

FIAT AND THE CIRCUMVENTION ARGUMENT

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In the mid-nineties, hardly a high school or college student has been able to avoid customizable card games such as Wizards of the Coast, Inc.™ Magic: The Gathering™ and its clones. Competent game designers understand the importance of moves and countermoves. For every move, there must be a plausible countermove otherwise the game would be won by whomever could afford the most catastrophic, most rare, and most expensive card. Moreover, card designers must avoid cascading, whereby an action forecloses or makes redundant other actions, nullifying incidentally implicated strategies and tactics. For example, computer programmers and debuggers know from experience that changing a single line of text can have fatal consequences throughout a program.

My thesis is that like inexperienced game designers and computer programmers, we have attempted to resolve paradoxical problems in academic debate by moves and countermoves, but the gestalt of these adjustments has not made debate such a great game to play.¹ Two occurrences will be examined below. First, we surrendered the stock issues model for the systems analysis model without shucking all the stock issues baggage. Then, we changed the meaning of inherency from “why non-topical actions have not and could not get the affirmative advantages or solve the affirmative harms” (Schunk, “Affirmative Fiat” 87) to “uniqueness of actions taken, rather than uniqueness of benefits claimed” (Flaningham, “Inherency” 233).² These two events have profoundly affected our

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¹ A. C. Snider, who popularized gaming as a metaphor for debate, felt that “academic debate already possesses the characteristics of a game.” Gaming is unlike evaluative paradigms such as policy making and hypothesis testing, he wrote, in that they are “prescriptive-external” and “require debate to be modeled after some outside phenomenon.” Gaming, on the other hand, is “descriptive-internal because it uses the characteristics internal to academic debate to describe it” (Snider, “Stalking” 5-6). For Snider, his metaphor was extrapolated into a paradigm. Here, gaming is used merely as a metaphor.

² For a detailed analysis of the history of inherency, see: Marsh; Kruger; Cronen; Goodnight; Cherwitz and Hikins; Zarefsky; Schunk; Lichtman and Rohrer; and Flaningham.

understanding of fiat and the legitimacy of solvency arguments such as circumvention. The essential purpose of this essay is to defend the circumvention argument as a viable counterbalance to the expansive interpretation of fiat.

Consider the following illustrations. A negative policy debater argues that the plan, say the extension of Title VII protection to cases involving same-sex harassment, will never be enforced: the Equal Employment Opportunity Commission (EEOC) will disfavor cases involving gays, and poverty and public interest lawyers will not take up the cases. She argues the EEOC are political creatures who reflect the biases in society at large. The affirmative responds: “Fiat!” The negative claims: “This is fiat abuse!” In another round, a negative policy debater argues that adoption of this plan will need some shifting of constituencies or blocs in Congress to accommodate the changes in thinking needed to implement the plan mandates. Those shifts might preclude consideration of important policies, which would compete with the political capital of the plan. The affirmative policy debater responds: “We fiat through that problem – the plan is implemented and any argument occurring before that point is ‘should-would’ and not germane.” The negative responds: “This is fiat abuse!”

While the abuse claimed by the negative in both illustrations might be difficult to sustain, our understanding of fiat is so unclear that we have no basis for arbitrating fiat abuse claims when dealing with implementation based arguments. The following will try to clarify some of these issues.

Defining “Should”

Before we can have any handle on determining what fiat abuse means, we need to understand how the term “should” is used in policy resolutions. Since fiat is assumed to trump policy arguments which exist outside the scope of should, the term’s meaning is elementary to understanding fiat’s purpose in debating.

“If should means ‘ought to be’ but not necessarily ‘will be,’ then . . . affirmative teams are not required to consider political obstacles to adopting their policy suggestions” (Lichtman and Rohrer 241). Arguments which are grounded in such obstacles have been dubbed “should-would” arguments. There seems to be good reason for distinguishing between arguments grounded in “should” and those grounded in “would,” since the latter are questionably productive. Schunk and others argue against predicting the behavior of policy makers for two primary reasons: it would encourage research about bureaucratic behavior

which may not be pedagogically defensible for contest debaters, and determining the rationale for voting behavior is highly suspect since self-reporting is often aspirational rather than realistic, and interpretive assessment might be impossible given the remoteness of the actors.

While “should” might not mean “would,” it surely means “could.” One of the earliest debate references to the “could” or “can” duty associated with “should” and “ought” statements was made by Lambertson more than five decades ago. “The word ‘should’ includes the word ‘could’. . . . The word ‘could’ connotes that the remedy is within the realm of possibility” (424, 423). Fitzgerald offers a simple standard to delineate between “could” and “would” considerations:

The “could” dimension pertains essentially to the mechanics of the plan: to issues of workability and the ability of the proposal to reconcile the inherency problems of the present system. The “would” dimension, on the other hand, will encompass the motivational forces that speak to the practical concerns of getting a proposal implemented: practicality or issues of enactment and enforcement (102).

For Fitzgerald, we “ought” not do what we “cannot” do; the affirmative plan must solve for the shortcomings of the present system that impede the plan. Once resolved, however, it is fair to assume that opposition to the plan will be resolved as well and sufficient resources to bolster the plan will be forthcoming. So, once the shortcomings are solved, motivations associated with and potentially disruptive to the plan will be solved. Unfortunately, it is not that simple.

Before considering the range of options, it is prudent to learn more about “should” as “could.” The first reason “ought” means “could” is steeped in pragmatics. Even when we ought to do a thing, obligations are relaxed, if not voided, when we cannot do that thing. Indeed, “we may excuse a man [sic] on the ground that he [sic] could not do what he [sic] ought to have done; circumstances prevented him [sic] from acting appropriately” (Margolis 37). The principle is straightforward: “If a person has no control over what he [sic] can or cannot do, over what he [sic] could or could not have done, in short, over his [sic] life, there might well be no wrong or blameworthy action” (Stocker 316). Consider Radin’s discussion of the Rule of Law:

To regulate conduct, and thereby achieve the social cooperation necessary for justice, rules must have certain characteristics associated with the Rule of Law: “Ought implies can.” The addressees must have the ability to conform, and the

authorities must act in good faith. Impossibility of conformance, therefore, must be recognized as a defense (788).

This doctrine has been applied frequently. “That an agent could not have done the act that he [sic] allegedly ought to have done (or could not have omitted what he allegedly ought not to have done) is also sometimes offered as a defense against the charge of wrongdoing. This appeals to the principle that ‘ought’ implies ‘can’” (McConnell 437).

Another reason is grounded in essentialism. “The ‘ought implies can’ principle requires that normative advice in epistemological matters not be designed to ideal knowers, but to real-world knowers. . . .” (Leiter 815). Lipkin provided a classic illustration: “For men to be obligated not to have abortions, they must be capable of having abortions, which means they must be capable of having children. Since men are incapable of having abortion, it is physically impossible for the state to impose the same burden on them as on women” (1080).

A third reason treats “could” in reference to free choice. “Whatever else the principle that ‘ought implies can’ means, it seems to be telling us that there is an important connection between ‘ought’ statements and freedom. . . . The idea is that actions that a person cannot avoid doing are not ones that he ought to do. Nor, of course are they ones that he ought to avoid doing” (McConnell 440). Tranoy sets a much more definitive standard:

It is no more than common sense that it is not legitimate (or not permissible, unjustifiable, unreasonable) to ask the impossible, to demand more than (you know) you can get from a person. . . . “Ought implies can” can be read as a general restriction placed on the right of any person *b* to act as a norm giver (norm authority) for a norm subject (norm-receiver) *a*. . . . If an action *p* is (known to be) impossible to perform for a person *a*, then no other person *b* is permitted (is justified, is entitled, has the right) to order *a* to do *p* or to place *a* under an obligation to do *p* (120).

While this precept is framed in terms of individual action, debate resolutions generally are not written with individual agents in mind. Unless you can assume institutions are individuals, this point of view on the “couldness” of “should” might be problematic. However, we know that institutions have emergent characteristics that exceed the totality of the individuals so incorporated, hence they are individuating. As such, the “ought implies can” principle has been applied to institutions. “Because ought implies can, governments

cannot be held responsible for failure to produce systems they cannot realistically create" (Balkin 1969).

It would be academically irresponsible to lead the reader to conclude that "ought" always means "could." There are many exceptions, but they can be grouped into two categories. The first deals with statements expressing ideals. "In what might be called an ideal-expressing or axiological mode – it would be good [or better or best] if – 'ought' clearly does not imply 'can.' A moral 'ought' can also be taken in a deontological way, given by such obligation notions as 'obligatory,' 'duty,' 'wrong not to do'" (Stocker 304).

"Ideal-expressing 'oughts' – such as in the statement, 'there ought to be no war' – do not imply 'can'" (McConnell 438). In fact, many people are faced with the duty to do the impossible. "The alcoholic may be placed under a prohibition not to touch liquor by well-meaning and ignorant moralists. A soldier may be ordered to do that which it is impossible for him to do. . . ." (Tranoy 118, 122).

Tranoy and others perceive a few problems with these ideal expressing statements, one of which Tranoy calls the "bridge principle:"

In any moral system there must, then, be at least one moral element, which cannot be the logical consequence of any other moral or non-moral element (or combination of elements) in the system. Yet it must be possible to argue and to give reasons in support of such a primitive moral element. If these two conditions are not fulfilled, a normative ethics is again made impossible: either it would founder on a violation of Hume's thesis or on the threat of an infinite regress, or it would have to be the product of unprincipled arbitrariness. . . . Moreover, it takes but little reflection to see that a primitive norm (the bridge principle) must not be conceived to be tautologous, or analytic, or self-evident and "intuitively certain," or again the outcome of arbitrary stipulation. . . . Furthermore, we know that systematically and deliberately asking, requiring, ordering, pressing people to do the impossible, and to abstain from the necessary/indispensable, leads to their undoing. This is elementary. But I think I am trying to say more than that. Acceptance of the meta-norm (the bridge principle) is prior to all moral agreement and disagreement; it is a necessary condition for the possibility of a moral point of view. It is in this sense that it is constitutive of any and all forms of life (124, 128-129).

Also, if the impossible can be demanded of a norm-receiver, Tranoy foresees an incredible normative paradox:

A generally, universally valid norm permitting norm-givers to order norm subjects to do the impossible might, indeed, serve to make any form of human life impossible if it were to be practiced on an extended scale. It would legitimate the existence of inhuman worlds. It might thus be held to be a normatively self-defeating norm (123).

The second major category of exceptions are linguistic in nature. There is the definitional issue. There are many "oughts": the ought of prediction (she's never late for a round, she ought to get here soon); the ought of duty (she promised to complete her assignment, it ought to be on your desk); the ought of urging (she can speak clearer and ought to try); the ought of wishing (there really ought to be free on-line text retrieval for everyone); the ought of advising (you ought to debate at a better university) (Smith 362-363); and the ought of the superogatory (one ought to accept the loss and turn the other cheek) (Dahl 487). For me, what happens in debate may be closer to advising or the superogatory, since people involved in the debate are not empowered to resolve the action contemplated within the resolutive statement. As such, definitional quibbling does not seem the fracture the "ought-could" conjunction.

An exception to a strict interpretation also has been grounded in the speech act itself. "Part of any adequate theory of conversation is to treat instances critically and not to take them at face value" (Martinich 327). Martinich's reservations have been voiced elsewhere, but J. L. Austin gave the finest criticism:

If, for example, the speaker is not in a position to perform an act of that kind, or if the object with respect to which he [sic] purports to perform is not suitable for the purpose, then he [sic] doesn't manage, simply by issuing his [sic] utterance, to carry out the purported act. . . . Now people have, I know, the impression that where a statement, a constative utterance, is in question, the case is quite different; anybody at all can say anything at all. What if he's [sic] ill-informed? Well then, one can be mistaken, that's all. It's a free country, isn't it? To state what isn't true is one of the Rights of Man [sic]. However, this impression can lead us into error. In reality nothing is more common than to find that one can state absolutely nothing on some subject, because one is simply not in a position to state whatever it may be – and this may come about, too, for more than one reason. . . . (14, 19-20).

Hence, the distinction between the speech act in a debate, for example, and the constative of a promise or command is arbitrary. Consequently, speech act associated exceptions to the ought implies can principle are suspect.

This examination has led me to conclude that arguments favoring a strict "could" obligation associated with a "should" statement are important to improve the play of the game of debating. It has produced two important conclusions: "should" does not imply a "will" or "would" obligation, yet does imply a "can" or "could" obligation. Enter fiat as the wild card.

The Genesis of Fiat

Fiat is one of the most powerful, if not pernicious, conventions established in debating. In the days of stock issues, students were taught about stases. Two stases, blame and cure, were incorporated into policy debate as the stock issues inherency and solvency. Evidently, it was perceived that inherency and solvency might be difficult to prove without contradicting oneself. In response, the debate community decided that arguments associated with the conflict between these two stock issues would be short-circuited: we would call them "should-would" and we would exclude them from the decision calculus of the critic.

It is likely that fiat was introduced into policy debate to avoid the should-would conundrum. In essence, fiat is "the authority of the word should" (McGee 16). It allows an advocate to assume policy adoption, so system implications, desirable and undesirable, can be compared. In describing how fiat works, a metaphor was used: It is like an act of God. In time, the metaphor grew legs and became a power in itself.

Unfortunately, as our way of thinking about the game of debating changed, the fiat rule remained unchanged. Along with Lichtman and Rohrer and, more recently, Madsen, a competing paradigm, systems analysis or policy-making, surfaced and was extended. This paradigm transformed debaters and the critic(s) into policy makers (legislative or judicial), and they approached the debate as their real world counterparts might approach making law.

Systems analysts, a.k.a. policy makers, changed debate profoundly. Their first effect was on inherency. For the policy systems analyst, at least, inherency assumed a probability function, an essentially new role:

Inherency, in short, answers the question, why is one system more likely than another to maximize the desired goal? What makes one system more efficacious than another. . . ? The essence of the problem is that the present system chooses not to pursue absolute goals. It chooses not to commit its energies and resources in

the pursuit of a particular value in a vacuum. In policy arena after policy arena, this is the only reasonable explanation as to why presumably good people tolerate evil (Pfau, "Part One" 82).

In order to remove the debate from some of the real world considerations of politics, fiat was embraced again. To remove constituency sating, porkbarreling, partisan or party line voting, and vote trading, etc., from the purview of the debate and the judge, the would part of the debate was again short-circuited with fiat.

The affirmative, in a better position to demonstrate probable efficacy for their proposal because of affirmative single-mindedness, chose to move from inherency as a barrier to inherency as a description of the status quo. In other words, the plan does not exist, hence it is inherent; fiat makes it exist, hence it resolves the inherency in the system. Indeed, the highly misleading term "existential inherency" has been used to describe the status quo. In systems analysis speak, the plan was secured via fiat to reprioritize policy decisions to favor the affirmative plan.

Other developments followed. In time, systems analysis allowed the introduction of the comparative advantage case. As cost-benefit analysis became part of budget planning during the Kennedy administration, it pervaded policy discourse. The cost-benefit calculus seemed to favor even fine improvements over the status quo by undervaluing any innate merit to inaction. Therefore, affirmatives argued that any improvements over a working status quo were grounds for adoption as long as the benefits of the plan exceeded disadvantages to it.

One result was the further weakening of inherency. By its nature, "in the so-called comparative advantages case. . . , strictly speaking, the affirmative does not indict the status quo, the inherent need flows from the fixed point which might be phrased as follows: If there is a better way to solve a problem (all things being equal), then that solution should be adopted" (Mader 20). "The affirmative does not necessarily have to demonstrate specific inherent problems in the status quo. Rather, they may choose to focus on the necessary (one might even say inherent) possibility that harms will accrue from minor defects in the machinery of existing policy. This possibility is caused by the very existence of the status quo" (Cronen 247).

Though the emphasis may have shifted, Zarefsky argues the obligations had not changed and that any dichotomy is false. "What is required for a determination of inherency is to decide what is the essence of the present system, and whether that essence must be changed

to achieve the goals of the proposal. . . . In addition, the advantages alleged by the affirmative must, logically, inhere in the proposal adopted" ("The Traditional Case" 13, 14). Nonetheless, plans were driven by descriptive (or existential) inherency, and affirmatives rejected essentializing their advantages to the plan, thereby avoiding "intrinsicness" considerations.

Systems analyst innovator Kunkler disagreed with Zarefsky, arguing that inherency in policy making is field dependent and that its discovery lies in the comparison of two systems. Essentializing the *per se* advantages would not be necessary:

The affirmative demonstrated inherency when it showed that the new system has characteristics different from the old and that they are not only responsible for the gained positive effects, but that they also flow from the proposition. So the substantial nature of inherency, which varies from topic to topic, is discovered more from a comparison of two systems rather than from a causal analysis of present circumstances (cited in Brock et al. 157).

Negative strategies against the comparative advantages case have become problematic. Traditionally, the negative would have "show[n] that the advantages can be obtained from the status quo itself, or from minor repairs of the status quo. . ." (Thomas and Anderson 156). They continued: "The second line of argument against the causal connection between the plan and the advantages is to show how the advantages can be obtained without adopting the plan, that is, to prove that the plan is not a necessary cause for the alleged effects. . . . If the alleged advantages can be gained by means other than the affirmative plan, the affirmative team has the burden to prove that its plan is superior to those other means" (157). The minor repair briefly became the hypothetical counterplan, before becoming an unconditional one. Testing for necessity started as justification, became the intrinsicness argument, and was rejected as infinitely regressive.

Next, systems analysis popularized attitudinal inherency. In an attempt to mirror more exactly the issues confronting policy makers, motives crept back into the discussion of inherency. This time it was about attitudes. Attitudinal inherency refers to the affirmative argument that the reason the present system is not considering the policy at issue is an irrational (read as not persuadable by rational affirmative claims) predisposition against it:

Generally the attitudinal inherency case is developed by arguing that the present system's inability to achieve a given goal is a function of that system's control by a group of men [sic] who are attitudinally opposed to that goal, or who find other

conflicting goals more desirable. Thus, it is the attitudinal bias of powerful men [sic], rather than an inherent structural flaw, which prevents the system from optimal performance vis-a-vis a given goal (Ling and Seltzer 278).

Cherwitz and Hikins not only argued that ". . . all inherency arguments are attitudinal since all institutions are rooted in motives," but also demanded that the inherency burden not stop at fingerpointing (89). Attitudinal inherency can be mitigated by the plan mandates.

What makes a problem truly inherent is the point at which attitude, structure, implementation, and means merge. In short, it is only the bringing together of final, formal, efficient, and material cause that attests to the status quo's inherent capacity to rectify a problem. For that reason, all affirmative cases are reflecting of the properties of attitudinal inherency; but, no matter what one calls them, they must not be confined to a delineation of attitude alone (89-90).

Therefore, either the plan should deny power to the presently controlling group or the plan should be enacted through a second group unaffected by the attitudinal bias. An example of the first would involve removing the EEOC from its gatekeeping role if the EEOC were insensitive to the civil rights of a proscribed group. An example of the second can be drawn from history. The federal government secured civil rights for African-Americans in the 1950s when it became clear the states were not rising to the challenge.

This view did not abandon the notion of "structural flaw" which pervaded the old inherency. The new inherency viewed a structure that allowed perverse attitudes to affect it as "a flawed structure," but rather than repair it they argued to replace it with one which was not flawed. In essence, fiat was perverted when affirmatives decided to avoid their inherency by fiatting it away. "If as the affirmative case argues, policy makers do not currently want the affirmative policy, then they will find ways to see that the affirmative plan is not put into effect. Affirmative debaters, wanting to have their cake and eat it too, have responded with the magical power of fiat, mandating policy action to override these currently opposing attitudes" (Schunk, "Affirmative Fiat" 84). At times, the affirmative, as if seduced, blindly uses fiat as a way to cancel the inherency claim rather than using the plan to avoid the inherency construct; as such, they fiat solvency with the plan. Some critics have found this practice self-defeating:

It is the affirmative who has introduced a "would" dimension into the debate. However, having introduced it, the affirmative is unwilling to be bound by this "would" dimension in the consideration of the affirmative proposal. . . . When

they “will” their plan into existence or depend upon an act of God, they are saying, in effect, that they cannot change the attitudes of men [sic]. They are saying that ultimately men [sic] cannot be convinced by reason to change their way of thinking If such a premise is accepted, it then follows that debate is a meaningless activity because decision making is outside the realm of rational processes (Ling and Seltzer 280).

Nonetheless, attitudinal inherency is pervasive, but plans that actually resolve the bases or mechanisms of the attitudinal inherency are not.

Finally, systems analysis introduced the concept of “normal means.” Systems analysis and fiat compressed the process of adoption: inception, composition, construction, discussion, amendment, compromise, veto, override, and judicial interpretation were undertaken by “normal means.” Arguments such as “Congress will repeal the affirmative plan after its adoption,” “Congress will refuse to fund the plan,” “an executive agency will refuse to enforce the plan,” “the Supreme Court will strike down the plan,” etc. might be labeled should-would and considered not germane to implementation, but arguments associated with the effects of implementation on the political culture were retained. Witness the prevalence of political process disadvantages.

Some may think that the notion of should – and affirmative fiat – obviates the need to consider all political variables associated with the implementation of policy. This assumption seems erroneous. For example, post-fiat, the impacts of the plan on political capital and resources are rich grounds for disadvantages of all sorts:

The political tension, generated both by the adoption of a particular policy and by the use of affirmative fiat, will result in costs which manifest themselves in terms of thwarting of present system alternatives – both present and future [and] affirmative plans, which mandate action in pursuit of one objective, will reduce the total pool of inputs which makes them less available for some future agenda. (Pfau, “Part Two” 149).

Nevertheless, “acts of fiat” disadvantages remain particularly absurd. Occasionally, we find the word “fiat” used in discourse about government and politics. Nearly without exception, such fiat is derided. Some debaters have tried taking the “fiat” referred to in political discourse, comparing it to “fiat” associated with “should-would” arguments in debate, cross-applying the discursive commentary, and claiming affirmative fiat should be rejected. On one level, the “fiats” are incomparable and the reference requires equivocation.

One another level, there are no costs associated with the act of fiat because fiat is not real: actually, it is never used. It is paradoxical in that it never happens, it only happened. It has no spatial location, hence, it has no effect in real time and space. It predicates nothing. Fiat was designed merely to suspend the examination of some political variables in order to foster a more complete comparison of effects. It does not absolve the affirmative from the political consequences of “normal means.”

The issue before us is: What, if any, political issues pre- and compressed-fiat remain outside the realm of “should-would” arguments. Prior to and during fiat (within the compressed time), all political capital which is expended, but left uncompensated by the plan, is relevant and not suspended by the should-would label or the fiat magic wand. Fiat does not empower the affirmative to cancel their inherency. They remain obligated to design a plan that either eliminates the motive for the attitude(s) or the mechanisms through which the attitude(s) find expression.

All these policy-making developments have confounded the status of fiat in contemporary debating practice. We have reached the point whereby affirmatives may fiat de facto advantages by ignoring the inherency of the problem, merely wishing it away. The negative has tried to respond. If the debate community was not willing to rewrite the fiat rule, negatives would find strategies and tactics to circumnavigate it. And, the cascading of the game began.

The Negative Responds to Fiat

Fiat abuse fired up the negative to fight for disadvantage links. For example, Cheshier warned that fiat removes from consideration important implementation details, which need to be recaptured as ground for the negative:

The politics of enactment are very much part of the policy landscape, but too often these arguments are dismissed as inappropriate to policy debate (they are “should-would” arguments; “fiat lets us assume Congress will support the plan”; “political capital consequences that would result in weakening of the plan’s mandates can be ignored – we can fiat over that,” and so on). Although we permit, by kind of mutual agreement, some political capital arguments (thus the popularity of the Clinton disadvantage, movement arguments, etc.), others are almost arbitrarily excluded (n. pag.).

As the negative began to see its ground recede, ground from which to draw link stories, we began to see the end of the disadvantage as an argument form. Though not the only cause of

its demise, ground loss has contributed to its near extinction. The death of the disadvantage has become painfully evident with the popularity of a mere handful of dubious ones.

For example, consider a popular political disadvantage, currently code named "Clinton." This argument assumes the plan will be perceived by constituents, either the electorate or legislative colleagues, as evidence of strength/weakness that, in turn, increases/decreases the likelihood of some action upon which the fate of the world revolves. Beyond the obvious (Clinton can positively/negatively distance himself from any policy, his leadership characteristics are hardly tagged to the policy instant, his sexual peccadilloes have made his administration appear ludicrous, etc.), the disadvantage is nothing more than a race for updated link and internal link stories from on-line full-text retrieval services. In many instances, the team with the fastest and best connection, and who can afford to travel with a card-cutting assistant, wins the disadvantage.

Disadvantages became highly problematic when the affirmative was given the power to suspend the discussion of problems linked to the plan at various stages of implementation. When conceived, a policy direction can cause groups to coalesce and mobilize because they are excluded from the payoff; an unwise or impractical agenda might be adopted and people might be seriously harmed. When adopted, vested interests and political actors might employ anticipative and responsive strategies that are counterproductive on many different levels, e.g., a group might amend legislation to secure interests risked by the adoption of the plan. While this normally occurs within the confines of the bureaucracy, it is fractured by fiat. When implemented, actors might spy shifts in actual or perceived self-interest and they mitigate the execution of the plan by implementing compromising legislation. They might overreact and gut the provisions of the plan altogether.

While we can categorize some of these arguments as "would" issues, it is important to realize that they become issues because the affirmative has grown unwilling to do what needs to be done to avoid their inherency. Why? Avoiding the inherency is costly and breeds disadvantage link stories. A clear example of this is the absolute unwillingness by affirmative teams to spend money at any level. Under the guise of normal means, they discount all spending arguments by claiming fiat on one level of another. In general, the affirmatives have been allowed to discount the execution costs of the plan:

Fiat . . . "turbo-charges" arguments elevating their propensity for occurrence to the status of inevitability, when the actual likelihood of adoption is slight or non-existent. . . . [O]ne can always imagine ways to change the world (through

fiat) so as to make competing proposals irrelevant or undesirable. . . (Cheshier n. pag.).

And negatives did just that, simply counterplanning their disadvantages into the debate. "Consider the difference between a federalism disadvantage and a state counterplan with a federalism net benefit. The only difference is that the former requires debate over likelihood of occurrence – can anyone really defend the view that disadvantage debates are worse than counterplan debates?" (Cheshier n. pag.). In response, the negative had no choice but to convert their disadvantages into counterplan mandates. Claiming comparable fiat, they mandated the link story.

This practice has been assisted by current interpretations of counterplan competitiveness. We decide whether a counterplan mutually excludes a plan by examining the net benefits of the permutation(s). Branham suggested that we view counterplan competitiveness as opportunity-cost directed choices. "Succinctly, one disadvantage of the affirmative plan may be that its adoption significantly reduces the chance of implementing the superior counterplan" (62). Therefore, Branham considered the counterplan as a disadvantage. "If the aim of the negative is believed to be the establishment of the counterplan as a disadvantage, it makes sense to think of competitiveness as a link, a relationship of varying probability between plan adoption and the ability to implement and gain the benefits of the counterplan" (62).

Another negative move designed to counter expanding affirmative fiat has been to replace the traditional policy disadvantage with the kritik. While surely not the sole reason for the kritik, fiat abuse was a powerful one. For Shanahan, one of the assumptions in debate worthy of examination was the reality of fiat. He wrote that a "necessary precondition for any kritik is uncovering assumptions critical for the arguments and evidence being debated" (A-7). Shrader paraphrased the fiat basis for kritiks: "Fiat is an illusion; nothing happens when you vote affirmative. The change in thinking patterns or patterns in discourse are the biggest impacts of all, since they're the product of this [sic]" (n. pag.). He continued; we may "imprint one another with our perverse habits of thinking" and "if our preparations have included actions that are destructive of the environment and detrimental to the fortunes of future generations, then a real impact has occurred" (n. pag.). Shrader concluded: "The events of the debate which are external to the thought-experiment (are) actually more important than the odd cyberworld of Fiat-constructed reality" (n. pag.).

Hence, kritiks have become pre-fiat considerations that are neither unique nor need a threshold, and they cannot be outweighed by the anticipated advantages of the plan.

Recently, Gehrke tried extending kritiks to post-fiat arguments. While his view of kritik as policy criteria needing normative retuning is interesting, he does not explain how systems analysis employs this method in pragmatic decision making. There may be moments in history that call for such retooling, e.g., pre-Depression America, post-Tito Yugoslavia, etc., but these instances are rare events. Furthermore, his view of kritiks within interpretive analysis casts them as internal link stories to a traditional disadvantage, e.g. "advocacy may alter belief systems, provide new paradigms..." (31). For Gehrke, the disposition of these kritiks is not unlike disadvantages with issues such as threshold, uniqueness, etc. His idealism seems misplaced, conveniently ignoring that thinking people forego challenging decision making calculi not because they are unenlightened, but rather because utility demands that some challenges wait for another day. Nonetheless, he hints at the obvious: disadvantages masquerade as kritiks.

Fiat has been especially at issue in terms of disadvantages framed as radical counterplan strategies. While fiat may be an issue with any counterplan, it is inextricably associated with two: utopian counterplans and advocacy counterplans.

Utopian counterplans are premised on repopulating the world with utopians. "Debaters who advocate (utopian) counterplans populate the globe with perfect individuals; they fiat structures which allow only the goodness of humanity to flourish. In other words, debaters magically create a perfect world community" (Herbeck and Katsulas 108).

The debate over utopian counterplans has occurred elsewhere.³ However, the three strongest arguments against utopian counterplans each implicate fiat. Allowing the negative to move from a non-utopian setting into full-fledged and operating utopia is a classic illustration of the problem with fiat in negative counterplanning. First, the agent of the utopian counterplan is not prone to considering the policy in question (Katsulas, Herbeck and Panetta "Negative view" 106-107). Second, the utopian counterplan ignores solvency burdens by fiatting past the transition from reality to utopia (Herbeck and Katsulas 109; Katsulas, Herbeck and Panetta "Negative view" 130). Third, fiat is skewed toward the negative, for the counterplan can be run against any and every case (Perkins 144).

³ See Herbeck and Katsulas; Katsulas, Herbeck and Panetta; Edwards; and Snider "Fantasy."

A second counterplan is more radical still. The advocacy counterplan was designed to circumnavigate plans premised on weak or non-existent inherency claims. As such, they are well tailored to reveal some of the fiat related problems discussed earlier. The negative argues that the descriptive or existential inherency justifies action by the negative team as advocates. While hardly popular, it is worth exploring below.

Zarefsky discussed why good people tolerate evil. Their motives range from altruistic acts of selflessness to symbolic statements to reassure a constituency. Unearthing core motives might involve determining patterns of consistency between word and deed. To clarify, he offered an list of seven core motives: self-interest, roles, role conflicts, self-esteem, conflicting values, jurisdictional concerns, and perversity ("Causal Argument" 185). To this I would add oversight. In other words, sometimes evil occurs merely because people simply lack foresight. For example, legislation in California requiring riders in the bed of a pickup truck to be restrained was introduced after a bizarre accident in which a young child was thrown into the windshield of the car following a truck. The California legislature reacted immediately, passing legislation to preclude such a disaster from recurring. Hence, the reason a problem may exist is that no one seemed to notice it was a problem. The warrants for descriptive or existential inherency might easily be simple oversight.

As such, debaters have advocated counterplans to resolve these oversight problems. Mitchell references an example "involving the coaching staff of a given university undertaking a study of the panoptic dimensions of the criminal justice system . . . and another involving the appointment of debaters as energy czar. . . . Against an affirmative plan which called for a reversal or a particular court decision, the negative might have presented an action plan which directed debaters to organize an amicus brief initiative designed to influence an appeals court to issue a judgment. . ." (12). The negative might opt to flash mail the affirmative plan to members of Congress for immediate consideration.

While the first two illustrations might be bizarre and extravagant, the remaining two are quite more realistic. In these instances, the construct of fiat is engaged "within the spatio-temporal boundaries of the contest round" – a concept Mitchell tags as "reflexive fiat" (11). Reflexive fiat "collapses the gulf separating advocate from agent of action. . . , makes fiat a tangible mandate for concrete action. . . , explodes the spatio-temporal limitation of the contest round itself. . . , and pragmatically grounds [fiat] in the physical presence of advocates" (11-12). Mitchell concluded: "Unlike the temporally ephemeral political commitment entailed in the defense of simulated plans, the commitment to future

action makes the reflexive fiat carry with it an outward activist imperative" (11-12). The negative is the activist. Mitchell argues that such counterplans compete rhetorically, and any affirmative permutation would tarnish the persuasiveness of the counterplan advocates as rhetors entering the public sphere. To advocate both plan and counterplan "would involve assuming a hypocritical or inconsistent rhetorical stance in the public sphere, something which would limit their political efficacy and jeopardize solvency of the action plan" (12).

The advocacy counterplan is most effective when used by the negative in response to descriptive or existential inherency. The counterplan demonstrates that the affirmative fails to establish an inherency requirement for the plan. The counterplan, whether visiting Washington in person, writing letters, or flashmailing a transcript, demonstrates the plan is not a unique solution to whatever ills or advantages the affirmative offers for consideration.

Unless we want pre-emptory advocacy counterplans run to flush out inherency that then serves as a solvency challenge, unless we want to allow affirmatives to run plans which are costly yet cost nothing because fiat cancels the link story to the potential disadvantage, and unless we want rounds riddled with mini-kritiks, often hidden within other arguments, such that every debate seems to frame the judge as the arbiter of all truth and understanding in the cosmos, then we might want to restrain fiat by encouraging negatives to argue plan circumvention. This argument would compel affirmative debaters to rewrite the fiat rule themselves.

The Circumvention Argument

The fiat exclusion of "should-would" arguments does not amnesty the affirmative from political reality:

Negative teams can, of course, argue that even if instituted, an affirmative proposal could not be effectively implemented and enforced. . . . [N]egative teams can contend that the government will act to undermine its intent . . . or the government either will not or cannot enforce the proposal. . . . By raising enforcement and circumvention arguments, advocates attempt to diminish the probability that the plan will achieve desirable outcomes even when adoption of the proposal is not an issue (Lichtman and Rohrer 242).

Of course, for any of these potential arguments to be effective, a bright line of sorts needs to be drawn that fences in fiat. Circumvention arguments are viable only when the affirmative

does not choose to expend capital (political, monetary, etc.) to evade the inherency issues, selecting to complete adoption by canceling the inherency and situating themselves among their solvency claims.

While Lichtman and Rohrer hedged that the negative is "prohibited from alleging that decision-makers will repeal the affirmative plan" (242), their conclusion seems to be groundless. In instances when the affirmative merely fiats away the motives and mechanisms which tolerated the absence of the plan, arguments such as repeal seem to be a viable test of the affirmative plan and clarifies the abuse of fiat. On the other hand, if the affirmative "buys off" or "buys out" the inherency, repeal arguments using the affirmative inherency arguments as a warrant are groundless simply because the post-fiat world is not the pre-fiat world; the motives and mechanisms which might lead to appeal are different. The affirmative inherency argument no longer identifies a viable motive or mechanism for circumvention, including repeal.

Repeal is, of course, an extreme form of the circumvention argument. There are many other types. Circumvention arguments can address issues associated with insufficient personnel, expertise, or budgets, misguided interests, concerns, or values, etc. The circumvention argument has three formal elements: (a) a discussion of motive(s) that have been illegitimately discounted by fiat; (b) an examination of mechanisms available to agents who have motivation to scuttle the plan; and (c) some evaluation of the relative impact of the motive and mechanism upon the solvency of the plan mandates. The circumvention argument would function post-fiat, and would punish arbitrary discounting through affirmative fiat.

It has been argued that the search for inherency and its incorporation into contest debates might make them less "magical" and more grounded in the machinations of policymaking. The same might be said of the circumvention argument:

In the search for inherency, we discover a multitude of configurations, which are the substance of the resolutorial field. The laws, or overarching structure, are related in unique harmony/disharmony with the particular expression of administrative order. An understanding of the relationship between laws and the embodiment of those laws will produce an understanding of reality for each topic which provides the ability to link general to specific, predicate to object, and even cause to effect. Additionally, such an understanding may reveal how systems of knowledge and acts may conjoin in constructing the real (Goodnight et al. 239).

Consider the use of "side payments" and package deals as acceptable strategies in constructing the "real." Zarefsky suggested: "It may be possible to propose action which will 'buy-off' objectors by outweighing their current motives with positive incentives for compliance . . . including 'side payments' – additional benefits to persons other than those for whom a program is designed. . . ("The Role of Causal" 188). Wilson wrote, "When change does come, it tends to come in packages. . . . To have a new policy. . . , it is usually necessary to make side payments, giving other people as a condition of acquiescence something that they want. The total package becomes much bigger, and a single change tends to be imbedded in a cluster of simultaneous changes" (21-22). The affirmative plan's true costs become clarified as the affirmative promulgates reasonable solutions to multivariate problems. "Given a society as diverse as ours and given the kind of decentralization of formal authority that exists, perhaps the cheapest way to keep the system moving with a minimum of organizational strain may be to engage in economically efficient 'package deals'" (Wilson 22). The circumvention argument demands that actors and agency be resolved by plan mechanics. The plan mandates would need to compensate the forces, attitudinal and/or structural, that preclude the realization of the affirmative advantage. If the status quo routinely ignored the plight of a class of citizens, then those involved would be replaced or their jurisdiction restrained. If the status quo refused to assist a class of citizens for a single or confluence of externalities, then those externalities would need to be resolved as well.

Consider this broad illustration. The Equal Employment Opportunity Commission has not functioned efficiently, and civil rights goals associated with employment remain unfulfilled. Why? Because the EEOC is perverse? (If so, the negative could argue that the plan would be equally problematic.) The EEOC has insufficient resources? (If so, unless the plan hires more civil servants and provides them with an adequate budget, the negative could argue that the post-plan EEOC will also fall short, or that it will merely expose another class of litigants to discrimination as a trade-off.) The EEOC does not realize the problem because it has not received appropriate complaints? (If so, unless the plan publicizes its mandates and provides increased resources for poverty and public interest lawyers, the negative could argue that the EEOC will remain ineffective.) Hence, the circumvention argument uncovers the motives for the descriptive inherency and uses the motives to construct a link story.

Next, the circumvention argument evaluates plan mechanics to determine which means remain available through which the motives are expressed and these are used to construct an

internal link story. Finally, the consequences of the interplay of motives and mechanisms are evaluated against the claimed advantages. While it may be difficult to argue that circumvention would nullify the solvency of the plan, when wedded to other arguments in the debate (presumption, solvency presses and take-outs, disadvantages, etc.), it might tip the balance away from the descriptive inherency and expansive fiat.

Conclusions and Complaints

To counterbalance expansive fiat, critics have had to listen to the following arguments: (1) tit-for-tat – whereby the negative claims comparable fiat privileges, adopting wildly bizarre counterplans; (2) crime and punishment – whereby the negative claims some procedural violation by the affirmative should be punished with an *a priori* disposition against them, somewhat like the traditional topicality argument; and (3) whining and counterwhining – whereby both teams make charges and countercharges, often without warrants, opening the discussion to intervention by the critic. While most judges find these "arguments" tiresome, debaters have added little or nothing to their argumentative arsenal that might avoid such questionable rejoinders.

Since the policy debate community seems unable to locate fiat, or even resolve why it exists at all, some controls on its escalation seem sensible. The circumvention argument might compel affirmatives to resolve inherency rather than making it dissolve into the ether like a cheap parlor card trick. By rewriting the fiat rule for debating as it is practiced presently, we might improve the game play for debating. Minimally, it deserves its day, at least until something better or cleaner rises in its place.

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CAD FORUM
GROUNDING NEGATIVE FIAT
Kenneth Broda-Bahm, Editor

The logical limits on the ability of the negative team to specify alternate courses of action have proven to be a vexing concern for debate theorists over the quarter-century since the appearance of Lichtman and Rohrer's "A General Theory of the Counterplan." Stated simply, the challenge has been to construct a rationale for negative fiat which limits the universe of compared worlds to those which reasonably test the resolution. In this special forum section, **Michael Korcok** offers a re-reading of Lichtman and Rohrer's classic article augmented by decision-making theory, in order to produce a comprehensive solution to this problem. At first blush, Korcok's advice that "the appropriate scope of negative fiat is the scope of the authority of the decision-maker choosing whether to adopt the affirmative plan" (3) seems to offer a clean slice through the Gordian knot of judicial role-playing and normative rule-making which has characterized present piecemeal solutions to this problem. Several critics, however, give pause to that assessment, noting several difficulties and challenges to Korcok's solution. Initially, **John Katsulas** argues that in addition to lacking a workable template and a clear grounding, Korcok's solution would deny the educational advantages of comparing the relevant merits of different agents by confining advocates to one level of governmental action. Taking the educational argument in a different direction, **Brian McGee** argues that fiat is a "necessarily and happily utopian concept" (31) and that restricting fiat actions to the scope of authority of a discrete decision-maker denies debaters the opportunity to engage in socially critical thinking and reduces a focus on the actual decision-maker in a debate: the critic/judge. Directly addressing Korcok's use of opportunity cost theory, **Gina Lane** argues that as an agent who does not represent or participate in the interests of others, critic/judges do not incur the costs of their choices. Since critics cannot produce an evaluation that represents the choice-conditions of other decision-makers, they are necessarily and appropriately left with the situational norm-setting that has characterized prior attempts to theorize fiat. **Dallas Perkins** charges that Korcok offers an overly simplified model of the policy-making process and fails to clarify the identity of the "decision-maker" whose scope of authority is to limit negative fiat. Noting the perspicuity and promise in Korcok's solution to negative fiat, however, Perkins