

Silver Lining in Iraq and Katrina Debacles?

Personal Comments of Asst. Dean Lydia Lazar, Chicago-Kent College of Law

Posted: 29th Sep 2005



Even as we uncover the full magnitude of the federal and local government failures in preparing for and responding to Katrina, we must keep our attention focused on the administration's rapid enlistment of private entities to solve problems not only in Louisiana but also in Iraq. As the New York Times and others are now reporting, the normal safeguards against price gouging on bids for government work are not working due to the exigency of the situation(s), the political opportunism of the Bush administration and its particular form of crony capitalism, and the unsurprisingly voracious appetite of private businesses to profit at the expense of the American taxpayer.

Americans, no matter their political affiliations, are offended by incompetence and self-dealing. We find it hard to believe that the "government" can't manage to do the one thing that everyone can agree it should be doing, namely, taking care of national security. And our dismay is exacerbated when the failure is so manifestly racist and classist. As Michael Ignatieff wrote so eloquently in the New York Times on Sunday September 25th, the Katrina debacle has illustrated that "the contract of American citizenship failed" for our poorest residents in New Orleans when, for a myriad of reasons, the government(s) that were supposed to help citizens "protect their families and possessions from forces beyond their control," failed to do so.

<http://www.nytimes.com/2005/09/25/magazine/25wwln.html>

As I see it, the lessons to be learned (so far!) from the mistakes of the Bush administration are: first, the internet and 24/7 media will not permit any country to live in isolation, and our mistakes and our successes will be equally available for all to measure; second, unilateralism is hubris – sheer folly –given the complexity of the problems facing us, and third, the answers to our problems lie within. While we can –and must –look to others for some models, I am confident that we already possess the intellectual capital, the experiential wherewithal and most importantly the skilled personnel to meet our needs for physical, economic, social and cultural security.

We have many sources of strength to draw on: two that are obvious are our educational institutions and our corporations. Our best and brightest students and faculties need to facilitate and lead a national, small "d" democratic discussion and reevaluation of our expectations about the roles we want our government to play in our communities and our lives. National teach-ins to increase awareness of our rights and obligations as citizens should be coupled with "town hall" style debates and discussions of the critical challenges we face as a society and the form and content of the solutions that we want to see implemented. We are a sovereign people who need to get back into the practice of governing ourselves again. And it does help that we have a great "mission statement" and set of guiding principles in our Constitution and Bill of Rights.

Lawyers and law schools may well be associated in a distrusting public's mind with untrustworthy institutions (see "The Role of Colleges in an Era of Mistrust" by Daniel Yankelovich and Isabella Furth <http://chronicle.com/cgi-bin/printable.cgi?article=http://chronicle.com/weekly/v52/i04/04b00801.htm> but writing as a lawyer and law professor I have to believe that the legal profession and its institutions can and do contribute in a significant way to increasing public awareness and understanding of the fundamental rights, obligations and liberties afforded all Americans by virtue of citizenship. The American Constitutional Society, for example, is comprised of law students, lawyers, scholars, judges, policymakers, activists and other concerned individuals who are working to ensure that the fundamental principles of human dignity, individual rights and liberties,

genuine equality, and access to justice are in their rightful, central place in American law. (see <http://www.americanconstitutionsociety.org/>)

While we engage in this critical re-energization of our democratic practice, we still need to solve problems on a daily basis, and we can look to our corporations for their skills and strengths in getting things done in a timely, cost-effective and publicly accountable manner. Our corporations –and especially our public corporations - are inordinately capable: it has been widely reported that Wal-Mart was prepared and functioning as an emergency supplier long before the feds realized what was going on. Our legal regime and our ingenuity have crafted an economic engine, the modern corporation, that is “second to none” (to use corporate-speak) when it comes to the efficient production and delivery of goods and services. The modern corporation must be profitable, it must be able to quickly adapt to changing circumstances, and it must report to its shareholders, and these conditions of existence have forged a uniquely powerful tool that we can –indeed we must - harness. But as we face the reality of our need to restructure the way that we, as a sovereign people, meet our needs for national security and economic and community development, we must be appropriately cautious and keep in mind the predatory nature of corporations.

Corporate strengths in rapid, internally accountable decision-making, and directedness toward survival and growth currently overwhelm our corporate governance regime. We do not presently require corporations to consider “the greater good” because we are operating with a tired ideology which asserts that in maximizing corporate profits the greater good will be served. So while we must learn from and harness the strengths of our corporations, we must get beyond the stale assumption that profit maximization for the few will create the society that we want to live in. We can and must use our legal system to rein in corporate “predatory instincts,” even as we increase and deepen the problem-solving cooperation between the public and private sectors.

Reining in predatory corporations does not mean preventing their growth, but it does mean controlling and harnessing that growth so that we end up meeting the needs of all the citizens of our society. That means safeguarding our national treasury from opportunistic no-bid contracts that reward insiders, and that means effectively using our existing legal regime to enhance our efforts. For example, when we spend *our* treasury to rebuild *our* infrastructure and meet *our* needs, we should require our private agents, the corporations, to pay decent, family supporting wages. The Bush administration decision to suspend the Davis-Bacon Act, which has been the law since 1931, is a bad sign that our current public servants are too close to our private agents. Davis-Bacon sets a minimum pay scale for workers on federal contracts by requiring contractors to pay the prevailing or average pay in the region. Suspension of the act will allow contractors to pay lower wages. How could this possibly be a good idea for the already disastrously impacted people of Louisiana and elsewhere?

So what is the silver lining in these debacles? I think it must be that we are now forced to confront the weak state of our democracy. If we really want to succeed in “exporting” our faith in the democratic form, we need to rediscover and re-embodiment the best expression of it. We must now use our democracy to figure out where we want to go as a people and make a strategic plan for how we are going to get there, using our corporate, educational and other resources to benchmark ‘best practices’ in levee building, emergency preparedness, logistics and the myriad other tasks ahead. If we believe in ourselves and in the democratic capacities of ordinary men and women to work together to govern and improve society, we can learn how to improve our own democracy so that our society is truly one in which we can confidently say that our efforts are leading to the greatest good for the greatest number.

- Lydia Lazar