

## Successor must learn from the Clinton years

by Chibli Mallat

Facts first. There is no effective molding of the future without a correct appreciation of the past. So, then, how should we assess the eight years of the Clinton administration? It is important for a new president to take stock of what has been achieved over the past two presidential terms so that his administration can improve on the positive side of the balance sheet and avoid or reverse his predecessor's mistakes.

While this may appear to be stating the obvious, the pluses and minuses on the Clinton administration's balance sheet are unusually polarized. Against the evidence of moral shortcomings, leading to an impeachment trial for which the last precedent goes back to 1868, there stands a resounding economic success.

Whether it is openly stated or not, the failed case for impeachment sent shockwaves through the system because the process reached the point of putting an incumbent president on trial. It was a momentous event in the history of the American republic. As senator after senator voted on impeachment on Feb. 12, the dilemma was clear to all. How could a president be censured for an affair conducted in private? Was that question on any reasonable person's mind, including the 45 senators who voted for impeachment? On the other hand, how could a president be allowed to carry on in office after trying to conceal his behavior behind such blatant lies? Was this question on any reasonable person's mind, including the 55 senators who voted against impeachment?

Here's the rub, spoken or unspoken, in the assessment of the Clinton legacy on either side of the two-party political system. That President Clinton is a man of considerable talent is widely conceded, but the moral cloud he created will continue to loom over the performance of his successor in the contours separating public and private behavior. The line between public and private life must be drawn anew by the holder of the 43rd presidency.

Since history never repeats itself, a new president won't face excruciating processes such as the one Clinton had to endure over several years of the Whitewater investigation. There will be no impeachment trials for presidencies to come, and the independent counsel's once-excessive power has now been diminished.

The question, however, goes deeper. It remains important to assess the Clinton presidency on this issue.

Things can be seen to have gone awry at several moments. For some, the powers of the special prosecutor went too far. From that perspective, the downsizing of a job initially created by the Democrats virtually rules out a repeat of the process.

For others, the decision of the Supreme Court on May 27, 1997, in *Jones v Clinton*, marked the turning point in the investigation. Then, the court allowed the civil suit brought by Paula Jones to proceed against the president and let the plaintiff's lawyers challenge the testimonies of those weak links in the president's entourage. This led eventually to Monica Lewinsky, and the opening of Pandora's box.

In an age where Augusto Pinochet is considered by an English court to have been justly arrested in London for the murder of Spanish citizens in the farthest corners of South America, it is reassuring that no one, not even the US president, is above the law, as agreed by all nine justices in *Jones v Clinton*.

But not enough attention was directed to Justice Breyer's separate opinion, which voiced worries about the ruling's consequences, and the paralysis of the workings of government for a full year before the impeachment vote. "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," the wise jurist warned. "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."

Another view incorporates the questions raised by Justice Breyer and underlines the lack of presidential statesmanship throughout. The president could have stopped the process dead in its tracks on at least two occasions: in his deposition in the Jones suit on Jan. 17, 1998, and in the four-minute speech preceding his Aug. 17 testimony before the grand jury.

On either occasion, instead of resorting to obfuscations and justifications, Clinton could have put the issue onto a different moral and legal plane with a simple statement announcing that, while he would submit to examination as requested by the Supreme Court, he would not answer any question relating to acts that did not meet the definition of a crime under the law of the land.

An affair between two consenting adults may be religiously or morally reprehensible one could even lie about it but it is not a crime, and certainly not a matter for the general public. By insisting on drawing the line between a president's personal affairs and his public duties, Clinton would have protected his privacy and the dignity of his position.

Failure in leadership goes well beyond an irrelevant affair. A president having to resort to the reply "it depends on what the meaning of 'is' is" epitomizes the puzzling moral leadership of the Clinton years. The president's equivocations created a bewildering wordplay that would have taxed the imagination of Lewis Carroll in Wonderland. Nor is the pursuit of raw politics beyond basic decency a trait of both Kenneth Starr and William Clinton without its hazards.

Particularly troubling is the appearance of the first lady in the shape of a senatorial candidate before her husband's term is over. Regardless of the personal qualities of Hillary Clinton, whose behavior throughout the Lewinsky ordeal was dignified, the pettiness and invasion of privacy by the investigator and the debasement of leadership by the president have paved the way to an abuse of power which needs rethinking for the integrity of the American public sphere.

US presidents, first ladies and first gents should know better their constitutional places in the republic. The proliferation of sons and spouses of important players in American public life is disturbing.

Within the orbit of the presidency a new line of moral leadership requires public responsibility to be restricted to the person of the president against the encroachment of spouses, children, and relatives. Upon this central premise political channels must be cleared at the top. As the former dean of the Stanford law school put it:

"Malfunction occurs when the process is undeserving of trust, when the ins are choking off the channels of political change to ensure that they will stay in and the outs will stay out."

Bad enough as the choking of political channels may be in a country where economic might tends to be the name of the game and money, soft or otherwise, is allowed to wreak havoc on the equality of voters, it is devastating when the presidency's ins start including descendants, collaterals and spouses, and the family penumbra turns

willfully into political limelight.

This tendency is increasingly troublesome across the American system. Spouses and sons inflicted on the political channels are not the exclusive prerogative of the incumbent president, even though the first lady running for high congressional position before her husband's term is over surely takes the biscuit. Nor is the presidency alone among the ins trying to ensure they will stay in.

While a forceful constitutional mobilization is needed for the limitation of congressional terms, the example starts at presidential level. In now obsolete terms, "civic virtues" in the republic should command self-restraint in the exercise of power, including a more discreet family parade. Otherwise, one should consider the virtues of monarchies allowing blood and marital kinship to prevail over merit, which supposedly defines a republic.

At least one virtue of constitutional monarchy is to spare the people from wondering why a person like you or me is not sitting at the top.

*Chibli Mallat is a practicing lawyer and a professor of law at Universite St. Joseph. This is the second article in a series entitled American presidential choices: a view from the edge. The next article will assess the Clinton administration's economic success*