

THE STATESMAN

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On Campus Seminars:

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| Dec 5-10 | Foreign Language Thomas Jefferson Style |
| Dec 16-17 2006 | The Writings Of Montesquieu |
| Jan 27-28 | Money... It's Not Just for Rich People! |
| Mar 3 | An Evening with Leonard Little Finger |
| Mar 10-11 | The Writings of Blackstone |
| Mar 25 | Thomas Jefferson Education Forum |
| Apr 24-28 | Special Week-long Intensive For Ph.D. Candidates |
| May 1-27 | Biology and Physical Science |
| May 5-6 | Thomas Jefferson Education Convention |
| May 25-Jun 3 | Youth for America! Conferences |
| May 30-31 | Mastering The Art of Mentoring |
| Jun 1-2 | Mentoring The Hero Generation |
| Jul 10-11 2007 | Third Annual Liber League Summit |
| Jun | European Field Experience |

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Can All Precedence be Bad?

Jennifer Jensen
Grad seminar, August, 2005

"I can't let you do that, even if it's good. It would start a precedent," the man told my son. At the time, I knew very little about precedent save Dr. DeMille's speech concerning the Supreme Court.

In his speech, Dr. DeMille spoke of the founding fathers not wanting the Supreme Court to use precedent—the constitution gave them powers of law and equity, not precedent, "The [Supreme] Court should . . . be a court of law . . . and a court of equity . . . and it should also decide individual cases, not set precedent." This authority to set precedent gives the Court too much power resulting in uncontested control over the other branches. However, there is much more to precedent.

The Court's use of precedent stems back to the beginning of England's courts of common law. Since that time, masses of records accumulated showing the courts' decisions throughout history. Lawyers and judges used these when deciding cases to ensure the continuity of the law, to keep it uniform. Sometimes judges will go against all precedent in a decision such as when the Supreme Court decided prayers were no longer allowed in public schools. That went against

all precedence set throughout the history of the United States, effectively setting new precedent still in effect today. Without precedence, this decision would only affect the members of the suit; with precedence, it affects the entire country giving the Supreme Court oppressive power—including legislative power not given them by the constitution.

Precedent has greatly impaired our nation's governmental forms but to wholly discount the use of all precedent on the basis of its failure in the Court is not sound. The use of precedent is so prevalent in our society, it is imperative that we understand the forms which do benefit from precedent and those forms which do not.

Precedent is common in many areas of our society adding format, order, and predictability. Take away precedent and chaos would result.

One example is mathematics. The expression $2+3 \times 4$ could have two answers: $2+3=5 \times 4=20$ or $3 \times 4=12+2=14$. Which is right? Without precedent, there would be no correct answer. Because of precedent, we know multiplication and division come before addition or subtraction. Thus, the correct answer is 14.

But precedent could just as easily have required the problem to be done left to right in which case an answer of 20 would be correct. The fact that this is the established pattern does not necessarily make it the best way; just the correct way. Without precedent in mathematics, the order and logic would disappear.

Computer programming also uses precedent in its order of operations and how these operations are grouped. Programming consists of specific rules and guidelines forming a "language." Not following this precedence will result in the computer not responding.

There is an abundance of precedence in music. For example, every type of music is written the same way. Any musician can pick up music written by any composer and easily read it. Musicians from all over the world can join together to create music. Music theory is all precedence—which chords work, whether minor or major, interpretation etc. Musicians have also been known to break precedence; anyone versed in music can hear when precedence has been ignored.

Likewise, precedent is also followed in grammar, writing, art, and many other aspects of life.

Precedent can evolve over time. One instance where this is apparent today is regarding etiquette. Manners used to be given precedent but are quickly losing their station. Now, it is more and more common to be rude such as the willingness to bluntly state an opinion no matter how degrading or uncivil. Precedent changes over time as society changes—sometimes for better, sometimes for worse.

George Washington understood precedent. As the first president of this country, he knew others would watch and follow his example. In a letter to Catharine McCaulay Graham, he wrote,

There is scarcely any part of my conduct [as President] which may not hereafter be drawn into precedent. Under such a view of the duties inherent to my arduous office, I could not but feel . . . an anxiety for the [nation] that every new arrangement should be made in the best possible manner.¹

He told Henry Lee Fitzpatrick, "precedents are dangerous things," and to James Madison he wished "these precedents may be fixed on true principles."²

George Washington understood he would set precedent, it would be impossible for him not to. He chose to be very careful basing everything on sound principles. He could have damaged the office of President of the United States; instead he was successful because he understood the principle of precedent and how it worked. But people are biological; they tend to do their own thing. Not every president followed George Washington's precedent. Thomas Jefferson was much more casual and relaxed while John Adams was all for court ceremony. People, being biological creatures, will never follow precedent exactly.

Precedent can have good ramifications as in math, computer programming, or music, but precedence can also cause damage like it has in the Supreme Court. There are places where it is vital and places where it does not belong. Precedent works well in technical or mechanical areas where rules are needed to keep

consistency and order. But people are biological, not mechanical. They have many different needs, feelings, dreams, and desires in situations that appear similar but are often quite different when given a closer look. Trying to use precedence while in direct contact with individuals is where it seems to fail. People must be seen as individuals with a personal situation always vastly different from any other.

Good forms, when dealing directly with individuals, tend away from precedent as this causes “group think” or an ideological mindset. Precedent causes the tendency to expect everyone to act, feel, and think the same as everyone else. This is not a good expectation in a free society. Precedent replaces human beings with rules and patterns as the most important. Those forms close to the individual should assist each separately and distinctly from any other. This is how the founders meant the Supreme Court to function—deciding cases one at a time, leaving no one else affected.

A church form is an example where precedent is needed in some cases and not in others. The church as a whole needs precedent to function—rules that maintain order and stability. But large churches are divided into individual parishes or branches to be small enough for individual attention where much less precedent is necessary. In any given case, each person should be attended personally and prayerfully considering his specific needs to find the right solution for him. What occurred with one person would have little bearing on anyone else. Take away precedent, then, and what is left is care for the individual.

If all forms close to the individual worked correctly, there would be little need of precedence. This is why the lowest levels of government should always be given the powers directly associated with the people. The higher the government level, the more impersonal and uniform the response. When towns or neighborhoods had control over the local school, each was different and unique fulfilling the needs of that locality. But as the power to educate moved from the neighborhood or township upwards through government levels, it lost its unique qualities. Now the National Government has usurped the power. Most school districts are very similar teaching the same subjects, using the same methods—the conveyor belt. No longer can students be seen as individuals.

Family forms cannot work best in the mode of “group think.” The family form is one of the most intimate forms dealing with individuals and their basic needs and wants. Precedent ought to have very little hold in this form. Parents will accomplish most for their children by looking at them each individually—their interests, talents, strengths, and weaknesses. What works best is for parents to sit down with each child separately and find out their dreams and plans. Praying about each child individually is another important option. Each family member, when seen as separate and unique and treated as such, will have all options open to them. Each will have more opportunity to fill his potential. When this occurs, they will respond with greater self-motivation and personal growth.

Precedent has a place in society. Truly, chaos would reign without it. But just as precedent set in the Supreme Court has not proven successful for the nation, precedent in other forms close to the people works equally poorly. Instead of each individual approached as distinctly different with different needs, if precedent is used, a person is merely stuck at the back of the line behind everyone else with a similar situation. But similar never means exactly the same—in fact, no situations are the same where people are concerned. It is important these forms, in levels of society so near to the individual, remain open to respond differently to each situation keeping mankind superior to precedent.

(Endnotes)

¹ Jay A. Parry, Andrew M. Allison, *The Real George Washington*, Washington D.C.: NCCS, 1991: p. 759.

² Ibid.

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