

The speaker's questions which the US government should not answer

By Chibli Mallat

Wednesday, September 05, 2007

First person by Chibli Mallat

The absurd, Ubuesque dimension of Lebanese constitutional life knows no bound. After three years of a coercively prolonged mandate for a president whom no respectable ambassador and no decent Lebanese is prepared to visit, Emile Lahoud continues to assign himself a role in deciding how the country should look like when his usurped power comes to end. Meanwhile, after he physically shut down Parliament for over a year, Speaker Nabih Berri has been insistently requesting from the United States government answers to his questions over the Lebanese Constitution.

Why should the speaker need to ask a foreign power, in that case an unfriendly power for him and his camp, for their views over an eminently domestic matter? Not even local Gauleiters sought responses from Berlin, let alone London, before going about their government business; at least they did not do so publicly.

Let us suspend our disbelief and give Berri, a lawyer who knows his trade, the benefit of the doubt over his latest democratic erring. Let's imagine that his questions are valid in a post-modern global world where democratic countries share a common denominator, here Lebanon and the US, and are willing to learn from each other.

In a lecture given in San Francisco in 1995, former Supreme Court Justice Sandra Day O'Connor, one of the icon figures of American contemporary law, formulated three central points as lynchpins for democracy: free choice by the majority of the people of their leadership, respect for basic rights, especially the freedom of expression for the press, and an independent judiciary that protects these rights.

Let's apply the three tests to the Speaker's questions.

Question 1. Does the US government consider that a presidential election requires a half or two thirds for the parliamentary quorum ?

The hairsplitting over Article 34 of the Lebanese Constitution, which sets the quorum at half, or over Article 49, which stipulates that the president requires two-thirds of the vote for the first term, is beside the point. Lebanese taxpayers pay MPs to perform their job, which is to meet as requested by the Constitution, debate, pose questions to the government, reject or approve its performance in a vote of confidence, cast their votes to pass bills, select half of the members of the Constitutional Court, and vote for a new president once every six years. For over a year, they have received their salaries without doing their job. People do not elect MPs and pay them to stay at home, and this includes presidential elections. An MP could vote blank if he wishes, but he cannot abstain from coming to Parliament. The issue of the quorum should simply not arise, the less so if it is designed to frustrate the cardinal principle of a regular change of their leadership by the people. <http://www.dailystar.com.lb>

Question 2. Does the US government accept that Lebanon amend its Constitution again, in the hallowed formula 'for once and exceptionally' ?

True, a Constitution is made by human beings, it is not sacred. But amendments are serious business, and the cardinal principle for any amendment is to enhance democracy, including freedoms and basic rights understood as universal norm in Justice O'Connor's second element. What is the right that needs to be defended in the speaker's purported amendment? Amending the Constitution 'for once and exceptionally', as has happened in this country three times in less a decade to extend the mandate of incumbents against the central principle of democracy or allow those not entitled to be president short of having resigned their official position way in advance of the mandate, is grotesque. It stands blatantly against the first democratic principle. Further, it takes the form of a bill of attainder. A bill of attainder is when a law designed to punish or reward (attain) one specific person, which is its worst possible use. It is expressly prohibited in the US Constitution.

Question 3. Does the USG seek a consensual president, or is it happy to allow one group (read here the majority) to prevail?

The issue is so absurd that it will be hard to find someone in the world even posing it. Any Constitution and any election require contenders, competitors, and a vote. What is democracy for otherwise? If someone can convince the Lebanese, through their freely elected MPs, that he or she should get 80 percent of their votes, so much the better. In that case, there will be a loser, or more, with the 20 percent remaining. Same for 51 against 49 percent. This is a basic majoritarian principle of any democracy.

The point is that any democrat in the world knows this. It's just odd that a speaker of a country which is sovereign and prides itself as the only democracy in the Arab world would need to ask the American, or any other government for that matter, to answer such basic questions.

Chibli Mallat is SJ Quinney professor of law at Utah University, EU Jean Monnet professor at USJ, and a presidential candidate. His campaign has just published its latest, sixth book, "Presidential Talk," at Dar al-Jadid