"*SUFFERABLE*" OR SATISFICING? HARD POLICY CHOICES WITHIN THE USA PATRIOT ACT OF 2001

Breena E. Coates, Ph.D.
School of Public Administration and Urban Studies
San Diego State University

Abstract

The USA Patriot Act (2001) has the laudable mission of providing national security and stability. Yet many see this hastily crafted legislation as raining down collateral damage upon individual rights that are protected by the 1st, 4th, 5th, 6th and 14th Amendments to the U.S. Constitution. It has also been seen as providing for expansion of executive power, and a broader authority for the federal government. Those that argue in its favor claim that the government was confronted with the quandary known as the lesser-of-evils—i.e., given policy choices where no alternative is optimum, it satisficed by choosing the least evil to preserve the national welfare. The policy outcomes so far reveal that people got a policy that was at best not even satisficing but merely sufferable. The paper discusses the implications of the USAPA.

1.INTRODUCTION:

Many social dilemmas, such as abortion, euthanasia, gun control, etc., are really fundamental questions of ethics with strong values that are intransitive and dichotomous. They often involve the clash of ideals, between, for example, individual and collective choice, or between groups. In a pluralistic society, such as ours, such conflicts are inevitable and generally quite useful(1) Yet, the net result of this multiplicity of interests, makes administering public policies much more difficult (Madsen and Shafritz, 1992). It is difficult because on the one hand we have the *teleological(2)* politically-based ideals of security and stability that are embedded into the legislation, which no reasonable person can dispute. On

Public Administration & Management:
An Interactive Journal
7, 3, 2002, pp. 211-228.

the other hand, we have the *deontological(3)* obligation-based concepts of liberty, equity, due process, freedom of speech, privacy, etc., that are values which are often compromised the process of administering and managing public policy.

The Problem of "Satisficing" a Policy Issue:

In the public policy field we have become familiar with the notion that policy decisions, especially those dealing with complex (Mitroff and Sagasti, 1973), ill-structured, and highly-politicized issues, satisfice—rather than optimize(4) (Simon, 1991)(5). With the Patriot Act and others like it(6) one might argue that the notion of "satisficing" possibly implies a far too positive characterization of quandaries of the lesser-of-evils(7) category, where utilities are not transitive(8), (9). In these instances the outcomes are interpreted less as satisfactory and sufficient and closer to being *Un*satisfactory + *In*sufficient by social groups of various persuasions.

This suggests that a less positive connotation may be appropriate in referring to policy decisions whose outcomes we must suffer and endure, because one "evil"—or difficult choice—was chosen over another. In which case, *sufferable* (Sufferance + Endurable) may be a better choice of terminology. It connotes the policy decision that is less than satisficing, and one that also elicits much highly-charged emotion(10) and dismay on many sides. This could well be the case in such areas as security vs. individual rights, as in the Patriot Act.

The Policy Issue:

Following the terrorist activities of September 11, 2001, we, the people, and our government faced a quandary—the issue of national safety and security on the one hand, and individual rights and liberties on the other. American citizens were devastated over the September 11, 2001 terrorist attack on the nation, not only for its human toll, which was painful enough, but also for the collateral demise of the sense of security and invulnerability within this nation. This sense of security had been given a massive blow with the 1993 bombing of the World Trade Center, and the latest attacks on the civilian population in the United States sounded its death knell.

In order to restore security and stability, Congress passed Public Law No. 107-56, the USA Patriot Act (USAPA) also known as the Anti-Terrorism Bill. President Bush signed the bill into law on October 26, 2001. The intent of this bill is stated as follows: *"An Act to deter and punish terrorist acts in the United States and around the world, to enhance investigatory tools, and for other purposes."* This bill has laudatory political ideals behind it. Its very name—the USA Patriot Act—makes a plea for patriotism, and also secondarily, makes it difficult for one to criticize such a bill for fear that one might *not* be considered patriotic. Yet, in a free and open democracy such as ours, other worldviews inevitably and simultaneously must prevail regarding liberty costs. While deterrence as the objective of this new law is supported by all, many believe that the passage of this anti-terrorism law has deeper implications for the political curtailment of individual rights in this country. Critics of this bill assert that legislation was rushed through Congress(11), without adequate study and hearings of expert-commentary on the vast majority of sections included therein(12).

The bill, consisting of Titles I-IX, is 343 pages long. It is far-reaching in scope. This legislation makes changes to over 15 statutory laws in small and large ways. 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(13) that allowed the judiciary to ensure that state police power is not abused, this bill has come under strong fire from civil libertarians. The center for Democracy and Technology (CDT) notes, "There is potential for serious collateral damage to our Constitution." A similar sentiment was earlier expressed in *Brown v. Glines* (1980)(14)when Justice William Brennan observed, *"The concept of military necessity is seductively broad and has a dangerous plasticity. Because they invariably have the visage of overriding importance, there is always a temptation to invoke security 'necessities' to justify an encroachment upon civil liberties. For that reason, the military-security argument must be approached with a healthy skepticism."*

The "lesser-of-evils" camp also may see this legislation as a slippery slope, as have the policymakers. Policymakers have shown some concern by including sunset language provisions in this bill for the year 2005. This, however, say critics, will not help, as the provisions can be reinstated. Both sides of the debate face the ultimate quandary of public policies—i.e., the

quandary of values in public policymaking that involves choosing between values—i.e., between the social good of security and stability vs. the individual good of liberty—each of which on its own would be considered desirable. However, those who support the legislation say that in this instance—i.e., at a time of great trauma to the nation—there were an array of choices that the government encountered, but none of which could have been considered optimum. In choosing between alternatives, they chose the one that does the least harm. This is the "lesser-of-evils" principle (Madsen and Shafritz, 1992).

2.COLLATERAL DAMAGE TO INTELLECTUAL LIBERTY:

Intellectual freedom of expression is one of the liberties that is likely to take a hit from the USAPA. This also includes the freedom of universities, and individuals and groups within them. A number of issues are worrisome in this regard. These are divided into general concerns and specific concerns:

General Concerns:
Generating a Suspect Class:

It must be acknowledged that the government has done an excellent job in reaching out to communities via television and other advertisements, asking the general population to refrain from unfairly targeting minority citizens who are either Middle-Eastern, or look like Middle-Eastern peoples. This followed in response to several incidents around the country where people were randomly selected for retaliation based entirely on visual characteristics—color, physiognomy and and dress(15),(16). Schools, colleges and universities are some of the common venues where Middle-Eastern, and other races (in addition to those who might simply look Middle-Eastern) generally cluster. Thus, universities, colleges, schools and other public venues in California were closed after the bombings to prevent retaliation. Yet, now via the USAPA, the government itself targets (what amounts to) a *suspect* class of its own citizens without providing the proper legal safeguards statutorily and constitutionally. Examples of American-Japanese in World War II, the Chinese-Indians during the Indo-Sino conflict of the 1960s, and others come to mind.

Redefinition of Terminology:

Amnesty International argues that some of the definitions of "terrorism" or "terrorist" used in the legislation are so broad they could be used to criminalize anyone out of favor with those in power. The first Amendment's right to freedom of association and expression might well be compromised—especially in intellectual circles (*ibid*, 11/29/01). There are new, as well as three expanded, definitions of terrorism. In Sec. 802, the definition of domestic terrorism raises concerns for intellectuals engaged in legitimate activity, which could result in terrorism charges, especially if violence has occurred. The Patriot Act expands other definitions of terrorism for acts transcending national borders, and on federal terrorism. These will expose more intellectual activity to surveillance and liability for "harboring" and "material support."

Destruction of Presumption of Innocence:

One cannot help but agree with Attorney General Aschcroft's claims that individuals who commit terrorist acts must be apprehended and brought to justice swiftly. Yet, the Patriot Act sweeps in with a very broad brush even "*suspects*" into this class of people—i.e., those who have not yet been proven guilty. This circumvents the guarantees under the Sixth Amendment (17) in the Bill of Rights that accrue to any individual in a civilian or military court. It is thought that the Patriot thus damages the presumption of innocence doctrine(18).

This paper looks at several issues with particular reference to certain institutions that might be impacted more than others—for example intellectual sites, such as colleges, universities and their faculties and students.

Specific Concerns:
Increased Surveillance:

The legislation extends surveillance powers from written records to electronic sites. This in itself is not out of order. Government must keep up with current technology use, and unlike prior anti-terrorist statutes, today much of the work of higher education is conducted electronically. How can the field agents measure intellectual curiosity (the legitimate backbone of

research) versus true evil intent? Some confusion might easily be possible. The government now may also tell a judge that someone is a suspect merely because they have peeked at him or her browsing the web and that the information being sought is "relevant" for criminal investigation. Furthermore the government is not obligated to tell the individual that it is doing a sneak peek. For example, might a professor teaching about terrorism, have a module of her curriculum picked up at random, without regard for the entire content, and she, herself, become a target for surveillance? Any number of courses in the areas of political science, sociology, and other related social science disciplines can, and *do*, carry such material. In doing her professional duties and carrying out her research, were our hypothetical professor to attend some political rally, would she be under more scrutiny? Herein lies the worry over the interpretation of the data. What about medicine or biology, where a student or professor could be doing legitimate research on a suspected pathogen? Already these people are subjected to various kinds of research controls. Can the federal government now step in and search and seize laboratory research? It is easy to see how the problem could escalate. Under this legislation, Internet Service Providers (ISPs) network administrators, and organizational elites can authorize surveillance of "computer trespassers" with judicial order. The FBI and the CIA can also go from one phone to another, and one computer to another without the showing of relevance of criminal investigation.

Invasions of Privacy:

An intellectual being interrogated is no longer entitled to attorney-client privilege, where discussions between the two are held in confidence. It brings to mind the privacy violations of individuals during the McCarthy era, and the FBI investigations of Martin Luther King and other civil rights groups in the 1960s—where confidential information was taped. Furthermore, university lifestyle is conducive to mixed racial marriages. Will the federal government now be permitted into the bedroom of a faculty member who is married to a person from a suspected class to ensure safety and stability of the nation?

It is also important to note that this law supercedes existing state and federal privacy policies if the FBI deems it necessary to obtain information connected to an intelligence investigation. Under its Titles, I, II, V-IX,(19)

authorities may browse through medical, financial and educational records (including library records) without showing evidence of need to do so. If the FBI states that information is required in connection with a terrorist investigation then the individual's private information must be revealed.

DNA Samples:

In Sec. 503, the executive branch can order collection of DNA from known terrorists. This is a legitimate activity. However, the section also allows for collection of DNA from any person *suspected* of "*any crime of violence*."(20) Might this not be construed as unwarranted search and seizure, forbidden under the Fourth Amendment of the Constitution?

Military Tribunals:

Concern over military tribunals is expressed especially when civilian courts are functioning appropriately. The restrictions of a military tribunal will further impact judgments on so-called "suspect" individuals.

3. POWER, SECURITY AND LIBERTY:

Assumption of Extra Powers by the Executive Branch?:

There are those who see the USAPA as an exercise in assumption of prerogative powers for the Presidency. This theory of executive privilege was espoused by John Locke in his Second Treatise of Government, 1690, where he noted: "*many things there are which the law can by no means provide for; and those that must necessarily be left to the discretion of him that has executive power in his hands*." President Abraham Lincoln used this theory of executive power in support his assumption of dictatorial power during the civil war. Here Lincoln saw it fitting for the chief executive not only to slightly exceed the Constitution but also, perhaps, to go well beyond constitutional bounds.(21) Since then when other presidents have sought similar arguments to go beyond the Constitution the Supreme Court has checked these assumptions of "executive privilege."(22) As noted by Shafritz and Russell, "…the theory of executive power is quietly reserved to support the efforts of a leader, who sees the nation through a time of crisis; or alternatively, it lurks in the hands of an unprincipled opportunist or demagogue to stifle republican institutions" (*ibid*, 48,

2000)…. Many view this as being counter to the provisions of the Tenth Amendment of the Constitution, which states: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*"

Peter A. French has observed that even though public officials such as presidents must engage in acts that for the rest of humanity are morally wrong, they could be exonerated and not be condemned for they do these acts in the name of all citizens with our implicit consent (*ibid*, 15-24, 1983). These wrongs, as Michael Walzer has noted, are *unique* to duty, unlike the wrongs of ordinary citizens (*ibid*, 160-180, 1973). While conceding that these wrongs are "unique", however, Walzer says that the wrong action taken is still a "wrong." If the wrongs amount too greatly, such individuals need to punish themselves, and save the office from embarrassment, by resigning from office. Since public policies like the USAPA are, in fact, social experiments, time will tell how much wrong will occur. In this case, either the provisions will be sunsetted, or there may be so much hue and cry that officials will be compelled to resign in response to democratic demands.

Enlarged Role for the Federal Government:

When Health and Human Services Secretary Tommy Thompson was Governor of Wisconsin, he was one of those who called loudly for states' rights, noting that the federal government was growing too powerful and that states had to go to Washington on bended knee "*to kiss the ring*" (Shafritz and Russell, 174, 2000). Today, he and other Republicans in the administration uphold the competing doctrine of federalism to the letter, with even greater powers to the federal government, as shown in the USAPA. On the other side, civil libertarians claim that this bill circumvents the First, Fourth, Fifth, and Sixth Amendments to the Constitution, and lays the framework for a police state(23). It gives the federal government large powers to target anybody who is deemed a threat to its authority. They argue that the statute goes well beyond the scope of fighting terrorism.(24) Local governments are protesting the law. For example, in Portland, Oregon, the "Anti-McCarthyism" doctrine is invoked over police questioning of students and other individuals who are not associated with any crime. It is said that such questioning of the citizenry "goes too far." Oregon's Attorney General has declared that police departments do not

have to do this. Police Chief Mark Kroeber agreed. Similar local government fears of the USAPA and its targeting of "suspect classes" have been expressed in Eugene, Oregon, Washington State, San Francisco and San Jose (Leherer News Hour, 12/17/2001).

4. THE DIRTY HANDS DILEMMA:

Quandaries of ethics such as those inherent in the USAPA 2001 are teleological and utilitarian based on costs and benefits. In this case, as in others, someone benefits more than someone else. There is a benefit to security, but also a cost. The one that pays could do so heavily vis-à-vis the denial of civil liberties. Yet, what is the government to do? How can it be pure and perfect in everything it does? After all it manages a plurality of interests—the very thing that was seen to be useful in a democracy at the country's founding. Government must necessarily and often dirty its hands in one way to provide benefits in some other way. As noted by the Communist leader in the play *Dirty Hands*, "*I have dirty hands right up to the elbows. I've plunged them in filth and blood. Do you think you can govern innocently?"* (Sartre, 1955). The issue is that if the politicians have dirty hands, it is by our consent that they are there and by our consent that public policies are promulgated.

The dirty hands dilemma is a perennial problem in implementation of the law of the land. Public officials "dirty" their hands when they implement the law in a wrong way to promote the greater social good. The issue surrounds the dilemma involved in administrative commitment to a wrong to further good political ideas. Implementation of the law, whether at the hands of a street-level bureaucrat or judge is the point at which public policy becomes subject to interpretation and decision. What a public agency or agent must do to further a political ideal might directly clash with moral values. This is particularly evident in the administration and implementation of the USAPA. Here the Machiavellian principle of utility "when the act accuses, the result excuses," (*The Prince*) comes into play. However as Madsen and Shafritz point out (1992) two additional bipolar issues must be taken into account in discussing the problem of dirty hands. Firstly, since public officials act with our consent and on our behalf, how can they be accountable for something that is simply a requirement of the role? This is the well-known *functionary* argument employed by Adolf

Eichmann(25). In this a narrow interpretation of the law might teleologically prevail. For example, putting all suspected students or faculty under surveillance. Secondly, and in contradiction to this view, is the notion that moral obligation is still applicable to the public officer doing the wrong (Madsen and Shafritz, 210, 1992). Here a broader commitment to ethics and careful administration of the policy is required on deontological grounds. How does a public official simultaneously manage both roles in administering the USAPA?

Finally there is the issue, taken up earlier in the section on executive privilege, as to whether it is permissible for the executive to do something less than ethical when the country is in crisis in order to make the situation right again. The famous Platonic "noble lie" is one of the many bases of this argument. Sissela Bok addresses this issue in her book *Lying: Moral Choice in Public and Private Life*. Her position is that even if there are justifiable lies in government—as in a crisis situation or for national security—engaging in them has its own grave risks, and hence they should be avoided (1978). These are difficult issues, made more difficult in complex, relativized relationships among people across borders and cultures.

5. NOTES

1. Here "useful" is drawn from James Madison's theory of utility of a multiplicity of interests, which he claimed would have a moderating influence on special interests to the benefit of democracy. As Madison noted in his famous argument for democratic government: *"In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good."* (*Federalist 51, 1787*).

2. The concept of teleological ethics derives its name from the Greek *telios* or purposeful. Teleological ethics takes into account, ends, outcomes, or purposes of action.
3. The concept of deontological ethics derives its name from the Greek *deontos*, or obligation. Deontological ethics speaks to obligations that are correlative with citizenship rights.

4. Satisfactory + Sufficient (*Simon, 1991*).
   "Models of what is called rational judgment in cognitive science, economics, biology, and other fields have traditionally held that [people] strive to reach the best possible, or optimal, judgments by statistically weighing and comparing all information relevant to a task. This scenario largely ignores time pressures. Even if the full solution eludes their grasp, this view states, creatures [people] look for ways to edge closer to optimality. As an alternative to optimality it is usually too difficult for a person to calculate an optimal strategy [and] in many situations no single best solution exists" (*Bower, 1999*).

5. California's Proposition 209—known formally as: "Prohibition Against Discrimination or Preferential Treatment by State and Other Entities," November 1997.

6. Where no single best solution exists, and solutions are less than satisfactory and/or sufficient.

7. "Whereas well-structured and moderately-structured problems contain preference rankings that are transitive—i.e., if alternative A1 is preferred to alternative A2, and alternative A2 is preferred to alternative A3—ill-structured problems have preference rankings that are intransitive (*Dunn, 105, 1988*).

8. One is again led back to Mitroff/Sagasti, 1973, which have pointed us to the fundamental limitations for finding solutions to the ill-structured problem. Unlike well-structured and moderately-structured problems (*Dunn, 105*) where problem values are transitive and can be evaluated in relation to each other, ill-structured problems present the quandary of preference—it is impossible to select a single policy alternative that is preferred to all others.

9. Some have referred to the USAPA as "new-age McCarthyism" (*Rothschild, 2002*).

10. The bill was put together in less than a month and has many

uncertainties connected with it. It has continued to draw fire about lack of protection of civil rights of various groups. Despite this President Bush noted, *"the bill was crafted with skill and care, determination and a spirit of bipartisanship for which the entire Nation is grateful [and] met with an overwhelming agreement in Congress because it upholds and respects the civil liberties guaranteed by our Constitution"* (*Bush, G.W., 2001*).

11. The hatching period of public policy does not necessarily have to be lengthy. Another policy in response to imminent national need — the Marshall Plan, [Public Law 472, April 3, 1948] was conceived in 1947 and passed in 1948—a short time as well, but USAPA was rushed to approval—due, of course, to the unprecedented nature of the external threat that had occurred within the nation.

12. Many of these checks and balances were put into place after previous abuses of surveillance powers of such agencies—particularly the issue of spying by the FBI and others on civil rights activities,such as that done on Dr. Martin Luther King—information that came to light in 1974.

13. *Brown v. Glines*, 444 US 348, 1980.

14. Amnesty International documented 250 incidents on Sikhs—who originate from the Indian subcontinent and 540 incidents on Arab-Americans in the week following the hijackings *(ibid, 11/29/2001*).

15. Amnesty International documents incidents of mosques as well as Hindu temples that have been fire-bombed. Incidents in the United States have included Yemeni-Americans, Sudanese, and Christian Middle-Easterners (*ibid, 11/29/2001*).

16. Amnesty International documents of mosques as well as Hindu temples that have been fire-bombed. Incidents in the United States have included Yemeni-Americans, Sudanese, and Christian Middle-Easterners (*ibid, 11/29/2001*).

17. **Amendment VI:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of

the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

18. **Presumption of Innocence**: The indictment or formal charge against any person is not evidence of guilt. Indeed, the person is presumed by the law to be innocent. The law does not require a person to prove his innocence or produce any evidence at all. The Government has the burden of proving a person guilty beyond a reasonable doubt, and if it fails to do so the person is (so far as the law is concerned) not guilty. *(The Electric Law Library Lexicon, http://www.leclaw.com/def/i047.htm)*

19. Title I: *Enhancing Domestic Security Against Terrorism*. Title II: *Enhanced Surveillance Procedures*. Title V: *Removing Obstacles to Investigating Terrorism*. Title VII: *Increased Information Sharing for Critical Infrastructure Protection*. Title VIII: *Strengthening the Criminal Laws Against Terrorism*. Title IX: *Improved Intelligence*.

20. On the surface, a "violent" act, seems easy to detect. In practice, however, violence can be extended to speech, as a form of future action, as well.

21. Lincoln noted: "*was it possible to lose the nation and yet preserve the Constitution? By general law, life and limb must be protected, yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb. I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation*."

22. In *Youngstown Sheet and Tube Co. v. Sawyer*, 1952, the Court held that President Truman had exceeded his powers. Later when President Nixon in 1974 claimed that the Constitution provided him with absolute and unreviewable executive privilege—i.e., the right

not to respond to a subpoena in a judicial trial for his tape recordings in the Oval office--the Court, however, forced the President to turn over the tapes. This caused the resignation of Richard Nixon from presidential office.

23. **Amendment I**: Congress shall make no law respecting an establishment of religion, or prohibiting 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. **Amendment IV:** 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 warrants shall issue, but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. **Amendment V**: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against, himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. **Amendment VI**: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

24. Ramifications of his law are far-reaching in their influence. One of the countries that complained that their freedoms have been compromised is Egypt, where it is believed that under coercion by the American government, legitimate, non-terrorist organizations are being targeted and marginalized (Leherer News Hour, 11/30/01).

25. The Nazi criminal Eichmann's defense for his atrocities perpetrated

on Jewish people during WWII was "*I was only following orders*."

6. CONCLUSION:

The tension between strong government that can provide security, versus the liberty interest of individuals is a concept as old as the foundations of the country itself. The Founding Fathers worried about how they could make security and stability compatible with democracy (Diamond, 1981) which they saw as having dangerous propensities to folly, feebleness, ignorance, not to mention tyranny of majorities. On the other hand they also feared that the strong and stable administrative structure needed to carry out public policy might well hinder its original democratically-derived intent. Indeed, despite these concerns The Framers did make, as Tocqueville noted, "*democratie safe for the world*" (as safe as it could be) with their system of checks and balances, and levels of government in the American federal system of government. Yet, throughout our history, as a nation, we have worried about powerful government vesting itself with more powers, versus individual freedoms and liberties guaranteed by our Constitution. Such is the issue seen in the Patriot Act. No one can argue that the country needs security from terrorist attacks, but how do we secure this without endangering some liberty interests? Those whose liberty is denied in these circumstances could well ask whether the majority, who have consented (via the national principles of sovereignty and republicanism) are in fact respecting liberty of others? It is a thorny issue.

Are we as a nation too naïve that we give consent to our leaders to promulgate policies, yet shudder from the full ramifications of them? We want a clean house, but abhor the dirty tasks involved in cleaning it. Yes, it is not a perfect world and we compromise, satisfice and *suffer* policies, because as yet we have no formula to optimize. The issue does not rest here. It is appropriate to be vigilant and to monitor to what extent we must dirty our hands on individual liberty issues to achieve collective good, for we do have correlative responsibility to be cautious about strong government, lest it get out of hand. Thus, when we—through our various watchdog agencies—note: *"governments must not use the 'war' or terrorism to introduce draconian measures that limit civil rights and allow violations of human rights. Such measures are likely to stifle dissent and*

curtain basic freedoms. For this reason they must be resisted" (Amnesty International, 11/29/01). In a similar vein, when Katz notes, "*we must not sacrifice our most fundamental principles or we run the risk of losing our freedom even at the same time that we prevail over those who hate us for our very system of freedom*" (ibid, Jurist, 11/29/01) he is being appropriately cautious as well.

Finally, although we the people, are ultimately the progenitors of public policy in a republic, one must be cautious in describing public policies that attempt to balance dichotomous values, such as PL-107-56, 2001, as satisficing. Rather it could be stated that the people do not *satisfice*, but must *suffer* their own policies as they play out in an imperfect, complex social universe.

BIBLIOGRAPHY

Amnesty International, November 29, 2001.

Bok, Sissela (1978). Lying: Moral Choice in Public and Private Life, New York, Pantheon Books.

Bower, Bruce (1999). Simple Minds, Smart Choices, Science News, 155:22: 348 (May).

Bush, George W. (2001), Remarks on Signing the USA Patriot Act of 2001, Weekly Compilation of Presidential Documents, 37:43: 550 (October).

Brown v. Glines (1980). 444 US 348.

Coates, Breena E. (2002). Hard Choices and Dirty Hands Dilemmas: The Implications of the USA Patriot Act of 2001, The Jurist, http://jurist.law.pitt.edu/terrorism/ terrorismcoates.htm (January).

Cole, David (2001). National Security State, Nation, 273:20:48 (December).

Diamond, Martin (1981). The Founding of the Democratic Republic, Illinois, F.E. Peacock Publishers.

Dunn, William N. (1981). An Introduction to Public Policy Analysis, New Jersey, Prentice Hall.

French, Peter A. (1983). Dirty Hands. Ethics in Government, New Jersey, Prentice Hall.

Katz, J. (2001). The Jurist. (November).

The Leherer News Hour (2001). December 12, 2001.

Locke, John (1952). The Second Treatise on Government, edited with an Introduction by T. P. Peardon, New York, Liberal Arts Press.

Madsen, Peter A. and Jay M. Shafritz (1992). Essentials of Government Ethics. New York, Meridian Publishers.

Mitroff Ian and F. Sagasti (1973). Epistemology as General Systems Theory: An Approach to the Design of Complex Decision-Making Experiments. Philosophy of the Social Sciences. 3:117-34.

Plato (c.370 B.C.). The Republic.

Rothschild, M. (2002) The New McCarthyism. The Progressive. 66:1:18. (January).

Sartre, Jean Paul (1955). No Exit and Three Other Plays. New York. Vintage Books.

Simon, Herbert. (1991). Models of My Life. New York. Basic Books.

The Center for Democracy and Technology. (2001). November 29, 2001.

The Federalist 51. (1787).

Public Law No. 107-56, The United States of America Patriot Act, 2001.

Tocqueville, Alexis (1899). Democracy in America. New York. Colonial Press.

Walzer, Michael.(1973). Political Action: The Problem of Dirty Hands. Philosophy and Public Affairs. 2:2:160-180.

Youngstown Sheet and Tube Co. v. Sawyer (1952). 343 U.S. 579.

BIOGRAPHICAL SKETCH:

BREENA E. COATES, Ph.D., is Chairman of the Divisions of Business and Public Administration, and Assistant Professor of Public Administration at
San Diego State University--Imperial Valley Campus. Her research interests are: public policy impacts on organizational behavior; organizational behavior in global organizations; informational technology impacts on organizational behavior. Dr. Coates teaches administrative behavior, organizational behavior--managing across borders and cultures; and administrative law at San Diego State University. Professor Coates has written and published in scholarly journals and books in the above fields.

ADDRESSES:

Breena E. Coates
School of Public Administration
San Diego State University—IVC
720 Heber Avenue
Calexico, CA 92231
(760) 768-5542, (760) 353-0558, FAX (760) 768-5631
bcoates@mail.sdsu.edu