its social power while still retaining the privileges of the racialized and gendered position of powerful white men.

Chapter 4 - Political Issues

Overview

A portion of the pardons Trump issued were given to people at least in part due to their affiliation with politically charged issues. This chapter will consider seven such pardons. Four pardons were granted to former US-affiliated mercenaries, two were granted to former Border Patrol officers, and one was granted to a Utah politician that protested environmental restrictions on federal land use. This chapter analyzes each pardon individually, and then ends with a summary of findings. The chapter argues that the rhetoric of these pardons situates the identity of the accused men as exceeding legal accountability by through a ritual investment in racial security. In particular, the pardons are invested in the trope of whiteness, which adopts a rhetoric of racial panic to position itself as precarious and its acts of self-defense as necessary. The strategies of policing and racial targeting operationalized on behalf of that rhetoric are accompanied by the active disavowal of complicity with those forms of violence, expressed as valorization of offenders as heroes, and systemic depersonalization of racial others.

Blackwater

On October 16, 2007, a convoy of Blackwater mercenaries stationed in Iraq to protect United States diplomats drove into a crowded square during rush hour and were involved in a gunfight that led to the death of 14 Iraqi civilians. The Blackwater contractors claimed that they had first been fired upon by terrorist forces hidden among the civilians, but eyewitnesses disputed that claim. The Iraqi government claimed that the deaths were an act of murder and threatened to revoke Blackwater's license to operate in their country and to prosecute the shooters. However, shortly thereafter it was discovered that Blackwater had never possessed a license to operate in the country, and that the contractors were actually exempt from Iraqi legal

jurisdiction (Singer, 2007). The onus was therefore on the FBI to investigate, and they eventually charged Paul Slough, Ethan Liberty, Dustin Heard, and Nicholas Slatten with felony use of a military firearm. However, the legal case against the men became heavily bogged down in procedural appeals, retrials, and reversals. Legal developments in the case were ongoing until 2019, over a decade after the incident occurred. The dust had hardly settled on the case when President Trump issued full pardons to all of the men involved in December of 2020 (White House, 2020).

The announcement of the pardon was occasioned by international outrage. A United Nations working group on the use of mercenaries described the pardons as "an affront to justice and to the victims of Nissour Square and their families" (Pengelly, 2021). Adil al-Khazali, the son of a man killed in the shooting, said "Justice doesn't exist…I lost my father and many innocent women and children died…Trump has no right to pardon killers of innocent people" (ibid.). And yet, pardon them he did.

Of the most shocking elements of this pardon is that it considers all four individuals without distinguishing between them (White House, 2020)[11]. This is despite the fact that Slatten was eventually charged with first degree murder whereas the others were charged only for voluntary manslaughter. Slatten was sentenced to life in prison without the chance of parole, while the other three were sentenced to ten years in prison. The press statement references this by saying that the group had been sentenced "on charges ranging from first degree murder to voluntary manslaughter" but does not offer a reason for why the vast difference in degree of punishment is immaterial to the pardon. The standard assumption is that a harsher sentence generates a higher burden on the pardon argument, since the departure from the due course of

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[11] Hereafter, unattributed quotations are from the pardon statement.

law is greater. The pardon issued to Lyman for a sentence of ten days in prison and a fine is relatively minor, whereas erasing an entire life sentence for murder is extreme. Grouping all four men together suggests that the argument for pardon is so strong that it is powerful enough to clear away all the guilt of the men no matter how egregious their conduct was.

This is a rhetorical moment. The organizing affect at play is indifference. By situating first degree murder as being basically equivalent with the manslaughter charges, the pardon statement waves away the questions of forethought, motive, and responsibility that distinguish the two, instead collapsing the issue down to a flattened binary proposition of guilt or innocence. This attitude signifies a contempt for the legal process, but also a contempt for the victims, on whose behalf the attribution of responsibility for murder is designated. The net effect of the flattening is to suggest that nobody really holds responsibility at all, since the murder charge can be folded into the wrongful death charges without friction.

Denial of responsibility is the operative theme for the pardon statement. The pardon begins by including the extraordinary claim that the pardon for these four men is "broadly supported by the public." This statement attempts to add to the perception of innocence by feigning a consensus opinion when no such thing exists in fact. The rhetorical purpose of this move is to diminish the force of the victim response imperative by suggesting that the victim's claim is not recognized by the adjudicating public. The statement constructs an imaginary public that is assumed to share the same unstated value propositions as the pardon does, for example that veteran status confers moral legitimacy, and then uses that imaginary public to obscure the large numbers of active dissidents to the view. This saves the pardon from the daunting task of responding to critical views and allows it to engage in otherwise risky argumentative tricks,

which will be discussed later. If the men are not being held responsible by a coherent public, then the issue of responsibility itself, which is the communal ascription of guilt, is denied.

The pardon continues to deny responsibility by referring to the military careers of the four men as "a long history of service to the Nation." Slatten, like Hunter, was "inspired to serve" following 9/11, which raises the same issues of melancholic attachment present in his case. The significance of these data about prior military service to the question at hand about criminal liability for behavior while employees of Blackwater is not stated, meaning the section functions as an enthymeme. The audience is allowed to fill in the missing proposition: once a person has served in the US military, they possess a life-long positive presumption towards innocence. A weaker proposition than this would fail to account for the weight that veteran status holds in the pardon argument. The pardon is very careful to specifically detail the exact number of deployments, duties, and branches of each person's service, for example identifying that Slough deployed to Iraq as part of his National Guard unit. Whereas other pardons have made at least token attempts to defend the character of the person in question, for example Ramos and Compean referenced church and community organizations, for these four men the military roles is assumed to cover that issue entirely.

The pardon continues to deny responsibility by providing a summary of the events surrounding the conviction. The pardon states that the men were "security contractors" which is a euphemism for a paid mercenary. The use of the word "security" suggests the actions of Blackwater mercenaries were primarily defensive and oriented towards de-escalation, and the use of the word "contractors" evokes mental images of business contexts. A contractor does not perform a given service or operation, rather they tend to advise and work under the direction of another agency. Taken together the label "security contractor" brings to mind perhaps an office

worker responsible for coordinating an employee badge system, not a trained military operative that mans a machine gun turret in active war zones, which is exactly what the men charged were doing in 2007. "Security contractors" serves as a metaphor for the ritualistic disavowal of aggression designed to cleanse public guilt about the nature of US military conduct in other countries. Minimizing the issue and forgoing a reckoning with guilt allows this rhetorical label to deny the relevance of responsibility.

The pardon attempts to evidence the security frame by mentioning that the role of Blackwater at that time was to secure "the safety of US personnel." This is technically true about Blackwater's mission but has no relation to what the men were actually doing at the time the crime occurred. The pardon would have the audience imagine that it was on the behalf of "US personnel" that the actions were taken. This would provide a plausible cover for the men's agency denial, by situating the motivating force of their conduct as the urgency of some other person's interest. In this case, the personnel in question would be US diplomats, but the term personnel is not specific. Defending one's comrades on a battlefield is a well-worn trope that establishes an imaginary scene: a friendly position about to be overrun, a hostile and advancing enemy, and a heroic rescue. The narrative of Blackwater's overall mission served as a metaphor for the motivations and behaviors of its members at all times, regardless of tactical reality. Even though there were no other US personnel present at the time, their imaginary presence can and will be summoned to justify and excuse immoral behavior. In fact, a statement from the Department of Justice notes that the Blackwater convoy was actually violating orders and leaving their assigned position to reach Nisur square, where the events took place (DOJ, 2019).

The pardon describes the convoy of Blackwater men as "attempting to establish a blockade outside 'the Green Zone.'" Using the phrases "blockade" and "the Green Zone" are

vocabulary designed to suggest an atmosphere of war. They are invitations for the audience to examine the actions of the men from the alienated perspective of one observing troop movements on a map. There is a unique tropological economy for describing events in war, and the pardon summons these associations to generate an aura of detached aggression. "Blockade" and "the Green Zone" are metaphors that stand in for a series of violent actions required to secure territory and maintain credible threat of attack against an enemy. By using military vocabulary to obscure the material reality of the actions in question, the rhetoric positions the audience as themselves part of the military apparatus, solider-subjects whose ways of viewing the world are consonant with the objectives of the war effort.

The production American citizenship in the post-9/11 context was licensed through references to the trope of whiteness (Ahmad, 2002). The war effort dovetailed with an extant logic of racial surveillance to create an Us against Them dichotomy where the enemy other is the trope of Muslimness. Those who appear to resemble the terrorists metaphorically stand in as terrorists in the ritual practice of whiteness lashing out against racial difference. Trump draws on and extends whiteness' disembodied control by invoking technical language as a self-contained moral universe. The public is not persuaded to adopt whiteness as a set of beliefs. Rather they are "'interpellated' as political subjects through a process of identification in rhetorical narratives that 'always already' presume the constitution of subjects…Support for sovereignty is inherent to the subject position" (Charland, 1987, pg. 134). One cannot adopt the metaphors of military vocabulary without also adopting the frame perspective of whiteness, which consists of the refusal to recognize the targets of racial violence as valid subjects. It is an act of disavowal, which is another affective ritual. Denying the material consequences of racial targeting as expressed in US military policy generally, and more viscerally in the Nissour Square Massacre,

is a way to sanitize the white subject position of its complicity with violence, and to suture the otherwise blistering contradiction between the American ideal of freedom and American military abuses.

The situational description continues the project of disavowal. The following two events in the summary of the situation are the factual crux of the issue, but they are reported briefly, and more importantly, completely in the passive voice. One of the primary roles of passive voice is to deemphasize the agent of an action by deleting them from the sentence. In this case, "the situation turned violent, which resulted in the unfortunate deaths and injuries of Iraqi civilians" identifies no agent besides "the situation" and attributes no responsibility for the deaths. The critical questions, such as "the situation was turned violent by whom?" and "the unfortunate deaths of Iraqi civilians were caused by whom?" are left unanswered. The rhetorical frame attempts to disable the coherence of those questions entirely by suggesting that causal explanation is pointless through its use of the word "unfortunate."

To say that an event is unfortunate is to say that its occurrence is due to chance, such that it could not have been reasonably prevented by any agent. This line of reasoning is directly connected to the rhetorical trope of "collateral damage" as a way to naturalize the unintended consequences of warfighting, notably civilian casualties. Dana Cloud (1994) discusses how the function of this kind of rhetoric is "obscuring the impact of weaponry and the Iraqi death toll" as a way to represent the outcome of a military conflict as justified. The pardon invokes this term to situate the men as vulnerable and lacking agency as part of a fantasy where subjects are only accountable for their intentions, assumed to be noble by virtue of their connection to patriotic ideals of service and comradery. It should be emphasized that this fantasy is being played not in the absence of the ability to attribute responsibility, but actively in spite of it. The FBI

investigation, the Iraqi investigation, the UN investigation, and all of the court records confirmed that the men were responsible for causing the deaths of unarmed civilians (Pengelly, 2021; Reuters, 2007; Virginian Pilot, 2007; Wamsley, 2020).

After having systematically denied responsibility on rhetorical grounds, the pardon embarks on a novel strategy of proliferating confusion. The pardon observes three procedural details and suggests that somehow they form a pattern of mitigating evidence despite the listed steps having no meaningful connection to the validity of the convictions. First, the pardon mentions that the first charges against the men were dismissed. This is correct; the first prosecution team relied on a form of evidence that was actually protected by the Fifth Amendment protections against self-incrimination, which unfairly prejudiced the jury (Savage, 2009). However, the Federal appeals court reviewed that decision and overturned it, concluding that the judge had made a significant legal error, which allowed a trial in 2014 to convict the men as guilty beyond a reasonable doubt (Neuman, 2017). The pardon then claims that the Court of Appeals ruled that additional evidence should have been presented in Slatten's trial. This is also true; the Court affirmed that it was inappropriate to try Slatten at the same time as the other men because he could not raise potentially exculpatory evidence for himself by claiming that another of the men had started shooting first (District of Columbia Court of Appeals, 2017). On this basis, that court reversed only Slatten's conviction pursuant to another trial of him as a solo defendant. That trial took place in 2019 and again concluded that Slatten was guilty of first degree murder beyond a reasonable doubt, and the motion for acquittal based on procedural objections was rejected (District of Columbia District Court, 2019). Both of the issues cited by the pardon were handled appropriately by the normal course of the criminal justice system, and there is no reason stated here or elsewhere to believe that the outcome of those processes were

inaccurate or unfair. The rhetorical purpose of the claims is not to serve as a good legal

argument. Rather it is to hold the valid legal conclusion in a state of indeterminate doubt so that

the imperatives of sovereign whiteness can be more forcefully applied.

The pardon concludes by offering what is truly a bizarre and disconcerting assertion that

"the lead Iraqi investigator," presumably referring to Faris Saadi Abdul, "may have had ties to

insurgent groups himself." The pardon suggests that the source of this information is the

prosecution team itself, as way to suggest that important evidence had been suppressed during

the course of the trial. I should note here that while many news reports cited this claim from the

press brief, I have been unable to find any independent corroboration of this allegation, and there

is no mention of this detail in any of the court documents I was able to review.

It is a standard trope in pardon argument to refer to new evidence suggesting potential

innocence, however even if the claim is true, it suggests nothing of the sort. The trials conducted

against the four men did not rely in any way on evidence collected by the Iraqi government, and

the possible presence of insurgents who had been killed was not a question of fact at issue in the

trials. Setting aside that there is no evidence to substantiate the possibility that Faris Saadi Abdul

"might" be "connected" to an "insurgent group," even if he was it would not challenge the

validity of the convictions. The pardon certainly does not offer any reasoning for why it would

suggest innocence. The rhetorical function of these statements is not to be legally persuasive, but

to be legally confusing. The pardon hopes that by raising enough objections, even if those

objections lack merit, that the legal decidability of the case will collapse, allowing the purely

moral and sentimental sphere to dominate. If the criminal justice system cannot be seen as

capable of resolving the situation, that precipitates a moment of crisis which warrants executive

intervention. In this sense the more outlandish the accusation the more effective it is. For

example, spreading rumors that a law enforcement official involved in the investigation over a decade ago was secretly a terrorist the whole time engaged in a conspiracy to frame the Blackwater soldiers would never function in a courtroom setting, but it is right at home in a pardon argument because granting four guilty men a free pardon seems almost logical by comparison.

Border Patrol

In 2005, United States Border Patrol agents Ignacio Ramos and Jose Compean confronted and then pursued Mexican drug smuggler Osvaldo Aldrete-Davila. The agents fired their weapons at him and wounded him, but he escaped. Instead of reporting the shooting incident according to procedure, the agents attempted to cover up the incident by policing the site of evidence and filing a false investigative report (Villagran, 2020). Both officers were sentenced to a decade in prison on felony charges of assault with a deadly weapon and civil rights violations. Conservatives who supported stronger border enforcement were outraged by what they perceived as overly zealous prosecution and they defended the agents as heroes (Villagran, 2020). Donald Trump issued full pardons to both men on December 22, 2020 (White House, 2020).

The press statement continues the theme of subject construction. It defines Ramos and Compean in terms of their prior position as Border Patrol agents. Ramos and Compean are identified thusly twice in the passage, the first time being in the second sentence (White House, 2020)[12]. By connecting the extant Congressional and non-profit support to the Border Patrol, the passage has Ramos and Compean serve as stand-ins for the institutional legitimacy of

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[12] Hereafter, unattributed quotations are from the pardon statement.

immigration enforcement. The entanglement of these individuals with broader partisan division is emphasized in the passage by listing several specific members of Congress as well as the U.S. Border Control Foundation and the Conservative Legal Defense and Education Fund as supporters. While the passage references the community ties of Ramos and the church activities of Compean, these seem more obligatory than essential. The discussion of the personal virtue of the two is overshadowed by the relatively in-depth description of the particular facts of the case.

The passage valorizes the identity of Border Patrol agent as an act of heroism and self-sacrifice. This is accomplished by saying that the agents "put themselves in harm's way" for the interests of the state. This particular formulation itself is notable because it positions the agency of the Border Patrol as purely reactive. Getting into harm's way suggests that the danger comes from without, precedes the actions of the agents, and that the harm would befall some other person absent the presence of the agents. In that way, the passage deputizes the actions of the agents as an expression of the will and interest of the community on whose behalf they operate. This amounts to an argument for pardon because it creates a split in the coherence of the identity of those prosecuting them. The argument suggests that on the one hand the government authorizes and benefits from the personal heroism of Border Patrol agents, but on the other hand seeks retribution against them for simply performing the duties of their position.

The passage attempts to show that the actions of the officers were within the course of their duties by making several situational attributions with hidden assumptions. First, the passage says that they "stopped an illegal alien." This term "illegal alien" justifies and normalizes the act of stopping them, because their identity is defined constitutively as a violation of law. Lisa Flores observed this tendency, writing "The emphasis on the criminality of entry, however, allows for linkages between Mexican and criminality such that Mexican immigrants become

almost inherently, even naturally, criminal simply by virtue of their migration to the U.S."
(Flores, 2003, pg. 377). In this narrative, it is presumptively lawful and desirable for the agents
to stop the person. This demonstrates how the law and its application can be a downstream effect
of rhetoric. What is lawful for the agents is a contested terrain of meaning, based on the way that
the subject of immigrant is constructed. The term "illegal alien" constructs a subject that is
radically outside the protection or concern of the law, and therefore subject only to the
imperative of state police power, which is guided by the racial insecurities of whiteness.

The second attribution is the added detail that the person was "trafficking 700 pounds of
marijuana." The relevance of this detail has nothing to do with the legal question of guilt. Rather
it is added for shock value. The reference to marijuana is racially coded; marijuana is a
convenient metaphor for white society to criminalize non-white ethnic groups (White and
Holman, 2012). The amount compounds the narrative by grounding the illegality of the alien in
the possession of controlled substances. The superfluous quantity of marijuana increases the
illegality of the person to the point that their presence constitutes a offense to the sensibilities of
the drug enforcement regime, and by extension the society which utilizes it. The use of
ideologically charged terminology and the use of shock tactics are both designed to
depersonalize the victim of the agents' shooting and to situate their violent response as a natural
response to the situation.

That is furthered by the attribution that the person was "thought to be armed." This
particular detail rests on nothing except the agents' testimony but is reported here uncritically
because it reproduces the narrative of social threat on an interpersonal level. Because the agents
function as representatives of society as heroic figures, threats to them are threats to society, and
vice versa. The subjects of the Border Patrol agents are affectively invested in producing

evidence of interpersonal threat because it completes the equivocation of agent and public. The feigned unicity of the Border Patrol subject is that the collective security of the public is accomplished through the personal security of the agent, so that the use of force to protect the latter is justified in light of the former. This explains why the passage sees the attribution that the person "resisted arrest" as sufficient explanation for the following action of Ramos shooting them. The enthymeme underlying this is that those who resist arrest can be justifiably shot by agents, and the affective investment of the Border Patrol subject creates a compelling force to accept it.

Border Patrol, police, and the executive are all bound together as indebted to the power afforded them by the state's monopoly on violence. That power is not an intrinsic feature of human civilization but rather a rhetorical product of what Travis Wall describes as the Thin Blue Line (TBL) metaphor. Wall describes the metaphor as "a politico-cultural articulation designed to render state violence as always defensive in nature while marking unruly populations as not merely transgressors of positive law, but as hostis humani generis: 'enemies of all mankind'" (2020, pg. 321). That metaphor is clearly reflected in the pardon statement, which positions Ramos and Compean's acts of violence as defensive and Aldrete-Davila as hostile to civilization. In this way Trump's pardon rhetoric performs the ritual of the state's investment in narratives of its own precarity by invoking the Blue Line metaphor as a total defense of the Border Patrol agents.

Because of the centrality of immigration enforcement issues to the Trump administration's political platform, it is natural to conclude that pardoning these two individuals is coextensive with the political goal of signaling support for Border Patrol agents. Trump made no secret of his political relationship with the Border Patrol; for example, he publicly encouraged

commissioner Mark Morgan to accept a union deal led by Brandon Judd, who had endorsed Trump in 2016 and defended his border policies (Miroff, Dawsey, and Hernandez, 2019). The passage recognizes this when it explains that the role of Ramos and Compean was to "help secure our southern border with Mexico." However, the passage takes steps to occlude the administration's interest in the agents, and instead attributes agency to other forces. The members of Congress are invoked a second time, along with the Senate Judiciary Committee and former President George W. Bush, who commuted their sentences. The passage indicates that there was strong bipartisan support for the commutation. This is generally true. Democrat senator Diane Feinstein oversaw the Senate hearing on the case and joined a public statement with Republican senator John Cornyn to call for the commutation.

However, the arguments offered to support the commutation are not operative to support Trump's pardon. The essence of the letter from Feinstein and Cornyn is that the penalty assessed was excessive, and the letter cites irregular details from the case to establish that the prosecution had unreasonably favored Adrete-Devila, the drug smuggler, over the Border Patrol agents. In a press conference after the hearing, Cornyn summarized their position by saying "The drug smuggler, who should be in prison, was given all the breaks and the Border Patrol agents received none of the breaks" (2007). Of note was a particular criminal charge brought by prosecutors which carried a mandatory minimum sentence of 10 years in prison, which was added onto 12 additional charges. The commutation served to end the prison sentence while leaving the otherwise lawful conviction intact. Trump's press statement cites the arguments that the prison sentences were excessive as support for the full pardon, which erases legal guilt for the offence entirely.

The difference between commutation and pardon indicates an alternative context for Trump's pardon. The effect is not to limit the severity of a punishment but to claim that there is no violation at all. This tension between limiting punishment and erasing guilt completely has been an ever-present tension in jurisprudence on pardon. In the Supreme Court case Ex Parte Garland in 1866, the Court wrote that the pardon "releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense…" (Williston, 1915, p. 647). This interpretation derives from the monarchical privilege model of execute pardon, in which the pardon is extended as a gift from the realm to the accused. Subsequent commentary on that case has argued that the model represents a "paradox" (Williston, 1915, p. 647) because the law must pretend that something which is known to be true is in fact false. This is because a pardon logically necessitates that a crime was committed, but the law must pretend that no crime occurred.

Henry Weihofen attempts to resolve this debate by making a distinction between pardons granted for innocence and pardons granted for other reasons (1939, p. 179). In his view, the legal consequences of a pardon granted for innocence ought to be far greater than those offered for other reasons. It is a neat argument but it relies very heavily on the communicated intentions of the executive granting the pardon. Applying this dichotomy in practice proves to be thornier than Weihofen seems to imagine. The press statement makes no explicit claims to innocence and mentions that the two were convicted of assault, use of firearm in a crime of violence, and deprivation of civil rights. But that does not account for the rhetoricity of the passage. Whereas Weihofen supposes that executive justification is a legal exercise, in practice it is a rhetorical one; the content of a pardon's justification will exceed the narrow question of innocence in fact and extend towards innocence in principle.

Questions of guilt and innocence can only emerge as legible within the imaginary context of a confrontation between a victim accuser, a defendant, and an authority able to judge the dispute. To contest the accusation in fact is simply to deny the content of the accusation. To contest the accusation in principle is to deny the coherence of the Imaginary context altogether, by denying the accuser the ability to construct their subjectivity as a victim. It is the accuser's claim to victimhood which grants legitimacy to their accusations, and which forms the basis for the authority's intervention. Retributivism, the central tropological economy of punishment, seeks to balance a demonstrated harm with the privation of the offender. Trump's pardon intervenes into this logic not by denying that Adrete-Devila was shot, but rather by denying that Aldrete-Devila is able to make grievance claims against the Border Patrol agents in the first place. This is accomplished by depersonalizing him as an "illegal alien" which implies that he is not a member of a shared moral community, but instead analogizes his actions and existence with external threats to the public, which the agents are deputized to remove with hostile force.

The use of an executive pardon is symbolically necessary to resolve the tension between Trump's immigration policies and the criminal status of the Border Patrol agents. Increasing the severity of border enforcement cannot coexist with the extant criminalization of border agents who exemplify that tendency. Trump is using the pardon to blot out the guilt of the agents so as to reconstruct the centrality of immigration control as a primordial state interest. It is an act of feigning unicity by constructing a heroic image of self-sacrifice which destabilizes attempts to recriminate the agents. By replacing the victim subject with the heroic subject, this rhetoric replaces retributivism with celebration, and affirms Trump's aggressive border policies.

The rhetoric of legality is interrupted by Trump's pardons' invocation of the Blue Line metaphor which presences the urgency of sovereign imperative as a form of racial security.

The portrayal of Ramos and Compean as heroes and defenders of civilization against a monstrous external threat suspends the legal sphere through a state of perpetual emergency. The rhetoric of responsibility is halted by disavowing the violence of racial security. The ritualistic depersonalization of those targeted by racial security metaphorically cleanses the state and its agents of their complicity.

Philip Lyman

Philip Lyman is a member of the Utah State Legislature who led an ATV ride through Recapture Canyon, an "archaeologically sensitive" area the Bureau of Land Management had declared off-limits to motor vehicles (Roberts, 2020). In 2015 he was sentenced to spend 10 days in jail and to pay a fee of approximately 90,000 dollars in restitution. Lyman's ATV ride was an act of protest against federal land regulations perceived to be too restrictive, and it came only weeks after the showdown between the BLM and cattle rancher Cliven Bundy (Mullahy, 2015). Donald Trump pardoned Philip Lyman on December 22, 2020 (White House, 2020). The political context for Lyman's protest suggests the tropological elements at play.

While Lyman's protest was less blatantly militarized than Bundy's, both draw from the same tropes of racial security. Lindsay Livingston discusses how Bundy's protest derived from white narratives of settler colonial conquest, and how opposition to the federal government served as a performance of public belonging which marked the performer as a "full participant in civic life" (2018). Lyman also characterizes the civic life of whiteness as being threatened, and he situates his act of protest as a way to reclaim the fantasy of total civic agency which the federal government is perceived to be obstructing. Defending the white civic identity is portrayed as an absolute necessity, and always at the cost of the racial other who is erased by these tropes. For Bundy, his invocation of "preemptive rights" "erased the centuries of caretaking performed

by the Moapa Paiute" (Livingston, 2018). Lyman's performance was staged against the backdrop of dwellings and burial sites of the Ancient Puebloan people who once inhabited Recapture Canyon.

The passage begins constructing the subject of Philip Lyman by asserting that he is "known to be a man of integrity and character" (White House, 2020)[13]. It is not clarified who possesses this knowledge, but the audience is left to assume that it includes the listed supporters of the pardons, which are politicians in Utah such as Senator Mike Lee. But as with all metaphors, the question of import is not whether these ascriptions are true but rather how they function to organize the audience into tropological economies of affect. In this case, the rhetoric positions the accusatory audience as intimate evaluators, called to evaluate Lyman's core essence or identity, as opposed to his actions. This replaces the technical legal framework with a moral and relational one, where the community is placed into the new role of determining whether this person deserves to be subject to the law. What the passage seeks to accomplish is the creation of a lawless subject, and it accomplishes this by substituting the legal sphere for the moral one.

This transfer relies on the vehicle of a counter-allegation that Lyman was a victim of "selective prosecution." Selective prosecution is a procedural defense in criminal trials where the defendant alleges an equal protection violation under the 14th Amendment by arguing that they were prosecuted for unjust reasons. This is consonant with the goals of the prior section because it also hinges the legal validity of the criminal conviction on a court of intent, not outcome. In the Supreme Court case United States v Armstrong, the Court enforced the rule that selective prosecution could only work if the defendant could provide evidence that similarly situated individuals were not subject to prosecution (McAdams, 1997, pg. 605-606). Of course, no such

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[13] Hereafter, unattributed quotations are from the pardon statement.

legal argument is either presented or referenced in the pardon. Rather, the exculpatory thrust of the passage is almost entirely provided by the use of the word "protest" to describe Lyman's actions.

The term "protest" situates Lyman as purely reactive to an external aggressor. It summons images of a mythical American fight against tyranny. Lyman himself endorses this reading. He describes his actions as responding to "a federal agency that wrongly and maliciously raided our community" (Dunphey 2020). This rhetorical landscape places a presumptive suspicion on those identified with the side of power, which in this case is framed to be the prosecutors. From this perspective, charging Lyman only proves his point that he is being victimized by the federal government, motivated by ill intent toward him personally, as evidenced by the selective prosecution claim. The affective charge behind these moves is the investment by Lyman and by Trump to lay hold of victim status. Doing so absolves them of guilt and allows them to weaponize the public blame ritual against their enemies. The pardon intervenes to accomplish legally what the selective prosecution claim aimed to accomplish morally. This is why Lyman described the pardon as "righting a wrong" (Dunphey, 2020) despite there being no doubt as to whether Lyman was indeed guilty of his crime as charged.

The rhetorical strategies of sphere manipulation and counter-allegation discussed in previous chapters are clearly present in Lyman's pardon, which shows that the rhetorical tropes of executive clemency do not always remained neatly contained. However, the rhetorical force of Lyman's pardon remains in the way that images of protest are appropriated to serve the racially reactionary interests of white settlerism in the American West. Lyman takes on the trope of the Thin Blue Line by situating his Utahn community as precarious and under threat by the monstrous outsiders of the federal government, and stages a triumphal ritual of overcoming

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through the ATV ride. Lyman is affectively invested in the anxieties of his racial position, and Trump's pardons affirm and extend those affects by appropriating the images of protest to morally whitewash Lyman's actions.

Conclusion

These pardons rely heavily on the rhetorical mode of subject construction. In these pardons, the themes of guilt and agency are manipulated with particular labels and ideologies serving to fill the constitutive gaps in those representations. Subjectivities are essential from a Lacanian perspective because they are the output of the Symbolic. Subjects define the Imaginary situation and are products of the drives, attachments, and affects of the Symbolic realm. Controlling the definition of subjects is an act of power which has significant social consequences. The audience, the speaker, and the convicted person are each imaged and figured in particular ways to allow the rhetorical appeals to become coherent. Subject construction engages with the rhetoric of legality because it interrupts the legal sphere's automatic equivocation between a person's legal status and their being. Trump's pardon rhetoric situates the identity of the convicted people as outside and beyond the law. The pardon, by opening a hole in the limit of the legal sphere, exposes otherwise legal determinations to political and moral criteria. This is where Agamben's state of exception appears. The emergency of the demands of the state suspends the applicability of the law to a certain case, and exposes that law as being purely internal and secondary to the state's primary directive of continued survival. This yields the paradox of breaking the law to save the law, which is exactly the kind of incoherent yet powerful tension that psychoanalytic rhetoric seeks to describe.

Subject construction engages with the rhetoric of responsibility by altering what subjects are responsible for. For example, a soldier is presumed to have reduced responsibility because of

their urgency of a battlefield situation and the frequent reality that their decisions are beholden to orders from superiors. By manipulating the coordinates of the subjects, the rhetoric of executive clemency can shift or obscure or even eliminate responsibility for acts which would otherwise be condemned as immoral, illegal, or both. The Blackwater pardons showed that pardon rhetoric can covertly extend the logics of whiteness by filtering an audience's connection to the events through a vocabulary of detached pseudo-objectivity. The Border Patrol pardons showed that pardon rhetoric can criminalize racial others and disavow the material consequences of that criminalization. The Lyman pardon shows how pardon rhetoric can enact itself as a performative defense of white civil identity, which is parasitic on the suffering of marginalized people.

In each case, the subject construction was guided by the central trope of whiteness as a form of racial securitizing. Citizenship, and correspondingly personhood, was mediated through a logic of racial targeting where certain groups of racial others were excluded to make room for the anxious performances of white subjects. The politics of disavowal were used to sanitize the violences of whiteness and to obscure the contradictions between ideals of justice and the material reality of racial power. Trump's pardon statements made arguments directly authorized by those metaphors and reified them by constructing subjectivities to correspond to the vocabulary, perspectives, and performances of whiteness.

Chapter 5 - Conclusion

This project aimed to address two questions. First, how do Trump's pardons engage with the rhetoric of legality? And second, how do Trump's pardons engage with the rhetoric of responsibility? In order to answer these questions, I rhetorically analyzed a series of press statements justifying the act of presidential pardon, with a focus on the psychoanalytic uses of

trope, metaphor, affect, and ritual. In the pardon statements analyzed, it was found that pardons typically adopt three rhetorical strategies to interact with legality and responsibility.

First, the pardons manipulate the spheres of argument between legal, moral, and political, to allow access to certain arguments and to obscure or deny access to others. Pardons granted to those with political connections were examined, including Conrad Black, Elliott Broidy, Chris Collins, Duncan Hunter, and Stephen Bannon. Analysis of these pardons revealed a triad of rhetorical strategies, consisting of the appeal to mitigating circumstances, the appeal to public contributions, and the appeal to moral character. Each of these strategies worked to obfuscate the rhetorics of legality and accountability in different ways. This allowed President Trump to subvert public accountability in the service of his own convenience, which further unmoors executive power from democratic control. The ritualistic and rhetorical nature of Trump's pardons carry the risk that audiences will be inured or apathetic towards the deeply political and significant affective investments contained within them, thereby disarming legitimate criticism and allowing the expansion of violent policies. Psychoanalytic rhetoric indicates that the battle between competing worldviews is inevitable and ongoing, but that does not mean that it is without consequence.

Second, the pardons make use of counter-allegations to appropriate the positionality of the victim. Pardons granted to those convicted as a result of the Mueller investigation took place within the context of suspicion against Trump's motives, which destabilized the interaction between the President and the accusatory audience by requiring two defenses. Trump's pardons respond to that tension by situating both Trump and the convicted person as victims of a conspiracy by the deep state. Trump's pardons perform a ritual of masculine victimhood as a form of affective investment in the precarity of white male subjectivity. This serves as a form of

enjoyment by coopting the social power of victimhood while retaining the institutional power afforded to elite white men.

Third, the pardons rhetorically construct subjects in particular ways to disrupt legality's claim to sole authority of judgement and to alter audience understandings of culpability. The pardons given in politically charged contexts construct subjectivities under the rubric of whiteness. Trump's pardons rhetorically suspend the rule of law by operating within the tropological economy of sovereign necessity. The pardons position the criminal acts being pardoned as purely reactionary and necessary responses to external aggression. By elevating those being pardoned beyond the law through conditions of emergency, the pardons reified the logic of racial targeting responsible for the material violence which guarantees white racial security. The pardons also expressed the politics of disavowal and rhetorically whitewashed the anxious performances of white subjects of their complicities with structural injustice.

Each of the three strategies works to efface the rhetoric of legality. Recall that in the introduction, it was explained that the rhetoric of legality is based fundamentally on the equivocation of process with justice. The pardon interrupts that equivocation by establishing an emergency which justifies the suspension of the legal realm. The sphere manipulation strategy performs the metaphor of emergency by shifting the criteria of judgement away from legal considerations and towards moral and political ones. This allows otherwise insubstantial factors about the convicted people to become reevaluated as dominant. The counter-allegation strategy performs the metaphor of emergency by attacking the legitimacy of the entire process, not just its application in one case, through allegations of systemic political bias. That performance is done on behalf of white men's institutional power, and it coopts the position of the victim to confuse the social application of guilt. The subject construction strategy performs the metaphor of

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emergency by invoking the collective defense of racial hierarchy as a sovereign necessity. The trope of whiteness authorizing the fantasy of racial precarity is based on targeting racial others, ritually depersonalizing its critics, and disavowing the material violence it produces.

Each of the three strategies works to subvert the rhetoric of accountability, which is the ritual practice whereby society manages the trauma of a grievance by assigning blame to a perpetrator and then punishing them. The three strategies are similar in that each of them works to erase the existence of a victim from public view. The sphere manipulation strategy pivots out of a legal context to cast the pardon decision as purely a referendum on the moral character of the convicted person without reference to the facts of his case. The counter-allegation strategy appropriates the position of victim on behalf of the convicted person and on behalf of President Trump, and stages a conspiratorial rejection of the justice system, which obscures the voice of the victim, and leaves the social mechanisms for assigning blame in tatters and without replacement. The subject construction strategy denies that there is any victim at all by valorizing the enforcement of racial security as a necessary and desirable feature of civilization according to the Thin Blue Line metaphor, and aggressively depersonalizes any victims who might be present as threatening.

Taken together, an analysis of President Trump's pardons demonstrates the power of ritual, affect, and metaphor in producing and navigating the rhetoric of executive clemency. The arguments that President Trump provided to justify his acts of pardon can only be understood as engagements with the structural tensions of executive power, in particular the rhetorics of legality and responsibility. The psychoanalytic dynamics of Trump's pardon statements demonstrate that the rhetoric of executive clemency is beholden to rhetorical justification, and that President Trump undertook that task of justification in way that reified and perpetuated toxic

and regressive tropes and metaphors which serve to constitute the social reality all people experience.

This analysis also exposed the extent to which politics and law are both deeply rhetorical. The meaning and application of core concepts such as the rule of law or American identity are not given in advance, but rather are metaphors subject to rhetorical manipulation for good or ill. This has important implications for how rhetorical scholars, legal scholars, and the general public respond to executive clemency rhetoric.

First, rhetorical scholars should be careful to avoid dogmatic assertions of falsehood. It is correct that many of the pardons discussed in this project appear to fly in the face of empirical reality. However, taking the power of rhetoric seriously means understanding that neither we as critics, nor the president as a speaker, have access to reality as it is. Rather, our experience of the world is always already mediated by the signification function of language, which cannot be escaped. That means our role as critics is not to expose the objective untruth-ness of an artifact, but to play the game of desire against it, to construct alternative regimes of metaphor and ritual. Alyson Cole and George Shulman, writing in the context of Trump's political populism, write "an effective politics must traffic in desire and fantasy by giving suffering a public cause, anger a target, and aspiration a horizon" (2018, pg. 350). Trump's rhetoric has the capacity to frame injustice as a feature of the private sphere, to preempt anger by erasing victims, and to foreclose aspiration by invoking the necessity of an emergency. Rhetorical scholars must reopen those possibilities by creating new public fantasies which can guide action towards democracy. Accepting a Lacanian interpretation of rhetoric does not imply a foreclosure of ethics. Just because we understand the language of public consciousness as a construct does not mean that all preferences are arbitrary. Rather, the capacity for publics to produce subjectivity is itself an

ethical act, which warrants the rejection of all rhetorics that seek to suppress that creation (Messite, 2021). Rhetorical criticism is, in the end, a way by which a public can reclaim access to the building blocks of subjectivity and thereby advance the project of political freedom, referred to in this project as democracy.

Second, legal scholars should be careful to avoid dogmatic assertions of structural determinism. A critical observer of this project might object that because the President can accomplish the legal reality of a pardon regardless of public acceptance, the rhetoric of justification is an irrelevant sideshow. That approach dramatically misses the point. The rhetorical foundations of executive clemency demonstrate that sovereign power, Agamben's state of exception, is not a complete and impervious structure. The power to declare exception is always uneasy and rife with contradiction, because it stands in opposition to the constitutive framework of law, which is what produces the executive's power in the first place. Executive clemency shows that the President is indeed responsive to a form of public accountability, but that the President as a rhetor has access to certain strategies designed to mitigate that accountability, which this project has traced. This demonstrates that legal scholars should not make the mistake of conflating possibility with permissibility; the legal powers of the President is only a partial description of the total social process of executive power.

Third, the general public should be careful to avoid dogmatic assertions of blame. It would be far too easy to say that it is all Trump's fault that executive clemency undermined justice in these pardons. Trump certainly does bear responsibility for his rhetoric. However, the point of using a psychoanalytic framework is to show that the rhetoric was not originated with Trump. The metaphors and rituals that gave license to his rhetoric predated his presidency and persist after he has left office. Trump should not be a convenient scapegoat to exorcise the guilt

of our society. Rather we should understand that the rhetoric Trump produced is evidence of a collective failure to maintain democratic accountability. If Trump is able to successfully portray investigations as corrupt and politically biased, it is only because the public has come to rely on investigations as a tool to accomplish political goals. If Trump is able to successfully portray police officers as defenders of civilization, it is only because the public has come to rely on police power to preserve its mode of social organization. If Trump is able to successfully portray corrupt politicians as public servants, it is only because the public has chosen to be served by political systems that incentivize corruption. This project has focused on Trump's rhetoric, but he is not the only agent, and he certainly is not the sole cause for the consequences of his rhetoric.

This project is a call for rhetorical scholars, legal scholars, and publicly-minded individuals to be sensitive to the tropological economies that underwrite the rhetorical practices of not just the President, but all those who claim to represent our cherished values.

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