



PARADOX OF POLITICAL DECISION-MAKING: THE U.S. PATRIOT ACT AS A CASE STUDY

Siyasal Karar Verme Paradoksu: Örnek Olay Çalışması ABD PATRIOT Yasası

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Abstract

Since its passage following the September 11, 2001 attacks, the *Patriot Act* has played a key part and often the leading role, in a number of successful operations to protect innocent Americans from the deadly plans of terrorists dedicated to destroying America and its way of life. While the results have been important, the passing of the *Patriot Act* provided for only modest incremental changes in the law. As a result, the 9/11 Commission Report states “Americans should not settle for incremental, ad hoc adjustments to a system designed generation ago for a world that no longer exists” (The Commission, 2004). The 9/11 Commission has recommended significant changes in the way the government operates by using our current resources and people more effectively and efficiently, achieving unity of effort.

This paper discusses the major tension between civil rights and national security by examining the *Patriot Act* provision, Section 215, which gives the FBI unprecedented access to sensitive, personal records and any “tangible things.” In setting the agenda, the overarching tension between the 1st and 4th Amendment and the *U.S. Patriot Act* is discussed. In discussing the complexity of balancing personal freedom with national safety, the efforts of the official and unofficial actors, as well as the importance of symbols are addressed. In closing, this paper discusses some possible

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solutions of delicately balancing constitutional rights with the rights of the government.

Keywords: Public policy, Policy making, *Patriot Act*, Civil rights, National security

Özet

11 Eylül 2001 saldırılarına karşılık olarak ortaya çıkışından bu yana, *Patriot Act* kanunu Amerika ve Amerikan yaşam tarzını ortadan kaldırmayı amaçlayan ve masum insanların hayatlarını tehlikeye atan terör örgütlerinin planlarını etkisizleştirme adına önemli bir rol oynamıştır. Her ne kadar önemli amaçlara hizmet için ortaya atılmış ise de *Patriot Act* aynı zamanda mevcut kanunlarla sağlamış olan hürriyet ve güvenlik dengesinde değişikliklerin ortaya çıkmasına da vesile olmuştur. Bu durum 9/11 komisyon raporunda da “Amerikalılar bir asır önce, yasal düzenin oluşturulduğu dönemde var olmayan, sonradan plansız bir şekilde değişen durumlara karşı sistemi dinamik kılabacak kararlar almamışlardı” (The Commission, 2004) şeklinde ifade edilmişti. Devamında 9/11 komisyonu yeni idari uygulamalarda hedeflere ulaşmak ve kaynakların daha etkili ve etkin kullanılması için kayda değer değişikliklerin oluşturulmasını tavsiye etmişti.

Bu makale sivil özgürlükler ile milli güvenlik arasındaki dengeyi milli polis olan FBI’a eşi görülmemiş şekilde kişisel kayıt ve belgelere erişme izni veren *Patriot Act* bölüm 215 çerçevesinde tartışmaya sunmaktadır. Gündem, daha ziyade, ABD anayasasının 1. ve 4. maddeleri ile sonradan oluşturulan *Patriot Act* arasında ortaya çıkan muhalefet üzerine oluşturulmaya çalışılmıştır. Kişisel özgürlükler ile milli güvenlik arasındaki dengenin karmaşıklığının tartışılması, bu durumda resmi ve gayri resmi figürlerin ortaya koyduğu gayretler ve sergilenen sembollerin incelenmesi ile olacaktır. Makale, son olarak anayasal haklar ile idari uygulamalar arasındaki ince dengenin sağlanmasına yönelik bir takım çözüm önerileri ortaya koymaya çalışmıştır.

Anahtar Kelimeler: Kamu politikası, Politika oluşturma, *Patriot Act*, Kişisel haklar, Güvenlik

Introduction

Terror and terrorism have been in existence since it was discovered that people may be influenced by intimidation. The root of terrorism lies in the desire for retaliation against wrongdoers--hence, the birth of Al-Qaida. Based in Afghanistan, in 1998, Osama bin Ladin announced the formation of an International Islamic Front for Jihad against America and Israel (South Asia Terrorism Portal, 2001). The justification of the formation by Bin Ladin was that Muslims everywhere in the world were suffering at the hands of the U.S. and Israel (Katzman, 2002). According to Bin Ladin, the new Islamic Front would eventually vanquish the American enemy (Federation of American Scientists, 2003).

The *U.S. Patriot Act* (an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”) of 2001 is 131 pages of legislation that expand the powers and rights of law enforcement agencies. These expansions include wiretaps and more access to the records of your internet service provider (ISP). Also included are expansions to FISA - the Foreign Intelligence Surveillance Act. This is an existing act that allows foreign governments to spy on Americans or foreign persons in the United States. The expanded clauses allow skirting around U.S. domestic surveillance limitations. For instance, obtaining a FISA wiretap against a U.S. person where “probable cause” does not exist, especially when the person is suspected to be an agent of a foreign government. The information can then be shared with the FBI, who was unable to wiretap without a court sanctioned warrant.

The *Domestic Security Enhancement Act of 2003*, also known as *Patriot Act II* is not yet law, but promised to go even further, allowing the government in some cases to conduct warrantless searches and wiretaps. It also allows for secret access to credit reports without consent, sampling your DNA without consent, looking into your book buying and library records without consent, and even includes provisions to strip native born Americans of their citizenship if they are suspected of being linked to an organization the government has labeled as “terrorist”. The government was given frighteningly unlimited investigative power of citizens at the expense of their constitutional rights.

The *U.S. Patriot Act* is an attempt at making the United States safe--but at what cost? The first ten *Amendments* to the U.S. Constitution specify certain basic freedoms and procedural safeguards designed to protect citizens from governmental power. Supporters of the *Patriot Act* point to the necessity of a nation to defend itself in order to provide security for its citizens. Critics of the act, defend that the right constitutionally reserved to individual citizens, cannot be violated even in the name of national security. How much freedom should Americans give up in order to be safe? Once Americans start giving up freedom in small increments, will the pendulum swing toward more safety and less toward personal freedom?

The *First Amendment* states, “Congress shall make no law respecting an establishment of religion, or exercising the free exercise thereof, or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” Section 215 of the *U.S. Patriot Act* states, “access to records and other items under the Foreign Intelligence Surveillance Act.may make an application for an order requiring the production of any tangible things for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the *First Amendment* to the Constitution.” In essence, before the *US Patriot Act*, the FBI could only obtain records, now the FBI has the authority to obtain any “tangible thing.” In addition, people who are not U.S. citizens or permanent residents can be investigated solely because of their *First Amendment* activity—i.e., if they wrote a letter to the editor of a paper criticizing government policy. Under section 215, the government does not have to show probable cause. It does not need to show that you are involved in terrorism, directly or indirectly, or that you work for a county that sponsor terrorism. If you are a United States citizen or permanent resident, the FBI can obtain a Section 215 order against you based in part on your *First Amendment* activity. Wouldn't this be acceptable in order to safely protect Americans?



The *Fourth Amendment* states, “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” It protects against unjustified intrusions by the government into privacy, human dignity, including a dislike for the government; which, may motivate individuals to exercise their privacy rights (Clancy, 1998; 2008). It prohibits police from search and seizure without probable cause or a warrant. The *U.S. Patriot Act*, Section 215, states, “authority for delaying notice of the Execution of a Warrant...to search for and seize any property or material that constitutes evidence of criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if (1) the court find reasonable cause to believe that providing immediate notification execution of the warrant may have an adverse result, (2) The warrant prohibits the seizure of any tangible property, any wire or electronic communication except where the court finds reasonable necessity for the seizure, and (3) the warrant provided for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.” This circumvents what was ordinarily guaranteed by the Constitution, which requires the government to notify you before it searches or seized your records or belongings; therefore, setting the stage of the tension between the *U.S. Patriot Act* and the *First and Fourth Amendments* (Carrigan, Alex, Ward, 2008).

1. Methodology

This is a descriptive study. In addition, a mixed policy method was used, in an effort to interpret and understand the tensions between the government desiring more security measures and the interest groups persistence on personal freedom. The event of 9/11 has led to a shift, in which there is a tradeoff between security and liberty (Stone, 2002). Such an extreme tension provided a psychological environment in which people changed their degree of privacy, became more rigid to national threats, and were bewildered as a result of the most serious terrorist attacks against the United States. Accordingly, in conceptualizing the issues of the psychology surrounding the *U.S. Patriot Act*, selected data sources were used to develop a framework. Data was gathered from the context derived from the discussion group and other available literature.

1.1. Brainstorming

The group consisted of 4 researchers coming from a different culture, country, and profession. Everyone was actively involved in discussing the 9/11 event and the *U.S. Patriot Act*. The researchers had two sessions to discuss the topic and prepare questions. After gathering and reviewing the questions, we organized the following questions. The initial question was, “What do you remember about 9/11?” Everyone discussed their personal feelings and the characteristics of the event from their perspective. As a result, some specific terms came out as a result of the lengthy conversations; such as: security, liberty, interest groups, world trade center, pentagon, power of the president and government, war against terrorism, electronic surveillance; and patriotism. Our next questions were, “How do you articulate the situation?” and “Do you think the *Patriot Act* has been a good policy, as a result of September 11th?” In addition, the question was asked, “What has changed

in comparing pre 9/11 and post 9/11?” In throwing out questions, everyone in the group freely interacted; therefore, we could obtain face validity on the information and the context reviewed. Interestingly, the answers for these questions and the arguments to the answers were a result of the literature review and remembering the events and situations surrounding 9/11 and the *U.S. Patriot Act*. The points and issues were summarized and by the end of the second meeting, the researchers asked, “Have we missed anything?”

Although we approached the policy problem from different perspectives, brainstorming allowed the researchers to set the primary framework that was followed throughout the study. Also, as a result of brainstorming, group members could release their metaphors against the nature of the 9/11 events and the *Patriot Act* before constructing the primary framework of the study. Accordingly, Stone (2011) was utilized as the primary road map to frame our study. It was better to have an in-depth discussion among the researchers before going through the literature (Patton, 2002; Longhofer, Floersch, & Hoy, 2012). The primary aim is to be able to bring a comprehensive context into the study and to enrich the arguments.

1.2. Descriptive Literature Review

Clearly, the essential data derived from the discussion group has been descriptively reviewed from the literature. The context and terminology discussed in the group became our guideline to search reliable and valid data from the literature. Once we comprehended the characteristics of 9/11, we were able to articulate the issues appearing around the event and interpret the policies offered to fix the problematic areas. Data and methodological triangulation have been utilized to minimize the weaknesses of any particular policy analysis techniques.

The sources for this policy analysis consisted of the concerns of the unofficial actors, and the arguments of executive branches. In addition, the findings of the judicial branch (i.e., Supreme Court cases), the sources for legislative branches, some descriptive statistical information, and the views of media were used. Various data examined the situation from different perspectives. Media news, for instance, discusses the current situation of the *U.S. Patriot Act*, and let the researchers realize the change in the perception of the American society. The 9/11 Commission Report (2004), on the other hand, makes a very clear picture for the reasons and characteristics of such a terrible event. The Commission Report was a descriptive study that included interviews and narratives, in addition to offering strategic changes in the structure of intelligence agency.

1.3. Stone's Framework

The focus is on the following points: Market and the Polis, Goals, Problems and Solutions. In keeping with Stone's (2011) framework, this study looked at security versus liberty trade off, and how that temporally changed the characteristics of the society. Although this study primarily uses the framework the same way Stone (2011) traces in her book, this study eagerly borrows some various perspectives from other public policy methodologies congruent with nature of this study; such as, Birkland (2011), Kingdon (2010) and Bardach (2012). Kingdon emphasizes that trigger events as a major source of initiating new policy, and such events might lead to immediate policy decisions. Bardach (2012) expects to optimize and enhance the policy alternatives before reaching an actual one. Bardach (2012), on the other hand, does not involve the unofficial actors into the policy analysis. Instead, he just refers



to professional analysts who gather the policy problems from official actors. This study enhances its methodology by adding the ideas of Bardach, in terms of the unofficial actors. In addition, this study used some insights from Kingdon's methodology to enhance Stone's framework. Stone framework was more favorable to interpret the events and situations surrounding 9/11 and the *U.S. Patriot Act*. While Stone brings out the essential ingredients of this particular policy, her framework for this particular issue may not be enough to open the policy window as indicated in Kingdon's book. After analyzing the case through Stone's lenses; this study realized that goals, problems, and solutions should be interpreted as policy streams in order to reconsider the current policy. However, Kingdon clearly expects to identify the policy agenda through the intersection of these various streams (problems, current policies, and politics), noting that they act separately until they reach this joining point. Stone also expects to open the policy window at this point.

Interestingly; symbols, causes, decisions, and interests address the policy failure of 9/11 and the *U.S. Patriot Act*. Although, this research concentrates on security as a goal of this particular policy, Stone (2011) recognizes equity, efficiency, security, and liberty together, which is one of the aims of the *U.S. Patriot Act*. In doing so, there are comprehensive elements of security versus liberty trade off and the characteristics of both the polis society and the market society. This study notices the temporary changes among the American society due to both 9/11 and the *U.S. Patriot Act*, and addresses that the act passed for the polis society of the United States. In addition, Stone's (2011), "Policy Paradox," is better equipped to address the tensions amongst the stakeholders.

1.4. Limitations

The researchers were aware of the secrecy that is among the law enforcement and intelligence agencies against terrorism. This in turn, made it hard to obtain quantitative data. The lack of such information may have limited the researchers' interpretations concerning the tensions between the stakeholders. Interestingly, government documents were obtained from the interest groups' web pages, recognizing that these documents may be vulnerable to biases.

The policy issues ignited very diverse complications amongst policy stakeholders, political institutions, security agencies, and interest groups (Barrington, Bosia, & Bruhn, 2012). This study, therefore, establishes a policy bucket that consists primarily of Stone, Birkland, Kingdon, and rarely Bardach. Each policy flower brings its pollens into the methodology, allowing the development of the framework; in order to understand the issues, events, and situations surrounding 9/11 and the *U.S. Patriot Act*.

2. Literature Application

2.1. Market and the Polis

The polis model focuses on collective (public) interests, while the market model is to maximize self-interest. While the September 11th tragedy united one group of people-- it divided others. The question continues to arise: How much are Americans willing to relinquish of self and liberty for the sake of public safety? The relationship between self and public interest is going to be dependent upon the forces of influence, cooperation, and loyalty (Stone, 2011). The necessity for negotiation and compromise between competing

points of view will have to become necessary (Ripley, Randall, and Grace, 1991), if the goal is for a safer America. In politics, relationships are not so fluid, where cooperation is central to the model of politics. This brings to light the importance of alliances and the importance of power (Stone, 2011). The polis is a community with the people having the same vision of freedom and choice, but those the individuals make will affect the community in which they live. Hence, the paradox between liberty and security has been realized. In order to have security, there has to be a trade-off with liberty and hence the creation of problems. A compromise was approved by the key negotiators: the president and the bipartisan 9/11 Commission, which would create a powerful position to oversee the CIA and several other nonmilitary spy agencies, brings to light the importance of the legitimate powers the government would have to interfere with citizens choices. The question arises when should personal civil liberties override the security for the community? Stone (2011) states that, "power, wealth, and knowledge are the prerequisites to liberty." In other words liberty in the polis is a matter of degree.

Those with more power, wealth and knowledge have more security. In conclusion, we must remember through different venues, information has become available to the citizens concerning the *U.S. Patriot Act*; but in the polis, the information is never complete and there is no way to anticipate the side effects and the long-term consequences of the act so we must remember that information is very often deliberately kept secret.

2.2. Security as a Goal

The *U.S. Patriot Act* main goal is to ensure the security of the United States and its citizens within its borders. After September 11th, the prevention of another terrorist attack has become one of highest priorities of all Americans. For the executive and legislative branches, extended law enforcement powers are inevitable for a safer country. As a result, the *U.S. Patriot Act* was enacted as a final version of a series of legislations shortly after September 11th. The act would increase security against terrorist threats through the use of extraordinary powers, which were given to the law enforcement and intelligence agencies. It has a profound impact on law enforcement agencies to work in pursuit of the administration's goal (Kingdon, 2010). It has spawned new responsibilities by emphasizing information gathering in order to act proactively through the use of new powers (Bahadur, Chan, & Weber, 2002).

The executive and legislative branches have legitimate responsibilities and powers to make and enforce policy (Birkland, 2011). They came to the conclusion--terrorism jeopardized the security of the United States and its citizens. Stone (2011) states, "the quest for security brings a sense of urgency to politics and is one of the enduring sources of passion in policy controversies (p.69)." The terrorist attacks on September 11th created a crisis, which generated the opportunity for the chief executive to pursue the new policy (Vanhorn, 1992). According to Vanhorn (1992), the U.S. President, as a chief executive, is dominant in the political agenda with the greatest powers available in the times of crisis. His role was symbolic during the crisis and very important for the country because his actions made people feel safe. Therefore, in the time of crisis, a trigger event opened a window for the new act (Kingdon, 2010).

In Maslow's (1943) need of hierarchy, physical satisfaction and security are the most urgent ones and therefore take priority over the higher order needs. According to Stone



(2011), needs are the most fundamental political claim and societies decide whether they are real or legitimate through politics. Since the new legislation responds to the issue of security needed for the country and its citizens, it is a solution for a problem--security during the time of crisis. Therefore, a majority of the Senate voted for the new policy (lifeandliberty.gov).

Considering the nature of the act, demonstrated that most of the members of Congress believed that security is the most important goal and there is a trade-off between liberty and security (Stone, 2011). This is an example how the government curtails one's liberty in order to promote security. According to Stone (2011), the liberty security trade-off seems inescapable because without the security of having one's basic needs met, a person cannot make free choices. In addition, she states that security undermines the liberty of an individual, but also appears to be necessary for it.

2.3. Problems

In the polis, problem definition is not simply defining and measuring goals, rather it is what these goals represent. As with the *U.S. Patriot Act*, which represents a situation that has a wide range of goals and can be portrayed from many points of view, such as: interest groups, governmental agencies, and individuals strategically use the new agenda to promote their agenda? Stone lists five problems in the policy agenda: symbols, numbers, causes, interests, and decisions. This paper will present four.

2.4. Symbols

According to Stone (2011), symbols are the means of influence and control in the policy process. An effective symbolic vehicle can shape the perceptions on policy issues. In fact, policy rhetoric includes numerous symbols to enhance arguments and to provide the politicians with a relatively large advantage to simplify the complex issues (Birkland 2011). Therefore, symbols are more likely to ignite the concerns and brought forth conflicts with the American people to make it more convincing to pass the *U.S. Patriot Act*. In this study, symbols are categorized into event-oriented symbols and policy-oriented symbols.

The symbols for the event included the trade center and pentagon. The terrorist groups did not randomly select the trade center, as it symbolizes the philosophy of the United States. Likewise, the pentagon symbolizes the power and the intelligence system of the United States. The policy-oriented symbols are: the President's power, national security, war against terrorism, American patriotism, and 9/11. Such symbols have had an impact on the decisions that affect the security versus liberty trade off. These symbols might have been initiated to change the balance of the trade off and to increase security. Currently, American society and interests groups are questioning the current level of security and its impact on liberty. Symbolically, liberty counteracts this situation, which awakened society against the *U.S. Patriot Act* and its components. The event of 9/11 has become another symbol to remind Americans of the catastrophic event of the terrorist attacks and international terrorism.

2.5. Causes

Stone (2011) states, "Causes is about the language of cause effect, and responsibility."

Causes are a language unto itself; it is a story of how a problem came into existence. During the crisis of the September 11th terrorist attacks, the *U.S. Patriot Act* was enacted for the sake of the security of the country and its citizens; however, some aspects of the act created risks for American's civil liberties. In order to aid in terrorist investigation, the *U.S. Patriot Act* of 2001, allows the government to monitor political groups without evidence of criminal activity, jail citizens indefinitely without a trial, sneak into someone's house or office, search the contents without probable cause, and leave without ever telling the owner, and to monitor penal communications between attorneys and clients (Scheeres, 2002).

Moreover, the new legislation destroys the "presumption of innocence" by generating a suspect class of "terrorist." It redefines the terminology of "terrorist" and "terrorism" so broadly that an individual's *First Amendment* right to freedom of association and expression might be seen as criminal behavior. In addition, the increased surveillance allows for the invasion of privacy (Coates, 2002).

As we can see, there is an overemphasis on security, which has an affect on liberty. Sobel and Condon (2001) argue that the expansion of new extraordinary powers for law enforcement agencies constitutes a radical departure from the *Fourth Amendment* standards. Although the new legislation aims to enhance security (against the threat of terrorism), its powers are very sweeping, and have drawn concern from civil libertarians because they give law enforcement agencies too much leeway to collect private information on people during their investigations (Olsen, 2001). Therefore, increasing the use of the new powers to law enforcement agencies will impact the public and cause concern about their civil liberties and privacy.

In a civilized society, achieving a proper balance between security and liberty is of utmost concern. This balance can shift to some degree in favor of security in wartime, however, civil rights groups worry that tough new laws may be difficult to change once they are enacted. The problem is whether government agencies with the power of the *U.S. Patriot Act* can protect people from harm without restricting their liberties.

2.6. Interests

Problems are also portrayed as a contest between competing interests. It is a contest between those that have the power and those that don't, but most importantly it is a measure of strength (Stone, 2011). According to Stone (2011), interests are groups that have a stake in an issue or are affected by it. She has classified the definition of "interest" as subjective (things people believe affect them) and objective (things that affect people even if they do not know about it). The driving force for this new legislation was described beforehand.

As Kingdon (2010) states, ideas are best described as a range of alternatives and possible solutions. It is important to push and pull the interest groups in affecting the essence of public policy. With the help of interest groups, there might be possible alternatives and solutions to the security problem, before it was raised and placed on the government's agenda (Birkland, 2011; Kingdon, 2010). However, in the aftermath of the terrorist attacks, there was a crisis, and an urgent solution was needed to protect the security of the country and its citizens'. Consequently, a series of new legislations were enacted in a very limited time. During that time, the effect of the media was not despised (Vanhorn, 1992; Kingdon, 2010). The use of media increased the security concerns of both the executives and the citizens. Time limitation, media effect, and shock of the terrorist incidents reduced the ability



of public opinion to form alternatives (Kingdon, 2010).

According to Stone (2011), liberty is another important goal of public policy where the tension between individual purpose and collective result is most pronounced. Although those malicious attacks have prompted calls for the expansion of extraordinary powers for law enforcement agencies to combat terrorists, the use of these powers has also raised public concerns about their effect on individuals' liberty and privacy. For example, civil liberties groups have expressed concerns over new laws that give law enforcement increasing powers to collect citizen information and put ordinary citizens at risk (Associated Press, 2001). Civil liberties activists in the United States are concerned that radical innocent individuals will be singled out by the system which challenges the right to privacy and the right to engage in certain activities (Waak, 2002). If this occurs, it could create a climate of psychological fear among United States citizens similar to that experienced in totalitarian regimes. Also, many citizens might have concerns as to whether or not the government agencies use of advanced powers is in violation of their liberties and privacy rights.

These concerns affect people both emotionally and psychologically. Emotional and psychological effects are equally difficult to grasp yet important as a type of harm (Stone, 2011). Although psychological effects of increasing the use of (surveillance) powers of law enforcement agencies on public are not measurable, public opinion surveys can measure public's concern of losing their liberties. Public opinion surveys show that Americans' attitudes towards their liberties altered during the first few months of war on terrorism. A few days after the September 11 attacks, a CBS and New York Times survey found that 79 percent of Americans were willing to forfeit their personal liberties to fight terrorism (Scheeres, 2002). Shortly after the attacks, 53 percent supported more law enforcement powers; however, in December 2001, 48 percent supported more law enforcement powers and 44 percent thought that surveillance would violate rights (Toner & Elder, 2001). Later, in February 2002, a Harris Poll showed that 63 percent of respondents thought current laws were inadequate to protect privacy (Epic.org, 2003b). As seen from these surveys, right after the terrorist attacks, American citizens were in favor of the new legislations to protect their securities in times of crisis, but as time passed their support of more law enforcement powers has waned. They started to be concerned for their privacy again and found the law inadequate to protect privacy rights.

2.7. Decisions

According to Deborah Stone (2011), the rational model of decision-making is the best means to attain a given goal. Rational models of decision-making are prescriptive rather than descriptive or predictive; they define policy problems as decisions, and they purport to show the best decision to solve the problem (Bardach, 2012; Stone, 2011, & Kingdon, 2003). The ideal of perfect rationality would require a person to consider all possible alternatives, and evaluate all the possible consequences of each (Kingdon, 2010). Stone's decision model does not look into where the problems come from and which one will be considered as possible candidate for the actor's choice. The essence of the model is to calculate the consequences of different alternatives and choose the one that yields the best results. When we look at the USAPA from this perspective and considering the interest groups' statements about the privacy concerns, we can infer that the act is not a perfect rational model. From this statement, Stone says the decision model chosen assumes that the entire relevant

considerations in a decision can be captured as consequences of the various alternatives. If we think that there are important considerations besides the consequences of our actions, then to that extent, the model will be unsatisfactory.

3. Solutions: Rules, Rights and Power

The *U.S. Patriot Act* emerged as a solution to an existing security threat, which can be considered as a shift from market model to polis model (Stone, 2011). As explained by Stone (2011) in the polis, “crisis creates a mentality of absolute prevention, and people want to stop that kind of thing from happening again”. This overarching idea is what led congress to pass the act with such a great number of votes. According to the senate vote, results on the *U.S. Patriot Act* was 100% of the republicans voting yes and 96% of the senate democrats voted for yes for the act. Also, 96% of the house republicans voted yes and 69% of the house democrats voted yes (lifeliberty.gov), which shows a total consensus on the act. In this example, we see a window of opportunity for policy change and growth as a result of the coupling of the problems: terrorist threats and the politics to ensure more security in the policy stream (Kingdon, 2010). Focusing events are important because they are one of the key triggers to open the policy window. While the events of September 11th provided the impetus for change, the threat of terrorism was already well established in the policy stream, and September 11th event only threw open the window of opportunity for policy change based, in large part, on preexisting ideas.

The rules that are a result of the act, aims to strengthen communication, cooperation, and coordination at every level of intelligence and law enforcement, so that law enforcement agencies have the necessary tools to defend the country. Stone (2011) explains rules as “commands to act or not to act in certain ways” and in broad terms, they are classifications of people and situations that determine permissions and entitlements. She also states, the dilemma that policy makers confront when making a rule instead of leaving things to discretion, and how to make a good rule that helps accomplish their purposes. To explain the dilemma of the policy maker, Stone (2011) mentions different ideas about rules. Among the models, the *U.S. Patriot Act* fits the rational ideal of the optimum social balance between discretionary power and control by formal rule and perfectly precise rule, which may have some certain problems. According to Stone (2011), the optimum social balance model over emphasis security threats, which may cause discretion by the bureaucrats. This means that the accountability of bureaucrats needs to be considered (Birklands, 2001 & Lipsky, 2010). Stone (2011) states that the discretionary powers of law enforcement officers deemed necessary to do their job is surely not the same as what arrest suspects and their defense attorneys think is necessary. For Stone (2011), the problem of perfectly precise rules are that we cannot fully anticipate all future circumstances in which a rule might have some bearing; more importantly, our goals change as circumstances change, and what people expect and what they find may change.

The act substantially increases the police power of domestic and international U.S. law enforcement and intelligence agencies. Because it has eliminated many of the checks and balances that allowed the judiciary system to ensure that state police power is not abused, this bill has come under strong fire from civil rights movement organizations and many see this legislation as a threat to individual rights that are protected by the *1st, 4th, 5th, 6th and 14th Amendments* to the U.S. Constitution (Coates, 2002).



Stone (2011) explains rights as strategies that allow individuals or groups or organizations to invoke government power in their behalf. From that point view; on one side is the citizen's right to live in a secure environment and on the other side, the right to live without any interruption to their privacy (Stone, 2011). Critics of the bill focus on its lack of adequate study and hearings of expert-commentary (Coates, 2002). Those increased concerns shows us that after a passage of time, the September 11th trigger event, shifted from the polis model back to market model in which the priorities of the people changed, and people started to consider that their privacy and civil right are also important besides security. Considering those factors, members of Congress also shifted their views, which are barely seen on recent action of republicans on November 20, 2004. They have blocked passage of legislation addressing the September 11th Commission's terror-fighting recommendations to President Bush ([http://abcnews.go.com/ Politics](http://abcnews.go.com/Politics)), which may be considered as an indicator of the future behavior of Congress. There will be many other bills that will cause the same concern, as people float around in the "policy primeval soup," it may be anticipated that the bill which has met several criteria with their technical feasibility, their fit with dominant values and the current national mood will survive.

With the *U.S. Patriot Act*, there is also a shift in power. Power describes strategies that seek to alter the content of decisions by shifting the process of decision making to different people (Stone, 2011). These strategies include changing the membership or size of decision-making bodies. It has also been seen as providing for the expansion of executive powers and broader authority for the federal government (Coates, 2002).

There are some ethical dilemmas of the act as well (Weimer, Vining, 2010). There is a benefit to security, but also a cost. People, who pay the cost, may face the loss of their civil liberties. This situation brings quandaries to the government about how it can be pure and perfect in everything it does. To provide benefits in a one-way government may act against others. Public officials may implement the law in a wrong way to promote the greater social good (Radin, 1997). This issue surrounds the dilemma involved in an administration commitment to a wrong to further good political ideas. Implementation of the law, at the hands of a street-level bureaucrat is the point at which public policy becomes subject to interpretation and decision (Lipsky, 2010).

Summary

In this study, we focused on the fact, that with the USAPA, the American community turned from a market model to a polis model, with the sense of preventing another occurrence, as 9/11. When we compare American's current behavior to their behavior at that time, we see another change; the American community switched back to the market model, and they started to consider the possible threat to their privacy which was brought on with the passing of the USAPA (Stone, 2011). The US *Patriot Act* has been offered as a solution to the existing national/international terrorism threats. That is, such focusing events might be a centrifugal impact on shifting from market model to polis model. Stone's lens helped the study discern such a changeability of market and polis society.

This study is a mixed policy model after gathering the comprehensive data through in-depth group discussion and a descriptive literature review. Initially, group members had some biases against 9/11 and/or The *Patriot Act* due to the various backgrounds.

Brainstorming, therefore, allowed the members of the group to minimize their biases against the policy issue. The literature review, on the other hand, covered the various data sources to address the various perspectives of official and unofficial actors, and the methodologies of policy analysis. Accordingly, the data and methodology triangulation has been the main pillars of the policy framework in the study. In choosing a framework for this study, the application of Stone's model was able to fortify the mainframe of the issues and was a better fit than Bardach and Kingdon. Through the insightful lenses of Stone, this study has interpreted the policy streams of Kingdon which discerned the temporary change of the tradeoffs. Using this methodology, has been restricting to some degree, but was enriched by the mixed policy model.

The use of the mixed policy model to discern the events and situations was an appropriate platform. It has not completely mirrored the Stone's policy model, but has adopted it into the nature of this phenomenon by conveying the thoughtful contributions from other sources. This study could not extend its arguments through the quantitative findings to determine to what degree the *Patriot Act* has been utilized against terrorism. The secret nature of its utilization has been the most important barrier to realize the level of its use. Further, both governmental and non-governmental documents have been vulnerable to subjective biases.

Symbolically, this study has utilized the events and policy terms as symbols to discern the closely related concepts in the policy issue. The level of perceived liberty (as a symbol) has been the primary factor to alter the existing balance of trade offs. Using Stone's model was excellent in understanding the extreme edges of perceived liberty. Such a symbolic balance in the tradeoff between liberty and security should be taken to an optimal level. This study realized that the *U.S. Patriot Act* only promotes security measures to protect the United States against terrorism. As a main goal, the way to perceive security in the time, has directly aligned the considerations of the executive and legislative branches, and resulted in extensive law enforcement powers.

In terms of causes, this study noted that during the crisis of the September 11th terrorist attacks, the *U.S. Patriot Act* was enacted for the sake of the security of the country and its citizens; however, some aspects of the act created risks for American's civil liberties. That is, the traditional probable cause has been ignored according to the act. The aim of security might directly cause a deficiency of previous legal regulations.

The first ten *Amendments* to the U.S. Constitution declare certain basic freedoms and procedural safeguards designed to protect citizens from governmental power. Supporters of the *Patriot Act* point to the necessity of a nation to defend itself in order to provide security for its citizens. Critics of the act defend that the right constitutionally reserved to individual citizens cannot be violated even in the name of national security.

This poses a unique problem. How much are Americans willing to forsake of their 4th *Amendment* rights in the name of public safety? The relationship between self and public interest is dependent upon the forces of influence, cooperation, and loyalty (Stone, 2011). Stone further states, "It is hard to motivate people to undertake private costs or forgo private benefits for the collective good, whereas in the market, the commons problems are the exception rather than the rule" (Stone, 2011).

From legal perspectives, the courts should ensure that the Constitution's protections, contained in the *Fourth Amendment* notions of a "reasonable expectation of privacy" for all



citizens, would remain vital in the twenty-first century regardless of surveillance technologies that the nation's law-enforcement agencies may develop. They must continuously be vigilant in balancing the rights of individuals against the criminal justice systems' need to protect citizens against both internal and external threats.

Hastily creating solutions regarding the war on terror may fail to address the critical balance between liberty and security can cause long-term conflicts that have not been discussed to date.

In closing, this is not the first time that the United States has faced security problems. In 1798, as a result of an impending conflict with France, Congress passed the Alien and Sedition Acts to allow the president to have aliens arrested and deported, and fine or imprison anyone who criticized the federal government. During World War II, President Franklin Roosevelt ordered the arrest of thousands of Japanese Americans who were then placed in internment camps for the duration of the war. The United States has become aware that global terrorist activities can also have an impact on their national and personal security. Before 9/11, the United States did not expect to face terrorist attacks like the people living on the other side of the world. As indicated in the 9/11 Commission Report, it was a lack imagination of the American society and the U.S. government.

This study, therefore, hopes to improve the policy literature, thanks to the unique methodology of policy analysis for this complex, catastrophic, and emotional event. The last rejection of Congress on regulating the Intelligence agencies seems a strong signal that supports the arguments of this study in terms of the shifts or tradeoffs. In the end, there will be many other bills that will be introduced, which will continue the security-liberty debate; but among them, only those which have met several criteria in their technical feasibility, their fit with dominant values, and the current national mood will survive.

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