

The Extraordinary Injustice of McCarthy's America

Written by Eve Collyer Merritt

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EVE COLLYER MERRITT, NOV 3 2011

Was fear used then, as now, to ensure acquiescence to extreme measures and the suspension of justice?

Introduction

In the McCarthy era of the 1950s, anti-Communism created an atmosphere of fear which allowed political actors to accrue greater powers over the American population. The legal status and rights of the individual were profoundly changed as the norms of fair trials were subverted, constitutional rights ceased to apply and new laws restricted personal freedoms. This dissertation argues that this unusual situation was permitted as the public were manipulated by people with political interests into believing the USA had entered into a state of emergency in order to safeguard national security.

This is informed by theories of 'the state of exception' which have become influential in analysing power in liberal democracies. The current literature focuses largely on the post-9/11 era, seeking to establish how the discourse of the 'War on Terror' allows governments to institute exceptional measures giving them greater control over the citizenry as a whole.[1] This power, it is argued, is the hidden mechanism of current politics.[2] This dissertation applies theories of exception to the McCarthy era. Current theoretical work has not included historical examples grounded in thorough archival research. This dissertation aims to contribute a new historical dimension to this theoretical debate.

This dissertation uses the archives of Harvey Matusow, a Communist Party member who became an informant to the FBI and an 'expert witness' in Communism trials; he testified in hundreds of cases. He was also Senator McCarthy's campaign aide.[3] Matusow's archives will be used to provide a new perspective on the study of the McCarthy era through detailed qualitative research. The archive is extensive, the 104 boxes contain court transcripts, government documents, anti-Communist literature, newspaper cuttings, pamphlets, personal correspondence and books. This dissertation uses mainly the official documents in addition to other texts. This primary resource was invaluable in exploring how the perceived threat of Communism was escalated by individuals in order to gain politically. This dissertation also draws from Matusow's 1955 autobiography in which he admitted being paid to provide false testimony against accused Communists, encouraged by McCarthy and others. Although evidence from the archives of a self-confessed false witness may seem to lack veracity, extensive legal documents and personal correspondence support his perspective.

Using the archival material, this dissertation will demonstrate that a state of exception did occur. To establish this, firstly, the theory review discusses theories of the state of exception. This will focus mainly on Agamben and Foucault. Secondly, the historical background chapter establishes the political culture preceding McCarthyism and how the threat of Communism began to be used politically. Thirdly, the core analysis section presents the evidence from the archive which demonstrates that exceptional measures were instituted in McCarthyism and how they were perpetuated. Finally, a discussion of theoretical implications and conclusions reviews the main arguments and suggests how the study of McCarthyism relates to theories of exception, particularly considering its contemporary relevance.

Theory Review

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The first part of this theory review considers the theory of exception and how this can be utilised in relation to the McCarthy era. The state of exception is explained largely through Agamben, however the mechanisms of power within it are further informed by Foucault's 'governmentality' and other concepts. Following from this, part two discusses how the state of exception is allowed to happen by considering theorists of the 'politics of fear', wherein fear is used to gain acquiescence to increased security measures. This literature provides a theoretical framework for the reading of the archive, particularly in exploring the cultural situation, including the rhetoric of nationalism and national security employed in the McCarthy era to justify anti-Communist measures.

1. The State of Exception

In order to explore the manner in which exceptional measures have become a technique of power in modern politics, it is first necessary to consider the conceptual basis of exception. Much work on exceptionalism is situated within Continental philosophy. This canon emphasises the importance of history to political thought. It is therefore appropriate for this historical case. In this tradition, Foucault's work has been described as 'an attempt to provide a critical history of the present.'^[4] Essential to this is his work on power. He provides an interesting basis for the study of the interconnection between law and power; law cannot be separated from power, as law is enacted by people.^[5] This is closely linked to the notion of biopolitics; a certain form of power which, according to Foucault, is exercised through holding control over the biological life of the population. Foucault brought this idea prominently into philosophical discourse.^[6] Foucault's account brings to light how power is reinforced by control over the lives of individuals.

Giorgio Agamben has attempted to re-conceptualise Foucault's work on sovereign power and biopolitics, claiming that politics that includes or is enacted upon the biological life of individuals (or 'bare life') is not the modern development Foucault describes, but existed in the foundations of the political order.^[7] Agamben asserts that bare life was perceived to be situated separate from political life, however, the distinction between bare life and political life cannot be upheld as the intersection between both is unavoidable. In violations of the law, for example, the individual's bare life enters the political sphere as punishment affects their life.^[8] Simply, law and bare life are interconnected; as bare life is the basis of sovereign power there cannot be any law or rights if there is no subject that they apply to or act upon. Therefore the power of the law is inherently linked to power over the individual.

Because the law excludes bare life from political life, it implicitly defines its status as excluded through a declaration of law. Bare life is therefore subject to the law in its status, although outside it. The inclusion through exclusion of bare life in the political order becomes the model for exception in the state. Agamben maintains that the sovereign is both inside and outside the law in his 'paradox of sovereignty'; the sovereign is granted the power to declare the exception by the law, but in doing so suspends the law's own validity.^[9] Agamben argues that this has become a dominant mechanism of political power and therefore coincidence of the political realm and bare life has also increased. Bare life has become politicised in many ways; Agamben presents the example of the prison camp which epitomises a space of political control over biological life.^[10] This can be seen as a microcosm of the modern political order, reflecting the restrictive nature of exceptional measures in political control, although this has been questioned.^[11]

Many of the characteristics of sovereign control over bare life were present in the McCarthy era. Exceptional legal measures were employed, compromising the freedom of individuals, restricting their civil rights and adapting the law extensively and permanently. Moreover, constitutional law was altered or suspended. A state of emergency was not officially declared in the McCarthy era, yet this is congruent with Agamben's assertion on the encroachment of exceptional powers justified through a public discourse of security, 'In conformity with a continuing tendency in all of the Western democracies the declaration of the state of exception has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government.'^[12] If the sense of emergency is created through a permanent discourse of insecurity, power outside of the law can become a permanent feature of control, instituting irreversible controls over bare life.

Agamben begins his investigation of the state of exception with an evaluation of the Roman legal concept, '*iustitium*'

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as its paradigmatic expression. It is a suspension not only of some practices of justice, but of a standstill or suspension of the law in its entirety, a 'juridical void.'^[13] Agamben introduces the idea of a kenomatic state, wherein exception can be defined as an emptiness within the law, rather than the dictatorial perspective which ascribes fuller juridical powers to the sovereign. However, the idea of emptiness in law does not express how law is increasing in practical terms, as new legislation is passed. Neither does it explain the law's transgression of the sphere of its jurisdiction as it encroaches upon the realm of bare life. Additionally, rather than an absence, it could be considered as a relocation of legal power into other facets of governance.

The notion of absence of law relates to the cases in the McCarthy era when normal legal practices appeared to cease to apply. This is most evident in the denial of constitutional rights that prevailed. Most notably, pleading the Fifth and First Amendments was no longer recognised as an individual's legal right. Law can therefore not be seen as a stable entity that forms the basis of the state; it is used as a tactic.^[14] It can be seen as entirely inoperative in emergency. As Agamben holds, power and the state are irreducible to law and there is an excess of power with regard to the law.^[15] If power is understood to be related to the now unstable law, the conception of the state must be reconsidered to accommodate this. The state can no longer be explained through a simple structural model which demonstrates where power is situated and how it is exercised. The state must therefore be reconceptualised in terms of the disparate distribution of sovereignty which is variously located where sovereign power is enacted. This further supports the notion that power is no longer situated with a legitimate, sovereign enactor. Power and sovereignty have indeed shifted so that neither are reducible or directly related to each other or to law. An institutional approach is therefore less practicable than an exploration of the enactment of power.

Agamben tends to uphold the idea of a unitary basis of power, following Schmitt who equated the power to declare exception with an individual sovereign.^[16] A fractious conception of power can therefore be more cogently considered in terms of Foucault's governmentality. He holds that the state has survived because it has 'governmentalised'.^[17] Within this, various forms of extra-legal power are instrumentalised by multiple facets of the administration including unelected actors who lack legislative legitimacy. This will be a valuable element to consider in terms of the McCarthy era, where various actors held power and law-like procedures took place in committees, rather than in courts. The suspension of the rule of law in emergency can be perceived to leave a dearth of sovereignty, yet this is compensated for, as Butler explains, by a resurgence in the arena of governmentality, considered not through the classical interpretation of sovereignty as legitimately exercised power, but as a 'rogue power'.^[18] Similar to Agamben's camp paradigm, Butler employs Guantanamo Bay as illustrative of this shift in power. Unelected military representatives hold power over the bare life of individuals; they decide who is allowed to be free. The phenomenon of indefinite detention is further indicative of an unbounded power over the biological human, ungrounded in the rule of law.^[19] Law, in this case, is used as a tactic when it is prescient for those in control to enforce a certain restriction or is suspended when it is inconvenient to their exercise of power.

2. The Politics of Fear

It is vital to explore how a state of exception comes to exist in political life. A de facto emergency seems to have been invoked in the McCarthy era by creating the impression of a nation at war. In wartime, people accept more repressive methods of governance. The shift towards establishing exceptional measures through discourse, rather than constitutional declaration is exemplified in Agamben's text through the examples of Lincoln's and Wilson's divergent methods of securing exceptional powers in the situation of war.^[20] During the American Civil War, Lincoln assumed full control of the state, suspending habeas corpus, imposing censorship and authorising the detention of anyone considered treasonous. In contrast, during World War One, Wilson's exceptional powers, which arguably exceeded Lincoln's, were granted through Congress. He gained complete administrative control over the country and prohibited negative press concerning the US government; an unprecedented act of censorship. Agamben further asserts that sovereign power grounded in emergency has become, in the USA particularly, linked to the state of war. The metaphor of war has become part of the dominant discourse in American politics.^[21] The archival materials will therefore be considered with an awareness of the USA's tendency towards a rhetoric of war.

This is reminiscent of Foucault's attempt to analyse power in terms of a continuation of war. He focuses on power's productive aspect; power is not a constant that can be held or exchanged.^[22] As an action upon a subject, power

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can be understood in terms of force and resistance.[23] He goes on to state that, 'the role of political power is perpetually to use a sort of silent war to reinscribe that relationship of force...in institutions, economic inequalities, language and the bodies of individuals.'[24] Thus political actions reaffirm the eternal presence of war in politics and the relation of force in which law originates. It is only possible to create public acquiescence to a state of emergency if a threat is constituted convincingly. Accordingly, to sustain exceptional measures, the impression of immanence in the threat must be upheld. As Butler argues with regard to terrorism, the perception of an unending danger emanating from a conceptual enemy means that the threat is not temporally or spatially limited, therefore the response of emergency can also exist forever.[25] A similar mechanism was at work in the McCarthy era founded upon the idea of a 'clear and present danger.'[26]

As this form of threat is not geographically contained or entirely external, power can be projected inwards using the authority and resources of the state. This is particularly relevant to the Cold War era, during which the 'enemy within' allowed power to be directed towards all citizens as potentially suspect. The idea of a 'politics of fear' has been previously related to the Cold War era, however its relation to exceptional measures has not been extensively expounded through archival research.[27] Wolin theorises this power as 'inverted totalitarianism' and seeks to explain the changes in modern American political culture to accepting pre-emptive war, torture, and corruption.[28] He argues that a shifting basis of power and modern society has created an era in which the license of popular culture makes people feel free, yet politics retains an oppressive agenda. The political imaginary which preserves this rests upon a foundational myth of America and its place in the global order. This is reinforced by the media which constructs an iconography of fear through selectively reporting and eliminating qualification.[29] Although Wolin's examples are largely post-9/11, his theory can be applied to some extent to the McCarthy era in its nationalistic rhetoric and media bias.

The foundational myth also allows the government to create a dichotomy of good and evil, wherein it is defending the world from an iniquitous force.[30] This binary morality is established through the media, but also through government output, grounding their own validity in the myth. As Der Derian indicates, the state does not simply construct an imaginary through policy, it purposefully leaks information.[31] The authority of a strong mythical grounding allows the government to constitute a power imaginary through which it can constantly expand capabilities. This is usually accompanied by a justifying mission, in the case study, the defeat of communism. Wolin argues that a threat is exaggerated to justify greater accretion of powers over society.[32] Within this society, the government is no longer expected to build an ideal nation, but to maintain security. When every individual is part of a permanent consciousness of fear, control and violence become an apparent necessity to counter the perpetual enemy.[33] The 'Core analysis' will consider the archive with an awareness of this theoretical basis.

Historical background

This chapter describes the political situation directly preceding McCarthyism to contextualise the core analysis and establish the ideological climate. Firstly, this chapter demonstrates how anti-Communism was used ideologically in the early twentieth century to justify political opinions and measures. Secondly, the threat of Communism is shown to be projected internally to create public fear. Thirdly, how this manifested itself in political practice is examined. Finally, it is argued that by 1950, the USA was operating as if under a state of emergency.

In the early twentieth century, the Communist threat became politicised by the Democratic administration and the Republican opposition; anti-Communist legislation was passed in the years preceding McCarthyism. Much of the government machinery and some of the legal measures invoked during McCarthyism had been established in previous years, yet were only fully employed from 1950.[34] The Smith Act of 1940, for example, gave the government unprecedented authority over groups deemed subversive. Under this Act, officially the 'Alien Registration Act', it became illegal for anyone to print or distribute materials advocating the overthrow of the government, or to help or organise any society which had this aim.

1. Ideological Background

Anti-Communist rhetoric became prevalent in the 1920s. In this era, business interests were dominant and largely

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unregulated until Democratic New Deal policies challenged this situation. Corporations opposed the restrictions placed upon them by the new measures as they curtailed their business practices. In order to gain support for their position, they presented their opposition to the measures as ideological, rather than grounded in their desire for corporate dominance. They held that left-wing measures made the administration akin to a centrally planned Communist state.[35] It has been suggested that, in this era, power was held by elites and politics was largely inaccessible to the people; corporations were dominant, political parties were precisely organised and Congress was highly institutionalised. This led the public to feel politically impotent and therefore more susceptible to radical ideas based upon a nationalism they could relate to.[36]

The Republican Party appropriated this equation of all left-wing ideas with Communism to found their attacks on the Democratic administration, first under Roosevelt and then Truman. It has been argued that the aim of the Republicans and subsequently, McCarthyism, was solely to defeat the Democratic Party, who had held the presidency since 1933, and bring about a 'conservative reorientation of American politics generally'.[37] Their motives were not national security, as they claimed. By making left-wing ideas publicly unpalatable, they could dominate the political agenda and regain power.

2. The Politics of Fear

After World War II, the USA lost the feeling of secure isolation which had defined American nationalistic rhetoric. Consequently, there was a loss of national self-identification. The USA instead projected a new national identity, defining itself as the defender of democracy throughout the world. The War had forced people to look outwards; policies of security had to reflect this.[38] It has been argued that American society post-1945 was particularly susceptible to demagoguery, defined as 'the conscienceless exploitation of fear and ignorance for political ends'.[39] Fear of another war, this time against the Soviet Union, was used tactically by politicians. As anti-Communist sentiments were encouraged by the political élites to advance their agendas, it was easier to appeal to fear than reason. An effective means of gaining electoral support was to cause the public to associate what they were opposed to with something already deemed alarming, Communism.[40]

The internalisation of the threat is an important feature of this era. Originally, the fear was that the Soviets would start another conflict; a foreign policy issue. It became transformed from this to an issue of internal security and fear of infiltration of government and industry by Communists. It was originally Soviet power that was the security issue, but the political rhetoric subsequently securitised Communist ideology.[41] The people came to believe that foreign policy necessitated further internal security.[42]

Propaganda was essential in establishing the threat. The actual presence of Communists in America was negligible, yet political leaders were claiming Communism had greater numbers and more power than it did, inflating the threat in order to gain the mandate to increase security measures.[43] The American Communist Party, for example, was a small, fringe party which was, as Goldston phrased it, 'one of the most...stupidly led political organisations in the world...its membership was miniscule, its influence nil, its political strategy wonderfully self-defeating'.[44] Yet members of this organisation were treated as organised militants, capable of undermining society and prepared for imminent violent revolution.

3. Political Practice

Anti-Communism was a decisive factor in the 1946 Republican victory over Congress. They claimed the Democrats were sympathetic to the Soviets.[45] The administration sought to negotiate with Communists privately, asking the public to trust their judgement. This lack of public information created tension. This, and the result of the Yalta conference,[46] added to the perception that the Democrats favoured appeasement. However, the administration also used the idea of the Communist threat for political ends.[47] Truman called for measures that harmed civil liberties, although it seems unlikely that he believed a domestic Communist threat existed. In fact, it is widely held that he may have called for the measures even without pressure as it allowed him to broaden his power base and undermine those who opposed his government.[48]

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As the Democrats' loss of control of congress was partially attributable to the Communist issue, they were keen to show their anti-Communist resolve. Truman created a loyalty board to investigate suspected Communists working within federal government.[49] The following account is from a lawyer who, despite being allowed to accompany his client to a hearing, was not authorised to speak:

An individual... found himself in a strange world, a world in which English Common Law had never been developed, in which the U.S Constitution had never been written, in which the Star Chamber and the Spanish Inquisition had triumphed. The suspect was presumed guilty until he could prove his innocence. He was not permitted to know who his accusers were or to face them... He was not even permitted to know what the specific charges were against him! He was simply to know that he was considered disloyal unless he could prove his loyalty.[50]

If loyalty could not be proven, suspicion of disloyalty was considered to constitute guilt, resulting in dismissal from government service, making it impossible to gain new employment.[51] Evidence of disloyalty could be as meagre as reading 'New Republic', a left-wing publication, or owning books on Russia.[52] These practices were in violation of the usual legal rights of the citizen. This almost constituted a suspension or inversion of the law which set the precedent for McCarthy's committees. No genuine case of sabotage or espionage was found, but dismissals gave the impression that infiltration was occurring at a great magnitude, therefore public fear and the perception of the internal threat increased.[53]

The Truman Administration also increased its anti-Communist foreign policy and rhetoric through implementing the Truman Doctrine.[54] This allowed the government to be more forthright in international affairs, justifying going into Korea as part of a vital battle against Communism.[55] Despite this, Truman did oppose some anti-Communist measures, including the McCarran Internal Security Act designed to register Communists and limit their legal rights; he believed it was transgressing civil liberties.[56] This Bill established the Subversive Activities Control Board which investigated people suspected of promoting overthrow of the government. It also allowed for the indefinite detention of subversive persons in times of war or 'internal security emergency'. By opposing this and other Bills as they circulated Congress, Truman appeared to be 'Soft on Communism'. However, he proposed other policies to control Communism internally, including the deportation of foreign Communists. As his actions demonstrated that measures were necessary due to the imminent threat, the public believed that even stronger measures should be instigated.

Additionally, more powers were given to existing bodies such as the Justice Department, who were widely perceived to be indifferent to civil liberties.[57] The FBI under the leadership of J. Edgar Hoover also magnified the perception of the threat. Hoover became known for making inflammatory speeches. It is argued that this is not because he believed in the threat, but because it allowed his agency to accrue greater power in legal terms[58]. The government ceased checking FBI activities, ignoring the use of illegal methods. This altered the political climate from defensively combating espionage to offensively targeting political groups through surveillance.[59]

The FBI became part of the new norms of justice, accusing people with little evidence other than suspicions of subversion. Targets were seen to be personal and political rather than criminal. The FBI withheld reports from the congressional committees on the pretence of containing information classified in the name of national security, whereas in fact they were inadmissible as details were often fabricated, gained illegally or lacking conclusive evidence.[60] By refusing to show the case against an individual, they made it near impossible to build a defence. This is unlike the usual process wherein the defendant has a right to answer charges and both sides have access to all evidence. A diversion from the usual practices of fair hearings had occurred as unelected agencies gained overtly political powers.

By 1950, it seemed that internal security required harsher measures than Truman was advocating. Federal employee disloyalty had been demonstrated by the case of Alger Hiss, who was convicted of perjury in connection with the charge of being a Soviet spy, although the evidence against him was questionable, and his guilt has subsequently been debated.[61] In addition to this, the Soviets had exploded an atomic bomb and China became Communist, demonstrating the growing international power of Communism.[62] The USA's involvement in Korea gave the international situation immediacy for the public, and popular fear of Communism increased.[63]

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4. Emergency

In 1950, Attorney General McGrath stated that 'temporary' restrictions on individual rights were essential in this time of 'emergency'.^[64] The administration had inflated the threat of Communism to advance their agenda, adopting a 'super-patriotic' posture.^[65] The political right also used the issue politically to 'narrow the limits of tolerable opinion... to exclude left-wing liberals.'^[66] As Theoharis states, Truman's loyalty program and Republican campaigning had 'encouraged a popular mania for absolute security that extended beyond the prosecution of overt acts of disloyalty to a suspicion of all potentially subversive ideas.'^[67] It was in this climate that McCarthyism was able to emerge. The tenure of the 81st and 82nd Congresses coincided with the McCarthy era. These administrations introduced measures that were more restrictive of civil liberties than any other peacetime laws in USA history.^[68]

The McCarthy era began as Senator McCarthy declared in February of 1950 that he held a list of known Communists working in the State Department.^[69] Even though this claim was proven false almost immediately, it catalysed the investigation of government, businesses, unions and thousands of individuals who were suspected of being Communists or sympathisers. They were tried in committees, rather than in courts. Constant accusations increased public fear and expert witnesses divulged Communist involvement in many organisations. The methods of the era have been commonly characterised as a 'witch-hunt'; accusations were often unfounded and the accused publicly vilified whether or not they were found guilty. This often resulted in loss of employment and lifestyle. This subversion of the usual practice of constitutional law provides a compelling case for the study of exceptional measures.

Core Analysis

This chapter reviews the archival material to establish which emergency measures were created in the McCarthy era, how they were used and the affects of this on individuals, consistent with Agamben's theory of exception. The chapter also discusses how the Communist threat was amplified and perpetuated through media coverage and government-issued literature, in accordance with Wolin and Der Derian. Following this is a closer focus on how the issue of Communist infiltration was used to create public fear of an internal threat. Then, censorship is considered in terms of the reinforcement of 'American values'. Additionally, this chapter considers who profited from anti-Communism other than state actors. The gains of the unelected will be linked to the 'American Legion' who provide an interesting example of a non-affiliated group who helped to promote anti-Communism and typify the rhetoric of a 'War on Communism' which was used extensively in the era. This structure of power follows Foucault and Butler's work on permanent war and the relocation of sovereignty.

The main analysis is based upon the archives of Harvey Matusow, a prominent 'professional witness' in the communist trials held in committees. He admitted to lying, in collusion with others, to perpetuate the idea of widespread Communist infiltration. Matusow described his task as a witness as having to 'convince the jury that when the Communists said one thing they meant another. One might say, surely the government's case was stronger than that. But it wasn't. It depended also upon the outside forces, such as McCarthy and the general Cold War atmosphere.'^[70] Insights such as this demonstrate how the threat was fabricated and used to gain power.

1. Emergency Measures

The passing of the McCarran Internal Security Act in 1950 was a key moment in legal change. Opponents held that it constituted prior censorship which should be forbidden by the First Amendment. Justice Black stated that 'The Amendment so construed is not likely to protect any but those "safe"... views which rarely need its protection.'^[71] The law states 'Those individuals who knowingly... participate in the world Communist movement...repudiate their allegiance to the United States, and... transfer their allegiance to a foreign country.'^[72] This means that Communists could be treated as foreign or non-citizens as they did not have citizenship of another state. This occluded the accused's invoking the constitution as it only applied to citizens. This is congruent with Agamben's discussion of power over the bare life of the individual in terms of the non-citizen located outside of normal law. The law was also changed so that courts could deny bail in all national security cases.^[73]

The Internal Security Act made the registration of American Communists and 'other subversives' mandatory, which

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many argued was in conflict with their right to a private life. Camps were built for the containment of people deemed subversive in case of 'national emergency'. [74] The defence of this Act provides an example of the reinterpretation of constitutional rights which became characteristic of the era. Attorney Wiles said, 'the charges made against this Act are that it abridges liberty, that it restricts freedom of the press and freedom of speech; that it imposes un-due restraint...It was not.. (the founding fathers') purpose to provide license to everyone to say anything.'[75] He continues, 'This government, as all governments, has the right to self-preservation.'[76] The lexical choice of 'government' implies that the administration is being protected by these measures, rather than people or nation. This indicates that much of the policy of McCarthyism was designed for political power rather than fighting a legitimate threat.

Truman's loyalty measures were retained to monitor the employees of government.[77] Additionally, state committees were set up to investigate private individuals. Senators and state officials sat on these committees. They functioned almost as a court, but were not presided over by an impartial judge.[78] The Fourth Amendment right to fair trial was not upheld.[79] The accused had to prove their innocence, rather than the prosecution proving their guilt. Many defendants chose to plead the First or Fifth Amendments for constitutional protection. The First Amendment enshrines the right to freedom of speech and the Fifth Amendment states that a person should not be compelled to be a witness against themselves and there should be due process of law.[80]

An excerpt from the Ohio Commission's own report demonstrates how witnesses who pleaded the amendments were treated,

...every witness in the category of "hostile witness" invoked the protection of the State and Federal Constitutions to evade answering a long list of specific questions... as to Communist Party activity and affiliation. In all, twenty such witnesses have been cited for contempt... Ultimately, the courts will have to determine whether the privileges resorted to by the witnesses cloaked them with the right to refuse to answer the questions put to them.[81]

Rights are referred to as 'privileges', implicitly not available to all. Matusow reinforced this by claiming that the Communist Party instructs people to plead the Amendments.[82] Many people who appealed to the amendments were sued for contempt. Another tactic of the courts was to ask a series of specific questions for hours to exhaust the witness until they contradicted themselves on any detail. They could then be charged with perjury. This was due to a change in the law insisted upon by the Justice Department which made conflicting testimony sufficient for a perjury conviction, rather than the prosecution proving a lie. [83] The questionable methods of these committees have been widely documented:

Cases are not so much investigated as tried... investigations are characterized by the badgering of witnesses, arbitrary and distorted summaries of testimony, loaded questions, unfair innuendos, and the admission of derogatory testimony and evidence without the opportunity for rebuttal. All of these are contrary to the spirit of a Constitution and a society predicated on... due process of law.[84]

In 1951, the Justice Department demanded more internal security legislation. It recommended the statute of limitations should not apply in national-security cases; that immunity from prosecution be granted to individuals whose testimony might be essential either to a national security case and that investigative agencies be permitted to use wiretapping. It was 'the unique nature of the internal security threat', the Justice Department argued, that necessitated legislative change.[85] This arguably led to a shift in national opinion against civil liberties which were seen as 'protecting traitors and undermining security.'[86]

2. The Communist Threat

Extreme measures were justified by the presentation of the Communist Party as a danger to the country. Official documents reinforced a biased view, following Der Derian's idea that governments selectively reveal information to control the political climate.[87] A report by The Ohio Commission stated, 'The Communist Party is an international conspiracy, directed from Moscow... its goal the violent overthrow of our democratic form of government.'[88] They vastly overestimated the party membership in the USA as 'numbering thousands of adherents, rigidly and ruthlessly

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disciplined.[89] This allowed the Un-American Activities Commission in Ohio to accrue powers outside normal bounds and, as in a state of emergency, to provide for the exponential increase of powers based upon perceived necessity, 'the commission shall have such additional rights, duties and powers as may be necessary'.[90] Butler's interpretation of governmentality seems to explain the location of power in McCarthyism. She holds that in a state of exception, sovereignty becomes relocated as a 'rogue power' and law is used as a tactic to accrue further powers.[91]

Documents also claimed Communists were seeking to undermine American industry and subvert preparations for war. An official report declared that, 'the Party will... fight its battle in our factories... to foment crippling strikes... to bring our machinery to a halt and to destroy the instruments of production by sabotage'.[92] This led to the vilification of the trade unions, it was widely thought that the Communist Party had rooted itself in the unions.[93] The Taft-Hartley Act required all union leaders to sign non-Communist affidavits.[94] Government gained the power to stop a strike, outlaw union shops and limit powers to take action. It has been argued that this was not genuinely an issue of national security, but designed to gain control over the workforce.[95]

Matusow played a key role in denouncing the trade unions as Communist. He falsely testified that the Mine, Mill and Smelter Workers Union was planning to call a strike to 'cripple the copper industry... on the guise of wanting higher wages, but actually to cut off production of copper for the Korean War effort'.[96] He implicated labour activist Clinton Jencks in this plot.[97] Jencks pleaded the Fifth and was convicted for falsifying a Taft-Hartley Affidavit and blacklisted. [98] His case typifies how little evidence was needed for a conviction; the testimony of just one witness. Matusow recanted his testimony, 'As an actor I knew that I first had to convince myself if I were going to convince anyone else, Jencks was the fall guy that enabled me to have a "perfect" story'.[99] Despite this retraction, Jencks did not win an appeal.

Media bias was prevalent in the era, value judgements are included in reports on suspected Communists. For example, a report on union action attempts to posit them as the enemy of society, 'The threats of these demonstrations have been a constant worry to many of the employers... There is a peculiarly hysterical, vicious and violent cast about "65" (district 65 of the Distributive, Processing and Office Workers of America)'. [100] Unions were portrayed as Communist-infiltrated bodies who sought to bring in socialist policies. It was even claimed that some, including District 65, were directly controlled by the Kremlin.[101] As Wolin argues, the accretion of powers was achieved through creating the perception of a constant threat and thus a need for increased security measures.[102]

Matusow describes the effect of the anti-Communist media saturation, 'I was now thoroughly indoctrinated, first by my new activities and then by the daily atmosphere of newspapers, radio and television, by the "revelations of subversion" revealed before Congressional Committees which I now convinced myself were true'. [103] Although American media had overwhelming anti-Communist content, it still claimed that Communist indoctrination was a real problem, 'Communist propaganda is pouring into the hearts and minds of the American people, most of whom are totally unaware'. [104]

3. Communist Infiltration

Many groups were investigated as 'Front Organisations', Communist infiltrated.[105] However most organisations had little or no relation to Communism. Therefore it seems the FBI and the Committees used this measure to investigate groups and individuals they felt could threaten the status quo. This included peace movements and civil rights associations. This extended to the media and the publication, *Counterattack*, whose role it was to name subversives. Their targets included people who had been 'too anti-fascist' during World War II and those who favoured equal rights for African-Americans.[106] Left-wing intellectuals were also vilified, Dr Dubois, an eminent black historian, was charged with being publicly representative of a 'foreign principle' as he had circulated petitions for peace.[107] Being investigated or blacklisted made a person unemployable and socially excluded. This was therefore used as social control as people became disinclined to be involved in activities that would make them appear subversive.[108]

Public fear was further heightened as the McCarthyites began to focus on the Communist subversion of American

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youth.[109] The newspapers published allegations of infiltration and recommended that churches, schools and youth organisations should be 'on guard against Communism'[110] Matusow denounced several organisations and became an expert witness on the subject.[111] To maintain this role, he claimed that the Scouts had become Communist-led. He wrote, 'As I attempted to pin the "red" label on the Boy Scouts, I was quite cognizant of the absurdity of my testimony. But I wanted the headlines, and I knew the committee also wanted them.' [112] There were no known instances of Scout infiltration.[113] He testified in 'an executive, or closed, session' which meant that, 'after each question was asked, we stopped and had an off-the-record discussion about what the best answer would be.'[114] The primary concern of the Committee was to create publicity for its work, entrenching the impression of its effectiveness and necessity.

4. Censorship and the Discourse of American Values

Even as Americans were encouraged to fear the indoctrination of their children, school texts provided a biased account of America's role in the world. A key example of this is a *Primer for Americans: Introduction to the Principles of Being American for School Children*. It begins, 'Real Americans like their country. They are proud of it. They think it a good place to live...Americans don't like either Communism or Fascism. So we want to keep them both out of America.'[115] This is followed by an explanation of why the government restricted civil liberties, 'Principles of individual freedom sometimes clash with those of individual equality. Therefore our rights as individuals must be limited.'[116] Matusow held a copy of this which suggests it was used as anti-communist material. The idea that there were principles of 'being American' taught in schools, narrowed the possibilities of acceptable opinion. Claiming subversion was undermining 'American values' reasserted that such values existed and created conformity.[117] This also follows Wolin's idea that cultural materials reinforce narrow ideals.

In 1953, McCarthy instigated censorship in America's overseas libraries after investigations into Communist content. Several hundred books were withdrawn under confidential State Department Directives including children's stories, detective novels and those concerning unflattering parts of U.S history.[118] The choice of books was seen to be selective and political, imposing limits on acceptable ideology. The precedent in using a Directive for censorship was contentious as these measures were not debated in Congress. McCarthy also censored the USA's overseas broadcasts, removing material from a Communist viewpoint. [119] President Eisenhower opposed this, and said of the authors, 'they are part of America, and even if they think ideas that are contrary to ours, their right to say them, their right to record them and their right to have them in places accessible to others is unquestioned, or it is not American.'[120] McCarthy and the State Department's ability to defy the President is indicative of a shift of power away from the leader to other political actors with differing agendas, following the ideas of governmentality.

5. The Business of Anti-Communism

Individuals outside formal politics sought to profit from anti-Communism. In accordance with Foucault and Butler's interpretation of governmentality, power is held by multiple figures in times of exception. Matusow felt being a witness was a career choice and planned his actions tactically to gain credibility, 'I was taught to go easy on accusations until I had established myself as a "reliable" witness.'[121] To maintain his position, he had to keep testifying and, therefore, fabricated evidence. McCarthy and others encouraged him. Matusow admitted, 'The way in which I presented my testimony was as deliberate and dishonest as the way I had prepared for it- with self-serving motivations governing both.'[122] Due to his prolific appearance and media coverage, he declares himself, 'a success'. [123] The motives of profit and fame seemed to attract McCarthy; his conversations with Matusow indicate he orchestrated dramatic hearings to maintain a captive audience; he suggested televised hearings daily, 'like a soap opera, leave them wanting more.'[124]

People in the media also saw the advantage of perpetuating the atmosphere of fear; new accusations sold papers. Even when publications were sympathetic to the accused, the accusation was presented as a sensational headline and the counter-evidence mentioned later.[125] New publications were created purely covering the fight against Communism. Matusow, who became an editor of *Counterattack*, described the pitch of a blacklist salesman, 'you either buy *Counterattack* or you're betraying your country... Either you were a patriot who spent \$24... or you saved \$24 "to give to the socialists"'. [126] This reflects the general atmosphere of the USA at the time; either one was with

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the McCarthyites, or with the Communists. A sentiment echoed by George W. Bush as he said, 'you're either with us or against us' in the 'War on Terror'. This reflects Wolin's assertion that a binary morality in political discourse reinforces the government's power.

6. Power Outside the Executive and the Rhetoric of War

Matusow kept extensive information on the American Legion, indicating their importance for anti-Communism. As veterans, they commanded respect and added to the impression of a military threat. They declared themselves 'prepared for war'.^[127] This reflects Foucault's concept of perpetual war; as the perception of a constant threat is reinforced, the public acquiesces to exceptional measures. Their literature was inflammatory as their description of a communist shows, 'While he may retain the physical characteristics of the rest of us... his mental and psychic processes might as well be from another planet.'^[128] This established Communists as completely unlike American citizens. By dehumanising them, their rights could be more easily subverted.

The literature of organisation such as the American Legion was widely distributed to homes and directly addressed the individual, explaining what action they could take to combat Communism, 'The World Crisis now facing us will undoubtedly be settled one way or another...It will be determined largely by what you as an individual American do this year!'^[129] There is also an element of blame; the reader is accused in one pamphlet of being 'uninformed and apathetic'.^[130] This idea of collective responsibility in combating the threat is reminiscent of a 'war effort', working against a foreign power and for the nation. This follows Agamben's claims that sovereign power grounded in emergency has become linked to a perceived state of war.

7. Conclusions: McCarthy's State of Exception

McCarthy tended not to follow the process of court cases but just latched on to popular issues.^[131] As a Republican, McCarthy was accused of fabricating constant accusations to undermine the Democratic Administration. Although he was a figure of contention, many people felt obliged to condone his methods to appear anti-Communist.^[132] He intimidated politicians and witnesses into conforming; he could destroy a career with an accusation. The atmosphere of fear made people susceptible to believing even outlandish charges as they had been repeatedly told, anyone could be a Communist, 'the larger, the more general, the more preposterous the charge, the less open it is to rational examination.'^[133]

Arguably, political power had shifted and become based on personal strength, rather than constitutional provision.^[134] The citizen could not freely be a member of any party or organisation; they no longer had a right to private political opinions and would not receive a fair trial. The constitution no longer applied for those who appealed to it, they were assumed to be loyal to another state. The methods of McCarthyism descended into an area of lawlessness in terms of the 'encroachment on executive powers and the usurpation of judicial powers; and abandonment or rejection of the usages of constitutional liberty.'^[135] The rhetoric of an imminent threat to national security, allowed this to occur. Therefore it can be established that in the McCarthy era, a state of exception did occur and was used by political actors to subvert civil liberties and gain power.

Theoretical Implications and Conclusions

Agamben's discussion of power over the bare life of the individual can be related to McCarthyism and his assertion that emergency power is based upon a perceived state of war. However, the usefulness of Agamben is limited as he assumes exceptional measures are used by the state as the holder of sovereign power, whereas in the McCarthy era, multiple actors held this power including the FBI, the American Legions and professional witnesses. A departure from Agamben is also necessary as he equates the state of exception with a suspension of the law. Constitutional rights were suspended, but otherwise the law was changed, relocated and increased as new measures were passed.

Foucault's concept of perpetual war more cogently explains public acquiescence to the state of emergency. Increased powers were maintained as McCarthy and others recognised that the immanence of the threat had to be maintained by constant accusations to heighten public fears. The state of emergency was initially designed to be

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invoked in times of war; therefore creating the idea of a permanent war justifies it perpetually. This can be seen throughout modern history, from the 'War on Communism' to the 'War on Terror'. Butler's interpretation of governmentality seems to explain the location of power in McCarthyism. Sovereignty is held by multiple actors and used without legal limits. Wolin's discussion of how power is reinforced culturally through a myth of true America illuminates the role of the media. Additionally, Der Derian explains how information is selectively presented to reaffirm political power. Much literature on the state of exception focuses on the post 9/11 era, claiming that the exception has become a paradigm of politics in modern times. However, this archival study has established that the expansion of power which occurred under McCarthyism can be viewed as an era of exception.

The archival evidence established that through political and cultural discourse, the public were led to believe that there was an omnipresent threat that endangered their society. This saw the law expanded, the constitution reinterpreted and rights limited, increasing power over the individual's life. The relation between McCarthy's war on Communism and the current war on terror becomes clear in this mechanism. Both have rhetorically exaggerated a conceptual enemy which threatens Western values, as narrowly defined by political discourse. In both instances, exceptional measures see perpetrators as foreign actors, rather than citizens. As fear of the conceptual enemy grew, other subversive behaviour was curtailed under laws designed for a specific group which in fact apply to all. Arguably, the McCarthyites achieved their aim of creating a political atmosphere in which radical and left wing opinions were made intolerable and a conservative discourse has remained dominant in the USA.

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[116] *Ibid.* p. 11

[117] R. Goldston *The American Nightmare: Senator Joseph R. McCarthy and The Politics of Hate* p. 2

[118] 'List of Banned Books Revealed' *The Washington Daily News* (Monday, June 22, 1953) *Matusow papers I Box 12 Personal Files A-B*

[119] 'Red Book Censors Rapped by President at Dartmouth' *Rocky Mountain News* (Denver, Colo. Monday, June 15, 1953) *Matusow papers I Box 12 Personal Files A-B*

[120] *Ibid.*

[121] H. Matusow *False Witness* ch. 2 p. 42

[122] *Ibid.* ch. 3 p.46

[123] *Ibid.* ch. 5 p. 77

[124] Senator J. McCarthy, quoted in H. Matusow *False Witness* ch. 17 p. 213

[125] R. Goldston *The American Nightmare: Senator Joseph R. McCarthy and The Politics of Hate* p. 97

[126] H. Matusow *False Witness* ch. 4 p. 52

[127] 'Know Your Enemy' National Americanism Commission, American Legion National Headquarters, Indianapolis, Indiana, p.10 *Matusow papers I Box 12 Personal Files A-B*

[128] *Ibid.* p. 10

[129] *Ibid.* p. 15

[130] 'Communist Fronts, Their Purpose and History' Distributed by the American Legion p. 7 *Matusow papers I Box 12 Personal Files A-B*

[131] J. Rorty & M. Decter *McCarthy and the Communists* p. 43

[132] *Ibid.* p. 51

[133] *Ibid.* p. 85

[134] A. Theoharis *Seeds of Repression: Harry S. Truman and the Origins of McCarthyism* p. 172

[135] J. Rorty & M. Decter *McCarthy and the Communists* p. 106

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