

Federalism the great American export

by Chibli Mallat

American foreign policy, as I argued last week, needs to find a balance between realism and idealism, and between isolationism and interventionism. Meanwhile, the domestic factor in policy-making must figure as a decisive ingredient in foreign affairs.

If that conclusion is correct, how is it possible to anticipate the impact of American decision-making on a global basis?

One matrix could bring the complicated threads together by turning idealistic aspirations into a realistic agenda, then by setting criteria to justify successful intervention into the matters which are essentially within the domestic jurisdiction of any state. Third, by weakening isolationist domestic American processes. That matrix can be summed up as the international projection of American-grown federalist values.

An unofficial law in the history of nation-states, current since Prussian General Clausewitz first developed it in 1832, states that “war is the continuation of domestic politics by other means.” The law was perfected by its many applications, with the addition of some notable corollaries, such as the fact that democracies rarely go to war against each other. This is because democratic governments do not usually need to resolve their domestic problems by military adventures abroad.

But if war is the continuation of domestic politics by other means, then the democratic reshaping of domestic politics on the receiving side of any foreign policy also poses a crucial test. In other words, foreign policy should be measured by how much it has improved the lot of the people who have been subjected to it. Considering the extent of the national interests of the state making the foreign policy, the reversal of the burden of proof onto the improved fate of those who are at the other end is an important departure of conventional wisdom.

For the next American president, the new matrix could operate as the combination of two famous American aphorisms stated by President Woodrow Wilson back in 1918: that “the day of conquest and aggrandizement is gone by,” and that the world must be made “safe for democracy.”

To end the day of conquest and aggrandizement is to ensure that fewer human groups, within any state borders or outside them, resort to violence in pursuit of their domestic interests. To make the world safe for democracy is to defuse, correct, or counter the violent inclinations and temptations of governments, groups and individuals.

Wilson failed because his idealistic hopes were dashed in the wake of the military victory brought about by US intervention in World War I. Often in such times new orders are declared, only to be undermined by the reality which follows.

A century before Wilson, following an unprecedented independence victory over colonial England, and a century after Wilson, following the Allied victory in the second Gulf War, “new world orders” were declared. All three visions failed, but the sense that wars do not happen in countries where democracy commands the passage of power from one leader to his or her successor, is increasingly well established as a law of history.

The passage from principle to reality should constitute the key objective for an American president. Chances of accommodating Clausewitz, the ultimate realist, with

Wilson, the ultimate idealist, have increased in the post-Soviet age by the ideological triumph of democracy, and by the propulsion of America as the sole world power. To pursue the foreign policy matrix with the hallowed and entrenched constitutional values which have unfailingly worked for the US since independence two centuries ago, should be made to work for the world. The underlying political ideas of the American system are well established.

In the words of Harvard University law professor Laurence Tribe, they can be easily circumscribed: “representative republicanism, federalism, separation of powers, equality before the law, individual autonomy, and procedural fairness.”

America has shared many of these traits for a long time with other democracies, but two constitutional features stand out as typically American: federalism and the Supreme Court. The American people deserve credit for both inventions, which brought new dimensions to democracy and the rule of law for the rest of the world. Perhaps America does not know it, but the world has been a consistently better one wherever these two homegrown main intellectual products have found anchor. In the United States, save for the Civil War which unleashed exceptional violence between secessionists and unionists, the country has experimented peacefully with federalism since 1787.

Freedom of movement of people and capital, religious freedom and credit clauses (the automatic acceptance in one state of decisions held by the courts of another state) in criminal and civil cases are now well established federal principles.

More difficult and complex terrain continues to be arbitrated by the Supreme Court to the present day. In a case decided on Jan. 12 of this year, the issue of federalism arose again. This was because of the now familiar problem of the use of data bases for private purposes. The Court held that Congress could prevent South Carolina from releasing data gleaned from driving license applications to third parties who might use them to further their commercial interests. In small and large matters, federalism keeps getting re-invented by the robust competition between US states and by the arbitration of a respected judiciary. It is safe and secure inside the United States.

In contrast, for many regions and countries, federalism and the regulation of both federalism and the pursuit of the rule of law by an independent Supreme Court appear as the two missing ingredients for a peaceful and secure future.

A famous 1932 quote by Supreme Court Judge Brande is worth noting: “It’s one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel and social experiments without risk to the rest of the country.”

Replace the last word with planet, and the global answer follows. In its transatlantic dimension, the United States of Europe is still in the making.

For Europe, an essential feature of federalism is lacking because of the democratic deficit attaching the European Commission and Parliament.

This deficit of the federal formula is keeping Europeans from their declared “ever closer union.”

In its Third World dimension, federalism is the inevitable shape of things to come within and between countries, in the Middle East and elsewhere, if countries and regions are to prosper. Federalism must be invented in many countries in Asia and Africa, and re-invented in the former Soviet Union.

Examples of federalism abound. In the same way that a decent future for Iraq or Turkey can only be federal within each country’s borders, the emerging shape of Arab-Israeli peace must consider, for long-term success, how to adapt federalism’s

central features of freedom of movement for business and labor. Federalism is an alluring export of American democratic genius.

The Supreme Court is the other great democratic improvement made in America. The court regulates federalism in addition to its other many features. In the 1787 Federalist Papers, it was Alexander Hamilton's argument that "whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former." Since 1803, this has meant that the Supreme Court has been in charge of interpreting the Constitution and making sure that "an act of the legislature, repugnant to the Constitution, is void."

It took 200 years for this simple, compelling argument to overwhelm the world. In Britain, the concept of a written Bill of Rights has become more pressing, but remains a few years away. Countries like France adopted constitutional review only in 1958, Iran followed suit in 1979, and Lebanon in 1990. In none of these countries is the individual entitled to go to court to defend his or her right under the Constitution. But American-style constitutional review is gaining ground in Latin America, the Middle East and in Europe. The arguments were right in 1803 and are no less correct in advanced European democracies. They are even more pressing in the rest of the world.

So federalism and the Supreme Court as the readily available recourse of the citizen seeking rights under most national constitutions are the two pillars of the matrix proposed for a new American president.

Against short-sighted isolationism, the projection of the United States abroad can be guided by the measure of federal progress in weak states and regional constructs inspired by the American constitutional tradition. Against starry-eyed idealism, the proper functioning of the Constitution and Supreme Court will offer tangible means to appreciate the stability of a foreign country and its readiness for democratic growth and economic stability.

It is fair to suggest that if all of the above represents variations on the Federalist Papers and the United States Constitution, then the right constitutional structure made the United States, and it should be allowed to inspire the world. This might sound like a tall order and further inflame fears that the United States is the world's policeman. The devil, however, is in the details, and Charles de Gaulle was right to caution against those who "jump up and down shouting democracy." Jumping up and down shouting for democracy, federalism and the Supreme Court is as inefficient and shortsighted as blaming the United States for all the evils associated with its perception as some planetary Leviathan.

How to act as the world's democratic safety valve, while respecting the dignity of the individual and the group in addition to regional and national sensitivities and local traditions, is a daunting task for the American president. But the guidelines are there and policy can be made to work.

Chibli Mallat is principal of Mallat law offices. The next commentary in this series on American presidential choices will deal with culture and foreign policy

DS: