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Unprecedented Logic

Why slippery-slope arguments against invading Iraq don't hold water.

By Eugene Volokh

Posted Tuesday, March 18, 2003, at 3:35 PM PT

A pre-emptive U.S. attack on Iraq, [Canadian Prime Minister Jean Chrétien has argued](#), "might be considered as a precedent for others to try to do the same thing. Where do you stop? You know, if you can do that there, why not elsewhere?" Democratic presidential contender [Howard Dean says the same thing](#): "What is to prevent China, some years down the road, from saying, 'Look what the United States did in Iraq—we're justified in going in and taking over Taiwan?'" Should we be moved by this concern about precedents, which is a form of [the slippery-slope argument](#)? Not really, and here's why.

Precedents do matter in many situations. First, in domestic law and politics, people care about consistency: If one group gets a tax break, for instance, people may think another group should be treated equally. Second, precedents affect people's judgment of what's right and wrong: When faced with a tough moral, judicial, or legislative question, we're often swayed by what influential decision-makers have done in the past. That's one reason why "The Supreme Court has long held ..." or "Congress has consistently said that ..." are such a powerful arguments, so long as listeners don't already have their own firm opinions and so long as they generally respect the precedent-setting institution and are willing to be influenced by its judgment.

Precedents thus matter not just in courts, but also in legislation, and even in international disputes, especially in areas such as trade. If Country A gets to restrict imports of movies, people might feel that Country B deserves to be treated equally, and over time, more people might come to assume that such restrictions are proper.

But regardless of the arena, precedents chiefly influence those who care about equality and consistency and those willing to defer to the precedent-setter's judgment. The Chinese government, to take Howard Dean's example, fits neither category. When China is deciding whether or not to invade Taiwan, it will focus on its own interests, not on being consistent with what other governments have done. And Chinese officials are unlikely to be influenced by America's judgment about when a war is just: They simply don't respect our views the same way that we might respect our own Supreme Court or Congress.

Nor will the supposed "precedent" set by an American attack on Iraq substantially affect the West's views about the Chinese attack. Some in the West—and especially in the United States—might care about consistency and might be influenced by America's judgment that pre-emptive war is sometimes permissible. But these people will likely be much more influenced by whether China really has a factual basis for a pre-emptive war. Howard Dean's scenario is troubling precisely because we know that Taiwan is not a military threat to China. If that's so, then the West should oppose the invasion of Taiwan whether or not we invade Iraq.

[Others have suggested](#) that India might pre-emptively attack Pakistan based on the alleged precedent of our attack on Iraq. India is a democracy, and its citizens may well care about consistency and respect America and its allies enough to be influenced by our judgment (especially if their own government ultimately endorses the allied attack). And India might have a plausible pre-emption argument against Pakistan.

But what is really stopping India from attacking Pakistan now, even though it feels that it's been seriously provoked? It's not concern about consistency or legalism—it's that Pakistan has a huge army and nuclear bombs and that India has little to gain from such a war. These factors will generally dictate national decision-making about war regardless of whether America sets a supposed precedent supporting pre-emptive attacks.

If all this is true, then our decision to invade Iraq will likely make a difference as a precedent only when five factors are simultaneously present: 1) The nation involved—or at least countries with decisive influence over that nation—seriously cares about international consistency or respects the moral force of our judgment, which probably

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means it is a democracy and likely our ally. 2) The nation's potential target really poses a serious threat, so the claim of "pre-emptive self-defense" seems plausible. 3) The threat isn't serious enough that the nation will just do what it thinks it must do regardless of concerns about consistency, legality, or others' opinion. 4) The nation feels that it can act with relative safety because the target isn't yet very well-armed. 5) The nation won't be dissuaded from its action by the cost and danger of war or by the pressure of allies who will likely continue to counsel against war in most cases.

This will happen rarely—and when it does happen, we shouldn't be all that troubled. If democracies become a bit quicker to act when there really is a good claim for pre-emptive self-defense, and when neither cost nor risk nor their allies' pressure suffices to dissuade them, that might on balance be good. Are we sorry, for instance, that the Israelis pre-emptively bombed the Iraqi nuclear reactor in 1981?

We might be slightly more troubled if democracies become slower to condemn non-democracies that act based on trumped-up claims of threat. Still, there are two reasons why we shouldn't much fear this, either: First, the essence of sound foreign policy is distinguishing real threats from fake ones; most of the time, democracies will know when another country's supposed justification for pre-emptive attack is well-founded. And second, in practice democracies rarely stop other nations' aggressions, and when they do, it's because of self-interest, not precedents or legal rules. Consider how long it took for outsiders to stop the Balkan wars, a move ultimately motivated by the Europeans' interest in maintaining a peaceful Europe.

Precedents and slippery slopes can be powerful forces and can sound like powerful arguments. We should indeed think about the indirect consequences of our actions, not just the immediate ones. But the phrases "what about the precedent?" and "where do you stop?" don't magically mandate inaction. Rather, people who make these arguments must concretely explain how our action today would supposedly help lead to others' action tomorrow. They haven't done so here.

Our invading Iraq will not set a dangerous precedent or much of a precedent at all. We should focus on the costs and benefits of this war, and not on its supposed precedential effects on future wars.

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Eugene Volokh teaches constitutional law at UCLA School of Law and runs the [Volokh Conspiracy](#) Weblog. His piece, "[The Mechanisms of the Slippery Slope](#)," was recently published in the *Harvard Law Review*.

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Remarks From The Fray:

Interesting argument, but it contains one fatal error: precedent has general effects. The learned professor fails to consider that precedent involving one issue also has an impact on OTHER RELATED ISSUES.

Whether our pre-emptive war will effect another nation's decision to engage in directly analogous behavior might not be too worrisome, as the author argued, but our pre-emptive war will have an enormous effect on international law and norms, IN GENERAL.

Every time our country seeks exemption from generally applicable rules, we make it that much harder for international law to have any restraining ability on other countries when it is in our interest to restrain them. As the rule of law diminishes in effectiveness, international relations become more ad hoc and less cooperative. Think that this is a good idea in the age of terrorism? (Not to mention other multilateral problems like the environment, AIDS, trade, etc...)

The professor may be right that Bush's slippery slope isn't as steep as we think, but that doesn't mean that downhill is up.

-- glib

(To reply, click [here.](#))

Volokh misses the point:

1. The most dangerous precedent is for the US itself: if it can go ahead with pre-emptive, liberation war in Iraq, why not Korea, Iran, or even China (a clear threat to US military hegemony in the long run, an oppressive government well-known for human rights violations, etc.)?

2. The other important precedent is not the idea of pre-emptive war in itself but the rejection of restraint by an international body. By weakening international restrictions, it will be more difficult for the US to restrain China when, in about 50 years, they become the economic and military hegemon- note that restraint doesn't come from precedent alone but rather from strong international institutions.

-- ocirederf

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I disagree with a number of the observations here as well as conclusions. Specifically Prof. Volokh main point that "people who make these arguments must concretely explain how our action today would supposedly help lead to others' action tomorrow. They haven't done so here." This is negated by Mr. Dean's rather concrete example of China invading Taiwan. Note the People's Republic of China, while not an expansionist nation, has gone to war with almost everyone of its neighbors, including India, USSR, and Vietnam (twice, I believe).

Conversely the PRC, while hardly a legalistic government, cares deeply about international opinion and recognition. Witness its efforts to host the Olympics, US recognition and join the WTO. These achievements are mostly symbolic but have real value to these governments. The reason is the precedent that these actions set. China wants international recognition and is willing to give up something in return. That something is following international guidelines of behavior. If those guidelines become blurred or unevenly enforced, like any guidelines, they diminish in value. Interestingly China has not gone to war with any of its neighbors in the last twenty years, or since it has generally joined the international community.

-- WinstonSmith101

(To reply, click [here.](#))

I think Volokh steals a couple bases with his assertion that the precedent will apply only when there's a "credible threat "

will apply only when there's a credible threat.

The question of precedent isn't whether it's acceptable for democracies to act when presented with a credible threat; it's what are the standards for establishing that a "credible threat" exists.

And even if we allow that China and India and others won't be subject to this precedent, it's reasonable to assume that we will. I'd like to know exactly what conditions are triggering the invasion here, so I know what will trigger one in the future.

-- JohnMcG

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