

## US system confuses public

by Chibli Mallat

**D**id the president lie about having an affair with a White House intern? Did the president tell that intern to lie under oath? These are the two questions which will seal the fate of the president of the United States of America.

A positive answer for either will lead to the resignation of Bill Clinton. For the president will have lied twice, in the first case behaving immorally, in the second behaving both immorally and illegally.

How did we get to this almost surreal situation? Of course Clinton should resign if he lied; of course he should resign if he suggested perjury. But would it be proper for the president – the only official in the US to be elected under such a wide suffrage – to be subjected to a system which would allow such questions to be posed to him?

The first question has to do with morality in America's public sphere. *Nota bene:* in theory, the issue is not whether the president had an affair or not, but whether he lied about it. Of course, one would not lie about an issue were it not in itself reprehensible.

In France or Lebanon, or in the rest of the world, it would not be possible to contemplate a situation like the one which has arisen in the US, because the private lives of officials are not public matters.

François Mitterrand was notorious for his affairs. In fact, he even announced in public the existence of an illegitimate daughter without a murmur about resignation.

Nor is it within the contemplation of the Lebanese public to question, let alone judge, our government officials about their faithfulness to their spouses.

The argument in America has slowly taken a course forcing strict monogamy as a condition for a president continuing in office. This is strange.

An affair is by definition within the private sphere, and of course not a crime, and one may wonder why faithfulness is a requirement to remain in office.

This topsy-turvy turn of events which are within the private sphere makes the whole system extremely fragile, and forces awkward questions which do not arise elsewhere in the world. Has this gone too far, and should America start reserving judgment before its officials get subjected to a type of scrutiny which confuses the most significant meaning of the public sphere and a core expression of the private sphere?

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The problem might have started when Gary Hart denied unfaithfulness and dared journalists during the presidential campaign in 1988 to prove he had had an affair. They came up with many compromising pictures. He had lied, and that was the end of his campaign. One wonders what would have happened had he or any of the high officials under accusation of unfaithfulness plucked up their courage to say that this issue was not within the public sphere, and that it concerned him and him only.

For if it were not a personal matter, the law would be there to sanction it. For the Paula Jones case, the charges are sexual harassment and abuse of power. Jones claims she was asked to have sex with then governor Clinton, and that her career was obstructed for refusing, two actions which violate federal regulations. In the Monica case, it is perjury which is actionable. Short of these violations, there would be no case.

How does a sitting president get into a situation where he has to answer such charges? How did it get so far?

The answer lies in the now famous decision of the US supreme court in Jones v Clinton on May 27 1997. In that decision, the court allowed the civil suit brought by Jones to proceed. It is because of this ruling that Jones' lawyers could go after the testimonies of the weak links of the chain in the president's entourage: that was the case of Monica Lewinsky, leading in turn to alleged interventions by the president with the young woman. Hence the irruption of

Lewinsky on the scene, whom Jones' lawyers deftly identified as the chink in Clinton's armour.

This is indeed surreal, and the court has much to answer to for opening the floodgates for lawsuits against a sitting president.

All nine justices agreed that Jones' day in court should not be postponed until the president's mandate was over, but justice

Breyer, in his separate opinion, voiced his worries about the ruling's consequences.

"Because of the singular importance of the president's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government. ... A lawsuit that significantly distracts an official from his public duties can distort the content of a public decision just as can a threat of potential future liability," the wise judge said.

Breyer's unease has come home to roost. In the coming weeks, perhaps months, detached behaviour by the US president will fall under the shadow of Shakespeare's time-honoured reflection about "busying giddy minds with foreign quarrels."

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